

DOCKETED

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CALIFORNIA ENERGY COMMISSION

715 P Street
Sacramento, California 95814

energy.ca.gov

CEC-057 (Revised 1/21)



NOTICE OF PROPOSED ACTION

Title 20. Public Utilities and Energy

Article 5: Small Power Plant Exemptions

Sections 1934 through 1948,

And

Article 6: Appendix B

Information Requirements for an Application

And

Article 6: Appendix F

Informational Requirements for a Small Powerplant Exemption

Docket No. 21-OIR-04

Notice Published on July 15, 2022

INTRODUCTION

Notice is hereby given that the California Energy Commission (CEC) proposes to adopt amendments to its procedures for small power plant exemptions (SPPE) contained in the California Code of Regulations (CCR), Title 20, ("the Proposed Action") after considering all comments, objections, and recommendations regarding the Proposed Action.

PUBLIC HEARING

The CEC staff will hold a public hearing on the proposed regulations at the date and time listed below. All interested persons may present statements, arguments, or contentions relevant to the proposed regulations at the public hearing. The record for this hearing will be kept open until every person has had an opportunity to provide comment.

Public Hearing
Tuesday, August 30, 2022
10:00 a.m. (Pacific Time)

The public hearing will be held remotely to improve and enhance public access to meetings by allowing broader access through teleconferencing options. Instructions for remote participation for the public hearing are below.

BUSINESS MEETING

PLEASE TAKE NOTICE that the CEC will consider and possibly adopt the proposed regulations at a CEC Business Meeting at the date and time listed below. Interested persons, or their authorized representative, may present oral statements, arguments, or contentions relevant to the proposed regulations at the Business Meeting. If the date, time, place, or nature of the proposed adoption changes, the CEC will provide updated information in the rulemaking docket.

Business Meeting
Wednesday, September 14, 2022
10:00 a.m. (Pacific Time)

REMOTE ATTENDANCE

The public hearing may be accessed by clicking the Zoom link below or visiting [Zoom](https://join.zoom.us) at <https://join.zoom.us> and entering the ID and password for the public hearing listed below. If you experience difficulties joining, you may contact Zoom at (888) 799-9666 ext. 2, or the Public Advisor's Office at publicadvisor@energy.ca.gov or (800) 822-6228.

Zoom Link:

<https://energy.zoom.us/j/98269163971?pwd=N1d0OEpwUXRtWDduRFIQYzdVOFN6UT09>

Webinar ID: 982 6916 3971

Password: 0830

To participate by telephone dial (213) 338-8477 or 1-888-475-4499 (toll free). When prompted, enter the Webinar ID and password listed above. To comment or ask a question over the telephone, dial *9 to "raise your hand" and *6 to mute/unmute your phone line.

PUBLIC ADVISOR

The CEC's Office of the Public Advisor, Energy Equity and Tribal Affairs provides the public assistance in participating in CEC proceedings. For information on participation or to request interpreting services or reasonable accommodations, reach out via email at publicadvisor@energy.ca.gov, by phone at (916) 957-7910. Requests for interpreting services and reasonable accommodations should be made at least five days in advance. The CEC will work diligently to accommodate all requests.

Zoom: If you experience difficulties with the Zoom platform, please contact the Office of the Public Advisor, Energy Equity and Tribal Affairs via email or phone.

MEDIA INQUIRIES

Direct media inquiries to the Media and Public Communications Office at (916) 654-4989 or mediaoffice@energy.ca.gov.

PUBLIC COMMENT PERIOD

The written public comment period for the proposed regulations will be held from July 15, 2022, through August 29, 2022. Any interested person, or an authorized representative, may submit written comments to the CEC for consideration on or prior to August 29, 2022. The CEC appreciates receiving written comments at the earliest possible date. Comments submitted outside this comment period are considered untimely. CEC may, but is not required to, respond to untimely comments, including those raising significant environmental issues.

Written and oral comments, attachments, and associated contact information (including address, phone number, and email address) will become part of the public record of this proceeding with access available via any internet search engine.

The CEC encourages use of its electronic commenting system. Visit <https://efiling.energy.ca.gov/EComment/ECommentSelectProceeding.aspx>, type in docket number, 21-OIR-04. Enter your contact information and a comment title describing the subject of your comment(s). Comments may be included in the "Comment Text" box or attached as a downloadable, searchable document consistent with Title 20, California Code of Regulations, Section 1208.1. The maximum files size allowed is 10 MB.

Written comments may also be submitted by email. Include Docket Number 21-OIR-04 in the subject line and email to docket@energy.ca.gov.

A paper copy may be sent to:

California Energy Commission
Docket Unit
Docket No. 21-OIR-04
715 P Street, MS-4
Sacramento, CA 95814

Pursuant to California Code of Regulations Title 20 section 1104(e), any person may make oral comment on any agenda item at the September 14, 2022, Business Meeting. Please consult the public agenda, which will be posted ten days before the Business Meeting, for important details on how to participate.

To ensure you receive notice of any changes to the proposed regulations in this proceeding, please follow the instructions provided at the end of this notice to join the proceeding list serve or provide a valid email or mailing address with your comments.

STATUTORY AUTHORITY AND REFERENCE

Public Resources Code Sections 25210, 25213, 25216.3 25218(e), and 25541 authorize the CEC to adopt rules or regulations, as necessary, to implement, interpret, and make specific Public Resources Code Sections 25210, 25502, 25519(b) and 25541.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The regulatory provisions subject to this rulemaking were first adopted in the late 1970s and have not been significantly amended since then. However, since the 1970s, many changes have occurred in California's electricity sector and related regulatory and market environments, changes that are not reflected in the processes and procedures the CEC currently uses. For example, the electricity market has been deregulated so that independent companies propose and operate electrical generating facilities and sell them to the market, as opposed to those facilities being owned by the investor-owned utilities. In addition, the California Environmental Quality Act (CEQA) has rigorous public procedures to ensure public participation in the environmental review process of a power plant. These changes since the 1970s make the adjudicative process unnecessary to perform adequate environmental review and encourage public participation in a decision on an SPPE.

Therefore, the CEC is proposing to amend the CEC's procedures for exempting from its exclusive certification authority thermal power plants with a generating capacity of up to 100 megawatts (Cal. Code Regs., tit. 20, §§ 1934-1948, Appendix B and Appendix F). The proposed amendments would remove the adjudicatory process that currently applies to SPPEs, while maintaining the requirements for environmental review and public participation under CEQA. The proposed amendments also update the application requirements for applications for certification (AFCs) and for SPPEs to conform to changes under CEQA and to ensure that the CEC has sufficient information at the time of application to perform the required environmental review under CEQA for an SPPE.

Difference from existing comparable federal regulations or statute

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

Broad objectives of the regulations and the specific benefits anticipated by the proposed amendments

The broad objective of this rulemaking is to update the regulatory provisions to remove the adjudicatory process that currently applies to SPPEs and to update the requirements for applications to conform to changes in CEQA and ensure the CEC has sufficient information to prepare an environmental review of an SPPE. The regulatory provisions subject to this rulemaking were first adopted in the late 1970s and have not been significantly amended since then. However, since the 1970s, many changes have occurred in California's electricity sector and related regulatory and market

environments, changes that are not reflected in the processes and procedures the CEC currently uses.

The specific benefits of this rulemaking are to streamline the CEC SPPE proceedings to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input under the California Environmental Quality Act (CEQA).

The proposed regulation will not adversely impact the health and welfare of California residents, worker safety, or the state's environment.

Determination of inconsistency or incompatibility with existing state regulations

The CEC has conducted a search for any other regulations in this area and has determined that the proposed regulations are neither inconsistent nor incompatible with any existing state regulations.

DOCUMENTS INCORPORATED BY REFERENCE

The CEC does not propose to incorporate by reference any documents.

MANDATED BY FEDERAL LAW OR REGULATIONS

None.

OTHER STATUTORY REQUIREMENTS

None.

FISCAL IMPACTS

The CEC has made the following initial determinations:

- Mandate on local agencies and school districts: No
- Cost to any local agency or school district requiring reimbursement pursuant to Government Code Section 17500 et seq.: No
- Cost or savings to any state agency: No
- Non-discretionary cost or savings imposed upon local agencies: No
- Cost or savings in federal funding to the state: No

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

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 CEC proposes to streamline the SPPE process to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input under CEQA.

The proposed amendments to the SPPE regulations remove the adjudicatory process for the CEC's determination on an SPPE application. This streamlining of the SPPE process eliminates unnecessary steps by eliminating processes duplicative of CEQA as well as unnecessary adjudicative procedures, potentially reducing the time and cost associated with an SPPE. The SPPE process must still comply with CEQA, which includes robust requirements for environmental review, public notice, and public participation, with meaningful opportunities for public input. Therefore, no economic or fiscal impacts are expected.

The amendments to the data requirements for the SPPE application set forth in Appendix B reflect information that is typically already provided as part of the SPPE environmental review process under CEQA guidelines 15060, 15063(e), 15084, and 15120. The proposed amendments consolidate the data requirements in one place to allow for an applicant to streamline the process by providing the information upfront in the application. While the end result is the same, the proposed amendments change the timing by front loading the information submittal to the application phase rather than a later data request phase. Therefore, no economic or fiscal impacts are expected from this change.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The CEC concludes that the proposal: (1) will not create jobs within California, (2) will not eliminate jobs within California, (3) will not create new businesses in California, (4) will not eliminate existing businesses within California, and (5) will not result in the expansion of businesses currently doing business within the state.

Benefit of the Proposed Action: The proposed regulation will benefit the health and welfare of California residents and the state's environment through streamlining the CEC's SPPE processes to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with meaningful opportunities for public participation and input under CEQA.

The proposed regulation will not adversely impact the health and welfare of California residents, worker safety, or the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The CEC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT

The regulations do not impose a new reporting requirement.

SMALL BUSINESS

The proposed regulations will not affect small business. The proposed regulations will not affect small business because most applicants before the CEC seeking a small power plant exemption are larger companies that either specialize in the construction and operation of powerplants or large scale backup generation systems. In addition, the proposed regulatory language is procedural in nature only relevant to the CEC's evidentiary process which is proposed to be removed or updates informational requirements and thus, would not result in additional impacts to any business regardless of *size*.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the CEC must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

General questions regarding procedural and administrative issues should be addressed to:

Corrine Fishman, Regulations Manager
715 P Street
Sacramento, CA 95814
(916) 805-7452
Corrine.Fishman@energy.ca.gov

If Corrine Fishman is unavailable, you may contact Jared Babula, Senior Attorney, at (916) 891-8033 or at Jared.Babula@energy.ca.gov

COPIES OF THE INITIAL STATEMENT OF REASONS, THE EXPRESS TERMS, AND RULEMAKING FILE

The CEC will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms, the Initial Statement of Reasons (ISOR), and any documents relied upon. Copies may be obtained by contacting Corrine Fishman above or accessed through the CEC website at Docket 21-OIR-04,

<https://www.energy.ca.gov/proceedings/energy-commission-proceedings/rulemaking-amend-regulations-small-power-plant-exemptions>.

AVAILABILITY OF CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS

Participants should be aware that any of the proposed regulations could be changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the CEC considers changes to the proposed regulations pursuant to Government Code Section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the CEC adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the Final Statement of Reasons (FSOR), once it has been prepared, by visiting the CEC website at Docket No. 21-OIR-04, <https://www.energy.ca.gov/proceedings/energy-commission-proceedings/rulemaking-amend-regulations-small-power-plant-exemptions>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The CEC maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared for this rulemaking have been posted on the CEC's website at Docket 21-OIR-04, <https://www.energy.ca.gov/proceedings/energy-commission-proceedings/rulemaking-amend-regulations-small-power-plant-exemptions>.

INSTRUCTIONS FOR RECEIVING NOTICES AND DOCUMENTS IN THIS PROCEEDING

To stay informed about this project and receive documents and notices of upcoming workshops and hearings as they are filed, please subscribe to the **Siting Division General List** or the **Rulemaking List**, which can be accessed here: <https://www.energy.ca.gov/subscriptions>.

The list serve sends out email notification and direct links when documents and notices are filed in the proceeding docket. If you are unable or do not wish to sign up for the listserv but still would like to receive documents and notices, please contact the contact person listed in this notice.