

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:

EMERGENCY PROCLAMATION

**[PROPOSED] Order Re: PROCESS
FOR POST-CERTIFICATION PETITIONS
FOR CHANGES IN DESIGN,
OPERATIONS OR PERFORMANCE OF
EXISTING FACILITIES**

I. Introduction

California faces extreme climate impacts, including extreme drought, wildfire, and record-breaking heat events, even as it races to achieve a 100 percent clean electricity system that supports long-term energy reliability. This unprecedented climate emergency threatens the state's energy supply and limits the state's ability to import additional energy to meet the summer electricity demand. At the same time, immediate action is needed to accelerate the state's transition to clean electricity to help end the cycle of energy contributing to the very climate impacts that threaten energy supply.

The California Energy Commission (CEC) is responsible for licensing new thermal power plants of 50 megawatts (MW) or more, establishing energy efficiency standards to reduce energy demand, assessing energy supply and demand, implementing renewable portfolio standards, and investing in clean transportation and clean energy research. These core functions anchor the state's effort to meet the Senate Bill (SB) 100 target of requiring renewable energy and zero-carbon resources for 100 percent of electric retail sales to end-use customers by 2045.

On July 30, 2021, Governor Newsom issued a Proclamation of State of Emergency (Emergency Proclamation) proclaiming an emergency to exist in California as a result of sudden and severe energy shortages resulting from extreme drought, wildfires, and record-breaking heat events throughout the Western United States, which put significant demand and strain on California's energy grid. The Emergency Proclamation declares that, due to these extreme weather events, the state currently faces an energy supply shortfall of up to 3,500 megawatts in 2021, and a shortfall of up to 5,000 megawatts is now projected for the summer of 2022. To take immediate action to reduce the strain on energy infrastructure, increase energy capacity, and make energy supply more resilient this year to protect the health and safety of Californians, the Governor ordered the CEC to establish a process to expedite all post certification petitions for changes of existing facilities licensed by the CEC. Specifically, the Emergency Proclamation ordered as follows:

With respect to all post certification petitions for changes in power plant project design, operation, performance, including geothermal generation and integrating solar generation and battery storage with appurtenant facilities on an existing site, the following statutes and regulations are suspended to the extent the California Energy Commission determines that the petitioned-for change should be granted and would reduce the energy shortfall resulting from this emergency by October 31, 2021.

The specific statutes and regulations suspended under the Emergency Proclamation include the California Environmental Quality Act in Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division; the California Coastal Act in Public Resources Code, Division 20 (commencing with section 30000) and regulations adopted pursuant to that Division; and Title 20, section 1769, of the California Code of Regulations.

The Emergency Proclamation further authorizes the CEC to delegate its authority to take the above actions to its Executive Director and exempts such actions from the rulemaking requirements in Government Code, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with Section 11340).

II. Authority

The CEC has authority under existing law to certify facilities with a generating capacity of 50 megawatts or more and amend such certifications as necessary. (Pub. Resources Code, §§ 25110, 25120, 25500 et seq.) In addition, if the commission determines that all reasonable conservation, allocation, and service restriction measures may not alleviate an energy supply emergency, and upon a declaration by the Governor or by an act of the Legislature that a threat to public health, safety, and welfare exists and requires immediate action, the commission shall authorize the construction and use of generating facilities under such terms and conditions as specified by the commission to protect the public interest. (Pub. Resources Code, § 25705.)

The Emergency Proclamation was issued pursuant to the Governor's authority under the California Emergency Services Act, Government Code sections 8567, 8571, 8625, and 8627, to take immediate action to address the energy supply shortfalls and achieve energy stability in the state. The Governor declared an energy supply emergency, and based on the findings in the Emergency Proclamation, the CEC has determined that all reasonable conservation, allocation, and service restriction measures currently being implemented may not be enough to alleviate the energy supply emergency.

The Governor's July 30, 2021, Emergency Proclamation provides the CEC authority to establish an expedited process for the approval of petitions for changes to facilities licensed by CEC that will contribute to reducing the energy shortfall by October 31, 2021, as specified in Section III as follows.

III. Criteria and Procedures for Emergency Approval of Changes to Existing Facilities

For petitions filed requesting approval of changes to existing facilities licensed by the CEC that will contribute to reducing the energy shortfall by October 31, 2021, through the increase in power production, increase in operational hours, addition of solar generation, or addition of battery storage, the following expedited emergency process shall be implemented:

(a) The facility owner shall file a petition to the Executive Director containing the following information:

- (1) a description of the proposed facility changes detailing how these changes will reduce the energy shortfall by October 31, 2021, and whether the changes are permanent or temporary;
- (2) a description of the existing site conditions (paved, graded, etc.) where the proposed facility changes will occur, including site plans and photographs; identifying any offsite equipment laydown or staging areas; describing any changes in type or volume of hazardous materials or wastes; and outlining the extent and depth of any ground disturbance associated with the facility changes;
- (3) an assessment of whether the facility changes would result in the facility exceeding any permitted air quality or water quality standard or conditions of certification requirement and a description of the estimated exceedance;
- (4) an identification of the existing conditions of certification and laws, ordinances, regulations, and standards applicable to construction and operation of the facility changes; and
- (5) a proposed schedule evidencing the ability of the facility owner to implement the facility changes no later than October 31, 2021.

(b) Within 10 working days after a complete petition is filed, the Executive Director shall file a decision on the petition. A petition may be granted if, based on the information available at the time of review, the changes can reasonably be expected to contribute to reducing the energy supply shortfall by October 31, 2021 and if on balance the petition supports the stated purpose of the Emergency Proclamation directing the CEC to act immediately to achieve energy stability. The Executive Director may impose conditions or reporting requirements on the license as appropriate. The decision of the Executive Director is final and is not subject to further consideration or appeal.

(c) Upon approval by the Executive Director, the facility owner may commence the work to implement the requested changes consistent with all applicable conditions of certification, including use of a delegated chief building official (DCBO) when required.

(d) Up to and including October 31, 2021, no petition for change to a CEC license is necessary for a facility to operate in contravention of a permit limitation for the purpose

of increasing output or hours of operation provided the increased output or hours of operation occurs only when all of the following conditions are met:

- (1) The California Independent System Operator (CAISO) issues a Grid Warning or Emergency Notice;
- (2) The limitation on increasing output or hours of operation is a permitting requirement or condition of certification adopted by the CEC or the local air quality management district that restricts the amount of power that a facility may generate, restricts the amount of fuel that a facility may use, or imposes air quality requirements that prevent the facility from generating additional power for use in California; and,
- (3) The increased output occurs during the period running from two hours before the beginning of the effective time of the CAISO Grid Warning or Emergency Notice to one hour after the end of that effective time.

(e) To support the Emergency Proclamation's directive to the California Air Resources Board to develop and promptly implement, a state-funded plan to mitigate the effects of additional emissions authorized by the Emergency Proclamation beyond ordinarily permitted levels, facility owners operating in excess of permitted conditions as authorized by the Emergency Proclamation or through approval of a petition, shall report the excess emissions to the CEC for transmittal to the California Air Resources Board within 48 hours of each exceedance.

IV. CALIFORNIA ENERGY COMMISSION FINDINGS

Based on the Governor's July 30, 2021 Emergency Proclamation and the authority set forth in Public Resources Code section 25705, the CEC finds that:

- The unprecedented climate emergency threatens the state's energy supply and limits the state's ability to import additional energy to meet the summer electricity demand.
- All reasonable conservation, allocation, and service restriction measures currently being implemented may not alleviate the energy supply emergency.
- The July 30, 2021 Emergency Proclamation in conjunction with these findings, activates the CEC's emergency authority under Public Resources Code section 25705.
- In order to implement the directives of the Emergency Proclamation and Public Resources Code section 25705, the Executive Director is authorized to approve petitions for changes to existing facilities consistent with the process set forth in this Order.
- A petition for change filed under the process set forth in this order is not subject to an adjudicatory proceeding as defined in California Code of Regulations, Title 20, section 1201(b), therefore the ex parte restrictions set forth in Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) do not apply.

V. CONCLUSION AND ORDER

The CEC hereby adopts this Order establishing criteria and procedures for approving changes to existing facilities and delegating approval of petitions to the Executive Director. This Order is effective through October 31, 2021, unless otherwise extended in a subsequent Emergency Proclamation or Executive Order, or by an act of the Legislature.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on August 17, 2021.

AYE:

NAY:

ABSENT:

ABSTAIN:

Liza Lopez
Secretariat