

DOCKETED

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Project Title:	Rulemaking to Amend Provisions of the Commission's Power Plant Licensing Process and General Procedures Under Title 20 of the California Code of Regulations
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2018 DRAFT REGULATIONS

Notice of Proposed Action

Docket 17-OIR-02



CALIFORNIA
ENERGY COMMISSION
Edmund G. Brown Jr., Governor

MAY 4, 2018

NOTICE OF PROPOSED ACTION

Proposed Amendments to Title 20 Siting and Procedure Regulations

California Energy Commission
Docket No. 17-OIR-02
May 4, 2018

The California Energy Commission (commission) proposes to update its siting and procedure regulations, located in the 1200, 1700, 1900 and 2300 sections of Title 20 of the California Code of Regulations. The updates address issues raised by staff and stakeholders regarding the commission's power plant amendment and general procedures. The proposed regulatory changes also cover the amendment processing fee as set forth in Public Resources Code section 25806(e). The rulemaking proceeding is being conducted under the authority of Public Resources Code sections 25210, 25213, and 25218(e), and of Title 20, California Code of Regulations section 1222(a).

PUBLIC HEARING (Gov. Code 11346.5(a)(1))

The commission will hold a public hearing for consideration and possible adoption of the 45-Day Language on the following date and time unless the commission decides to modify the Express Terms through issuance of 15-Day Language.

**Date: July 11, 2018
10 a.m.**

**California Energy Commission
1516 Ninth Street
First Floor, Art Rosenfeld Room (Hearing Room A)
Sacramento, California
(Wheelchair accessible)**

Audio for the July 11, 2018, adoption hearing will be broadcast over the internet. Information on agendas and how to use the commission's web system can be found at http://www.energy.ca.gov/business_meetings/.

If you have a disability and require assistance to participate in these hearings, please contact Poneh Jones at (916) 654-4425 or poneh.jones@energy.ca.gov at least 5 days in advance of the hearing.

At this hearing, any person may present oral or written statements or arguments relevant to the proposed action. Interested persons may also submit written comments (see below).

WRITTEN COMMENTS (Gov. Code 11346.5(a)(15))

Written comments are due by July 10, 2018. If you wish to provide comments on the draft regulatory language, please submit comments to the commission using the commission's e-commenting feature by going to the commission's TITLE 20 UPDATES, webpage <http://www.energy.ca.gov/title20/2017-OIR-02/> and click on the "Submit eComment" link. A full name, e-mail address, comment title, and either a comment or an attached document (.doc, .docx, or .pdf format) is mandatory. After a challenge-response test used by the system to ensure that responses are generated by a human user and not a computer, click on the "Agree & Submit Your Comment" button to submit the comment to the commission Dockets Unit.

Please note that written comments, attachments, and associated contact information included within the written comments and attachments, (e.g., your address, phone, email, etc.) become part of the viewable public record.

You are encouraged to use the electronic filing system, described above, to submit comments. If you are unable to submit electronically, a paper copy of your comments may be sent to:

Docket Unit
California Energy Commission
Docket No. 17-OIR-02
1516 9th Street, MS-4
Sacramento, CA 95814

Telephone: 916-654-5076

Or e-mailing them to: DOCKET@energy.ca.gov

PUBLIC ADVISER

The commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228, or send an email to publicadviser@energy.ca.gov.

STATUTORY AUTHORITY AND REFERENCE (Gov. Code 11346.5(a)(2))

The commission proposes to update its siting and procedure regulations under the authority of Public Resources Code sections 25210, 25213, and 25218(e), and of Title 20, California Code of Regulations section 1222(a). The proposed regulations would implement, interpret, or make specific provisions of the following laws:

- Public Resources Code sections 21061.1, 21080.1, 21080.5, 21081, 21082, 21092, 21100, 21105, 21108, 25205, 25210, 25211, 25213, 25214, 25216.3, 25216.5, 25217, 25218, 25223, 25321, 25362, 25502, 25505, 25506, 25506.5, 25507, 25509, 25519, 25520, 25521, 25522, 25523, 25525, 25526, 25527, 25529, 25532, 25534, 25534.1, 25538, 25539, 25540, 25540.1, 25540.2, 25540.3, 25541, 25541.5, 25802, 25806, 25900, 25967, 25983
- Government Code sections 11104.5, 11129, 11180, 11513, 11515
- 14 California Administration Code section 15085.5(i)
- Title 14, California Code of Regulations sections 15000, 15022, 15091, 15093, 15160, 15164, 15165, 15166

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW (Gov. Code 11346.5(a)(3))

Current regulations set forth in title 20 sections 1200-1209, provide for processes and procedures applicable to all commission proceedings such as power plant licensing, rulemakings, enforcement actions, policy report adoptions and other proceedings. Current regulations set forth in sections 1210-1216 provide additional processes and procedures specific to adjudicatory proceedings such as power plant licensing and enforcement actions. Current regulations contain provisions in the 1700s and 1900s covering the filing and review of applications for small power plant exemptions. Current regulations set forth in sections 2301-2309 implement the Environmental Quality Act of 1970. Currently section 1769 provides for the evaluation and approval of amendments to power plants license under the commission's jurisdiction. Current laws also provide for the imposition of fees related to the licensing and operations of power plants under the commission's jurisdiction.

This rulemaking addresses four distinct areas of the commission's title 20 regulations. The first part encompasses refinements to the regulatory language changes which were developed under the comprehensive 2015 process and procedure updates under docket 15-OIR-01. With the updated language now in practice, real world experience has resulted in the identification of text where language refinements will improve the regulations. Grammatical changes have also been made for consistency within the regulations.

The second part of the rulemaking restructures the regulations so that the small power plant exemption process is no longer partially spread between the 1700s and 1900s but contained within the 1900s. While there are no substantive changes, consolidating the process in one article will make following the small power plant process easier.

The third part of the rulemaking amends or repeals sections 2301 to 2309 which are obsolete and addressed through the commission's certified regulatory program or the

California Environmental Quality Act Guidelines, California Code of Regulations Title 14, Chapter 3.

The fourth part of this rulemaking amends sections 1708, 1769 and adds 1769.1. Section 1708 explains the statutory processing fee the commission charges power plant owners for the processing of amendments. The changes to 1769 and the addition of 1769.1 update how power plant facility amendments are reviewed and approved. The language provides more flexibility and efficiency for the review and approval of certain types of amendments that would not impact the environment. The language also creates a subset of amendments that commission staff and the project owner can jointly initiate.

The proposed language changes resulted from a multifaceted effort by commission staff to engage stakeholders, especially on the issues of power plant project amendments, to understand barriers to efficient amendment review and approval while ensuring public engagement. In response to stakeholder comments on the existing section 1769, commission staff performed a comprehensive review of the power plant amendment process and developed language that addresses identified issues.

The proposed revisions cover commission specific proceedings and processes. The commission has conducted a search of any similar regulations on this topic and has concluded that these regulations are not inconsistent or incompatible with existing state regulations.

The objective and anticipated benefits of the language changes is to achieve procedures that are functional, efficient and fair for both those who have regular business with the commission and for those who infrequently engage the commission. The refinements to the recently amended language will provide added clarity, the repeal of obsolete language covering environmental review will improve the readability of the regulations and remove inconsistencies, and finally the updates to the language covering how power plant amendments are processed and approved will provide a more streamlined process for facility changes that do not impact the environment.

DOCUMENTS INCORPORATED BY REFERENCE (1 CCR 20(c)(3))

There are no documents incorporated by reference.

FEDERAL LAW (Gov. Code 11346.2(c); 11346.9)

The proposed revisions are not mandated by federal law, and do not conflict with any federal law or other statutory requirements.

LOCAL MANDATE DETERMINATION (Gov. Code 11346.5(a)(5))

The proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACTS (Gov. Code 11346.5(a)(6))

- Cost to any local agency or school district requiring reimbursement pursuant to 17500 et seq.

Staff is unaware of any cost impacts that a local agency or school district would incur in compliance with the proposed action, as the changes are to process, procedural in nature, and are specific to commission activities and proceedings. No school district or local agency has informed the commission of any costs associated with the proposed regulatory language changes. No school district, and few local agencies, would be seeking a license, or amending a license, to build and operate a power plant under the commission's jurisdiction, so most of the proposed regulation changes have no applicability to either type of entity.

- Cost or savings to any state agency.

Staff is unaware of any cost impacts that a state agency would incur in compliance with changes to the process and procedure regulations. The proposed regulations do not change any existing requirement or impose a new requirement on any state agency. No state agency has informed the commission of any costs associated with the proposed regulatory language changes. While proposed changes to section 1708 relate to an existing fee for processing power plant amendments, which will help compensate the commission for the actual work performed to evaluate and process the amendment, the fee is imposed by statute (Public Resources Code section 25806(e)). The regulations themselves do not create the fee, set the initial filing amount or set the maximum that can be collected.

- Other non-discretionary cost or savings imposed upon local agencies.

Staff is unaware of any cost impacts that a local agency would incur in compliance with changes to the process and procedure regulations. The proposed regulations do not change any existing requirement or impose a new requirement on any local agency. No local agency has informed the commission of any costs associated with the proposed regulatory language changes.

- Cost or savings in federal funding to the state.

Staff is unaware of any cost or savings impacts on federal funding that would result from changes to its process and procedure regulations.

HOUSING COSTS (Gov. Code 11346.5(a)(12))

Staff is unaware of any costs impacts to housing from the proposed regulations which have no relation to the permitting, building or repair of housing.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (Gov. Code 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

Staff has made an initial determination that the revised regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (Gov. Code 11346.5(a)(10) and 11346.3(b))

Based on the procedural and clarifying nature of the proposed changes, no additional costs or economic impacts have been identified or are anticipated. While the proposed regulatory language in section 1708 covers an existing processing fee, the fee is imposed by statute on facility owners who are seeking amendments to their licenses (Public Resources Code section 25806(e)). Proposed section 1708 complements the statute by identifying the commission activities which fall within the reimbursable processing of the petition to amend work. The statute already sets the amount of deposit required; \$5000, the activity that is billable; actual cost of processing a petition to amend, and the maximum amount charged; \$750,000. The other proposed changes improve internal process, especially how power plant amendments are reviewed and approved.

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

There is no information in the record and staff is unaware of any 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 reason why the proposed changes would have any impact on the creation or elimination of businesses in California.

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

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

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

The proposed changes to the regulations attempt to improve the functionality of the commission's regulations and improve the process for the evaluation and approval of amendments to power plants. The proposed changes do not impact the health and welfare or worker safety of California residents or the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (Gov. Code 11346.5(a)(9))

Staff is unaware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While the proposed regulatory language covers an existing processing fee, the fee is imposed by statute on facility owners seeking to amend their license (Public Resources Code section 25806(e)). Proposed section 1708 complements the statute by identifying the commission activities which fall within the reimbursable processing of the petition to amend work. The statute already sets the amount of deposit required; \$5,000, the activity that is billable; actual cost of processing a petition to amend, and the maximum amount charged; \$750,000. The other proposed changes improve internal process, especially how power plant amendments are reviewed and approved or harmonize the general complaint and the Renewable Portfolio Standard complaint process.

BUSINESS REPORT (Gov. Code 11346.5(a)(11) and 11346.3(d))

The proposed changes would not require a report to be made or create new reporting requirements.

SMALL BUSINESS IMPACTS (1 CCR 4(a) and (b))

The proposed regulations do not affect small businesses for the same reasons the proposed regulations do not impose economic impacts on any businesses, school districts, local agencies and other state agencies. While the proposed regulatory language covers an existing processing fee, the fee is imposed by statute on facility owners seeking to amend their license (Public Resources Code section 25806(e)). Few small businesses own or operate power plants of the size licensed by the commission.

Proposed section 1708 complements the statute by identifying the commission activities which fall within the reimbursable processing of the petition to amend work. The statute already sets the amount of deposit required; \$5,000, the activity that is billable; actual cost of processing a petition to amend, the maximum amount charged; \$750,000. The other proposed changes improve internal process, especially how power plant amendments are reviewed and approved or harmonize the general complaint and the Renewable Portfolio Standard complaint process.

ALTERNATIVES STATEMENT (Gov. Code 11346.5(a)(13))

Prior to adopting the revised regulations, the commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be: more effective in carrying out the purpose for which the revisions are proposed, as effective and less burdensome to affected private persons than the proposed revisions, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The commission developed the proposed language in conjunction with stakeholder and public input which resulted in the incorporation of alternative or modified language. The proposed language achieves the clarity, functionality and fairness that underline the reason for updating the regulations. The proposed language does not impose any additional obligations or costs on private persons. While the proposed regulatory language covers an existing processing fee, the fee is imposed by statute on facility owners (Public Resources Code section 25806(e)). Proposed section 1708 complements the statute by identifying the commission activities which fall within the reimbursable processing of the petition to amend work. The statute already sets the amount of deposit required; \$5,000, the activity that is billable; actual cost of processing a petition to amend, the maximum amount charged; \$750,000. The other proposed changes improve internal process, especially how power plant amendments are reviewed and approved or harmonize the general complaint and the Renewable Portfolio Standard complaint process.

Staff is not currently aware of any alternatives that would be as effective as and less burdensome than the proposed modifications to the regulations. Interested persons are invited to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON (Gov. Code 11346.5(a)(14))

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations, should be directed to Jared Babula at (916) 651-1462 or jared.babula@energy.ca.gov.

The designated backup contact person is Galen Lemei who may be contacted at (916) 654-4873 or at galen.lemei@energy.ca.gov.

AVAILABILITY OF THE PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH THE PROPOSAL IS BASED (Gov. Code 11346.5(a)(16))

In order to obtain the proposed regulations (express terms), the commission's Initial Statement of Reasons for the proposed changes, and all documents relied upon by the

commission; please visit the commission's website at: <http://www.energy.ca.gov/title20/2017-OIR-02/> or contact Jared Babula at 916-651-1462 or by e-mail at jared.babula@energy.ca.gov.

In addition, the commission's Docket Office has all information upon which the proposed regulations are based. To obtain copies, please contact:

Docket Unit
California Energy Commission
Docket No. 17-OIR-02
1516 9th Street, MS-4
Sacramento, CA 95814
(916) 654-5076
DOCKET@energy.ca.gov

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from commissioners. Changes may also be considered if they improve the clarity or effectiveness of the regulations. If the commission considers changes to the proposed regulations, a full copy of the text will be available for review at least 15 days prior to the date on which the commission adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS (Gov. Code 11346.5(a)(19))

The commission will prepare a Final Statement of Reasons for the revisions, responding to all relevant comments made during the proceeding. The Final Statement of Reasons will be available at <http://www.energy.ca.gov/title20/2017-OIR-02/>, and may also be obtained from Jared Babula at 916-651-1462 or by email at jared.babula@energy.ca.gov.

INTERNET ACCESS (Gov. Code 11346.4(a) (6) and 11346.5(a)(20))

The commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, have been posted at <http://www.energy.ca.gov/title20/2017-OIR-02/>.