

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512**DOCKET**
04-SIT-2DATE AUG 29 2006RECD. AUG 30 2006

August 29, 2006

To: **INTERESTED PARTIES**Subject: **CALIFORNIA ENERGY COMMISSION STAFF PROPOSED REVISIONS TO THE RULES OF PRACTICE AND PROCEDURE AND POWER PLANT SITE CERTIFICATION REGULATIONS (DOCKET NO. 04-SIT-2)**

On October 6, 2004, the Energy Commission issued an Order Instituting Rulemaking (Order) to revise, as needed, the regulations governing the Rules of Practice and Procedure and Power Plant Site Certification. The Energy Commission staff has proposed revisions to the regulations.

Staff's proposed changes fall predominantly into five categories:

1. Clarification of information requirements,
2. Conformance with new laws, statutes, regulations, court rulings, and new state energy, air, or water policies,
3. Additional information requirements as part of the Application for Certification to ensure meeting the 12-month timeline,
4. Reorganization of information requirements into a more logical sequence, and
5. Conformance of the Commission's Rules of Practice and Procedure with the Administrative Procedures Act and the Public Resources Code, where there are inconsistencies.

Topics that are addressed in staff's proposed revisions include:

1. Revision of the twelve-month Application for Certification information requirements based on recent siting cases,
2. Inclusion of US Environmental Protection Agency 316(b) informational requirements for cooling water intake structures,
3. Information requirements for coastal power plants identified during discussions with the California Coastal Commission,
4. Identification of greenhouse gas emissions from thermal power plants, and
5. Administrative Procedure Act alignment of Commission Rules.

Energy Commission staff's proposed changes to the Rules of Practice and Procedure and Information Requirements can be viewed on the Energy Commission's website at <http://www.energy.ca.gov/siting/rulemaking/documents/index.html>. New language is underlined and deleted language is shown with "strikethrough." Each proposed change is followed by a rationale. If you would like to obtain a paper copy or CD of the proposed changes, please contact Angela Hockaday at (916) 654-3925 or by email at ahockada@energy.state.ca.us.

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Written comments on the Proposed Revisions should be submitted no later than 5:00 p.m. on October 2, 2006. Please include the docket number 04-SIT-02, and "Proposed Revisions," in the subject line or first paragraph of your comments. Please hand-deliver or mail to:

California Energy Commission
Docket
1516 Ninth Street, MS# 4
Sacramento, CA 95814-5512

The Energy Commission also encourages comments by e-mail. Please include your name or your organization's name in the e-mail. Those submitting comments via e-mail should provide them in either Microsoft Word format, or as a Portable Document (PDF), to: docket@energy.state.ca.us. **One original paper copy** must also be provided by regular mail or hand delivery.

The Siting Committee has scheduled a workshop to be held September 20, 2006, that will focus on the staff's proposed revisions, comments received, and suggested changes to the proposed revisions. The workshop has been noticed separately and can be found on the Energy Commission website at <http://www.energy.ca.gov/siting/rulemaking/notices/index.html>. Following the workshop, staff will review the additional information, written comments it receives, and direction from the Siting Committee and will prepare a revised set of Regulations, a Notice of Proposed Action, and an Initial Statement of Reasons, and submit them to the Siting Committee for their approval.

The Energy Commission's Public Adviser, Margret J. Kim, provides the public with assistance in participating in Energy Commission activities. If you want information on how to participate in this proceeding, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at pao@energy.state.ca.us. If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

Please direct all news media inquiries to Claudia Chandler, Assistant Director, at (916) 654-4989 or e-mail at mediaoffice@energy.ca.gov.

For questions on the subject matter, please contact James W. Reede, Jr., Ed.D, Project Manager at (916) 653-1245 or at: jreede@energy.state.ca.us.

Date: _____

Roger E. Johnson
Siting & Compliance Office Manager

Changes to RULES OF PRACTICE AND PROCEDURE

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Rules of Practice and Procedure

&

**Power Plant Site Certification Regulations
Revisions**

04-SIT-2

August 29, 2006

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§ 1002. Service on the Commission.

Service of process may be made on the commission by personal service on the chairman, the executive director, or ~~general~~ chief counsel, or as otherwise provided by law addressed as follows:

Energy Resources Conservation and Development Commission
1516 Ninth Street
Sacramento, CA 95814
Attn: ~~General~~ Chief Counsel

[RATIONALE: This change creates consistency with the title actually used.]

§ 1201. Definitions.

The following definitions shall apply unless otherwise indicated:

(a) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

(b) "Respondent" means any person named in a complaint, pursuant to Section 1231 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission, and any person who is the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.

(c) "Complainant" means any person who files a complaint, pursuant to section 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(d) "Intervenor" means any person who has been granted leave to intervene pursuant to these regulations.

(e) "Party" means any applicant, respondent, complainant, or intervenor, and the staff of the commission.

(f) "Presiding member" means the chairman of the commission or any member of the commission designated to preside over any proceeding pursuant to Section 1204 of these regulations.

(g) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(h) "Testimony" means any oral or written statement made ~~by any person~~, under oath in any proceeding before the commission.

(i) "Witness" means any person who offers testimony in any proceeding before the commission.

(j) "Docket Unit" means the Docket Unit of the Energy Resources Conservation and Development Commission.

[RATIONALE: This is consistent with §1212(b).]

§ 1207. Intervenors.

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or at least 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

[RATIONALE: Encouraging earlier intervention encourages more timely and meaningful participation. The presiding member would still retain the discretion to allow intervention at a later date.]

ALTERNATIVE PROPOSAL

Incorporate by reference or include verbatim the provisions of Government Code section 11440.50 of the Administrative Procedure Act. (See **Attachment A** for text of Govt. Code § 11440.50.)

§ 1208. Conferences; Purpose; Notice; Order.

The presiding member or hearing officer may hold a conference with the parties, the public adviser, the ~~general~~ chief counsel, and any other persons interested in the proceeding, at any time he deems necessary, for the purpose of formulating the issues, organizing the questioning of witnesses, determining the number of witnesses, providing for the exchange of exhibits or prepared statements, and such other matters as may expedite the orderly conduct of the proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

(a) The conference shall be publicly noticed and the notice served in person or by mail on all parties at least ten (10) days before the conference.

(b) The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accept stipulations of law or fact.

[RATIONALE: This change creates consistency with the title actually used.]

§ 1209. Form of Submissions.

(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.

(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:

- (1) the title of the proceedings before the commission;
- (2) the docket number, if any, assigned by the commission;
- (3) the nature of the material;
- (4) the name, address, and telephone number of the person submitting the material.

(c) Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding

before the commission shall provide twelve (12) paper copies thereof, including one original paper copy, ~~unless provision of twelve (12) copies would impose an undue burden on the submitter. If the undue burden is one of inconvenience, a check covering the cost of making additional copies at the current rate per page specified by the commission's Docket Unit shall be submitted with the original copy. If the undue burden is financial, the letter of transmittal, written material, or comment should so state.~~ The Docket Unit shall photocopy and distribute submitted material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.

(d) Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.

~~(e) Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit. Materials shall be deemed filed as of the date upon which such material is served upon the appropriate officer of the commission, or if mailed, as of the date upon which such material is deposited in the mail, first class postage prepaid.~~

(f) Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 1210.

[RATIONALE: Hardship status is unnecessary in light of electronic filing and the alternative specified (providing only one paper copy and electronic copies) currently contained in 1209(c). Current Statutes use various terms to describe the act of filing a document. The amendment gives all of those terms the same meaning, avoiding confusion and uncertainty. Section (f) is to emphasize the requirement to serve other parties in a siting case at the time a document is filed at the Commission.]

[RATIONALE: Hardship status is unnecessary in light of electronic filing and the alternative specified (providing only one paper copy and electronic copies) currently contained in 1209(c). Current Statutes use various terms to describe the act of filing a document. The amendment gives all of those terms the same meaning, avoiding confusion and uncertainty.]

§ 1209.5. Electronic filing.

(a) Electronic documents may be submitted in any of the following media in the number of copies specified:

- (1) Two CD-ROMs (read only);

- (2) Two magnetic diskettes;
- (3) One internet e-mail; or
- ~~(4) One posted to an FTP site; or~~
- (45) Any other media and number of copies authorized by the Executive Director.

(b) The format version used must be noted on the media. Charts, graphs, drawings, maps, and photographs should be incorporated within the document, but may be included in an appendix. Maps and photographs may be submitted as paper copies in the number specified by the executive director.

(c) Electronic documents shall be provided in the Portable Document Format (PDF), or its equivalent, as determined by the executive director.

(1) The executive director may waive the format requirement if it is shown to constitute an undue burden on the submitter of a document. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a document. The request shall include a description of each such document and a discussion of the reasons why the format specified in (c) above is an undue burden. The requesting party may not file the electronic document while such a request is pending. If a request is granted, the executive director shall specify the format allowed. The executive director shall act on all such requests within 15 days.

(d) Documents shall be delivered to the Dockets Unit in one of the following ways:

(1) by personal delivery to the Dockets Unit;

(2) by electronic transfer (e-mail) of smaller documents (5MB maximum file size) to: docket@energy.state.ca.us ~~dockets@energy.state.ca.us~~;

(3) by first class mail, or other equivalent delivery service, with postage prepaid; or

(4) in any other delivery method approved by the Executive Director.

(e) Data the submitter considers confidential must be filed as a separate document with an application for confidential designation pursuant to Section 2505.

[RATIONALE: These are simple cleanup revisions. The reference to the FTP format for delivered documents appears obsolete and in any event there is no corresponding description of an FTP delivery method in subsection (d). Staff pointed out that the email address for Dockets wasn't correct (they have received a few calls from applicants and operators who were frustrated when their messages to the currently listed address were rejected by our mail server].

§ 1213. Official Notice.

~~During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.~~

“In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.”

[RATIONALE: This is the verbatim APA text of Government Code section 11515.]

§ 1216. Ex Parte Contacts.

Commissioners and assigned hearing officer(s) shall avoid any oral or written communication with a representative of any party to or an interested person outside the agency in an adjudicatory proceeding pending before the commission including those members of the commission staff who have been involved or are likely to be involved as principals in case management or who have participated or are likely to participate in the preparation or presentation of staff testimony, documentary evidence, or cross-examination concerning any substantive issue involved in the proceeding; provided, however, that communications contained in the formal record at a commission hearing shall not be prohibited. "This section, including the following subsections, is augmented by Government Code sections 11430.10--11430.80."

~~(a) If such a communication occurs, the commissioners or hearing officer shall include a description of the substance of the discussion in the public file on the proceeding to permit rebuttal of the matter on the record by any party affected.~~ make all of the following a part of the administrative record in the proceeding:

(1) If the communication is written, the writing and any written response of the commissioner or hearing officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the commissioner or hearing officer, and the identity of each person from whom the commissioner or hearing officer received the communication.

~~(b) The presiding member shall notify all parties that a communication described in this section has been made a part of the administrative record. All of the written communications received by a commissioner or hearing officer which relate to substantive issues raised in an~~

~~adjudicatory proceeding before the commission shall be included in the public file on the proceeding and shall be subject to rebuttal on the record by any party affected.~~

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding member has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

(de) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.

[RATIONALE: The existing regulation is narrower and not as explicit as the Administrative Procedure Act as to what is covered by the ex parte rule. The proposed amendments would conform the regulation to the APA and also incorporate by reference the sections of the APA that govern ex parte contacts. The Energy Commission is governed by the APA sections on ex parte contacts whether or not the sections are incorporated by reference in the Commission's regulations. See **Attachment A** for the text of Govt. Code §§ 11430.10—11430.80.]

§1217. Precedent Decisions of the Commission.

(a) A Commission decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) The Commission may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur.

(c) The Commission shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public and its availability shall be publicized annually in the California Regulatory Notice Register.

[RATIONALE: The APA requires indexing of precedent decisions and annual notice of the index's availability.]

§1219. Effective Date of All Decisions and Orders Interim Regulations for Adjudicatory Procedure.

For all purposes, including but not limited to implementation of sections 25530, 25531, and 25901 of the Public Resources Code, a decision or order is adopted, issued, final, and effective on the day when the decision or order is docketed, unless the decision or order states otherwise. Government Code Sections 11430.10 through 11430.80 (ex parte communications) and 11445.10 through 11445.60 (informal hearings) are hereby incorporated by reference as applicable to commission adjudicatory proceedings commenced prior to July 1, 1997.

[RATIONALE: The current section 1219 is obsolete. Current Statutes use various terms to describe the date which begin time limitations for filing appeals and other actions. The amendment gives all of those terms the same meaning, avoiding confusion and uncertainty.]

§ 1231. Complaints and Requests for Investigation; Filing.

Any person, including but not limited to the commission staff or the owner or operator of a powerplant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 et seq. and following must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

(a) A complaint or request for investigation shall be filed with the ~~General~~ Chief Counsel of the commission.

(b) The complaint or request for investigation shall include:

(1) the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);

(2) the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the request for investigation (respondent);

(3) a statement of the facts upon which the complaint or request for investigation is based;

(4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;

(5) the action the complainant or petitioner desires the commission to take;

(6) the authority under which the commission may take the action requested; ~~and~~

(7) a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought; ~~and-~~

(8) a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.

[RATIONALE: This change creates consistency with the title actually used.]

§1232. Hearing and Notice Procedures.

(a) Within 30 days after the receipt by the ~~General~~ Chief Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:

(1) dismiss the matter upon a determination of insufficiency or lack of merit of the pleadings, specifying whether the dismissal is with or without prejudice; or

(2) serve the complaint or request for investigation upon the respondent and all other persons identified in Section 1231(b)(7) and schedule a hearing upon the complaint or request for investigation. The hearing shall be scheduled to commence within 90 days after the receipt by the ~~General~~ Chief Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, the committee, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) Notice, by certified mail, return receipt requested, of complaint or investigatory proceedings shall be given to all petitioners, respondents and persons identified in Section 1231(b)(7) no fewer than 21 days before the first hearing on the matter. In addition, the committee, or if none has been assigned the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision.

(c) The notice shall contain:

(1) the names and addresses of all named complainants, petitioners, and respondents;

(2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;

(3) an explanation of the action the commission may take;

- (4) the date, place, and time of ~~any~~ the first hearing in the matter; and
- (5) a statement concerning the availability of the public adviser.

(d) Along with the notice described above, the Respondents and any other individuals or entities to which the complaint or request for investigation is directed shall be provided a copy of the Commission's procedures governing the conduct of the proceeding and a statement that Chapter 5 of the Administrative Procedure Act (Government Code Section 11500 et seq.) is not applicable.

[RATIONALE: The APA requires that this information be made available to targets of agency actions.]

§ 1702. Definitions.

For purposes of this subchapter and unless otherwise indicated, definitions found in Public Resources Code Section 25100 as well as the following definitions shall apply:

(a) "Administrative record" means all materials and comments that have been entered into the docket ~~on~~ of the proceeding. The administrative record includes, but is not limited to, the hearing record (as defined below).

(b) "CEQA" means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.

(c) Chief Counsel means the Chief Counsel of the commission.

~~(e)~~(d) "Committee" means the committee of the commission appointed pursuant to Section 1204 of these regulations to conduct proceedings on a notice or application.

~~(d)~~(e) "Environmental documents" means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and overriding considerations, and the documentation prepared by the Commission or its Staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.

~~(f) "General counsel" means the general counsel of the commission.~~

~~(e)~~(f) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(g) "Hearing officer" means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting the proceeding.

(h) "Hearing record" means the materials that the committee or commission accepts at a hearing. While the committee or commission may rely in part on any portion of the hearing record in making a finding, only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding of fact. The hearing record includes:

- (1) Written and oral testimony presented at a hearing including direct and cross-examination of a witness.
- (2) Supporting documentary evidence submitted with testimony.
- (3) Public comment offered at a hearing. ~~or entered into the record at a hearing.~~
- (4) Public agency comment offered at a hearing or entered into the record of a hearing.
- (5) Matters of which official notice has been taken.
- (6) Other evidence that the committee accepts at a hearing.

[RATIONALE: The proposed amendments would delete the definition of an outdated classification at the Energy Commission--"General Counsel"—and add the definition of the current classification, "Chief Counsel." The amendments would also revise the definitions of "administrative record" and "hearing record" to make it clear that public comments are included in the administrative record and that the commission may rely in part on public comments, in addition to the hearing record, in making a finding or reaching a decision.]

(i) "Intervenor" means any person who has been granted leave to intervene in notice or application proceedings pursuant to Section 1712 of these regulations.

(j) "Party" means the applicant, the staff of the commission, and any intervenor.

(k) "Presiding member" means the presiding member of the committee appointed to conduct proceedings on a notice or application.

(l) "Filing" means submission of any document to the commission docket. A document is filed on the day it is received by the commission docket.

(m) "Acceptance" means a formal determination by the commission, pursuant to Public Resources Code, sections 25516.6, 25522, or 25540.1 that a notice or application for certification is complete.

(n) "Related Facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites.

Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(o) "Application" means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.

(p) "Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district, or Native American government.

(q) "Areas of critical concern" means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.

(r) "Performance criteria" means performance goals for which the applicant proposes to design the facilities.

(s) "MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.

(t) "MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.

(u) "Impact area" means the area which is potentially affected by the construction, modification, or operation of a site and related facilities.

(v) "Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.

[RATIONALE: This change creates consistency with the title actually used.]

§ 1708. Application, Compliance, and Reimbursement Fees.

- (a) A cashier's check or wire transfer in the amount required by Section 25802 of the Public Resources Code shall be prepared by the applicant and subsections (c) and (d) shall accompany the filing of the notice.
- (b) Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.
- (c) A cashier's check or wire transfer for \$100,000 plus \$250 per megawatt (MW) of gross generating capacity shall accompany the filing of an Application for Certification (AFC). Gross generating capacity shall be determined in accordance with Section 2003 (a).
- (d) The owner of each facility granted certification shall submit a cashier's check for \$15,000 annually. The first payment of the annual fee shall be due on the date the Commission adopts the final decision for the facility. Subsequent payments shall be paid on July 1 of each year in which the facility retains its certification.
- (e) The fees specified in (c) and (d) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce.
- (f) A project which use a renewable resource as its primary fuel or power source is exempt from the filing and compliance fees identified in (c) and (d).
- (g) Fees paid pursuant to this section are non-refundable. Additional fees may be required in the event an amendment to the AFC increases the Gross generating capacity identified in (c).

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25538, 25802 and 25806, Public Resources Code.

[RATIONALE: Changes needed to conform with filing fee revisions to Public Resources Code.]

§ 1709.7. Informational Hearing, Site Visit, and Schedule.

(a) Within 45 days after the acceptance of a notice or application for certification or the filing of an application for small powerplant exemption, the committee shall ~~hold~~ hold one or more informational presentations and site visits in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as practicable to the proposed sites. Notice of the first informational presentation shall be mailed to all owners of land adjacent to the proposed sites.

(b) At or before the first informational presentation, the commission staff shall file with the committee a written statement summarizing the major issues that the staff believes will be

presented in the case. This summary shall not preclude the staff or any other party from raising additional issues later in the case.

(c) No later than 15 days after the last informational presentation, the presiding member shall issue an order establishing the schedule for the prehearing phase of the proceedings on the notice or application. The presiding member may change the schedule at any time upon motion by any party or upon his own motion.

(d) At each informational presentation, the applicant shall describe the proposed project, and the staff shall explain how the certification or exemption proceedings are conducted. These presentations shall allow for informal questions to the applicants and the staff from local residents and other interested persons regarding the proposed sites and facilities.

[RATIONALE: Correction of a typo.]

§ 1710. Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by subsection (b); provided, however, these requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's position or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

(b) Except for the hearing conducted pursuant to Section 1809(a) and the workshop pursuant to Section 1709.5(d), notice of the initial public hearing on a notice or application shall be mailed or otherwise delivered fourteen (14) days prior to the first such hearing to the applicant, intervenors, and to all persons who have requested notice in writing. Except for continued hearings, notices shall, to the extent possible, be mailed at least fourteen (14) days in advance, and in no case less than ten (10) days in advance.

(c) The public adviser shall be consulted in the scheduling of locations, times, and dates for all noticed hearings, presentations, conferences, meetings, workshops, and site visits so as to encourage maximum public participation.

(d) Notices of Committee hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof. Notices of staff workshops, conferences, and meetings shall be signed by the Executive Director or a Deputy Director, unless, in a specific proceeding, the Committee or Commission orders otherwise.

(e) The public adviser shall be afforded a reasonable opportunity to review all notices of hearings, presentations, conferences, meetings, workshops, and site visits for timeliness, completeness, clarity, and adequacy of dissemination.

(f) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place, by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date ten days or more in the future, then notice shall also be provided by mail as provided in subdivision (b).

(g) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be canceled for good reason, provided the following requirements are met:

(1) A notice of cancellation shall be posted at the door in the same manner as provided by Government Code section 11129.

(2) A notice of cancellation shall be mailed as provided in subdivision (b).

(3) If the notice of cancellation is mailed less than ten (10) days before the originally noticed date, then the staff shall work with the public adviser to ensure that notice is provided to all interested parties by the best means available.

[RATIONALE: It is unnecessary to involve the Committee in the noticing of staff conducted meetings and workshops.]

§ 1716. Obtaining Information.

(a) The executive director or the ~~general~~-chief counsel shall have authority to request or otherwise obtain from the applicant such information as is necessary for a complete staff analysis of the notice or application.

(b) Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request.

(c) Any public agency which is not a party and which has been requested to provide comments on the notice or application shall have the same rights as a party to obtain information necessary to comply with the commission's request for comments. To the extent practicable, the staff shall coordinate requests from agencies to the applicant to avoid duplicative requests.

(d) Any party may request from a party other than the applicant information which is reasonably available to the responding party and cannot otherwise be readily obtained, and which is relevant to the proceeding or reasonably necessary to make any decision on the notice or application. All such requests shall state the reasons for the request.

(e) All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown.

(f) Any party requested to provide information pursuant to this section shall, within 10 days of receiving the request, notify the requesting party and the committee in writing if it is unable to provide or objects to providing the information requested of it. Such notification shall state the reasons for the inability or the grounds for the objection. Absent such an objection, the party shall provide the information requested within 30 days of the date that the request is made. The dates specified in this section may be changed by mutual agreement of the parties or by committee order.

(g) If the requesting party or agency is unable to obtain information as provided in this section, such party or agency may petition the committee for an order directing the responding party to supply such information. A party petitioning the committee for an order to provide information must do so within 10 days of being informed in writing by the responding party that such information will not be provided. The committee may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, either grant or deny the petition, in whole or in part. The committee may direct the commission staff to supply such of the information requested as is available to the staff.

(h) The committee shall have the authority to require from any electric utility, including any aggregator, scheduling coordinator, energy service provider, or independent power producer, information which is specific to the subject notice or application and reasonably necessary to make any decision on the notice or application; provided, however, that such information, or its equivalent, is not reasonably available from any party or from publicly available records. Applications for confidentiality may be filed pursuant to Title 20, California Code of Regulations, section 2501 et seq.

(i) All information requests and responses shall be served on all parties to the proceeding by the requesting and responding parties respectively; provided, however, that requests for information made orally at a public meeting or hearing authorized by the presiding member need not be made in writing or served unless otherwise required by the presiding member. The presiding member may set reasonable time limits on the use of, and compliance with, information requests in order to avoid interference with any party's preparation for hearings or imposing other undue burdens on a party. No information requests shall be submitted by any party after release of the presiding member's hearing order except upon petition to the presiding member.

(j) Any witness testifying at a hearing shall to the extent that it does not unduly burden the witness, make available to any party on request copies of any work papers relied upon in the preparation of the testimony. If a witness for the applicant sponsors any portion of the notice or application for inclusion in the hearing record, the applicant shall make available, on request, all work papers relied upon in the preparation of the sponsored portion.

[RATIONALE: This is needed to bring closure to the period in which a petition to compel may be filed.]

§ 1717. Distribution of Pleadings, Comments, and Other Documents.

(a) Any party or agency who submits petitions (except petitions to intervene), motions, briefs, comments, written testimony or exhibits, shall file its documents in accordance with section 1210. ~~twelve (12) copies with the Dockets Unit of the commission, or with the presiding member if presented during a hearing, as well as serve the document upon all parties and all other persons designated by the presiding member. Proof of service on such parties and other designated persons shall be filed with the twelve (12) copies provided to the commission. The presiding member may direct the executive director to provide such copies and their service upon all parties on behalf of any party for whom compliance with this section would impose an undue hardship.~~

(b) Upon receipt of any agency comments and recommendations, and unless such service is already provided by the agency, the executive director shall immediately serve such comments and recommendations on the applicant and all parties to the proceeding and to any other person who requests a copy of such comments and recommendations.

(c) During the course of the proceedings under this article, the presiding member shall, if requested by any party or member of the public, cause to be distributed, to all parties and to any persons so requesting, a list of all materials and documents introduced into the record of the proceeding. Such list shall be kept up to date on at least a weekly basis by the Dockets Unit and kept on file with the record of the proceeding.

(d) The executive director shall cause a copy or summary of materials and documents introduced into the record of the proceeding to be placed in a public document room in each county in which a proposed site and related facility or any portion thereof is located.

[RATIONALE: This removes the requirement for 12 paper copies to be consistent with 1210(a) and the duplication of POS requirements of 1210(c). Elimination of the requirement for 12 paper copies should remove any credible assertions of hardship.]

§1719. Consolidation or Severance Proceedings.

~~(a)~~ Upon motion of a member of a committee or of any party, and for good cause shown, the commission may order the consolidation of part or all of any notice or application proceeding with any other notice or application proceeding, or the severance of part of any notice or application proceeding, if reasonably necessary to ensure the complete, fair, or timely consideration of any siting proposal.

~~(b)~~ A decision on any site and related facility shall not be delayed by reason of consolidation or severance unless agreed to by the applicant.

[RATIONALE: This section gives an applicant unwarranted control over commission discretion as whether to consolidate or to sever a proceeding.]

§ 1720. Reconsideration of Decision or Order.

(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence which was unavailable during evidentiary hearings on the case; or 2) a change or error in fact or law or a change in circumstance. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. For purposes of calculating deadlines pursuant to Section 25530 of the Public Resources Code, the date of adoption by the commission of a decision or order shall be the date that a written decision or order is docketed.

(b) The commission shall hold a hearing for the presentation of arguments on a petition for ~~to reconsideration~~ and shall act to grant or deny ~~the a petition for reconsideration~~ within ~~thirty (30) days of its filing.~~ In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied. ~~the receipt of such petition. The chairman shall set the place, time, and date for the hearing. Decision on the substantive merits of any such petition shall occur, after public hearing, within thirty (30) days after the commission has granted consideration of such petition. The commission or chairman may consolidate for hearing petitions dealing with similar issues.~~

(c) If the commission grants a petition for reconsideration, or if on its own motion it orders reconsideration, then within 90 days, or within a longer period set by the commission for good cause stated, the commission shall hold a subsequent hearing, which may include the taking of evidence, and shall decide whether to change the decision or order. In the absence of an affirmative vote of three members of the commission to change the decision or order, it shall stand. ~~The petition for reconsideration shall set forth with specificity the grounds for reconsideration, addressing any error in fact or law.~~

(d) ~~In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied. In the absence of an affirmative vote of three members of the commission to change a previously adopted final decision, the decision shall stand.~~

(de) The commission may stay the effective date of all or part of a decision or order pending reconsideration ~~thereof of the decision or order.~~ The commission shall specify the length of the stay, which shall expire no later than the end of the period for action upon reconsideration, as established in or pursuant to subdivision (c) of this section.

[RATIONALE: This section clarifies deadlines and the process for reviewing petitions for reconsideration of a Commission order. This also specifies the grounds for reconsideration, limiting such grounds and preventing re-argument,]

§ 1720.3. Construction Deadline.

Unless a shorter deadline is established pursuant to § 25534, The deadline for the commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

[Rationale: This change reflects a recent statutory amendment governing construction deadlines.]

§ 1720.4. Effective Date of Decisions and Orders.

The effective date of a decision or order is established by section 1219. ~~Unless otherwise specified in the final decision on a notice or application, the effective date of the decision is the date that it is filed with the Docket Unit.~~

[RATIONALE: The operative language of this section has been moved to § 1219. It is appropriate to provide a cross-reference to that location. Another option to address that fact would be to simply delete the entire section.]

~~§1720.5. Demand Conformance.~~

~~The criteria for determining demand conformance in a particular siting case shall be established in the Electricity Report adopted most recently prior to acceptance of a notice or application for certification or prior to the first informational hearing in a small powerplant exemption case, unless the Commission by order determines otherwise.~~

[RATIONALE: No longer appropriate.]

~~§ 1720.6. Demonstration Projects.~~

~~The criteria for determining whether a project is a demonstration project under Public Resources Code section 25540.6, subdivision (e), shall be established in the Electricity Report adopted most recently prior to acceptance of a notice or application for certification or prior to the informational hearing in a small powerplant case, unless the Commission by order determines otherwise.~~

[RATIONALE: No longer appropriate.]

§1721. Purpose of Notice and Notice of Intention Proceeding.

(a) The purpose of a notice, and such supporting documentation as may be filed concurrently with the notice, is to provide the commission, interested agencies, and interested members of the public with an informative document which does all of the following:

(1) Accurately describes the nature, size, and location of the sites and related facilities proposed by the applicant;

(2) Fairly identifies and explains the principal environmental, economic, and technological advantages and disadvantages of each siting proposal in the notice;

(3) Identifies measures which the applicant is considering to mitigate the principal disadvantages of each siting proposal in the notice;

(4) Explains the need for the proposed facilities;

(5) Describes the commercial availability of the generation technologies proposed in the notice (if not already determined to be commercially available by the commission); discusses the economic comparability of the proposals based upon comparative generation costs available to the applicant; and explains the impact of the proposed facilities on the overall reliability of the service area system;

(6) Specifies the measures proposed or being considered by the applicant to ensure public health, safety, and reliability during construction and operation of the proposed facilities at each site; and

(7) Indicates the degree to which the proposed facilities can be constructed and operated at each site in conformity with applicable federal, state, and local standards, laws, ordinances, and regulations, including any long-range land use plans or guidelines adopted by any federal, state, regional, or local planning agency.

(b) The purpose of notice of intention proceedings shall be to engage the applicant, the commission, interested agencies and members of the public in an open planning process designed to identify sufficient acceptable sites and related facilities ~~to meet the need for electricity determined pursuant to Section 25309 of the Public Resources Code~~. To this end, each notice of intention proceeding shall be conducted in order to determine the technical, environmental, public health and safety, economic, and social and land use acceptability of alternative sites and related facilities, by accomplishing each of the following:

~~(1) To make findings on the need for the proposed facility in terms of its conformity with the forecast and assessment of electricity demand adopted pursuant to Section 25309 of the Public Resources Code;~~

~~(2)~~(1) To provide information on the nature of the siting proposals to interested agencies and members of the public, and to actively solicit their assessments, comments, and recommendations on any aspect of the sites and related facilities proposed in the notice, including recommendations for modification in the location, design, construction or operation of the proposed facilities, or alternatives to the proposal;

~~(3)~~(2) To determine whether there is a reasonable likelihood that the facilities will comply with applicable federal, state, regional and local standards, laws, ordinances, regulations, and plans;

~~(4)~~(3) To attempt to resolve critical issues affecting the ability to employ the proposed technology at each of the sites and to determine the feasibility of any conditions or modifications necessary to make any site and related facilities proposed acceptable;

~~(5)~~(4) To determine whether the proposed facilities can be designed, constructed, and operated in a manner which ensures public health, safety, and reliability, by evaluating the adequacy of the measures proposed by the applicant, assessing their conformity with applicable standards, and where appropriate, determining the necessity, feasibility, and relative costs and benefits of additional measures;

~~(6)~~(5) To identify the most serious environmental impacts and assess the feasibility of mitigating such impacts;

~~(7)~~(6) To consider alternatives to the proposal, including feasible alternative sites, facilities, or sites and related facilities which may substantially lessen any significant adverse effects which the applicant's proposals may have on the environment or which may better carry out the policies and objectives of the Act;

~~(8)~~(7) To consider the economic, financial, rate, system reliability, and service implications of the proposed facilities, in coordination with the Public Utilities Commission (for facilities requiring a certificate of public convenience and necessity) or with the board of directors or other appropriate body of a municipal utility (for all other facilities); and

~~(9)~~(8) To prevent any needless commitment of financial resources and regulatory effort prior to a determination of the basic acceptability of, and need for, the proposed facilities, and the suitability of proposed sites to accommodate the facilities; and to eliminate from further consideration and commitment of resources any site and related facility found to be unsuitable, unneeded, or otherwise unacceptable.

(c) In assessing the proposed sites and related facilities, the commission shall defer until the formal application stage (1) a detailed scrutiny of engineering and design aspects, (2) a detailed identification and analysis of significant adverse environmental impacts, or (3) a precise analysis of need for new generating facilities; provided, however, that issues relating to such matters may be considered where resolution of such issues will not unduly hinder or burden the parties and the proceeding and evidence for the resolution of such issues is readily available, or where resolution of such issues is necessary to determine the acceptability of one or more of the sites and related facilities proposed.

(d) It shall be the responsibility of the presiding member to ensure that the notice proceeding is conducted in a manner consistent with the purposes of this article and to ensure that the needless expenditure of time, effort, and financial resources in considering matters more appropriate for the formal certification stage is avoided.

[RATIONALE: No longer appropriate.]

§ 1744. Review of Compliance with Applicable Laws.

(a) Information on the measures planned by the applicant to comply with all applicable federal, state, regional, and local laws, regulations, standards, and plans shall be provided in the application as specified in the appropriate appendix. Such information shall not duplicate information contained in environmental, safety and reliability, and air quality sections of the application.

(b) Upon acceptance of the application, each agency responsible for enforcing the applicable mandate shall assess the adequacy of the applicant's proposed compliance measures to determine whether the facility will comply with the mandate. The commission staff shall assist and coordinate the assessment of the conditions of certification to ensure that all aspects of the facility's compliance with applicable laws are considered.

(c) The applicant's proposed compliance measures and each responsible agency's assessment of compliance shall be presented and considered at hearings on the application held pursuant to Section 1748.

(d) If the applicant or any responsible agency asserts that an applicable mandate cannot be complied with, the commission staff shall independently verify the non-compliance, and advise the commission of its findings in the hearings.

(e) Comments and recommendations by a interested agency on matters within that agency's jurisdiction shall be given due deference.

[RATIONALE: This conforms to section 1714.5(b)]

§ 1747. Final Staff Assessment

At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 ~~, and a need assessment~~, as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

[RATIONALE: A need assessment is no longer appropriate.]

§1748. Hearings; Purposes; Burden of Proof.

No earlier than ninety (90) days after the acceptance of the application, the committee shall commence hearings on the application.

(a) The hearings shall be used to identify significant adverse impacts of the proposal on the environment which were not identified in proceedings on the notice of intention and shall assess the feasibility of measures to mitigate the adverse impacts. The applicant's environmental information and staff and agency assessments required by Section 1742 shall be presented. All

testimony filed by the parties to the proceeding must be submitted following publication of the Final Staff Assessment specified in Section 1747 prior to the commencement of committee hearings.

(b) The hearings shall consider whether the facilities can be constructed and operated safely and reliably and in compliance with applicable health and safety standards, and shall assess the need for and feasibility of modifications in the design, construction, or operation of the facility or any other condition necessary to assure safe and reliable operation of the facilities. The applicant's safety and reliability information and staff and agency assessments required by Section 1743 shall be presented.

(c) The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility. The applicant's proposed compliance measures and the staff and agency assessments required by Section 1744 shall be presented. The determination of compliance required by Section 1744.5 shall also be presented.

(d) Except where otherwise provided by law, the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.

(e) The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.

(f) Any party to the application proceeding shall be provided a reasonable opportunity to move to strike portions of prior testimony taken during the notice proceeding. Such motion may be based on incorrectness, irrelevance, or changed circumstances.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5 and 25521, Public Resources Code.

[RATIONALE: This change specifies the timing for the filing of testimony by the applicant, intervenors, and other parties to the proceeding.]

§ 1751. Presiding Member's Proposed Decision; Basis.

(a) The presiding member's proposed decision shall be based exclusively upon the hearing record, ~~including the evidentiary record~~, of the proceedings on the application and public comment contained in the administrative record. The decision may rely on public comments and any portion of the hearing record in making a finding of fact, but only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a factual finding.

(b) The presiding member's proposed decision shall contain reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

[RATIONALE: "Evidentiary record" is not defined in section 1702 and reference to it is unnecessary in this section. The additional wording would allow public comments to be used as part of the basis of the presiding member's proposed decision even if they are not presented at a hearing, so long as they are part of the administrative record in the proceeding. The addition would also reiterate and, thus, clarify the point that only evidence entered into the hearing record under oath and subject to cross examination can be used by itself to support a finding of fact.]

APPENDIX B: INFORMATION REQUIREMENTS FOR AN APPLICATION

(a) Executive Summary

(1) Project Overview

(A) A general description of the proposed site and related facilities, including the location of the site or transmission routes, the type, size and capacity of the generating or transmission facilities, fuel characteristics, fuel supply routes and facilities, water supply routes and facilities, pollution control systems, and other general characteristics.

[RATIONALE: Applicants to the Commission's Facility Siting process have misunderstood that the information regarding fuel and water supply routes and facilities must be evaluated, and they usually provide a generic description without discussing the specific routes and facilities proposed. The above additions are needed to ensure that a complete project description is submitted by the applicant.]

(B) Identification of the location of the proposed site and related facilities by section, township, range, county, and assessor's parcel numbers.

(C) A description of and maps depicting the region, the vicinity, and the site and its immediate surroundings.

(D) A full-page color photographic reproduction depicting the visual appearance of the site prior to construction, and a full-page color simulation or artist's rendering of the site and all project components at the site, after construction.

(E) In an appendix to the application, a list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of the proposed transmission line and other linear facilities, and within 1000 feet of the proposed powerplant and related facilities.

(2) Project Schedule: Proposed dates of initiation and completion of construction, initial start-up, and full-scale operation of the proposed facilities.

(3) Project Ownership

(A) A list of all owners and operators of the site(s), the power plant facilities, and, if applicable, the thermal host, the geothermal leasehold, the geothermal resource conveyance lines, and the geothermal re-injection system, and a description of their legal interest in these facilities.

(B) A list of all owners and operators of the proposed electric transmission facilities.

(C) A description of the legal relationship between the applicant and each of the persons or entities specified in subsections (a)(3)(A) and (B).

(b) Project Description

(1) In a section entitled, "Generation Facility Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (1" = 2000'), (or appropriate map scale agreed to by staff) along with an identification of the dedicated leaseholds by section, township, range, county, and county assessor's parcel number, showing the proposed final locations and layout of the power plant and all related facilities;

(B) Scale plan and elevation drawings depicting the relative size and location of the power plant and all related facilities to establish the accuracy of the photo simulations required in Sections (a)(1)(D) and (g)(6)(F) :

(C) A detailed description of the design, construction, and operation of the facilities, specifically including the power generation, cooling, water supply and treatment, waste handling and control, pollution control, fuel handling, and safety, emergency and auxiliary systems, and fuel types and fuel use scenarios; and

(D) A description of how the site and related facilities were selected and the consideration given to engineering constraints, site geology, environmental impacts, water, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant.

(2) In a section entitled, "Transmission Lines Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) of each proposed transmission line route, showing the settled areas, parks, recreational areas, scenic areas, and existing transmission lines within one mile of the proposed route(s);

(B) A full-page color photographic reproduction depicting a representative above ground section of the transmission line route prior to construction and a full-page color photographic simulation of that section of the transmission line route after construction;

(C) A detailed description of the design, construction, and operation of any electric transmission facilities, such as power lines, substations, switchyards, or other transmission equipment, which will be constructed or modified to transmit electrical power from the proposed power plant to the load centers to be served by the facility. Such description shall include the width of rights-of-way and the physical and electrical characteristics of electrical transmission facilities such as towers, conductors, and insulators. ~~This description shall include power load flow diagrams which demonstrate conformance or non-conformance with utility reliability and planning criteria at the time the facility is expected to be placed in operation and five years thereafter; and~~

(D) A description of how the route and additional transmission facilities were selected, and the consideration given to engineering constraints, environmental impacts, resource conveyance constraints, and electric transmission constraints; and

(E) A completed System Impact Study or signed System Impact Study Agreement with the California Independent System Operator and proof of payment. When not connecting to the California Independent System Operator controlled grid, provide the executed System Impact Study agreement and proof of payment to the interconnecting utility.

If the interconnection and operation of the proposed project will likely impact an transmission system that is not controlled by the interconnecting utility (or California Independent System Operator), provide evidence of a System Impact Study agreement and proof of payment with/to the impacted transmission owner or provide evidence that there are no system impacts requiring mitigation.

[RATIONALE: The Energy Commission must ensure that a project proposed for construction can be connected to the California electrical system in a manner that protects both public health and safety and the operation of the state's electrical system. The California Independent System Operator must review a proposed facility and determine, through a System Impact Study, the potential impacts to the electrical system from the construction and operation of the proposed facility. Item (E) is added to insure that the Interconnection System Impact Study for the project's proposed interconnection to the grid is underway at the time a project is found to be data adequate by the Energy Commission. The California Independent System Operator has issued Standard Large Generator Interconnection Procedures which specify that the Interconnection System Impact Study be completed within 120 days of the completion of the Study Agreement. If the Study Agreement is left to discovery, delays in the AFC process could occur because the Interconnection System Impact Study is required to determine whether downstream transmission facilities will be required for the interconnection or and operation of the proposed project. The second paragraph is added to ensure that the potential transmission impacts of projects which connect to transmission lines outside the control of a utility or the California Independent System Operator are properly accounted for.]

(3) Applications for geothermal facilities shall contain the following additional information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) showing the location of the geothermal leaseholds, along with a description by section, township, range, county, and assessor's parcel numbers of the leaseholds;

(B) Full-page color photographic reproductions of the geothermal leaseholds;

(C) A description of the process by which the geothermal leasehold was selected and the consideration given to engineering constraints, site geology, environmental impacts, water, steam, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant. Include references to any environmental documents which address ~~steamfield~~ steam field development;

(D) A detailed description of the type, quality, and characteristics of the geothermal resource, including pressure and temperature flow rates, constituents and concentrations of ~~non-~~ non-condensable non-condensable gases, and constituent concentrations of dissolved solids, and

descriptions and concentrations of any substances potentially harmful to public health and safety or to the environment;

[RATIONALE: Correct (C) & (D) misspelled words.]

(E) Proposed locations of production and re-injection wells for the project. Include the applicant's assessment of geothermal resource adequacy, including the production history of those wells within the leaseholds dedicated to the project, including pressure decline curves as available; and

(F) A discussion of the potential impacts on the temperature, mineral content, and rate of flow of thermal springs affected by the project.

~~(c) Demand Conformance~~

~~In a section entitled, "Demand Conformance" provide a discussion explaining how the proposed project conforms with the requirements of Public Resources Code s 25524 or Public Resources Code s 25540.6(a)(5). If the provisions of Public Resources Code s 25523.5 are applicable, explain how the project conforms with the requirements of this section. Additional data adequacy requirements may be contained in the Electricity Report applicable pursuant to Title 20, California Code of Regulations, s 1720.5.~~

[RATIONALE: Removed from regulation pursuant to Public Resources Code Section 25009.]

(d) Information for Projects Which Completed the NOI Process

(1) A copy of any study or analysis required by the terms of the Commission's Final Decision on the NOI, and a brief summary of the results of the study or analysis.

(2) Updates of any significant information which has changed since the Commission's Final Decision on the NOI.

(e) Facility Closure

(1) A schedule for the development of a preliminary plan for closing the project facilities when the project ceases operation at the end of its useful life.

(2) A discussion of how facility closure will be accomplished in the event of premature or unexpected cessation of operations.

(f) Alternatives

(1) A discussion of the range of reasonable alternatives to the project, or to the location of the project, including the no project alternative, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and an evaluation of the comparative merits of the alternatives. In accordance with Public Resources Code section 25540.6(b), a discussion of the applicant's site selection criteria,

any alternative sites considered for the project, and the reasons why the applicant chose the proposed site.

(2) An evaluation of the comparative engineering, economic, and environmental merits of the alternatives discussed in subsection (f)(1).

(g) Environmental Information

(1) General Information: For each technical area listed below, provide a discussion of the existing site conditions, the expected direct, indirect, and cumulative impacts due to the construction, operation, and maintenance of the project, the measures proposed to mitigate adverse environmental impacts of the project, the effectiveness of the proposed measures, and any monitoring plans proposed to verify the effectiveness of the mitigation. Additional requirements specific to each technical area are listed below.

(2) Cultural Resources

~~(A) A brief summary of the ethnology, prehistory, and history of the region with emphasis on the area within no more than a 5-mile radius of the project location. in which the project site and related facilities are located and maps at a scale of 1:24,000, indicating areas of ethnographic occupation. The region may vary depending on the extent of the territory occupied or used by prehistoric cultures indigenous to the area in which the project is located.~~

[RATIONALE A1: The recommended changes to (A) identify for Applicants specifically what is needed and reduce extraneous information. This will facilitate early issue identification and result in fewer Data Requests. The public benefits from the streamlined permitting process, and Applicants can both save money on research costs and have more options earlier in their planning.]

[RATIONALE A2: Cultural Resources staff needs a broad synthesis of past human activities in the project region as a background for the evaluation of cultural resources directly affected by the project. Staff also needs to focus specifically on the area close to the project location to predict the kinds of cultural resources which could be present and impacted by a project. Applicants typically provide general background summaries but neglect to focus on the local area. Specifying the 5-mile-area focus will result in staff getting the needed information in the AFC, eliminating considerable time spent by both Applicants and staff on Data Requests. This will benefit the public by ensuring a more efficient review process.]

~~(B) A description of literature searches and field surveys used to provide information about known cultural resources in the project vicinity. If survey records of the area potentially physically affected by the project are not available, and the area has the potential for containing significant cultural resources, the applicant shall submit a new or revised survey for any portion of the area lacking comprehensive survey data. A discussion of the dates of the surveys, methods used in completing the surveys, and the identification and qualification of the individuals conducting the surveys shall be included.~~

(B) The results of a literature search to identify cultural resources within an area not less than a 1-mile radius around the project site and not less than one-quarter (0.25) mile on each side of the linear facilities. Identify any cultural resources listed pursuant to ordinance by a city or county, or recognized by any local historical or archaeological society or museum. Literature searches to identify the above cultural resources must be completed by, or under the direction of, individuals who meet the Secretary of the Interior's Professional Standards for the technical area addressed.

Copies of technical survey reports and California Department of Parks and Recreation (DPR) 523 forms shall be provided for all cultural resources (ethnographic, architectural, historical, and archaeological) identified in the literature search as being 45 years or older or of exceptional importance as defined in the National Register Bulletin Guidelines, (36CFR60.4(g)).

[RATIONALE B1: The current requirement (B) slows down the permitting process by providing insufficient guidance to Applicants on either conducting a literature search or conducting and reporting new archaeological and architectural surveys, and it does not require adequate qualifications for cultural resources specialists.. The recommended changes divide requirement (B) into two parts, one (new (B)) detailing the coverage, sources, and personnel qualifications for an adequate cultural resources literature search, and the other (new (C)) detailing the coverage, personnel qualifications, and technical report requirements for new archaeological and architectural surveys. These changes will provide Applicants with clear direction regarding the level of information staff needs for its CEQA analysis and the professional training and experience which staff expects cultural resources specialists to have. These changes will help Applicants hire consultants who are able to conduct the level of scientific research that produces data of the quality and reliability that staff needs. Staff will be able to make fewer and more specific Data Requests, which will save time for staff and money for the Applicants. In addition, critical issues will be identified early in the siting process.]

[RATIONALE B2: The one-mile-diameter coverage area specified for the literature search is commonly used in cultural resources management. It reflects the surrounding geographical context of the cultural resources potentially affected by a project. Learning what kinds of resources are already known to exist in the area around a proposed project provides staff with a sampling of what to expect archaeologically in the immediate project location, which aids Applicants and staff in planning mitigation measures for project impacts. Also, for historical architectural resources, whose integrity of setting can be affected even over long distances by a power plant, one mile is a reasonable distance over which to evaluate visual impacts, and similarly, ¼ mile is reasonable for the visual impact of transmission lines in open country.]

[RATIONALE B3: Adding the requirement that Applicants include in their literature search any cultural resources listed by cities, counties, professional societies, and museums casts a wider net inclusive of all the kinds of cultural resources that California statutes list as potentially eligible for the California Register of Historical Resources (CRHR), and therefore within the consideration of CEQA (Sect. 21084.1).]

[RATIONALE B4: To be granted access to the primary source of cultural resources data, the California Historic Resources Information System (CHRIS), cultural resources specialists are

required to meet the Secretary of the Interior’s Professional Qualifications Standards, as stated on p. 36 in the “CHRIS Information Center Procedural Manual,” (2002). Also, staff can better rely on the information provided in the AFC being complete and correct when the specialist or director of research meets minimum professional standards. These standards are in the Code of Federal Regulations (36 CFR Part 61) and apply to persons working on projects with any federal connection. Some Energy Commission-certified power plant projects have a federal connection, so requiring these qualifications will cover the needs of those Applicants who have such projects.]

[RATIONALE B5: Applicants may include in AFCs their consultants’ cultural resources significance determinations, but as the lead agency, staff needs to make its own determinations, based on detailed information presented in either the AFC or in responses to Data Requests. Currently, AFCs rarely provide the detailed level of information that staff needs to compile a complete inventory of cultural resources subject to project impacts and to make significance evaluations. To fulfill its CEQA responsibilities, staff needs to review all available information on affected cultural resources. Staff does its own additional research as necessary, but must start with reviewing copies of all CHRIS DPR 523 records and reports for cultural resources in the project vicinity.(For more information on DPR 523 forms, see Rationale C2, below.)]

[RATIONALE B6: The 45-year requirement is from the California Office of Historic Preservation’s (OHP) “Instructions for Recording Historical Resources,” p. 2, and reflects the first essential basis for most preservation protections of cultural resources: the age eligibility criterion for listing on the National Register of Historic Places, which is 50 years unless a younger resource is exceptional. OHP uses 45 years, rather than 50 years, for contingency planning purposes. It can take 5 years for a project to actually begin construction, by which time a 45-year-old resource has become a 50-year old resource. If such a resource was not in the inventory of resources considered for impacts 5 years before, when the project was proposed, construction could be delayed while a new evaluation takes place. Having a contingency “waiting period” for cultural resources benefits Applicants by preventing construction delays and benefits the public by ensuring that all potential cultural resources will be identified and evaluated, and impacts to significant cultural resources will be mitigated.]

~~(C) A discussion of the sensitivity of the project area described in subsection (g)(2)(A) and the presence and significance of any known archeological sites and other cultural resources that may be affected by the project. Information on the specific location of archeological resources shall be included in a separate appendix to the application and submitted to the Commission under a request for confidentiality pursuant to Title 20, California Code of Regulations, § 2501 et seq.~~

(C) The results of new surveys or surveys less than 5 years old shall be provided if survey records of the area potentially affected by the project are more than five (5) years old. Surveys to identify new cultural resources must be completed by (or under the direction of) individuals who meet the Secretary of the Interior’s Professional Standards for the technical area addressed. New pedestrian archaeological surveys shall be conducted inclusive of the project site and project linears, and extending to 200’ around the project site and to 100’ to either side of the project linear facilities, and new historic architecture field surveys shall be conducted inclusive

of the project site and the project linear facilities and extending 1 mile (see 1704(b) for parallel language) out from the project footprints.

A technical report of the results of the new surveys, conforming to the Archaeological Resource Management Report format (CA Office of Historic Preservation Feb 1990), shall be separately provided and submitted (under confidential cover if archaeological site locations are included). Information included in the technical report shall also be provided in the Application for Certification, except that confidential information (archaeological sites or areas of religious significance) shall be submitted under a request for confidentiality pursuant to Title 20, California Code of Regulations, § 2501 et seq. At a minimum, the technical report shall include the following:

[RATIONALE C: This section, old (C), has been deleted because the requested information will be included in the technical report requested as part of the new (C).]

[RATIONALE C1: Under CEQA, if a historical resource is potentially eligible for the CRHR it is significant and therefore impacts to it are potentially significant. The California Code of Regulations requires that the documentation of a resource being considered for nomination to the CRHR must be updated if it is five or more years old (CCR 4852 (e) (3)). This means staff needs information that is no more than 5 years old on resources potentially affected by the project. New surveys ensure identification of all cultural resources while verifying old survey results, which prevents wasting staff and Applicant time on unnecessary avoidance and mitigation planning for sites that no longer exist. Submitting new survey reports to the CHRIS provides a benefit to the wider public, as well, by aiding cultural resources specialists on other, future projects. The five-year limit on survey viability also means that Applicants only have to conduct new surveys if existing surveys in the area are more than 5 years old or do not fully cover the specified area around projects. This benefits Applicants by omitting unnecessary surveys.]

[RATIONALE C2: Adding professional qualifications for directors of surveys to the new (C) reflects a requirement of the Office of Historic Preservation (OHP) that evaluators of cultural resources on DPR 523 detail forms meet the Secretary of the Interior's Professional Qualifications Standards. When cultural resources are evaluated for potential eligibility to the CRHR on the DPR 523 detail forms, OHP entrusts this only to cultural resources specialists who meet the Secretary of the Interior's Professional Qualifications Standards. Also, the CHRIS only accepts new DPR 523 detail forms from evaluators who meet those qualifications. The Secretary of the Interior's Professional Qualifications Standards are the generally accepted standards for cultural resources specialists tasked with project management responsibilities all over the country.

[RATIONALE C3: The distance parameters specified for the coverage of new surveys reflect the knowledge and experience of staff regarding the vulnerabilities of all kinds of cultural resources and regarding the physical impacts of construction activities and the visual intrusions commonly associated with power plants and transmission lines. The distances specified encompass the full extent of potential impacts from construction, not just the footprint of the project. This will aid staff in meeting obligations under historic preservation law to minimize the loss of cultural

resources. It will aid Applicants because they will not have to do additional surveying to satisfy Data Requests to increase survey coverage beyond the project footprint.]

[RATIONALE C4: Technical reports of new surveys must be sent to the Commission in an appendix, and under confidential cover if it contains information on the locations of archaeological sites. This language must be added to protect known archaeological sites from damage caused by artifact hunters who, when they find prehistoric and historic-period archaeological deposits, dig through them randomly looking for such artifacts as projectile points and antique bottles in order to remove and sell them. All archaeologists are expected to uphold this professional ethical standard. The CHRIS only discloses the exact locations of known archaeological sites to professional archaeologists (see Rationale B4, above), the owners of the land where a site is located, or the NAHC. The California Public Records Act exempts from public disclosure archaeological site information held by the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency (Government Code Sect. 6254.10).]

[RATIONALE C5: In California, technical reports organized in a specific, systematic, consistent layout are standard in professional cultural resources management. That layout is detailed in “Archaeological Resource Management Reports (ARMR): Recommended Contents and Format” (February, 1990). The reasoning behind OHP’s establishing the ARMR format was the recognition that regulatory and review agencies need the information in archaeological reports, and standardizing the format of reports would assure that “all needed data would be included and organized to optimize efficiency and utility” (1990: p. 1). This exactly expresses why staff has specified ARMR format for the technical reports for new surveys conducted by Applicants under new (C).

[RATIONALE C6: The technical report is a professional cultural resources document which is the appropriate medium for conveying detailed information on new, project-driven surveys. Staff can combine that information with additional information obtained through independent research to reach its own conclusions, either agreeing or disagreeing with those of an Applicant’s consultants.]

(i) The summary from Appendix B (g)(2)(A) and the literature search results from Appendix B (g)(2)(B).

[RATIONALE C (i): Since Applicants have to prepare these sections for the AFC, the additional cost in time and money of putting them into the technical report is negligible. The benefit of putting them into the report is that it will make the report more readily useful to staff and to other cultural resources specialists who will acquire these reports later from the CHRIS. This benefits the wider public, as well, by aiding cultural resources specialists on other, future projects. Also, the ARMR format requires a section on background and a section on a literature search.]

(ii) The survey procedures and methodology used to identify cultural resources and a discussion of the cultural resources identified by the survey.

[RATIONALE C (ii): The current requirement (B) calls for a description of literature searches and survey methodology, so this is not new or burdensome. Staff needs this information to evaluate the survey method and determine if it was adequate to produce reliable results. Also, the ARMR format requires a section on survey methods.]

(iii) Copies of all new and updated DPR 523(A) forms. If a cultural resource may be impacted by the project, also include the appropriate DPR 523 detail form for each such resource.

[RATIONALE C (iii): The OHP and the CHRIS together oversee the development of California's state-wide inventory of cultural resources by encouraging all persons, whether amateur or professional, to fill out OHP's DPR 523 primary forms for all potential cultural resources over 45 years of age and to submit them to the CHRIS. The completion and submission of the forms is voluntary. But all professional archaeologists and architectural historians consider it their duty to add to the state-wide inventory in this way when their surveys find new sites or structures. To encourage cooperation, the CHRIS can impose a condition on cultural resources specialists under which users of the CHRIS database and reports must complete and submit records and reports of their recent investigations no later than 30 days after the final report is completed. Failure to comply with this condition could result in denial of subsequent access to CHRIS data. Most federal and state agencies require the cultural resources specialists who conduct surveys for their public projects to complete the DPR 523 primary forms for newly found resources and submit them to the CHRIS, and the same is true of many private projects.]

(iv) A map at a scale of 1:24,000 U.S. Geological Survey quadrangle depicting the locations of all previously known and newly identified cultural resources compiled through the research required by Appendix B (g)(2)(B) and Appendix B (g)(2)(C) (ii).

[RATIONALE C (iv): A requirement similar to this is included in the current (A). The recommended change moves the map requirement from (A) to (C) (iv), and changes it from depicting ethnographic areas to depicting all known cultural resources. Staff needs this map to compare cultural resource locations to project impact locations. Applicants can best compile such maps because they can most accurately identify project locations. The specified scale is standard in cultural resources management, used on DPR 523 forms, and used by the CHRIS to plot all their known resources. Because this map size is standard, it will be easy for Applicants to obtain, and it will facilitate the direct transfer and compilation of map locations. Also, the ARMR format requires a map at this scale depicting the cultural resources found by survey.]

(v) The names and qualifications of the cultural resources specialists who contributed to and were responsible for literature searches, surveys, and preparation of the technical report.

[RATIONALE C (v): Including the names and qualifications of all persons responsible for the various aspects of the research reported in technical reports provides information required for projects which have a federal connection and affords staff a means of evaluating the quality and reliability of the data in the reports. It will serve the same purpose for other cultural resources specialists who will acquire these reports later from the CHRIS. This is why the ARMR format

requires the inclusion of the names and qualifications of the cultural resources specialists who did the reported research.]

~~(D) A summary of contacts and communications with, and responses from, Native American representatives who may have an interest in heritage lands and/or resources potentially affected by the proposed project.~~

(D) Provide a copy of your request to the Native American Heritage Commission (NAHC) for information on Native American sacred sites and lists of Native Americans interested in the project vicinity, and copies of any correspondence received from the NAHC. Notify the Native Americans on the NAHC list about the project, including a project description and map. Provide a copy of all correspondence sent to Native American individuals and groups listed by the NAHC and copies of all responses. Provide a written summary of any oral responses.

[RATIONALE D: Consultation with Native Americans is essential to identify all archaeological sites and all areas of Native American religious significance (PRC §§ 5097.9, 5097.94, 5097.97, & 5097.98) Current requirement (D) does not provide sufficiently detailed guidance to Applicants about obtaining information regarding archaeological and ethnographic cultural resources known only to Native Americans with traditional ties to a project area. This lack burdens the permitting process when staff has to provide Applicants with the missing guidance by means of Data Requests, and Applicants have to submit supplementary information. The NAHC, a state agency, exists to provide information on known Native American sacred sites and to facilitate the process of contacting Native Americans knowledgeable about a given project area. The recommended changes to requirement (D) indicate that Applicants must work through the NAHC to obtain sacred site information and to obtain the names of appropriate Native Americans to contact about Native American cultural resources in their project areas. The changes also specify what information about the project Applicants should provide to Native Americans to ensure they can make informed and useful responses. These changes assure that appropriate Native Americans are consulted regarding potential projects and given ample opportunities to convey their concerns to Applicants and the Commission.]

~~(E) In the discussion on mitigation and monitoring prepared pursuant to subsection (g)(1), a discussion of any educational programs proposed to enhance awareness of potential impacts to archeological resources by employees and contractors, measures proposed for mitigation of impacts to known cultural resources, and a set of contingency measures for mitigation of potential impacts to previously unknown cultural resources.~~

(E) Include in the discussion of proposed mitigation measures required by subdivision (g)(1):

(i) A discussion of measures proposed to mitigate project impacts to known cultural resources;

(ii) A set of contingency measures proposed to mitigate potential impacts to previously unknown cultural resources and any unanticipated impacts to known cultural resources.;

(iii) Educational programs to enhance employee awareness during construction and operation to protect cultural resources.

[RATIONALE E: The recommended changes are not substantive. They just state more clearly what is needed in the AFC to meet CEQA requirements on mitigation for unavoidably impacted cultural resources. Applicants will find it advantageous to suggest possible mitigation measures because only they will know what resources they have which can be applied to mitigating impacts to cultural resources. Educational programs are typically included as part of the mitigation package.]

(3) Land Use

(A) A discussion of existing land uses and current zoning at the site, land uses and land use patterns within one mile of the proposed site and within one-quarter mile of any project-related linear facilities. Include:

(i) An identification of residential, commercial, industrial, recreational, scenic, agricultural, natural resource protection, natural resource extraction, educational, religious, cultural, and historic areas, and any other area of unique land uses;

(ii) A discussion of any ~~trends in~~ recent or proposed zoning zone changes and/or general plan amendments ~~potential future land use development~~;

[RATIONALE: Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity. Land use issues have a potential to add additional costs to developers. The proposed modification moves the required discussion from a general discussion of “trends” in zoning changes to a discussion of any general plan amendments which have actually occurred in the project vicinity. This information allows staff to better determine the actual land use impacts of the project.]

(iii) Identification of all discretionary reviews by public agencies initiated or completed within 18 months prior to filing the application for those changes or developments identified in subsection (g)(3)(A)(ii); and

(iv) Legible maps of the areas identified in subsection (g)(3)(A) potentially affected by the project, on which existing land uses, jurisdictional boundaries, general plan designations, specific plan designations, and zoning have been clearly delineated.

(B) A discussion of the compatibility of the proposed project facilities with present and expected land uses, and conformity with any long-range land use plans adopted by any federal, state, regional, or local planning agencies. The discussion shall identify the need, if any, for land use decisions by another public agency or as part of the commission’s decision ~~variances or any measures~~ that would be necessary to make the project proposal conform to adopted federal, state, regional, or local coastal plans, land use plans, or zoning ordinances. ~~with permitted land uses.~~ Examples of land use decisions include: general plan amendments, zoning changes, lot line adjustments, parcel mergers, subdivision maps, Agricultural Land Conservation Act contracts cancellation, and Airport Land Use Plan consistency determinations.

[RATIONALE: Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity and the proposal's conformance with current land use regulations in the vicinity. Land use issues have a potential to add additional costs to developers. The proposed changes clarify the information needed to determine the compatibility of the proposed project with all adopted land use plans for the site and vicinity.]

(C) A discussion of the legal status of the parcel(s) on which the project is proposed. If the proposed site consists of more than one legal parcel, describe the method and timetable for merging or otherwise combining those parcels so that the proposed project, excluding linears and temporary laydown or staging area, will be located on a single legal parcel. The merger need not occur prior to a decision on the Application but must be completed prior to the start of construction.

[RATIONALE: Good planning practice and the development requirements of local agencies, require that a project be located on a single legal lot. Various local development standards, such as set-back distances, which staff must apply to the proposed project, are measured from lot boundaries. In some cases the applicant may find that all the land it owns in the project vicinity is not required for the power plant and may wish to reconfigure the lots to maximize development potential of the power plant site and the remaining lands. Addressing this issue early in the siting process will help avoid delay in the review of the application while a reconfiguration is designed. The process of merging lots is handled through the City or County having jurisdiction over the site. Early identification of the need to process a merger will help successful applicants avoid an unexpected delay of the start of construction.]

(D) A map at a scale of 1:24,000 and written description of agricultural land uses found within all areas affected by the proposed project. The description shall include:

(i) Crop types, irrigation systems, and any special cultivation practices; and

(ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the California Department of Conservation.

(iii) Direct, indirect, and cumulative effects on agricultural land uses.; and-If the proposed site or related facilities are subject to an Agricultural Land Conservation contract, provide a written copy and a discussion of the status of the expiration or canceling of such contract.

[RATIONALE: Moved from Agriculture and Soils for clarity as a Land Use issue. Agricultural Land Conservation and Williamson Act contracts prohibit industrial development of agricultural land for the duration of the contract. A proposed power plant is prohibited on land containing this land use restriction. Williamson Act cancellation requires the land use agency to conduct a CEQA assessment for canceling the contract and allows for a 180-day noticing period before taking final action in canceling the contract. Providing information on the status of an Williamson Act related actions will assure that the staff can work early in the process to solve any Williamson Act related issues.]

(4) Noise

(A) A land use map which identifies residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment within the area impacted by the proposed project. The area impacted by the proposed project is that area where there is a potential increase of 5 dB(A) or more, during either construction or operation, over existing background levels.

(B) A description of the ambient noise levels at those sites identified under subsection (g)(4)(A) which the applicant believes provide a representative characterization of the ambient noise levels in the project vicinity, and a discussion of the general atmospheric conditions, including temperature, humidity, and the presence of wind and rain at the time of the measurements. The existing noise levels shall be determined by taking noise measurements for a minimum of 25 consecutive hours at a minimum of one site. Other sites may be monitored for a lesser duration at the applicant's discretion during the same 25-hour period. The results of the noise level measurements shall be reported as hourly averages in Leq (equivalent sound or noise level), Ldn (day-night sound or noise level) or CNEL (Community Noise Equivalent Level) in units of dB(A). The L10, L50, and L90 values (noise levels exceeded 10 percent, 50 percent, and 90 percent of the time, respectively) shall also be reported.

(C) A description of the major noise sources of the project, including the range of noise levels and the tonal and frequency characteristics of the noise emitted.

(D) An estimate of the project noise levels, during both construction and operation, at residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment, within the area impacted by the proposed project.

(E) An estimate of the project noise levels within the project site boundary during both construction and operation and the impact to the workers at the site due to the estimated noise levels.

(F) The audible noise from existing switchyards and overhead transmission lines that would be affected by the project, and estimates of the future audible noise levels that would result from existing and proposed switchyards and transmission lines. Noise levels shall be calculated at the property boundary for switchyards and at the edge of the rights-of-way for transmission lines.

[RATIONALE: Items (A) & (B) insert missing words for clarification.]

(5) Traffic and Transportation

(A) A regional transportation setting, on topographic maps (scale of 1:250,000), identifying the project location and major transportation facilities. Include a reference to the transportation element of any applicable local or regional plan.

(B) A discussion of the potential aviation safety issues (e.g., thermal plumes, visible plumes, evaporation ponds, and transmission lines and towers) of siting the power plant if the proposed

power plant would be located within three (3) miles or electrical transmission lines would be within one (1) mile of any operating or planned airport or airstrip (including agricultural airstrips). The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.

[RATIONALE: The Energy Commission has a responsibility to ensure that impacts to any nearby air facilities are identified and mitigated during the regulatory review of the project. Aircraft which pass over the cooling towers of a facility may be adversely affected by thermal plumes emanating from the power plant. The newly requested information from the applicant regarding flight paths, runway configurations, and airport influence areas is essential for staff to make LORS findings in relation to the proposed site and will enable staff to evaluate compatibility between the project and airport activities.]

~~(B)~~ (C) An identification, on topographic maps at a scale of 1:24,000, and a description of existing and planned roads, rail lines, (including light rail), bike trails, airports, bus routes serving the project vicinity, pipelines, and canals in the project area affected by or serving the proposed facility. For each road identified, include the following information, where applicable:

- (i) Road classification and design capacity;
- (ii) Current daily average and peak traffic counts;
- (iii) Current and projected levels of service before project development, during construction, and during project operation;
- (iv) Weight and load limitations;
- (v) Estimated percentage of current traffic flows for passenger vehicles and trucks; and
- (vi) An identification of any road features affecting public safety.

~~(C)~~ (D) A description of any new, planned, or programmed transportation facilities in the project vicinity, including those necessary for construction and operation of the proposed project. Specify the location of such facilities on topographic maps at a scale of 1:24,000.

~~(D)~~ (E) An assessment of the construction and operation impacts of the proposed project on the transportation facilities identified in subsection (g)(5)(B). Also include anticipated project-specific traffic, estimated changes to daily average and peak traffic counts, levels of service, and traffic/truck mix, and the impact of construction of any facilities identified in subsection (g)(5)(C).

[RATIONALE: Project truck routes and workers' commute patterns may conflict with school bus routes and other commute patterns within the community. The above addition assures that all of the facilities identified by the applicant are discussed and that the information needed to assess the potential impacts to transportation in the project vicinity are addressed.]

~~(E)~~ (F) A discussion of project-related hazardous materials to be transported to or from the project during construction and operation of the project, including the types, estimated quantities, estimated number of trips, anticipated routes, means of transportation, and any transportation hazards associated with such transport.

(6) Visual Resources

(A) Descriptions of the existing visual setting of the vicinity of the proposed project site and the proposed routes for any project-related linear facilities. ~~the region that can be seen from the vicinity of the project, and the proposed project site.~~ Include:

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested in discover, providing this information as part of the application will reduce the applicant's cost for responding to data requests and will streamline the review of the project by staff.]

(i) Topographic maps at a scale of 1:24,000 ~~of the areas that~~ depict all directions from which the project would ~~may~~ be seen, identification of the view areas most sensitive to the potential visual impacts of the project, and the locations where photographs were taken for (g)(6)(C); and

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested in discovery, providing this information as part of the application will reduce the applicant's cost for responding to data requests and will streamline the review of the project by staff.]

~~(ii) Elevations of any existing structures on the site; and~~

~~(iii) The~~ Description of the existing visual properties of the topography, vegetation, and any modifications to the landscape as a result of human activities, including existing water vapor plumes, above-ground electrical transmission lines, and nighttime lighting levels in the project viewshed.

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested in discover, providing this information as part of the application will reduce the applicant's cost for responding to data requests and will streamline the review of the project by staff.]

(B) An assessment of the visual quality of those areas that ~~would~~ will be ~~affected~~ impacted by the proposed project.

[RATIONALE: Staff's visual resources analysis of a proposed project considers both degradation of visual quality and visual character. The addition of "character" to this

requirement assures that the applicant addresses this potential visual impact. A request for the description of the method used by the applicant to assess visual resources has been added so that staff can assess the appropriateness of the methodology used.]

(C) ~~After discussions~~ In consultation with Energy Commission staff and community residents who live in close proximity to the proposed project, identify the i) any designated scenic roadways or scenic corridors and any visually sensitive areas that would be potentially affected by the proposed project, including recreational and residential areas and ii) the locations of the key observation points to represent the most critical viewing locations from which to conduct detailed analyses of the visual impacts of the proposed project. Indicate the approximate number of people using each of these sensitive areas and the estimated number of residences with views of the project. ~~For purposes of this section, a scenic corridor is that area of land with scenic natural beauty, adjacent to and visible from a linear feature, such as a road, or river. Also identify any major public roadways and trails of local importance that would be visually impacted by the project and indicate the types of travelers (e.g., local residents, recreationists, workers, commuters, etc.) and the approximate number of vehicles, bicyclists, and/or hikers per day.~~

[RATIONALE: Applicants have indicated that the preparation of the visual resources analysis can be burdensome. Requiring that applicants consult with Energy Commission staff in the selection of the key observation points (KOPs) is the first step in reducing this burden. By consulting with staff in the selection of the KOPs, applicants will gain first hand knowledge of concerns and view areas to be protected which can focus the review and further reduce applicant costs.]

(D) ~~A table providing description of the dimensions (height, length, and width, or diameter) and, color(s), and materials, finishes, patterns, and other proposed design characteristics of each major visible component visible from off of the project site, including any project-related electrical transmission line and/or offsite aboveground pipelines and metering stations.~~

[RATIONALE: Applicants have indicated that the preparation of the visual resources analysis can be burdensome. The changes attempt to reduce this cost by specifying the structures to be included in the application, as well as the dimensions and appearance (e.g., color and finish) of the project structures.]

(E) Provide the cooling tower and heat recovery steam generator (HRSG) exhaust design parameters that affect visible plume formation. For the cooling tower, data shall include heat rejection rate, exhaust temperature, exhaust mass flow rate, liquid to gas mass flow ratio, and, if the tower is plume-abated, moisture content (percent by weight) or plume-abated fogging curve(s). The parameters shall account for a range of ambient conditions (temperature and relative humidity) and proposed operating scenarios, such as duct firing and shutting down individual cells. For the heat recovery steam generator exhausts, data shall include moisture content (percent by weight), exhaust mass flow rate, and exhaust temperature. The parameters must correspond to full-load operating conditions at specified ambient conditions, and shall account for proposed operating scenarios, such as power augmentation (i.e., evaporative coolers, inlet foggers, or steam injection) and duct firing, or proposed HRSG visible plume abatement, such as the use of an economizer bypass. For simple-cycle projects, provide analogous data for the exhaust stack(s).

[RATIONALE: Over the last 10 years the analysis of visible plumes has taken on greater importance in the Energy Commission's review process. Staff regularly requests the above information during discovery in order to address the project's potential visible plume impacts. If the information is provided in the application staff can move forward with its analysis and reduce the number of data requests to which the applicant must respond.]

~~(E)~~ (F) Provide: i) ~~F~~ full-page color photographic reproductions of the existing site, and ii) full-page color simulations of the proposed project, including any project-related electrical transmission lines, in the existing setting from each key observation point. If any landscaping is proposed to mitigate visual impacts, include the landscaping in simulation(s) representing sensitive area views, depicting the landscaping five years after installation; and estimate the expected time until maturity is reached. ~~Location representative of the view areas most sensitive to the potential visual impacts of the project.~~

[RATIONALE: Applicants have failed to include all potential project features in their visual simulations. The above changes provide specificity for the information to be contained in the color simulations of the project submitted with the application. If landscaping is proposed in the application in order to mitigate impacts, simulations (and supporting data to verify their accuracy) should also be included.]

~~(F)~~ (G) An assessment of the visual impacts of the project, including light, ~~and~~ glare, and any modeling of visible plumes. Include a description of the method and identify any computer model used to assess the impacts. Provide an estimate of the expected frequency and dimensions (height, length, and width) of the visible cooling tower and/or exhaust stack plumes. Provide the supporting assumptions, meteorological data, operating parameters, and calculations used.

[RATIONALE: While the application should employ a methodology for assessing visual impacts, applicants typically provide generic language on plume impacts and present no computer modeling to support their conclusions. Applicants typically present such information during hearings to rebut staff's analysis, requiring staff to evaluate an applicant's analysis late in the process. This delay in review can lengthen the evidentiary hearings on the project and increase the expense to both the applicant and the State of California.]

(H) If any landscaping is proposed to reduce the visual impacts of the project, provide a conceptual landscaping plan at a 1:40 scale (1"=40'). Include information on the type of plant species proposed, their size, quantity, and spacing at planting, expected heights at 5 years and maturity, and expected growth rates.

[RATIONALE: Most applicants propose landscaping to reduce the potential impacts of the project. Because this information is not currently required, staff routinely requests that applicants provide conceptual landscape plans during discovery. If landscaping is proposed in the application, a conceptual plan, and related information, must be provided.]

(7) Socioeconomics

(A) A description of the socioeconomic circumstances of the vicinity and region affected by construction and operation of the project. Provide the year of estimate, model, if used, and appropriate sources. Include:

[RATIONALE: Many applicants have failed to provide the above information in their socioeconomic analysis. This information is critical to the accurate review of the potential socioeconomic impacts of the proposed project. The addition of this information will reduce the need for additional data requests and will streamline staff's analysis.]

(i) The economic characteristics, including the economic base, fiscal resources, and a list of the applicable local agencies with taxing powers and their most recent and projected revenues;

(ii) The social characteristics, including population and demographic and community trends;

(iii) Existing and projected unemployment rates;

(iv) Availability of skilled workers by craft required for construction and operation of the project;

(v) Availability of temporary and permanent housing and current vacancy rate; and

[RATIONALE: In order to determine the availability of housing in the project area a current vacancy rate is needed. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(vi) Capacities, existing and expected use levels, and planned expansion of utilities (gas, water, and waste) and public services, including fire protection, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. For projects outside metropolitan areas with a population of 500,000 or more, information for each school district shall include current enrollment and yearly expected enrollment by grade level groupings, excluding project-related changes, for the duration of the project construction schedule.

(B) A discussion of the socioeconomic impacts caused by the construction and operation of the project (note year of estimate, model, if used, and appropriate sources), including:

[RATIONALE: Applicants frequently provide inconsistent economic data. If the applicant provides the above information staff can verify the information provided by the applicant. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(i) An estimate of the number of workers to be employed each month by craft during construction and operation, and separate estimates for the average permanent and short-term (contract) operations workers during a year;

[RATIONALE: This change clarifies the level of information needed to accurately assess the potential employees needed for construction and operation of the project. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(ii) An estimate of the ~~number and~~ percentage of non-local workers who will ~~commute daily, commute weekly, or relocate to the project area in order~~ to work on the project;

[RATIONALE: The proposed modification is designed to clarify and simplify the information needed to determine the potential socioeconomic impacts of non-local workers. Applicants are no longer required to determine the actual number of workers who might commute to the project site. Staff believes that, in areas where housing supplies are short, socioeconomic impacts may result from the migration of non-local workers to a project area. This change provides the necessary data to analyze this potential impact.]

(iii) An estimate of the potential population increase caused directly and indirectly by the project;

(iv) The potential impact of population increase on housing during the construction and operations phases;

(v) The potential impacts, including additional costs, on utilities (gas, water, and waste) and public services, including fire, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. Include response times for hospitals, police, and emergency services. For projects outside metropolitan areas with a population of 500,000 or more, information on schools shall include project-related enrollment changes by grade level groupings and associated facility and staffing impacts by school district during the construction and operating phases;

[RATIONALE: The addition of a power plant in a local community may create additional responsibilities for emergency services in the area. Information on the potential response times for these services can be an indicator of the community's ability to handle these increased responsibilities. Staff will use this information, which has been typically requested during discovery, to assess the project's potential impacts on these services. Provision of this data in the application will reduce the applicant's cost for responding to staff's data request.]

(vi) An estimate of applicable school impact fees;

(vii) An estimate of the total construction payroll and separate an estimates of the total operation payroll for permanent and short-term (contract) operations employees;

[RATIONALE: This change clarifies the level of information needed to accurately assess the potential payroll for the facility. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(viii) An estimate of the expenditures for locally purchased materials for the construction and operation phases of the project; and

(ix) An estimate of the capital cost (plant and equipment) of the project ~~of the potential impacts on tax revenues from construction and operation of the project.~~

(x) An estimate of sales taxes generated during construction and separately during an operational year of the project.

(xi) An estimate of property taxes generated during an operational year of the project.

(xii) The expected direct, indirect, and induced income and employment effects due to construction, operation, and maintenance of the project. Also, include an evaluation of the cumulative economic effects from construction of this and other similar projects simultaneously occurring in the study area

[RATIONALE: This section of the regulations previously required applicants to provide information regarding the potential impacts of tax revenues from the construction and operation of the project. Staff has found that the estimate provided by applicants was often inaccurate. Because of this, staff typically requests this data during discovery. The proposed modifications provide the detail needed by staff to accurately describe the potential socioeconomic benefits or impacts of a project. Further, provision of this information in the application will lessen the need for data requests and associated project delays.]

(8) Air Quality

(A) The information necessary for the air pollution control district where the project is located to complete a Determination of Compliance.

(B) The heating value and chemical characteristics of the proposed fuels, the stack height and diameter, the exhaust velocity and temperature, the heat rate and the expected capacity factor of the proposed facility.

(C) A description of the control technologies proposed to limit the emission of criteria pollutants.

(D) A description of the cooling system, the estimated cooling tower drift rate, the rate of water flow through the cooling tower, and the maximum concentrations of total dissolved solids.

(E) The emission rates of criteria pollutants and greenhouse gases (CO₂, CH₄, N₂O, and SF₆) from the stack, cooling towers, fuels and materials handling processes, delivery and storage systems, and from all on-site secondary emission sources.

[RATIONALE: The Energy Commission's 2003 IEPR requires the reporting of greenhouse gas emissions as a condition of licensing. This modification implements this condition.]

(F) (i) A description of typical operational modes, and start-up and shutdown modes for the proposed project, including the estimated frequency of occurrence and duration of each mode, and estimated emission rate for each criteria pollutant during each mode.

(ii) A description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the consistent production of electricity for sale to the market, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be used during such tests.

[RATIONALE: In evaluating many projects over the years, staff has learned that during the initial commissioning phase of operation, especially for the larger combustion turbine projects, that the duration of this phase of operation can be many weeks or months. Emissions and associated impacts during this period of time are usually quite elevated in comparison to normal project operation, thus this mode of operation should be analyzed.]

(G) The ambient concentrations of all criteria pollutants for the previous three years as measured at the three Air Resources Board certified monitoring stations located closest to the project site, and an analysis of whether this data is representative of conditions at the project site. The applicant may substitute an explanation as to why information from one, two, or all stations is either not available or unnecessary.

(H) One year of meteorological data collected from either the Federal Aviation Administration Class 1 station nearest to the project or from the project site, or meteorological data approved by the California Air Resources Board or the local air pollution district.

(i) If the data is collected from the project site, the applicant shall demonstrate compliance with the requirements of the U.S. Environmental Protection Agency document entitled "On-Site Meteorological Program Guidance for Regulatory Modeling Applications" (EPA - 450/4-87-013 (August 1995)), which is incorporated by reference in its entirety.

(ii) The data shall include quarterly wind tables and wind roses, ambient temperatures, relative humidity, stability and mixing heights, upper atmospheric air data, and an analysis of whether this data is representative of conditions at the project site.

(I) An evaluation of the project's direct and cumulative air quality impacts, consisting of the following:

(i) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct ~~criteria inert~~ pollutant impacts of project construction activities on ambient air quality conditions, including fugitive dust (PM 10) emissions from grading, excavation and site disturbance, as well as the combustion emissions [nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), particulate matter less than 10 microns in diameter (PM 10) and particulate matter less than 2.5 microns in diameter (PM_{2.5})] from construction-related equipment;

[RATIONALE: This change is needed to update the regulation to more accurately refer to the criteria pollutants which are the scope of the analysis of the proposed facility. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.]

(ii) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct ~~inert~~ criteria pollutant (NO_x, SO₂, CO, PM₁₀ and PM_{2.5}) impacts on ambient air quality conditions of the project during typical (normal) operation, and during shutdown and startup modes of operation. Identify and include in the modeling of each operating mode the estimated maximum emissions rates and the assumed meteorological conditions; and

[RATIONALE: This change is needed to clarify the discussion of criteria pollutants expected in the application. The term “inert” is unnecessary and does not add clarity to the regulation. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.]

(iii) A protocol for a cumulative air quality modeling impacts analysis of the project's typical operating mode in combination with other stationary emissions sources within a six mile radius which have received construction permits but are not yet operational, or are in the permitting process. The cumulative inert pollutant impact analysis should assess whether estimated emissions concentrations will cause or contribute to a violation of any ambient air quality standard.

(iv) an air dispersion modeling analyses of the impacts of the initial commissioning phase emissions on state and federal ambient air quality standards for NO_x, SO₂, CO, PM₁₀ and PM_{2.5}.

(J) If an emission offset strategy is proposed to mitigate the project's impacts under subsection (g)(1), provide the following information:

(i) The quantity of offsets or emission reductions that are needed to satisfy air permitting requirements of local permitting agencies (such as the air district), state and federal oversight air agencies, and the California Energy Commission. Identify by criteria air pollutant, and if appropriate, greenhouse gas; and

(ii) Potential offset sources including location, and quantity of emission reductions; Discuss the method to obtain or sources of the needed offsets or emissions reductions, including relevant information such as, but not limited to, emission reduction certificate numbers, contemporaneous shut-downs, process modifications, district accounts/banks or reserve programs, emissions controls, inter-pollutant trades, and district rule or attainment designation revisions; and

(iii) Provide a schedule that ensures that the offsets or emission reductions are specifically identified by the release of the district's Preliminary Determination of Compliance. Identification includes ERC numbers, or ERCs owned, under contract, or under option contract by the project owner. Shutdowns, process modifications, or emissions controls proposed to generate offsets or emission reductions should be formalized by final engineering drawings and specifications by the release of the district's Preliminary Determination of Compliance.

[RATIONALE: Applicants have sometimes failed to provide offsets for the entire quantity needed to offset the project's air quality impacts. Staff needs assurances that the applicant is in serious negotiations with prospective ERC owners, so that the eventual offset package is secured in a timely fashion (prior to issuance of the final Determination of Compliance from the appropriate air district) and not delay the siting process. In many areas of California, offset availability can be a key determinate as to whether or not a facility can be permitted. Without an assurance that there are offsets available to cover the entirety of project emissions staff, and the applicant, could waste valuable resources on a project that could not be constructed.]

~~(iii) Method of emission reduction.~~

[RATIONALE: Staff believes that this requirement is vague and confusing, and (J)(ii) above adequately addresses "method of emission reduction."]

~~(K) A topographic map containing contour and elevation data, at a scale of 1:24,000, showing the area within 6 miles of the power plant site.~~

[RATIONALE: Staff believes that this information is no longer necessary to perform our analysis. Removing this requirement reduces the application preparation cost for applicants.]

(K) a detailed description of the mitigation, which an applicant shall propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule.

[RATIONALE: In some instances, certain air districts do not require emission offsets for sources of air pollution, even though those sources can contribute to an air pollution problem in those districts. Staff believes that mitigation is still necessary in those circumstances, notwithstanding the district's offsetting requirements.]

(9) Public Health

~~(A) A list of all toxic substances emitted by the project under normal operating conditions, which may cause an adverse public health impact as a result of acute, or chronic, or sub-chronic exposure and to which members of the public may be exposed. The list should include, at a minimum, any pollutants emitted by the project that are listed pursuant to Health and Safety Code s 25249.8.~~

(A) An assessment of the potential risk to human health from the project's hazardous air emissions using the Air Resources Board Hotspots Analysis and Reporting Program (HARP) or its successor and Approved Risk Assessment Health Values. These values should include the cancer potency values and noncancer reference exposure levels approved by the Office of Environmental Health Hazard Assessment (OEHHA Guidelines, Cal-EPA 2005).

[RATIONALE: This change is to be consistent with requirements specified in the Office of Environmental Health Hazard Assessment's "Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments."]

~~(B) A protocol describing the analysis which the applicant will conduct to determine the extent of potential public exposure to substances identified in subsection (g)(9)(A) resulting from normal facility operation. The analysis itself can be submitted after the AFC is completed.~~

(B) A listing of the input data and output results, in both electronic and print formats, used to prepare the HARP health risk assessment.

[RATIONALE: The proposed change better identifies the information needed by staff to confirm the HARP study results and reduces the burden on applicants for providing information on the protocols used to perform the health risk analysis.]

~~(C) A map at a scale of 1:24,000, showing all terrain areas exceeding the elevation of the stack within a 10-mile radius of the facility.~~

(C) Identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site.

[RATIONALE: Available health studies for the potentially affected area will allow staff to analyze additional health effects that may need to be considered in its public health analysis. Staff does not need map information to perform this analysis.]

~~(D) A map at a scale of 1:24,000, showing the distribution of population and sensitive receptors within the area exposed to the substances identified in subsection (g)(9)(A).~~

[RATIONALE: Staff does not need a particular scaled map of population distribution to conduct its public health analysis. This allows applicants to determine the scale needed to appropriately show the requested data.]

(E) For purposes of this section, the following definitions apply:

(i) A sensitive receptor refers to infants and children, the elderly, and the chronically ill, and any other member of the general population who is more susceptible to the effects of the exposure than the population at large.

(ii) An acute exposure is one which occurs over a time period of less than or equal to one (1) hour between the time of emission and eight hours after the emission.

[RATIONALE: This change makes the definition consistent with the Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*.]

~~(iii) A sub-chronic exposure is one in which total exposure over a one-week period is greater than four hours, but less than sixteen hours.~~

[RATIONALE: The Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* does not refer to subchronic exposures.]

~~(iii)~~ A chronic exposure is one which is greater than twelve (12) percent of a lifetime of seventy (70) years. ~~occurs intermittently and repeatedly for more than one month.~~

[RATIONALE: This change makes the definition consistent with the Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*.]

(10) Hazardous Materials Handling

(A) A list of all materials used or stored on-site which are hazardous or acutely hazardous, as defined in Title 22, California Code of Regulations, s 66261.20 et seq., and a discussion of the toxicity of each material.

(B) A map at a scale of 1:24,000 depicting the location of schools, hospitals, day-care facilities, emergency response facilities, and long-term health care facilities, within the area potentially affected by any release of hazardous materials.

(C) A discussion of the storage and handling system for each hazardous material used or stored at the site.

(D) For each hazardous material stored or used at the site, an evaluation of the likelihood, consequences, and potential quantity of an accidental release, the locations and estimates of maximum acute exposure levels, and the operating and plausible worst-case upset conditions that could lead to a release.

(E) The protocol that will be used in modeling potential consequences of accidental releases that could result in off site impacts. Identify the model(s) to be used, a description of all input assumptions, including meteorological conditions. The results of the modeling analysis can be substituted after the AFC is complete.

(F) A discussion of whether a Risk Management Prevention Plan (Health and Safety Code s 25500 et seq.) will be required, and if so, the requirements that will likely be incorporated into the plan.

(G) A discussion of measures proposed to reduce the risk of any release of hazardous materials.

(H) A discussion of the fire and explosion risks associated with the project.

(11) Worker Safety

(A) A description of the safety training programs which will be required for construction and operation personnel.

(B) A complete description of the fuel handling system and the fire suppression system.

(C) Provide draft outlines of the Construction Health and Safety Program and the Operation Health and Safety Program, as follows:

Construction Health and Safety Program:

- * Injury and Illness Prevention Plan (8 Cal. Code Regs., § 1509);
- * Fire Protection and Prevention Plan (8 Cal. Code Regs., § 1920);
- * Personal Protective Equipment Program (8 Cal. Code Regs., §§ 1514-1522).

Operation Health and Safety Program:

- * Injury and Illness Prevention Program (8 Cal. Code Regs., § 3203);
- * Fire Prevention Plan (8 Cal. Code Regs., § 3221);
- * Emergency Action Plan (8 Cal. Code Regs., § 3220);
- * Personal Protective Equipment Program (8 Cal. Code Regs., §§ 3401-3411).

(12) Waste Management

(A) A Phase I Environmental Site Assessment for the proposed power plant site using methods prescribed by the most recent version of the American Society for Testing and Materials (ASTM) document entitled "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process" (Designation: E 1527-93, ~~May 1993~~), ~~which is incorporated by reference in its entirety~~; or an equivalent method agreed upon by the applicant and the CEC Staff that provides similar documentation of the potential level and extent of site contamination.

[RATIONALE: The ASTM periodically revises its standard for preparation of Environmental Site Assessments. This change will assure that applicants use the proper version when preparing their Site Assessment.]

(B) A description of each waste stream estimated to be generated during project construction and operation, including origin, hazardous or nonhazardous classification pursuant to Title 22, California Code of Regulations, Sections 66261.20 et seq., chemical composition, estimated annual weight or volume generated, and estimated frequency of generation.

(C) A description of all waste disposal sites which may feasibly be used for disposal of project wastes. For each site, include the name, location, classification under Title 23, California Code of Regulations, Sections 2530 et seq., the daily or annual permitted capacity, daily or annual

amounts of waste currently being accepted, the estimated closure date and remaining capacity, and a description of any enforcement action taken by local or state agencies due to waste disposal activities at the site.

(D) A description of management methods for each waste stream, including methods used to minimize waste generation, length of on- and off-site waste storage, re-use and recycling opportunities, waste treatment methods used, and use of contractors for treatment.

(13) Biological Resources

(A) A regional overview and discussion of terrestrial and aquatic biological resources, with particular attention to sensitive biological resources within ten (10) miles of near the project, and Include a map at a scale of 1:100,000 (or some other suitable scale) showing sensitive biological resource their location(s) in relation to the project site and related facilities and any boundaries of a local Habitat Conservation Plan or similar open space land use plan or designation. Sensitive biological resources include the following:

(i) species listed under state or federal Endangered Species Acts;

(ii) resources defined in sections 1702(q) and (v) of Title 20 of the California Code of Regulations;

(iii) species identified as state Fully Protected;

(iv) species covered by Migratory Bird Treaty Act;

(v) species and habitats identified by local, state, and federal agencies as needing protection, including but not limited to those identified by the California Natural Diversity Database, or where applicable, in Local Coastal Programs or in relevant decisions of the California Coastal Commission; and

(vi) fish and wildlife species that have commercial and/or recreational value.

[RATIONALE: To improve clarity and lessen confusion, Section (A) now includes all the sensitive species and habitat information requirements, and their definitions, which were moved from Sections (G), (H), and (I).

Habitat Conservation Plan (HCP) information has been added to the Data Adequacy regulations so each application is more complete when projects are located near or within an HCP area. HCPs are an important local tool, developed in consultation with state and federal wildlife agencies, that are used to determine impacts, identify appropriate mitigation, protect habitat, and manage state and federal protected species and their remaining habitat.

California counties have sensitive species and habitat lists that include species that are neither state nor federally listed. These local sensitive species and habitats need to be identified and addressed in the application. With this information, staff will be better able to address locally rare species

and lessen the need for data requests during Discovery. Reducing the number of data requests reduces the cost of regulatory review to both the state and applicant.

Also in subsection (v), the California Natural Diversity Database (CNDDDB) is included as a source of sensitive species lists for completeness. CNDDDB, Fish and Game's official sensitive species and habitat data base, is continually updated with ecological and site-specific data for sensitive plant, mammal, fish, bird, etc. lists. These lists include all state and federally listed species; however, they also include all proposed, candidate, and other sensitive species that may be locally rare that are monitored for possible future state or federal listing consideration. This data is essential to understand potential project impacts and develop measures to mitigate the impacts to biological resources.]

~~(B) A discussion and detailed maps at a scale of 1:6,000, of the biological resources at the site of the proposed project and related facilities, and in areas adjacent to them, out to a mile from the site and 1000 feet from the outer edge of linear facility corridors. Include a list of the species actually observed and those with a potential to occur within 1 mile of the project site and 1,000 feet from the outer edge of linear facility corridors. The discussion and maps shall address the distribution of community types, denning or nesting sites, population concentrations, migration corridors, breeding habitats, and the presence of sensitive biological resources.~~

Maps or aerial photographs shall include the following:

(i) Detailed maps at a scale of 1:6,000 or color aerial photographs taken at a recommended scale of 1 inch equals 500 feet (1:6,000) with a 30 percent overlap that show the proposed project site and related facilities, biological resources including, but not limited to, those found during project-related field surveys and records from the California Natural Diversity Database, and the associated areas where biological surveys were conducted. Label the biological resources and survey areas as well as the project facilities.

(ii) A depiction of the extent of the thermal plume at the surface of the water if cooling water is proposed to be discharged to a water source. Provide the location for the intake and discharge structures on an aerial photograph(s) or detailed maps. Water sources include, but are not limited to, waterways, lakes, impoundments, oceans, bays, rivers, and estuaries.

(iii) An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application.

[RATIONALE: The current data adequacy regulations lack specificity and guidance on which maps and aerial photographs are useful to complete staff's analysis. This increases both the time required to complete the analysis and the cost of the environmental review. All required maps and suggested map scales are consolidated in Section (B). By requiring these items be filed with the application, applicants will save time and money since fewer data requests will likely be necessary and maps will not have to be redone during Discovery.

The current regulations lack specific guidance regarding mapping wetlands and allowing for more precise measurements of their extent. Requiring better maps for measurement will also help applicants when they provide this same information to the Army Corps of Engineers if a wetlands fill permit (Section 404) is required from the Corps.

Providing map information about wetlands and adjacent habitat that occurs within 250 feet of the project will be helpful to staff and the applicant since this distance matches the distance the USFWS and Corps use when determining impacts to isolated wetlands such as vernal pools or creeks and rivers. This clarification is needed since *indirect* impacts are likely to occur if the project will affect upland areas within 250 feet of the nearby wetland.

Section 316(a) of the federal Clean Water Act requires thermal plume information for projects that discharge heated cooling water into an adjacent water body. The current data adequacy regulations lack specificity regarding what needs to be included in an Application for Certification for a complete thermal discharge impacts analysis. Including this information in the application will make the application more complete and reduce the costs of participation for both applicants and staff.]

~~(C) A description of all studies and surveys used to provide biological information about the project site, including seasonal surveys and copies of the California Department of Fish and Game's Natural Diversity Data Base Survey Forms, "California Native Species Field Survey Forms", and "California Natural Community Field Survey Forms", completed by the applicant. Include the dates and duration of the studies, methods used to complete the studies, and the names and qualifications of individuals conducting the studies.~~

(C) A discussion of the biological resources at the proposed project site and related facilities. Related facilities include, but are not limited to, laydown and parking areas, gas and water supply pipelines, transmission lines, and roads. The discussion shall address the distribution of vegetation community types, denning or nesting sites, population concentrations, migration corridors, breeding habitats, and other appropriate biological resources including the following:

(i) A list of all the species actually observed.

(ii) A list of sensitive species and habitats with a potential to occur (as defined in (A) above).

(iii) If cooling water is taken directly from or discharged to a water source containing a functioning ecosystem, include a description of the intake structure, screens, water volume, intake velocity field of influence, and the thermal plume dispersion area as depicted in response to B(ii) above. Describe the thermal plume size and dispersion under high and low tides, and in response to local currents and seasonal changes. Provide a discussion of the aquatic habitats, biological resources, and critical life stages found in these affected waters. This information shall be provided in the form of federal Clean Water Act 316(a) and (b) studies of entrainment and impingement impacts that has been completed within the last five (5) years.

[RATIONALE: The new federal Clean Water Act section 316(b) regulations require updated impact analyses during the 5-year National Pollution Discharge Elimination System permit

renewal, so recent impact information will be available and must be provided for a complete analysis. To provide clarity and make the regulations easier to use, Section (C) now consolidates all the general biological resources data requirements in one section. The current data adequacy regulations are incomplete regarding what information should be required of applicants for projects that propose to use or are currently using once-through cooling. Staff always asks for a current impingement and entrainment impacts analysis; however, when the data is not provided, the Commission decision is significantly delayed until the data is collected / provided.]

~~(D) A description of all permanent and temporary impacts to biological resources from site preparation, construction activities, and plant operation. Discussion of impacts must consider impacts from cooling tower drift, and from the use and discharge of water during construction and operation. For facilities which use once through cooling or take or discharge water directly from or to natural sources, discuss impacts resulting from entrainment, impingement, thermal discharge, effluent chemicals, type of pump (if applicable), temperature, volume and rate of flow at intake and discharge location, and plume configuration in receiving water.~~

(D) A description and results of all field studies and seasonal surveys used to provide biological baseline information about the project site and associated facilities. Include copies of the California Natural Diversity Database records and field survey forms completed by the applicant's biologist(s). Identify the date(s) the surveys were completed, methods used to complete the surveys, and the name(s) and qualifications of the biologists conducting the surveys. Include:

(i) Current biological resources surveys conducted using appropriate field survey protocols during the appropriate season(s). State and federal agencies with appropriate jurisdiction shall be consulted for field survey protocol guidance prior to surveys if a protocol exists.

(ii) If cooling water is proposed to be taken directly from a water source with a functioning ecosystem, seasonal aquatic resource studies and surveys shall be conducted. Aquatic resource survey data shall include, but is not limited to, fish trawls, ichthyoplankton and benthic sampling, and related temperature and water quality samples. Sampling protocol shall be provided to the Energy Commission staff for review and concurrence prior to the start of sampling. This information shall be provided in the form of a federal Clean Water Act 316(b) impingement and entrainment impact study that has been completed within the last five (5) years for the facility under consideration..

(iii) If the project or any related facilities could impact a jurisdictional or non-jurisdictional wetland, provide completed Army Corps of Engineers wetland delineation forms and/or determination of wetland status pursuant to Coastal Act requirements, name(s) and qualifications of biologist(s) completing the delineation, the results of the delineation and a table showing wetland acreage amounts to be impacted.

[RATIONALE: The current regulations lack specificity and are incomplete regarding field survey protocols. To make the Data Adequacy regulations easier to understand, new Section (D) consolidates all terrestrial and aquatic survey protocol information requirements contained in the current regulations. Section (D) requires clarification regarding study design and sampling

protocols regarding federal Section 316(b) studies being completed under new Clean Water Act regulations. Suggested California Coastal Commission language regarding wetland status is added to help clarify requirements for determining California Coastal Act compliance.]

(E) Impacts A discussion of the following:

~~(i) All measures proposed to avoid and/or reduce any adverse impacts;~~

(i) all impacts (direct, indirect, and cumulative) to biological resources from project site preparation, construction activities, plant operation, maintenance, and closure. Discussion shall also address sensitive species habitat impacts from cooling tower drift and air emissions.

[RATIONALE: For clarity, all impact information requirements are now consolidated in Section (E). CEQA requires that information on direct, indirect, and cumulative impacts be provided so staff can complete its CEQA analyses.]

~~(ii) All measures proposed to mitigate any adverse impacts, including any proposals for off site mitigation;~~

(ii) facilities that propose to take water directly from, and/or discharge water to sources with functioning ecosystems, daytime and nighttime impacts from the intake and discharge of water during operation, water velocity at the intake screen, the intake field of influence, impingement, entrainment, and thermal discharge. Provide a discussion of the extent of the thermal plume, effluent chemicals, oxygen saturation, intake pump operations, and the volume and rate of cooling water flow at the intake and discharge location.

[RATIONALE: Due to substantial changes to the Federal Clean Water Act section 316(b), subsection (ii) now includes data adequacy requirements that will help staff complete its analysis for power plant projects that currently withdraw cooling water and discharge it after its use. Staff currently attempts to get this information during Discovery; however, it would be more efficient for staff and the applicant, saving time and money, if this information is required in the data adequacy regulations.]

~~(iii) Any educational programs proposed to enhance employee awareness in order to protect biological resources.~~

(iii) Methods to control biofouling, chemical concentrations, and temperatures that will be discharged to receiving waters.

[RATIONALE: The biofouling issue is not addressed in the current data adequacy regulations; however, the chemicals used to control biofouling can impact biological resources when discharged. Anti-fouling agents often include copper-based and other metal-based chemicals which can have a negative impact on biological resources in the discharge receiving water. Requiring this information in their application will save time for the staff's analysis and time and money for the applicant during Discovery.]

~~(F) A discussion of compliance and monitoring programs to ensure the effectiveness of mitigation measures incorporated into the project.~~

(F) A discussion of all feasible mitigation measures including, but not limited to the following:

(i) All measures proposed to avoid and/or reduce adverse impacts to biological resources.

(ii) All off-site habitat mitigation and habitat improvement or compensation, and an identification of contacts for compensation habitat and management.

(iii) Design features to better disperse thermal discharge.

(iv) All measures proposed to avoid or minimize adverse impacts of cooling water intake. This shall include a Best Technology Available (BTA) discussion. If BTA is not being proposed, the rationale for not selecting BTA must be provided.

(v) Educational programs to enhance employee awareness during construction and operation to protect biological resources.

[RATIONALE: Our current data adequacy regulations lack clarity regarding a complete mitigation discussion. This lack of clarity often results in more data requests during Discovery which slows staff's completion of its analysis and costs the applicants additional money. As an example, Section (F) now requires a more complete discussion of ways to minimize impacts associated with cooling water withdrawal and discharge. This has been a time-consuming issue during several recent siting cases (Moss Landing, Morro Bay, and Potrero) requiring multiple data requests and data request rounds. If this information is provided in their application, then staff may be able to complete its analysis more quickly and result in a more timely Commission decision.

This section also provides suggested California Coastal Commission additions that are appropriate and will help determine Coastal Act compliance. Without this critical information, Coastal Act compliance will be costly for the applicants and delay the Commission decision.]

~~(G) A discussion of compliance and monitoring programs to ensure the effectiveness of impact avoidance and mitigation measures incorporated into the project. native fish and wildlife species of commercial and/or recreational value that could be impacted by the project.~~

[RATIONALE: Section (G) originally provided one of the sensitive species (native fish and wildlife species of commercial and/or recreational value) definitions; however, this definition has been moved to improve clarity to Section (A) so all sensitive species definitions are found in the same section.

Since the original material has been moved to Section (A), the new Section (G) now contains refinements to the language regarding compliance and mitigation monitoring requirements and the need to determine if the mitigation is effective. This is missing in the current data adequacy regulations and needs to be added for clarity and completeness.]

~~(H) For purposes of this section, sensitive biological resources are one of the following:~~

(H) Submit copies of the biological resource information provided to obtain federal permits from other agencies such as the U. S. Fish and Wildlife Service and/or the National Marine Fisheries Service and/or Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, incidental take authorization from the California Department of Fish and Game, and water discharge permits from the Regional Water Quality Control Board.

~~(i) Species listed under state or federal Endangered Species Acts;~~

[RATIONALE: This sensitive species definition has been deleted here and moved along with the other definitions to Section (A) so the sensitive species concept, and related definitions, are located in the same section. This change makes the biological resources data adequacy regulations easier to use and helps applicants compile a more complete application.

Current data adequacy regulations are incomplete regarding other federal permits that may be required outside of the Commission licensing authority. Requiring this information be provided as part of a complete application is essential to a better understanding of the overall project permitting schedule.]

~~(ii) Resources defined in sections 1702 (q) and (v) of Title 20 of the California Code of Regulations; and~~

[RATIONALE: Subsection (ii) is no longer necessary – to improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A) .

~~(iii) Species or habitats identified by legislative acts as requiring protection.~~

[RATIONALE: Subsection (iii) is no longer necessary – to improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A).

(14) Water Resources

~~(A) All information required by the Regional Water Quality Control Board in the region where the project will be located to apply for:~~

(A) All the information required to apply for the following permits, if applicable, including:

(i) Waste Discharge Requirements; ~~and~~ National Pollutant Discharge Elimination System Permit; and/or a Section 401 Certification or Waiver from the appropriate Regional Water Quality Control Board (RWQCB);-

~~(ii) National Pollutant Discharge Elimination System Permit~~

(ii) Construction and Industrial Waste Discharge and/or Industrial Pretreatment permits from wastewater treatment agencies;

(iii) Nationwide Permits and/or Section 404 Permits from the U.S. Army Corps of Engineers; and

(iv) Underground Injection Control Permit(s) from the U.S. Environmental Protection Agency, California Division of Oil and Gas, and RWQCB.

[RATIONALE: The number of permits which regulate discharge is broader than originally proposed in the Data Adequacy Regulations. The inclusion of this set of permits will cover most discharges and allow staff to begin discovery knowing what other agency regulations apply to the discharge of wastewaters]

(B) A detailed description of the hydrologic setting of the project. The description shall include laboratory analysis of at least one sample from nearby water sources for chemical and physical characteristics. The information shall describe in description shall include a narrative discussion writing and maps at a scale of 1:24,000 (or appropriate scale approved by staff), the chemical and physical characteristics of the following nearby water bodies that may be affected by the proposed project:

[RATIONALE: To ensure the discussion and description of the hydrological setting is sufficient to provide an adequate technical basis for a staff assessment. An incomplete or inaccurate technical basis for hydrological impacts is frequently a cause of delay in both the staff assessment and the licensing of power projects.]

(i) Ground water bodies and related geologic structures;

(ii) Surface water bodies; ~~and~~

(iii) Water inundation zones, such as the 100-year flood plain and tsunami run-up zones;

(iv) Flood control facilities (existing and proposed); and

(v) Groundwater wells within ½ mile if the project will include pumping.

(C) A description of the water to be used and discharged by the project. This information shall include:

(i) Source(s) of the primary and back-up water supplies and the rationale for their selection; and if fresh water is to be used for power plant cooling purposes, a discussion of all other potential sources and an explanation of why these sources were not feasible;

[RATIONALE: The project water supply must be established as a critical path item in the staff assessment in order to assure that the project has adequate water supplies for continued operation at the proposed site.]

(ii) The expected physical and chemical characteristics of the source and discharge water(s) including identification of both organic and inorganic constituents before and after any project-related treatment. For source waters with seasonal variation, provide seasonal ranges of the expected physical and chemical characteristics. Provide copies of background material used to create this description (e.g., laboratory analysis);

[RATIONALE: Incomplete or inadequate characterization of the physical and chemical characteristics of the water supply and wastewater discharge is often the cause of unanticipated problems resulting in delays in the production of the staff assessment and licensing of power projects.]

(iii) Average and maximum daily and annual water demand and waste water discharge for both the construction and operation phases of the project; ~~and~~

(iv) A detailed description of all facilities to be used in water conveyance (from primary source to the power plant site), water treatment, and wastewater discharge. ~~Include a water mass balance diagram;~~

[RATIONALE: A final conceptual design is necessary to prevent delays in the staff analysis and licensing of power plants. Problems with conveyance facilities and pipelines are a frequent cause of delay.]

(v) For all water supplies to be provided from public or private water purveyors, a letter of intent or will-serve letter indicating that the purveyor is willing to serve the project, has adequate supplies available for the life of the project, the term of service to the project, any previous uses of the allocated water (if known), and any conditions or restrictions under which water will be provided. In the event that a will-serve letter or letter of intent can not be provided, identify the most likely the water purveyor and discuss the necessary assurances from the water purveyor to serve the project were unable to be secured. Also discuss the term of the water service to the project, whether the water purveyor has adequate water supplies for the life of the project, any previous uses of the allocated water (if known), and any issues or conditions/restrictions the purveyor may impose on the project for use of its water.

(vi) For all water supplied which necessitates transfers and/or exchanges at any point, identify all parties and contracts/agreements involved, the primary source for the transfer and/or exchange water (e.g., surface water, groundwater), and provide the status of all appropriate agencies' approvals for the proposed use, environmental impact analysis on the specific transfers and/or exchanges required to obtain the proposed supplies, a copy of any agency regulations that govern the use of the water, and an explanation of how the project complies with the agency regulation(s);

[RATIONALE: The project water supply must be established as early as possible as a critical path item in the staff assessment. An incomplete or inaccurate technical and/or legal basis for the proposed water supply is frequently a cause of delay in both the staff assessment and the licensing of power projects.]

(vii) Provide water mass balance and heat balance diagrams for both average and maximum flows that include all process and/or ancillary water supplies and wastewater streams. Highlight any water conservation measures on the diagram and the amount that they reduce water demand.

[RATIONALE: State law prohibits the waste or unreasonable use of water. Resolution of excessive water use issues by a proposed project is a frequent cause of delay.]

(viii) For all projects which have a discharge, provide a copy of the will-serve letter, permit or contract with the public or private entity that will be accepting the wastewater and contact storm water from the project. The letter, permit or contract should identify the discharge volumes and the chemical or physical characteristics under which the wastewater and contact storm water will be accepted.

In the event that a will-serve letter, permit, or contract cannot be provided, identify the most likely wastewater/storm water entity and discuss why the applicant was unable to secure the necessary assurances to serve the project's wastewater/storm water needs. Also, discuss the term of the wastewater service to the project, whether the wastewater entity has adequate permit capacity for the volume of wastewater from the project and has adequate permit levels for the chemical/physical characteristics of the project's wastewater and storm water for the life of the project, and any issues or conditions/restrictions the wastewater entity may impose on the project.

[RATIONALE: Any pre-treatment requirements found in the permit or contract could change the configuration of the project. For instance, if it was cost prohibitive to clean the wastewater to the permit's chemical standards, then the project may need to use zero-liquid discharge. It is necessary to know the permit conditions early in the process to avoid any amendments and major project changes. In addition, it is necessary for staff to establish that the proposed provider has the capacity to accept the wastewater and contact stormwater and to establish that the project's discharge (with or without pre-treatment) can occur without causing additional impacts. For example, if the project's discharge were to cause a municipal utility to violate the volume limit in its own discharge permit, this would be an indirect impact of the project which must be mitigated.]

(D) Identify all project elements associated with stormwater drainage, including a description of the following: pre-, and post-construction runoff and drainage patterns, including:

(i) Monthly and/or seasonal precipitation and stormwater runoff and drainage patterns for the proposed site and surrounding area that may be affected by the project's construction and operation;

(ii) Drainage facilities and the design criteria used for the plant site and ancillary facilities, including but not limited to capacity of designed system, design storm, and estimated runoff;

(iii) All assumptions and calculations used to calculate runoff and to estimate changes in flow rates between pre- and post construction; and

(iv) A copy of applicable regional and local requirements regulating the drainage systems, and a discussion of how the project's drainage design complies with these requirements.

[RATIONALE: The information on the project's potential stormwater drainage impacts provided by applicants under the previous regulation did not provide all of the information necessary for staff to fully determine the potential drainage impacts of the project. The additional information requested will allow staff to analyze the project without the need for additional data requests. This will reduce the cost to applicants for responding to data requests and will further speed staff's review of the application.

(E) An assessment of the effects impacts analysis of the proposed project on water resources and a discussion of conformance with water-related LORS and policy. This discussion shall include:

(i) The effects of project demand on the water supply and other users of this source, including, but not limited to, water availability for other uses during construction or after the power plant begins operation, consistency of the water use with applicable RWQCB basin plans or other applicable resource management plans, and any changes in the physical or chemical conditions of existing water supplies as a result of water use by the power plant;

[RATIONALE: Water supply related issues are highly significant reasons for delays during the licensing process. As the state's demand on water resources continues to increase, unresolved water supply issues will only cause further delays.]

~~(ii) The effects of construction activities and plant operation on water quality; and~~

(ii) If the project will pump groundwater, the estimated drawdown on neighboring wells with 0.5 mile of the place of withdrawal, any effects on the migration of groundwater contaminants, and the likelihood of any changes in existing physical or chemical conditions of groundwater resources;

[RATIONALE: Due to the volume and pumping rate of groundwater at power plants, interference with, and significant impacts to other users in a groundwater basin frequently cause delays in review of the potential impacts from a facility.]

~~(iii) The effects of construction activities and plant operation on water quality and to what extent these effects could be mitigated by best management practices; the project on the 100-year flood plain or other water inundation zones.~~

[RATIONALE: Unmitigated discharge related issues are common reasons for delays. Requiring that complete and detailed stormwater drainage, erosion, and sediment control information be included with the AFC will minimize such delays.]

(iv) If not using a zero liquid discharge project design for cooling and process waters, include the effects of the proposed wastewater disposal method on receiving waters, the feasibility of using pre-treatment techniques to reduce impacts, and beneficial uses of the receiving waters. Include

an explanation why the zero liquid discharge process is “environmentally undesirable,” or “economically unsound.”

[RATIONALE: This will establish consistency with the 2003 IEPR Water Policy]

(v) If using fresh water, include a discussion of the cumulative impacts, alternative water supply sources and alternative cooling technologies considered as part of the project design. Include an explanation of why alternative water supplies and alternative cooling are “environmentally undesirable,” or “economically unsound.”

[RATIONALE: This will establish consistency with the 2003 IEPR Water Policy]

(vi) The effects of the project on the 100-year flood plain, flooding potential of adjacent lands or water bodies, or other water inundation zones.

[RATIONALE: Identification of impacts to adjacent lands or water bodies will allow for more accurate identification of any required mitigation measures early in the licensing process.]

(vii) All assumptions, evidence, references, and calculations used in the analysis to assess these effects.

[RATIONALE: Understanding how the applicant has analyzed these issues will prevent misunderstandings and related delays in processing the application.]

(15) Agriculture and Soils

(A) A map at a scale of 1:24,000 and written description of soil types and all agricultural land uses that will be affected by the proposed project. The description shall include:

(i) The depth, texture, permeability, drainage, erosion hazard rating, and land capability class of the soil; ~~and~~

(ii) An identification of other physical and chemical characteristics of the soil necessary to allow an evaluation of soil erodibility, permeability, re-vegetation potential, and cycling of pollutants in the soil-vegetation system;

(iii) The location of any proposed fill disposal or fill procurement (borrow) sites; and

(iv) The location of any contaminated soils that could be disturbed by project construction.

[RATIONALE: The additional items are needed to understand the potential impacts of the project to agriculture and soils in the vicinity of the project. Without this information staff would be required to burden the applicant with data requests for this additional information.]

~~(B) A map at a scale of 1:24,000 and written description of agricultural land uses found within all areas affected by the proposed project. The description shall include:~~

~~(i) Crop types, irrigation systems, and any special cultivation practices; and~~

~~(ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the Natural Resource Conservation Service or the California Department of Conservation.~~

~~(B)~~ (C) An assessment of the effects of the proposed project on soil resources and agricultural land uses. This discussion shall include:

(i) The quantification of accelerated soil loss due to wind and water erosion.;

~~(ii) Direct, indirect, and cumulative effects on agricultural land uses.; and If the proposed site or related facilities are subject to an Agricultural Land Conservation contract, provide a written copy and a discussion of the status of the expiration or canceling of such contract.~~

(iii) The effect of power plant emissions on surrounding soil-vegetation systems.

[RATIONALE: Deleted sections were moved to Land Use for continuity of analysis.]

(16) Paleontologic Resources

(A) Identification of the physiographic province and a brief summary of the geologic setting, formations, and stratigraphy of the project area. The size of the paleontological study area may vary depending on the depositional history of the area region.

[RATIONALE: This addition is needed to clarify that the “area” requested was the size of the area under study. Also, the word “area” was used twice in the same sentence which was confusing to applicants and the public. Region more appropriately describes the requested information.]

(B) A discussion of the sensitivity of the project area described in subsection (g)(16)(A) and the presence and significance of any known paleontologic localities or other paleontologic resources within or adjacent to the project. Include a discussion of sensitivity for each geologic unit identified on the most recent geologic map at a scale of 1:24,000. Provide rationale as to why the sensitivity was assigned.

[RATIONALE: This addition clarifies that the applicant must address each geologic unit and that they must provide rationale for sensitivity assignments. This will reduce the need for staff to seek this information during discovery and will reduce the applicant’s cost for responding to staff data requests.]

(C) A summary of all local museums, literature searches and field surveys used to provide information about paleontologic resources in the project area described in subsection (g)(16)(A). Identify the dates of the surveys, methods used in completing the surveys, and the names and qualifications of the individuals conducting the surveys.

[RATIONALE: Local museums are a primary source of information regarding paleontologic resources in an area. This addition assures that applicants contact museums in the area to determine what resources may have been collected near the site. While many applicants provide this information, this addition will streamline the review process by assuring that no data request is need to obtain this information.]

(D) Information on the specific location of known paleontologic resources, survey reports, locality records, and maps at a scale of 1:24,000, showing occurrences of fossil finds within a one-mile radius of the project and related facilities shall be included in a separate appendix to the Application and submitted to the Commission under a request for confidentiality, pursuant to Title 20, California Code of Regulations, s 2501 et seq.

[RATIONALE: The requirement to provide information on known paleontologic resources, on a map at a scale of 1:24,000, lacks definition on the area surrounding the project and its facilities that must be studied by the applicant. Providing information only on resources within a one-mile radius will provide the needed definition and will reduce the cost to applicants who might needlessly study a larger area.]

(E) A discussion of educational programs proposed to enhance awareness of potential impacts to paleontological resources by employees, measures proposed for mitigation of impacts to known paleontologic resources, and a set of contingency measures for mitigation of potential impacts to currently unknown paleontologic resources.

(17) Geological Hazards and Resources

(A) A summary of the geology, seismicity, and geologic resources of the project site and related facilities; including linear facilities.

(B) A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities.

[RATIONALE: This section did not explicitly require the applicant to provide information regarding the submission of data relative to any proposed linear facilities. This resulted in additional requests for information during discovery, and additional costs to the applicant for responding to these requests. The proposed revisions will clarify that the information is required in each application.]

(C) A map and description of geologic resources of recreational, commercial, or scientific value which may be affected by the project. Include a discussion of the techniques used to identify and evaluate these resources.

(18) Transmission System Safety and Nuisance

(A) The locations and a description of the existing switchyards and overhead and underground transmission lines that would be affected by the proposed project.

(B) An estimate of the existing electric and magnetic fields from the facilities listed in (A) above and the future electric and magnetic fields that would be created by the proposed project, calculated at the property boundary of the site and at the edge of the rights of way for any transmission line. Also provide an estimate of the radio and television interference that could result from the project.

(C) Specific measures proposed to mitigate identified impacts, including a description of measures proposed to eliminate or reduce radio and television interference, and all measures taken to reduce electric and magnetic field levels.

(f h) Engineering

(i)(1) Facility Design

(A) A description of the actual site conditions and investigations or studies conducted to determine the site conditions used as the basis for developing design criteria. The descriptions shall include, but not be limited to, seismic and other geologic hazards, adverse conditions that could affect the project's foundation, adverse meteorological and climate conditions, and flooding hazards, if applicable.

(B) A discussion of any measures proposed to improve adverse site conditions.

(C) A description of the proposed foundation types, design criteria (include derivation), analytical techniques, assumptions, loading conditions, and loading combinations to be used in the design of facility structures and major mechanical and electrical equipment.

(D) For each of the following facilities and/or systems, provide a description including drawings, dimensions, surface-area requirements, typical operating data, and performance and design criteria for protection from impacts due to adverse site conditions:

(i) The power generation system;

(ii) The heat dissipation system;

(iii) The cooling water supply system, and, where applicable, pre-plant treatment procedures;

(iv) The atmospheric emission control system;

(v) The waste disposal system and on-site disposal sites;

(vi) The noise emission abatement system;

- (vii) The geothermal resource conveyance and re-injection lines (if applicable);
- (viii) Switchyards/transformer systems; and
- (ix) Other significant facilities, structures, or system components proposed by the applicant.

(i)(2) Transmission System Design

(A) A discussion of the need for the additional electric transmission lines, substations, or other equipment, the basis for selecting principal points of junction with the existing electric transmission system, and the capability and voltage levels of the proposed lines, along with the basis for selection of the capacity and voltage levels.

(B) A discussion of the extent to which the proposed electric transmission facilities have been designed, planned, and routed to meet the transmission requirements created by additional generating facilities planned by the applicant or any other entity.

(i)(3) Reliability

(A) A discussion of the sources and availability of the fuel or fuels to be used, and their expected prices, over the estimated service life of the facilities.

(B) A discussion of the anticipated service life and degree of reliability expected to be achieved by the proposed facilities based on a consideration of:

(i) Expected overall availability factor, and annual and lifetime capacity factors;

(ii) The demonstrated or anticipated feasibility of the technologies, systems, components, and measures proposed to be employed in the facilities, including the power generation system, the heat dissipation system, the water supply system, the reinjection system, the atmospheric emission control system, resource conveyance lines, and the waste disposal system;

(iii) Geologic and flood hazards, meteorologic conditions and climatic extremes, and cooling water availability;

(iv) Special design features adopted by the applicant or resource supplier to ensure power plant reliability including equipment redundancy; and

(v) For technologies not previously installed and operated in California, the expected power plant maturation period.

[Rationale: As currently written, the request for information regarding the project's maturation period makes sense only for new technologies which do not have a demonstrated operational record in California. The generating technologies currently being sited in California (such as simple cycle and combined cycle gas turbine generating plants), are well understood. The

current requirement often causes delays in staff's data adequacy review, and additional costs for applicants, because it is commonly overlooked in preparing the AFC. The proposed addition makes it clear that the information is needed only for technologies which have not previously been installed and operated in California.]

(i)(4) Efficiency

(A) Heat and mass balance diagrams for design conditions for each mode of operation.

(B) Annual fuel consumption in BTUs for each mode of operation, including hot restarts and cold starts.

(C) Annual net electrical energy produced in MWh for each mode of operation, including starts and shutdowns.

(D) Number of hours the plant will be operated in each design condition in each year.

(E) If the project will be a cogeneration facility, calculations showing compliance with applicable efficiency and operating standards.

(F) A discussion of alternative generating technologies available for the project, including the projected efficiency of each, and an explanation why the chosen equipment was selected over these alternatives.

(5) Demonstration, if applicable

(A) Justification for the request for demonstration status, based on the criteria contained in the most recently adopted Electricity Report.

(B) A demonstration plan containing the following elements:

(i) A description of the technology to be demonstrated;

(ii) The objectives of the demonstration;

(iii) The plans for acquiring the data necessary to verify the state demonstration objectives;

(iv) The schedule for implementing the demonstration tasks;

(v) The expected date of commencement of commercial operation of the facility, if applicable, and

(vi) A description of contingent actions to be implemented if individual demonstration tasks are technologically unsuccessful.

(h) i) Compliance with Laws, Ordinances, Regulations and Standards

(1) Tables which identify:

(A) Laws, regulations, ordinances, standards, adopted local, regional, state, and federal land use plans, leases, and permits applicable to the proposed project, and a discussion of the applicability of, and conformance with each. The table or matrix shall explicitly reference pages in the application wherein conformance, with each law or standard during both construction and operation of the facility is discussed; and

(B) Each agency with jurisdiction to issue applicable permits, leases, and approvals or to enforce identified laws, regulations, standards, and adopted local, regional, state, and federal land use plans, and agencies which would have permit approval or enforcement authority, but for the exclusive authority of the commission to certify sites and related facilities.

~~(2) A discussion of the conformity of the project with the requirements listed in subsection (h)(1)(A).~~

[RATIONALE: This discussion requirement has been moved to (i)(1)(A) to make it clear to applicants that information on conformance with all LORS is needed in the application. Clarity in the regulation reduces the applicants cost for compliance.]

(23) The name, title, phone number, ~~and~~ address (required), and email address (if known), of an official who was contacted within each agency, and also provide the name of the official who will serve as a contact person for Commission staff ~~the agency~~.

[RATIONALE: This section has been updated to provide an electronic contact point for agency contacts. This additional contact information will be helpful to both the staff and to public who wish to discuss the proposed project.]

(34) A schedule indicating when permits outside the authority of the commission will be obtained and the steps the applicant has taken or plans to take to obtain such permits.

Note: Authority cited: Sections 25213, 25216.5(a), 25218(e), Public Resources Code.
Reference: Sections 21080.5, 25308.5, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, 25540.6, Public Resources Code.

ATTACHMENT A

ALTERNATIVE - Section 1207. Intervenors

11440.50. (a) This section applies in adjudicative proceedings of an agency if the agency by regulation provides that this section is applicable in the proceedings.

(b) The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

(1) The motion is submitted in writing, with copies served on all parties named in the agency's pleading.

(2) The motion is made as early as practicable in advance of the hearing. If there is a prehearing conference, the motion shall be made in advance of the prehearing conference and shall be resolved at the prehearing conference.

(3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(c) If an applicant qualifies for intervention, the presiding officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(d) As early as practicable in advance of the hearing the presiding officer shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(e) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the presiding officer. The determination is not subject to administrative or judicial review.

(f) Nothing in this section precludes an agency from adopting a regulation that permits participation by a person short of intervention as a party, subject to Article 7 (commencing with Section 11430.10) of Chapter 4.5.

ALTERNATIVE - Section 1216. Ex Parte Contacts

11430.10. (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section **11430.50**.

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60. Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section **11430.50**.

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.