

DOCKETED

Docket Number:	24-OIR-02
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations to Add Reimbursement Procedures for Local Agencies
TN #:	259274
Document Title:	Notice of Approval of Emergency Regulatory Action with Final Express Terms
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	9/24/2024 11:59:22 AM
Docketed Date:	9/24/2024

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections: 1878.1

Amend sections: 1701

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2024-0912-02

OAL Matter Type: Emergency (E)

This emergency rulemaking action by the California Energy Commission adopts and amends regulations relating to procedures to allow local agencies to be reimbursed for the review of opt-in applications and lost permit fees for opt-in energy facility projects.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/23/2024 and shall remain in effect until amended by the Commission pursuant to Public Resources Code section 25545.12.

Date: September 23, 2024



**Kevin D. Hull
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Drew Bohan, Executive
Director**

Copy: Crystal Cabrera

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2024-0912-02E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Energy Commission			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

SEP 23 2024

*Sm 2:19 p***A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Amendment to Opt-In Emergency Regulations		TITLE(S) 20	FIRST SECTION AFFECTED 1701	2. REQUESTED PUBLICATION DATE September 12, 2024
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Crystal Cabrera	TELEPHONE NUMBER (916) 909-2542	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	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Reimbursement for Review of Opt-in Applications and Lost Permit Fees		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 1878.1		
	AMEND 1701		
TITLE(S) 20	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" 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"/> Resubmittal 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 Crystal Cabrera	TELEPHONE NUMBER (916) 909-2542	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) crystal.cabrera@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

Jennifer Martin Gallardo

DATE

7/18/2024

TYPED NAME AND TITLE OF SIGNATORY

Jennifer Martin-Gallardo, Deputy Executive Director, California Energy Commission

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 23 2024

Office of Administrative Law

Title 20 of the California Code of Regulations

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

§ 1701 Scope of Regulations

(a) Article 1 applies to all notice of intent proceedings and all application for certification proceedings.

(b) Article 2 of this chapter shall apply to all notices except as provided in Article 4.

(c) Article 3 of this chapter shall apply to all applications for certification except as provided in Article 4.

(d) Article 4 of this chapter shall apply to all geothermal notices and applications for certification.

(e) Article 4.1 of this chapter shall apply to all certifications of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code.

~~(f)~~(e) Article 5 of this chapter shall apply to all applications for a Small Power Plant Exemption.

~~(g)~~(f) Article 6 of this chapter shall apply to all powerplant and transmission line jurisdictional determinations.

~~(h)~~(g) Article 7 of this chapter shall apply to all Expedited Applications under Public Resources Code Section 25550.

Note: Authority cited: Sections 25213, 25218(e), ~~and 25541.5~~, and 25545.12, Public Resources Code.

Reference: Sections 25541.5, 25545, 25545.1, and 25550, Public Resources Code.

§ 1878.1 Reimbursement of Local Agencies

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for an application for a facility as defined in Public Resources Code section 25545(b) in the absence of commission jurisdiction, and

(B) the added costs of services performed directly in response to commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged. This does not include expenses incurred prior to a commission request for review or expenses incurred for review beyond the scope of the commission request.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters that the agency is requested to review or not within the area of the agency's expertise; this includes attorneys' fees and costs associated with advocating for or against commission approval of the facility.

(2) expenses for which it receives payment from other sources; or

(3) entertainment and first class travel expenses.

(c) Procedure for approving reimbursement budgets.

(1) To be eligible for reimbursement, a local agency must receive a request for review from the Executive Director or delegee.

(2) To apply for reimbursement, a local agency shall, within 21 days of receiving a request for review from the commission, file an itemized proposed budget with the staff and the applicant estimating the actual and added costs that are likely to be incurred during such review. The proposed budget shall justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review. A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

(3) Within 10 working days of receiving a proposed budget, the staff shall notify the agency, in writing, whether the proposed budget is complete or incomplete. If the proposed budget is incomplete, the staff shall provide the local agency with a list of deficiencies that must be corrected to complete the proposed budget request.

(4) If neither the commission staff nor the project applicant files a written objection to the proposed budget within 10 working days after the proposed budget is determined to be complete, then the proposed budget is deemed approved.

(5) If a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.

(6) A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

(d) Procedure for approving reimbursement invoices.

(1) A local agency seeking reimbursement must receive approval of its proposed budget before it files an invoice for expenses actually incurred. Reimbursement may not exceed the approved budget.

(2) On either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.

(3) If the applicant does not object to the invoice within 10 days after receipt, then it shall pay the local agency the amount of the invoice within 14 days of the receipt of the invoice.

(e) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (c) above, or a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency, the local agency or applicant shall notify the Executive Director in writing of the dispute. The Executive Director shall resolve the dispute by filing a written decision based on good cause as demonstrated by any information provided by the applicant and local agency on the merits of reimbursement.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25519(f), 25538, 25545, 25545.1, and 25545.8, Public Resources Code.