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STATE OF CALIFORNIA

**State Energy Resources Conservation
and Development Commission**

In the Matter of:)
)
Application for Certification for the)
Willow Rock Energy Storage Center)
)
_____)

Docket No. 21-AFC-02

**MOTION TO AMEND THE REVISED SCHEDULING ORDER
FOR
THE WILLOW ROCK ENERGY STORAGE CENTER**

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Pursuant to Section 1211.5 of the California Energy Commission (“CEC” or “Commission”) Rules of Practice and Procedure¹ and in response to the *Hearing Officer Memorandum Regarding Requests for Relief from the Revised Scheduling Order for Willow Rock Energy Storage Center (21-AFC-02)*,² GEM A-CAES, LLC (“Applicant”) hereby files this *Motion to Amend the Revised Scheduling Order for the Willow Rock Energy Storage Center* (“Motion”).

I. THE COMMITTEE HAS PLENARY AUTHORITY TO REVISE THE SCHEDULING ORDER TO GRANT THE RELIEF REQUESTED IN THIS MOTION.

The Warren-Alquist Act and its accompanying regulations provide the Committee with plenary authority to grant the relief requested in this Motion. Specifically, the Commission’s Regulations authorize the Committee to “Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, ordering the consolidation or severance of any part, or all, of any proceeding or hearing, admitting or excluding evidence, designating the subject matter, scope, time of presentation, and order of appearance of persons

¹ As set forth in Title 20, Division 2, Chapter 2 of the California Code of Regulations (“C.C.R.”).

² TN #: 260133.

making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings.”³

In this case, the Scheduling Order currently proposed for this proceeding does not provide a date certain for a final Commission decision on the Application for Certification (“AFC”). For the reasons described below, achieving a timely decision on the AFC is necessary to meet the CEC’s obligations under the Warren-Alquist Act, ensure California’s fair share of federal funds, and to ensure that critically needed long-duration energy storage projects (“LDES”) are available to meet the grid reliability needs recognized in recent procurement decisions by the California Public Utilities Commission (“CPUC”). Therefore, the Applicant seeks an order from this Committee to amend the Scheduling Order for this proceeding as appropriate to regulate the conduct of this proceeding to provide a date certain for a final decision by the CEC by September 2025.

II. THE APPLICANT HAS SATISFIED THE MEET AND CONFER OBLIGATIONS.

In furtherance of the meet and confer obligations of the Parties, on Friday, November 22, 2024, the Applicant emailed Counsel for each of the Parties the Applicant’s Proposed Schedule attached hereto. Thereafter, Counsel for the Applicant spoke with each Party via videoconference to determine whether they would stipulate to the Proposed Schedule attached.

On Monday, November 25, 2024, Counsel for Applicant spoke with Counsel for Center for Biological Diversity (“CBD”), Zeynep Graves, about the Applicant’s Proposed Schedule. The discussion was professional and productive; however, Counsel for CBD indicated that CBD would not stipulate to Applicant’s Proposed Schedule.

On Tuesday, November 26, 2024, Counsel for Applicant spoke with Counsel for California Unions for Reliable Energy (“CURE”), Tara Rengifo. The discussion was professional and productive. Before discussing the Applicant’s Proposed Schedule, CURE and Applicant discussed two CURE Data Requests, and on Monday December 2, 2024, Applicant emailed information to CURE on those Data Requests. In discussing the Applicant’s Proposed Schedule, Counsel for CURE indicated that CURE would not stipulate to Applicant’s Proposed Schedule.

³ 20 C.C.R. § 1203(c); the Committee’s plenary authority is not limited to good cause.

On November 22, 2024, after emailing the Applicant’s Proposed Schedule, Counsel for Applicant spoke briefly with Counsel for the CEC Staff, Erika Giorgi, who confirmed receipt and stated that she would talk with Staff the following week. On Tuesday, November 26, 2024, Counsel for the Applicant spoke with CEC Staff Counsel and several members of the Staff, including the Siting, Transmission, and Environmental Protection Division Director, Elizabeth Huber. The meeting was productive and Staff indicated that they would regroup after the Thanksgiving holiday.

The Applicant noted that as a courtesy and as a recognition of the cooperative discussions, the Applicant would hold, and not file, the Motion until the following week to avoid triggering the seven-day deadline for a reply by Staff and the Intervenors, the response time for which would have run almost entirely over the Thanksgiving holiday.

On Monday, December 2, 2024, Staff Counsel emailed the Applicant to indicate the Staff and Management were discussing the Applicant’s Proposed Schedule. On that same day at approximately 6:50 p.m., Elizabeth Huber from the CEC sent the Applicant an email with proposed dates. Staff filled in many of the “TBD” placeholders in the Committee Order, resulting in a proposed Final Decision at a CEC Business Meeting in either November or December of 2025. On Tuesday, December 3, 2024, Counsel for Applicant informed Staff Counsel that because the Applicant requires a schedule that allows for Final Decision and the commencement of construction in 2025 and because an agreement was not reached, Applicant would be filing this Motion.

III. TO ADVANCE THIS IMPORTANT LONG DURATION ENERGY STORAGE PROJECT, THE COMMITTEE SHOULD ISSUE AN ORDER GRANTING THE MOTION’S REQUEST FOR RELIEF.

The facts, the law, and the interests of the State of California all support the thorough, robust and expedited consideration of the Supplemental Application for Certification (“SAFC”) for the Willow Rock Energy Storage Center (“WRESC”). As noted above, the Committee has plenary authority to regulate the conduct of these proceedings. The Committee should exercise that plenary authority to (a) avoid negatively impacting the Applicant’s efforts to secure California’s fair share of available federal clean energy incentives and (b) avoid negatively impacting a project that will advance California’s climate policy and energy reliability objectives and help to meet the energy storage procurement targets set by the CPUC.

The delaying of the Committee’s review of WRESC has already adversely impacted efforts to secure California’s fair share of available federal clean energy incentives. Specifically, the Applicant has been informed that the federal National Environmental Policy Act (“NEPA”) process for WRESC, a critical activity associated with federal funding benefits, has been paused in direct response to the Committee Order’s perceived delay in the CEC’s processing of the SAFC.⁴

Completion of federal NEPA review by the U.S. Department of Energy is a pre-requisite for federal clean energy incentives. CEC-induced delays in processing the Applicant’s SAFC send a signal to the NEPA Responsible Agency, Department of Energy, that California’s statutory permitting timelines are not relevant and/or are indifferent to availability of incentives that are crucial to ensuring project success. These signals provide an impression that federal resources for support of clean energy investment are better directed to jurisdictions that are able to advance permitting in a more timely manner. The Applicant strongly believes that this should not be the case and that focused yet timely consideration by state and federal permitting bodies can indeed ensure delivery of robust clean energy funding support that is crucial to successful project completion and the corresponding economic benefit to California ratepayers and the communities receiving reliable new clean energy development. This includes important eligibility considerations for Inflation Reduction Act incentives as well as U.S. Department of Energy programming.

Separately, as one of the lynchpins in satisfying the LDES needs vital to California’s Mid-Term Grid Reliability, WRESC requires a final CEC Decision in 2025. The CPUC has correctly identified a mid-term (roughly the 2028-2031 period) need for LDES capable of 8+ hours of continuous energy discharge as a critical component to meeting the state’s electricity reliability needs. The Mid-Term Reliability (“MTR”) deadline for long-lead time resources including WRESC is June 1, 2028, with some flexibility allowing project delivery out to June 1, 2031. To take advantage of this flexibility through June 1, 2031, California’s load-serving entities (“LSEs”) are required to provide short-term energy or bridging resources between 2028 and the online date of LDES facilities,⁵ increasing costs to consumers based on the length of delays. Delays could further burden ratepayers in additional procurement costs while California

⁴ TN #: 259605, Exhibit A.

⁵ See CPUC Decision 24-02-047, Ordering Paragraph 19.

is facing an affordability crisis. These costs can be avoided through revising the Scheduling Order.

The Applicant is doing everything within its reasonable control to help LSEs meet the CPUC's MTR procurement mandates and deadlines for long-lead time resources. The Applicant submitted a California Independent System Operator ("CAISO") Cluster 13 Interconnection application on April 15, 2020 and advanced site engineering and design to meet the CAISO interconnection queue requirements, allowing the Applicant to file its AFC on December 1, 2021. Deliverability for the full 500 MW, Full Capacity Deliverability Status was assigned by the CAISO on March 18, 2022.

The CPUC MTR procurement mandates, coupled with associated commercial offtake agreements, currently require WRESC to deliver energy before 2030 without penalty. Working backwards from this deadline, construction must therefore commence in 2025. A delay of the CEC's Final Decision for WRESC to November or December of 2025 would risk California not meeting its critical energy reliability, economic benefits, and energy affordability goals.

Again, the Applicant is doing everything it can to ensure LSEs can meet the CPUC's MTR mandates and deadlines for long-lead time resources, including LDES. Permitting delays may have significant adverse impacts on meeting these important policy objectives, and are also adversely affecting current efforts to contract the remaining capacity for offtake with LSEs under the MTR requirements.

IV. THE APPLICANT'S PROPOSED SCHEDULE IS REASONABLE BECAUSE IT RETAINS IMPORTANT OPPORTUNITIES FOR STAKEHOLDER PARTICIPATION.

No Parties or persons would be prejudiced by the thorough yet expeditious consideration of this Application proposed in the Applicant's revised schedule. In contrast, the state's interests in electric reliability, renewable power integration, and Resource Adequacy are prejudiced by unnecessary delay.

As set forth in the Applicant's Response to the Issues Identification Reports of the Parties, only a handful of issues remain open.⁶ At the Informational Hearing, the Staff stated that it was now satisfied with the information provided on Biological Resources and Water

⁶ TN #: 259795.

Resources, due in large part to the Applicant’s Data Responses to CEC Staff Data Requests Sets 3⁷ and Set 4. Specifically, On October 28, 2024, the Applicant filed its responses to the CEC’s Data Requests Set 4.⁸ Also on October 28, 2024, the Applicant docketed its Repeated Application for Confidential Designation of Biological Resources Information in response to the CEC’s Data Requests Set 4.⁹ On October 30, 2024, in preparation for the Site Visit and Public Hearing, the Applicant docketed its presentation slides.¹⁰ On the same date, the Applicant docketed its response to the Issues Identification Reports filed by the CEC and Intervenors CURE and CBD.¹¹ With respect to Cultural Resources, Staff indicated that “Although a query of the California Native American Heritage Commission’s Sacred Lands Files has not identified the presence of tribal cultural resources documented in the Project Area of Analysis, tribal consultation *could* result in the identification of significant tribal cultural resources.”¹² To date, no such resources have been identified, and the Applicant’s Proposed Schedule retains sufficient time to ensure that issues, should they arise, are respectfully and thoroughly addressed.

As set forth in the attached Proposed Schedule, stakeholders will have notice and opportunity to be heard in numerous settings in this proceeding, including, but not limited to the following: review of the Preliminary Staff Assessment (“PSA”); Public Comments on the PSA; a Final Staff Assessment; Evidentiary Hearings; Briefings; Presiding Member’s Proposed Decision (“PMPD”); a Hearing on the PMPD; Public comment on the PMPD; and a Hearing on the Commission’s Final Decision. Given the Commission’s comprehensive and iterative approval process, and the limited number of issues that remain open, no Parties or persons are likely to be prejudiced by an Order adopting the Applicant’s Proposed Schedule.

V. REQUEST FOR RELIEF FROM THE REVISED SCHEDULING ORDER FOR WILLOW ROCK ENERGY STORAGE CENTER

The Applicant has attached hereto a Proposed Schedule allowing for the Commission to fully and thoroughly consider this project in a timely manner. Specifically, the attached

⁷ TN #: 259675.

⁸ TN #: 259736.

⁹ TN #: 259737 and 259326, respectively.

¹⁰ TN#: 259775.

¹¹ TN#: 259795.

¹² TN #: 259671, p. 4; emphasis added.

Proposed Schedule satisfies all of the procedural and substantive due process considerations at issue, allowing for consideration without prejudicing the Committee or the Commission in its duties to consider a Final Decision on this SAFC.

Accordingly, the Applicant respectfully requests that the Committee issue an Order adopting the Applicant's Proposed Schedule, granting the requested *Relief from the Revised Scheduling Order for Willow Rock Energy Storage Center*.

Dated: December 3, 2024

Respectfully Submitted,

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By  _____

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APPLICANT'S PROPOSED SCHEDULE

Activity	Committee Order 9-9-24	Applicant's Proposed Schedule
Close of discovery period	January 13, 2025	January 13, 2025
Preliminary Staff Assessment filed	April 14, 2025, or 60 days after Applicant provides last Data Response, whichever is earlier	February 27, 2025 (Close of Discovery + 45 days)
Public Comments on PSA due date	May 29, 2025, or 45 days after filing of the Preliminary Staff Assessment, whichever is earlier	April 14, 2025 (PSA + 45 days)
Final Staff Assessment filed	July 14, 2025, or 45 days after the Public Comment Period Closes on Preliminary Staff Assessment, whichever is earlier	May 14, 2025 (PSA Comments + 30 days)
Last day to file petition to intervene	7 days after filing of the Final Staff Assessment	May 21, 2025 (FSA + 7 days)
Evidentiary Hearings	TBD (By regulation: no sooner than 14 days after filing of the Final Staff Assessment)	May 28, 2025 (FSA + 14 Days)
Presiding Member's Proposed Decision (PMPD) Filed	TBD	July 28, 2025 (Evidentiary Hearings + 60 Days)
Hearing on PMPD	TBD	August 2025 (During 30 day comment period)
Close of comment period on PMPD	TBD	August 27, 2025
Commission issues Final Decision	TBD	September 2025