

CALIFORNIA
ENERGY
COMMISSION

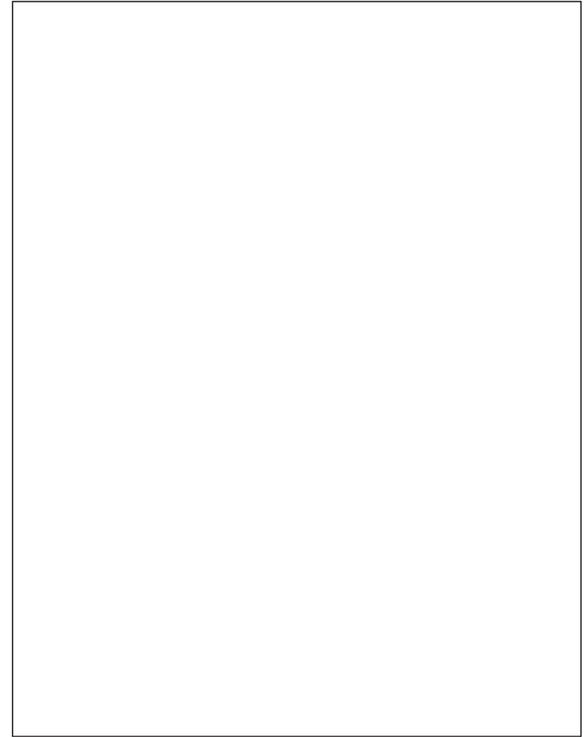
RULES OF
PRACTICE AND
PROCEDURE
&
POWER PLANT SITE
CERTIFICATION
REGULATIONS

SITING REGULATIONS

AUGUST 2000
P800-00-007



Gray Davis, *Governor*



**CALIFORNIA
ENERGY
COMMISSION**

William J. Keese,
Chairman

Commissioners:
Michal C. Moore, Ph.D.
Robert A. Laurie
Robert Pemell
Arthur H. Rosenfeld

Steve Larson
Executive Director

William M. Chamberlain,
Chief Counsel
OFFICE OF CHIEF COUNSEL

Mary D. Nichols,
Secretary for Resources

TITLE 20. ENERGY COMMISSION

DIVISION 2. STATE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

CHAPTER 1. GENERAL PROVISIONS

Article 1. Construction of Regulations

Section		
1001.	Interpretation	1
1002.	Service on the Commission	1
1003.	Computation of Time	1

CHAPTER 2. RULES OF PRACTICE AND PROCEDURE

Article 1. Commission Meetings

Section		
1101.	Scope	2
1102.	Meetings Scheduling	2
1103.	Notices and Agenda	2
1104.	Meetings	2
1105.	Permanent Record	3

Article 2. General Provisions

Section		
1200.	Scope	4
1201.	Definitions	4
1202.	Right of Any Person to Comment	5
1203.	Powers of the Chairman	6
1204.	Designation of Committees and Presiding Member; Quorum	6
1205.	Designation of Hearing Officer; Responsibilities	7
1206.	Representatives	7
1207.	Intervenors	7
1208.	Conferences; Purpose; Notice; Order	8
1209.	Form of Submissions	8
1209.5	Electronic Filing	9
1210.	Filing by Parties	10
1211.	Submission of Exhibits; Filing	11
1212.	Rules of Evidence	11
1213.	Official Notice	12
1214.	Record and Transcript	12
1215.	Interlocutory Orders and Appeals	12
1216.	Ex Parte Contacts	13

Article 3. Rulemaking and Informational Hearings

Section
1220. Scope 13
1221. Petitions 14
1222. Commission Orders 15
1223. Notice 16
1224. Use of Testimony 16
1225. Questioning 16

Article 4. Complaints and Investigations

Section
1230. Scope 17
1231. Complaints and Requests for Investigation; Filing 17
1232. Hearing and Notice Procedures..... 18
1233. Answers to Complaints and Requests for Investigation 19
1234. Proposed Decision 20
1235. Public Participation and Intervention 20
1236. Commission Decision 20

DIVISION 2. ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

CHAPTER 5. SITE CERTIFICATION

Article 1. General Provisions Applicable to Notices and Applications

A. Scope and Definitions

Section
1701. Scope of Regulations 21
1702. Definitions 21

B. Filing and Information Requirements for Notices and Applications

Section
1704. Information Requirements for Notices and Applications 24
1705. Form of Submissions 26
1706. Number of Copies 26
1707. Authority and Verification 27
1708. Fees 27
1709. Filing of Notices and Applications for Certification; Data Adequacy Review and Docketing 28

Section		
1709.5.	Prefiling Review	29
1709.7	Informational Hearing, Site Visit, and Schedule	29
1709.8	Withdrawal of Notice or Application	30

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

Section		
1710.	Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.....	31
1711.	Right of Any Person to Comment.....	32
1712.	Right to Become a Party; Rights and Duties	32
1712.5.	Staff as an Independent Party	32
1713.	Summary of Notice or Application; Distribution	33
1714.	Distribution of Copies to Public Agencies; Request for Comments	33
1714.3.	Agency Comments on a Notice; Purpose and Scope	34
1714.5.	Agency Comments on an Application; Purpose and Scope	35
1715.	Reimbursement of Local Agencies	36
1716.	Obtaining Information	38
1716.5.	Motions, Hearings, Decision	39
1717.	Distribution of Pleadings, Comments, and Other Documents	39
1718.	Prehearing Meetings; Purposes	40
1718.5.	Prehearing Conferences; Hearing Order	41
1719.	Consolidation or Severance of Proceedings	41
1720.	Reconsideration of Decision or Order	42
1720.2.	Termination of NOI, AFC, and SPPE Proceedings	42
1720.3.	Construction Deadline	43
1720.4.	Effective Date of Decisions	43
1720.5.	Demand Conformance	43
1720.6.	Demonstration Projects	43

Article 2. Procedures for Considering Notices of Intention
to File an Application for Certification

Section		
1721.	Purpose of Notice and Notice of Intention Proceeding	44
1722.5.	Air Quality Report on Notice; Preparation; Contents; Testimony	46
1723.	Nonadjudicatory Hearings; Purposes and Procedures	47
1723.5.	Presentation of Evidence; Burdens of Producing Evidence; Burden of Proof	48
1724.	Summary and Hearing Order; Preparation; Contents; Distribution	49
1725.	Adjudicatory Hearings	49
1726.	Final Report; Preparation; Distribution	50
1726.5.	Requests for PUC Comments	50
1727.	Final Report and Proposed Decision Hearings	50
1729.	Nonapprovable Sites or Noncertifiable Sites	51

Section		
1730.	Approval; Required Finding for Air Quality	52
1731.	Environmentally Unacceptable Sites	52

Article 3. Procedures for Considering
Applications for Certification

Section		
1741.	Application Proceeding; Purpose and Objectives	53
1742.	Review of Environmental Factors; Staff and Agency Assessment.....	53
1742.5	Environmental Review; Staff Responsibilities	54
1743.	Review of Safety and Reliability Factors; Staff and Agency Assessment	54
1744.	Review of Compliance with Applicable Laws	55
1744.5.	Air Quality Requirements; Determination of Compliance	55
1745.	Location of Hearings and Conferences	56
1747.	Final Staff Assessment	56
1748	Hearings; Purposes; Burden of Proof	56
1749.	Presiding Member’s Proposed Decision; Distribution; Comment Period	57
1751.	Presiding Member’s Proposed Decision; Basis	58
1752.	Presiding Member’s Proposed Decision; Contents	58
1752.3.	Presiding Member’s Proposed Decision; Air Quality Findings.....	61
1752.5.	Presiding Member’s Proposed Decision; CEQA Findings	61
1752.7.	Presiding Member’s Proposed Decision; 61 Findings for a Multiple Facility Site	61
1753.	Revised Presiding Member’s Proposed Decision	62
1754.	Hearings on Presiding Member’s Proposed Decision	62
1755.	Final Decision	62
1757.	Multiple-Facility Sites, Review Schedule	63
1765.	Projects Exempted from Notice Requirements; Application Procedures.....	64
1768.	Notice of Decision; Filing with Resources Agency and the Office of Planning and Research	64

Section		
1769.	Post Certification Amendments and Changes	64
1770.	Compliance Verification	66

Article 4. Additional Provisions Applicable to
Geothermal Notices and Applications

A. General Provisions

Section		
1801.	Applicability of Regulations	67
1802.	Policies of the Commission on the Siting of Geothermal Power Plants	67
1803.	Alternative Certification Processes for Siting Geothermal Power Plants.....	68
1804.	Special Geothermal Definitions	68
1809.	Determination of Availability of Commercial Resource	69

B. Delegation of Geothermal Power Plant
Siting Authority to Local Government

Section		
1860.	Policy and Purpose	70
1861.	Counties Eligible to Petition for Delegation of Authority	71
1862.	Contents of Petition	71
1863.	Equivalent Certification Program Requirements	72
1864.	Commission Staff Analysis	73
1865.	Air Quality Determinations	74
1866.	Record of Proceedings	74
1867.	Commission Action on Petition	74
1868.	Appeals to Commission	75
1869.	Commission Action on Appeals	75
1870.	Revocation of Delegation	75

Article 5. Small Power Plant Exemptions

Section		
1934.	Statement of Purpose	76
1936.	Filing Applications for Exemption	76
1940.	Notice of Application.....	76
1943.	Presentation of Evidence	77
1944.	Hearings	77
1945.	Final Argument and Decision	77
1946.	Content of Decision	78
1947.	Modifications of Deadlines	78

Article 6. Powerplant and Transmission Line
Jurisdictional Investigations

A. Definitions

Section		
2001.	Definitions	78
2003.	Generating Capacity	78

B. Expedited Clearance Process

Section		
2010.	Petition For Expedited Clearance; Filing	80
2011.	Notice of Petition for Expedited Clearance	81
2012.	Clearance Order	81

APPENDIX A.	Information Requirements for a Nongeothermal Notice of Intention	81
APPENDIX B.	Information Requirements for an Application	90
APPENDIX C.	Information Requirements for a Geothermal Notice of Intent	110
APPENDIX F.	Informational Requirements for a Small Powerplant Exemption	121

CHAPTER 6. ENVIRONMENTAL PROTECTION

Article 1. Implementation of the California
Environmental Quality Act of 1970

Section		
2305.	Initial Study	122
2306.	Negative Declaration	122
2308.	Fees for EIR or Negative Declaration Expenses	122

CHAPTER 7. ADMINISTRATION

Article 2. Disclosure of Commission Records

Section		
2501.	Policy	123
2502.	Scope	124
2503.	Construction and Definitions	124
2504.	Inspection and Copying	125
2505.	Designation of Confidential Records	127
2506.	Request for Inspection or Copying of Confidential Records	129
2507.	Disclosure of Confidential Record	132
2508.	Pending Requests for Confidentiality	133
2509.	Security of Confidential Records	133
2510.	Delegation of Authority and Responsibilities	134
2511.	Information Practices Act	134

Article 3. Role of Public Adviser

Section		
2551.	Application of Article	134
2552.	Definitions	134
2553.	Overall Duty of the Public Adviser	135
2554.	The Adviser's Duty to Refrain from Advocating Substantive Positions	135
2555.	The Adviser's Duty Within the Commission	135
2556.	The Adviser's Duties In Advising Members of the Public	135
2557.	Additional Duties	136

CHAPTER 1. GENERAL PROVISIONS

Article 1. Construction of Regulations

/ 1001. Interpretation.

The regulations in this chapter supplement the Warren-Alquist State Energy Resources Conservation and Development Act (Division 15 of the Public Resources Code).

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

/ 1002. Service on the Commission.

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

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

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25218(c), Public Resources Code.

/ 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 Sunday or holiday as defined in Sections 10 and 12 of the Code of Civil Procedure and then such day is also excluded.

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 Meetings

/ 1101. Scope.

This article only applies to meetings conducted under Public Resources Code Section 25214.

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

/ 1102. Meetings--Scheduling.

(a) The commission shall meet at least once every month.

(b) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairman. The chairman may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

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

/ 1103. Notice and Agenda.

(a) Time and Distribution. Notices shall be given to all members, ex officio members, the public adviser, to all parties to proceedings on the agenda, and to all persons who request in writing such notice.

(b) Agenda. The agenda shall be prepared by the executive director and shall include any item proposed by any member, the public adviser or the executive director.

(c) Emergencies. In all public emergency cases, every member and ex officio member and the public adviser shall be notified in person, by telephone, or by telegram.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25214 and 25217(a), Public Resources Code; and Section 11125, Government 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 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.

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.

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

/ 1105. Permanent Record.

(a) The commission shall keep minutes of its meetings. Minutes shall be approved by the full commission and, upon approval, shall be signed by the chairman or other person designated by the chairman. Signed minutes shall be the original evidence of actions taken at any meeting, including the text of any resolutions adopted.

(b) Commission public meetings shall be recorded by stenographic reporter or electronic recording or both. The transcripts or recordings shall be kept at least one year and shall be available to the public for review at the commission's main office and such other offices as the commission may designate.

(c) Any person may photograph or record any public meeting of the commission so long as it does not disrupt the orderly conduct of business.

(d) Any person may petition the commission to correct a transcript of his own statements. Such petition shall be made within sixty days after the transcript has been made available to the public at the commission's main office. The commission shall consider any such petition as an item on the consent calendar pursuant to Section 1104(c) of these regulations.

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

Article 2. General Provisions

/ 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.

NOTE: Authority cited: Section 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) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

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

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

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

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

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

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

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

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

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

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

/ 1202. Right of Any Person to Comment.

(a) Any person 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 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 of the Chairman.

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

(a) Request and secure such information as is relevant 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 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, admitting or excluding evidence, receiving exhibits, designating the order of appearance of persons making oral comments or testimony, 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 and the staff in consultation with the public adviser 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: Section 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.

(d) If a presiding member is unavailable during any portion of the proceedings, he 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 chairman may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The 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 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. Intervenors.

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

(b) In a power plant siting case, the petition shall be filed at least 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, 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, and may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner.

(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. Conferences; Purpose; Notice; Order.

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

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

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

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

/ 1209. Form of Submission.

(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 (8½) 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 the title page or cover:

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

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

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

(e) Materials shall be deemed filed as of the date upon which such material is served upon the appropriate officer of the commission, or if mailed, as of the date upon which such material is deposited in the mail, first class postage prepaid.

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;

- (4) One posted to an FTP site; or
- (5) 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: dockets@energy.state.ca.us;
- (3) by first class mail, or other equivalent delivery service, with postage prepaid; or
- (4) in any other delivery method approved by the Executive Director.

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

NOTE: Authority cited: Sections 25216.5(a), 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.

/ 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) 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.

(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.

/ 1215. Interlocutory Orders and Appeals.

(a) During proceedings before a committee, party may request that a ruling of the committee or presiding member be issued in the form of a written order. Any such request shall be made no later than five calendar days following the ruling.

(b) Any party may petition the full commission to review any order prepared pursuant to subsection (a) of this section. Any such petition shall be filed within ten days of the date of the order being issued; provided, however, that rulings of the presiding member or committee may not be appealed during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instances, the matter shall be referred forthwith by the presiding member to the commission for determination.

(c) Unless the commission acts upon questions referred by the presiding member to the commission or upon a petition to review an order of the presiding member or committee within thirty (30) days after the referral or filing of the petition, whichever is later, such referrals or petitions shall be deemed to have been denied. The commission may act by formally denying the petition or by vacating or amending the committee order.

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

/ 1216. Ex Parte Contacts.

Commissioners and assigned hearing officer(s) shall avoid any oral or written communication with a representative of any party to any adjudicatory proceeding pending before the commission including those members of the commission staff who have been involved or are likely to be involved as principals in case management or who have participated or are likely to participate in the preparation or presentation of staff testimony, documentary evidence, or cross-examination concerning any substantive issue involved in the proceeding; provided, however, that communications contained in the formal record at a commission hearing shall not be prohibited.

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

(b) All of the written communications received by a commissioner or hearing officer which relate to substantive issues raised in an adjudicatory proceeding before the commission shall be included in the public file on the proceeding and shall be subject to rebuttal on the record by any party affected.

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

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

Article 3. Rulemaking and Informational Hearings

/ 1220. Scope.

(a) "Rulemaking proceedings" shall include any hearings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application, which implements, interprets or makes specific any provision of Division¹⁵ of the Public Resources Code or any other statute enforced or administered by the commission.

(b) "Informational proceedings" shall include any hearings designed to gather and assess information to assist the commission in formulating policies; informing the public of commission actions; or obtaining public comment and opinion.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

/ **1221. Petitions.**

(a) Any person may petition the commission to request rulemaking hearings. Such petition shall include:

- (1) the name, address, and telephone number of the petitioner;
- (2) the substance or nature of the regulation, amendment, or repeal requested;
- (3) the reasons for the request;
- (4) reference to the authority of the commission to take the action requested.

(b) Such petition shall be filed with the executive director who shall within seven (7) days after its filing determine whether the petition contains the information specified in subsection (a).

(1) If the executive director determines that the petition is complete, he or she shall so certify in writing and shall inform the petitioner.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner accompanied by a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(c) Upon certification by the executive director, the commission shall, within thirty (30) days from the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing the staff to prepare an appropriate order pursuant to section 1222 of these regulations.

(d) Nothing in this section shall operate to limit the opportunity of any member of the public to be heard at commission meetings and hearings, as provided by section 25214 of the Public Resources Code.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11347 and 11347.1, Government Code.

/ 1222. Commission Orders.

(a) The commission may, upon its own motion or upon granting a petition filed pursuant to section 1221 of these regulations, adopt an order to institute a rulemaking proceeding in accordance with the procedures of Sections 11346.4, 11346.5, 11346.7, and 11346.8 of the Government Code.

(b) The commission may, upon its own motion, adopt an order to institute an informational proceeding. The order shall include:

(1) the date of the first hearing;

(2) a statement indicating whether the commission or a committee thereof will hold additional hearings on the matter;

(3) a statement of the authority pursuant to which the hearing is ordered, and a reference to any code sections or other provisions of law pursuant to which the information is to be gathered or disseminated;

(4) a statement of the nature and purpose of the proceedings;

(5) a statement requiring the presence and participation of such persons as the commission may direct, consistent with the nature and purpose of the proceedings.

(c) In addition to the requirements of subsections (a) and (b) of this section, every order instituting hearings pursuant to this section shall contain:

(1) a statement informing members of the public of the function and availability of the public adviser;

(2) a statement indicating the time during which written comments will be received, and the manner by which such comments shall be filed;

(3) a statement that any person may make oral comments on the subject of the proceeding;

(4) a statement setting forth additional procedures deemed necessary by the commission and not inconsistent with these regulations. Such procedures may include one or more provisions contained in section 1212 of these regulations.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210 and 25214, Public Resources Code.

/ 1223. Notice.

(a) Notice of a rulemaking proceeding shall be given in accordance with Government Code Section 11346.4.

(b) At least fourteen (14) days prior to the first hearing in an informational proceeding ordered pursuant to Section 1222(b), the executive director shall cause notice of the hearing to be mailed to every person who requested such notice in writing, to every person requested to participate in such proceedings, and to any person who the executive director, in conjunction with the public adviser, determines to be concerned with the subject matter of the proceeding.

(c) In addition to the requirements of subsections (a) and (b) of this section, notice of additional hearings shall be required at least ten (10) days prior to the commencement of such hearings.

(d) Nothing in this section shall preclude the commission from publishing notice in such additional forms or media as the executive director, in conjunction with the public adviser, may prescribe.

(e) A copy of the order adopted pursuant to Section 1222 of these regulations shall accompany the initial notice prepared and mailed pursuant to this section, unless a copy of the order has been previously mailed to those persons who would receive such notice.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resource Code.

/ 1224. Use of Testimony.

(a) The commission, or a committee thereof, may require by order instituting hearings, prehearing conference order, or other proper notice that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.

(b) The presiding member may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.

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

/ 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.

Article 4. Complaints and Investigations

/ 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, 25218(e), and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 25534.1, 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 person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

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

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

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

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

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

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

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

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

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

(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, 25218(e), and 25539, Public Resources Code.

Reference: Section 11180, Government Code; Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 25900, 25967, and 25983, Public Resources Code.

/ 1232. Hearing and Notice Procedures.

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

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

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

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

(c) The notice shall contain:

- (1) the names and addresses of all named complainants, petitioners, and respondents;
- (2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;
- (3) an explanation of the action the commission may take;
- (4) the date, place, and time of the first hearing in the matter; and
- (5) a statement concerning the availability of the public adviser.

NOTE: Authority cited: Sections 25213, 25218(e), 25539, Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 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 Section 1231(b)(7) or 1232(b) within 30 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, 25218(e), and 25539, Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 25900, 25967, and 25983, Public Resources Code.

/ **1234. Proposed Decision.**

(a) 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.

(b) To the extent reasonably possible, the proposed decision shall be made available within 14 days following the close of hearings held pursuant to Section 1232.

(c) The proposed decision shall contain an explanation and analysis of the facts and issues involved in the case, and recommendations for disposition by the full commission. The committee or hearing officer shall serve a copy of the proposed decision upon all parties to the hearings on the matter and shall schedule the matter for consideration by the full commission at the earliest reasonable date, but in no event sooner than 10 days after service of the proposed decision.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

/ **1235. 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 become a formal party by intervening pursuant to Section 1207.

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

/ **1236. Commission Decision.**

(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall:

- (1) adopt, modify, or reject the proposed decision; or
- (2) remand the matter to the committee or hearing officer for further hearings; or
- (3) reopen 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.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

CHAPTER 5. SITE CERTIFICATION

Article 1. General Provisions Applicable to Notices and Applications

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.

(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 6 of this chapter shall apply to the consideration of all powerplant and transmission line jurisdictional determinations.

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 et seq. as well as the following definitions shall apply:

(a) "Administrative record" means all materials that have been entered into the docket on 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) "Committee" means the committee of the commission appointed pursuant to Section 1204 of these regulations to conduct proceedings on a notice or application.

(d) "Environmental documents" means draft environmental impacts 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.

(e) "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.

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

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

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

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

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

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

(n) "Related Facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in connection with a geothermal exploratory project or geothermal field development project, and absent unusual or 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), and 25541.5, Public Resources Code.
Reference: Sections 21061.1, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; Title 14, California Code of Regulations, section 15364.

B. Filing and Information Requirements for Notices and Applications

/ 1704. Information Requirements for Notices and Applications.

(a) General Requirements. All notices and applications shall conform to the following requirements:

(1) Except where otherwise indicated, any descriptions, statements, analyses, and discussions required in the notice or application shall extend to the site and related facilities.

(2) An applicant may incorporate by reference any information developed or submitted in any previous commission proceeding, provided that the notice or application contains a summary of the referenced material, identifies the proceeding in which it was submitted, and explains the relevance of the material to the information requirement. To the extent possible, the applicant should rely on findings, conclusions, analyses, policies, and other guidelines adopted or established in the most recent Biennial Report in order to satisfy the information requirements.

(3) The notice or application shall include or reference the following:

(A) Descriptions of all significant assumptions, methodologies, and computational methods used in arriving at conclusions in the document;

(B) Descriptions, including methodologies and findings, of all major studies or research efforts undertaken and relied upon to provide information for the document; and a description of ongoing research of significance to the project (including expected completion dates); and

(C) A list of all literature relied upon or referenced in the documents, along with brief discussions of the relevance of each such reference.

(4) Each principal subject area covered in a notice or application shall be set forth in a separate chapter or section, each of which shall identify the person or persons responsible for its preparation.

(b) The informational requirements for notices, applications for certification, and applications for a small powerplant exemption are contained in this section and in appendices to this Chapter. Maps required in this section and in the appendices shall be provided at the scale specified in the appendices, except that applicants may provide maps at a different scale if the maps are legible and if a written explanation of why this different scale is more appropriate is included in the notice or application. The term region means a geographic area that is normally contiguous and exhibits similar geographic characteristics. The term vicinity means both that area in close proximity to the project site and which receives a preponderance of the direct impacts of the project. The area referred to by the terms vicinity and region will overlap, although, in most circumstances, the vicinity will be part of the region. The size of the region and vicinity that should be discussed in the filing will vary depending on the project's location (e.g., rural, urban, coastal), its technology (e.g., nuclear, coal, geothermal), and by technical area. Applicants should use their professional judgment in determining the appropriate size of the region and vicinity to be discussed in the application. A statement explaining the extent of the area described for each technical area shall be included.

(1) The notice of intention shall contain all the information specified in Appendix A to this chapter for a nongeothermal site and related facilities, and Appendix C for a geothermal site and related facilities.

(2) The application for certification shall contain all information specified by Appendix B of this chapter and the commission decision approving the notice, if any.

(3) Except where otherwise indicated, any descriptions, statements, analyses, and discussions required in a geothermal notice or application shall extend to the geothermal power plant and associated geothermal field, including, but not limited to, wells that supply the power plant or re-inject geothermal fluids, resource conveyance lines, major access roads, storage sites, switchyards, waste disposal sites, and all other structures or improvements which are related to the power plant. Information and data concerning the associated geothermal field are required to the extent that they relate to the environmental impacts of the entire project or to the reliability of the proposed power plant. Absent new information or changed circumstances, incorporation of environmental impact reports on the geothermal field will fulfill the requirements for field information.

(4) Where required information on any aspect of the proposed geothermal power plant is unavailable, the geothermal notice may contain typical operating data or projections representative of the size and type of the facilities proposed, together with a discussion of the applicability of the data to the proposed facilities, an identification of limitations inherent in the representative data, an explanation for the unavailability of the required information, and an estimate of when such information will be available. The substitution of representative or projected information for the information requested in Appendix C is intended to allow and encourage the filing of a notice prior to the discovery or confirmation of commercial resources.

(5) The application for small powerplant exemption shall contain all the information specified by Appendix F.

NOTE: Authority cited: Sections 25213, 25216.5(a), 25218(e), and 25541.5, Public Resources Code. Reference: Sections 21080.5, 25308.5, 25504, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, 25540.6, 25541, 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.**

(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 subsections (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 subsections (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 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.

/ 1708. Fees.

(a) A cashier's check in the amount required by Section 25802 of the Public Resources Code shall be prepared by the applicant and shall accompany the notice.

(b) Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.

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

/ 1709. Filing of Notices and Applications for Certification; Data Adequacy Review and Docketing.

(a) Upon the filing of any notice or application for certification, all documentation shall be reviewed by the executive director or a delegatee to determine whether the notice or application for certification contains the information required under section 1704 and is therefore complete. The executive director or a delegatee shall take into consideration the timely comments of the Air Resources Board, local air pollution control districts, other agencies, and members of the public prior to the determination of whether the notice or application for certification contains the information required under section 1704 and is therefore complete.

(b) No later than 30 days after the receipt of a non-geothermal notice or application and no later than 20 days after receipt of a geothermal notice or application for certification, the executive director shall file his or her recommendation on whether the notice or application for certification contains the information required under section 1704 and is therefore complete.

(c) No later than 45 days after receipt of a nongeothermal notice or application for certification, and no later than 30 days after receipt of a geothermal notice or application for certification, the commission shall act upon the executive director's recommendation as to whether the notice or application for certification contains the information specified in Section 1704 and is therefore complete. If the commission determines that the notice or application for certification is complete, the notice or application for certification shall be deemed accepted for the purpose of this section on the date that this determination is made. If the commission determines that the notice or application for certification is incomplete, the commission shall indicate, in writing, those parts of the notice or application for certification which fail to meet the information requirements and the manner in which it can be made complete.

(d) If the applicant files additional data to complete the notice or application for certification, the commission shall determine, within 30 days of the receipt of that data, whether the data is sufficient to make the notice or application for certification complete. The notice or application for certification shall be deemed filed on the date when the commission determines the notice or application for certification is complete if the commission has adopted regulations specifying the informational requirements for a complete notice or application for certification, but if the commission has not adopted regulations, the notice or application for certification shall be deemed filed on the last date the commission receives any additional data that completes the notice or application for certification.

(e) On or before acceptance of a notice or application for certification or upon filing of an application for a small powerplant exemption, a committee, a presiding member and a hearing officer shall be designated pursuant to Sections 1204(a) and 1205 to conduct proceedings on the notice or application.

NOTE: Authority cited: Section 25213 and 25541.5, Public Resources Code. Reference: Sections 25211, 25502, 25504, 25516.6, 25520, 25522, 25540.1, 25540.2, 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 the staff without a publicly noticed workshop.

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 or application for certification or the filing of an application for small powerplant exemption, the committee shall hold one or more informational presentations and site visits in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as

practicable to the proposed sites. Notice of the first informational presentation shall be mailed to all owners of land adjacent to the proposed sites.

(b) At or before the first informational presentation, the commission staff shall file with the committee a written statement summarizing the major issues that the staff believes will be presented in the case. This summary shall not preclude the staff or any other party from raising additional issues later in the case.

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

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

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

/ 1709.8. Withdrawal of Notice or Application.

(a) Any time after acceptance, the applicant may withdraw the notice or application by filing and serving on all parties written notice of withdrawal. The notice of withdrawal must be authorized and verified in the same manner as the original notice or application, as provided in Section 1707.

(b) Upon receipt of a properly executed withdrawal, the presiding member, or if there is none, the Chairman, shall immediately issue a written order to terminate the notice or application proceeding and close the docket. The records and documents of the proceeding shall continue to be maintained by the Docket Unit.

(c) If the applicant decides to go forward with a project after the notice or application proceeding is terminated, the applicant must file a new notice or application under Section 1709.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25216.5, Public Resources Code.

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

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

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public.

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

(c) The public adviser shall be consulted in the scheduling of locations, times, and dates for all hearings, presentations, conferences, workshops, meetings, and site visits so as to encourage not to preclude maximum public participation.

(d) Notice of hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof.

(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) 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) 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.

(h) Nothing in this section shall prohibit an applicant from informally exchanging information or discussing procedural issues with the staff without a publicly noticed workshop.

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 any 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) 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.

(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.

/ 1712.5. 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 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.

/ 1713. Summary of Notice or Application; Distribution.

(a) Upon filing of the notice or application, the executive director shall prepare a summary of such notice or application. The summary shall be concise and understandable, shall fairly describe the content of the notice or application using the applicant's own words whenever possible, and shall include a description of the commission's procedures concerning proceedings on the notice or application, as appropriate.

(b) As soon as practicable after its preparation, the executive director shall cause a copy of the summary to be mailed or otherwise delivered to public libraries in communities near the proposed sites, including the main branch of a public library in each county in which a facility is proposed to be located in whole or in part; to libraries in Eureka, Fresno, Los Angeles, San Diego, and San Francisco; and to all members, to the ex officio members, to the public adviser, to the hearing officer, to the general counsel, to the applicant, to any person who requests such mailing or delivery, and to all parties to the proceeding.

(c) As soon as practicable after its preparation, the executive director shall cause the summary to be published in a newspaper of general circulation in each county in which a site and related facility, or any part thereof, designated in the notice or application, are proposed to be located.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25505 and 25519(g), 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, to the Air Pollution Control District in which the project is located, to the Water Resources 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 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.

(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) 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, 1748, 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.

/ 1714.3. Agency Comments on a Notice; Purpose and Scope.

Any agency requested, pursuant to Section 1714 of this article, to transmit its comments and recommendations to the commission on a site and related facility proposed in the notice shall be requested to do each of the following:

(a) Identify each aspect of the proposed site and related facility for which the agency has land use or related jurisdiction or would have such jurisdiction but for the exclusive authority of the commission to certify sites and related facilities;

(b) List and summarize the nature of the laws, regulations, ordinances, or standards which the agency administers or enforces and which are applicable to the proposed site and related facility or would be applicable but for the commission's exclusive authority to certify sites and related facilities pursuant to Section 25500 of the Public Resources Code;

(c) Describe the nature and scope of the information requirements which the applicant must eventually meet in order to satisfy the substantive requirements of the agency; summarize the agency's procedures for resolution of such requirements and indicate the amount of time necessary to do so; describe any other studies, analyses, or other data collection which the applicant, agency, or commission should perform in order to resolve each substantive or permit requirement of the agency;

(d) Based upon available information, conduct a preliminary analysis and provide comments and recommendations to the commission regarding the design, operation, and location of the facilities proposed in the notice, in relation to environmental quality, public health and safety, and other factors on which the agency has expertise or jurisdiction. The preliminary analysis shall be limited to that necessary to advise the commission on whether there is a reasonable likelihood that the proposal will be able to comply with the agency's applicable laws or concerns. The analyses should identify aspects of the proposed site and facilities which are likely to disqualify a proposal as an acceptable site and related facility; and

(e) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the notice, the results of the agency's analyses, studies, or other review relevant to the notice.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25506 and 25509.5, Public Resources Code.

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

Any agency requested, pursuant to Section 1714 of this article, to submit its comments and recommendations to the commission on any aspect of the application shall be requested to do each of the following:

(a) Update as necessary the information requested or submitted by the agency during the notice proceedings;

(b) Perform or conduct such analyses or studies as needed to resolve any significant concerns of the agency, or to satisfy any remaining substantive requirements for the issuance of a final permit by the agency which would have jurisdiction but for the commission's exclusive authority, or for the certification by the commission for the construction, operation, and use of the proposed site and related facilities; and

(c) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the application, the results of the agency's analyses, studies, or other review relevant to the application. The agency may submit comments and

recommendations on any aspect of the application, including among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area, and other aspects of the design, construction, or operation of the proposed site and related facility.

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

/ 1715 Reimbursement of Local Agencies.

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for a powerplant or transmission line application in the absence of Commission jurisdiction, and

(B) the added costs of services performed directly in response to Commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise;

(2) expenses for which it receives payment from other sources;

(3) expenses incurred in advocating a position as a formal intervenor to the proceeding, except for the local district and Air Resources Board presentations pursuant to Section 1744.5; or

(4) entertainment and first class travel expenses.

(c) Procedure for approving reimbursement budgets.

(1) To be eligible for reimbursement, a local agency must receive a request for review from the Chairman, Presiding Member, or Executive Director.

(2) To apply for reimbursement, a local agency shall, within 21 days of receiving a request for review from the commission, file an itemized proposed budget with the staff and the applicant estimating the actual and added costs that are likely to be incurred during such review.

The proposed budget shall justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review. A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

(3) Within 10 working days of receiving a proposed budget, the staff shall notify the agency, in writing, whether the proposed budget is complete or incomplete. If the proposed budget is incomplete, the staff shall provide the local agency with a list of deficiencies that must be corrected to complete the proposed budget request.

(4) If neither the commission staff nor the project applicant files a written objection to the proposed budget within 10 working days after the proposed budget is determined to be complete, then the proposed budget is deemed approved.

(5) If a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.

(6) A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

(d) Procedure for approving reimbursement invoices.

(1) A local agency seeking reimbursement must receive approval of its proposed budget before it files an invoice for expenses actually incurred. Reimbursement may not exceed the approved budget.

(2) On either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.

(3) If the applicant does not object to the invoice within 10 days after receipt, then it shall pay the local agency the amount of the invoice within 14 days of the receipt of the invoice.

(e) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (c) above, or a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency, the staff shall notify the committee in writing of the dispute. The committee shall resolve the dispute by written order. The committee shall have discretion to determine whether and to what extent hearings are required to resolve the dispute.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25538, Public Resources Code.

/ 1716. Obtaining Information.

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

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

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

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

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

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

(g) If the requesting party or agency is unable to obtain information as provided in this section, such party or agency may petition the committee for an order directing the responding party to supply such information. The committee may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, either grant or deny the petition, in whole or in part. The committee may direct the commission staff to supply such of the information requested as is available to the staff.

(h) The committee shall have the authority to require from any electric utility, including any aggregator, scheduling coordinator, energy service provider, or independent power producer, information which is specific to the subject notice or application and reasonably necessary to make any decision on the notice or application; provided, however, that such information, or its equivalent, is not reasonably available from any party or from publicly available

records. Applications for confidentiality may be filed pursuant to Title 20, California Code of Regulations, section 2501 et seq.

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

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

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25502, 25519(b), and 25541, Public Resources Code; Section 11181, Government 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 twelve (12) copies with the Dockets Unit of the commission, or with the presiding member if presented during a hearing, as well as serve the document upon all parties and all other persons designated by the presiding member. Proof of service on such parties and other designated persons shall be filed with the twelve (12) copies provided to the commission. The presiding member may direct the executive director to provide such copies and their service upon all parties on behalf of any party for whom compliance with this section would impose an undue hardship.

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

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

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

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

/ 1718. Prehearing 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, and interested agencies 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 be held in or near the communities affected.

(c) Such meetings 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, 25522 and 25540.2, Public Resources Code.

/ 1720. Reconsideration of Decision or Order.

(a) For purposes of calculating deadlines pursuant to Section 25530 of the Public Resources Code, the date of adoption by the commission of a decision or order shall be the date that a written decision or order is docketed.

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

(c) The petition for reconsideration shall set forth with specificity the grounds for reconsideration, addressing any error in fact or law.

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

(e) The commission may stay the effective date of a decision or order pending reconsideration of the decision or order.

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

/ 1720.2. Termination of NOI, AFC, and SPPE Proceedings.

(a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion.

(b) A committee order terminating a proceeding must be approved by the full commission.

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.

/ **1720.3. Construction Deadline.**

The deadline for the commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

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

/ **1720.4. Effective Date of Decisions.**

Unless otherwise specified in the final decision on a notice or application, the effective date of the decision is the date that it is filed with the Docket Unit.

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.**

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

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

/ **1720.6. Demonstration Projects.**

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

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

**Article 2. Procedures for Considering Notices
of Intention to File an Application for Certification**

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

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

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

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

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

(4) Explains the need for the proposed facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

where resolution of such issues is necessary to determine the acceptability of one or more of the sites and related facilities proposed.

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

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25502-25516.6, Public Resources Code.

/ 1722.5. Air Quality Report on Notice; Preparation; Contents; Testimony.

(a) Upon filing of a notice, the local air district (or the Air Resources Board if the local district fails to participate) in which a site is located shall prepare and submit a report prior to the conclusion of the nonadjudicatory hearings held pursuant to Section 1723. Each agency submitting a report shall testify in support of the report at hearings on the notice. The report shall include, but not be limited to:

(1) A preliminary specific definition of best available control technology (BACT) for the proposed facility;

(2) A preliminary discussion of whether there is a substantial likelihood that the requirements of the applicable new source review rule and all other applicable air quality regulations can be satisfied by the proposed facility; and

(3) A preliminary list of conditions which the proposed facility must meet in order to comply with the applicable rules and regulations.

(b) The ARB shall review and submit written comments on each report. After considering each of the local air district reports, if the ARB is of the opinion that none of the proposed sites has a substantial likelihood of meeting the requirements of the applicable air quality regulations (including emission limitations), the ARB and commission staff, in consultation with the local districts and prior to the conclusion of the nonadjudicatory hearings, shall propose an alternative site or sites, in or near the applicant's service area, which has a greater likelihood of meeting the applicable air quality regulations and which merits further study. The proposal shall include the reasons therefor. If such a proposal is filed, the presiding member may direct the applicant to evaluate major siting constraints of the proposed alternative for presentation at the adjudicatory hearings held pursuant to Section 1725. Each air district and the ARB shall supplement their reports as necessary in response to changes in the applicant's proposal which may occur during the notice proceeding.

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

/ 1723. **Nonadjudicatory Hearings; Purposes and Procedures.**

The committee shall commence nonadjudicatory hearings on the notice pursuant to the hearing order issued by the presiding member.

(a) The hearings shall be used to provide information on the proposed sites and facilities to the public. The presiding member shall reserve a portion of each hearing to permit members of the public to question the applicant and staff about the proposals or about each party's contentions. Both parties shall make qualified persons available to answer questions on the matters scheduled for consideration at each hearing. The presiding member shall limit questions to the applicant and staff to those necessary to identify issues or solicit relevant information on the proposals and shall defer adjudication of identified issues until hearings held under Section 1725.

(b) The hearings shall be used to develop an evidentiary basis for the findings and conclusions required for a decision on the notice. The applicant, staff, and other parties shall present evidence in the hearings pursuant to Section 1723.5 and the hearing order. Testimony or evidence based upon statements of facts agreed to by the applicant or staff which set forth the ultimate positions of either party on need, public health and safety, and environmental acceptability may be admitted into evidence without the necessity of reading the entire statements into the record only if a supporting witness presents an informative summary of the facts and evidence at the hearing and any person so requesting is provided a reasonable opportunity to ask relevant, nonrepetitive questions of the sponsoring witnesses. The presiding member may require oral summaries of other joint statements of facts offered into evidence.

(c) The hearings shall be used to solicit the views and comments of the public, parties, and governmental agencies on the environmental, public health and safety, economic, social, and land use impacts of the facilities at the proposed sites.

(d) The hearings shall be used to identify issues which require adjudication, issues which may be deferred to the certification stage, and issues which may be eliminated from the proceeding. Issues may be raised by submitting comments or testimony which dispute the contentions of the applicant or staff, or by asking questions of witnesses at hearings. The presiding member may permit a party to present evidence to show that an apparently disputed matter presents no issue of fact, or may defer such evidence until the adjudicatory hearings. The presiding member shall determine whether the evidence presented on each matter is sufficient to raise a genuine, relevant, factual issue appropriate for adjudication in subsequent hearings.

(e) The presiding member shall conclude the hearings under this section whenever he or she is satisfied that the purposes of this section have been achieved and that the evidentiary record and issues are sufficiently developed to prepare the summary and hearing order required by Section 1724.

NOTE: Authority cited: Sections 25518(e) and 25541.5, Public Resources Code. Reference: Sections 25509.5, Public Resources Code.

/ **1723.5. Presentation of Evidence; Burdens of Producing Evidence; Burdens of Proof.**

(a) The applicant has the burden of proof and of producing evidence on each of the following:

- (1) The probable need for the proposed facilities;
- (2) A reasonable likelihood that the principal adverse impacts on the environment can be mitigated or avoided;
- (3) A reasonable likelihood that the facilities can be constructed and operated safely and reliably;
- (4) The suitability of the sites to accommodate the facilities;
- (5) The reasonableness of the likely financial impacts of constructing and operating the facilities; and
- (6) A reasonable likelihood that the construction and operation of the proposed facilities will comply with the federal, state, regional, and local laws, standards, ordinances, and land use plans which are applicable to the proposals.

(b) The staff shall present its independent assessment of the need for the facilities and of the adequacy of the measures proposed by the applicant to protect environmental quality and to protect public health and safety. The staff may also present evidence on any other matter relevant to the proceeding and shall present evidence on such matters and issues as the presiding member directs.

(c) Any party or person may propose modifications in the design, construction, location or other conditions to protect public health and environmental quality, to ensure safe and reliable operation, or to meet the standards, policies, and guidelines established by the commission. If the proponent of any such modification or condition demonstrates its apparent reasonableness, 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.

(d) The staff shall conduct an independent environmental assessment of the applicant's proposals and present a report on its findings at the hearings. The report shall summarize the principal adverse environmental effects of the applicant's siting proposals, evaluate the potential mitigation measures available to the applicant, and assess the feasibility of reasonable alternative sites and facilities other than those proposed by the applicant, which the staff believes may substantially lessen or avoid the principal adverse effects of the applicant's proposal. Any person may suggest one or more of such alternatives to the staff and committee for consideration in the staff report.

(e) Any party or person may propose that the commission approve any alternative site and related facility in lieu of or in addition to the applicant's proposals. The proponent of such

alternative siting proposal has the burden of presenting evidence to establish the suitability and acceptability of such proposal as set forth in subsection (a) of this section. The presiding member may also direct the staff to investigate any alternative siting proposal.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25509.5, 25511 and 25513, Public Resources Code.

/ **1724. Summary and Hearing Order; Preparation; Contents; Distribution.**

(a) After the conclusion of the nonadjudicatory hearings, and no later than 150 days after acceptance of the notice, the presiding member shall prepare and publish a summary of the hearing record and a hearing order pursuant to Public Resources Code sections 25512 and 25512.5 to guide subsequent adjudicatory hearings.

(b) The hearing order shall identify issues to be adjudicated in subsequent hearings, issues which have been eliminated, and issues which should be deferred to the certification proceeding. To the extent permitted by the record, the summary shall also include proposed findings on matters relevant to the final report and proposed conditions for filing an application.

(c) Based upon information presented in the hearings, the summary and hearing order shall briefly describe each siting proposal, shall summarize the principal significant environmental effects of each siting proposal, and shall describe reasonable alternatives and mitigation measures which could substantially reduce the adverse effects. The summary and hearing order shall list environmental issues regarding potential adverse effects, mitigation measures, and alternatives which require resolution in the subsequent adjudicatory hearings. The summary should briefly describe and discuss those environmental issues important to a decision on the notice.

(d) The presiding member shall publish notice of the availability of the summary and hearing order in a newspaper of general circulation for the county or counties where the sites are located.

(e) The presiding member shall provide all parties with a reasonable opportunity to submit comments, recommendations, and proposed findings and conclusions for the summary and hearing order prior to its preparation. The presiding member may hold a public conference to consider amendments to the hearing order after its publication.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25512 and 25512.5, Public Resources Code.

/ **1725. Adjudicatory Hearings.**

Pursuant to the hearing order, the assigned committee shall conduct adjudicatory proceedings as provided in Public Resources Code, Section 25513.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25513, Public Resources Code.

/ 1726. Final Report; Preparation; Distribution.

(a) The presiding member shall prepare a final report on the notice, as provided in Section 25514 of the Public Resources Code. The report shall propose such findings and conclusions as are warranted by the record of the proceeding; shall recommend either approval or disapproval of the notice and the reasonable conditions, if any, which must be satisfied before certification is granted; and shall contain a proposed decision on the notice.

(b) The final report shall contain the committee's responses to significant environmental points raised in the notice proceeding, including findings and conclusions on each of the environmental issues in the summary and hearing order or otherwise important to a decision on the notice. The report shall include findings on the need for and feasibility of any mitigation measures or alternatives considered in the hearings. The report shall include findings and conclusions on the relative merits and acceptability of each alternative site and related facility proposed and considered in the proceeding, and conditions for filing an application on each site and facility approved.

(c) The final report shall be distributed in the same manner as the summary and hearing order.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25514, Public Resources Code.

/ 1726.5. Request for PUC Comments.

If the final report recommends any modifications, conditions or criteria for any site and related facility requiring a certificate of public convenience and necessity from the Public Utilities Commission, the presiding member shall request the comments of the PUC in accordance with Section 25514.3 of the Public Resources Code.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25514.3, Public Resources Code.

/ 1727. Final Report and Proposed Decision Hearings.

(a) The Commission or the assigned committee may hold one or more hearings to consider any statements of the parties on the final report and the proposed decision, and the comments and recommendations of interested agencies and members of the public. Such statements may contain recommendations for amendments to the final report and proposed decision.

(b) The chairman or the presiding member may require that all statements by parties and other persons be filed in writing in advance of the hearings. No new or additional evidence shall be considered at the hearings under this section unless the commission or the assigned committee adopts a motion to reopen the evidentiary record. In such case, the commission or the

assigned committee shall afford such notice to the parties as appears fair and reasonable under the circumstances, but in no event shall such notice be given less than ten days prior to the hearings.

(c) Any member may propose an alternative decision, including supporting findings and conclusions. Such proposed decision may also be considered at the hearings under this section but need not be acted upon until the commission makes its decision on the notice. The commission or the assigned committee shall provide any party with a reasonable opportunity in the hearings or prior to adoption of the final decision to comment on any proposed decision.

(d) The commission shall adopt, reject, or amend and adopt, the final report and proposed decision.

(e) The decision shall be based exclusively on the evidentiary record of the proceedings on the notice. The decision shall conform to the requirements of Sections 25516, 25516.1, 25516.5, and 25516.6 of the Public Resources Code.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25515, 25516.1, 25516.5 and 25516.6, Public Resources Code.

/ **1729. Nonapprovable or Non-certifiable Sites.**

(a) The commission shall not find acceptable any site and related facility to which the provisions of sections 25526 or 25527 of the Public Resources Code apply unless the finding required by the applicable section has been made.

(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 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 of these regulations.

(3) For a site in an area listed in Section 25527, the applicant shall demonstrate to the Energy Commission that the proposed facility will cause no substantial adverse environmental effects on any such area. The commission's findings shall be contained in the proposed decision on the application.

(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 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.

/ **1730. Approval; Required Finding for Air Quality.**

The commission shall not approve any site and related facility unless it determines that there is a substantial likelihood that it will meet the applicable air quality regulations; provided, however, that if the commission determines that the facility is urgently needed, the applicant has made a good faith effort to find acceptable alternative sites and related facilities, and no otherwise approvable site has a substantial likelihood, it may approve the single site and related facility that is otherwise acceptable and that is most likely to meet all applicable air quality regulations. In such event, the commission shall request the ARB and local districts to appear at the hearings on the final report and advise the commission on which site is most likely to meet the requirements.

NOTE: Authority cited: Sections 25218, 25541.5, Public Resources Code. Reference: Sections 21081, 25516, Public Resources Code.

/ **1731. Environmentally Unacceptable Sites.**

(a) If the commission finds that the construction and operation of a power plant and related facilities at a site would cause a significant adverse effect on the environment, the commission shall follow the provisions of this section.

(1) The commission may find the site and related facilities acceptable despite the probability of a significant adverse effect if the commission finds that there is a reasonable likelihood that the adoption of feasible mitigation measures could substantially reduce the significant adverse effect.

(2) If the commission finds that there is not a reasonable likelihood that feasible mitigation measures could substantially reduce the significant adverse effect, and that there is available a feasible alternative that could avoid or substantially reduce the significant adverse effect, the commission shall find the proposed site unacceptable.

(b) This provision shall not apply to any notice for which only one site and related facility is required.

(c) This provision shall not enlarge the scope of environmental review required by Sections 1723 through 1726.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.5 and 25541.5, Public Resources Code.

Article 3. Procedures for Considering Applications for Certification

/ 1741. Application Proceeding; Purpose and Objectives.

(a) The purpose of an application proceeding is to ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality.

(b) The application proceeding shall be conducted in order to accomplish all of the following objectives:

(1) To ensure that no facility is certified unless it is found to be in conformity with the 12-year forecast of electric demand adopted pursuant to Section 25309(b).

(2) To ensure that the applicant incorporates into the project all measures that can be shown to be feasible, reasonably necessary, and available to substantially lessen or avoid the project's significant adverse environmental effects, and to ensure that any facility which may cause a significant adverse environmental effect is certified only if the benefits of such facility outweigh its unavoidable adverse effects.

(3) To ensure that the applicant takes all measures that can be shown to be feasible, reasonably necessary, and available to comply with applicable governmental laws and standards; to ensure that any facility certified complies with applicable federal law; and to ensure that any facility which fails to comply with an applicable local or state law or standard is certified only if such facility is required for public convenience and necessity and there are not more prudent and feasible means of achieving such convenience and necessity.

(4) To ensure safe and reliable operation of the facility.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21081, 25523, 25524 and 25525, Public Resources Code; 14 California Code of Regulations, sections 15091 and 15093.

/ 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.

(b) Upon acceptance of the application pursuant to Section 1709, 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 are 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.

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: Sections 25216.5(a), Public Resources Code. Reference: Section 25520(b), Public Resources Code.

/ 1744. Review of Compliance with Applicable Laws.

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

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

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

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

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.

(a) The applicant shall submit in its application all of the information required for an authority to construct under the applicable district rules, subject to the provisions of Appendix B(g)(8) of these regulations.

(b) The local air pollution control officer shall conduct, for the commission's certification process, a determination of compliance review of the application in order to determine whether the proposed facility meets the requirements of the applicable new source review rule and all other applicable district regulations. If the proposed facility complies, the determination shall specify the conditions, including BACT and other mitigation measures, that are necessary for

compliance. If the proposed facility does not comply, the determination shall identify the specific regulations which would be violated and the basis for such determination. The determination shall further identify those regulations with which the proposed facility would comply, including required BACT and mitigation measures. The determination shall be submitted to the commission within 240 days (or within 180 days for any application filed pursuant to Sections 25540 through 25540.6 of the Public Resources Code) from the date of the acceptance.

(c) The local district or the Air Resources Board shall provide a witness at the hearings held pursuant to Section 1748 to present and explain the determination of compliance.

(d) Any amendment to the applicant's proposal related to compliance with air quality laws shall be transmitted to the APCD and ARB for consideration in 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: Sections 25521, 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, and a need assessment, as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

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

/ **1748. Hearings; Purposes; Burden of Proof.**

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

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

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

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

(d) The hearings shall consider whether the proposed facilities are in conformity with the level of electricity demand adopted pursuant to Section 25309(b) of the Public Resources Code. The applicant and staff shall both present evidence in support of their positions on this issue.

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

(f) 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.

(g) 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.

/ 1749. Presiding Member's Proposed Decision; Distribution; Comment Period.

(a) At the conclusion of the hearings, the presiding member, in consultation with the other committee member shall prepare 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.

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

/ **1751. Presiding Member's Proposed Decision; Basis.**

(a) The presiding member's proposed decision shall be based exclusively upon 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: Sections 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) Whether and the circumstances under which the proposed facilities are in conformity with the 12-year forecast of statewide and service area electric power demands adopted pursuant to Section 25309(b) of the Public Resources Code.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

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

(k) 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.

(l) With respect to any facility which does not comply with an applicable state, local or regional standard, ordinance or law, finding 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.

- (m) Any other findings and conclusions relevant to the commission's decision.

NOTE Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25523, 25524, 25524.1(b), 25524.2(a) 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.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25524.5, Public Resources Code.

/ **1753. 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 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: Section 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 25519(c), 25522, 25523, Public Resources Code.

/ **1754. Hearings 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 hearings 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, 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.

(b) The chairman may require that certain statements by parties and other persons be submitted in writing in advance of the hearings. The commission shall not consider new or additional evidence at the hearings under this section unless due process requires or unless the commission adopts a motion to reopen the evidentiary record. In such case, the commission shall afford such notice to the parties as is fair and reasonable under the circumstances.

(c) Any member may propose an alternative decision, including supporting findings and conclusions. Such alternative may also be considered at the hearings under this section but need not be acted upon until the commission makes its final decision.

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

/ **1755. Final Decision.**

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

(b) The decision shall not certify any facility considered in the proceeding unless the commission’s findings pursuant to subsections (a), (f), (g), and (l) of Section 1752 are all in the affirmative.

(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:

(1) With respect to matters within the authority of the commission, that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects identified in the proceeding.

(2) 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.

(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:

(1) That specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the application proceeding; and

(2) 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, 25524, 25525-25527, 25529, and 25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

/ 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.

/ 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 Resources 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: Sections 25540.6, Public Resources Code.

/ 1768. Notice of Decision; Filing with Resources Agency and the Office of Planning and Research.

The executive director shall file a notice of the final decision with the Secretary of the Resources Agency and the Governor's Office of Planning and Research.

NOTE: Authority cited: Sections 25541.5, Public Resources Code. Reference: Section 25541.5, Public Resources Code.

/ 1769. Post Certification Amendments and Changes.

(a) Project Modifications

(1) After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed modifications, including new language for any conditions that will be affected;

(B) A discussion of the necessity for the proposed modifications;

(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;

(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;

(E) An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts;

(F) A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;

(G) A discussion of how the modification affects the public;

(H) A list of property owners potentially affected by the modification; and

(I) A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.

(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.

(3) If staff determines that a modification does not meet the criteria in subsection (a)(2), or if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2), the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it decides to assign the matter for further hearing before the full commission or an assigned committee or hearing officer. The commission may approve such modifications only if it can make the following findings:

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

(B) that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;

(C) that the change will be beneficial to the public, applicant, or intervenors; and

(D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information that was not available to the parties prior to Commission certification.

(4) The staff shall compile and periodically publish a list of petitions filed under this section and their status.

(b) Change in Ownership or Operational Control

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) A discussion of any significant changes in the operational relationship between the owner and operator;

(B) A statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) A statement verified by the new owner or operator in the same manner as provided in Section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) The commission may approve changes in ownership or operational control after fourteen days notice.

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

/ 1770. Compliance Verification.

(a) The Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards for all projects certified. A compliance plan shall be adopted by the commission as part of the certification decision. The plan shall include the following:

(1) A set of general compliance conditions setting forth and explaining the duties and responsibilities of the staff, the licensee, delegate agencies, and others; the procedures for settling disputes; the requirements for handling confidential records and maintaining the compliance record; and the requirements for verification, including periodic reports and any other administrative procedures that are necessary to verify that all the conditions will be satisfied.

(2) Condition(s) or mitigation measure(s) to be monitored;

(3) Method of monitoring or reporting including who will monitor or report, provisions for approving qualifications of the monitor, when the monitoring or reporting will be done, and the frequency of site visits, if any.

(b) To the extent permitted by law, the Commission may delegate authority for compliance verification to state and local agencies which have expertise in subject areas where conditions of certification have been established. Such agencies may include the local building department and the local air quality management district.

(c) If a delegate agency is unwilling or unable to participate in this program, the Commission staff shall establish an alternative method of verification.

(d) The verification provisions in a siting decision are intended to verify compliance with the actual conditions of certification. The staff, after notice to the licensee, may modify the verification provisions as necessary to enforce the conditions of certification without requesting an amendment to the decision, provided that the verification change does not conflict with the conditions of certification. If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25523, 25525, 25532 and 25534, Public Resources Code.

Article 4. Additional Provisions Applicable to Geothermal Notices and Applications

A. General Provisions

/ 1801. Applicability of Regulations.

Except as otherwise provided in this article, the provisions of Articles 1, 2, and 3 of this subchapter shall apply to the consideration of all notices and applications for geothermal power plants, associated transmission lines, and appurtenant facilities.

NOTE: Authority cited: Sections 25213, 25218(e), 25539 and 25541.5, Public Resources Code.
Reference: Sections 25540 and 25540.5, Public Resources Code.

/ 1802. Policies of the Commission on the Siting of Geothermal Power Plants.

In carrying out the provisions of this article it shall be the policy of the commission:

(a) To promote the accelerated development of economically feasible and environmentally acceptable geothermal power plants;

(b) To implement a 12-month certification process for the consideration of geothermal applications for projects for which a resources supply has been confirmed;

(c) To enhance public participation in decisions relating to the development of geothermal energy in California to ensure a thorough and balanced consideration of relevant issues;

(d) To assist and cooperate with local permitting agencies in the preparation of environmental documents relating to geothermal power plants, to encourage local agencies to prepare full-field environmental impact reports at the earliest practical time, to provide such

agencies with technical and financial assistance wherever possible in the preparation of such reports; and

(e) To avoid the duplication of environmental analyses by coordinating with local, state, and federal agencies in the preparation of environmental documents, including the use of documents prepared by such agencies to the extent practicable.

NOTE: Authority cited: Sections 25218(e), and 25541.5, Public Resources Code. Reference: Sections 25540-25540.3 and 25540.5, Public Resources Code.

/ **1803. Alternative Certification Processes for Geothermal Power Plants.**

(a) Eighteen-month certification process. The commission shall issue its decision on a geothermal notice as specified in Section 1727 of Article 2 within nine months from the date of accepting such notice, and except as provided in subsection (b), shall issue its final decision on an application within nine months from the date of acceptance of the application, or at such later times as are mutually agreed upon by the Commission and the applicant.

(b) Twelve-month certification process. If the applicant can demonstrate at the outset of the proceedings that the project complies with the provisions of Public Resources Code Section 25540.2(a) the commission shall issue its decision within 12 months of the acceptance of the application. Any application filed pursuant to Public Resources Code Section 25540.2(a) shall explicitly state that a commercial resource has been discovered and that a 12-month process is requested.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540, 25540.2(a) and 25540.3, Public Resources Code.

/ **1804. Special Geothermal Definitions.**

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

(a) "Commercial quantities of a geothermal resource" means enough geothermal steam or hot water resources from a sufficient number of wells to support a reasonable conclusion that a proposed power plant will be able to achieve the applicant's estimated gross capacity over the life of the project.

(b) "Full-field environmental impact report" means an environmental impact report which considers in detail the impacts of the development of a geothermal field, as defined by the resource developer, including but not limited to the construction of well pads, the drilling and operation of geothermal wells, and the construction and operation of geothermal resource conveyance lines, and which generally considers the construction, operation, and maintenance of one or more geothermal power plants within such geothermal field.

(c) "Geothermal field" means the geographic area containing the wells that supply steam and/or hot water to one or more geothermal power plants proposed in a notice or application.

(d) "Geothermal power plant" means any thermal power plant, as defined under Section 25120 of the Public Resources Code, which uses geothermal resources as the principal energy source for the generation of electrical power.

(e) "Twelve month process" means the consideration, and the granting or denial of the certification, within 12 months from the filing of an application for a geothermal plant for which no notice is required pursuant to Public Resources Code Section 25540.2(a).

(f) "KGRA" means Known Geothermal Resource Area as defined by the United States Geological Survey.

(g) "Plant maturation period" means the initial break-in period for a geothermal power plant which includes the period from commencement of operation to the time required to achieve the anticipated capacity factor.

(h) "Reconnaissance survey" means a survey as defined by the Federal Power Commission in Archaeological and Historical Investigation for Energy Facilities: A State of the Art, 1977.

(i) "Resource conveyance line" means the pipelines that transport the steam and/or hot water from the well to the geothermal power plant or from the power plant to a holding pond for reinjection.

(j) "Thermal Spring" means any natural or artificial spring outlet whose average temperature is at least 15_ F above the mean annual temperature of the air at the same locality.

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

/ 1809. Determination of Availability of Commercial Resource.

(a) Within thirty (30) days of the filing of an application pursuant to Public Resources Code Section 25540.2(a) and Section 1803 of these regulations, the committee shall hold a hearing for the sole purpose of determining whether the proposed site is reasonably capable of supplying geothermal resources in commercial quantities. Such hearing shall be publicly noticed.

(b) The applicant shall present testimony, studies or other evidence in support of its contention that sufficient geothermal resources have been confirmed at the site. The staff shall also present its evaluation of the site's resource capabilities.

(c) The California Division of Oil and Gas (DOG) shall be requested to review the application and all well records filed with the division concerning wells completed at the site, and shall be requested to present at the hearing its conclusions, based on the professional experience of

its personnel, as to whether the site is reasonably capable of providing geothermal resources in commercial quantities.

(d) If the commission determines that the site is reasonably capable of providing geothermal resources in commercial quantities, the application shall be processed in accordance with Section 1803(b) of these regulations.

(e) If the commission determines that the site is not reasonably capable of producing geothermal resources in commercial quantities, or that the applicant has failed to demonstrate that the site is reasonably capable of producing geothermal resources in commercial quantities, the applicant may withdraw the application or request that the application be treated as a notice filed pursuant to Section 1803(a). The document shall, as of the date such request is granted, be processed in accordance with Sections 1806 and 1807.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540.1 and 25540.2(b), Public Resources Code.

B. Delegation of Geothermal Power Plant Siting Authority to Local Government

/ 1860. Policy and Purpose.

(a) General. Pursuant to Section 25540.5 of the Public Resources Code, the commission is permitted to delegate its siting authority over geothermal power plants and related facilities to county governments which have adopted geothermal elements to their general plans.

(b) Policy. It is the policy of the California Energy Commission to delegate its geothermal power plant siting authority to county governments which have demonstrated a capability to expeditiously process applications for geothermal power plants and/or geothermal field development projects, provided, however, that such county governments have formally adopted policies which are consistent with adopted policies of the commission with respect to the development of geothermal resources for the generation of electrical energy.

(c) Purposes. Delegation of the commission's geothermal power plant siting authority to county governments will maximize local control over development projects whose impacts are peculiarly local. The provisions of this article will ensure that local exercise of such control will occur in a manner that is consistent with the state's interests in a reliable supply of electrical energy and environmental maintenance. Further, a delegation pursuant to this article will vest permitting authority over both the geothermal field and the geothermal power plant in a single agency, thus allowing a consolidated review of all aspects of a geothermal project.

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

/ 1861. Counties Eligible to Petition for Delegation of Authority.

(a) Any county government which has adopted a geothermal element to its general plan may petition the commission for delegation of the commission's exclusive authority to certify geothermal power plants and related facilities vested in Section 25500 of the Public Resources Code.

(b) Two or more counties, each of which has adopted a geothermal element to its general plan and which have executed a joint powers agreement or its equivalent for the administration of such geothermal power plant siting authority as may be delegated by the commission, may jointly petition

the Energy Commission for delegation of its exclusive authority to site its geothermal power plants and related facilities.

(c) Upon the delegation of geothermal power plant siting authority by the Energy Commission, the county government or governments which have petitioned for such delegation shall be exclusively responsible for administering and deciding upon all applications for geothermal power plants and related facilities which are wholly located within the territorial jurisdiction of the petitioning county or counties until such time as the authority delegated pursuant to this article shall have been revoked pursuant to the provisions of Section 1870.

(d) The provisions of this section shall not apply to any application for a geothermal power plant and related facilities which are not wholly located within the territorial jurisdiction of such counties that have been delegated siting authority pursuant to the provisions of this article. Applications for such facilities shall be filed with the commission.

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

/ 1862. Contents of Petition.

Every petition filed pursuant to Section 1861 shall contain all of the following:

(a) A resolution approving and directing the submission of the petition adopted by the county board of supervisors;

(b) A copy of the geothermal element and the date of adoption;

(c) A written statement from the Governor's Office of Planning and Research that the geothermal element complies with the office's guidelines and/or criteria for geothermal elements;

(d) A description of the policy statements contained in the geothermal element with respect to the development of geothermal resources for the generation of electrical energy;

(e) A description of the procedures contained in the geothermal element for the implementation of the policies expressed in the element, and a discussion of the status of such implementation;

(f) A complete and detailed description of the program that the county seeks to have designated as an equivalent certification program for the orderly and efficient review of geothermal power plant applications. Such description shall indicate the manner in which the program complies with each of the requirements set forth in Section 1863 below;

(g) A detailed description of the procedures that will be employed to comply with the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.);

(h) The level of staffing required to carry out the responsibilities delegated pursuant to this article;

(i) A discussion of any additional staffing required by the administering agency including job descriptions and duration of need;

(j) A discussion of funding required by the administering agency to process applications in accordance with the provisions of this article; and

(k) Such additional information as the county desires to submit.

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

(a) Certification of geothermal areas as multiple facility sites, if so applied for;

(b) Distribution of all applications to the commission and to each federal, state, and local agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities, as well as provisions for receipt of and response to the comments and recommendations of each such agency;

(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 Sections 1752-1753 of these regulations, and shall be based on the formal record of the proceeding;

(d) Public hearings, including provisions for adjudication of disputed issues of fact through testimony taken under oath and refutation by cross-examination;

(e) Formal intervention by any person with a legally recognizable interest in the outcome of the proceedings;

(f) Timely and orderly amendments of the program to reflect changes in law or commission certification requirements;

(g) Administration of and decision upon geothermal power plant applications within 12 months of the filing of such applications; and

(h) Appeal to the commission on any aspect of the decision of the county.

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

/ **1864. Commission Staff Analysis.**

(a) The commission and its staff may participate in any aspect of county proceedings on an application for a geothermal power plant and related facilities if such application would have been filed with the commission but for the delegation of authority pursuant to this article.

(b) The commission staff shall assist the county in assembling a record adequate to support findings on each of the following:

(1) Conformity of the site and related facilities with the 12-year forecast of statewide and service area electric power demands adopted pursuant to Section 25309(b) of the Public Resources Code; and

(2) Necessary modifications, mitigation measures, conditions or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, constructed and operated in order to assure reliability of operation, safety, and environmental protection.

(c) The county may submit a written request for staff assistance in the technical evaluation of any issue presented in the proceedings, or in the conduct of the proceedings on the application. Staff may render such assistance as it deems appropriate, provided however, that it shall indicate in writing its intention to do so within fifteen (15) days of the receipt of the county's request.

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

/ **1865. Air Quality Determinations.**

Whenever any county is administering an application for a geothermal power plant and related facility pursuant to authority delegated by the commission, the air pollution control officer shall prepare and submit to such county its determination of compliance as specified in Section 1744.5 within 180 days of the acceptance of the application.

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

/ **1866. Record of Proceedings.**

The county counsel shall be responsible for ensuring the preparation of a record adequate to support all required findings and conclusions.

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

/ **1867. Commission Action on Petition.**

(a) Within twenty (20) days of the filing of a petition pursuant to Section 1861, the executive director shall determine whether the petition contains the information specified in Section 1862.

(1) If the executive director determines that the petition is complete, he or she shall so certify in writing and shall inform the petitioner.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner with a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(b) Unless the petition has been returned pursuant to (a)(2) above, the commission shall, within sixty (60) days of the filing of the petition, convene two hearings to allow representatives of the county to explain each aspect of its proposed equivalent certification program, and to allow any interested party to offer testimony or comments. One (1) of the hearings shall be in the petitioner's county seat, and one (1) of the hearings shall be in the state capital, except where the petitioner's county seat is the state capital, in which case only one (1) such hearing, in the state capital, shall be required. There shall be no less than ten (10) nor more than forty-five (45) days, exclusive, between the dates of the two hearings. Such hearings shall be publicly noticed, and any person shall be entitled to offer testimony or comments.

(c) Within thirty (30) days of the conclusion of the hearing convened pursuant to (b) above, the commission shall issue its decision as to whether the county's program shall be designated as an equivalent certification program. The commission's decision shall include findings on the compatibility of commission and county policies pertinent to geothermal energy

development, and on the county's technical and financial ability to carry out the responsibilities which may be delegated by the commission.

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

/ **1868. Appeals to Commission.**

(a) Any party to county proceedings conducted pursuant to authority delegated by the commission may, within 30 days of the issuance of the county's written decision, or within 30 days of the disposition by that county of an appeal filed pursuant to county ordinances, appeal any aspect of the county decision to the commission.

(b) The appeal shall specify the bases therefor, and shall include a succinct summary of the evidence received by the county pertinent to the issues appealed, and shall specify the relief requested.

(c) The appeal shall include a copy of the administrative record of the county which has been certified by the county as complete.

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

/ **1869. Commission Action on Appeals.**

(a) The commission shall, within 60 days of filing of the appeal, convene a hearing for the presentation of arguments on the appeal. In reviewing a factual issue, the commission shall determine whether, in light of the whole record, the record contains substantial evidence to support that aspect of the county decision which has been appealed.

(b) If the commission finds for the appellant, it shall take such action as it deems appropriate, including, but not limited to:

- (1) Returning the case to the county for further proceedings as may be directed; or
- (2) Conducting further evidentiary hearings before the commission; or
- (3) Removing the case from the county for disposition by the commission.

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

/ **1870. Revocation of Delegation.**

(a) The Commission may, after public hearings, revoke its approval of a county's equivalent certification program whenever it finds that such program does not comply with current

statutory requirements, duly adopted regulations of the commission, or that the program is not being effectively and efficiently administered.

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

Article 5. Small Power Plant Exemptions

/ 1934. Statement of Purpose.

It is the policy of the State Energy Resources Conservation and Development Commission to promote the development of electric energy supply technologies that prudently conserve and economically use energy resources. A major purpose of these regulations is to encourage the use of those technologies by expediting the procedures necessary for the approval and development of alternate sources of electric generation.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1936. Filing Applications for Exemption.

Any person who proposes to construct a thermal power plant with a generating capacity not exceeding 100 megawatts, or proposes a modification to an existing thermal power plant which will add generating capacity not exceeding 100 megawatts may apply for an exemption from the provisions of Chapter 6 of Division 15 of the Public Resources Code.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1940. Notice of Application.

(a) Upon receipt of an application the executive director in conjunction with the public adviser shall immediately take action to cause notice of the application and its date of receipt to be published in the commission's next meeting agenda and distributed to the public at large.

(b) The executive director shall transmit copies of the application to each member and ex officio member, the commission general counsel, the public adviser, the hearing officer, the Attorney General and all other persons who have requested in writing that a copy be provided.

(c) The executive director shall also transmit copies of the application to all federal, state, regional, and local agencies which have an interest in the matter and shall request that these agencies submit their written comments and recommendations on the application. Such comments

shall be filed with the executive director no later than the date of the first hearing held pursuant to Section 1942 of these regulations.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1943. Presentation of Evidence.

All testimony together with any other relevant documentary evidence, such as any environmental impact documentation or other environmental document prepared by the lead agency, may be offered by any party and shall be filed with the Docket Unit no later than seven (7) days prior to the hearing at which such testimony is to be offered, or at such other time as ordered by the presiding member.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1944. Hearings.

A committee shall be appointed pursuant to Section 1204(a) to handle the proceedings. A hearing officer may also be appointed to assist the committee in the conduct of the proceeding.

The presiding member shall set the time and place for hearings, conferences, and site visits pursuant to this Section provided, however, that hearings on the application shall commence no later than one hundred (100) days after the filing of the application.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1945. Final Argument and Decision.

(a) After the hearings conducted pursuant to Section 1942 of these regulations, the committee shall prepare a proposed decision on the application. The proposed decision shall be distributed to the members, ex officio members, general counsel, the public adviser, the applicant, all intervenors, and any other persons designated by the presiding member.

(b) Within twenty-one (21) days after publication of the proposed decision, a hearing shall be held before the full commission for final arguments on the formal record of the proceedings. After the hearing, the commission shall adopt, or amend and adopt, the proposed decision, which shall thereupon become final. The final decision shall be rendered within one hundred thirty-five (135) days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1946. Content of Decision.

(a) The decision on the application shall either approve or disapprove the application and shall include a statement of reasons supporting the decision. The decision shall include, in the affirmative or negative, the findings required by Public Resources Code Section 25541.

NOTE: Authority cited: Section 25218, Public Resources Code. Reference: Section 25541, Public Resources Code.

/ 1947. Modifications of Deadlines.

The applicant may at any time stipulate to a more lengthy time schedule than is provided in these regulations in order to permit full and fair exploration. Such stipulation shall be made in writing to the committee.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

**Article 6. Powerplant and Transmission Line
Jurisdictional Investigations**

A. Definitions

/ 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 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 cogeneration or solar thermal powerplant exemption from the notice of intention requirement.

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

/ 2003. Generating Capacity.

(a) The "generating capacity" of an electric generating facility means the maximum gross rating of the plant's turbine generator(s), in megawatts ("MW"), minus the minimum auxiliary load.

(b) The "maximum gross rating" of the plant's turbine generator(s) shall be determined according to this subdivision. If there is more than one turbine generator, the maximum gross

rating of all turbine generators shall be added together to determine the total maximum gross rating of the plant's turbine generator(s).

(1) The maximum gross rating of a steam turbine generator shall be the output, in MW, of the turbine generator at those steam conditions and at those extraction and induction conditions which yield the highest generating capacity on a continuous basis.

(2) The maximum gross rating of a combustion turbine generator shall be the output, in MW, of the turbine generator at average operating site conditions, with the proposed fuel type, and at those water or steam injection flow rates, which yield the highest generating capacity on a continuous basis.

(A) The average dry bulb temperature and relative humidity of the inlet air at the plant site shall be calculated using 10-year data for temperature and relative humidity from the nearest meteorological data point, using the most recent published data from the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), the National Oceanographic and Atmospheric Administration (NOAA), the U.S. Air Force, or commercial airport weather stations.

(B) The barometric pressure at the site shall be one standard atmosphere, corrected for actual site elevation.

(3) The maximum gross rating cannot be limited by an operator's discretion to lower the output of the turbine generator(s) or by temporary design modifications that have no function other than to limit a turbine generator's output.

(4) The maximum gross ratings specified in the overall plant heat and mass balance calculations shall be subject to verification by commission review of the steam or combustion turbine generator manufacturer's performance guarantee, specifications and procurement contract, if available.

(c) The "minimum auxiliary load" means the electrical rating (in MW) of the sum of the minimum continuous and the average intermittent on-site electrical power requirements necessary to support the maximum gross rating as defined in subsection (b) of this regulation and which are supplied directly by the power plant. For geothermal projects, the minimum auxiliary load includes the minimum electrical operating requirements for the associated geothermal field which are necessary for and supplied directly by the power plant. Discretionary loads, i.e., those which can be curtailed without precluding power generation, are not included in minimum auxiliary loads.

NOTE: Authority cited: Sections 25213, 25218(e), 25539, Public Resources Code. Reference: Sections 25110, 25120, 25123, 25500, and 25517, Public Resources Code.

B. Expedited Clearance Process

/ 2010. Petition For Expedited Clearance; Filing.

(a) In lieu of filing a request for a jurisdictional determination pursuant to Section 1230 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 et seq.

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

- (1) A description of the exact location of the proposed powerplant;
- (2) A description of the ownership and control of the proposed powerplant;
- (3) The generating capacity of the proposed powerplant, including detailed equipment and operation design specifications and auxiliary loads necessary to determine the generating capacity under section 2003;
- (4) The schedule for developing the proposed powerplant;
- (5) The name, address, and telephone number of the person or persons responsible for reporting the information;
- (6) A power sales agreement, if available, showing the amount of power to be sold from the project, and to whom the power is being sold;
- (7) A declaration dated and signed under penalty of perjury by the petitioner or in the case of a corporation or business association by an authorized officer thereof that the facts stated in the petition are true and correct;
- (8) The date on which the petition is filed; and
- (9) Other information relevant to the issue of generating capacity.

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

/ **2011. Notice of Petition for Expedited Clearance.**

(a) Within 14 days after a petition is filed, the Executive Director shall determine whether the petitioner has filed all of the information required in section 2010. If the petition is incomplete, the Executive Director shall specify the items required to make the petition complete.

(b) Within 14 days after the petition is determined to be complete, the Executive Director shall provide notice of the filing of the petition in the agenda prepared for regularly scheduled commission meetings pursuant to Sections 1103 and 1104.

(c) The Public Adviser shall ensure that adequate notice is given to the public of all petitions filed under this article.

NOTE: Authority cited: Sections 25213, 25218(e), and 25539, Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25214, 25222, and 25500, Public Resources Code.

/ **2012. Clearance Order.**

(a) If no complaint or request for a jurisdictional determination pursuant to Section 1231 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.

(b) If the proposed powerplant is not constructed and operated substantially in conformance with the description provided by the owner or operator in the petition for expedited clearance, then the commission may, on its own motion or upon the motion of any person, reconsider its jurisdiction over the powerplant.

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

**APPENDIX A: INFORMATION REQUIREMENTS FOR A
NONGEOTHERMAL NOTICE OF INTENTION**

(a) In a section entitled "Project Description", the notice shall contain:

(1) A brief, summary description of the alternative site and related facility proposals, including the general location of each site or potential transmission corridor; the type, size, and capacity of the generating or transmission facilities; fuel, water supply, pollution control systems and other general characteristics. The description shall indicate precisely what sites and related facilities the applicant proposes to have approved by the commission.

(2) A proposed time schedule outlining the applicant's estimates for obtaining regulatory approvals, starting and completing construction, initial start up, and full-scale operation of the proposed facilities.

(b) In a section entitled "Need for Facilities," the notice shall contain:

(1) A summary description outlining the reasons why the applicant believes that new or additional facilities should be added to the applicant's electrical system, indicating whether the facilities are being proposed to meet projected capacity or energy deficits, to displace existing units scheduled for retirement, to meet requirements for additional reserves, or other justification for proposing new or additional capacity.

(2) A table showing the expected capacity and energy levels, adopted by the commission pursuant to Section 25309 of the Public Resources Code, for the general period in which the facilities are proposed. Where appropriate, include a table of, and explanation for, any adjustments to the adopted capacity and energy levels which are necessary to derive the applicant's service area requirements.

(3) A discussion indicating the amount or percentage of reserve capacity which the applicant believes is appropriate, including a description of the controlling criterion for determining the reserve margin, a discussion of why the applicant believes the indicated reserve margin is appropriate, and a discussion of how the indicated margin was derived.

(4) A table and summary description of the generating resources and electricity supplies which are likely to be available to the applicant's service area in the general time period proposed for initial operation of the facilities, including an explicit identification of transfer capabilities from outside the service area, and a summary of facilities operated or proposed by the applicant or by other entities within the service area.

(5) A discussion identifying and explaining any major uncertainties, such as delays in the construction or licensing of major planned resources or uncertainty with respect to contractual arrangements for transfer capabilities, which may affect the need for the proposed facilities.

(6) Tables showing the capacity and energy balances, projected deficits or excesses, and resulting reserve margins which reflect the applicant's expectations for electricity supply and demand within the general period for which the facilities are proposed.

(7) If the need is based in whole or in part on the proposed retirement or displacement of existing facilities, a discussion identifying such facilities and briefly explaining the reasons for their proposed retirement or displacement.

(8) If the need is based on factors other than projected capacity or energy deficits (taking into account reserve requirements), a discussion of the basis for the need and its conformance with the forecast assessment and any other criteria for determining need adopted in the most recent biennial report. If the need is based upon contingency planning, an explicit discussion of the nature and impact of the possible contingencies and their likelihood, an indication

of when it may be determined whether the contingencies will or will not occur, and a schedule showing the earliest (or latest, if appropriate) date on which the proposed facilities should be operating given the possible contingencies.

(c) In a section entitled "Selection of Facilities", the notice shall contain:

(1) A discussion of the reasons why the principal generating technology was chosen from among those technologies most recently determined as commercially available by the commission pursuant to Public Resources Code Section 25309(j). Indicate the effect, if any, of the following factors on the selection of the facility type: comparative economics, comparative reliability, comparative health and safety aspects or environmental impacts, availability of appropriate sizes, comparative operating flexibility, lead time for approval and construction, and any other factor considered important by the applicant in making the selection.

(2) A discussion of the reasons for selecting the size of the facilities proposed in the notice. Indicate the effect, if any, of the following factors on the selection of facility size: need for capacity or energy; comparative reliability of different sizes, overall impact on system reliability, or reserve requirements of different sizes; comparative safety of different sizes; economies or diseconomies of scale associated with different sizes; commercial availability of different sizes; and other factors considered important by the applicant in the selection.

(3) A summary description of the preliminary design of the proposed facilities, specifically including the power generation, cooling, pollution control, fuel handling, water supply and treatment, safety, emergency, and auxiliary systems; and a summary of the proposed methods of construction and operation.

(d) In a section entitled "General Acceptability," the notice shall contain:

(1) For any technology not previously found to be commercially available as most recently determined by the commission pursuant to Public Resources Code Section 25309(j), a discussion of the reasons why the applicant expects the technology to be available in the time period proposed for the facility.

(2) A discussion of the economic comparability of the proposed facilities based on information available to the applicant on comparative costs of commercially available generating technologies.

(3) A discussion of any significant unresolved technical, environmental, or health and safety or other issues, affecting the ability to use the proposed technologies at each of the sites, which have been identified in the most recent biennial report, or which are otherwise known to the applicant. The discussion should include or refer to any information which the applicant believes is relevant to resolving the question or issues identified.

(4) A summary discussion explaining (with reference to parts (1) through (3) above) why the applicant believes the facilities proposed should be found acceptable.

(e) In a section entitled "Transmission Needs," the notice shall contain:

(1) A description in general terms of any new or additional transmission facilities, powerlines, substations, switchyards, or other transmission equipment, whether or not within the exclusive permit authority of the commission, which the applicant believes will be required to carry electrical power from the proposed power plant at each of the sites presented in the notice to the principal load centers to be served by the new power plant. The information should include all potential corridors under consideration, approximate lengths of each corridor being considered, and a summary of the preliminary estimates of the costs of lines, stations and other equipment that are being considered.

(2) A discussion of the analyses, load-flow studies, or other considerations which the applicant believes justify the need for the additional transmission equipment under consideration, the relative merits of the alternative principal points of junction with the existing transmission system being considered, and the relative merits of the alternative capacity or voltage levels being considered for the proposed power lines.

(3) A discussion of the extent to which the consideration of alternative corridors or proposed capacity and voltage levels has taken or will take into account the future transmission needs created by additional generating facilities planned by the applicant or any other entity proposing generating facilities in the same general area.

(4) A discussion summarizing the principal advantages and disadvantages to the environment of each of the alternative transmission proposals under consideration by the applicant. The discussion shall extend only to the functional point of delivery of the power to the interconnected system, and should include an identification of areas in the vicinity of the proposed corridors where important social, aesthetic, historical, or recreational resources, or scarce, unique, or specially protected resources (including archaeological sites, endangered species, unique recreational areas, and protected biological areas) may be adversely affected. The discussion should indicate the measures being considered by the applicant to avoid or mitigate the principal adverse effects identified in the discussion.

(f) In a section entitled "Safety and Reliability," the notice shall contain:

(1) A preliminary description of any fuels, emissions (except for air quality emissions), wastes, or other toxic or hazardous substances associated with the proposed facility which may have an effect on safety and reliability; a discussion of the principal adverse effects of such substances on safety and reliability; and a discussion of the measures proposed or being considered by the applicant to ensure the safe handling, control, storage, removal, or disposal of such substances.

(2) A discussion of the likelihood that the measures described in part (1) will be able to comply with existing health and safety standards.

(3) A report which describes the seismic, other natural hazards, and man-made hazards

associated with each of the proposed sites, discusses the degree to which such hazards could cause secondary hazards at the proposed facilities (e.g., fuel spills, structural collapse, increased emissions including radiological, explosions, etc.) and discusses the alternative levels of design being considered to safeguard safe and reliable operation in light of such hazards. The report should describe special design features being considered to protect against seismic and other potential natural hazards and indicate the relative degrees of safety from such hazards that can be achieved by the design features being considered.

(4) A description of the principal emergency systems and safety precautions proposed or being considered by the applicant, and a discussion of the nature of the hazards for which the systems or precautions are provided. The description need not duplicate the discussion of special design features in part (3) or measures discussed in other parts.

(5) If a nuclear power plant is proposed:

(A) A description of the methods proposed or being considered to prevent illegal diversion of nuclear fuels and waste, and to control density of population in areas surrounding each proposed site.

(B) A description of the facilities upon which the applicant proposes to rely for reprocessing or storage of spent nuclear fuel rods from the nuclear reactor. This description shall include an estimate of the volume of spent fuel generated by the reactor over its design life, the particular technology likely to be utilized for such storage or reprocessing, the anticipated on- or off-site facilities to be utilized, the date on which those facilities have been or are likely to be licensed and in operation, and the anticipated means of transporting and storing the spent fuel rods after removal from the reactor.

(C) A description of the emergency response capabilities that would be required of local communities surrounding each of the proposed sites in order to comply with any provisions of federal or state law in the event of an accidental release of radioactivity from the facilities.

(6) A description of the principal adverse effects on safety and reliability associated with other aspects of the fuel cycle, and which are directly traceable to the proposed facilities.

(g) In a section entitled "System Reliability", the notice shall contain:

(1) A discussion indicating the degree of reliability which the applicant believes the proposed facilities are capable of achieving. The discussion should include an estimate of the expected annual capacity factor for the initial operating years of the facilities and an estimate of the average annual capacity factor over the expected life of the facilities. Estimated capacity factors may be supported by information on forced outage rates and capacity factors actually experienced by comparable facilities elsewhere (if any) or by a discussion of other factors which support the applicant's expectations on reliability where data from actual operating experience of comparable facilities is not readily available. For purposes of this subsection, "comparable facilities" means facilities whose principal generating technology and fuel type, generating capacity, and mode of operation is similar to those of the proposed facilities. The discussion should indicate the basis for

reliability expectations for any new or innovative pollution control, cooling water or other principal systems, even where the reliability of the principal generating technology is considered proven, and should identify any major uncertainties or unproven aspects of such new or innovative systems.

(2) An assessment of the long-term availability of the fuel or fuels proposed for the facilities, at prices consistent with those assumed in subsection (h), and a discussion of the principal uncertainties in providing assurance of a reliable supply of fuel over the expected operating life of the facility. If the facilities are capable of using multiple fuels, the extent of such fuel flexibility should be discussed, along with its impact on long-term reliability. The applicant may discuss the relative merits, costs, and difficulties in initially designing the facility to accept multiple fuels versus modifying the facility for such purposes at a later time.

(3) A discussion of the probable effect of the proposed facilities, including transmission facilities, on the overall reliability of the applicant's service system. The discussion should indicate the effect of the alternative plant sizes or transmission voltage levels being considered on the applicant's determination of "loss of load probability", "largest contingency", or any other reliability criterion or determinant of needed reserve margins.

(h) In a section entitled "Financial Impacts", the notice shall contain:

(1) A discussion of the financial requirements for constructing and operating the proposed facilities, and a table summarizing capital requirements and operating expenses, and their principal components. The discussion should indicate and explain the basis for any assumed escalation rates and costs of capital, fuel, or other principal components. Significant cost differences between alternative sites and facilities should be identified.

(2) A summary of the cost of the installed generating capacity (expressed in \$/KW) and of the cost of supplying energy at the busbar (expressed in _/Kwhr.); a list of principal cost components, an explanation of the source or derivation of each, and the calculations used to arrive at the summary costs above; a discussion of any major uncertainties in the cost figures used or assumptions relied upon.

(3) A discussion of proposed methods for financing the proposal.

(i) In a section entitled "Proposed Sites", the notice shall contain:

(1) The location of each site and related facility proposed in the notice on a location map and described by sections, range, township, and county. The map should also indicate the various transmission corridors under consideration by the applicant and the location of other transmission facilities and equipment being considered and identified pursuant to subsection (e)(1).

(2) Photographic representations adequately depicting the visual appearance of each power plant site and its immediate surroundings.

(3) A brief description of the applicant's legal interest in each power plant site

proposed.

(4) A description, including artists drawings, of the proposed location of facilities and structures on each site.

(j) In a section entitled "Site Suitability", the notice shall contain (separate sections may be submitted for each alternative site proposed):

(1) A brief description of the environmental setting for each site, a summary discussion of the general suitability of each alternative site to accommodate the facilities proposed in the notice, and a summary of the principal environmental, economic, and technological advantages and disadvantages of each alternative site.

(2) A preliminary statement of the principal environmental impacts of the proposed facilities at each site on areas of special environmental concern, including, but not limited to areas prohibited as power plant sites pursuant to Section 25527 of the Public Resources Code, areas designated by the Coastal Commission or BCDC or within their jurisdiction, areas identified for potential wilderness designation or other protective designation, and agricultural areas; and a preliminary statement of the principal environmental impacts on biological resources, including especially rare and endangered species, livestock, and crops.

(3) A preliminary statement of the principal environmental impacts on human health which may result from air and water pollutants discharged from the facility, toxic and other hazardous materials stored or used at the site, wastes created by the facility, or any other substance associated with the facility. The statement shall include all regulated pollutants and substances; for nonregulated pollutants and substances, the statement shall include a summary of any findings and conclusions made by the commission in any generic assessment of the health effects of such substances.

(4) A preliminary discussion of the principal impacts on human resources, including major impacts on aesthetic, historical, cultural, archaeological, and recreational resources.

(5) A discussion of the principal social and economic impacts of constructing and operating the facilities at each site on the surrounding communities. The discussion should include anticipated impacts on public institutions such as schools, and on public services, housing, employment and other community resources during construction, and the impact on tax bases and other community aspects after construction.

(6) A preliminary discussion indicating the extent to which various measures being considered by the applicant are likely to mitigate the impacts identified under parts (2) through (5).

(7) A general discussion of the compatibility of the proposed facilities with present and expected land uses at each site, including conformity with any long-range land use plans adopted by any federal, state, local, or regional planning agency. The discussion should identify the need,

if any, for variances at any of the sites, or any measures that would be necessary to make the

proposals conform with permitted land uses.

(8) A description of the principal and alternative (if any) sources of water proposed or being considered by the applicant for power plant cooling and other purposes; a description of the quality of water being considered and a general description of any treatment processes which may be necessary to make the water suitable for cooling or other uses at the site; a description of total amounts of such water that will be required each year and on any given day; a general description of any conveyance systems that will be required to carry the water from its source to the site and return it to a disposal or discharge area; the location and identity of any area being considered for disposal or discharge of water from the site; and a description of any treatment processes that may be necessary to make the water acceptable for discharge or disposal. The applicant should also describe any other major water facilities, including coolant outfalls, ponds, lakes, or towers, that may be associated with the proposed facilities, and discuss the principal impacts, if any, of these facilities on the physical and human environment.

(9) A land use map which indicates noise sensitive receptors or groups of receptors in the vicinity of the proposed site and related facilities, including anticipated receptors based on future land uses identifiable from public documents at the time of submission.

(k) In a section entitled "Applicable Standards," the notice shall contain:

(1) A list of federal, state, regional, and local agencies and their standards, ordinances, or laws, including long-range land use plans adopted by the state or by any local or regional planning agency, that are applicable to each site and related facility, including those which would be applicable but for the exclusive authority of the commission to certify sites and related facilities. The list should include a brief description of the applicability of such standards, ordinances, laws, or plans for each agency, and citations for each.

(2) To the extent not discussed in previous sections, discussion of the likelihood of the conformity of the proposed facilities with remaining laws, regulations, ordinances and standards of particular importance in assessing the acceptability of the sites and related facilities. Indicate those areas for which conformity with applicable standards cannot be determined at this time and provide a preliminary schedule for the resolution of such remaining issues.

(l) In a section entitled "Air Quality", the notice shall contain:

(1) A project description including typical fuel type and characteristics (BTU content, maximum sulfur and ash content), design capacity, proposed air emission control technologies, stack parameters (assumed height, diameter, exhaust velocity and temperature) and operational characteristics (heat rate, expected maximum annual and daily capacity factor). This information may be based upon typical data for a facility of the proposed type and design.

(2) A description of cooling systems, including approximate drift rate, water flow and water quality (TDS content).

(3) A projection of facility-related emissions from the stack and combustion system,

from cooling towers and from associated fuel and other material handling, delivery and storage systems to the extent that the applicable new source review rule requires attributing these sources to the proposed project. The emissions discussion should include a discussion of the basis of the estimate, such as test results, manufacturers' estimates, extrapolations and all assumptions made.

(4) A list of all applicable air quality rules, regulations, standards and laws.

(5) A statement, including the reasons therefor, of what the applicant considers best available control technology as defined in the applicable district's new source review rule.

(6) Existing baseline air quality data for all regulated pollutants affected by the proposed facility including concentrations of pollutants, an extrapolation of that data to the proposed site, and a comparison of the extrapolated data with all applicable ambient air quality standards. This discussion should include a description of the source of the data, the method used to derive the data and the basis for any extrapolations made to the proposed site.

(7) Existing meteorological data including wind speed and direction, ambient temperature, relative humidity, stability and mixing height, and existing upper air data; and a discussion of the extent to which the data are typical conditions at the proposed site. This description should include a discussion of the source of the data and the method used to derive the data.

(8) A worst case air quality analysis for each proposed site and related facility to determine whether the plant may cause or contribute to a violation of each applicable ambient air quality standard. Such analysis shall include a description of the methodology employed and the basis for the conclusions reached, and shall consider topography, meteorology and contributions from other sources in the area.

(9) A discussion of the emission offset strategy or any other method of complying with the applicable new source review rule. The emission offset strategy shall be designed to show whether there are sufficient offsets available (contracts are not required). Offset categories (e.g. dry cleaners, degreasers) and an inventory of potential reductions may be used unless most of the potential offsets come from a very small number of sources. In the latter case, the offset sources should be more specifically identified. Potential offsets may be aggregated by geographic location as appropriate under the applicable rule. The offset discussion should also include a brief description of the emissions controls to be used for each offset category and should account for applicable rules requiring emission reductions. In the event there is no emissions inventory available from the ARB or from the applicable local district, the applicant may propose an alternative method for complying with this requirement.

(10) Based upon worst case data for analysis for short-term averaging times and typical data for analysis for annual averaging times, a discussion of whether the proposed facility will be within PSD Class I or Class II increments.

(m) The notice shall designate an individual or individuals authorized to receive

pleadings, briefs, comments, and other documents for the applicant.

(n) The notice may contain any other pertinent information that the applicant desires to submit.

NOTE: Authority cited: Sections 25213 and 25502, Public Resources Code. Reference: Sections 21080.5, 25309, 25502, 25504, 25511, 25514, and 25541.5, Public Resources Code.

APPENDIX B: INFORMATION REQUIREMENTS FOR AN APPLICATION

(a) Executive Summary

(1) Project Overview

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

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

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

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

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

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

(3) Project Ownership

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

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

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

(b) Project Description

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

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

(B) Scale plan and elevation drawings depicting the relative size and location of the power plant and all related facilities;

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

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

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

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

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

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

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

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

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

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

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

(D) A detailed description of the type, quality, and characteristics of the geothermal resource, including pressure and temperature flow rates, constituents and concentrations of non-condensable gases, and constituent concentrations of dissolved solids, and descriptions and concentrations of any substances potentially harmful to public health and safety or to the environment;

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

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

(c) Demand Conformance

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

(d) Information for Projects Which Completed the NOI Process

(1) A copy of any study or analysis required by the terms of the Commission's Final

Decision on the NOI, and a brief summary of the results of the study or analysis.

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

(e) Facility Closure

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

(f) Alternatives

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

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

(g) Environmental Information

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

(2) Cultural Resources

(A) A brief summary of the ethnology, prehistory, and history of the region in which the project site and related facilities are located and maps at a scale of 1:24,000, indicating areas of ethnographic occupation. The region may vary depending on the extent of the territory occupied or used by prehistoric cultures indigenous to the area in which the project is located.

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

used in completing the surveys, and the identification and qualification of the individuals

conducting the surveys shall be included.

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

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

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

(3) Land Use

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

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

(ii) A discussion of any trends in recent zoning changes and potential future land use development;

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

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

(B) A discussion of the compatibility of the proposed facilities with present and expected land uses, and conformity with any long-range land use plans adopted by any federal, state, regional, or local planning agency. The discussion shall identify the need, if any, for variances or any measures that would be necessary to make the proposal conform with permitted land uses.

(4) Noise

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

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

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

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

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

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

(5) Traffic and Transportation

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

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

(i) Road classification and design capacity;

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

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

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

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

(6) Visual Resources

(A) Descriptions of the existing visual setting of the vicinity of the project, the region that can be seen from the vicinity of the project, and the proposed project site. Include:

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

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

(iii) The visual properties of the topography, vegetation, and any modifications to the landscape as a result of human activities.

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

(C) After discussions with staff and community residents who live in close proximity to the proposed project, identify the scenic corridors and any visually sensitive areas potentially

affected by the proposed project, including recreational and residential areas. Indicate the approximate number of people using each of these sensitive areas and the estimated number of residences with views of the project. For purposes of this section, a scenic corridor is that area of land with scenic natural beauty, adjacent to and visible from a linear feature, such as a road, or river.

(D) A description of the dimensions, color, and material of each major visible component of the project.

(E) Full-page color photographic reproductions of the existing site, and full-page color simulations of the proposed project in the existing setting from each location representative of the view areas most sensitive to the potential visual impacts of the project.

(F) An assessment of the visual impacts of the project, including light and glare, and visible plumes.

(7) Socioeconomics

(A) A description of the socioeconomic circumstances of the vicinity and region affected by construction and operation of the project. Include:

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

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

(iii) Existing and projected unemployment rates;

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

(v) Availability of temporary and permanent housing; and

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

(B) A discussion of the socioeconomic impacts caused by the construction and operation of the project, including:

- (i) The number of workers to be employed each month by craft during construction and operation;
 - (ii) An estimate of the number and percentage of workers who will commute daily, commute weekly, or relocate in order to work on the project;
 - (iii) An estimate of the potential population increase caused directly and indirectly by the project;
 - (iv) The potential impact of population increase on housing during the construction and operations phases;
 - (v) The potential impacts, including additional costs, on utilities (gas, water and waste) and public services, including fire, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. For projects outside metropolitan areas with a population of 500,000 or more, information on schools shall include project-related enrollment changes by grade level groupings and associated facility and staffing impacts by school district during the construction and operation phases;
 - (vi) An estimate of applicable school impact fees;
 - (vii) An estimate of the total construction payroll and an estimate of the total operation payroll;
 - (viii) An estimate of the expenditures for locally purchased materials for the construction and operation phases of the project; and
 - (ix) An estimate of the capital cost of the project of the potential impacts on tax revenues from construction and operation of the project.
- (8) Air Quality
- (A) The information necessary for the air pollution control district where the project is located to complete a Determination of Compliance.
 - (B) The heating value and chemical characteristics of the proposed fuels, the stack height and diameter, the exhaust velocity and temperature, the heat rate and the expected capacity factor of the proposed facility.
 - (C) A description of the control technologies proposed to limit the emission of criteria pollutants.
 - (D) A description of the cooling system, the estimated cooling tower drift rate, the rate of water flow through the cooling tower, and the maximum concentrations of total dissolved solids.

(E) The emission rates of criteria pollutants from the stack, cooling towers, fuels and materials handling processes, delivery and storage systems, and from all secondary emission sources.

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

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

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

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

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

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

(i) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct inert pollutant impacts of project construction activities on ambient air quality conditions, including fugitive dust (PM₁₀) emissions from grading, excavation and site disturbance, as well as the combustion emissions [nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO), and particulate matter less than 10 microns in diameter (PM₁₀)] from construction-related equipment;

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

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

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

- (i) The quantity of offsets needed;
- (ii) Potential offset sources, including location, and quantity of emission reductions; and
- (iii) Method of emission reduction.

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

(g)(9) Public Health

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

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

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

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

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

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

(ii) An acute exposure is one which occurs between the time of emission and eight hours after the emission.

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

(iv) A chronic exposure is one which occurs intermittently and repeatedly for more than one month.

(10) Hazardous Materials Handling

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

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

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

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

(E) A discussion of whether a risk management plan (Health and Safety Code/ 25531 et seq.) will be required, and if so, the requirements that will likely be incorporated into the plan.

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

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

(11) Worker Safety

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

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

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

Construction Health and Safety Program:

* Injury and Illness Prevention Plan (8 Cal. Code Regs., / 1509);

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

Operation Health and Safety Program:

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

(12) Waste Management

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

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

(C) A description of all waste disposal sites which may feasibly be used for disposal of project wastes. For each site, include the name, location, classification under Title 23, California Code of Regulations,/ 2530 et seq., the daily or annual permitted capacity, daily or annual amounts of waste currently being accepted, the estimated closure date and remaining capacity, and a description of any enforcement action taken by local or state agencies due to waste disposal activities at the site.

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

(13) Biological Resources

(A) A regional overview and discussion of biological resources, with particular attention to sensitive biological resources near the project, and a map at a scale of 1:100,000 (or some other suitable scale) showing their location in relation to the project.

(B) A discussion and detailed maps at a scale of 1:6,000, of the biological resources at

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

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

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

(E) A discussion of the following:

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

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

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

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

(G) A discussion of native fish and wildlife species of commercial and/or recreational value that could be impacted by the project.

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

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

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

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

(14) Water Resources

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

- (i) Waste Discharge Requirements; and
- (ii) a National Pollutant Discharge Elimination System Permit.

(B) A description of the hydrologic setting of the project. The information shall describe, in writing and on maps at a scale of 1:24,000, the chemical and physical characteristics of the following water bodies that may be affected by the proposed project:

- (i) Ground water bodies and related geologic structures;
- (ii) Surface water bodies; and
- (iii) Water inundation zones, such as the 100-year flood plain and tsunami run-up zones.

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

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

(ii) The physical and chemical characteristics of the source and discharge water;

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

(iv) A description of all facilities to be used in water conveyance, treatment, and discharge. Include a water mass balance diagram;

(D) A description of pre-, and post-construction runoff and drainage patterns, including:

- (i) Precipitation and storm runoff patterns; and
- (ii) Drainage facilities and design criteria;

(E) An assessment of the effects of the proposed project on water resources. This discussion shall include:

- (i) The effects of project demand on the water supply and other users of this source;

- (ii) The effects of construction activities and plant operation on water quality; and
- (iii) The effects of the project on the 100-year flood plain or other water inundation zones.

(15) Agriculture and Soils

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

- (i) The depth, texture, permeability, drainage, erosion hazard rating, and land capability class of the soil; and
- (ii) An identification of other physical and chemical characteristics of the soil necessary to allow an evaluation of soil erodibility, permeability, re-vegetation potential, and cycling of pollutants in the soil-vegetation system.

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

- (i) Crop types, irrigation systems, and any special cultivation practices; and
- (ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the Natural Resource Conservation Service or the California Department of Conservation.

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

- (i) The quantification of accelerated soil loss due to wind and water erosion;
- (ii) Direct and indirect effects on agricultural land uses; and
- (iii) The effect of power plant emissions on surrounding soil-vegetation systems.

(16) Paleontologic Resources

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

(B) A discussion of the sensitivity of the project area described in subsection (g)(16)(A) and the presence and significance of any known paleontologic localities or other paleontologic resources within or adjacent to the project.

(C) A summary of all literature searches and field surveys used to provide information

about paleontologic resources in the project area described in subsection (g)(16)(A). Identify the dates of the surveys, methods used in completing the surveys, and the names and qualifications of the individuals conducting the surveys.

(D) Information on the specific location of known paleontologic resources, survey reports, locality records, and maps at a scale of 1:24,000, shall be included in a separate appendix to the Application and submitted to the Commission under a request for confidentiality, pursuant to Title 20, California Code of Regulations, / 2501 et seq.

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

(17) Geological Hazards and Resources

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

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

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

(18) Transmission System Safety and Nuisance

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

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

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

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

(1) Tables which identify:

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

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

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

(3) The name, title, phone number, and address, if known, of an official within each agency who will serve as a contact person for the agency.

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

(i) Engineering

(i)(1) Facility Design

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

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

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

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

(i) The power generation system;

(ii) The heat dissipation system;

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

(iv) The atmospheric emission control system;

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

(vi) The noise emission abatement system;

(vii) The geothermal resource conveyance and re-injection lines (if applicable);

(viii) Switchyards/transformer systems; and

(ix) Other significant facilities, structures, or system components proposed by the applicant.

(2) Transmission System Design

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

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

(i) (3) Reliability

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

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

(i) Expected annual and lifetime capacity factors;

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

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

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

(v) The expected power plant maturation period.

(i)(4) Efficiency

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

(B) Annual fuel consumption in BTUs for each mode of operation.

(C) Annual net electrical energy produced in MWh for each mode of operation.

(D) Number of hours the plant will be operated in each mode of operation in each year.

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

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

(5) Demonstration, if applicable

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

(B) A demonstration plan containing the following elements:

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

(ii) The objectives of the demonstration;

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

(iv) The schedule for implementing the demonstration tasks;

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

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

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

APPENDIX C. INFORMATION REQUIREMENTS FOR A GEOHERMAL NOTICE OF INTENT.

(a) In a section entitled "Project Description", the notice shall contain:

(1) A map indicating the location or tentative location of the geothermal leasehold and the location or tentative location of each proposed power plant site and related facility, along with a description by section, township, range, and county of the leasehold.

(2) The location or tentative location of production and reinjection well sites, resource conveyance lines, access roads, and waste disposal sites in relation to each geothermal power plant.

(3) Photographic and/or other suitable graphic representations of the geothermal leasehold and each proposed geothermal power plant, and the visual appearance and general surroundings of such proposed power plant.

(4) A description of the process by which the tentative site was selected within the geothermal leasehold and the consideration given to site geology and ease engineering, physical environmental impact, socioeconomic impacts, resource conveyance constraints, electric transmission constraints, land use constraints, and any other factors considered by the applicant and not listed herein.

(5) A preliminary description of the type, quality, and characteristics of the geothermal resource encountered or expected, including, to the extent known, pressure and temperature, flow rates, concentrations of non-condensable gases, concentrations of dissolved solids, and descriptions and concentrations of any substances potentially harmful to the environment or to the public health and safety.

(6) Where a notice is filed early in the resource development process, and where the pressure, temperature, flow rate, and constituency and concentration of dissolved solids in the geothermal resources are uncertain, an estimate of the probable range of the various resource parameters based upon nearby development, leasehold exploration if it has occurred, or any other information sources available to the applicant and resource developer. In addition, the basis for such estimations shall be clearly identified.

COMMENT: The 18-month certification process is particularly appropriate for the instances described in this subsection.

(7) The maximum estimated generating capacity of each proposed power plant.

(8) A tentative project schedule including permit approvals from the commission and other agencies from which permits must be issued prior to construction or operation, construction lead times, anticipated date of commercial operation, and anticipated operating plant life.

(9) For each of the following facilities and/or systems, a general description, which includes dimensions, surface area requirements, and typical operating data, performance and design criteria for protection from impacts due to geotechnical hazards, flood hazards, and meteorological extremes, performance and design criteria for assurance of public health and safety and protection of the environment:

(A) Power generation system;

(B) Heat dissipation system;

(C) Cooling water supply system;

(D) Reinjection system;

(E) Atmospheric emission control system;

(F) Waste disposal systems and disposal sites;

(G) Geothermal resource conveyance lines;

(H) Pre-plant cooling water treatment systems, where applicable;

(I) Switchyards/transformer systems; and

(J) Other significant facilities, structures or system components proposed by the applicant not listed above.

COMMENT: The term "performance criteria", when used in these regulations, refers to performance goals which the applicant proposes to use in designing the proposed facilities. For example, a component of the seismic performance criteria would be designing a turbine generator so as to allow continued operation of the proposed facility at full load after the occurrence of a design basis earthquake at the site. Performance criteria are an alternate statement of acceptable risk and are usually semi-quantitative in nature.

The term "design criteria" refers to the limiting criteria used for detailed design of a structure or component. The design criteria produce a design which will meet or exceed the desired performance criteria. For example, design criteria include design loads and the methods for determining loads.

(10) A list of all project participants and their legal interests in the power plant facilities,

the geothermal leasehold, the geothermal resource conveyance lines, the geothermal reinjection system, and the electric transmission facilities.

(b) In a section entitled "Need for Project", the notice shall contain:

(1) A discussion of the conformity of the proposed facilities with the level of statewide and service area electrical demand adopted by the commission pursuant to Section 25309 of the Public Resources Code. The discussion shall specify the reasons why the applicant has concluded that the facilities should be added to the applicant's electrical system, including a discussion of whether the facilities are being proposed to meet projected capacity or energy deficits, to displace existing units scheduled for retirement, or to meet requirements for additional reserves.

COMMENT: In the discussion of need, the applicant may incorporate by reference any other relevant filings or submittals to the commission and must include a summary of the referenced material and a discussion of the relevance of such filings or submittals.

(2) An energy and capacity balance showing the forecast of electricity demand as adopted pursuant to Section 25309(b) of the Public Resources Code and generating resources expected to be available to the applicant when the proposed plant is scheduled to begin operation.

(3) The anticipated generating capacity of each proposed facility or facilities, and:

(A) The expected annual capacity factor from the date of initial operation through the 12-year forecast period; and

(B) The expected average annual capacity factor over the anticipated operating life of the facility.

(4) The applicant can demonstrate need for a geothermal facility by reference to the most recent Biennial Report, and in making such demonstration the applicant may cite any findings and conclusions resulting from any generic proceedings conducted by the commission.

(c) In a section entitled "Financial Impacts", the notice shall contain:

(1) A discussion of the preliminary financial requirements for constructing and operating the proposed facilities, including a table summarizing capital requirements and operating expenses, and their principal components. The discussion shall indicate and explain the basis for any assumed escalation rates and costs of capital, fuel, or other principal components. If more than one site is proposed, significant cost differences between alternative sites should be identified.

(2) A preliminary summary of the cost of the installed generating capacity (expressed in \$/kw) and of the cost of energy at the busbar (expressed in /kwhr). A list of principal cost components, an explanation of the source of derivation of each, and the calculations used to arrive at the summary costs above shall be provided. Any major uncertainties in the cost figures used or assumptions relied upon shall be explicitly identified and their significance shall be discussed.

(3) In situations where electric transmission facilities serve more than one geothermal power plant, the notice shall identify costs associated with such transmission facilities in a manner which recognizes the allocation of such costs over more than one unit.

(4) A general discussion of the estimated impact of the proposed facilities on customer rates during construction and after commencement of operation.

(d) In a section entitled "Applicable Laws, Ordinances, Standards, Permits, and Approvals", the notice shall contain tables which identify:

(1) Laws, regulations, standards, adopted local, regional, state, and federal land use plans, permits, and approvals applicable to the proposed project, and a discussion of the applicability of each.

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

(3) The name, title, and address, if known, of an official within each agency who will serve as a contact person for each respective agency.

(4) References to the text of the notice wherein the compatibility of the proposed project with each identified law, regulation, standard, adopted local, regional, state, and federal land use plans, permits and approvals, is discussed.

COMMENT: The information requirements set forth in portion IV of Appendix A applies only to facilities to be constructed by the applicant, and not to the geothermal field. The applicant's discussion in this portion shall give particular consideration to those county hydrologic elements, county solid waste management laws, state water use plans, and water basin plans identified in Appendix A.V.B.

(e) In a section entitled "Environmental Description and Project Effects", the notice shall identify potential physical, biological, social, economic and cultural effects of the proposed project and contain:

(1) With respect to air quality:

(A) Available baseline air quality data including concentrations of pollutants, and a comparison of air quality data with applicable ambient air standards.

(B) Available meteorological data, including wind speed and direction, ambient temperature, relative humidity, stability and mixing height, and available upper air data.

(C) A discussion of the extent to which the data in subsections 1 and 2 above are typical of conditions at the proposed site and the KGRA; also, provide a description of the monitoring program, if any, used to obtain required data, including the location and elevation of monitoring stations, parameters measured, and duration of monitoring.

(D) A worst case air quality impact analysis for each proposed site and related facility and source of air emissions, assuming worst case meteorological conditions and emissions consistent with applicable emission standards, including the cumulative effect of wells and pipelines in normal and shutdown modes of operation, in order to determine the worst case impact on potential sensitive receptors. Such analysis shall include the basis of the worst case and consider topography, meteorology, and contributions from other sources in the KGRA.

(E) A general description of normal and shutdown modes of operation for the proposed facility or facilities that affect the release of pollutant emissions into the atmosphere for existing and proposed sources or groups of sources that would have additive effects, including estimated frequency of occurrence, duration, location, and estimated emission rate for each pollutant of interest.

(F) A general discussion of expected or confirmed chemical constituencies of gaseous and particulate pollutants from the proposed project including wells and resource conveyance lines.

(G) For facilities using an external water supply, an estimate of cooling tower particulate and gaseous emissions associated with each alternative cooling water source considered.

(H) A discussion of applicable rules, including but not limited to standards, new source review, and significant deterioration rules established pursuant to Chapter 1 (commencing with _ 39000) of Division 26 of the Health and Safety Code, and the methods proposed to satisfy these rules.

(2) With respect to hydrology, water supply, and water quality:

(A) A description of surface waters which may be a source of cooling water or which may be potentially impacted by the proposed project. Such description shall indicate the proximity of such surface waters to the geothermal field and power plant site, availability of cooling water for the project, competitive uses for the cooling water supply, quality of cooling water supply, and available data on existing quality of surface waters potentially impacted or any programs proposed to identify and monitor water quality.

(B) A description of local and regional groundwater aquifers and related geologic formations, structures, recharge areas, and major groundwater uses.

(C) A description of existing regional and local precipitation and storm runoff data, including maximum probable precipitation and flood potential.

COMMENT: If the applicant proposes to use other than maximum probable precipitation

for flood hazard mitigation design criteria, other historical extreme precipitation values used for design criteria shall be provided.

(D) A general discussion of any liquid discharges, permitted or accidental, or disposals of solid waste materials which could impact the quality of surface or groundwater.

(E) A general discussion of potential project impacts on local hydrologic flows and runoff.

(F) A general discussion of the potential for flood hazard to the proposed facilities.

(G) A general discussion of potential mitigation measures to protect surface and groundwaters from project impacts, including the identification of any spill clean-up contingency plans proposed or under consideration at the time of filing of the notice.

(H) A discussion of potential project impacts on the temperature, mineral content, rate of flow, and other aspects of nearby utilized thermal springs.

(3) With respect to geology and seismicity:

(A) A general description based on existing data, including maps of the tectonic history, fault activity, and historical seismicity within 50 km of the site, including all known or inferred potentially active and active faults, an estimate of the magnitude of MCE and MPE derived for each active fault, and the epicenter and date of any earthquake with a magnitude equal to or in excess of M4 or which could be reasonably inferred to have caused ground acceleration of greater than 0.1 G at the site.

(B) The MCE and MPE peak bedrock or ground accelerations derived for the proposed site.

(C) A brief discussion of the known stratigraphic units and significant geologic structures within 10 km of the site with emphasis on those potentially associated with geotechnical problems.

(D) A map and detailed description, based on existing data, of all recognized stratigraphic units, geologic structures, and geomorphic features or processes within the leasehold boundaries or two km of the site, whichever is greater, with emphasis on those associated with geotechnical problems in the site area. The discussion should include the following anticipated site conditions: ground rupture from faulting, mass wasting and slope stability, liquefaction or settlement, subsidence and associated ground rupture, expansion or collapse of soil structures, cavities, and other adverse site or foundation conditions.

(E) A description, with maps, of commercially developed mines, gem, mineral, and fossil collecting localities, fumaroles, geysers, hot springs, or other geologic resources of unique recreational or scientific value which may be affected by the proposed project.

(F) A detailed description, including maps showing location, of potential impacts to the geological environment resulting from construction, operation, or failure of the proposed facilities including inducement or acceleration of mass wasting, subsidence seismicity, and fault rupture.

COMMENT: The geological environment includes, but is not limited to, developed mines, gem, mineral and fossil collecting localities, fumaroles, geysers, and thermal springs.

(G) A general description of typical mitigation measures, if any, under consideration to eliminate or reduce identified geologic hazards and impacts to the geologic environment.

COMMENT: The 2, 10 and 50 km distances in items 4, 3, and 1, respectively, are intended as guidelines, and may decrease, if reasons are given, or increase, as geologic conditions warrant.

COMMENT: Also, for purposes of the proceedings on the notice, the MCE, MPE and associated accelerations requested in items 1 through 7 above are intended to establish a common data base with respect to seismic setting and are not meant to imply proposed levels of seismic design.

Furthermore, where an applicant pursues a certification process pursuant to Section 1803(a) and files a notice early in the resource development process information related to the geologic environment may be based on existing information without performing original research and investigation.

Finally, the geotechnical information requested above is consistent with the policy adopted by the State Board of Registration for Geologists and Geophysicists on July 17, 1978.

(4) With respect to agriculture and soils:

(A) A map of soils at the site and within geothermal, the leasehold based on available soils information, and a description of mapped soils including soil erodability, soil taxonomy, and physical and chemical characteristics. The description of soils shall be sufficient to allow an evaluation of soil erodability, infiltration rate, permeability, and of the potential for leaching of pollutant deposition and cycling of pollutants in the soil-vegetation system.

(B) An assessment of the general effects of construction and operation of each proposed geothermal power plant facility on soils including, but not limited to, accelerated soil loss, soil dispersal and deposition patterns and quantities, the effects of power plant emissions on surrounding soil-vegetation systems, and the methods used to determine such effects.

(C) A discussion of the effects of construction and operation of each proposed geothermal power plant facility on agricultural resources, including the effects of cooling tower drift on crops and the removal of prime agricultural land from production. The discussion of these effects should be based on land capability classifications and storic ratings for all soil series of the proposed site.

(D) A discussion of mitigation measures under consideration to minimize effects on agricultural resources and soil-vegetation systems and to prevent off-site sediment transport.

(5) With respect to biological resources:

(A) A description of vegetational communities, general wildlife and aquatic resources, and dominant species within the area potentially impacted by the proposed project.

(B) An identification on a map and a description of the known probable distribution of fully protected, rare, threatened or endangered plant and animal species, and commercially or recreationally valued species and habitats that may be adversely affected by the project.

(C) An identification of biological species of special concern and areas of critical biological concern.

COMMENT: In the notice, an attempt shall be made to identify species of special concern and areas of critical concern that may be, or are known by the applicant to be, of special interest to: (1) local, state, and federal agencies responsible for biological resources within the area potentially biologically impacted by the project; and/or (2) educational institutions, museums, biological societies and members of the public that might have specific knowledge of the biological resources within the area.

(D) A description of the potential effects of the proposed project on legally protected and commercially and recreationally valued biological resources, species of special concern, and areas of critical biological concern.

(E) A discussion of measures proposed or under consideration to mitigate impacts to identified biological resources.

(F) A general discussion of the effects of the proposed project upon timber and forest land.

(6) With respect to noise:

(A) A land use map which identifies noise sensitive receptors or groups of receptors in the vicinity of the proposed site and related facility, and geothermal leasehold, which includes future land uses identifiable from adopted land use plans and filed development plans at the time of filing the notice.

(B) A discussion of either the results of daytime and nighttime ambient noise surveys at the site and at sensitive receptors, including the general weather conditions during the surveys, or any plans to conduct such surveys.

COMMENT: If noise concerns are likely to be a significant consideration for site acceptability due to the proximity of the proposed facilities to sensitive noise receptors, the applicant should conduct ambient noise surveys for inclusion in the notice; without such

information, no conclusive findings shall be made during the proceedings on the notice regarding the acceptability of project noise impacts.

(C) A description of major plant noise sources and the estimated range of noise emission levels and characteristics.

(D) An estimation of the plant construction and operational noise levels at sensitive receptors potentially impacted by project noise.

(E) A discussion of applicable noise standards and ordinances and the general conformance of the proposed project therewith.

(7) With respect to cultural resources:

(A) A description of all cultural resource properties (archaeological, historical, paleontological, and areas of unique religious or scientific value) within the area potentially impacted by the project identifiable from a literature and reconnaissance survey.

(B) A discussion of those cultural resources listed in, declared eligible for, or nominated to the National Register of Historic Places; those resources that are listed as state or local landmarks or points of historic interest; and those resources that are otherwise protected by existing law.

(C) A description of the methodology and techniques used to identify and evaluate site area cultural resources and any plans for future studies.

(D) A description of potential impacts on identified cultural resources from construction and operation of each proposed geothermal power plant, and the measures under consideration for mitigation of such impacts.

(8) With respect to social and economic effects:

(A) A general description, with an accompanying map, of the existing and proposed future land uses of the proposed power plant site and geothermal leasehold as designated by applicable land use plans or guidelines of local, regional, state, and federal agencies; of the present and proposed land use classifications for the site, leasehold and adjoining areas which are potentially impacted by the project; and the location of municipal, county, regional, state and federal parks, recreational areas, scenic areas, wildlife sanctuaries, religious sanctuaries, or natural areas in the vicinity of the site and leasehold.

(B) A general description of the social and economic setting of the areas subject to impact from the proposed project.

(C) An estimation of labor required during construction and operation of the proposed geothermal power plant and the geothermal field.

(D) An estimation of the level of temporary and permanent project-related immigration to the local area.

(E) An estimation of the impact of construction activities and project operation on the local economy and on the availability of public services and facilities fixtures.

(f) In a section entitled "Public Health Impacts", the notice shall contain the following information on the potential public health effects from the construction and operation of the proposed power plant and geothermal field:

(1) An identification, to the extent known, of solid gaseous, and water-borne emissions, such as H₂S, SO₂, NH₃, and B, total suspended and respirable particulates, trace metals, and radioactive materials, which may cause adverse health effects in the surrounding population.

(2) An estimation of the ambient concentrations for the pollutants identified in subsection A of this section, and the worst case incremental increase expected as a result of project emissions.

(3) A general discussion of concentrations, to the extent known, required for the creation of potentially significant adverse health effects from identified pollutants as disclosed in available literature. The discussion shall include variables due to differing age groups within the general population and portions of the general population which may be particularly affected by any identified emissions. The discussion shall also include the age distribution and size of the population which may be potentially affected by these emissions.

(4) A discussion of all existing federal, state, and local health standards for identified project emissions.

(g) In a section entitled "Power Plant Reliability" the notice shall contain the following information on site dependent reliability-related factors:

(1) A general discussion of the impact on plant reliability from potential hazards to each proposed facility caused by, but not limited to, ground rupture by faulting, mass wasting, and slope stability, liquefaction or settlement, subsidence and associated ground rupture, expansion or collapse of soil structures, cavities or other adverse foundation conditions, flooding, meteorological and climatic extremes, and cooling water supply reliability.

(2) A general discussion of performance and design criteria for protecting the facilities from potential hazards.

(3) A general description of the basis for formulation or selection of performance and design criteria discussed in subsection (B) of this section.

(h) In a section entitled "Electric Transmission Facilities", the notice shall contain the following information:

(1) A description of any electric transmission facilities, lines, stations, or other equipment, whether or not within the exclusive permit authority of the commission, which will be required to carry electrical power from each proposed geothermal power plant at each of the sites presented in the notice to the principal load centers to be served by the new power plant. Such description shall include the width of rights-of-way and the physical and electrical characteristics of towers, conductors, and insulators. For electric transmission facilities outside the exclusive permit authority of the commission, response to this subsection may be limited to information, such as capacity and voltage levels and right-of-way widths, which will allow the commission staff to perform an electric transmission system planning analysis and to assess the cumulative environmental impacts.

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

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

COMMENT: A precise definition for "general area" as used here cannot be provided. In some instances the KGRA in which the proposed geothermal power plant is to be located would comprise the "general area". In all cases the applicant should acknowledge whether or not power plants proposed in an area which could be served by common transmission to the main transmission grid where considered in determining the capacity and general route of the proposed electric transmission facilities.

(4) An identification of the owners and operators of the proposed electric transmission facilities and their legal interest in the proposed route or corridor.

(5) A discussion of alternative methods of transmitting power from each proposed geothermal power plant that were considered by the applicant, and the basis for selection of such methods.

(6) A map or maps showing the potential corridor or corridors proposed or alternative points of interconnection, and existing and proposed land uses at and adjoining the corridor(s) as designated by local, regional, state, and federal agencies.

(7) A description of the corridor or route selection process.

(8) A discussion of the physical, biological, social and cultural, environmental, and engineering advantages and disadvantages of the alternatives considered.

(9) A preliminary estimate of the costs of lines, stations, and other equipment that would be required.

(10) If the applicant does not or will not have an ownership interest in those electric transmission lines proposed to transmit power from the power plant to a point of junction with an interconnected system, a discussion of contracts executed or arrangements contemplated for the transmission of electric power from the proposed geothermal power plant.

COMMENT: Where tap lines are proposed, the discussion may be route-specific due to their limited length.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25001, 25006, 25110, 25502, 25504, 25506 and 25506.5, Public Resources Code.

APPENDIX F: INFORMATIONAL REQUIREMENTS FOR A SMALL POWERPLANT EXEMPTION

The application shall include the following information:

- (a) The location of the power plant on a location map and described by section or sections, range, township, and county.
- (b) Photographic representations adequately depicting proposed transmission corridors or routes and the visual appearance of the power plant site and its immediate surroundings.
- (c) The type(s) of fuel to be used.
- (d) The methods of construction and operation of the power plant.
- (e) A discussion of the environmental and energy resources impacts which may result from the construction or operation of the power plant.
- (f) A discussion of proposed alternatives to the power plant, including the alternative of no power plant, and any mitigation measures proposed to reduce environmental impact.
- (g) The need for the power plant.
- (h) The compatibility of the power plant with the most recent biennial report issued pursuant to Section 25309 of the Public Resources Code.
- (i) A list, including the names and addresses of persons to contact, of federal, state, regional, or local agencies whose standards, ordinances, or laws including long range land use plans or guidelines adopted by the state or any local or regional planning agency are applicable to the proposed project. The list shall include a brief description of the applicability of such standards, ordinances, laws, plans, or guidelines for each agency.

(j) A discussion of that portion of the gross energy output which will be used for the site and related facility.

(k) Any other information that the applicant desires to submit.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

CHAPTER 6. ENVIRONMENTAL PROTECTION

Article 1. Implementation of the California Environmental Quality Act of 1970

/ 2305. Initial Study.

Where an Initial Study is necessary, it will be available for public access and inspection either in the Negative Declaration or incorporated into a draft EIR, depending upon its findings on significant effect.

Note: Authority cited: Section 21082 and 25213, Public Resources Code. Reference: Section 21105, Public Resources Code.

/ 2306. Negative Declaration.

Where a Negative Declaration is prepared, its completion and availability shall be announced in one or more newspapers of general circulation chosen on the basis of providing the most effective public notice.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21092, Public Resources Code.

/ 2308. Fees for EIR or Negative Declaration Expenses.

The executive director shall charge and collect a reasonable fee from any person proposing a project subject to CEQA to cover the estimated actual cost of preparing a Negative Declaration or an EIR. The deposit shall not be in excess of three percent (3%) of the estimated capital cost of the proposed project.

(a) The commission staff shall separately account for the deposit collected and the charges thereto. The status of the account shall be provided to the project proponent at regular intervals established by mutual agreement. The executive director shall request additional deposits if the initial deposit has been exhausted. A final accounting shall be rendered by the commission staff after the EIR or Negative Declaration has been certified or adopted.

(b) If in the final accounting the deposits exceed the actual costs incurred by the commission, the excess shall be refunded. If the actual costs exceed the amount of the deposits, the project proponent shall be billed for the difference.

(c) The executive director may adjust or waive deposits for minor projects. For projects with an estimated capital cost of more than \$1,000,000, the executive director shall permit payment of the deposit in increments.

(d) The executive director should collect the deposit prior to the preparation of environmental documents and no final EIRs or Negative Declarations shall be certified until the project proponent has reimbursed the commission for the costs of preparing and processing them.

(e) Where a staged EIR is prepared the executive director shall collect a deposit sufficient to cover the expenses of each stage of the EIR before each stage is commenced. Such deposits shall be accounted for in the manner described in subsection (a) of this section, and a final accounting shall be rendered upon completion of each stage of the EIR at the request of the project proponent.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21089, Public Resources Code.

CHAPTER 7. ADMINISTRATION

Article 2. Disclosure of Commission Records

/ 2501. Policy.

The California Legislature has declared that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, and has also recognized that there are sound reasons for protecting privacy. The Commission has adopted these regulations so that members of the public will fully understand and be given the opportunity to exercise their right to inspect and copy commission records with the least possible delay and expense, and so that legitimate interests in confidentiality will be protected.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 6250 and 6254, Government Code and Sections 25223 and 25321, Public Resources Code.

/ 2502. Scope.

This Article applies to inspection and copying of all records. It applies to any person making any request to copy or inspect records. It applies to any request by any person for the commission to keep a record confidential, including, but not limited to, requests pursuant to Section 25321 of the Public Resources Code.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code, and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code.

/ 2503. Construction and Definitions.

(a) This Article implements the California Public Records Act (Sections 6250-6261 of the Government Code) and shall be construed in a manner consistent with that Act.

(b) Unless the context requires otherwise, for purposes of this Article the following definitions shall apply:

(1) "Record" means any writing containing information relating to the conduct of public business prepared, owned, used, or retained by the commission, regardless of physical form. "Record" includes "confidential record" as defined by Section 2503(b)(4).

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, or any other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, on any paper, map, magnetic or paper tape, photographic film or print, magnetic or punched card, disc, drum, or other document.

COMMENT: The definitions of "record" and "writing" are derived from Sections 6252(d) and 6252(e) of the Government Code. These definitions are designed to be as broad as possible and to require a focus on substantive information rather than on form. As the Legislative Committee which drafted the Public Records Act stated, "[the definitions are] intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping as it is developed. Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from [these] definition[s], i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities." ("A Final Report of the California State Assembly Statewide Information Policy Committee," Appendix to Journal of the Assembly, 1970, Volume 1, page 9.)

(3) "Private third party" means any person other than a federal, state, regional, or local governmental body or a person under contract to such a governmental body.

(4) "Confidential record" means a record which has been determined to be confidential and unavailable to the public pursuant to Section 2505.

(5) "Applicant" means a private third party requesting the commission to keep a record confidential pursuant to Section 2505.

(6) "Application" means a request, pursuant to Section 2505, that the commission keep a record confidential.

(7) "Petitioner" means a person requesting to inspect or copy a confidential record pursuant to Section 2506.

(8) "Petition" means a request, pursuant to Section 2506, to inspect or copy a confidential record.

Note: Authority cited: Section 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Sections 6250-6261, Government Code.

/ 2504. Inspection and Copying.

(a) Requests.

A request to inspect or copy a record may be made orally or in writing to the Office or Division where the record is kept, to the Executive Director or to the Communications Office. The Public Adviser will assist persons in requesting records. A request shall describe the record sought in sufficient detail so that it can be identified and found by a commission employee. Persons requesting to inspect or copy records need not provide any information about their reasons for wishing to examine records.

(b) Time and Place.

A request to inspect or copy a readily identifiable and available record shall be satisfied within eight working hours unless the use of the record by another person or a commission employee, the volume of requests, or the unavailability of commission employees renders such a response impracticable. All records except records determined to be confidential pursuant to Section 2505 or Section 2506 shall be made available for inspection and copying Monday through Friday, generally between 8 a.m. and 5 p.m. at the commission's offices. Records submitted to the commission but not yet processed or filed are not available for inspection or copying until all necessary processing is completed; provided, however, that no processing or filing shall delay making a record available for more than two working days. The Executive Director shall make reasonable efforts to provide facilities for inspection of records, including a desk for notetaking.

(c) Protection of Records.

Records may be inspected or copied only at Commission offices. The Executive Director may designate a particular place for the public to inspect or copy records. He or she may establish procedures for responding in a fair and orderly manner to numerous requests, including, when

strictly necessary to prevent disruption of commission functions, establishing a specific time each day for inspection and copying. He or she may require a commission employee to be present at the time of inspection or copying, but such employee shall not disturb a person inspecting or copying records. Where necessary, copies of records rather than originals may be provided for inspection.

COMMENT: These provisions are for the protection of records and to allow the commission to function smoothly while responding to requests for records. They will not be used in any way to delay or hinder inspection or copying of records. The rule in Section 2504(b) that records are available between 8 a.m. and 5 p.m. will be overridden only when strictly necessary to prevent disruption of commission activities.

(d) Computer Records.

Inspection and copying of computer records and other records whose form makes inspection or copying difficult or impracticable shall be in a manner determined by the Executive Director. If providing an exact copy is impracticable, some type of copy shall nevertheless be provided.

(e) Copies.

Except for records determined to be confidential pursuant to Section 2505 or Section 2506, copies and certified copies of all records are available to any person for a fee. The fee shall be paid at the time a request is made. A request for a copy of a readily identifiable and available record, accompanied by proper payment, shall be satisfied within ten working days. The fee for providing a copy or a certified copy shall be no higher than the actual cost of providing the copy, or the prescribed statutory fee, whichever is less.

(f) Requests for Confidential Records.

If a person requests to inspect or copy a record determined to be confidential pursuant to Section 2505 or Section 2506, the Staff shall:

- (1) inform the person that the record is confidential and is unavailable;
- (2) briefly explain the procedures available to obtain confidential records pursuant to Section 2506;
- (3) give the person a copy of these regulations;
- (4) give the person a copy of the Executive Director's determination of confidentiality, or the commission's, as the case may be; and

- (5) inform the person of the assistance available from the Public Adviser.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Section 6253(a), and 6257, Government Code.

/ 2505. Designation of Confidential Records.

No confidential record, or record which is the subject of a pending application, shall be disclosed except as provided by Section 2506 or 2507, unless disclosure is ordered by a court of competent jurisdiction.

- (a) Application for Confidential Designation.

Any private third party giving custody or ownership of a record to the commission shall indicate any desire that it be designated a confidential record and not publicly disclosed but failure to so indicate at the time the record is submitted to the commission is not a waiver of the right to request confidentiality later. An application for confidential designation shall:

- (1) be on a sheet or sheets separate from but attached to the record;
- (2) specifically indicate those parts of the record which should be kept confidential;
- (3) state the length of time the record should be kept confidential, and provide justification for the length of time;
- (4) cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record. If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of the advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;
- (5) state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated with other information or masked, the application shall justify why it cannot;
- (6) state whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;
- (7) contain the following certification executed by the person primarily responsible for preparing the application: "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my

knowledge." Where the applicant is a company firm, partnership, trust, corporation, or other business entity, or an organization, or association, the certification shall also state that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization or association.

If the record contains information which the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, the applicant shall address the items in Section 2505(a) to the greatest extent possible and shall explain the demand or request made by the original party and the reasons expressed by the original party.

An improper or incomplete application shall be returned to the applicant with a statement of its defects. The record for which confidentiality was requested shall not be disclosed for 30 days after return of the application to allow a new application to be submitted.

COMMENT: Section 2505(a) states that failure to request confidentiality at the time a record is submitted is not a waiver of the right to request confidentiality at a later date. However, if the commission releases a record to a member of the public after it has been submitted but before a request for confidentiality has been received, the commission cannot thereafter keep the record confidential. Black Panther Party v. Kehoe, 42 Cal.App.3d 645, 656-657, 658, 117 Cal.Rptr. 106, 113, 114 (1974). Thus, timely submission of confidentiality requests is very important.

(b) Repeated Applications for Confidential Designation.

If an applicant's prior application for confidential designation of substantially similar information has been granted pursuant to Section 2505 or approved pursuant to Section 2506, an application for confidential designation need contain only a certification, pursuant to Section 2505(a)(7), that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the application are unchanged. Such an application shall be deemed granted or approved, as the case may be.

(c) Executive Director's Determination--Records Submitted by Private Third Parties.

The Executive Director shall, after consulting with the General Counsel and the Information Practices Officer, determine if an application for confidential designation should be granted. An application shall be granted unless the applicant has failed to make any reasonable claim that the Public Records Act or other provision of law authorizes the commission to keep the record confidential, and that there is a public interest in nondisclosure of the record. The Executive Director or the General Counsel may, within 30 days after receipt of an application, require the applicant to submit any additional information necessary to rule on the application. If the additional information is not submitted within fourteen days of receipt of the request, the Executive Director may deny the application. The Executive Director's determination shall be in writing and shall be issued no later than 60 days after receipt of an application or 30 days after receipt of additional information, whichever is later. If the Executive Director denies the application, the denial may be appealed to the commission within 30 days.

After a denial of an application, the information sought to be designated confidential shall not be available for inspection or copying if the applicant files an appeal within the aforesaid 30 day period, and until such appeal shall have been resolved by the commission. In any event, said information shall not be available for inspection or copying for a period of 30 days after the denial of an application.

COMMENT: The Information Practices Officer is the commission employee responsible, pursuant to Section 1798.22 of the Civil Code, for ensuring that the commission complies with the provisions of the Information Practices Act of 1977 (Chapter 1, Title 1.8, Part 4, Division 3 of the Civil Code, Sections 1798-1798.76).

(d) Appeal from Executive Director's Denial of Application for Confidential Designation. An Appeal from an Executive Director's denial for confidential shall be handled in the same manner as provided in Section 2506(c) and (d) of these regulations.

(e) Executive Director's Determination--Other Records. The Executive Director may, after consulting with the General Counsel, determine that a record not submitted by a private third party should be kept confidential. The determination shall be in writing and may be appealed to the commission within 30 days.

COMMENT: This subsection applies to records produced at the commission, submitted by persons under contract to the commission, and received from other agencies. In the case of information to be submitted by a person under contract to the commission, the Public Adviser will attempt to inform potentially interested members of the public before the contract is approved by the commission or the Executive Director. Neither the commission nor the Executive Director will entertain requests for confidential treatment from any person under contract to the commission after the contract has been approved.

(f) Every three months the Executive Director shall prepare a list of applications submitted and the Executive Director's determinations made during the previous three months. The Executive Director shall give the list to each commissioner.

Note: Authority cited: Section 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25321, and 25364, Public Resources Code.

/ 2506. Request for Inspection or Copying of Confidential Records

(a) Form of Request. A request for inspection or copying of any confidential record shall be a written petition to the commission. It shall state either:

(1) the reasons why the public interest in disclosure is such that the commission should release the record, if the petitioner believes the Executive Director, or the commission on appeal, correctly determined that the Public Records Act or other provision of law authorizes confidentiality; or

(2) the reasons why the petitioner believes the Executive Director's determination, or the commission's on appeal, was incorrect.

(b) Executive Director's Reconsideration.

(1) If the petition is for inspection or copying of a record received from a private third party, a person under contract to the commission, or another government agency, the Executive Director shall request permission from the private third party, person, or agency, as the case may be, to release the record. If permission is not given, the petition shall be heard by the commission pursuant to subsections (c) and (d) of this section.

(2) If the petition is for inspection or copying of a record produced at the commission, the Executive Director shall reconsider his or her original decision designating the record confidential. If the Executive Director determines that the record should not be released, the petition shall be heard by the commission pursuant to subsections (c) and (d) of this section.

(c) Commission Hearing.

(1) The Chairman shall schedule a hearing on the petition at the next practicable commission business meeting after the petition is received, considering the need to collect and examine the records in question, the number of records requested, other pending requests, and the need to obtain additional information.

(2) When a record is confidential because of an application from a private third party a copy of the petition shall be sent to such person.

(3) The commission or the General Counsel may request additional information necessary to rule on the petition from the applicant or the petitioner. If the additional information is not received by the commission within fourteen days of receipt of the request, the commission may deny the application.

(4) The petitioner and applicant shall be given notice and an opportunity to be heard at the hearing on the petition. Failure of either party to appear is not a waiver of the petition or application.

(5) At the hearing, the commission shall allow oral argument and may allow presentation of evidence. Any evidence shall be in writing and served no later than 10 days before the hearing, on the commission, the petitioner, the applicant, and any other person who requests such service. If evidence is presented, reasonable cross-examination shall be allowed. The Information Practices Officer, Executive Director, and General Counsel may participate in the hearing.

(d) Commission Decision.

(1) Procedure.

The commission's decision shall be based on the petition and application, the oral argument, and any evidence presented. If the commission determines that the record is not exempt from the disclosure requirements of the Public Records Act, or that it is exempt but that the record should nevertheless be disclosed, it shall issue an order that the record be disclosed. If the record is one for which confidential treatment was requested by a private third party, the order to disclose the record shall not be effective until thirty days after the order is issued to allow the applicant to seek judicial review; however, the order shall be final upon issuance and shall not be subject to reconsideration. If the commission determines that the record is exempt from disclosure and should not be disclosed, an order to that effect shall be issued; such order is final and effective upon issuance.

(2) Criteria for Decision.

(A) The commission shall not disclose any record whose disclosure is prohibited by law.

(B) The commission shall disclose any record which is not authorized by law to be kept confidential.

(C) The commission shall disclose any record exempted from disclosure by Section 6254(a) of the Government Code unless the public interest in nondisclosure clearly outweighs the public interest in disclosure.

(D) The commission shall disclose any record exempted from disclosure by Section 6254(c) of the Government Code unless disclosure would constitute an unwarranted invasion of personal privacy.

(E) The commission shall disclose any record exempted from disclosure by Section 6254(i) of the Government Code unless disclosure would result in an unfair competitive disadvantage to the person supplying the information.

(F) The commission shall disclose any record exempted from disclosure by Sections 6254(b), 6254(d), 6254(e), 6254(f), 6254(g), 6254(h), 6254(j), 6254(k), 6254(l), 6254(m), or 6254(n) of the Government Code unless the public interest in nondisclosure outweighs the public interest in disclosure.

(G) The commission shall disclose any other record unless the public interest in nondisclosure clearly outweighs the public interest in disclosure.

In weighing the public interests in disclosure and nondisclosure, the commission shall consider whether the record has played or will play a part in a commission decision, whether the public interest in disclosure could be served by presenting the information in an alternate form which lessens the harm to the applicant, the extent to which disclosure would affect the

commission's ability to obtain information in the future, the probability and extent of harm to be suffered by the applicant if the record is disclosed, and other relevant factors.

COMMENT: The Public Records Act establishes a general rule that public records shall be disclosed to any person upon request. (Government Code Sections 6250, 6253.) In Section 6254 the Act sets forth a number of exemptions, for specified types of records, from this general requirement of disclosure. The courts have declared that these exemptions "are permissive, not mandatory; they permit nondisclosure but do not prohibit disclosure." Black Panther Party v. Kehoe, 42 Cal.App.2d 645, 656, 117 Cal.Rptr. 106, 113 (1974). That is, even though a record is exempted from disclosure by one of the specific provisions of Section 6254, the commission has the discretion to release the record. The law on this subject indicates that the commission should exercise this discretion by withholding records only when the public interest in nondisclosure outweighs the public interest in disclosure. 53 Ops.Cal.Atty.Gen. 136, 143 (1970); Black Panther Party v. Kehoe, 42 Cal.App.3d 645, 656, 117 Cal.Rptr. 106, 113 (1974); Uribe v. Howie, 19 Cal.App.3d 194, 206-207, 209-211, 96 Cal.Rptr. 493, 500, 502-504 (1971). Section 2506(d)(2)(F) of the regulations implements this principle.

Government Code Sections 6254(a), 6254(c), and 6254(i) contain somewhat different tests for determining whether a record exempted by one of these Sections should be disclosed. Sections 2506(d)(2)(C), 2506(d)(2)(D), and 2506(d)(2)(E) of the regulations implement those tests. Many public records are not covered by any of the specific exemptions in Section 6254 of the Government Code. Section 6255 states that the commission may withhold any such record only if the public interest in nondisclosure clearly outweighs the public interest in disclosure. Section 2506(d)(2)(G) of the regulations reflects this rule.

(e) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the commission orders held confidential pursuant to Section 2506(d). Any petition for such information shall be deemed denied unless the petitioner alleges changed circumstances which require a reversal of the commission's previous order. A petition for such information shall be returned to the petitioner with a copy of the commission's previous order, a copy of these regulations, and an explanation of the requirement to show changed circumstances. An amended petition may be submitted.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code and Sections 6250-6261, Government Code.

/ 2507. Disclosure of Confidential Record.

The Executive Director may disclose records determined confidential pursuant to Section 2505 or Section 2506 to:

(a) Commission employees whose commission work requires inspection of the records.

COMMENT: All commission employees are required to sign an agreement forbidding disclosure of trade secrets or other confidential records.

(b) Persons under contract to the commission whose work for the commission requires inspection of the records and who agree in a contract to keep the records confidential.

(c) Other governmental bodies which have a need for the records related to their official functions and which agree to keep the records confidential and to disclose the records only to those employees whose agency work requires inspection of the records. On behalf of the commission the Executive Director may request and agree to maintain the confidentiality of other agencies' confidential records.

(d) Any person, provided that the Executive Director has masked or aggregated the information in the manner indicated by the applicant pursuant to Section 2505(a)(5), or provided that the applicant has otherwise consented in writing to the disclosure.

(e) The Executive Director shall advise the private third party to whom the confidential designation belongs of the disclosure to persons in subsections (b), (c) and (d) of this section of records determined confidential pursuant to Section 2505 or Section 2506.

NOTE: Authority cited: Section 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

/ 2508. Pending Requests for Confidentiality.

All petitions, requests, and other expressions of a desire that the commission maintain particular records confidential, including but not limited to petitions pursuant to Section 25321 of the Public Resources Code, which have submitted to the commission before the effective date of this article, are deemed granted pursuant to Section 2505. All other provisions of this article, including 2506, are applicable to such records.

NOTE: Authority cited: Section 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 25223 and 25231, Public Resources Code.

/ 2509. Security of Confidential Records.

The Executive Director is responsible for maintaining the security of confidential records and records determined by the commission to be unavailable pursuant to Section 2506.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

/ 2510. Delegation of Authority and Responsibilities.

The Executive Director may delegate any of his or her authorities or responsibilities under this Article to any Division Chief.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

/ 2511. Information Practices Act.

Nothing in this article shall be interpreted or applied in a manner inconsistent with the Information Practices Act of 1977 (Chapter 1, Title 1.8, Part 4, Division 3 of the Civil Code, Sections 1798-1798.76). In particular, notwithstanding any other provision of this Article:

(a) Personal information contained in individual employment or medical files, or other personal information which would clearly be disparaging of or threatening to the reputation or rights of an individual other than a state employee acting in his or her official capacity, shall not be publicly disclosed.

(b) Any individual may obtain any record containing personal information concerning him or her which is accessible pursuant to the provisions of the Information Practices Act of 1977.

For purposes of this section, the definitions of "individual" and "personal information" in Sections 1798.3(b) and 1798.3(f) of the Civil Code shall apply.

COMMENT: Subsections (a), (b), and (c) implement Sections 1798.24(g), 1798.60, and 1798.70 of the Civil Code. They are not necessarily a complete list of the relevant restrictions of the Information Practices Act of 1977. The commission's Information Practices Office is available to answer questions about the commission's implementation of that Act.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code and Section 1798.70, Civil Code.

Article 3. Role of Public Adviser.

/ 2551. Application of Article.

This article defines the duties of the Public Adviser to the State Energy Resources Conservation and Development Commission, which duties are outlined in Sections 25222 and 25519 of the Public Resources Code, and any amendments to Division 15 of the Public Resources Code.

NOTE: Authority cited: Sections 25213, 25218(e) and 25218(f), Public Resources Code. Reference: Sections 25217-25217.5, 25222, 25223 and 25519(g), Public Resources Code.

/ 2552. Definitions.

(a) "Member of the public" means any person, firm, association, organization, partnership, business trust, corporation, or company, and also includes any city, county, public district or agency, state or any department or agency thereof (except for the commission and members of its staff), and the United States or any department or agency thereof.

(b) "Proceeding" means any meeting, hearing, workshop, conference, or visit, of the commission or its staff, at which public attendance is required or permitted.

/ 2553. Overall Duty of the Public Adviser.

The Public Adviser serves as adviser to the public and to the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The adviser serves the public and the commission by (1) advising the public how to participate fully in the commission's proceedings, thereby providing the commission with the most comprehensive record feasible in those proceedings; (2) advising the commission on the measures it should employ to assure open consideration and public participation in its proceedings; and (3) taking other measures to comply with Sections 25222 and 25519(g) of the Public Resources Code.

/ 2554. The Adviser's Duty to Refrain from Advocating Substantive Positions.

In performing duties to the commission, including those duties discharged by advising the public, the adviser shall not represent any members of the public, nor shall he advocate any substantive position on issues before the commission.

/ 2555. The Adviser's Duty Within the Commission.

(a) Within the commission the adviser shall present recommendations to and requests for documents from line divisions of the commission only through the executive director or the division chiefs. The public adviser shall be given full and ready access to all public records.

(b) In recommending to the commission measures to assure full public participation in the commission's proceedings, the adviser shall render his or her independent advice on commission procedures that in the adviser's view will provide the optimum of public participation to benefit the commission in its work. As part of such advice, the adviser may advocate points of procedure that in the adviser's view will improve public participation in the commission's proceedings.

(c) So that the adviser may ensure that timely and complete notice of commission proceedings is disseminated to members of the public, he or she shall examine all notices of commission proceedings and shall present to the executive director any recommendations for improving the accuracy and timeliness of such notices.

/ 2556. The Adviser's Duties In Advising Members of the Public.

The adviser shall be available to any member of the public with an interest in participating in the commission's proceedings. In advising members of the public on effective means of participating in the commission's proceedings, the adviser shall render his or her independent advice to a member of the public that in the adviser's view will provide the most effective participation of that member. Specifically, the adviser shall:

- (a) Respond to all inquiries he or she receives from members of the public for information on the commission's agenda and opportunity for participation in the commission's proceedings.
- (b) Respond to all inquiries from members of the public seeking advice on how to participate in the commission's proceedings.
- (c) Establish rosters of members of the public who have an interest in the commission's proceedings.
- (d) Advise members of the public regarding when an attorney, expert witness, or other professional assistance will be necessary or helpful to their participation.
- (e) Upon request, assist members of the public in obtaining access to the public records of the commission, following the procedures established by appropriate regulations.
- (f) Refer members of the public to commission staff who can best respond to the inquiries of those members.
- (g) Organize the appearances of public participants in the public meetings and hearings of the commission, and formally introduce public participants to the commission.
- (h) Suggest consolidation and coordination between and among members of the public with similar interests or views.
- (i) Solicit the participation of members of the public whose participation the adviser deems necessary or desirable to complete the record in matters before the commission.
- (j) Upon the request of public participants who may be absent from the commission's place of business or proceedings when a matter of interest to them is being considered, neutrally and publicly relate those participants' points to the commission.
- (k) When necessary and desirable, guide public participants in their oral presentation to elicit or emphasize the participants' main points.

/ 2557. Additional Duties.

The adviser shall perform such additional duties consistent with Division 15 of the Public Resources Code and these regulations, that the commission may from time to time assign.