

## DOCKETED

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*Comment Received From: Jane E. Luckhardt*

*Submitted On: 10/23/2014*

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**Day Carter Murphy LLP Comments on Draft Regulations**

*Additional submitted attachment is included below.*

October 23, 2014

Karen Douglas  
Lead Commissioner  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Re: 2014 Revisions: Title 20 Commission Process and Procedure Regulations  
(Docket No. 14-SIT-OII-1)

Dear Commissioner Douglas:

We appreciate this opportunity to comment on the draft regulations. Your effort is needed to update and clarify the requirements of all parties to California Energy Commission (“Commission”) proceedings. The following comments are provided by section number for ease of reference:

- 1207.5(a) – If the intent of this section is to allow Commission Staff to meet with the parties, this is a good change. It is important for Commission Staff to be able to obtain information to complete their analysis in an efficient manner.
- 1209(a) – Please clarify what requirements are contemplated by the statement, “all other applicable legal requirements.” Otherwise, how is an entity to know they have satisfied all of the requirements for notice?
- 1209(c) – Please clarify who besides the Commission and the Staff are expected to be covered by the reference to “persons conducting the public events”. Is this expression intended to cover for example the applicant coordinating the site visit in conjunction with the informational hearing? What other events or “persons” are contemplated by this section?

- 1210 and 1212(c)(2) – These sections allow findings to be based upon public comments. The Commission has traditionally not allowed any questioning or cross-examination of public comment. This older standard provided an atmosphere where anyone could come to the microphone and make their comments without having to worry about being questioned by a lawyer. These changes will make public comment much more adversarial. Is this truly the direction the Commission would like to go? This change will shift the public comment portion of any hearing from a listening mode to a cross-examination format. The lawyers will be required to cross-examine any public comment that might hurt their case and all public commenters must be able to support their positions and statements.
- 1212(b)(4) – This section automatically places all public comment letters into the record. This section combined with the new standard allowing the Decision to be based upon comment letters will require the project proponent to spend hearing time refuting adverse comment letters no matter how farfetched the comment may be.
- 1212(b)(4) – Although the Final Staff Assessment will be automatically included in the hearing record, please confirm that if challenged, the Commission Staff will have to defend their analyses and conclusions.
- 1231 – This section provides the information required to file a claim or complaint. But, this process also needs to be transparent to the entity against which the complaint or claim is filed. There are no provisions for notice to and opportunity for that entity to respond to or correct the alleged violation.
- 1711(a) – The rules should apply equally to everyone. Other governmental agencies should have to air their positions and requirements in public like all other entities.
- 1745 – These changes shift the focus of the decision making to the Commission Staff and their analysis of the project. The prior regulations presented the position that all parties came to the hearing to convince the decision maker of their position. We are still considering this shift and plan to comment further on this issue at the workshop.
- 1745(b)(4) – This section needs to state the population requirements only apply to nuclear power plant applications.

The comments above are intended to improve the effort undertaken by Commission Staff. We applaud the effort to revise the regulations and thank the Commission and the Staff for undertaking this effort.

Very Truly Yours,

DAY CARTER & MURPHY LLP

A handwritten signature in cursive script, reading "Jane E. Luckhardt". The signature is written in black ink and is positioned below the firm name "DAY CARTER & MURPHY LLP".

Jane E. Luckhardt

Cc: Jared Babula

Docket Office, 14-SIT-OII-1