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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

Staff's Response to Motion for Expedited Schedule

I. INTRODUCTION

On December 2, 2024, the California Energy Commission (CEC) received a *Motion to Amend the Revised Scheduling Order for the Willow Rock Energy Storage Center* from the project applicant (TN 260431). The motion was filed in response to *Hearing Officer Memorandum Regarding Requests for Relief from the Revised Scheduling Order for Willow Rock Energy Storage Center (21-AFC-02)* (TN 260133) and the Revised Committee Scheduling Order (TN 259084). Applicant's motion requests the Willow Rock Energy Storage Center AFC Committee (Committee) to expedite the schedule in order to have a final Commission decision by September 2025. The applicant's new proposed schedule:

- Eliminates the time allotted after the discovery period closes for data request responses,
- Reduces time significantly that staff has to prepare and file the Preliminary Staff Assessment (PSA),
- Reduces time staff has to prepare a response to comments and file a Final Staff Assessment, and,
- Eliminates a prehearing conference and a prehearing filing for the evidentiary hearing.

Per the September 9, 2024 Revised Committee Scheduling Order (TN 259084), CEC staff has seven days to file a response to the applicant's motion. For the reasons discussed below, staff proposes an alternative schedule that we believe is feasible in addressing the applicant's concerns as set forth in their motion.

II. BACKGROUND

On September 9, 2024, the Committee issued a scheduling order denying applicant's motion to hold a committee scheduling conference and instead issued a Revised Committee Scheduling Order (TN 259084). The revised schedule set dates from the close of the discovery period to the filing of the Final Staff Assessment. The specific dates for the evidentiary hearings and hearing filings were left as "to be determined (TBD)." The Revised Committee Scheduling Order also mandates that once a party determines that it cannot make a deadline, it must "notify the Committee as soon after reaching that conclusion as possible and file a written request as a standalone motion asking for modification of the schedule that explains the reasons the deadline cannot be met." However, before filing a motion for an extension or relief from the Revised Committee Scheduling Order, the parties must first attempt to meet and confer and "failing that, the motion shall describe the attempt to meet and confer and recommend a resolution."

In a series of filed letters, the applicant requested modifications to the Revised Committee Scheduling Order (TN 259524 and TN 259757) without an effort to meet and confer with the parties or filing a motion with the Committee to modify the Revised Committee Scheduling Order. In support of its request, the applicant claims it was informed that the federal National Environmental Policy Act (NEPA) process for the project was paused in response to the Revised Committee Scheduling Order as a perceived delay in the CEC's processing of the Application for Certification (AFC). In response, the Hearing Officer acknowledged the letters at the November 6, 2024, Informational Hearing and issued a *Hearing Officer Memorandum Regarding Requests for Relief from the Revised Scheduling Order for Willow Rock Energy Storage Center (21-AFC-02)* (TN 260133) reiterating the process to request modifications to the revised schedule.

On November 22, the applicant contacted CEC staff requesting a meeting to confer on their proposed schedule. CEC staff agreed to meet with the applicant on November 26, where the applicant presented their proposed timeline and shared the opposition to their proposed timeline from the contact intervenors. The applicant's proposed schedule includes specific dates for the "TBD" dates in the Revised Committee Scheduling Order. The applicant also proposes to eliminate the timeline for the applicant to submit data request responses; reduce the time provided to staff to prepare and file the PSA from 60 to 45 days; eliminate prehearing conference and prehearing filings for the evidentiary hearing; and reduce the time period for the Presiding Member's Proposed Decision. In Attachment A, staff provides a table comparing the dates in the Revised Committee Scheduling Order with the dates proposed in the applicant's motion and the CEC staff's suggested schedule that ensures staff meet their California Environmental Quality Act (CEQA) obligations while attempting to address the applicant's concerns.

III. DISCUSSION

While CEC staff appreciates the applicant's intentions to support California's transition to a clean energy future and the state's climate goals under Senate Bill 100 of 2018, staff has been collaborating with the applicant since the original AFC was filed in 2021 and then paused. The applicant then submitted its Supplemental Application for Certification (SAFC) in March 2024 with a new project location and configuration (TN 254951). Although the A-CAES technology for the SAFC is the same as the Original AFC, there are new engineering, construction, transmission, and operational details unique to the new site and design. New data and surveys related to natural and cultural resources are needed. Most, if not all, resource, engineering, reliability, and safety analyses for the proceeding are substantively impacted by the reconfigured and relocated project. Staff has been working diligently to review applicant's SAFC and has been operating under the Revised Committee Scheduling Order for three months.

Since July 2024, staff has submitted five separate data set requests with the most recent on November 26, 2024. The applicant has submitted responses to the first four sets of requests. Staff will file a sixth set of data requests asking that the applicant update their state jurisdictional waters report to reflect a series of drainages, that staff confirmed during a site visit with the applicant, to occur near or within the proposed project footprint, and to update the impact assessment to habitat or jurisdictional features. Staff is actively reviewing these responsive filings to ensure the data requests have been addressed and will continue to file follow-up data requests as necessary. Staff also continues to coordinate with partner agencies, most notably the California Department of Fish and Wildlife and the Lahontan Regional Water Quality Control Board, to review the applicant's SAFC. While responses were submitted in response to Data Request 3, staff at the Lahontan Regional Water Quality Control Board have indicated they did not receive a full response to their comments and are waiting for the additional requested information to complete their analysis. Applicant's consultant is still evaluating the significance of archaeological site in the project area, has delayed filing a complete archaeological test excavation plan, and did not file a Cultural Resources Phase II Testing Plan until November 26, 2024 (TN 260303).

Staff needs the full discovery period to ensure there is sufficient time to gather all necessary data and information to complete a full assessment of the project. Eliminating the last day for applicant to submit data responses, would require staff to prepare a PSA without the ability to ensure it has received complete and satisfactory responses. Given the new engineering, construction, transmission, and operational details unique to the new proposed site and design, and substantially new data and surveys related to natural and cultural resources, staff anticipates needing obtain all relevant and necessary information to complete its analysis. The sooner applicant provides staff with all necessary information, the sooner staff can complete the analysis and publish the PSA. With staff resources already constrained processing 11 licensing applications, continued consistency on how staff conducts discovery is critical to the CEC public process. For these reasons, staff prefers no changes to the discovery period. However, staff does propose a schedule that modifies the existing schedule in the Revised

Committee Scheduling Order as described in detail in Attachment A and highlighted here as follows, assuming applicant provides all requested information:

- Files PSA two weeks earlier by March 31, 2025
- Ensures 45 days for public comment is unchanged
- Files Final Staff Assessment by June 16, 2025, or 30 days after public comment closes instead of current 45 days after public comment closes
- Provides suggested dates for the TBDs in the Revised Committee Scheduling Order concluding with a Commission Hearing on a Final Decision in October 2025

The applicant is concerned that the current schedule in the Revised Committee Scheduling Order has already adversely impacted efforts to secure federal clean energy incentives. Specifically, the applicant has been informed by the U.S. Department of Energy's Loan Programs Office (LPO) that it has paused its NEPA process. Per the LPO's letter dated October 7, 2024 (TN 259605), *"to keep the NEPA and CEQA processes aligned and in compliance with NEPA §1501.10(b)(1), the LPO has paused its NEPA review of the Project."* There is no indication in the letter that the federal funding for the project is at risk because of the Committee's Revised Committee Scheduling Order. The delays the applicant references are largely due to outstanding data responses that are keeping staff from having a complete record sufficient to produce a PSA ahead of schedule.

Both intervenors, California Unions for Reliable Energy (CURE) and the Center for Biological Diversity (CBD), oppose the applicant's motion for an expedited schedule. The applicant, CURE, and CEC staff filed Issue Identification Statements and proposed schedules on August 9, 2024 (TN#s, 258407, 258428, and 258444). Previously, staff and CURE did not see a likely path forward to shorten the time needed to complete the PSA. Staff now believes that the time needed to complete the PSA can be shortened, but not to the extent of the applicant's proposed schedule.

Under the current schedule, staff can publish the PSA prior to the deadline, and with increased production by applicant to provide outstanding data request responses, this outcome can be achieved. Staff is preparing the PSA and currently believes it can meet the PSA publication target identified in staff's proposed schedule changes (See Attachment A) provided the applicant submits all necessary responses in a timely, complete, and satisfactory manner.

If the Committee decides to grant applicant's motion in part, staff requests the Committee consider staff's suggested schedule changes, instead of applicant's proposed schedule.

IV. CONCLUSION

Staff is on track to meet all the deadlines set in the Revised Committee Scheduling Order. For the reasons discussed above, if the Committee decides to modify the schedule, staff requests the Committee adopt staff's proposed schedule changes (Attachment A), instead of the schedule proposed in the applicant's motion.

Dated: December 10, 2024

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION

By: _____
Attorneys for Staff

Attachment A

Table comparing the dates in the Revised Committee Scheduling Order (Committee Order) with the dates proposed in the Motion and Staff's suggested schedule.

ACTIVITY	COMMITTEE ORDER	APPLICANT'S PROPOSED SCHEDULE	STAFF'S PROPOSED SCHEDULE
Discovery closes: Last day for any party to request information in a Data Request	January 13, 2025	January 13, 2025	January 13, 2025
Last day for Applicant to submit data responses	February 12, 2025, or 30 days after last Data Request, whichever is earlier	Not identified in proposed schedule	February 12, 2025, or 30 days after last Data Request, whichever is earlier
Staff deadline to file Preliminary Staff Assessment	April 14, 2025, or 60 days after Applicant provides last Data Response, whichever is earlier	February 27, 2025 (Close of Discovery + 45 days)	March 31, 2025, or 45 days after Applicant provides last Data Response, whichever is earlier
Public Comment Period Closes on Preliminary Staff Assessment	May 29, 2025, or 45 days after filing of the Preliminary Staff Assessment, whichever is earlier	April 14, 2025 (PSA + 45 days)	May 15, 2025, or 45 days after filing of the Preliminary Staff Assessment, whichever is earlier
Staff Files Final Staff Assessment	July 14, 2025, or 45 days after the Public Comment Period Closes on Preliminary Staff Assessment, whichever is earlier	May 14, 2025 (PSA Comments + 30 days)	June 16, 2025, or 30 days after the Public Comment Period Closes on Preliminary Staff Assessment, whichever is earlier ¹

¹ Depending on the number and nature of comments received, staff may need to request additional time to prepare the Final Staff Assessment. Staff will submit a request for extension or relief from the Revised Scheduling Order to the Committee.

Last Day to File Petition to Intervene	7 days after filing of the Final Staff Assessment	May 21, 2025 (FSA + 7 days)	June 23, 2025 (FSA + 7 days)
Last Day to File Objection to any Petition to Intervene	7 days after a Petition to Intervene is filed	Not identified in proposed schedule	7 days after a Petition to Intervene is filed
Parties File Opening Testimony	To be determined	Not identified in proposed schedule	Defer to Committee
Parties File Rebuttal Testimony	To be determined	Not identified in proposed schedule	Defer to Committee
Parties File Prehearing Conference Statements	To be determined	Not identified in proposed schedule	Defer to Committee
Prehearing Conference	To be determined	Not identified in proposed schedule	Defer to Committee
Evidentiary Hearings	To be determined and no sooner than 14 days after filing of the Final Staff Assessment	May 28, 2025 (FSA + 14 Days)	June 30, 2025 - Evidentiary Hearing (CCR section 1742 – FSA must be filed 14 days prior to first evidentiary hearing)
Committee Files Presiding Member's Proposed Decision (PMPD)	To be determined	July 28, 2025 (Evidentiary Hearings + 60 Days)	August 29, 2025

Public Comment Period Closes on PMPD	30 days after filing of the PMPD	August 27, 2025	September 29, 2025 - Public comment period ends on PMPD (at least 30 days per CCR section 1745.5)
Committee Conference on PMPD	To be determined	(Identified as Hearing On PMPD) August 2025 (During 30-day comment period)	Defer to Committee
Commission Hearing on the Final Decision	To be determined	September 2025	October 2025 – Commission Decision at Business Meeting
Only if needed – Publish revised PMPD (at least 15-day comment period per CCR section 1746)	To be determined	Not identified in proposed schedule	Defer to Committee
Alternative date for a Commission Decision at Business Meeting if a revised PMPD is required	To be determined	Not identified in proposed schedule	November 2025