

DOCKETED

Docket Number:	22-OIR-02
Project Title:	Emergency Rulemaking for Certification of DWR Facilities
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Document Title:	Resolution Adopting Emergency Regulations
Description:	Resolution No. 22-1012-9
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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**Emergency Rulemaking to Implement
Strategic Reliability Reserve DWR
Permit Procedures**

Docket No. 22-OIR-02

**RESOLUTION ADOPTING
EMERGENCY REGULATIONS**

WHEREAS, on June 30, 2022, the Legislature enacted, and the Governor signed Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 8.9 to Division 15 of the Public Resources Code; and on September 6, 2022, the Legislature enacted, and the Governor signed Assembly Bill (AB) 209 (ch. 251, stats. 2022), which, among other things, modified portions of AB 205; and

WHEREAS, to provide Strategic Reliability Reserve (SRR) facilities to support statewide electrical demands during extreme events, Chapter 8.9 (commencing with section 25794) to Division 15 of the Public Resources Code authorizes the CEC to implement an expedited process to review applications submitted by the Department of Water Resources (DWR) for certification of SRR facilities; and

WHEREAS, Public Resources Code section 25793 states that the CEC shall adopt emergency regulations to implement Chapter 8.9 at a CEC business meeting, that notwithstanding sections 11346.1 and 11349.6 of the Government Code, a finding of emergency or necessity to address an emergency shall not be required, and that notwithstanding any other area of law, the emergency regulations adopted to implement this chapter shall remain valid for three years, or until replaced by nonemergency regulations, whichever is sooner; and

WHEREAS, on September 20, 2022, the CEC mailed a Notice of a Webinar to the subscription service and posted it on the CEC's website to present the emergency regulations and take public comments on the regulatory language for the SRR DWR facilities program and;

WHEREAS, on September 30, 2022, the CEC held the webinar and accepted written public comment until October 3, 2022; and

WHEREAS, on September 30, 2022, in the proceeding's docket and business meeting webpage, the CEC provided notice that it designated October 12, 2022, as the date for the business meeting to consider adoption of the proposed emergency regulations; and

WHEREAS, on October 7, 2022, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the CEC provided notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency; and

WHEREAS, on October 12, 2022, the CEC considered the proposed emergency regulations at its business meeting and adopted the proposed emergency regulations as published on October 7, 2022.

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to the California Environmental Quality Act (CEQA):

- The CEC has considered the application of CEQA to the proposed regulations and concluded that the action is not a project under CEQA, and that CEQA therefore does not apply. In any event, were CEQA to apply, the adoption of these proposed regulations are exempt from CEQA based on the common sense exception, the categorical exemption as a category 6 activity, and pursuant to the intent of the legislature exempting the SRR DWR certification process from CEQA;

With regard to the Administrative Procedure Act:

- The proposed regulations are deemed an emergency by statute, and the CEC has express statutory authority to seek approval of these regulations implementing Chapter 8.9 of Division 15 of the Public Resources Code through OAL's emergency rulemaking procedures; and
- The proposed emergency regulations will impose no direct costs or savings, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; and
- The proposed emergency regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed emergency regulations will result in no nondiscretionary costs or savings to any state agencies, local agencies, or school districts; and
- None of the comments received at the business meeting on October 12, 2022, and nothing else in the record, justified any changes to the proposed emergency regulations.

THEREFORE, BE IT RESOLVED, that, based on the entire record before it, the CEC finds that the proposed emergency regulations are exempt from CEQA because the rulemaking is not a project. In the alternative, adoption of the proposed emergency regulations is exempt from CEQA pursuant to the common sense exemption (Cal. Code Regs., tit. 14, § 15061(b)(3)), the categorical exemption under an information collection activity (Cal. Code Regs., tit. 14, §§ 15061(b)(2) and 15306), and the legislative intent contained in AB 205 (Pub. Resources Code, § 25794.1); and

FURTHER BE IT RESOLVED, that, after considering all comments received and based on the entire record of this proceeding, the CEC hereby adopts emergency regulations implementing the SRR DWR expedited certification procedures. The CEC takes this action under the authority of sections 25213, 25218(e) and 25545.12 of the Public Resources Code, which authorize the CEC to adopt rules or regulations, as reasonable and necessary, to implement the SRR DWR program; and

FURTHER BE IT RESOLVED, that documents and other materials that constitute the rulemaking record can be found at the CEC, 715 P Street, Sacramento, California, 95814 in the custody of the Docket Unit and online in 22-OIR-02, at and posted on the CEC's [SRR DWR docket page](#) and posted on the CEC's website.

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed emergency regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents, such as the Notice of Proposed Emergency Action; compiling and submitting the rulemaking file to OAL; and making any changes to the rulemaking file required by OAL.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on October 12, 2022.

AYE: Hochschild, Gunda, McAllister, Monahan, Vaccaro
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: October 13, 2022

SIGNED BY:

Liza Lopez
Secretariat