CALIFORNIA
ENERGY
COMMISSION

PUBLIC PARTICIPATION IN THE SITING PROCESS: PRACTICE AND PROCEDURE GUIDE

SITING PROCESS GUIDEBOOK

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Arnold Schwarzenegger, *Governor*

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DISCLAIMER

This Guide has been prepared and updated by the Public Adviser's Office and has been reviewed by the Hearing, Legal, as well as Siting Offices of the Energy Commission. It is provided to assist the public with understanding and participating in the Energy Commission's siting process. Therefore, the guide is informational in nature and does not discuss all situations, variations and exceptions in the siting processes and proceedings of the Energy Commission. For this reason, the guide should not be relied upon as legal advice. If you feel you need such advice, you are encouraged to seek competent legal help. However, you do not need an attorney to participate in the Energy Commission's proceedings. The Public Adviser's Office will assist you with information on how to participate, but cannot represent you in these proceedings.

Dear Reader:

The California Energy Commission's (Energy Commission) primary responsibility is to the people of California. As the Public Adviser at the Energy Commission, it is my responsibility and highest priority to assist the public -- including individuals, stakeholders or members of organizations -- with meaningful participation in the programs and proceedings of the Energy Commission.

This Guide has been prepared and updated by the Public Adviser's Office to help the public with understanding and, if so inclined, participating in the Energy Commission's process of licensing the construction, operation and closure of thermal power plants 50 megawatts or larger and their related facilities. It has been reviewed by experts in the Energy Commission's Hearing, Legal and Siting Offices and their constructive comments have been incorporated into the final document. I want to express my appreciation for their valuable contributions.

The Public Adviser's Office is committed to being pro-active in our outreach efforts to a broad section of society to ensure meaningful public participation. While we are ready to assist you with information about the programs and proceedings of the Energy Commission, we are not authorized to represent you in these proceedings.

We may be contacted by:

- Toll-phone: (916) 654-4489;
- Toll-free phone: (800) 822-6228;
- FAX: (916) 654-4493;
- E-mail: PAO@energy.state.ca.us; or
- Mail: California Energy Commission, MS-12
  1516 9th Street, Sacramento, CA 95814

We are looking forward to hearing from you, especially your comments about the contents and the value of this Guide as an information and reference document.

Sincerely,

MARGRET J. KIM
Public Adviser

ABSTRACT

State law established the California Energy Commission as the primary state agency for licensing power plants 50 megawatts or larger. The same law also ensures public access to and participation in this licensing process.

This Siting Process Guidebook has been prepared and updated by the Public Adviser's Office (PAO) to help the public with understanding of and – if so inclined – participating in the Energy Commission's licensing process. While the PAO provides procedural guidance to the public, it is not authorized to represent as the public's legal counsel in these proceedings.

KEY WORDS

The following key words or phrases may be used to search the California Energy Commission Website (www.energy.ca.gov) on the subject/topics of this Guidebook:

Public participation, public adviser, public access, guide to public participation, environmental justice, intervention process, intervenor, parties of interest, informational hearing/workshop, siting process, certification process, compliance process, data adequacy.

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PREFACE

The California Energy Commission has the following major responsibilities:

- Preparing a biennial Integrated Energy Policy Report for the Governor and Legislature;
- Forecasting statewide energy supply/demand and maintaining/providing energy data;
- Licensing and monitoring the siting, construction and closure of thermal power plants 50 megawatts or larger;
- Promoting energy conservation and efficiency;
- Developing renewable energy resources and alternative energy technologies; and
- Planning for and directing state response to energy emergencies.

This Siting Process Guide book addresses the second major issue area - siting and certifying power plants. It serves the public by providing information to persons wanting to participate in the siting process.

Chapters 1 through 5 provide an overview of the entire siting process; explain the roles of the participants; and describe key siting documents. Chapter 6 explains how to become an "intervenor" or a party in the siting process and the intervenor's role and responsibilities in the siting process. General procedures, requirements and practices are explained in Chapters 6 through 13. Chapters 14 through 18 take the reader through steps of the final certification decision, including the hearings, decisions, and appeals.

Appendix A describes the public notices that are frequently used by the Energy Commission. Appendix B contains blank forms an intervenor would find useful.

The siting procedures illustrated in this Guide serve the public and the Energy Commission in four basic ways:

- Maximize the time available for analysis and information gathering at the beginning of the siting proceeding;
- Provide for workshops where information can be exchanged. Energy Commission sponsored workshops provide a "rolled-up sleeves" examination and discussion of issues.[1] Workshops facilitate the resolution of substantive issues on which there is agreement;
- Identify and narrow issues that must be heard in formal hearings. Facts are gathered to form the basis for the proposed decision; and
- Afford a full opportunity to argue the importance and effect of the evidence before and after preparation of the proposed decision.

[1] Substantive issues create, define and regulate rights. Substantive matters include, but are not limited to, discussions on the project's issues and whether they are right or wrong, and any contemplated or proposed conclusions, recommendations or discussions on the case.

Using this Guide, the public can maximize opportunities for effective participation, and protect substantive and procedural rights.[2] No one should hesitate to use these procedures to protect or advance his/her own interest.

The Public Adviser, an attorney admitted to practice law in California, is available to provide independent advice on ways to participate in the regulatory process. The Public Adviser may be reached at (916) 654-4489 or toll-free in California at (800) 822-6228. The FAX for the Public Adviser's Office is (916) 654-4493 and the e-mail address is pao@energy.state.ca.us .

[2] Procedural rights prescribe methods of enforcing substantive rights or obtaining redress for their invasion. For example, procedural rights deal with questions regarding a fair process such as receiving notice; an opportunity to comment; or other questions concerning access to participation in the process.

CHAPTER 1

Overview of the Energy Commission in the Siting Process

The Energy Commission is responsible for addressing the emerging energy challenges facing our state.[3] Consistent with its mandate, the Energy Commission advocates energy systems that protect the public health, safety, and preserve the environment. It also advocates efficient and reliable energy systems and provides comprehensive energy forecasting, as well as a one–stop, coordinated licensing process for power plants 50 megawatts or larger.

The energy industry is shifting toward greater competition and away from direct government intervention. With deregulation and competition in energy generation, the Energy Commission is challenged to ensure that all new power plants are fully evaluated in a timely and consistent manner for their impacts on health, safety and the environment.

This chapter:

- Defines the term "siting process" and clarifies its purpose;
- Explains that a certificate of approval by the Energy Commission must be obtained before constructing a power plant; and
- Directs the reader to the sources of information about the proposed siting project.

What Does the Term "Siting Process" Mean?

The "siting process" is a chain of events leading to a decision by the five-member Energy Commission to approve or to disapprove construction of a power facility. Literally, "site" means the location of a place. At the Energy Commission, the siting process is used to evaluate the proposed power plant project[4] -- the location, design and construction as well as the impact on public health, safety, the environment, and the general welfare.

The Energy Commission is assisted in the siting process by the staff of the Systems Assessment and Facilities Siting Division. The Division plays a key role in gathering information about proposed sites and evaluating both the engineering and environmental details of the proposed project. Impacts of the proposal on transportation, health, air quality and possible hazardous materials are among the concerns that are analyzed.

What Is the Purpose of the Siting Process?

The purpose of the siting process is to: "...ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection" (Public Resources Code § 25001).

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[3] The Warren-Alquist State Energy Resources Conservation and Development Act created the Energy Commission in 1974. The statutes are found in the Public Resources Code beginning at section 25000.

[4] Including all related power plant facilities, electric transmission lines, gas and water lines.

To meet this purpose, the Energy Commission has compiled the “Rules of Practice and Procedure and Power Plant Certification” which guide the conduct of participants in the Siting Process. The “Rules” are contained in Title 20, California Code of Regulations, Chapters 1,2,5,6,and 7.

A Certificate Is Needed To Build A Power Plant

Often referred to as a permit or license, a certificate designating approval of the Energy Commission must be obtained before constructing, or expanding, a power plant and/or electric transmission line and related facilities.[5] Projects requiring a certificate include:

- A power plant with a net generating capacity of 50 megawatts[6] or larger.
- The plant must be a "thermal electric" power plant, meaning the production of electricity by the direct action of heat.[7] These technologies usually use the following heat sources: natural gas, biomass, geothermal, solar thermal, oil, coal and nuclear. Other technologies, such as wind, hydroelectric, fuel cells, and solar photovoltaic power facilities would not be included because they are not thermal electric plants.
- An electric transmission line from a jurisdictional thermal power plant to the first point of interconnection with the existing transmission system.
- The line carrying power from the plant to distribution lines is covered. Generally, replacement of existing electric power lines with equivalent lines is not covered.
- Related facilities include fuel supply lines, access roads, and water and waste facilities.[8]

The Energy Commission certification process examines engineering and environmental aspects of power plant proposals. The Energy Commission’s review process for Application for Certification has been deemed by the Secretary of Resources functionally equivalent to a review under the California Environmental Quality Act (CEQA).[9]

Public Information Sources On a Proposed Siting Project

Ask the Public Adviser

The Energy Commission's Public Adviser is available to advise the public on the most effective methods of participation in siting projects and to assist in obtaining copies of public records. The Public Adviser can be reached by calling (916) 654-4489 or toll free

[5] Public Resources Code section 25500.
[6] One megawatt will provide electricity for approximately 750 homes.
[7] A thermal power plant is any stationary or floating electrical generating facility using any source of thermal energy (Public Resources Code § 25120).
[8] Title 20 California Code of Regulations (CCR) § 1702(n).
[9] However, Energy Commission certification requirements sometimes exceed CEQA requirements, especially in the area of compliance conditions.

in California at (800) 822-6228. The FAX number for the Public Adviser is (916) 654-4493. The e-mail address for the Public Adviser is pao@energy.state.ca.us.[10]

Ask the Project Manager

The Energy Commission's Project Manager is the principal contact person for parties interested in upcoming activities of Energy Commission staff's review of a proposed siting project. The name and contact information for the assigned Project Manager can be found on the website for a proposed project at www.energy.ca.gov/sitingcases. The Project Manager is usually the best source of information on the technical aspects of the proposed project, as well as for information regarding the project schedule and upcoming staff events.

Go to a Local Library

Current law requires that a summary of a proposed siting project be prepared by the Executive Director of the Energy Commission and delivered to the main branch of the public library in the county where the proposed project will be located.[11] In addition, copies of the summary will be delivered to public libraries in Eureka, Fresno, Los Angeles, Sacramento, San Diego and San Francisco.

A complete copy of the filing - the Notice of Intention, the Application for Certification or Small Power Plant Exemption - is also delivered to the libraries listed above. An Application for Certification is physically a large document, often filling multiple three-ring binders. The Energy Commission also sends copies of pleadings, comments and other documents to libraries in counties affected by the proposed project to assist the public in the review process.[12]

In addition to libraries, the Docket Unit at the Energy Commission can assist in locating documents related to siting cases. Dockets can be reached at (916) 654-5076 or via e-mail at www.docket@energy.state.ca.us.

Place Your Name on the Interested Person List to Receive Mailings

Each siting case has an "Interested Person's List." People on this list receive notices of all meetings, workshops, conferences and hearings for the particular siting case. To get on the list and request future mailings the public can:

- Contact the Public Adviser's Office;
- Sign-in at an Energy Commission siting meeting and indicate you want your name added to the mailing list;
- Contact the staff project manager for the specific siting case; or
- Enter an e-mail address on the Energy Commission's list server located on the Energy Commission Website at www.energy. ca.gov/html/listservers.

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[10] The role of the Public Adviser is discussed in Chapter 2.
[11] Title 20 CCR § 1713(a), (b).
[12] Title 20 CCR § 1717(d).

Access the Energy Commission Website

Access www.energy.ca.gov/sitingcases to obtain general and specific siting case information. The site will provide links to various references, such as:

- Maps of Power Facility Licensing Cases in California;
- California Energy System Maps;
- List of "Power Facility Licensing Cases currently before the Energy Commission;"
- List of "Anticipated Power Facility Licensing Cases;"
- Energy Facilities Siting Regulations (Title 20 California Code of Regulations) (CCR);
- Energy Facilities Licensing Process - A Guide to Public Participation; and
- Overview of the Energy Commission Energy Facilities Siting/Licensing Process

A specific siting project can be accessed from this website to provide more site-specific details including a calendar for the project. Many times, the complete application for certification and all project related documents are available electronically.

Look for Public Notices

All hearings, presentations, conferences, meetings, workshops and site visits are open to the public. Notices inform the public of the date, time and location for events. Notices for the first public hearing in a siting case are mailed at least 14 days before the hearing. Subsequent notices are mailed at least 10 days before the meeting. Persons interested in receiving public notices can follow the procedures discussed above at "Interested Person List to Receive Mailings." Notices for each siting case are also available at the Energy Commission Website www.energy.ca.gov/sitingcases. A list of frequently used public notices is provided in Appendix C, at the end of this Guide.[13]

Read the Newspapers for Published Notices

The Energy Commission inserts the following notices in newspapers of general circulation in communities near the proposed power plant:

- Summary of Notice or Application;
- Notice of Informational Hearing and Site Visit; and
- Notice of Availability of the Proposed Decision.[14]

[13] From the Energy Commission's home page, access Energy Facilities/Licensing Process; select a specific project from the list "Power Facility Licensing Cases Currently before the Commission." From the left sidebar select "Proceedings, Notices, Orders, Hearings & Workshops.

[14] Title 20 CCR § 1749(a).

CHAPTER 2

Participants and Their Roles in the Siting Process

This chapter describes for the public the siting case participants and their respective roles in the process. In brief, the Energy Commission siting process involves the following key players:

- The Decision-Maker -- meaning the Energy Commission (consisting of all five Commissioners), acting on the proposed decision of a designated Committee, consisting of two Commissioners. The Committee is also supported by a Hearing Officer.
- The Parties -- meaning all applicants, complainants, respondents, intervenors and the Energy Commission staff.[15]
- The Public Participants -- meaning the general public (not having formally intervened) and interested agencies.
- The Facilitators -- denoting the Hearing Officers and the Public Adviser, attorneys who help move the process from a project proposal to the Energy Commission decision.

More detailed information about the participants and their roles follows.

Who May Participate?

Any member of the public may take part in the siting process. All meetings, workshops and hearings are open to the public. Public participation often begins when interested citizens learn of a proposal to construct a power plant in their community. Acting on this interest, citizens attend a public meeting to observe and learn more about the Energy Commission and siting procedures. The Public Adviser attends most Energy Commission meetings to assist members of the public wanting to learn more about the siting process and explain siting participation procedures.[16]

The Decision-Maker

Energy Commission Makes the Final Decision

The Energy Commission serves as the final decision-making body on all siting cases. The Governor appoints the five members of the Energy Commission to five-year terms. By law, one member must be selected from the public at large and the remaining Commissioners must individually represent the fields of engineering or physical science, economics, environmental protection and law. The appointments require Senate confirmation.

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[15] Title 20 CCR § 1201(e).

[16] Information about the Public Adviser can be accessed on the Energy Commission's Website www.energy.ca.gov. This Guide is also available by requesting a copy from the Public Adviser's Office, or downloading text from the website.

Committee Presides Over the Siting Case

Two of the five Commissioners are designated to be the committee presiding over an individual siting case. One of these Commissioners is appointed as the Presiding Member; the other is the Associate Member. The committee sets the schedule, conducts hearings and site visits, issues orders and renders a proposed decision to the full Energy Commission. Fulfilling the role of decision-maker, the committee uses the record of evidence presented in formal hearings, called the hearing record, as the basis for the committee deliberations.[17] At the completion of the formal hearing process, the committee recommends a decision to the full Energy Commission.

The Parties

Applicant Seeks Project Approval through the Siting Case

The applicant is the person or entity seeking the approval to construct and operate a power plant or transmission line that falls within the Energy Commission's jurisdiction. The applicant is a party to the proceeding and, therefore, a formal participant. Applicants prepare siting documents for processing and decision under these procedures[18] and must provide sufficient evidence to prove the facts required by law for the Energy Commission to approve a certification or exemption.

Energy Commission Staff Reviews the Siting Case

The Energy Commission staff is an independent, objective party to the proceeding.[19] As such, they review the information provided by the applicant. Expert in various disciplines, the staff coordinate responsibilities with other federal, state and local agencies, and accomplish necessary field studies. They also prepare and present testimony in hearings and are represented by a staff attorney at all formal hearings.

Each siting case has an Energy Commission staff project manager. The project manager is responsible for guiding the specific case through the siting process, working with the agencies and public and complying with the overall project schedule set by the Siting Committee.

Intervenors Are Granted Formal Participation In the Siting Case

Members of the public, groups and agencies who want to become a formal participant may ask the Siting Committee for permission to become a party to a siting proceeding. The formal request is called a "Petition for Intervention".[20] Once the request is granted, the petitioner becomes an intervenor and has all rights and duties of a party to the case. Notice of all meetings, workshops, conferences and hearings will be sent to

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[17] The "hearing record" includes sworn testimony and public comment accepted at a hearing. Testimony is different from comment. The difference is discussed more fully in Chapter 5 on Intervention. "Administrative record" includes all materials entered into the case file ("docket") and includes, but is not limited to the hearing record. Title 20 CCR § 1702(a), (h).

[18] The documents discussed in greater detail in Chapter 4 are: Notice of Intent (NOI), Application for Certification (AFC), Small Power Plant Exemption (SPPE) and the Notice of Intent Exemption (NOIE).

[19] Title 20 CCR § 1712.5.

[20] Title 20 CCR § 1207(a).

the intervenor, who may attend and participate in any of these. The intervenor will receive copies of all documents related to the case and have the opportunity to request data, testify, present evidence, and cross-examine witnesses. The intervenor will also have the responsibility of answering data requests from other parties, and responding to committee orders. The Public Adviser can assist anyone interested in becoming an intervenor with advice on how to participate. (Intervention and intervenors are discussed in greater detail in Chapter 6.)

The Public

Public Participation through Public Comments

Members of the public are encouraged to become participants in siting activities. The public can participate without having to intervene in the case. Members of the public can attend and participate in all hearings, workshops, conferences and meetings on the particular siting case. Interested persons will have an opportunity to make a presentation of personal views, listen to, and analyze all other views. These remarks are received as "comments"[21] and are made part of the administrative record and/or the hearing record. By way of contrast, the parties - the applicant, Energy Commission staff and intervenors -- have to offer "testimony."[22]

As members of the public, copies of any or all documents related to any case are available upon request. Interested persons can also receive guidance from the Public Adviser about how to participate in siting proceedings.[23]

Other Public Agencies Provide Comments

The Energy Commission encourages and invites interested agencies, organizations, and associations to take part in the siting process. The Energy Commission fully considers all input from other government agencies and actively solicits recommendations. Some agencies' participation is specifically required in the Energy Commission's regulations. For example, regulations cover participation by local air quality management districts that prepare a determination of compliance with their rules and regulations.

Facilitators

Project Manager Facilitates Public Workshops

The project manager is the Energy Commission staff member responsible for conducting public workshops between the parties and provides the public an opportunity to participate at these events.

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[21] Title 20 CCR § 1201(g) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the Energy Commission.

[22] Title 20 CCR § 1201(h) "Testimony" means any oral or written statement made by any person, under oath, in any proceeding before the Energy Commission.

[23] Formal participation is achieved by becoming a party to the proceeding through the intervenor procedure. Procedures for intervention are described in detail in Chapter 5.

Hearing Officer Facilitates the Hearing Process

The Hearing Officer is an Energy Commission attorney appointed to conduct the hearings and assist the Energy Commission committee during the siting proceeding.[24]

Public Adviser Assists Public Participation

The Public Adviser's role is to ensure full and knowledgeable participation by the public and all the interested parties in the Energy Commission proceedings. The Commissioners nominate, and the Governor appoints, a Public Adviser to a three-year term. The Public Adviser is an attorney admitted to the practice of law in California.

The Public Adviser and staff are available to advise the public on the most effective methods of participation and to assist in obtaining copies of public records.[25] The Public Adviser can be reached at (916) 654-4489, or toll free in California at (800) 822-6228. The FAX number for the Public Adviser is (916) 654-4493 and the e-mail address is PAO@energy.state.ca.us. The Public Adviser is also on the Energy Commission Website at www.energy.ca.gov/commission/publicadviser.

[24] Title 20 CCR §§ 1205, 1702(g).
[25] Public Resources Code §§ 25217.1, 25222, and Title 20 CCR §§ 2551-2557.

CHAPTER 3

Siting Process Phases

The key features of the Energy Commission siting process provide a consolidated state permit, an established timeline, an open public process and legally sound decisions. The siting process determines if a project complies with applicable laws, if significant impacts are mitigated, and what conditions of certification are required to ensure compliance. The certification process involves a series of discovery and analytical phases leading to the final decision. The phase following certification is compliance.

This chapter outlines the phases in a siting case. The reader is referred to graphic flow charts illustrating the timeline of the phases. The chapter concludes with a discussion of compliance monitoring.

Siting Process Phases: Pre-Filing to Decision

It is useful to visualize the siting process as a series of steps or phases. Each siting case is unique; thus the discussion that follows is a general guide to the timeline/phases in the siting process. All phases of the process are open to the public. The Public Adviser can answer questions about specific projects. Accessing the Energy Commission Website at www.energy.ca.gov/sitingcases can provide information about the timeline/phase for a specific siting case.

Pre-Filing Phase

The informal portion of the siting process is called "pre-filing." Pre-filing is the period before an applicant submits or files a formal application to develop an energy facility. Some meetings and activities during the pre-filing period may not be formally announced or "noticed." Pre-filing consists of meetings between the applicant, Energy Commission staff, and agencies to discuss the project, siting process, filing requirements, and specific issues. Workshops, site visits, public meetings and the optional preliminary review of the applicant's filing document may also be part of the pre-filing phase. All pre-filing activities are at the applicant's option. Pre-filing activities provide a forum to share information and achieve an understanding of the siting process, the project and its various features, and the likely issues.

The Affirmative Act of "Filing"

"Filing" is not a phase; it's an affirmative act. Filing occurs when the formal application is delivered to the Energy Commission Docket Unit.[26] A "filing," however, is not accepted until the applicant completes the data adequacy phase.[27] (Discussed below.)

[26] Title 20 CCR § 1702(l). Filing is discussed in greater detail at Chapter 7.

[27] Title 20 CCR § 1702(m).

Applicants file any one of three documents with the Energy Commission:

1. Notice of Intention (NOI), (or exemption from such notice);
2. Application for Certification (AFC) (6-month or 12-month); or
3. Small Power Plant Exemption Application (SPPE).

Each type of filing must fully explain the applicant's proposed project, as well as the anticipated impacts resulting from the project. These documents contain a wealth of information and should be reviewed by anyone interested in the particular project.[28] These documents are discussed separately in Chapter 5.

Data Adequacy Phase

During the data adequacy phase, the Energy Commission staff reviews the applicant's filing to determine whether or not the filing contains the information required by the siting regulations. The data adequacy is a critical phase of the review process and must be completed within 45 days. The Energy Commission staff reviews the material and provides its data adequacy recommendation to the Energy Commission within 30 days after receipt of the filing. The Energy Commission then has 15 days to make a data adequacy determination at a regularly scheduled Energy Commission Business Meeting.

The commencement of the formal siting proceeding can only take place after the Commissioners determine that an application is sufficiently complete based on the information required in the Energy Commission's regulations.[29] If the submission is not data adequate, the applicant will be required to file supplemental information. As soon as the application is deemed data adequate, the clock starts ticking to complete the siting process in the mandated time.[30]

Discovery Phase

After the Energy Commission accepts a filing as data adequate, the Energy Commission staff, agencies and intervenors begin gathering information. This phase is called "discovery" and usually spans the first 90 days after the filing is deemed data adequate. Staff workshops are usually held. If additional information is needed, the parties may exchange data requests and responses to data requests.[31]

It is also a time for the public to learn about the project. Within 45 days of the data adequacy determination, the Energy Commission committee (two Commissioners assigned to the siting case) will hold one or more public informational presentations and site visits. The first informational presentation shall be held close to the proposed site. Landowners adjacent to the proposed site are notified when the application is filed and

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[28] Copies of these documents are placed in public libraries close to the proposed site. The Public Adviser's Office and the Energy Commission Website can identify libraries with copies of these filings. Many documents are also available on the Energy Commission's web page for the project.
[29] Title 20 CCR § 1709.
[30] Public Resources Code § 25522(a).
[31] Data requests and responses are discussed in greater detail in Chapter 12, Obtaining and Exchanging Information - Data Requests and Subpoenas.

when the informational presentation is to be held. The staff prepares an Issue Identification Report to provide the committee, applicant, parties, and the public with our early identification of any significant issues associated with its early review of the project. Staff presents its report at the Informational Hearing.

Information Analysis Phase

The length of the information analysis phase varies based on the complexity of the project. During the information analysis phase, the Energy Commission staff, agencies and participants analyze the project and its various issues.

- The staff prepares a Preliminary Staff Assessment and later the Final Staff Assessment. These reports, discussed in greater detail in Chapter 5, summarize the project proposal, the environmental setting, and the principal adverse environmental effects of the applicant's siting proposal along with any necessary mitigation.
- The committee holds the Pre-Hearing Conference during the information analysis phase, generally after the publication of the Final Staff Assessment. This conference is scheduled to prepare and organize information and witnesses for formal hearings. The committee will establish procedures to be followed and set the schedules for document due dates and future hearings. The Pre-hearing Conference is discussed in greater detail in Chapter 14.

Hearing Phase

No earlier than 90 days after the acceptance of the application, hearings can commence. Formal hearings (termed "evidentiary") are held to establish the factual record by the taking of written, oral and documentary testimony from all parties. (Formal hearings are discussed in greater detail in Chapter 15.) The committee hears the evidence and testimony presented by the applicant, the Energy Commission staff, other agencies, intervenors, and also takes public comments.[32] The applicant must provide sufficient evidence to prove the facts required by law in order for the Energy Commission to decide[33] to approve a certification or exemption.[34]

Decision Phase

At the conclusion of the hearings, the Presiding Member prepares and issues a Presiding Member's Proposed Decision (PMPD). (The PMPD is discussed in greater detail in Chapter 17.) The Presiding Member also sets a public comment period of at least 30 days from the date of distribution and may also hold hearings. The decision to approve or deny an Application for Certification is usually made at the time and place of the regularly scheduled bi-monthly Energy Commission business meeting.[35] (Chapter 18 discusses the decision in greater detail.)

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[32] Parties testify at hearings. The difference between testimony and comment is discussed in Chapter 5.
[33] Also termed "findings and conclusions"; the Energy Commission must decide questions of fact. These decisions are called "findings" derived from the evidence presented under oath in formal hearings. Inferences drawn from the facts in evidence are the "conclusions." Title 20 CCR § 1752 lists the findings and conclusions required for approval of an Application for Certification.
[34] Title 20 CCR § 1748(d).
[35] Title 20 CCR § 1754.

Graphic Flowcharts to Illustrate Siting Phases

The following flowcharts, and a sample schedule of key dates, provide a convenient timeline and graphic representation of the steps involved in three siting certification proceedings. The charts are entitled:

- Notice of Intention (NOI);
- Application for Certification (AFC); and
- Small Power Plant Exemption (SPPE).

NOTICE OF INTENTION (NOI)

GOAL: ALTERNATIVE AND SITE SUITABILITY EVALUATION

OBJECTIVES:
1. DETERMINE NEED
2. EXAMINE ALTERNATIVE SITES
3. DETERMINE SUITABILITY OF POWER PLANT AND RELATED FACILITIES ON EACH SITE
4. DETERMINE CONFORMITY WITH LAWS AND STANDARDS
5. PROVIDE EARLY PUBLIC INVOLVEMENT

MAXIMUM TIME: TWELVE MONTHS

PHASE:	PREFILING	DATA ADEQUACY	DISCOVERY	ANALYSIS	HEARING	DECISION
TIME (MONTHS)	? -1 1/2	0	4	7	10	12
ACTIVITY/PRODUCTS:	• WORKSHOPS	• WORKSHOPS	• DATA REQUESTS • INFORMATION HEARING • SITE VISITS • WORKSHOPS • TESTIMONY	• ISSUES AND ALTERNATIVES REPORT • WORKSHOPS • PREHEARING CONFERENCE	• HEARINGS • BRIEFS	• FINAL REPORT • DECISION

APPLICATION FOR CERTIFICATION (AFC)*

GOAL: CONDITIONAL PERMIT TO CONSTRUCT AND OPERATE

OBJECTIVES:
1. DETERMINE NEED
2. MINIMIZE ENVIRONMENTAL IMPACTS
3. PROTECT PUBLIC HEALTH AND SAFETY
4. SATISFY CEQA REQUIREMENTS
5. ENSURE CONFORMITY WITH LAWS AND STANDARDS
6. ESTABLISH COMPLIANCE MONITORING SYSTEM

MAXIMUM TIME: EIGHTEEN MONTHS UNLESS FILED WITHIN TWELVE MONTHS OF A NOI DECISION

PHASE:	PREFILING	DATA ADEQUACY	DISCOVERY	ANALYSIS	HEARING	DECISION
TIME (MONTHS)	? -1 1/2	0	5	10	14	18
ACTIVITY/PRODUCTS:	• WORKSHOPS	• WORKSHOPS	• DATA REQUESTS • INFORMATION HEARING • SITE VISITS • WORKSHOPS	• PRELIMINARY STAFF ANALYSIS • PREHEARING CONFERENCE • FINAL STAFF ANALYSIS • WORKSHOPS	• HEARINGS • BRIEFS	• PRESIDING MEMBER'S REPORT • PROPOSED DECISION • DECISION

*Follows an NOI Decision

SMALL POWER PLANT EXEMPTION (SPPE)

PURPOSE: EXEMPT FROM STATE'S POWER PLANT SITING PROCESS

QUALIFYING PROJECT: ANY THERMAL POWER PLANT 50 - 100 MW

QUALIFYING CRITERIA:
1. NO SUBSTANTIAL ADVERSE ENVIRONMENTAL IMPACT
2. NOT SIGNIFICANTLY IN EXCESS OF THE DEMAND FORECAST

TYPICAL TIME: SIX MONTHS

PHASE:	PREFILING	DISCOVERY	ANALYSIS	HEARING	DECISION
TIME (MONTHS):	0	2	4	5	6
ACTIVITY/PRODUCTS:	WORKSHOPS	WORKSHOPS DATA REQUEST INFORMATION HEARING SITE VISIT	STAFF ANALYSIS WORKSHOPS INITIAL STUDY	HEARINGS	PROPOSED DECISION DECISION

Compliance Monitoring

During the certification of an energy facility, the Energy Commission establishes a monitoring system to assure that the facility is constructed and operated in compliance with the environmental, public health and safety, and other conditions established by the Energy Commission.[36] Through compliance monitoring, the Energy Commission enforces the conditions of certification from the start of construction through the decommissioning of a facility at the end of its useful life.

The scope of Energy Commission staff monitoring covers compliance with conditions of certification and review of amendments to decisions. Compliance monitoring oversees the conditions of the Energy Commission's Application for Certification decision, which apply to the design, construction, operation and closure phases of each approved energy facility:

- To fulfill the responsibility of compliance monitoring, the Energy Commission may seek cooperation and assistance from state and local agencies with appropriate interest or expertise.[37] Thus, Energy Commission monitoring can involve working with local building officials, air pollution control districts and regional water quality control boards.
- Compliance monitoring relies on administrative verification that conditions and requirements for certification are followed. They may include on-site audits for permit compliance, as well as complaint and investigation procedures to ensure that the facilities are constructed and operated properly.
- The staff also reviews and processes requests to change the Energy Commission's decision. The changes are called amendments and typically relate to changes in the project description or in specific conditions of certification. The approval of amendments normally occurs at a regularly scheduled Energy Commission business meeting, after undergoing a publicly noticed amendment review process.

[36] Public Resources Code § 25532.
[37] Public Resources Code § 25532, (e.g., State Air Resources Board, State Water Resources Control Board, and the Department of Health).

CHAPTER 4

Schedules and Meetings

This chapter discusses the siting case schedules and identifies types of Energy Commission meetings. The goal is to give guidance to participants who want to locate and follow the public meetings during the various phases of a siting case.

Schedules

How can the public keep track of the phases of the siting case? Fortunately, one of the first tasks undertaken by the Siting Committee is to establish a calendar for siting meetings and activities through a "Scheduling Order." A second type of calendar or schedule, called a "Hearing Order," is also prepared by the committee for the formal hearings. The public can obtain copies of these schedules from the Public Adviser, from the Docket Unit, or by accessing the siting project on the Energy Commission's Website, www.energy.ca.gov/sitingcases and selecting "Proceedings, Notices, Orders, Hearings and Workshops" from the left sidebar menu. Additional details are provided in the discussion on each schedule.

The Scheduling Order

The Presiding Member of the committee issues a Scheduling Order for the pre-hearing phase no later than 15 days after the last informational presentation.[38] The scheduling order establishes the timeline for filing documents and holding certain meetings from the informational presentation up to the formal hearings. The Presiding Member can change the schedule or the parties can file a motion with the committee to change the schedule. Usually, the committee requests "status reports" from the parties to assess whether the case is progressing satisfactorily.

Sample 1 on page 29 is a scheduling order for "Zap Power" issued after the Informational Hearing. It can be read as a timeline for workshops, reports and activities up to the Pre-Hearing Conference. **Sample 2** on page 31 is a revised scheduling order for "Zap Power" issued along with a Notice of Pre-Hearing Conference. The revised order takes into account the adjustments to the earlier schedule that are necessary when there are changes to the project or unavoidable delays in critical documents (like an air quality district Determination of Compliance). The revised schedule continues the timeline through the final decision.

The Hearing Order

The Hearing Order is prepared by the committee to schedule witnesses and testimony for formal hearings. It is prepared after the Prehearing Conference and can be accessed on the Energy Commission's Website. Often formal hearings are scheduled for more than one day. The Hearing Order is useful to identify witnesses and proposed testimony in the issue areas of greatest concern to the public. The Hearing Order is discussed in greater detail in Chapter 14 dealing with the Prehearing Conference. **Sample 23** on page 105 is an example of a Hearing Order.

[38] Title20 CCR § 1709.7(c).

Meetings

Once an application is filed in a siting case, all Energy Commission meetings are publicly announced or "noticed"[39] and open to the public.

The primary purposes of all siting meetings are to allow the participants to:

- Exchange information and fully explore all sides and contentions concerning any particular issue;
- Provide a forum for parties and members of the public to identify and explore issues;
- Identify and prepare agreements on conditions concerning issues not in dispute; and
- Identify and narrow the issues that will be adjudicated.

How can the public follow the different types of meetings in a siting case? The rest of this chapter describes the basic types of siting case meetings. The siting phases and the graphic flow charts and key events schedule described in Chapter 3 provide a general timeline for meeting sequence. Usually ten months after the data adequacy phase, formal hearings are held to take the evidence and testimony[40] that establish the hearing record. The hearing record is used for the siting decision. Members of the public who want to present evidence at formal hearings should consider intervening, as discussed in Chapter 6.

Who is Holding the Meeting - The Committee or Staff?

There are two basic types of meetings in siting cases -- meetings initiated by the Energy Commission staff, usually called "workshops;" and meetings initiated by the Energy Commission committee, usually called "conferences" and "hearings."

- The Energy Commission staff initiates workshops. These are meetings held to discuss project issues and exchange information. The workshop is informal and generally not reported or transcribed. A workshop summary is usually prepared and filed with the Docket Unit. The workshop summary is also available at the project website.
- The committee's meetings (conferences and hearings) are recorded by a court reporter. Once transcribed, the document is posted at the website for the siting case. The transcript is usually large and requires the Adobe computer program to read.[41] Formal or "evidentiary hearings" establish the hearing record for the case and take evidence and testimony.

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[39] Chapter 5 identifies many of the "Notices" used to communicate with the public and assure an open public process in the siting case.

[40] As discussed in Chapter 6, please note the difference between comment and testimony. Testimony is also discussed in Chapter 15 "Establishing the Factual Record."

[41] The transcript can be several hundred pages. Some of the files are available as Adobe Acrobat Portable Document Files (PDF). In order to download, negotiate and print these files you will need the free Acrobat Reader software installed in and configured for your computer. You can download the software from Adobe Systems Incorporated's website at www.adobe.com. Note: a 200 kilobyte file will take less than one minute to download using a 28,000 bit per second modem.

Another term applied to describe the meeting sequence is "pre-hearing," or before the hearings. A Pre-Hearing Conference (initiated by the committee) or a Pre-Hearing Workshop (initiated by the staff) is often termed "pre-hearing meetings" because they assist in the examination of the issues and precede the more formal "hearing."

The terms used to describe the meeting indicate what will happen there:

- "Pre-Hearing Workshop" means a meeting initiated by the staff prior to hearings. The staff will attend, but the committee will not. The staff project manager will facilitate the meeting. The workshop will be summarized, but not recorded.
- "Pre-Hearing Conference" is a meeting initiated by the committee. The committee will attend. A hearing officer will be the facilitator. The meeting will be transcribed for the record. At least one member of the committee attends all hearings.

All meetings are open to the public and public comment is encouraged. Members of the public who want to present evidence at formal hearings should consider becoming an intervenor, as discussed in Chapter 6.

Overview of Siting Case Meetings

Committee Informational Hearing

The committee assigned to the siting case will conduct one or more informational presentations approximately 30 to 45 days after filing.[42] These presentations shall be as close to the proposed site as practical. The Energy Commission mails notice of the informational presentation to landowners adjacent to the proposed site,[43] and others that have requested notice.

The applicant will provide information on the project and related facilities and explain why the project is needed. The committee members will explain their role and responsibilities. The Energy Commission staff will discuss their role and responsibilities and disclose major issues identified to date. Intervenors (if any) and public agencies will explain their participation. The Public Adviser will also explain how to participate in the proceeding. Public groups and organizations will have opportunities to ask questions and make statements about the project. The public is encouraged to attend and the Public Adviser can assist persons wanting to participate.

An "Issue Identification Report" [44] will be available at the Informational Hearing. This report is prepared by staff and filed with the Docket Unit. (The report is discussed in greater detail in Chapter 5, Part II.)

The Hearing Office will prepare the meeting agenda and a hearing officer will moderate the presentations. The presentations at the Informational Hearing are recorded by a court

[42] Public Resources Code § 25509. The Informational Hearing is only required for a Notice of Intention. In practice, however, Informational Hearings are scheduled for an Application for Certification as well.
[43] Title 20 CCR § 1709.7(a).
[44] Title 20 CCR § 1709.7(b). The report can be downloaded from the Energy Commission's Website at www.energy.ca.gov/sitingcases going to the specific project and select "Documents, Decisions, and Transcripts" from the left sidebar menu.

reporter. Comments, questions and concerns made by the public become a part of the hearing record.

Committee Site Visit

Usually scheduled on the same day as the Informational Hearing, a site visit allows the applicant to explain the project while giving a tour of the site. The public is invited and public comment about the location is encouraged. In some cases, sensitive issues such as the presence of rare or endangered biological species may require restricted site visits and limited public access.

Staff Workshops

To facilitate full and open exchange of information and the discussion and informal resolution of issues, the Energy Commission staff will sponsor a series of workshops. Staff workshops create a public forum, where the applicant, all other parties, other government agencies, and the public can exchange information about the siting case. Although the Energy Commission staff usually prepares workshop summaries, the noticed workshops are generally not reported or transcribed.

The notice for the workshop will provide a clear statement of the type of workshop and the purpose for the meeting. The notice also indicates which parties/agencies will attend. Usually, however, neither Commissioners nor their advisors participate in workshops.

Workshops may occur in the pre-filng phase. Staff schedules public workshops during discovery, after the preliminary staff assessment and the final staff assessment. Workshops are good opportunities for public participation and are held in communities near the proposed site when social, economic or other impacts are the noticed topics.

Scoping Meeting

After a filing is data adequate, the staff may hold a "scoping meeting." The purpose of the meeting is to gather information. The agenda may be extensive and cover numerous topics or be limited to several issues.

Issue Workshops

These workshops may take place at any time during the process. The topics for the workshops will vary depending on the issues in each case. Most cases have issue workshops covering air quality, hazardous materials, visual, transmission routes, transmission line safety, water, biological resources, drainage and cultural impacts. "Issue workshops" may be technical discussions.

Preliminary Staff Assessment Workshop

The purpose of this workshop is to allow the public as well as local, state and federal agencies the opportunity to ask questions about, and provide input on, the staff's preliminary staff assessment report. It takes place about 165 days from the date of data adequacy. The report is a preliminary look at the staff's testimony and the workshop gives the public and parties the opportunity to comment on the staff's view of the issues and proposed conditions of certification.

Final Staff Assessment Workshop

This workshop takes place about 225 days from the date of data adequacy. The purpose of the workshop is to review the staff's final assessment and proposed testimony. This is an opportunity to address the staff's decisions and recommendations for mitigation as well as conditions for certification.

As a result of the information exchange during workshops, the parties may reach a general agreement on various topics. When the agreements are formalized and put into writing, they are called "Stipulations of Law or Fact." The role of stipulations is discussed more fully in Chapter 14.

Remedial Action

Any person who is dissatisfied with the manner in which staff workshops/meetings are being conducted, may ask the Presiding Member to take remedial action.[45]

Committee Meetings

Pre-Hearing Conference

Approximately 210 days after data adequacy, the assigned committee holds a pre-hearing conference. The purpose of the conference is to allow the participants[46] to address the committee with their preliminary concerns and positions regarding issues that have been explored in informal workshops or raised during discovery. During this conference, the committee may aid the participants in settling the issues that can be resolved. Based upon information developed at the conference, the Presiding Member may direct any of the participants to provide additional information for the pre-hearing conference or subsequent hearing to determine the facts based on testimony and other evidence. The pre-hearing conference is discussed more fully in Chapter 14.

Formal Hearings Produce the Hearing Record

Approximately 240 days after data adequacy, but not earlier than 90 days, the committee assigned to the siting case holds hearings. The hearings are formal although following the technical rules from civil courts is not required. Also called "evidentiary hearings," these hearings represent the beginning of the decision phase. The committee's formal hearings to take evidence and establish the hearing record are discussed more fully in Chapter 15. Techniques to make arguments from the record and recommend decisions to the committee are discussed in Chapter 16.

Conference on Presiding Member's Proposed Decision

When considering an Application for Certification, the Presiding Member's Proposed Decision is ready approximately ten months after data adequacy. There is a 30-day public comment period following the release of the Proposed Decision. Usually, the

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[45] Title 20 CCR § 1718(e).

[46] In this meeting, "participants" means the parties (staff, applicant and intervenors) and public agencies. The public does not join in the pre-hearing conference discussion, however public comments are encouraged and recorded.

committee will hold a Conference to discuss the report. Any party or member of the public can comment on the report. The Presiding Member's Proposed Decision and the Revised Proposed Decision are discussed in Chapter 17. In the unlikely event that the committee would be considering a Notice of Intention, the committee report would be titled the Presiding Member's Report. It would be available approximately ten months after data adequacy and have the same comment period.

Energy Commission Decision

Usually, the Energy Commission will consider the approval or disapproval of any Notice of Intention, Notice of Intention Exemption, Application for Certification, or Small Power Plant Exemption at a regularly scheduled business meeting. The final Energy Commission decision is discussed in Chapter 18.

Post Certification Issues

What happens when a power plant applicant wants to modify a project that has already been approved?

When a final decision has been made in the certification process for approval of a power plant project, an applicant must file a petition with the Energy Commission for any modification it proposes to the initial project design, operation or performance requirements.

What must be included in this petition?

The applicant must indicate:

- The proposed modifications and its necessity;
- If the modification is based on information that was known to the petitioner at the time of certification proceeding, an explanation as to why the issue wasn't raised at the time of application;
- If the modification is based on new information, an explanation as to why the change should be permitted if it changes or undermines the assumptions upon which the original decision was based;
- A listing of any environmental impacts and proposed measures to mitigate them;
- The modification's impact on the facility's compliance with laws, ordinance and regulations; and
- A listing of possible impacts to the public and nearby property owners.

When will the Energy Commission review the petition?

Within 30 days after application, Energy Commission staff will determine the extent of the proposed modifications.

What factors will the Energy Commission assess when making a determination of whether the modification is significant?

A modification is *not* considered significant and the modification can be made *without* further Energy Commission approval when the Energy Commission finds that**:**

- The modification will have no significant effect on the environment;
- The change would not affect conditions adopted by the Energy Commission in the final decision;
- The changes will not affect a plant's compliance with laws, ordinances, regulations, or standards; and
- There are no objections to staff's determination that the proposed change is insignificant.

What happens if staff determines that a modification will be a significant project change?

Any modification to a project design, operation or performance requirement that requires changes to any component of its conditions of certification are processed as an amendment. The decision must then be approved by the full Energy Commission at a noticed business meeting. At the business meeting, the Energy Commission will issue an order approving, rejecting, or modifying the petition. If further consideration is needed, the Energy Commission may decide to assign the matter for further hearing before the full Energy Commission or an assigned committee or Hearing Officer.

How can a member of the public become involved in the modification request?

- A determination on the modification will be mailed to every person on the post-certification mailing list. To be included in the mailing list and receive notices of a particular siting case, contact the Public Adviser's Office at (916) 654-4489, or toll free in California at (800) 822-6228, or enter an e-mail address at: http://www.energy.ca.gov/listservers/index.html.
- Any person may file an objection to staff's decision within 14 days of service.
- If it is an objection to an insignificant project change decision, and staff agrees with the objection, the modification will be re-analyzed and processed using the normal amendment process and procedures.

Will there be a public informational hearing?

- If the application involves a major amendment, the committee may hold a public informational meeting, workshop, or site visit near the area of the project. Notice will be sent at least ten days prior to the workshop date to all names listed on the compliance project mailing list, and notice will be placed on the Energy Commission's Website.

In what situations will the Energy Commission amend or revoke the certification of a power facility?

The Energy Commission may amend or revoke the certification of a power facility for the following reasons:

- Any material false statement made in the application;
- Any failure to comply with the terms or conditions of approval; or
- A violation of any regulation or order issued by the Energy Commission.

When are fines imposed?

Fines may be imposed in situations where the Energy Commission determines that:

- A material false statement was made in the initial application for the project; or
- When there was a failure to comply with the terms or conditions of the project's approval.

In such cases, a complaint will be issued by the Energy Commission's Executive Director and it will specify the alleged act or failure to act for which the civil penalty will be imposed. A hearing will be conducted within 60 days of service unless the complainant waives the right.

How will the Energy Commission determine the amount of the fine or civil penalty?

The Energy Commission may impose a civil penalty up to $75,000 for such violations. The penalty may be increased up to $1500 per day for each additional day the violation persists, not to exceed $50,000.

In determining the amount of penalty to impose, the Energy Commission will weigh several factors including:

- The nature, circumstance, extent, and gravity of the violation;
- Whether the violation can be resolved;
- The cost to the state in pursuing the enforcement action;
- The violator's ability to pay and continue business;
- Any voluntary efforts undertaken by the violator to resolve the issue; and
- The degree of culpability, including any past history of violations.

Any moneys recovered will be deposited into the State of California's General Fund.

After a project has been certified by the Energy Commission, when can it be found "non-compliant?"

A project is found to be non-compliant if it fails to comply with any law, regulation, order, decision or condition of certification upon which the Energy Commission's approval of the project was granted.

For more information of what laws, ordinances, regulations or conditions apply, log on to the Public Adviser's website at: http://www.energy.ca.gov/public_adviser/lors_faq.html.

Who may file a complaint alleging non-compliance and where do I file a complaint?

Any person may file a complaint. A claimant must file a complaint with the Energy Commission's Docket Unit and the designated compliance project manager for the specific project. The Docket Unit is located at:

California Energy Commission

1516 Ninth Street, MS 4
Sacramento, CA 95814
or telephone: (916) 654-5076

What must the complaint include?

- Name, address, and telephone number of the person filling out the complaint;
- Name, address, and telephone number of the person owning, operating or proposing to own the project which is the subject of complaint;
- Statement of facts upon which the complaint is based;
- Statement indicating statute, regulation, order, decision or condition of certification, upon which the complaint is based;
- The action claimant requests the Energy Commission take to resolve the issue, and a listing of the authority under which Energy Commission may take the action, if known; and
- A declaration under penalty of perjury attesting to the truth and accuracy of the statement of facts, upon which complaint is based.

What happens after the complaint is filed?

Within 30 days of receipt of the complaint, Energy Commission staff will file a staff report detailing the non-compliance as well as any steps taken to remedy the noncompliance.

- This report will be provided to the person filling out the complaint, the project developer, and any other interested parties.
- Written comments on the complaint or staff report will be accepted up to 14 days after issuance of the staff report.

Within 30 days after issuance of the staff report the Siting Committee of the Energy Commission will take one of the following actions:

- Dismiss the complaint upon determination of insufficiency of complaint or lack of merit;
- Issue a written decision presenting its findings and conclusions; or
- Conduct hearings to investigate further.

What if I am not satisfied with the decision?

A claimant or project owner may appeal to the full Energy Commission within 14 days after issuance of its decision.

What laws cover Post-Certification Modifications, Non-Compliance, and Complaints?

- *Cal. Admin. Code tit. 20, § 1769* for Post-Certification Amendments and Changes;
- *Cal. Pub. Res. Code § 25534, § 25534.1, § 25534.2* for Amendment or Revocation of Certification and Civil Penalties; and

- *Cal. Admin. Code tit. 20, § 1237* for Post-Certification Complaints.

SAMPLE 1– Scheduling Order

ZAP Power
Chris Jones, President
2 Glow Avenue
Sacramento, CA 95000
(916) 324-0090

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	SCHEDULING ORDER
	)	
ZAP POWER	)	

This order is based on discussions occurring at the September 16, 1998 Informational Hearing. It sets forth the schedule for submissions, due prior to the commencement of a formal hearing, on the evidence ("evidentiary" hearings), and also includes past events scheduled between the Informational Hearing and the date of this Order.

The Siting Committee appointed for this project may modify the schedule at any time either upon its own motion or that of a party (CCR, § 1709.7(c)). The dates provided below for parties to request committee conferences are for general guidance only. Parties may request conferences or the committee may schedule then at its own prerogative, as deemed necessary. The committee intends that the parties use the periodic status reports referred to below to inform the committee of satisfactory case progress, as well as to bring any potential delays to other relevant matters to its attention.

SCHEDULE

EVENT	DATE
Data Responses due from Zap Power	September 17, 1998
Committee issues Scheduling Order	September 16, 1998
Submittal of draft transmission system stability analysis	September 30, 1998
Issues workshop on air quality, hazardous materials, visual, transmission routes and transmission line safety	October 3, 1998
Issues workshop on water, biological resources and drainage	October 3, 1998

Parties submit Status Report No. 1 to the committee; Issues Workshop on various topics as needed.	November 15, 1998
Parties submit Status Report No. 2 to the committee, request conference if necessary	November 23, 1998
Applicant submits letters of intent committing offsets for the project to the Air District	November 29, 1998
Parties submit Status Report No. 3 to committee; request conference if necessary	December 22, 1998
Completion of final transmission stability analysis and interconnection study	December 30, 1998
Staff files Preliminary Staff Assessment (PSA)	February 5, 1999
Staff holds PSA public workshops	February 1999
Parties submit Status Report No. 4 to committee; request conference if necessary	February 16, 1999
Air District issues Preliminary Determination of Compliance (PDOC)	February 16, 1999
Last day to intervene	February 27, 1999
Parties submit Status Report No. 5 to committee; request conference if necessary	March 7, 1999
Committee holds Pre-hearing Conference; Staff files Final Staff Assessment (FSA)/Draft	March 16, 1999
Environmental Impact Statement (DEIS)	April 7, 1999
Local Air District Files Final DOC	April 16, 1999

This order is available at [www.energy.ca.gov/sitingcases/zappower/notices] (Illustration only, site is fictitious.)

SAMPLE 2– Committee's Second Revised Scheduling Order

(For Illustration Only; Site is Fictitious)

ZAP Power
Chris Jones, President
2 Glow Avenue
Sacramento, CA 95000
(916) 324-0090

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	SCHEDULING ORDER
	)	
ZAP POWER	)	

The Public Resources Code sections 25522(a) and 25540.6(a) provide, in part, that the Energy Commission shall issue a final decision on an Application for Certification within 12 months of its filing, or at a later time as is mutually agreed by the Energy Commission and the applicant. The Energy Commission accepted the Application for Certification for the Zap Power Project on August 26, 1998.

The committee will therefore adhere to the attached schedule that provides for a final Energy Commission decision on August 25, 1999. Information concerning the status of the project, as well as notes and other relevant documents are also available on the Energy Commission's website at www.energy.ca.gov/sitingcases/zappower/notices (illustration only, site is fictitious).

SITING CASE SCHEDULE

Event	Date
Applicant provides final determination from California Independent System Operator (CAISO)	March 1, 1999
Parties file Pre-Hearing Conference Statements	March 9, 1999
Pre-Hearing Conference	March 16, 1999
Applicant provides Air District Determination of Compliance and Biological Opinion(s), if required, as well as required analysis from federal authorities, if any	March 19, 1999

Committee issues Order and Notice of Formal (Evidentiary) Hearings	March 23, 1999
Staff released final testimony in form of Staff Assessment	April 7, 1999
Parties file written testimony	April 7, 1999
Parties file rebuttal testimony	April 14, 1999
Formal (Evidentiary) hearings on all topics	April 19-27, 1999
Parties file opening briefs	May 13, 1999
Parties file reply briefs	May 25, 1999
Committee deliberations	May-June 1999
Presiding Member's Proposed Decision (PMPD) and Notice of Conference issued	June 25, 1999
Parties file comments on PMPD	July 19, 1999
Conference on PMPD	July 23, 1999
Close of comment period on PMPD	July 28, 1999
Committee issues Revised PMPD and Conference Notice	August 9, 1999
Conference on Revised PMPD	August 18, 1999
Energy Commission consideration of revised PMPD	August 25, 1999

This order is available at www.energy.ca.gov/sitingcases/zappower/notices.

CHAPTER 5

The Siting Documents

This chapter identifies the key documents in the siting process. Not all the documents appear at once. Instead, they are produced as the siting process moves through the various phases discussed in Chapter 3.

Part I of this chapter discusses the applicant's siting documents which must be filed with the Energy Commission. Filing brings the pre-filing phase to an end. There are three possible informational siting documents. The documents are titled Notice of Intention; Application for Certification; or Application for Small Power Plant Exemption.

Part II of this chapter discusses the staff reports. When the applicant's information is received, the Energy Commission staff begins the review and analysis for the staff reports. The first step is to determine if the applicant has provided sufficient information (data adequacy phase).[47] If sufficient information is provided, the second step is to independently gather and analyze the proposal (discovery and analysis phases). During these phases, the following reports are prepared:

For an Application for Certification

- Issue Identification Report
- Preliminary Staff Assessment
- Final Staff Assessment

For the Small Power Plant Exemption

- Draft Initial Study
- Final Initial Study

Part III of this chapter discusses the documents produced by participating agencies (who are sometimes intervenors). As mentioned earlier, the Energy Commission's siting process is a "one stop coordinated permitting process." A certificate to construct a power plant cannot be issued without a determination that the proposal conforms to local, state, and federal laws, ordinances, regulations, and standards. The Energy Commission is the lead agency under the California Environment Quality Act (CEQA) and works closely with other public agencies. Affected agencies outside the Energy Commission are asked to review and, if appropriate, comment upon the applicant's proposal.

Part IV of this chapter discusses the Siting Committee and Energy Commission documents. The two-member Energy Commission committee, acting as the preliminary decision-maker, resolves conflicts and decides if the project complies with siting regulations and laws. The committee recommends approval or denial of the project to the full Energy

[47] Data Adequacy must be completed in 45 days. The review is an open, public process. Often, however, the public is just learning about the project. Please contact the Public Adviser for information on how to participate in the data adequacy review.

Commission. The committee's documents are the Presiding Member's Proposed Decision and, if necessary, the Revised Presiding Member's Proposed Decision. The Siting Committee and Energy Commission documents are prepared and completed during the decision phase.

Part I - The Applicant's Siting Documents - Notices, Applications and Small Power Plant Exemption

To be granted the right to construct a power plant, a notice and/or an application describing the power plant and related facilities must be submitted to and approved by the Energy Commission. The statutory scheme established for siting power plants is a two-part process, unless a single process is allowed by law.

The first part begins when an applicant files a Notice of Intention with the Energy Commission. Approval of the applicant's Notice of Intention proposal, however, is conceptual and is not site-specific. The second part begins when the applicant files an Application for Certification. Building on the general site, information contained in the Notice of Intention analysis, the details of the site and its related facilities are considered during the Application for Certification review. Approval of an Application for Certification completes the certification process. In some cases, however, an exemption exists, eliminating the Notice of Intention and moving directly to the Application for Certification. In other cases, the Small Power Plant Exemption is applicable and allows a streamlined exemption process for smaller power plants.

Notice of Intention (NOI) and Petition for NOI Exemption

In the Notice of Intention, the applicant suggests building a power plant at any of at least three possible sites. In practice, since 1984, very few NOI's have been filed. Instead, applicants file a "Petition for Notice of Intention Exemption" to bypass the Notice of Intention phase. The reasons so few NOI's have been filed are as follows:

- The law changed in 1978 increasing the number of facilities that do not require the Notice of Intention (Public Utility Regulatory Procedures Act [PURPA] 1978). The law changed again in 1994 to exclude a project "which is the result of a competitive solicitation or negotiation for new generation resources and will employ natural gas-fired technology" from filing a Notice of Intention. Language limiting the Notice of Intention Exemption to less than 300 Megawatts was also eliminated (Public Resources Code § 25540.6(a) (1)).[48]
- The most recent Notice of Intention filing occurred in 1984. Another Notice of Intention was filed with the Energy Commission in late 1989 but was ultimately withdrawn in 1991 by the sponsoring utility. The original statutory scheme designed the Notice of Intention as a unique mid-point between the Energy Commission's planning activities and the certification of major power plants and transmission lines. The most important purpose of a Notice of Intention, the assessment of alternatives, especially alternative sites, is now usually covered in the Application for Certification.

[48] The law changed again in 1999 when the language "which is the result of a competitive solicitation or negotiation for new generation resources" was removed. It now excludes a project "that will employ natural gas-fired technology" from filing a Notice of Intention.

Notice of Intention Exemption

Under certain circumstances a project is exempt from the Notice of Intention process, as set forth in Public Resources Code, § 25540.6. No Notice of Intention is required for modifications to an existing facility or thermal power plant:

- Employing cogeneration technology (which produce electricity and steam);
- Which can only be located at or near the energy source;
- With a net generating capacity up to 100 megawatts; or
- Designed to develop or demonstrate new technologies.

During 1998, the Energy Commission considered eight "Petitions for Notice of Intention Exemption." All requests were granted. In May 1999, the Energy Commission decided to exempt all natural gas-fired merchant power plants[49] from such a petition.

If a project does not require a Notice of Intention, it moves directly to the Application for Certification stage.

Application for Certification

The Application for Certification suggests a specific site and presents details to construct and operate the proposed power plant. The Application for Certification sets forth the applicant's view of the project's environmental impacts, proposed mitigation measures, preliminary engineering design and conformance with laws and standards.[50]

The Application for Certification review process will vary from case to case, depending on the complexity of the issues. Usually, decisions are reached within 12 to 18 months after the Energy Commission accepts the filing as “data adequate.” There are two flowcharts and the schedule of key events in Chapter 3 which illustrate the siting phases and key events for an Application for Certification.

An Application for Certification proposal receives wide public review through distribution of the document to interested public agencies at the federal, state and local levels. Copies of the Application for Certification are also placed at public libraries in communities that may be affected by the project.

The applicant proposing the project is seeking an affirmative Application for Certification decision. The Application for Certification process[51] includes:

- Assigning the Energy Commission Siting Committee for the proposed project;
- Providing the public with advance notice;
- Holding staff workshops and committee hearings; and

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[49] A “merchant power plant” as defined by the Energy Commission is “a plant owned neither by a utility nor by an affiliate utility (1994 Electric Report, p. 134). Merchant plants have also been referred to as “plants for which investors not ratepayers, bear the financial risk” (1996 Electricity Report, p. 71).
[50] Public Resources Code § 25520.
[51] The Application for Certification process is discussed in greater detail in Chapter 3, "Siting Process Phases.”

- Issuing a proposed order and a proposed decision for the full Energy Commission to consider.

The Presiding Member of the committee will schedule meetings and hearings by committee order. The applicant attends and participates in all meetings and hearings. An affirmative Application for Certification decision allows the applicant to begin construction and, eventually, to operate the project.

Six-Month Power Plant Siting Certification

The California Legislature established a "fast-track," six-month review process to approve or disapprove construction of a thermal power plant facility with a generating capacity of 50 megawatts or greater.[52] Under this process, final certification for a proposed plant construction is issued within six months of a complete filing only if the Energy Commission finds that the plant will not cause significant adverse impacts to public health, the environment or electrical transmissions systems; and will comply with all applicable standards, laws, and ordinances. Power plants that demonstrate superior environmental or efficiency performance receive priority review. The legislation establishing this six-month process will sunset on January 1, 2007.

The six-month process changes the otherwise applicable deadline for a final decision on an Application for Certification and adjusts other procedural deadlines as appropriate. However, the process does not modify any procedural requirements for an application proceeding.[53]

Impact of the Six-Month Certification

The most likely applicants for the expedited process are those requesting a repowering of existing plants, because these applications generally present fewer environmental and community problems.

Since the six-month application process took effect on January 1, 2001, until it's review in the summer of 2004, 12 applications were submitted under the process. Of these, two projects were successfully completed; five were sited under the traditional, 12-month process and five were discontinued.[54]

Differences between the 6-Month and 12-Month Power Plant Siting and Certification Process

- **Application and Necessary Documentation for Six-Month Certification**

  A certification designating approval by the California Energy Commission must be obtained before constructing a thermal power plant. The certification process begins when an applicant submits or files a formal application to develop an energy facility and the form application is delivered to the Energy Commission's Docket Unit. The Energy Commission staff then has 30 days to review the application and make a

[52] 2003 CA Senate Bill (SB) 1776.
[53] Title 20 CCR § 2021(b).
[54] CA B. An., SB 1776.

recommendation to the Energy Commission as to whether the application should be accepted as complete based on the informational requirements in the Energy Commission's regulations.

In addition to the requirements listed for a 12-month application, a 6-month application[55] requires:

- documentation of substantial evidence that the power plant will not adversely affect the environment or electrical systems;
- proof of compliance with substantial evidence that the power plant will comply with all present and upcoming applicable standards, ordinances and applicable laws at the time of certification;
- a discussion of impacts on low-income and minority populations in the geographical area;
- proof that the power plant will be built if the project is certified and the Interconnection Study of electrical system impacts and mitigation measures considered; and
- a will-serve letter or similar document from each provider of water for the project.

- **Application and Necessary Documentation for 12-Month Certification Requires:**
  - a description of the power plant and related facilities;
  - safety and reliability information;
  - statement of need, discussion of impacts, proposed mitigation measures, and alternatives; and
  - site information.
- **Review of Application**

  Once an application is received, the Energy Commission will review the applicant's filing and determine whether or not it contains all necessary informational requirements of the Energy Commission's siting regulations. The commencement of the formal siting proceeding begins only after the Commissioners at a public business meeting determine that an application is complete.

  - Within 45 days of receipt of an application, in both the 12- and 6-month applications, the Energy Commission staff will make a determination on whether the application is complete.[56]
  - If all of the requirements for the 6-month process are met, the Energy Commission accepts the application as of that date of the business meeting within the 45 days and the proceeding for reaching a final decision within six months begins.[57]

[55] Title 20 CCR § 2022.
[56] Title 20 CCR § 2023(b).
[57] Title 20 CCR § 2023(b).

- If all of the requirements for the 6-month process are not met, but the application meets all the requirements set forth for the 12-month site review, the application will be accepted for the 12-month process.[58] An applicant can ask for suspension of the 12-month process if the applicant can provide additional information needed in order to meet the 6-month requirement.[59]

- **Intervention**

  Interested members of the public are encouraged to participate in the siting process by becoming informal or formal participants in the siting process. Interested persons can receive legal advice assistance from the Public Adviser about how to participate in the siting proceedings.

- **Informal Participants**

  The public can attend and participate in all hearings, workshops, conferences and meetings for any siting case. In addition, the public is allowed to comment by offering any oral or written statements to represent their views of the project in a proceeding.

  Any member of the public can become an informal participant at anytime during the 6- or 12-month process.

- **Formal Participants**

  Members of the public, groups or public agencies can intervene to become a formal party to a siting proceeding in both the 6- and 12-month process.

  The form to intervene is available on the Energy Commission Website at: http://www.energy.ca.gov/public_adviser/documents/forms.html. Once a request for a formal participant is granted, the petitioner has all rights and duties of the parties to the case. The formal participant will receive copies of all documents related to the case and has the opportunity to testify, present evidence and cross-examine witnesses.

  - In the 6-month application proceeding, an individual must file a Petition to Intervene with the Energy Commission. The petition to intervene must be received by the Energy Commission and must be served on all parties on the "Proof of Service List" for the project within 100 days after acceptance of the Application for Certification by the Energy Commission.[60]
  - In the 12-month process, an intervenor can petition anytime up until the pre-hearing conference, held typically 200 days after acceptance of the Application for Certification.[61]

- **Workshops**

[58] Title 20 CCR § 2023(c).
[59] Title 20 CCR § 2023(e).
[60] Title 20 CCR § 2040.
[61] Title 20 CCR § 1207.

Informal meetings are arranged for interested parties in order to facilitate the open exchange of information and discuss issues of the project in a public forum. Interested persons can be notified of workshops pertaining to a proposed power plant siting case by requesting their names be added to the project's "interest list." The request can be made by phoning the Public Adviser's Office at (916) 654-4489, or toll free at (800) 822-6228, or via e-mail at http://www.energy.ca.gov/html/listservers.html.

- 6-month process:
  - **i.** A data response and issue resolution workshop is held approximately 50 days after application acceptance.
  - **ii.** A staff assessment workshop is held approximately 85 days after application acceptance**.**
- 12-month process:
  - **i.** A data response and issue resolution workshop is held approximately 55 days after application acceptance.
  - **ii.** A preliminary staff assessment workshop is held approximately 170 to 180 days after application acceptance**.**

- **Data Requests**

Once the Application for Certification is accepted as data adequate complete, the Energy Commission staff, agencies, and intervenors may request to exchange information with each other in order to thoroughly review each issue in the proceeding. A party may obtain any information from another party that is reasonably available and relevant to the proceedings.

- The 6-month process limits data requests to within 90 days of the acceptance of the application.[62]
- During the 12-month process, the Presiding Member of the committee is allowed to set reasonable time limits on the use of, and compliance with data requests. While there is no set timeline, usually, data requests can be sent anytime prior to release of the hearing order. The hearing order is released soon after the pre-hearing conference, held typically around 200 days after initial acceptance of the application.

- **Agency Reports**

After acceptance of the application, the California Independent System Operator (CAISO) and all interested local, regional, state, and federal agencies that have jurisdiction are required to file and serve on all parties their preliminary approval, comments, determinations and opinions of the project. These reports analyze approval of transmission connection plans and specify whether the project will conform to all applicable laws, ordinances, regulations or standards (LORS).

[62] Title 20 CCR § 2025.

- The 6-month application process requires preliminary agency reports within 60 days after acceptance of an application for certification. Final agency reports are due within 100 days of acceptance of an application.[63]
- During the 12-month process, state and federal agencies are expected to submit draft permits or opinions comments and suggested permit conditions approximately 120 days after the application for certification is accepted. Within 180 days, state and federal wildlife agencies are expected to submit issue permits and final biological comments, opinions, and recommendations.

- **Staff Reports**

  Energy Commission staff prepares a report that analyzes and makes conclusions and recommendations on topics pertaining to the project including: environmental and engineering analysis issues, compliance proposed conditions of certification, and need for the facility and feasible alternatives. The report will recommend and analyze a reasonable range of alternatives to the project and the advantages and disadvantages and potential impacts and benefits of the proposal. These reports provide an excellent source of information for persons interested in participating in the siting process. The public can access these reports on the Energy Commission's Website at www.energy.ca.gov/sitingcases. Additionally, workshops are scheduled after each report is released to allow the public, parties and agencies an opportunity to comment on the assessment.

  - During the 6-month application proceeding:
    - **i.** The preliminary staff assessment is due 75 days after initial acceptance of the application.
    - **ii.** The staff assessment workshop is usually held around 85 days after initial application acceptance.
    - **iii.** A final report is due within 120 days after application acceptance.[64]
  - During the 12-month application proceeding:
    - **i.** The preliminary staff assessment is usually filed 165 days after application acceptance.
    - **ii.** The staff assessment workshop is usually held around 170-180 days after the initial application is accepted.
    - **iii.** A final assessment is usually filed about 225 days into the process.[65]

[63] Title 20 CCR § 2026.
[64] Title 20 CCR § 2027.
[65] Title 20 CCR § 1747.

- **Hearings**

  Formal hearings are held by the committee to take written, oral and documentary testimony from the parties. Parties present arguments on all relevant issues in the case.

  - During the 6-month application process, evidentiary hearings are required to begin within 135 days after application acceptance.[66]
  - During the 12-month application, formal hearings are held approximately 240 days after acceptance of application.[67]

- **Presiding Member's Proposed Decision**

  At the conclusion of the hearings, the Presiding Member will prepare a proposed decision on whether the application should be approved. The decision will be based on the record of evidence presented during the hearing. To initiate public participation, the Presiding Member will post a notice in a local newspaper near the proposed site's location that the proposed decision is available. The public may then file written comments on the proposed decision.

  - During the 6-month application proceeding, a Proposed Decision must be made and issued within 20 days after the end of the hearings. Following this decision, the regulations provide for a 15-day public comment period.[68]
  - During the 12-month application proceeding, the Proposed Decision is issued typically 305 days after initial acceptance of the application. Following this decision, there is a 30-day public comment period.

- **Final Decision**

  A final decision to approve, modify or disapprove an Application for Certification takes place at a regularly scheduled Energy Commission business meeting. At this meeting, the Energy Commission receives the Presiding Member's Proposed Decision containing the recommendation of the committee. The public may comment on the decision. After discussion of the decision, the Energy Commission may make changes to or add conditions prior to voting on the proposed decision.

  - In a 6-month application proceeding, at least 30 days following the Proposed Decision, the Energy Commission must hold a hearing and decide on whether to approve, disapprove, or modify the Proposed Decision. A final Energy Commission decision must be made within 180 days after the application is accepted.[69]

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[66] Title 20 CCR § 2029.
[67] Public Resources Code § 25521.
[68] Title 20 CCR § 2030.
[69] Title 20 CCR § 2030.

- In a 12-month application proceeding, the Energy Commission will generally adopt a final decision on whether to approve the application within about 365 days after initial acceptance of the application.[70]

- **Petition to Change from the 6-Month Process to the 12-Month Process**

  Anytime after acceptance of the application and before the final date for filing testimony, any party may petition the committee to remove the project from the 6-month proceeding, thereby changing the deadline for a Energy Commission decision to 12-months.[71]

  In order for the application petition to be accepted, the petitioner must prove and demonstrate with substantial evidence that the project, as proposed:

  - Has an adverse environmental or electrical system impact;
  - Fails to/will not comply with applicable standards, ordinances, or laws; or
  - Has changed substantially and requires new analysis, or generates substantial public controversy.

  Any person or party is allowed to comment on the petition in writing within ten days after the petition is served.

  Within 20 days after filing of the petition, the committee will determine if there is substantial evidence in the record to support the petitioner's claim for removal from the six-month process.

  If there is substantial evidence to support the petitioner's claim, then the committee grants the petition and extends the final decision on the application to 12 months (instead of 6 months) after acceptance of the application.

  The approval or denial of the petition becomes effective five days after it is filed in the Energy Commission's Docket Unit, and served on all parties.

  Parties can appeal the committee's ruling within five days after it is filed in the Docket Unit. The Energy Commission will rule on the appeal at the next business meeting that allows sufficient time for public notice of the appeal.

- **Construction of the Project for Approved Six-Month Certification Applicants**

  If a project is certified under the 6-month siting process, substantial construction of the project must be commenced within 12 months after the effective date of the decision on an application accepted and processed.[72] "Substantial" is defined as at least 30 percent completion of the engineering design and at least 5 percent completion of the physical plant.[73]

Small Power Plant Exemption (SPPE)

[70] Public Resources Code § 25523.
[71] Title 20 CCR § 2028(a).
[72] Title 20 CCR § 2031(a).
[73] Title 20 CCR § 2031(b).

To expedite the construction of small power plants, the Energy Commission can exempt applicants from an Application for Certification. Exemptions can be granted to applicants proposing thermal power plants with a net generating capacity of 50 megawatts up to 100 megawatts or the modification of an existing plant in this size range.[74]

Although the Small Power Plant Exemption (SPPE) application process at the Energy Commission is streamlined, the applicant must obtain all necessary local, state and federal permits, in addition to the SPPE process at the Energy Commission. The phases or timeline for a SPPE is slightly different from the phases described in Chapter 3. Unlike the Application for Certification, there is no requirement for a data adequacy determination review; therefore, the "clock" starts on the day the SPPE is filed. The final decision should be rendered within 135 days after the filing of the SPPE application, or at such later time as deemed necessary to permit full and fair examination of the issues.

To qualify for an exemption, a project must meet both of the following criteria:[75]
No substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications, and it has a generating capacity of up to 100 megawatts; or, if the project will modify an existing facility, it will not add capacity in excess of 100 megawatts.

The emphasis of the SPPE review is on environmental impacts. The SPPE process includes assigning a siting committee for the particular project, providing the public with advance notice, holding staff workshops and committee hearings, as well as issuing a proposed decision and negative declaration for the entire Energy Commission to consider. The Presiding Member of the committee will schedule meetings and hearings by committee order.[76] (A graphic illustration of the timeline is available in Chapter 3.)

Information on the Laws Covering Filing and Annual Fee Requirements

Energy Facility License Fees

In addition to meeting all requirements to obtain certification for a power plant through the California Energy Commission, an applicant is required to pay an initial application fee and, if the power plant is certified, an annual fee for compliance monitoring. These fees are placed in the Energy Facility License and Compliance Fund. The fund is used to cover the Energy Commission's costs of processing applications for certification and for monitoring the compliance with conditions of certification of certified plants.

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[74] Title 20 CCR § 1936.
[75] Public Resources Code § 25541.
[76] Many of the features described in Chapter 3 "Phases From Pre-filing to Decision" are also part of the SPPE process.

Initial Certification Fee

The application for a power plant facility must be accompanied with a fee of $100,000 plus $250 per megawatt of gross generating capacity of the proposed facility. The total fee may not exceed $350,000.

Annual Compliance Fees

Each person who receives certification of a proposed power plant facility is required to pay an annual fee of $15,000.

For plants certified as of December 31, 2003, the first annual payment was due on January 1, 2004. For all facilities certified on or after January 1, 2004, the fee is due on the date the Energy Commission adopts the final decision to certify the power plant.

All subsequent payments are due by July 1 of each subsequent year in which the facility retains its certification.

Fee Adjustments

Both the initial and annual renewal fees are adjusted annually based on the United States Department of Commerce's report on percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services.

No Fees are Required for Renewable Resource Generating Facilities

No application fee or annual compliance fee is required for a facility that uses a renewable resource as its primary fuel or power source.

Types of Renewable Resources

A renewable resource includes, but is not limited to:

- Biomass
- Solar thermal
- Geothermal
- Digester gas
- Municipal solid waste conversion
- Landfill gas
- Ocean thermal
- Solid waste converted to a clean burning fuel by using a non-combustion thermal process

Information on the Laws Covering Filing and Annual Fee Requirements

Section 25806 of the California Public Resources Code specifies the Energy Commission's filing and annual fees for generation facilities.

Part II – Staff's Reports

The Energy Commission staff provides an independent analysis of the project.[77] The staff reports are an excellent source of information for persons interested in participating in the siting process. Copies of these reports are available upon request or through the Energy Commission's Website at www.energy.ca.gov/sitingcases.

Staff's Issue Identification Report

The Energy Commission staff prepares the Issue Identification Report to inform the interested parties and committee of the major issues identified after staff visits the site, holds discussions with other agencies and potential intervenors and reviews the documents filed by the applicant.[78] Generally, the report contains a summary of the project and a brief history of activities to date. The report clearly identifies issues; potential significant impacts that may be difficult to mitigate; conflicts with local laws, ordinances, regulations or standards; and conflicts between the parties. The staff will propose solutions, methods to seek resolution and identify possible alternatives. The report also addresses the need for future meetings and a proposed schedule.

The Issue Identification Report is prepared about 15 to 25 days after the filing is accepted (after data adequacy), and is available before an informational hearing is scheduled. It is served on the parties on the proof of service list (see Chapter 9) and is filed with the Energy Commission Docket Unit. The report can be read on the Energy Commission Website at www.energy.ca.gov/sitingcases by accessing the specific siting case and selecting "Proceedings, Notices, Orders, Hearings and Workshops" from the left sidebar menu.

Public participants should review the staff's Issue Identification Report for background on the project and for helpful information to prepare comments. The public can comment on issues identified by staff and may also propose additional topics that need consideration by the Energy Commission. Public comments on the Issue Identification Report may be made in writing or presented orally at the informational hearings held by the Committee.

Staff Report for Notice of Intention - Issues and Alternatives Report

If a Notice of Intention is before the Energy Commission, the staff will prepare an Issues and Alternatives Report. The report is prepared shortly after the last data request is submitted or about 100 days after the Notice of Intention is accepted.[79] The Issues and Alternatives Report identifies the issues and may contain recommended conditions for the subsequent filing of an Application for Certification.

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[77] Title 20 CCR § 1712.5.
[78] Title 20 CCR § 1709.7(b).
[79] Title 20 CCR § 1723.5(d).

Staff Reports for Application for Certification - Preliminary Staff Assessment (PSA) and Final Staff Assessment (FSA)

Following the discovery phase of the Application for Certification review, the staff reports are usually presented in two steps:

1. The Preliminary Staff Assessment filed about 165 days into the project, and
2. The Final Staff Assessment filed about 225 days into the project and includes revisions.

The Preliminary Staff Assessment and the Final Staff Assessment are significant reports and form the basis for staff's testimony at formal hearings.

What Is Covered in the Staff Reports?

The Energy Commission staff works to develop an analysis of an Application for Certification in an open public process. Building on the staff's Issue Identification Report, changes or alternatives to make the project acceptable are proposed and the relative advantages and disadvantages of a proposal are evaluated. Input from the applicant, other parties and intervenors, as well as public agencies and interested public participants is obtained at the staff's workshops.

When completed, these reports cover staff's analysis and conclusions on these topics:

- Environmental analysis, including impacts and mitigation measure: This section explains federal, state, local and regional laws that apply to the project.[80] Environmental impacts are identified and explained. When appropriate, mitigation measures will be proposed.
- Engineering analysis: This section is a technical discussion of the project and engineering issues including staff's suggestions for modification. When appropriate, conditions of certification are proposed.
- Alternatives analysis: Alternative sites, locations, project design, and fuels are potential topics for staff analysis. The alternatives suggested by the public and other participants in workshops should also be addressed in this section of the staff report.
- Facility closure: This section of the report covers proposed conditions of certification, which the applicant must perform if the project ceases to operate. A facility may close either at the economic end of the project or for another unforeseen reason.
- Compliance conditions of certification and verification: Conditions are recommended to protect the environment, maintain public health and safety, as well as to ensure that the design, construction, operation and closure of the project comply with all applicable laws. Verifications provide an administrative mechanism for ensuring that conditions are followed. (See Title 14 CCR § 1770.)

[80] Termed "LORS," meaning laws, ordinances, regulations, standards, as discussed on the next page.

Laws, Ordinances, Regulations and Standards

The Energy Commission cannot issue a certificate unless the project conforms with all applicable state, local, or regional laws, ordinances, regulations or standards (LORS), unless it determines that the project is required for pubic convenience and necessity.[81] The term frequently used to describe this requirement is that the project must comply with all "LORS."

"LORS" issues could include those related to local land use, such as General Plan impacts requiring rezoning or variances from the city or county. Biological impacts could require a Streambed Alteration Permit from the California Department of Fish and Game. Impact on historic property could require clearance with the State Historic Preservation Officer as well as compliance with the National Historic Preservation Act. A complete LORS analysis often covers more than 150 separate conforming determinations. Members of the public who want to participate in the siting case should consult the scheduling order to determine when the various elements needed to show compliance with LORS will be available.

How to Receive a Copy of Staff Reports

The reports are automatically mailed to parties in the case including intervenors. The Preliminary Staff Assessment and the Final Staff Assessment for a specific siting case may be accessed on the Energy Commission's Website at www.energy.ca.gov/sitingcases. Other interested participants may obtain copies of the reports by contacting the Public Adviser.

How to Participate In Staff Report Review

Workshops are scheduled after each report is released. The workshops allow the parties, agencies and the public an opportunity to comment on the staff's assessment of the project and the staff's proposed conditions for certification. Placing the reports in a timeline of events, workshops for the Preliminary Staff Assessment are usually held after the report is filed and before the Pre-Hearing Conference.[82] The Final Staff Assessment is staff's testimony for the formal hearings. Any unresolved differences are presented at formal hearings before the Energy Commission two-member committee .

Revisions to staff reports as well as corrections to errors in the text are published as "Supplemental Testimony" and "Errata."

Staff Report for Small Power Plant Exemption - Initial Study

When an applicant seeks a Small Power Plant Exemption (SPPE), the staff prepares an Initial Study.[83] The document follows California Environmental Quality Act (CEQA) guidelines and for each issue determines the significance of the project's impacts. The Initial Study also suggests conditions necessary for the exemption to assure there are no significant effects on the environment.

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[81] Also termed "override authority;" see Public Resources Code § 25525.
[82] See Chapter 14 for a discussion of the Pre-Hearing Conference.
[83] Title 14 CCR § 15063.

The Energy Commission serves as the lead agency under CEQA for any SPPE. Hearings may be held prior to the committee's proposed decision. After the Energy Commission approves a Small Power Plant Exemption, the Energy Commission's analytical documents are also used by responsible local agencies that subsequently issue permits for the project. The Energy Commission staff or local agencies monitor compliance of any conditions of exemption that are required to ensure that impacts are fully mitigated.

If there are no significant adverse impacts on the environment, the Committee prepares a Proposed Mitigated Negative Declaration. A Notice of Completion, a Notice of Availability and a Public Notice for a Proposed Mitigated Negative Declaration announce the availability of the Mitigated Negative Declaration. A 30-day comment period is established for the Proposed Negative Declaration. At the conclusion of the comment period, significant revisions may require that the Proposed Negative Declaration be re-published and re-issued following the same process as the original Initial Study.

Members of the public who want to participate in the committee hearing to determine whether to grant the Small Power Plant Exemption should carefully review the Initial Study and the Proposed Negative Declaration. These documents serve as staff's testimony on the questions of the project's impact(s) on the environment.

Part III - Agency Reports

When siting a power plant, local agencies[84] -- which would usually issue a permit, except for the exclusive permitting authority of the Energy Commission -- are encouraged to participate. For example, the city and county governments and local air districts may participate. The Energy Commission may ask local agencies to provide analysis in specific areas required by the siting regulations.[85] While the number of specific agencies will vary for each project, local, regional, and other state and federal agencies should work closely with the Energy Commission staff throughout the process.

Agencies may intervene in a siting case. For example, a city in an urban area adjacent to a proposed plant may intervene to represent members of its community. Local agency intervenors are not eligible for reimbursement of expenses associated with intervention, but may still be reimbursed for the costs of complying with Energy Commission requests for comments and recommendations. Sometimes, however, agencies may participate and testify without intervention because the Energy Commission requests their participation. In these cases, the local agency may only be reimbursed for the added costs actually incurred in complying with the Energy Commission's request to review.[86]

Each project will require compliance with air quality rules as well as review by the California Independent System Operator or other control area operator to assure approval of transmission connection plans. Compliance with all local, state and federal laws, ordinances, regulations, standards, rules, codes, and plans is another requirement for certification.

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[84] "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.
[85] Public Resources Code § 25506, 25507, 25519; Title 20 CCR § 1714, 1714.3, 1714.5.
[86] Public Resources Code § 25538 and Title 20 CCR § 1715.

The public can determine other agency participants in a specific siting case by consulting the applicant's documents filed for the project, the staff Issue Identification Report or from the Energy Commission's Website at www.energy.ca.gov/sitingcases.

Air Quality Requirements: Determination of Compliance

The document produced by an air quality management district is called a Determination of Compliance (DOC). The air quality management district is required to participate in the siting process by the Energy Commission's regulations. Thus the local air pollution control officer conducts a two-part review of the application.[87] The review seeks to determine whether the proposed facility meets the requirements of applicable district regulations and complies with the Federal New Source Review (NSR) program when applicable.[88] The first document, termed the Preliminary Determination of Compliance (PDOC), is scheduled for filing 120 days after the application is accepted and is circulated for a 30-day public review and comment period. The second document, termed the Final Determination of Compliance, is due 180 days after the application is accepted and addresses comments on the PDOC.[89]

Completion of the Determination of Compliance in a timely manner is very important. Delays in obtaining the Determination of Compliance can negatively impact the siting project schedule because the air quality compliance information is needed at the committee's formal hearings. The local air quality management district provides a witness to present and explain the Determination of Compliance at the evidentiary hearing.[90] The public can comment on the air quality testimony, however, only parties (the applicant, staff and intervenors) may cross-examine the witness.

Any participant concerned with air quality requirements should contact the local air quality management district and participate in the Determination of Compliance, review in addition to participating in the Energy Commission's siting process.

Transmission Interconnection Study

Created by legislation in 1996 to deregulate the electric power generation industry, the California Independent System Operator (CAISO) manages the flow of electric power through most of the California power grid. The mission of the CAISO is to ensure and safeguard the reliable delivery of electricity and also to ensure equal access to the power grid.[91] Applicants seeking certification by the Energy Commission must obtain approval of a Transmission System Impact Study from the CAISO or other appropriate control area operator. Hopefully, the study is completed around 120 days from acceptance of the filing. A representative from CAISO can be called as a witness to testify about the proposed

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[87] Title 20 CCR § 1744.5.

[88] The Federal New Source Review program, which is administered by the air quality district, requires applicants comply with the Lowest Achievable Emission Rate (LAER) for NOx, S02 and C02 and to provide offsets for emissions of these pollutants.

[89] In practice, districts have typically filed the Preliminary Determination of Compliance at 180 days and the Final Determination of Compliance at 240 days.

[90] Title 20 CCR § 1744.5.

[91] The California power grid is a network of long-distance, high-voltage transmission lines and substations that carry bulk electricity to local utilities for distribution to their customers.

transmission plan and its relationship to the agency's power flow model. The witness can also explain the CAISO recommendations for mitigation to the transmission system.

Part IV - The Decision Documents - Proposed Decision and Final Decision

The information exchange leading to an Energy Commission decision is an open public process and an integral phase in certification. After extensive public workshops and hearings, the sometimes-conflicting views of participants must be resolved. The decision documents produced by the Energy Commission committee are available on the Energy Commission's Website at www.energy.ca.gov/sitingcases. Persons interested in participating in a specific siting case can review previous Energy Commission decision documents to better understand how the siting process uses the information from the applicant, staff, intervenors, agencies and interested participants to reach a decision.

Proposed Decision

The two-member Energy Commission committee assigned to the siting case makes decisions on the conflicts presented by the evidence and recommends approval or denial of the certificate. The Presiding Member of the committee will prepare and file the committee's decision documents. The first document in the decision on an Application for Certification is called the Presiding Member's Proposed Decision (PMPD),[92] and it includes conditions of certification. The proposal is released following workshops and formal hearings about 305 days into the process. A 30-day minimum comment period follows the release of the proposed decision. Sometime after the close of the comment period the Presiding Member may issue a Revised Presiding Member's Proposed Decision.[93] There is a 15-day comment period after the revised proposed decision is released.

The Presiding Member's Proposed Decision and the Revised Presiding Member's Proposed Decision are the heart of the decision in the siting case. The final decision is made by the full Energy Commission. To better understand how to participate in the review of the Presiding Member's Proposed Decision, please consult Chapter 17.

Final Decision

The final decision to approve, modify or disapprove the Notice of Intention, Application for Certification or the Small Power Plant Exemption is usually made at a regularly scheduled Energy Commission business meeting[94] before the five Commissioners.

At the business meeting, the Energy Commission receives the Presiding Member's Proposed Decision containing the recommendation from the committee. At this point in the siting process, a favorable recommendation from the Siting Committee means that many issues have been resolved. The public may comment on the decision. After the

[92] The Presiding Member's Proposed Decision is discussed more fully in Chapter 17.
[93] The Presiding Member's Revised Proposed Decision is discussed more fully in Chapter 17.
[94] The Energy Commission can schedule the business meeting in Sacramento or in the area near the project. A third option is to schedule a special meeting to hear only the siting case.

discussion of the decision, the Energy Commission may make changes to conditions in the proposed decision and may add new conditions.

After the Energy Commission vote, the Energy Commission signs an Adoption Order incorporating the Presiding Member's Proposed Decision and any changes made. The Order and the PMPD, or revised PMPD, then constitute the final Energy Commission Decision. More information about the final decision is provided in Chapter 18.

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CHAPTER 6

Becoming a Formal Party - Intervention and Intervenors

This chapter explains how members of the public or interested public agencies can become formal parties to a siting case.

What Is Intervention and Who Can Become An Intervenor?

Intervention is a process to allow an informal participant to become a formal party to a siting proceeding.[95] The basis for intervention comes from California law requiring that the Energy Commission hold open meetings and afford an opportunity to be heard to any person on subjects before the Energy Commission.[96] While any interested person may, upon request, be granted a reasonable opportunity to ask questions at hearings, intervenors receive the full rights and bear the full responsibilities of a party to the proceeding.

Any person may ask to intervene in a power plant siting case.[97] Asking to intervene or to become an intervenor begins by filing a request called a "petition" that will be considered by a committee of two Commissioners. (The petition is discussed in greater detail in this chapter in the section "How to Become an Intervenor." (Also see **Sample 3** at the end of this chapter.)

The committee will consider all requests for intervention, and the Presiding Member may grant the petition to the extent they deem it reasonable and relevant. Once granted intervenor status, one becomes a party to the case.

Any person whose request for intervenor status is denied may appeal the denial to the full Energy Commission. The appeal must be filed within 15 days of the denial.[98] Appeals are discussed in Chapter 10.

Benefits of Intervention And Becoming A Party

The benefits of intervening and becoming a party are most apparent when the Siting Committee for the project holds formal hearings. While the public can offer opinions and "comment"[99] at formal hearings, only parties can offer "testimony."[100] In other words, only parties can sponsor formal testimony and cross-examine other parties' witnesses. The difference between comment and testimony is that testimony is given more weight by the decision-makers. "More weight" means that when the committee is weighing the facts and deciding conflicts in the evidence, testimony can be used as the basis for a finding on any issue. Testimony has more weight than comment because testimony is evidence

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[95] Informal participants are members of the public, groups or public agencies. If agreed to by the Energy Commission, intervention permits an informal participant to become a party.
[96] Public Resources Code § 25214.
[97] Title 20 CCR § 1207(a).
[98] Title 20 CCR § 1207(d).
[99] Title 20 CCR § 1201(g).
[100] Title 20 CCR § 1201(h).

given under oath. Public comment is not formal evidence. Standing alone, public comment does not support a finding on any issue before the Commissioners.

Any person who is granted intervenor status shall have all the rights of a party (the applicant, Energy Commission staff and other intvervenors). These rights include:

- Receiving all filings in a case including the original application;
- Receiving all notices of hearings and workshops;
- Presenting evidence and witnesses at any hearings;
- Cross-examining the witnesses presented by other parties;
- Requesting and obtaining data from all other parties (see Obtaining and Exchanging Information, Chapter 13); and
- Filing documents relevant to the siting proceedings, including motions, petitions, objections and briefs.

Responsibilities of Intervenors

Any person who is granted intervenor status has all the duties of a party. The responsibilities of an intervenor include:

- Serving the intervenor's papers on all the other parties on the proof of service list;
- Presenting the intervenor's witnesses for cross-examination by other parties;
- Responding to data requests from other parties as outlined in Energy Commission regulations;
- Complying with the Pre-Hearing Conference Statement requirement (see Pre-Hearing Conference, Chapter 14);
- Filing and serving post-hearing briefs when necessary to protect the intervenor's interests in a case (see Chapter 16 for Procedures To Present Arguments from the Hearing Record); and
- Complying with all other requirements imposed upon the parties by the committee.

How to Become An Intervenor

To become an intervenor, apply in writing to the Energy Commission two-member committee assigned to the siting case. The application is called a "Petition to Intervene" and must state the name, address and telephone number of the person applying (petitioner), the petitioner's reasons for intervention, and interest in the proceeding, and the degree of participation desired by the petitioner (i.e., presenting evidence, cross-examination, etc.).[101] A sample form illustrating a Petition for Intervention (**Sample 3**) is provided at the end of this chapter. Two additional forms, "Petition for Intervention as an Individual or Agency" and "Petition for Intervention as a Group" are provided in Appendix B.

[101] Title 20 CCR § 1207(a).

When filing the request, the original is filed with either the Docket Unit of the Energy Commission or with the Presiding Member of the committee assigned to the siting case. The address of the Docket Unit is:

California Energy Commission
Docket Unit
1516 Ninth Street, MS 4
Sacramento, CA 95814

A copy of the petition must be served on the applicant in the particular case (see Service, Chapter 8). The address of the applicant may be obtained from the Energy Commission Website, the Docket Unit or the Public Adviser's Office by calling (916) 654-4489, the California toll free number (800) 822-6228, or by contacting the office through e-mail at PAO@energy.state.ca.us. Once the request to intervene is properly filed and served, the Presiding Member of the committee will promptly issue a ruling. Persons asking for intervention (petitioners) are advised of the ruling (usually within 30 days of the filing of the petition). If the committee grants the petition for intervention, the petitioner can participate fully as a party.

When Is the Best Time to Intervene?

It is important to intervene as early as possible in the proceeding. Waiting may mean that opportunities to raise important issues may be missed. If there are no intervenors, issues may be resolved solely between the staff and the applicant. The committee may not allow a late intervenor to revisit matters resolved before the intervention.

Petitions to intervene are not acted upon until after data adequacy (45 days after filing) when the committee is appointed. On the other hand, a request to intervene must be filed no later than the pre-hearing conference, which occurs before the first evidentiary hearing.[102] The Presiding Member of the committee will consider late filings only if the person requesting intervention can show good cause for the delay in filing the request.

Withdrawing From the Proceeding

At any time during the proceeding, an intervenor may request to withdraw from further participation. Withdrawal is accomplished by filing a "Request to Withdraw." (See **Sample 4** at the end of this chapter.) Upon receipt of a "Request to Withdraw," the Presiding Member will order the party withdrawn as an intervenor and notify all other parties of the change.

Questions

The Public Adviser's Office is available to provide assistance to intervenors at any stage of the proceeding. The Public Adviser's Office also has copies of many of the documents filed in any case. The public is welcome to come to the office to review siting proceeding materials. Additionally, the Docket Unit has a complete set of all documents filed in every case, and many are available on the Energy Commission Website at www.energy.ca.gov/sitingcases.

[102] Title 20 CCR § 1207(b).

Frequently Asked Questions

1. What does the Energy Commission do?

The Energy Commission ensures that needed energy facilities are certified in an expeditious and environmentally acceptable manner. The energy facilities certification process is designed to be rigorous, fair and consistent, while eliminating duplication and regulatory uncertainty.

The Energy Commission's siting process provides:

- Assurance that only power plants actually needed will be built;
- Review by independent staff with expertise in public health and safety, environmental sciences, engineering and reliability;
- Simultaneous review and full participation by all state and local agencies, as well as coordination with federal agencies;
- One-stop regulatory permit process;
- A decision within a specific time frame; and
- Full opportunity for participation by public and interest groups.

Although all energy facilities are considered in the Energy Commission's planning and forecasting process, the power plant site certification process applies to thermal energy facilities that produce 50 megawatts (MW) or more of electricity. Power plants below that threshold are reviewed by other agencies, primarily at the local level.

2. Who makes the decision about the power plant?

The final decision about siting a power plant is made by the Energy Commissioners. The five members of the California Energy Commission are appointed by the Governor to staggered, five-year terms and require Senate approval. By law, four members have professional training in specific areas – engineering and physical science, environmental protection, economics and law. The fifth Commissioner is from the public-at-large.

3. What regulations cover this process?

The Energy Commission is governed by the Warren Alquist Act and Title 20, California Code of Regulations. A copy of the Warren Alquist Act can be requested through the Energy Commission's Publication Department; Title 20, California Code of Regulations, is available at most libraries. Both references are also available to you on the Energy Commission Website at www.energy.ca.gov. In addition, the regulations can be accessed from any siting case. The Warren-Alquist Act is available as an on-line publication.

4. Who makes up the Energy Commission Siting Committee?

During the energy facilities certification process, two Commissioners are chosen to oversee all hearings, workshops and related proceedings on a specific project. The two-member “committee” will make recommendations to the other Commissioners before final action for certification is determined at a public hearing of the full five-member Commission.

The Siting Committee isn't chosen until the application for a specific project is filed at the Energy Commission and determined to have the correct information to be "data adequate." The processes for “filing” and becoming “data adequate” are discussed in Chapter 3 of the Guide.

5. Will the Energy Commission Committee visit the site?

Once appointed, the Committee will visit the site and hold a public meeting. See Guide Chapter 14 “Committee Site Visit" and "Committee Informational Hearing."

6. What is the role of the Energy Commission staff?

The Energy Commission’s staff, which includes a full range of environmental and engineering experts, is an independent, objective party in a power plant siting process.

The staff’s function is to review information provided by the applicant, coordinate with other federal, state, and local agencies; do necessary field studies; and prepare and present testimony in hearings. The staff also implements a compliance monitoring program to ensure that power plants are constructed and operated according to the conditions of certification.

7. Will the Energy Commission meet at the project site when it decides the issue?

Generally, no. Though a hearing is usually held in the area of the project, the final decision is usually made at a regularly scheduled Business Meeting in Sacramento. See Guide Chapter 18 “Energy Commission Final Decision.”

8. How can an individual or community participate in the siting process?

The Energy Commission siting process guarantees the right to public participation and an open discussion of all aspects of the proposal. Early public participation helps assure that questions are asked and answered while changes can be considered.

Before the Siting Committee’s first Informational Hearing, the staff identifies issues that may be a problem or need further work and analysis. The information is available in “The Staff’s Issue Identification Report.” (See Chapter 5 “Siting Documents,” Part II.) If there are additional issues, the public needs to make the Energy Commission aware through public comments. If the issues cannot be resolved satisfactorily through public comments, it may be necessary to intervene – as an individual or a group – and become a party in the case. Chapter 6 of the Guide discusses intervention and how to intervene.

The Energy Commission usually cannot approve a project that does not conform to applicable laws, ordinances, regulations and standards (LORS). By reading the staff's Issues Identification Report, the public can learn if there are potential LORS issues. For example, the local air quality management district must determine air quality complaince. The public can influence the Energy Commission siting process by participating in the air quality district's Determination of Compliance. Public participation in any LORS issue can influence the Energy Commission siting decision.

9. What is the most effective way to participate in the process?

Each project has unique features. Issues are discussed and may be resolved in the workshops, but the decision is made from the hearing record. Workshop comments, newspaper articles, and community meetings are important while issues are being discussed, but these items do not become a part of the hearing record. The hearing record is the evidence and testimony used by the Commissioners when deciding the case. (Chapter 15 provides background on the formal hearing and Chapter 14 describes numerous meetings and schedules leading up to the formal hearing.) To introduce evidence and testimony, one must be a party, an intervenor. (Chapter 6 discusses how to intervene.)

10. How are "impacts" reviewed and how does the public provide input?

The applicant proposes the project (See Chapter 5, Application for Certification). The staff reviews the project. (See Chapter 5, Staff Reports for Application for Certification, Preliminary Staff Assessment, and Final Staff Assessment.) Before reaching a decision, the Committee, and ultimately the Energy Commission, must make findings and conclusions on all potential impacts. If there are "impacts", there must be conditions that mitigate the impact. The conditions are part of the certificate (license to operate).

Individuals and the communities can participate and be heard on all the issues. However, it is important to note the difference between comment and testimony. The committee decision is based on findings made from the hearing record of the evidence and sworn testimony. Public comment can explain or amplify points under discussion. Public comment, however, is not sworn testimony and it cannot alone support a decision or a finding. Intervenors, on the other hand, can enter sworn testimony and evidence and cross-examine witnesses.

11. Is there anyone at the Energy Commission that can answer my questions?

The Energy Commission nominates, and the Governor appoints, a Public Adviser who is responsible for ensuring that the public and other interested parties are adequately represented at all Energy Commission proceedings, including the certification of energy facilities. The Public Adviser's accessibility affords California citizens the unique opportunity to be a part of energy decision-making process that could affect their lives. Appointed to a three-year term, the Public Adviser and his/her office has the primary responsibility of fostering public understanding of and participation in the certification process.

The Public Adviser does not act as the public's legal counsel before the Energy Commission. Instead, he/she advises the public on effective ways to participate in the proceedings.

12. If I want to know what's going on, how can I stay informed?

- **Interest List:** Interested persons can be assured notification of upcoming Energy Commission meetings, workshops, hearings and site visits pertaining to a proposed power plant siting case by requesting that their names be added to the project's "interest list." Persons may make this request at any of the workshops or hearings on the project or by calling the Public Adviser at (916) 654-4489, toll-free at (800) 822-6228, or by e-mail at PAO@energy.state.ca.us. Complete instructions for placing names on the project mail list via e-mail are located at http://www.energy.ca.gov/html/listservers.html.
- **Informal Participation:** In addition to signing up on the "interest list," individuals also are encouraged to attend Energy Commission meetings on the case which is of particular interest to them. At these meetings, the public always has an opportunity to state their views either orally or in writing. The public also has the opportunity to hear the positions of the other parties and decide if individual interests are being protected. At this level of participation, public comments to the Commissioners will be considered but will not have the effect of formal evidence, and, therefore, will not be sufficient, alone, to support a decision on any issue before the Commissioners. Comments do not have the same weight as testimony.
- **Intervenor Status:** To intervene formally in a case, individuals must petition the Energy Commission committee in a particular case for "intervenor status". Intervenors are a full party to the proceedings, with the same rights and obligations as the other parties, such as the applicant and the staff. Intervenors have the right to present evidence and witnesses, the opportunity to obtain information from the other parties, the right to cross-examine the witnesses of the other parties at public hearings, and the right to receive all documents filed in the case. Intervenors also will have the duty to send copies of all filings to other parties, answer data requests from other parties, and submit witnesses to cross examination by other parties. Intervenor evidence can be used by the Energy Commission as the basis for any part of the final decision. The Public Adviser will assist anyone desiring to intervene in a proceeding.

13. It sounds like you have to be an attorney to intervene.

You do not have to be an attorney. You do have to become involved. The Public Adviser's office can provide you with information, forms, and assistance, but cannot intervene for you.

14. What does the Hearing Officer do?

The Hearing Officer represents and provides legal advice to the Energy Commission committee appointed to oversee each siting proceeding. The Hearing Officer often conducts and can, in certain instances, preside over a committee proceeding.

15. If I want to read a staff report, how do I get a copy?

The Energy Commission's Docket is the repository for official records of all Energy Commission rulemaking proceedings, including certification for energy facilities. Upon request, the Docket Unit provides copies of docketed materials at a nominal charge when such documents are not available from the Energy Commission library or the Publications Unit, located at 1516 – 9th Street in Sacramento. In certain instances, copies of docketed material also are available in selected public libraries throughout California and in communities affected by the proposed facility. Most Energy Commission documents, including staff reports, can be read by accessing the Energy Commission Website at www.energy.ca.gov/sitingcases, then select the specific siting case and select the "Proceedings, Notices, Orders, Hearings and Workshops" from the left sidebar menu.

16. Is there money available to help the community organize and get the information it needs to respond to this proposal?

No. Formerly, the Energy Commission had a limited program providing intervenor funding in certain cases. The program, however, has expired.

Depending on the scope of the analysis, local agencies such as the city or a county, can be reimbursed for extra costs due to project analysis. To qualify for reimbursement the work must be beyond the normal analysis and the analysis must be requested by the Energy Commission. Local agencies do not get funding for intervention expenses. (See Chapter 5, Part III, Agency Reports.)

SAMPLE 3 – Petition for Intervention

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No. 98-AFC-1
	)	
	)	PETITION FOR
	)	INTERVENTION
ZAP POWER	)	
_____	)	

Petitioner, **John Doe**, states:

1. Petitioner, **John Doe**, petitions to intervene in the above-entitled proceeding.
2. Petitioner has an interest in the proceeding in that **John Doe owns property that is adjacent to the proposed project.**
3. Petitioner does ☐ does not ☐ wish to reserve the right to present evidence and to cross-examine witnesses.
4. Petitioner will be represented by **SELF**.

_____ Date

_____ Signature

☐ ☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

SAMPLE 4 - Request to Withdraw

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No. 98-AFC-1
	)	
	)	REQUEST TO WITHDRAW
	)	
ZAP POWER	)	

John Doe hereby requests to withdraw from the above-entitled proceeding.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**Sample 7**) must be attached.)

CHAPTER 7

The Rule for Fair and Impartial Communication Bars Ex Parte Contact

This chapter explains the term "ex parte" contact and the rule banning private communications with the Energy Commission decision-makers.

"Ex Parte" -- What Does It Mean?

Termed "off the record" or "ex party communications," private or partisan communications are prohibited between any party and an Energy Commission decision-maker (e.g., a Commissioner, an advisor to a Commissioner, or a Hearing Officer). Private discussions concerning the merits[103] of an issue are prohibited by Energy Commission regulation.[104] The rule exists to assure fairness and impartiality in all Energy Commission proceedings and to guarantee all parties the right to read or hear exactly what is presented to the decision-makers.

Open Meetings and Adequate Notice

The "ex parte communication" rule does not restrict a full presentation of views on any issue. The ban on one-sided oral or written communication means that the merits of an individual case may only be discussed in meetings, conferences or hearings open to full public participation. The public must be given adequate notice of the time, place and topic to be considered. Commissioners, Commissioner's advisers or the Hearing Officers may not have private discussions with parties about cases before the Energy Commission.

Written communications to the same individuals may only occur if the document is first properly filed with the Energy Commission Docket Unit. Parties must serve copies of written communications on all other parties. Informal participants however, are not required to serve copies of their written communications but should send them to the Docket Unit to ensure the communications are included in the administrative record.

Communicating With the Public Adviser Is Not an Ex Parte Contact

Procedural inquiries may be directed to or through the Public Adviser's Office. Though communication regarding procedural issues does not constitute an ex parte contact, this type of communication with a Commissioner, Commissioner's adviser or Hearing Officer, is generally not favored in order to prevent even an appearance of unfairness.

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[103] "Merits" means the intrinsic right or wrong of the issue. The merits or substantive issues in the case are different from procedural issues.
[104] Title 20 CCR § 1216.

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CHAPTER 8

How Papers Should Appear - Document Form

This chapter explains how to prepare information for filing in a siting case. The document "form" rules cover the size of the page and spacing. The chapter also explains the use of a title page and the number of copies to be filed. Finally, sample forms from Appendix F are provided which should be very helpful to an intervenor.

Form and Size

Documents filed[105] with the Energy Commission shall be typewritten or printed on paper 8-1/2 inches wide and 11 inches long, and exhibits shall be folded to the same size and attached. The written material should be on both sides of the paper and should be double-spaced except that footnotes and quotations in excess of a few lines may be single-spaced.[106]

Use a Caption Page (Title Page)

All papers filed with the Energy Commission should have a first page called a "caption page." The caption page functions as a title page. An example of the caption page is provided as **Sample 5** at the end of this chapter. The following format is recommended:[107]

- Use at least a one-inch left margin. Begin from a point 3/4 to 1 inch from the top of the page and to the left of the center of the page. Provide the name, address, and telephone number of the party, or the attorney for the party for whom the paper is presented, and the name of the party the attorney represents.
- The space three inches from the top of the page and to the right of the center of the page shall be left blank for the use of the Energy Commission Docket Unit.
- At or below three inches from the top at the center of the page, provide the title "State of California, on the next line "State Energy Resources" and on the third line "Conservation and Development Commission."
- Below the title "State of California," in the space to the left of the center of the page provide the title of the proceeding.
- To the right of and opposite the title of the proceedings, insert the "docket number" of the proceeding. "Docket number" is the number assigned to identify the case and related filings by the Energy Commission Docket Unit. (Docket number is discussed in greater detail in Chapter 9).
- Immediately below the docket number of the proceeding, provide the title of the document.

[105] "Filing documents" is discussed in greater detail in Chapter 8.
[106] Title 20 CCR § 1209(a).
[107] Title 20 CCR § 1209(b).

Number of Copies

Generally, any person submitting written materials in connection with an Energy Commission proceeding should provide the original and 11 copies. (See Chapter 9 for further discussion of the number of copies.)

Forms

"Sample forms" with fictitious data are used throughout this Guide to illustrate proper formatting of information. Appendix B contains blank forms ready for use in a siting proceeding. Participants can photocopy the appropriate form and fill in the required information. Please be certain to sign all documents before they are filed or served. Forms may also be downloaded by accessing the Siting Process Practice and Procedure Guide at www.energy.ca.gov/commission/public-adviser/index.

SAMPLE 5 – Caption Page

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	DOCKET NO. **98-AFC-1**
	)	
	)	(Title of Document)
	)	
ZAP POWER	)	

_____ _____
Date Signature

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CHAPTER 9

Filing and Delivering Documents - Service of Papers

This chapter explains document filing procedures in a siting case. The first part of the chapter covers the rules for filing with the Energy Commission Docket Unit and the number of copies required. The second part of the chapter explains the rules for delivering documents to other parties.

Filing With the Energy Commission Docket Unit

"Filing" written materials with the Energy Commission means to submit documents in person or by mail to the "Docket Unit." Papers are officially filed on the date of delivery to the Docket Unit or, if mailed, on the date the papers are deposited in the United States mail, first class postage prepaid, with the following address:

California Energy Commission
Docket Unit
1516 Ninth Street, MS 4
Sacramento, California 95814

A document may be filed electronically with the Docket Unit by e-mail addressed to: DOCKET@energy.state.ca.us. The original hard copy must be mailed to the Docket Unit as well.

The Docket Unit assigns a "docket number" to identify each case and maintains the official record of the proceedings. For example, the first Application for Certification filed in 1999 would have the docket number 99 - AFC - 1. If the public has questions, the Public Adviser can locate the docket number for a particular siting case. A description of each project, including the docket number, can be found on Energy Commission's Website at www.energy.ca.gov/sitingcases.

Number of Copies Required For Filing

Generally, any person submitting written materials in connection with a proceeding before the Energy Commission shall provide the original and 11 copies to the Energy Commission at the Docket Unit address. The 11 copies are distributed internally by the Docket Unit to appropriate Energy Commission staff. If access to a copy machine is unavailable, the person filing the documents may submit a check, with the original document, in place of the required copies. Make the check payable to the Energy Commission to cover the cost of making additional copies at the rate of ten cents per page.[108]

[108] Title 20 CCR §§ 1209(c) & 1717(a).

Exception to the Requirement of Filing 11 Copies

If providing 11 copies would impose an undue financial burden, the requirement may be excused. To be excused, a "Financial Hardship Petition" must be filed stating that the requirement of filing 11 copies is an undue financial hardship.[109] (See **Sample 6** at the end of this chapter for the financial hardship form.) However, all parties should note that electronically filing documents essentially obviates the necessity for requesting hardship status since multiple paper copies are not required.

Delivery of Documents - Service of Papers

"Service of papers" is a legal term describing delivery of documents involved in a legal proceeding. "Service" is accomplished by having a neutral person (like a secretary, business associate, or neighbor, etc.) deliver the papers either in person or by mail to other parties in the proceeding. This person serving the papers must have no stake in the outcome of the proceeding.

Since each party has the right to know of, and comment upon, the officially filed papers of all other parties, the rules requiring service protect that right. Thus, any party filing with the Energy Commission must serve the filed papers on all other parties "of record" in the proceeding or provide them a copy via e-mail.

The Energy Commission Hearing Office maintains and publishes a list of those persons, associations, agencies, or corporations who are the "parties of record." The list is called the "Proof of Service List" and may be obtained from the Hearing Office by calling (916) 654-3893 or by writing to:

California Energy Commission
Hearing Office
1516 9th Street, MS 9
Sacramento, California 95814.

The proof of service list is revised as new parties are admitted into the proceeding or other changes occur. The Energy Commission Hearing Office serves revisions of the proof of service list on all parties.

The proof of service list for each proceeding may also be found on the Energy Commission's Website at www.energy.ca.gov/sitingcases. After accessing the website, select the specific siting project. Then select "Proof of Service List" from the sidebar menu.

Parties filing documents with the Energy Commission shall ensure that the most up-to-date Energy Commission proof of service list is used for serving other parties of record. Each revision to the Energy Commission proof of service list will bear its effective date. (To be sure that the right people are served, maintain a separate binder with the latest Energy Commission revised proof of service list.)

The Public Adviser can answer questions and can verify the parties on the proof of service list.

[109] Title 20 CCR § 1717(a).

Proving the Documents Were Delivered - Proof of Service

Since service of documents on all other parties is required, there is a procedure to prove compliance called "proof of service." The proof of service is a statement or declaration completed by the person who performed the mailing or personal delivery and specifies the "date" of service. The proof of service also identifies all the parties served. (See **Sample 7** at the end of this chapter.)

Original Proof of Service

To be an original proof of service, the document must bear an original signature of the person serving the paper. (Using blue ink to sign the original proof of service makes it easy to identify the document as an original.) The original proof of service must accompany the original paper filed with the Docket Unit of the Energy Commission and list the parties served.

Copies of Proof of Service

A copy of the proof of service shall accompany each of the 11 copies of the document filed with the Docket Unit of the Energy Commission and copies of documents served by mail upon other parties **(Sample 7)**.

SAMPLE 6 – Financial Hardship Petition

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION FOR
	)	FINANCIAL HARDSHIP
ZAP POWER	)	

John Doe hereby petitions to be excused from:

- ☐ Filing 12 copies with the Commission Docket Unit
- ☐ Serving papers on all other parties of record.

Compliance with the above requirement(s) creates an undue financial hardship for Petitioner in that:

Petitioner is currently unemployed.

Petitioner lives in a remote area without reasonable access to photocopy equipment.

_____ _____
Date Signature

☐ Check box if continuation pages are attached (Proof of Service (**Sample 7**) must be attached.)

SAMPLE 7 – Proof of Service

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	DOCKET NO. **98-AFC-1**
	)	
	)	PROOF OF SERVICE
	)	
ZAP POWER	)	

DECLARATION OF SERVICE

I, **John Doe** declare that on **August 2, 1999**, I deposited copies of the attached **Data Request** in the United States mail at **Sacramento, California** with first class postage thereon fully prepaid and addressed to those identified on the Proof of Service list below. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. I declare under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

1. ZAP Power
   2 Glow Avenue
   Sacramento, CA 95833

2. Docket Unit
   California Energy Commission
   1516 Ninth St.., MS 4
   Sacramento, CA 95814

_____ Date

_____ Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**Sample 7**) must be attached.)

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CHAPTER 10

To Ask For an Order From the Energy Commission - Make A Motion/Petition

This chapter explains how to ask the Energy Commission to take action using the "Motion" and "Petition" procedural tools. A general discussion of motions and petitions provides an overview of the various types of requests that can be made in a siting case. The procedural rules covering the form, filing, service and proof of service provide a closer look at the mechanics of preparing a motion or petition. A detailed discussion of the request, “Motion to Change Location of Meeting,” walks through each step to create the motion.

This chapter also discusses a "Request for a Written Ruling before the Final Order" and the appeal or stay of an Energy Commission order.

Motions and Petitions Generally

Parties may ask the Energy Commission or committee for an order directing the staff, applicant or other parties to do something or to refrain from doing something. This request is made by making a motion or filing a petition. Motions and petitions are tools that can be used effectively by intervenors and other parties. Motions and petitions can impact the process and the result during the course of an Energy Commission proceeding.

Generally, motions and petitions can be made for any purpose. Some common types are:

- Motion for a Continuance of a Meeting or Workshop (**Sample 8**);
- Motion for an Order Changing the Location of a Meeting or a Workshop (**Sample 9**);
- Petition for Order Lengthening Time (**Sample 14**);
- Petition for Reconsideration of an Energy Commission Committee Order (**Sample 12**);
- Request for Stay of Energy Commission Committee Order (**Sample 13**);
- Petition to Reopen the Administrative Record (**Sample 24**); and
- Petition for Reconsideration of Energy Commission Decision (**Sample 28**).

Form

Motions and petitions should be submitted in writing. The form should clearly state what the Energy Commission or committee should order and the basis for making an order.

If necessary to provide support for the request, attach the following:

- "Declaration" (**Sample 15**) by the person with knowledge of the facts to support the request; and
- Legal points and authorities as outlined in a "Memorandum of Points and Authorities in Support of Petition" (**Sample 11**).

The general forms used to file a motion or petition are shown on **Sample 8** and **Sample 10**. Both forms can be adapted for use with any motion/petition. Blank forms are provided in Appendix F.

Filing and Service

Any party, including intervenors, may file motions and petitions with the Energy Commission's Docket Unit. Such motions and petitions must also be served on all "parties of record." Use the "proof of service list" discussed in Chapter 9 to identify parties of record.

Proof of Service

A proof of service must accompany the written motion or petition. (See Chapter 9 for discussion of proof of service and **Sample 7** for form.)

Hearing the Motion/Petition

A hearing on the motion or petition may be set by order of the Presiding Member of the committee. Parties will be served with a Committee Order setting a time and place for the hearing. Within 30 days of filing of the petition, the Presiding Member shall act to grant or deny the motion/petition, in whole or in part, or schedule further hearings or written responses on the motion/petition.[110]

Responding to the Motion/Petition

The order may specify the date by which responses by other parties shall be filed and served.

Procedure for a Motion to Change Meeting Location

There are many types of requests for Energy Commission committee orders. The following procedure would be used to ask for a change in location.

Assume the Energy Commission issued a notice announcing a workshop to discuss water issues and the location of a new gas pipeline. As a property owner, the pipeline will pass in front of your home. As a concerned citizen, you have already intervened in the siting case, so you have party status. The workshop is scheduled for Sacramento and the project and your home are 350 miles away. You and some of your neighbors want to attend the workshop, but it is too far and would require that you miss work. What can you do? Enter a Motion for Change of Location of Meeting.

[110] Title 20 CCR § 1716.5.

As the party making the motion, begin by stating the reasons/grounds for the motion. The reasons could include inconvenience or time conflicts. Prepare a motion requesting that the meeting be relocated closer to the proposed site so that you, the public and local landowners can participate (**Sample 9**). If appropriate, use a Declaration (**Sample 15**) to support the reasons/grounds identified in the motion. In the hypothetical example, the declaration might state:

- the location of the residence;
- ownership of the residence;
- the location of the pipeline;
- an interest in attending the workshop;
- conversations with other landowners who want to attend but cannot because of the distance; and
- any other facts to support the request for the change of location.

The motion can also be supported by a "Memorandum of Points and Authorities" (**Sample 11**) referring to the Public Resources Code and Title 20 of California Code of Regulations. The references to the code and the regulations should illustrate the authority for granting the motion. Energy Commission regulations allow parties to ask the presiding Member of the committee to continue or change the location of workshops by filing a motion. The Chairperson or the Presiding Member has the power to continue, cancel, or schedule meetings.[111] In the example, refer to this regulation to support the motion. This and other regulations are available at www.energy.ca.gov.[112] Finally, prepare a proof of service (**Sample 7**).

To complete the process, sign the original documents and prepare copies. File the original motion, declaration, memorandum of points and authorities and the proof of service. Complete the service by having the documents mailed or delivered to the parties of record. (Service is discussed in Chapter 9.)

The same procedure is followed for a Motion for Continuance. These motions should be made as far in advance as possible. Members of the public should contact the Public Adviser if the location or timing of the workshop or proceedings hinders participation.

Request for a Written Ruling Before the Final Order

During the proceedings before the Energy Commission's final decision, any party may request that a ruling of the Presiding Member or committee be issued in the form of a written order.[113] The request must be made within the five calendar days following the ruling. The request is called "interlocutory,"[114] meaning provisional, because it is not a final, decisive order.

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[111] Title 20 CCR § 1203(c),(d), and (e).
[112] Go to Power Plant Site Certification, Rules of Practice and Procedure (Title 20 CCR).
[113] Title 20 CCR § 1215(a).
[114] "Interlocutory Order" means it is not a final order, rather an order between the beginning and the end of the case which decides a point, but is not a final decision of the whole case.

Appeal of Energy Commission Orders

It is the preferred practice to request the committee to reconsider an adverse order prior to requesting review of the order by the entire Energy Commission. At the end of the chapter, **Samples 10** and **11** illustrate a "Petition for Reconsideration of Energy Commission Committee Order by Energy Commission Committee" and the form for a "Memorandum of Points and Authorities" in support of reconsideration.

Any party may directly petition the Energy Commission to review a written Energy Commission committee order, especially in extraordinary circumstances where a prompt decision by the full Energy Commission is necessary to prevent detriment to the public interest. The petition will be deemed to have been denied[115] unless the Energy Commission acts upon a petition to review an order of the Presiding Member or committee within 30 days after the filing of the petition. (See **Sample 10** at the end of the chapter.) The Energy Commission may affirm, modify or vacate the Energy Commission's committee order.

Stay[116] of Energy Commission Committee Order

The appealing party may file a "Request for Stay" along with the filing of the "Petition for Reconsideration of Energy Commission Committee Order by Energy Commission" to ask the committee to not enforce a committee order pending the outcome of the appeal. The "Request for Stay" requires filing a declaration by the party showing irreparable harm. The harm could be to the interest of the party or the public interest in the absence of a stay. The declaration should also demonstrate that the appellant is likely to prevail upon appeal. The "Request for Stay" is filed at the same time as the "Petition for Reconsideration for Energy Commission Committee Order by Energy Commission."

The Energy Commission Chairperson may issue a stay of the committee order. The stay would be continued after favorable consideration of the "Petition for Reconsideration of Commission Committee Order by Energy Commission." Or the stay would be vacated (made to go away), should the committee deny the petition for reconsideration. (See **SAMPLE 13** "Request for Stay of Energy Commission Order.")

[115] Title 20 CCR § 1215(c)
[116] To "stay" an order means to refrain from enforcing the order.

SAMPLE 8 – Motion for Continuance

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	DOCKET NO. **98-AFC-1**
	)	
	)	MOTION FOR CONTINUANCE
	)	OF ZAP POWER WORKSHOP
ZAP POWER	)	

John Doe hereby requests the Energy Commission order the California Energy Commission staff to continue the Zap Power Workshop currently scheduled on November 28, 2004, to January 5, 2005.

This motion is made on the ground(s) that:

There is a conflict between the Energy Commission Committee meeting scheduled on November 28, 2004, and the County Commission meeting. Both meetings will discuss the Zap Power Project, and it is critical that Intervener John Doe attend both meetings.

This motion is based on the pleadings and records on file in this proceeding and the following:

The attached declaration of Jane Jones, County Supervisor (**SAMPLE 15**)
The attached Memorandum of Points and Authorities (**SAMPLE 12**)
Oral and documentary evidence that may be presented at the hearing

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 9 – Motion for Change of Location

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	MOTION TO REQUEST CHANGE OF
	)	LOCATION OF THE
	)	NOVEMBER 28, 1998
ZAP POWER	)	ZAP POWER WORKSHOP

John Doe hereby requests the Energy Commission change the location of the California Energy Commission's Committee Workshop scheduled for November 28, 2004, in Sacramento to Happy Acres.

This motion is made on the ground(s) that:

The Energy Commission's Committee workshop scheduled for November 28, 2004, is more than 350 miles from the proposed site. The Zap Power project pipeline passes in front of my residence and it is critical that I, Intervener John Doe attend the workshop.

This motion is based on the pleadings and records on file in this proceeding and the following:

☐ The attached declaration of Samuel Jones, neighbor (**SAMPLE 15**).
☐ The attached Memorandum of Points and Authorities (**SAMPLE 12**).
☐ Oral and documentary evidence that may be presented at the hearing.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 10 – Petition for Reconsideration

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION FOR RECONSIDERATION
	)	OF ENERGY COMMISSION'S
	)	COMMITTEE ORDER
ZAP POWER	)	

Intervener John Doe hereby petitions the Commission for reconsideration of the Committee's Order of January 2, 1999, in the above referenced matter.

This petition is made on the ground(s) that:

1. **Petitioner has been denied the right to cross-examine applicant's witness on air quality, Patrick Park.**

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 11 – Memorandum of Point and Authorities

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
	)	PETITION FOR RECONSIDERATION
	)	OF ENERGY COMMISSION'S
ZAP POWER	)	COMMITTEE ORDER

Intervener John Doe hereby submits the following points and authorities in support of his petition for the reconsideration of the Committee's January 2, 1999 order in the above referenced matter.

1. Title 20, California code of regulations section 1212(c) states in relevant part that:

   "Each party shall have the right to…cross-examine opposing witnesses on any matters relevant to the issues in the proceeding…."

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 12 – Petition for Reconsideration

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION FOR RECONSIDERATION
	)	OF ENERGY COMMISSION'S
	)	COMMITTEE ORDER
ZAP POWER	)	

John Doe hereby petitions for reconsideration of the Commission Committee decision of January 2, 1999, in the above-entitled matter.

This Petition is made on the ground(s) that:

1. Petitioner has been denied the right to cross-examine Patrick Park, the Applicant's witness, regarding issues that are critical to the project

2. Petitioner duly intervened in this proceeding on January 2, 1999, (see attached order labeled Exhibit 1).

3. Title 20 California Code of Regulations section 1212 (c) guarantees that each party shall have the right to cross-examine opposing witnesses.

4. On November 1, 1998, the Commission Committee voted to accept the declaration of Patrick Park into the record without giving the Petitioner an opportunity to cross-examine him (see attached Committee Order labeled Exhibit 2).

5. Committee denied Petitioner's motion for reconsideration see attached Petitions and Memorandum of Points and Authorities labeled Exhibit 3.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 13 – Request for Stay of Energy Commission's Committee Order

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	REQUEST FOR STAY OF
	)	ENERGY COMMISSION'S
	)	COMMITTEE ORDER
ZAP POWER	)	

John Doe hereby requests a stay of the following Energy Commission's Committee Order.

1. Title: **Order accepting Declaration of Applicant's Witness**
2. Date Order issued: November 1, 1998
3. This request is made on the grounds that there is irreparable harm to John Doe because he is denied the right to cross-examine Applicant's witness.
4. This request is based upon the pleading and records on file in this proceeding.
   The attached declaration of _____ (**SAMPLE 15**).
   Oral and Documentary evidence that may be presented at the hearing.
   The attached Memorandum of Points and Authorities (**SAMPLE 11**).

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

CHAPTER 11

How to Compute Time to Comply With Order

Time is very important in the siting process. Rules for calculating "time" are very specific. This chapter answers the procedural question, "How do I compute the time to comply with an Energy Commission order?"

General Energy Commission Rule

The time in which a siting process procedural step is to be performed is computed by excluding the first day and including the last. However, if the last day is a Saturday, Sunday or holiday, then it is also excluded and the time specified for doing the act is extended to the next business day that is not a holiday.[117]

Example 1: Last Day Is Week Day

Assume a committee order allows ten days to file a document with the Energy Commission. The order is issued on Monday, the 9th day of the month. In computing time, the 9th day of the month is the "first day" and is excluded. Counting begins on the 10th and includes Saturday and Sunday. The tenth day is Thursday, the 19th that is included as the "last day."

SUN	MON	TUES	WED	THR	FRI	SAT
	9	10	11	12	13	14
15	16	17	18	19		

Example 2: Last Day Is Weekend

Assume a committee order allows ten days to file a document with the Energy Commission. The order is issued on Wednesday, the 12th day of the month. In computing time, the 12th day of the month is the first day and excluded. Counting begins on the 13th and will include Saturday (15th) and Sunday (16th). However, when the date for accomplishing an act falls on a Saturday, time is extended until the next business day, which is not a holiday. Since Sunday, the 23rd, is not a business day, the document must be filed by Monday, the 24th day of the month, assuming it is not a holiday.

SUN	MON	TUES	WED	THR	FRI	SAT
			12	13	14	15
16	17	18	19	20	21	22
23	24					

[117] Title 20 CCR § 1003.

Should problems arise due to an inability to comply with the committee order, parties can make a Motion for an Order Shortening Time (or Lengthening Time). This order shortens/lengthens the amount of time permitted to do a required act. The request may accompany other documents submitted to the committee (also termed "pleadings"), and must include a statement of the reasons why time should be shortened or lengthened. After hearing the petition and where necessary to protect the interest of a party or the public interest, the Presiding Member of the committee may grant a Motion for an Order Shortening (or Lengthening) Time.[118] To make either the Petition for an Order Shortening or Lengthening Time, adapt the form illustrated by **SAMPLE 14.** Petitions and Motions are discussed more fully in Chapter 10.

[118] Title 20 CCR § 1203(f).

SAMPLE 14 – Petition for Order Lengthening Time

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION FOR ORDER
	)	LENGTHENING TIME
ZAP POWER	)	

John Doe hereby petitions the Commission for an order lengthening the time to comply with the Energy Commission's Committee Briefing Order of November 30, 1998, parties to submit briefs on the subject of Zap Power's alternative transmission line due on December 15, 1998. John Doe requests the time for response be lengthened until December 30, 1998.

This petition is made on the ground(s) that:

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.

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CHAPTER 12

Using Declarations or Written Testimony

This chapter explains a form of written testimony called a "declaration." It also discusses how declarations are used and the information required to complete a declaration.

What Is a Declaration?

A "declaration" is a form of written testimony, also called a sworn statement. A declaration is signed under penalty of perjury, and can be offered as testimony in an Energy Commission proceeding. The declaration states facts known to be true and correct to the best knowledge of the person signing the statement. The person making the declaration is named the "declarant."

Uses

Declarations may be used in any Energy Commission proceeding or hearing. When California Law, Energy Commission regulations or orders require or permit the subject in controversy to be supported by the sworn statement of a knowledgeable person, a declaration is a useful tool. A declaration may be included in any request of the Energy Commission or committee (see Motions and Petitions in Chapter 10) as evidence for consideration by the Energy Commission, committee, or the staff, or in any number of other circumstances. Parties use declarations to add credibility to their position or to challenge the credibility of evidence put forth by other parties.

Content

A declaration must contain the following information to be properly submitted:

- The name of the declarant;
- The phrase "I (name of declarant), declare:... ;"
- A numerical listing of the facts stated by the declarant;
- A declaration made under the penalty of perjury, that the facts listed by the declarant are true and correct and;
- The signature of the declarant, the date of signing, and the name of the city or location where the declaration was signed.

For assistance in preparing a declaration, please see **Sample 15** at the end of this chapter.

SAMPLE 15 – Declaration

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	JOHN DOE'S DECLARATION
	)	
ZAP POWER	)	

I, **John Doe**, declare:

1. I have personal knowledge of the following facts and can and will competently testify if called upon as a witness in this matter.

2. I am the owner of real property that is adjacent to the proposed ZAP Power Project.

3. I have resided on the property since 1960.

4. I have observed wildlife including deer, waterfowl, and fish using the creek that will be the sole water supply for the ZAP Power Project

5. ZAP Power has failed to include any mitigating information regarding wildlife in its application.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this Declaration was executed at **Sacramento, CA**. on
_____.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

CHAPTER 13

Obtaining and Exchanging Information – Data Requests and Subpoenas

The Energy Commission must have a process for the efficient exchange of relevant information. Effective communication of information allows each party and the Energy Commission Committee to thoroughly review each issue in the proceeding. The information exchange process builds a record for the Energy Commission to evaluate when making determinations in the siting decision.

The first part of this chapter discusses the Data Request and the procedures to correctly use this information-gathering tool. The second part of the chapter discusses the "subpoena and the subpoena duces tecum," tools to compel the production of witnesses and documents at siting case formal hearings.

Data Requests

A data request is a tool any party may use to ask for information from other parties. Public agencies that are not parties, but have been asked to comment on the application, may also use the data request process.

The process for exchanging information between participants can be relatively informal. The "requesting party" asks for information and the "responding party" replies to the request.

Usually, informal requests for information are made by telephone, correspondence, or verbally at a public meeting. The informal requests by telephone or correspondence have the advantage of being quick and easy. Informal requests, however, have the disadvantage of being susceptible to misunderstanding and are not in the record.

Informal verbal requests at public meetings have the advantage of being on the record and do not require service on the other parties unless ordered by the Presiding Member. The disadvantage of making verbal requests at a public meeting would have to be waiting until the next meeting because the requested data may not be available.

The best way to obtain information and protect procedural rights is to use the written "data request" process. Any party may use the data request process to obtain information from another party that is reasonably available and relevant to the proceeding. A data request must state reasons for the request.[119] At the end of this chapter, **Sample 16** is an example of a form to use for a data request and includes sample "reasons." Each set of data requests should be numbered consecutively (for example, Set One and Set Two).

[119] Title 20 CCR § 1716(d).

Time Limits

The Presiding Member of the committee may set reasonable time limits on the use of, and compliance with, a data request. The time limits are set to avoid interference with any party's ability to prepare for hearings, or to avoid imposing undue burdens on any party. No information request may be submitted after release of the hearing order, except upon approval of the presiding member.[120]

Responding parties have 30 days following receipt of a data request to reply unless changed by mutual agreement or by committee order.[121]

Inability to Provide Response or Objections to Requests

It is possible that the responding party might be unable to reply to some or all of the data requests or might object to some or all of the data requests. If so, the requesting party and the Presiding Member must be notified in writing within 10 days of receipt. The notice shall include the reasons for the inability or the objections and shall be served on all parties.[122]

Petition for Order Directing Response

If the responding party does not comply with the data request, the requesting party may ask the Presiding Member for an order directing the responding party to supply the information. The requesting party may file a Petition for Order Directing Response. The Presiding Member may set a hearing to consider the petition, and shall within 30 days of the filing either grant or deny the petition in whole or in part.[123] (See **Sample 17** at the end of this chapter.)

Answer to Data Request

The response to a data request is called an "Answer to Data Request." **Sample 18** illustrates the "Answer to Data Request" format. The answer responds in succeeding numbered paragraphs to the questions in the data request.

Service

The requesting party filing the data request and the responding party filing an answer to data request shall serve their data request and answers to data request on all parties to the proceeding.[124] (Refer to Chapter 9 for details on “service.”)

General Information Regarding Subpoenas

At times, the testimony of others is relied upon to support a position during a hearing before the Energy Commission. When a witness will not volunteer to attend the hearing and testify, the witness can be compelled to attend. While it is always best to ask for a witness' voluntary attendance with or without documents, before seeking a

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[120] Title 20 CCR § 1716(i).
[121] Title 20 CCR § 1716(f).
[122] Title 20 CCR § 1716(f).
[123] Title 20 CCR § 1716(g).
[124] Title 20 CCR § 1716(i).

subpoena, sometimes the witness does not cooperate. In that case, the two tools parties may use to compel testimony are the Subpoena and the Subpoena Duces Tecum.

Subpoena

A subpoena is a command to a witness to appear before the Energy Commission to testify as requested by the party seeking the subpoena. A subpoena may be used to command the attendance of a witness who is an opposing party or of a person who is not a party to the proceedings.[125]

Subpoena Duces Tecum

A "subpoena duces tecum" is a command to a witness to produce a document or paper relevant to an issue in the proceedings and that is in the possession or control of the witness. A subpoena duces tecum may be used to command the production of a document in the possession or control of an opposing party or a person who is not a party to a proceeding.[126]

Requests For Subpoena/Subpoena Duces Tecum

Requests for a subpoena or a subpoena duces tecum are made to the committee Presiding Member. Using the subpoena format (**Sample 19** at the end of this chapter), the requesting party must attach a "Declaration of Good Cause." The Declaration of Good Cause should briefly set forth why the witness or document is important to the party's position, and why the party cannot get the information by other means. (Declarations are discussed in Chapter 12.)[127]

The party making the subpoena request must:

- Identify the witness;
- State why the witness' testimony is material to the proceeding; and
- State the date the witness is requested to appear.

.

[125] Title 20 CCR § 1203(b).
[126] Title 20 CCR § 1203(b).
[127] Title 20 CCR § 1203(b).

SAMPLE 16 – Data Request

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	JOHN DOE'S DECLARATION
	)	
ZAP POWER	)	

To*:* ***Chris Jones, President of ZAP Power, and his Attorney.***

John Doe requests that you answer the following data request within *30* days. All the information sought is relevant to the proceeding and is in the control of the applicant and not readily available from other sources. In answering this data request, you are required to furnish full and complete answers.

1. Describe the impacts that the power project will have on the water supply to adjacent landowners and what mitigation is proposed, if any. This information is needed because I will be directly affected by change in the water supply.

2. Describe with specificity the impacts that the power project will have on air quality for the area within a one-mile radius of the plant and what mitigation is proposed, if any. This information is needed because my health will be directly affected by the air quality near the plant.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 17 – Petition Requesting Order Directing Response

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	PETITION FOR ORDER
	)	DIRECTING RESPONSE
ZAP POWER	)	

John Do *h*ereby petitions for an order directing ***ZAP Power*** to respond to the items listed below which were included in the Data Request Set **Number *One*** served on ***ZAP Power on January 2,1999***.

1. Proposed project impact on air quality and proposed mitigation.

This petition is made on the ground(s) that: ***The information is in the sole custody of ZAP Power, Inc. Further, as of February 2, 1999, Respondent has not responded to said Data Request.***

This petition is based on the pleadings and records on file in this proceeding:

- ☐ The declaration(s) of: _____
- ☐ The attached Memorandum of Points and Authorities.
- ☐ Oral and documentary evidence that may be presented at hearing.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 18 – Answers to Data Request

ZAP Power
Chris Jones, President
2 Glow Avenue
Sacramento, CA 95000
(916) 324-0090

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	ZAP POWER'S RESPONSE
	)	TO JOHN DOE'S
ZAP POWER	)	DATA REQUEST

ZAP POWER responds to John Doe's Data Request as follows:

1. (Here and in succeeding numbered paragraphs corresponding to the questions on the Data Request, set forth the responses.)

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 19 – Subpoena Duces Tecum

ZAP Power
Chris Jones, President
2 Glow Avenue
Sacramento, CA 95000
(916) 324-0090

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	REQUEST FOR SUBPOENA
	)	DUCES TECUM
ZAP POWER	)	

John Doe hereby requests issuance of a subpoena by the Commission.

1. SUBPOENA:
Name of witness to be called to testify:
Statement regarding the materiality of the testimony of the witness:
Attempts made to procure attendance of witness:
2. SUBPOENA DUCES TECUM: The following witness has possession or control of the requested documents or papers.
Name of witness: Christopher Jones, President of Zap Power
Identify the document requested: 1998 Underground Water Study Conducted by Jim Smith
Statement regarding the materiality of the document: The study contradicts previous testimony by applicant and is in the sole possession and control of the witness.
Attempts made to procure document: Three phone calls (11/20/98; 11/30/98; 1212/98) and letter 12/5/98 copy attached

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

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CHAPTER 14

Pre-Hearing Conference

As the name "pre-hearing" suggests, this committee conference is held before or "pre" formal hearings by the Siting Committee. This chapter discusses the purpose of, and the participants in, the "Pre-Hearing Conference." The role and preparation of the pre-hearing conference statement is explained. This chapter also describes the use of "Stipulations" and the "Issue and Witness Identification" forms. Finally, the "Hearing Order" is explained, as well as the process for amending the hearing order.

Purpose

The primary purpose of the pre-hearing conference is to prepare for formal hearings;

- Identify issues in agreement and issues in dispute;
- Schedule witnesses for subsequent hearings on the Notice of Intention, Application for Certification, or Small Power Plant Exemption; and
- Establish procedures to be followed.[128]

Participation

One or more pre-hearing conferences may be held with all participants and interested agencies.[129] Any party intending to present testimony[130] to the committee should attend, or delegate a representative to attend, the pre-hearing conference. Energy Commission proceedings are not as formal as civil trials, however participants should thoroughly prepare evidence and witnesses.

Pre-Hearing Conference Statement

The parties in the pre-hearing conference who have agreed on a statement of facts or statement of issues need to prepare a pre-hearing conference statement. Utilizing material from the meetings and workshops, the pre-hearing conference statement must identify the factual and legal issues that are not in dispute, and identify the witnesses whose testimony will support those issues.[131] Additionally, the statement must:

- Identify those issues requiring judicial settlement by the Energy Commission;
- Identify those witnesses to be called to testify regarding the disputed issues;
- Provide a brief summary of the witnesses' qualifications;
- Provide the testimony which will be presented; and
- Provide any exhibits that will be offered into evidence.

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[128] Title 20 CCR § 1718.5.
[129] Title 20 CCR § 1718.5.
[130] Testimony is discussed in Chapter 15.
[131] Title 20 CCR § 1718.5.

- **SAMPLES 20, 21** and **22** will assist in the preparation of a pre-hearing conference statement.
- **SAMPLE 20** - *Cover Sheet.* Used for the pre-hearing conference statement and designed as an attachment to the next two forms.
- **SAMPLE 21**- *Stipulations of Fact and Law.* Any party agreeing with a factual or legal assertion by another participant may enter into an agreement called a stipulation with those parties. The committee, however, is not required to accept the stipulation. If the stipulation is supported by the testimony of a competent witness, the committee may make a decision based upon the stipulation.
- **SAMPLE 22** - *Issue and Witness Identification.* If the participants agree on certain issues and disagree on others (usually the case), the information provided allows the committee to focus its time on the issues that need to be resolved. It is critical to identify those issues that are resolved and those that are in dispute. Using the "dispute" information, the committee can better schedule subsequent hearings to allow sufficient time to explore these issues. And, using the "resolved" and "witnesses in support information," the committee can also schedule hearings accordingly and begin to consider appropriate decisions on those issues.

Usually the Notice of Pre-Hearing Conference states: "Each party shall serve and file a Pre-Hearing Conference Statement. These statements must be received at the Energy Commission Docket Unit, 1516 Ninth Street, MS-4, Sacramento, California 95814, no later than 5 p.m. on (specified date). Identify these statements with “Docket No. 99-AFC - (specific project)."

Conduct of Pre-Hearing Conference

First, the committee will review all of the ***Stipulations of Fact and Law*** submitted by the parties in the pre-hearing conference statements.

Stipulations impose an obligation on the parties who sign or join the stipulation. Each party present at the pre-hearing conference will be given the opportunity to indicate an intention to contest the stipulation at the formal hearing of the evidence. Parties may contest a stipulation by cross-examining a supporting witness or by presenting their own witness. If no requests to cross-examine or to present a witness are received, the committee may assume that no one objects to the stipulation. In that event, the committee need not set a stipulated matter for hearing. Instead the committee may accept a written declaration from a competent witness in place of oral testimony. Because the stipulation is supported by the testimony of a competent witness (Declarant) the Energy Commission may use the stipulation to support a decision.

Thus, a good way to begin preparations for the pre-hearing conference is to examine stipulations in advance of the conference. The public should also review stipulations because the practical effect of committee acceptance of a stipulation is to take the stipulated issue off the table. For example, assume the applicant, Zap Power, agrees with the staff’s assessment that the applicant must mitigate visual impact of a proposed water storage tank by painting the tank. Staff and Zap Power stipulate to the problem and the solution. In the absence of opposition, the stipulation will settle the matter and no further hearings will be held on that point.

Second, the committee will review the Issue and Witness Identification form by subject matter. During the pre-hearing conference, each party confirms plans to sponsor one or more witnesses to testify on the disputed or undisputed issue at the formal hearing of the evidence. In addition to the intention to call a witness, parties confirm their ability to prepare and serve written testimony, generally ten days in advance of appearance of the witness.

Any party may orally request to cross-examine a witness from another party on either resolved or disputed issues. At the formal hearing of the evidence, however, the presiding member may limit repetitive cross-examination where there are multiple requests. (See Establishing the Factual Record - Formal Hearings, Chapter 15.)

When a witness identified in the Issue and Witness Identification form is scheduled to testify, any party who disagrees may propose another witness to respond or rebut the testimony. In order to propose a rebuttal witness, a party must identify the witness and commit to preparing and serving written rebuttal testimony as directed by the Presiding Member.

Hearing Order

Following the pre-hearing conference, the committee will prepare and serve a hearing order that will: 1) set forth the schedule and procedure for hearings, 2) indicate the order of presentation of the parties and interested agencies, and 3) identify the issues to be addressed in the hearings.[132] (See **Sample 23** at the end of this chapter.)

Amendments to The Hearing Order

Any party may make a motion to withdraw or add a witness or to reschedule the appearance of a witness (see To Ask For An Order From The Energy Commission Make A Motion/Petition - Chapter 9). In order to add a witness, the motion must include a declaration explaining the lateness of the request and specify why the intended testimony should be heard. The Presiding Member may order a public hearing on any motion to amend the hearing order. No witness will be added to the hearing schedule without affording an opportunity for an adverse party to call a rebuttal witness. Following issuance of the hearing order, the committee may amend the order on its own motion or upon the motion of a party.

[132] Title 20 CCR § 1718.5 (d).

SAMPLE 20 – Pre-Hearing Conference Statement

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PRE-HEARING
	)	CONFERENCE STATEMENT
	)	
	)	
ZAP POWER	)	

Intervener John Doe hereby submits his Pre-hearing Conference Statement.

1. Stipulations of fact and law ☐ are attached ☐ are not attached.

2. Issue and Witness Identification ☐ is attached ☐ is not attached.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 21 – Stipulation

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	STIPULATION
	)	
	)	
ZAP POWER	)	

John Doe and Jim Bright, President of Zap Power hereby stipulates to the following matters.

1. Total acreage for proposed plant side is 60 acres.
2. Economic impact on the City of Bloomdale is $250,000 per year and will result in 75 new jobs.
3. The specific proposed licensing conditions in the Final Staff Assessment 98-AFC-1, to which the parties agree, is set forth in Attachment A.

By this stipulation the parties agree that stipulated conditions are necessary and appropriate to ensure full mitigation of any potentially significant adverse environmental impacts and compliance with all applicable laws, ordinances, regulations or standards for each of the stipulated subject areas.

_____	_____
Date	Signature
_____	_____
Date	Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 22 – Issue and Witness Identification

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	ISSUE AND WITNESS
	)	IDENTIFICATION
	)	
ZAP POWER	)	

ISSUE	**PROPOSED TESTIMONY**	**WITNESS**
Pollution Impacts (Resolved)	Plant emission will exceed air quality standards.	Kelsey Long
Water table (Resolved)	Plant will lower ground water table to unacceptable levels.	Anthony Jones
Wildlife (Disputed)	Plant will disrupt normal migration of wildlife.	Patrick N. Thomas

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 23 – Hearing Order

ZAP Power
Chris Jones, President
2 Glow Avenue
Sacramento, CA 95000
(916) 324-0090

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	HEARING ORDER
	)	
ZAP POWER	)	

Based upon discussion at the March 16, 1989, Pre-hearing Conference, the following filing schedule shall apply.

Filings shall be served upon all parties to this proceeding and the Energy Commission's Docket Unit, 1516 Ninth Street, MS-4, Sacramento, CA 95814. Each party is responsible for ensuring that its respective submissions are received no later than 5 p.m. on the dates indicated. Identify all documents with "Docket No. 98-AFC-1."

SCHEDULE

Event	**Date**
Applicant provides Determination of Compliance	March 25, 1999
Applicant submits new Transmission Line, Cultural and Palentological information.	March 31, 1999
Staff files Final Staff Assessment, including witness qualifications.	April 7, 1999
Applicant files prepared testimony and resumes of sponsoring witnesses.	April 7, 1999
California Independent System Operator files prepared testimony and resume(s) of sponsoring witness(es) on topic of Transmission System Engineering; this witness and testimony may be presented by Staff.	April 7, 1999

Event	Date
All other parties desiring to present witnesses file prepared testimony and copies of exhibits to be offered as evidence	April 7, 1999
Parties file revisions to testimony, and rebuttal testimony as necessary	April 14, 1999
Parties file any requests for changes to schedule of topics and witnesses (Attachment A)	April 21, 22, 26, as necessary
Parties file Opening Briefs	May 13, 1999
Parties file Reply Briefs	May 25, 1999
Presiding Member's Proposed Decision (PMPD) and Notice of Conference issued	June 25, 1999
*Parties file comments on PMPD	July 19, 1999
*Conference on PMPD	July 23, 1999
*Close of comment period on PMPD	July 28, 1999
*Committee issues revised PMPD	August 9, 1999
*Conference on revised PMPD	August 18, 1999
*Energy Commission consideration of revised PMPD	August 25, 1999

These events will be separately noticed.

Dated: _____

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

_____
OLIVER POWERS
Presiding Member

_____
DONALD A. WATT, Vice Chair
Associate Member

ATTACHMENT A

Topic and Witness Schedule

The committee will hear topics according to the following agenda. Any requests for changes/substitutions, etc. should be made in the party's April 7, 1999 filing.

TUESDAY, APRIL 21, 1999 (SACRAMENTO)

TOPIC	WITNESSES
Project Description	Applicant: Chris Jones Staff:
Alternatives	Applicant: Chris Jones Staff: First/Nally
Compliance Monitoring and Closure	Applicant: Chris Jones Staff: Adams
Conformance with the Integrated Assessment of Need	Applicant: Chris Jones Staff: Barns
Facility Design and Geology	Applicant: Barlow/Willis/Smiley/ Jones/Lance Staff: Carlson/Dawes
Power Plant Reliability	Applicant: Willis Staff: Ewing
Power Plant Efficiency	Applicant: Willis Staff: Ewing
Waste Management	Applicant: Manner Staff: Franklin
Worker Safety and Fire Protection	Applicant: Blenden/Willis Staff: Franklin
Transmission Line Safety and Nuisance	Applicant: Door Staff: Grande
Public Health	Applicant: Key Staff: Grande
Noise	Applicant: Brown Staff: Carlson

SAMPLE 24 – Petition to Reopen the Record

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION TO REOPEN
	)	THE ADMINISTRATIVE
	)	RECORD
ZAP POWER	)	

John Doe hereby petitions the Energy Commission Committee reopen the administrative record of the proceedings.

1. Specify grounds for petition including specifically any material changes of fact or law that have occurred since the conclusion of the evidentiary hearing.

2. Specify any additional proposed evidence to be considered together with an explanation why such evidence was not introduced.

3. Consider attaching Declarations and a Memorandum of Points and Authorities in support of the Petition to Reopen the Administrative Record.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

CHAPTER 15

Establishing the Factual Record; Formal Hearings

This chapter describes the purpose and the mechanics of the formal hearing process. The chapter discusses how disputed facts are resolved. Explanations are included for the following procedural elements: rules of evidence, rulings, objections, offer of proof, prepared testimony, witness qualification, using a declaration, exhibits, cross-examination, and the obligations to prove a statement. The chapter concludes with recommended review steps to be used in preparation for the formal hearings.

Why the Formal Hearing Is a Hearing of the Evidence

Formal hearings are held by the committee to take written, oral, and documentary testimony from the parties. Formal hearings to establish the factual record are called "evidentiary" hearings - meaning conducted so evidence can be presented. From the public's perspective, formal hearings differ from meetings and workshops because participation - asking questions and cross-examining witnesses - is usually limited to the parties (the applicant, Energy Commission staff and intervenors).

Formal hearings bring forth the facts that support the Presiding Member's proposed decision. As in cases tried before a judge, the Energy Commission makes decisions based on findings.[133] At the Energy Commission, findings must be supported by the evidence and testimony presented by the participants at the formal hearings.

Disputed Facts Are Settled During Formal Hearings

Formal hearings, where the committee hears testimony leading to the settlement of disputed facts, are also called "adjudicatory" hearings - meaning conducted so an action of judging can be made. Witnesses take an oath to tell the truth, then testify, present evidence, and are cross-examined on the evidence presented. When facts are in dispute, a judgment is made by the decision-makers.

The committee will conduct these formal, fact-finding hearings with the assistance of a Hearing Officer. The hearings establish the record of the case and form the basis for "findings."

The issues to be settled by the committee will be listed in the hearing order for the proceeding. (The hearing order was prepared after the pre-hearing conference discussed in Chapter 14.) The applicant, staff and other parties will present evidence and witnesses on the issues specified in the order. There will be time set aside for direct examination, cross examination, and redirect examination of all witnesses by parties to the proceeding and by the committee members. All hearings will be recorded and transcripts of the hearings will be available.

[133] "Findings" are a decision upon a question of fact reached as a result of an investigation and conclusion by reasonable inference; a recital of the facts as found.

An Example to Show How Evidence Can Support a Finding and Settle a Disputed Fact

Before a power plant can be certified, the Energy Commission must determine that the design of the proposed facility will conform with all applicable LORS pertaining to the protection of visual resources. At the conclusion of the Zap Power Project Pre-Hearing Conference, it is clear that there are unresolved questions about project visual impacts. From the decision-maker's perspective, one of the questions requiring evidence at the Zap Power Project formal hearing will be: Does the proposed transmission line create a significant environmental impact after all feasible mitigation measures are imposed?

At the formal hearing, none of the testimony is a "surprise" because each party participated in the Pre-Hearing Conference where witnesses and proposed testimony are discussed (see Chapter 14). However, the witnesses give their testimony under oath and may be cross-examined to test the credibility of their statements. To illustrate how evidence on the issue of visual impact might come before the Zap Power Project Siting Committee formal hearing, consider this testimony from three parties, the applicant, staff and intervenor.

- Applicant's evidence on visual impacts: The applicant qualifies an expert witness.[134] The witness testifies that he conducted a scientific study and surveyed local residents. He testified that he used five key observation points (KOPs) to analyze the visual impacts. In his professional opinion, and based on the scientific analysis, the project is situated so that no transmission towers or lines would interrupt local homeowner views of the redwood forest. This testimony is challenged and the witness is now cross-examined by the intervenor. The intervenor wants to know who in the local area was asked to participate in the survey. The intervenor also asks why the key observation points were selected and specifically, why the view from his home was not analyzed. The staff also cross-examines the expert.
- Staff's evidence on visual impacts: During the Zap Power Project formal hearing, the Energy Commission's staff witness testifies that "the visual impacts of the transmission line would be significant." The testimony is challenged by the applicant and the witness is cross-examined.
- Intervenor's evidence on visual impacts: The intervenor testifies that in his opinion, "There is a problem with the applicant's evidence. My home is 150 feet east of one of the *key* observation points. All homes east of the KOP, including my home, will lose their unobstructed view of the redwood forest. I will be damaged by the transmission line." The witness is cross-examined by the applicant concerning the technique he used to measure the 150 feet.

In this example, the decision-makers must resolve the conflicts in the testimony concerning impacts to visual resources. The applicant's testimony that there are no impacts is supported by a scientific survey. While the intervenor disagrees, the intervenor does not offer any scientific evidence to support his opinion that the survey is not accurate. The testimony of the Energy Commission staff witness, if not successfully refuted by the cross-examination, could support a finding that the project has a significant impact on the area's visual resources.

[134] Witness "qualification" is discussed later in the chapter.

In the Zap Power case, and in all actual siting cases, the Siting Committee must make its findings based on the record of evidence. In other words, the decision in the siting case cannot be based on newspaper articles, public opinion or scientific theories unless one of the parties prepares the evidence (see Chapter 14; Pre-Hearing Conference) and introduces the evidence at the Siting Committee formal hearing.

What Rules of Evidence Apply?

The technical rules of evidence -- as used in California civil court actions -- are not applied in hearings before the Energy Commission. Any evidence relating to the siting case is admitted if responsible persons would normally rely on the evidence in the conduct of serious affairs.[135] However, repetitive evidence that duplicates evidence already on the record is not admitted.

Written or oral "out of court statements," (also called hearsay evidence) may be used for the purpose of supplementing or explaining other evidence. But hearsay evidence shall not be sufficient in itself to support a finding, unless it would be admissible over objections in civil actions.[136]

To illustrate a hearsay statement: Mr. Doe testifies "my neighbor, Harry, says he can hear the train from ten miles away. And Harry knows that generator will be louder than the train." Mr. Doe's statement about what Harry said is hearsay because there is no way to measure Harry's truthfulness since Harry is not in court. In the example, however, Mr. Doe's statement can be admitted to explain why Mr. Doe is proposing an alternative location for the power plant that is ten miles from the nearest homes. Harry's statement, however, is not sufficient to support a decision to relocate the plant.

Who Makes The Rulings?

The Presiding Member must rule on all questions of whether to accept or exclude evidence.[137]

Objections

Objections are statements made to question the acceptance or exclusion of evidence. Objections can by raised to the marking and introduction of exhibits; to questions before they are answered; and statements made by witnesses. The party making the objection should briefly state the reason(s) for the objection.[138]

Objections are a common part of evidentiary hearings. Here are a few of the typical objections:

- **Relevance**. Evidence is relevant if it tends to make any disputed fact, that is important to the outcome of the hearing, more or less likely to be true. Therefore,

[135] Title 20 CCR § 1212 (a).
[136] Title 20 CCR § 1212(d).
[137] Title 20 CCR § 1203(c).
[138] Title 20 CCR § 1712(b).

an objection to relevance is challenging the notion that your evidence will prove or disprove a disputed fact in the proceeding.

Example: Evidence of how the use of Cold Fusion would be a better fuel source for the proposed power plant would be objected to as lacking relevance. This is because information on Cold Fusion, a highly theoretical and unproven science, has no relevance to the siting of a power plant.

- **Failure to Qualify as an Expert**. Often in evidentiary hearings, an intervenor will wish to offer the testimony of an expert. A witness is an expert if he or she has enough special knowledge, skill, experience, training, or education to qualify as an expert on the subject of his or her testimony. You can use any admissible evidence to show that the witness meets these requirements, including the witness's own testimony that he or she meets the requirements.

Example: Having a psychologist testify on highly technical electrical transmission data will likely lead to the objection that the expert has not been qualified as an expert in the field.

- **Cumulative**. This objection will likely occur if you keep trying to introduce evidence that concerns a fact that has been addressed by prior evidence. Cumulative evidence is evidence that is not needed even though it may be relevant, because other relevant evidence on the same issue has already been presented.

Example: Eight reports from environmental organizations that each reach the same conclusions, with the same data and making the same recommendations, may be objected to as cumulative because the issue has already been presented.

- **Hearsay**. This is the most common of evidentiary objections. Hearsay is commonly referred to as an out-of-court statement. A statement is hearsay if the statement was made outside the hearing by someone other than a witness testifying at the hearing, and is offered to prove the truth of the matter stated. In general, you can only introduce hearsay evidence if it adds to or explains other evidence, unless it would be admissible over objections in a civil action.

Example: Tom, a witness, testifies how John says he has developed asthma as a result of the nearby power plant. Tom’s statement is hearsay, an out-of-court statement that is meant to establish the fact that the power plant has given John asthma.

- **Lack of Foundation**. This typically occurs when you are introducing some type of writing as evidence. Any written evidence (a "writing") you wish to introduce has to be authenticated. This includes, for example, newspaper and magazine articles, information from books, printouts of information from a computer, transcripts from other proceedings, and letters and e-mails. Pictures and sound recordings are also considered "writings."

Example: An article for which you do not remember the title, the author or where it was published, may be objected to for lack of foundation. This is because without those facts, there is no way to authenticate this writing as being a reputable source.

Why Make An Offer of Proof?

When an objection to evidence has been sustained, the party proposing the evidence may make an offer of proof for the record. An "offer of proof" is a statement of the substance of the evidence to which objection has been sustained. In the event the Hearing Officer's decision to sustain the objection is appealed, the offer of proof tells a reviewing court what evidence the party wanted to admit.

What Is Prepared Testimony?

"Testimony" means any oral or written statement made by any person, under oath in any proceeding before the Energy Commission.[139] "Prepared testimony" is evidence (a statement or fact) given by a witness under oath or by declaration offered by a participant. Any participant offering a witness's prepared testimony shall prepare the testimony in writing, either in question-and-answer or narrative form.

At the direction of the Presiding Member, the prepared testimony may be read into the record by the witness or may be identified and copied into the record without reading. In either case, the prepared testimony is subject to the rules governing the admissibility of oral testimony.[140]

Sometimes supplemental testimony is needed because new information is available. Prepared testimony can be changed, however, amendments or changes to prepared testimony must be served on all parties to the proceeding. Revisions and changes are often presented as "errata" to previously prepared testimony. Participants may make a Motion to Strike prior testimony for the reasons of incorrectness, irrelevance or changed circumstances.[141] (See Motions, Chapter 9.)

An Expert Witness Must Be "Qualified"

Whenever the prepared testimony of a person is offered as the testimony of an "expert witness," the witness should be qualified as an expert. To qualify the expert witness, a biography or resume including the educational background, qualifying experiences and a list of relevant circulated writings should be filed and served along with the prepared testimony.

Using a Declaration Instead of An Appearance

The testimony of a witness supporting a Stipulation of Fact and Law (discussed in Chapter 14) may be taken by declaration (see Declaration, Chapter 11). A declaration, used instead of an appearance, must contain sufficient facts to support the stipulation with substantial evidence.

How To Use Exhibits As Evidence

Documentary material (drawings, photographs, maps, diagrams, charts, graphs, or similar documents) relevant to the hearing may be offered into evidence as exhibits. Before an exhibit is admitted into evidence, the party offering the exhibit must connect

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[139] Title 20 CCR § 1201(h).
[140] Title 20 CCR §§ 1212(b), (d).
[141] Title 20 CCR § 1748(f).

the exhibit to the issue being heard. (This is called laying a foundation.) Parties may object to allowing documents into the record or may mutually agree to admission of an exhibit in advance of the formal hearing or at the hearing. To the extent possible, all exhibits shall be folded to eight and one-half inches wide by eleven inches long.[142] Exhibits used on direct examination[143] must be filed and served upon other parties before the hearing. At the hearing, before using an exhibit on cross-examination, provide copies to the Presiding Member, the court reporter, and all counsel or parties.

Service of Testimony and Exhibits

Prepared testimony, declarations in support of stipulations, and exhibits to be presented on direct examination should generally be filed and served at least five days before the date upon which the witness is to testify or the document is to be offered unless modified by committee order.[144] In the case of Small Power Plant Exemption hearings, the testimony, list of witnesses and experts shall be filed and served not later than seven days before the hearing at which it is to be offered.[145]

Challenging the Testimony by Cross-Examination

The testimony by sponsored witnesses at the formal hearing may be questioned by parties who did not sponsor the witness to test the truth of the testimony and to verify facts. The process is commonly called cross-examination. The direct testimony of any witness at the formal hearing may be subject to cross-examination by the parties.[146] The Presiding Member has the authority to limit cross-examination to avoid repetitive or cumulative questioning or testimony. The Presiding Member shall establish the order of cross-examination.[147]

Who Has the Obligation To Prove A Statement? - The Burden of Proof

Throughout the siting proceeding, the applicant has the obligation to prove the statements in the filing. The obligation can be called the "burden of proof." The applicant has a second obligation, which is to produce the evidence.

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[142] Title 20 CCR § 1209(a).
[143] Direct examination is the first examination of a witness, on the merits, by the party on whose behalf he is called.
[144] Title 20 CCR § 1202(b).
[145] Title 20 CCR § 1943.
[146] Title 20 CCR § 1212(c).
[147] Title 20 CCR § 1203(c).

If the hearing is on a Notice of Intention, the applicant must prove the following issues:[148]

- Probable need for the facilities;
- Likelihood that principal adverse impacts can be mitigated;
- Likelihood that the facility can be constructed and operated safely and reliably;
- Suitability of the sites to accommodate the facility;
- Reasonableness of the financial impacts of constructing and operating the facility; and
- Likelihood that the operation of the plant will comply with federal, state, regional, and local laws, ordinances, and land use plans, which are applicable to the proposal.

If the hearing is on an Application for Certification, the applicant must provide sufficient substantial evidence to support the findings and conclusion required for certification.[149] Other parties offering a different condition, modification or provision must offer a reasonable showing to support the need for the change.[150]

Preparing For the Formal Hearing

Participating agencies and intervenors should prepare for formal hearings by thoroughly reviewing:

- Their own testimony and exhibits;
- The testimony and exhibits from all other participants;
- The applicant's testimony (proposed compliance measures presented as evidence of compliance with LORS);
- The participating affected agency testimony regarding compliance with LORS (discussed in greater detail in Chapter 4, Part III, Agency Reports); and
- The local air quality management district evidence showing the air quality Determination of Compliance. (See Chapter 5, Part III, Agency Reports.)

A thorough review of the proposed testimony will indicate the areas where the agency or intervenor will likely be questioned. The review will also suggest cross-examination questions for other participants. The review will also suggest questions for cross-examining other participants concerning their evidence. By preparing in advance of the formal hearing, the procedural tools discussed in this chapter, (i.e., witness qualification, objections to evidence and entering exhibits) become useful and more easily performed.

While the chapter's discussion has emphasized the mechanics of the formal hearing process, the reader is reminded of the importance of the factual record. The formal hearing

[148] Title 20 CCR § 1723.5.
[149] Title 20 CCR § 1748(d).
[150] Title 20 CCR § 1748(e).

record is the evidence used to reach a siting case decision. If an issue or point is not a part of the record, it is not considered in deliberations leading to the decision.

The Public Adviser is available to answer questions about establishing the factual record and the formal hearing process.

Concluding The Formal Hearing Closes the Hearing Record

When all the parties have presented their testimony and exhibits and members of the public have made their comments, the Hearing Officer will close the evidentiary record. When the record is closed, the parties prepare for the next step, which is making written arguments, called "briefs," based on the evidence in the record.

CHAPTER 16

Procedures To Present Arguments From The Hearing Record

After the conclusion of the fact-finding hearings and the closing of the formal hearing record, the parties can now prepare written arguments in a document called a "brief."[151] The "opening brief" is the first set of arguments and the "responding brief" replies to the initial arguments. This chapter also explains how to deliver written arguments to the Energy Commission Siting Committee, ask for an extension of time to file a brief and request to reopen the record.

Opening Brief

Since the applicant must provide evidence to prove compliance on all matters necessary for certification, the applicant's opening brief may be ordered to be filed first. Usually, however, there is a committee order for concurrent opening briefs by all the parties. The parties in the case (applicant, staff and intervenors and sometimes interested agencies), will prepare opening briefs according to the schedule established by the Siting Committee in the Hearing Order (**Sample 23**).

The opening briefs may include, among other things:

- A summary of facts concerning the issue raised in the brief;
- The law that applies to the facts identified in the brief; and
- Arguments to support proposed determinations of fact by the committee.

The brief should make appropriate references to the record on each point that must be proven by the applicant's evidence and is necessary for certification. The briefs may also contain arguments regarding conflicting testimony in the record. In practice, the applicant's brief will present arguments on all potential issues in the case. Intervenors and participating agencies will usually limit their brief to the issues that concern them.

Filing and Service of Opening Briefs

Parties shall file and serve their opening briefs according to the schedule prescribed by the Presiding Member at the conclusion of the formal hearings. (Filing and serving documents was discussed in Chapter 9.)

Responding Briefs

Following receipt and review of the opening briefs, the parties may file post-hearing briefs responding to arguments in any one or more of the opening briefs. Among other things, the responding briefs may rebut [152] proposed findings of fact with references to the record. The briefs may rebut arguments in any one or more opening briefs concerning

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[151] A brief is a legal statement addressing an issue or issues in a case. The brief identifies facts, the laws that apply to the issue, and makes arguments or recommendations based on how the facts or the law support the conclusion. Briefs may be requested by the committee at any time to explain disputes, technical points or procedural rights.

[152] Refute with evidence.

conflicting testimony in the record. In addition, based upon evidence in the record, a party may propose that a different condition be placed upon any particular finding of fact offered by a party in an opening brief. (See **Sample 24**).

Filing and Service of Responding Briefs

The parties shall file and serve their responding briefs as prescribed by the Presiding Member.

Asking For An Extension of Time To File Brief

Any party may ask for an extension of time for the filing of a post-hearing brief (see Petitions, Chapter 9). A request to extend the filing time is generally not favored however, since the participant has been afforded adequate time to review the testimony. Any extension of time could result in a delay in the issuance of the Presiding Member's report and the proposed decision.

Request To Reopen the Record

After the conclusion of formal hearings but before issuance of a decision, a party may file and serve on all other parties a petition to reopen the proceeding for the taking of additional evidence. The request should specify the facts claimed to justify the petition, including material changes of fact or of law alleged to have occurred since the conclusion of the hearings. The petition should contain a brief statement of the proposed additional evidence, and explain why such evidence was not previously presented (**Sample 26**).[153]

Public Participation In the Presentation of Briefs

While briefs are formal documents used by the parties to argue issues in the siting case, the public can participate by submitting written comments during this step. When received by the Docket Unit, the public's written comments become a part of the administrative record for the siting case. The comments are not, however, a part of the evidentiary record which was collected under oath during the hearings. The next chapter discusses the decision phase and includes information about the public comments on the proposed decision.

[153] Title 20 CCR §§ 1754(b), 1720.

SAMPLE 25 – Responding Brief

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. 98-AFC-1
	)	
	)	John Doe's
	)	☐ OPENING BRIEF
	)	☐ RESPONDING BRIEF
	)	☐ REPLY BRIEF
ZAP POWER	)	

John Doe hereby submits his Responding Brief.

1. Here and in succeeding numbered headings, set forth subject matter headings, e.g., Air Quality

    a. Here and in succeeding paragraphs, set forth a narrative review or argument referring to testimony in the record or arguments of other parties concerning matters under the subject matter heading.

PROPOSED FINDINGS, CONCLUSIONS, AND CONDITIONS

a. Here and in succeeding numbered paragraphs, set forth proposed findings, conclusions and conditions. Make reference to the record for the review of the Energy Commission concerning matters under the subject matter heading.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

SAMPLE 26 – Petition to Reopen the Record

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION TO REOPEN
	)	THE ADMINISTRATIVE
	)	RECORD
ZAP POWER	)	

John Doe hereby petitions the Energy Commission Committee reopen the administrative record of the proceedings.

1. Specify grounds for petition including specifically any material changes of fact or law that have occurred since the conclusion of the Evidentiary hearing.

2. Specify any additional proposed evidence to be considered together with an explanation why such evidence was not introduced.

3. Consider attaching Declarations and a Memorandum of Points and Authorities in support of the Petition to Reopen the Administrative Record.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

CHAPTER 17

Presiding Member's Proposed Decision and Revised Proposed Decision

At the conclusion of the hearings on an Application for Certification, the Presiding Member prepares a proposed decision based upon the evidence presented at the hearings.[154] This chapter provides an overview of the Presiding Member's proposed decision and shows how the record of evidence is used to support findings and conclusions. Once the proposed decision is released, the public is encouraged to comment and the forum for the discussion is a Siting Committee conference. The chapter concludes with information on a revised Presiding Member's proposed decision and an explanation of the small power plant exemption.

Presiding Member's Proposed Decision

The Presiding Member's Proposed Decision contains the Presiding Member's recommendation on whether the application should be approved. The proposed decision cannot recommend approval of the application, unless the evidence presented during formal hearings reasonably proves each of the following points:

- Adequacy of applicable health and safety standards;[155]
- Conformity with the applicable air and water quality standards adopted by the Energy Commission;
- Conformity with all other relevant local regional, state and federal standards, ordinances, or laws and regulations;[156]
- To be "functionally equivalent" to the requirements of the California Environmental Quality Act[157] and identify the significant adverse environmental impacts of the proposal and mitigation measures proposed to avoid or lessen each such impact[158]; and
- Discussion of project alternatives, including their respective merits.

The proposed decision must state the facts as found by the committee. Also called "findings" the term means, having considered the evidence, the committee decided the point. Once the findings are established, the committee makes specific conclusions based on the findings.

For example, looking at a copy of the Presiding Member's Proposed Decision for the Zap Power Project on the topic of public safety, the reader would find a summary of the record and statements of the findings and conclusions. The excerpt might look like this:

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[154] Title 20 CCR § 1749(a) and 1751(a) state the decision shall be based exclusively upon the evidentiary record of the proceeding.
[155] Title 20 CCR § 1743.
[156] Title 20 CCR § 1744.
[157] Title 14 CCR § 15251(j) lists the California Energy Commission power plant site certification as exempt from CEQA; also Title 20 CCR § 1742.
[158] Title 20 CCR § 1752.

"The Record:

Hazardous materials to be used at the power plant present potential health and safety risks. The applicant's witness testified that to avoid potential releases of dangerous materials a double walled storage tank and an alarm would be installed. The Energy Commission staff testified that most accidents were caused by human errors and the project's proposed safety measures were sufficient to address that risk. The evidence of record also contains an analysis showing that the risk of accidental release would be less than one in one million.

Findings and Conclusions:

Based on the weight of the evidence of record, the Energy Commission finds:

1. The possibility of dangerous events can be reduced by application of appropriate design, safety and mitigation measures.
2. Hazardous materials will be used.
3. The Conditions of Certification set forth below require safety and mitigation measures that will reduce project-related hazards to acceptable levels both on and off the project site.
4. We therefore conclude that, with the implementation of the Conditions of Certification set forth below, Zap Power will be constructed and operated in conformity with all applicable laws, ordinances, regulations and standards set forth at page two hundred of this Decision."

This approach: outlining the evidence; considering Energy Commission comment and public comment; stating the findings and conclusions and listing the conditions of certification and verification is followed for each subject in the Presiding Member's Proposed Decision.

The Presiding Member's Proposed Decision is published, and distributed within 15 days, to interested agencies, parties, and any person who requests a copy.

If hearings were conducted on a Notice of Intention instead of an Application for Certification, the Presiding Member would issue the Presiding Member's Report (PMR).

Public Comment On The Presiding Member's Proposed Decision

The Presiding Member's Proposed Decision is a draft document. It is released for public comment. To encourage public participation the Presiding Member publishes a notice that the proposed decision is available in a local newspaper close to where the site is located. A comment period of at least 30 days from the date of distribution is established.[159] Any person may file written comments on the Presiding Member's Proposed Decision. Any participant (parties, intervenors and agencies) may file and serve comments on the proposed decision or on the revised proposed decision. "Exceptions" to the proposed decision may also be filed and served. (See **Sample 27** for Exceptions to Proposed Decision.) Exceptions to

[159] Title 20 CCR § 1749(b).

factual findings shall specify the portions of the record relied upon. Exceptions to conclusions shall cite statutory provisions or principal authorities relied upon. The Energy Commission Siting Committee may schedule a conference or hearing to take oral comments on the Proposed Decision.[160]

Conference On The Presiding Member's Proposed Decision

The Presiding Member may schedule a conference or hearing to take oral comments on the Presiding Member's Proposed Decision. New or additional evidence, however, will not be considered unless due process[161] requires or the Energy Commission adopts a motion to reopen the hearing record.[162] Thus comments from intervenors or the public should address material discussed in the proposed decision.

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. The revised proposed decision is forwarded to the full Energy Commission and distributed to all parties, interested agencies, and any person who requests a copy for a minimum 15-day comment period.[163]

Small Power Plant Exemption

In the case of a Small Power Plant Exemption, the committee will prepare a proposed decision.[164] (See Chapter 4 regarding the Small Power Plant Exemption.) Within 21 days after publishing the proposed decision, a hearing will be held before the full Energy Commission for final arguments.[165]

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[160] Title 20 CCR § 1754(a).
[161] Due process: 1) a course of formal proceedings carried out in accordance with established rules and principles, or 2) a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary or unreasonable treatment of an individual.
[162] Title 20 CCR § 1754(b). Sample 20 illustrates a Petition To Reopen The Record.
[163] Title 20 CCR § 1763.
[164] Title 20 CCR § 1945.
[165] Title 20 CCR § 1945(b).

SAMPLE 27 – Exceptions to Proposed Decision

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	EXCEPTIONS TO
	)	PROPOSED DECISION
	)	
ZAP POWER	)	

John Doe hereby takes exception to the following findings and conclusions of the Proposed Decision.

1. Here and in succeeding numbered paragraphs, refer to the specific finding in the proposed decision and set forth an argument taking exception to the finding together with the specific portions of the record that support the exception.

2. Here and in succeeding numbered paragraphs, refer to the specific conclusion in the proposed decision and set forth an argument taking exception to the conclusion together with citations to statutory provisions and other authority that support the exception.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

CHAPTER 18

Energy Commission Final Decision

This chapter discusses the Decision Phase in the siting process - the final decision that is made by the full Energy Commission. Information is also provided to explain the Energy Commission's "override authority." Finally, measures are presented which explain reconsideration of a final decision.

Final Commission Decision

The full Energy Commission will conduct a hearing to consider and vote on the Proposed Decision after the hearings conclude on the Presiding Member's Proposed Decision or the Revised Presiding Member's Proposed Decision. During this hearing on the Final Commission Decision, the Energy Commission will receive final oral and written statements of the parties and final comments and recommendations from interested agencies and members of the public. The Energy Commission will not consider new or additional evidence at this point, unless due process[166] requires, or unless the Energy Commission grants a motion to reopen the record and take additional evidence. If the Energy Commission votes to reopen the record, it will provide reasonable and fair notice to the parties.[167]

The final decision to approve or disapprove an Application for Certification, Notice of Intention or Small Power Plant Exemption is usually made at a regularly scheduled Energy Commission business meeting, held in Sacramento. The Commissioners, however, may decide to consider the final decision at a special meeting in Sacramento, or in the vicinity of the project.

The final decision adopts the Presiding Member's Proposed Decision (or if appropriate, the Revised Presiding Member's Proposed Decision) and includes any changes or modifications. A Commission Adoption Order is prepared and attached to the Proposed Commission Decision. After a vote, the order is signed. The effective date of the decision is the date it is filed with the Docket Unit, unless otherwise provided in the order.[168]

An affirmative Application for Certification decision allows the applicant to begin construction and eventually to operate the project.

If a Small Power Plant Exemption is being considered, the Energy Commission hearing will be held any time within 21 days after publication of the proposed decision.[169]

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[166] Due process: 1) a course of formal proceedings carried out in accordance with established rules and principles, or 2) a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary or unreasonable treatment of an individual.
[167] Title 20 CCR § 1754(b).
[168] Title 20 CCR § 1720.4.
[169] Title 20 CCR § 1945(b).

Override Authority

The Energy Commission has the exclusive power to certify all sites and related facilities in California.[170] Where necessary, the Energy Commission may override a local agency's or local jurisdiction's laws or standards, but only under special circumstances and with proper process. As a general rule, however, the determination by other state and local agencies regarding a project's compliance with their laws and standards are given great weight and are considered in the Energy Commission decision.[171] Compliance with requirements under federal law is not discretionary.

Reconsideration of Energy Commission Decision

Any party may petition the Energy Commission to reconsider its decision, according to the following procedure: [172]

- A party may seek reconsideration by filing and serving on all parties a "Petition for Reconsideration of Energy Commission Decision." (See **Sample 28** at the end of this chapter.)
- The "Petition for Reconsideration of Energy Commission Decision" should state the specific reasons for reconsideration, and address any error in fact or law. The purpose of the Petition for Reconsideration is to alert the Energy Commission to an error, so it may be corrected expeditiously. Thus, petitioners are cautioned that vague assertions as to the record or the law, without citation, may be accorded little attention.
- A response to a Petition for Reconsideration of Energy Commission Decision is not necessary.

The Energy Commission shall conduct a hearing for the presentation of arguments on the Petition for Reconsideration and must act to grant or deny the petition within 30 days of its receipt. Upon the affirmative vote of at least three members of the Energy Commission to grant the Petition, the matter will be reconsidered. The Chairperson will set the place, time and date for the hearing. A decision on the substantive merits of the petition will occur, after public hearing, within 30 days after the Energy Commission has granted consideration of a petition.

Reconsideration of Decision By Energy Commission Motion

The Energy Commission may reconsider a Decision on its own motion within 30 days after it dockets a decision or order.

[170] Public Resources Code § 25500.
[171] Public Resources Code § 25525.
[172] Title 20 CCR § 1720.

FAQ's Regarding Reconsideration and Judicial Review of the California Energy Commission's Final Decision on Power Plant Certification

What is this document all about?

This guide is designed to provide helpful information to a party wishing to know more about the limited circumstances in which there can be further review, once a final decision on power plant certification has been made by the Energy Commission. This guide is provided for information only and is not intended to provide legal advice or to address every situation that may arise in applying for reconsideration or review of a final decision. Please seek the advice of a qualified attorney for answers to specific legal questions. The information in this guide is current as of the date of publication, October 2006.

Can a party petition the Energy Commission to reconsider a final decision on power plant certification?

Yes. Public Resources Code section 25530 allows petitions for reconsideration. A petition for reconsideration must be filed within 30 days after the Energy Commission's decision is docketed. The petition must specify the grounds for reconsideration, including all alleged errors of fact or law. Within 30 days after a petition for reconsideration is received, the Energy Commission will hold a hearing for the presentation of arguments on the petition, and will grant or deny the petition. If the petition is denied, that is the end of the matter at the Energy Commission. If the petition is granted, then the Energy Commission will make a decision on the substantive merits of the petition after a subsequent public hearing, which must be held within 30 days after the Energy Commission has granted the petition.

Can a final decision by the California Energy Commission on power plant certification be reviewed by a court?

Yes. Under Public Resources Code section 25531, the decisions of the Energy Commission on any application for certification of a site and related facility are subject to judicial review only by the Supreme Court of California. Judicial review may be requested by filing a "petition for a writ of mandate" with the California Supreme Court.

What issues pertaining to power plant site certification may be reviewed by the Supreme Court of California?

Section 25531(b) of the Public Resources Code states that the only issue that the California Supreme Court may consider is "whether the commission has regularly pursued its authority, including a determination of whether the decision violates any right of the petitioner under the United States Constitution or the California Constitution." Section 25531(b) also states that "[t]he findings and conclusions of the commission on questions of fact are final and are not subject to review." However, the Energy Commission believes that the issue "whether the commission has regularly pursued its

authority" includes an assessment of whether the Energy Commission's findings of fact are supported by "substantial evidence." Note that Section 25531(b) limits the Court's review to the record developed during the Energy Commission's certification proceeding, so no new evidence can be submitted to the Court. Parties should also note that the existence of evidence that they believe is strongly in favor of their position does not mean that there was not other "substantial evidence" in the record supporting a different position. The California Supreme Court will not likely overturn the Energy Commission's decision if it is supported by enough relevant information and reasonable inferences that a fair argument can be made to support the Energy Commission's conclusions, even if other conclusions could be reached that are equally or more reasonable.

What happens if a petition to the Supreme Court is denied?

A denial of a petition is considered a final decision on the merits for all legal challenges, including those based on constitutional claims. Therefore, the petitioner may not appeal this decision to any other California court.

What about challenges to Small Power Plant Exemption decisions?

According to Section 25541 of the Public Resources Code, the Energy Commission may exempt from the ordinary certification process thermal power plants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts. Such facilities are then permitted by the appropriate state, regional, and local authorities that have jurisdiction where the Energy Commission does not act. Because such facilities are not certified by the Energy Commission, Section 25531, which covers judicial review of Energy Commission certification decisions, does not apply. As a result, the other judicial review provision applicable to Energy Commission actions, Section 25901, does apply to SPPE decisions. That section calls for review in the Superior Court, but review is still limited to the evidentiary record before the Energy Commission.

When can an aggrieved party petition for judicial review?

A petition *must* be filed within 30 days after the Energy Commission adopts its final determination on the matter, whether a certification decision for which the petition is filed in the Supreme Court, or an SPPE decision for which the petition is filed in the Superior Court. In general, the date of adoption is the day on which the Energy Commission's decision is docketed.

Please Note: Once a final decision on power plant certification is made, the 30-day time frame runs concurrently for both the petition for reconsideration to the Energy Commission, and the petition for judicial review to the Supreme Court. (There is no reconsideration of an SPPE decision.)

Where can I obtain more information on the Judicial Review Process?

For more information refer to:

- Title 20 California Code of Regulations section 1720 (Reconsideration of Decision or Order)
- Public Resources Code section 25531 (Judicial Review)
- Public Resources Code section 25901 (Writ of Mandate for Review)
- Public Resources Code section 25541 (Thermal power plants; exemption from chapter)
- Santa *Teresa Citizen Action Group v. California Energy Commission*, 105 Cal. App.4th 1441, (Feb. 5, 2003)
- The Public Advisor's Office at (916) 654-4489, or toll free at (800) 822-6228, or by e-mail at pao@energy.state.ca.us .

SAMPLE 28 – Petition for Reconsideration of Energy Commission Decision

John Doe
623 Elm Street
Sacramento, CA 95831
(916) 324-3009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO. **98-AFC-1**
	)	
	)	PETITION FOR
	)	RECONSIDERATION OF
	)	ENERGY COMMISSION
ZAP POWER	)	DECISION

John Doe hereby petitions for reconsideration of the Energy Commission's decision of December 12, 1998, in the above-entitled matter.

This petition is made on the grounds that:

1. Here and in succeeding numbered paragraphs, specify the grounds for reconsideration, addressing any error in fact or law.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service (**SAMPLE 7**) must be attached.)

USE OF THE APPENDICES

***Appendix A* - Public Notices:** A list and brief description of frequently used public notices is included in this appendix. Public notices are used by the Energy Commission to communicate with the public and assure an open, public process.

Appendix B* - Blank Forms:** A compilation of blank forms commonly used in the siting process is provided for your convenience. The blank forms in the appendix are to be completed by typing or hand writing required information in the blanks. Each of the blank forms is discussed in detail in the ***Guide as a SAMPLE form. If you have questions regarding the use of the forms, please contact the Public Adviser's Office.

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APPENDIX A

Public Notices

Appendix A is an overview and brief description of frequently used public notices.

The Energy Commission has numerous requirements for pubic hearings and meetings. “All hearings, presentations, conferences, meetings, workshops and site visits shall be open to the public” (Title 20 CCR § 1710(a). Public notices are the mechanism to informing the public, intervenors, agencies, interest groups and the public of these activities.

To be effective, the notices must be timely. Committee or staff meetings require a minimum of 10-calendar days notice (Title 20 CCR § 1710(b)). The day the notice is mailed counts as the first day. The day of the event is not counted.

The frequently used notices are (in alphabetical order):

Notice of Availability: Informs the public that documents are available. For example, a Notice of Availability for Final Staff Assessment tells the public the document is available and how/where to obtain copies.

Notice of Cancellation: Sometimes good reason requires that meetings be cancelled. If either a staff workshop or committee event is cancelled, the Energy Commission mails a cancellation notice to the interested persons mail list information stating that the previously noticed meeting has been cancelled. In addition, the cancellation notice is posted on the door of the meeting site.

Notice of Committee Assignment: Names the two-Commissioner Siting Committee for a particular siting case, after the application is data adequate. This notice, which is usually in a letter format, identifies the two Commissioners named to serve on the committee and identifies the Presiding Member. The Hearing Officer for the siting case is also named.

Notice of Committee Status Conference: Announces a public conference to discuss the progress and possible delays on issues in the siting case. Other discussion topics may be announced in the notice asking for information from the staff, applicant, intervernors or public agencies to provide information to the committee.

Notice of Completion: Follows regulations requiring an Initial Study and Proposed Negative Declaration be filed with the State Clearinghouse. The Notice of Completion identifies responsible agencies or trustee agencies exercising jurisdiction over natural resources affected by the project (Title 14 CCR § 15073(b)(c)(d)).

Notice of Decision: Summarizes the final written decision adopted by the Energy Commission when an Application for Certification or a Small Power Plant Exception is approved. The summary usually states that the decision reflects the completed final

environmental review of the application pursuant to the Energy Commission's California Environmental Quality Act certified equivalent regulatory program.

Notice of Negative Declaration: Informs the public that the California Energy Commission, as lead agency under the California Environmental Quality Act, is preparing to adopt a negative declaration. The notice is published at least once in a newspaper of general circulation in the area affected by the proposed project. The notice is also mailed to property owners contiguous to the project and is posted on and off the site in the area where the project is to be located.

Notice of Receipt: Tells the public that a filing has been received by the Energy Commission. The notice contains a summary of the filing and identifies where copies are available for public review.

Notice of Site Visit: Provides the public with information about the site visit including the purpose, time and place of the visit. A general description of the project is included along with a directional map.

Notice of Workshop: Contains workshop discussion topic(s) and identifies the parties expected to attend. The notice provides the location, time and place of the meeting.

APPENDIX B

Blank Forms

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION FOR INTERVENTION
	)	
	)	
	)	
_____	)	

Petitioner,_____, states:

1. Petitioner, _____, petitions to intervene in the above-entitled proceeding.

2. Petitioner has an interest in the proceeding in that_____
_____
_____
_____.

3. Petitioner ☐ does ☐ does not wish to reserve the right to present evidence and to cross-examine witnesses.

4. Petitioner will be represented by_____.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	
	)	PETITION FOR INTERVENTION
	)	AS AN INDIVIDUAL OR AGENCY
_____	)	

1. The following individual/agency hereby petitions to intervene in the above-captioned proceeding:

   _____
   (name of individual or agency)

2. Petitioner will be represented in this proceeding by:

   _____
   _____
   _____
   _____
   (name and address of individual)

3. Petitioner is not (is) a member of a group or organization already a party to this proceeding.

4. Petitioner has an interest in this proceeding in that [state reasons for intervening; if you are a member of a group or organization which already is a party, state why intervening as an individual is necessary]:

_____
_____
_____
_____
_____

5. Petitioner understands that it will receive all relevant documents in this proceeding and that it will be responsible for supplying other parties with information and documents properly requested, as well as complying with Orders of the presiding Committee.

6. Petitioner certifies that it has served a copy of this Petition upon the Applicant's attorney-of-record in this proceeding.

_____ _____
Date Signature

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION FOR INTERVENTION
	)	AS A GROUP
	)	
	)	
_____	)	

1. Petitioner is a group or organization known as:

   _____
   (name of group or organization)

2. Petitioner is (is not) formally recognized as a group or organization under the laws of the State of California.

3. Petitioner represents the concerns of those on the membership list attached hereto. (***ATTACH COMPLETE MEMBERSHIP LIST*** *for local or community organization.*)

4. Petitioner will be represented in the above-captioned proceeding by:

   _____
   _____
   _____
   _____
   (name and address of representative)

5. Petitioner agrees to notify the Applicant and the Commission of additions or deletions to the group/organization membership list within 10 days of when such changes occur.

6. The representative(s) named above certifies that the representative will act as spokesperson in these proceedings for members of the group or organization.

7. The representative(s) named above understand that the representative will receive all necessary documents on behalf of the group and will be responsible for serving and distributing, on behalf of the group, appropriate documents to other parties in this proceeding.

8. Petitioner has an interest in this proceeding in that [*state reasons for intervening*]:

_____
_____
_____
_____

9. Petitioner certifies that it has served a copy of this Petition upon the Applicant's attorney-of-record in this proceeding.

_____ _____

Date Signature

Representative for:

_____

(name of group or organization)

ATTACH CURRENT MEMBERSHIP LIST

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	REQUEST TO WITHDRAW
	)	
	)	
	)	
_____	)	

_____hereby requests to withdraw from the above entitled proceeding.

_____ _____
Date Signature
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	FINANCIAL HARDSHIP
	)	PETITION
	)	
	)	
_____	)	

_____hereby petitions to be excused from

☐ Filing 12 copies with the Commission Docket Unit.

☐ Serving its papers on all other parties of record.

Compliance with the above requirement(s) creates an undue financial hardship for the Petitioner in that:

_____ _____
Date Signature

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PROOF OF SERVICE
	)	
	)	
	)	
_____	)	

I declare that on_____, 20_____, I deposited the attached

_____ in the United States mail in

_____, California, with first class postage and addressed to the following:

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	MOTION BY_____
	)	_____
	)	FOR_____
	)	_____
_____	)	

_____hereby moves the Energy Commission order
_____
_____
_____

This motion is based on the pleadings and records on file in this proceeding and the following

☐ The attached Declaration of_____.
☐ The attached Memorandum of Points and Authorities.
☐ Oral and documentary evidence that may be presented at hearing.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION FOR RECONSIDERATION
	)	OF ENERGY COMMISSION
	)	COMMITTEE ORDER BY
_____	)	ENERGY COMMISSION COMMITTEE

_____hereby petition(s) for reconsideration of

the committee order _____ in the above-entitled matter.

This Petition is made on the ground(s) that:

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT
	)	OF RECONSIDERATION OF
	)	ENERGY COMMISSION
_____	)	COMMITTEE ORDER

_____hereby submits the following points and authorities in support of the Petition for Reconsideration of Energy Commission Committee Order.

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION FOR
	)	RECONSIDERATION OF
	)	COMMISSION COMMITTEE
	)	ORDER BY ENERGY COMMISSION
_____	)	

_____hereby petition(s) for reconsideration of the committee decision of _____in the above-entitled matter.

This Petition is made on the ground(s) that:

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	REQUEST FOR STAY OF
	)	ENERGY COMMISSION
	)	COMMITTEE ORDER
	)	
_____	)	

_____hereby requests a stay of the following Energy Commission Committee Order:

1. Title:
2. Date order issued:
3. This request is made on the ground that there is irreparable harm

to:_____

because:_____

4. This request is based upon the pleading and records on file in this proceeding,
- ☐ The declaration(s) of _____.
- ☐ The attached memorandum of points and authorities.
- ☐ Oral and documentary evidence that may be presented at hearing.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	DECLARATION OF
	)	
	)	
	)	_____
_____	)	(Name)

I, _____ declare:

1.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed

at _____

on _____.

_____ _____
Date Signature

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	DATA REQUEST
	)	OF_____
	)	_____
	)	SET_____
_____	)	

TO:_____

_____ requests that you answer the following data request within _____days. All the information sought is relevant to the proceeding and is in the control of the applicant and not readily available from other sources. In answering this data request, you are required to furnish full and complete answers.

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	MOTION FOR ORDER
	)	DIRECTING RESPONSE
	)	
	)	
_____	)	

_____hereby moves for an order directing

_____ to respond to the items listed below which were included

on the Data Request Set #_____served on_____, 20_____.

This motion is made on the ground(s) that:

This motion is based on the pleadings and records on file in this proceeding:

- ☐ The declaration(s) of _____.
- ☐ The attached memorandum of points and authorities.
- ☐ Oral and documentary evidence that may be presented at hearing.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	ANSWERS TO DATA REQUEST
	)	OF_____
	)	SET_____
	)	
_____	)	

_____answers the Data Request of

_____ as follows:

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	Docket No.
	)	
	)	SUBPOENA
	)	SUBPOENA DUCES TECUM
	)	Date:
	)	Time:
_____	)	Place:

_____hereby requests issuance of a Subpoena by the Commission.

1. ☐ SUBPOENA:
   a. Name of witness to be called to testify:_____.
   b. Statement regarding the materiality of the testimony of the witness:

2. ☐ SUBPOENA DUCES TECUM: The following witness has possession or control of the requested documents or papers.
   a. Name of witness: _____.
   b. Identify the document requested: _____.
   c. Statement regarding the materiality of the document:

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PRE-HEARING CONFERENCE
	)	STATEMENT
	)	
	)	
_____	)	

_____hereby submits its Pre-Hearing Conference Statement.

1. Stipulations of Fact and Law ☐ are ☐ are not attached.

2. Issue and Witness Identification Form ☐ is ☐ is not attached.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	STIPULATION
	)	
	)	
	)	
	)	

_____hereby stipulates to the following

matters

with_____

_____.

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	ISSUE AND WITNESS
	)	IDENTIFICATION
	)	
	)	
_____	)	

ISSUE	PROPOSED TESTIMONY	WITNESS

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	_____
	)	
	)	☐ OPENING BRIEF
	)	☐ RESPONDING BRIEF
_____	)	☐ REPLY BRIEF

_____hereby submits its Brief.

_____ _____
Date Signature

(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION TO REOPEN
	)	THE RECORD
	)	
	)	
_____	)	

_____hereby petitions the Commission

Committee to reopen the record of the proceedings.

This motion is made on the ground(s) that:

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.
(Proof of Service must be attached.)

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	EXCEPTIONS TO
	)	PROPOSED DECISION
	)	
	)	
_____	)	

_____hereby takes exception to the

following findings and conclusions of the proposed decision:

_____ _____
Date Signature

☐ Check box if continuation pages are attached.

_____

_____

_____

_____

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	Docket No.
	)	PETITION FOR
	)	RECONSIDERATION
	)	OF ENERGY COMMISSION
	)	DECISION
_____	)	

_____hereby petition(s) for

reconsideration of the Energy Commission Decision of _____ in the

above-entitled matter.

This Petition is made on the ground(s) that:

1.

_____ _____
Date Signature

☐ Check box if continuation pages are attached.