

**DOCKETED**

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# Memorandum

To: Docket 21-OIR-04

Date: October 4, 2022

From: Jared Babula, Senior Attorney  
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California Energy Commission

Subject: California Environmental Quality Act Compliance

At the October 12, 2022, California Energy Commission (CEC) Business Meeting, CEC staff will recommend the CEC adopt a proposed resolution amending its small powerplant exemption (SPPE) regulations to remove the evidentiary process and update the informational requirements for an application. (Cal. Code Regs., tit. 20, §§ 1934-1948, Appendix B and Appendix F.)

## **I. Adoption of the Regulations is Not a Project.**

For purposes of complying with the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.), staff recommends the CEC find that the adoption of the proposed regulations is not a project under CEQA. The proposed regulations remove additional process no longer needed and update the informational requirements in an SPPE application. The proposed changes do not change the requirements for the CEC to approve an exemption.

California Code of Regulations, title 14, section 15060 states, in part, that a lead agency must first determine whether an activity is subject to CEQA and that an activity is not subject to CEQA if the activity is not a project as defined in section 15378. CEQA Guidelines section 15378 states that an activity is a project if it has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

In the case of the SPPE rulemaking, the regulatory changes are procedural only, relating to the process for reviewing an SPPE application. The action to amend the SPPE regulatory language does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but simply removes obsolete administrative process and amends the informational requirements in the application. Therefore, the activity is not subject to CEQA.

## **II. Even if Adoption of the Regulations Were a Project, the Common Sense Exemption Would Apply.**

Adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA only applies to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the

environment, and does not include an economic change by itself or beneficial changes to the environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) Because the action concerns the adoption of regulations covering the process and procedures for the review of a SPPE application and it does not provide for any physical changes to the environment, it can be seen with certainty that there is no possibility that the adoption of the SPPE regulations may have a significant effect on the environment.

### **III. Conclusion.**

As shown, adoption of the amendments to the SPPE regulations is not a project under CEQA and thus CEQA does not apply. Even if the adoption is a project and CEQA does apply to the agency action, adoption of the regulations is consistent with the common sense exemption under section 15061(b)(3) of the CEQA Guidelines. For these reasons, the adoption of the SPPE regulations by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.