

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

DOCKET	
05-DATA-1	
DATE	APR 25 2007
RECD.	APR 30 2007

In the Matter of:)	Docket No. 05-DATA-01
)	Order No. 07-425-2
Proposed Adoption, Amendment, and Repeal)	
of Regulations Governing Rules of Practice and)	ADOPTION ORDER
Procedure, Data Collection, and Disclosure)	
<u>of Commission Records</u>)	April 25, 2007

I. INTRODUCTION

By this Order, the California Energy Commission (Commission) adopts the attached amendments to the Commission's existing regulations governing the rules of practice and procedure (Articles 2 and 4 of Chapter 2 of Division 2 of Title 20, beginning with section 1101), data collection (Articles 1 and 2 of Chapter 3 of Division 2 of Title 20, beginning with section 1301), and disclosure of Commission records (Article 2 of Chapter 7 of Division 2 of Title 20, beginning with section 2501). The adoption meets three broad Commission objectives: 1) to clarify some of the Commission's rules of practice and procedure, including those governing the timelines and process the Commission will follow in conducting a complaint or investigatory proceeding; 2) to modify the Commission's energy data collection regulations so that the regulations reflect changes to the energy industry that have occurred since the last rulemaking, and more carefully distinguish between the different data submission requirements applicable to different groups of market participants; and 3) to modify the Commission's regulations governing the disclosure of Commission records in order to clarify those portions of the confidentiality regulations which filers have found to be confusing, and to update the confidentiality status of several types of energy data.

II. RULEMAKING HISTORY

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information pertaining to electricity generation.

In 2002, SB 1389 (Stats. 2002, ch. 568) was enacted, re-defining the Commission's data collection and analysis responsibilities in light of electric industry re-structuring and other significant changes in the energy industry. That legislation repealed Chapter 4 of Division 15 of the Public Resources Code, and enacted a new Chapter 4 that significantly

modified and expanded the Commission's responsibilities. In addition, since 2002, new Commission responsibilities have been identified in several provisions of the Public Utilities Code, as well as in amendments to Chapter 4. Included in this category are AB 1723 (Stats. 2005, ch. 703), addressing load migration, SB 1037 (Stats. 2005, ch. 366), addressing gas energy efficiency and electric energy efficiency programs of municipal utilities, AB 380 (Stats. 2005, ch. 367), concerning resource adequacy efforts of municipal utilities, SB 1565 (Stats. 2004, ch. 692), directing the Commission to adopt a strategic plan for the state's electric transmission grid, and SB 1059 (Stats. 2006, ch. 638) which allows the Commission to designate a transmission corridor zone, either on its own motion or by application of a person who plans to build a high-voltage electric transmission line within the state. Taken together, these statutes require the Commission to collect and disseminate data, conduct assessments and forecasts of all aspects of energy markets, collaborate with other entities that participate in or regulate energy markets, and provide information on both a regular basis and on an as-needed basis to the Governor, the Legislature, and to the public. In addition to the Commission's data collection responsibilities, the Commission is authorized to adopt regulations implementing the California Public Records Act (Govt. Code § 6250 et seq.), and rules of practice and procedure for a variety of proceedings that it conducts. These provisions are used in conjunction with the Commission's data collection and analysis responsibilities, as well as in other Commission proceedings.

On October 19, 2005, in preparation for this rulemaking, the Commission adopted an Order Instituting Rulemaking, and assigned a Committee of two Commissioners to oversee the rulemaking process. That Committee directed the development of three draft proposals (April 2006, June, 2006, and August 2006), and conducted four workshops to discuss these proposals (May 2, 2006, May 25, 2006, July 10, 2006, and August 28, 2006). The Commission also solicited and received numerous comments on the various draft proposals. On March 2, 2007, the Commission published, posted on its website, and mailed to a service list developed for this proceeding the following documents: Notice of Proposed Action (along with the required Fiscal and Economic Impact Statements), Initial Statement of Reasons, and Proposed Express Terms. No comments were received during the public comment period. Two people spoke at the adoption hearing; Bruce McLaughlin, representing the California Municipal Utilities Association, and William W. Westerfield III, representing Sierra Pacific Power Company, Bear Valley Electric Service, PacifiCorp and Mountain Utilities. Both asked that the Commission and Commission staff be cognizant of the unique position of their clients in the energy market in requesting data pursuant to the proposed regulations, but did not oppose their adoption.

III. FINDINGS

1. California Environmental Quality Act (Pub. Resources Code § 21000 et seq.): The California Environmental Quality Act (CEQA) requires all public agencies to certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. (Pub. Resources Code,

section 21100). However, CEQA provides an exemption for projects for which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14, section 15061(b)(3).) The Commission's decision today to adopt the proposed amendments is exempt for that reason. All of the proposed changes are procedural in nature, and will not affect any activity that could have a direct, indirect, or cumulative impact on the environment. All three categories of changes -- modifying and clarifying the rules of practice and procedure, including rules governing the complaint and investigatory process, modifying energy data collection filing requirements, and amending regulations governing the disclosure of Commission records -- only affect the type and timing of filing requirements. The Commission's Project Manager for this proceeding has extensive experience with CEQA implementation, having worked for many years in the Energy Facilities Siting Division of the Commission overseeing the development of CEQA documentation for large energy projects. He provided a memo to the Committee explaining that the amendments being considered today create no possibility that the activity may have a significant effect on the environment. This memo is included in the docket for this proceeding. Therefore, the Commission finds that there is no possibility that the proposal may have a significant effect on the environment and that the adoption is therefore exempt from the requirements of CEQA.

2. Administrative Procedure Act – Administrative Regulations and Rulemaking: Government Code § 11346.9 requires the Commission to submit to the Office of Administrative Law a Final Statement of Reasons that includes two determinations. The first, identified in subdivision (a)(2), addresses whether the regulation imposes a mandate on local agencies or school districts, and if so, whether the mandate requires reimbursement. If the agency finds that any such mandate is not reimbursable, it shall state the reasons for that finding. As discussed in the Notice of Proposed Action for this rulemaking, the Commission has determined that this rulemaking will not impose a mandate on local agencies or schools. Proposed amendments to Commission regulations establishing rules of practice and procedure and proposed changes to regulations implementing the Public Records Act do not impose a state-mandated local program. They specify various procedures and timing requirements that the Commission itself, as well as various entities participating in Commission proceedings, must follow. None of the amendments to these sections require any new reports, filings, or activities.

Similarly, the amendments to the data collection portion of the Commission's regulations do not impose a mandate on local agencies or schools. Although both irrigation districts and municipal utilities could see increased reporting requirements as a result of this rulemaking, these new requirements are not mandates, as state mandates are limited to "new programs or higher levels of service". (Cal. Const., Section XIII B, section 8.) In addition, the mandated activities must involve the provision of governmental services and must apply uniquely to the local agency. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139.) Where these regulations require publicly-owned utilities to submit data, the requirements are not unique to those entities, and are due to the fact that they have chosen to enter into the business of generating, distributing, and

selling electricity, which is not a government service. Therefore, the proposed regulations will not impose a mandate on local agencies or schools.

The second determination that the Commission must make, found in subdivision (a)(4) of Government Code § 11346.9 is that no alternative considered by the Commission would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. Similarly, Government Code section 11346.5(a)(13) requires that the Notice of Proposed Action contain a statement that the Commission must, before adopting the proposed regulations, determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of it, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

As discussed above, the Commission, in developing the proposed changes to the regulations, conducted an extensive public participation process that included four public workshops and several rounds of comments on various draft proposals. This process provided a significant amount of information about the effectiveness and the burden associated with the proposed changes which were considered in crafting the changes adopted today. As a result, the Commission has determined that no alternative considered would be more effective in carrying out the purpose for which the amendments to the Commission's existing regulations were proposed or would be as effective as and less burdensome to affected private persons than the adopted amendments.

3. Economic Impact Findings: Government Code Section 11346.3 requires the Commission to assess the potential for adverse economic impacts on California business enterprises and individuals, and to avoid the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. The section establishes a series of requirements that the Commission must adhere to in amending its regulations. The Commission has adhered to these requirements and finds all of the following:

- a. That the amendments are based on adequate information concerning the need for, and the consequences of, the proposed action. The Commission initiated the rulemaking by instituting an informal public process designed to solicit input from a wide variety of market participants and other members of the public affected by these regulations. This process included broad notice of three draft proposals and four workshops, and several requests for written comments on the draft proposals, in response to which approximately twenty sets of comments were received. All of the participants in the workshops and commenters received a copy of the Notice of Proposed Action; not one entity has recommended any changes to the proposal. This indicates that the Commission based the proposed amendments being adopted today on adequate information.

- b. That the Commission considered the impact on business in the rulemaking with consideration of industries affected, including the ability of California businesses to compete with businesses in other states. The modifications to the Rules of Practice and Procedure and to the regulations governing disclosure of Commission records will have no impact on businesses within the state. However, amendments to our data collection regulations may affect California businesses. We recognize that our data collection responsibilities impose reporting requirements on a broad range of market participants. The Legislature has clearly stated that “data collection activities are essential to serve the information and policy development needs of the Governor, the Legislature, public agencies, market participants, and the public.” (Pub. Resources Code, section 25300, subd, (e).) In amending the regulations, the Commission has attempted to minimize any impact on businesses that these reporting requirements might otherwise impose. Thus, the Commission responded to public comment on earlier drafts by reducing reporting requirements in certain circumstances and broadening the exemptions from reporting requirements that are available in certain circumstances. Notwithstanding broad distribution of the Notice of Proposed Action, the Commission received no written comments on the proposal. Nor did the two commenters at the adoption hearing oppose adoption of the proposal. Thus, the Commission believes that it has been successful in considering and minimizing the impact on business in the rulemaking, including the ability of California businesses to compete with businesses in out of state. The result of this rulemaking is regulations that minimize any impact on business while ensuring that the Governor, Legislature, public agencies, market participants, and the public will have adequate information about energy issues.
- c. That the amendments will have no effect on elimination of jobs within the State of California, the elimination of existing businesses with the State of California, the creation of new jobs and businesses or the expansion of businesses currently doing business with the State of California. The modifications to the Rules of Practice and Procedure and to the regulations governing disclosure of Commission records will have no effect on jobs or businesses within the state. Changes to the Commission’s data collection regulations will decrease reporting requirements applicable to various energy market participants in some instances and increase them in other instances. Overall, the changes will decrease reporting costs by more than \$1,000,000 over ten years. However, each type of business is affected differently depending upon which role(s) it plays in the energy market, and some businesses may see increased costs. Because the single biggest cost associated with any single amendment is still relatively low, the Commission concludes that the proposed modifications will have no effect on the creation or elimination of jobs and new businesses within the state, and no effect on the expansion of businesses currently doing business within the state.

- d. That those regulations that apply to business and require a report are necessary for the health, safety, or welfare of the people of the State. The Commission finds that accurate information about energy markets is essential for state government as well as for the public. Without this information, policymakers cannot assess the effectiveness of existing policies, the need for new policies or identify emerging energy challenges. In addition, the public needs this information in order to make informed decisions about individual energy options and to understand the energy policy issues being addressed by state agencies and the Legislature. Therefore, the attached regulations, as modified in this rulemaking, are necessary for the health, safety, and welfare of the people of the State.

IV. ORDER

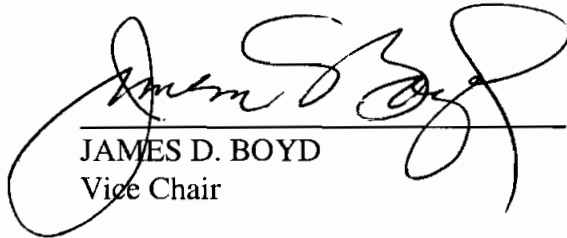
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Date: _____

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ENERGY RESOURCES CONSERVATION
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JACKALYNE PFANNENSTIEL
Chairman



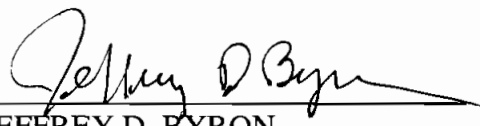
JAMES D. BOYD
Vice Chair

(Absent)

ARTHUR ROSENFELD
Commissioner



JOHN L. GEESMAN
Commissioner



JEFFREY D. BYRON
Commissioner