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August 11, 2021 Business Meeting, Agenda Item No 4 - Certification of Final Environmental Impact Report and Adoption of the 202

This letter is submitted in regards to the CEC's intent to certify the Final EIR and adopt the 2022 Energy Code and the CEC's failure to comply with regulatory noticing requirements and CEQA's minimum publication requirements.

Additional submitted attachment is included below.

Holland & Knight

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August 11, 2021

Via Electronic Submission

David Hochschild, Chair
California Energy Commission
Docket Unit, MS-4
Docket No. 21-BSTD-02
1516 Ninth Street
Sacramento, CA 95814-5512

> **Re:** **August 11, 2021 Business Meeting, Agenda Item No. 4 - Certification of Final Environmental Impact Report and Adoption of the 2022 California Energy Code**

Dear Mr. Hochschild:

This letter is submitted in regards to Agenda Item No. 4 on the California Energy Commission's ("CEC") Business Meeting Agenda for August 11, 2021, Certification of Final Environmental Impact Report and Adoption of the 2022 California Energy Code. The CEC intends to consider and possibly certify the Final Environmental Impact Report ("EIR") and adopt updates to the California Code of Regulations, Title 24, Parts 1 and 6 (the "2022 Energy Code") (collectively, the "Project"). Any action taken at the August 11, 2021 meeting is in violation of the CEC's own regulations, specifically the noticing requirements as required by Cal. Code Regs. tit. 20, § 1209, and the statutory 10 day publication period for the Final EIR required by the California Environmental Quality Act[1] ("CEQA") (Pub. Res. Code § 21000 *et seq.*), specifically Pub. Res. Code § 21092.5 and Cal. Code Regs. tit. 14, § 15088(b).

Section 1209 requires all public events, inclusive of hearings, in all proceedings to be noticed at least 10 days prior to the event. Importantly, notice is required to all persons on the appropriate commission listserv and applicable proceeding's service list.

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[1] CEC. 2022 Energy Code Update CEQA Documentation. Docket No. 21-BSTD-02, https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-BSTD-02.

Agenda Item No. 4 purports to take action on the Final EIR associated with updates to the 2022 Energy Code. The CEC has provided no notice to the participants in the environmental review process of this proposed action or of the August 11, 2021 hearing. In this case, the CEC has established two separate proceedings dockets: one for the rulemaking process[2] pursuant to the Administrative Procedure Act ("APA") (Gov. Code § 11340 *et seq.*), and a second docket for compliance with CEQA. The CEC has failed to provide such notice of this hearing considering certification of the Final EIR to the listserv associated with the CEQA review of the 2022 Energy Code updates, nor has there been any notice provided on the docket for the CEQA proceedings, indicating the CEC's intent to consider and certify the matter at the hearing scheduled for August 11, 2021. In sum, the CEC purports to take action on an item for which no notice has been provided in accordance with Cal. Code Regs. tit. 20, § 1209.

The CEC itself acknowledged that independent notice was required in the CEQA proceedings. The CEC has specifically committed to complying with this noticing requirement when it published its Notice of Availability for the Project's Draft EIR:

> "**Public Hearing:** The CEC anticipates that a public hearing will be held at a CEC business meeting in August 2021 to receive input from agencies and the public on the Final EIR. The CEC will file a public notice of hearing in the docket of this proceeding and notify all interested agencies and individuals of the date, time, and place of the public hearing on the proposed project."[3]

Additionally CEQA requires the Final EIR to be in publication for a minimum of 10 days prior to certification. Pub. Res. Code § 21092.5; Cal. Code Regs. tit. 14, § 15088(b). According to CEC records, the Final EIR was published on August 4, 2021, or seven days ago.[4] Therefore, any action to certify the EIR at today's meeting would be premature and in violation of CEQA.

In the absence of the legally required notice to all participants in the relevant proceedings and compliance with CEQA's statutory publication periods for Final EIRs, the CEC must delay the consideration and proposed actions until the CEC has fully complied with such requirements.

Sincerely,
HOLLAND & KNIGHT LLP

Jennifer L. Hernandez

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[2] CEC. 2022 Energy Code Update Rulemaking, Docket No. 21-BSTD-01, https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-BSTD-01.
[3] CEC. Notice of Availability of a Draft Environmental Impact Report for Public Review, Docket No. 21-BSTD-02, https://efiling.energy.ca.gov/GetDocument.aspx?tn=239242&DocumentContentId=72691 (emphasis in original).
[4] CEC. Final EIR, Docket No. 21-BSTD-02, https://efiling.energy.ca.gov/GetDocument.aspx?tn=239176&DocumentContentId=72629.

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