

## DOCKETED

<b>Docket Number:</b>	14-OII-01
<b>Project Title:</b>	2014 Updates: Title 20 Commission Process and Procedure Regulations
<b>TN #:</b>	203280
<b>Document Title:</b>	2014 Draft Regulations (Title 20 Sections 1000s, 1100s, 1200s and 1700s) with Comments, dated September 29, 2014
<b>Description:</b>	N/A
<b>Filer:</b>	Alicia Campos
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	10/29/2014 3:49:32 PM
<b>Docketed Date:</b>	10/29/2014

# **2014 DRAFT REGULATIONS**

**TITLE 20 SECTIONS 1000s,  
1100s,1200s AND 1700s**



CALIFORNIA  
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

September 29, 2014

### **§ 1003. Computation of Time.**

The time in which any act provided by these regulations is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday or an observed holiday as posted by the Executive Director. ~~in Sections 10 and 12 of the Code of Civil Procedure, in which case and then such that~~ day is also excluded. Unless otherwise stated, all time periods refer to calendar days.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 10 and 12, Code of Civil Procedure.

*Purpose and Rationale: Sections 10 and 12 of the Code of Civil Procedure do not reflect the current list of Commission observed holidays. Since Commission observed holidays may change over time, reference has been made to a list which will be posted by the Executive Director. For clarity, the rule regarding the counting of days has been moved earlier in the regs and grouped with computation of time.*

*Necessity: The language is necessary to correct references that no longer provide current observed holiday dates.*

## **Chapter 2. Rules of Practice and Procedure**

### **Article 1. Commission Business Meetings**

#### **§ 1101. Scope.**

This article ~~only~~ applies only to the commission's business meetings conducted under Public Resources Code Section 25214.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

*Purpose and Rationale: Word edits for consistency between the Public Resources Code and the Commission's regulations to clarify that the meeting referred to is the Commission's business meeting.*

*Necessity: The change is a clarification and not one of substance.*

**Comment [j1]:** Suggestion "...unless the last day is a Saturday, Sunday, holiday or other day when the Commission offices are closed..."

## **Article 2. General Provisions Applicable to All Commission Proceedings**

### **§ 1200. Scope.**

Except as otherwise specifically indicated, the provisions of this article ~~shall~~ apply to all proceedings and hearings held before the commission, ~~or a committee thereof, an assigned commissioner or hearing officer.~~

Note: Authority cited: Sections 25218(e) and 25218(f), Public Resources Code.  
Reference: Section 25214, Public Resources Code.

*Purpose and Rationale: Heading has been added to provide clarity and to guide readers as to the scope of the Article and where they are in the regulations. The purpose is to highlight the topical sections of the regulations and the distinction among regulations that cover all proceedings, adjudicative proceedings, and siting cases. Adding an assigned commissioner or hearing officer comports with other sections of the regulations.*

*Necessity: Staff does not believe this change will create any additional impacts on stakeholders as the change is a clarification and not one of substance but will allow for greater clarity when navigating the regulations.*

### **§ 1201. Definitions.**

The following definitions shall apply unless otherwise indicated:

(a) "Acceptance" means a ~~formal~~ determination by the commission, pursuant to Public Resources Code, sections 25516.6, 25522, or 25540.1, that a notice of intention or application for certification is complete.

(b) "Application" means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.

(c) "Areas of critical concern" means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.

(d) "CEQA" means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.

**Comment [j2]:** Should this include the presiding member?

RESPONSE: the PM would be part of the committee or the assigned commissioner if only one.

**Comment [j3]:** Suggestion to define adjudicative proceeding.

(e) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(f) ~~"Complainant" means any person who files a complaint, pursuant to sections 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.~~

(f) "Docket Unit" means the ~~Docket Unit office of the commission State Energy Resources Conservation and Development Commission.~~ that receives, distributes, serves and stores all filed documents.

(g) "Environmental documents" means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and overriding considerations, and the documentation prepared by the Commission or its Staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.

(h) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(i) "Hearing officer" means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting a proceeding.

(j) "Impact area" means the area which is potentially affected by the construction, modification, or operation of a site and related facilities. The geographic extent of the impact area may differ depending on the topic being considered.

(k) "Intervenor" means any person who has been granted leave to intervene in an adjudicative proceeding pursuant to these regulations.

(l) "Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district. ~~or Native American government.~~

(m) "MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.

(n) "MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.

(o) "Party", applicable only in adjudicative proceedings, means any applicant, respondent, complainant, or intervenor, and depending on its role in the proceeding, the staff of the commission.

(p) "Performance criteria" means performance goals for which the applicant proposes to design the facilities.

**Comment [j4]:** Not necessary to define since the term does not appear anywhere in the regs except in the definition.

**Comment [j5]:** Concern with the ambiguity of staff's role.

(q) "Presiding member" means the chairman of the commission or any member of the commission designated to preside over any proceeding. ~~pursuant to Section 1204 of these regulations.~~

(r) "Related Facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(s) "Respondent" means any person named in a complaint, pursuant to Section ~~4234~~ 1233 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission. ~~and any person who is the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.~~

(t) "Service list" means a list, created for each adjudicative proceeding, that includes all parties, all interested agencies, the presiding member, associate member, the hearing officer, and the relevant staff of the commission (if not already a party).

(u) "Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.

(v) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

(w) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

(x) "Witness" means any person who offers testimony in any proceeding before the commission.

NOTE: Authority cited: Sections 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 21061.1, 25214, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; and Title 14, California Code of Regulations, Section 15364.

**Comment [j6]:** Comment that service list does not need to be defined as the scope of the service list should be defined by the presiding member or by Section 1211, which covers service.

**RESPONSE:** One reason this definition was created was to clarify the difference between the service list and the automatic list serve one can sign up with to receive notices and documents regarding a specific proceeding. The distinction is of less importance with the e-crims system for automatic document distribution.

*Purpose and Rationale: For ease of use the list of definitions is alphabetized and centralized in one location. Under changes made in these regulations as well as commission practices and the implementation of electronic filing, the docket unit will play a more central role in agency document management and will be the central repository for documents submitted to the commission. The change clarifies docket's duties in receiving and storing records.*

*A new definition that clarifies what a service list is and who is on the list, has been created to ensure clarity. Given a transition to more electronic filing, the expectation is that most materials will then be served by dockets through a more automated email service process. In some cases, parties in adjudicative proceedings may need to serve documents as directed by the presiding member.*

*Necessity Updating and alphabetizing the definitions are required to comport with changes in other sections and to implement the Commission's efforts to make the regulations easier to understand and navigate.*

## **§ 1202. Right of Any Person to Comment.**

(a) Any person present, either in person or through remote means, and so desiring shall be given an opportunity to make oral comments on the subject matter of any public event in any a proceeding; provided, however, that the presiding member may limit such comments as necessary for the orderly conduct of business. Except as otherwise provided, persons desiring to make oral comments are encouraged to notify the presiding member or the public adviser at least two (2) days prior to the hearing at which such comments are to be made.

(b) The submittal of written comments in a proceeding is governed by section 1208 of these regulations and any order made by the presiding member. Any person desiring to submit written comments to the commission concerning the subject matter of a proceeding shall submit copies of such comments pursuant to Section 1209 of these regulations. Persons are encouraged to submit such comments at least five (5) days prior to the hearing, unless otherwise provided by order. Written comments shall be filed with the Docket Unit of the Energy Resources Conservation and Development Commission; provided, however, that during the actual conduct of a hearing, written comments may be filed with the presiding member.

**COMMENT:** The right to comment is not the limit of public participation in commission proceedings. For example, Section 1226 of these regulations provides the opportunity for persons to submit sworn testimony on specified issues in rulemaking and informational hearings, while Section 1227 provides a mechanism whereby persons interested in a proceeding may be permitted to ask or answer additional questions either orally or in writing. In addition, in those proceedings requiring greater formality, and in all adjudicatory proceedings, the commission permits intervention in the proceeding.

**Comment [j7]:** Comment questions what the point is of this change an whether it is intended to expand or limit public comment.

**RESPONSE:** the primary change is to update the language to include those using webex or calling in be included within the right to comment. The addition of public event was simply to more correctly describe situation in which one would be presenting oral comments. The proceeding is the entire process, from AFC to final decision or from filing a NOPA to OAL approval. Public events, (workshops, hearings, status conferences etc.) are typically one portion of a proceeding, and it is at these events in which oral comments are made.

**Comment [j8]:** Suggestion to change language to "Any person submitting written comments to the Commission shall meet the requirements of Section 1208"

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

*Purpose and Rationale: 1202 clarifies that participation can be by those participating through the use of remote technology, confirms oral comments can be made at public events and that written comments are governed by section 1208. The remaining text is not necessary as it is addressed in other sections or was commentary. Because this section applies to all commission public proceedings, it will serve as the baseline regarding rights to comment. Specific proceedings may have additional requirements but for this more general section, much of the language is not necessary.*

*Necessity: Overall the language changes conform to existing practice to allow comments at proceedings by those attending on webex or over the phone.*

**§ 1203. Powers Authority of the Chairman to Manage Proceedings.**

In addition to all other powers conferred by this article, the chairman or presiding member designated pursuant to Section 1204 shall have the power to:

(a) ~~Request and secure~~ On his or her own motion or on the motion of any party, order any party to provide such information as is relevant, or potentially able to lead to the securing of information that is relevant and necessary in carrying out the purposes of the proceeding.

(b) Issue subpoenas and subpoenas duces tecum at the direction of the Commission, on his motion or upon application of any party. The application of a party shall be supported by a declaration of good cause.

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, ordering the consolidation or severance of any part, or all, of any proceeding or hearing, admitting or excluding evidence, ~~receiving exhibits,~~ designating the subject matter, scope, time of presentation, and order of appearance of persons making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings.

(d) Set the time and place of hearings.

(e) Cancel a scheduled hearing or meeting. To the extent feasible, notice shall be given of any cancellation and the staff in consultation with the public adviser shall inform known interested participants by the most expeditious means possible.

(f) For good cause shown, ~~and upon proper notice,~~ shorten or lengthen the time required for compliance with any provision of these regulations.

Note: Authority cited: Sections 25213 and 25539, Public Resources Code. Reference: Section § 25210, Public Resources Code.

**Comment [j9]:** Suggestion is not to separate out the authority of the chair and PM. It is confusing for the draft regs to strike the reference to presiding member in this section and then to re-designate the authority to the presiding member in section 1204(d)

**Comment [j10]:** Suggestion to use "reasonably calculated to lead to discovery of admissible evidence."

RESPONSE: The intent was to match CCP.



*Purpose and Rationale:* This expansion of what is discoverable more closely tracks the rule in civil litigation and should help the Commission and parties obtain useful information. Rather than have various powers spread throughout the regulations, subsection (c) was expanded to be more comprehensive allowing a reader to better understand the authority of the chair to manage proceedings. In other areas of the regs these procedural powers have been deleted as duplicative given the more comprehensive scope of new section 1203.

*Necessity:* Overall staff does not see the language as a substantial change but an effort to consolidate existing language and authority relating to the ability of the chair to manage a proceeding. Therefore impacts to parties would be minimal.

#### **§ 1204. Designation of Committees and Presiding Member; Quorum.**

(a) Committees shall be designated in accordance with Public Resources Section 25211. ~~During committee proceedings a presiding member shall exercise the powers and duties conferred on the chairman by this article.~~

(b) A quorum of a committee is one member.

(c) The commission may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission. The committee may at any time refer a matter directly to the full commission.

(d) During committee proceedings, a presiding member shall exercise the authority conferred on the chair by this article.

**Comment [j11]:** See comment on 1203.

~~(e) If a presiding member is unavailable during any portion of the proceedings, he may delegate his responsibilities to the second member of the committee.~~ The associate member assumes all authority of the presiding member if the presiding member is unavailable during any portion of a proceeding.

**Comment [j12]:** Comment that the term unavailable is not defined and if the Commission is not collegial, this ambiguity may lead to conflict and confusion.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

**RESPONSE:** The goal was to have a process that was automatic allowing hearing to continue without the need for some affirmative action.

*Purpose and Rationale:* New language clarifies that an issue can move directly from a committee to the full Commission without the need for some time consuming process or action by the full Commission. The authority of the presiding member has been given a subsection to allow for a reader to more easily find and cite to the section addressing the presiding member's authority. The text is otherwise the same as in the existing regulations. New language automatically vests the authority of the presiding member with the associate member when the presiding member is unavailable. This automatic transfer allows a proceeding to continue without the need for some type of affirmative action on the part of the presiding member or Commission. This will save time and ensure an efficient and more seamless proceeding

*Necessity:* The proposed changes reflect internal procedures and would not impact the public or stakeholders participating in Commission proceedings.

**§ 1224. 1204.1. Use of Testimony.**

(a) The commission, or a committee thereof, may require by order instituting hearings, prehearing conference order, or other proper notice that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.

(b) The presiding member may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

*Purpose and Rationale: In order to enhance the organization of the regulations, effort has been made to group related sections. This particular description of use of testimony is of general application and should be included in Article 2 General Provisions Applicable to all Proceedings.*

*Necessity: Moving the language to Article 2 is consistent with other sections such as 1203.*

**§ 1225. 1204.2. Questioning.**

(a) Questions from commissioners or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement; provided, however, that persons not submitting sworn testimony shall not be compelled to answer such additional questions without their consent.

(b) The presiding member may, at his discretion, limit the time and scope of oral questioning.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

*Purpose and Rationale: The language has been moved from the article of the regulations addressing rulemakings and informational hearings to the article covering general rules governing all proceedings.*

*Necessity: The process described in old 1224 and 1225 actually apply to all proceedings so, for purposes of clarity, the two sections have been relocated to Article 2.*

**Comment [j13]:** Comment regarding the ability of staff to ask questions at any time.

RESPONSE: This is status quo language but was moved from a different section.

Comment that the second sentence is not necessary because the Commission cannot punish for contempt.

#### **§ 1205. Designation of Hearing Officer; Responsibilities.**

The chairman may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The ~~chair~~ Commission may authorize a hearing officer to preside over proceedings held pursuant to this Division, except for site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, Biennial Integrated Energy Policy Report proceedings, and rulemaking proceedings. In site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, a hearing officer may take evidence in the temporary absence of a Commission member as provided in Public Resources Code section 25211.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25211 and 25217, Public Resources Code.

*Purpose and Rationale: Updates reflect contemporary terms and more accurately identifies the authority of the chair.*

*Necessity: These changes are needed to reflect current practices and terminology.*

#### **§ 1206. Representatives.**

Any person may designate any other person, ~~except those prohibited by Section 25205(d), Public Resources Code, to represent him or her for any purpose, under this subchapter.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25205(d), Public Resources Code.

*Purpose and Rationale: The corrected language more accurately reflects that the probation cited to in 25205 would potentially be on the person being asked to represent and not the person requesting a representative. Citing to 25205 is unnecessary so the citation has been removed.*

*Necessity: The language is a clearer statement of 25205(d).*

#### **§ 1207. Interveners. [moved to section 1211.7]**

(a) ~~Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.~~

(b) ~~In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections~~

Comment [j14]: Purpose of this change is not clear.

1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

~~(c) — The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.~~

~~(d) — Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.~~

~~(e) — Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.~~

~~NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

*Purpose and Rationale: This section has been moved into the newly labeled adjudicative proceedings article since intervention is an action found only in adjudicative proceedings. Moving the section will help enhance the distinctions between the various articles and increase the logical organization of the regulations.*

*Necessity: Improves the ease of understanding the structure of the Commission's regulations.*

#### **§ 1208 1207. Conferences; Purpose; Notice; Order.**

The presiding member, or hearing officer if there is one, may at any time hold a public conference with the parties, the public adviser, the chief counsel, and any other persons interested in the proceeding, ~~at any time he deems necessary~~, for the purpose of formulating the issues, organizing the presentations and questioning of witnesses, determining the number of witnesses, providing for the exchange of ~~exhibits or prepared statements, information and comments~~, and ~~such any~~ other matters as may expedite the orderly conduct of the proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

~~(a) The conference shall be publicly noticed and the notice as required under section 1209, served in person or by mail on all parties at least ten (10) days before the conference.~~

~~(b) — The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accepting stipulations of law or fact.~~

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

Purpose and Rationale: Due to changes to 1203, 1203.1 and 1209, this section can be amended and shortened. 1209 provides for a 10 day notice period. Section 1209 is a new section that centralizes the process for noticing. Having a primary section to address noticing allows for consolidation and removal of noticing provisions that are currently found throughout the regulations. This subsection is not needed given the authority of the presiding member addressed in 1203 and 1203.1.

Necessity: In order to eliminate redundancy, this section needs to be amended.

**§ 1207.5 1718. Staff Meetings; Purposes.**

(a) At any time, after a notice or application is filed, the staff may initiate informal, voluntary meetings with the applicant, other parties, interested agencies, stakeholders or the public on matters relevant to a proceeding the notice or application. Such meetings may include workshops, site visits, or other information exchanges.

(b) Public meetings All meetings shall be noticed pursuant to Section 1710 of these regulations, and shall be open to the public. The notice shall list the topics and purposes of the meetings. ~~Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they shall, to the extent feasible, be held in or near the communities affected.~~

(c) ~~Meetings initiated by staff may be held for any of the following purposes:~~

(1) ~~To allow parties to solicit and exchange information relevant to the notice or application;~~

(2) ~~To allow parties to identify areas of factual and legal agreement;~~

(3) ~~To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or~~

(4) ~~To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.~~

(d) ~~The public advisor, and in the advisor's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.~~

(e) ~~The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the manner in which such meetings are being conducted may petition the presiding member to take remedial action.~~

**Comment [j15]:** The section should clarify that the ability of staff to conduct public meetings does not preclude staff from communicating with individual parties in a siting proceeding for any purpose without the need for advance written notice.

**RESPONSE:** The intent of this change is to move a siting specific application to the section of the regulations that apply commission wide. This provision is not intended to address the relationship of parties in a siting case. See 1710 for the section that address party to party interactions in siting cases.

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

Purpose and Rationale: This section is moved from 1718 to reflect a general ability of staff in any proceeding, not just siting, to hold workshops and meetings. Subsection (a) already states meetings can cover matters relevant to a proceeding so not necessary to provide the list in subsection (c). The new 1202 addresses public participation at all public events so subsection (d) not necessary. The essence of Subsection (e) is contained in 1203 and the new section on motions, 1211.5.

Necessity: In order to improve the structure of the regulations and to reduce redundancy, the changes are required.

#### **§ 1208. Filing of Documents**

(a) All documents submitted in any proceeding, whether by a party or any other individual or entity, shall be filed with the Docket Unit. Filing is complete and considered docketed, when a document has been endorsed by dockets staff or by the Commission's automated electronic filing system. The date of filing of a document is the date that it has been docketed, as shown on the endorsement on the face of the document. Documents that are not filed will not be deemed part of a proceeding's record.

(b) A document will be endorsed as of the day of its receipt by the Docket Unit or by the automated electronic filing system, except that:

(1) The Docket Unit may reject for filing any document that does not substantially comply with the requirements of section 1208.1, or is found to be infected with a computer virus or otherwise electronically corrupted.

(2) Documents filed after 5:00 p.m. on a business day or on a Saturday, Sunday or holiday shall be deemed filed the next business day.

(3) Documents submitted to the Presiding Member during a public hearing will be endorsed as of the date received, or as otherwise ordered by the Presiding Member.

(c) The responsibility to ensure that a document has been timely docketed rests with the person, party, or entity that desires the document to be filed.

(1) For adjudicatory proceedings where service of documents is required the docket unit will provide service to all parties consistent with process described in section 1211.

NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25210 and 25223, Public Resources Code, Section 11020 Government Code; Section 10 Code of Civil Procedure.

**Comment [j16]:** Need to use one term, "filed" or "docketed" consistently.

If a document is filed when endorsed by the electronic filing system, how does the docket unit "reject the filing"

**Comment [j17]:** In an electronic system why not just have the docket date be that actual date it is uploaded, why carry over to next business day?

*Purpose and Rationale: This new title clarifies how filing is done. This section also incorporates the transition to electronic filing and service. This new requirement would help consolidate the flow of documents to one area allowing for better tracking and more efficient document management. As written, filing with dockets would only apply to documents submitted in some type of proceeding. While filing with the docket unit is current practice, the proposed language clarifies the central role of dockets and will make it clearer to those participating in a proceeding where materials need to be filed and what triggers the act of filing.*

*Staff can assist in directing documents to dockets. For example, when a document is sent directly to staff, it can be forwarded to dockets.*

*This provision adds important clarity as to when a document is considered filed, for the purpose of meeting deadlines.*

*Section 1208.1 contains the requirements for format, electronic media, and so on. Note that the criterion is “substantial compliance”, so that a trivial failure to comply with a format requirement will not prevent a document from being filed.*

*For adjudicatory proceedings, service generally will automatically happen once a document is filed so the standard procedure, absent a different directive from the presiding member, is a party files and the dockets serves the document. Therefore throughout the regulations, the term “file and serve” has been replaced with just file because service is automatic. See section 1211 for the rules governing service.*

*Necessity: Centralizes the role of dockets in document management and clarifies the obligation on a submitter to ensure documents are received and endorsed by dockets and reduces the problem of documents being sent to the random staff at the Commission. The changes are necessary to accomplish a transition to a more electronic system.*

**§ 1208.1 Media, Format, Content, and Other Required Characteristics of Filed Documents; Changes in the Requirements by the Executive Director.**

(a) Every document filed with the Energy Commission shall comply with this section. Filers must ensure the content, quality and format of their documents meets applicable requirements. The Energy Commission is not responsible for the content, quality or formatting of filed documents.

(b) Electronic documents shall be word searchable, if feasible, and shall be filed on the following electronic media and in the following format:

(1) DVD, CD-ROM, USB flash drive, SD card, or internet e-mail attachment, e-filing web portal when available, electronic transfer; and

(2) Portable Document Format (pdf), Excel spreadsheets for data or other format supported by the Commission information technology systems.

**Comment [j18]:** Suggestion to code filings so that one can quickly tell if the email with the document link is for a document submitted by a party or is it a public comment.

**RESPONSE:** That is a system functionality question.

(c) Paper documents shall be:

(1) typewritten or otherwise mechanically printed or legibly handwritten;

(2) on paper 11 inches high and 8½ inches wide, for text;

(3) printable at no larger than 17 inches wide and 11 inches high, and folded to 11 inches high and 8 ½ inches wide, for drawings, photographs, maps, diagrams, charts, graphs, and similar material;

(4) printed on both sides of the page if feasible; and

(5) bound securely.

(d) All documents shall:

(1) be in a clear, easily readable font of at least 12 points;

(2) have consecutively-numbered pages; and

(3) on the first page include the following information:

(A) Name of the proceeding

(B) Docket number of proceeding

(C) Title of the document

(D) Name, address, telephone number and email address of the filer.

(e) Signatures. Except as otherwise required by the presiding member:

(1) For electronic filings containing a signature, the signature may be electronic. The signature may be shown on the electronic copy by inserting a scanned signature graphic, or by "Original Signed By", "/S/", or similar notation.

(2) If an electronic copy of a document is filed, the filer must retain the document containing the original signature, and produce it at the presiding member's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.

(f) The executive director may, after consultation with the public adviser, add to, eliminate, or modify any of the protocols in subdivisions (b), (c), (d) and (e) of this section. The protocols established by the executive director may vary among types of proceedings, or among individual proceedings, and they shall reasonably balance the need for accuracy and security of documents, the efficiency with which documents may be retrieved, read, and used, the capacity of the commission's computer systems, technological developments, and cost and ease of use. When protocols are



established, the executive director shall post them prominently on the commission's website and on the webpages of all applicable commission proceedings.

(g) Non-confidential documents filed are part of the viewable public record and may become available via internet search engines.

NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code.  
Reference: Section 25223, Public Resources Code.

*Purpose and Rationale: Most of these requirements came from the original text in 1209 and 1209.5 and updates reflect technology changes and the use of e-filing capabilities. In addition, flexibility has been built into the language to allow for the Commission to adapt to future technology changes in how materials are submitted. Since many documents are submitted through electronic means, language addressing the signing of documents has been added. With 1208 and 1208.1 and some new language, the original 1209, 1209.5, 1210 and 1211 can all be eliminated.*

*Necessity: The new language will ensure the public and stakeholders can easily communicate and submit materials to the Commission and that internal processes are adaptable to technology changes.*

#### **~~§ 1209 Form of Submissions~~ [covered by 1208.1]**

~~(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.~~

~~(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:~~

- ~~(1) the title of the proceedings before the commission;~~
- ~~(2) the docket number, if any, assigned by the commission;~~
- ~~(3) the nature of the material;~~

~~(4) the name, address, and telephone number of the person submitting the material.~~

~~(c) — Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding before the commission shall provide twelve (12) paper copies thereof, including one original paper copy. The Docket Unit shall photocopy and distribute submitted material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.~~

~~(d) — Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.~~

~~(e) — Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit.~~

~~(f) — Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 4210.~~

~~NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.~~

**~~§ 1209.5. Electronic Filing. [covered by 1208 and 1208.1]~~**

~~(a) — Electronic documents may be submitted in any of the following media in the number of copies specified:~~

~~(1) — Two CD-ROMs (read only);~~

~~(2) — Two magnetic diskettes;~~

~~(3) — One internet e-mail; or~~

~~(4) — Any other media and number of copies authorized by the Executive Director.~~

~~(b) — The format version used must be noted on the media. Charts, graphs, drawings, maps, and photographs should be incorporated within the document, but may be included in an appendix. Maps and photographs may be submitted as paper copies in the number specified by the executive director.~~

~~(c) — Electronic documents shall be provided in the Portable Document Format (PDF), or its equivalent, as determined by the executive director.~~

~~(1) — The executive director may waive the format requirement if it is shown to constitute an undue burden on the submitter of a document. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a document. The request shall include a description of each such document and a discussion of the reasons why the format specified in (c) above is an undue burden. The requesting party may not file the electronic document while such a request is pending. If a request is granted, the executive director shall specify the format allowed. The executive director shall act on all such requests within 15 days.~~

~~(d) — Documents shall be delivered to the Dockets Unit in one of the following ways:~~

~~(1) — by personal delivery to the Dockets Unit;~~

~~(2) — by electronic transfer (e-mail) of smaller documents (5MB maximum file size) to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us);~~

~~(3) — by first class mail, or other equivalent delivery service, with postage prepaid; or~~

~~(4) — in any other delivery method approved by the Executive Director.~~

~~(e) — Data the submitter considers confidential must be filed as a separate document with an application for confidential designation pursuant to Section 2505.~~

~~NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.~~

#### **~~§ 1210. Filing by Parties. [covered by 1208]~~**

~~(a) — Unless otherwise provided by the presiding member, a paper copy of all written material filed by any party in a proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid, on every other party to the proceeding, except where a party requests an electronic copy when available. Any party so requesting shall be served with an electronic copy in a manner pursuant to section 1209.5 regarding electronic filings.~~

~~(b) — The Docket Unit shall promulgate and make available a list which shall include the names and addresses of all parties to a proceeding.~~

~~(c) — Any filing by a party shall include a proof of service in compliance with subsection~~

~~(a) — of this section.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

## **§ 1211. Submission of Exhibits; Filing- [covered by 1208 and 1208.1]**

~~Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member, filed with the Docket Unit at any time before the close of the proceeding.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

## **§ 1209 Notice of Public Events**

(a) Unless otherwise required by law or directed by the presiding member, all public events in all proceedings shall be publicly noticed at least 10 days before the event. Notice consists of posting the applicable information about the event on the webpage of the proceeding, sending notice electronically to all persons on the appropriate Energy Commission list-server and applicable proceeding's service list, and complying with all other applicable legal requirements.

(b) In addition, when the presiding member, the public adviser, or the executive director believes that a significant number of members of an affected community lack internet access or are otherwise unlikely to be exposed to notice provided under subdivision (a), the presiding member may order other methods of notice to be used such as first class mail.

(c) The persons conducting the public events shall consult with the public adviser on the scheduling, location, and noticing of all public events, so as to promote maximum public participation.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code; Government Code section 11104.5.

*Purpose and Rationale: This new provisions establishes a general rule for noticing of public events, so that consistency is ensured, confusion avoided, and one single rule appears in one place.*

*Necessity: The public and stakeholders will have a clear understanding of the general rule for noticing public events.*

## **Article 3. General Provisions Applicable to Adjudicative Proceedings**

*Purpose and Rationale: This is a new article. It applies to all adjudicative proceedings. Although the article is new, the topics it deals with are all found in the current regulations – often in several different places. Thus the new article consolidates and clarifies – and allows the elimination of a substantial amount of unnecessary and outmoded language scattered throughout the 1200s and 1700s.*

**Comment [j19]:** What are applicable legal requirements. How is an entity supposed to know if they have satisfied the requirements.

**RESPONSE:** This provision is intended to set forth a general noticing provision that is located in one place which sets forth minimal standards. The phrase other applicable legal requirements is meant to cover additional requirements for specific events. Those additional requirements are covered in sections specific to a proceeding. For example in siting for the first workshop/site visit, property owners are near the facility need to be notified. In rule makings, specific additional noticing requirements apply. It is not anticipated that an entity other than the Commission would be noticing a public event.

**Comment [j20]:** There may be some confusion as to person. A clearer phrase would be "Staff noticing the public event"

**Comment [j21]:** Suggestion to change maximum public participation to the language in PRC 25222 "full and adequate participation"

*Necessity: Improves the functionality of the regulations by standardizing elements of adjudicative proceedings and providing a heading to separate out the section.*

#### **§ 1210. Adjudicative Procedures**

Except as otherwise specified in these regulations or by other applicable law, in an adjudicative proceeding the presiding member may regulate the proceedings, and any parts thereof, in any manner that complies with the Administrative Adjudication Bill of Rights in section 11425.10 of the Government Code. For example, a proceeding may include (1) formal hearings with features such as lay and expert witnesses providing oral and written testimony under oath, direct examination, cross examination and briefs. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding; or (2) if noticed under Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code section 11445.30(a), the informal hearing procedures described in the Administrative Procedure Act (see Government Code section 11445.10 & following). In addition the presiding member may allow the questioning of witnesses or public commenter by other persons or parties during any proceeding.

**Comment [j22]:** Add language about parties ability to object to informal hearings and objections are resolved in favor of the applicant.

**Comment [j23]:** Reiteration of old section 1225 which has been moved and is now 1204.2 Ties into 1212(c)(2)

NOTE: Authority cited: Section 25210, 25216.5(a) and 25218(e), Public Resources Code. Reference: Sections 11445.10 and 11455.60, Government Code, Section 25213(a) and 25214, Public Resources Code.

*Purpose and Rationale: This section provides the general framework for adjudicative proceedings in one section as opposed to in multiple areas of the regulations. The language provides appropriate flexibility to tailor procedures to the unique circumstances of each case and whether a formal or more informal process is utilized.*

*Necessity: While the language is not new, the consolidation of various provisions will improve clarity and remove redundancy and is necessary to improving the organization of the regulations.*

#### **§ 1211 Service of Documents**

(a) In each adjudicative proceeding, the Commission shall create and maintain a service list and post the service list on the proceeding's website. By providing an email address for the service list, a person consents to email service of notices and of documents or links to documents.

(b) Unless otherwise ordered by the presiding member or otherwise required by law, the Docket Unit shall serve all filed documents on all persons on the service list, by:

(1) having the document electronically posted on the proceeding's website;  
and

(2) having electronic notice of the availability of the document provided to all persons on the service list.

(c) Any person on the service list may request permanent service of all documents in paper form. The presiding member may order such service only upon a showing that the person does not have reasonably efficient and economic access to equipment that would allow the person to receive electronic notice of availability of the document, and to view it on the proceeding's website. If such service is ordered, any person filing a document shall serve a paper copy on all persons designated for paper service no later than the filing of the document and shall include proof of such service with the filed document.

(d) The date of service of a document is the date of its electronic posting on the proceeding's website, whether or not a person receives service of the document in paper form.

NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code.  
Reference: Section 25210 and 25223, Public Resources Code, Section 11020  
Government Code; Section 10 Code of Civil Procedure.

*Purpose and Rationale: As part of the effort to clarify filing documents with the Commission and service on other parties, new language has been proposed. Most importantly, the section on service has been moved into the adjudication article. The general rule is that service will be performed by the docket unit. In support of this new section, a definition of service list was created in the definition section. The language makes electronic service as the expected norm.*

*This provision also provides needed clarify on when a document is considered "served." Note that persons requesting paper service are likely to have less time to respond to those documents, because they are likely to receive their paper copies after the official service date.*

*Necessity: Service is more automated through the docket unit which reduces the burden on parties and improves the efficiency of adjudicative proceedings. This language is needed for clarification and to put the new service process into practice.*

#### **1211.5. Motions**

(a) All requests by parties to a proceeding for action by the presiding member or where applicable the commission, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues, shall, except as otherwise required by these regulations or allowed by the presiding member, be in the form of a written motion. Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the filing and service of the motions. Unless otherwise ordered by the presiding member, there shall be no replies to responses. The presiding member shall rule on the motion within 21 days of its filing and service, or a later deadline established by the

Comment [j24]: Should be 14 days from service.

presiding member; if the presiding member does not rule within 30 days or the time prescribed, the motion is deemed denied.

(b) Requests for action made during any hearing may be made orally to the presiding member and need not be in the form of a written motion. Rulings by the presiding member may be made orally. If the presiding member does not make a ruling on the motion by the end of the hearing, the motion is deemed denied.

NOTE: Authority cited: Section 25210, 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25213(a) and 25214, Public Resources Code.

*Purpose and Rationale: This new provision makes clear that “motions” are the method by which a person asks the Commission to do something. This should help clarify the correct process for requesting action and eliminate ambiguous requests that come in as part of an email on another topic.*

*Necessity: This new language is necessary to clarify to parties in a proceeding how to make requests and to insert default time tables for action.*

#### **§ 1207 1211.7. Intervenor.**

(a) Subject to the provisions of specific proceedings, any person may file with the Docket Unit or the presiding committee member a petition to intervene. in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, mailing address, e-mail address and telephone number of the petitioner.

(b) In a power plant siting case, the A petition for intervention shall be filed no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding, the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant intervention and may impose reasonable limits on an intervenor's participation, including but not limited to ordering intervenors with substantially similar interests to consolidate their participation or limiting an intervenor's participation to specific topics. An intervenor is a party to a proceeding. The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) The presiding member may grant late petitions only on a showing of good cause by the petitioner. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such

person became a party, without an order from the presiding member based upon a showing of good cause.

(e) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within ~~fifteen (15)~~ 10 days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(f) Any petitioner may withdraw from any proceeding by filing a notice to such effect. ~~with the Docket Unit or presiding committee member.~~

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

*Purpose and Rationale: The topic of intervention received various comments from stakeholders at the original lessons learned workshop staff held. Staff has made an effort to reconcile various, often times, opposing, comments about how intervention impacts Commission proceedings, especially siting cases. Staff tried to balance the need for potential intervenors to be able to read the staff assessment and engage staff before deciding to intervene and, on the other hand, if intervention is allowed to occur late, not only may that delay the proceeding but usually reduces the effectiveness of the intervenor. The language contains a default provision that allows intervention up to 30 days prior to the evidentiary hearing. The language also is clearer in that intervention may come with limitations imposed by the presiding member. While this is not new, the language is more explicit.*

*Necessity: The language is necessary for consistency with changes in other sections such as filing and to remove unnecessary language specific to siting cases.*

#### **§ 1212. Rules of Evidence. Rights of Parties, Record and Basis for Decision**

**(a) Rights of Parties.** Subject to the presiding member's authority to regulate a proceeding as prescribed in section 1210, and other rights identified in specific proceedings, each party shall have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.

**(b) Record.** The "hearing record", in an adjudicatory proceeding, is all of the information upon which the commission may rely in reaching a decision. The hearing record shall contain:

(1) all documents, materials, oral statements, testimony and public comments accepted by the committee or commission at a hearing;

(2) all letters from federal, state and local governmental agencies filed prior to the close of the record.

**Comment [j25]:** Concern about public comment in the record.

**RESPONSE:** This is current language.



(3) any materials or facts officially noticed; and

(4) for siting cases, staff's Final Staff Assessment and any supplemental assessments as well as all public comment letters filed during the comment period on the staff assessment as described in section 1742.

except that parties may move to exclude information from consideration by the commission on the ground that it is not relevant, is duplicative of information already in the record, or on another basis. If the presiding member grants such a motion, the information shall remain in the record but shall not be relied upon under subsection (c)(2). The record shall contain the presiding member's ruling. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency and adequacy of the record.

**(c) Basis for and Contents of Decisions.**

1) Decisions in adjudicative proceedings shall, be based on the evidence in the hearing record, explain the basis for the decision, and the explanation shall include but need not be limited to all legally-required findings of fact and conclusions of law.

2) Unless the information has been excluded under subsection (b), a finding may be based on any evidence in the record, if the evidence is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or opinions. Upon notice to parties, the committee or commission may rely on public comment to support a finding if such comment asserts facts or reasonable assumptions predicated on facts and does not contain analysis that would require special training or skill not possessed by the commenter and there is opportunity for questioning of the commenter. The commission may give appropriate weight to information in the record as allowed by law.

3) Hearsay evidence may be used to supplement or explain other evidence and, absent a sustained objection, may be sufficient to support a finding if the hearsay evidence has attributes of reliability and probative value.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25210, Public Resources Code; Section 11513 Government Code

*Purpose and Rationale: During the original lessons learned workshop and over the years there have been many comments from the public and stakeholders on the complexity of the hearing process and the lack of cohesive regulations that can be found in one place that cover all proceedings especially power plant siting cases. In addition rules governing how public comment and agency letters are used are cumbersome. Complicating things further is the fact that the regulations identify the administrative record, hearing record and evidentiary record. To address these issues section 1212 Rules of Evidence has been rewritten as a comprehensive consolidated*

**Comment [j26]:** Concern with comment letters automatically in the record.

RESPONSE: To some extent comment letters are all ready part of the record when the comments are incorporated into the staff assessment. The objective is to provide a focal point for the public to maximize participation. If you send comment letters on the staff assessment the comment letter will generate a response and will be part of the record. This will make participation easier for the public.

**Comment [j27]: Fundamental Question:** does the limiting text adequately screen out portions of the record that should not be used to support a finding.

**Comment [j28]:** Comment that public comment is hearsay. Is that true regardless of what is said?

**Comment [j29]:** Concern with this provision on hearsay.

RESPONSE: Go back to original language for hearsay.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

outline that describes three key elements in the Commission's hearing and decision process: rights of parties, hearing record contents and basis for decision. The new 1212 replaces sections 1212, 1213, 1214 and certain sections in the 1700s.

*The rights of parties subsection provides the general scope of actions parties can take when participating in a proceeding.*

*The record subsection redefines the hearing record and clarifies what documents and information make up the universe of materials the Commission can consider when making a decision. Currently there are a number of gaps that allow potentially useful documents to not be part of the record. These gaps have been closed, especially for information submitted to the Commission but not brought to the hearing. The language also sets up clear boundaries as to what information makes up the hearing record.*

*The Basis for a Decision subsection borrows from the APA and clearly identifies the type of information which can support a finding or decision. Most importantly, the language moves away from focusing on the source of information to the quality of information. Therefore, in certain circumstances, public comment may support a finding.*

*The Staff Assessment will become a single document put forth by Commission staff as the Commission's independent analysis. The staff assessment will not be a collection of independent sections with declarations in the form of testimony. As the Commission's independent analysis, the Staff Assessment will automatically be part of the record.*

*Necessity: The new language is necessary to reduce confusion by separating out the three elements of a proceeding, focusing on the development of the hearing record and eliminating the term evidentiary record. The language directing what information makes up the hearing record is clearer so the public can understand what the universe of materials the Commission can consider.*

#### **~~§ 1212. Rules of Evidence [covered in new 1212]~~**

~~The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.~~

~~(a) — The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.~~

~~(b) — Oral or written testimony offered by any party shall be under oath.~~

~~(c) — Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any~~

matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.

(d) ~~Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.~~

~~The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**~~§ 1213. Official Notice. [covered in new 1212]~~**

~~During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**~~§ 1214. Record and Transcript. [covered in new 1212]~~**

~~The presiding member shall cause a formal record of the proceedings to be made. The record shall consist of the official minutes or a transcript of each hearing or conference held during the proceedings, all pleadings, written testimony, and briefs submitted by any party, any order entered pursuant to Section 1208(b), all questions and answers of witnesses submitted pursuant to Section 1225, any exhibits accepted into the record pursuant to Section 1211, any written comments submitted pursuant to Section 1202(b), and the record of all ex parte contacts filed pursuant to Section 1216 of these regulations, together with such other items as the presiding member may direct. The presiding member may cause a transcript of any conference held pursuant to Section 1208 to be made and entered into the record.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1215. Interlocutory Orders and Appeals. [no change]**

**§ 1216. Ex Parte Contacts. [no change]**

**~~§ 1217. Informal Hearings. [covered in new 1210]~~**

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10—11455.60, Government Code, Section 25210, Public Resources Code.

Purpose and Rationale: Now part of section 1210, which describes the types of proceedings that can be utilized.

Necessity: This change is needed to eliminate redundancy in the regulations.

**~~§ 1218.— Ex Parte Contacts.~~**

Note: Specific reference: Section 25500 et seq., Public Resources Code.

**~~§ 1219.— Interim Regulations for Adjudicatory Procedure.~~**

Note: Authority cited: Section 11400.21, Government Code. Reference: Section 11400.21, Government Code.

**Article 34. Rulemaking and Informational Hearings**

**~~§ 1224.— Use of Testimony.— [moved into Article 2]~~**

(a) ~~—The commission, or a committee thereof, may require by order instituting hearings, prehearing conference order, or other proper notice that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.~~

(b) ~~—The presiding member may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

**~~§ 1225.— Questioning.— [moved into article 2]~~**

(a) ~~—Questions from commissioners or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement; provided, however, that persons not submitting sworn testimony shall not be compelled to answer such additional questions without their consent.~~

(b) ~~—The presiding member may, at his discretion, limit the time and scope of oral questioning.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

**~~§ 1226. Use of Testimony. [Renumbered]~~**

**~~§ 1227. Questioning. [Renumbered]~~**

**~~Article 45. Complaints and Investigations~~**

**Article 5. Claims and Complaints**

**§ 1230. Claims; Scope**

The claim process provides a means for the public to inform the commission of alleged violations of laws under the jurisdiction of the commission.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: The current complaint process, which includes complaints, request for investigations and complaints involving commission licensed power plants is confusing and does not function well in practice. This is especially the case since investigations and complaints are often part of the same proceeding and, for actions related to post certification of siting projects, different rules apply. Therefore, sections 1230 through 1237 have been eliminated and rewritten into one consolidated process. This new approach to "Complaints" is more in line with how other agencies handle enforcement and compliance. In addition, the process is less extreme compared to the existing process, which offers dismissal of the complaint or a hearing. The new process provides for action on the claim by staff through the Executive Director and some type of end result without the need for a hearing.*

*The current complaint process causes considerable confusion as to what are the roles of staff and the complaining entity. This confusion has been eliminated.*

*The proposed claim process provides a clear mechanism to bring potential violations of laws to the Commission's attention. The Commission then decides how best to act given its enforcement authority for various programs. This partnership with the public enhances the ability of the public to inform the Commission while reducing the burden of the public potentially having to prosecute the offending entity at a hearing.*

*Necessity: The language is necessary to create a new Claim and Complaint process. The new process eliminates the need for a person or entity to prosecute the violation and clearly places the investigation and, if necessary, enforcement action on the Commission. The new language reduces confusion as to the roles of staff and the entity submitting a claim.*

**Comment [k30]:** Rename to Request for investigation

**Comment [j31]:** Comment that claims process not needed in siting cases.

**Comment [j32]:** Concern about docketing of claims.

RESPONSE: The thought was that subject of the claim would not expect to do anything while staff looked into it. In some cases the claim would be addressed and the subject of the claim would not even know about it. Other times staff would need to contact the subject of the claim to inquire about the issue.

One solution is to not have claims docketed until a determination is made.

#### **§ 1231. Claim; Filing with the Commission**

Any person may allege, in writing, a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission (a "Claim"). For a Claim to be acted on by the commission it must be filed, consistent with section 1208, and include:

- (a) the name, address, email and telephone number of the person filing the Claim;
- (b) the name, address, email and telephone number of the person or entity allegedly violating the statute, regulation, order, program, or decision;
- (c) a statement of the facts upon which the Claim is based and any evidence and witness statements demonstrating the existence of those facts;
- (d) a statement indicating the statute, regulation, order, program, or decision that has been violated; and
- (e) the names and addresses of any other individuals, entities, or organizations that are or are likely to have been affected by the violations.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: While a claim does not have to be an extensive document, some basic information will be needed to allow the Commission to evaluate the claim and take appropriate action.*

*Necessity: Sets forth the basic information needed to inform the Commission of the claim.*

#### **§ 1232. Claim; Commission Response**

(a) The Executive Director, in consultation with the Chief Counsel, shall direct staff to perform an evaluation of the Claim. Within 30 days of filing a complete Claim, the Executive Director shall provide a written response identifying the action the Executive Director intends to take and the basis for that action. Such action may include:

- (1) dismissing the Claim for lack of jurisdiction or insufficient evidence;
- (2) initiating a complaint pursuant to section 1233 et seq.;
- (3) conducting further investigation;
- (4) sending a warning or cease and desist letter to the violator;

**Comment [j33]:** Comment regarding when notice of the claim or complaint is given to the entity against which the claim or complaint is filed.

RESPONSE: Notice may be given as part of staff's investigation of the claim but in some cases may not be necessary as the claim can be quickly resolved. The complaint is an action by the agency against a potential violator which would be served as set forth in 1233.1.

**Comment [j34]:** There was concern that addressing claims under the proposed language would impose burdens on Commission resources.

RESPONSE: This evaluation need not result in a detailed report. Many claims could be disposed of with a short memo.

(5) proposing a settlement with a violator;

(6) referring the matter to the Attorney General's office;

(7) referring the matter to another federal, state or local agency with jurisdiction over the violation;

(8) correcting or modifying prior staff action; or

(9) taking other appropriate action, including rejecting the Claim for being incomplete.

(b) The written response of the Executive Director shall be filed and sent to the person or entity that submitted the Claim.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: This new section is the heart of the Claim process and identifies a number of actions that the Commission, through the Executive Director, may take when responding to a claim. While the old process either resulted in dismissal or a hearing, this new process moves away from this extreme either/or approach, to one that is far more efficient and provides a better partnership with the public. It also clarifies that the public is entitled to a process that gives visibility to an issue or concern but not to a trial of the issue.*

*Necessity: Sets forth the possible actions the Executive Director may take when responding to a complaint.*

#### **§ 1232.5 Claim; Appeal**

(a) If the Executive Director dismisses a Claim for lack of jurisdiction or insufficient evidence, the claimant may appeal the dismissal to the Chair within 15 days of the date of the Executive Director's response. The appeal must be in writing, filed in accordance with section 1208, and state the basis for challenging the Executive Director's dismissal.

(b) The Chair, within 45 days of the filing of the appeal, shall issue a written order sustaining the determination, modifying it, overturning it, or referring the matter to a committee or full commission for further evaluation.

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

Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: To provide an element of review of the Executive Director's actions.*

*Necessity: Language is necessary to implement the review process.*

#### **§ 1233. Complaint; Scope**

The complaint process identified in this Article is general in nature and may be modified or supplemented by requirements in other regulations applicable to specific types of violations. The complaint process describes how the Executive Director brings an action against any person or entity for violation of a statute, regulation, order, program or decision within the jurisdiction of the commission.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: New section 1233 begins the Complaint process. A complaint issued by the Executive Director may have been derived from a claim filed under new section 1230 or may be from internal investigations. The Scope acknowledges that there may be specific requirements in certain enforcement provisions of the regulations or Public Resources Code but 1233 provides a general process.*

*Necessity: Sets forth the scope of the new process.*

#### **§ 1233.1 Complaint; Service**

(a) The executive director of the commission may serve a complaint on any person or entity, alleging a violation of any statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. The complaint shall include:

(1) a statement of the facts upon which the complaint is based and any evidence to support the complaint;

(2) a statement indicating the statute, regulation, order, condition or decision upon which the complaint is based;

(3) the remedy being sought; and

(4) the authority under which the commission may take the action requested.

(b) The complaint shall be served on the respondent by personal service or certified mail, and shall inform the respondent that a hearing before the commission will be conducted to adjudicate the complaint. The respondent may waive the right to a hearing, in which case the commission need not conduct a hearing.



(c) Any person or entity may provide oral and written comments in the proceeding, pursuant to a schedule adopted by the Presiding Member, but, unless otherwise allowed by the Presiding Member, shall not be entitled to intervene or otherwise become a party to the proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale:* This general process borrows language from the Public Resources Code, citing sections of these regulations and the new 1240 section as well as existing complaint process language. As noted above, the Complaint process may be the result of a claim submitted by the public but it is the agency that determines whether to go forward with an enforcement proceeding against a violator. The structure is to break down the General Adjudication into four sections: Service, Answer, Hearing and Decision. Generally there is no intervention in a complaint, but under certain circumstances, the presiding member may allow intervention.

*Necessity: The language implements the complaint process.*

#### **§ 1233.2. Complaint; Answer**

(a) The respondent shall file an answer to the complaint within 30 days after service of the complaint. The answer shall include any information the respondent believes addresses the issues and violations alleged in the complaint.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: Clarifies the general timing applicable with filing an answer.*

*Necessity: Implements the timing and content of an answer to a complaint.*

#### **§ 1233.3 Complaint; Hearing**

(a) The Presiding Member shall schedule a hearing on the complaint to commence no sooner than 30 days after filing the answer under section 1233.2, unless the respondent has waived their right to a hearing.

(b) A hearing order, served on the respondent and all interested persons, shall be issued identifying the schedule for hearings, whether the hearings will be before a hearing officer, committee or the full commission, whether provisions of Government Code Section 11400 et seq. are applicable to the proceeding, the role of commission staff in the proceeding and other relevant information about the hearing.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: Provide the rules governing the hearing process.*

*Necessity: The language is necessary to set forth the hearing process when a complaint is being prosecuted.*

#### **§ 1233.4 Complaint; Decision**

(a) If the matter is heard before an assigned committee or hearing officer, the committee or hearing officer shall submit its recommendation to the full commission in the form of a written proposed decision within 21 days following the close of hearings.

(b) Upon consideration of a proposed decision from a committee or hearing officer, or in cases where the commission directly hears the case, the commission shall:

(1) issue a decision; or

(2) adopt, modify, or reject the proposed decision; or

(3) remand the matter to the committee or hearing officer for further hearings;

or

(4) reopen the hearing record and itself conduct further hearings.

(c) The decision of the full Commission shall be a final decision. There is no right of reconsideration of a final decision. The decision shall include all findings, including findings regarding mitigating and aggravating factors.

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

Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: Provides language as to how a decision is rendered.*

*Necessity: The language is necessary to provide the framework for issuing a decision.*

#### **§ 1234 Jurisdictional Determinations**

(a) Any person engaged in an activity potentially regulated by the commission may request a jurisdictional determination by the Executive Director as to whether the commission has regulatory authority over a particular activity. To request a determination, information detailing the facts, issues and law relating to the activity shall

**Comment [j35]:** Greater role for the public including notice of jurisdictional determination requests filed with the Commission and ability for any interested person to appeal the executive director's determination.

be filed with the commission. For issues relating to power plant output, a person seeking a jurisdictional determination may also follow the process under section 2010.

(b) Within 45 days of receiving a complete request, the Executive Director shall file a written determination as to whether the activity subject to the request is under the jurisdiction of the commission and what actions need to be taken to comply with commission regulations and orders.

(c) Within 10 days of the filing of the Executive Director's determination, an appeal to the Chair may be filed by the person seeking the jurisdictional determination. The appeal shall specify the alleged errors in fact or law that resulted in an incorrect determination.

(d) Within 30 days of the filing of the appeal, the Chair shall file a hearing order identifying the schedule for hearings, whether the hearings will be before a hearing officer, committee, or the full commission, whether provisions of Government Code Section 11400 et seq. are applicable to the proceeding, the role of commission staff in the proceeding and other relevant information about the hearing.

(e) Section 1233.4 shall govern the decision of the appeal.

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

Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

*Purpose and Rationale: In the current regulations jurisdictional determinations are mixed into the "complaint" process, causing confusion as to how the determination works. To make matters more complicated, section 2010 contains another jurisdictional determination process, "Petition for Expedited Clearance; Filing" which covers power plant mega-watt determinations. Currently section 2010 is presented as a second option for power plant related jurisdictional determinations based on 50 MW thresholds.*

*New section 1234 carves out a process that allows one who is engaged in an activity that might fall under the Commission's jurisdiction to seek out a determination in advance of an activity. The overall process should allow the Commission to streamline assessments currently performed with a structured appeal option.*

*Necessity: The language is needed to provide a clear and separate process for jurisdictional determinations, which are unique and should not be included in the Claim and Complaint process.*

**§ 1230. Scope.—[replaced by new claim and complaint process]**

~~(a) — Complaint proceedings shall include any adjudicatory proceeding in which the commission determines whether to sanction, or take other appropriate action against, a person for an alleged violation of any statute, order, decision, or regulation adopted, administered, or enforced by the commission, including but not limited to a proceeding pursuant to Public Resources Code section 25534.1. Investigation proceedings shall include any adjudicatory proceeding in which the commission determines the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission. A single proceeding may involve both a complaint and an investigation.~~

~~(b) — Standing committees to exercise the complaint or investigatory functions of the commission may be established pursuant to Section 1204(a). The order establishing a committee shall designate the area of commission jurisdiction over which a committee shall exercise the complaint or investigatory function.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.~~

**§ 1231. Complaints and Requests for Investigation; Filing.—[replaced by new claim and complaint process]**

~~Any person, including but not limited to the commission staff or the owner or operator of a powerplant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 et seq. must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.~~

~~(a) — A complaint or request for investigation shall be filed with the Chief Counsel of the commission.~~

~~(b) — The complaint or request for investigation shall include:~~

~~(1) — the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);~~

~~(2) — the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the request for investigation (respondent);~~

~~(3) — a statement of the facts upon which the complaint or request for investigation is based;~~

~~(4) — a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;~~

~~(5) — the action the complainant or petitioner desires the commission to take;~~

~~(6) — the authority under which the commission may take the action requested;~~

~~(7) — a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought; and~~

~~(8) — a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.~~

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

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**§ 1232. — Complaints and Requests for Investigation; Commission Response.**  
**[replaced by new claim and complaint process]**

~~(a) — Within 30 days after the receipt by the Chief Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:~~

~~(1) — dismiss the matter upon a determination of or of the pleadings, specifying whether the dismissal is with or without prejudice; or~~

~~(2)) — serve the complaint or request for investigation by certified mail, return receipt requested, upon the respondent. All other persons identified in Section 1231(b)(7) shall be served by first class mail. In addition, the committee, or if none has been assigned, the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision. When serving the complaint, the committee, or if none has been assigned, the chairman, shall also provide a copy of the commission's governing procedure, including a statement whether the provisions of Government Code section 11400 et seq. are applicable to the proceeding.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**~~§ 1233. Answers to Complaints and Requests for Investigation. [replaced by new claim and complaint process]~~**

~~(a) — The respondent shall file and serve an answer with the complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 21 days after service of the complaint or request for investigation, pursuant to Section 1232(a)(2).~~

~~(b) — The answer shall include:~~

~~(1) — an admission or denial of each material allegation;~~

~~(2) — an explanation of any defenses raised by the respondent; and~~

~~(3) — a declaration as provided in Section 1231(b)(8).~~

~~(c) — Where the petitioner seeks clarification of the jurisdictional status of its own project, no answer shall be required.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**~~§ 1233.5. Staff Assessment. [replaced by new claim and complaint process]~~**

~~(a) — If the entity filing the complaint or request for investigation is other than the commission staff, the committee, or if none has been assigned, the chairman, may direct commission staff to prepare a written assessment of the complaint or request for investigation and the answer. The staff assessment shall be filed and served by first class mail on complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 7 days of service of the answer provided pursuant to Section 1233.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

**~~§ 1234. Notice and Hearing. [replaced by new claim and complaint process]~~**

~~(a) — The hearing shall be scheduled to commence no sooner than 21 days after receipt of the answer and no later than 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, a committee designated by the commission, or a hearing~~

officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) ~~The commission shall provide written notice by first class mail to all petitioners, respondents and persons identified in Sections 1231(b)(7) and 1232(a)(2) no fewer than 14 days before the first hearing on the matter. The notice shall contain:~~

(1) ~~the names and addresses of all named complainants, petitioners, and respondents;~~

(2) ~~a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;~~

(3) ~~an explanation of the action the commission may take;~~

(4) ~~the date, place, and time of any hearing in the matter; and~~

(5) ~~a statement concerning the availability of the public adviser.~~

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

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

**~~§ 1235. Proposed Decision.~~ [replaced by new claim and complaint process]**

~~If the matter is heard before an assigned committee or hearing officer, appointed pursuant to Section 1205, the committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision within 21 days following the close of hearings held pursuant to Section 1234.~~

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

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

**~~§ 1236. Commission Decision.~~ [replaced by new claim and complaint process]**

(a) ~~Upon consideration of a proposed decision from a committee or hearing officer, the commission shall, to the extent reasonably possible, prepare a decision within 21 days of the filing of the proposed decision that:~~

(1) ~~issue a decision; or~~

(2) ~~adopts, modify, or reject the proposed decision; or~~

(3) ~~remands the matter to the committee or hearing officer for further hearings; or~~

(4) ~~reopens the evidentiary record and itself conduct further hearings.~~

(b) ~~When considering a proposed decision from a committee or hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.~~

(c) ~~In cases where the commission, rather than a committee or hearing officer hears the case, to the extent reasonably possible, the commission shall make a decision within 21 days following the close of hearings.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25500, 25534, 25534.1, 25900, 25967 and 25983, Public Resources Code.~~

**~~§ 1236.5. Public Participation and Intervention.~~ [replaced by new claim and complaint process]**

~~To the extent deemed relevant by the presiding member, any person may testify or comment during a complaint or investigatory hearing. A person may request to become a formal party by intervening by following the procedures identified in Section 4207.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.~~

**~~§ 1237. Post-Certification Complaints.~~ [replaced by new claim and complaint process]**

(a) ~~Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:~~

(1) ~~the name, address, and telephone number of the person filing the complaint (complainant);~~

(2) ~~the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the complaint;~~

(3) ~~a statement of facts upon which the complaint is based;~~

(4) ~~a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;~~

(5) ~~the action the complainant desires the commission to take;~~



~~(6) — the authority under which the commission may take the action requested, if known; and~~

~~(7) — a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.~~

~~(b) — Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned, setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.~~

~~(c) — If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).~~

~~(d) — Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.~~

~~(e) — Within 30 days after issuance of the staff report, the committee shall:~~

~~(1) — dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;~~

~~(2) — issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or~~

~~(3) — conduct hearings to further investigate the matter and then issue a written decision.~~

~~(f) — If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.~~

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resources Code.

**~~§ 1238. Decision and Sanctions. [Repealed]~~**

**§ 1240. Renewables Portfolio Standard Enforcement.**

(a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.

(b) Complaints

~~(1) No complaint for the failure of a local publicly owned electric utility to meet~~  
a

~~Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, may be filed by any person or entity listed in section 1231, except Commission staff.~~

~~(12)~~ A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the following:

(A) A statement of facts upon which the complaint is based.

(B) A statement indicating the statute, regulation, order, or decision upon which the complaint is based.

(C) The action the Commission is requested to take.

(D) The authority for the Commission to take such action.

~~(23)~~ A declaration under penalty of perjury shall not be required for the filing of a complaint under this section 1240.

(c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the Chief Counsel within 45 calendar days after service of the complaint. In addition to those matters set out in section 1233 (b), the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include

information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating factors related to any alleged violation.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the Executive Director along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file with the Chief Counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.

(2) In the event that Commission staff files a response under (e)(1), the local publicly owned electric utility may file with the Chief Counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon Commission staff upon filing.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 30 calendar days after the filing of a staff response pursuant to subdivision (e) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section 1234 (b). Such notice shall be provided no later than 30 calendar days after the last filing is made.

(3) The hearing may be scheduled before the full Commission, a committee designated by the Commission, or a hearing officer assigned by the Chair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the full Commission, the proposed decision set out in section 1235 shall be forwarded to the full Commission, to the extent reasonably possible, no later than 45 calendar days after the hearing has been concluded. If the hearing is held before the full Commission, to the extent reasonably possible, the Commission shall publish its decision within 45 calendar days after the hearing has been concluded.

(g) The decision of the full Commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors, upon which the Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (l) and (m).

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, Commission staff shall forward a notice of violation, based on the final decision of the full Commission, together with the record of proceedings, to the Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the Commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, Commission staff shall not forward the notice of violation to the Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and section 399.30, Public Utilities Code. Reference

*Purpose and Rationale: Since staff, through the executive director, is the only entity that can bring a complaint, the language in b(1) is not needed under the new process.*

*Necessity: To reduce redundancy the language in b(1) is being removed.*

## **Chapter 5. Power Plant Site Certification**

### **Article 1. General Provisions Applicable to Notices of Intent and Applications for Certification**

#### **A. Scope and Definitions**

#### **§ 1701. Scope of Regulations.**

(a) ~~Unless otherwise stated, the provisions of Article 1 of this chapter shall apply to the consideration of all notices and applications for any site and related facility within the jurisdiction of this commission.~~ This Article 1 applies to all notice of intent proceedings and all application for certification proceedings.

(b) ~~The provisions of Article 2 of this chapter shall apply to the consideration of all notices except as provided in Article 4.~~

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

(d) ~~The provisions of Article 4 of this chapter shall apply to the consideration of all geothermal notices and applications for certification.~~

**Comment [j36]:** Do the draft rules significantly diminish the role of the Commissioners as decision makers in the sitting process?

**RESPONSE:** This was not the intent.

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

(f) ~~The provisions of Article G 6 of this chapter shall apply to the consideration of all powerplant and transmission line jurisdictional determinations.~~

(g) Article 7 of this chapter shall apply to all Expedited Applications Under Public Resources Code Section 25550

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25541.5, Public Resources Code.

Purpose and Rationale: The proposed changes are clean up fixing the incorrect reference to Article G and adding reference to Article 7.

Necessity: The language changes are necessary to remove errors and add an existing section that had never been included in this scope section.

#### **~~§ 1702. Definitions.~~ [Now in 1201]**

~~For purposes of this subchapter and unless otherwise indicated, definitions found in Public Resources Code Section 25100 as well as the following definitions shall apply:~~

(a) ~~“Administrative record” means all materials that have been entered into the docket of the proceeding. The administrative record includes, but is not limited to, the hearing record (as defined below).~~

(b) ~~“CEQA” means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.~~

(c) ~~Chief Counsel means the Chief Counsel of the commission.~~

(d) ~~“Committee” means the committee of the commission appointed pursuant to Section 1204 of these regulations to conduct proceedings on a notice or application.~~

(e) ~~“Environmental documents” means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and overriding considerations, and the documentation prepared by the Commission or its Staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.~~

(f) ~~“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.~~

(g) ~~“Hearing officer” means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting the proceeding.~~

(h) —“Hearing record” means the materials that the committee or commission accepts at a hearing. While the committee or commission may rely in part on any portion of the hearing record in making a finding, only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding of fact. The hearing record includes:

(1) —Written and oral testimony presented at a hearing, including direct and cross examination of a witness.

(2) —Supporting documentary evidence or exhibits submitted with testimony.

(3) —Public comment offered at a hearing or entered into the record at a hearing.

(4) —Public agency comment offered at a hearing or entered into the record of a hearing.

(5) —Matters of which official notice has been taken.

(6) —Other evidence that the committee accepts at a hearing.

(i) —“Intervener” means any person who has been granted leave to intervene in notice or application proceedings pursuant to Section 1712 of these regulations.

(j) —“Party” means the applicant, the staff of the commission, and any intervener.

(k) —“Presiding member” means the presiding member of the committee appointed to conduct proceedings on a notice or application.

(l) —“Filing” means submission of any document to the commission docket. A document is filed on the day it is received by the commission docket.

(m) —“Acceptance” means a formal determination by the commission, pursuant to Public Resources Code, sections 25516.6, 25522, or 25540.1 that a notice or application for certification is complete.

(n) —“Related Facility” means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(o) ~~—"Application" means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.~~

(p) ~~—"Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district, or Native American government.~~

(q) ~~—"Areas of critical concern" means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.~~

(r) ~~—"Performance criteria" means performance goals for which the applicant proposes to design the facilities.~~

(s) ~~—"MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.~~

(t) ~~—"MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.~~

(u) ~~—"Impact area" means the area which is potentially affected by the construction, modification, or operation of a site and related facilities.~~

(v) ~~—"Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.~~

~~NOTE: Authority cited: Sections 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 21061.1, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; and Title 14, California Code of Regulations, Section 15364.~~

#### **~~§ 1703.—Requirement to File. [Repealed]~~**

~~Note: Authority cited: Sections 25216.5, 25218, 25539, Public Resources Code. Reference: Sections 25502, 25517, 25519, Public Resources Code.~~

**§ 1704. Information Requirements for Notices and Applications. [no change]**

**~~§ 1705. Form of Submissions. [covered by 1208.1 and 1706]~~**

~~Paper copies of notices and applications, and any other documents attached thereto, submitted pursuant to this article, shall conform to the requirements of Section 1209 of these regulations and shall be submitted in a three-ring binder in a loose-leaf fashion, with pages numbered by chapter.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.~~

**§ 1706. Number of Copies.**

The Executive Director shall specify the number of copies and the format of notice of intent, applications for certification and small power plant exemptions to be filed.

~~(a) — The applicant shall file with the commission one hundred fifty (150) copies of any notice and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the notice or, alternatively, 100 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(b) — The applicant shall file with the commission one hundred twenty-five (125) copies of any application for certification and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(c) — The applicant shall file with the commission one hundred (100) copies of any application for a small powerplant exemption and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 25 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise required by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(d) — The applicant shall also file the same number of copies, specified in subsection (a) or (b) above, of any subsequent documents required by the Commission for completeness under section 1709.~~

~~(e) — In addition to the materials filed pursuant to subsection (a), (b), or (c) above, the applicant shall file five (5) copies of all documents cited in the notice or application which are not available at public libraries or other governmental agencies in the City or County of Sacramento. For each document which is so available, the filing shall state where the document can be found.~~



(f) ~~—The executive director may waive the requirement for filing the number of copies specified by this section for any document for which reproduction and filing of that number of copies would constitute an unreasonable burden to the applicant. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a notice or application. The request shall include a description of each such document and a discussion of the reasons why reproduction and filing of that number of copies is unreasonable. An applicant may not file a notice or application while such request is pending. If a request is granted, the executive director shall specify the number of copies of the document to be filed. The executive director shall act on all such requests within 15 days.~~

(g) ~~—Upon filing a notice or application pursuant to this article, the executive director may require the filing of additional copies of the notice or application and associated documents, if necessary, to satisfy the requirements of interested agencies, the parties, and the public.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.

*Purpose and Rationale: As e-filing becomes more common and documents are automatically posted, the number of hard copies needed decreases. It is difficult to predict the numbers required over the next few years. Most likely the current numbers in the regulations are far too high. Staff believes a more effective process is to have the Executive Director post the number of copies required and update as needed. Staff anticipates the number of hard copies to be well below the current number of 125 copies of an Application for Certification, reducing production costs for applicants.*

*Necessity: The proposed language is necessary to continue the Commission's movement into a more digital document management landscape.*

#### **§ 1707. Authority and Verification.**

Every notice and application shall be dated and signed by each applicant attesting under penalty of perjury to ~~the~~ its truth and accuracy. ~~of such notice or application. If any of the applicants are corporations or business associations, the notice or application shall be dated, signed, and attested to by an officer thereof. Where a notice or application is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the notice or application; provided, however, that no more than one member of said joint venture or proposed joint venture need attest as to the entire notice or application, but that each joint venturer or proposed joint venturer shall attest to the notice or application with respect to the information required by Section 1704 regarding need for the project and financial impacts of the proposal.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25520, Public Resources Code.

*Purpose and Rationale:* The first sentence is adequate to assure the contents of the application and is consistent with other applications requiring attestation such as an application for confidentiality. The remaining requirements are cumbersome and do not add to the validity of the application. Considering the AFC requires a fee payment, it is unlikely the Commission would be presented with a false AFC.

*Necessity:* To reduce the complexity of the application verification, the language change is necessary.

**§ 1708. Application, Compliance, and Reimbursement Fees. [no change]**

**§ 1709. Filing of Notices and Applications for Certification; Data Adequacy Review and Docketing. [no change]**

**§ 1709.5. Prefiling Review.**

~~(a) — A potential applicant may request the executive director to conduct a prefiling review of existing environmental and other documentation relevant to a proposed notice or application. The purpose of such a review shall be to determine the extent to which information contained in the existing documents is sufficient to meet the information requirements for a notice or an application.~~

~~(b) — Any request pursuant to this section shall be in writing and shall be accompanied by at least twelve (12) copies of each document which the potential applicant requests to have reviewed. The executive director may recommend that additional documents known to the commission staff be included in the document review. Potential applicants may, and are encouraged to, file documents in the form of a draft or proposed notice or application.~~

~~(c) — If the executive director determines that a prefiling review is appropriate, the executive director shall, by such time as may be mutually agreed upon by the potential applicant and the executive director, determine whether the information provided is sufficient to meet the information requirements of a notice or application and, where appropriate, shall provide the potential applicant with a list identifying the additional information necessary to comply with the information requirements.~~

~~(d) — The potential applicant may request a workshop with the commission staff to discuss any matter relevant to the preparation of a notice or application. The public shall be notified at least 10 days in advance of any such workshop by the executive director in consultation with the public adviser. Nothing in this section shall prohibit a potential applicant from informally exchanging information or discussing procedural issues with the staff without a publicly noticed workshop.~~

(a) Before filing a notice or application, a potential applicant shall request the executive director conduct a prefiling meeting and review of the proposed project for purposes of receiving guidance and advice regarding the proposed project's siting, design, construction and operation, and the requirements for documentation.

**Comment [j37]:** Comment is to return the language back to voluntary prefiling review. Remove language that implies that Applicants would be expected to modify the size, location or design of the project.

Concern with confidentiality in the RFO process if prefiling meetings are too early.

(b) Prefiling meetings shall occur as early as possible to allow for consideration by applicants of advice and guidance.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502, 25520 and 25540.3, Public Resources Code.

*Purpose and Rationale: The changes to this section (1) make prefiling mandatory (as at the CPUC) to help ensure projects start out in the best possible position; and (2) eliminate unnecessary and unduly restrictive language that is not related to the purpose of the prefiling meeting, which is to provide guidance on potential projects.*

Necessity: The language is necessary to make prefiling meetings mandatory.

#### **§ 1709.7. Informational Hearing, Site Visit, and Schedule.**

(a) Within 45 days after the acceptance of a notice or application ~~for certification or the filing of an application for small powerplant exemption~~, the ~~committee presiding member~~ shall hold one or more informational hearings ~~presentations~~ and site visits ~~in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as practicable to the proposed sites. Notice of the first informational hearing shall comply with section 1209, presentation shall include information on how to participate in the proceeding, and shall be mailed provided to all persons identified by the applicant under section (a)(1)(E) of the information requirements in Appendix B and to any other person as required by law. to all owners of land adjacent to the proposed sites.~~

(b) At least five days ~~At or before the first informational hearing presentation~~, the commission staff shall file ~~with the committee~~ a written statement summarizing the major issues that the staff believes will be presented in the case. ~~This summary shall not preclude the staff or any other party from raising additional issues later in the case.~~

(c) No later than 15 days after the last informational hearing ~~presentation~~, the presiding member shall ~~issue an order establishing the schedule for the prehearing phase of the proceedings on the notice or application. The presiding member may change the schedule at any time upon motion by any party or upon his own motion.~~

(d) At each informational hearing ~~presentation~~, the applicant shall describe the proposed project, and the staff shall explain how the ~~certification or exemption proceedings are~~ is conducted. The ~~presiding members presentations~~ shall allow for ~~informal questions to the applicants and the staff from local residents and other interested any persons regarding the proposed project sites and facilities.~~

(e) The informational hearing serves as the commission's scoping meeting under CEQA guidelines section 15082(c). The informational hearing provides the commission with an opportunity to learn about potential concerns and further define the issues, feasible alternatives and potential mitigation measures that may warrant in-depth analysis in the environmental review process.

**Comment [j38]:** Comment that the informational hearing is too early in the process to function as a scoping meeting. May not be fair to expect the public to be in a position to provide significant input.

NOTE: Authority cited: Sections 25213 and 25541.5, Public Resources Code.  
Reference: Sections 25214, 25216.5 and 25509, Public Resources Code.

*Purpose and Rationale: Language changes tie in with new standard noticing section 1209 and adds siting specific requirements. Providing five days will allow for a more informed public and may result in a better upfront discussion of the issues. The presiding member's authority to run a proceeding is already established in prior sections so redundant language has been eliminated. Language has also been added which defines the informational hearing as a scoping meeting, which will clarify that the informational hearing can be used to narrow the scope of staff's environmental assessment.*

*Necessity: The language changes are necessary to comport with changes in other sections and to clarify the informational hearing as a scoping meeting.*

**§ 1709.8. Withdrawal of Notice or Application. [no change]**

**~~C. Public and Agency Rights and Responsibilities; Provisions Applicable to Notices and Applications~~ [there is no A or B heading]**

**§ 1742.5. 1710. Staff as an Independent Party [moved from below, no text change].**

In carrying out its duties pursuant to this chapter, the staff of the commission shall be an independent party to all notice, application, and exemption proceedings. The staff is not required to petition to intervene in such proceedings.

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

**~~§ 1711 1710. NOTICING PROCEDURES; SETTING OF HEARINGS, PRESENTATIONS, CONFERENCES, MEETINGS, WORKSHOPS, AND SITE VISITS PUBLIC NOTICE OF DISCUSSIONS AMONG PARTIES. [Covered by new sections 1207, 1207.5, 1209, 1709.7]~~**

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by section 1209 subsection (b); provided, however, these requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's positions or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

~~(b) Except for the hearing conducted pursuant to Section 1809(a) and the workshop pursuant to Section 1709.5(d), notice of the initial public hearing on a notice~~

**Comment [j39]:** Comment on consistency between staff being an independent party and staff prepares the Energy Commission's independent report. (1742(a))

Comment as to whether "independent party" means staff is carrying out its duties independent of direction and supervision by the committee or does the document reflect the judgment of the committee.

**Comment [j40]:** Comment about more open dialog among parties. If staff is serving as an independent party there is no reason to restrict communications between the staff and other parties. Should this section be repealed?

**Comment [j41]:** Status quo language.

~~or application shall be mailed or otherwise delivered fourteen (14) days prior to the first such hearing to the applicant, intervenors, and to all persons who have requested notice in writing. Except for continued hearings, notices shall, to the extent possible, be mailed at least fourteen (14) days in advance, and in no case less than ten (10) days in advance.~~

~~(c) — The public adviser shall be consulted in the scheduling of locations, times, and dates for all noticed hearings, presentations, conferences, meetings, workshops, and site visits so as to encourage maximum public participation.~~

~~(d) — Notices of Committee hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof. Notices of staff workshops, conferences, and meetings shall be signed by the Executive Director or a Deputy Director, unless, in a specific proceeding, the Committee or Commission orders otherwise.~~

~~(e) — The public adviser shall be afforded a reasonable opportunity to review all notices of hearings, presentations, conferences, meetings, workshops, and site visits for timeliness, completeness, clarity, and adequacy of dissemination.~~

~~(f) — Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place, by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date ten days or more in the future, then notice shall also be provided by mail as provided in subdivision (b).~~

~~(g) — Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be canceled for good reason, provided the following requirements are met:~~

~~(1) — A notice of cancellation shall be posted at the door in the same manner as provided by Government Code section 11129.~~

~~(2) — A notice of cancellation shall be mailed as provided in subdivision (b).~~

~~(3) — If the notice of cancellation is mailed less than ten (10) days before the originally noticed date, then the staff shall work with the public adviser to ensure that notice is provided to all interested parties by the best means available.~~

~~NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 11129, Government Code; Sections 25216.5 and 25222, Public Resources Code.~~

*Purpose and Rationale: At the original workshop, there was discussion about the ability of staff and the applicant or other parties, to meet outside a noticed meeting and discuss the project. Staff encourages comment on the general issue of party to party communication and the need for any changes to section (a).*

*All the other subsections being eliminated are now covered in other sections on noticing, filing and site visits. See sections 1207, 1207.5, 1209, 1709.7.*

*Necessity: The proposed changes are needed to remove redundant provisions.*

**~~§ 1711. Right of Any Person to Comment. [covered by 1202]~~**

~~Any person interested in a notice or application proceeding shall be given an opportunity to make oral or written comments on any relevant matter at any hearing or information meeting held on a notice or an application. The presiding member may specify such conditions on the right to comment as are reasonably necessary for the orderly conduct of the proceeding, and may request that written comments be submitted in advance of any hearing.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

**~~§ 1712. Right to Become a Party; Rights and Duties. [covered by 1211.7 and 1212(a)]~~**

~~(a) — Any person may petition to intervene pursuant to Section 1207 of these regulations. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without a showing of good cause.~~

~~(b) — Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to present witnesses, to submit testimony and other evidence, to cross-examine other witnesses, to obtain information pursuant to Section 1716, and to file motions, petitions, objections, briefs, and other documents relevant to the proceeding. Each party shall be provided with a copy of the notice or application. The rights set forth herein are in addition to such other rights as the parties may have as set forth in Chapters 2 and 5 of these Regulations, including Section 1212(c).~~

~~(c) — Each party shall have the responsibility to comply with the requirements for filing and service of documents, the presentation of witnesses and evidence, and any other reasonable conditions which may be imposed by order of the presiding member.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

**§ 1713. Summary of Notice or Application; Distribution. [no change]**

**§ 1714. Distribution of Copies to Public Agencies; Request for Comments.**

(a) As soon as possible after receipt of the notice or application for a site and related facility requiring a certificate of public convenience and necessity, the executive director shall transmit a copy thereof to the Public Utilities Commission and shall request the Public Utilities Commission to perform an analysis and to offer comments and recommendations regarding the economic, financial, rate, system reliability, and service implications of the design, construction, operation, and location of the site and related facilities. For applications for a site and related facility which does not require a certificate of public convenience and necessity, the executive director shall transmit a notice of receipt of the application to the Public Utilities Commission.

(b) Within ten days after receipt of the application for a site and related facility that is proposed to connect to the California Independent System Operator-controlled grid, the executive director shall transmit a copy thereof to the California Independent System Operator and shall request the California Independent System Operator to perform an analysis and to offer comments and recommendations regarding the system reliability implications and identification of interconnection facilities required for connection to the California Independent System Operator-controlled grid. For applications which do not connect to the California Independent System Operator-controlled grid, the executive director shall transmit a notice of receipt to the California Independent System Operator.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and Game, to the Air pollution Control District in which the project is located, to the Water Resources Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with # 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

(d) ~~The executive director shall transmit a copy of the notice or application to any Native American government having an interest in matters relevant to the site and related facilities proposed in the notice or application provided the Native American government has a governing body recognized by the Secretary of the Interior of the United States or the Native American government has otherwise requested in writing to receive a copy of the notice or application.~~ **No later than 30 days after an Application or petition to amend has been filed, the Energy Commission shall invite tribal governments, deemed culturally affiliated with a project area by the Native American Heritage Commission, to participate in consultations with the Energy Commission.**

**Comment [j42]:** Suggestion that new language would confuse the role of tribal governments and that the Commission should conform its tribal consultation procedures to the requirements in AB 52.

~~(e) The commission shall request any Native American government covered under subsection (c) to make comments and recommendations regarding the design, operation, and location of the facilities proposed in relation to the environmental quality, public health and safety, and other factors on which they may have expertise. To the extent that the Native American government has land use and related jurisdiction in the area of the proposed sites and related facilities, the commission shall request the Native American government to review and comment upon the land use and related aspects of the proposed sites and related facilities.~~

(f. e) Upon receiving a copy of the notice or application, each agency requested to file comments shall inform the presiding member (or the executive director if no committee has been appointed yet) of when such comments can be filed with the commission. Unless otherwise specified by law or by order of the presiding member, all such comments shall be filed prior to the conclusion of the evidentiary hearings held pursuant to Sections 1723, 1748, and 1944 on the notice or application.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25505, 25506, 25506.5, 25507 and 25519, Public Resources Code.

*Purpose and Rationale: Sections d and e represent an outdated model for tribal consultation that determines a tribal interest with facility siting if and only if the project is on or near a tribal jurisdiction. Recent Governor Executive Order and related policy direct a much more robust agency-tribe relationship. In addition the new language ensures tribal engagement earlier in the process with a specific time period to contact tribal officials.*

*Necessity: Language changes ensure Energy Commission regulations comport with current tribal consultation best practices.*

**§ 1714.3. Agency Comments on a Notice; Purpose and Scope. [no change]**

**§ 1714.5. Agency Comments on an Application; Purpose and Scope. [no change]**

**~~§ 1714.7. Air Quality Report on the Notice; Preparation; Contents; Testimony.~~**

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25506, Public Resources Code.~~

**~~§ 1714.9. Determination of Compliance; Preparation by Local Air Districts.~~**

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25519(f), (g), (j), Public Resources Code.~~

**§ 1715. Reimbursement of Local Agencies. [no change]**

**§ 1716. Obtaining Information. [no change]**



**~~§ 1716.5. Motions, Hearings, Decision.~~[covered in 1211.5]**

~~Any party may file a motion or petition with the presiding member regarding any aspect of the notice or application proceeding. Responses to the petition by other parties shall be filed within 15 days of the filing of the petition unless otherwise specified by the presiding member. The presiding member may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, act to grant or deny the petition, in whole or in part, or schedule further hearings or written responses on the petition.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code.~~

**~~§ 1717. Distribution of Pleadings, Comments, and Other Documents.~~ [covered in 1208]**

~~(a) — Any party or agency who submits petitions (except petitions to intervene), motions, briefs, comments, written testimony or exhibits, shall file its documents in accordance with section 1210.~~

~~(b) — Upon receipt of any agency comments and recommendations, and unless such service is already provided by the agency, the executive director shall immediately serve such comments and recommendations on the applicant and all parties to the proceeding and to any other person who requests a copy of such comments and recommendations.~~

~~(c) — During the course of the proceedings under this article, the presiding member shall, if requested by any party or member of the public, cause to be distributed, to all parties and to any persons so requesting, a list of all materials and documents introduced into the record of the proceeding. Such list shall be kept up to date on at least a weekly basis by the Dockets Unit and kept on file with the record of the proceeding.~~

~~(d) — The executive director shall cause a copy or summary of materials and documents introduced into the record of the proceeding to be placed in a public document room in each county in which a proposed site and related facility or any portion thereof is located.~~

~~NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25216.5(a), Public Resources Code.~~

**~~§ 1717. Distribution of Pleadings, Comments, and Other Documents.~~[covered in 1208, 1211 and 1212]**

~~(a) — Any party or agency who submits petitions (except petitions to intervene), motions, briefs, comments, written testimony or exhibits, shall file its documents in accordance with section 1210.~~

(b) ~~Upon receipt of any agency comments and recommendations, and unless such service is already provided by the agency, the executive director shall immediately serve such comments and recommendations on the applicant and all parties to the proceeding and to any other person who requests a copy of such comments and recommendations.~~

(c) ~~During the course of the proceedings under this article, the presiding member shall, if requested by any party or member of the public, cause to be distributed, to all parties and to any persons so requesting, a list of all materials and documents introduced into the record of the proceeding. Such list shall be kept up to date on at least a weekly basis by the Dockets Unit and kept on file with the record of the proceeding.~~

(d) ~~The executive director shall cause a copy or summary of materials and documents introduced into the record of the proceeding to be placed in a public document room in each county in which a proposed site and related facility or any portion thereof is located.~~

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Section 25216.5(a), Public Resources Code.

**§ 1718. ~~Staff Meetings; Purposes.~~ [covered in 1207.5]**

(a) ~~At any time after a notice or application is filed, the staff may initiate informal, voluntary meetings with the applicant, other parties, interested agencies, or the public on matters relevant to the notice or application. Such meetings may include workshops, site visits, or other information exchanges.~~

(b) ~~All meetings shall be noticed pursuant to Section 1710 of these regulations and shall be open to the public. The notice shall list the topics and purposes of the meetings. Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they shall, to the extent feasible, be held in or near the communities affected.~~

(c) ~~Meetings initiated by staff may be held for any of the following purposes:~~

(1) ~~To allow parties to solicit and exchange information relevant to the notice or application;~~

(2) ~~To allow parties to identify areas of factual and legal agreement;~~

(3) ~~To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or~~

(4) ~~To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.~~

(d) ~~—The public adviser, and in the adviser's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.~~

(e) ~~—The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the manner in which such meetings are being conducted may petition the presiding member to take remedial action.~~

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

#### **~~§ 1718.5. Prehearing Conferences; Hearing Order. [covered in new 1207]~~**

~~The committee shall hold one or more prehearing conferences with all parties and interested agencies to establish procedures, identify issues, and set schedules for adjudicatory or nonadjudicatory hearings on the notice or application.~~

(a) ~~—The presiding member shall request the applicant to indicate when it will be prepared to present its case or evidence in support of the notice or application, and shall request the staff and each participating agency to indicate when each will be prepared to present the results of its assessments to the commission.~~

(b) ~~—Parties who have agreed on statements of facts shall make such statements and lists of probable sponsoring witnesses available to all interested persons at the prehearing conference. To the extent practical, such statements should be served on all parties five days prior to the prehearing conference. Such statements shall not be binding on the committee and may be challenged by any person.~~

(c) ~~—Parties who have agreed on a statement of issues requiring adjudication shall submit such statements at the prehearing conference. The presiding member may direct the staff to present at the conference a statement of issues which the staff believes must be resolved in the applicant's favor before approval of the notice or the application is granted. The staff statement shall not be binding on the committee.~~

(d) ~~—The presiding member, in consultation with other committee members, shall prepare a hearing order to guide the hearings on the notice or application. The order shall set forth the schedule and procedures for hearings, indicate the order of presentation of the parties and interested agencies, and identify the issues to be addressed in the hearings.~~

(e) ~~—This section shall not preclude parties from agreeing to and offering additional statements of facts and issues during the hearings.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25211 and 25509.5, Public Resources Code.

#### **~~§ 1719. Consolidation or Severance Proceedings. [covered in 1203]~~**

(a) ~~Upon motion of a member of a committee or of any party, and for good cause shown, the commission may order the consolidation of part or all of any notice or application proceeding with any other notice or application proceeding, or the severance of part of any notice or application proceeding, if reasonably necessary to ensure the complete, fair, or timely consideration of any siting proposal.~~

(b) ~~A decision on any site and related facility shall not be delayed by reason of consolidation or severance unless agreed to by the applicant.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25516.6, 25540.2, Public Resources Code.

#### **§ 1720. Reconsideration of Decision or Order. [no changes]**

#### **§ 1720.2. Termination of NOI, AFC, and SPPE Proceedings. [no changes]**

#### **§ 1720.3. Construction Deadline. [no changes]**

#### **§ 1720.4. Effective Date of Decisions and Other Determinations.**

~~For the all purposes, including but not limited to of implementing of sections 25530, 25531, and 25901 of the Public Resources Code, a decision, or order, or any other determination is adopted, issued, final, and effective on the day when it the decision or order is docketed, unless the decision or order it states otherwise.~~

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25210, 25216.5, 25502, 25519(b) and 25541, Public Resources Code.

*Purpose and Rationale: This makes “finality” etc., consistent for all committee and commission determinations, thereby adding clarity and simplicity.*

*Necessity: The language offers clarification but not a substantive change from existing regulations.*

#### **~~§ 1720.5. Demand Conformance.~~**

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25305(e), 25308.5, 25523(f), 25524 and 25541, Public Resources Code.

#### **~~§ 1720.6. Demonstration Projects.~~**

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25540.6(e), Public Resources Code.

**Comment [j43]:** Other determinations is not clear. The rule should explicitly identify any determinations that are intended to be covered.

**Article 2. Procedures for Considering Notices of Intention to File an Application for Certification [1721-1731 no changes]**

**Article 3. Procedures for Considering Applications for Certification**

**§ 1741. Application Proceeding; Purpose and Objectives. [no changes]**

**§ 1742. ~~Review of Environmental Factors; Staff and Agency Assessment.~~**

~~(a) Information on the environmental effects of the proposed facility and mitigation measures proposed by the applicant shall be provided in the application as specified in the appropriate appendix.~~

~~(b) Upon acceptance of the application pursuant to Section 1709, the commission staff and all concerned environmental agencies shall review the application and assess whether the report's list of environmental impacts is complete and accurate, whether the mitigation plan is complete and effective, and whether additional or more effective mitigation measures and reasonably necessary, feasible, and available~~

~~(c) The applicant shall present information on environmental effects and mitigation and the staff and concerned agencies shall submit the results of their assessments at hearings held pursuant to Section 1748. The staff's assessment shall focus on those environmental matters not expected to be considered by other agencies, in order to ensure a complete assessment of significant environmental issues in the proceeding.~~

(a) The staff shall prepare an environmental assessment of the proposed site and related facilities. Staff's assessment is the **Energy Commission's independent report** that describes and analyzes the significant environmental effects of a project and discusses ways to mitigate or avoid the effects. The assessment also evaluates the safety and reliability of a project. In developing staff's assessment, staff may rely on information submitted by parties, other public agencies, members of the public, experts in the field as well as any other information obtained through staff's independent research and investigation. **The environmental assessment that includes responses to public comments is a Final Staff Assessment and shall be filed according to a schedule set by the presiding member; if there is no applicable schedule, the Final Staff Assessment shall be filed at least 14 days before the first evidentiary hearing.**

(b) Staff's environmental assessment shall be the document in which public comments are received and responded to by commission staff. The staff's environmental assessment shall be subject to at least **a 45 day public comment period** or such other time as required by the presiding member. Staff shall file responses to comments on significant environmental issues received during the noticed comment period that have not already been addressed. Responses may be provided to late comments. Staff's environmental assessment may be one document or may be published as multiple documents with different publishing dates. Project changes may necessitate the publishing of additional environmental assessments with additional comment and response to comment periods.

**Comment [j44]:** More clarity on the role of staff, staff assessment process, specific deadlines for production of the Final Staff Assessment, clarify the timing of the evidentiary hearings in relation to publication of the staff assessment/final staff assessment.

**Comment [j45]:** Go back to 30 days.

**Comment [j46]:** Comment that the new proposed comment period eliminate four rounds of comments in the AFC process.

1) After close of the comment period, responses shall be incorporated into staff's environmental assessment as a revision or separate section published as a standalone document, creating a Final Staff Assessment of the proposed project.

**Comment [j47]:** 1742 is still unclear about the linear path for development of the staff assessment and for the siting process.

(c) Any governmental agency may adopt all or any part of a Final Staff Assessment, proposed commission decision, or final decision, as all or any part of an environmental analysis that CEQA requires that agency to conduct. It is the responsibility of the other agency to ensure that any such document meets the CEQA obligations of that agency.

**Comment [j48]:** Comment that only the final commission decision can be relied on. Proposed provision is inconsistent with CEQA. Another comment that the PMPD should be the CEQA document for use by other jurisdictions.

(d) In preparing the assessments, the staff shall give deference to the analyses and conclusions in any agency assessment described in section 1743.

Should also make clear that other agency must exercise its independent judgment when approving a project.

(e) The staff shall review the information provided by the applicant and other sources and assess the environmental and health effects of the applicant's proposal, the safety and reliability of the proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures.

What about PRC 25519:

(f) The staff assessment shall provide a description of all applicable federal, state, regional, and local laws, ordinances, regulations and standards and the project's compliance with them. In the case of noncompliance, the staff assessment shall provide a description of all staff communications with the agencies responsible for enforcing the laws, ordinances, regulations and standards, for which there is noncompliance, in an attempt to remove the noncompliance.

If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory program certified pursuant to Section 21080.5, any other public agency that must make a decision that is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.

(g) The staff assessment shall be written to inform the public and the commission of the environmental consequences of the proposal, and to assist the presiding member in preparing findings for the presiding member's proposed decision required by Section 1745. The staff assessment shall indicate the staff's positions on the environmental issues affecting a decision on the applicant's proposal.

**Comment [j49]:** Agree to change back

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code.  
Reference: Sections 21081 and 25519, Public Resources Code.

**Comment [j50]:** Comment that this language somehow eliminates the Commission responding to comments. This was not the intent. The intent was not to change the current practice of the Committee/Commission responding to questions/comments raised at evidentiary hearings either at time of the question or in the PMPD or Final Decision.

*Purpose and Rationale: During the original lessons learned workshop, staff received a number of comments about existing confusion regarding what document should public comments be submitted on and what type of response can be expected and when. Currently there is no comment period on any staff document and only a required comment period on the proposed decision. This leads to a number of issues which staff has attempted to address with new language and to combine sections 1742, 1742.5, while still maintaining their essence – thereby making the staff's responsibilities clearer and making the regulations easier to read and apply.*

*The proposed changes move the comment period from the PMPD to the Staff Assessment and establish a clear mechanism for staff to respond to comments on significant environmental issues. This will allow for earlier opportunity for comment and response potentially resulting in project changes. This will also allow the staff technical*

experts to respond to the comments of a technical nature, as opposed to the Committee, when such comments are on the PMPD. Once comments are responded to, they are attached to the Staff Assessment and the document becomes the Final Staff Assessment. This parallels the DEIR-FEIR process. Except for certain circumstances, the PMPD will not have a comment period.

While staff has proposed a new comment provision to generate discussion, staff encourages stakeholders to propose other possible comment and response to comment scenarios for the Staff Assessment and or PMPD that will improve on the current process by providing clarity as to the document to be commented on, the time period for comments and who will provide responses. Another consideration is to ensure a timely process that balances the need for comment and response with an end point in the process that is easily understood by the public.

In addition, 1742 and 1742.5 have been combined, making clear what has always been the case: that other agencies may use Commission documents as their own, as long as the document meets CEQA requirements.

Necessity: The new language is necessary to provides clarity as to the comment and response process and what documents other jurisdictions can use for their CEQA process.

#### **§ 1742.5. Environmental Review; Staff Responsibilities. [now in 1742]**

(a) ~~—The staff shall review the information provided by the applicant and other sources and assess the environmental effects of the applicant's proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures.~~

(b) ~~—The staff shall present the results of its environmental assessments in a report (or exhibit) to be offered as evidence at the hearings held under Section 1748.~~

(c) ~~—The staff report shall be written to inform interested persons and the commission of the environmental consequences of the proposal, and to assist the presiding member in preparing the presiding member's proposed decision required by Section 1749. The staff report shall indicate the staff's positions on the environmental issues affecting a decision on the applicant's proposal.~~

(d) ~~—The staff shall monitor the assessment of environmental factors by interested agencies and shall assist and supplement the agencies' assessment to ensure a complete consideration of significant environmental issues in the proceeding.~~

(e) ~~—The staff shall distribute a notice of availability of the staff report to all interested persons.~~

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25216.5, 25217(b) and 25519(c), Public Resources Code.

**§ 1743. Review of Safety and Reliability Factors; Staff and Agency Assessment.** [no changes]

**§ 1744. Review of Compliance with Applicable Laws.** [no changes]

**§ 1744.5. Air Quality Requirements; Determination of Compliance.** [no changes]

**~~§ 1745. Location of Hearings and Conferences.~~**

~~Hearings and formal conferences shall be held pursuant to Public Resources Code Section 25521.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25521, Public Resources Code.~~

**~~§ 1746. Prehearing Meetings; Purposes.~~**

~~Note: Authority cited: Sections 25216.5, 25218, 25539, Public Resources Code.  
Reference: Sections 25216.5, 25519, 25539, Public Resources Code.~~

**~~§ 1747. Final Staff Assessment.~~** [now in 1742 and covered by filing and service sections]

~~At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.~~

~~Note: Authority cited: Sections 25218(e), 25539 and 25541.5, Public Resources Code.  
Reference: Sections 21080.5, 25519(e), 25523, Public Resources Code.~~

**§ 1748 1744. Evidentiary Hearings; Purposes; Burden of Proof; Schedule for Filing and Service of Evidence**

(a) ~~No earlier than ninety 90 days after the acceptance of the application, the committee shall commence~~ presiding member may begin evidentiary hearings on the application.

(b) The hearings shall consider the topics listed in 1745.

~~No earlier than ninety (90) days after the acceptance of the application, the committee shall commence hearings on the application.~~

(a) ~~The hearings shall be used to identify significant adverse impacts of the proposal on the environment which were not identified in proceedings on the notice of intention and shall assess the feasibility of measures to mitigate the adverse impacts.~~

**Comment [j51]:** Number needs to be fixed.

**Comment [j52]:** There is a comment that the new language eliminates the rights to comment on the staff assessment.

RESPONSE: That was not the intent of changes to this provision which was thought to be a consolidation of the status quo requirements. New subsection (b) subsumed the other subsections.

**Comment [j53]:** Comment that it is not clear the purpose of the hearing since the FSA automatically comes into the record and parties cannot comment on the FSA because it is a final CEQA document.

RESPONSE: The FSA being entered into the record does not preclude parties from providing contrary information or asking staff questions about the content of the FSA or for the Committee from not adopting portions of the FSA.



The applicant's environmental information and staff and agency assessments required by Section 1742 shall be presented.

(b) ~~—The hearings shall consider whether the facilities can be constructed and operated safely and reliably and in compliance with applicable health and safety standards, and shall assess the need for and feasibility of modifications in the design, construction, or operation of the facility or any other condition necessary to assure safe and reliable operation of the facilities. The applicant's safety and reliability information and staff and agency assessments required by Section 1743 shall be presented.~~

(c) ~~—The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility. The applicant's proposed compliance measures and the staff and agency assessments required by Section 1744 shall be presented. The determination of compliance required by Section 1744.5 shall also be presented.~~

(c) Except where otherwise provided by law, the applicant ~~shall have~~ has the burden of ~~presenting~~ producing sufficient substantial evidence to support all the findings and conclusions required for certification of the site and related ~~facility.~~ facilities.

(d) The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.

(f) ~~—Any party to the application proceeding shall be provided a reasonable opportunity to move to strike portions of prior testimony taken during the notice proceeding. Such motion may be based on incorrectness, irrelevance, or changed circumstances.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25216.5 and 25521, Public Resources Code.

Purpose and Rationale: By including a complete list of the relevant issues in section 1745, the detail in existing subsections (a)-(c) can be eliminated.

Necessity: The changes are necessary to reduce redundancy with new sections.

#### **§ 1748.5. Environmental Review; Staff Responsibilities.**

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25519(c), Public Resources Code.

**§ 1749. 1745. Presiding Member's Proposed Decision; Distribution; Comment Period; Basis, Contents, Hearing.**

(a) ~~At the conclusion~~ After the end of the evidentiary hearings, the presiding member, in consultation with the other committee members shall ~~prepare~~ file a proposed decision on the application. ~~based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.~~

(b) ~~Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution.~~

(b) The presiding member's proposed decision shall:

(1) Be based on a consideration of the entire hearing record and contain:

(2) Environmental Factors:

(A) a description of potential significant environmental effects;

(B) an assessment of the feasibility of mitigation measures and a reasonable range of alternatives that could lessen or avoid the adverse effects; and

(C) if any significant effects are likely to remain even after the application of all feasible mitigation measures and alternatives, whether the benefits of the project outweigh the unavoidable adverse effects;

(3) Laws Ordinances Regulations, and Standards:

(A) a description of all applicable federal laws, ordinances, regulations and standards and an assessment of the project's compliance with them;

(B) a description of all applicable state, regional, and local laws, ordinances, regulations and standards, the project's compliance with them, and, in the case of noncompliance:

(i) a description of all staff communications with the agencies responsible for enforcing the laws, ordinances, regulations and standards for which there is noncompliance, in an attempt to remove the noncompliance; and

(ii) if the noncompliance cannot be eliminated, the assessments shall discuss whether the proposed project is required for public convenience and necessity and whether there are more prudent and feasible means of achieving such public convenience and necessity; and

**Comment [j54]:** Comment received: *These changes shift the focus of the decision making to the Commission staff and their analysis of the project.*

RESPONSE: Not clear why this is so. The subsections are elements in the Warren-Alquist Act required to be in the PMPD. The goal was to have all the elements in one place and serve as a check list to ensure all the elements are covered in the record.

(C) to the extent not already covered under subdivisions (1) or (2), and for sites in the Coastal Zones, San Francisco Bay Zones or the Suisun Marsh:

(i) a discussion of provisions to meet the objectives of the California Coastal Act, as may be specified in the applicable report submitted by the California Coastal Commission under section 30413(d); or to meet the requirements of objectives of the Bay Conservation and Development Act, as may be specified in the applicable report submitted by the Bay Conservation and Development Commission under section 66645 of the Government Code;

**Comment [j55]:** Comment that provisions don't accurately reflect the PRC.

(ii) if the provisions described in paragraph (i) would result in greater adverse effect on the environment or would be infeasible, an explanation of why; and

(ii) a statement of whether the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500;

(4) with respect to controlling population density in areas surrounding the proposed facilities, an assessment:

**Comment [j56]:** PRC 25528

(A) whether existing governmental land use restrictions are necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities that will ensure public health and safety;

(B) whether, in the case of a nuclear power plant, the area and population density criteria specified by the United States Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements; and

(C) whether the commission should require that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities in order to control population densities and to protect public health and safety.

(5) for sites in the coastal zone or any other area with recreational, scenic, or historic value, proposed conditions relating to land that should be acquired, established, and maintained by the applicant for public use and access;

**Comment [j57]:** Sections truncate the full language of 25529. Need to make conforming changes to section 1748.

(6) for sites along the coast or shoreline of any major body of water, proposed conditions on the extent to which the proposed facilities should be set back from the coast or shoreline to permit reasonable public use and to protect scenic and aesthetic values;

(7) for sites in state, regional, county or city parks; wilderness, scenic, or natural reserves; areas for wildlife protection, recreation or historic preservation; natural preservation areas in existence as of January 7, 1975; or estuaries in an essentially natural and undeveloped state: an analysis of whether the facilities will be consistent with the primary land use of the area, and of whether the approval of the public agency

having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500.

(8) where a nuclear powered facility is proposed, an analysis of the factors in Public Resources Code sections 25524.1 and 25524.2;

(9) an analysis of the extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d);

(10) if the application is for a facility to be located on a potential multiple facility site, as determined under of the Public Resources Code section 25516.5, an analysis of the factors listed in Public Resources Code section 25524.5.

(11) a discussion of any public benefits from the project, including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits;

(12) provisions for restoring the site as necessary to protect the environment, if the commission does not certify the project; and.

(13) A recommendation as to whether the proposed site and related facilities should be certified, and if so under what conditions; and

(14) Engineering Assessment;

(15) Reliability Assessment;

(16) Any other relevant matter identified by the presiding member.

(17) responses to all significant environmental points raised during the proceeding not already addressed; and

(18) reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision findings on each applicable fact, conclusions on each applicable legal determination, and an explanation of the connection between the evidence, the findings, the conclusions, and the determination to propose certification or non-certification

(c) If the PMPD contains significant new information, not included in the Final Staff Assessment subject to the comment period under section 1742(b), about a substantial adverse environmental effect, the presiding member shall set a period of at least 45 days for written comments on the PMPD for Committee consideration. For purposes of this section, significant new information is the same as defined under section 15088.5 of the CEQA guidelines.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25519(c), 25522 and 25523, Public Resources Code.

Comment [j58]: Propose no changes to PMPD comment period.

*Purpose and Rationale: By laying out the critical factors here, staff can conform the FSA to the required information in the PMPD, making the development of the PMPD easier and saving time. Paragraphs (1) – (11) in section 1745 are matters that the law – either the Warren-Alquist Act or CEQA – requires to be in the Commission’s decision on a power facility. (Some, of course, are applicable only in certain circumstances, such as facilities proposed in the Coastal Zone, or nuclear facilities). (1) Incorporates the basic requirements of CEQA, and (2) is the familiar “LAWS, ORDINANCES, REGULATIONS AND STANDARDS analysis required by sections 25523 and 25525 of the Warren-Alquist Act. The Staff Assessment should also cover each one of these matters in order to ensure that there is an adequate record on all of them. In the current regulations, these matters are scattered in several different sections (or do not appear at all).*

**Comment [j59]:** Comment on the comment that the FSA should not be a draft of the PMPD.

RESPONSE: The intent was not so much that the FSA is a draft of the PMPD but that section 1745 will help reduce the length of the staff assessment because it will be clear what core information is required and what other information, while interesting, is not necessary.

*The proposed language would eliminate the 30 day comment period on the PMPD because it has been moved to the Staff Assessment. Like the concept of re-circulation under CEQA, if the PMPD contains significant new information from the Staff Assessment which was commented on, then a comment period is provided on the PMPD.*

*Necessity: Provides a single section where all the elements the PMPD must consider can be found.*

#### **§ 1750. Proposed Decision.**

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5 and 25522, Public Resources Code.~~

#### **§ 1751. Presiding Member's Proposed Decision; Basis. [now in 1212 and 1745]**

~~(a) —The presiding member's proposed decision shall be based exclusively upon the hearing record, including the evidentiary record, of the proceedings on the application.~~

~~(b) —The presiding member's proposed decision shall contain reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25522, Public Resources Code.~~

#### **§ 1752. Presiding Member's Proposed Decision; Contents. [now in 1745]**

~~The presiding member's proposed decision shall contain the presiding member's recommendation on whether the application should be approved, and proposed findings and conclusions on each of the following:~~

~~(a) —The extent to which the proposed facilities are in compliance with:~~

~~(1) — Public health and safety standards, including any standards adopted by the commission;~~

~~(2) — Applicable air and water quality standards; and~~

~~(3) — Any other applicable local, regional, state, and federal standards, ordinances, regulations or laws.~~

~~(b) — Necessary modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated in order to:~~

~~(1) — Protect environmental quality;~~

~~(2) — Assure safe and reliable operation of the facility; and~~

~~(3) — Comply with applicable standards, ordinances, regulations or laws.~~

~~(c) — Unless the commission finds that such provisions would result in greater adverse effect on the environment or would be infeasible, specific provisions to meet the objectives of the California Coastal Act, as may be specified in a report submitted by the California Coastal Commission pursuant to Section 30413(d) of the Public Resources Code, or to meet the requirements of Division 19 (commencing with § 29000) of the Public Resources Code or Title 7.2 (commencing with § 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code.~~

~~(d) — With respect to controlling population density in areas surrounding the proposed facilities, proposed findings on each of the following:~~

~~(1) — Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities which will ensure the public health and safety;~~

~~(2) — Whether, in the case of a nuclear generating facility, the area and population density criteria specified by the United States Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements; and~~

~~(3) — Whether the commission should require as a condition of certification that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities in order to control population densities and to protect public health and safety.~~

~~(e) — With respect to any facility to be located in the coastal zone or any other area with recreational, scenic, or historic value, proposed findings and conditions~~

relating to the area that shall be acquired, established, and maintained by the applicant for public use and access; and with respect to any facility to be located along the coast or shoreline of any major body of water, proposed findings and conditions on the extent to which the proposed facility shall be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

(f) — With respect to any of the following areas:

(1) — State, regional, county or city parks;

(2) — Wilderness, scenic, or natural reserves;

(3) — Areas for wildlife protection, recreation or historic preservation;

(4) — Natural preservation areas in existence as of January 7, 1975;

(5) — Estuaries in an essentially natural and undeveloped state; Findings and conclusions on whether the facility will be consistent with the primary land use of the area; whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects; and whether the approval of the public agency having ownership or control of the land has been obtained.

(g) — With respect to any facility to be sited in a coastal zone location designated by the California Coastal Commission pursuant to Section 30413(b) of the Public Resources Code, or in a location designated by the Bay Conservation and Development Commission pursuant to subdivision (b) of Section 66645 of the Government Code, findings on whether the approval of the public agency having ownership or control of the land has been obtained, and findings of the California Coastal Commission or the BCD, respectively, on each of the following:

(1) — Whether the facility will be consistent with the primary land use of the area; and

(2) — Whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects;

(h) — Where a nuclear powered facility is proposed, findings on;

(1) — Whether and when the facility will require reprocessing of nuclear fuel rods or off-site storage of such fuel rods in order to provide continuous onsite fuel core reserve storage capacity; and

(2) — Whether and when facilities with adequate capacity to reprocess nuclear fuel rods, if such reprocessing is required, and facilities with adequate capacity to store such fuel, if such storage is approved by an authorized agency of the United States, are or will be in actual operation at the time the nuclear powered facility requires such reprocessing or storage.

~~(i) — Provisions for restoring the site as necessary to protect the environment, if the commission denies approval of the application.~~

~~(j) — Findings on the extent to which the applicant has complied with the recommended minimum standards of efficiency for operation of the facility, approved pursuant to Section 25402(d) of the Public Resources Code.~~

~~(k) — With respect to any facility which does not comply with an applicable state, local or regional standard, ordinance or law, findings and conclusions on whether the noncompliance can be corrected or eliminated; and if such noncompliance cannot be corrected, findings on both the following:~~

~~(1) — Whether the facility is required for public convenience and necessity; and~~

~~(2) — Whether there are no more prudent and feasible means of achieving such public convenience and necessity.~~

~~(l) — Any other findings and conclusions relevant to the commission's decision.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25523 and 25525-25529, Public Resources Code.~~

**~~§ 1752.3. Presiding Member's Proposed Decision; Air Quality Findings. [now in 1745]~~**

~~(a) — The presiding member's proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.~~

~~(b) — If the determination of compliance concludes that the facility will comply with all applicable air quality requirements, the commission shall include in its certification any and all feasible conditions necessary to ensure compliance. If the determination of compliance concludes that the proposed facility will not comply with all applicable air quality requirements, the commission shall direct its staff to meet and consult with the agency concerned to attempt to correct or eliminate the noncompliance.~~

~~(c) — If the noncompliance cannot be corrected or eliminated, the commission shall determine whether the facility is required for the public convenience and necessity and whether there are not more prudent and feasible means of achieving such public convenience and necessity. In such cases, the commission shall require compliance with all provisions and schedules required by the Clean Air Act and compliance with all applicable air quality requirements which in the judgment of the commission, can be met.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25523(d) and 25525, Public Resources Code.~~



**~~§ 1752.5. Presiding Member's Proposed Decision; CEQA Findings.~~ [now in 1745]**

~~The presiding member's proposed decision shall contain the committee's responses to significant environmental points raised during the application proceeding.~~

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

~~Reference: Sections 21080.1, 25523 and 25541.5, Public Resources Code.~~

**~~§ 1752.7. Presiding Member's Proposed Decision; Findings for a Multiple Facility Site.~~**

~~With respect to any application for a facility to be located on a potential multiple facility site, as determined pursuant to Section 25516.5 of the Public Resources Code, the presiding member shall make the findings specified in Public Resources Code Section 25524.5.~~

Purpose and Rationale: This section has never been used and is adequately covered by the statute.

Necessity: Removes unnecessary section of the regulations.

**~~§ 1753. Revised Presiding Member's Proposed Decision.~~ [covered in 1745(c)]**

~~After the conclusion of the comment period on the presiding member's proposed decision, the presiding member, in consultation with the other committee member, may prepare a revised proposed decision on the application. If a revised proposed decision is prepared, it shall be forwarded to the full commission and distributed to all parties, interested agencies, and to any person who requests a copy for a minimum 15-day comment period before consideration by the full commission.~~

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

~~Reference: Sections 25519(e), 25522 and 25523, Public Resources Code.~~

**~~§ 1754. 1747 Hearing on Presiding Member's Proposed Decision.~~ [no change except for section number]**

**~~§ 1755. 1748 Final Decision.~~**

(a) At the conclusion of the hearings under Section 1754 1747, the commission shall adopt a final written decision in conformity with **as prescribed by Public Resources Code section 25523.**

(b) The decision shall not certify any site and related facility ~~considered in the proceeding unless the commission's findings pursuant to subsections (e), (f), and (k) of Section 1752 are all in the affirmative.~~ finds that:

**Comment [j60]:** Question about why the change.

RESPONSE: Not intended to change the meaning of the section.

**Comment [j61]:** Rather than paraphrasing 25525, cite it.

(1) in all areas surrounding the proposed facility, existing governmental land use restrictions are sufficient to guarantee the maintenance of population levels and limits on land use development that will ensure the public health and safety;

(2) for a nuclear powerplant:

(A) the area and population density criteria specified by the United States Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements;

(B) if the powerplant will require reprocessing of nuclear fuel rods or off-site storage of nuclear fuel rods in order to provide continuous onsite fuel core reserve storage capacity: facilities with adequate capacity to reprocess nuclear fuel rods or with adequate capacity to store them, as applicable, have been approved by an authorized agency of the United States, and are or will be in actual operation at the time the powerplant requires such reprocessing or storage.

(3) with respect to state, regional, county, and city parks; wilderness, scenic, and natural reserves; areas for wildlife protection, recreation, and historic preservation; natural preservation areas in existence as of January 7, 1975; and estuaries in an essentially natural and undeveloped state: the facility will be consistent with the primary land use of the area, and the approval of the public agency having ownership or control of the land has been obtained;

(4) if the site or facility does not comply with an applicable state, local or regional laws, ordinances, regulations and standards: the facility is required for public convenience and necessity, and there are no more prudent and feasible means of achieving such public convenience and necessity;

(5) if the construction, operation, or shutdown and decommissioning of the powerplant will cause a significant environmental impact, either (A) or (B):

~~(c) — The commission shall not certify any site and related facilities for which one or more significant adverse environmental effects have been identified unless the commission makes both of the following findings:~~

~~(A) With~~

~~(i) with respect to matters within the authority of the commission: that changes or alterations have been required in, or incorporated into, the project which that mitigate or avoid the significant environmental effects; and identified in the proceeding.~~

~~(2ii) with respect to matters not within the commission's authority but within the authority of another agency: that changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency;~~

or

(B)

~~(d) If the commission cannot make both the findings required under subsection (c), then it may not certify the project unless it specifically finds both of the following:~~

~~(i) That specific economic, social, or other considerations make infeasible the all mitigation measures or project alternatives that would mitigate or avoid the significant environmental effects identified in the application proceeding; and~~

~~(ii) That the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 21080.1, 21081, 25216.3, 25523, 25525-25527, 25529 and 25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

Purpose and Rationale: The listed items match the requirements of the PMPD in the new 1745. The other new subsections come from PRC 25528 and original section 1752.

Necessity: The new language comports with other changes made to the PMPD.

#### **~~§ 1756. Schedule for Review of Applications.~~**

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25522, 25540.2 and 25540.6, Public Resources Code.~~

#### **~~§ 1757. Multiple-Facility Sites, Review Schedule.~~**

~~(a) Review of an application for an additional facility at a potential multiple facility site shall be conducted in conformity with Public Resources Code Section 25520.5.~~

~~(b) The commission shall commence public hearings no later than 60 days after acceptance of the application and conclude such hearings no later than 150 days after the acceptance.~~

~~(c) The commission shall issue its decision on the matters under reconsideration within 180 days from the acceptance of the application.~~

~~(d) Upon an affirmative decision pursuant to this section, the commission shall follow the procedures and schedules for review of the application as provided in this article and Article 1.~~

Comment [j62]: This should be restored.

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25520.5, Public Resources Code.~~

Purpose and Rationale: This section contains some but not all of the material in Public Resources Code section 25520.5, which makes it both incomplete and redundant (if one believes that regulations should not repeat what can be found in the statutes that they implement). Moreover, the Commission has never processed an AFC “for an additional facility at a potential multiple-facility site); indeed, it has never approved a Notice of Intention for a “potential multiple-facility site.” (See Public Resources Code section 25516.5.) Therefore, the entire section should be repealed.

Necessity: Removes a section of the regulation that does not provide a clear function.

**~~§ 1760. Environmental Impact Report.~~**

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 21100 and 25519(c), Public Resources Code.~~

**~~§ 1763. Exemption from the Notice of Intention Requirements for Cogeneration Facilities Greater Than 300 Megawatts.~~**

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Sections 25522 and 25540.6(a), Public Resources Code.~~

**~~§ 1764. Acceptance of Applications for Cogeneration Facilities Greater Than 300 Megawatts.~~**

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.  
Reference: Sections 25522 and 25540.6(a), Public Resources Code.~~

**~~§ 1765. Projects Exempted from Notice Requirements; Application Procedures.~~**

~~At the hearings specified in section 1748 on an application exempt from the notice requirements pursuant to Public Code section 25540.6, the parties shall present information on the feasibility of available site and facility alternatives to the applicant's proposal which substantially lessen the significant adverse impacts of the proposal on the environment. The presiding member shall use the determinations, findings, and conclusions available from any generic proceedings on the commercial availability of technologies to determine which alternatives merit consideration in the hearings, which require preliminary showings as to their commercial availability, and which require resolution of issues affecting their feasibility.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Section 25540.6, Public Resources Code.~~

*Purpose and Rationale: The analyses required by this section are already required – in every AFC proceeding – by CEQA. Therefore, the section is unnecessary and should be repealed.*

*Necessity: Removal of the language is necessary to eliminate a redundant provision.*

§ ~~1768~~, 1749. Notice of Decision; Filing with Resources Agency. [no change except for section number]