

DOCKETED

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Project Title:	Public Comment on California Energy Commission Business Meetings
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Memorandum

To: Chair and Commissioners
California Energy Commission

Date: July 3, 2019

Telephone: (916) 654-4996

From: **Drew Bohan**
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **Petition Requesting Rulemaking Hearings to Amend Title 20, section 1208**
Docket No. 19-BUSMTG-02

I. Summary

On June 12, 2019, Mr. Steve Uhler (Petitioner) filed a petition with the Executive Director of the California Energy Commission (Energy Commission) requesting that the Energy Commission initiate a rulemaking hearing to amend California Code of Regulations, title 20, section 1208,¹ to allow a member of the public to open a docket to receive filed documents.

Under section 1221, this petition was deemed complete by the Executive Director on June 18, 2019, and will be heard at the Energy Commission's July 15, 2019 business meeting. Staff recommends denying the petition because no rulemaking is necessary. The creation of a docket is an agency function, not a public function. The current process for filing documents with the Energy Commission and the supporting regulatory language does not present any issues or barriers that impact the ability for the public to submit documents to the Energy Commission or otherwise participate in proceedings.

II. Petitioner's Requests and Assertions

Petitioner's belief in the need for the public to open a docket stems from two regulatory provisions. Section 1208(c) places the responsibility to ensure that a document has been timely filed with the person that desires the document to be filed, and section 1208(a) states "*all documents submitted in any proceeding shall be filed with the Docket Unit...Documents that are not filed will not be deemed part of the proceeding's record.*"

Petitioner raises concerns that if a docket is necessary to accept the filing and if a filer is obligated to timely file with the Docket Unit, then a filer needs to open a docket.

¹ All citations are to California Code of Regulations, title 20, unless otherwise specified.

III. Staff Response

The issues identified by Petitioner reflect a misunderstanding that a docket needs to be created prior to any public submission of documents to the Energy Commission or that the public somehow is responsible for creating a docket.

The creation of a docket is an internal agency function that has no impact on the public's ability to engage with the Commission. To require the public to create a docket each time they wish to file a document with the Energy Commission is not only unnecessary based on the Energy Commission's current practice, but it would place an unnecessary burden on the public to create a docket. In addition, if members of the public were permitted to create a docket each time they filed a document with the Energy Commission, confusion would result within proceedings regarding the correct docket and Energy Commission documents would become disorganized.

The purpose of a docket is to house documents/notices/reports/studies/presentations/public comments, and other documents relevant to a specific proceeding. A docket is typically created by Staff in preparation for an agency proceeding. Reasons to create a docket include the receipt of an Application for Certification of a power plant, the decision to initiate an appliance efficiency rulemaking, the initiation of the Integrated Energy Policy Report proceeding, and complaint proceedings. In most cases, dockets are set up well before there is a need for members of the public to file a document with the Energy Commission.

Section 1208(a) sets forth the general procedure for submitting documents in an existing proceeding:

All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit.

Under sections 1208 and 1208.1, and as also indicated in any notice related to the proceeding, documents can be filed with dockets through the electronic filing system, by emailing dockets directly, or by mailing paper copies to dockets. Thus, the regulations provide multiple means for the public to participate in Energy Commission proceedings.

In a situation where no proceeding exists and there is no specific docket, the Energy Commission's regulations set forth the process to submit documents to the Energy Commission. Examples of this include the petition for rulemaking under section 1221, and the request for investigation under section 1231, both of which direct members of the public to file their petitions and requests with the Executive Director. In no case is a member of the public who wishes to petition the Energy Commission required to create a docket because it is not a prerequisite to engaging with the Commission when there is no proceeding.²

² Staff notes that Petitioner successfully initiated this petition by following the procedure set forth in section 1221 and filing with the Executive Director.

Finally, if assistance is needed to comply with section 1208, or to otherwise submit a request or petition to the Energy Commission, the Public Adviser is available to assist as set forth in section 2553:

The public adviser serves as adviser to the public and to the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The adviser serves the public and the commission by (1) advising the public how to participate fully in the commission's proceedings, thereby providing the commission with the most comprehensive record feasible in those proceedings; (2) advising the commission on the measures it should employ to assure open consideration and public participation in its proceedings; and (3) taking other measures to comply with sections 25222 and 25519(g) of the Public Resources Code.

As can be seen, section 1208 is the key provision in the Energy Commission's management of incoming documents in conjunction with the multiple proceedings occurring at any one time. These proceedings are identified with individual docket numbers that have to be created by Energy Commission Staff to ensure proper proceeding management and document organization.

The Petitioner raised concerns about the requirement to timely file. Section 1208(c) places the burden to timely file on the submitter of a document, but the requirements of 1208(c) to timely filing typically only come into play when there is an announced deadline to file a particular document. For example, when a Staff assessment in a power plant case is published, there will be a comment period with a clear deadline for comments to be filed. The notice of the Staff assessment will identify the docket and deadline as well as the means of submitting comments to the Commission (e-filing, email, or regular mail). Another example is in a rulemaking proceeding where comments on the proposed regulatory language are due by a certain date. In all these cases, there is no need for the public to create a docket, as one would already exist.

IV. Recommendation

Staff recommends denying the petition because it is not necessary to amend the regulations to provide the public with authority to create a docket. Creation of a docket is an agency function. In addition, the Energy Commission's current regulations and practice ensure a document filing and docketing process that allows the public to submit documents in all types of proceedings and to petition the Energy Commission. Finally, the Public Adviser is available to assist the public.

PROPOSED ORDER

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

STEVE UHLER

**PETITION FOR RULEMAKING
HEARING**

Docket No. 19-BUSMTG-02

**PROPOSED ORDER DENYING THE
PETITION FOR RULEMAKING HEARING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 12, 2019, Mr. Steve Uhler (Petitioner) filed a petition with the Executive Director of the California Energy Commission (Energy Commission) requesting that the Energy Commission initiate a rulemaking hearing to amend California Code of Regulations, title 20, section 1208, to allow a member of the public to open a docket to receive filed documents.

The Executive Director deemed this petition complete on June 18, 2019.

Staff recommends denying the petition because it is not necessary to amend the regulations to provide the public with authority to create a docket. Creation of a docket is an agency function. In addition, the Energy Commission's current regulations and practice ensure a document filing and docketing process that allows the public to submit documents in all types of proceedings and to petition the Energy Commission. Finally, the Public Adviser is available to assist the public.

On July 15, 2019, the Commission held a hearing to consider the petition.

II. FINDINGS

Based on the record, the Commission finds that:

- 1) Public Resources Code section 25218 empowers the Commission to adopt any rule or regulation, or take any action it deems reasonable and necessary to carry out its statutory duty. Thus, the Commission has the authority to initiate a rulemaking, as requested in the petition.

2) The creation of a docket is properly the function of the Energy Commission Staff and not the public. Staff typically creates a docket in advance of any public filings into that docket. If members of the public were permitted to create a docket each time they filed a document with the Energy Commission, confusion would result within proceedings regarding the correct docket and Energy Commission documents would become disorganized. The provisions of section 1208 and 1208.1 provide clear directions to the public on the methods of filing documents in existing proceedings, which includes e-filing, emailing, and standard mail.

3) A docket is not necessary for the public to submit documents or comments to the Energy Commission when there is no proceeding. Generally, when a member of the public is initiating a petition or request for Energy Commission action, the member of the public is directed by the Energy Commission's regulations to submit that filing to the Executive Director.

4) The Public Adviser is available to assist the public in submitting documents and participating in proceedings.

5) Amendments to the procedures set forth in sections 1208 and 1208.1 are not necessary. The current process for filing documents with the Energy Commission and the supporting regulatory language do not present any issues or barriers that impact the ability for the public to submit documents to the Energy Commission or otherwise participate in proceedings.

III. CONCLUSION AND ORDER

For the reasons stated above, the Petition is hereby DENIED.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on July 15, 2019.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat