

DOCKETED

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Comments of Calpine Corporation

Additional submitted attachment is included below.



February 9, 2018

Christine Root, Compliance Office Manager
Siting, Transmission &
Environmental Protection Division
California Energy Commission
Dockets Unit, MS-4
Docket No. 17-SIT-1
Docket No. 17-SIT-2
1516 Ninth Street
Sacramento, CA 95814-5512

RE: 17-SIT-1 Compliance Incident Reporting and 17-SIT-2 Compliance Docketing Policy: Comments of Calpine Corporation

Dear Ms. Root:

On behalf of Calpine Corporation, including its subsidiaries (“Calpine”), we offer the following comments in response to the *Notice of Staff Workshop: Discussion of Compliance Incident Reporting for All Jurisdictional Plants and Discussion of Proposed Compliance Docketing Policy* (“Notice”; TN#: 221978). In the Notice, the California Energy Commission’s (“Commission’s”) Siting, Transmission and Environmental Protection (“STEP”) Division requested comments on two draft documents, the *Compliance Docketing Policy* (TN #: 221775) and the *Compliance Incident Reporting Policy* (TN #: 221787).¹ As set forth below, while Calpine is generally supportive of the intent behind each policy, revisions are necessary to safeguard sensitive information, clarify the proposed policies, and ease the administrative burdens of voluntarily participating in the proposed incident reporting policy.

I. COMPLIANCE DOCKETING POLICY

Calpine understands, appreciates, and supports the STEP Division’s initiative to make certain documents accessible online as part of ongoing efforts to increase transparency regarding the Commission’s compliance process. Transparency is an important objective. However, the docketing policy should be carefully crafted and implemented to avoid the potential for confusion regarding the Commission’s docketing processes, while also providing public access to the limited set of filings that are available for public review.

¹ Calpine is filing consolidated comments and will docket these comments in both applicable dockets.

Pursuant to the proposed *Compliance Docketing Policy*, Commission Staff proposes to docket three types of documents: “Periodic Reports”²; “Other Major Filings and Plans”³; and “Staff Generated Compliance Documents.”⁴ For the purpose of these comments, we use the term “Compliance Filing” to encompass all three types of documents.

These Compliance Filings should be contrasted with “Public Notices.” By the term Public Notices, we mean those certain documents that are intended to be available for public review and *comment*. In this category, we would include proposed amendments or revisions to the CEC Certificate, amendments to an air district permit, any changes to any federal permits (such as federal PSD permits), which by law have a public comment period, and Staff analyses and Commission decisions relating to proposed amendments.

Because the purpose and content of Compliance Filings are different from Public Notices, each of the two categories of documents should be docketed differently. For example, in contrast to Public Notices, Compliance Filings are informational in nature, and not intended for public review and comment. Compliance Filings can contain sensitive information ranging from personnel information to facility security and operations information. Wholesale docketing of Compliance Filings and their email distribution to a List Serve can potentially mislead the public into thinking that there is an opportunity to review and comment on routine Compliance Filings. Proactive email distribution of routine Compliance Filings may incorrectly suggest that the public has a right to “appeal” routine Compliance Filings. Broad dissemination of routine Compliance Filings may also invite baseless (and potentially frivolous) litigation over Compliance Filings.

Balancing transparency with the desire to ensure that the public is not confused about the informational nature of Compliance Filings is tantamount. One possible compromise would be to log Compliance Filings so that the document will appear on the Docket Log, but not be “live-linked,” i.e., available by clicking on a weblink on the Docket Unit’s page. Notice of the docketing of Compliance Filings would not be sent to the List Serve. Compliance Filings would remain available to the public via email request to either the Compliance Project Manager or the Docket Unit. The project owner then could review the requested document to see if the document, or a portion thereof, should be designated as “Confidential.”⁵ In contrast, Public

² Described as, “Periodic Reports” (Monthly Compliance Reports, Annual Compliance Reports, Periodic Compliance Reports and Quarterly Operating Report.” (TN #: 221775, p 1.)

³ Described as, “Major reports typically provided at the beginning of a project (during the pre-construction, construction, or preoperation phases) and may be updated when a change in circumstances warrants revising the plan.” (TN #: 221775, pp 1-2.)

⁴ Described as, “Reports and letters created by staff to help ensure the on-going compliance of a power plant facility”, including “Compliance Advice Letters” and “Periodic Operational Inspection Reports”. We note that these latter two terms are not defined by the Commission’s regulations. Further, we note that “Settlement Agreements/Announcements” are not necessarily Staff Generated documents.

⁵ Section 2505(a)(6) of the Commission’s regulations allow a project owner to seek confidential designation of a document after submission to the Commission.

Notice documents, which do include opportunities for public comment, would be docketed, live-linked, and distributed via email notification.

Email distribution of only Public Notices and not Compliance Filings would facilitate document control by providing TN Numbers for all documents while avoiding public confusion about which documents are available for review and comment. Calpine recommends that the proposed *Compliance Docketing Policy* be revised to provide for docketing Compliance Filings and Public Notices, but only email serving and live-linking Public Notices.

II. COMPLIANCE INCIDENT REPORTING POLICY

Calpine attended the January 25, 2018 Staff Workshop, and appreciates the extensive discussion and clarifications regarding the proposed *Compliance Incident Reporting Policy* provided by Staff. In particular, we appreciate the Commission Staff confirmation and affirmation that the intent of the policy is not to “amend” the Certificate of any project, that participation in the *Compliance Incident Reporting Policy* is voluntary, and that the Staff will not pursue any enforcement or other actions based on noncompliance with this voluntary policy.

Because the *Compliance Incident Reporting Policy* is voluntary, it cannot and does not create a legally enforceable obligation against any licensed project. To avoid any doubt, the STEP Division should confirm in writing (1) that the Compliance Incident Reporting policy is voluntary and (2) confirm that the Commission cannot and would not pursue a complaint or other enforcement action against any project for alleged “noncompliance” associated with this voluntary policy.

Calpine is also concerned with the administrative burden associated with the proposed *Compliance Incident Reporting Policy*, particularly as such extensive reporting may divert resources away from potential incident response, if required. The policy contains substantial reporting requirements: reports must be filed within one hour “after it is safe and feasible”, followed by a “detailed incident report” within six business days, followed by monthly status reports until the Compliance Project Manager (“CPM”) determines that such reporting is no longer necessary. Calpine agrees that the CPM should be notified of certain incidents, but does not agree that such extensive reporting is necessary, particularly where such reporting is duplicative of information that must be reported to other agencies. To ease the administrative burden and avoid the potential confusion arising from different reporting requirements from different agencies for the same incident, Calpine recommends that the policy be revised to be consistent with the safety-related incident reporting required by the California Public Utilities Commission’s General Order 167.⁶ Calpine’s proposed revisions are set forth in Attachment A.

⁶ http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

Calpine appreciates this opportunity to comment further on the *Compliance Docketing Policy* and the *Compliance Incident Reporting Policy*, and welcomes the opportunity to further discuss these comments with Commission Staff and other interested stakeholders.

ELLISON SCHNEIDER HARRIS & DONLAN LLP

A handwritten signature in blue ink that reads "Jeffery D. Harris". The signature is fluid and cursive, with the first name "Jeffery" being more prominent and the last name "Harris" following in a similar style.

Jeffery D. Harris
Attorneys for Calpine Corporation

ATTACHMENT A

PROPOSED REVISIONS TO PROPOSED COMPLIANCE INCIDENT REPORTING POLICY

[Calpine's proposed changes are indicated as follows: additions are in bold and underline, deletions are in bold and strike out.]

Compliance Incident Reporting

The Energy Commission needs timely and clear information on **certain** incidents that have occurred or are occurring at each jurisdictional power plant, ~~which result in an emergency response, a potential security breach, or a media inquiry.~~

The **Energy Commission requests that** project owners **s voluntarily** ~~shall~~ notify the CPM within **twenty-four one (1)** hours after it is safe and feasible, of any **safety-related** incident at the facility that results in any of the following:

- 1. Any incident that has resulted in the death to a person;**
- 2. The activation of onsite emergency fire suppression equipment to combat a fire; or any other use of this equipment outside of routine maintenance, readiness testing, or training;**
- ~~**3. The activation of onsite emergency fire suppression equipment to combat a fire;**~~
- ~~**3. Any chemical, gas or hazardous materials release that could result in potential health impacts to the surrounding population; or create an off-site odor issue; or release of particulates that could damage property or biota; or**~~
- 3. Notification to, or emergency response by, any federal, state or local agency regarding a fire, or materials release that could be considered hazardous based on composition and concentrations in the environment, on-site injury, or physical or cyber security incident;**
- 4. An on-site injury or illness requiring a report to Cal/OSHA or other regulatory agency or requiring overnight hospitalization;**
- 5. Significant negative media coverage (resulting in a news story or editorial from one media outlet with a circulation or audience of 50,000 or more persons) when the Project Owner has actual knowledge of the media coverage.**

Notification shall describe the circumstances, status, and expected duration of the incident. ~~If warranted, as soon as it is safe and feasible, the project owner shall implement the safe shutdown of any non-critical equipment and removal of any hazardous materials and waste that pose a threat to public health and safety and to environmental quality (also, see specific conditions~~

ATTACHMENT A

PROPOSED REVISIONS TO PROPOSED COMPLIANCE INCIDENT REPORTING POLICY

~~of certification for the technical areas of Hazardous Materials Management and Waste Management).~~

Within ~~six~~ ten business days of an incident, the Energy Commission requests that a project owner ~~shall~~ voluntarily submit to the CPM ~~an~~ detailed incident report, which includes, as appropriate, the following information:

1. A brief description of the incident, including its date, time, and location;
2. A description of the cause of the incident, or likely causes if it is still under investigation;
3. The location of any off-site impacts;
4. Description of any resultant impacts;
5. A description of emergency response actions associated with the incident;
6. Identification of responding agencies;
7. Identification of emergency notifications made to federal, state, and/or local agencies;
8. Identification of any hazardous materials released, if any, and an estimate of the quantity released; and
9. A description of any injuries, fatalities, or property damage (if more than \$50,000) that occurred as a result of the incident;
- ~~10. Fines or violations assessed by other agencies;~~
- ~~11. Name, phone number, and e-mail address of the appropriate facility contact person(s) having knowledge of the incident; and~~
- ~~12. Initial corrective actions to prevent a recurrence of the incident.~~

~~After the initial 6-day report, the project owner shall provide monthly status reports regarding the ongoing activities being taken to remedy the impacts of the incident. The CPM will notify the project owner when monthly reporting is no longer required. The CPM may provide written guidance outlining the actions necessary to conclude the reporting requirement.~~

For the purposes of this voluntary reporting, an email constitutes a sufficient writing, and no writing shall be expected if the reporting detracts from response to the incident or the operational needs of the project. The project owner and CPM shall will maintain all incident report records for the

ATTACHMENT A

PROPOSED REVISIONS TO PROPOSED COMPLIANCE INCIDENT REPORTING POLICY

operational life of the project, ~~including closure. After the submittal of the initial report for any incident, the project owner shall submit to the CPM copies of incident reports within 48 hours of a request. If the project owner requests that an incident notification or report be designated as a confidential record and not publicly disclosed, the project owner shall submit copies of notices or reports with an application for confidential designation in accordance with California Energy Commission regulations.~~