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CALIFORNIA ENERGY COMMISSION

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CEC-70 (Revised 07/2022)



IN THE MATTER OF:

Morton Bay Geothermal Project

Docket No. 23-AFC-01

**PRESIDING MEMBER'S SCHEDULING ORDER FOR THE MORTON BAY
GEOTHERMAL PROJECT PROCEEDING**

This Scheduling Order is prepared by the Presiding Member¹ in this proceeding to establish the schedule for the prehearing phase of the Application for Certification (AFC) proceeding for the Morton Bay Geothermal Project (Morton Bay) pursuant to California Code of Regulations, title 20, section 1709.7(c).²

BACKGROUND

On April 18, Morton Bay Geothermal LLC (Applicant), an indirect, wholly owned subsidiary of BHE Renewables, LLC, filed an AFC with the California Energy Commission (CEC) for the Morton Bay Geothermal Project and related facilities (Morton Bay, or Project).³ The AFC seeks to construct and operate geothermal electrical generating and related facilities southeast of the Salton Sea, in unincorporated Imperial County, California near the cities of Niland and Calipatria.

The proposed Project would use geothermal resources to provide renewable electricity. The CEC has exclusive jurisdiction to license the Project pursuant to Public Resources Code section 25500. On June 1, 2023, the CEC found that the Project site is capable of providing geothermal resources in

¹ On June 1, 2023, the California Energy Commission (CEC) assigned a committee to this proceeding to consist of Noemí Gallardo, Commissioner and Presiding Member, and Andrew McAllister, Commissioner and Associate Member, to preside over any proceedings arising from the Application. (TN 250451.)

² The Presiding Member is responsible for issuing a scheduling order for the prehearing phase of an AFC no later than 15 days following the informational hearing. California Code of Regs., tit. 20, section 1709.7(c).

³ 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 application comprises many separate documents filed in the docket beginning April 18, 2023, e.g., Volume 1 is TN 249723.

commercial quantities in accordance with Public Resources Code section 25540.1.⁴ On July 26, 2023, the CEC found that the AFC for the Project contains the information required under Public Resources Code section 25520 and California Code of Regulations, title 20, sections 1704 and 1709 and Appendix B. Thus, the CEC found that the AFC is complete,⁵ commencing a 12-month licensing approval process pursuant to Public Resources Code, section 25540.2, unless the CEC and Applicant mutually agree to a later time for the issuance of a decision.

On August 9, 2023, the CEC issued a Notice of Joint Public Site Visits, Joint Environmental Scoping Meeting and Informational Hearing (Joint Hearing)⁶ for Morton Bay and two similar AFCs filed concurrently by companies formed by BHE Renewables, LLC: Elmore North Geothermal Project (Elmore North)⁷ and Black Rock Geothermal Project (Black Rock).⁸ On August 25, 2023, the Presiding Member granted the Petition to Intervene filed by California Unions for Reliable Energy (CURE).⁹ The Joint Hearing occurred at Calipatria High School in Calipatria, California on August 31, 2023, and included ground transportation to view each of the three proposed sites for Morton Bay, Elmore North, and Black Rock.

A. Staff's Data Requests and Issues Identification Report

On August 17, 2023, CEC staff (Staff) filed its Issues Identification Report (Staff's Report),¹⁰ identifying potential issues in the technical areas of Cultural and Tribal Cultural Resources, and Water Resources. Staff also proposed a Project schedule. Staff did not suggest a specific date for publication of the Preliminary Staff Assessment (PSA) but requested a schedule permitting the publication of the PSA up to 60 days after Staff notifies the Committee in a status report that Staff has received complete and satisfactory answers to each of its data requests and thus has no further data requests.

On August 31, 2023, Staff filed Data Request Set 1 including specific requests for the following technical areas: Air Quality and Greenhouse Gas Emissions, Alternatives, Biological Resources,

⁴ The Order finding commercial quantities of geothermal resources can be found in the docket at TN 250451.

⁵ TN 251219.

⁶ TN 251545.

⁷ 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.

⁸ 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.

⁹ TN 251919.

¹⁰ TN 251660.

Cultural and Tribal Cultural Resources, Geology and Soils, Land Use, Public Health, Socioeconomics, Noise and Vibration, Transportation, Transmission System Engineering, and Water Resources.¹¹ On August 18, 2023, Staff sent Tribal Consultation Letters via U.S. Mail to 13 Native American tribes and tribal leaders.¹²

B. Applicant's Response and Notice

On August 24, 2023, Applicant submitted its Response to Staff's Report (Applicant's Response), agreeing with Staff's identification of Cultural Resources/Tribal Cultural Resources and Water Resources as important for further data, analysis for potential significant effects, and for compliance with all applicable laws, ordinances, regulations, and standards.¹³

Applicant articulates concerns with Staff's proposed schedule to potentially extend discovery beyond the 180-day discovery period set by California Code of Regulations, title 20, section 1716(e), and the lack of concrete deadlines. Applicant underscores Public Resources Code section 25540.2(a), which sets the CEC's time to issue a final decision in this proceeding at no later than July 26, 2024, and the orders by the California Public Utilities Commission (CPUC) for load-serving entities to procure 15,500 megawatts of renewable generation by 2028.¹⁴ Applicant requests reasonable deadlines for this proceeding, acknowledging that they may be extended later if needed.

C. CURE's Response to the Proposed Schedule

On September 8, 2023, CURE submitted a response to the proposed schedule, requesting the following schedule requirements: a 45-day comment period of the PSA; staggered publication of the PSAs of Morton Bay, Elmore North, and Black Rock, and of the Imperial County Air Pollution Control District's Preliminary Determination of Compliance; and up to 60 days for staff to publish the PSA 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.¹⁵

DISCUSSION OF SCHEDULE

The Committee discussed the scheduling considerations of Morton Bay, Elmore North, and Black Rock with the Parties at the Joint Hearing, heard public comment on the timing and management of these three AFCs, and reviewed CURE's response to the proposed schedules. Having considered the

¹¹ TN 252095.

¹² CEC Staff oral statements at the Joint Hearing.

¹³ TN 251877.

¹⁴ See CPUC Decisions 21-06-035 and 23-02-040.

¹⁵ TN 252201.

requests of the parties and oral comments on the record from tribal leaders and members, community representatives, and the public, the Committee finds as follows:

1. Status reports will be required monthly from Staff and Applicant according to the Scheduling Order described below. Status reports shall include summaries of the progress of discovery in each monthly report, including descriptions of significant communications with other federal, state, local agencies, and tribal governments, and identify any factors that may impact the schedule of the proceeding. Status reports shall also include a description of the outcome of any public workshop or other meeting held during that month. Intervenor shall file status reports for any month in which they engage in discovery, including communications of the type noted above. In the first monthly report following the submittal of the Preliminary Determination of Compliance, Staff shall announce its target dates for the release of each PSA for each project so that the Parties and public can anticipate approximately when and in what order each PSA will be released.
2. The Applicant and Staff agree that the PSA for Morton Bay will be filed no later than 60 days after the Imperial County Air Pollution Control District submits its Preliminary Determination of Compliance for the Project.
3. To ease the burden on Parties and interested members of the public in preparing and reviewing the PSA for Morton Bay and the separate PSAs for Elmore North and Black Rock, Staff is directed to release each PSA one by one, with *no less than 14 calendar days in between* each one, while also ensuring that each PSA is released no later than 60 days after the submittal of its attendant Preliminary Determination of Compliance.
4. Under ordinary circumstances the Committee expects the Final Staff Assessment (FSA) to be filed within 30 days after the close of public comment on the PSA. If extraordinary circumstances are present that would prevent compliance with this expectation, Staff shall specify in the PSA the reason more time may be needed, what, if any, additional information Staff needs in order to produce the FSA, and when Staff expects to obtain that information and file the FSA. The Applicant shall file a response to these statements no later than 14 days after the PSA is filed; Intervenor may also file responses within this timeframe.
5. 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 Scheduling Order or elsewhere in CEC regulations, the party shall notify the Committee as soon after reaching that conclusion as possible and file a written request asking for modification of the schedule that explains the reasons the deadline cannot be met.
6. The Committee will establish the schedule and dates for the FSA and evidentiary phase of the proceeding upon Staff's filing of the PSA and any responses filed by the Applicant or Intervenor.

SCHEDULING ORDER

The Committee hereby adopts the schedule for the prehearing phase of the Morton Bay proceeding as attached below. The Committee encourages the Parties to make their best efforts to complete the deliverables ahead of these dates.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's 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.

Direct questions of a procedural nature related to the AFC to Hearing Officer Ralph Lee at Ralph.Lee@energy.ca.gov or 916-776-3408.

Direct technical subject inquiries concerning the AFC to Project Manager Eric Veerkamp at STEPsiting@energy.ca.gov or 916-661-8458.

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

AVAILABILITY OF DOCUMENTS

Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [Morton Bay Geothermal Project webpage](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 the following QR code:



IT IS SO ORDERED.

Dated: September 12, 2023

APPROVED BY:

Noemí Otilia Osuna Gallardo
Commissioner and Presiding Member
Morton Bay Geothermal Project
AFC Committee

Mailed to: List Number: 7550

**MORTON BAY GEOTHERMAL PROJECT
(23-AFC-01)
SCHEDULING ORDER
SEPTEMBER 15, 2023**

EVENT	DATE
Status Reports filed by Applicant and Staff monthly, and by Intervenor(s) if necessary	October 31, 2023, and by the last business day of every month thereafter
Discovery closes: Last day for any party to request information	January 22, 2024 ¹⁶
Anticipated date that the local air pollution control officer will issue a Preliminary Determination of Compliance (PDOC) on the AFC	November 22, 2023 ¹⁷
Staff files Preliminary Staff Assessment	No later than 60 days after the Preliminary Determination of Compliance is filed, and not within 14 calendar days of the filing of the PSAs in either Elmore North or Black Rock
Public Comment Period Closes on Preliminary Staff Assessment	30 days after filing of the Preliminary Staff Assessment ¹⁸
Staff files Final Staff Assessment	To be determined ¹⁹

¹⁶ "All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown." (Cal. Code Regs., tit. 20, § 1716(e).)

¹⁷ Applicant's proposed schedule indicated this date (TN 251877, p. 5), which Applicant clarified at the Joint Hearing on August 31, 2023 to be an estimate based on discussion with the Imperial County Air Pollution Control District. (A transcript of the Joint Hearing will be filed in the docket for this proceeding; see also Cal. Code Regs., tit. 20, § 1744.5(b); Imperial County Air Pollution Control District, Rule 207 D.4.e.)

¹⁸ Staff's preliminary environmental assessment shall be subject to at least a 30-day public comment period. (Cal. Code Regs., tit. 20, § 1742(c).)

¹⁹ After the close of the public comment period, Staff shall file the Final Staff Assessment. (Cal. Code Regs., tit. 20, § 1742(c).)

Last Day to File Petition to Intervene	10 days after filing of the Final Staff Assessment ²⁰
Last Day to File Objection to any Petition to Intervene	10 days after a Petition to Intervene is filed ²¹
Prehearing Conference	To be determined
Evidentiary Hearing	To be determined ²²
Committee Files Presiding Member's Proposed Decision (PMPD)	To be determined
Public Comment Period Closes on PMPD	30 days after filing of the PMPD ²³
Committee Conference on PMPD	To be determined
Commission Hearing on the Final Decision	To be determined

²⁰ 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).)

²¹ "Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions." (Cal. Code Regs., tit. 20, § 1211.5.)

²² The final staff assessment shall be filed at least 14 days before the first evidentiary hearing. (Cal. Code Regs., tit. 20, § 1742(c).)

²³ The presiding member shall set a comment period of at least 30 days from the date of filing. (Cal. Code Regs., tit. 20, § 1745.5(c).)