

DOCKETED

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Docket Number: 16-OIR-05

BUSMTG-19-02 Notice of violations of Bagley-Keene Open Meeting Act 2019-12-11, re rulemaking process 16-OIR-05

BUSMTG-19-02 Notice of violations of Bagley-Keene Open Meeting Act 2019-12-11, re rulemaking process 16-OIR-05

I observed the following violations of Bagley-Keene Open Meeting Act at the Energy Commission's December 11, 2019 business meeting for item 5 of the attached agenda.

The Energy Commission's Public Adviser has advised me that legislative body does not allow the public to address the state body after the state body has deliberated but prior to taking action on agenda items. The public can not address the body as to the complete process used in the proceeding. This prevents the public from having comments on the rulemaking process entered into the record for the hearing. The staff presentation did not address my written comment on complying with that California does not allow resource shuffling pursuant to Public Utilities Code - PUC 454.53 prior to the presiding office calling me to address the state body for item 5.

See my written comments that were not addressed by staff prior to my addressing the state body, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=231072>

The Energy Commission violated of Bagley-Keene Open Meeting Act and the APA by not allowing the public to address the state body as to the complete process of rulemaking by allowing the public to wait to address the state body until deliberation has ended and just prior to taking action.

Government Code - GOV 11125.7. (a)

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

The Energy Commission violated of Bagley-Keene Open Meeting Act by prohibiting public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the

state body. In this case my rebuttal at the meeting, of the staff's claim that resource shuffling is required for their equations, even though Public Utilities Code - PUC 454.53. prohibits resource shuffling.

Government Code - GOV 11125.7. (d)

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

When a transcript is made available, my claims should be evident in the transcript.

The legislative bodies of the Energy Commission should allow the public to choose at what point in the process to address the state body.

Commission Chair please respond by answering my claims made here.

Steve Uhler
sau@wwmpd.com

Additional submitted attachment is included below.



December 11, 2019

Warren-Alquist State Energy Building
1516 Ninth Street
Art Rosenfeld Hearing Room
Sacramento, California 95814
10 a.m.
(Wheelchair Accessible)

THE COMMISSION WILL CONSIDER AND MAY TAKE ACTION ON THE FOLLOWING:

1. Consent Calendar.

(Items will be taken up and voted on as a group. A commissioner may request that an item be moved and discussed later in the meeting.)

- a. OTAY MESA ENERGY CENTER (99-AFC-05C). Proposed order approving the distribution of \$25,875.97 from the Quino Checkerspot Butterfly Fund managed by the San Diego Foundation to RECON Environmental, Inc., for work related to the San Diego National Wildlife Refuge Quino Checkerspot Butterfly Augmentation Project. Condition of Certification BIO-11 requires that the California Energy Commission (CEC) and United States Fish and Wildlife Service (USFWS) decide how to distribute the allocated funds to better understand the Quino checkerspot butterfly and its management. The USFWS supports the current expenditure proposal and will consider formal approval once approved by the CEC. Staff Contact: Ann Crisp.
- b. TRB AND ASSOCIATES (01-AFC-17C). Proposed resolution approving Agreement 700-19-005 with TRB and Associates (TRB) for a \$0 contract to provide delegate chief building official (DCBO) services for the Inland Empire Energy Center Decommissioning/Demolition. TRB will conduct design review and construction inspections on behalf of the CEC. TRB will be compensated by the project owner of the Inland Empire Energy Center. Contact: Mary Dyas.
- c. ENERGYPRO VERSION 8.0. Proposed resolution approving EnergyPro Version 8.0, by EnergySoft, LLC., as an alternative calculation method for demonstrating performance compliance with the nonresidential provisions of the 2019 Building Energy Efficiency Standards (2019 Energy Code), California Code of Regulations (CCR), Title 24, Part 6, and associated administrative regulations in Part 1, Chapter 10 (Standards). (CCR, Title 24, §§ 10-109 (c)2). Contact: RJ Wichert.

- d. THERMALITO UNION ELEMENTARY SCHOOL DISTRICT. Proposed resolution approving a change to Agreement ARV-19-028 with Thermalito Union Elementary School District to increase the grant amount by \$10,825 and to change the all-electric school buses being funded from four Type D buses without chair lifts and one Type C bus without chair lift to five Type D buses without chair lifts. (Clean Energy Job Creation Fund funding) Contact: Tomas Ortiz.
- e. GLADSTEIN, NEANDROSS AND ASSOCIATES. Proposed resolution to approve a \$4,950 purchase order to co-sponsor the Advanced Clean Transportation Expo 2020 conference scheduled for May 11-14, 2020, in Long Beach. (Clean Transportation Program funding) Contact: Tim Olson.
- f. UNIVERSITY OF CALIFORNIA, BERKELEY, ENERGY INSTITUTE AT HAAS SCHOOL OF BUSINESS. Proposed resolution approving Agreement 800-19-001 with the University of California, Berkeley, Energy Institute at Haas School of Business for a \$12,500 contract to co-sponsor the 2020 POWER Conference on Energy Research and Policy in Berkeley on March 20, 2020. The 2020 POWER Conference will be the 25th annual conference focusing on electricity markets and systems. (ERPA funding) Contact: Lynn Marshall.
- g. SCHOOL BUS REPLACEMENT PROGRAM. Proposed order directing the Executive Director or his or her designee to approve changes up to \$5,000 per electric school bus for grant agreements under the School Bus Replacement Program. The funds will be used for bus design specification changes. Contact: Lorraine Gonzalez.

2. Energy Commission Progress on Joint Agency Report, Charting a Path to a 100 Percent Clean Electricity Future, Senate Bill 100 (19_SB-100).

Staff presentation on the clean energy goals established by Senate Bill (SB) 100 and a discussion of its requirement to issue a joint agency report due to the Legislature by January 1, 2021. Staff will also provide an update of the report development process, including the planned scope and public engagement process. Contact: Terra Weeks. (Staff presentation: 5 minutes)

3. San Jose City Data Center (19-SPPE-04).

Proposed order appointing a committee of two commissioners to preside over the small power plant exemption (SPPE) proceeding and any other proceedings arising from the application filed on November 15, 2019, by Microsoft Corporation, for the proposed SJC02. The SJC02 would be in San Jose and consist of two single-story data center buildings that house data servers and associated diesel-fueled backup generators to provide an uninterruptible power supply of up to 99 MW during an emergency loss of utility power. The CEC is the lead agency for the project under the Warren-Alquist Act and CEQA. The CEC will prepare the appropriate environmental document. If an SPPE is granted, the SJC02 would be exempt from CEC jurisdiction and subject to permitting by the City of San Jose and other agencies. Contact: Steve Kerr. (Staff presentation: 5 minutes)

4. Inland Empire Energy Center (01-AFC-17C).

Proposed order approving the closure plan for the Inland Empire Energy Center under Condition of Certification COM-12 of the facility's Final Commission Decision. Staff concludes that implementation of the closure plan would not result in a significant adverse impact to the environment and would comply with applicable laws, ordinances, regulations, and standards. Contact: Jonathan Fong. (Staff presentation: 5 minutes)

5. Modifications to Regulations Governing the Power Source Disclosure Program (16-OIR-05).

Proposed resolution to adopt a Negative Declaration under CEQA. Also proposed resolution to adopt modifications to the Power Source Disclosure Program Regulations, Title 20, CCR, §§ 1391-1394; adding §§ 1394.1-1394.2., and provisions required by Assembly Bill (AB) 1110 (Ting, Stats. 2016, Ch. 656). Contact: Jordan Scavo. (Staff presentation: 10 minutes)

- a. **NEGATIVE DECLARATION.** Consideration for possible adoption of the Negative Declaration for Modifications of Regulations Governing the Power Source Disclosure Program. This proposed adoption comes after a 30-day public comment period necessary to comply with CEQA guidelines.
- b. **POWER SOURCE DISCLOSURE PROGRAM REGULATIONS.** Proposed for consideration to adopt amendments to Title 20, CCR, §§ 1391-1394 and new §§ 1394.1-1394.2 implementing specific requirements found in Public Utilities Code (PUC) §§ 398.1–398.5. This rulemaking also updates other aspects of the Power Source Disclosure Program to facilitate implementation, improve clarity, and ensure the statutory directive produces a label that is accurate, reliable, and simple to understand. The proposed action is taken under the authority of §§ 25213 and 25218(e) of the Public Resources Code, and §§ 398.4(k)(2)(F)(i) and 398.5(c) of the PUC. This proposed adoption comes after a 45-day and subsequent 15-day public comment period.

6. 2019 California Energy Efficiency Action Plan (19-IEPR-06).

Proposed resolution approving the 2019 California Energy Efficiency Action Plan. The plan fulfills the mandates in California Public Resources Code §§ 25310(c) and 25943(f). It is separated into three goals: doubling energy efficiency savings by 2030, removing and reducing barriers to energy efficiency in low-income and disadvantaged communities, and reducing greenhouse gas emissions from the buildings sector. Contact: Michael Kenney. (Staff presentation: 5 minutes)

7. Determination of Consistency of Integrated Resource Plans (IRP) with SB 350 (18-IRP-01).

Adoption of CEC determination that integrated resource plans prepared by Los Angeles Department of Water and Power (LADWP), City of Palo Alto, Sacramento Municipal Utility District (SMUD), Silicon Valley Power, and Turlock Irrigation District are consistent with the requirements of PUC § 9621. Contact: Paul Deaver. (Staff presentation: 10 minutes)

- a. LOS ANGELES DEPARTMENT OF WATER AND POWER. Proposed resolution adopting CEC's determination finding LADWP's IRP Filing consistent with the requirements of SB 350.
- b. CITY OF PALO ALTO. Proposed resolution adopting CEC's determination finding City of Palo Alto's IRP Filing consistent with the requirements of SB 350.
- c. SACRAMENTO MUNICIPAL UTILITY DISTRICT. Proposed resolution adopting CEC's determination finding SMUD's IRP Filing consistent with the requirements of SB 350.
- d. SILICON VALLEY POWER. Proposed resolution adopting CEC's determination finding Silicon Valley Power's IRP Filing consistent with the requirements of SB 350.
- e. TURLOCK IRRIGATION DISTRICT. Proposed resolution adopting CEC's determination finding the Turlock Irrigation District's IRP Filing consistent with the requirements of SB 350.

8. Local Ordinances Exceeding the 2019 Energy Code (19-BSTD-06).

Possible approval of six resolutions for six separate applications submitted by local jurisdictions for energy ordinances that exceed the energy efficiency requirements of the 2019 Energy Code (Title 24, Part 6). Contact: Gabriel D. Taylor (Staff presentation: 5 minutes)

- a. CITY OF MENLO PARK. For new residential construction, requires electric space and water heating and dryers, but allows gas for cooking and fireplaces. In new nonresidential construction, requires electric space and water heating, all-electric appliances, and solar electric generation. Allows some nonresidential projects to apply for a limited exception from some of the all-electric requirements (scientific laboratories, public agency owned emergency operations centers, and commercial kitchens). In all buildings, requires prewiring for electric appliances wherever gas appliances are installed.
- b. CITY OF SAN JOSE. For both new residential and nonresidential construction, defines "mixed-fuel buildings" as buildings that use gas for any appliance or buildings that contain gas plumbing. For such buildings, the ordinance requires both higher energy efficiency than the 2019 Energy Code, and prewiring for possible future electric appliances. To encourage electrification, buildings that are all-electric and are not required to exceed the 2019 Energy Code. The ordinance extends the solar ready requirements in the code to hotel/motel and high-rise multifamily buildings over ten stories and to nonresidential buildings over three stories. Requires additional electric vehicle supply equipment infrastructure.
- c. CITY OF SAN MATEO. For both new residential and nonresidential construction, defines "mixed-fuel buildings" as buildings that use gas for any appliance or buildings that contain gas plumbing. For such buildings, the ordinance requires higher energy efficiency than the 2019 Energy Code. To encourage electrification, buildings that are all-electric and are not required to exceed the

2019 Energy Code. Requires solar electric generation or solar thermal on new nonresidential, hotel/motel, and high-rise residential buildings, as well as major additions to all building types. Requires additional electric vehicle supply equipment infrastructure for residential.

- d. CITY OF SANTA MONICA. For both new residential and nonresidential construction, defines “mixed-fuel buildings” as buildings that use gas for any appliance or buildings that contain gas plumbing. For such buildings, the ordinance requires higher energy efficiency than the 2019 Energy Code. To encourage electrification, buildings that are all-electric and are not required to exceed the 2019 Energy Code. Requires solar electric generation on new nonresidential, hotel/motel, and high-rise residential buildings, as well as major additions to all building types. Requires swimming pool heaters to use either electric heat pumps or solar thermal.
- e. CITY OF WEST HOLLYWOOD. For both residential and nonresidential construction, including both new construction and major modifications, requires either solar photovoltaic (PV), solar thermal, or a vegetative roof. Requires additional energy or water efficiency measures for buildings seeking height or density waivers. Requires additional electric vehicle supply equipment infrastructure and water efficiency measures in most building types.
- f. COUNTY OF MARIN. Encourages both new and remodeled buildings to be all-electric by requiring that owners and developers demonstrate more stringent energy performance for projects that use natural gas or propane. In addition, requires either CALGreen Tier 1 or CALGreen Mandatory compliance, and either electric vehicle capable or electric vehicle ready charging infrastructure.

9. Refrigeration Service Engineers Society 2019 Update Report (13-ATTCP-01).

Proposed resolution approving the Refrigeration Service Engineers Society (RSES) nonresidential mechanical acceptance test technician certification provider updates report for the 2019 Energy Code. This will allow RSES to administer its proposed program changes and training curricula adjustments for the 2019 Energy Code. Contact: Joe Loyer. (Staff presentation: 5 minutes)

10. National Lighting Contractors Association of America 2019 Update Report (13-ATTCP-01).

Proposed resolution approving the National Lighting Contractors Association of America (NLCAA) nonresidential lighting controls acceptance test technician certification provider update report for the 2019 Energy Code. This will allow NLCAA to administer its proposed program changes and training curricula adjustments for the 2019 Energy Code. Contact: Veronica Olvera. (Staff presentation: 5 minutes)

11. Energy Conservation Assistance Act-Education Subaccount (ECCA-Ed) Competitive Loan Program, PON-18-101.

Proposed resolutions approving seven ECAA-Ed loans to local educational agencies (LEAs) at zero percent interest to finance energy efficiency and renewable energy projects. Program Opportunity Notice 18-101 sought applications from LEAs on a competitive basis based on priority criteria: number of students, geographic region, percent of students eligible for free or reduced-price meals, and energy savings. (Clean Energy Job Creation Fund) Contact: Deborah Godfrey (Staff presentation: 5 minutes)

- a. EUREKA CITY SCHOOLS. Proposed resolution approving Agreement 001-19-ECG with Eureka City Schools for a \$463,733 loan at zero percent interest to install a 132 kWdc roof-mounted solar PV system, and adopting staff's determination that this project is exempt from CEQA. The project is estimated to save 173,969 kWh of electricity annually, resulting in annual energy cost savings of \$38,702.
- b. SOUTHERN HUMBOLDT UNIFIED SCHOOL DISTRICT. Proposed resolution approving Agreement 002-19-ECG with Southern Humboldt Unified School District for a \$1,048,320 loan at zero percent interest to install five roof-mounted solar PV systems totaling 279 kWdc on five buildings at South Fork High School, and adopting staff's determination that this action is exempt from CEQA. The project is estimated to save 395,449 kWh of electricity annually, resulting in annual energy cost savings of \$89,123.
- c. CUTTEN ELEMENTARY SCHOOL DISTRICT. Proposed resolution approving Agreement 003-19-ECG with Cutten Elementary School District for a \$182,560 loan at zero percent interest to install a 52 kWdc roof-mounted solar PV system at Ridgewood Elementary School, and adopting staff's determination that this action is exempt from CEQA. The project is estimated to save 67,064 kWh of electricity annually, resulting in annual energy cost savings of \$13,983.
- d. CLASSICAL ACADEMY HIGH SCHOOL. Proposed resolution approving Agreement 004-19-ECG with Classical Academy High School for a \$585,565 loan at zero percent interest to install one roof-mounted and one shade structure-mounted solar PV system totaling 170 kWdc and adopting staff's determination that this project is exempt from CEQA. The project is estimated to save 280,777 kWh of electricity annually, resulting in annual energy cost savings of \$75,902.
- e. MATTOLE UNIFIED SCHOOL DISTRICT. Proposed resolution approving Agreement 005-19-ECG with Mattole Unified School District for a \$44,800 loan at zero percent interest to install two roof-mounted solar PV systems totaling 12.8 kWdc on two buildings, and adopting staff's determination that this action is exempt from CEQA. The project is estimated to save 17,599 kWh of electricity annually, resulting in annual energy cost savings of \$4,060.

- f. PALM SPRINGS UNIFIED SCHOOL DISTRICT. Proposed resolution approving Agreement 006-19-ECG with Palm Springs Unified School District for a \$1,643,480 loan at zero percent interest to install two solar PV carport systems totaling 495 kWdc and adopting staff's determination that this project is exempt from CEQA. The project is estimated to save 846,915 kWh of electricity annually, resulting in annual energy cost savings of \$82,174.
- g. PARLIER UNIFIED SCHOOL DISTRICT. Proposed resolution approving Agreement 007-19-ECG with Parlier Unified School District for a \$2,750,331 loan at zero percent interest and adopting staff's determination that this project is exempt from CEQA. The project includes a comprehensive interior and exterior retrofit to LED lighting, replacing 26 inefficient wall-mounted heat pumps units with high-efficiency systems and installing an 898.5 kWdc ground-mounted solar PV system at two co-located schools. The project is estimated to save 1,721,452 kWh of electricity annually, resulting in annual energy cost savings of \$270,925.

12. Minutes.

Possible approval of the November 13, 2019, business meeting minutes.

13. Lead Commissioner or Presiding Member Reports.

A lead commissioner on a policy matter may report to the CEC on the matter and discussion may follow. A presiding member on a delegated committee may report to the CEC on the matter and discussion may follow.

14. Executive Director's Report.

15. Public Advisor's Report.

16. Public Comment.

Individuals may speak up to three minutes on any matter concerning the Energy Commission, with the exception of items appearing on this agenda or items related to pending adjudicative (certification or enforcement) proceedings.

17. Chief Counsel's Report.

- a. Pursuant to Government Code § 11126(e), the CEC may adjourn to closed session with its legal counsel to discuss any of the following matters to which the CEC is a party:
 - i. *In the Matter of U.S. Department of Energy (High Level Waste Repository), (Atomic Safety Licensing Board, CAB-04, 63-001-HLW); State of California v. United States Department of Energy* (9th Cir. Docket No. 09-71014).
 - ii. *Communities for a Better Environment and Center for Biological Diversity v. Energy Resources Conservation and Development Commission, and California State Controller* (Alameda County Superior Court, Case No. RG13681262).

- iii. *State Energy Resources Conservation and Development Commission v. Electricore, Inc. and ZeroTruck* (Sacramento County Superior Court, Case No. 34-2016-00204586).
 - iv. *Natural Resources Defense Council, Inc., et al. v. United States Department of Energy* (Federal District Court, Northern District of California, Case No. 17-cv-03404).
 - v. *City of Los Angeles, acting by and through, its Department of Water and Power v. California Energy Resources Conservation and Development Commission* (Los Angeles Superior Court, Case No. BS171477).
 - vi. *In re: PG&E Corporation and In re: Pacific Gas and Electric Company* (United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 19-30088).
 - vii. *State Energy Resources Conservation and Development Commission v. HyGen Industries, Inc.* (Sacramento County Superior Court No. 34-2019-00252543).
- b. Pursuant to Government Code § 11126(e), the CEC may also discuss any judicial or administrative proceeding that was formally initiated after this agenda was published; or determine whether facts and circumstances exist that warrant the initiation of litigation, or that constitute a significant exposure to litigation against the CEC, which might include personnel matters.

Participate by Telephone. To participate by telephone, call 1-888-823-5065 on business meeting days after 9:50 a.m. (Pacific Time). The passcode is "business meeting" and the call leader is Jerome Lee. If you plan to speak about a specific item, please give the item number to the operator.

In the event of technical problems with the telephone line, it is recommended that comments be submitted by email to publicadviser@energy.ca.gov or facsimile to (916) 654-4493 by 5 p.m., at least two days before the meeting.

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Public participation. Questions may be directed to the Public Advisor, Noemí O. Gallardo, via email at publicadvisor@energy.ca.gov, or by phone at 916-654-4489 or 800-822-6228.

Accommodation. Requests may be directed to Yolanda Rushin at 916-654-4310, at least five days before the meeting.

Wi-Fi. Access is available in the building's public areas (atrium, snack bar, and library).

Media. Inquiries may be directed to Media and Public Communications at 916-654-4989.

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Adjournment of Hearings and Meetings. Depending on time and the orderly management of proceedings, the CEC may adjourn (recess or postpone) any noticed hearing or meeting to be continued the next day, another specific date or time, or the next business meeting. Any such adjournment will be noticed at the time the order of adjournment is made. (Government Code §§ 11128.5, 11129)