

**DOCKETED**

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CALIFORNIA ENERGY COMMISSION

In the matter of:

Rulemaking to Amend	)	
Regulations for Small Power	)	Docket No. 21-OIR-04
Plant Exemptions	)	
_____	)	

PUBLIC HEARING

REMOTE VIA ZOOM

TUESDAY, AUGUST 30, 2022

10:00 A.M.

Reported by:

Martha Nelson

## APPEARANCES

### CEC STAFF

Jared Babula, Senior Attorney

Deborah Dyer, Senior Attorney

Eric Knight, Siting, Transmission, and Environmental  
Protection Division

Patricia Carlos, Chief Counsel's Office

### ALSO PRESENT

Kourtney Vaccaro, Commissioner

### PUBLIC COMMENT

Scott Galati

Claire Warshaw

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P R O C E E D I N G S

10:03 A.M.

TUESDAY, AUGUST 30, 2022

MR. BABULA: So it's 10:03. I want to welcome everybody to today's public hearing on the Rulemaking to Amend Regulations for Small Power Plant Exemptions.

So my name is Jared Babula, Senior Attorney in the Chief Counsel's Office. And I will be presenting this initial presentation with Eric Knight, Branch Manager of the Siting, Transmission, and Environmental Protection Unit.

Next slide, please.

So before we get started, a few housekeeping items to cover.

So this public hearing will be recorded. And so, in an effort to sort of make this functional for everybody, please mute your line when you're not speaking. And we will be taking comments, public comments, at the end of the presentation.

And so, quickly, how you use the system is if you're online, there's a little raise-hand feature at the bottom of the screen in the

1 webinar controls, and so you could raise your  
2 hand and the host will call on you for you to  
3 initiate your speaking for the public comment  
4 period. And then when you're done speaking,  
5 please mute yourself.

6           If you're on the phone, you want to dial  
7 star nine to raise your hand and then the host  
8 will call on you to speak, then you dial star six  
9 to mute and unmute.

10           And if you can state your name and  
11 affiliation before speaking, so we can get that  
12 into the record, that would be great.

13           Next slide, please.

14           So the purpose of this public hearing is  
15 to receive comments on the proposed Expressed  
16 Terms, rulemaking documents, and the rulemaking  
17 process. So written comments submitted during  
18 the 45-day comment period and oral comments made  
19 today will be responded to by CEC Staff in what's  
20 called the Final Statement of Reasons, and so  
21 we're not going to be responding to the comments  
22 at this event. And so all comments made today  
23 and the recording that we'll be generating will  
24 become part of the public record.

25           Next slide, please.

1           So here's a list of key events for this  
2 rulemaking. And so December 8th, 2021 is when we  
3 did what's called an Order Instituting Rulemaking  
4 to launch this effort.

5           July 14th we published the rulemaking  
6 documents, so that would be the Express Terms,  
7 the Notice of Proposed Action, and the Initial  
8 Statement of Reasons.

9           So August 29th, which was yesterday, that  
10 was the close of the 45-day comment period.

11           And then today, August 30th, which is why  
12 it's bolded, is the -- this is the public hearing  
13 on the rulemaking.

14           We're projecting then to be taking the  
15 rulemaking for adoption at the September 14th  
16 business meeting, so that would be our proposed  
17 rulemaking adoption date. And then approximately  
18 around September 23rd we would be submitting the  
19 rulemaking package to OAL. And then OAL will  
20 have a period of time to review the package and  
21 so we're estimating an effective date,  
22 potentially, in November. But, again, everything  
23 after today is an estimate on where we're going,  
24 but it's just to give you some ideas of the time  
25 line here.

1           Next slide, please.

2           So under Public Resources Code section  
3 25500, the CEC has exclusive jurisdiction to  
4 certify, for construction operation, thermal  
5 power plants 50 megawatts or larger. This is  
6 commonly known as sort of the one-stop-shop  
7 certificate in lieu of other permits that are  
8 usually submitted or provided by or issued by  
9 state, regional, and local agencies.

10          Next slide, please.

11          However, the Warren-Alquist Act does  
12 provide that, if certain requirements are met,  
13 the CEC may exempt from its jurisdiction thermal  
14 power plants up to 100 megawatts. And so  
15 These, the conditions, require it to be no  
16 greater than 100 megawatts, as well as the  
17 Commission must find that there's no substantial  
18 adverse impact on the environment or energy  
19 resources will result from the construction or  
20 operation of a proposed facility, so these are  
21 known as Small Power Plant Exemptions. And the  
22 implementing regulations are found in California  
23 Code of Regulations Title 20, section 1934 to  
24 1947.

25          But it's important to remember that

1 approval of the exemption is not approval of the  
2 project. This is simply an entity coming to us  
3 that normally would be under our jurisdiction  
4 seeking an exemption because they meet these  
5 particular requirements. And so, again, it is  
6 not approval of the project, it's approval of the  
7 exemption.

8           Next slide, please.

9           So the current steps in this Small Power  
10 Plant Exemption or SPPE process are laid out on  
11 this slide here. And so we've got -- initially,  
12 the application for the SPPE is filed with the  
13 CEC. And there's a noticing with public and  
14 tribal outreach. There is -- Staff will draft an  
15 environmental document in accordance with CEQA,  
16 so that could be a mitigated neg dec, it could be  
17 an Environmental Impact Report, depending on the  
18 nature of the underlying project.

19           And then there's a public review period  
20 on environmental documents. And then there's  
21 what's bolded here, the evidentiary hearings on  
22 the SPPE application, and then a Committee-issued  
23 proposed decision. And then, finally, the  
24 Commission considers the proposed decision and  
25 the adoption or certification of the



1 environmental document at a business meeting.

2           And so if the exemption is granted, then  
3 the applicant must then seek approval of the  
4 project with the local city or county  
5 jurisdiction that would then have jurisdiction  
6 over the project.

7           And so what is not being changed by these  
8 proposed regulations are all the requirements in  
9 CEQA related to public noticing, public comment  
10 periods, response to comments, and all the CEQA  
11 requirements to consult and engage with tribes.  
12 So what we're looking at is number five and  
13 number six, eliminating those two procedures in  
14 this larger process.

15           Next slide, please.

16           So the rationale for making these changes  
17 stems from changes in the energy market in the  
18 fact that CEC no longer determines the need for  
19 specific generating facilities. that has been  
20 removed as a primary purpose of this evidentiary  
21 hearing.

22           I mean, the primary purpose of the  
23 evidentiary hearing in the SPPE context was to  
24 adjudicate these non-CEQA issues, such as a need  
25 for a particular project. So issues of

1 environmental impacts' mitigation are squarely in  
2 the domain of CEQA. Thus, the evidentiary  
3 process is not necessary and duplicative of many  
4 parts of CEQA, especially since the SPPE process,  
5 as I mentioned before, does not result in the  
6 approval of a facility at issue. So projects  
7 that present a high potential for significant  
8 impacts would not typically be in the SPPE  
9 process.

10           And so the effort here is twofold. One  
11 is to just make updates to language that hasn't  
12 been significantly changed since the 1970s, and  
13 then to also reflect changes in CEQA and in  
14 existing robust public and tribal outreach  
15 process that exists in the CEQA framework.

16           Next slide, please.

17           So the two areas of focus in this  
18 rulemaking that Staff are proposing is to repeal  
19 the evidentiary process, which I pointed out in  
20 the two bolded numbers in the last slide -- or  
21 the slide before, and to update the informational  
22 requirements for SPPE and AFC applications. And  
23 so those are the two areas of focus in this  
24 rulemaking.

25           Next slide, please.

1           So the specific provisions to be repealed  
2 are on this slide here. So the evidentiary  
3 components are found in sections 1934 and 1937,  
4 43, 44, 45, 46, and 47. So those provisions  
5 really all relate to the evidentiary component we  
6 are proposing to remove.

7           The other component of this rulemaking is  
8 to deal with -- well, before I get to that, the  
9 other sections that we're amending in the 1900s  
10 there are either going to be amended for  
11 consistency because we're no longer have an  
12 evidentiary component, so terms like "party" has  
13 been removed, or to just update for consistency  
14 of other provisions related to power plant  
15 certification.

16           And then for the second portion that I  
17 mentioned, updating Appendix A and B -- or  
18 Appendix B and F of the information requirements,  
19 I'm going to turn it over to Eric Knight to  
20 discuss those elements of the proposed rulemaking  
21 changes.

22           Thank you.

23           MR. KNIGHT: Thank you, Jared.

24           So Staff is proposing changes to two  
25 sections of the CEC's regulations that contain

1 the information requirements for applications  
2 submitted to the CEC. These are, specifically,  
3 Appendix B and Appendix F.

4 So Appendix B sets the data requirements  
5 for an Application for Certification.

6 Oh, I should have asked for the next  
7 slide to be advanced. Sorry about that. Thank  
8 you. Apologize.

9 So there's Appendix B, which is the data  
10 requirements for an Application for  
11 Certification. And Appendix F, which sets the  
12 data requirements for a Small Power Plant  
13 Exemption Application.

14 So these data requirements should ensure  
15 applications contains sufficient information for  
16 Staff and the public to understand the project,  
17 and for Staff to initiate the review under the  
18 California Environmental Quality Act. Presently,  
19 Appendix F for Small Power Plant Exemptions is  
20 not adequate for these purposes.

21 Next slide, please.

22 So Staff is proposing in this rulemaking  
23 to repeal Appendix F and make Appendix B the  
24 information requirements for both an Application  
25 for Certification and an Application for Small

1 Power Plant Exemption.

2 In addition, Staff is proposing updates  
3 to Appendix B to match changes to CEQA, including  
4 adding Tribal Cultural Resources as a category of  
5 Cultural Resources, the use of Vehicle Miles  
6 Traveled, VMT, over Levels of Service, LOS, in a  
7 Transportation Analysis, and adding Wildfire as a  
8 category requiring information in the  
9 Application.

10 And Staff is also proposing other changes  
11 that fill common data gaps.

12 Next slide, please.

13 So this slide shows you how to follow and  
14 participate in this rulemaking, which is  
15 designated as Docket No. 21-0 -- or, excuse me,  
16 -OIR-04. If you sign up for one or both of the  
17 list servers shown on the slide, you'll receive  
18 email notification of any document posted to this  
19 docket. Should you require assistance in how to  
20 participate in a proceeding, or any other  
21 proceeding at the CEC, you can contact the CEC's  
22 Public Advisor's Office at the email listed on  
23 the slide.

24 I will now turn the presentation over to  
25 Patricia Carlos to start the public comment

1 portion of the hearing.

2 Next slide, please.

3 MS. CARLOS: Hi everybody. This is  
4 Patricia Carlos. I'm assisting the Public  
5 Advisor's Office today. If you would like to  
6 participate in public comment, please raise your  
7 hand using the high-five icon if you are on Zoom.  
8 And if you are calling in by phone, please press  
9 star nine to raise your hand. And once we call  
10 on you, you can press star six to unmute.

11 Let's see if we have anybody. I have Mr.  
12 Scott Galati on the line.

13 Scott, I will allow you to talk. And if  
14 you can unmute? Can you hear us?

15 MR. GALATI: Yes, I can. Can you hear me  
16 okay?

17 MS. CARLOS: Yes, I can. Alright.

18 MR. GALATI: Okay. Thank you.

19 MS. CARLOS: Please state your name and  
20 affiliation for the record.

21 MR. GALATI: Thank you very much,  
22 Patricia. This is Scott Galati, G-A-L-A-T-I. As  
23 some of you know, I'm a practitioner in front of  
24 the Energy Commission on all things related to  
25 permitting. I represent many clients today.

1 These comments are my own. But I can tell you,  
2 without a doubt, none -- all of my clients  
3 support this particular change.

4 I wanted to talk to you about a couple of  
5 things. I'm going to take them in reverse order.  
6 The first has to do with the replacement of  
7 Appendix F and replacement and modification of  
8 Appendix B. I actually support those changes in  
9 whole. Even though they require the applicant to  
10 provide probably more information than other  
11 agencies may require from CEQA, I do believe that  
12 this is clear and easier for us to do a better  
13 application and to avoid the sort of data  
14 request, informational requests back and forth  
15 that can happen.

16 So I support those comments. And I've  
17 also polled two of my clients who also support  
18 those changes, as well. We think that that will  
19 ultimately make for a better application, which  
20 will make Staff's job easier to do.

21 The second thing I wanted to really talk  
22 to was the basis and the reason that these  
23 regulations should change, and to assure the  
24 staff and Commissioner Vaccaro that I don't  
25 believe that the change in these regulations will

1 diminish in any way, shape or form public  
2 participation as it was intended in California to  
3 get a permit.

4           For almost all other facilities other  
5 than a backup generating facility that's over 50  
6 megawatts or a power plant that's over 50  
7 megawatts, in every other situation I have been  
8 in, county, city, state permit, the California  
9 Environmental Quality Act is the process by which  
10 environmental impacts are examined, discussed,  
11 and ultimately mitigated, or in cases where they  
12 are not able to be mitigated, identify that they  
13 cannot be mitigated. It's also the area where  
14 alternatives are explored. This is sufficient  
15 for far more complicated projects than data  
16 centers and, certainly, small power plants.

17           I do believe that Mr. Babula was correct  
18 in remembering, and maybe because I'm older than  
19 him, I can even -- you can't go quite that far  
20 back, but in a lot of my research since the  
21 Warren-Alquist Act was adopted in 1975, it really  
22 was a balance between a public process and a  
23 technically-important process for ensuring that  
24 we have enough power on the grid and could serve  
25 Californians. And remember, it was also at a



1 time when the state was very much considering  
2 nuclear power plants at the time.

3 I see the timer has stopped on my screen.  
4 Can you still hear me? Okay. Thanks.

5 MR. BABULA: Yes, we can hear you. The  
6 timer has been stalling but that's okay. Keep  
7 going. Thanks.

8 MR. GALATI: I wanted to make sure it  
9 wasn't my computer.

10 The second thing is we don't have that  
11 with these projects. We also -- since the 1970s,  
12 CEQA has been amended and interpreted by  
13 hundreds, if not thousands, of cases in which I  
14 believe it is the premiere method for evaluating  
15 environmental impact. It's certainly more  
16 significant than most other states and I believe  
17 than the federal National Environmental Policy  
18 Act. So CEQA is sufficient for the content, the  
19 substance, and for public comment.

20 I would like to just mention a couple of  
21 different things.

22 Adjudicative hearings really aren't  
23 needed for people to participate. And our  
24 projects have shown, in the Small Power Plant  
25 Exemptions the Commission has had, we very rarely

1 only had a handful, actually less than a handful  
2 of intervenors. Very small members of the public  
3 are interested in these projects, even though  
4 there is significant outreach. These are not  
5 complicated projects. There might be a  
6 complicated issue but you have a premiere staff  
7 that has been very good at being able to evaluate  
8 those.

9           So the last thing I'd like to -- as I see  
10 my time is running out -- the last thing I'd like  
11 to comment is the evidentiary process actually  
12 confuses the record. While, certainly,  
13 information goes into the process and out of the  
14 process, if it amends or changes the final EIR,  
15 and if there is, heaven forbid, a lawsuit on the  
16 project, I think we present a really difficult  
17 record for a judge to be able to understand.  
18 It's a CEQA document for a project that the  
19 Commission is not approving. The cities and  
20 counties will approve the project.

21           And so if people have comments on  
22 environmental impacts, this is the appropriate  
23 place, is CEQA. And if they just don't want the  
24 project, which is their rights, they have the  
25 ability to go to the public hearings conducted by

1 the local cities and counties who are actually  
2 approving the project and weighing whether the  
3 benefits of the project outweigh its potential  
4 impacts.

5 Thank you very much for the opportunity.  
6 I'll stay on if anyone has any questions.

7 MS. CARLOS: Thank you, Mr. Galati.

8 A reminder for anyone calling in on the  
9 phone, please press star nine to raise your hand  
10 to comment, and press star six to unmute. Or, if  
11 you are on Zoom, click the raise-hand feature to  
12 make a comment.

13 Seeing no other hands, I'll give it back  
14 to Eric.

15 MR. BABULA: This is Jared. Okay, so we  
16 didn't -- and there was no one on the phone?

17 MS. CARLOS: That's correct.

18 MR. BABULA: Okay, then we've had our one  
19 comment.

20 Let me just ask one more time, just for  
21 clarity, anybody have any comments, either on the  
22 phone or on Zoom? Oh, okay, I see Claire Warshaw  
23 has raised her hand.

24 MS. CARLOS: Claire, I have asked you to  
25 unmute, if you can unmute yourself and state your

1 name for the record?

2 MS. WARSHAW: Hi. My name is Claire  
3 Warshaw. I'm a member of the public. I'm not  
4 affiliated with any of these projects or with the  
5 CEC, except I've listened to a bunch -- to some  
6 of the different meetings.

7 I wanted to say that it seems to me that  
8 the public, although it may appear that they are  
9 not interested and they probably are not,  
10 generally. They have lives of their own and  
11 their really busy with their families and their  
12 jobs and everything that they do. And I think  
13 they want to trust that everything's handled  
14 professionally and that their state leaders will  
15 take care of them, although I think there are  
16 cases, business cases, where even leadership  
17 isn't aware of impacts.

18 And with the SPPE proceedings that I've  
19 listened to, the little that I've listened to  
20 from the beginning, just here and there, it seems  
21 like it's come a long ways.

22 I think the intervenors have made a  
23 substantial difference in what has been  
24 considered. I think that they've brought things  
25 to light that we wouldn't have noticed. But if I

1 were the CEC, I would change it and try and  
2 involve more of the public surrounding these  
3 projects because I think that they'll learn about  
4 them later rather than when they're being  
5 established, which is not optimal.

6           And I would ask them to go and have  
7 committees go knock on doors and call them until  
8 some of them start showing up. I don't think  
9 it's fair to think that they won't be interested  
10 later, after the projects are built, especially  
11 when they have a whole bunch of diesel generators  
12 in their neighborhood. So that's my comment.

13           And I know that the questions about  
14 cleaning up the SPPE process, to me, I thought  
15 that sounded like a really great idea, even from  
16 the start I thought. I can't even believe what  
17 you guys were going through to either accept or  
18 reject one of these, although I wouldn't have  
19 been, necessarily, cleaning up what you're doing  
20 and the way you are doing it. I would have  
21 thought about the rules on how to accept or  
22 dismiss and SPPE and giving the CEC more power  
23 over rejecting things that were polluting.

24           As far as listening to the applicants'  
25 representation speak, is he the only, you know,

1 the only representation of all the data center  
2 SPPEs that have been submitted so far in the last  
3 three years or five years or whatever it is? If  
4 he is, it seems a little unbalanced, and that's,  
5 you know, that's my point of view. It does seem  
6 very unbalanced towards the business side. And,  
7 you know, not that all business -- I don't  
8 believe it's all bad to embrace business but  
9 there is a lot of public health to be considered.

10 Thanks for listening. Thank you.

11 MR. BABULA: Thank you for your comment.

12 MS. CARLOS: Thank you, Claire.

13 If there are any other commenters on the  
14 line, please click the raise-hand button. It  
15 looks like a high-five at the bottom of your  
16 screen. Or if you're on the phone, please press  
17 star nine to raise your hand.

18 Jared, I'm not seeing any additional  
19 commenters.

20 MR. BABULA: Okay then. Well, what we'll  
21 do, as I indicated before, the comments -- the  
22 written comments that came in during the comment  
23 period and these comments we received today will  
24 be responded to in detail in the Final Statement  
25 of Reasons, and so you can look forward to that.

1           Otherwise, we can adjourn the meeting and  
2 wrap it up. Thank you everybody.

3           (Off the record at 10:27 a.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of September, 2022.



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MARTHA L. NELSON, CERT\*\*367



CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



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MARTHA L. NELSON, CERT\*\*367

September 19, 2022