

DOCKETED

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Dear Energy Commission Commissioners,

SMUD's application in section "4.0 Demonstration that Program Meets Requirements" relies on Commission approved compliance software.

The Commission approved compliance software is approved as required by Title 24, 10-109 (a) and is otherwise governed by statute pursuant to Public Resources Code - PRC 25402.1.

Pursuant to Public Resources Code - PRC 25402.1. In order to implement the requirements of subdivisions (a) and (b) of Section 25402, the commission shall do the following. Pursuant to Public Resources Code - PRC 25402.1. (b) The Energy Commission is required to establish a formal process for certification of compliance options for new products, materials, and calculation methods which provides for adequate technical and public review to ensure accurate, equitable, and timely evaluation of certification applications.

Pursuant to Health and Safety Code - HSC 18909. (c) a "Building standard" includes a regulation or rule relating to the implementation or enforcement of a building standard not otherwise governed by statute.

A formal process for certification of Commission approved compliance software for implementation or enforcement of a building standard is not a "Building standard" because it is otherwise governed by statute pursuant to Public Resources Code - PRC 25402.1. See AB 3515 (Stats. 1992, c. 897) for bill amending Health and Safety Code - HSC 18909. (c), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199119920AB3515

Until January 1989, Office of Administrative Law (OAL) approved and published the "administrative regulations" that pertained to the enforcement and implementation of building standards. The enactment of AB 4616 (Stats. 1988, c. 1194) in 1988 shifted the approval and publication of these regulations to the State Building Standards Commission (SBSC). SBSC subsequently directed all agencies to transfer their administrative regulations for building standards to Title 24. See AB 4616 (Stats. 1988, c. 1194) http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=198719880AB4616

The Commission transferred its building standards administrative regulations to Title 24 in 1989, and requested that OAL delete Sections 1401 through 1451 pursuant to a Section 100 filing. OAL informed the Commission legal office that the requested deletion would occur, but for some reason the regulations were never deleted.

The administrative regulations in Title 24 have subsequently been revised. The "dead" regulations in Title 20 were unchanged and could very well confuse the affected public that must comply with the building standards. The Commission therefore, in 1996 renewed its request to delete these obsolete sections from Title 20. See OAL File No. 96-0228-01 N. Commission staff member, Mr. Babula can provide the file, to large to docket thru eFiling.

The Sections 1401 through 1409 still appear in Title 20. Section 1409 applies to Calculation Methods and Alternative Component Packages.

The replacement for Title 20. Section 1409 is Title 24, 10-109 and only covers the requirements to be met by the compliance software, and is not a formal process for certification of Commission approved of compliance software. This formal process for certification of Commission approved of compliance software does not apply directly to the implementation or enforcement of building standards.

Please ensure that Sections 1401 through 1409 no longer appear in Title 20.

Please ensure that the Energy Commission establishes in Title 20, a formal process for certification of compliance options for new products, materials, and calculation methods which provides for adequate technical and public review to ensure accurate, equitable, and timely evaluation of certification applications.

Please ensure that pursuant to Public Resources Code - PRC 25402.2. any standard adopted by the commission pursuant to Sections 25402 and 25402.1, which is a building standard as defined in Section 25488.5, shall be submitted to the State Building Standards Commission for approval pursuant to, and is governed by, the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). Building standards adopted by the commission and published in the State Building Standards Code shall be enforced as provided in Sections 25402 and 25402.1.

SMUD's application is for a building standard pursuant to Health and Safety Code - HSC 18909. (a) and shall be enforced as provided in Sections 25402 and 25402.1.

SMUD's application should not appear on any Energy Commission business meeting agenda for approval, until the Energy commission has corrected Title 20 pursuant to Energy Commission ORDER NO. 96-0117-05 and has had the Title 20 rulemaking to adopt a formal process for certification of compliance options for new products, materials, and calculation methods which provides for adequate technical and public review to ensure accurate, equitable, and timely evaluation of certification applications.

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