

DOCKETED

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Comments on Proposed Revisions to the Commission's Process and Procedure Regulations, California Code of Regulations, Title 20 (Docket No. 14-OII-01)

Additional submitted attachment is included below.



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October 23, 2014

VIA ELECTRONIC MAIL

The Honorable Karen Douglas
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Comments on the Proposed Revisions to the Commission's Process and Procedure Regulations, California Code of Regulations, Title 20 (Docket No. 14-OII-01)

Dear Commissioner Douglas:

We appreciate the efforts of the Commission to draft and propose revisions to the Commission's regulations, specifically as such revisions relate to project siting and compliance issues. In that regard, and pursuant to the Notice of Lead Commissioner Workshop and Notice of Availability of Proposed Revisions to the Commission's Process and Procedure Regulations (California Code of Regulations, Title 20) ("Proposed Revisions"), herein we provide initial comments on the Proposed Revisions published on September 30, 2014.

Section 1212(c) Basis for and Contents of Decisions

We are concerned that, as proposed, section 1212(c)(3) will lead to complications in a siting proceeding. Hearsay evidence, as you are aware, could include unreliable communications, statements, and perceptions. As written, section 1212(c)(3) is not clear as to the extent to which such hearsay evidence will or will not be considered. Specifically, the section simply states that absent a sustained objection, hearsay evidence "may be sufficient to support a finding if the hearsay evidence has attributes of reliability and probative value." (*See* Proposed Revisions at p. 23.) We strongly urge the Commission to delete this subsection in its entirety and, instead, leave the current subsection as is (*see* ~~strikethrough~~ of section 1212(d) at Proposed Revisions at p. 25).

Article 3. Procedures for Considering Applications for Certification

Generally, we are concerned about the overall length of time a siting proceeding takes from data adequacy of an Application for Certification ("AFC") to a Final Decision. It has been our experience that siting proceedings generally take more than two years, despite the statutory



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language defining a 12-month process. We appreciate the effort to create a comment period for comments on the Staff Assessment, and understand the goal to move the comment period from the PMPD to the FSA, to allow technical staff to address comments at that stage of the proceeding. We agree that if properly implemented, this process has the potential to reduce delay. That said, the Proposed Revisions to Article 3 (specifically beginning at section 1742 (Staff Assessment)) create some confusion about the process and lack of consistency among the sections could cause other unintended delays. Project developers must have reliance on a defined process and timeline.

Moreover, there appears to be a significant internal conflict regarding CEC Staff's role in a siting proceeding. While section 1710 maintains the position that Staff is an independent party, section 1742(a) would provide that staff's assessment "is the Energy Commission's independent report." Staff cannot be both an "independent party" and prepare the "independent report" of the adjudicative body. The two roles are fundamentally different. If Staff is going to act as advisor to the Commission (rather than an independent party), Staff's role must be redefined and Staff cannot also act as an independent party. We believe this fundamental conflict must be resolved before siting regulations can properly be adopted.

If the Staff assessment will be the Commission's independent report and Staff's role will change to one of an advisor to the Commission, rather than a party to an adjudication, we respectfully recommend revisions to (1) clarify the Staff Assessment process and content; (2) specify deadlines for production of the Final Staff Assessment; and (3) clarify the timing of the evidentiary hearings in relation to publication of the Staff Assessment and Final Staff Assessment.

As a starting point, section 1742 is somewhat unclear. There are varying references to "environmental assessment", "Staff's environmental assessment", "Staff assessment", and "Final Staff Assessment." Some of these terms are capitalized and some are not; it is unclear whether these will be defined terms. For clarity, we recommend using consistent terminology throughout the Siting Regulation and clearly defining terms that could be confused.

Our perspective is that section 1742 is also unclear in that it does not present a clear linear path for the siting process. We believe the language in section 1742 could be presented in a more linear fashion, reflecting the steps in the process, to provide greater clarity and certainty regarding the process and the timelines. Moreover, depending on how the internal inconsistency about Staff's role is ultimately resolved, section 1742 may require additional clarifying revisions.



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We strongly believe that improvements to the siting regulations will allow for a more efficient and expedited process. We appreciate the Committee's focus and attention on this issue and look forward to continuing to participate in this process.

Respectfully submitted,

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