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STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF: MORTON BAY GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-01
IN THE MATTER OF: ELMORE NORTH GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-02
IN THE MATTER OF: BLACK ROCK GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-03

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
RESPONSE TO STAFF'S MOTION TO EXTEND THE DUE DATE FOR THE
FINAL STAFF ASSESSMENTS**

January 31, 2025

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Pursuant to the Revised Joint Scheduling Order and Request for Information Regarding Tribal and Cultural Resources (“Revised Joint Scheduling Order”),¹ California Unions for Reliable Energy (“CURE”) submits this response to the California Energy Commission (“Commission”) Staff’s January 24, 2025 Motion to Extend the Due Date for the Final Staff Assessments (“Motion”) for the Morton Bay Geothermal Project (“MBGP”), Elmore North Geothermal Project (“ENGP”), and Black Rock Geothermal Project (“BRGP”) (collectively “Proposed Projects”) proposed by Morton Bay Geothermal LLC, Elmore North Geothermal LLC, and Black Rock Geothermal LLC (collectively “Applicants”), respectively.²

Staff’s Motion asks the Committees to extend the publication dates for the Proposed Projects’ Final Staff Assessments (FSAs”) until all outstanding data and information regarding the Project’s environmental impacts has been docketed. CURE supports Staff’s request but finds Staff’s list of outstanding information to be incomplete. CURE has identified additional information that is critical to the Commission’s review of each Proposed Project’s environmental impacts which are not listed in Staff’s Motion and are missing from the docket. CURE respectfully requests that Committees require all outstanding data and information to be docketed and considered in Staff’s environmental assessment before the FSAs are published.

Additionally, to ensure an orderly and transparent FSA process, CURE recommends that the Committees adopt additional procedures for docketing outstanding information and publishing the FSAs, described herein. Finally, CURE respectfully requests that the Committees extend all other proceeding deadlines identified in the Revised Joint Scheduling Order to correspond with the delayed release of the FSAs.

I. BACKGROUND

The Revised Joint Scheduling Order outlines the schedule of proceedings for the Proposed Projects through evidentiary hearings. The Order currently requires Staff to publish the ENGP FSA on February 5, 2025, with the FSAs for the MBGP and BRGP to be released two and four weeks thereafter, respectively.³ The Order also includes subsequent deadlines for petitions to intervene, opening and reply testimony, meet-and-confer sessions, prehearing conference statements, the prehearing conference, and evidentiary hearings.⁴

Staff’s Motion asks the Commission to postpone publication of the ENGP FSA until “five weeks following the receipt of all outstanding data and information,” with

¹ TN # 260569; TN # 260570; TN # 260571.

² TN # 261286; TN # 261288; TN # 261302 (hereinafter “Staff’s Motion”).

³ TN # 260569; TN # 260570; TN # 260571.

⁴ TN # 260569; TN # 260570; TN # 260571.

the MBGP and BRGP FSAs to be released two and four weeks thereafter, respectively.⁵ Staff is requesting the extensions to ensure that Staff obtains all necessary information to complete a full evaluation of the Proposed Projects' environmental impacts in compliance with the California Environmental Quality Act and to support the Commission's decision on the applications for certification in compliance with the Warren-Alquist Act.⁶

The Motion identifies the following information as outstanding:

1. Applicants' production of revised project descriptions for each project;
2. Applicants' production of revised air quality and public health modeling following proposed design changes for the ENGP, plus Staff's independent modeling analysis;
3. Imperial County Air Pollution Control District's production of a Final Determination of Compliance for each Project;
4. California Department of Fish and Wildlife's input on burrowing owl mitigation measures following the recent decision to list the species as a candidate under the California Endangered Species Act;
5. Applicants' production of a Salton Sea Impact Study addressing impacts to Yuma's Ridgway Rail, desert pupfish, and the Salton Sea from anticipated reductions in water flow;
6. U.S. Fish and Wildlife Service's review of a biological assessment for the Yuma's Ridgway Rail at the MBGP pursuant to the Endangered Species Act;
7. Applicants' production of revised nitrogen deposition modeling for ENGP;
8. Applicants' production of additional information to assess impacts to wetland areas under restoration orders from a prior project;
9. Colorado River Basin Regional Water Quality Control Board's guidance on water resource issues; and
10. Federal Emergency Management Agency's review of letter of map revision.

II. DISCUSSION

A. The Committees Should Require All Outstanding Information Regarding the Projects' Environmental and Public Health Impacts Be Docketed and Addressed in the FSAs

CURE agrees that the data and information identified in Staff's Motion is missing from the proceeding dockets and is necessary to inform the Commission's analysis of the Projects' environmental and public health impacts. Nearly all outstanding information described in the Motion was identified in CURE's

⁵ Staff's Motion at pp. 1, 3-4.

⁶ Staff's Motion at pp. 3-4.

comments on the Preliminary Staff Assessments for the Proposed Projects. For example, CURE identified deficiencies in meteorological data that conflicted with U.S. Environmental Protection Agency (“EPA”) guidance on air quality modeling.⁷ CURE also emphasized that the modeling must incorporate emissions from nearby facilities to comply with EPA guidelines and ensure cumulative air quality impacts are adequately analyzed.⁸ The revised air quality modeling to be submitted by the Applicant, along with the anticipated independent analysis by Staff, are directly relevant to these concerns. Additionally, CURE provided extensive comments on the analysis of impacts on Yuma’s Ridgway Rail and desert pupfish.⁹ The Salton Sea Impact Study, biological assessment, and other outstanding information requested by Staff are directly relevant to issues raised by CURE.

However, the Motion does not identify all outstanding information necessary for a comprehensive analysis. Notably, the Motion omits any reference to Imperial Irrigation District’s (“IID”) revised system impact study. This study is critical to assessing the downstream transmission infrastructure required for IID to maintain a safe and reliable grid. The environmental impacts associated with construction and operation of this additional infrastructure must be thoroughly discussed and analyzed in the FSAs.

Furthermore, while Staff’s motion acknowledges the need for revised air quality and public health modeling data for ENGP, it neglects to address the that the Applicants are conducting revised modeling for all three Proposed Projects to due to the issuance of new EPA modeling guidance and incorporate emissions estimates from nearby facilities.¹⁰ Project design changes and comprehensive analysis of cumulative air quality and public health impacts necessitate updated modeling data for each Project to ensure an accurate and holistic assessment.

This information is necessary to inform the Commission, the parties, and the public about the extent of the Projects’ impacts and prepare a legally adequate environmental document. The ruling on Staff’s Motion should require that this additional information also be docketed and received by Staff at least five weeks prior to publication of the FSAs.

Additionally, any changes to a Project’s description must be fully disclosed and analyzed in the environmental document. Although the Applicants have indicated that revised project descriptions are forthcoming for each of the Proposed Projects, they have thus far provided only preliminary figures without any

⁷ TN # 258994 at pp. 36-38, 47-49; TN # 258995 at pp. 37-39; TN # 258996 at pp. 33-35.

⁸ TN # 258994 at pp. 38-39, 47-49; TN # 258995 at pp. 39-40, 47-49, TN # 258996 at p. 35-37, 43-45.

⁹ TN # 258994 at p. 101, 114-18; TN # 258995 at pp. 85-88, 91-94, 111-13, 124-27; TN # 258996 at pp. 79-81, 96-102.

¹⁰ TN # 260865; TN # 260866; TN # 260867.

narrative discussion clarifying the full extent of the proposed changes.¹¹ Physical changes to the Projects may substantially alter the nature and severity of the Projects' impacts and may require revision and recirculation of the PSAs prior to release of the FSAs. A core principle of CEQA is that the project description must be accurate, stable, and finite to support an informative and legally sufficient environmental impact report.¹² A complete project description is essential both for Staff to efficiently conduct a timely environmental analysis and for the public to understand the full scope of the project.¹³ The Committees' ruling on the Motion should clarify that the outstanding information necessary to support preparation of FSAs includes complete and accurate revised Project descriptions.

B. The Committees Should Enhance Monthly Reporting Requirements to Increase Transparency and Accountability for Outstanding Items

In ruling on Staff's Motion, the Committees should implement additional reporting and notice requirements to provide clarity on the status of outstanding information, promote timely completion of the FSAs, and safeguard the decision-making process.

The Revised Joint Scheduling Order directs parties to continue filing monthly status reports, which must include: (1) a summary of any significant communications with other parties and other federal, state, local agencies, and tribal governments; (2) a description of the outcome of any public workshop or other meeting held during that month; and (3) any factors that may impact the schedule of the proceeding.¹⁴ While parties have flagged many of the outstanding items identified in Staff's Motion in their status reports, these descriptions often lack specific timelines for completing those efforts.

To enhance transparency and accountability, the Committees should order that Staff and the Applicants provide monthly updates addressing all outstanding items identified in Staff's motion, as well as items identified by other parties, such as the Imperial Irrigation District's revised system impact study and new cumulative air quality and public health modeling data for all three projects.¹⁵ The report should clearly indicate the current stage of each outstanding item, outline the steps required before the information can be docketed, and provide an estimated timeline for completion, ensuring that all parties and the Committees are informed of ongoing progress. For actions beyond the control of Staff or Applicant, such as reviews by third-party agencies, Staff and/or Applicant should request timeline

¹¹ TN # 260469; TN # 260470; TN # 260471.

¹² 14 Cal. Code Regs. § 15124; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.3d 185.

¹³ 20 Cal. Code Regs. § 1742.

¹⁴ TN # 260569; TN # 260570; TN # 260571.

¹⁵ TN # 260865; TN # 260866; TN # 260867.

updates from the relevant agencies and docket their responses to ensure transparency and keep all stakeholders and the Committees informed.

C. The Committees Should Establish a Triggering Event for Docketing the First FSA

Staff's Motion requests that the deadline for publication of the first FSA be set five weeks after it receives all outstanding data and information. However, Staff does not define what constitutes "all outstanding data and information," nor does it establish a method for parties to determine when this milestone has been met. To address this lack of clarity, the Committees should establish a specific triggering event for publication of the ENGP FSA.

CURE recommends that Staff file a formal notice upon receipt of all outstanding data and information, which would serve as the starting point for the five-week deadline. This notice of receipt should include a proposed schedule for all subsequent deadlines through evidentiary hearings, ensuring consistency with the Revised Joint Scheduling Order to the extent practicable.

To avoid disputes, Staff should be required to meet and confer with all parties at least one week prior to filing this notice of receipt to resolve disagreements about whether all necessary information has been docketed and to finalize the proposed schedule. If parties are unable to reach a consensus, the Committees should allow parties to file a response to Staff's notice within seven days of service of the notice, ensuring that the Committees have a complete and informed record before moving forward.

D. The Committees Should Extend All Proceeding Deadlines to Correspond with Delayed Release of the FSAs

The Revised Joint Scheduling Order outlines the Project's schedule of proceedings through evidentiary hearings. The Order currently requires Staff to publish the ENGP FSA on February 5, 2025, with the FSAs for the MBGP and BRGP to be released two and four weeks thereafter, respectively.¹⁶ The Order also sets subsequent deadlines for petitions to intervene, opening and reply testimony, meet-and-confer sessions, prehearing conference statements, the prehearing conference, and evidentiary hearings.¹⁷

Staff's Motion asks the Commission to postpone publication of the ENGP FSA until "five weeks following the receipt of all outstanding data and information," with the MBGP and BRGP FSAs to be released two and four weeks thereafter,

¹⁶ TN # 260569; TN # 260570; TN # 260571.

¹⁷ TN # 260569; TN # 260570; TN # 260571.

respectively.¹⁸ However, the Motion does not address these other deadlines. CURE respectfully requests that the Commission extend all other proceeding deadlines identified in the Revised Joint Scheduling Order to correspond with the delayed release of the FSAs. As discussed above, CURE recommends that the revised schedule be set following Staff's notice of receipt of outstanding information needed to prepare the FSAs.

III. CONCLUSION

CURE respectfully asks that the Committees grant Staff's Motion to extend the FSA deadlines and require that all outstanding data and information identified by the parties be docketed and considered before the FSAs are released. CURE further asks that the Commission adopt the procedural safeguards recommended herein. Implementing these recommendations will clarify the status of outstanding information, encourage the timely completion of FSAs, and protect the fairness and integrity of the decision-making process.

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Respectfully submitted,

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¹⁸ Staff's Motion at pp. 1, 3-4.