

<b>DOCKETED</b>	
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# Memorandum

To: Docket 22-OIR-01

Date: October 6, 2022

From: Jared Babula, Senior Attorney  
Chief Counsel's Office  
California Energy Commission

Subject: California Environmental Quality Act Compliance

At the October 12, 2022 California Energy Commission (CEC) Business Meeting, CEC staff will propose that the CEC adopt a proposed resolution adopting emergency regulations to implement a new siting program authorized by Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code.

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

For purposes of complying with the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.), staff recommends the CEC find that the adoption of the proposed emergency regulations is not a project under CEQA. The proposed emergency regulations implement a new optional program (opt-in) that authorizes the CEC to accept applications seeking certification of certain types of non-fossil-fueled energy generating facilities, energy storage facilities, and related facilities. The emergency regulations set forth the process for submitting opt-in applications, reviewing applications, performing outreach, and considering whether to issue or deny a certification.

California Code of Regulations, title 14, section 15060 states, in 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 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.

In the case of this rulemaking, the proposed emergency regulations set forth a process for submitting and reviewing an opt-in application. The action to establish procedural requirements in emergency regulations does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but implements an administrative process. Therefore, the adoption of the emergency regulations is not a project and is not subject to CEQA.

## II. Even if Adoption of the Regulations Were a Project, the Class 6 Exemption and the Common Sense Exemption Would Apply.

The adoption of the opt-in emergency regulations is also exempt from CEQA as a categorical exemption under the Class 6 Information Collection exemption. (Pub. Resources Code, §

15061(b)(2); Cal. Code Regs., tit. 14, §15306.) Pursuant to section 15306, activities that involve data collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource, have been determined not to have a significant effect on the environment and are therefore exempt from CEQA. In this case, part of the opt-in regulations relate to the contents of an application and environmental review which cover the data collection and resource evaluation of the Class 6 exemption.

Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply here, and there is no reasonable possibility that the approval will have a significant effect on the environment due to unusual circumstances. For these reasons, the adoption of the opt-in emergency regulations is exempt from CEQA.

Adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA only applies 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.) Because the action concerns the adoption of regulations covering the process and procedures for the opt-in program and it does not provide for any physical changes to the environment, it can be seen with certainty that there is no possibility that the adoption of the opt-in emergency regulations may have a significant effect on the environment.

### **III. Conclusion.**

As shown, adoption of the opt-in emergency regulations is not a project under CEQA and thus CEQA does not apply. Even if the adoption is a project and CEQA does apply to the agency action, consistent with the Class 6 exemption in section 15306 of the CEQA Guidelines, the adoption is exempt from CEQA as information gathering and resource evaluation. Additionally, adoption of the regulations is consistent with the common sense exemption under section 15061(b)(3) of the CEQA Guidelines. For these reasons, the adoption of the opt-in emergency regulations by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.