

DOCKETED

Docket Number:	21-OIR-04
Project Title:	Rulemaking to Amend Regulations for Small Power Plant Exemptions
TN #:	244072
Document Title:	Initial Statement of Reasons
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	7/14/2022 1:34:20 PM
Docketed Date:	7/14/2022

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

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

The California Energy Commission (CEC) proposes to adopt amendments to the CEC's procedures related to small power plant exemptions (SPPE) contained in the California Code of Regulations (CCR), Title 20, after considering all comments, objections, and recommendations regarding the proposed action.

The purpose of this rulemaking is to: (1) remove the adjudicatory process from the regulatory provisions that currently apply to SPPEs; and (2) update the requirements for applications to conform to changes in the California Environmental Quality Act (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 CEC proposes to eliminate components of the SPPE process that either duplicate existing process and procedures set forth in CEQA and its implementing guidelines (Public Resources Code section 21000 et seq. and California Code of Regulations, Title 14, Chapter 3), or to remove layers of process that no longer serve a purpose given the changed nature of energy markets.

The current adjudicatory framework applied to SPPEs is no longer appropriate given statutory and market changes that eliminate the requirement for the CEC's assessment of a utility's need for a specific energy generating facility. The non-CEQA controversies that SPPE adjudications used to address have been addressed through changes in the electricity market and in the CEC's own regulations.

PROBLEM STATEMENT

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, 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 by removing the adjudicative process in the regulations applicable to an SPPE (Cal. Code Regs., tit. 20, §§ 1934-1948, Appendix B and Appendix F).

BENEFITS

The specific benefits of this rulemaking are to streamline the CEC's SPPE proceedings 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 would remove the adjudicatory process that currently applies to SPPEs and update the requirements for applications for certification (AFCs) and applications 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.

STATEMENT OF SPECIFIC PURPOSE AND NECESSITY

SECTION 1934. Statement of Purpose

SPECIFIC PURPOSE

The specific purpose is to repeal Section 1934, updating the regulations to remove provisions dated from the 1970s that serve no regulatory purpose and are unnecessary for the implementation of the Public Resources Code.

NECESSITY

Updating the regulatory language requires that provisions no longer serving any purpose or not required for the implementation of the Public Resources Code be repealed. This particular provision is a broad policy statement, unnecessary to implement the process for which an entity can apply for an SPPE or the process for the review of an application by the CEC.

SECTION 1936. Scope, Filing, Review and Distribution of Applications for Exemption.

SPECIFIC PURPOSE

The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review process by eliminating the additional notice and outreach requirements required by an adjudicative process and instead use the existing process and procedures set forth in CEQA and its implementing guidelines (Public Resources Code section 21000 et seq. and California Code of Regulations, Title 14, Chapter 3). The proposed amendments also make changes to allow for the withdrawal of an application by submitting it to the Executive Director instead of the presiding member, as other changes to the SPPE procedures eliminate the role of a presiding member in these applications.

NECESSITY

To accomplish the streamlining effort, it is necessary to repeal subsection (d) because CEQA already contains provisions which govern the CEC's noticing and outreach with other agencies, tribal governments, and the public, making the existing provision duplicative. Changes to current subsection (e) are necessary to comport with the removal of the evidentiary hearing component in later sections and reflects the need to have any withdrawal of an SPPE application be submitted to the CEC's Executive Director rather than the presiding member of a committee since there will not be a committee.

SECTION 1937. Staff as an Independent Party.

SPECIFIC PURPOSE

The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review process by eliminating the requirement that staff participate as an independent party in the SPPE process, as staff as a party is part of the adjudicatory framework that is no longer appropriate given statutory and market changes described above.

NECESSITY

To accomplish the streamlining effort, it is necessary to repeal this subsection which will become obsolete with the transition of the SPPE review process from one designed as an adjudicatory proceeding, to a review process that comports with CEQA but removes the adjudicatory layer. Thus, there are no parties and language automatically designating CEC staff as a party is not necessary.

SECTION 1940. Information Requirements for Applications for Exemption.

SPECIFIC PURPOSE

As part of the updating and consolidating of Appendix B, Appendix F is now duplicative and obsolete and is being deleted. Therefore, the proposed changes remove reference to Appendix F and replace it with Appendix B.

NECESSITY

Because Appendix F is being deleted, the regulatory language must be updated to cite to Appendix B.

SECTION 1941. Obtaining Information

SPECIFIC PURPOSE

The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review process by eliminating references to obtaining information via the discovery processes applicable to an adjudication.

NECESSITY

To accomplish the streamlining effort, it is necessary to repeal this subsection which will become obsolete with the transition of the SPPE review process from one designed as an adjudicatory proceeding, to a review process governed solely by the requirements of CEQA. Title 20, section 1716 describes the process for obtaining information under the CEC's application for certification process which will continue to use an adjudicatory process. Therefore, it is necessary to remove the citation to the process set forth in section 1716.

SECTION 1942. ~~Termination of an Application for Exemption.~~ Decision on Application.

SPECIFIC PURPOSE

The process for terminating an application for exemption is now addressed in section 1936 so this section can be repealed and re-titled to identify the role of the Executive Director in recommending a decision for consideration by the full commission at a noticed public meeting on the SPPE application.

NECESSITY

To accommodate the moving of the termination of the SPPE application process to section 1936, it is necessary to repeal this language. Because Public Resources Code section 25541 requires the CEC to make certain findings before an SPPE can be granted, this language is necessary to identify a process for the Executive Director to make a recommendation for consideration by the full commission at a noticed public meeting to make those findings.

SECTIONS 1943-1947

SPECIFIC PURPOSE

The specific purpose of the proposed amendments to the regulatory language is to streamline the SPPE application review process by eliminating the adjudicatory components, specifically those provisions for presenting evidence, conducting proceedings and hearings, preparing a proposed and final decision, the content of that committee decision, and modification of deadlines.

These provisions relevant to an adjudicatory framework are no longer appropriate given statutory and market changes described above as part of the general purpose of this rulemaking.

NECESSITY

To accomplish the streamlining effort and remove the adjudicatory process it is necessary to repeal these sections which relate to the evidentiary proceedings that are proposed for elimination under this rulemaking.

SECTION: Appendix B - Information Requirements for an Application

SPECIFIC PURPOSE AND NECESSITY

The CEC's siting regulations currently contain four distinct sets of information requirements identified as Appendix A, Appendix B, Appendix C and Appendix F. Appendix B contains the information requirements for Applications for Certification and Appendix F contains the information requirement for Small Powerplant Exemptions. The amendments propose consolidating Appendix B and Appendix F into one updated set of information requirements to provide consistency between the information required for each of the two procedures and to simplify the regulations. The updates also reflect changes in data needs to appropriately assess the environmental impacts of projects filed seeking an application either for certification or for an exemption. A discussion of the purpose and necessity of each technical section is detailed below.

Appendix B(a)(1)(E)

SPECIFIC PURPOSE

The purpose of changes to the Project Overview section is to update the data requirements in an application to be consistent with CEQA Guidelines section 15087(a)(3) so that the CEC can ensure adequate notification to the public of the project.

NECESSITY

The proposed amendments are necessary to ensure the CEC receives contact information of those who live near or own property near the project early in the process so that CEC can provide adequate public notice and review as required under the CEC's regulations and CEQA.

Appendix B(b)(1)(C)

SPECIFIC PURPOSE

The proposed amendments in the Project Description section do not change the substantive effect of the regulations but instead make it clear that information related to construction includes depth of any excavations.

NECESSITY

This change is necessary to provide clarity to applicants to ensure that the CEC collects the information it needs to conduct an adequate environmental review under CEQA especially in relation to potential impacts of subsurface resources.

Appendix B(g)(1)

SPECIFIC PURPOSE

The proposed amendments are to update the requirements to be consistent with CEQA Guidelines section 15130(b)(1), which requires a discussion of cumulative impacts and to ensure applicants have collected the information on cumulative impacts prior to filing the application.

NECESSITY

This change is necessary to ensure that the CEC collects the information it needs to develop a CEQA compliant environmental document and to support adequate responsible agency review under CEQA.

Appendix B(g)(2)(A-E)

SPECIFIC PURPOSE

The proposed amendments to the Cultural Resources section are to update the data requirements to reflect changes made to Public Resources Code sections 21074, 21080.3.1, and 21080.3.2 requiring lead agencies to consult with relevant Native American tribes and to assess the impacts of the project on tribal cultural resources. The updates also reflect changes in data needs to appropriately assess the environmental impacts of projects filed seeking an application either for certification or for a small power plant exemption.

NECESSITY

The proposed amendments are necessary to ensure that the applicant provides the information the CEC needs to conduct an adequate tribal consultation and cultural resources environmental review under CEQA. Other proposed amendments are added to clarify the existing regulatory language and to clarify that the scope of confidential information may extend to certain non-archaeological tribal or cultural resources as well. Amendments that specify what a particular document must address or inform in order to clarify for applicants the required content and scope of the summary. The updates are also necessary to gather the data needed to assess the environmental impacts of projects filed seeking an application either for certification or for a small power plant exemption.

Appendix B(g)(3)(A-D)

SPECIFIC PURPOSE

The proposed amendments to the Land Use section provide more specificity as to the land use and zoning data that needs to be submitted as part of the application. The proposed amendments do not change the substantive effect of the regulations but instead provide more specificity regarding the type of information required, which is not always initially provided by an applicant, requiring CEC staff to make additional data requests that can cause delays in the proceeding.

NECESSITY

The proposed amendments are necessary to ensure CEC staff are efficiently provided with the land use information necessary to develop an environmental analysis under CEQA.

Appendix B(g)(5)(B-F)

SPECIFIC PURPOSE

The proposed amendments to the Traffic and Transportation section reflect changes made in Federal Aviation Administration (FAA) regulations regarding projects near airports as well as changes made to CEQA requiring traffic analysis based on vehicle miles traveled attributable to the project as set forth in the CEQA Guidelines section 15064.3. Other proposed changes do not change the substantive effect of the regulations but instead provide more specificity regarding the type of information required, which is not always initially provided by an applicant, requiring CEC staff to make additional data requests causing delays in the proceeding. Finally, some renumbering is proposed to accommodate the changes required above.

NECESSITY

The proposed amendments are necessary to ensure that the CEC collects the information it needs to conduct an adequate environmental review and that the information provided reflects changes in both FAA requirements and CEQA.

Appendix B(g)(6)(A-H)

SPECIFIC PURPOSE

The proposed amendments to the Visual Resources section reflect changes made to CEQA related to the analysis of effects on scenic vistas and resources, existing visual character, quality of public views, and light and glare. Other proposed changes reflect changes made to the 2019 version of the CEQA Guidelines Appendix G Checklist for Aesthetics and to Public Resources Code section 21071, "urbanized area" definition. In addition, proposed changes incorporate wording used in CEQA and in the CEQA Guidelines. (See Pub. Resources Code, § 21060.5; Cal. Code Regs., tit. 14, §§ 15360, 15382.)

NECESSITY

The proposed changes are necessary to ensure that data provided by the applicant reflects current requirements of CEQA so CEC staff can efficiently prepare the environmental analysis. Other changes improve clarity of the information required to be submitted.

Appendix B(g)(7)(A-B)

SPECIFIC PURPOSE

The proposed amendments to the Socioeconomics section do not change the substantive effect of the regulations but instead add clarity by removing dated terms and adding more precise language. The proposed amendments add a request for information to support the CEC's analysis of environmental justice impacts. This change will ensure information regarding impacts to relevant environmental justice communities are identified earlier in the process resulting in greater transparency.

NECESSITY

The proposed amendments are necessary to provide more specificity regarding the type of information required, which is not always initially provided by an applicant, requiring CEC staff to make additional data requests causing delays in the proceeding. The proposed amendments to add information requirements for environmental justice are necessary to prepare these required analyses under the Public Resources Code and CEQA.

Appendix B(g)(8)(B)

SPECIFIC PURPOSE

The proposed amendment corrects a typographical error without making any substantive change.

NECESSITY

The proposed amendment is necessary to correct a typographical error in the regulations.

Appendix B(g)(10)(B) and (D), (g)(12)

SPECIFIC PURPOSE

The proposed amendment to subdivision (B) remove the requirement that emergency response facilities, such as fire departments, hazmat response teams, ambulance services, and police departments, be shown on the maps as it is not necessary to analyze the impacts of a hazardous release on these types of facilities and persons that are trained to respond to hazardous releases, rather than be affected by them. The proposed amendment to subdivisions (g)(10)(D) and (g)(12) broadens the language to refer to an "application" so that Appendix B can apply to both SPPEs and AFCs.

NECESSITY

The proposed amendments are necessary to remove extraneous information from project applications, and to allow for Appendix B to apply to both applications for certification and for exemption.

Appendix B(g)(13)(A-H)

SPECIFIC PURPOSE

The proposed amendments to the Biological Resources section reflect updates in required data submissions to correspond to changes to the CEQA Guidelines and Appendix G related to biological resources. Other changes implement requirements from the California Department of Fish and Wildlife which require that maps of a scale showing greater detail than 1:350,000 must be confidential if it contains sensitive biological resources. Other proposed changes reflect a need for different types of information to accommodate different types of powerplants, for example, information specific to once through cooling, a process no longer used in new powerplants, has been removed. The impacts of nitrogen deposition are a greater concern, so information requirements have been added to account for this type of impact. Other proposed changes provide greater specificity in the data being requested to ensure an adequate environmental analysis or renumber due to repealed provisions.

NECESSITY

The proposed changes are necessary to ensure the application contains the information needed for staff to develop a CEQA compliant environmental analysis. The changes also will ensure that applicant does not file into the CEC's public docket maps of a scale that would allow somebody to locate sensitive biological resources such as endangered plants.

Appendix B(g)(19)(A-C)

SPECIFIC PURPOSE

The proposed amendments add a new section of required data related to wildfires. The CEQA Guidelines now include a section on wildfire. The proposed amendments will allow staff to obtain information regarding the impacts of the project on wildfire that is required to be assessed under CEQA.

NECESSITY

The proposed amendments are necessary to ensure that the CEC collects the information it needs to conduct an adequate environmental review under CEQA.

SECTION: Appendix F - Informational Requirements for a Small Powerplant Exemption

SPECIFIC PURPOSE

The data category updates to Appendix B make Appendix F obsolete and duplicative.

NECESSITY

To avoid confusion, and make the regulations easier to follow, it is necessary to remove Appendix F as the data requirements for applications for SPPEs have been incorporated into Appendix B.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Creation or Elimination of Jobs within the State of California

The CEC proposes to streamline the CEC SPPE process 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. The changes being proposed are not relevant to most businesses outside those that develop thermal powerplants. Therefore, the CEC has determined that jobs will not 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 SPPE process 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 an exemption from the CEC's exclusive jurisdiction over thermal powerplants. 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 SPPE process 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 an exemption from the CEC's exclusive jurisdiction over thermal powerplants. Therefore, the CEC has determined that the proposed regulations will not result in the expansion of businesses.

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 SPPE process to minimize cost and delay while maintaining a comprehensive environmental review and mitigation program with opportunities for public participation and input. It is expected that the proposed SPPE amendments will not impact worker safety or the state's environment as the proposed changes are procedural and do not change the existing environmental analysis of any projects seeking an exemption. Therefore, the CEC has determined that

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

Results of the Economic Impact Assessment/Analysis

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.

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

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 cities and counties that have recently participated in the CEC's SPPE process
- Intervenors in the CEC's recent SPPE proceedings
- Power plant developers that have applied for SPPEs
- Local air districts that have recently participated in the CEC's SPPE process
- Lithium Valley Commission members and meeting participants
- Disadvantaged Communities Advisory Group members and meeting participants
- State agencies that have participated in the CEC's SPPE process

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.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate specific technology or equipment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS

The CEC has made an initial determination that the proposed regulations are unlikely to 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 CEC 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. There are no anticipated cost impacts to businesses.

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 processes duplicative of CEQA as well as adjudicative procedures, including evidentiary hearings, that are unnecessary for the CEC to perform adequate environmental review and encourage public participation in a decision on an SPPE. This streamlining potentially reduces the CEC's time and cost of rendering a decision on an SPPE. The SPPE process must still comply with CEQA, which includes robust requirements for environmental review, public notice, and public participation.

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.

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.