

| DOCKETED | |
|-------------------------|--|
| Docket Number: | 22-SPPE-02 |
| Project Title: | San Jose Data Center 04 |
| TN #: | 248159 |
| Document Title: | OAL-Approval-Amendments Sections 1934-1947 |
| Description: | N/A |
| Filer: | Patty Paul |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 12/19/2022 3:23:01 PM |
| Docketed Date: | 12/19/2022 |

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

APPROVED:

Adopt sections:

Amend sections: 1936, 1940, 1941, 1942,

Repeal sections: 1934, 1937, 1943, 1944,
1945, 1946, 1947,
Appendix F

WITHDRAWN:

Adopt sections:

Amend sections: Appendix B

Repeal sections:

**NOTICE OF APPROVAL IN PART AND
WITHDRAWAL IN PART OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2022-1028-05

OAL Matter Type: Regular (S)

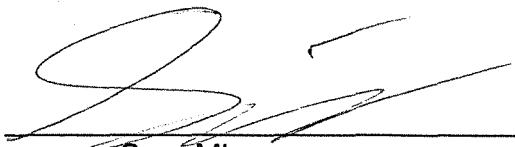
The California Energy Commission ("CEC") proposes to remove the adjudicatory hearing process for its Small Power Plant Exemption. The proposed regulation also supplements and clarifies information that must be provided during the application process for certification and for the Small Power Plant Exemption.

OAL approves the sections listed as APPROVED above pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 12/14/2022.

The section(s) listed as WITHDRAWN above were withdrawn from OAL review pursuant to Government Code section 11349.3(c).

Please contact me at (916) 323-6809 or Sam.Micon@oal.ca.gov, or the OAL Reference Attorney at (916) 323-6815, if you have any questions about the resubmittal process. You may request the return of your rulemaking record by contacting the OAL Front Desk at (916) 323-6225.

Date: December 14, 2022



Sam Micon

For: Kenneth J. Pogue
Director

NOTICE PUBLICATION/REGULATIONS

REGULAR(See Instructions on
Reverse)

STD. 400 (REV. 10/2019)

For use by Secretary of State only

| | | | |
|---|--------------------------------------|--|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2022-0630-01 | REGULATORY ACTION NUMBER 202-1028-055 | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| OFFICE OF ADMINISTRATIVE LAW Electronic Submission RECEIVED DATE PUBLICATION DATE 6/30/2022 7/15/2022 | | OFFICE OF ADMIN. LAW 2022 OCT 28 PM 4:46 | |
| AGENCY WITH RULEMAKING AUTHORITY California Energy Commission | | AGENCY FILE NUMBER (If any) 21-OIR-04 | |

ENDORSED - FILED
In the office of the Secretary or State
of the State of California

DEC 14 2022

2:01 PM

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|---|--|---|-----------------------------------|--|
| 1. SUBJECT OF NOTICE Small Power Plant Exemption (SPPE) | | TITLE(S) 20 | FIRST SECTION AFFECTED 1934 | 2. REQUESTED PUBLICATION DATE July 15, 2022 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Corrine Fishman | TELEPHONE NUMBER (916)805-7452 | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | NOTICE REGISTER NUMBER 2022, 28-Z | PUBLICATION DATE 7/15/2022 | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | | | |
|---|--|--|---|
| 1a. SUBJECT OF REGULATION(S) Small Power Plant Exemptions (SPPE) | | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | | ADOPT | |
| 1936, 1940, 1941, 1942, Appendix B | | AMEND | |
| 20 | | 1934, 1937, 1943, 1944, 1945, 1946, 1947, Appendix F | |
| 3. TYPE OF FILING | | | |
| <input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | | |
| <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | | | |
| <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) | | | |
| <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only | | | |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) | | | |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) | | | |
| 7. CONTACT PERSON Corrine Fishman | | TELEPHONE NUMBER (916) 805-7452 | FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) corrine.fishman@energy.ca.gov |

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY
Drew Bohan, Executive Director

10-12-22

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 14 2022

Office of Administrative Law

Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 5. Power Plant Site Certification
Article 5. Small Power Plant Exemptions
and
Appendix B
and
Appendix F

The proposed new language appears as underline (example) and proposed deletions appear as strikethrough (~~example~~). Existing language appears as plain text.

§ 1934. Statement of Purpose [Repealed]

~~It is the policy of the State Energy Resources Conservation and Development Commission to promote the development of electric energy supply technologies that prudently conserve and economically use energy resources. A major purpose of these regulations is to encourage the use of those technologies by expediting the procedures necessary for the approval and development of alternate sources of electric generation.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1936. Scope, Filing, Review and Distribution of Applications for Exemption.

(a) Any person who proposes to construct a thermal power plant with a generating capacity not exceeding 100 megawatts, or proposes a modification to an existing thermal power plant which will add generating capacity not exceeding 100 megawatts may apply for an exemption from the provisions of Chapter 6 of Division 15 of the Public Resources Code.

(b) Applications for exemption shall be filed as set forth in sections 1208, 1208.1, 1706 and 1707.

(c) The review of the application for exemption shall follow the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3).

~~(d) Applications for exemption shall be distributed and comments requested from public agencies and tribal governments as set forth in sections 1713 and 1714.~~

~~(e) An applicant may withdraw an application for exemption as set forth in section 1709.8~~by providing written notice of withdrawal to the executive director. The notice of withdrawal must be authorized and verified in the same manner as the original application, as provided in section 1707. Upon receipt of a properly executed

withdrawal, the executive director shall immediately terminate consideration of the application and close the docket.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1937. Staff as an Independent Party. [Repealed]

~~In carrying out its duties pursuant to this article, staff shall be an independent party and is not required to petition to intervene.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25217(b), Public Resources Code.

§ 1940. Information Requirements for Applications for Exemption.

The application for an exemption shall contain all the information specified by Appendix ~~FB~~ and meet the general requirements set forth in section 1704(a).

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1941. Obtaining Information.

The executive director or designee may request information from the applicant Information necessary to complete an analysis of the application for an exemption ~~may be obtained by following the requirements of section 1716, except that all requests for information shall be submitted no later than 60 days from the application for exemption's filing date or a later date as approved by the presiding member.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code; and Section 11181, Government Code.

§ 1942. Termination of an Application for Exemption. Decision on Application.

The executive director or designee shall recommend findings to the commission on whether the application meets the requirements of Public Resources Code section 25541.

~~The application for exemption proceeding may be terminated by following the procedures set forth in section 1720.2.~~

Note: Authority cited: Sections 25213 and 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25216.5, 25519(b) and 25541, Public Resources Code.

§ 1943. Presentation of Evidence. [Repealed]

~~All testimony together with any other relevant documentary evidence, such as any environmental impact documentation or other environmental document prepared by the lead agency, may be offered by any party and shall be filed with the Docket Unit no later than 7 days prior to the hearing at which such testimony is to be offered, or at such other time as ordered by the presiding member.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1944. Application for Exemption Proceedings and Hearings. [Repealed]

~~(a) A committee shall be appointed pursuant to Section 1204(a) to oversee the proceedings. The presiding member shall set the time and place for hearings.~~

~~(b) Unless otherwise directed by the presiding member, evidentiary hearings on the application shall commence no later than 100 days after the filing of the application.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1945. Proposed and Final Decision. [Repealed]

~~(a) After the hearings conducted pursuant to Section 1944 of these regulations, the committee shall prepare and file a proposed decision on the application.~~

~~(b) After publication of the proposed decision, a hearing shall be held before the commission. The final decision shall be issued by the commission within 135 days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1946. Content of Decision. [Repealed]

~~The decision on the application shall either approve or disapprove the application and shall include a statement of reasons supporting the decision. The decision shall include, in the affirmative or negative, the findings required by Public Resources Code Section 25541.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1947. Modifications of Deadlines. [Repealed]

~~The applicant may at any time stipulate to a more lengthy time schedule than is provided in these regulations in order to permit full and fair exploration. Such stipulation shall be made in writing to the committee.~~

Appendix F [Repealed]

Informational Requirements for a Small Powerplant Exemption

The application shall include the following information:

- ~~(a) The location of the power plant on a location map and described by section or sections, range, township, and county.~~
- ~~(b) Photographic representations adequately depicting proposed transmission corridors or routes and the visual appearance of the power plant site and its immediate surroundings.~~
- ~~(c) The type(s) of fuel to be used.~~
- ~~(d) The methods of construction and operation of the power plant.~~
- ~~(e) A discussion of the environmental and energy resources impacts which may result from the construction or operation of the power plant.~~
- ~~(f) A discussion of proposed alternatives to the power plant, including the alternative of no power plant, and any mitigation measures proposed to reduce environmental impact.~~
- ~~(g) The need for the power plant.~~
- ~~(h) The compatibility of the power plant with the most recent biennial report issued pursuant to Section 25309 of the Public Resources Code.~~
- ~~(i) A list, including the names and addresses of persons to contact, of federal, state, regional, or local agencies whose standards, ordinances, or laws including long range land use plans or guidelines adopted by the state or any local or regional planning agency are applicable to the proposed project. The list shall include a brief description of the applicability of such standards, ordinances, laws, plans, or guidelines for each agency.~~
- ~~(j) A discussion of that portion of the gross energy output which will be used for the site and related facility.~~
- ~~(k) Any other information that the applicant desires to submit.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.