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**STATE OF CALIFORNIA**

**State Energy Resources Conservation  
and Development Commission**

In the Matter of:

WILLOW ROCK ENERGY STORAGE  
CENTER

Docket No. 21-AFC-02

**CALIFORNIA UNIONS FOR RELIABLE ENERGY  
RESPONSE TO APPLICANT'S LETTER REQUEST TO MODIFY  
SEPTEMBER 9 REVISED SCHEDULING ORDER**

October 18, 2024

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## INTRODUCTION

California Unions for Reliable Energy (“CURE”) submits this response to GEM A-CAES LLC’s (“Applicant”) letter dated October 11, 2024 to Andrew McAllister, California Energy Commission (“CEC”) Commissioner and Presiding Member, and Noemí Gallardo, CEC Commissioner and Associate Member, requesting modifications to the Committee’s Revised Scheduling Order dated September 9, 2024 (“Revised Scheduling Order”)<sup>1</sup> for the Willow Rock Energy Storage Center proceeding (21-AFC-02)(“Project”).<sup>2</sup> CURE requests that the Committee deny the Applicant’s request for modifications to the schedule because the Applicant does not demonstrate good cause to modify the Revised Scheduling Order, the Revised Scheduling Order is reasonable, and the letter is not a motion that was preceded by an effort to meet and confer with the parties about revising the schedule.

For the foregoing reasons, CURE respectfully requests that the Committee deny Applicant’s request to modify the Revised Scheduling Order.

## DISCUSSION

### I. BACKGROUND

On December 1, 2021, the Applicant filed an Application for Certification (“AFC”) with CEC to construct and operate the Project.<sup>3</sup> In its first AFC Status Report, the Applicant generally described its ongoing Project optimization activities but explained that it did “not anticipate that the

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<sup>1</sup> TN 259084.

<sup>2</sup> TN 259524.

optimization can, should, or will substantially delay the schedule,” and urged the Committee that “the schedule for this AFC proceeding of first impression should not be delayed.”<sup>4</sup> Several months of discovery, information gathering, and analysis of the Project ensued, but the proceeding was later suspended by the Committee on August 11, 2023 at the unopposed request of CEC Staff due to numerous Project changes.<sup>5</sup>

Beginning on March 1, 2024, Applicant submitted its Supplemental Application for Certification (“SAFC”) for the Project, which the Committee described as both “a relocated and reconfigured Willow Rock Project.”<sup>6</sup> Given the substantial changes to the Project since the original AFC filing, the Applicant acknowledged that the SAFC “largely supersede[s]” the analysis and work performed on the AFC.<sup>7</sup> The Committee also stated that “[m]ost if not all resource, engineering, reliability, and safety analyses for the proceeding are substantively impacted by the reconfigured and relocated project.”<sup>8</sup> Essentially, the filing of the SAFC restarted the certification process.

On September 9, 2024, the Committee issued its Revised Scheduling Order, which adopted a schedule for the SAFC proceeding.<sup>9</sup> The Revised Scheduling Order explains that the schedule may be modified upon a showing

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<sup>3</sup> TN 240751-1 to 240751-23.

<sup>4</sup> TN 246209.

<sup>5</sup> TN 251599.

<sup>6</sup> TN 254951.

<sup>7</sup> TN 259084.

<sup>8</sup> TN 254951; TN 259084.

<sup>9</sup> TN 259084.

of “good cause.”<sup>10</sup> The Order also mandates that once a party determines that it cannot make a deadline, it must “notify the Committee as soon after reaching that conclusion as possible and file a written request as a stand-alone motion asking for modification of the schedule that explains the reasons the deadline cannot be met.”<sup>11</sup> However, before filing a motion for an extension or relief from the Revised Scheduling Order, the parties must first attempt to meet and confer and “failing that, the motion shall describe the attempt to meet and confer and recommend a resolution.”<sup>12</sup>

## **II. THE APPLICANT HAS NOT SHOWN GOOD CAUSE TO MODIFY THE SCHEDULE**

The Applicant has not provided the requisite showing of “good cause” to support a modification of the Revised Scheduling Order. First, DOE’S decision to align the NEPA and CEQA processes should not impact the schedule in this proceeding. The Applicant applied for a loan guarantee to support the construction and startup of the Project pursuant to DOE’s Renewable Energy and Efficient Energy Projects Solicitation (Solicitation Number: DE-SOL-0007154) under Title XVII, Innovative Energy Loan Guarantee Program, authorized by the Energy Policy Act of 2005.<sup>13</sup> On June 25, 2024, DOE circulated a letter notifying Interested Parties of its intent to prepare an Environmental Assessment to evaluate whether to provide a

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Letter from Kara Harris, Federal NEPA Document Manager, Loan Programs Office, DOE to Interested Party (June 25, 2024).

federal loan guarantee.<sup>14</sup> On October 7, 2024, DOE circulated a letter stating its decision to keep the NEPA and CEQA processes aligned while also continuing to pursue the required federal agency consultations.<sup>15</sup>

The Applicant overstates the significance of DOE’s recent action, claiming that the Committee’s Revised Scheduling Order has “impacted efforts to secure California’s fair share of available federal clean energy incentives.”<sup>16</sup> This alleged implication of the DOE’s October 7 letter is unsubstantiated by the Applicant and fails to acknowledge that the DOE’s review process is still proceeding with federal agency consultations.<sup>17</sup> Moreover, NEPA review will likely resume in early 2025 with the publishing of CEC’s Preliminary Staff Assessment.<sup>18</sup> Finally, there is no evidence of interference with the Applicant’s eligibility for the federal loan guarantee. Therefore, the DOE’s decision to align its NEPA review process with CEC’s CEQA-equivalent review does not qualify as “good cause” to support any changes to the Committee’s Revised Scheduling Order.

Second, the Applicant erroneously characterizes any perceived “delay” in this proceeding as due to the Revised Scheduling Order when in fact the pace of this proceeding has been largely dictated by the Applicant relocating and reconfiguring the project. Earlier this year, the Applicant essentially

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<sup>14</sup> *Ibid.*

<sup>15</sup> Letter from Kara Harris, Federal NEPA Document Manager, Loan Programs Office, U.S. Department of Energy (“DOE”) to Interested Party (October 7, 2024)(“Exhibit A”).

<sup>16</sup> TN 259524.

<sup>17</sup> Letter from Kara Harris, Federal NEPA Document Manager, Loan Programs Office, U.S. Department of Energy (“DOE”) to Interested Party (October 7, 2024)(“Exhibit A”).

<sup>18</sup> *Ibid.*

restarted this proceeding by filing the SAFC.<sup>19</sup> As described by the Committee, the SAFC “proposed a substantially reconfigured and relocated project” that requires “[n]ew data and surveys related to natural and cultural resources,” among other things.<sup>20</sup> As of September 27, 2024, the Applicant was still in the process of finalizing access and site control agreements for the areas needed for Project development.<sup>21</sup> The Committee recognized that “site access may be impeding the ability to conduct resource surveys,” which then delays the release of certain information and data.<sup>22</sup>

The Applicant also requested an extension of time to respond to CURE’s Data Requests Set 1, which was granted, but then several attachments to Applicant’s responses were not provided to CURE until more than two weeks after receiving the responses.<sup>23</sup> Providing timely access to requested information to the parties will ensure that this proceeding runs efficiently.

Since the Applicant’s letter does not demonstrate good cause to modify the Revised Scheduling Order, CURE urges the Committee to deny the Applicant’s request.

### **III. THE REVISED SCHEDULING ORDER IS REASONABLE**

The Applicant claims that an expedited permitting process is consistent with CURE’s Proposed Schedule, but CURE’s proposal asked the

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<sup>19</sup> TN 254951.

<sup>20</sup> TN 259084.

<sup>21</sup> TN 259338.

<sup>22</sup> TN 259084.

Committee to establish the deadlines for the evidentiary hearing phase of the proceeding after the PSA is released.<sup>24</sup> CURE reasoned that the timing for the FSA and evidentiary phase of this proceeding will be dictated in large part by the PSA and any comments on the PSA, in addition to any additional information that may be provided during future workshop(s), if scheduled. Furthermore, CURE explained that CEC Staff will need adequate time to review the comments and prepare written responses to comments that raise significant environmental issues.<sup>25</sup> The Revised Scheduling Order's requirement to evaluate the hearing schedule after CEC Staff's filing of the FSA is generally consistent with CURE's recommendation.<sup>26</sup>

#### **IV. NO MOTION PRECEDED BY MEET AND CONFER EFFORTS OCCURED AS REQUIRED IN THE REVISED SCHEDULING ORDER**

The Revised Scheduling Order requires that the parties meet and confer before a party may file a motion for an extension or relief from the Revised Scheduling Order, and "failing that, the motion shall describe the attempt to meet and confer and recommend a resolution."<sup>27</sup> The Applicant's letter is not a motion, the Applicant did not meet and confer, and the Committee should not amend its Revised Scheduling Order on the basis of a

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<sup>23</sup> TN 259316.

<sup>24</sup> TN 259524.

<sup>25</sup> See 20 C.C.R. § 1742(c); Pub. Res. Code § 21091(d)(2)(A).

<sup>26</sup> TN 259084. This approach is similar to the Committee's previous Scheduling Order, which stated that "The Committee will establish the schedule and dates for the evidentiary phase of the proceeding upon Staff's filing of the Final Staff Assessment." TN 245754. It is also consistent with scheduling orders in other AFC proceedings, e.g., Presiding Member's Scheduling Order for the Elmore North Geothermal Project Proceeding, TN 252285, Docket 23-AFC-02.

letter. Should the Applicant decide to pursue a motion, as set forth in the Revised Scheduling Order, CURE would be available to meet and confer with the Applicant prior to the Applicant filing its motion.

**V. CONCLUSION**

For the foregoing reasons, CURE respectfully requests that the Committee deny the Applicant's request to modify the Revised Scheduling Order.

Dated: October 18, 2024

Respectfully submitted,

/s/ Tara C. Rengifo

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<sup>27</sup> TN 259084.

# **EXHIBIT A**



**Department of Energy**  
Washington, DC 20585

October 7, 2024

**SUBJECT:** The U.S. Department of Energy is pausing the preparation of the Environmental Assessment for the Willow Rock Energy Storage Center in Kern County, California.

Dear Interested Party,

The U.S. Department of Energy (DOE) Loan Programs Office (LPO) is preparing an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) for a potential Federal loan guarantee to Hydrostor USA Holdings Inc. (the Applicant) to support construction of the Willow Rock Energy Storage Center in Kern County, California (Project). The decision to prepare an Environmental Assessment (EA) for the Project was made in accordance with the requirements of NEPA, the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), and DOE's implementing procedures for compliance with NEPA (10 CFR Part 1021).

The California Energy Commission (CEC) is conducting an environmental review of the Project pursuant to the California Environmental Quality Act (CEQA). On September 9, 2024, the CEC issued a Revised Scheduling Order identifying the anticipated environmental review schedule. This letter is to inform you that to keep the NEPA and CEQA processes aligned and in compliance with NEPA §1501.10(b)(1), LPO has paused its NEPA review of the Project. LPO will continue to pursue the required federal agency consultations, including consultation under Section 106 of the National Historic Preservation Act.

If you or your staff have any questions concerning this project or DOE's NEPA process, please contact me in the DOE Loan Programs Office by email at [LPO\\_Environmental@hq.doe.gov](mailto:LPO_Environmental@hq.doe.gov) or by telephone at 202-586-8716.

Sincerely,

**KARA HARRIS**

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Kara Harris  
Federal NEPA Document Manager  
Loan Programs Office