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STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

BLACK ROCK GEOTHERMAL PROJECT
(BRGP) APPLICATION FOR
CERTIFICATION

Docket No. 23-AFC-03

**INTERVENOR CALIFORNIA UNIONS FOR RELIABLE ENERGY
RESPONSE TO CEC STAFF'S PROPOSED SCHEDULE AND APPLICANT'S
PROPOSED SCHEDULE**

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Tanya A. Gulesserian
Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
(650) 589-1660
tgulesserian@adamsbroadwell.com
kfederman@adamsbroadwell.com

Attorneys for California Unions for Reliable
Energy

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I. INTRODUCTION

Pursuant to California Code of Regulations, title 20, section 1709.7, the Committees for the Morton Bay Geothermal Project (23-AFC-01), the Elmore North Geothermal Project (23-AFC-02), and the Black Rock Geothermal Project (23-AFC-03) ordered staff for the California Energy Commission ("CEC") to file no later than August 17, 2023, "a proposed schedule for conducting the certification process and an Issues Identification Report summarizing the major issues identified to date and what additional information is necessary to resolve them," in the *Notice of Joint Public Site Visits, Joint Environmental Scoping Meeting and Informational Hearing, and Committee Orders* filed on August 9, 2023. (TN 251547) The Committees also ordered the applicants for each project to respond to CEC staff's Proposed Schedule and Issues Identification Report by August 24, 2023. (*Id.*)

On August 17, 2023, CEC staff filed an *Issues Identification Report and Proposed Schedule for the Black Rock Geothermal Project (23-AFC-03)* ("CEC staff's Proposed Schedule"). (TN 251662) In relevant part, CEC staff recommends a performance-based schedule and for the Scheduling Order to "state that publication of the PSA will occur no later than 60 days after staff notifies the Committee in a status report that staff has received complete and satisfactory answers to its data requests and thus has no further data requests." (*Id.*) Staff's Proposed Schedule also provides for a forty-five (45) comment period on the Preliminary Staff Assessment ("PSA"). (*Id.*)

In response, Black Rock Geothermal, LLC, an indirect, wholly owned subsidiary of BHE Renewables, LLC, ("Applicant") submitted *Applicant's Response*

to CEC Staff's Issues Identification Report and Proposed Schedule to Docket No. 23-AFC-03 on August 24, 2023 ("Applicant's Proposed Schedule"). (TN 251875) The Applicant requests that the Committee "set clear deadlines for all the key events in this proceeding,..." (*Id.*) The Applicant's Proposed Schedule sets forth specific deadlines for most activities associated with the Morton Bay Geothermal Project, the Elmore North Geothermal Project, and the Black Rock Geothermal Project.¹ (*Id.*) Among other things, the Applicant proposes staggering certain stages of the Application for Certification ("AFC") proceedings for the three projects, including, but not limited to, the filing of the PSAs, issuance of the Final Determination of Compliance by Imperial County Air Pollution Control District ("ICAPCD"), filing of the Final Staff Assessment ("FSA"), filing of opening testimony, and filing of reply testimony. (*Id.*)

On August 25, 2023, the Committee granted CURE's petition to intervene in the Black Rock Geothermal Project proceeding (Docket 23-AFC-03). (TN 251916)

II. RESPONSES BY CURE TO CEC STAFF AND APPLICANT'S PROPOSED SCHEDULES

Intervenor California Unions for Reliable Energy ("CURE") provides the following responses to CEC staff's Proposed Schedule and Applicant's Proposed Schedule for the AFC proceedings in the Morton Bay Geothermal Project, the Elmore North Geothermal Project, and the Black Rock Geothermal Project.

a. CURE Supports a 45 Day Comment Period on the PSA

CURE respectfully requests that the Committee's Scheduling Order include at least a forty-five (45) comment period on the PSA, as proposed in CEC staff's Proposed Schedule. (TN 251662) A forty-five (45) day public comment period is consistent with California Environmental Quality Act ("CEQA") section 21091, which mandates that "the review period shall be at least 45 days, ... [i]f the draft environmental impact report is for a proposed project where a state agency is the lead agency, a responsible agency, or a trustee agency;" as is the case here.² CEQA also requires at least a forty-five (45) day public comment period on a draft environmental impact report if submitted to the State Clearinghouse for review by state agencies.³ A forty-five (45) day public comment period on the PSA is

¹ The proposed comment periods on the Preliminary Staff Assessments ("PSAs") for the Morton Bay Geothermal Project and the Black Rock Geothermal Project in the Applicant's Proposed Schedule are less than thirty (30) days, which is contrary to the requirements under the regulations. 20 C.C.R. § 1742(c). The Committee must not adopt the PSA comment period timelines recommended in Applicant's Proposed Schedule.

² Pub. Res. Code § 21091(a). The CEC has a certified regulatory program and is the lead agency under CEQA.

³ 14 C.C.R. § 15105(a).

consistent with the CEC’s regulations, which allow for the Presiding Member to provide “additional time” to comment on the PSA.⁴

Additionally, a forty-five (45) day comment period on the PSA is warranted for the three projects because (1) the three AFC proceedings are occurring simultaneously, (2) the three projects affect multiple sites in various locations, (3) there has been no initial study which contains the analysis for environmental topics with less-than-significant impacts and the PSA will be the first opportunity for members of the public to provide comment on the substantive analysis of the projects’ impacts, and (4) depending on when the PSAs are released, the public comment period may overlap with multiple major federally-recognized holidays (i.e., Christmas, New Years).

b. CURE Requests a Staggered Review Process on the Three AFC Proceedings

CURE requests that the Committee’s Scheduling Order stagger the filing and submittal deadlines for the three AFC proceedings to ensure meaningful and adequate public review of each project.

c. CURE Requests That the Comment Period on the PDOC End Prior to the Initiation of the Comment Period on the PSA in Each Proceeding to Avoid Simultaneous Comment Periods

CURE requests that the Committee’s Scheduling Order does not allow for any overlap between the forty-five (45) day comment period on the PSA and the thirty (30) day comment period on the ICAPCD Preliminary Determination of Compliance (“PDOC”) in each proceeding to reduce the burden on the public seeking to engage on both comment periods.⁵

d. CURE Supports CEC Staff’s Recommended Language Concerning the Publication of the PSA

CURE supports CEC staff’s recommendation for the Scheduling Order to “state that publication of the PSA will occur no later than 60 days after staff notifies

⁴ 20 C.C.R. § 1742(c).

⁵ The Imperial County Air Pollution Control District (“ICAPCD”) deemed the application for the Black Rock Geothermal Project complete on June 22, 2023. TN 250728. ICAPCD Rule 207 requires ICAPCD to issue a preliminary decision within 180 days of accepting an Application for Certification (“AFC”). ICAPCD Rule 207 D.4.e. The preliminary decision is subject to public notice and comment requirements of Rule 206. *Id.* at Rule 207 D.4.e.3. “Within 240 days of accepting an [AFC] as complete, [], the APCO shall issue and submit to the California Energy Commission a preliminary determination of compliance or, if such a determination cannot be issued, shall so inform the California Energy Commission. A determination of compliance shall confer the same rights and privileges as an Authority to Construct only when and if the California Energy Commission approves the application for certification, and the California Energy Commission certificate includes all conditions of the final determination of compliance.” *Id.* at Rule 207 D.4.f.

the Committee in a status report that staff has received complete and satisfactory answers to its data requests and thus has no further data requests.” (TN 251661)

III. CONCLUSION

CURE appreciates the opportunity to respond to CEC staff’s Proposed Schedule and Applicant’s Proposed Schedule, and thanks the Committee for consideration of its requests regarding schedules set forth herein.

Dated: September 8, 2023

Respectfully submitted,

Original Signed by:

/s/ Kelilah D. Federman

Tanya A. Gulesserian
Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
(650) 589-1660
tgulesserian@adamsbroadwell.com
kfederman@adamsbroadwell.com

Attorneys for California Unions for Reliable
Energy