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VIA E-FILING

Karen Douglas, Commissioner
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: **Comments on the 2015 Revised Draft Regulations**
Title 20 Commission Process and Procedure Regulations

Dear Commissioner Douglas:

Thank you for the opportunity to provide comments on the Commission's 2015 Revised Draft Regulations: Title 20 Sections 1000s, 1100s, 1200s and 1700s (TN 203509) ("**draft rules**"). The Commission has done a commendable job of incorporating stakeholder feedback on the 2014 Draft Regulations into the draft rules. The result is a document that positively addresses many of the areas of significant concern expressed by stakeholders in the previous round of comments. Overall, the Commission has done well in updating rules that need, or benefit from, revision and reorganization. We offer the following comments on the draft rules for the Commission's consideration.

All §§: Inconsistent Commission references throughout the existing and draft rules

Comment: The existing regulations and the draft rules refer to the Commission by multiple names. It is called the "Energy Commission", the "Commission", the "commission", and the "State Energy Resources Conservation and Development Commission." For clarity, we suggest a global change to the rules to consistently refer to the Commission by a single name.

§ 1201(b): Definition "Adjudicative Proceeding"

Comment: In response to a stakeholder suggestion, the Commission added a definition for the term "adjudicative proceeding". This new definition is derived from, but not identical to, the definition set forth in Government Code § 11405.20, which provides general definitions for administrative adjudication. Government Code § 11405.20 defines an adjudicative proceeding as "an evidentiary **hearing** for determination of facts pursuant to which an agency formulates and issues a decision." In the draft rule, an adjudicative proceeding is "an evidentiary **process**

for determination of facts pursuant to which the commission makes findings and issues a decision." The term "process" is vague and could open the door to proceedings inconsistent with due process. We propose the use of the term "hearing" in place of the term "process."

§ 1201(j-z): Numbering error

Comment: There is no subsection i. We propose renumbering subsections j-z.

§ 1201(q): Definition "Party"

Comment: When a project owner petitions the Commission to amend a licensed project, it acts as a petitioner. A petitioner is a party. Accordingly, we suggest adding "petitioner" to the definition of "party."

§ 1202(b): Right of Any Person to Comment

Comment: As written, this section might suggest that the authorization to make written comments comes from section 1208. Section 1208, however, sets forth the process for filing documents with the Docket Unit. We suggest changing the phrase "pursuant to section 1208" to "by following the procedure set forth in section 1208".

§ 1210: Adjudicative Proceedings

Comment: When commenting on the 2014 Draft Regulations, the stakeholder Independent Energy Producers Association expressed concern about the use of informal hearing procedures in power plant siting cases. The stakeholder asked that language be added to Section 1210 which, consistent with Government Code § 11445.30, would preserve the right of parties to object to informal hearing procedures and that any such objection shall be resolved in favor of the applicant. We think the stakeholder's suggestion is reasonable and prudent. We urge the Commission to adopt the suggestion by incorporating language that clearly indicates the right to object to the use of informal hearing procedures and expressly states that the objection is to be resolved in favor of the applicant.

§ 1211.5: Motions

Comment: For clarity, we suggest changing the word "parties" to the defined term "party".

Comment: We request clarification on whether the Commission intends to use the word "or" or "of" in the following phrase: "if the presiding member does not rule within 30 days or the time prescribed, the motion is deemed denied." The meaning of the sentence is altered substantially depending on which is the intended word. If "or" is intended, we suggest a comma be inserted after the phrase "within 30 days."

§ 1211.7: Intervenors

Comment: We suggest adding a new subsection, consistent with Government Code § 11440.50(c), that allows the presiding member to place subsequent limits, including revocation

of intervenor status, on the scope of participation of an intervenor that fails to participate in the proceedings in a timely and meaningful manner.

§ 1231(b): Request for Investigation; Filing with the Commission

Comment: Recognizing that an individual requesting investigation might not be in a position to know "the name, address, email and telephone number of the [alleged violator]" we suggest replacing that data requirement with the phrase "identifying information of the person or entity." If the individual does not provide sufficient identifying information, the executive director is free, under § 1232(a)(9), to reject the request as incomplete.

§ 1232(a): Request for Investigation; Commission Response

Comment: We suggest deleting the word "complete" from the phrase "Within 30 days of filing a complete request, the executive director shall provide a written response. . ." The use of the word "complete" is unnecessary because one of the actions the executive director is authorized to take within the thirty-day period is to reject the request as incomplete.

Comment: Add new subsection (b) "If the executive director determines that the request for investigation is meritless, the request for investigation shall be rejected."

§ 1232.5(a): Request for Investigation; Appeal

Comment: We suggest revising this section to require the executive director to send a final action summary to the individual or entity that filed the request for investigation. For example, if the executive director initially indicated that he or she would conduct further investigation in his or her written response, the requestor may never know what became of the request even though it subsequently grew into a cease-and-desist letter and a settlement with the violator. We would also suggest expanding the scope of appeal to cover dismissal or rejection for any reason (not just lack of jurisdiction or insufficient evidence).

§ 1711(a): Public Notice of Discussions Among Parties

Comment: We suggest renumbering as subsection (a) is the only subsection remaining. There is no need to break this section into subsections.

Comment: Staff is an independent party in power plant siting proceedings. Their role, like the role of the applicant and the role of intervenors, is to inform the siting committee so that the committee can make findings and issue a decision on the application. The Staff has no decision-making authority. Therefore, there should be no limitation on discussions between staff and other parties. In the same way one intervenor might encourage another intervenor to adopt its position on visual resources, it is entirely appropriate for the staff to have substantive discussions with other parties.

§ 1714(d): Distribution of Copies to Public Agencies: Request for Comments

Comment: This provision is in need of clarification. The phrase "to participate in consultations with the Energy Commission" is ambiguous. Is it expected that those

consultations will take place with Staff, the siting committee, or the Commissioners? Do those consultations exempt tribal governments from the ex parte communications prohibitions? What level of consultation with tribal governments will occur?

§ 1742(a): Staff Assessment

Comment: For clarity, we suggest changing the phrase "Staff's final assessment is the Energy Commission staff's independent report" to "Staff's final assessment is the Staff's independent report." Revising the language reinforces the fact that Staff is an independent party in the proceeding. "Staff" is a defined term in the regulations, so there is no risk of confusion by consistently referring to the Energy Commission's staff as "Staff".

Comment: The revisions in the draft rules now require every project to go through both a preliminary staff assessment and a final staff assessment. While a majority of power plant siting projects require both a preliminary and a final staff assessment (some even split the staff assessment into multiple parts), certain projects might be simple enough that a single staff assessment should suffice. Requiring both a preliminary and a final staff assessment on such projects only serves to lengthen the period of review and does so without good reason. We recommend the addition of a sentence authorizing the Presiding Member of the Siting Committee to waive the requirement of a preliminary staff assessment where the Presiding Member concludes a preliminary staff assessment would not add significantly to the quality of the Staff's review process nor hinder public involvement.

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