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STATE OF CALIFORNIA
California Energy Commission

In the Matter of:	
2014 Revisions: Title 20 Commission Process and Procedure Regulations	Docket No. 14-OII-01

ADDITIONAL COMMENTS OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON THE PROPOSED REVISIONS TO THE COMMISSION'S PROCESS AND PROCEDURE REGULATIONS, CALIFORNIA CODE OF REGULATIONS, TITLE 20

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On October 23, 2014, California Unions for Reliable Energy ("CURE") submitted comments on the Proposed Revisions to the Commission's Process and Procedure Regulations, California Code of Regulations, Title 20 ("Proposed Revisions"). We submit these additional comments on issues raised at the October 27, 2014 workshop on the Proposed Revisions.

§ 1711 Public Notice of Discussions Among Parties.

Section 1710(a) of the Commission's current regulations prohibits nonpublic discussions between Commission Staff and other parties to modify Staff's position on substantive issues. Section 1710(a) allows the exchange of information and discussion of procedural issues between Staff and other parties outside of the public forum. The Proposed Revisions do not include any substantive changes to section 1710(a) – just renumbering and minor non-substantive changes.

Section 1710(a) should remain substantively the same. Prohibiting private substantive communication with the Staff has been the rule and practice of the Commission for more than 30 years. In that time, the Commission has licensed hundreds of power plants. While applicants may view this rule as cumbersome, as a result of this rule, the Commission has produced better results with more informed decisions and increased environmental protection. Further, there is no indication that California's energy production has suffered from this rule. In short, there is no problem that needs fixing.

The Commission should continue to prohibit nonpublic discussions between Commission Staff and other parties to modify Staff's position on substantive issues. Discussions regarding substantive issues, such as environmental impacts or mitigation measures, that may result in modifications to Staff's position, should continue to take place at a properly noticed workshop where all parties and the public can participate. Also, information regarding substantive issues should continue to be made available to all parties to a proceeding at the same time.

With respect to the specific situation where a Native American tribe is a party, we cannot make a recommendation at this time. AB 52, which goes into effect next year, requires that CEQA lead agencies consult with tribes regarding tribal cultural resources. During consultation, certain confidentiality requirements apply. The requirements of AB 52 require more study before considering whether any substantive revisions to section 1710(a) of the Commission's regulations are required to implement AB 52.

§ 1742(c) Staff Assessment.

The Proposed Revisions include a new § 1742(c), which provides that "[a]ny 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." The Commission's purpose for including the new section is to clarify "what documents other jurisdictions can use for their CEQA process."

In our initial comments, we explained that a responsible agency may only rely on a document accompanied by the requisite CEQA findings by the agency decision maker. Thus, a responsible agency cannot rely on a Final Staff Assessment (a report that presents the results of staff's environmental assessments of a proposed project, which is offered as evidence at hearings) or a PMPD (one Commissioner's opinion which may be revised and which has not been approved, adopted or certified by the Commission). Rather, it is the Commission's Final Decision and associated findings adopted by the full Commission that will satisfy the responsible agency's obligations under CEQA.

Jane Luckhardt's November 17, 2014 Post Workshop Comments describe a situation where Sutter County relied on the Commission's decision to ***certify the environmental analysis*** in the PMPD for the Sutter Power Plant Project in order for the County to adopt a general plan amendment, zoning change and ferrying charge condition for the project. Then, once the project was consistent with the County's general plan, the Commission granted ***approval of a license*** to construct and operate the power plant.

The process that occurred for the Sutter Power Plant Project is correct and consistent with a responsible agency's obligations under CEQA. Sutter County relied on the Commission's final decision to certify the ***environmental analysis*** (i.e. adopt CEQA findings) contained in the PMPD. Importantly, it is this decision (to adopt CEQA findings) on which a responsible agency relies to satisfy CEQA -- not the Commission's issuance of a ***license*** to construct and operate.

Accordingly, the Proposed Revisions § 1742(c) should be modified to make clear that a responsible agency may only rely on the Commission's final decision to certify the environmental analysis that contains requisite CEQA findings, which may or may not include a decision to license a facility.

Thank you for the opportunity to provide additional comments on the Proposed Revisions to the Commission's Process and Procedure Regulations.

Respectfully submitted,

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Thank you for the opportunity to provide additional comments on the Proposed Revisions to the Commission's Process and Procedure Regulations.

Respectfully submitted,

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