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Docket Number:	23-AFC-01
Project Title:	Morton Bay Geothermal Project (MBGP)
TN #:	253403
Document Title:	Status Report #2 for Morton Bay Geothermal Project
Description:	N/A
Filer:	Marichka Haws
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/30/2023 2:37:30 PM
Docketed Date:	11/30/2023

M e m o r a n d u m

To: Commissioner Noemi Gallardo, Presiding Member
Commissioner Andrew McAllister, Associate Member

Date: November 30, 2023

From: California Energy Commission
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Subject: STATUS REPORT #2 FOR MORTON BAY GEOTHERMAL PROJECT (23-AFC-01)

The Presiding Member's Scheduling Order for the Morton Bay Geothermal Project (MBGP) Proceeding (Scheduling Order) filed on September 15, 2023, orders the parties to file a status report on "October 31st, and by the last business day of every month thereafter." Staff is ordered to "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."

Summary of Progress of Discovery

Status of Data Requests:

On October 27, 2023, the applicant filed Data Request Response Set 2 (DRR Set 2) (TN 252809 and TN 252817) containing supplemental information requested for the technical areas of Cultural and Tribal Cultural Resources, Land Use, and Water Resources. Certain subsurface well figures/exhibits were also submitted under confidential cover at that time.

On November 13, 2023, the applicant filed the Project Data Request Response Set 1 (DRR Set 1) (Revised Responses to DR 3, 4, 7, 10 to 13, 73 to 77) (TN 253082) (original due date, November 10, 2023) for the technical areas of Air Quality and Public Health.

On November 14, 2023, the applicant filed a Notice pursuant to California Code of Regulations, Title 20, section 1716(f) requesting additional time to respond to CURE's DR Set 1 (TN 253112). The filing provided partial responses, a request for an extension until December 1 to provide further responses and notice of its objection to certain data requests in the CURE DR Set 1.

On November 17, 2023, the applicant submitted various air quality modeling files, and air quality and public health data spreadsheets. CEC staff continues to analyze the remaining

Air Quality, Public Health, and Greenhouse Gas DRRs and may request further clarification in a pending DR Set 4.

On November 17, 2023, the applicant filed the draft Water Supply Assessment (WSA) (TN 253193). Data contained in the WSA is being reviewed by CEC staff; however, it is too early to make conclusive statements about whether outstanding requests from DR Set 1 (DRs 100, 103, 104, and 110) are fully satisfied. The final WSA is expected to address CEC staff concerns surrounding regional water supply and reliability, and future set-asides for non-agricultural projects (including conservation measures). Determining the feasibility of alternative supplies of water, beyond Colorado River water, including for power plant cooling, also remains under investigation by CEC staff (see also Alternatives). Additional Data Requests may be needed if the received responses do not fully address DRs 100, 103, 104, and 110, or if the WSA does not resolve water usage impacts of the project.

On November 21, 2023, CEC staff filed Data Request (DR) Set 3 (TN 253276). Responses are due by December 21, 2023. DR Set 3 seeks information in the three technical areas below:

1. Cultural and Tribal Cultural Resources
2. Efficiency and Energy Resources
3. Land Use

Filings Impacting Discovery

On November 17, 2023, the applicant filed the MBGP Revised General Arrangement Refinement (TN 253188). The filing proposes to relocate the generating facility, along with all related infrastructure approximately 915 feet south/southwest of the former location, but still on the subject parcel. The other components of the filing are a reorienting of project components on the site, and the addition of new project elements (on-site liquid lime storage, for example). CEC staff is reviewing the submittal to determine if staff's preliminary inferences and conclusions regarding the project will need to be reevaluated based on the new information.

CEC staff continues to meet, as necessary, with the applicant and our agency partners to discuss outstanding data needs. Staff continues to evaluate information related to Air Quality, Alternatives, Cultural and Tribal Cultural Resources, Biological Resources, Solid Waste, and Water Resources. Staff anticipates these areas will be the subject of a pending DR Set 4.

Significant Communications with Other Government, Tribal Government, or Interested Entities

In response to the submittal of the WSA, CEC staff anticipates having discussions with IID representatives and Imperial County Planning and Development Services regarding regional water supply and availability, and adequacy of necessary cooling water for the proposed facility.

On November 22, 2023, CEC staff members from the Cultural Resources Unit met with the Tribal Historic Preservation Office of the Agua Caliente Band of Cahuilla Indians to talk about the MBGP, as well as Elmore North and Black Rock. Staff is planning to conduct additional meetings (dates to be determined) with Agua Caliente and other tribes that expressed interest in the projects, focusing on each individual project.

Factors That May Impact the Schedule

As implemented in the Committee's Scheduling Order, the Preliminary Staff Assessment (PSA) for MBGP shall be filed no later than 60 days after the Imperial County Air Pollution Control District (ICAPCD) submits its Preliminary Determination of Compliance (PDOC), and no less than 14 calendar days from the filing of the PSA in either the Elmore North Geothermal Project or Black Rock Geothermal Project proceeding. The Order further states that the PDOC was estimated to be submitted on November 22, 2023, based on the best information available. The PDOC has not been submitted as of the date of this status report and CEC staff has been unable to obtain updated information or a new estimated date for submittal from the ICAPCD.

Potential impacts to the California Independent System Operator-controlled grid will be determined through the previously requested Affected System Study. Impacts identified through the study have the potential to trigger additional review under the California Environmental Quality Act and therefore affect the project schedule.

As reported in Status Report #1, the applicant indicated that select areas were resurveyed for the presence of cultural and tribal cultural resources on September 12–14, 2023, and that it expects to provide the requested information within 30 days of the completion of any additional surveys (DRs 33 and 34). The lack of firm due dates for this survey work could impact the schedule of the proceeding.

The Scheduling Order also directs staff to provide a 30-day comment period for the review of the PSA pursuant to California Code of Regulations, title 20, section 1742(c). Staff notes that, under CEQA, Draft EIRs submitted to the State Clearinghouse for review by state agencies require a 45-day comment period. (Cal. Code Regs., title 14, § 15105(a).) This regulation is consistent with Public Resources Code, section 21090(a) (amended, Ch.97, Statutes 2021), which requires a 45-day comment period for such EIRs. Since state agencies such as the California Geologic Energy Management Division (CalGEM) have an interest in reviewing the PSA, which is an EIR substitute under the CEC's Certified Regulatory Program, the committee may wish to further consider ordering a 45-day comment period for the MBGP PSA. Staff notes that this amended statute is outside of Chapters 3 and 4 of CEQA, which are the only portions of CEQA from which the CEC's Certified Regulatory Program is exempt.

At this time, staff does not anticipate the need for committee intervention regarding discovery, but delays, as noted above, are possible.