

DOCKETED

Docket Number:	21-OIR-02
Project Title:	Rulemaking to Amend Regulations for Delegation of Certification Authority
TN #:	241940
Document Title:	Initial Statement of Reasons - Geothermal Delegation
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	2/24/2022 9:40:42 AM
Docketed Date:	2/24/2022

CALIFORNIA ENERGY COMMISSION

715 P Street
Sacramento, California 95814

energy.ca.gov

CEC-057 (Revised 1/21)

**INITIAL STATEMENT OF REASONS**

Title 20. Public Utilities and Energy
Delegation of Geothermal Power Plant Siting Authority to Local Government
Sections 1802, 1860 through 1870

Docket No. 21-OIR-02
Notice Published on February 25, 2022

INTRODUCTION

The California Energy Commission (CEC) proposes to adopt amendments to the CEC's procedures to delegate its site certification authority over geothermal power plants to counties contained in the California Code of Regulations (CCR), Title 20, after considering all comments, objections, and recommendations regarding the proposed action.

PROBLEM STATEMENT

The CEC is undertaking this rulemaking in response to a Proclamation of a State of Emergency issued by Governor Gavin Newsom on July 30, 2021 (Proclamation), directing state agencies to, among other things, perform any and all actions to accelerate the state's transition to carbon-free energy. This rulemaking will also support a June 2021 decision by the California Public Utilities Commission (CPUC) to procure 11,500 megawatts (MW) of new electricity resources before 2026, with at least 1,000 MW coming from "firm resources with zero-onsite emissions" such as geothermal.

The CEC first adopted the regulations subject to this rulemaking in the late 1970s and has not significantly amended these regulations since then. These regulations have never been used because they are too burdensome for a county to petition for delegation of geothermal power plant certification authority, and for the CEC to approve such delegation. As a result, the CEC and counties have not been able to use this delegation authority, which could streamline the certification of geothermal power plants as intended by the Legislature. Streamlining these regulations will help remove barriers to geothermal power plant certification while maintaining robust environmental review and public participation as required under the California Environmental Quality Act (CEQA). Therefore, the CEC is proposing to amend the CEC's procedures for delegating the CEC's full authority for the certification of geothermal power plants within a county which has adopted a geothermal element for its general plan and

demonstrates that it has an equivalent certification program (Cal. Code Regs., tit. 20, §§ 1802 and 1860-1870).

PURPOSE

The purpose of this rulemaking is to update the regulations for delegating geothermal power plant licensing authority from the CEC to counties with demonstrated equivalent certification programs. The CEC first adopted the regulations subject to this rulemaking in the late 1970s and has not significantly amended these regulations since then. These regulations have not been used by counties to obtain delegation of geothermal power plant certification authority. Streamlining these regulations will help remove barriers to geothermal power plant certification while maintaining robust environmental review and public participation as required under CEQA.

BENEFITS

The specific benefits of this rulemaking are to streamline the CEC delegation of authority process to minimize cost and delay of certifying geothermal power plants while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input required under CEQA. The streamlined regulations will help accelerate the state's transition to carbon-free energy by providing a simpler process for counties to obtain a delegation of authority to approve siting of geothermal power plants.

STATEMENT OF SPECIFIC PURPOSE AND NECESSITY

SECTION 1802. Policies of the Commission on the Siting of Geothermal Power Plants.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to specify a policy and discretionary decision stated in the Public Resources Code Section 25540.5 which authorizes the CEC to delegate its full authority for the certification of all geothermal power plants within a county which has submitted a petition to the CEC, adopted a geothermal element for its general plan, and has an equivalent certification program.

NECESSITY

Streamlining the regulations which implement the CEC's authority to delegate its certification of geothermal power plants to an eligible county requires specifying the statutory authority to do so in the list of policies of the CEC on the siting of geothermal power plants. The existing statement of policies in this section lacks a specific restatement or description of CEC's policy regarding delegation authority provided in Public Resources Code, section 25540.5. It is necessary to specify the CEC's existing authority and policy to delegate its certification of geothermal power plants to support streamlining its procedures for doing so.

SECTION 1862. Contents of Petition.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to remove provisions adopted over forty years ago which are outdated and are unnecessary for the implementation of the Public Resources Code. Since this section was adopted, the Governor's Office of Planning and Research has stopped publishing guidelines or criteria for geothermal elements in a county general plan. The CEC's adopted policies for geothermal development as stated in its existing and proposed regulations based on statutory authority under the Warren Alquist Act are the more pertinent and accurate reference for a county's development of a geothermal element in its general plan and preparation of a petition for delegation of the CEC's exclusive authority to certify geothermal power plants and related facilities in its jurisdiction. The proposed amendments also will require more specificity about the county's financial resources to implement its delegated authority if approved by the CEC.

NECESSITY

Updating the existing regulations which implement the CEC's authority to delegate its certification of geothermal power plants to an eligible county requires eliminating language which is outdated, obsolete, or unnecessary. The existing language references a guidance document published by the Governor's Office of Planning and Research that no longer exists. The proposed text will ensure that the petition expressly describes how the policy statements in the county's geothermal element are in fact aligned with the CEC's policies. Additionally, the proposed text will ensure that the petition describes the county's financial resources to implement its equivalent certification program if delegated the CEC's certification authority.

SECTION 1863. Equivalent Certification Program Requirements.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to align a county's requirement to hold a public hearing on applications for certification with existing law describing the county's public hearing requirements for its general plan adoption and amendments, and to repeal language in subdivision (d) and (e) that provides for a specific type of public hearing procedure. The amendments to this section would permit a county to provide an equivalent certification program by offering adjudicatory hearings consistent with the public hearing procedures it is required to use for general plan adoption and amendments as provided by Article 6 of Chapter 3 of Division 1 Title 7 of the Government Code. The proposed text also requires the equivalent certification program to include notification and invitation of tribal governments to consult consistent with the requirements for tribal consultation and engagement in CEC's existing regulations for power plant proceedings and CEQA requirements. Finally, the amendments clarify the appeal procedures, including appeals to the CEC on substantive issues, to better align with the underlying statutory language in Public Resources Code section 25540.5.

NECESSITY

Removing unnecessary administrative procedures is necessary for the CEC to update its regulations to respond to the Proclamation and the CPUC decision and perform any and all actions to accelerate the state's transition to carbon-free energy, specifically to

accelerate decisions on a county's petition for delegated authority to certify geothermal power plants and its capability to carry out an equivalent certification program. It will streamline the county's ability to consider applications for certification under its equivalent certification program if it can hold an adjudicatory hearing for site certification utilizing the same procedures it uses for public hearings for a county's general plan adoption and amendments in Article 6 of Chapter 3 of Division 1 of Title 7 of the Government Code. The existing language proposed for deletion in this section, which describes elements of an adjudicatory hearing, is unnecessary since the proposed language specifies procedures for local government public hearings already applicable to a county's adoption and amendment of its general plan. Pursuant to section 65351 of the Government Code, a county may adopt or amend its general plan only after providing public hearings and opportunities for the involvement of citizens, California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups. The procedures required for such local general plan decisions will satisfy the requirement for a hearing for site certification.

New requirements for tribal notification and consultation in proceedings to certify power plant facilities are necessary to ensure that the county's equivalent certification program aligns with the CEC's certification program by requiring the county's equivalent certification program to have procedures that comport with CEQA (Public Resources Code section 21080.3.1) and the CEC's siting regulations.

Modified language for appeal procedures is necessary to include the word "substantive" to align with statutory language governing appeals in Public Resources Code section 25540.5 and to provide clarity about what types of appeal procedures the equivalent certification program must include.

SECTION 1864. Commission ~~Staff~~ Analysis Participation.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to update the regulations to remove provisions from the 1970s that are outdated and to update them to reflect the current energy reports prepared by the CEC. Additionally, the amendment corrects the title of this section to more accurately reflect the existing text.

NECESSITY

The existing section requires an analysis of the conformity of the county's petition with a 12-year forecast of statewide and service area electric power demands pursuant to Section 25309(b) of the Public Resources Code, a section which was since repealed by the Legislature. Therefore, the CEC no longer prepares the 12-year forecast. Instead, current law mandates that the CEC prepare a biennial report pursuant to Section 25302 of the Public Resources Code, which includes an overview of the major energy trends and issues in California addressing, among other things, supply and demand of electricity. The proposed amendment to this section is necessary to update the regulations accordingly. Additionally, it is necessary to amend the title of this section to more accurately indicate that this section describes the CEC's participation and

assistance – beyond a staff analysis – in county proceedings on an application for certification.

SECTION 1867. Commission Action on Petition.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to streamline and accelerate the CEC's review of a county's petition for delegation authority, and to remove unnecessary and burdensome administrative procedures for the CEC's consideration of whether a county has demonstrated that it has an equivalent certification program.

NECESSITY

The existing section requires the CEC to convene two public hearings on a county's petition, which are not required by the Warren-Alquist Act. The existing language specifies the locations and timing of the two public hearings and provides for any interested party to offer testimony at the hearings. Because these two hearings are not required by law, eliminating them is necessary to accelerate the CEC's review of a county's petition for delegation authority to certify geothermal power plants, which will in turn accelerate opportunities for construction and operation of carbon-free electrical generation facilities in support of the Proclamation and CPUC decision. The proposed language specifies instead that the CEC will convene a single public meeting on the petition, which shall be a properly noticed meeting with public access pursuant to the Bagley-Keene Open Meeting Act at Sections 11120-11132 of the Government Code. The proposed language also streamlines the review of a county's petition by specifying that the CEC shall convene such meeting within thirty days after the Executive Director's certification that the petition is complete. Finally, the proposed language aligns the CEC's findings required for approving a county's petition with the requirements stated in the Warren-Alquist Act; includes findings that the petition aligns with the CEC's geothermal policies and that the administrative record adequately supports the CEC's determination; and removes findings not required by law.

SECTION 1868. Appeals to Commission.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to better align the language in the existing regulation with the underlying statutory language in Public Resources Code section 25540.5.

NECESSITY

The proposed language is necessary to replace the word "aspect" with "substantive issue" to align the types of issues that may be appealed with statutory language governing appeals to the CEC in Public Resources Code section 25540.5.

SECTION 1869. Commission Action on Appeals.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to streamline and accelerate the CEC's review of an appeal of any county proceeding conducted pursuant to authority delegated under Section 25540.5 of the Public Resources Code, and to remove unnecessary and burdensome administrative procedures for the CEC's consideration of such appeal.

NECESSITY

The existing section requires the CEC to convene a hearing for the presentation of arguments on any appeal of a county proceeding conducted under its delegated authority, which is not required by the Warren-Alquist Act. Because a hearing is not necessarily required by law and will depend on the specific issues of the appeal, eliminating it in the regulations is necessary to accelerate the CEC's review of such appeal by allowing the CEC to decide whether or not a hearing is necessary and to forgo any unnecessary hearings, which will in turn accelerate the construction and operation of carbon-free electrical generation facilities in support of the Proclamation and CPUC decision. Eliminating the option to conduct further evidentiary hearings after a finding for the appellant clarifies that the CEC may either remand to the county or remove the case from the county's jurisdiction and issue its own decision.

SECTION 1870. Revocation of Delegation.

SPECIFIC PURPOSE

The specific purpose of the amendment to this section is to remove unnecessary numbering, where there is only one item in the section.

NECESSITY

This change is necessary to remove unnecessary numbering. It is not a substantive change to the regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS.

The CEC relied on input from various stakeholders, subject matter experts, and interested parties that provided information, feedback, and subject matter expertise from operational, technical, and governmental perspectives. Some of the groups and organizations that participated include:

- California counties with significant geothermal resources
- Lithium Valley Commissioners and meeting participants
- Disadvantaged Communities Advisory Group and meeting participants
- State agencies that have generally participated in the CEC's siting process

The CEC relied upon the following documents:

- Proclamation of a State of Emergency dated July 30, 2021, Executive Department, State of California.

- Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) dated June 24, 2021, California Public Utilities Commission Rulemaking 20-05-003.

CONSIDERATION OF REASONABLE ALTERNATIVES INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No reasonable alternatives to the proposed regulations have been proposed that would lessen any adverse impact on small business or that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that achieves the purposes of the statute being implemented.

The CEC is proposing to streamline the delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input required under CEQA. The CEC is not aware of any significant costs impacts that a small business would incur in reasonable compliance with the proposed action. The changes being proposed are not relevant to businesses, as the proposed amendments to the delegation process relate to counties seeking a delegation of certification authority for geothermal power plants.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate proprietary technology or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Creation or Elimination of Jobs within the State of California

The CEC proposes to streamline the CEC delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input. The proposed regulations do not impact private persons and there are no anticipated cost impacts to businesses. Therefore, the CEC has determined that no jobs are expected to be created or eliminated as a result of the proposed regulations.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California.

The CEC proposes to streamline the CEC delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input. There are no anticipated cost impacts to businesses and there is no information in the record that the proposed regulations will change the number of businesses that seek certification of geothermal power plants through delegated authority. Therefore, the CEC has determined that no new businesses would be created or eliminated as a result of the proposed regulations.

The Expansion of Businesses Currently Doing Business within the State of California

The CEC proposes to streamline the CEC delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input. There are no anticipated

cost impacts to businesses and there is no information in the record that the proposed regulations will change the size of businesses that seek certification of geothermal power plants through a county with delegated authority. Therefore, the CEC has determined that no expansion of businesses is expected as a result of the proposed regulations.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulation will benefit the health and welfare of California residents and the state's environment through streamlining the CEC's delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input. This streamlining may potentially accelerate the state's transition to carbon-free energy by allowing more counties to review and approve geothermal power plants if delegation is approved under the proposed amended process and effectively utilized. It is expected that the proposed amendments will not impact worker safety as the proposed changes are procedural and do not relate to geothermal power plant operations.

Results of the Economic Impact Assessment/Analysis

Based on its analysis, the CEC has made an initial determination that the proposal: (1) will not create jobs within California, (2) will not eliminate jobs within California, (3) is not expected to create new businesses in California, (4) is not expected to eliminate existing businesses within California, and (5) is not expected to result in the expansion of businesses currently doing business within the state. Further, the proposed amendments have no impact on business and only relate to those counties in the state that have geothermal resources within their jurisdiction.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

These proposed amended regulations do not duplicate or conflict with any federal regulations or statute contained in the Code of Federal Regulations.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS

The CEC has made an initial determination that the proposed regulations will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed amendments have no impact on business and only relate to those counties in the state that have geothermal resources within their jurisdiction.

The CEC proposes to streamline the CEC's delegation of authority processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input required under CEQA. The CEC proposes to amend portions of its delegation regulations to better reflect what is necessary to ensure an equivalent certification program while minimizing or eliminating unnecessary procedural steps that delay and complicate both the

consideration of a petition for delegation and the requirements itself for the equivalent certification program. There are no anticipated cost impacts to businesses.