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## Memorandum

To: Docket 24-OIR-01

Date: May, 15 2026

From: **Aleecia Gutierrez, Deputy Director**  
**Energy Assessments Division**  
California Energy Commission

**Subject:** California Environmental Quality Act Compliance for Regulations Implementing AB 1373 Capacity Payment Assessments for Publicly Owned Electric Utilities.

At the May 26, 2026 California Energy Commission (CEC) Business Meeting, CEC will consider adopting regulations to implement its mandate under Water Code section 80714 to: (a) assess a capacity payment annually on each publicly owned utility serving end-use customers (POU) in the California Independent System Operator (ISO) Balancing Authority Area (BAA) that procures resources through the Department of Water Resources (DWR) Electricity Strategic Reliability Reserve Program (ESSRRP) during the same month in which the POU in the California ISO BAA fails to meet its planning reserve margin (PRM); and (b) in consultation with the Public Utilities Commission, determine a capacity payment unit cost in kilowatts per month that is based on the monthly cost of the resources procured using moneys from the DWR Electricity Supply Reliability Reserve Fund. This memo provides CEC staff's analysis of the proposed action pursuant to the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.)

### **I. Adoption of the Regulations is Not a Project.**

For purposes of complying with CEQA, staff recommends the CEC find that adoption of the proposed regulations is not a project under CEQA. The proposed regulations simply implement the process for assessment and remittance of a payment by any POU in the California ISO BAA that, as determined by DWR, fails to meet its resource adequacy requirements.

California Code of Regulations, title 14 ("CEQA Guidelines"), section 15060 states, in pertinent part, that a lead agency must first determine whether an activity is subject to CEQA and that an activity is not subject to CEQA if the activity is not a "project," as defined in CEQA Guidelines section 15378. CEQA Guidelines section 15378 states that an activity is a project if it has the "potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]"

Adoption of the proposed regulations poses no potential for any direct or reasonably foreseeable indirect physical change in the environment. The proposed regulations will not, directly or indirectly, trigger any additional electric generation resources. Instead, they set forth a process for calculating and assessing a capacity payment required by statute, that POUs in the California ISO BAA must pay if they fail to meet their PRM in the same month that they

procure DWR ESSRRP resources. Water Code section 80714 establishes how the capacity payments are to be calculated, the conditions under which the payment will be assessed, the timeframe for remitting the payment, and the entity to which remittance must be made. The mere act of assessing the payment results in neither a direct physical change, nor a reasonably foreseeable indirect physical change, in the environment. Rather, the proposed regulations implement a statutorily required payment assessment and, as such, merely reflect an administrative process. Therefore, adoption of the proposed regulations is not a project and is not subject to CEQA.

## **II. Even if Adoption of the Regulations Were a Project, the Common Sense Exemption Would Apply.**

Adoption of the regulations is also exempt under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA applies only to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) The action in question here concerns the adoption of regulations to implement a calculation for a payment and does not provide for any direct or indirect physical changes to the environment. Therefore, there is no potential that the regulations would have a significant effect on the environment.

Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply to this action, and there is no reasonable possibility that approval of the proposed regulations will have a significant effect on the environment due to unusual circumstances. For these reasons, the adoption of the proposed regulations implementing the calculation of capacity payments for POUs in the California ISO BAA would be exempt from CEQA if they were a project.

## **III. Conclusion.**

As discussed, adoption of the proposed regulations implementing a process to assess a payment that is already required by statute is not a project under CEQA and thus CEQA does not apply. Moreover, even if adoption were a project, it would be exempt from CEQA under the common sense exemption set forth in section 15061(b)(3) of the CEQA Guidelines. For these reasons, the adoption of the proposed regulations by the CEC is not subject to CEQA.