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STATE OF CALIFORNIA

**State Energy Resources Conservation
and Development Commission**

In the Matter of:

**WILLOW ROCK ENERGY STORAGE
CENTER**

Docket No. 21-AFC-02

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
RESPONSE TO MOTION TO AMEND THE REVISED SCHEDULING
ORDER FOR THE WILLOW ROCK ENERGY STORAGE CENTER**

December 10, 2024

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INTRODUCTION

California Unions for Reliable Energy (“CURE”) submits this response to GEM A-CAES LLC’s (“Applicant”) Motion to Amend the Revised Scheduling Order¹ for the Willow Rock Energy Storage Center proceeding (21-AFC-02)(“Project”) (“Motion”).² CURE respectfully requests that the California Energy Commission (“CEC”) Committee deny the Motion because the Applicant’s Proposed Schedule omits several critical opportunities for stakeholders to be heard in the proceeding.

DISCUSSION

I. BACKGROUND

The Applicant submitted its Supplemental Application for Certification (“SAFC”) for the Project beginning on March 1, 2024, which the Committee described as both “a relocated and reconfigured Willow Rock Project.”³ Given the substantial changes to the Project since the original AFC filing, the Applicant acknowledged that the SAFC “largely supersede[s]” the analysis and work performed on the AFC.⁴ The Committee also stated that “[m]ost if not all resource, engineering, reliability, and safety analyses for the proceeding are substantively impacted by the reconfigured and relocated project.”⁵

The Committee provided the parties with several opportunities to provide input on a revised schedule, including an all-party meet and confer and submissions of Issues Identification Statements and Proposed Schedules.⁶ On August 12, 2024, the Applicant docketed a Motion for a Committee Scheduling Conference to discuss the schedule for the proceeding.⁷ CEC Staff and CURE responded that the Committee had sufficient information to inform a schedule without the need for a scheduling conference.⁸ Based on all of the information presented to the Committee, a Revised Scheduling Order was adopted on September 9 and the Committee denied the Applicant’s request for a Scheduling Conference.⁹

¹ The Committee issued its Revised Scheduling Order on September 9, 2024, for the Willow Rock Energy Storage Center proceeding (21-AFC-02). TN 259084.

² TN 260431.

³ TN 254951.

⁴ TN 259084.

⁵ TN 254951; TN 259084.

⁶ TN 258444; TN 258428; TN 258407.

⁷ TN 258454.

⁸ TN 258691; TN 258694.

⁹ TN 259084.

Over a month later on October 11, 2024, the Applicant docketed a “letter response” requesting certain modifications to the Revised Scheduling Order.¹⁰ CURE submitted a response to the Applicant’s letter on October 18, which requested that the Committee deny the Applicant’s request for modifications to the schedule because the Applicant had not demonstrated good cause to modify the Revised Scheduling Order, the Revised Scheduling Order is reasonable, and the letter was not a motion preceded by an effort to meet and confer.¹¹

On November 18, 2024, a Hearing Officer Memorandum was submitted to the docket seeking clarification about whether the Applicant intended to request an expedited schedule.¹² If so, the Memorandum directed the Applicant to comply with the requirements in the Revised Scheduling Order, including a meet and confer with all parties and filing a motion to modify the schedule based on good cause.¹³ The Memorandum further directed that the “motion should include a detailed proposed schedule accompanied by documentation of the facts and rationale that compel the expedited timeline, as well as a discussion of potential impacts, if any, of any shortened deadlines on the other parties or interested persons to review and comment on the forthcoming staff assessments and participate in the evidentiary process.”¹⁴

Counsel for CURE and counsel for Applicant engaged in a meet and confer on November 26 that did not result in an agreement. The Applicant filed its Motion to Amend the Revised Scheduling Order for the Willow Rock Energy Storage Center on December 3, 2024.¹⁵

II. THE COMMITTEE SHOULD NOT GRANT THE APPLICANT’S MOTION WITHOUT THE INCLUSION OF SEVERAL KEY DEADLINES

The Motion requests that the Committee exercise its plenary authority pursuant to section 1203, subsection (c) of the CEC Rules of Practice and Procedure to adopt its Proposed Schedule.¹⁶ Section 1203 gives this Committee the power to regulate the conduct of the proceeding in a manner that preserves the parties’ notice and provides an opportunity to be heard.¹⁷

¹⁰ TN 259524. A “corrected” letter was docketed by the Applicant on October 29, 2024, which replaced the earlier version. TN 259757.

¹¹ TN 259605.

¹² TN 260133.

¹³ TN 260133; TN 259084.

¹⁴ TN 260133.

¹⁵ TN 260431.

¹⁶ *Ibid.*

¹⁷ 20 C.C.R. §§ 1203(c), 1210; Gov’t Code § 11425.10.

The Applicant's Proposed Schedule would deprive the parties of notice and an opportunity to be heard during several phases of this proceeding.

To achieve an expedited schedule, the Applicant entirely omitted opening testimony, rebuttal testimony, prehearing conference statement, a prehearing conference, and post-hearing briefing from its Proposed Schedule.¹⁸ These events are standard components in an AFC proceeding. The Revised Scheduling Order includes most of these events (with the exception of briefing).¹⁹ No reasoning is set forth in the Applicant's Motion to support eliminating these critical components in this proceeding.

Opening and rebuttal testimony are indispensable elements of AFC proceedings. Testimony is an opportunity for each party to present its evidence and identify the issues in controversy for evidentiary hearings. It also gives CEC Staff and Intervenor the chance to respond to claims made by the Applicant. While the Applicant has the burden of producing evidence to support all findings and conclusions required for certification, CURE has its own "burden of making a reasonable showing to support the need for and feasibility of [any] condition, modification, or provision" "relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety."²⁰ By omitting opening and rebuttal testimony from the schedule, CURE and the other parties would be deprived of the opportunity to present their case and ensure informed decision-making by the CEC.

The Applicant's Proposed Schedule also omits a prehearing conference and prehearing conference statement, which "provide[] the Committee with important information for the orderly conduct of the evidentiary hearing, including what exhibits and other evidence are part of the record on which to make the ultimate findings of fact and conclusions of law."²¹ The prehearing conference and prehearing conference statement lay the groundwork for an efficient evidentiary hearing and reduce uncertainties during the hearing. The Motion does not address how the evidentiary hearing would be impacted if the hearing were to begin two weeks after the release of the FSA without any prior testimony, prehearing conference statement, or prehearing

¹⁸ TN 260431.

¹⁹ TN 259084.

²⁰ 20 C.C.R. § 1745 (c), (d).

²¹ 21-SPPE-01, TN 242725. Although 21-SPPE-01 involved a Small Power Plant Exemption, the dicta in the order is nevertheless persuasive authority because at the time of the order, both the Small Power Plant Exemption and the Application for Certification processes involved similar procedures and the general purpose of testimony, prehearing conferences, and briefing were fairly analogous in both proceedings.

conference. In reality, these steps would have to occur to some extent during the evidentiary hearing, which would result in much longer hearings and other potential delays.

Finally, post-hearing briefing serves several critical functions including but not limited to clarifying key issues, applying the law to the facts of the case, rebutting issues raised during the evidentiary hearing, and providing each party with the opportunity to advocate for its position. It is premature to determine whether post-hearing briefing will be necessary in this proceeding and to avoid delays later, the Applicant's Proposed Schedule should have a placeholder for briefing, if needed.

The Applicant's Proposed Schedule would prejudice the parties by eliminating notice and the opportunity to be heard at crucial stages of this proceeding. Therefore, the Applicant's Proposed Schedule should not be adopted by this Committee without inclusion of the evidentiary hearing procedures outlined above.

III. CONCLUSION

For the foregoing reasons, CURE respectfully requests that the Committee deny the Applicant's Motion to Amend the Revised Scheduling Order in this proceeding.

Dated: December 10, 2024

Respectfully submitted,

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