

| DOCKETED | |
|-------------------------|--|
| Docket Number: | 17-OIR-02 |
| 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 |
| TN #: | 226043 |
| Document Title: | Notice of Approval of Regulatory Action and Final Express Terms |
| Description: | N/A |
| Filer: | Chester Hong |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 12/7/2018 2:17:24 PM |
| Docketed Date: | 12/7/2018 |

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections: 1751, 1769.1, 1937, 1941,
1942, 2300

Amend sections: 1201, 1209, 1211.5, 1211.7,
1212, 1231, 1232, 1232.5,
1233.1, 1233.2, 1233.3,
1233.4, 1234, 1240, 1704,
1706, 1708, 1709, 1710,
1714, 1714.3, 1714.5,
1720.2, 1745.5, 1748, 1768
(renumbered to 1749),
1769, 1936, 1940, 1943,
1944, 1945, 1946, 2308
(renumbered to 2300.1)

Repeal sections: 2301, 2302, 2303, 2304,
2305, 2306, 2307, 2309

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2018-1019-03

OAL Matter Type: Regular (S)

This action updates and restructures regulations related to adjudicatory proceedings for power plant licensing and enforcement actions, filing and review of applications for small power plant exemptions, amendments to power plant licenses, and fees for power plant licensing and operations.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2019 pursuant to section 11343.4, subdivision (b)(3), of the Government Code.

Date: December 5, 2018


Eric Partington
Senior Attorney

For: Debra M. Cornez
Director

Original: Drew Bohan, Executive Director
Copy: Jared Babula

Express Terms

May 4, 2018

§ 1201. Definitions.

The following definitions shall apply unless otherwise indicated:

~~(e)~~ ~~“Application” means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.~~

~~(d)~~ “Areas of critical concern” means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.

~~(e)~~ “CEQA” means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.

~~(f)~~ “Comment” means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

~~(g)~~ “Docket Unit” means the office of the commission that receives, distributes, serves and stores all filed documents.

~~(h)~~ “Environmental documents” means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and overriding considerations, and the documentation prepared by the commission or its staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.

~~(i)~~ “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

~~(j)~~ “Hearing officer” means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting a proceeding.

(~~k~~j) "Intervenor" means any person who has been granted leave to intervene in an adjudicative proceeding, pursuant to these regulations.

(~~l~~k) "Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district.

(~~m~~l) "MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.

(~~n~~m) "MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.

(~~o~~n) "Party", applicable only in adjudicative proceedings, means any applicant, respondent, or intervenor, and depending on its role in the proceeding, the staff of the commission.

(~~p~~o) "Performance criteria" means performance goals for which the applicant proposes to design the facilities.

(~~q~~p) "Presiding member" means the chair of the commission or any member of the commission designated to preside over any proceeding.

(~~r~~q) "Related facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(~~s~~r) "Respondent" means any person named in a complaint, pursuant to Section 1233 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(~~t~~s) "Service list" means a list, created for each adjudicative proceeding, that includes all parties, all interested agencies, the presiding member, associate member, the hearing officer, the relevant staff of the commission (if not already a party) and other persons as deemed necessary by the presiding member.

(ut) "Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.

(vu) "Staff" means the staff of the commission.

(wv) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

(xw) "Witness" means any person who offers testimony in any proceeding before the commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21061.1, 25214, 25502, 25519, 25540, 25540.1, 25540.2 and 25541.5, Public Resources Code; and ~~Title 14, California Code of Regulations, Section 15364.~~

§ 1209. Notice of Public Events.

(a) Unless otherwise required by law or directed by the presiding member, all public events, such as workshops and hearings, in all proceedings shall be noticed at least 10 days before the event. Notice consists of sending the notice electronically to all persons on the appropriate commission listserv and applicable proceeding's service list.

(b) In addition, when the presiding member, the public adviser, or the executive director believes that a significant number of members of an affected community lack internet access or are otherwise unlikely to be exposed to notice provided under subdivision (a), the presiding member may order other methods of notice to be used, such as first class mail.

(c) The public adviser shall be consulted on the scheduling, location, and noticing of all commission public events, so as to promote full and adequate public participation.

(d) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date

ten days or more in the future, then notice shall also be provided as set forth in subdivision (a) and, if applicable, any additional methods of notice ordered pursuant to subdivision (b).

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code; and Section 11104.5, Government Code.

§ 1211.5. Motions.

(a) Any party may request the presiding member ~~or, where applicable, the commission,~~ to issue orders or rulings, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues. ~~All such requests shall, e~~Except as provided by subdivision (c) otherwise required by these regulations or otherwise allowed by the presiding member, all such requests shall be in the form of a written motion. Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions. Unless otherwise ordered by the presiding member, there shall be no replies to responses. The presiding member shall rule on the motion within ~~30~~24 days of its filing, or a later deadline established by the presiding member; if the presiding member does not rule within 30 days of the motion's filing, or the time prescribed, the motion is deemed denied.

(b) For a hearing noticed to take place at a meeting of the Energy Commission noticed pursuant to section 1103, written motions must be filed five days prior to the meeting date, unless otherwise provided by the presiding member.

(~~b~~c) Requests for action made during any hearing may be made orally to the presiding member and need not be in the form of a written motion. Rulings by the presiding member may be made orally. If the presiding member does not make a ruling on the motion by the end of the hearing, the motion is deemed denied.

(~~c~~) ~~A party to a proceeding, currently before the commission for consideration and identified on the commission's agenda, must file any related motion, requiring the commission to take some action, five days prior to the meeting date. Consideration of the motion is at the discretion of the presiding member.~~

Note: Authority cited: Sections 25210, 25216.5(a) and 25218(e), Public Resources Code. Reference: Sections 25213(a) and 25214, Public Resources Code.

§ 1211.7 Intervenor.

(a) Subject to the provisions of specific proceedings, any person may file a petition to intervene. The petition shall set forth the grounds for the intervention, the

position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, mailing address, e-mail address, and telephone number of the petitioner.

(b) A petition for intervention shall be filed no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding. If the time period between notice of the first evidentiary hearing and the hearing is less than 30 days, the notice shall ~~contain~~ set a the deadline for intervention of at least 10 days from the date of the notice.

(c) The presiding member may grant intervention and may impose reasonable conditions on an intervenor's participation, including, but not limited to, ordering intervenors with substantially similar interests to consolidate their participation or limiting an intervenor's participation to specific topics. An intervenor is a party to a proceeding.

(d) The presiding member may grant late petitions only on a showing of good cause by the petitioner. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without an order from the presiding member based upon a showing of good cause.

(e) Any ruling on a petition to intervene may be appealed by the petitioner, to the full commission within 10 days of the ruling. Failure to file a timely appeal will result in the presiding member's ~~denial~~ ruling becoming the final action on the matter.

(f) Any petitioner may withdraw from any proceeding by filing a notice to such effect.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1212. Rights of Parties, Record and Basis for Decision.

(a) Rights of Parties. Subject to the presiding member's authority to regulate a proceeding as prescribed in section 1210, and other rights identified in specific proceedings, each party shall have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.

(b) Hearing Record.

(1) The "hearing record", in an adjudicatory proceeding, ~~is all of the information the commission may consider in reaching a decision. The hearing record shall contain:~~

(A) all documents, ~~filed comments~~, materials, ~~oral statements~~, or testimony received into evidence by the committee or commission at a hearing;

(B) public comment, including comments from other government agencies, offered orally at a hearing, or written comments received into the record at a hearing;

(C) any materials or facts officially noticed by the committee or commission at a hearing; and

(D) all transcripts of evidentiary hearings; and

~~(D)~~ E for siting cases, subject to 1212(b)(3), staff's Final Staff Assessment and any timely filed supplemental assessments.

(2) Parties may move to exclude information from the hearing record ~~consideration by the commission~~ on the ground that it is not relevant, is duplicative of information already in the record, or on another basis. If the presiding member grants such a motion, the information shall be excluded from the hearing record. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency, and adequacy of the record.

(3) In a siting case, if a party requests a staff witness be present to sponsor specific portions of the Final Staff Assessment, or any supplemental assessments, and no witness is made available for questioning, the relevant portions of the staff assessment or supplemental assessments at issue shall be treated as comment and shall not be sufficient, in and of itself, to support a finding by the commission.

(c) Basis for and Contents of Decisions.

1) Decisions in adjudicative proceedings shall be based on the evidence in the hearing record, explain the basis for the decision, and shall include but need not be limited to all legally-required findings of fact and conclusions of law.

2) A finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or

opinions. ~~The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, to provide rebuttal evidence. The committee or commission shall give appropriate weight to information in the record as allowed by law.~~

3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

4) Public comments and briefs filed by parties in an adjudicative proceeding, as prescribed in section 1208, may be considered by the committee or commission, but shall not be sufficient in themselves to support a finding. The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, to provide rebuttal evidence.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code; and Section 11513, Government Code.

§ 1231. Request for Investigation; Filing with the Commission.

Any person may allege, in writing, a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. For a request to be acted on by the commission it must be submitted to the executive director, and include:

(a) the name, address, email and telephone number of the person filing the request;

(b) identifying information such as the name, address, email and telephone number of the person or entity allegedly violating the statute, regulation, order, program, or decision;

(c) a statement of the facts upon which the request is based and any evidence and witness statements demonstrating the existence of those facts;

(d) a statement indicating the statute, regulation, order, program, or decision that has been violated; and

(e) the names and addresses of any other individuals, entities, or organizations that are or are likely to have been affected by the violations; and

(f) a statement indicating if the person or entity requesting the investigation has attempted to resolve the issue with the person or entity alleged to have committed the violation.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1232. Request for Investigation; Commission Response.

(a) The executive director, in consultation with the chief counsel, shall direct staff to perform an evaluation of the request. Within 30 days of filing receipt of a complete request, the executive director shall provide a written response identifying the action the executive director intends to take and the basis for that action. Such action may include, but is not limited to:

(1) dismissing the request for lack of jurisdiction or insufficient evidence determining 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;

(2) initiating a complaint pursuant to section 1233 et seq.;

(3) conducting further investigation;

(4) sending a warning or cease and desist letter;

(5) proposing a settlement;

(6) referring the matter to the Attorney General's office;

(7) referring the matter to another federal, state or local agency with jurisdiction over the violation; or

(8) correcting or modifying prior staff action; or

~~(9) taking other appropriate action, including rejecting the request for being incomplete.~~

(b) The written response of the executive director and any final action summaries closing the matter shall be filed and sent to the person or entity that submitted the request.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1232.5. Request for Investigation; Appeal Review by the Chair.

(a) If the executive director makes a determination under section 1232(a)(1), dismisses a request for lack of jurisdiction or insufficient evidence, the requester may appeal the dismissal to the chair request that the chair review the executive director's determination. The request shall be made in writing and filed in accordance with section 1208 within 15 days of the date of the filing of the executive director's response. The appeal must be in writing, filed in accordance with section 1208, and must state the basis for challenging requesting review of the executive director's determination dismissal.

(b) The chair, within 45 days of the filing of the appeal receiving a request for review, shall issue a written order decision affirming or modifying the executive director's determination. The chair may also sustaining the determination, modifying it, overturning it, or referring refer the matter to a committee or the full commission for further evaluation. If the chair does not issue a written decision within 45 days, the request for review shall be deemed denied.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.1. Complaint; Service.

(a) The executive director of the commission may serve a complaint on may bring a complaint against any person or entity, alleging a violation of any statute, regulation, order, program, or decision adopted, administered, or enforced by the commission.

(b) The complaint shall be signed by the executive director or the executive director's chief deputy, and shall include:

(1) a statement of the facts upon which the complaint is based and any evidence to support the complaint;

(2) a statement indicating the statute, regulation, order, condition or decision upon which the complaint is based;

(3) the action or remedy being sought; and

(4) the authority under which the commission may take the action requested.

~~(b) The complaint shall be served on the respondent by personal service or certified mail, and shall inform the respondent that a hearing before the commission will be conducted to adjudicate the complaint. The respondent may waive the right to a hearing, in which case the commission need not conduct a hearing.~~

(c) The complaint shall be delivered to the chair for review in consultation with the chief counsel. If the complaint meets the requirements of subdivision (b), the chair shall cause a docket to be opened, and the complaint to be filed as specified in section 1208 and served on the respondent by personal service or certified mail. The respondent shall be informed that a hearing before the commission will be conducted to adjudicate the complaint unless the respondent waives the right to a hearing.

~~(e) Any person or entity may provide oral and written comments in the proceeding, pursuant to a schedule adopted by the presiding member, but, unless otherwise allowed by the presiding member, shall not be entitled to intervene or otherwise become a party to the proceeding.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.2. Complaint; Answer.

(a) The respondent shall file an answer to the complaint within ~~30~~ 45 days after service of the complaint. The answer shall include any information the respondent believes addresses the issues and violations alleged in the complaint.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.3. Complaint; Adjudication and Hearing.

(a) No sooner than 30 days after filing the answer under section 1233.2, the chair presiding member shall schedule the complaint to be considered at a hearing, as set forth in Chapter 2 of Article 1 of Title 20, on the complaint to commence no sooner than 30 days after filing the answer under section 1233.2, unless the respondent has waived its right to a hearing. For complaints seeking civil penalties under Public Resources Code section 25534.1, a hearing before the commission will be conducted within 60 days after service on the respondent.

(b) At the hearing, the commission may take any action under its authority including, but not limited to, dismissing the complaint, ruling on the complaint, establishing a committee to further investigate, or scheduling additional hearings.

(~~b~~ c) If a committee is established or if future hearings are scheduled, a hearing order, served on the respondent and all interested persons, shall be filed by the presiding member issued identifying information regarding the proceeding including, but not limited to, the schedule for hearings, whether the hearings will be before a hearing officer, committee or the full commission, whether provisions of Government Code Section 11400 et seq. are applicable to the proceeding, information required from the parties, the role of commission staff in the proceeding and other relevant information about the hearing.

(d) Any person or entity may provide oral and written comments in the proceeding, pursuant to a schedule adopted by the presiding member, but, unless otherwise allowed by the presiding member, shall not be entitled to intervene or otherwise become a party to the proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25534.1, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.4. Complaint; Decision.

(a) If the matter is heard before an assigned committee or hearing officer, the committee or hearing officer shall submit a written proposed decision containing its recommendation to the ~~full~~ commission within ~~24~~45 days following the close of hearings.

(b) Upon consideration of a proposed decision from a committee or hearing officer, or in cases where the commission directly hears the case, the commission shall:

- (1) issue a decision; or
 - (2) adopt, modify, or reject the proposed decision; or
 - (3) remand the matter to the committee or hearing officer for further hearings;
- or
- (4) reopen the hearing record and itself conduct further hearings.
- (c) The decision of the commission on a complaint is final.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.

Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1234. Jurisdictional Determinations.

(a) Any person engaged in an activity potentially regulated by the commission may request a jurisdictional determination by the executive director as to whether the commission has regulatory authority over a particular activity. To request a determination, information detailing the facts, issues and law relating to the activity shall be filed with the commission. For issues relating to power plant output, a person seeking a jurisdictional determination may also follow the process under section 2010.

(b) Within 45 days of receiving a complete request, the executive director shall file a written determination as to whether the activity subject to the request is under the jurisdiction of the commission and what actions need to be taken to comply with commission regulations and orders.

(c) Within 10 days of the filing of the executive director's determination, an appeal to the chair may be filed by the person seeking the jurisdictional determination. The appeal shall specify the alleged errors in fact or law that resulted in an incorrect determination.

(d) Within 30 days of the filing of the appeal, the chair shall file a hearing order identifying the schedule for hearings, whether the hearings will be before a hearing officer, committee, or the full commission, whether provisions of Government Code §Section 11400 et seq. are applicable to the proceeding, the role of commission staff in the proceeding and other relevant information about the hearing.

(e) Section 1233.4 shall govern the decision of the appeal.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code.
Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1240. Renewables Portfolio Standard Enforcement.

(a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the cCommission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.

(b) Complaints shall follow the process set forth in section 1233.1.

(1) The eExecutive dDirector may file a complaint against a local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the cCommission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities.

(2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the cCommission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the following informational requirements set forth in section 1233.1(b).:-

~~(A) — A statement of facts upon which the complaint is based.~~

~~(B) — A statement indicating the statute, regulation, order, or decision upon which the complaint is based.~~

~~(C) — The action the Commission is requested to take.~~

~~(D) — The authority for the Commission to take such action.~~

(c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer ~~with the Chief Counsel~~ within 45 ~~calendar~~ days after service of the complaint. The answer shall be filed with the commission as specified in section 1208. In addition to those matters set out in section 1233.2, the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims,

allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating or otherwise pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if noncompliance is determined pursuant to this section. The information included regarding any mitigating or otherwise pertinent factors may describe all relevant circumstances, including, but not limited to, the following:

(A) The extent to which the alleged violation has or will cause harm.

(B) The nature and expected persistence of the alleged violation.

(C) The history of past violations.

(D) Any action taken by the local publicly owned electric utility to mitigate the alleged violation.

(E) The financial burden to the local publicly owned electric utility.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, the local publicly owned electric utility shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the eExecutive dDirector along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file ~~with the Chief Counsel~~ a response to the answer no later than 15 ~~calendar~~ days after receipt of the answer. ~~The response shall be served upon the local publicly owned electric utility upon filing.~~

(2) In the event that cCommission staff files a response under (e)(1), the local publicly owned electric utility may file ~~with the Chief Counsel~~ a reply to such response no later than 10 ~~calendar~~ days from receipt of such response. ~~The reply shall be served upon Commission staff upon filing.~~

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than ~~30~~45 ~~calendar~~ days after the filing of the answer ~~a staff response~~ pursuant to subdivision (e d) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section 1233.3(b)1209. ~~Such notice shall be provided no later than 30 calendar days after the last filing is made.~~

(3) The hearing may be scheduled before the ~~full~~ cCommission, a committee designated by the cCommission, or a hearing officer assigned by the cChair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the ~~full~~ cCommission, the proposed decision set out in section 1233.4(a) shall be forwarded to the ~~full~~ cCommission, to the extent reasonably possible, no later than 45 ~~calendar~~ days after the hearing has been concluded. If the hearing is held before the ~~full~~ cCommission, to the extent reasonably possible, the cCommission shall publish its decision within 45 ~~calendar~~ days after the hearing has been concluded.

(g) The decision of the ~~full~~ cCommission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors related to noncompliance. The decision may also include findings regarding mitigating and aggravating factors upon which the California Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (o) and (p). The decision may also include suggested penalties for the California Air Resources Board to consider, as appropriate. Any suggested penalties shall be comparable to penalties adopted by the California Public Utilities Commission for noncompliance with a Renewables Portfolio Standard requirement for retail sellers.

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, cCommission staff shall forward a notice of violation, based on the final decision of the ~~full~~ cCommission, together with the record of proceedings, to the California Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the cCommission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, cCommission staff shall not forward the notice of violation to the California Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

§ 1704. Information Requirements for Notices of Intent and Applications for Certification.

[...]

(b) The informational requirements for notices, and applications ~~for certification, and applications for a small power plant exemption~~ are contained in this section and in appendices to this Chapter. Maps required in this section and in the appendices shall be provided at the scale specified in the appendices, except that applicants may provide maps at a different scale if the maps are legible and if a written explanation of why this different scale is more appropriate is included in the notice or application. The term region means a geographic area that is normally contiguous and exhibits similar geographic characteristics. The term vicinity means both that area in close proximity to the project site and which receives a preponderance of the direct impacts of the project. The area referred to by the terms vicinity and region will overlap, although, in most circumstances, the vicinity will be part of the region. The size of the region and vicinity that should be discussed in the filing will vary depending on the project's location (e.g., rural, urban, coastal), its technology (e.g., nuclear, coal, geothermal), and by technical area. Applicants should use their professional judgment in determining the appropriate size of the region and vicinity to be discussed in the application. A statement explaining the extent of the area described for each technical area shall be included.

[...]

~~(5) The application for small powerplant exemption shall contain all the information specified by Appendix F.~~

[...]

Note: Authority cited: Sections 25213, 25216.5(a), 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.5, 25308.5, 25504, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, and 25540.6, ~~25541~~, Public Resources Code.

§ 1706. Number of Copies.

Consistent with section 1208.1, the executive director shall specify the number of copies and the format of notices of intent, applications for certification, ~~and small power plant exemptions~~, and any amendments, to be filed.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.

§ 1708. Costs and 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 Code sections 25802 and 25806, and reimburse the commission for its actual costs of processing a petition to amend as specified in 25806(e). In calculating the fee required by Public Resources Code section 25806(a), generating capacity shall be determined in the manner specified in section 2003(a).

(b) "Processing the petition to amend," as used in Public Resources Code section 25806(e), includes the activities of staff, staff subcontractors, and legal counsel representing staff in the preparation of the staff assessment and in any proceeding on a petition through the adoption of the commission decision, as well as the labor and administrative expenses associated with the production and distribution of staff, committee, and commission documents. The activities of commissioners and their advisors, commission hearing officers, and other attorneys and commission staff advising commissioners or the commission are not considered part of processing the petition to amend.

(c) Costs shall be calculated based on the hourly loaded rates for staff, including subcontractors, consultants and legal staff, and the hours worked to process a petition to amend. If requested by a project owner, the commission shall provide a full accounting, including the following: the hours billed by staff, subcontractors, consultants and legal staff; the hourly rate associated with each; a description of the work performed; and supporting documentation.

(bd) Upon the demand of the executive director, the applicant project owner 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.

(e) Project owners may request an investigation of the fees they have been assessed using the procedures set forth in section 1231.

~~(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).~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25538, 25802 and 25806, Public Resources Code.

§ 1709. Filing of Notices of Intent and Applications for Certification; Data Adequacy Review and Docketing.

[...]

(e) On or before acceptance of a notice or application for certification ~~or upon filing of an application for a small powerplant exemption~~, a committee, a presiding member and a hearing officer shall be designated pursuant to Sections 1204(a) and 1205 to conduct proceedings on the notice or application.

Note: Authority cited: Sections 25213 and 25541.5, Public Resources Code. Reference: Sections 25211, 25502, 25504, 25516.6, 25520, 25522, 25540.1, and 25540.2 and 25544, Public Resources Code.

§ 1710. Staff as an Independent Party.

In carrying out its duties pursuant to this chapter, staff shall be an independent party to all notice, and application, ~~and exemption~~ proceedings. Staff is not required to petition to intervene in such proceedings.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25217(b), Public Resources Code.

**§ 1714. Distribution of Copies to Public Agencies and Tribal Governments;
Request for Comments.**

(a) As soon as possible after receipt of the notice or application for a site and related facility requiring a certificate of public convenience and necessity, the executive director shall transmit a copy thereof to the Public Utilities Commission and shall request the Public Utilities Commission to perform an analysis and to offer comments and recommendations regarding the economic, financial, rate, system reliability, and service implications of the design, construction, operation, and location of the site and related facilities. For applications for a site and related facility which does not require a certificate of public convenience and necessity, the executive director shall transmit a notice of receipt of the application to the Public Utilities Commission.

(b) Within ten days after receipt of the application for a site and related facility that is proposed to connect to the California Independent System Operator-controlled grid, the executive director shall transmit a copy thereof to the California Independent System Operator and shall request the California Independent System Operator to perform an analysis and to offer comments and recommendations regarding the system reliability implications and identification of interconnection facilities required for connection to the California Independent System Operator-controlled grid. For applications which do not connect to the California Independent System Operator-controlled grid, the executive director shall transmit a notice of receipt to the California Independent System Operator.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and Wildlife, to the Air Pollution Control District in which the project is located, to the Regional Water Quality Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with section 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

(d) No later than 14 days after a ~~n~~Notice of Intent, ~~or a~~Application for Certification or Small Power Plant Exemption has been accepted, staff shall notify and invite tribal governments deemed traditionally and culturally affiliated with a project area

by the Native American Heritage Commission, to participate in consultations with staff, consistent with Public Resources Code section 21080.3.1. For projects with a federal nexus, staff shall also invite tribal governments deemed traditionally and culturally affiliated with a project area by federal land managing agencies, to participate in consultations.

(e) Upon receiving a copy of the notice or application, each agency requested to file comments shall inform the presiding member (or the executive director if no committee has been appointed yet) of when such comments can be filed with the commission. Unless otherwise specified by law or by order of the presiding member, all such comments shall be filed prior to the conclusion of the evidentiary hearings held pursuant to Sections 1723, and 1745, and 1944 on the notice or application.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25505, 25506, 25506.5, 25507 and 25519, Public Resources Code.

§ 1714.3. Agency Comments on a Notice of Intent; Purpose and Scope.

[No changes to text.]

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25506 and 25509.5, Public Resources Code.

§ 1714.5. Agency Comments on an Application for Certification; Purpose and Scope.

[No changes to text.]

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25519(f), 25519(g) and 25519(j), Public Resources Code.

§ 1720.2. Termination of Notice of Intent and Application for Certification NOI, AFC, and SPPE Proceedings.

(a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion.

(b) A committee order terminating a proceeding must be approved by the ~~full~~ commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25210, 25216.5, 25502, and 25519(b) ~~and 25541~~, Public Resources Code.

§ 1745.5. Presiding Member's Proposed Decision; Comment Period; Basis; Contents; Hearing.

(a) After the end of the evidentiary hearings, the presiding member, in consultation with the other committee members, shall prepare and file a proposed decision on the application that meets the requirements of section 1748.

(b) The presiding member's proposed decision shall: ~~(1) B~~ be based on a consideration of the entire hearing record and contain the following:

(~~2~~1) Environmental Factors:

(A) a description of potential significant environmental effects;

(B) an assessment of the feasibility of mitigation measures and a reasonable range of alternatives that could lessen or avoid the adverse effects; and

(C) if any significant effects are likely to remain even after the application of all feasible mitigation measures and alternatives, whether economic, legal, social, technological or other environmental benefits of the project outweigh the unavoidable adverse effects;

(~~3~~2) Laws, Ordinances, Regulations, and Standards:

(A) a description of all applicable federal laws, ordinances, regulations and standards and an assessment of the project's compliance with them;

(B) a description of all applicable state, regional, and local laws, ordinances, regulations and standards, and the project's compliance with them;

(i) ~~if~~ if the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation, a description of all staff communications with the agencies responsible for enforcing the laws, ordinances, regulations and standards for which there is noncompliance, in an attempt to correct or eliminate the noncompliance;

(ii) if the noncompliance with a state, local, or regional ordinance or regulation cannot be corrected or eliminated, the proposed decision shall discuss whether the proposed project is required for public convenience and necessity and whether there

are more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability; and

(iii) ~~if the noncompliance with a state, local, or regional ordinance or regulation~~ cannot be corrected or eliminated, the proposed decision shall satisfy the commission's obligation to inform the state, local, or regional governmental agency if it makes the findings required by Public Resources Code section 25525-;

(C) to the extent not already covered under subdivisions ~~(2) or (3)~~ (1) or (2), and for applications for certification, as defined in Public Resources Code section 25102, concerning sites in the Coastal Zones, as defined in Public Resources Code section 30103, or the Suisun Marsh, as defined in Public Resources Code section 29101, a discussion of the issues raised by the California Coastal Commission, if any, pursuant to section 30413(e) of the California Public Resources Code; or issues raised by the San Francisco Bay Conservation and Development Commission, if any, pursuant to section 66630 of the Government Code-;

(D) to the extent not already covered under subdivisions ~~(2) or (3)~~ (1) or (2), and for sites in the Coastal Zones or Suisun Marsh for which a notice of intent as defined in Public Resources Code section 25113 has been filed:

(i) a discussion of provisions to meet the objectives of the California Coastal Act, as may be specified in the applicable report submitted by the California Coastal Commission under section 30413(d); or to meet the requirements of objectives of the Bay Conservation and Development Act, as may be specified in the applicable report submitted by the San Francisco Bay Conservation and Development Commission under section 66645 of the Government Code;

(ii) if the provisions described in paragraph (i) would result in greater adverse effect on the environment or would be infeasible, an explanation of why; and

(iii) a statement of whether the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500;

~~(43)~~ a description of land use, as necessary, consistent with Public Resources Code section 25528-;

~~(54)~~ for new sites proposed for location in the coastal zone or any other area with recreational, scenic, or historic value, proposed conditions relating to land that

should be acquired, established, and maintained by the applicant for public use and access consistent with Public Resources Code ~~§~~Section 25529;

(65) for new sites proposed along the coast or shoreline of any major body of water, proposed conditions on the extent to which the proposed facilities should be set back from the coast or shoreline to permit reasonable public use and to protect scenic and aesthetic values consistent with Public Resources Code ~~§~~Section 25529;

(76) for sites in areas specified in section 25527 of the Public Resources Code ~~state, regional, county or city parks; wilderness, scenic, or natural reserves; areas for wildlife protection, recreation, or historic preservation; natural preservation areas in existence as of January 7, 1975; or estuaries in an essentially natural and undeveloped state~~; an analysis of whether:

(A) the facilities will be consistent with the primary land use of the area,

(B) there will be any substantial adverse environmental effects, ~~and of whether~~

(C) the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500-;

(87) where a nuclear powered facility is proposed, an analysis of the factors in Public Resources Code sections 25524.1 and 25524.2;

(98) an analysis of the extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d);

(109) if the application is for a facility to be located on a potential multiple facility site, as determined under of the Public Resources Code section 25516.5, an analysis of the factors listed in Public Resources Code section 25524.5-;

(110) a discussion of any public benefits from the project, including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits;

(111) provisions for restoring the site as necessary to protect the environment, if the commission does not certify the project; ~~and~~

(112) A recommendation as to whether the proposed site and related facilities should be certified, and if so, under what conditions; ~~and~~

(113) an ~~E~~ngineering ~~A~~assessment relating to facility efficiency, health and safety;

(4514) a Reliability Aassessment;

(4615) A ny other relevant matter identified by the presiding member;

(4716) responses to all comments on significant environmental issues ~~points~~ raised during the evidentiary hearing; and

(4817) the reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

(c) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of ~~distribution~~ filing.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 25519(c), 25522, 25523 and 25525-25529, Public Resources Code.

§ 1748. Final Decision.

(a) At the conclusion of the hearings under ~~s~~Section 1747, the commission shall adopt a final written decision in conformity with section 1212, which includes all of the information specified by Public Resources Code section 25523.

(b) The decision shall not certify any site and related facility unless the commission finds that:

(1) as necessary, land use is consistent with Public Resources Code ~~S~~section 25528;

(2) if the powerplant will require reprocessing of nuclear fuel rods or off-site storage of nuclear fuel rods in order to provide continuous onsite fuel core reserve storage capacity: facilities with adequate capacity to reprocess nuclear fuel rods or with adequate capacity to store them, as applicable, have been approved by an authorized agency of the United States, and are or will be in actual operation at the time the powerplant requires such reprocessing or storage, as required by Public Resources Code sections 25524.1 and 25524.2;

(3) with respect to sites in the locations designated by the California Coastal Commission pursuant to Public Resources Code section 30413(b), or by the San Francisco Bay Conservation and Development Commission pursuant to Government Code section 66645, that the findings required by Public Resources Code section 25526 have been made by the appropriate commission;

(43) with respect to sites in the areas specified in Public Resources Code section 25527~~state, regional, county, and city parks; wilderness, scenic, and natural reserves; areas for wildlife protection, recreation, and historic preservation; natural preservation areas in existence as of January 7, 1975; and estuaries in an essentially natural and undeveloped state, that:~~

(A) the facility will be consistent with the primary land use of the area,

(B) there will be no substantial adverse environmental effects, and

(C) the approval of the public agency having ownership or control of the land has been obtained;

(5) with respect to a facility proposed to be located in the coastal zone or any other area with regional, scenic, or historic value, as specified by Public Resources Code section 25529, a finding that an area will be established for public use, as determined by the commission, and that the facility to be located along the coast or shoreline of any major body of water will be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values;

(6) with respect to a facility which adds generating capacity to a potential multiple-facility site in excess of the maximum allowable capacity established by the commission pursuant to Public Resources Code section 25516.5, the findings required by Public Resources Code section 25524.5;

(47) if the site or facility does not comply with an applicable state, local or regional laws, ordinances, regulations and standards; a finding that the facility is required for public convenience and necessity, and there are no more prudent and feasible means of achieving such public convenience and necessity, a finding made pursuant to the requirements of as required by section 25525 of the Public Resources Code;

(58) if the construction, operation, or shutdown and decommissioning of the powerplant will cause a significant environmental impact, either (A) or (B):

(A) (i) with respect to matters within the authority of the commission; changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effects; and

(ii) with respect to matters not within the commission's authority but within the authority of another agency; changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency;

or

(B) (i) specific economic, social, or other considerations make infeasible all mitigation measures or project alternatives that would mitigate or avoid the significant environmental effects; and

(ii) ~~That~~ the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 21080.1, 21081, 25216.3, 25523, 25525-25527, 25529 and 25541.5, Public Resources Code; ~~Title 14, California Code of Regulations, sections 15091 and 15093.~~

§ 174968. Notice of Decision; Filing with Resources Agency.

The executive director shall file a notice of the final decision with the Secretary of the Natural Resources Agency.

Note: Authority cited: Section 25541.5, Public Resources Code. Reference: Sections 21080.5 and 25541.5, Public Resources Code.

Article 3.1. Post-Certification Activities

§ 1751. Post-Certification List Serve.

After the final decision is issued, the commission shall create an electronic list serve related to post-certification activities. In closing the application for certification proceeding the commission shall file a notice in the application for certification project docket providing instructions on how to subscribe to the list serve.

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

§ 1769. Post Certification Petition for Changes in Project Design, Operation or Performance and 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;~~

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

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

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

~~(G)(F) 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;~~

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

(I) A discussion of any exemptions from the California Environmental Quality Act, commencing with section 21000 of the Public Resources Code, that the project owner believes may apply to approval of the proposed change.

~~(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 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 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 preparing the summary, staff shall file the summary and provide a copy to each property owner described in subdivision (a)(1)(G) with instructions on how to receive future filings.

(3) Staff Approval of Proposed Change.

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

(i) that there is no possibility that the change may have a significant effect on the environment, or the change is exempt from the California Environmental Quality Act;

(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 subdivisions (a)(3)(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 taken pursuant to subdivisions (a)(3)(A) or (B). Any person may file an objection to a staff action taken pursuant to subdivisions (a)(3)(A) or (B) within 14 days of the filing of staff's statement. Any such objection must make a showing supported by facts that the change does not meet the criteria in this subdivision. Speculation, argument, conjecture, and unsupported conclusions or opinions are not sufficient to support an objection to staff approval.

(D) Staff may submit to the commission, for consideration and a decision, a proposed change that could otherwise be approved by staff under subdivisions (a)(3)(A) or (B).

(34) Commission Approval of Proposed Change.

(A) If staff determines that a ~~modification~~ change does not meet the criteria for staff approval set forth in ~~subsections~~ subdivision (a)(23), or if staff submits the proposed change to the commission for consideration under subdivision (a)(3)(D), or if a person objects to a staff determination files an objection that a ~~modification does meet the criteria in~~ complies with ~~subsection~~ subdivision (a)(23)(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~~ a change only if it can make the following findings:

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

~~(B) that the 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.~~

(4B) 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 subdivision (a)(4), the presiding member 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. Staff and Project Owner Jointly Initiated Amendment.

(a) Staff and a project owner may jointly initiate an amendment to a final decision adopted under this chapter, provided that 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, impossible, or otherwise unnecessary to avoid potentially significant effects and remain in compliance with all applicable laws, ordinances, regulations, and standards.

(b) An amendment jointly initiated by staff and the project owner 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 be considered by the commission in a manner consistent with the process set forth in section 1769(a)(4). The amendment shall not be approved by the commission unless the agreement of the project owner with the proposed amendment is reflected in the joint proposal presented to the commission for approval.

(c) An amendment initiated jointly by staff and a project owner 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.

§ 1936. Scope, Filing, Review and Distribution of Applications for Exemption.

(a) Any person who proposes to construct a thermal power plant with a generating capacity not exceeding 100 megawatts, or proposes a modification to an existing thermal power plant which will add generating capacity not exceeding 100 megawatts may apply for an exemption from the provisions of Chapter 6 of Division 15 of the Public Resources Code.

(b) Applications for exemption shall be filed as set forth in sections 1208, 1208.1, 1706 and 1707.

(c) The review of the application for exemption shall follow the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3).

(d) Applications for exemption shall be distributed and comments requested from public agencies and tribal governments as set forth in sections 1713 and 1714.

(e) An applicant may withdraw an application for exemption as set forth in section 1709.8.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1937. Staff as an Independent Party.

In carrying out its duties pursuant to this article, staff shall be an independent party and is not required to petition to intervene.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25217(b), Public Resources Code.

§ 1940. Information Requirements for Notice of Applications for Exemption.

~~(a) Upon receipt of an application the executive director in conjunction with the public adviser shall immediately take action to cause notice of the application and its~~

~~date of receipt to be published in the commission's next meeting agenda and distributed to the public at large.~~

~~(b) The executive director shall transmit copies of the application to each member and ex-officio member, the commission general counsel, the public adviser, the hearing officer, the Attorney General and all other persons who have requested in writing that a copy be provided.~~

~~(c) The executive director shall also transmit copies of the application to all federal, state, regional, and local agencies which have an interest in the matter and shall request that these agencies submit their written comments and recommendations on the application. Such comments shall be filed with the executive director no later than the date of the first hearing held pursuant to Section 1944 of these regulations.~~

The application for an exemption shall contain all the information specified by Appendix F and meet the general requirements set forth in section 1704(a).

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1941. Obtaining Information.

Information necessary to complete an analysis of the application for an exemption may be obtained by following the requirements of section 1716, except that all requests for information shall be submitted no later than 60 days from the application for exemption's filing date or a later date as approved by the presiding member.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code; and Section 11181, Government Code.

§ 1942. Termination of an Application for Exemption.

The application for exemption proceeding may be terminated by following the procedures set forth in section 1720.2.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25210, 25216.5, 25519(b) and 25541, Public Resources Code.

§ 1943. Presentation of Evidence.

All testimony together with any other relevant documentary evidence, such as any environmental impact documentation or other environmental document prepared by the lead agency, may be offered by any party and shall be filed with the Docket Unit no

later than ~~seven (7)~~ days prior to the hearing at which such testimony is to be offered, or at such other time as ordered by the presiding member.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1944. Application for Exemption Proceedings and Hearings.

(a) A committee shall be appointed pursuant to Section 1204(a) to oversee handle the proceedings. ~~A hearing officer may also be appointed to assist the committee in the conduct of the proceeding.~~ The presiding member shall set the time and place for hearings, ~~conferences, and site visits pursuant to this Section provided, however, that~~

(b) Unless otherwise directed by the presiding member, evidentiary hearings on the application shall commence no later than ~~one hundred (100)~~ days after the filing of the application.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1945. Final Argument Proposed and Final Decision.

(a) After the hearings conducted pursuant to Section 1944 of these regulations, the committee shall prepare and file a proposed decision on the application. ~~The proposed decision shall be distributed to the members, ex officio members, general counsel, the public adviser, the applicant, all intervenors, and any other persons designated by the presiding member.~~

(b) ~~Within twenty one (21) days a~~After publication of the proposed decision, a hearing shall be held before the full commission ~~for final arguments on the formal record of the proceedings. After the hearing, the commission shall adopt, or amend and adopt, the proposed decision, which shall thereupon become final.~~ The final decision shall be rendered issued by the commission within ~~one hundred thirty five (135)~~ days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

§ 1946. Content of Decision.

(a) The decision on the application shall either approve or disapprove the application and shall include a statement of reasons supporting the decision. The decision shall include, in the affirmative or negative, the findings required by Public Resources Code Section 25541.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25541, Public Resources Code.

Chapter 6. Environmental Protection

Article 1. Implementation of the California Environmental Quality Act of 1970

§ 2300. CEQA Guidelines.

Except for activities undertaken in connection with the commission's certified regulatory program for power plant site certification identified in Title 14, section 15251(j), the State CEQA Guidelines codified in Title 14, section 15000 et seq., of the California Code of Regulations are the procedures governing implementation of the California Environmental Quality Act.

Note: Authority cited: Sections 21082, 25213 and 25218(e), Public Resources Code. Reference: Sections 21080.5, 21082, 25213, 25519(c) and 25541.5, Public Resources Code.

§ 2308 2300.1. Fees for EIR or Negative Declaration Expenses.

(a) The executive director shall charge and collect a reasonable fee from any person proposing a project subject to CEQA to cover the estimated actual cost of preparing a Negative Declaration or an EIR. The deposit shall not be in excess of three percent (3%) of the estimated capital cost of the proposed project.

(ab) The Commission staff shall separately account for the deposit collected and the charges thereto. The status of the account shall be provided to the project proponent at regular intervals established by mutual agreement. The executive director shall request additional deposits if the initial deposit has been exhausted. A final accounting shall be rendered by the Commission staff after the final EIR or Negative Declaration has been certified or adopted.

(bc) If in the final accounting the deposits exceed the actual costs incurred by the Commission, the excess shall be refunded. If the actual costs exceed the amount of the deposits, the project proponent shall be billed for the difference.

(ed) The executive director may adjust or waive deposits for minor projects. For projects with an estimated capital cost of more than \$1,000,000, the executive director shall permit payment of the deposit in increments.

(de) The executive director should collect the deposit prior to the preparation of environmental documents and no final EIRs or Negative Declarations shall be certified until the project proponent has reimbursed the Commission for the costs of preparing and processing them.

(ef) Where a staged EIR is prepared the executive director shall collect a deposit sufficient to cover the expenses of each stage of the EIR before each stage is commenced. Such deposits shall be accounted for in the manner described in subsection (a) of this section, and a final accounting shall be rendered upon completion of each stage of the EIR at the request of the project proponent.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21089, Public Resources Code.

~~§ 2301. Purpose.~~

~~These regulations specify the objectives, criteria, and procedures to be followed by the Commission in implementing the California Environmental Quality Act of 1970. (Public Resources Code Sections 21000 et seq.) ("CEQA"). These regulations should be read in conjunction with the State EIR Guidelines, as they are supplemental to and not repetitive of the Guidelines.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21082, Public Resources Code.~~

~~§ 2302. Definitions.~~

~~Terms issued in these regulations, unless otherwise defined, shall have the meaning ascribed to them in the State EIR Guidelines. In addition, the following definitions are used:~~

~~(a) — Environmental Documents. "Environmental documents" mean draft and final Environmental Impacts Reports (EIRs), Initial Studies, Draft and Final Negative Declarations, Notices of Preparation, Notices of Determination, Notices of Exemption, Statements of Findings and Overriding Considerations, and the environmental manual.~~

~~(b) — Environmental Manual. "Environmental manual" means a Commission-approved manual which details internal procedures for the preparation and review of environmental documents.~~

~~(c) — State EIR Guidelines. "State EIR Guidelines" means the Guidelines for Implementation of the California Environmental Quality Act of 1970 by the Secretary for Resources (Div. 6, Title 14, Cal. Adm. Code, Sections 15000, et seq. with Appendices).~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21082, Public Resources Code.~~

~~§ 2303. General Responsibilities.~~

~~(a) — Implementation of CEQA. Details for the implementation of the various environmental review procedures are set forth in the environmental manual.~~

~~(b) — Contracted Documents. Where the Commission contracts with another person or agency to prepare environmental documents, the Commission retains responsibility for the adequacy, content, and objectivity of the environmental document.~~

~~(c) — Availability of Environmental Documents. All environmental documents prepared by the Commission shall be available for public inspection upon request during normal Commission working hours at 1516 Ninth Street, Sacramento, other Commission field offices, or may be requested through the publications office. Copies shall be made available to the general public who may be charged an amount not in excess of the actual cost of reproducing such copies.~~

~~(d) — Retention and Availability of Environmental Comments. Comments received through the consultation process shall be retained in the files of the Commission for one year from the date of final action on the document and shall be available for public inspection at an address provided in the final EIR. Comments which may be received independently of the review of the draft EIR shall also be considered and kept on file.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Sections 21082, 21082.1, 21100 and 21105, Public Resources Code; and 14 California Administration Code Section 15166.~~

~~§ 2304. Activities Not Requiring an Initial Study.~~

~~(a) — Whenever the executive director and general counsel determine, based upon the review by the Commission staff, that a formal Initial Study is not required pursuant to this section, this determination and the reasons therefore shall be presented to the Commission for its concurrence. If the Commission concurs, no formal Initial Study, Negative Declaration, or EIR is required.~~

~~(b) — Whenever an activity determined exempt from a formal Initial Study is approved by the Commission, the Commission shall file a Notice of Exemption with the Secretary for Resources.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Sections 21080.1 and 21108(b), Public Resources Code.~~

~~§ 2305. Initial Study.~~

~~Where an Initial Study is necessary, it will be available for public access and inspection either in the Negative Declaration or incorporated into a draft EIR, depending upon its findings on significant effect.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21105, Public Resources Code.~~

~~§ 2306. Negative Declaration.~~

~~Where a Negative Declaration is prepared, its completion and availability shall be announced in one or more newspapers of general circulation chosen on the basis of providing the most effective public notice.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21092, Public Resources Code.~~

~~§ 2307. EIR Preparation and Procedure.~~

~~(a) — Hearings. The decision regarding the need for public hearings on a draft EIR shall be based upon the amount of public interest in the environmental impacts of the proposed activity and any other considerations which the Commission finds are compelling. It is the policy of the Commission that reasonable doubts concerning the appropriateness of public hearings shall be resolved in favor of holding such hearings. A decision not to hold such hearings shall be in writing including the reasons supporting the decision and shall be included in the Commission's record of decision on the activity.~~

~~(b) — Duration of Comment Period. The executive director, at the time of certifying a draft EIR for public review, shall specify the length of the public review period after considering the complexities of the proposed project and the anticipated needs of the public. The executive director shall provide a minimum of 45 calendar days between the release of the draft EIR and the final receipt of comments. Any person may request that the executive director grant an extension of the comment and review period prior to termination of the original specified time period. Upon a showing of reasonable need, the executive director may grant such extensions. Any request to extend the comment and review period beyond 90 days or a request submitted after expiration of the original review period shall document unusual or extenuating circumstances; if such conditions are found to exist, such requests may be granted.~~

~~(c) — Forwarding of Final EIR Copies. To the extent feasible, copies of the final EIR shall be forwarded to all persons, agencies, or organizations requesting such copies.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Sections 21100 and 21105, Public Resources Code; and 14 California Administration Code Sections 15160, 15164 and 15165.~~

~~§ 2309. Review of Environmental Documents of Other Lead Agencies.~~

~~When the Commission is a Responsible Agency for a project, and approves or determines to carry out a project for which an EIR or Negative Declaration has been prepared by the Lead Agency, it shall file a Notice of Determination.~~

~~(b) — The executive director shall approve all comments to environmental documents prepared by the Commission staff pursuant to this section before such comments are submitted to the State Clearinghouse or the Lead Agency.~~

~~Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Sections 21108(a) and 25404, Public Resources Code; and 14 California Administration Code Section 15085.5(i).~~