

**DOCKETED**

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# Memorandum

To: Docket 23-OIR-02

Date: October 23, 2023

From: Mariah Ponce, Attorney  
Chief Counsel's Office  
California Energy Commission

Subject: California Environmental Quality Act Compliance

At the November 8, 2023, California Energy Commission (CEC) Business Meeting, CEC staff will recommend the CEC adopt a proposed resolution amending the CEC's business meetings and requests for rulemakings procedures, as contained in the California Code of Regulations (CCR), title 20, sections 1102, 1105, and 1221. These procedural changes would allow the CEC to conduct business meetings as necessary, remove the requirement for the CEC to take minutes at business meetings, ensure that the CEC has sufficient information to evaluate petitions for rulemakings and would increase the time for the executive director to respond to a petition for rulemaking from seven to 14 days.

## **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 regulations is not a project under CEQA. The proposed regulations are procedural in nature and will allow the CEC to conduct its business and respond to the public more efficiently and will save CEC staff time and resources.

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 the rulemaking related to business meetings and requests for rulemakings, the regulatory changes are procedural only. The proposed procedural changes do not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but simply would address recurring issues in the implementation of unnecessary or obsolete regulations, align with available recording technologies and current practices, and save CEC staff time and resources. These changes will allow the CEC to effectively conduct its business while improving public transparency and minimizing delays in responding to requests for rulemakings. Therefore, the action of adopting these procedural regulatory changes is not subject to CEQA.

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

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 concern procedural changes related to business meetings and requests for rulemakings and the changes do 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 proposed regulations may have a significant effect on the environment.

## **III. Conclusion.**

As shown, adoption of the amendments to the CEC's business meetings and requests for rulemakings 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, 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 proposed regulations by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.