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STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION

IN THE MATTER OF:

ELMORE NORTH GEOTHERMAL
PROJECT (ENGP), BLACK ROCK
GEOTHERMAL PROJECT
(BRGP), AND MORTON BAY
GEOTHERMAL PROJECT
(MBGP) APPLICATIONS FOR
CERTIFICATION

Docket No. 23-AFC-01

Docket No. 23-AFC-02

Docket No. 23-AFC-03

**UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA'S RESPONSE TO
APPLICANTS' MOTION FOR SUSPENSION OF PROCEEDINGS**

February 13, 2024

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I. Introduction

The Second Revised Joint Scheduling Order and Order Granting Staff's Motion to Extend Due Dates ("Second Revised Joint Scheduling Order") gives parties seven (7) days to respond to motions for schedule modifications filed in the dockets for the Morton Bay Geothermal Project, Elmore North Geothermal Project, and Black Rock Geothermal Project (collectively "the Projects") proposed by Morton Bay Geothermal LLC, Elmore North Geothermal LLC, and Black Rock Geothermal LLC (collectively "Applicants"), respectively. (Second Revised Joint Scheduling Order and Order Granting Staff's Motion to Extend Due Dates (TN-261551, TN-261552, TN-261553) at 6). Accordingly, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW") submits this response to the Applicants' February 7, 2025, Motion for the Suspension of the proceedings for the three Projects. (Applicant's Motion for Suspension of Application for Certification for the Elmore North Geothermal Project (TN-261640); Applicant's Motion for Suspension of Application for Certification for the Morton Bay Geothermal Project (TN-261639); Applicant's Motion for Suspension of Application for Certification for the Black Rock Geothermal Project (TN-261641).) (These motions are hereinafter referred to as "the Applicants' Motion.")

The Applicants' Motion asks the California Energy Commission ("CEC") committees for the three Projects to indefinitely suspend the Application for Certification ("AFC") proceedings for the Projects, including all Staff activities, until the Applicants file a notice to resume the proceedings. (Applicant's Motion for Suspension of Application for Certification for the Elmore North Geothermal Project (TN-261640) at 5; Applicant's Motion for Suspension of Application for Certification for the Morton Bay Geothermal Project (TN-261639) at 5; Applicant's Motion for Suspension of Application for Certification for the Black Rock Geothermal Project (TN-261641) at 5.) The Applicant's Motion also requests CEC staff to provide an itemized list of outstanding information necessary for the Final Staff Assessments ("FSAs") for the Projects and for permission to continue filing this outstanding information during the suspension. (*Id.*) Also, the Applicant's Motion requests authorization to submit quarterly status reports instead of monthly reports during the suspension. (*Id.*)

UAW does not oppose the suspension of the proceedings for the Projects but remains concerned that allowing the Applicants to submit information on a rolling basis will cause parties to needlessly monitor the dockets for the three Projects on a regular basis. UAW is likewise concerned that the Applicant's Motion requests an indefinite suspension of the proceedings for the three Projects. Allowing for an indefinite suspension of the proceedings for the three Projects creates an incentive for the Applicants to abandon their pursuit of these Projects diligently, as required. (20 C.C.R. § 1720.2(a).) Although UAW is not now filing a motion for the termination of these proceedings, it wants to highlight this issue for the CEC committees for these Projects and thereby emphasize the need to structure any suspension with identifiable deadlines for the submission of the outstanding informational items. Accordingly, UAW respectfully requests that the CEC committees for the three Projects require all outstanding informational items be submitted as a single, comprehensive filing and also set deadlines by which this information will become due. UAW also requests that the CEC committees for the three Projects mandate that the Applicants submit monthly status reports rather than quarterly reports, so that the parties can more easily keep tabs on the progress being made towards resumption of the proceedings.

II. Background

On January 24, 2025, CEC staff filed a motion requesting that the CEC postpone publication of the FSAs for the three Projects until all necessary information was obtained to fully evaluate the environmental impacts, as required by the California Environmental Quality Act and the Warren-Alquist Act. (Staff's Motion to Extend the Due Date for the Final Staff Assessments (TN-261286, TN-261288, TN-261302) at 4.) The outstanding informational items identified by CEC staff in their motion include air quality modeling data based on the proposed rearrangement of the Elmore North Geothermal Project; the Imperial County Air Pollution Control District's Final Determination of Compliance for each of the Projects; input from the California Department of Fish and Wildlife regarding mitigation measures for Burrowing Owls following the recent decision to list the species as a "candidate species" under the California Endangered Species Act; an agricultural flow return assessment study prepared by the Applicant for the Morton Bay site; the Salton Sea Impact Study evaluating the impacts of anticipated reductions in water flows to the Salton Sea resulting from Project's respective implementation; and revised project descriptions for all three Projects (that were promised to be submitted by mid-January 2025 but that have not yet been provided by the Applicants). (*Id.*) The Applicants did not object to CEC staff's motion, but noted that the extension could be indefinite because several of the informational requests were outside of the Applicants' control and required cooperation and diligence by third-party agencies. (Applicant's Response to Staff's Motion to Extend the Due Date for the Final Staff Assessments (TN-261508, TN-261509, TN-261510) at 1.)

On February 5, 2025, the Presiding Member for the Committees for the three Projects issued the Second Revised Joint Scheduling Order vacating all deadlines until CEC staff filed a Notice of Final Receipt of All Outstanding Information. (Second Revised Joint Scheduling Order and Order Granting Staff's Motion to Extend Due Dates (TN-261551, TN-261552, TN-261553) at 5.) That order required CEC staff to submit an itemized list of the outstanding information needed to complete the FSAs, identify the source of the information, and specify the expected receipt date. (*Id.*) To date, CEC staff have not submitted that list. In response to this order, the Applicant's submitted the instant Motion requesting the CEC suspend the AFC proceedings for all three Projects until all of the outstanding information is submitted. (Applicant's Motion for Suspension of Application for Certification for the Elmore North Geothermal Project (TN-261640) at 5; Applicant's Motion for Suspension of Application for Certification for the Morton Bay Geothermal Project (TN-261639) at 5; Applicant's Motion for Suspension of Application for Certification for the Black Rock Geothermal Project (TN-261641) at 5.)

III. Discussion

Although UAW does not oppose the Applicant's Motion, it requests the CEC impose conditions on the suspension for the benefit of the parties and the public. A non-exhaustive list of proposed conditions, with justifications for such conditions, is provided below.

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

As noted, while the Applicants seek a suspension of the AFC proceedings, they also request permission to continue filing outstanding information during the suspension. (*Id.*) UAW objects to this aspect of the Applicant's Motion, as permitting rolling submission of critical information would prejudice the parties' ability to respond to the information and require parties to expend unnecessary resources continuously monitoring the dockets for the three Projects. In addition, and critically, allowing for rolling submission of this information would require parties to maintain ongoing and continuous capacity to comprehensively and quickly respond to new information submitted in the dockets throughout the duration of the suspension. This would defeat the purpose of the proposed suspension to allow for the parties and the CEC to focus their resources elsewhere while outstanding information is collected and provided. Indeed, the Applicant's Motion asks that the suspension order include "immediate suspension of CEC Staff's activities relating to the Projects." (*Id.*) Allowing ongoing submission of Project-related information by the Applicants, CEC, and third-party agencies during the suspension would contradict the purpose of the request in the Motion and may blur the line between suspension and active review by forcing CEC staff and intervenors to evaluate new information on a piecemeal basis.

Consequently, UAW requests that the suspension order, should one be granted, require the submission of all outstanding information in a single, comprehensive filing to be filed concurrently with the Applicant's notice seeking to resume the proceedings. This would prevent unnecessary expenditures of time and resources and avoid prejudice to the parties by ensuring that all parties have clear notice as to the Applicants' position on the sufficiency and completeness of the supplemental information. Moreover, requiring the single submission be issued concurrently with a notice requesting to resume the proceedings would guarantee that there are active proceedings through which intervenors may communicate with the CEC and CEC staff about the information provided.

B. The CEC Should Impose Deadlines by Which Outstanding Information Be Provided.

The Applicant's Motion effectively requests that the proceedings for the three Projects be suspended indefinitely. As the Applicants' admitted in response to CEC staff's request to extend the deadlines for issuing the FSAs for the three Projects, several of the outstanding informational items are being prepared by or in the possession of regulatory agencies other than the CEC (and, obviously, other than the Applicants). (Applicant's Response to Staff's Motion to Extend the Due Date for the Final Staff Assessments (TN-261508, TN-261509, TN-261510) at 1.) CEC staff's January 24, 2025, request to extend the deadlines to issue the FSAs identified the following outstanding information:

1. Air quality modeling data based on the proposed rearrangement of the Elmore North Geothermal Project;
2. The Imperial County Air Pollution Control District's Final Determination of Compliance for each of the Projects;

3. Input from the California Department of Fish and Wildlife regarding mitigation measures for Burrowing Owls following the recent decision to list the species as a “candidate species” under the California Endangered Species Act;
4. An agricultural flow return assessment study prepared by the Applicant for the Morton Bay site;
5. The Salton Sea Impact Study evaluating the impacts of anticipated reductions in water flows to the Salton Sea resulting from Project’s respective implementation; and
6. Revised project descriptions for all three Projects (that were promised to be submitted by mid-January 2025 but that have not yet been provided by the Applicants).

(Staff’s Motion to Extend the Due Date for the Final Staff Assessments (TN-261286, TN-261288, TN-261302) at 3-4.) For those outstanding informational items within the Applicants’ control (i.e., items 1, 4, 5, and 6 in the above list), UAW requests, as part of any suspension order to result from the Applicants’ Motion, that the CEC impose a deadline, with a date certain, by which the Applicants’ must submit these informational items. And for those outstanding informational items outside of the Applicants’ control (i.e., items 2 and 3 in the above list), UAW requests that, as part of any suspension order to result from the Applicants’ Motion, that the CEC set a deadline by which the other, third-party agencies (the Imperial County Air Pollution Control District and the California Department of Fish and Wildlife) submit the required information. Allowing for suspensions of AFC proceedings to be set concurrently with date certain deadlines has precedents in past CEC matters. (*See, e.g.*, Order Denying Motion to Terminate; Order Suspending Proceedings; and Third Revised Scheduling Order (Docket No. 15-AFC-02), at 3 (TN#223626); Committee Order Denying Motion to Terminate and Granting Request for Suspension (Docket No. 08-AFC-08), at 4 (TN#205238-1).)

Moreover, setting deadlines by which the outstanding informational items must be submitted would prevent the suspension from needlessly and unlawfully extending the suspension indefinitely. (20 C.C.R. § 1720.2(a).) And it would incentivize the Applicants to act diligently, as required, to pursue the AFC proceedings for the three Projects. (*Id.*) Accordingly, UAW strongly urges the CEC to include in a suspension of the three Projects’ proceedings deadlines by which the outstanding informational items must be submitted.

C. The CEC Should Order the Applicants to File Monthly Reports Until the Proceedings Resume.

The Applicants’ Motion request that during the pendency of the suspension they be required only to submit status reports on a quarterly basis. (Applicant’s Motion for Suspension of Application for Certification for the Elmore North Geothermal Project (TN-261640) at 5; Applicant’s Motion for Suspension of Application for Certification for the Morton Bay Geothermal Project (TN-261639) at 5; Applicant’s Motion for Suspension of Application for Certification for the Black Rock Geothermal Project (TN-261641) at 5.) Allowing the Applicants to submit status reports so infrequently during the suspension period would keep intervenors and the CEC itself in the dark as to the Applicants’ progress in collecting, organizing, analyzing, and submitting the outstanding information. Requiring monthly status reports, as has been the standard throughout these proceedings thus far, would work to ensure that the CEC committees for these proceedings, CEC staff, intervenors, and the public at large remain informed of the Applicants’ progress. Plus, and importantly, such reports would allow the CEC committees for

these proceedings to assess whether the Applicants are proceeding with due diligence toward resuming the proceedings, as required.

IV. Conclusion

UAW respectfully requests that the CEC committees for the three Projects grant the Applicants' Motion to suspend the proceedings but impose the aforementioned conditions thereon. Specifically, UAW requests that the suspension order include (1) a condition requiring the submission of all of the outstanding informational items together in a single, comprehensive filing to be submitted concurrently with the Applicants' notice seeking to resume the proceedings, (2) a condition setting deadlines by which the Applicants and the other, third-party agencies (the Imperial County Air Pollution Control District and the California Department of Fish and Wildlife) must submit the outstanding informational items, and (3) a condition requiring the Applicants to submit monthly, rather than quarterly status reports during the pendency of the suspension.

Thank you for consideration of this response. If you have any questions about this request, please do not hesitate to contact me at (415) 568-5200 or mcm@atalawgroup.com.

Respectfully submitted,



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