

DOCKETED

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**Staff Draft Proposed Revisions to Energy Commission Regulations
Pertaining to Amendments to Siting Decisions
California Code of Regulations
Title 20, §§ 1708, 1769, 1769.1 & 1769.2**

**For January 23, 2017
Staff Pre-Rulemaking Workshop**

Strike through is used to indicate deleted language and underline is used for new language.

§ 1708. Application, Compliance, and Reimbursement Fees.

~~(a) — A cashier's check or wire transfer in the amount required by subsections (c) and (d) shall accompany the filing of the notice.~~

(a) A project owner shall pay all fees specified in Public Resources section 25806. As necessary for calculating a fee, generating capacity shall be determined in the manner specified in section 2003(a). All fees paid are non-refundable, with the exception of the fee assess pursuant to Public resources code section 25806(e).

(b) "Processing the petition to amend," as used in Public Resources Code section 25806(e), includes the activities of staff, staff subcontractors, staff counsel representing staff, and the commission-designated Delegate Chief Building Official, performed in the management, review, analysis, and preparation for and participation in hearings, workshops, and commission Business Meetings related to the petition to amend, and associated expenses. These activities also include monitoring the implementation of the project owner's facility design changes, through the completion of construction on the amendment, if applicable, to ensure compliance with all conditions of certification and laws, ordinances, regulations and standards. The activities of commissioners and their advisors, and the activities of the commission hearing officers and other attorneys and commission staff advising the commissioners or the commission, are not considered part of processing the petition to amend.

(b~~c~~) Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.

~~(c) — A cashier's check or wire transfer for \$100,000 plus \$250 per megawatt (MW) of generating capacity shall accompany the filing of an Application for Certification (AFC). Generating capacity shall be determined in accordance with Section 2003(a).~~

~~(d) — The owner of each facility granted certification shall submit a cashier's check or wire transfer for \$15,000 annually. The first payment of the annual fee shall be due on the date the Commission adopts the final decision for the facility. Subsequent payments shall be paid on July 1 of each year in which the facility retains its certification.~~

~~(e) The fees specified in (c) and (d) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce.~~

~~(f) A project which use a renewable resource as its primary fuel or power source is exempt from the filing and compliance fees identified in (c) and (d).~~

~~(g) Fees paid pursuant to this section are non-refundable. Additional fees may be required in the event an amendment to the AFC increases the Gross generating capacity identified in (c).~~

§ 1769. Post Certification Amendments and Changes to the Commission Decision.

~~(a) Project Modifications~~ Change in Project Design, Operation, or Performance Requirements.

~~(1) After the final decision is effective under section 1720.4, the applicant project owner shall file with petition the commission a petition for approval of any modifications~~ change it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

~~(A) A complete description of the proposed modifications~~ change, including new language for any conditions of certification that will be affected;

~~(B) A discussion of the necessity for the proposed modifications;~~ change and

~~(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;~~

~~(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;~~

~~(E) A description of any new information or change in circumstances that necessitated the change;~~

~~(F) An analysis of the impacts the modification effects that the proposed changes to the project may have on the environment and proposed measures to mitigate any significant adverse impacts~~ environmental effects;

~~(G) A discussion~~ An analysis of the impact of how the modification on proposed changes would affect the facility's ability to comply project's compliance with applicable laws, ordinances, regulations, and standards;

~~(H) A discussion of how the modification affects~~ proposed change would affect the public;

~~(H)(G)~~ A list of property owners potentially affected by the modification; and A list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of any affected project linears and 1000 feet of the project site; and

~~(I)(H)~~ A discussion of the potential effect of the proposed changes on nearby property owners, residents, and the public and the parties in the application proceedings.

~~(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.~~

(2) Within 30 days after a petition is filed pursuant to subsection (a)(1), and the applicable fee is paid, staff shall review the petition to determine the extent of the proposed change and prepare a summary of the petition. The summary shall be concise and understandable, shall fairly describe the content of the petition using the applicant's own words whenever possible, and shall include a description of the commission's procedures concerning proceedings on the petition, as appropriate. As soon as practicable after its preparation, staff shall file the summary and provide a copy to each property owner described in subsection (a)(1)(G) and to each person on the post-certification mailing list.

(A) Staff may approve the change where staff determines:

(i) that there is no possibility that the change may have a significant effect on the environment;

(ii) that the change would not cause the project to fail to comply with any applicable laws, ordinances, regulations, or standards; and

(iii) that the change will not require a change to, or deletion of, a condition of certification adopted by the commission in the final decision or subsequent amendments.

(B) Staff, in consultation with the air pollution control district where the project is located, may approve any change to a condition of certification regarding air quality, provided:

(i) that the criteria in subsections (a)(2)(A)(i) and (ii) are met; and

(ii) that no daily, quarterly, annual or other emission limit will be increased as a result of the change.

(C) Staff shall file a statement summarizing its actions pursuant to subsections (a)(2)(A) or (B) and provide a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to a staff action taken pursuant to subsections (a)(2)(A) or (B) within 14 days of the filing of staff's statement. Any such objection must state the reasons that the change does not meet the criteria in this subsection.

(3) If staff determines that a ~~modification~~ change does not meet the criteria in subsection (a)(2), or if a person ~~objects to a staff determination~~ files an objection that a ~~modification does not meet the criteria in~~ complies with subsection (a)(2)(C), the petition must shall be processed as a formal amendment to the decision and must be ~~approved~~ considered by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it decides to or assign the matter for further hearing proceedings before the full commission or an assigned committee or hearing officer. The commission may approve such ~~modifications~~ change only if it can make the following findings:

(A) the findings specified in section 1748(b)(5), if applicable;

(B) that the changed project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;

~~(C) that the change will be beneficial to the public, applicant, or intervenors; and~~

~~(D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification.~~

~~(4) The staff shall compile and periodically publish a list of petitions filed under this section and their status. In any matter assigned for further proceedings pursuant to subsection (a)(3), the presiding member or, if there is none, the hearing officer, shall establish the schedule and process for the proceeding.~~

(5) The petitioner may withdraw its petition from consideration by the commission in the manner described for withdrawal of notices or applications in section 1709.8.

(b) Change in Ownership or Operational Control

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) a discussion of any significant ~~changes~~ change in the operational relationship between the owner and operator;

(B) a statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) a statement verified by the new owner or operator in the ~~same~~ manner as ~~provided~~ described in ~~Section~~ section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) ~~The commission may approve changes in ownership or operational control after fourteen days' notice. Staff may approve a change in ownership or operational control by filing a statement approving the change no sooner than 14 days after filing of the petition. Any person may file an objection to a staff approval within 14 days of the filing of staff's statement. Any such objection must state the grounds for the objection. If a person files such an objection, the petition shall be considered by the commission at a noticed business meeting or hearing.~~

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25523, 25532 and 25534, Public Resources Code.

§ 1769.1. Advance Review of Anticipated Project Changes.

(a) The owner of a project for which a final decision is effective pursuant to section 1720.4 may request a meeting with staff to review anticipated activities or changes related to the project, for purposes of receiving guidance and advice as to whether the anticipated activities or changes would constitute a change in project design, operation, or performance requirements for which a petition under section 1769 is necessary, and if so, the requirements for documentation. The request shall be made in writing, include a complete description of the proposed change, and be filed with the Docket Unit.

(b) No later than 14 days after a meeting is held pursuant to subsection (a), staff shall prepare and file a summary of the meeting, including any guidance or advice provided to the project owner as to whether the anticipated activities or changes that were the subject of the request require the filing of a petition to amend under section 1679.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25523, 25532, 25534, and 25806 Public Resources Code

1769.2. Staff Initiated Amendment.

(a) Staff may initiate an amendment to a final decision adopted under this chapter, provided that the proposed amendment meets each of the following requirements:

(1) the purpose of the proposed amendment is to update the decision to reconcile the conditions of certification with other legal requirements or changes to compliance protocols or methodologies, or to modify a condition that is moot or impossible;

(2) the amendment pertains to a condition of certification that has been effective for at least ten years;

(b) An amendment initiated by staff shall include the information specified in section 1769(a)(1), and be accompanied by a summary of the amendment consistent with the requirements of section 1769(a)(2). The amendment shall otherwise be processed in a manner consistent with section 1769, provided that the amendment shall be considered by the commission consistent with the requirements of section 1769(a)(3). The amendment shall not be approved by the commission unless the concurrence of the project owner with the proposed amendment is reflected in the record of the proceeding.

(c) An amendment initiated by staff pursuant to this section shall not be subject to section 25806(e) of the Public Resources Code.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25523, 25532, 25534, and 25806 Public Resources Code.