

DOCKETED

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| Docket Number: | 21-OIR-02 |
| Project Title: | Rulemaking to Amend Regulations for Delegation of Certification Authority |
| TN #: | 244088 |
| Document Title: | Notice of Approval of Regulatory Action |
| Description: | N/A |
| Filer: | Ngoc Tran |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 7/14/2022 3:58:21 PM |
| Docketed Date: | 7/14/2022 |

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections:

**Amend sections: 1802, 1862, 1863, 1864,
1867, 1868, 1869, 1870**

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2022-0606-01

OAL Matter Type: Regular (S)

This action by the California Energy Commission (Commission) amends the Commission's procedures to delegate its site certification authority over geothermal power plants to counties.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/13/2022.

Date: July 13, 2022



Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Drew Bohan, Executive Director
Copy: Corrine Fishman

REGULAR

STD. 400 (REV. 10/2019)

For use by Secretary of State only

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|--|---|---|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2022-0215-02 | REGULATORY ACTION NUMBER 2022-0606-01 | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 13 2022

1:52pm

OFFICE OF ADMIN. LAW
2022 JUN 6 PM 12:02

AGENCY WITH RULEMAKING AUTHORITY
Energy Resources Conservation and Development Commission (CA Energy Commission)

AGENCY FILE NUMBER (If any)
21-OIR-02

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|---|--|---|------------------------------------|---|
| 1. SUBJECT OF NOTICE Geothermal Delegation | | TITLE(S) 20 | FIRST SECTION AFFECTED 1802 | 2. REQUESTED PUBLICATION DATE 02/25/2022 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Corinne Fishman | TELEPHONE NUMBER (916) 805-7452 | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | | | | |
|--|--|---|--|---|
| 1a. SUBJECT OF REGULATION(S) Geothermal Delegation | | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) | | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | | ADOPT | | |
| TITLE(S) 20 | | AMEND 1802, 1862, 1863, 1864, 1867, 1868, 1869, 1870 | | |
| REPEAL | | | | |
| 3. TYPE OF FILING | | | | |
| <input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | | <input type="checkbox"/> File & Print |
| | | | | <input type="checkbox"/> Print Only |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) | | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | | <input type="checkbox"/> \$100 Changes Without Regulatory Effect |
| | | | | <input type="checkbox"/> Effective other (Specify) _____ |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | | <input type="checkbox"/> Fair Political Practices Commission | | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | | | |

| | | | |
|--------------------------------------|----------------------------------|-----------------------|--|
| 7. CONTACT PERSON Corrine Fishman | TELEPHONE NUMBER 916 805-7452 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) corrine.fishman@energy.ca.gov |
|--------------------------------------|----------------------------------|-----------------------|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|---|-----------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 5/24/22 |
| TYPED NAME AND TITLE OF SIGNATORY Andrew Bohan, Executive Director | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 13 2022

Office of Administrative Law

Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 5. Power Plant Site Certification
Article 4. Additional Provisions Applicable to Geothermal Notice and Applications
A. General Provisions
B. Delegation of Geothermal Power Plant Siting Authority to Local Government

The proposed new language appears as underline (example) and proposed deletions appear as strikeout (~~example~~). Existing language appears as plain text.

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

In carrying out the provisions of this article it shall be the policy of the commission:

- (a) To promote the accelerated development of economically feasible and environmentally acceptable geothermal power plants;
- (b) To implement a 12-month certification process for the consideration of geothermal applications for projects for which a resource supply has been confirmed, and to delegate its geothermal power plant certification authority to county governments with a demonstrated equivalent certification program;
- (c) To enhance public participation in decisions relating to the development of geothermal energy in California to ensure a thorough and balanced consideration of relevant issues;
- (d) To assist and cooperate with local permitting agencies in the preparation of environmental documents relating to geothermal power plants, to encourage local agencies to prepare full-field environmental impact reports at the earliest practical time, to provide such agencies with technical and financial assistance wherever possible in the preparation of such reports; and
- (e) To avoid the duplication of environmental analyses by coordinating with local, state, and federal agencies in the preparation of environmental documents, including the use of documents prepared by such agencies to the extent practicable.

Note: Authority cited: Sections 25218(e) and 25541.5 Public Resources Code. Reference: Sections 25540-25540.3 and 25540.5, Public Resources Code.

§ 1862. Contents of Petition.

Every petition filed pursuant to Section 1861 shall contain all of the following:

- (a) A resolution approving and directing the submission of the petition adopted by the county board of supervisors;
- (b) A copy of the geothermal element and the date of adoption;
- ~~(c) A written statement from the Governor's Office of Planning and Research that the geothermal element complies with the office's guidelines and/or criteria for geothermal elements;~~

(dc) A description of how the policy statements contained in the geothermal element with respect to the development of geothermal resources for the generation of electrical energy align with the commission's adopted policies for geothermal development set forth in section 1802;

(ed) A description of the procedures contained in the geothermal element for the implementation of the policies expressed in the element, and a discussion of the status of such implementation;

(fe) A complete and detailed description of the program that the county seeks to have designated as an equivalent certification program for the orderly and efficient review of geothermal power plant applications. Such description shall indicate the manner in which the program complies with each of the requirements set forth in Section 1863 below;

(gf) A detailed description of the procedures that will be employed to comply with the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.);

(hg) The level of staffing required to carry out the responsibilities delegated pursuant to this article;

(ih) A discussion of any additional staffing required by the administering agency, including job descriptions and duration of need;

(ji) A discussion of how the administering agency intends to generate the sources and amount of funding required by the administering agency to implement an equivalent certification program process applications in accordance with the provisions of this article; and

(kj) Such additional information as the county desires to submit.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1863. Equivalent Certification Program Requirements.

No county program shall be designated as an equivalent certification program unless it contains provisions for all of the following:

(a) Certification of geothermal areas as multiple facility sites, if so applied for;

(b) Distribution of all applications to the commission and to each federal, state, and local agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities, as well as provisions for receipt of and response to the comments and recommendations of each such agency;

(c) Notification and invitation of tribal governments to participate in consultation with county staff consistent with Public Resources Code section 21080.3.1 and Section 1714(d) of these regulations;

(ed) Preparation and distribution of a written decision on each power plant application. Such written decision shall contain each of the findings and conclusions required by Section 1745.5 of these regulations, and shall be based on the formal record of the proceeding;

~~(d) Public hearings, including provisions for adjudication of disputed issues of fact through testimony taken under oath and refutation by cross examination;~~

(e) ~~Formal intervention by any person with a legally recognizable interest in the outcome of the proceedings~~ Public hearing procedures consistent with Article 6 (commencing with section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code;

(f) Timely and orderly amendment of the program to reflect changes in law or commission certification requirements;

(g) Administration of and decision upon geothermal power plant applications within 12 months of the filing of such applications; and

(h) Appeal procedures, including for appeals brought before the county, and for appeals to the commission pursuant to Section 1868 of these regulations on any substantive issues in to the ~~commission on any aspect of the decision of the county.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1864. Commission Staff Analysis Participation.

(a) The commission and its staff may participate in an aspect of county proceedings on an application for a geothermal power plant and related facilities if such application would have been filed with the commission but for the delegation of authority pursuant to this article.

(b) The Commission staff shall assist the county in assembling a record adequate to support findings on each of the following:

(1) ~~Conformity of the site and related facilities with the 12-year forecast of statewide and service area electric power demands adopted pursuant to~~ biennial report required under Section 25309(b) 25302 of the Public Resources Code; and

(2) Necessary modifications, mitigation measures, conditions or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, constructed and operated in order to assure reliability of operation, safety and environmental protection.

(c) The county may submit a written request for staff assistance in the technical evaluation of any issue presented in the proceedings, or in the conduct of the proceedings on the application. Staff may render such assistance as it deems appropriate, provided however, that it shall indicate in writing its intention to do so within fifteen (15) days of the receipt of the county's request.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1867. Commission Action on Petition.

(a) Within twenty (20) days of the filing of a petition pursuant to Section 1861, the executive director shall determine whether the petition contains the information specified in Section 1862.

(1) If the executive director determines that the petition is complete, he or she shall so certify in writing and shall inform the petitioner.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner with a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(b) Unless the petition has been returned pursuant to (a)(2) above, the commission shall, within ~~sixty (60)~~ 30 days of the filing of the petition executive director's certification under subdivision (a)(1), convene ~~two a public meeting hearings~~ to allow representatives of the county to explain each aspect of its proposed equivalent certification program, and to allow ~~any interested party to offer testimony or for public comments on the petition.~~ One (1) of the hearings shall be in the petitioner's county seat, and one (1) of the hearings shall be in the state capital, except where the petitioner's county seat is the state capital, in which case only one (1) such hearing, in the state capital, shall be required. There shall be no less than ten (10) nor more than forty five (45) days, exclusive, between the dates of the two hearings. Such hearings shall be publicly noticed, and any person shall be entitled to offer testimony or comments.

(c) ~~Within thirty (30) days of the conclusion of~~ Following the hearing meeting convened pursuant to (b) above, the commission shall issue its decision as to whether the county's program shall be designated as an equivalent certification program. The commission's decision shall include ~~findings on the compatibility of commission and county policies pertinent to geothermal energy development, and on the county's technical and financial ability to carry out the responsibilities which may be delegated by the commission~~ findings regarding each of the requirements of an approved equivalent certification program specified in section 25540.5 of the Public Resources Code, a finding that approval of the equivalent certification program is consistent with the commission's geothermal policies, and a finding that the record before commission is adequate to support the commission's decision.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1868. Appeals to Commission.

(a) Any party to county proceedings conducted pursuant to authority delegated by the commission may, within 30 days of the issuance of the county's written decision, or within 30 days of the disposition by that county of an appeal filed pursuant to county ordinances, appeal any substantive issue aspect of the county decision to the commission.

(b) The appeal shall specify the bases therefor, and shall include a succinct summary of the evidence received by the county pertinent to the issues appealed, and shall specify the relief requested.

(c) The appeal shall include a copy of the administrative record of the county which has been certified by the county as complete.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1869. Commission Action on Appeals.

(a) The commission shall, within 60 days of filing of the appeal, ~~convene a hearing for the presentation of arguments on the appeal. In reviewing a factual issue, the commission shall~~

determine whether, in light of the whole record, the record contains substantial evidence to support that aspect of the county decision which has been appealed.

(b) If the commission finds for the appellant, it shall take such action as it deems appropriate, including, but not limited to:

(1) Returning the case to the county for further proceedings as may be directed; or

~~(2) Conducting further evidentiary hearings before the commission; or~~

~~(3) Removing the case from the county for disposition by the commission.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 1870. Revocation of Delegation.

~~(a)~~ The commission may, after public hearings, revoke its approval of a county's equivalent certification program whenever it finds that such program does not comply with current statutory requirements, duly adopted regulations of the commission, or that the program is not being effectively and efficiently administered.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.