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STATE OF CALIFORNIA — NATURAL RESOURCES AGENCY

Gavin Newsom, *Governor*

CALIFORNIA ENERGY COMMISSION

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Sacramento, California 95814
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CEC-70 (Revised 7/2022)



*APPLICATION FOR CERTIFICATION
FOR THE:*

Morton Bay Geothermal Project

Docket No. 23-AFC-01

*APPLICATION FOR CERTIFICATION
FOR THE:*

Elmore North Geothermal Project

Docket No. 23-AFC-02

*APPLICATION FOR CERTIFICATION
FOR THE:*

Black Rock Geothermal Project

Docket No. 23-AFC-03

REVISED JOINT SCHEDULING ORDER AND REQUEST FOR INFORMATION REGARDING CULTURAL AND TRIBAL CULTURAL RESOURCES

This Revised Joint Scheduling Order and Request for Information Regarding Cultural and Tribal Cultural Resources (Revised Scheduling Order) is prepared by the Presiding Member¹ for the Committees² appointed by the California Energy Commission (CEC) to conduct proceedings on the

¹ Pursuant to Cal. Code Regs., tit. 20, § 1203.

² For documents related to these proceedings, see the "Availability of Documents" section, below. On May 31, 2023, the CEC adopted orders appointing the following Committees:

- For Morton Bay, Commissioner Noemí Gallardo as Presiding Member and Commissioner Andrew McAllister as Associate Member. (TN 250451.)
- For Elmore North, Commissioner Gallardo as Presiding Member and Commissioner McAllister as Associate Member. (TN 250452.)

applications for certification (AFCs) for the Morton Bay Geothermal Project, Elmore North Geothermal Project, and Black Rock Geothermal Project (collectively, Proposed Projects).

BACKGROUND

A. Proposed Projects and Parties

On April 18, 2023, the CEC received the following three AFCs³ seeking to construct and operate geothermal electrical generating and related facilities to use geothermal resources to generate renewable energy, all located southeast of the Salton Sea in unincorporated Imperial County, California near the towns of Niland and Calipatria:

- Morton Bay Geothermal LLC, an indirect, wholly owned subsidiary of BHE Renewables, LLC, filed an AFC to construct and operate the Morton Bay Geothermal Project⁴ (Morton Bay), which would have a maximum continuous electrical output rating of approximately 157 megawatts (MW) gross and an expected net output of approximately 140 MW. Morton Bay would be located on 51 acres of a 160-acre parcel approximately four miles southwest of the town of Niland bounded by McDonald Road to the north, Davis Road to the east, and Schrimpf Road to the south.
- Elmore North Geothermal LLC, an indirect, wholly owned subsidiary of BHE Renewables, LLC, filed an AFC to construct and operate the Elmore North Geothermal Project⁵ (Elmore North), which would have a maximum continuous rating of approximately 157 MW gross and an expected net output of approximately 140 MW. Elmore North would be located on 51 acres of a 140-acre parcel approximately six miles northwest of the town of Calipatria and six miles southwest of the town of Niland bounded by an unnamed dirt road to the north, Cox Road to the west, Garst Road to the east, and West Sinclair Road to the south.
- Black Rock Geothermal LLC, an indirect, wholly owned subsidiary of BHE Renewables, LLC,

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- For Black Rock, Commissioner Gallardo as Presiding Member and Chair David Hochschild as Associate Member. (TN 250454.)

³ The information in this section is based on the AFC documents, TN 249723 for Morton Bay, TN 249737 for Elmore North, and TN 249752 for Black Rock.

⁴ The AFC and all filed documents related to the Morton Bay proceeding are available via the "Docket Log (23-AFC-01)" link on the [Morton Bay proceeding's web page](https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp>. The AFC comprises many separate documents filed in the docket beginning April 18, 2023, e.g., Volume 1 is TN 249723.

⁵ The AFC and all filed documents related to the Elmore North proceeding are available via the "Docket Log (23-AFC-02)" link on the [Elmore North proceeding's web page](https://www.energy.ca.gov/powerplant/steam-turbine/elmore-north-geothermal-project-engp) at <https://www.energy.ca.gov/powerplant/steam-turbine/elmore-north-geothermal-project-engp>. The AFC comprises many separate documents filed in the docket beginning April 18, 2023, e.g., Volume 1 is TN 249737.

filed an AFC to construct and operate the Black Rock Geothermal Project⁶ (Black Rock). Black Rock is a proposed geothermal power plant with a maximum continuous electrical output rating of approximately 87 MW gross and an expected net output of approximately 77 MW. Black Rock would be located on a 51-acre portion of a 160-acre parcel approximately eight miles to the southwest of the town of Niland bounded by McKendry Road to the north, Boyle Road to the east, and Severe Road to the west.

The entities submitting each of the individual AFCs are referred to collectively as Applicants (Applicants). The Committees have granted intervenor status to several entities in each of the proceedings including California Unions for Reliable Energy (CURE), United Automobile, Aerospace and Agricultural Implement Workers of America, Region 6 (UAW), Supporters Alliance for Environmental Responsibility (SAFER), and Jobs to Move America (JMA) (collectively, Intervenors).⁷ The parties to each of these proceedings include the project Applicant, CEC Staff (Staff), and intervenors (collectively, Parties).

B. Proposed Schedules

On September 15, 2023, the Presiding Member issued separate scheduling orders for the pre-evidentiary phase of the AFC proceeding for each of the Proposed Projects.⁸ These scheduling orders were subsequently amended to extend the time for Staff to publish its Preliminary Staff Assessment (PSA) for each Proposed Project.⁹

Staff published its PSAs for Elmore North on June 13, 2024,¹⁰ for Morton Bay on June 27, 2024,¹¹ and for Black Rock on July 11, 2024.¹² The public comment periods for the three PSAs were consolidated and extended until September 4, 2024.¹³ After the PSAs were published, Staff hosted several public workshops related to the Proposed Projects jointly, including a Joint Technical and

⁶ The AFC and all filed documents related to the Black Rock proceeding are available via the "Docket Log (23-AFC-03)" link on the [Black Rock proceeding web page](https://www.energy.ca.gov/powerplant/steam-turbine/black-rock-geothermal-project-brgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/black-rock-geothermal-project-brgp>. The AFC comprises many separate documents filed in the docket beginning April 18, 2023, e.g., Volume 1 is TN 249752.

⁷ The various orders granting intervention can be found in the respective dockets at: TN 251919, TN 254840, TN 256297 & TN 260088 for Morton Bay; TN 251917, TN 254841, TN 256298 & TN 260089 for Elmore North; and TN 251916, TN 254842, TN 256299 & TN 260090 for Black Rock.

⁸ The Scheduling Orders can be found in the respective dockets at TN 252284 for Morton Bay, TN 252285 for Elmore North, and TN 252289 for Black Rock.

⁹ TN 255664 (Morton Bay); TN 255667 (Elmore North); TN 255668 (Black Rock).

¹⁰ TN 256843.

¹¹ TN 257470.

¹² TN 157697.

¹³ The Joint Orders Extending and Consolidating Public Comment can be found in the respective dockets at: TN 258079 & TN 258708 for Morton Bay; TN 258080 & TN 258709 for Elmore North; and TN 258081 & TN 258710 for Black Rock.

Mitigation Workshop on July 31 through August 1, 2024,¹⁴ a Joint Workshop on Tribal Mitigation on September 6, 2024,¹⁵ and a second PSA technical and mitigation workshop on September 19, 2024.¹⁶

On September 17, 2024, the Presiding Member of the Committees directed the Parties to meet and confer regarding a proposed schedule for the remainder of the proceedings and directed Staff and Applicants to submit a joint proposed schedule for each Proposed Project.¹⁷ The Parties met and conferred on September 24, 2024. Thereafter, Staff and Applicants filed a joint proposed schedule, and the other Parties filed comments on the joint proposed schedule.¹⁸ The Parties' positions can be summarized in part as:

- All Parties agree that the evidentiary hearings should be held in Imperial County.
- Staff and Applicants propose that the evidentiary hearings be held on consecutive days and separated by project, but they are open to addressing certain issues for all Proposed Projects on a certain day, separated by project.
- UAW proposes that Intervenor's witnesses be permitted to speak to all three projects at once for efficiency.
- CURE recommends that the schedule for the remainder of the proceedings provide adequate time for the Parties and public to review all significant new information and highly technical information, and that comment periods and other deadlines are consistent with legal requirements.
- JMA proposes that the PSAs be revised and recirculated to address issues raised by comments submitted by the Imperial Irrigation District and the Water Supply Assessment submitted on September 25, 2024.

¹⁴ TN 257850 (Morton Bay); TN 257851 (Elmore North); TN 257852 (Black Rock).

¹⁵ TN 258554 (Morton Bay); TN 258553 (Elmore North); TN 258687 (Black Rock).

¹⁶ TN 259035 (Morton Bay); TN 259036 (Elmore North); TN 259037 (Black Rock).

¹⁷ The Joint Order to meet and confer can be found in the respective dockets at TN 259193 for Morton Bay, TN 259195 for Elmore North, and TN 259194 for Black Rock.

¹⁸ The Parties' proposed schedules and related comments can be found in the respective dockets at: TN 259330, TN 259364, 259363 for Morton Bay; TN 259331, 259365, TN 259361 for Elmore North; and TN 259332, TN 259371, TN 259362 and TN 259359 for Black Rock.

C. Comment Letter from Imperial County regarding Cultural District

On September 25, 2024, the County of Imperial (County) filed a comment letter in the docket for each Proposed Project outlining its concerns regarding Staff's proposal to nominate a cultural district for listing with the California Register of Historical Resources (CRHR) and National Register of Historic Places (NRHP).¹⁹

In the PSA for each Proposed Project, Staff proposes the nomination of a cultural district in Mitigation Measure CUL/TRI-8 to reduce the severity of potentially significant and unavoidable impacts the Proposed Projects could have on cultural and tribal cultural resources.²⁰ The PSAs summarize information from the Kwaaymii Laguna Band of Mission Indians requesting the need to document the Southeast Lake Cahuilla Active Volcanic Cultural District (SELCAVCD, or Cultural District), to have such documentation paid for by the Applicants, and to have the eligibility of the SELCAVCD taken to the State Historic Preservation Officer (SHPO), CRHR, and NRHP. If the CEC approves any of the Proposed Projects including Mitigation Measure CUL/TRI-8 proposed by Staff, the project owner would be required to retain an anthropologist to nominate the Cultural District as described by Staff in the PSAs.²¹

The County's comment letter also noted that at Staff's Joint Workshop on Tribal Mitigation on September 6, 2024,²² Staff made statements that could be interpreted as indicating that it intended to expend Staff resources nominating the Cultural District and that Staff "could" move forward with the nomination even before the CEC's final decision on the Proposed Projects including approval of Mitigation Measure CUL/TRI-8.²³

The County asserted several claims, including: (1) Staff lacks authority to expend resources on the nominations, (2) federal listing would give the National Parks Service jurisdiction over Lithium Valley projects; (3) federal and state listing of the Cultural District could negatively impact the economic, environmental, and environmental justice benefits recognized in Senate Bill (SB) 125; (4) there is insufficient evidence in the PSAs to support a finding that all 7,500 acres of the Cultural District is a tribal cultural resource or eligible for listing in the federal or state historical registries; and (5) an application for listing the Cultural District is not a legally defensible mitigation measure.²⁴

The County requests the CEC do the following: (1) reconsider plans to expend Staff time or resources preparing applications for the nomination; (2) consider the effectiveness and legality of

¹⁹ TN 259294 (Morton Bay); TN 259285 (Elmore North); and TN 259284 (Black Rock).

²⁰ The information in this discussion can be found in Sections 5.4 of each the PSAs in the respective dockets at TN 257470 for Morton Bay, TN 256843 for Elmore North, and TN 257697 for Black Rock.

²¹ *Ibid.*

²² TN 258554 (Morton Bay); TN 258553 (Elmore North); TN 258687 (Black Rock).

²³ TN 259294 (Morton Bay); TN 259285 (Elmore North); and TN 259284 (Black Rock).

²⁴ TN 259294 (Morton Bay); TN 259285 (Elmore North); and TN 259284 (Black Rock).

the nomination as mitigation; (3) analyze the potential impact of the proposed nomination; and (4) consider less intrusive alternatives to the nomination such as conserving Obsidian Butte, realigning the Morton Bay cooling tower, and adjusting the location of Black Rock.

DISCUSSION AND ORDERS ON THE REVISED SCHEDULE

The Presiding Member of the Committees has considered the proposed schedules and related comments. The Committees intend to commence joint evidentiary hearings in Imperial County to allow witnesses to speak to the three Proposed Projects on the same technical area on the same day, if not concurrently, and to accommodate local public participation. After publication of the Final Staff Assessment and testimony, the Committees will hold a Prehearing Conference to determine which technical areas will be the subject of evidentiary hearings and how they will be scheduled.

JMA's suggestion to recirculate the revised PSAs is declined because, among other reasons, the CEC's certified regulatory process provides ample opportunity for review and comment on any alleged significant new information added to the PSA before a final decision by the CEC is issued.

Pursuant to California Code of Regulations, title 20, sections 1203 and 1709.7(c), the Presiding Member of the Committees hereby orders as follows regarding the schedule:

1. [The revised schedule for the AFCs for Morton Bay, Elmore North, and Black Rock](#), attached below, is hereby established and supersedes all prior schedules.
2. The Parties shall continue filing monthly status reports according to the revised schedule. Status reports shall include at minimum: a summary of any significant communications with other Parties and other federal, state, local agencies, and tribal governments; a description of the outcome of any public workshop or other meeting held during that month; and any factors that may impact the schedule of the proceeding.
3. The Committee may modify the schedule at any time for good cause. If any Party determines after making a good faith effort that they cannot meet a deadline specified in this Revised Scheduling Order or as otherwise required in CEC regulations, the Party shall 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.
4. Notwithstanding the CEC regulations providing for responses to motions within 14 days of the service of motions, the Presiding Member hereby shortens that time to 7 days for any responses to motions for modification of schedules or petitions to intervene.

DISCUSSION AND ORDERS REGARDING CULTURAL AND TRIBAL CULTURAL RESOURCES

Considering the County's comment letter described above,²⁵ the Presiding Member of the Committees seeks additional information from the Parties and other interested persons to allow the Committees and the CEC to fully consider the adequacy, feasibility, and potential impacts of Mitigation Measure CUL/TRI-8²⁶ and to decide whether Mitigation Measure CUL/TRI-8, or any related mitigation, should be adopted and implemented.²⁷

The County's comment letter expressed concern that certain statements by Staff could be interpreted to indicate that staff could advance the nomination of the Cultural District before the CEC formally considers whether to approve the Proposed Projects.²⁸ The Committees have not directed any Staff activity to advance the nomination of the Cultural District in these proceedings, nor are the Committees aware of any current CEC activities to advance the Cultural District outside of these proceedings.

Given the concerns expressed by the County, the limited information publicly available regarding Staff's proposal, and the lack of any Committee or CEC determination on the merits of the proposal, it is prudent at this time for Staff to limit its activities regarding the Cultural District to that necessary to fulfill Staff's responsibilities to analyze the impacts of the Proposed Projects and proposed Mitigation Measure CUL/TRI-8, and provide recommendations to the Committees and CEC for ultimate consideration. To that end, Staff is directed to cease any work, if any is in process, to implement proposed CUL/TRI-8 until the CEC has rendered a final decision in these AFC proceedings. This order does not purport to affect any activities independent from these proceedings to nominate the Cultural District that do not involve CEC Staff or resources.

The Committees look forward to a robust discussion in the evidentiary record of the merits of formally nominating a Cultural District so that they can consider whether to propose to include such a provision as part of the licensing decisions for these applications.

Pursuant to California Code of Regulations, title 20, section 1203, the Presiding Member hereby orders as follows regarding cultural and tribal cultural resources:

1. Effective immediately, Staff is directed to limit its activities documenting or otherwise advancing the Cultural District to what is appropriate to support its environmental analyses and to draft recommendations to the Committees and CEC for these proceedings on the Proposed Projects.

²⁵ TN 259294 (Morton Bay); TN 259285 (Elmore North); and TN 259284 (Black Rock).

²⁶ Discussion of Mitigation Measure Cul/Tri-8 can be found in Sections 5.4 of each the PSAs in the respective dockets at TN 257470 for Morton Bay, TN 256843 for Elmore North, and TN 257697 for Black Rock.

²⁷ See Cal Code Regs., tit. 20, §§ 1203, 1742(b), 1748(b)(8).

²⁸ TN 259294 (Morton Bay); TN 259285 (Elmore North); and TN 259284 (Black Rock).

2. Staff is directed, **by December 18, 2024**, to file in the dockets for each respective Proposed Project, a report of any existing analyses Staff has already conducted regarding nomination of the Cultural District, including the following if it exists:
 - a. Analysis of the potential direct, indirect, and cumulative impacts of the proposed Mitigation Measure CUL/TRI-8 on the environment, including the extent to which listing of the Cultural District by the NRHP and/or CRHR would pose any inconsistencies with any adopted or pending general plans, specific plans, regional plans, climate change plans or other plans, including SB 125²⁹ and the County's Lithium Valley Specific Plan.
 - b. Analysis of the impacts of the proposed Mitigation Measure CUL/TRI-8 on disadvantaged and environmental justice communities.
 - c. Analysis of the impacts of the proposed Mitigation Measure CUL/TRI-8 on the potential loss of benefits to habitat and tribal cultural resources, dust mitigation, and access to clean water, including pursuant to SB 125.
 - d. Analysis of the evidence supporting the boundaries of the Cultural District as currently proposed. Nothing herein is directing the filing or public disclosure of confidential information. Confidential information may be discussed in general terms as appropriate. Additionally, to the extent necessary to support the proposed boundaries, Staff shall, and the other Parties may to the extent known to them, cite material filed in the dockets of the proceedings designated as confidential without publicly disclosing the information.
 - e. Analysis of the effectiveness, adequacy, and nexus of the nomination of the Cultural District to mitigate or avoid any potentially significant impacts of the Proposed Projects on tribal cultural resources. This analysis may include legal analysis.
 - f. Analysis of the adequacy and feasibility of any identified alternatives to Mitigation Measure CUL/TRI-8, such as conservation of Obsidian Butte, realigning the Morton Bay cooling tower, and adjusting the location of Black Rock.
3. The Applicants are directed, **by January 8, 2025**, to file in the dockets for each respective Proposed Project, a report addressing the analyses requested in subdivision (2) above, including any response to Staff's analyses of the same.
4. The Presiding Member invites **by January 8, 2025**, intervenors, local and tribal governments, and other interested persons to file in the dockets for each respective

²⁹ See Cal. Code Regs., tit. 20, §§ 1747, 1748; Cal. Code Regs., tit. 14, §§ 15125(d) & 15126.4(a)(1)(D); and Stats. 2022, ch. 63, § 1, codified at Fish & G. Code, §§ 2950-2954.

Proposed Project, comments addressing the analyses requested in subdivision (2) above, including any response to Staff's analyses of the same.

5. Staff is directed to update or revise its documentation and analyses of cultural and tribal cultural resources in each of its Final Staff Assessments for the Morton Bay, Elmore North and Black Rock AFCs, including to address new information obtained pursuant to this order regarding cultural and tribal cultural resources. Additionally, the FSAs shall include one or more overlay maps showing; (a) the proposed Imperial County Lithium Valley Specific Plan, (b) the proposed Cultural District, (c) existing geothermal projects, and (d) the Proposed Projects.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Office of the Public Advisor, Energy Equity and Tribal Affairs (Public Advisor) assists members of the public with participating in CEC proceedings. For information on how to participate in this proceeding, please contact the Public Advisor at publicadvisor@energy.ca.gov, or (916) 957-7910.

Parties and members of the public may contact the assigned Hearing Officers for each AFC for clarifications about this order or general procedural questions:

Morton Bay: Ralph Lee, (916) 776-3408, ralph.lee@energy.ca.gov
Chad Oliver, (916) 891-8569, chad.oliver@energy.ca.gov

Elmore North: Reneé Webster-Hawkins, (916) 237-2507, renee.webster-hawkins@energy.ca.gov
Deborah Dyer, (916) 931-5041, deborah.dyer@energy.ca.gov

Black Rock: Chad Oliver, (916) 891-8569, chad.oliver@energy.ca.gov
Deborah Dyer, (916) 931-5041, deborah.dyer@energy.ca.gov

Direct media inquiries to mediaoffice@energy.ca.gov or (916) 654-4989.

AVAILABILITY OF DOCUMENTS

The AFC for each Proposed Project contains the engineering and environmental details of the Proposed Project. Please refer to this section for information on how to electronically access the AFCs and all related documents submitted to the CEC Docket Unit for each AFC in their respective by selecting the following:

- The “Docket Log (23-AFC-01)” link on the [Morton Bay proceeding’s web page](https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp>, or scan (use the camera on your mobile device and hold it over the QR code) the following QR code:



- The “Docket Log (23-AFC-02)” link on the [Elmore North proceeding’s web page](https://www.energy.ca.gov/powerplant/steam-turbine/elmore-north-geothermal-project-engp) at <https://www.energy.ca.gov/powerplant/steam-turbine/elmore-north-geothermal-project-engp>, or scan the following QR code:



- The “Docket Log (23-AFC-03)” link on the [Black Rock proceeding web page](https://www.energy.ca.gov/powerplant/steam-turbine/black-rock-geothermal-project-brgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/black-rock-geothermal-project-brgp>, or scan the following QR code:



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If you need assistance in accessing an application or any other project document, please contact the Public Advisor at public.advisor@energy.ca.gov or (916) 957-7910.

IT IS SO ORDERED.

Dated: December 4, 2024

APPROVED BY:

Noemí Otilia Osuna Gallardo
Commissioner and Presiding Member
Morton Bay Geothermal Project
Elmore North Geothermal Project
Black Rock Geothermal Project
AFC Committees

Mailed to List Number: 7550

**JOINT REVISED SCHEDULE FOR THE
MORTON BAY (23-AFC-01),
ELMORE NORTH (23-AFC-02), AND BLACK ROCK (23-AFC-03)
GEOTHERMAL PROJECT PROCEEDINGS
DECEMBER 4, 2024**

Activity	Approximate Interval³⁰	Elmore North DATE	Morton Bay DATE	Black Rock DATE
Final Staff Assessment Filed	---	February 5, 2025	February 19, 2025	March 5, 2025
Last Day to file petition to intervene	10 days after filing of the Final Staff Assessment ³¹	February 18, 2025	March 3, 2025	March 17, 2025
Opening Testimony filed	30 days after last FSA	April 4, 2025	April 4, 2025	April 4, 2025
Reply Testimony filed	21 days after Opening Testimony	April 28, 2025	May 5, 2025	May 5, 2025
Meet and Confer	10 Days after Reply Testimony	May 8, 2025	May 19, 2025	May 19, 2025
Prehearing Conference (PHC) Statement filed	4 weeks before Evidentiary Hearing	May 29, 2025	May 29, 2025	May 29, 2025
Prehearing Conference	1 week after PHC Statement	June 9, 2025	June 9, 2025	June 9, 2025
Evidentiary Hearings (EH)	Approximately 2-3 weeks after PHC	<i>Week of June 23, 2025</i>	<i>Week of June 23, 2025</i>	<i>Week of June 23, 2025</i>
Presiding Member Proposed Decision (PMPD) filed	---	TBD	TBD	TBD
Hearing on PMPD	---	TBD	TBD	TBD
PMPD Errata filed if necessary	---	TBD	TBD	TBD
Final Decision Issued	---	TBD	TBD	TBD

³⁰ Where the calculated date would fall on a weekend or state holiday, the date provided is the next business day.

³¹ The deadline to file a petition for intervention shall be established by the presiding member, or if no deadline is established, at least 30 days prior to the first day of the evidentiary hearing. (Cal. Code Regs., tit. 20, § 1211.7(b).) At this point in the proceedings the Presiding Member will not entertain a petition for intervention that requests reopening discovery or modification to the dates set in this Revised Scheduling Order.