2015 DRAFT REGULATIONS

EXPRESS TERMS
Supplemental15-Day Language

CALIFORNIA
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

AUGUST 11, 2015

Proposed supplemental 15-day language appears as double underline (example) and proposed deletions appear as double strikeout (~~example~~). Existing language appears as plain text

§ 1003. Computation of Time.

The time in which any act provided by these regulations is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday ~~or~~ holiday or other day when the commission offices are closed. ~~in Sections 10 and 12 of the Code of Civil Procedure~~, in which case ~~and then such~~ that day is also excluded. Unless otherwise stated, all time periods refer to calendar days.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 10 and 12, Code of Civil Procedure.

Chapter 2. Rules of Practice and Procedure

Article 1. Commission Business Meetings

§ 1101. Scope.

This article ~~only~~ applies only to the commission's business meetings conducted under Public Resources Code Section 25214.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1104. Meetings

(a) Presiding Member. The chairman shall preside over all meetings of the commission at which he is present. In his or her absence, the vice chairman shall preside. If neither the chairman nor the vice chairman is in attendance, the member present who has the greatest seniority on the Commission shall preside. The presiding member may yield the chair.

(b) Robert's Rules of Order. Except as otherwise provided by this article and except when all the members present indicate otherwise, meetings of the commission shall be conducted pursuant to the latest edition of Robert's Rules of Order. Failure to comply with this subsection shall not invalidate any action of the commission.

(c) Order of Agenda. The presiding member may determine the order in which agenda items shall be considered.

(d) Consent Calendar. The agenda may include an item designated "the consent calendar."

(1) The consent calendar shall include only those matters for which there appears to be no controversy. The consent calendar shall contain any such matter specified for inclusion by the person proposing the agenda item. A brief description of each matter on the consent calendar shall be included in the agenda.

(2) At the request of any member, any matter shall be removed from the consent calendar and may be considered at the same meeting as a separate item of business.

(3) After an opportunity for the requests to remove matters from the consent calendar has been given, a vote shall be taken on the consent calendar. If three members vote to approve the consent calendar, each matter on the consent calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

(e) Public Comments. Any person may file ~~submit~~ comments in writing on any agenda item. ~~Any person submitting such comments shall, if possible, provide the commission with either twelve paper copies of such comments, or one paper copy and electronic copies in the number, media and format specified in Section 1209.5 in advance of the meeting at which it is to be considered.~~ Unless otherwise directed by the presiding member, all written comments shall be filed three days before the commission meeting. Any person present ~~and so desiring~~ shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding members may limit or preclude such comments as necessary for the orderly conduct of business.

(f) The procedures governing motion filing by parties in proceedings before the commission can be found in section 1200 et seq. of these regulations.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25214, Public Resources Code.

Article 2. General Provisions Applicable to All Commission Proceedings

§ 1200. Scope.

Except as otherwise specifically indicated, the provisions of this article ~~shall~~ apply to all proceedings and hearings held before the commission, ~~or~~ a committee thereof, an assigned commissioner or hearing officer.

Note: Authority cited: Sections 25218(e) and 25218(f), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1201. Definitions.

The following definitions shall apply unless otherwise indicated:

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

(b) “Adjudicative Proceeding” means an evidentiary process for determination of facts pursuant to which the commission makes findings and issues a decision.

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

(d) "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.

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

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

~~(f) “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.~~

(g) “Docket Unit” means the ~~Docket Unit~~ office of the commission ~~State Energy Resources Conservation and Development Commission.~~ that receives, distributes, serves and stores all filed documents.

(h) "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.

(i) "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.

(j) “Hearing officer” means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting a proceeding.

(k) “Intervenor” means any person who has been granted leave to intervene ~~in notice or application proceedings pursuant to Section 1712 of these regulations~~ in an adjudicative proceeding pursuant to these regulations.

(l) "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.

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

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

(o) “Party”, applicable only in adjudicative proceedings, means any applicant, respondent, ~~complainant~~, or intervenor, and depending on its role in the proceeding, the staff of the commission.

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

(q) “Presiding member” means the chair~~man~~ of the commission or any member of the commission designated to preside over any proceeding. ~~pursuant to Section 1204 of these regulations~~.

(r) "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.

(s) “Respondent” means any person named in a complaint, pursuant to Section ~~1231~~ 1233 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 1231of these regulations.~~

(t) "Service list" means a list, created for each adjudicative proceeding, that includes all parties, all interested agencies, the presiding member, associate member, the hearing officer, the relevant staff of the commission (if not already a party) and other persons as deemed necessary by the presiding member.

(u) "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.

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

(w) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

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

Note: Authority cited: Sections 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 21061.1, 25214, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; and Title 14, California Code of Regulations, Section 15364.

§ 1202. Right of Any Person to Comment.

(a) Any person or interested agency present ~~and so desiring~~ shall be given an opportunity to make oral comments on the subject matter of a proceeding; provided, however, that the presiding member may limit such comments as necessary for the orderly conduct of business. ~~Except as otherwise provided, persons desiring to make oral comments are encouraged to notify the presiding member or the public adviser at least two (2) days prior to the hearing at which such comments are to be made.~~

(b) Any person or interested agency may submit written comments to the commission by following the procedure set forth in section 1208. ~~Any person desiring to submit written comments to the commission concerning the subject matter of a proceeding shall submit copies of such comments pursuant to Section 1209 of these regulations. Persons are encouraged to submit such comments at~~

~~least five (5) days prior to the hearing, unless otherwise provided by order. Written comments shall be filed with the Docket Unit of the Energy Resources Conservation and Development Commission; provided, however, that during the actual conduct of a hearing, written comments may be filed with the presiding member.~~

~~COMMENT: The right to comment is not the limit of public participation in commission proceedings. For example, Section 1226 of these regulations provides the opportunity for persons to submit sworn testimony on specified issues in rulemaking and informational hearings, while Section 1227 provides a mechanism whereby persons interested in a proceeding may be permitted to ask or answer additional questions either orally or in writing. In addition, in those proceedings requiring greater formality, and in all adjudicatory proceedings, the commission permits intervention in the proceeding.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1203. ~~Powers~~ Authority of the Chair~~man~~ <u>to Manage Proceedings</u>.

In addition to all other powers conferred by this article, the chair~~man,~~ or presiding member designated pursuant to Section 1204, shall have the power to:

(a) Request and secure ~~such~~ information as is relevant<u>, or reasonably calculated to lead to discovery of relevant information,</u> ~~and necessary~~ in carrying out the purposes of the proceeding.

(b) Issue subpoenas and subpoenas duces tecum at the direction of the commission, on ~~his~~ <u>their own</u> motion or upon application of any party. The application of a party shall be supported by a declaration of good cause.

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, <u>ordering the consolidation or severance of any part, or all, of any proceeding or hearing,</u> admitting or excluding evidence, ~~receiving exhibits~~, designating the <u>subject matter, scope, time of presentation, and</u> order of appearance of persons making oral comments or testimony, <u>accepting stipulations of law or fact,</u> and continuing the hearings.

(d) Set the time and place of hearings.

(e) Cancel a scheduled hearing or meeting. To the extent feasible, notice shall be given of any cancellation<u>,</u> and the staff<u>,</u> in consultation with the public adviser<u>,</u> shall inform known interested participants by the most expeditious means possible.

(f) For good cause shown, ~~and upon proper notice,~~ shorten or lengthen the time required for compliance with any provision of these regulations.

Note: Authority cited: Sections 25213 and 25539, Public Resources Code. Reference: Section § 25210, Public Resources Code.

§ 1204. Designation of Committees and Presiding Member; Quorum.

(a) Committees shall be designated in accordance with Public Resources Section 25211. ~~During committee proceedings a presiding member shall exercise the powers and duties conferred on the chairman by this article.~~

(b) A quorum of a committee is one member.

(c) The commission may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission. The committee may at any time refer a matter directly to the full commission.

(d) If a presiding member is unavailable during any portion of the proceedings, ~~he~~ the presiding member may delegate ~~his~~ responsibilities to the second member of the committee.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

§ 1205. Designation of Hearing Officer; Responsibilities.

The chair~~man~~ may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The chair ~~Commission~~ may authorize a hearing officer to preside over proceedings held pursuant to this Division, except for site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, ~~Biennial~~ Integrated Energy Policy Report proceedings, and rulemaking proceedings. In site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, a hearing officer may take evidence in the temporary absence of a commission member as provided in Public Resources Code section 25211.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25211 and 25217,Public Resources Code.

§ 1206. Representatives.

Any person may designate any other person, ~~except those prohibited by Section 25205(d), Public Resources Code,~~ to represent him or her for any purpose. ~~under this subchapter.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25205(d), Public Resources Code.

~~§ 1207. Interveners~~.

~~(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 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.~~

~~NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

§ ~~1208~~ 1207. Conferences; Purpose; Notice.~~; Order.~~

The presiding member, or hearing officer if there is one, may at any time hold a public conference with the parties, the public adviser, the chief counsel, interested agencies and any other persons interested in the proceeding, ~~at any time he deems necessary,~~ for the purpose of formulating the issues, organizing the presentations and questioning of witnesses, determining the number of witnesses, providing for the exchange of ~~exhibits or prepared statements,~~ information and comments, and ~~such~~ any 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~~ as required under section 1209. ~~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.~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1207.5 ~~1718~~. Staff Meetings; Purposes.

(a) At any time, ~~after a notice or application is filed, the~~ staff may initiate ~~informal,~~ voluntary meetings with the applicant, other parties, interested agencies, stakeholders or the public on matters relevant to a proceeding ~~the notice or application~~. Such meetings may include workshops, site visits, or other information exchanges.

(b) Public meetings ~~All meetings~~ shall be noticed pursuant to Section ~~1710~~ 1209 of these regulations. ~~and shall be open to the public.~~ The notice shall list the topics and purposes of the meetings. ~~Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they shall, to the extent feasible, be held in or near the communities affected.~~

~~(c) Meetings initiated by staff may be held for any of the following purposes:~~

~~(1) To allow parties to solicit and exchange information relevant to the notice or application;~~

~~(2) To allow parties to identify areas of factual and legal agreement;~~

~~(3) To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or~~

~~(4) To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.~~

~~(d) The public adviser, and in the adviser's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.~~

~~(e) The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the manner in which such meetings are being conducted may petition the presiding member to take remedial action.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210 and 25216.5, Public Resources Code.

§ 1208. Filing of Documents.

(a) All documents submitted in any proceeding, whether by a party,

committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by dockets staff or by the commission's automated electronic filing or commenting system. Documents that are not filed will not be deemed part of a proceeding's record.

(b) A document will be accepted as of the day of its receipt by the Docket Unit or by the automated electronic filing or commenting system, except that:

(1) The Docket Unit may reject for filing any document that does not substantially comply with the requirements of section 1208.1, or is found to be infected with a computer virus or otherwise electronically corrupted.

(2) Documents filed after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday, or holiday, or other day when the commission is closed, shall be deemed filed the next business day.

(3) Documents submitted to the presiding member during a public hearing will be accepted as of the date received, or as otherwise ordered by the presiding member.

(c) The responsibility to ensure that a document has been timely filed rests with the person, party, or entity that desires the document to be filed.

(1) For adjudicatory proceedings where service of documents is required the docket unit will provide service to all parties consistent with the process described in section 1211.

Note: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25210 and 25223, Public Resources Code, Section 11020 Government Code; Section 10 Code of Civil Procedure.

§ 1208.1. Media, Format, Content, and Other Required Characteristics of Filed Documents; Electronic Signatures, Changes in the Requirements by the Executive Director.

(a) Every document filed with the commission shall comply with this section. Filers must ensure the content, quality, and format of their documents meets applicable requirements. The commission is not responsible for the content, quality or formatting of filed documents.

(b) Electronic documents shall be word searchable, if feasible, and shall be filed on the following electronic media and in the following format:

(1) DVD, CD-ROM, USB flash drive, SD card, or internet e-mail attachment, e-filing web portal when available, electronic transfer; and

(2) Portable Document Format (pdf), Excel spreadsheets for data or other format supported by the commission information technology systems.

(c) Paper documents shall be:

(1) typewritten or otherwise mechanically printed or legibly handwritten;

(2) on paper 11 inches high and 8½ inches wide, for text;

(3) printable at no larger than 17 inches wide and 11 inches high, and folded to 11 inches high and 8 ½ inches wide, for drawings, photographs, maps, diagrams, charts, graphs, and similar material;

(4) printed on both sides of the page if feasible; and

(5) bound securely.

(d) All documents shall:

(1) be in a clear, easily readable font of at least 12 points;

(2) have consecutively-numbered pages; and

(3) on the first page include the following information:

(A) Name of the proceeding

(B) Docket number of proceeding

(C) Title of the document

(D) Name, address, telephone number and email address of the filer.

(e) ~~Signatures.~~, Except as otherwise required by the executive director or the presiding member of a proceeding, signatures maybe electronic.

(1) For electronic filings containing a signature, including for submissions into electronic data bases requiring a signature as attestation of information, the signature may be in electronic form and represented as~~.~~ ~~The signature may be shown on the electronic copy by inserting~~ a scanned signature graphic, a typed in name or by “Original Signed By”, “/S/”, or similar notation.

(2) In a proceeding, if an electronic copy of an originally signed hardcopy ~~document~~ is filed, the filer must retain the document containing the original signature, and produce it at the presiding member’s request, until the commission’s final decision in the proceeding is no longer subject to judicial review.

(f) The executive director may, after consultation with the public adviser, add to, eliminate, or modify any of the protocols in subdivisions (b), (c), (d) and (e) of this section. The protocols established by the executive director may vary among types of proceedings, or among individual proceedings, and they shall reasonably

balance the need for accuracy and security of documents, the efficiency with which documents may be retrieved, read, and used, the capacity of the commission's computer systems, technological developments, and cost and ease of use. When protocols are established, the executive director shall post them prominently on the commission's website and on the webpages of all applicable commission proceedings.

(g) Non-confidential documents filed are part of the viewable public record and may become available via internet search engines.

Note: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

~~§ 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 orthe 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. 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.~~

~~(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.~~

~~NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.~~

~~§ 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) 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;~~

~~(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.~~

~~NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.~~

~~§ 1210. Filing by Parties.~~

~~(a) Unless otherwise provided by the presiding member, a paper copy of all written material filed by any party in a proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid, on every other party to the proceeding, except where a party requests an electronic copy when available. Any party so requesting shall be served with an electronic copy in a manner pursuant to section 1209.5 regarding electronic filings.~~

~~(b) The Docket Unit shall promulgate and make available a list which shall include the names and addresses of all parties to a proceeding.~~

~~(c) Any filing by a party shall include a proof of service in compliance with subsection~~

~~(a) of this section.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

~~**§ 1211. Submission of Exhibits; Filing.**~~

~~Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member, filed with the Docket Unit at any time before the close of the proceeding.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

§ 1209. Notice of Public Events.

(a) Unless otherwise required by law or directed by the presiding member, all public events, such as workshops and hearings, in all proceedings shall be noticed at least 10 days before the event. Notice consists of sending the notice electronically to all persons on the appropriate commission listserv and applicable proceeding's service list.

(b) In addition, when the presiding member, the public adviser, or the executive director believes that a significant number of members of an affected community lack internet access or are otherwise unlikely to be exposed to notice provided under subdivision (a), the presiding member may order other methods of notice to be used, such as first class mail.

(c) The public adviser shall be consulted on the scheduling, location, and noticing of all commission public events, so as to promote full and adequate public participation.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code; Government Code section 11104.5.

Article 3. General Provisions Applicable to Adjudicative Proceedings

§ 1210. Adjudicative Procedures.

Except as otherwise specified in these regulations or by other applicable law, in an adjudicative proceeding the presiding member may regulate the proceedings, and any parts thereof, in any manner that complies with the Administrative Adjudication Bill of Rights in section 11425.10 of the Government Code. A proceeding, or any portion of one, may include (1) formal hearings with features such as lay and expert witnesses providing oral and written testimony under oath, direct examination, cross examination and briefs, Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding; or (2) if noticed under Title 2 of the Government Code section 11445.30(a), the informal hearing procedures described in the Administrative Procedure Act (see Government Code section 11445.10 & following).

Note: Authority cited: Section 25210, 25216.5(a) and 25218(e), Public Resources Code. Reference: Sections 11445.10 and 11455.60, Government Code, Section 25213(a) and 25214, Public Resources Code.

§ 1211. Service of Documents.

(a) In each adjudicative proceeding, the commission shall create and maintain a service list and post the service list on the proceeding's website. By providing an email address for the service list, a person consents to email service of notices and of documents, decisions or orders or links to such materials.

(b) Unless otherwise ordered by the presiding member or otherwise required by law, the Docket Unit shall serve all filed documents on all persons on the service list, by:

(1) having the document electronically posted on the proceeding's website; and

(2) having electronic notice of the availability of the document provided to all persons on the service list.

(c) Any person on the service list may request permanent service of all documents in paper form. The presiding member may order such service only upon a showing that the person does not have reasonably efficient and economic access to equipment that would allow the person to receive electronic notice of availability of the document, and to view it on the proceeding's website. If such service is ordered, any person filing a document shall serve a paper copy on all persons designated for paper service no later than the filing of the document and shall include proof of such service with the filed document.

(d) The date of service of a document is the date of its electronic posting on the proceeding's website, whether or not a person receives service of the document in paper form.

Note: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25210 and 25223, Public Resources Code, Section 11020 Government Code; Section 10 Code of Civil Procedure.

1211.5. Motions.

(a) Any party may request the presiding member or, where applicable, the commission, to issue orders or rulings, including but not limited to requests to require another person to act or to refrain from acting, or requests for adjudication of procedural or substantive issues. All such requests shall, except as otherwise required by these regulations or allowed by the presiding member, be in the form of a written motion. Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule,

responses to motions shall be filed within 14 days of the service of the motions. Unless otherwise ordered by the presiding member, there shall be no replies to responses. The presiding member shall rule on the motion within 21 days of its filing, or a later deadline established by the presiding member; if the presiding member does not rule within 30 days or the time prescribed, the motion is deemed denied.

(b) Requests for action made during any hearing may be made orally to the presiding member and need not be in the form of a written motion. Rulings by the presiding member may be made orally. If the presiding member does not make a ruling on the motion by the end of the hearing, the motion is deemed denied.

(c) A party to a proceeding, currently before the commission for consideration and identified on the commission's agenda, must file any related motion, requiring the commission to take some action, five days prior to the meeting date. Consideration of the motion is at the discretion of the presiding member.

Note: Authority cited: Section 25210, 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25213(a) and 25214, Public Resources Code.

§ ~~1207~~ 1211.7. Intervenors.

(a) Subject to the provisions of specific proceedings, 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, mailing address, e-mail address and telephone number of the petitioner.

(b) ~~In a power plant siting case, the~~ A petition for intervention shall be filed no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding. If the time period between notice of the first evidentiary hearing and the hearing is less than 30 days, the notice shall contain the deadline for intervention. ~~the Prehearing Conference or 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 intervention and may impose reasonable conditions on an intervenor's participation, including, but not limited to, ordering intervenors with substantially similar interests to consolidate their participation or limiting an intervenor's participation to specific topics. An intervenor is a party to a proceeding. ~~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) The presiding member may grant late petitions only on a showing of good cause by the petitioner. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without an order from the presiding member based upon a showing of good cause.

(e) ~~Any petitioner who has been denied leave to intervene by the presiding member,~~ Any ruling on a petition to intervene, may be appealed, by the petitioner, ~~may appeal the decision~~ to the full commission within ~~fifteen (15)~~ 10 days of the ruling. ~~denial.~~ Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

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

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1212. ~~Rules of Evidence.~~ Rights of Parties, Record and Basis for Decision.

(a) **Rights of Parties.** Subject to the presiding member's authority to regulate a proceeding as prescribed in section 1210, and other rights identified in specific proceedings, each party shall have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.

(b) **Record**.

(1) The "hearing record", in an adjudicatory proceeding, is all of the information the commission may consider in reaching a decision. The hearing record shall contain:

(A) all documents, filed comments, materials, oral statements, or testimony received into evidence by the committee or commission at a hearing;

(B) public comment offered at a hearing;

(C) any materials or facts officially noticed; and

(D) for siting cases, subject to 1212(b)(3), staff's Final Staff Assessment and any timely filed supplemental assessments.

(2) Parties may move to exclude information from consideration by the commission on the ground that it is not relevant, is duplicative of information already

in the record, or on another basis. If the presiding member grants such a motion, the information shall be excluded from the hearing record. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency, and adequacy of the record.

(3) In a siting case, if a party requests a staff witness be present to sponsor specific portions of the Final Staff Assessment, or any supplemental assessments, and no witness is made available for questioning, the relevant portions of the staff assessment or supplemental assessments at issue shall be treated as comment and shall not be sufficient, in and of itself, to support a finding by the commission.

(c) **Basis for and Contents of Decisions.**

1) Decisions in adjudicative proceedings shall be based on the evidence in the hearing record, explain the basis for the decision, and shall include but need not be limited to all legally-required findings of fact and conclusions of law.

2) A finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or opinions. The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, ~~the opportunity~~ to provide rebuttal evidence. The committee or commission shall ~~may~~ give appropriate weight to information in the record as allowed by law.

3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25210, Public Resources Code: Section 11513 Government Code.

~~§ 1212. Rules of Evidence~~

~~The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.~~

~~(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be~~

~~admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.~~

~~(b) Oral or written testimony offered by any party shall be under oath.~~

~~(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.~~

~~(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.~~

~~The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

~~§ 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.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

~~§ 1214. Record and Transcript.~~

~~The presiding member shall cause a formal record of the proceedings to be made. The record shall consist of the official minutes or a transcript of each hearing or conference held during the proceedings, all pleadings, written testimony, and briefs submitted by any party, any order entered pursuant to Section 1208(b), all questions and answers of witnesses submitted pursuant to Section 1225, any exhibits accepted into the record pursuant to Section 1211, any written comments submitted pursuant to Section 1202(b), and the record of all ex parte contacts filed pursuant to Section 1216 of these regulations, together with such other items as the presiding member may direct. The presiding member may cause a transcript of any conference held pursuant to Section 1208 to be made and entered into the record.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.~~

~~§ 1217. Informal Hearings.~~

~~The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10 - 11455.60, Government Code, Section 25210, Public Resources Code.~~

~~§ 1218. Ex Parte Contacts.~~

~~Note: Specific reference: Section 25500 et seq., Public Resources Code.~~

~~§ 1219. Interim Regulations for Adjudicatory Procedure.~~

~~Note: Authority cited: Section 11400.21, Government Code. Reference: Section 11400.21,Government Code.~~

Article ~~3~~4. Rulemaking and Informational Hearings

§ 1225. Questioning.

(a) Questions from commissioners or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement. ~~provided, however, that persons not submitting sworn testimony shall not be compelled to answer such additional questions without their consent.~~

(b) The presiding member may~~, at his discretion,~~ limit the time and scope of ~~oral~~ questioning.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

~~§ 1226. Use of Testimony. [Renumbered]~~

~~§ 1227. Questioning. [Renumbered]~~

~~Article 4~~5. ~~Complaints and Investigations~~

Article 5. Request for Investigations and Complaints

§ 1230. Investigation Scope.

The investigation process provides a means for the public to inform the commission of alleged violations of laws under the jurisdiction of the commission. Section 1230 and the following provisions are not intended to replace the public's ability to informally contact the Energy Commission for resolution of concerns and information about issues.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983,Public Resources Code.

§ 1231. Request for Investigation; Filing with the Commission.

Any person may allege, in writing, a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. For a request to be acted on by the commission it must be submitted to the executive director, and include:

(a) the name, address, email and telephone number of the person filing the request;

(b) identifying information such as the name, address, email and telephone number of the person or entity allegedly violating the statute, regulation, order, program, or decision;

(c) a statement of the facts upon which the request is based and any evidence and witness statements demonstrating the existence of those facts;

(d) a statement indicating the statute, regulation, order, program, or decision that has been violated; and

(e) the names and addresses of any other individuals, entities, or organizations that are or are likely to have been affected by the violations.

(f) a statement indicating if the person or entity requesting the investigation has attempted to resolve the issue with the person or entity alleged to have committed the violation.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1232. Request for Investigation; Commission Response.

(a) The executive director, in consultation with the chief counsel, shall direct staff to perform an evaluation of the request. Within 30 days of filing a complete request, the executive director shall provide a written response identifying the action the executive director intends to take and the basis for that action. Such action may include:

(1) dismissing the request for lack of jurisdiction or insufficient evidence;

(2) initiating a complaint pursuant to section 1233 et seq.;

(3) conducting further investigation;

(4) sending a warning or cease and desist letter;

(5) proposing a settlement;

(6) referring the matter to the Attorney General's office;

(7) referring the matter to another federal, state or local agency with jurisdiction over the violation;

(8) correcting or modifying prior staff action; or

(9) taking other appropriate action, including rejecting the request for being incomplete.

(b) The written response of the executive director and any final action summaries closing the matter shall be filed and sent to the person or entity that submitted the request.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983,Public Resources Code.

§ 1232.5. Request for Investigation; Appeal.

(a) If the executive director dismisses a request for lack of jurisdiction or insufficient evidence, the requester may appeal the dismissal to the chair within 15 days of the date of the executive director's response. The appeal must be in writing, filed in accordance with section 1208, and state the basis for challenging the executive director's dismissal.

(b) The chair, within 45 days of the filing of the appeal, shall issue a written order sustaining the determination, modifying it, overturning it, or referring the matter to a committee or full commission for further evaluation.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233. Complaint; Scope.

The complaint process identified in this Article is general in nature and may be modified or supplemented by requirements in other regulations applicable to specific types of violations. The complaint process describes how the executive director brings an action against any person or entity for violation of a statute, regulation, order, program, condition or decision within the jurisdiction of the commission.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.1. Complaint; Service.

(a) The executive director of the commission may serve a complaint on any person or entity, alleging a violation of any statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. The complaint shall include:

(1) a statement of the facts upon which the complaint is based and any evidence to support the complaint;

(2) a statement indicating the statute, regulation, order, condition or decision upon which the complaint is based;

(3) the remedy being sought; and

(4) the authority under which the commission may take the action requested.

(b) The complaint shall be served on the respondent by personal service or certified mail, and shall inform the respondent that a hearing before the commission will be conducted to adjudicate the complaint. The respondent may waive the right to a hearing, in which case the commission need not conduct a hearing.

(c) Any person or entity may provide oral and written comments in the proceeding, pursuant to a schedule adopted by the presiding member, but, unless otherwise allowed by the presiding member, shall not be entitled to intervene or otherwise become a party to the proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.2. Complaint; Answer.

(a) The respondent shall file an answer to the complaint within 30 days after service of the complaint. The answer shall include any information the respondent believes addresses the issues and violations alleged in the complaint.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.3. Complaint; Hearing.

(a) The presiding member shall schedule a hearing on the complaint to commence no sooner than 30 days after filing the answer under section 1233.2, unless the respondent has waived its right to a hearing.

(b) A hearing order, served on the respondent and all interested persons, shall be issued identifying the schedule for hearings, whether the hearings will be before a hearing officer, committee or the full commission, whether provisions of Government Code Section 11400 et seq. are applicable to the proceeding, the role of commission staff in the proceeding and other relevant information about the hearing.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233.4. Complaint; Decision.

(a) If the matter is heard before an assigned committee or hearing officer, the committee or hearing officer shall submit a written proposed decision containing its recommendation to the full commission within 21 days following the close of hearings.

(b) Upon consideration of a proposed decision from a committee or hearing officer, or in cases where the commission directly hears the case, the commission shall:

(1) issue a decision; or

(2) adopt, modify, or reject the proposed decision; or

(3) remand the matter to the committee or hearing officer for further hearings; or

(4) reopen the hearing record and itself conduct further hearings.

(c) The decision of the commission on a complaint is final.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1234. Jurisdictional Determinations.

(a) Any person engaged in an activity potentially regulated by the commission may request a jurisdictional determination by the executive director as to whether the commission has regulatory authority over a particular activity. To request a determination, information detailing the facts, issues and law relating to the activity shall be filed with the commission. For issues relating to power plant output, a person seeking a jurisdictional determination may also follow the process under section 2010.

(b) Within 45 days of receiving a complete request, the executive director shall file a written determination as to whether the activity subject to the request is under the jurisdiction of the commission and what actions need to be taken to comply with commission regulations and orders.

(c) Within 10 days of the filing of the executive director's determination, an appeal to the chair may be filed by the person seeking the jurisdictional determination. The appeal shall specify the alleged errors in fact or law that resulted in an incorrect determination.

(d) Within 30 days of the filing of the appeal, the chair shall file a hearing order identifying the schedule for hearings, whether the hearings will be before a hearing officer, committee, or the full commission, whether provisions of Government Code Section 11400 et seq. are applicable to the proceeding, the role of commission staff in the proceeding and other relevant information about the hearing.

(e) Section 1233.4 shall govern the decision of the appeal.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference:

Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983,Public Resources Code.

~~**§ 1230. Scope.**~~

~~(a) Complaint proceedings shall include any adjudicatory proceeding in which the commission determines whether to sanction, or take other appropriate action against, a person for an alleged violation of any statute, order, decision, or~~

~~regulation adopted, administered, or enforced by the commission, including but not limited to a proceeding pursuant to Public Resources Code section 25534.1. Investigation proceedings shall include any adjudicatory proceeding in which the commission determines the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission. A single proceeding may involve both a complaint and an investigation.~~

~~(b) Standing committees to exercise the complaint or investigatory functions of the commission may be established pursuant to Section 1204(a). The order establishing a committee shall designate the area of commission jurisdiction over which a committee shall exercise the complaint or investigatory function.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.~~

~~§ 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. 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 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;~~

~~(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.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and25983, Public Resources Code.~~

~~§ 1232. Complaints and Requests for Investigation; Commission Response.~~

~~(a) Within 30 days after the receipt by the 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 or of the pleadings, specifying whether the dismissal is with or without prejudice; or~~

~~(2)) serve the complaint or request for investigation by certified mail, return receipt requested, upon the respondent. All other persons identified in Section 1231(b)(7) shall be served by first class mail. 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. When serving the complaint, the committee, or if none has been assigned, the chairman, shall also provide a copy of the commission's governing procedure, including a statement whether the provisions of Government Code section 11400 et seq. are applicable to the proceeding.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.~~

~~§ 1233. Answers to Complaints and Requests for Investigation.~~

~~(a) The respondent shall file and serve an answer with the complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 21 days after service of the complaint or request for investigation. pursuant to Section 1232(a)(2).~~

~~(b) The answer shall include:~~

~~(1) an admission or denial of each material allegation;~~

~~(2) an explanation of any defenses raised by the respondent; and~~

~~(3) a declaration as provided in Section 1231(b)(8).~~

~~(c) Where the petitioner seeks clarification of the jurisdictional status of its own project, no answer shall be required.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 an 25983, Public Resources Code.~~

~~§ 1233.5. Staff Assessment.~~

~~(a) If the entity filing the complaint or request for investigation is other than the commission staff, the committee, or if none has been assigned, the chairman, may direct commission staff to prepare a written assessment of the complaint or request for investigation and the answer. The staff assessment shall be filed and served by first class mail on complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 7 days of service of the answer provided pursuant to Section 1233.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.~~

~~§ 1234. Notice and Hearing.~~

~~(a) The hearing shall be scheduled to commence no sooner than 21 days after receipt of the answer and no later than 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, a committee designated by the commission, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.~~

~~(b) The commission shall provide written notice by first class mail to all petitioners, respondents and persons identified in Sections 1231(b)(7) and~~

~~1232(a)(2) no fewer than 14 days before the first hearing on the matter. 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 hearing in the matter; and~~

~~(5) a statement concerning the availability of the public adviser.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.~~

~~§ 1235. Proposed Decision.~~

~~If the matter is heard before an assigned committee or hearing officer, appointed pursuant to Section 1205, the committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision within 21 days following the close of hearings held pursuant to Section 1234.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.~~

~~§ 1236. Commission Decision.~~

~~(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall, to the extent reasonably possible, prepare a decision within 21 days of the filing of the proposed decision that:~~

~~(1) issue a decision; or~~

~~(2) adopts, modify, or reject the proposed decision; or~~

~~(3) remands the matter to the committee or hearing officer for further hearings; or~~

~~(4) reopens the evidentiary record and itself conduct further hearings.~~

~~(b) When considering a proposed decision from a committee or hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.~~

~~(c) In cases where the commission, rather than a committee or hearing officer hears the case, to the extent reasonably possible, the commission shall make a decision within 21 days following the close of hearings.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25500, 25534, 25534.1, 25900, 25967 and 25983, Public Resources Code.~~

~~§ 1236.5. Public Participation and Intervention.~~

~~To the extent deemed relevant by the presiding member, any person may testify or comment during a complaint or investigatory hearing. A person may request to become a formal party by intervening by following the procedures identified in Section 1207.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.~~

~~§ 1237. Post-Certification Complaints.~~

~~(a) Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:~~

~~(1) the name, address, and telephone number of the person filing the complaint (complainant);~~

~~(2) 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 complaint;~~

~~(3) a statement of facts upon which the complaint is based;~~

~~(4) a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;~~

~~(5) the action the complainant desires the commission to take;~~

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

~~(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.~~

~~(b) Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned, setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.~~

~~(c) If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).~~

~~(d) Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.~~

~~(e) Within 30 days after issuance of the staff report, the committee shall:~~

~~(1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;~~

~~(2) issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or~~

~~(3) conduct hearings to further investigate the matter and then issue a written decision.~~

~~(f) If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resources Code.~~

~~§ 1238. Decision and Sanctions. [Repealed]~~

§ 1240. Renewables Portfolio Standard Enforcement.

(a) Notwithstanding anything in this article to the contrary, the following shall apply to any complaint pertaining to a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission

pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.

(b) Complaints

(1) ~~No complaint for the failure of a local publicly owned electric utility to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, may be filed by any person or entity listed in section 1231, except Commission staff.~~ The executive director may file a complaint against a local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities.

(2) A complaint for the failure of a local publicly owned electric utility to meet a requirement of the Renewables Portfolio Standard, or any regulation, order, or decision adopted by the commission pertaining to the Renewables Portfolio Standard for local publicly owned electric utilities, shall include, but not be limited to, the following:

(A) A statement of facts upon which the complaint is based.

(B) A statement indicating the statute, regulation, order, or decision upon which the complaint is based.

(C) The action the commission is requested to take.

(D) The authority for the commission to take such action.

~~(3) A declaration under penalty of perjury shall not be required for the filing of a complaint under this section 1240.~~

(c) Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding.

(d) Answer

(1) The local publicly owned electric utility shall file an answer with the chief counsel within 45 calendar days after service of the complaint. In addition to those matters set out in section ~~1233 (b)~~ 1233.2, the answer shall include all data, reports, analyses, and any other information deemed relevant by the local publicly owned electric utility to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant by the local publicly owned electric utility to support findings of fact regarding any mitigating or otherwise

pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if ~~for~~ noncompliance is determined pursuant to this section. The information included regarding any mitigating or otherwise pertinent factors may describe all relevant circumstances, including, but not limited to, the following:

(A) The extent to which the alleged violation has or will cause harm.

(B) The nature and expected persistence of the alleged violation.

(C) The history of past violations.

(D) Any action taken by the local publicly owned electric utility to mitigate the alleged violation.

(E) The financial burden to the local publicly owned electric utility.

(2) In the event that the local publicly owned electric utility includes in the answer any confidential business information, trade secrets, or other information sought to be withheld from public disclosure, respondent shall submit such information in a separate filing, under seal, at the time the local publicly owned electric utility files the answer. The information shall be submitted to the executive director along with a complete request for confidential designation in accordance with section 2505.

(e) Response

(1) Commission staff may file with the chief counsel a response to the answer no later than 15 calendar days after receipt of the answer. The response shall be served upon the local publicly owned electric utility upon filing.

(2) In the event that commission staff files a response under (e)(1), the local publicly owned electric utility may file with the chief counsel a reply to such response no later than 10 calendar days from receipt of such response. The reply shall be served upon commission staff upon filing.

(f) Hearing

(1) A hearing on the complaint shall be scheduled to commence no sooner than 30 calendar days after the filing of a staff response pursuant to subdivision (e) of this section.

(2) A notice of hearing on the complaint shall be provided in accordance with section ~~1234 (b)~~ 1233.3(b). Such notice shall be provided no later than 30 calendar days after the last filing is made.

(3) The hearing may be scheduled before the full ~~C~~ commission, a committee designated by the ~~C~~ commission, or a hearing officer assigned by the ~~C~~ chair at the request of the committee as provided in section 1205.

(4) If the hearing is not held before the full commission, the proposed decision set out in section ~~1235~~ 1233.4(a) shall be forwarded to the full commission, to the extent reasonably possible, no later than 45 calendar days after the hearing has been concluded. If the hearing is held before the full commission, to the extent reasonably possible, the commission shall publish its decision within 45 calendar days after the hearing has been concluded.

(g) The decision of the full commission shall be a final decision. There is no right of reconsideration of a final decision issued under this section 1240. The decision will include all findings, including findings regarding mitigating and aggravating factors~~,~~ related to noncompliance. The decision may also include findings regarding mitigating and aggravating factors upon which the California Air Resources Board may rely in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions ~~(l) and~~ (m) and (n). The decision may also include suggested penalties for the California Air Resources Board to consider, as appropriate. Any suggested penalties shall be comparable to penalties adopted by the California Public Utilities Commission for noncompliance with a Renewables Portfolio Standard requirement for retail sellers.

(h) Referral

(1) No sooner than five days after the time for filing a petition for writ of mandate in accordance with Public Resources Code section 25901 has passed, commission staff shall forward a notice of violation, based on the final decision of the full commission, together with the record of proceedings, to the California Air Resources Board for determination of a penalty. The record of proceedings shall include all filings made in the course of the proceedings, the transcripts of the hearing and any exhibits used during the course of that hearing, and any correspondence between the respondent and the commission pertaining to the proceedings.

(2) If a petition for writ of mandate is filed by respondent, commission staff shall not forward the notice of violation to the California Air Resources Board until the matter is fully and finally determined. In the event a petition for writ of mandate is filed by respondent, the record of proceedings shall also include all filings made by all parties in the action and any appeals thereof.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and section 399.30, Public Utilities Code. Reference: Section 399.30, Public Utilities Code.

§ 1675. Review by the Energy Commission.

(a) Annual Review. The ~~Energy Commission~~ commission may annually review the performance of Providers certified under Section 1674 to determine whether the Providers comply with the requirements of these regulations. This

review may include interviewing recipients of ratings and field verification and diagnostic testing services and reports on a voluntary basis.

(b) ~~Complaint Proceedings~~ Request for Investigation. Any person or entity may file a ~~complaint~~ request for investigation concerning any violation of these regulations as provided for in Section 1230 et. seq. of Title 20 of the California Code of Regulations. The ~~Energy Commission~~ commission may, for good cause, conduct an investigation and, if necessary, hearing, under the procedures established in Section 123~~0~~3 et. seq. ~~of Title 20 of the California Code of Regulations.~~ Each Provider shall provide all information requested by the Energy Commission regarding any annual review or complaint proceeding.

(c) ~~Energy~~ Commission Determination. If the ~~Energy Commission~~ commission determines there is a violation of these regulations or that a Provider is no longer providing rating, field verification and diagnostic testing services, the ~~Energy~~ ~~C~~commission may revoke the certification of the Provider pursuant to Section 123~~0~~3 et. seq. ~~of Title 20 of the California Code of Regulations.~~

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Section 25942, Public Resources Code.

Chapter 5. Power Plant Site Certification

Article 1. General Provisions Applicable to Notices of Intent and Applications for Certification

A. Scope ~~and Definitions~~

§ 1701. Scope of Regulations.

(a) ~~Unless otherwise stated, the provisions of Article 1 of this chapter shall apply to the consideration of all notices and applications for any site and related facility within the jurisdiction of this commission.~~ This Article 1 applies to all notice of intent proceedings and all application for certification proceedings.

(b) ~~The provisions of~~ Article 2 of this chapter shall apply to ~~the consideration of~~ all notices except as provided in Article 4.

(c) ~~The provisions of~~ Article 3 of this chapter shall apply to ~~the consideration of~~ all applications for certification except as provided in Article 4.

(d) ~~The provisions of~~ Article 4 of this chapter shall apply to ~~the consideration of~~ all geothermal notices and applications for certification.

(e) ~~The provisions of~~ Article 5 of this chapter shall apply to ~~the consideration of~~ all applications for a Small Power Plant Exemption.

(f) ~~The provisions of~~ Article ~~G~~ 6 of this chapter shall apply to ~~the consideration of~~ all powerplant and transmission line jurisdictional determinations.

(g) Article 7 of this chapter shall apply to all Expedited Applications under Public Resources Code Section 25550

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25541.5, Public Resources Code.

~~**§ 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 that have been entered into the docket 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.~~

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

~~(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) "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 or exhibits 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.~~

~~(i) "Intervener" 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 intervener.~~

~~(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.~~

~~NOTE: Authority cited: Sections 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 21061.1, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; and Title 14, California Code of Regulations, Section 15364.~~

~~§ 1703. Requirement to File. [Repealed]~~

~~Note: Authority cited: Sections 25216.5,25218, 25539, Public Resources Code. Reference: Sections 25502, 25517, 25519, Public Resources Code.~~

~~§ 1705. Form of Submissions.~~

~~Paper copies of notices and applications, and any other documents attached thereto, submitted pursuant to this article, shall conform to the requirements of Section 1209 of these regulations and shall be submitted in a three-ring binder in a loose-leaf fashion, with pages numbered by chapter.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.~~

§ 1706. Number of Copies.

Consistent with section 1208.1, the executive director shall specify the number of copies and the format of notices of intent, applications for certification, and small power plant exemptions, and any amendments, to be filed.

~~(a) The applicant shall file with the commission one hundred fifty (150) copies of any notice and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the notice or, alternatively, 100 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(b) The applicant shall file with the commission one hundred twenty-five (125) copies of any application for certification and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(c) The applicant shall file with the commission one hundred (100) copies of any application for a small powerplant exemption and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 25 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise required by the Executive Director for the convenience of interested agencies, the parties, and the public.~~

~~(d) The applicant shall also file the same number of copies, specified in subsection (a) or (b) above, of any subsequent documents required by the Commission for completeness under section 1709.~~

~~(e) In addition to the materials filed pursuant to subsection (a), (b), or (c) above, the applicant shall file five (5) copies of all documents cited in the notice or application which are not available at public libraries or other governmental agencies in the City or County of Sacramento. For each document which is so available, the filing shall state where the document can be found.~~

~~(f) The executive director may waive the requirement for filing the number of copies specified by this section for any document for which reproduction and filing of that number of copies would constitute an unreasonable burden to the applicant. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a notice or application. The request shall include a description of each such document and a discussion of the reasons why reproduction and filing of that number of copies is unreasonable. An applicant may not file a notice or application while such request is pending. If a request is granted, the executive director shall specify the number of copies of the document to be filed. The executive director shall act on all such requests within 15 days.~~

~~(g) Upon filing a notice or application pursuant to this article, the executive director may require the filing of additional copies of the notice or application and associated documents, if necessary, to satisfy the requirements of interested agencies, the parties, and the public.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.

§ 1707. Authority and Verification.

Every notice and application shall be dated and signed by each applicant attesting under penalty of perjury to ~~the~~ its truth and accuracy. ~~of such notice or application. If any of the applicants are corporations or business associations, the notice or application shall be dated, signed, and attested to by an officer thereof. Where a notice or application 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 notice or application; provided, however, that no more than one member of said joint venture or proposed joint venture need attest as to the entire notice or application, but that each joint venturer or proposed joint venturer shall attest to the notice or application with respect to the information required by Section 1704 regarding need for the project and financial impacts of the proposal.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25520, Public Resources Code.

§ 1709.5. Prefiling Review.

~~(a) A potential applicant may request the executive director to conduct a prefiling review of existing environmental and other documentation relevant to a proposed notice or application. The purpose of such a review shall be to determine~~

~~the extent to which information contained in the existing documents is sufficient to meet the information requirements for a notice or an application.~~

~~(b) Any request pursuant to this section shall be in writing and shall be accompanied by at least twelve (12) copies of each document which the potential applicant requests to have reviewed. The executive director may recommend that additional documents known to the commission staff be included in the document review. Potential applicants may, and are encouraged to, file documents in the form of a draft or proposed notice or application.~~

~~(c) If the executive director determines that a prefiling review is appropriate, the executive director shall, by such time as may be mutually agreed upon by the potential applicant and the executive director, determine whether the information provided is sufficient to meet the information requirements of a notice or application and, where appropriate, shall provide the potential applicant with a list identifying the additional information necessary to comply with the information requirements.~~

~~(d) The potential applicant may request a workshop with the commission staff to discuss any matter relevant to the preparation of a notice or application. The public shall be notified at least 10 days in advance of any such workshop by the executive director in consultation with the public adviser. Nothing in this section shall prohibit a potential applicant from informally exchanging information or discussing procedural issues with thje staff without a publicly noticed workshop.~~

Before filing a notice or application, a potential applicant may request the executive director conduct a prefiling meeting and review of the proposed project for purposes of receiving guidance and advice regarding the proposed project's siting, design, construction and operation, and the requirements for documentation.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502, 25520 and 25540.3, Public Resources Code.

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

(a) Within 45 days after the acceptance of a notice of intent or application for certification ~~or the filing of an application for small powerplant exemption~~, the ~~committee~~ presiding member shall hold one or more informational hearings ~~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 hearing shall comply with section 1209, ~~presentation~~ shall include information on how to participate in the proceeding, and shall be ~~mailed~~ provided to all persons identified by the applicant under section (a)(1)(E) of the information requirements in Appendix B. ~~to all owners of land adjacent to the proposed sites.~~

(b) At least five days ~~At or~~ before the first informational hearing ~~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 hearing ~~presentation~~, the presiding member shall ~~issue an order~~ establish~~ing~~ the schedule for the prehearing phase of the proceedings~~s 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 hearing ~~presentation~~, the applicant shall describe the proposed project, and ~~the~~ staff shall explain how the ~~certification or exemption~~ proceedings~~s are~~ is conducted. The presiding members~~ presentations~~ shall allow ~~for informal~~ questions to the applicants and ~~the~~ staff from ~~local residents and other interested~~ any persons~~s~~ regarding the proposed project ~~sites and facilities~~.

Note: Authority cited: Sections 25213 and 25541.5, Public Resources Code. Reference: Sections 25214, 25216.5 and 25509, Public Resources Code.

~~C. Public and Agency Rights and Responsibilities; Provisions Applicable to Notices and Applications~~

§ ~~1712.5~~. 1710. Staff as an Independent Party.

In carrying out its duties pursuant to this chapter, ~~the~~ staff ~~of the commission~~ shall be an independent party to all notice, application, and exemption proceedings. ~~The s~~ Staff is not required to petition to intervene in such proceedings.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25217(b), Public Resources Code.

§ 1711 ~~1710. NOTICING PROCEDURES; SETTING OF HEARINGS, PRESENTATIONS, CONFERENCES, MEETINGS, WORKSHOPS, AND SITE VISITS~~ PUBLIC NOTICE OF DISCUSSIONS AMONG PARTIES.

~~(a)~~ All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by section 1209; ~~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 positions or recommendations regarding substantive issues shall be noticed. ~~The s~~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, interveners, 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 inadvance, 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.~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 11129, Government Code; Sections 25216.5 and 25222, Public Resources Code.

~~**§ 1711. Right of Any Person to Comment.**~~

~~Any person interested in a notice or application proceeding shall be given an opportunity to make oral or written comments on any relevant matter at any hearing or information meeting held on a notice or an application. The presiding member may specify such conditions on the right to comment as are reasonably necessary for the orderly conduct of the proceeding, and may request that written comments be submitted in advance of any hearing.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

~~**§ 1712. Right to Become a Party; Rights and Duties.**~~

~~(a) Any person may petition to intervene pursuant to Section 1207 of these regulations. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without a showing of good cause.~~

~~(b) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to present witnesses, to submit testimony and other evidence, to cross-examine other witnesses, to obtain information pursuant to Section 1716, and to file motions, petitions, objections, briefs, and other documents relevant to the proceeding. Each party shall be provided with a copy of the notice or application. The rights set forth herein are in addition to such other rights as the parties may have as set forth in Chapters 2 and 5 of these Regulations, including Section 1212(c).~~

~~(c) Each party shall have the responsibility to comply with the requirements for filing and service of documents, the presentation of witnesses and evidence, and any other reasonable conditions which may be imposed by order of the presiding member.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

§ 1714. Distribution of Copies to Public Agencies; Request for Comments.

(a) As soon as possible after receipt of the notice or application for a site and related facility requiring a certificate of public convenience and necessity, the executive director shall transmit a copy thereof to the Public Utilities Commission and shall request the Public Utilities Commission to perform an analysis and to offer comments and recommendations regarding the economic, financial, rate, system reliability, and service implications of the design, construction, operation, and location of the site and related facilities. For applications for a site and related facility

which does not require a certificate of public convenience and necessity, the executive director shall transmit a notice of receipt of the application to the Public Utilities Commission.

(b) Within ten days after receipt of the application for a site and related facility that is proposed to connect to the California Independent System Operator-controlled grid, the executive director shall transmit a copy thereof to the California Independent System Operator and shall request the California Independent System Operator to perform an analysis and to offer comments and recommendations regarding the system reliability implications and identification of interconnection facilities required for connection to the California Independent System Operator-controlled grid. For applications which do not connect to the California Independent System Operator-controlled grid, the executive director shall transmit a notice of receipt to the California Independent System Operator.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and ~~Game~~ Wildlife, to the Air ~~p~~Pollution Control District in which the project is located, to the ~~Water Resources~~ Regional Water Quality Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with # section 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

(d) ~~The executive director shall transmit a copy of the notice or application to any Native American government having an interest in matters relevant to the site and related facilities proposed in the notice or application provided the Native American government has a governing body recognized by the Secretary of the Interior of the United States or the Native American government has otherwise requested in writing to receive a copy of the notice or application.~~ No later than 14 days after a Notice of Intent, Application for Certification or Small Power Plant Exemption has been accepted, staff shall notify and invite tribal governments deemed traditionally and culturally affiliated with a project area by the Native American Heritage Commission, to participate in consultations with staff, consistent with Public Resources Code section 21080.3.1. For projects with a federal nexus, staff shall also invite tribal governments deemed traditionally and culturally affiliated with a project area by federal land managing agencies, to participate in consultations.

~~(e) The commission shall request any Native American government covered under subsection (c) to make comments and recommendations regarding the design, operation, and location of the facilities proposed in relation to the environmental quality, public health and safety, and other factors on which they may have expertise. To the extent that the Native American government has land use and related jurisdiction in the area of the proposed sites and related facilities, the commission shall request the Native American government to review and comment upon the land use and related aspects of the proposed sites and related facilities.~~

(~~f~~ e) Upon receiving a copy of the notice or application, each agency requested to file comments shall inform the presiding member (or the executive director if no committee has been appointed yet) of when such comments can be filed with the commission. Unless otherwise specified by law or by order of the presiding member, all such comments shall be filed prior to the conclusion of the evidentiary hearings held pursuant to Sections 1723, 174~~8~~5, and 1944 on the notice or application.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25505, 25506, 25506.5, 25507 and 25519, Public Resources Code.

§ 1714.5. Agency Comments on an Application; Purpose and Scope.

(b) Consistent with Section ~~1747~~ 1742, comments and recommendations submitted to the commission pursuant to this section regarding the project's conformance with applicable laws, ordinances, and standards under the agency's jurisdiction shall be given due deference by ~~the commission~~ staff.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25519(f), (g), (j), Public Resources Code.

~~**§ 1714.7. Air Quality Report on the Notice; Preparation; Contents; Testimony.**~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25506, Public Resources Code.~~

~~**§ 1714.9. Determination of Compliance; Preparation by Local Air Districts.**~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25519(f), (g), (j), Public Resources Code.~~

~~**§ 1716.5. Motions, Hearings, Decision.**~~

~~Any party may file a motion or petition with the presiding member regarding any aspect of the notice or application proceeding. Responses to the petition by other parties shall be filed within 15 days of the filing of the petition unless otherwise specified by the presiding member. The presiding member may set a hearing to~~

~~consider argument on the petition, and shall, within 30 days of the filing of the petition, act to grant or deny the petition, in whole or in part, or schedule further hearings or written responses on the petition.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code.~~

~~§ 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.~~

~~(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.~~

~~NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Section 25216.5(a), Public Resources Code.~~

~~§ 1718. Staff Meetings; Purposes.~~

~~(a) At any time after a notice or application is filed, the staff may initiate informal, voluntary meetings with the applicant, other parties, interested agencies, or the public on matters relevant to the notice or application. Such meetings may include workshops, site visits, or other information exchanges.~~

~~(b) All meetings shall be noticed pursuant to Section 1710 of these regulations and shall be open to the public. The notice shall list the topics and purposes of the meetings. Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they shall, to the extent feasible, be held in or near the communities affected.~~

~~(c) Meetings initiated by staff may be held for any of the following purposes:~~

~~(1) To allow parties to solicit and exchange information relevant to the notice or application;~~

~~(2) To allow parties to identify areas of factual and legal agreement;~~

~~(3) To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or~~

~~(4) To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.~~

~~(d) The public adviser, and in the adviser's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.~~

~~(e) The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the manner in which such meetings are being conducted may petition the presiding member to take remedial action.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210 and 25216.5, Public Resources Code.~~

~~§ 1718.5. Prehearing Conferences; Hearing Order.~~

~~The committee shall hold one or more prehearing conferences with all parties and interested agencies to establish procedures, identify issues, and set schedules for adjudicatory or nonadjudicatory hearings on the notice or application.~~

~~(a) The presiding member shall request the applicant to indicate when it will be prepared to present its case or evidence in support of the notice or application, and shall request the staff and each participating agency to indicate when each will be prepared to present the results of its assessments to the commission.~~

~~(b) Parties who have agreed on statements of facts shall make such statements and lists of probable sponsoring witnesses available to all interested persons at the prehearing conference. To the extent practical, such statements should be served on all parties five days prior to the prehearing conference. Such statements shall not be binding on the committee and may be challenged by any person.~~

~~(c) Parties who have agreed on a statement of issues requiring adjudication shall submit such statements at the prehearing conference. The presiding member may direct the staff to present at the conference a statement of issues which the staff believes must be resolved in the applicant's favor before approval of the notice or the application is granted. The staff statement shall not be binding on the committee.~~

~~(d) The presiding member, in consultation with other committee members, shall prepare a hearing order to guide the hearings on the notice or application. The order shall set forth the schedule and procedures for hearings, indicate the order of presentation of the parties and interested agencies, and identify the issues to be addressed in the hearings.~~

~~(e) This section shall not preclude parties from agreeing to and offering additional statements of facts and issues during the hearings.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25211 and 25509.5, Public Resources Code.~~

~~§ 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.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code. Reference: Sections 25516.6, 25540.2, Public Resources Code.~~

§ 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 that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. 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. In addition to being served on all parties as required by section ~~1210~~ 1211, the petition for reconsideration shall be filed with the chief counsel of the commission.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25530, Public Resources Code.

§ 1720.4. Effective Date of Decisions.

For ~~the~~ all purposes, including but not limited to ~~of~~ implementing ~~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~~ it ~~the decision or order~~ is ~~docketed~~ filed, unless ~~the decision or order~~ it states otherwise.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25216.5, 25502, 25519(b) and 25541, Public Resources Code.

~~**§ 1720.5. Demand Conformance.**~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25305(e), 25308.5, 25523(f), 25524 and 25541, Public Resources Code.~~

~~**§ 1720.6. Demonstration Projects.**~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Section 25540.6(e), Public Resources Code.~~

§ 1729. Nonapprovable Sites or Non-Certifiable Sites.

(b) The applicant shall be required to comply with the following requirements of Sections 25526 and 25527 at the application stage:

(1) For a site in an area designated by the Coastal Commission, the applicant shall demonstrate to the Coastal Commission that the proposed facilities will cause no substantial adverse environmental effects on any designated area. The Coastal Commission shall submit its findings to the Energy Commission prior to the conclusion of the hearings held under Section 1748~~8~~5 of these regulations.

(2) For a site in an area designated by the BCDC, the applicant shall demonstrate to the BCDC that the proposed facility will cause no substantial adverse environmental effects on any designated area. The BCDC shall submit its findings to the Energy Commission prior to the conclusion of the hearings held under Section 1748~~8~~5 of these regulations.

(4) For a site in any area covered by this section, the applicant shall demonstrate prior to the conclusion of hearings held under Section 1748~~8~~5 that the approval of any public agency having ownership or control of such lands has been obtained.

Note: Authority cited: Sections 25518(e) and 25541.5, Public Resources Code. Reference: Sections 25526 and 25527, Public Resources Code.

§ 1742. ~~Review of Environmental Factors;~~ Staff ~~and Agency~~ Assessment.

~~(a) Information on the environmental effects of the proposed facility and mitigation measures proposed by the applicant shall be provided in the application as specified in the appropriate appendix.~~

(a~~b~~) Upon acceptance of the application pursuant to Section 1709, staff shall consult with local, state and federal agencies with special expertise or interest in environmental, health, safety and reliability matters related to the application. ~~the commission staff and all concerned environmental agencies shall review the application and assess whether the report's list of environmental impacts is complete and accurate, whether the mitigation plan is complete and effective, and whether additional or more effective mitigation measures and reasonably necessary, feasible, and available.~~

~~(c) The applicant shall present information on environmental effects and mitigation and the staff and concerned agencies shall submit the results of their assessments at hearings held pursuant to Section 1748. The staff's assessment shall focus on those environmental matters not expected to be considered by other agencies, in order to ensure a complete assessment of significant environmental issues in the proceeding.~~

(b) The staff shall prepare a preliminary and final environmental assessment of the proposed site and related facilities. Staff's final assessment is the staff's independent report that describes and analyzes the significant environmental effects of a project, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures. The assessment also evaluates the safety and reliability of a project. In developing its assessment, staff may rely on information submitted by parties, other public agencies, members of the public, and experts in the field, as well as any other information obtained through staff's independent research and investigation.

(c) Staff's preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member. After close of the comment period staff shall publish a final staff assessment which shall include responses to comments on significant environmental issues received during the comment period. The final staff assessment shall be filed according to a schedule set by the presiding member, if there is no applicable schedule; the final staff assessment shall be filed at least 14 days before the first evidentiary hearing on the subjects covered in the staff assessment.

(d) The staff assessment shall provide a description of all applicable federal, state, regional, and local laws, ordinances, regulations and standards and the project's compliance with them. In the case of noncompliance, the staff assessment shall provide a description of all staff efforts with the agencies responsible for enforcing the laws, ordinances, regulations and standards, for which there is noncompliance, in an attempt to correct or eliminate the noncompliance.

(e) The staff assessment shall indicate the staff's positions on the environmental issues affecting a decision on the applicant's proposal.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code. Reference: Sections 21081 and 25519, Public Resources Code.

~~§ 1742.5. Environmental Review; Staff Responsibilities.~~

~~(a) The staff shall review the information provided by the applicant and other sources and assess the environmental effects of the applicant's proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures.~~

~~(b) The staff shall present the results of its environmental assessments in a report (or exhibit) to be offered as evidence at the hearings held under Section 1748.~~

~~(c) The staff report shall be written to inform interested persons and the commission of the environmental consequences of the proposal, and to assist the presiding member in preparing the presiding member's proposed decision required by Section 1749. The staff report shall indicate the staff's positions on the environmental issues affecting a decision on the applicant's proposal.~~

~~(d) The staff shall monitor the assessment of environmental factors by interested agencies and shall assist and supplement the agencies' assessment to ensure a complete consideration of significant environmental issues in the proceeding.~~

~~(e) The staff shall distribute a notice of availability of the staff report to all interested persons.~~

~~Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5, 25217(b) and 25519(c), Public Resources Code.~~

~~§ 1743. Review of Safety and Reliability Factors; Staff and Agency Assessment.~~

~~(a) Information on safety and reliability of the proposed facility, describing in detail the measures proposed to ensure the safe and reliable operation of the facility shall be provided in the application as specified in the appropriate appendix.~~

~~(b) Upon acceptance of the application, the commission staff and interested agencies shall assess the completeness and adequacy of the measures proposed by the applicant in terms of applicable health and safety standards and other reasonable requirements. The staff shall consult with other agencies with special expertise or interest in safety and reliability matters. The staff's assessment shall focus on those safety and reliability matters not expected to be considered by other agencies. The staff may recommend additional measures which are economically and technically feasible and can be shown to be effective in ensuring safe and reliable operation.~~

~~(c) The applicant's information on safety and reliability, the results of the staff's assessment, and any additional agency comments and recommendations shall be presented and considered at hearings on the application held pursuant to Section 1748.~~

~~Note: Authority cited: Section 25216.5(a), Public Resources Code. Reference: Section 25520(b), Public Resources Code.~~

§ 1744. Review of Compliance with Applicable Laws.

(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 174~~8~~5.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5(a), 25217(b) and 25523, Public Resources Code.

§ 1744.5. Air Quality Requirements; Determination of Compliance.

(c) The local district or the Air Resources Board shall provide a witness at the hearings held pursuant to Section 174~~8~~5 to present and explain the determination of compliance.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.3 and 25523, Public Resources Code.

~~**§ 1745. Location of Hearings and Conferences.**~~

~~Hearings and formal conferences shall be held pursuant to Public Resources Code Section 25521.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25521, Public Resources Code.~~

~~§ 1746. Prehearing Meetings; Purposes.~~

~~Note: Authority cited: Sections 25216.5, 25218, 25539, Public Resources Code. Reference: Sections 25216.5, 25519, 25539, Public Resources Code.~~

~~§ 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 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.~~

~~Note: Authority cited: Sections 25218(e), 25539 and 25541.5, Public Resources Code. Reference: Sections 21080.5, 25519(c), 25523, Public Resources Code.~~

§ ~~1748~~ 1745. Evidentiary Hearings; Purposes; Burden of Proof; Schedule for Filing and Service of Evidence.

(a) No earlier than ~~ninety~~ 90 days after the acceptance of the application, the ~~committee shall commence~~ presiding member may begin evidentiary hearings on the application.

(b) The hearings shall consider the topics listed in 1745.5.

~~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.~~

~~(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.~~

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

(d) 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.

~~§ 1748.5. Environmental Review; Staff Responsibilities.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25519(c), Public Resources Code.~~

§ ~~1749~~. 1745.5. Presiding Member's Proposed Decision~~; Distribution;~~ Comment Period; Basis, Contents, Hearing.

(a) ~~At the conclusion~~ After the end of the evidentiary hearings, the presiding member, in consultation with the other committee members, shall prepare and file a proposed decision on the application. ~~based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.~~

~~(b) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution.~~

(b) The presiding member's proposed decision shall:

(1) Be based on a consideration of the entire hearing record and contain:

(2) Environmental Factors:

(A) a description of potential significant environmental effects;

(B) an assessment of the feasibility of mitigation measures and a reasonable range of alternatives that could lessen or avoid the adverse effects; and

(C) if any significant effects are likely to remain even after the application of all feasible mitigation measures and alternatives, whether economic, legal, social, technological or other environmental benefits of the project outweigh the unavoidable adverse effects;

(3) Laws, Ordinances, Regulations, and Standards:

(A) a description of all applicable federal laws, ordinances, regulations and standards and an assessment of the project's compliance with them;

(B) a description of all applicable state, regional, and local laws, ordinances, regulations and standards, and the project's compliance with them.

(i) If the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation a description of all staff communications with the agencies responsible for enforcing the laws, ordinances, regulations and standards for which there is noncompliance, in an attempt to correct or eliminate the noncompliance;

(ii) if the noncompliance cannot be eliminated, the proposed decision shall discuss whether the proposed project is required for public convenience and necessity and whether there are more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability; and

(iii) If the noncompliance cannot be corrected or eliminated, the proposed decision shall satisfy the commission's obligation to inform the state, local, or regional governmental agency if it makes the findings required by Public Resources Code section 25525.

(C) to the extent not already covered under subdivisions (2) or (3), and for applications for certification, as defined in Public Resources Code section 25102, concerning sites in the Coastal Zones, as defined in Public Resources Code section 30103, or the Suisun Marsh, as defined in Public Resources Code section 29101, a discussion of the issues raised by the California Coastal Commission, if any, pursuant to section 30413(e) of the California Public Resources Code; or issues raised by the San Francisco Bay Conservation and Development Commission, if any, pursuant to section 66630 of the Government Code:

(D) to the extent not already covered under subdivisions (2) or (3), and for sites in the Coastal Zones or Suisun Marsh for which a notice of intent as defined in Public Resources Code section 25113 has been filed:

(i) a discussion of provisions to meet the objectives of the California Coastal Act, as may be specified in the applicable report submitted by the California Coastal Commission under section 30413(d); or to meet the requirements of objectives of the Bay Conservation and Development Act, as may be specified in the applicable report submitted by the San Francisco Bay Conservation and Development Commission under section 66645 of the Government Code;

(ii) if the provisions described in paragraph (i) would result in greater adverse effect on the environment or would be infeasible, an explanation of why; and

(iii) a statement of whether the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500;

(4) a description of land use, as necessary, consistent with Public Resources Code section 25528.

(5) for new sites proposed for location in the coastal zone or any other area with recreational, scenic, or historic value, proposed conditions relating to land that should be acquired, established, and maintained by the applicant for public use and access consistent with Public Resources Code Section 25529;

(6) for new sites proposed along the coast or shoreline of any major body of water, proposed conditions on the extent to which the proposed facilities should be set back from the coast or shoreline to permit reasonable public use and to protect scenic and aesthetic values consistent with Public Resources Code Section 25529

(7) for sites in state, regional, county or city parks; wilderness, scenic, or natural reserves; areas for wildlife protection, recreation or historic preservation; natural preservation areas in existence as of January 7, 1975; or estuaries in an essentially natural and undeveloped state: an analysis of whether the facilities will be consistent with the primary land use of the area, and of whether the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500.

(8) where a nuclear powered facility is proposed, an analysis of the factors in Public Resources Code sections 25524.1 and 25524.2;

(9) an analysis of the extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d);

(10) if the application is for a facility to be located on a potential multiple facility site, as determined under of the Public Resources Code section 25516.5, an analysis of the factors listed in Public Resources Code section 25524.5.

(11) a discussion of any public benefits from the project, including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits;

(12) provisions for restoring the site as necessary to protect the environment, if the commission does not certify the project; and.

(13) A recommendation as to whether the proposed site and related facilities should be certified, and if so under what conditions; and

(14) Engineering Assessment relating to facility efficiency, health and safety;

(15) Reliability Assessment;

(16) Any other relevant matter identified by the presiding member.

(17) responses to all significant environmental points raised during the evidentiary hearing; and

(18) the reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

(c) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the ~~date~~ of distribution.

~~(d) Any governmental agency may adopt all or any part of a proposed decision, or final decision, as all or any part of an environmental analysis that CEQA requires that agency to conduct. It is the responsibility of the other agency to ensure that any such document meets the CEQA obligations of that agency.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25519(c), 25522 and 25523, Public Resources Code.

~~§ 1750. Proposed Decision.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5 and 25522, Public Resources Code.~~

~~§ 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.~~

~~(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.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25522, Public Resources Code.~~

~~§ 1752. Presiding Member's Proposed Decision; Contents.~~

~~The presiding member's proposed decision shall contain the presiding member's recommendation on whether the application should be approved, and proposed findings and conclusions on each of the following:~~

~~(a) The extent to which the proposed facilities are in compliance with:~~

~~(1) Public health and safety standards, including any standards adopted by the commission;~~

~~(2) Applicable air and water quality standards; and~~

~~(3) Any other applicable local, regional, state, and federal standards, ordinances, regulations or laws.~~

~~(b) Necessary modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated in order to:~~

~~(1) Protect environmental quality;~~

~~(2) Assure safe and reliable operation of the facility; and~~

~~(3) Comply with applicable standards, ordinances, regulations or laws.~~

~~(c) Unless the commission finds that such provisions would result in greater adverse effect on the environment or would be infeasible, specific provisions to meet the objectives of the California Coastal Act, as may be specified in a report submitted by the California Coastal Commission pursuant to Section 30413(d) of the Public Resources Code, or to meet the requirements of Division 19 (commencing with § 29000) of the Public Resources Code or Title 7.2 (commencing with § 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code.~~

~~(d) With respect to controlling population density in areas surrounding the proposed facilities, proposed findings on each of the following:~~

~~(1) Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities which will ensure the public health and safety;~~

~~(2) Whether, in the case of a nuclear generating facility, the area and population density criteria specified by the United States Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements; and~~

~~(3) Whether the commission should require as a condition of certification that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities in order to control population densities and to protect public health and safety.~~

~~(e) With respect to any facility to be located in the coastal zone or any other area with recreational, scenic, or historic value, proposed findings and conditions relating to the area that shall be acquired, established, and maintained by the applicant for public use and access; and with respect to any facility to be located along the coast or shoreline of any major body of water, proposed findings and conditions on the extent to which the proposed facility shall be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.~~

~~(f) With respect to any of the following areas:~~

~~(1) State, regional, county or city parks;~~

~~(2) Wilderness, scenic, or natural reserves;~~

~~(3) Areas for wildlife protection, recreation or historic preservation;~~

~~(4) Natural preservation areas in existence as of January 7, 1975;~~

~~(5) Estuaries in an essentially natural and undeveloped state; Findings and conclusions on whether the facility will be consistent with the primary land use of the area; whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects; and whether the approval of the public agency having ownership or control of the land has been obtained.~~

~~(g) With respect to any facility to be sited in a coastal zone location designated by the California Coastal Commission pursuant to Section 30413(b) of the Public Resources Code, or in a location designated by the Bay Conservation and Development Commission pursuant to subdivision (b) of Section 66645 of the Government Code, findings on whether the approval of the public agency having~~

~~ownership or control of the land has been obtained, and findings of the California Coastal Commission or the BCDC, respectively, on each of the following:~~

~~(1) Whether the facility will be consistent with the primary land use of the area; and~~

~~(2) Whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects;~~

~~(h) Where a nuclear powered facility is proposed, findings on;~~

~~(1) Whether and when the facility will require reprocessing of nuclear fuel rods or off-site storage of such fuel rods in order to provide continuous onsite fuel core reserve storage capacity; and~~

~~(2) Whether and when facilities with adequate capacity to reprocess nuclear fuel rods, if such reprocessing is required, and facilities with adequate capacity to store such fuel, if such storage is approved by an authorized agency of the United States, are or will be in actual operation at the time the nuclear powered facility requires such reprocessing or storage.~~

~~(i) Provisions for restoring the site as necessary to protect the environment, if the commission denies approval of the application.~~

~~(j) Findings on the extent to which the applicant has complied with the recommended minimum standards of efficiency for operation of the facility, approved pursuant to Section 25402(d) of the Public Resources Code.~~

~~(k) With respect to any facility which does not comply with an applicable state, local or regional standard, ordinance or law, findings and conclusions on whether the noncompliance can be corrected or eliminated; and if such noncompliance cannot be corrected, findings on both the following:~~

~~(1) Whether the facility is required for public convenience and necessity; and~~

~~(2) Whether there are no more prudent and feasible means of achieving such public convenience and necessity.~~

~~(l) Any other findings and conclusions relevant to the commission's decision.~~

~~Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25523 and 25525-25529, Public Resources Code.~~

~~§ 1752.3. Presiding Member's Proposed Decision; Air Quality Findings.~~

~~(a) The presiding member's proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.~~

~~(b) If the determination of compliance concludes that the facility will comply with all applicable air quality requirements, the commission shall include in its certification any and all feasible conditions necessary to ensure compliance. If the determination of compliance concludes that the proposed facility will not comply with all applicable air quality requirements, the commission shall direct its staff to meet and consult with the agency concerned to attempt to correct or eliminate the noncompliance.~~

~~(c) If the noncompliance cannot be corrected or eliminated, the commission shall determine whether the facility is required for the public convenience and necessity and whether there are not more prudent and feasible means of achieving such public convenience and necessity. In such cases, the commission shall require compliance with all provisions and schedules required by the Clean Air Act and compliance with all applicable air quality requirements which in the judgment of the commission, can be met.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25523(d) and 25525, Public Resources Code.~~

~~§ 1752.5. Presiding Member's Proposed Decision; CEQA Findings.~~

~~The presiding member's proposed decision shall contain the committee's responses to significant environmental points raised during the application proceeding.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.1, 25523 and 25541.5, Public Resources Code.~~

~~§ 1752.7. Presiding Member's Proposed Decision; Findings for a Multiple Facility Site.~~

~~With respect to any application for a facility to be located on a potential multiple facility site, as determined pursuant to Section 25516.5 of the Public Resources Code, the presiding member shall make the findings specified in Public Resources Code Section 25524.5.~~

§ ~~1753~~ <u>1746</u>. Revised Presiding Member's Proposed Decision.

After the conclusion of the comment period on the presiding member's proposed decision, the presiding member, in consultation with the other committee

member, may prepare a revised proposed decision on the application. If a revised proposed decision is prepared, it shall be filed and subject to a ~~forwarded to the full commission and distributed to all parties, interested agencies, and to any person who requests a copy for a minimum~~ 15-day comment period before consideration by the full commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25519(c), 25522 and 25523, Public Resources Code.

§ ~~1754.~~ 1747. Hearing on Presiding Member's Proposed Decision.

(a) Adoption hearings on the presiding member's proposed decision or the revised proposed decision, if any, shall be held before the full commission after the comment period on the presiding member's proposed decision. The hearing shall be conducted for the purpose of considering final oral and written statements of the parties and final comments and recommendations from interested agencies and members of the public. The hearing(s) on the presiding member's proposed decision may be the same hearing as the one to consider the final decision. If a revised decision is issued as provided in Section ~~1753~~ 1746, the presiding member may schedule additional hearing(s) before either the committee or the full commission prior to or at the same time as the final commission adoption hearing.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25522, Public Resources Code.

§ ~~1755.~~1748. Final Decision.

(a) At the conclusion of the hearings under Section ~~1754~~ 1747, the commission shall adopt a final written decision in conformity with Public Resources Code section 25523.

(b) The decision shall not certify any site and related facility ~~considered in the proceeding~~ unless the commission'~~s~~ ~~findings pursuant to subsections (e), (f), and (k) of Section 1752 are all in the affirmative.~~ finds that:

(1) as necessary, land use is consistent with Public Resources Code Section 25528.

(2) if the powerplant will require reprocessing of nuclear fuel rods or off-site storage of nuclear fuel rods in order to provide continuous onsite fuel core reserve storage capacity: facilities with adequate capacity to reprocess nuclear fuel rods or with adequate capacity to store them, as applicable, have been approved by an authorized agency of the United States, and are or will be in actual operation at the time the powerplant requires such reprocessing or storage.

(3) with respect to state, regional, county, and city parks; wilderness, scenic, and natural reserves; areas for wildlife protection, recreation, and historic preservation; natural preservation areas in existence as of January 7, 1975; and

estuaries in an essentially natural and undeveloped state: the facility will be consistent with the primary land use of the area, and the approval of the public agency having ownership or control of the land has been obtained;

(4) if the site or facility does not comply with an applicable state, local or regional laws, ordinances, regulations and standards: the facility is required for public convenience and necessity, and there are no more prudent and feasible means of achieving such public convenience and necessity, a finding made pursuant to the requirements of section 25525 of the Public Resources Code;

(5) if the construction, operation, or shutdown and decommissioning of the powerplant will cause a significant environmental impact, either (A) or (B):

~~(c) The commission shall not certify any site and related facilities for which one or more significant adverse environmental effects have been identified unless the commission makes both of the following findings:~~

(A) ~~With~~

(i) with respect to matters within the authority of the commission: ~~that~~ changes or alterations have been required in, or incorporated into, the project ~~which~~ that mitigate or avoid the significant environmental effects; and ~~identified in the proceeding.~~

(~~2~~ii) with respect to matters not within the commission's authority but within the authority of another agency: ~~that~~ changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency;

or

(B)

~~(d) If the commission cannot make both the findings required under subsection (c), then it may not certify the project unless it specifically finds both of the following:~~

(i) ~~That~~ specific economic, social, or other considerations make infeasible ~~the~~ all mitigation measures or project alternatives that would mitigate or avoid the significant environmental effects ~~identified in the application proceeding;~~ and

(ii) That the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.1, 21081, 25216.3, 25523, 25525-25527, 25529 and

25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

~~§ 1756. Schedule for Review of Applications~~~~.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference:Sections 25522, 25540.2 and 25540.6, Public Resources Code.~~

~~§ 1757. Multiple-Facility Sites, Review Schedule~~~~.~~

~~(a) Review of an application for an additional facility at a potential multiple facility site shall be conducted in conformity with Public Resources Code Section 25520.5.~~

~~(b) The commission shall commence public hearings no later than 60 days after acceptance of the application and conclude such hearings no later than 150 days after the acceptance.~~

~~(c) The commission shall issue its decision on the matters under reconsideration within 180 days from the acceptance of the application.~~

~~(d) Upon an affirmative decision pursuant to this section, the commission shall follow the procedures and schedules for review of the application as provided in this article and Article 1.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25520.5, Public Resources Code.~~

~~§ 1760. Environmental Impact Report.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21100 and 25519(c), Public Resources Code.~~

~~§ 1763. Exemption from the Notice of Intention Requirements for Cogeneration Facilities Greater Than 300 Megawatts.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25522 and 25540.6(a), Public Resources Code.~~

~~§ 1764. Acceptance of Applications for Cogeneration Facilities Greater Than 300Megawatts.~~

~~Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25522 and 25540.6(a), Public Resources Code.~~

~~§ 1765. Projects Exempted from Notice Requirements; Application Procedures.~~

~~At the hearings specified in section 1748 on an application exempt from the notice requirements pursuant to Public Code section 25540.6, the parties shall present information on the feasibility of available site and facility alternatives to the applicant's proposal which substantially lessen the significant adverse impacts of the proposal on the environment. The presiding member shall use the determinations, findings, and conclusions available from any generic proceedings on the commercial availability of technologies to determine which alternatives merit consideration in the hearings, which require preliminary showings as to their commercial availability, and which require resolution of issues affecting their feasibility.~~

~~Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25540.6, Public Resources Code.~~

§ ~~1768~~. 1749. Notice of Decision; Filing with Resources Agency.

§ 1769. Post Certification Amendments and Changes.

(A) the findings specified in section ~~1755 (c), and (d)~~ 1748(b)(5), if applicable;

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25523, 25532 and 25534, Public Resources Code.

§ 1804. Special Geothermal Definitions.

In addition to the definitions contained in Section ~~1702~~ 1201 and unless otherwise indicated, the following definitions shall apply to this article.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540-25540.4, Public Resources Code.

§ 1863. Equivalent Certification Program Requirements.

No county program shall be designated as an equivalent certification program unless it contains provisions for all of the following:

(c) Preparation and distribution of a written decision on each power plant application. Such written decision shall contain each of the findings and conclusions required by Section~~s~~ ~~1752-1753~~ 1745.5 of these regulations, and shall be based on the formal record of the proceeding;

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

§ 2001. Definitions.

In addition to the definitions found in Chapter 2 (beginning with Section 25100), Division 15, Public Resources Code and the definitions found in Section ~~1702~~ 1201 of this chapter, the definitions contained in this article shall apply to all commission determinations of megawatt capacity thresholds, including the 50 megawatt jurisdictional threshold, the 100 megawatt threshold for a small powerplant exemption, and the 300 megawatt threshold for a small powerplant exemption, and the 300 megawatt threshold for a cogeneration or solar thermal powerplant exemption from the notice of intention requirement.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

§ 2010. Petition For Expedited Clearance; Filing.

(a) In lieu of filing a request for a jurisdictional determination pursuant to Section ~~1230~~ 1234 et seq., the owner or operator of a proposed powerplant may file a petition requesting expedited clearance of the proposed powerplant on the basis that it has a generating capacity less than 50 MW. The purpose of this expedited clearance process is to resolve jurisdictional issues involving the definition of generating capacity under Section 2003. All other jurisdictional issues must be processed under Section ~~1230~~ 1234 et seq.

(b) All petitions for expedited clearance must be filed with the Docket Unit in accordance with Section ~~1209~~ 1208 and shall include, but not be limited to, the following information:

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

§ 2012. Clearance Order.

(a) If no ~~complaint or~~ request for a jurisdictional determination pursuant to Section ~~1231~~ 1234 is filed within ~~thirty (~~30~~)~~ days after distribution of the agenda containing the notice of filing of the petition, then a clearance order shall be placed on the consent calendar for the next available commission meeting, subject to the limitation in subdivision (b) below.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

§ 2027. Staff Reports.

(a) Within 75 days after acceptance of an application that is eligible for a six-month decision, the staff shall file an initial report of the environmental impacts and other aspects of the proposed project in accordance with sections 1742~~.5~~, 1743, and 1744. Based on information known and available to the staff, the staff's initial report shall:

(b) Within 120 days after the acceptance of an application, the staff shall file a final report on the proposed project in accordance with sections 1742~~.5~~, 1743, and 1744. The staff's final report may focus on those areas identified for further analysis in the staff's initial report and may incorporate by reference or otherwise rely on the initial report for all other areas. The report shall serve as the staff's final assessment of the project and be presented as testimony at the hearings under section 2029.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 21081, 25217(b), 25519(c), 25523(a), 25523(d) and 25550, Public Resources Code.

§ 2028. Removal of the Project from the Six-Month Process.

(a) At any time after acceptance of the application, but no later than the final date for filing testimony, any party may petition the committee to remove the project from the provisions of this Article and thereby change the deadline for a commission decision from six months after acceptance to twelve months after acceptance. The petition shall show that there is substantial evidence in the record that the project:

(1) may result in a significant adverse unmitigated impact on the environment;

(2) may result in a significant adverse unmitigated impact on the electrical system;

(3) will not comply with an applicable standard, ordinance, or law; or

(4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy. The petition and other pleadings shall be ~~served~~ filed ~~on all parties~~ in accordance with sections ~~1209~~ 1208 and ~~1210~~ 1208.1.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 25550(c), Public Resources Code.

§ 2030. Presiding Member's Proposed Decision; Commission Decision.

(a) Within 20 days after the end of the hearings held under section 2029, the presiding member of the committee shall, in consultation with the other committee member, file ~~in the Docket and serve on all parties~~ a proposed decision in accordance with sections 1212 ~~1749~~ and 1745.5. ~~1751, 1752(b) through (k) and (m), 1752.3(a) and (b), and 1752.5.~~

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 21081, 25216.5(a), 25519(c), 25523 and 25550, Public Resources Code.

§ 2322. Format and Number of Copies.

Paper copies of applications and any other documents attached thereto shall conform to the requirements of Sections ~~1209~~ 1208.1 and 170~~5~~6. An application shall be filed in electronic format in conformance with section ~~1209.5~~ 1208. ~~In addition, the applicant shall file with the commission one hundred twenty-five (125) paper copies of an application for designation and all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application. Alternatively, the applicant may file 75 paper copies and 50 copies in a CD-ROM medium and in the format specified in Section 1209.5, unless otherwise specified by the executive director under section 1209.5, subdivision (c).~~

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25331(b), Public Resources Code.

§ 2325. Coordination with Interested Agencies, Intervention, and Public Participation.

(c) Any person may file a petition to intervene under section ~~1207~~ 1211.7 in a designation proceeding, but must file the petition no later than 15 days after the staff issues the draft environmental report. The petitioner shall also serve the petition upon the applicant. The presiding member may grant a petition to intervene filed after the deadline only upon a showing of good cause by the petitioner. A person whose petition is granted shall have all the rights and duties of a party under these regulations. Any person whose petition to intervene has been denied by the presiding member may appeal the decision in the manner provided by section ~~1207(d)~~ 1211.7(e). Any ~~intervener~~ intervenor may withdraw from a proceeding by filing a notice to such effect with the Docket Unit.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25334, Public Resources Code.

§ 2328. Informational Hearing and Scoping Meeting.

(5) Solicit factual information, recommendations, and suggestions on reasonable alternatives that could avoid or mitigate potentially significant environmental impacts

associated with the proposed transmission corridor. An alternative shall be considered reasonable if it meets one or more of the state's needs and objectives that the proposed corridor for designation proposes to meet in accordance with the applicable Strategic Plan, is feasible as that term is defined in section ~~1702(f)~~ 1201(h), and offers a way to mitigate or avoid one or more potentially significant environmental impacts associated with the proposed transmission corridor.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21080.1, 21080.3, 21104 and 25335, Public Resources Code.

Appendix A

Information Requirements for a Corridor Designation Application

*All maps depicting the proposed transmission corridor in the application shall show the proposed corridor's center line and outer boundaries and shall conform with the format requirements for such documents under Sections ~~1209~~ 1208.1 and 170~~5~~6.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25331, Public Resources Code; and Section 15084, Title 14, California Code of Regulations.

Appendix B

(13) Biological Resources

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

(ii) resources defined in sections ~~1702(q) and (v)~~ 1201 (c) and (v) of Title 20 of the California Code of Regulations;

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