

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

)
2016 Title 24 Building Energy Efficiency)
Standards Rulemaking Proceeding)
California Code of Regulations, Title 24,)
Parts 1 and 6)
_____)

Docket No. 15-BSTD-1
Resolution No. 15-1112-4

[PROPOSED] RESOLUTION ADOPTING NEGATIVE DECLARATION AND
PROPOSED REGULATIONS

I. INTRODUCTION

The California Energy Commission (the Energy Commission) has, as directed by Section 25402 of the California Public Resources Code, developed and undertaken a proceeding to adopt revisions to its Building Energy Efficiency Standards.

These standards, generally speaking, apply to residential, nonresidential, high-rise residential, and hotel and motel buildings. The standards are in Part 6 (also known as the California Energy Code) and in the associated administrative regulations in Part 1, Chapter 10, of Title 24 of the California Code of Regulations.

The Energy Commission hereby adopts proposed regulations relating to alterations to existing lighting systems in nonresidential, high-rise residential, and hotel and motel buildings, in Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Table 141.0-E and -F (the Lighting Provisions). These revisions are part of the 2016 Building Energy Efficiency Standards (the 2016 Standards), that will go into effect on January 1, 2017, following approval by the California Building Standards Commission.

The Energy Commission takes this action under the authority given by Public Resources Code sections 25218, subdivision (e), 25402, 25402.1, 25402.5, and 25402.5.4, to implement, interpret and make specific Sections 25402, subdivisions (a)-(c), 25402.1, 25402.5, and 25402.5.4.

The California Environmental Quality Act (CEQA)¹ defines a project as any activity “which

¹ The CEQA statute, California Public Resources Code § 21000 et seq., codifies a statewide policy of environmental protection. The California Resources Agency promulgates the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. (Guidelines) which detail the protocol by which state

may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”² The Energy Commission thus prepared and published on July 10, 2015 an Initial Study and proposed Negative Declaration of the potential environmental effects of the Lighting Provisions (the “July 10 IS/ND”), that the Energy Commission also hereby adopts.

II. HISTORY OF THE PROCEEDING

To develop the 2016 Standards, the Energy Commission conducted an open, transparent, and extensive public process. Between April 2014 and today, the Energy Commission has held several workshops and other public events on proposed revisions to the Standards that are related to the Lighting Provisions adopted here.

On February 13, 2015, the formal rulemaking phase was initiated when the Energy Commission (1) filed with the California Building Standards Commission (CBSC) and the Office of Administrative Law (OAL), and (2) published, the following:

- A Notice of Proposed Action (NOPA), which described the proceeding, summarized the proposed Standards, and explained how interested persons could participate;
- Economic and Fiscal Analysis (Form 399);
- An Initial Statement of Reasons (ISOR), which presented the rationales for the Standards;
- Proposed Express Terms (45-day language) of the 2016 Standards; and
- The Initial Study and Proposed Negative Declaration for the 2016 Standards.

OAL published the NOPA in the California Regulatory Notice Register on February 13, 2015.³

The Energy Commission also provided the NOPA to:

- Every contact on the Energy Commission's mailing lists for: *The Blueprint* (an Energy Code newsletter), appliance efficiency standards, nonresidential and residential building energy efficiency standards, city and county building officials, and county clerks;
- The Energy Commission's *Efficiency* and *Building Standards* electronic mail list serves; and
- Every person who had requested notice of such matters.

and local agencies comply with CEQA requirements. We refer to the statute and the Guidelines collectively as “CEQA”. In citing to the Guidelines, we use the format “Guidelines, § “.

² Pub. Resources Code § 21065(a).

³ California Regulatory Notice Register, Feb. 13, 2015, vol. no. 7-Z, p. 268.

The NOPA, the ISOR, the Initial Study of the 2016 Standards, and the 45-day and initial 15-day language (discussed below) were also posted on the Energy Commission's website.⁴

On March 2 and 3, 2015, the Energy Commission's Lead Commissioner for Energy Efficiency, held a public hearing, pursuant to Government Code section 11346.8 and Public Resources Code section 25402, to accept both oral and written comments on the 2016 Standards and the Initial Study of the 2016 Standards.

As stated in the NOPA, p. 3, the Energy Commission welcomed comments on any of the proposed provisions – and, as we have noted above, many were received. In anticipation of comments, the NOPA stated:

Interested persons should be aware that any of the provisions of the amendments under consideration by the Energy Commission could be substantively changed as a result of public comment, staff recommendations, or discussions at the Energy Efficiency Lead Commissioner or Full Commission Hearings. The proposed regulations could be changed, withdrawn, or replaced with different proposals.

Accordingly, the Energy Commission on May 26, 2015, published revisions to the proposed 2016 Standards.⁵ The Energy Commission also identified additional documents upon which it was relying to adopt the proposed 2016 Standards. The revisions to the proposed regulations and additional documents were made available for public comment for at least 15 days, through June 10, 2015.⁶ The public notice of the revised language also stated that the Energy Commission would consider adopting the proposed regulations and negative declaration at a public hearing during its business meeting on Wednesday, June 10, 2015,⁷ which it did⁸ - with the exception of the Lighting Provisions adopted today, due to public comments on these provisions.

After considering the public comments, the proposed Lighting Provisions were revised further on July 10, 2015, to provide a compliance path based on total power reduction rather than calculation of lighting power densities, simplify and more uniformly apply the existing allowance for reduced multi-level and daylighting controls when sufficient power reductions are achieved, and exempt projects involving less than 20 luminaires from requirements for acceptance testing of the controls. These revisions were made available

⁴ See <http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/>.

⁵ These revisions and subsequent revisions to the proposed regulations are entitled "15-day Language" because they are sufficiently related to the originally proposed 45-day language that they must be made available to the public for at least 15 days pursuant to Gov. Code § 11346.8(c).

⁶ Gov. Code § 11346.8; Cal. Code Regs., tit. 1, § 42.

⁷ See

http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/15-day_language/2016-05-26_No_tice_of_Availability_of_15-Day_Language.pdf.

⁸ See Energy Commission Order No. 15-0610-5.

to the public for a 15-day comment period, along with three additional documents the Energy Commission was relying upon to adopt these standards. The July 10 IS/ND was separately prepared for the Lighting Provisions, and was made available for public review on July 10, 2015.

On July 27, 2015, an additional document that the Energy Commission relied upon in adopting these regulations was made available for public review.

On October 27, 2015 the Energy Commission published additional revisions to the proposed Lighting Provisions to more closely align the specifications in the Lighting Provisions with those of the 2013 Building Energy Efficiency Standards. The Energy Commission also published notice that the proposed Lighting Provisions would be considered for adoption on November 12, 2015. All of the aforementioned documents are available on the Energy Commission's website.⁹

III. FINDINGS AND CONCLUSIONS

Several different statutory schemes govern the Energy Commission's adoption of building standards: CEQA, the Warren-Alquist Act, the Administrative Procedure Act, and the State Building Standards Law.¹⁰ The Energy Commission has reviewed the entire record of this proceeding regarding the proposed nonresidential lighting provisions, including public comments, reports and other documents, transcripts of public events, and all other materials that have been filed regarding these provisions in this proceeding (Docket No. 15-BSTD-1). Based on that record, the Energy Commission makes the following findings and conclusions.

A. The California Environmental Quality Act, Public Resources Code Section 21000 et seq.

CEQA requires that state agencies consider the environmental impact of their discretionary decisions, including the adoption of regulations. The Energy Commission prepared the July 10 IS/ND to address the potential physical environmental impacts of the regulations, including air emissions, indoor air pollution, greenhouse gas emissions, and the use of materials necessary to comply with the provisions.¹¹

A Notice of Intent to adopt the July 10 IS/ND was sent to the State Clearinghouse and all 58 county clerks in California, as well as more than 10,000 people and entities that had previously requested such notice.¹² Finally, a legal notice was published on July 10, 2015 in:

⁹ See postings at <http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/>.

¹⁰ [Health & Safety Code § 18930](#).

¹¹ See Guidelines, §§ 15060-15065.

¹² See Guidelines, § 15072(a).

- The Los Angeles Times,
- The Sacramento Bee,
- The San Diego Union Tribune,
- The San Francisco Chronicle, and
- The San Jose Mercury News.¹³

The Energy Commission provided a comment period on the July 10 IS/ND beginning on July 10, 2015.¹⁴

The Energy Commission received one comment addressing the potential environmental impacts of the adoption of the Lighting Provisions, from the law firm of Adams, Broadwell, Joseph & Cordozo, on behalf of the California chapters of the National Electrical Contractors Association, the California International Brotherhood of Electrical Workers, and the California State Labor Management Cooperation Committee for the International Brotherhood of Electrical Workers and the National Electrical Contractors Association (the “IBEW-NECA-LMCC Comments,” TN 76120).¹⁵

The IBEW-NECA-LMCC Comments argued that, contrary to the conclusion of the July 10 IS/ND, the proposed Lighting Provisions published on July 10 would cause a loss in efficiency savings compared with the 2013 Building Energy Efficiency Standards. The IBEW-NECA-LMCC Comments attached a report prepared by an engineer named Michael F. Neils (the “M. Neils Report”) that evaluated the Lighting Provisions proposed on July 10, 2015 and purported to show that the proposed regulations “will create a 2016 Standard for lighting alterations that increases energy use in California buildings and costs California rate payers millions over the life of their lighting systems.” (M. Neils Report, p. 1.) The IBEW-NECA-LMCC Comments argued that the M. Neils Report provided substantial evidence of a fair argument “that the proposed exemptions will reduce energy savings and may result in increased GHG emissions,” and that an EIR must be prepared to evaluate this impact.” (IBEW-NECA-LMCC Comments, page 21.)

Energy Commission staff carefully evaluated the IBEW-NECA-LMCC Comments, and prepared an analysis of the M. Neils Report (the “Staff Analysis of the M. Neils Report, TN# 76315). The Staff Analysis of the M. Neils Report examined the specific assertions underlying the M. Neil Report’s conclusion that Lighting Provisions proposed on July 10, 2015 would result in lost efficiency savings compared with the 2013 Energy Efficiency Standards, and the basis for each underlying assertion. Having reviewed the IS/ND, the IBEW-NECA-LMCC Comments and the M. Neils Report, and the Staff Assessment of the M. Neils Report, the Energy Commission concurs with Energy Commission Staff that the

¹³ Guidelines, § 15072(b)(1).

¹⁴ See Guidelines, § 15073(a).

¹⁵ TN refers to Transaction Number of the document in the record of this proceeding.

M. Neils report does not constitute substantial evidence in support of a fair argument of an environmental impact of adoption of the Lighting Provisions proposed on July 10, 2015.

The Energy Commission nevertheless proposed additional revisions to the proposed Lighting Provisions on October 27, 2015, in response to policy concerns raised by IBEW and other stakeholders regarding the differences between the proposed Lighting Provisions and the existing standards. These revisions were proposed for policy reasons unrelated to CEQA, and were not necessary to avoid any environmental impact. The revisions to the Lighting Provisions proposed on October 27, 2015 do not create any significant environmental effects that would require revision and recirculation of the July 10 IS/ND pursuant to Section 15073.5 of the CEQA Guidelines.

Accordingly, based on the July 10 IS/ND, together with all documents in the record of this proceeding, including all comments received during the public participation process, the Energy Commission finds that:

1. In light of the whole record, there is no substantial evidence that adoption of the proposed Lighting Provisions of the 2016 Building Energy Efficiency Standards as proposed on October 27, 2015, to be codified in Title 24, Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Tables 141.0-E and –F of the California Code of Regulations, will have a significant effect on the environment;
2. The Proposed Negative Declaration reflects the Energy Commission's independent judgment and analysis;
3. The Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act;
4. Pursuant to Section 15074(c) of the CEQA Guidelines, the custodian of documents and other materials that constitutes the record of proceedings upon which this decision is based is Robert Oglesby, located at 1516 9th Street, Sacramento CA 95814;
5. The July 10 IS/ND prepared and previously circulated for public comment on July 10, 2015 is adequate; and
6. The revisions to the Lighting Provisions proposed on October 27, 2015 do not create any significant environmental effects that would require revision and recirculation of the July 10 IS/ND pursuant to Section 15073.5 of the CEQA Guidelines.

Therefore, Energy Commission hereby **adopts the Negative Declaration**, and directs the Executive Director to file a Notice of Determination with the State Clearinghouse.¹⁶

We next consider the various other statutes governing adoption of these regulations: the Warren-Alquist State Energy Resources Conservation and Development Act,¹⁷ the administrative rulemaking provisions of the Administrative Procedure Act,¹⁸ and the Building Standards Law.¹⁹

B. The Warren-Alquist Act

The Standards we adopt today satisfy the requirements of Public Resources Code section 25402, subdivisions (a) and (b). Those provisions require the Energy Commission to adopt building design and construction standards that increase the efficiency in the use of energy for new nonresidential buildings, and energy conservation design standards. By law, these standards must be “cost effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice.”

These 2016 Standards fulfill these directives. They increase the efficiency of and conserve the use of energy. Moreover, they are cost-effective.

The Lighting Provisions codified in Title 24, Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Table 141.0-E and -F, of the California Code of Regulations, being adopted separately from the rest of the 2016 Standards, clarify, simplify, and streamline these regulations. The revisions provide an optional alternative compliance criteria and threshold, more clearly delimit the scope of each subdivision, align the requirements of each subdivision to that subdivision’s scope, provide appropriate and necessary exceptions to each revised subdivision, and improve the text to ensure that the regulations are readable and understandable to persons directly affected by the requirements. These revisions are not anticipated to result in increased costs of any kind, and it is anticipated that the optional compliance path will be chosen where it results in cost savings.

Therefore, we find and conclude that the 2016 Standards are cost-effective.

C. The Administrative Procedure Act

The California Administrative Procedure Act (APA) requires all state agencies to take certain steps and assess several matters when adopting regulations. Many of these matters, analyses, and findings are required to be addressed in the ISOR, prepared as part of the NOPA, or in the Final Statement of Reasons (FSOR) that is required to be

¹⁶ Guidelines, § 15075(c).

¹⁷ Pub. Resources Code, § 25000 et seq.

¹⁸ Gov. Code, § 11340 et seq.

¹⁹ Health & Safety Code, § 18901 et seq.

prepared after the regulations are adopted. In support of those documents, the Energy Commission makes the following findings and determinations here in adopting these provisions of the 2016 Standards.

1. Reports Required of Businesses, Government Code section 11346.3, subdivision (d)

In addition to the economic analysis required by Section 11346.3 of the APA, discussed further below, subdivision (d) of this statute mandates that agencies that require the preparation of reports by businesses find that such reports are necessary to protect the health, safety or welfare of the people of California.

The existing provisions for alterations to existing lighting systems require completion of certain reports, called compliance documentation, regarding the efficiency measures incorporated into buildings. The reports collect the information necessary for local building officials, building owners and occupants, and contractors to ensure that the measures are properly installed and operating correctly, so that the anticipated energy, environmental and cost benefits will actually be achieved. The revised provisions necessarily require that different information be reported for certain nonresidential lighting alteration projects, but do not require the preparation of additional reports compared to what is required under existing law. Reporting is expected to be accomplished using amended versions of current forms. Construction projects pursuing the option of reducing rated power at full light output would describe the installed lighting before and after the project on the compliance documentation and thereby show that the percent reduction target was reached. Accordingly, we find and conclude that it is necessary that these reporting requirements apply to businesses, in order to protect the health, safety and welfare of the people of California, as required by Government Code section 11346.3, subdivision (d).

2. Public Participation, Government Code section 11346.45

State agencies must “involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.” As described above, the Energy Commission conducted extensive outreach with industry and other stakeholders. We therefore find and conclude that the Energy Commission has complied with Government Code section 11346.45.

3. Economic Impact Assessment, Government Code sections 11346.3, 11346.5 and 11346.9

Sections 11346.3, 11346.5, and 11346.9 of the APA require State agencies to assess various potential economic and fiscal impacts of proposed regulations and potential al-

ternatives. Briefly stated, for the reasons explained in the Resolution adopting the balance of the 2016 Standards, and the underlying comprehensive analysis of the economic and fiscal impacts of the Standards, the Energy Commission finds that the revisions to the nonresidential lighting alteration provisions within the Standards:

- a) Will not result in a significant statewide adverse impact directly affecting business (including small businesses), including the ability of California businesses to compete with businesses in other states, and job creation;
- b) Will not have significant impacts on housing costs;
- c) Do not have alternatives that would be more effective in implementing the policies and provisions of the Warren-Alquist Act without increasing burdens, or that would be as effective and less burdensome to affected private persons in implementing the policies and provisions; and
- d) Will not impose any direct costs or direct or indirect requirements on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of the Government Code.

For complete details of the Energy Commission's fiscal and economic analysis of the 2016 Standards, see the Economic and Fiscal Analysis (Form 399), previously published with the NOPA.

D. The State Building Standards Law, Health & Safety Code Section 18930.

The 2016 Standards must be submitted to the California Building Standards Commission (CBSC) for approval, and are required by Health and Safety Code section 18930, subdivision (a), to be accompanied by an analysis which will, to the satisfaction of the CBSC, justify their approval. For the reasons described below, we find, determine, and conclude that these provisions of the 2016 Standards comply with each one of the applicable criteria.

1. The building standards do not conflict with, overlap, or duplicate other building standards.

There is no overlap or duplication with other building standards because the Energy Commission is the only state agency authorized to set efficiency standards for buildings, and for the same reason there should be no conflict with other building standards (i.e., no situation in which it is impossible to comply with both an Energy Commission standard and another building standard).

2. The building standards are within the parameters established by enabling legislation and are not expressly within the exclusive jurisdiction of another agency.

The California Energy Commission has statutory authority under Public Resources Code sections 25213, 25402, 25402.1, 25402.4, and 25402.5 to promulgate and update energy-efficiency standards for nonresidential buildings, including additions and alterations to existing buildings.

3. The public interest requires the adoption of the building standards.

The Building Standards Law states that the “public interest includes, but is not limited to, health and safety, resource efficiency, fire safety, seismic safety, building and building system performance, and consistency with environmental, public health, and accessibility statutes and regulations.” (Health & Safety Code, § 18930, subd. (a)(3).) These standards are in the public interest, as they increase resource efficiency, improve building and building system performance, and are consistent with environmental and public health statutes and regulations.

4. The building standards are not unreasonable, arbitrary, unfair, or capricious, in whole or in part.

The analysis of the record to date found nothing to demonstrate that these standards are unreasonable, arbitrary, unfair, or capricious, in whole or in part. The Energy Commission fully considered the public comments on these requirements and adjusted the proposed language in response. A complete discussion of the comments will be included in the Comments and Responses section of the Final Statement of Reasons for the rulemaking.

5. The cost to the public is reasonable based on the overall benefit to be derived.

The record demonstrates that the 2016 Standards are cost-effective. The added construction costs that the proposed revisions to the Standards will impose are reasonable based on the economic, environmental, and other benefits that will be derived from the Standards, and these benefits will substantially outweigh the costs. In other words, although building owners and operators will see increases in the costs of purchasing buildings, the savings in natural gas and electricity costs will outweigh these initial costs.

The nonresidential lighting alteration revisions, considered separately from the rest of the 2016 Standards, provide an optional alternative compliance criteria and threshold and do not require the installation of any materials or components beyond those already required by law. These revisions are not anticipated to result in increased costs of any kind, and it is anticipated that the optional compliance path will be chosen where it results in cost savings.

6. These building standards are not unnecessarily ambiguous or vague, in whole or in part.

Throughout the year-and-a-half-long rulemaking process, the Energy Commission made many changes to the proposed draft language in response to comments by those it directly affects. This has resulted in language that is clear, understandable to those it directly affects, and cannot, on its face, be reasonably and logically interpreted in multiple ways.

7. The applicable national specifications, published standards, and model codes have been incorporated in the standards as provided in the State Building Standards Law, where appropriate.

There are no federal laws applicable to nonresidential building lighting. However, the adopted 2016 Standards do incorporate (as have previous editions of the Standards) applicable federal energy standards for lighting that may be installed in buildings. In addition, these regulations adopted or exceeded the national standards of ASHRAE 90.1-2013.²⁰

8. The format of the building standards is consistent with that adopted by the California Building Standards Commission.

The 2016 Standards continue to use the format of the other building standards in the State Building Code.

9. The proposed building standards, if they promote fire and panic safety as determined by the State Fire Marshal, have the written approval of the State Fire Marshal.

The Energy Commission obtained the approval of the State Fire Marshal for the 2016 Standards, inclusive of proposed changes to nonresidential lighting alterations. The State Fire Marshal has determined that the proposed 2016 Building Energy Efficiency Standards do not promote fire or panic safety. This document is included in the record (see Docket Log for this proceeding, document TN 75653).

IV. ADOPTION OF REGULATIONS; DELEGATION TO EXECUTIVE DIRECTOR

Based on consideration of the full record of this proceeding, the Energy Commission hereby adopts the proposed Lighting Provisions, as revised in the 15-day language published and distributed for public comment on October 27, 2015.

The Energy Commission directs the Executive Director to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted regulations approved

²⁰ See Initial Statement of Reasons, pp. 6-7.

by the California Building Standards Commission and go into effect, including but not limited to preparing and filing all appropriate documents, such as the Final Statement of Reasons and the Notice of Determination of a Negative Declaration, and correcting grammatical, typographical, and other nonsubstantial errors, and publishing corrected versions of the complete 2016 Standards that include all the adopted provisions.

CERTIFICATION

The undersigned Secretariat to the Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on November 12, 2015.

AYE:

NAY:

ABSENT:

ABSTAIN:

Tiffani Winter,
Secretariat