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CEC-057 (Revised 1/21)

FINAL STATEMENT OF REASONS

Small Power Plant Exemptions
OAL Z# 2022-0630-01

UPDATE OF THE INITIAL STATEMENT OF REASONS

After publication of the express terms and the end of the 45-day comment period, the following non-substantive edits were made to Appendix B:

Section (g)(2)(C)(iv), the term “topographic” appeared in the express terms but was not underlined. The term should have been underlined as it is new text. The term “topographic” is already inferred from the existing text as quadrangle maps are a type of topographic map produced by the United States Geological Survey and thus the term does not alter the meaning of section.

Section (g)(3)(D)(i) is part of a section addressing agricultural lands affected by the project. In total, section (D) and its subsections seek information that in part can be obtained from the Department of Conservation. Existing language in subsection (ii) references Department of Conservation classifications for agricultural land. Similar to the identification of the Department of Conservation in subsection (ii), adding the phrase “Department of Conservation’s” in subsection (i) would clarify which classifications are being referenced by the phrase “Farmland Mapping and Monitoring Program.” Such an addition is non-substantive as the context of section (D) already infers the land classifications shown on the Farmland maps are maps from the Department of Conservation. In addition, consultants and applicants submitting applications already know that Farmland Mapping and Monitoring Program’s Important Farmland maps are at the Department of Conservation, and a quick internet search of the term will take one to the Department of Conservation’s website. Finally, subsection (D) is an informational section that is similar to section (II)(a) of Appendix G of the CEQA Guidelines, California Code of Regulations, title 14, which references the same Department of Conservation maps. Therefore, adding this term does not in any way alter the meaning of the section.

Section (g)(13)(B)(iii) of the express terms included the phrase “An aerial photo map...” as existing regulatory language. The term “map” is not existing language, the addition of the term was unintentional, and therefore it has been removed in the final version of the express terms.

Section (g)(13)(E), the term “of” was shown as strikeout in error which would result in a grammatically awkward sentence. Therefore, the word “of” has been restored to original.

LOCAL MANDATE DETERMINATION

The California Energy Commission has determined that this action will not result in a local mandate on local agencies or school districts.

CONSIDERATION OF ALTERNATIVE PROPOSALS

The Energy Commission determined pursuant to Government Code Section 11346.9(a)(4) that no alternative before it would be more effective in carrying out the purpose for which this action is proposed; no alternative would be as effective as and less burdensome to affected persons than the adopted regulation; and no alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The adopted regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business.

Except as discussed in the summary and response to comments, no alternatives were recommended.

INCORPORATION BY REFERENCE

The Energy Commission did not incorporate any documents by reference.

SUMMARY OF RESPONSES TO PUBLIC COMMENTS RECEIVED

All responses to public comments, including acceptance of recommendations and justification when recommendations were not accepted, are hereby incorporated by reference to this Final Statement of Reasons, and included in the final record.

Written Comments Received
Small Power Plant Exemption (SPPE) Regulations
Title 20, Sections 1934-1948; Article 6, Appendix B; Article 6, Appendix F
July 15, 2022 – August 29, 2022

1. **Robert Sarvey (1).**

   a. *Summary of Comment*: SPPEs are more environmentally damaging than similar-sized AFCs, and all are sited in minority communities. The adjudicatory process and intervenors are an important part of the SPPE process.

   Response to Comment: The initial premise is not correct as the projects subject to an SPPE are not more environmentally damaging than a project seeking certification by the CEC. Public Resources Code section 25541 limits the use of the SPPE to projects 100 MW or less and that do not have a substantial adverse impact on the environment or energy resources.

   The CEC disagrees that the adjudicatory process is necessary for reviewing an SPPE. CEQA already provides an extensive process for community participation in project review and for obtaining information from the public and other interested parties without the additional step of formalizing intervention and holding evidentiary hearings. It is especially noteworthy that the end result of the SPPE process is not approval of the project, but whether it can be exempted from the CEC's jurisdiction. Actual project approval would then be under the jurisdiction of the local government.

   Therefore, no change is necessary in response to this comment.

2. **California Unions for Reliable Energy (CURE)**

   a. *Summary of Comment*: CURE generally supports the proposed improvements to the informational requirements for SPPE and AFC applications to better align with CEQA standards.

   Response to Comment: This comment supports the proposed changes.

   b. *Summary of Comment*: The CEC should keep the adjudicatory process for SPPE proceedings because:

      - The adjudicative process allows parties to engage in discovery and directly access information

- The adjudicative process allows testimony under oath, evidence, and cross-examination of witnesses, which improves the analysis and mitigation measures.

Response to Comment: The CEC disagrees that the adjudicatory process is necessary for reviewing an SPPE. CEQA already provides an adequate process for obtaining information from the public and other interested parties without the additional step of formalizing intervention and holding evidentiary hearings. Public commenters may comment on the need for additional information or propose mitigation to address issues through CEQA, and the CEC must consider any timely input provided as part of its decision.

Numerous complex land use and development projects have been successfully analyzed following the requirements of CEQA without the need for an additional adjudicative process with a formal evidentiary hearing. In the case of an SPPE, there already exists a secondary process as granting of the exemption moves the decision to approve the project or not to the local jurisdiction. Thus, interested persons can also participate in the local process.

The CEC's experience during the review of multiple recent SPPE data center projects show that few parties take advantage of intervention and its procedures, and that public comment is adequate to express concerns regarding the projects and inform the CEC about its analysis and decision. The CEC's existing docketing system makes public commenting easy and an efficient means to submit comments, further eliminating the need for a resource-intense evidentiary hearing process.

Therefore, no change is necessary in response to this comment.

c. *Summary of Comment*: The CEC should amend its regulations to reaffirm that SPPEs are not part of the CEC's certified regulatory program.

Response to Comment: CURE is correct that the SPPE procedures are not part of the CEC's certified regulatory program. It is unnecessary to make this clarification, as California Code of Regulations title 14, section 15251(j) states that the certified regulatory program is the power plant site certification program, and an SPPE is not a power plant site certification. In addition, title 20 section 1936(c) states the SPPE review process shall following the requirements of CEQA, not the requirements of the CEC's site certification program. Finally, as CURE notes, this comment is outside the scope of this rulemaking.

Therefore, no change is necessary in response to this comment.

3. **Robert Sarvey (2)**

   a. *Summary of Comment*: The Committee and adjudicative process are necessary because:

   - SPPEs are complex and environmentally damaging, making the adjudicative process necessary to address their impacts.
   - SPPEs are more environmentally damaging than similar-sized AFCs, and all are sited in minority communities.
   - Intervenor testimony is important and given more weight than public comment in the proceeding.
   - Removing CEC staff as an independent party affects the integrity of the proceeding.
   - The Committee is needed to oversee CEC staff to clarify the law and facts.
   - The proposed changes could have judicial review implications.

   Response to Comment: The CEC disagrees that the adjudicatory process is necessary for reviewing an SPPE. CEQA already provides an extensive process for engaging with the public to understand concerns and impacts from projects under review. Such engagement includes noticing requirements, opportunity for public comment and agency responses to comments. The evidentiary process is obsolete and duplicative of CEQA's public engagement requirements. In addition, the SPPE evidentiary process originated in the 1970s with the primary purpose of adjudicating the need of an investor-owned utility powerplant project, not environmental issues. With changes in the energy markets that make investor-owned utility projects unlikely to be proposed and removal of any need determination as set forth in Public Resources Code section 25009, the evidentiary component of the CEC's SPPE review is outdated and no longer necessary.

   The existing requirements under CEQA will allow the CEC to obtain information from the public and other interested parties without the additional step of formalizing intervention and holding evidentiary hearings. See also response to Comment 1(a) on the requirements for granting an SPPE, which prohibit the CEC from approving a project that will have a substantial adverse effect on energy or the environment. These requirements persist in statute and are not affected by the proposed regulations.

   Numerous complex land use and development projects have been successfully analyzed following the requirements of CEQA without the need for an additional adjudicative process with a formal evidentiary hearing. In the case of an SPPE, there already exists a secondary process as granting of the exemption moves the decision to

approve the project or not to the local jurisdiction. Thus, interested persons can also participate in the local process. In addition, projects subject to an SPPE are capped in power generation size under Public Resources Code section 25541 and thus by self-selection tend to be smaller projects with limited impacts.

Removing staff as an independent party in the proceeding does not affect the CEC's obligation under CEQA to exercise its independent judgment and analysis in reviewing and certifying the environmental document for a project. (Cal. Code Regs., tit. 14, §§ 15074, 15084, 15090.)

The ultimate decision to approve the exemption and certify or approve the environmental document rests with the commission during a publicly noticed meeting. Thus, the commission already exercises staff oversight.

It is not clear what the comment on judicial review is referencing or how the proposed regulatory changes impact judicial review, which is set forth in Public Resources Code section 25901.

Therefore, no change is necessary in response to this comment.

b. *Summary of Comment*: The CEC should not limit public participation; CEQA does not require as many opportunities for public participation and public outreach.

Response to Comment: The proposed changes do not limit public participation or public outreach. Public participation may still occur at the business meeting and as part of the comment period on the draft environmental document. The facts indicate that intervention and the evidentiary hearing are not a primary vehicle for public participation, yet still require considerable administrative time and effort for an obsolete process. See the evidentiary hearing transcripts of the following dockets for the number of intervenors participating and public comments made at the evidentiary hearings:

- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01 [no intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-02 [one intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04 [one intervenor, no public comments]

- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05 [one intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=17-SPPE-01 [one intervenor, no public comments]

In addition, the proposed changes do not preclude staff from holding workshops or scoping meetings as part of the development of the environmental document for the project. Finally, the Public Advisor remains responsible for public outreach related to the CEC's proceedings, and would continue public outreach and engagement as required by statute.

Therefore, no change is necessary in response to this comment.

c. *Summary of Comment*: The stated purpose of the rulemaking – to address changes in regulatory and market environments that are not reflected in the current procedures – does not support the proposed changes to remove adjudications from SPPEs. Rather, the increase in data centers, which use diesel generators, applying for SPPEs supports keeping the adjudicative process.

Response to Comment: This comment appears to address the rationale for the rulemaking rather than the proposed regulations themselves. As stated in the NOPA, the purpose of the proposed regulations is to remove unnecessary procedures given changes in the regulatory and market environments. Regulatory changes include changes to CEQA that provide for a more robust and thorough environmental review of potential projects. Market changes include the fact that investor-owned utilities, which had an innate interest in increasing energy use and generation, no longer construct and operate power plants, resulting in less of a need for an adversarial process with a neutral decisionmaker to determine the need for the project. This is true regardless of the fuel type proposed or volume of applications received.

Therefore, no change is necessary in response to this comment.

d. *Summary of Comment*: If the CEC wishes to reduce the time to process an SPPE, it should comply with the required 135-day timeline using the existing procedures.

Response to Comment: This comment does not request a change to the regulations.

4. Courtney Ann Coyle on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians

a. *Summary of Comment*: The CEC should consult with tribes on the proposed regulations.

   Response to Comment: The comment is not specifically about the proposed regulations. While the CEC issued the required notice of the rulemaking under the Administrative Procedure Act, tribal consultation is not required because this rulemaking is not a project under CEQA and, even if it were a project, would be considered categorically exempt under the "common sense" exemption in section 15061(b)(3) of title 14 of the California Code of Regulations. The proposed regulatory changes do not remove or change CEC's requirement to consult with tribes on each SPPE proceeding as required under CEQA, which includes Assembly Bill (AB) 52 (Gatto, Chapter 532, Statutes of 2014). Consultation is also not required under the CEC's Tribal Consultation Policy, developed in response to Executive Order B-10-11 and AB 52, as the proposed regulations are unlikely to affect tribes.

   Therefore, no change is necessary in response to this comment.

b. *Summary of Comment*: The substance and procedural requirements of AB 52 are not reflected in the regulations, including addressing who conducts consultation and when.

   Response to Comment: These issues are addressed in existing law. AB 52 continues to govern any SPPE before the CEC. The CEC, under Public Resources section 25519(c), must serve as a lead agency under CEQA. Under AB 52, CEC must conduct this consultation before the CEC produces the environmental document for the proceeding. Therefore, no change is necessary in response to this comment.

c. *Summary of Comment*: Qualified personnel need to be employed at the local government level to conduct tribal consultation and engagement. The proposed regulations should address the need for qualified staffing to conduct tribal consultation.

   Response to Comment: Resource issues related to qualified personnel either at the state or local level to conduct tribal consultation for SPPEs are outside the scope of this regulation. Therefore, no change is necessary in response to this comment.

d. *Summary of Comment*: Re Appendix B (b)(1)(C), revise to "vertical and horizontal" depth of excavations; this is critical information for addressing effects to TCRs.

   Response to Comment: Information regarding the depth of excavations is provided for in the project description section of Appendix B subdivision (b)(1)(C), which would include vertical data.

Appendix B sets forth the initial information that must be included in an application so that staff, the public, other agencies, and tribes can understand the nature of the project that is seeking either an SPPE or certification (AFC).

While Appendix B has considerable amount of detail, which will ensure applications are complete, Appendix B is not intended to capture every possible piece of information for every type of potential project. Appendix B is not the only tool for CEC staff to obtain information to assess the impacts from the project. Project-specific information relevant to a particular set of facts can be obtained during the review process as set forth in the CEC's regulations at sections 1716 (for AFCs) and 1941 (for SPPEs).

These other processes allow for detailed project-specific information to be obtained by CEC staff whether such information is at the request of another agency or a result of consultation with tribes.

Therefore, no change is necessary in response to this comment.

e. *Summary of Comment*: Re Appendix B (b)(1)(D), (2)(D), and 3(C), variously use the phrase, "consideration given to" engineering constraints, site geology, environmental effects, etc. Add standards, criteria, or guidance for what "consideration given to" means or looks like.

   Response to Comment: Staff is not proposing any changes to the sections identified which is existing regulatory language and only included in the express terms to show surrounding text. Therefore, this comment is out of scope of the proposed changes to the regulations and no change is necessary in response to this comment.

f. *Summary of Comment*: Re Appendix B (e) Facility Closure, where and when is decommissioning addressed?

   Response to Comment: Staff is not proposing any changes to the section identified which is existing regulatory language and only included in the express terms to show surrounding text. Therefore, this comment is out of scope of the proposed changes to the regulations and no change is necessary in response to this comment.

g. *Summary of Comment*: Re Appendix B (f) Alternatives, language should be added discussing project design alternatives and micro siting to avoid effects to TCRs.

   Response to Comment: Staff is not proposing any changes to the section identified which is existing regulatory language and only included in the express terms to show surrounding text. Therefore, this comment is out of scope of the proposed changes to the regulations and no change is necessary in response to this comment.

h. *Summary of Comment*: Re Appendix B (g)(2), Cultural Resources and Tribal Cultural Resources. While the addition of the TCR category is appropriate (if not overdue), the regulation appears to improperly conflate TCRs with archaeology. Doing so risks the continued inappropriate treatment of TCRs as archaeological resources by archaeological professionals, leaving tribes out of resource identification, evaluation, treatment, and mitigation in violation of CEQA. These sections especially warrant review by NAHC, OPR, and OHP.

   Response to Comment: The proposed amendments to the section implement and excerpt for consistency language from Public Resources Code section 21074, which ensures additional information regarding tribal cultural resources is provided upfront.

   The interpretation of the data provided in the application by CEC cultural resource specialists is outside the scope of the regulations and more appropriately addressed as part of the CEQA process of public comment and agency response.

   Therefore, no change is necessary in response to this comment.

i. *Summary of Comment*: The fact that the regulations have not been updated since the passage of AB 52 in 2015 draws into question the extent to which other CEC rules and regulations may also be outdated. Has a comprehensive review of CEC policies and regulations been done since AB 52 was adopted?

   Response to Comment: This comment is outside the scope of this rulemaking. Therefore, no change is necessary in response to this comment.

j. *Summary of Comment*: No basis is provided in Appendix B (g)(2)(A) for the 5-mile radius limitation for ethnology, prehistory, and history of the region. Precontact trails, cultural landscapes, and traditional cultural properties (TCPs) may reasonably extend beyond such boundaries and be necessary for assessing context of the tribal or historic property.

   Response to Comment: The 5-mile radius is existing regulatory language and only included in the express terms to show surrounding text. Staff is not proposing any changes to that value, so the proposed changes in the comment are outside the scope of the proposed regulations. Also note that the cited regulation only requires an *emphasis* on the 5-mile radius; it does not restrict consideration of ethnology, prehistory, and history to a 5-mile radius.

   The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process. Additional information, such as a need for data beyond 5 miles, would be

assessed on a case-by-case basis after consultation with relevant agencies and tribes as part of the existing CEQA process to develop an environmental assessment.

Therefore, no change is necessary in response to this comment.

k. *Summary of Comment*: Appendix B (g)(2)(B) similarly appears to privilege archaeological societies and archaeologists over tribes in identifying TCRs in violation of AB 52 and caselaw such as *People v. Van Horn*.

Response to Comment: It is not clear from the comment what changes are being requested since the proposed changes are to include the phrase, “tribal cultural resources” to ensure adequate information is submitted in the application.

The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process. Additional information, such as specific types of tribal cultural resources, would be assessed on a case-by-case basis after consultation with relevant agencies and tribes. The identification of specific types of tribal cultural resources would be made consistent with AB 52 and relevant caselaw.

Therefore, no change is necessary in response to this comment.

l. *Summary of Comment*: Appendix B (g)(2)(C) refers to requiring new cultural and TCR surveys only if surveys are older than 5 years and that such surveys must be done by Secretary of Interior qualified individuals. No mention is made of affiliated tribes. Affiliated tribes should be deployed on the very first survey and new surveys should be required on any age survey if those surveys were not performed with qualified tribal input on the scope, protocols, and personnel for these resource identification efforts. The section on confidentiality should also be revised to reference relevant sections of the Government and Public Resources Code for TCRs and information provided by tribes during consultation. Also, this section overemphasizes surveys while not even mentioning consultation with affiliated tribes, which would lead to tribes being left out.

Response to Comment: The 5-year text is existing regulatory language and only included in the express terms to show surrounding text. Staff is not proposing any changes to that value, nor is staff proposing any changes to the use of a Secretary of Interior qualified individual. Therefore, the proposed changes in the comment are outside the scope of the proposed regulations.

The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

Appendix B is limited to setting forth information to be provided in an application. How the information is gathered, and, except for basic parameters, the methodology used is outside the scope of Appendix B and therefore outside the scope of the proposed regulations.

Confidentiality requirements related to tribal information are already set forth in statute at Public Resources Code section 21082.3 and Government Code section 6254.10. Since these provisions are already available in statute and the CEC is not modifying any confidentiality provisions, it is not necessary to also reference these statutory requirements in the proposed regulations.

Therefore, no change is necessary in response to this comment.

m. *Summary of Comment*: Appendix B (g)(2)(D) references the NAHC's Sacred Lands File. Revisions should be made to ensure that the SLF search and the results of that search be provided to affiliated tribes prior to any field work or surveys commencing or reports being drafted. Moreover, any outreach to initiate consultation should disclose whether the SLF search was positive or negative, as tribes may be more engaged when they know about a positive result.

Response to Comment: Staff is not proposing any substantive changes to Appendix B, subd. (g)(2)(D).

The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

The consultation process set forth in CEQA would provide a process for CEC staff to engage with the tribes on the tribal cultural information that was part of the application and what additional information is necessary and the process to obtain it. This consultation process, which may include the disclosure of the results of any SLF search, is not part of the application, which is what is being addressed in these regulations.

Therefore, no change is necessary in response to this comment.

n. *Summary of Comment*: Appendix B (g)(4) Noise, should reference that TCRs can be affected by noise impacts and that tribal ceremonial use can be involve sensitive receptors.

Response to Comment: Staff is not proposing any changes to the section identified, which is existing regulatory language and only included in the express terms to show surrounding text.

Moreover, the consultation process set forth in CEQA, rather than the application itself, would provide a process for CEC staff to engage with the tribes on the tribal cultural information that was part of the application and what additional information is necessary and the process to obtain it.

Therefore, the proposed changes are outside the scope of this rulemaking, and no change is necessary in response to this comment.

o. *Summary of Comment*: Appendix B (g)(6) Visual Resources, should reference that projects can adversely affect the visual quality, setting, and context for TCRs. Again, what is the rationale for the 5- and 1-mile radius limitations?

   Response to Comment: The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

   The consultation process set forth in CEQA would provide a process for CEC staff to engage with the tribes and discuss the tribal cultural information that was part of the application and what additional information is necessary and the process to obtain it.

   The radius specifications are intended to gather sufficient information at the application stage to do an initial assessment of possible impacts. A larger radius may be necessary for some projects, which can be addressed when gathering additional information after the application is complete, while a narrower radius may be appropriate for other projects. The final determination will need to be made on a case-by-case basis and cannot be made as part of general application requirements.

   Therefore, no change is necessary in response to this comment.

p. *Summary of Comment*: (A)(i)(c) also appears to reflect a western bias on what man-made features are to be considered as "significant innovations" or "unique" referencing just "the California State Capitol, Golden Gate Bridge, or Hollywood Sign" - again - leaving tribal properties and achievements out.

   Response to Comment: The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

   To the extent the comment infers the content of the section excludes tribal-related information, the section in Appendix B on tribal resources would cover the required initial information to be submitted in the application.

The consultation process set forth in CEQA would provide a process for CEC staff to engage with the tribes on the tribal cultural information that was part of the application and what additional information is necessary and the process to obtain it.

Therefore, no change is necessary in response to this comment.

q. *Summary of Comment*: Appendix B (g)(7) Socioeconomics, should add a subsection (xix) requiring "a discussion of affected and affiliated Tribes' and tribal communities' concerns, opportunities, and issues".

Response to Comment: The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

The existing and proposed changes to the socioeconomics section already build in categories that would include information on tribal issues. (See Appendix B, subd. (g)(7)(i-ii).)

The consultation process set forth in CEQA would provide a process for CEC staff to engage with the tribes on the tribal cultural information that was part of the application and what additional information is necessary and the process to obtain it.

Therefore, no change is necessary in response to this comment.

r. *Summary of Comment*: Appendix B (b) Project Description should conform with the section (g)(13)(E) Impacts discussion to reference "site preparation, construction activities, plant operation, maintenance, closure, and decommissioning" as these are all aspects of proposed projects. Otherwise, impact analysis may be improperly segmented.

Response to Comment: The purpose of Appendix B is to set forth a detailed but not exhaustive set of information that must be included in the application to start a review process.

The structure of Appendix B is by topic and does not dictate the format of staff's environmental document which contains a comprehensive impacts analysis assessing construction and operations and setting forth the process of closure. It is staff's environmental document, rather than the application, that must avoid improperly segmenting the project.

Therefore, no change is necessary in response to this comment.

s. *Summary of Comment*: It would be helpful to know the approximate number of facilities and geographical areas this regulation is projected to concern. At this point, Ms. Lucas is particularly concerned with Imperial and San Diego Counties. Such data points also would help understand cumulative effect, something that has been notoriously understudied and mitigated in our southern California desert.

Response to Comment: This comment is not specific to the proposed regulatory language.

The CEC does not know how many facilities or what geographical areas are likely to be affected by this proposed regulation. Because applications under this provision are optional, only applicants would know whether they are likely to apply for this exemption program. In the last several years, 2018-2022, all the projects seeking a SPPE have been data centers located primarily in industrial or business parks in Santa Clara County and surrounding counties.

Therefore, no change is necessary in response to this comment.

5. Kevin Hughes, STACK Infrastructure

a. *Summary of Comment*: We strongly support the proposed amendments.

Response to Comment: This comment supports the proposed regulations.

Oral Comments Received
Small Power Plant Exemption (SPPE) Regulations
Title 20, Sections 1934-1948; Article 6, Appendix B; Article 6, Appendix F
Public Hearing August 30, 2022

6. Scott Galati

a. *Summary of Comment*: I support the proposed regulations because:

- – While the changes to Appendix B require more information, the requirements are clear and easier to provide a better application.

- CEQA is an appropriate and sufficient process to examine, discuss, and mitigate environmental impacts, and explore alternatives.
- The types of projects under consideration when the regulations were adopted, such as natural gas and nuclear facilities, are not the types of projects being considered today.
- Adjudicative hearings aren't needed for people to participate, and the SPPEs have rarely had many intervenors.
- The evidentiary process confuses the record, especially when the cities and counties are ultimately responsible for approving the project.

Response to Comment: This comment supports the proposed regulations.

7. Claire Warshaw

a. *Summary of Comment*: Eliminating intervenors could reduce the amount of public participation that is important to address potential concerns with SPPEs, especially as many SPPEs are data centers.

Response to Comment: The proposed changes do not limit public participation. Public participation may still occur at the business meeting and as part of the comment period on the draft environmental document. The facts indicate intervention, and the evidentiary hearing are not a primary vehicle for public participation, yet still require considerable administrative time and effort for an obsolete process. See the evidentiary hearing transcripts of the following dockets for the number of intervenors participating and public comments made at the evidentiary hearings:

- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-01 [no intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-02 [one intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04 [one intervenor, no public comments

- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05 [one intervenor, no public comments]
- https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=17-SPPE-01 [one intervenor, no public comments]

In addition, the proposed changes do not preclude staff from holding workshops or scoping meetings as part of the development of the environmental document for the project.

Therefore, no change is necessary in response to this comment.

b. *Summary of Comment:* Intervenors are valuable to the SPPE process. CEC should have committess knock on doors and ask the public to participate.

Response to Comment: The CEC disagrees that intervenors are necessary to the SPPE process, although the CEC agrees with the importance of public participation. CEQA provides for robust public participation through notice and opportunity to comment, making the adjudicative process unnecessary for SPPEs. Having committees knock on doors is outside the scope of the proposed regulations.

Therefore, no change is necessary in response to this comment.

c. *Summary of Comment*: CEC should adopt criteria for disapproving SPPEs.

Response to Comment: The criteria for approving an SPPE are established in statute in PRC 25541, and include: that the project's generating capacity will not exceed 100 MW and that the project will not have a substantial effect on energy resources or the environment. Therefore, no change is necessary in response to this comment.

d. *Summary of Comment:* Is the applicant's representative the only representation of all data center SPPEs? That seems unbalanced toward the business side. Public health must also be considered.

Response to Comment: This comment does not appear to request any change to the regulations. The CEC considers public health as part of its CEQA analysis of any proposed project. Therefore, no change is necessary in response to this comment.

Oral Comments Received
Small Power Plant Exemption (SPPE) Regulations
Title 20, Sections 1934-1948; Article 6, Appendix B; Article 6, Appendix F
Business Meeting October 12, 2022

8. Steve Uhler

a. *Summary of Comment: CEC's regulations, title 20, section 1208(a), requires any document that wants to be considered a record of proceeding to be included in the docket. The documents included on the website for the meeting page are not in the docket and cannot be considered part of the record of proceeding.*

Response to Comment: This comment does not request a change to the regulations but instead addresses the rulemaking process. All documents relevant to the rulemaking are included in the docket for this rulemaking, Docket number 21-OIR-04, before the CEC votes on the item. The proposed resolution is publicly available on the CEC's website for the business meeting as required by law. The resolution is not itself part of the record of proceeding until after it has been approved, at which point it is placed in the docket. Therefore, no change is necessary in response to this comment.