

DOCKETED

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M e m o r a n d u m

To: Chair David Hochschild
Renewables Lead Commissioner Karen Douglas

Date: July 8, 2019

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Subject: Docket No. 07-SB-01, Proposed Revisions to the Guidelines for California's Solar Electric Incentive Programs (Senate Bill 1), 7th Edition, at the July 15, 2019 Business Meeting

Summary

This memo addresses the application of the California Environmental Quality Act (CEQA) to the Energy Commission's adoption of proposed revisions to the Guidelines for California's Solar Electric Incentive Programs (Senate Bill 1), 7th Edition (hereinafter referred to as the SB 1 Guidelines) as reflected in the *Notice to Consider Adoption of Revisions to the Guidelines for California's Solar Electric Incentive Programs (Senate Bill 1), Seventh Edition* docketed on June 28, 2019 as TN 228876.¹ The SB 1 Guidelines are being revised due to accreditation changes for third-party photovoltaic module performance testing laboratories.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Energy Commission's adoption of the revisions to the SB 1 Guidelines are exempt from CEQA, either because the action is not a "project" under CEQA, or because the action is exempt under what is commonly referred to as the "common sense" exemption to CEQA. This is the same conclusion that was made in a Memorandum dated November 30, 2018 with regards to the adoption of the Guidelines for California's Solar Electric Incentive Programs (Senate Bill 1), 7th Edition, last year.

Background

The SB 1 Guidelines establish eligibility criteria, conditions for incentives, and rating standards to qualify for ratepayer-funded incentives for solar energy systems pursuant to Senate Bill 1.² Senate Bill 1 builds on the California Public Utilities Commission's California Solar Initiative program, the Energy Commission's New Solar Homes Partnership program, and the local publicly owned electric utilities' existing solar energy system incentive programs, with an overall goal is to help build a self-sustaining solar electricity market combined with improved energy efficiency in residential and non-residential buildings in California.

The SB 1 Guidelines were initially adopted by the Energy Commission in December 2007, with multiple revisions to date, including the most recent 7th Edition adopted in December 2018.

Since accreditation for third-party test laboratories for photovoltaic module performance to any currently available International Electrotechnical Commission (IEC) IEC 61215 and/or IEC 61646 version will evidence a sufficient level of technical competence and align the SB 1 requirements with current international oversight protocols, Staff is recommending that the accreditation requirement for third-party test laboratories for PV

¹ <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=07-SB-01>.

² Stats. 2006, ch. 132, § 4.

module performance be revised to omit the particular version year of the referenced IEC standards. If these revisions are made, instead of Chapter III, Section A and Appendix B, Section A of the 7th Edition SB 1 Guidelines requiring test laboratory accreditation scope that includes “IEC 61215:2005 and/or IEC 61646:2008”, the requirement shall be for a scope that includes “IEC 61215 and/or IEC 61646.” These revisions will not change or impact testing standards, including photovoltaic module performance testing standards.

CEQA

CEQA³ requires state agencies to consider the environmental impacts of their discretionary decisions. CEQA generally applies to “discretionary projects proposed to be carried out or approved by public agencies...”⁴ The CEQA Guidelines⁵ define a “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...”⁶ The CEQA Guidelines list activities that may be considered a “project,” including approvals by public agencies for public works construction or related activities, contracts, grants, loans or other forms of assistance, or leases, permits, licenses, certificates, or other entitlements.⁷ The CEQA Guidelines also list several activities that do not fall within the meaning of the term “project” and thus are not subject to CEQA, including a public agency’s “[c]ontinuing administrative or maintenance activities, such as ... general policy and procedure making....”⁸

Adoption of Revisions to the SB 1 Guidelines

The proposed revisions to the SB 1 Guidelines are administrative in nature. As such, the Energy Commission’s approval of the proposed revisions should be characterized as a continuing administrative or maintenance activity related to general policy and procedure making, and thereby excluded from the definition of a “project” under the CEQA Guidelines § 15378(b)(2), and not subject to CEQA.

However, if adoption of the proposed revisions are considered to constitute a “project” under CEQA, the Energy Commission’s action is nevertheless exempt under CEQA Guidelines § 15061(b)(3), commonly referred to as the “common sense exemption.” Under the common sense exemption where there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.⁹ The proposed revisions seek to revise program guidelines so it will not have a significant effect on the environment. Additionally, the Energy Commission has already determined the SB 1 Guidelines are exempt under the common sense exemption, so revisions thereto should fall under the same analysis.

For these reasons, the Energy Commission’s adoption of the proposed revisions to the Guidelines for California’s Solar Electric Incentive Programs (Senate Bill 1), Seventh Edition is exempt from CEQA.

³ Public Resources Code, § 21000 et seq.

⁴ Public Resources Code, § 21080(a).

⁵ Cal. Code Regs., Title 14, Chapter 3.

⁶ CEQA Guidelines, § 15378(a).

⁷ CEQA Guidelines, § 15378(a)(1) - (3).

⁸ CEQA Guidelines, § 15378(b)(2).

⁹ CEQA Guidelines, § 15061(b)(3).