

## DOCKETED

<b>Docket Number:</b>	15-OII-01
<b>Project Title:</b>	Siting Compliance Process Review and Improvement Proceeding
<b>TN #:</b>	206594
<b>Document Title:</b>	Post-Scoping Workshop Comments on Potential Changes to CEC's Siting Compliance Process and Procedure Regulations
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	Stoel Rives LLP/Melissa A. Foster
<b>Submitter Role:</b>	Other Interested Person
<b>Submission Date:</b>	11/12/2015 10:04:03 AM
<b>Docketed Date:</b>	11/12/2015

*Comment Received From: Melissa A. Foster*

*Submitted On: 11/12/2015*

*Docket Number: 15-OII-01*

**Post-Scoping Workshop Comments on Potential Changes to CEC's Siting Compliance Process and Procedure Regulations**

*Additional submitted attachment is included below.*



500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

November 12, 2015

MELISSA A. FOSTER  
KRISTEN T. CASTAÑOS  
*Direct (916) 447-0700*

**VIA ELECTRONIC FILING**

The Honorable Karen Douglas, Siting Lead Commissioner  
California Energy Commission  
Docket No. 15-OII-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814

**Re: Post-Scoping Workshop Comments on Potential Changes to the Energy  
Commission's Siting Compliance Process and Procedure Regulations  
Docket No. 15-OII-01**

Dear Commissioner Douglas:

Stoel Rives LLP attended the Scoping Workshop on Potential Changes to the Commission's Siting Compliance Process and Procedure Regulations (Docket No. 15-OI-01) on October 23, 2015. Thereafter, we received your October 26, 2015 request for stakeholder input related thereto. To that end, we provide these initial comments.

We want to express our appreciation to Mr. Gregg Wheatland for his comments during the October 23rd workshop. We generally agree with the majority of Mr. Wheatland's comments. Here, however, we provide a few specific comments, which fall into only a few of the categories presented in the October 26th request for post-scoping workshop comments.<sup>1</sup>

As a general comment, we support the idea of reducing the number of requests for modification and time to process such modifications. In order to do so, however, the proposed regulations will need to address several key issues, including, but not limited to the following:

- Provide clear definitions as to what modifications require 1) Staff approval, 2) Staff analysis and approval, or 3) Staff analysis and recommendations to the full Commission for approval.

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<sup>1</sup> The October 26th request for stakeholder input requested comments on seven different topics. At this time, without seeing proposed draft changes to the regulations, we have comments only on those topics identified herein.



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- Provide clear guidelines as to what constitutes a “valid” objection from a project intervenor or member of the public to a Staff determination on a petition for modification.
- Identify clear timelines for processing petitions, based on the type of petition submitted (see first bullet point).
- Identify categories for modifications that do not require a petition for modification.

By defining when a petition for modification is required, project owners will be able to depend on the type of process and the timeframe to complete such process, whether a substantial modification or a minor change is requested.

In addition to the above clear definitions, it is important to identify criteria regarding what constitutes a “valid” objection to a Staff Determination. Currently, Title 20, California Code of Regulations, section 1769(a)(3) states that if a person objects to a Staff determination, the petition must be processed as a formal amendment to the decision and must be approved by the full Commission at a noticed business meeting or hearing. Because any objection to a Staff determination requires that a petition be processed as a formal amendment, even the most harmless or minor comment adds unnecessary delay to a modification request that may be very minor. Clear criteria defining a valid objection will avoid these unnecessary delays.

Providing greater clarity on the issues identified in the above bulleted list will automatically allow for greater Staff and Compliance Project Manager (CPM) flexibility to approve project changes where appropriate. In turn, this flexibility will shorten the time to process a petition, especially when such modifications are particularly minor. To that end, we support a process that would allow the CPM to make determinations based on the type of project modification sought. As Mr. Wheatland suggested during the workshop, drafting regulations identifying a list of modifications that would be exempt from the modification request process currently set forth in Title 20, California Code of Regulations, section 1769(a) could provide the clarity needed.

Lastly, we appreciate that Title 20, California Code of Regulations, section 1770(d) allows Staff flexibility to modify verification provisions as necessary to enforce the conditions of certification without requesting an amendment to the decision and request that, at a minimum, such flexibility remain in the proposed draft revised regulations when issued for public review.



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In closing, we thank you for the opportunity to provide these comments and look forward to participating in any future workshops or proceedings related to these issues.

Respectfully submitted,

Melissa A. Foster

Kristen T. Castaños