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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 APPLICANTS' MOTION FOR SUSPENSION OF
PROCEEDINGS**

February 12, 2025

Andrew J. Graf
Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
(650) 589-1660
agraf@adamsbroadwell.com
kfederman@adamsbroadwell.com

Attorneys for California Unions for Reliable
Energy

Pursuant to the Second Revised Joint Scheduling Order and Order Granting Staff's Motion to Extend Due Dates ("Second Revised Joint Scheduling Order"),¹ California Unions for Reliable Energy ("CURE") submits this response to the Applicants' February 7, 2025 Motion for Suspension of Application for Certification Proceeding for the Morton Bay Geothermal Project, Elmore North Geothermal Project, and Black Rock Geothermal Project (collectively "Proposed Projects") proposed by Morton Bay Geothermal LLC, Elmore North Geothermal LLC, and Black Rock Geothermal LLC (collectively "Applicants"), respectively.²

Applicants' Motion asks the Committees to suspend the Application for Certification ("AFC") proceedings for the Proposed Projects, including all Staff activities, until Applicants file a notice to resume the proceedings.³ Applicants further seek an order requiring California Energy Commission Staff to provide an itemized list of outstanding information necessary for the Final Staff Assessments ("FSAs") and permission to continue filing this outstanding information during the suspension.⁴ Finally, Applicants request authorization to submit quarterly status reports instead of monthly reports during the suspension.⁵

CURE does not oppose a suspension of the AFC proceedings, but is concerned that allowing Applicants to submit information on a rolling basis during the suspension may result in unnecessary expenditures and procedural inefficiencies. Accordingly, CURE respectfully requests that the Committees require that Applicants submit all outstanding informational items as a single, comprehensive supplemental filing concurrently with their notice to resume proceedings. Upon receipt of this filing, Staff and Intervenor should then have an opportunity to pursue additional information requests or discovery motions, if warranted.

CURE also requests that the Committees relieve Staff and Intervenor of reporting obligations pursuant to the Second Revised Joint Scheduling Order during the suspension and implement enhanced reporting requirements for Applicants to ensure transparency through the suspension period.⁶

I. BACKGROUND

On January 24, 2025, Staff filed a motion requesting that the Commission postpone publication of the FSAs for the Proposed Project until all necessary information was obtained to fully evaluate the environmental impacts in compliance with the California Environmental Quality Act and to support the Commission's

¹ TN # 261551, TN # 261552, TN # 261553 (hereinafter "Second Revised Joint Scheduling Order").

² TN # 261639, TN # 261640, TN # 261641 (hereinafter "Applicants' Motion for Suspension")

³ *Id.* at p. 5.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ TN # 260569; TN # 260570; TN # 260571.

decision on the applications for certification in compliance with the Warren-Alquist Act.⁷ Applicants did not object to Staff's motion and viewed the extension as effectively indefinite because several of the informational requests were outside of Applicants' control and require cooperation and diligence by third parties.⁸ CURE supported Staff's motion and recommended enhanced reporting and notice requirements to provide clarity on the status of the proceedings.⁹

On February 5, 2025, the Presiding Member for the Committees issued the Second Revised Joint Scheduling Order vacating all deadlines until Staff filed a Notice of Final Receipt of All Outstanding Information.¹⁰ The Order also modified the monthly reporting requirements by directing Staff to provide an itemized list and description of outstanding information needed to complete the FSAs, identify the source of the information, and specify the expected receipt date.¹¹

Given the indefinite postponement and other factors discussed in the Motion, Applicants filed the instant Motion seeking suspension of the proceedings, while asking to retain the ability to continue docketing outstanding information at their discretion during the suspension.¹²

II. DISCUSSION

A. The Committees Should Require a Single, Comprehensive Filing of All Outstanding Informational Items Concurrently with the Notice to Resume Proceedings

While Applicants seek a temporary suspension of the AFC proceedings, they also request permission to continue filing outstanding information identified in Staff's itemized list during the suspension.¹³ CURE objects to this proposal.

Allowing rolling submission of critical information during a suspended proceeding would undermine the purpose of the suspension and may prejudice the Parties' ability to respond to the information. A suspension is intended to halt the proceedings until Applicants are prepared to submit the necessary information to resume the AFC process and allow the Commission and other parties to turn their efforts and resources to other matters.¹⁴ Applicants' Motion asks that the suspension order include "immediate suspension of CEC Staff's activities relating to

⁷ TN # 261286; TN # 261288; TN # 261302.

⁸ TN # 261508, TN # 261509, TN # 261510.

⁹ TN # 261501, TN # 261502, TN # 261503.

¹⁰ Second Revised Joint Scheduling Order at p. 5.

¹¹ Ibid.

¹² Applicants' Motion for Suspension at p. 5.

¹³ Ibid.

¹⁴ See e.g., TN # 205238-1.

the Projects.”¹⁵ Allowing ongoing submission of Project-related information during the suspension would contradict the purpose of the Motion, and may blur the line between suspension and active review by forcing Staff and Intervenor to evaluate new information on a piecemeal basis. This fragmented approach wastes resources, creates confusion, and may delay, rather than expedite, the process.

Granting Applicants’ request would require Intervenor and other stakeholders to expend time and resources reviewing filings despite the suspension. Intervenor, in particular, may be prejudiced if they are not actively engaged during the suspension, or unable to engage because the proceeding is suspended, but must nevertheless respond to continuous Applicant filings.

To ensure efficiency, fairness, and procedural clarity, CURE requests that the Committees order Applicants to submit all outstanding informational items as a single, comprehensive supplemental filing concurrently with their notice seeking to resume proceedings. This approach aligns with precedent.

For example, in the Willow Rock Energy Storage Center AFC proceeding (21-AFC-02), Staff moved to suspend proceedings due to insufficient information and requested that the applicant file a supplemental AFC with complete project details, subject to committee approval, to restart the process.¹⁶ Staff also requested sufficient time for follow-up data requests and monthly status reports to keep the committee and the public informed.¹⁷

The applicant in the Willow Rock proceeding did not oppose suspension but proposed that the order: suspend proceedings until the committee determined the supplemental AFC was sufficient; allow all parties to suspend work during the pause; and stay all deadlines, including those for pending data request responses.¹⁸ The applicant also agreed to submit monthly status reports, but this requirement applied only to the applicant.¹⁹

The committee ultimately ordered suspension of the Willow Rock proceeding and issued an order requiring that: (1) all parties, except the applicant, be relieved from filing monthly status reports; (2) all deadlines, including data requests and responses, be stayed; (3) **the applicant submit a single supplemental AFC with a cover letter attesting to its completeness**; (4) Staff be given 30 days to review the supplemental AFC; and (5) a revised scheduling order or other appropriate orders be issued once completeness was verified.²⁰

¹⁵ Applicants’ Motion for Suspension at p. 5.

¹⁶ TN # 251029.

¹⁷ *Ibid.*

¹⁸ TN # 251186.

¹⁹ *Ibid.*

²⁰ TN # 251599 (emphasis added).

Although these proceedings are at a different procedural stage than the Willow Rock proceeding, the Committees should adopt the same approach. Requiring a single, comprehensive submission of outstanding information would prevent unnecessary expenditures of time and resources. It would also avoid prejudice to parties, ensure all parties have clear notice as to Applicants' position on the sufficiency and completeness of the supplemental information, and uphold procedural fairness with respect to the starting point upon which future deadlines may be set.

Additionally, requiring a single, comprehensive submission concurrently with the notice seeking to resume the proceeding would ensure there is an actual, active proceeding in which Intervenor can effectively communicate with the Committees regarding the information submitted. This would ensure an efficient, orderly and timely process for stakeholders to communicate with the Committees about whether further information requests or discovery motions are necessary.

Some critical outstanding information – such as the Salton Sea Impact Study assessing the effects of anticipated reductions in water flows to the Salton Sea – has never been produced. Other key information – such as air quality and public health modeling data – is undergoing substantial adjustments due to revised project descriptions. Outstanding information should be submitted in an active proceeding to ensure stakeholders have the opportunity to participate in a complete, equitable, and transparent process of developing and obtaining information necessary to review the Proposed Projects.

B. The Committees Should Order Applicants to File Monthly Reports Until Proceedings Resume

The Second 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.²¹ Applicants request that they be permitted to file status reports quarterly instead.²²

The Committees should continue requiring Applicants to submit monthly status reports during the suspension to ensure the Committees, Staff, Intervenor, and the public remain informed of the Applicants' progress. These reports will allow the Committees to assess whether Applicants are proceeding with due

²¹ Second Revised Joint Scheduling Order at p. 5.

²² Applicants' Motion for Suspension at p. 5.

diligence toward resuming the proceedings. Additionally, Applicants should assume Staff's responsibility for reporting the status of all outstanding items, including expected timelines for receiving the necessary information.

If the Committees adopts a quarterly reporting schedule, the same information should be required. In addition, Applicants should be required to indicate whether they anticipate filing a notice to resume proceedings before the next report. This requirement ensures that the Committees, Staff, Intervenors, and other stakeholders can adequately prepare for the potential resumption of proceedings given the significant gap between reports.

C. The Committees Should Relieve Intervenors of Reporting Obligations During the Suspension

The Second Revised Joint Scheduling Order directs parties to continue filing monthly status reports.²³ While the Applicants' Motion requests that they submit quarterly status reports during the suspension,²⁴ it does not address reporting requirements for other parties.

The Committees should follow the approach taken in the Willow Rock proceeding and relieve Intervenors of all reporting obligations until the proceedings resume.²⁵ This would prevent unnecessary expenditures of time and resources during the suspension.

III. CONCLUSION

CURE respectfully requests that the Committees grant Applicants' Motion to suspend the proceedings, but should not allow Applicants to submit outstanding informational items on a rolling basis. Instead, CURE requests that the Committees order Applicants to submit a single, comprehensive filing concurrently with filing a notice seeking to resume proceedings.

During the suspension, CURE requests that the Committees order Applicants to submit monthly reports detailing the status of all outstanding information identified in Staff's itemized list and other parties should be relieved of their reporting obligations. If quarterly reports are adopted, CURE requests that the Committees order Applicants to indicate in each report whether the Applicants anticipate filing a notice seeking to resume proceedings before the next report.

²³ Second Revised Joint Scheduling Order at p. 5.

²⁴ Applicants' Motion for Suspension at p. 5.

²⁵ TN # 251599.

Implementing these recommendations will ensure transparency, maintain procedural efficiency, and uphold the fairness and integrity of the decision-making process.

Thank you for consideration of this response.

Dated: February 12, 2025

Respectfully submitted,

/s/ Andrew J. Graf

Andrew J. Graf
Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
(650) 589-1660
agraf@adamsbroadwell.com
kfederman@admasbroadwell.com

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