

## DOCKETED

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**Comments of California Unions for Reliable Energy on Proposed Changes to the Energy Commission's Siting Compliance Process**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

Siting Compliance Process Review and  
Improvement Proceeding

Docket No. 15-OII-01

**COMMENTS OF**  
**CALIFORNIA UNIONS FOR RELIABLE ENERGY**  
**ON PROPOSED CHANGES TO THE ENERGY COMMISSION'S SITING**  
**COMPLIANCE PROCESS**

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California Unions for Reliable Energy (“CURE”) appreciates the opportunity to provide comments on the proposed revisions to the Commission’s Siting Amendment Process and Procedure. The proposed revisions include several positive changes that we believe will promote public participation and help clarify existing regulations, such as those governing small power plant exemption proceedings, among others. We offer the following limited comments on the proposed revisions.

**§ 1769. Post Certification Petition for Changes in Project Design, Operation or Performance and Amendments to the Commission Decision**

- **§ 1769(a)(3)**

With respect to the proposed section 1769, we would first like to reiterate our support for the requirement in subsection (a)(3)(B) specifying that staff cannot unilaterally approve a change to a condition of certification where a daily, quarterly, annual or other emission limit will be increased as a result of the change. Despite past stakeholder comments to the contrary, this requirement serves as a critical check on the proposed staff approval process and is necessary to ensure adequate Commission and public review in instances where a change to a condition of certification is contemplated.

The proposed section 1769(a)(3)(B) represents a departure from the existing regulations requiring that any proposed modification that would require a change to a condition of certification be processed as a formal amendment and approved by the Commission.<sup>1</sup> While the staff approval process created by the proposed subsection (a)(3)(B) is somewhat limited, any rule that permits staff alone to change a Commission decision must be narrowly tailored to ensure compliance with obligations under the Warren-Alquist Act and the Commission’s implementing regulations. Importantly, the proposed section 1769(a)(3)(B) recognizes that an increase in emission limits may result in impacts that do not necessarily rise to the level of a “significant effect on the environment” or noncompliance with laws, ordinances, regulations, or standards but nonetheless implicate other issues the Commission must consider when certifying a facility. Proposed section (a)(3)(B) also ensures that members of the public have an opportunity to contribute to the decision-making process when a proposed change may affect their interests.

Under the Warren Alquist Act, the Commission is not limited to considering a facility’s significant environmental impacts when deciding on an Application for Certification. Rather, the scope of the Commission’s review is broad and includes consideration of how the project will affect the environment and public health and

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<sup>1</sup> 20 Cal. Code Regs. § 1769(a)(2).

safety.<sup>2</sup> Consider, for example, a situation where a proposed increase in emission limits would not cause the project to exceed applicable significance thresholds, but would allow the project to operate on a different schedule. Such a change stands to impact those members of the public that live or work near the facility. Accordingly, the Commission must consider such an impact when evaluating a proposed change despite the fact the resulting impact may not exceed defined thresholds of significance.

In sum, the distinction in proposed section 1769(a)(3)(B) between changes requiring an increase in emission limits and those that do not is critical because incremental changes that may not rise to the level of “significant” may nevertheless lead to environmental degradation, adverse impacts on public health and safety, or conflicts with the Commission’s original decision to certify the project. When a change to a condition of certification is proposed, especially where an increase in emissions limits will result, such changes must be reviewed by the Commission to determine whether the change is consistent with its original decision and legal obligations, and the public must have the opportunity to participate in that review process.

- **§ 1769(a)(2)**

Under the proposed section 1769(a)(2), within 30 days after a petition for a change in project design, operation, or performance is filed and the fee is paid, staff is required to prepare a summary of the petition. Section 1769(a)(2) requires that “[t]he summary shall be concise and understandable, shall describe the content of the petition . . . , and shall include a description of the commission’s procedures concerning proceedings on the petition, as appropriate.” As soon as practicable after staff has completed the summary, staff is required to provide a copy of the summary to each *property owner* “within 500 feet of any affected project linears and 1000 feet of the project site[.]”<sup>3</sup>

CURE supports this revision to the extent that it will better inform members of the public that own property in the immediate vicinity of projects that are proposing a change in operations. However, it is unclear why the staff summary of the petition and relevant Commission procedures must only be made available to property owners in the project’s vicinity. Notably, there is no requirement that the staff summary ever be filed or otherwise made available to the general public. Rather, in the event of a staff approved change, all that is required under section 1769(a)(3)(C) is that staff “file a statement summarizing its actions” *after* the approval has occurred.

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<sup>2</sup> See, e.g., Pub. Resources Code § 25523(a) (Commission decision must include “Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated *in order to protect environmental quality and assure public health and safety.*”) (Emphasis added.)

<sup>3</sup> Proposed § 1769(a)(1)(G).

In order to better inform all members of the public of proposed project changes, section 1769(a)(2) should, at a minimum, require that staff's summary of the petition and Commission procedures be filed in the relevant docket. This would notify members of the public that a change is proposed early in the process, and it would present the pertinent information in a concise and understandable form, thereby promoting greater public participation. Since section 1769(a)(2) already requires a staff summary be provided to neighboring property owners, the burden of making that summary available to the general public through filing is minimal.

#### **§ 1232.5. Request for Investigation; Review by the Chair.**

As currently proposed, the language of section 1232.5(a) providing the right to seek review by the chair “[i]f the executive director *declines to take action* on a request for investigation as provided for in section 1232(a)(1)” (emphasis added) is inconsistent with the language of section 1232(a). Under section 1232(a), upon receiving a request for investigation, the executive director is required to provide a written response to the requester within 30 days. Pursuant to the proposed section 1232(a)(1), the written response to a request may include a determination that “there has been no violation of a statute, regulation, order, program or decision adopted, administered or enforced by the commission, or that the action sought in the request for investigation cannot be taken.” Thus, while the executive director may ultimately choose not to take further action after making a determination and providing a written response, section 1232(a) requires the executive director to take action on all requests in the form of a written determination. In other words, “action” is always required.

The language of section 1232.5(a) should be revised to accurately reflect the language of section 1232(a) and proposed subsection (a)(1), similar to the current version of the regulation. This clarification will make clear that a requester may seek review of *any* determination made pursuant to proposed section 1232(a)(1). Moreover, it will eliminate any potential confusion created by the final clause of proposed section 1232(a)(1) regarding determinations “that the action sought in the request for investigation cannot be taken,” which may reasonably be read as the only situation the executive director “declines to take action.” The proposed regulations should use consistent language throughout and clearly communicate that chair review is available to the requester for all determinations pursuant to 1232(a)(1).

Thank you for the opportunity to provide comments on potential changes to the Commission's siting compliance and amendment process.

Respectfully submitted,

/s/

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