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2015 DRAFT REGULATIONS

Initial Statement of Reasons



CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

APRIL 7, 2015

INITIAL STATEMENT OF REASONS

PROPOSED AMENDMENTS TO California Code of Regulations, Title 20, Sections 1000, 1100, 1200, 1600, 1700 and 2000

CALIFORNIA ENERGY COMMISSION Docket Number 15-OIR-01

April 7, 2015

Introduction

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the California Energy Commission’s proposed amendments to its regulations relating to commission process and procedures. The changes encompass primarily sections in the 1200s and 1700s of Title 20 California Code of Regulations, and address the following: implementing electronic document management to correspond with technology changes; consolidating the components of adjudicatory proceedings; developing a new investigations and complaint process; clarifying the record and basis of decision in adjudicatory proceedings; establishing clearer procedures regarding public comment and response on environmental assessments; and other changes designed to streamline and clarify the commission’s internal processes and procedures, consistent with the commission’s certified regulatory program for the licensing of thermal power plants. Each of these proposed changes are discussed in Appendix A.

The proposed language changes arise out of a multifaceted effort by commission staff to engage stakeholders to understand barriers to efficient simplified operations, effective public engagement and to improve the processes and procedures that govern commission proceedings.

A. SCOPE OF THIS RULEMAKING, PROBLEM THE AGENCY INTENDS TO ADDRESS, AND ANTICIPATED BENEFITS (GOV. CODE SECTION 11346.2(b) (1))

This rulemaking encompasses the portions of the commission’s Title 20 regulations that primarily relate to how the commission performs its duties. Examples include the filing of electronic documents, the management of proceedings, the creation of a record, the use of evidence, the noticing of public workshops and hearings, and the handling of public comments.

Over the last few years commission staff critically reviewed the regulations and engaged stakeholders to determine what problem areas could be identified within the current regulations and what language changes could be developed to address concerns. After extensive review and discussion, the following key changes were made to ensure efficiency, functionality and fairness of commission process and procedures:

- 1) To improve clarity and readability, headings were added and related sections that were once spread between the 1200s and 1700s were consolidated. The provisions that apply to adjudicatory proceedings have been grouped together with a clear heading to allow a reader to easily find the provisions applicable to adjudicatory proceedings.
- 2) The updated regulations reflect the development and use of electronic filing and document management systems and the changing role of dockets to manage these systems.
- 3) Repealing the current complaint and request for investigation provisions, which have proven difficult to implement in practice and lacked appropriate flexibility to resolve issues. The new investigation and complaint process provides a clear structure on how requests are treated. Most importantly, the new language clearly places enforcement with the agency and not the person filing the claim.
- 4) In power plant licensing proceedings, stakeholders have requested refinements in how public comments on environmental documents and responses to those comments are handled. New language establishes a clear comment period on the Staff Assessment, with a clear process for responding to comments.
- 5) For adjudicatory proceedings, changes were also made to clarify rights of parties, the composition of the hearing record, and what can be used as the basis of the decision. An additional refinement is to allow public comment to support a finding in certain limited circumstances upon notice to the parties.
- 6) A single noticing section was developed so the requirements for noticing a public event are contained in one section that can be cross-referenced.

7) Other changes include language refinements for greater clarity, and the consolidation of provisions allowing for the elimination of unnecessary text.

B. THE SPECIFIC PURPOSE, RATIONALE, AND NECESSITY OF EACH SECTION OF THE PROPOSED AMENDMENTS (GOV. CODE SECTIONS 11346.2(b) (1) AND 11349(a))

See Appendix A for text changes in underline and strikethrough format and for explanations of the purpose, rationale and necessity for the proposed amendments.

C. ECONOMIC IMPACT ANALYSIS/ASSESSMENT OR STANDARDIZED REGULATORY IMPACT ANALYSIS (GOV. CODE SECTION 11346.3(b))

Based on the procedural and clarifying nature of the proposed changes, no additional costs or economic or fiscal impacts have been identified or are anticipated. The proposed changes improve internal process and reorganize the structure of the commission's process and procedure provisions but do not change any obligations on those conducting business with the commission. The proposed changes also do not impose any additional fiscal costs on local or state agencies.

(A) The creation or elimination of jobs within the state.

There is no information in the record and staff is unaware of any information or reason why the proposed changes would have any impact on jobs in California. The changes are process and procedural in nature, and are specific to commission activities and proceedings.

(B) The creation of new businesses or the elimination of existing businesses within the state.

There is no information in the record and staff is unaware of any information or reason why the proposed changes would have any impact on the creation or elimination of businesses in California. The changes are process and procedural in nature, and are specific to commission activities and proceedings.

(C) The expansion of businesses currently doing business within the state.

There is no information in the record and staff is unaware of any information or reason why the proposed changes would have any impact on the expansion of

businesses in California. The changes are process and procedural in nature, and are specific to commission activities and proceedings.

- (D) **The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.**

The proposed regulations add efficiency and functionality to the commission's processes and proceedings, but do not impact the health and welfare or worker safety of California residents or the state's environment.

D. TECHNICAL, THEORETICAL, AND EMPIRICAL STUDIES, REPORTS, AND SIMILAR DOCUMENTS RELIED UPON (GOV. CODE SECTION 11346.2(b)(3))

No studies or reports were relied upon for the development of the proposed regulatory language, and no studies or reports were submitted to the commission by any interested stakeholder.

E. CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS (GOV. CODE SECTIONS 11346.2(b)(5)(A-B))

In developing the proposed language, commission staff considered different iterations of various provisions from a variety of sources. The following sections of Title 20 were subject to considerable drafting efforts: 1203, 1208, 1210, 1211, 1212, 1230-1234, 1711 and 1742. In no case did any of the sections or suggested alternative language impact small businesses.

F. MANDATE OF SPECIFIC TECHNOLOGY (GOV. CODE SECTIONS 11340.1(a); 11346.2(b)(5))

The proposed language does not mandate any specific technology or relate to technology beyond updating the provisions on filing and serving to comport with the commission's electronic e-filing system.

**G. FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR
OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE
IMPACT ON BUSINESS (GOV. CODE SECTION
11346.2(B)(5))**

Staff is unaware of any evidence or other information that indicates the proposed language changes impose any adverse impacts on business. Based on the procedural and clarifying nature of the proposed changes, no additional costs or economic or fiscal impacts have been identified or are anticipated. The proposed changes improve internal process and reorganize the structure of the commission's process and procedure provisions but do not change any obligations on those conducting business with the commission. The proposed changes also do not impose any additional costs on business.

**H. DUPLICATION OR CONFLICTS WITH FEDERAL
REGULATIONS (GOV. CODE SECTION 11346.2(B)(6))**

The proposed changes to the state regulations do not duplicate or conflict with federal regulations.