

RESOLUTION NO: 16-0309-04B

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

RESOLUTION

WHEREAS, the California Energy Commission is charged with certifying eligible renewable energy resources for purposes of California's Renewables Portfolio Standard (RPS) pursuant to Public Utilities Code section 399.11 et seq. and Public Resources Code section 25740 et seq.; and

WHEREAS, the California Energy Commission has adopted guidelines as set forth in the *Renewables Portfolio Standard Eligibility Guidebook, Eighth Edition* (RPS Guidebook), to address the eligibility requirements and process for certifying electrical generation facilities as eligible renewable energy resources for the RPS pursuant to Public Utilities Code section 399.11 et seq. and Public Resources Code section 25740 et seq.; and

WHEREAS, Section VII.C of the RPS Guidebook establishes an appeal process for applicants and awardees of RPS certification to appeal staff's denial or revocation of RPS certification; and

WHEREAS, the process in Section VII.C of the RPS Guidebook relies in part on the procedures for requesting an investigation pursuant to the California Energy Commission's regulations for complaints and investigations in Title 20, California Code of Regulations, section 1230, et seq.; and

WHEREAS, the California Energy Commission's regulations for complaints and investigations in Title 20, California Code of Regulations, section 1230, et seq. were recently amended with an effective date of January 1, 2016, so it necessary to revise the appeal process in Section VII.C of the RPS Guidebook to reflect the recent amendments to section 1230, et seq., of Title 20; and

WHEREAS, to address this issue, staff is recommending revisions to Section VII.C of the RPS Guidebook, as shown in Attachment A, to address the recent amendments to section 1230, et seq., of Title 20; and

WHEREAS, on February 26, 2016, the California Energy Commission issued a public notice in accordance with Public Resources Code section 25747 that identified and discussed staff recommended revisions to the appeal process in Section VII.C of the RPS Guidebook, and offered stakeholders and interested member of the public an opportunity to comment on staff's recommended revisions; and

WHEREAS, the California Energy Commission's legal office has considered the application of the California Environmental Quality Act (CEQA) to the adoption of staff's recommended revisions to the appeal process in Section VII.C of the RPS Guidebook and concluded that the adoption of these revisions is exempt from CEQA, because it is not a "project" subject to CEQA pursuant to Title 14, California Code of Regulations, section 15378 (b)(2), in that it deals with the continuation of administrative and maintenance activities related to general policy and procedure making, and because the action is exempt under the "common sense" exception of Title 14, California Code of Regulations, section 15061 (b)(3), where it can be seen with certainty that there is no possibility the action may have a significant effect on the environment; and

WHEREAS, the California Energy Commission has reviewed staff's recommended revisions to the appeal process in Section VII.C of the RPS Guidebook, as shown in Attachment A, and finds that the adoption of these revisions is exempt from CEQA for the reasons concluded by legal counsel, and accepts and approves these revisions for the purpose of implementing the RPS; and

THEREFORE BE IT RESOLVED, the California Energy Commission hereby adopts staff's recommended revisions to the appeal process in Section VII.C of the RPS Guidebook as shown in Attachment A.

The Executive Director, or his designee, is hereby authorized and directed to implement the adopted revisions to the appeal process in Section VII.C of the RPS Guidebook.

CERTIFICATION

The undersigned Secretariat to the California 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 March 9, 2016.

AYE:

NAY:

ABSENT:

ABSTAIN:

Tiffani Winter,
Secretariat

ATTACHMENT A

Revisions to Appeal Process in Section VII.C of the RPS Guidebook, Eighth Edition, to Address Amendments to Regulations in CCR, Title 20, Section 1230, et seq.

The revisions that follow to Section VII.C are shown in underline and strikeout font.

C. Reconsideration of RPS Certification

Pursuant to Public Resources Code section 25747, applicants and awardees of RPS certification may appeal the Energy Commission's denial or revocation of RPS certification under the *RPS Guidebook*. Appeals will be considered as provided in this section only upon a showing that factors other than those described in the *RPS Guidebook* were applied by the Energy Commission in denying or revoking RPS certification.

1. Executive Director Reconsideration

An applicant or awardee may petition the Executive Director for reconsideration if his or her application for RPS certification was denied or the RPS certification revoked. The petition for reconsideration shall be in writing and shall be submitted, together with any supporting documentation, to the Office of the Executive Director at the following address within **30 days** of the date of the notice of RPS certification denial or revocation.

California Energy Commission
Office of the Executive Director
1516 9th Street, MS-39
Sacramento, CA 95814-5512

The petition shall specify the basis for the appeal, state why the petitioner believes the RPS certification denial or revocation is improper given the eligibility criteria for RPS certification, explain any supporting documentation filed with the petition, identify any legal authority or other basis supporting the petitioner's position, and identify the remedy sought.

If the petition for reconsideration is complete, the Executive Director shall direct staff to perform an evaluation of the petition. Within 30 days of receiving a complete petition, the Office of the Executive Director shall provide a written response to the petition that identifies the action the Executive Director intends to take and the basis for that action. This action may include 1) denying the petition based on the lack of merit, lack of jurisdiction, or insufficient evidence, 2) conducting further investigation, 3) correcting or modifying prior staff action, or 4) taking other appropriate action, including rejecting the petition for being incomplete. ~~issue a decision based on the petition and the written response of Energy Commission staff.~~

If the Executive Director denies the petition for lack of merit, lack of jurisdiction, or insufficient evidence, ~~If petitioner disagrees with the decision of the Office of the Executive Director, the~~

petitioner may appeal the ~~denial decision~~ to the Energy Commission in accordance with Section VII.C.2: Energy Commission Appeals.

2. Energy Commission Appeals

Within **30 days** of the date of the ~~decision of the Office of the Executive Director's written response denying the petition~~, the appealing party may file a letter of appeal to the Energy Commission Chair. The letter of appeal shall be submitted to the Energy Commission Chair and processed as an appeal from a request for investigation pursuant to the Energy Commission's regulations ~~in for complaints and investigations~~, Title 20, California Code of Regulations, section ~~1232.5, 1230, et seq.~~ The letter of appeal shall state the basis for challenging the Executive Director's denial. ~~include the information specified in Title 20, California Code of Regulations, section 1231 (b). In place of the information specified in section 1231 (b)(2), (b)(4), and (b)(6), the letter of appeal shall identify the eligibility criteria in the RPS Guidebook that the appealing party believes were applied incorrectly in denying or revoking RPS certification. Energy Commission staff shall be designated the respondent in the letter of appeal.~~

In addition, ~~to the information required by Title 20, California Code of Regulations, section 1231,~~ the letter of appeal shall include a copy of the petition for reconsideration, ~~and all supporting documentation submitted with the petition, and a copy of the Executive Director's written response.~~ written decision of the Office of the Executive Director.

Within 45 days of the filing of a complete letter of appeal, the Energy Commission Chair shall issue a written order sustaining the Executive Director's denial, modifying it, overturning it, or referring the matter to an Energy Commission committee or the full Energy Commission for further evaluation.

An applicant or awardee seeking to file a petition for reconsideration or appeal pursuant to this section may contact the Public Adviser's Office for information on the filing process. The contact information for the Public Adviser's Office is:

California Energy Commission
Public Adviser's Office
1516 9th Street, MS-12
Sacramento, CA 95814-5512
e-mail: PublicAdviser@energy.ca.gov