

Memorandum

To: Chair Robert B. Weisenmiller
Lead Commissioner

Date: August 1, 2017

From: Jana Romero, Attorney
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California Energy Commission
1516 Ninth Street
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Subject: **Docket No. 17-IEPR-07 Integrated Resource Planning, Guideline Adoption**

Summary

This memo addresses the application of the California Environmental Quality Act (CEQA) to the Commission's adoption of *Publicly Owned Utility Integrated Resource Plan Submission and Review Guidelines* (hereinafter referred to as *Guidelines*). The *Guidelines* specify the requirements for submitting information, data, and reports needed to support the Commission's review of integrated resource plans (IRPs) submitted by specified local publicly owned electric utilities (POUs) in accordance with Public Utilities Code Section 9621.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Commission's adoption of the proposed *Guidelines* is not subject to CEQA, either because the action is not a "project" under CEQA, or because the action is exempt under what is commonly referred to as the "common sense" exemption to CEQA.

Background

The *Guidelines* set forth how the Commission will implement the submission and review of POU IRPs pursuant to Senate Bill 350 (de León, Chapter 547, Statutes of 2015). SB 350 requires specified POUs to adopt and submit to the Commission IRPs that meet the requirements in Public Utilities Code Section 9621. The Commission is required to review IRPs and, if it finds an IRP to be inconsistent with the requirements of Public Utilities Code Section 9621, make recommendations to correct the deficiencies (Public Utilities Code, § 9622). The Commission is authorized to adopt guidelines to govern the submission of information, data, and reports needed to support the Commission's review of IRPs (Public Utilities Code, § 9622). The *Guidelines* specify the information, data, and reports needed to support the Commission's review, and describe how the Commission will review IRPs and make findings and recommendations.

CEQA

CEQA (Public Resources Code, § 21000 et seq.) requires state agencies to consider the environmental impacts of their discretionary decisions. CEQA generally applies to "discretionary projects proposed to be carried out or approved by public agencies..." (Public Resources Code, § 21080(a)). The CEQA Guidelines (Cal. Code Regs., Title 14, Chapter 3) define a "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in

the environment, or a reasonably foreseeable indirect physical change in the environment...” (CEQA Guidelines, § 15378(a)). The CEQA Guidelines list activities that may be considered a “project”, including approvals by public agencies for public works construction or related activities, contracts, grants, loans or other forms of assistance, or leases, permits, licenses, certificates, or other entitlements (CEQA Guidelines, § 15378(a)(1) - (3)). The CEQA Guidelines also list several activities that do not fall within the meaning of the term “project” and thus are not subject to CEQA, including a public agency’s “[c]ontinuing administrative or maintenance activities such as...general policy and procedure making....” (CEQA Guidelines, § 15378(b)(2).)

Adoption of Guidelines

The *Guidelines* establish the rules and procedures the Commission will use to accept, review, and make recommendations on POU IRPs. The *Guidelines* require POUs to submit various information, data, and reports needed to support the Commission’s review of IRPs for consistency with Public Utilities Code Section 9621.

The *Guidelines* relate to general policy and procedure making, which do not involve a commitment to a specific project that may result in a potentially significant physical impact on the environment. (CEQA Guidelines, § 15378(b)(2)). The *Guidelines* also relate to administrative activities of governments that will not result in direct or indirect physical changes in the environment (CEQA Guidelines, § 15378(b)(5)). As a result, adoption of the proposed *Guidelines* is not a “project” under CEQA.

In addition, even if the adoption of the proposed *Guidelines* did constitute a “project” under CEQA, the *Guideline* adoption falls within the “common sense” exemption of the CEQA Guidelines. This exemption indicates that CEQA only applies to projects that have a significant effect on the environment. (CEQA Guidelines, § 15061(b)(3)). A significant effect on the environment is defined as substantial, or potentially substantial, adverse change in the environment. (Public Resources Code, § 21068; CEQA Guidelines, § 15382). The *Guidelines* will not create an adverse change to the environment because they simply establish informational and formatting requirements to facilitate Energy Commission review of IRPs that the POUs are required to prepare pursuant to Public Utilities Code Section 9621. In fact, the POUs must prepare IRPs whether or not the Commission adopts *Guidelines*. It can therefore be seen with certainty that there is no possibility that adoption of the *Guidelines* may have a significant effect on the environment. Consequently, the adoption of the *Guidelines* is not subject to CEQA (CEQA Guidelines, § 15061(b)(3)).

Follow Up

The Chief Counsel’s Office will file this memo as part of the record in the IRP proceeding, Docket No. 17-IEPR-07, to support the Commission’s action if it chooses to adopt the proposed *Guidelines*.

If the proposed *Guidelines* are adopted, the Chief Counsel’s Office will prepare and file a Notice of Exemption with the Office of Planning and Research pursuant to Public Resources Code, Section 21108(b), and Sections 15061(d) and 15062 of the CEQA Guidelines.