

Memorandum

To: Docket 21-OIR-02

Date: April 29, 2022

From: Kristen M. Driskell, Assistant Chief Counsel
Chief Counsel's Office
California Energy Commission

Subject: California Environmental Quality Act Compliance

At the May 11, 2022, California Energy Commission (CEC) Business Meeting, the Chief Counsel's Office will propose the CEC adopt a proposed resolution amending its geothermal certification authority regulations to simplify the process for the CEC to delegate full authority for the certification of geothermal power plants within a county which has adopted a geothermal element for its general plan and demonstrates that it has an equivalent certification program. (Cal. Code Regs., tit. 20, §§ 1860-1870.)

For purposes of complying with the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.), staff recommends the CEC find that the adoption of the proposed regulations is categorically exempt under CEQA. The proposed regulations streamline the processes by which a county applies for, and the CEC approves, a delegation of the CEC's exclusive certification authority for geothermal power plants with a generating capacity of at least 50 megawatts (MW). The proposed changes do not change the requirement that a thermal power plant undergo environmental review, nor do they predict whether or not the CEC would approve a delegation to a county. It can be seen with certainty that there is no possibility of the delegation process itself or the proposed changes to that process having a significant effect on the environment. For this reason, the adoption of the proposed regulations is categorically exempt under CEQA, Title 14, California Code of Regulations, section 15061(b)(3), the "common sense" exemption.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**Rulemaking to Amend Regulations for
Delegation of Certification Authority**

Docket No. 21-OIR-02

**[PROPOSED] RESOLUTION
ADOPTING REGULATIONS**

WHEREAS, on December 8, 2021, the California Energy Commission (CEC) adopted an order instituting rulemaking proceeding to consider amending its existing processes and procedures for, among other things, delegating the CEC's full authority for the certification of geothermal power plants within a county which has adopted a geothermal element for its general plan and demonstrates that it has an equivalent certification program (Cal. Code Regs., tit. 20, §§ 1860-1870); and

WHEREAS, on February 24, 2022, the CEC mailed to the listserv, including to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action, and posted on the CEC's website a Notice of Proposed Action (NOPA) formally notifying the public of the CEC's intent to adopt proposed regulations amending the process for delegation of geothermal certification authority, the Express Terms of the proposed regulations, an Initial Statement of Reasons (ISOR) describing the rationale for the proposal, and the fiscal and economic impact analysis; and

WHEREAS, on February 25, 2022, the NOPA was published in the California Regulatory Notice Register, delivered to the Secretary of the California Natural Resources Agency; and

WHEREAS, each of these documents and notices was provided to every person on the CEC's Geothermal list serve and Rulemaking list serve, and to every person who had requested notice of such matters, and was posted to the CEC's website and project docket; and mailed to a representative number of entities that are likely to be affected by the proposed action; and

WHEREAS, on April 11, 2022, the 45-day written comment period established by the NOPA closed; and

WHEREAS, on April 14, 2022, the CEC held a public hearing to receive comments on the proposed regulations; and

WHEREAS, in the NOPA, the CEC provided notice designating May 11, 2022, as the date for the business meeting to consider adoption of the proposed amendments and did so adopt the proposed amendments.

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to the California Environmental Quality Act (CEQA):

- The CEC has considered the application of CEQA to the proposed regulations and concluded that the proposed regulations are exempt from CEQA under the common sense exemption (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)) because it can be seen with certainty that there is no possibility that the proposed amendments will have a significant effect on the environment; and

With regard to the Administrative Procedure Act:

- The proposed regulations will not result in the creation of new businesses or elimination of existing businesses, will not result in the expansion of businesses currently doing business in California, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; and
- The proposed regulations will impose no direct costs or savings, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; and
- The proposed regulations are will not result in the creation or elimination of jobs within California; and
- The proposed regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed regulations will result in no nondiscretionary costs or savings to any state agencies, local agencies, or school districts; and
- The proposed regulations will have no impact on housing costs; and
- The proposed regulations will result in no cost impacts to representative private persons or businesses in reasonable compliance with the regulations; and

- The proposed regulations will not adversely impact the health and welfare of California residents, worker safety, or the state’s environment; and
- The proposed regulations have no alternatives that would be more effective in carrying out the purposes of the statutes for which it is proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- The proposed regulations will not have a significant adverse economic impact on small business; and
- The proposed regulations will not require completion of any new report; and
- None of the comments received during the comment period, at the public hearing on April 11, 2022, or at the business meeting on May 11, 2022, and nothing else in the record, justified any changes to the proposed regulations as published on February 24, 2022.

THEREFORE, BE IT RESOLVED, that, on the basis of the entire record before it, the CEC finds that the proposed regulations are exempt from CEQA under the common sense exemption (Cal. Code Regs., tit. 14, § 15061 subd. (b)(3)) because it can be seen with certainty that there is no possibility that the proposed regulations will have a significant effect on the environment; and

FURTHER BE IT RESOLVED, that, after considering all comments received and based on the entire record of this proceeding, the CEC hereby adopts the amendments to its geothermal delegation regulations, as set forth in the Express Terms that were published on February 24, 2022; and

The CEC takes this action under the authority of sections 25213 and 25218(e) of the Public Resources Code, which authorize the CEC to adopt rules or regulations, as reasonable and necessary, to implement, Public Resources Code section 25540.5; and

FURTHER BE IT RESOLVED, that documents and other materials that constitute the rulemaking record can be found at the CEC, 715 P Street, Sacramento, California, 95814 in the custody of the Docket Unit and online in [Docket Number 21-OIR-02](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-OIR-02), <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-OIR-02>; and

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and preparing and filing the Notice of Exemption with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on May 11, 2022.

AYE:

NAY:

ABSENT:

ABSTAIN:

Liza Lopez
Secretariat