



**CALIFORNIA
ENERGY COMMISSION**



**California Energy Commission
March 14, 2023 Business Meeting
Backup Materials for Agenda Item No 04:
Petition to Request a Rulemaking Hearing**

The following backup materials for the above-referenced agenda item are available as described below:

1. Proposed Order, attached below.
2. Memorandum, attached below.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Steve Uhler Petition for Rulemaking

**[PROPOSED] ORDER DENYING
PETITION FOR RULEMAKING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 1, 2023, Steve Uhler filed a letter requesting that the California Energy Commission (CEC) initiate a rulemaking pursuant to California Code of Regulations (CCR), title 20, section 1221. Specifically, Steve Uhler's petition requests the CEC initiate a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a).

On March 3, 2023, the Executive Director determined that Steve Uhler's petition met the requirements of CCR, title 20, section 1221 and certified that the petition was complete. The Executive Director also noted that his determination and certification does not constitute an approval of his petition for the CEC to initiate a rulemaking hearing. The Executive Director's determination and certification was sent to Steve Uhler via email.

On March 3, 2023, the CEC published the Business Meeting Agenda for its business meeting scheduled on March 14, 2023. The agenda includes consideration of Steve Uhler's petition for a rulemaking hearing and describes the agenda item as follows: "Consideration of an action on a petition that requests the CEC to initiate a rulemaking hearing pursuant to CCR, title 20, section 1221." The CEC posted the agenda on its website and Business Meeting Docket 10 days prior to the March 14 business meeting. The agenda included information on how to participate in the meeting.

On March 14, 2023, the CEC held a hearing to consider Steve Uhler's petition for a rulemaking.

II. CEC FINDINGS

Based on the entirety of the record, the CEC finds that:

- 1) CCR, title 20, section 1201, subsection (f) provides that: "Docket Unit" means "the office of the commission that receives, distributes, serves and stores all filed documents."
- 2) CCR, title 20, section 1208, subsection (a) provides that: "All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by docket staff or by the commission's automated electronic filing or commenting system. Documents that are not filed will not be deemed part of a proceeding's record."
- 3) Public Resources Code sections 25213 and 25218(e) mandate and authorize the CEC to adopt rules and regulations, as necessary, to carry out its statutory duty. Thus, the Commission has the authority to initiate a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a), as requested in Steve Uhler's petition.
- 4) The Steve Uhler petition for a rulemaking meets the requirements of CCR, title 20, section 1221.
- 5) The Chief Counsel's Office evaluated Steve Uhler's petition and found that the CEC follows existing law.
- 6) The CEC staff uses the Docket Unit as a central location to keep records for its proceedings. Nothing requires the CEC to submit documents that are not part of a proceeding's formal record to the Docket Unit. Thus, the requested rulemaking is not necessary and does not warrant the expenditure of resources that such a rulemaking would require.
- 7) CCR, title 20, section 1221(c), requires that the CEC, within 30 days of the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing staff to prepare an order instituting a rulemaking.

III. CONCLUSION AND ORDER

- 1) For the reasons stated above, the CEC hereby DENIES Steve Uhler's petition for a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a).
- 2) CEC staff is directed to file this Order and supporting documentation with the Office of Administrative Law in accordance with Government Code section 11340.7(d).

IT IS SO ORDERED.

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 CEC held on March 14, 2023.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

Liza Lopez
Secretariat

Memorandum

To: Chair, Vice Chair, and Commissioners
California Energy Commission

From: Josephine Crosby, Attorney
Chief Counsel's Office
California Energy Commission

Date: March 8, 2023

Subject: Recommendation Regarding Steve Uhler's Petition to Initiate Rulemaking to repeal California Code of Regulations, title 20, section 1201, subsection (f) and amend California Code of Regulations, title 20, section 1208, subsection (a).

I. Procedural and Factual Background

On March 1, 2023, Steve Uhler filed a letter requesting that the California Energy Commission (CEC) initiate a rulemaking pursuant to California Code of Regulations (CCR), title 20, section 1221. Specifically, Steve Uhler's petition requests the CEC initiate a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a).

On March 3, 2023, the Executive Director determined that Steve Uhler's petition met the requirements of CCR, title 20, section 1221 and certified that the petition was complete. The Executive Director also noted that his determination and certification does not constitute an approval of the petition for the CEC to initiate a rulemaking hearing. The Executive Director's determination and certification was sent to Steve Uhler via email.

On March 3, 2023, the CEC published the Business Meeting Agenda for its business meeting scheduled on March 14, 2023. The agenda includes consideration of Steve Uhler's petition for a rulemaking hearing and describes the agenda item as follows: "Consideration of an action on a petition that requests the CEC to initiate a rulemaking hearing pursuant to CCR, title 20, section 1221." The CEC posted the agenda on its website and Business Meeting Docket 10 days prior to the March 14 business meeting. The agenda includes information on how to participate in the meeting.

II. Legal Authority

Government Code section 11340.6 provides that any interested person may petition an agency to initiate a proceeding for the adoption, amendment, or repeal of a regulation. The CEC has established regulations that set the requirements and procedures to file a petition for rulemaking. Specifically, CCR, title 20, section 1221(a)-(b), requires a petition to include the following information: (1) the name, address, and phone number of the petitioner; (2) the substance or nature of the regulation, amendment, or repeal requested; (3) the reasons for the request; and (4) reference to the authority of the CEC to take the action requested.

Pursuant to CCR, title 20, section 1221(b), a petition to request a rulemaking hearing shall be filed with the executive director who shall within seven days after its filing determine whether the petition is complete. CCR, title 20, section 1221(c) provides that, if the executive director certifies that the petition is complete, the CEC shall, within 30 days from the filing of the

petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing the staff to prepare an appropriate order.

III. Steve Uhler's Request and Assertions

Steve Uhler's petition requests that the CEC repeal CCR, title 20, section 1201, subsection (f), which defines the CEC's "Docket Unit" as "the office of the commission that receives, distributes, serves and stores all filed documents." Steve Uhler states that "[the] Chief Counsel Office receives, distributes, and stores documents for proceedings forgoing the use of the Docket Unit notwithstanding 20 CCR 1201(f) and 1208(a). Chief Counsel Office in storing these documents has chosen to forgo submitting some documents, prior to the year 2023, to the Docket Unit, such as agendas, and meeting minutes." Further, Steve Uhler asserts that the amendment is necessary because "definitions, under the doctrine expression unius exclusion alterius est, these activities are limited to the Docket Unit."

Additionally, Steve Uhler requests that the CEC amend to CCR, title 20, section 1208, subsection (a) to clarify that documents submitted to the Chief Counsel's Office and not filed with the Docket Unit will not be deemed part of the proceeding record. Specifically, Steve Uhler proposes the following amendments, proposed in underlined text, to CCR, title 20, section 1208, subsection (a):

All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by dockets staff or by the commission's automated electronic filing or commenting system. Documents that are not filed, or submitted to the Chief Counsel Office, will not be deemed part of a proceeding's record.

Steve Uhler similarly asserts that "[the] Chief Counsel Office receives, distributes, and stores documents for proceedings forgoing the use of the Docket Unit notwithstanding 20 CCR 1201(f) and 1208(a). Chief Counsel Office in storing these documents has chosen to forgo submitting some documents, prior to the year 2023, to the Docket Unit, such as agendas, and meeting minutes." Steve Uhler supports this claim by stating "Filing of documents, under the doctrine expression unius exclusion alterius est, these activities are limited to the Docket Unit."

IV. Analysis and Recommendation

The Chief Counsel's Office recommends denying the petition for rulemaking because repealing CCR, title 20, section 1201, subsection (f) and amending CCR, title 20, section 1208, subsection (a) is not necessary to address Steve Uhler's assertions and because the proposed amendments would add, rather than remove, ambiguity in the regulations. While Steve Uhler's statements have been carefully evaluated and are appreciated, the Chief Counsel's Office has determined that the CEC is following existing law, as discussed more fully below. Thus, the requested rulemaking is not necessary and does not warrant the expenditure of resources that such a rulemaking would require.

CCR, title 20, section 1201, subsection (f) states:

"Docket Unit" means the office of the commission that receives, distributes, serves and stores all filed documents.

CCR, title 20, section 1208, subsection (a) states:

All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by dockets staff or by the commission's automated electronic filing or commenting system. Documents that are not filed will not be deemed part of a proceeding's record.

Steve Uhler asserts that the Chief Counsel's Office receives, distributes, and stores documents for CEC proceedings not submitted to the Docket Unit for inclusion as part of the proceeding record. However, the CEC already ensures that all documents that are part of the proceeding are submitted to the Docket Unit as part of the record, as required by law. The CEC follows the relevant requirements of CCR, title 20, and the Administrative Procedure Act (Government Code section 11340 et seq.) when maintaining proceeding records. To achieve these requirements, the CEC utilizes dockets. Dockets act as the repository for documents related to a specific rulemaking, informational, or other proceedings, and the Business Meeting Docket and Business Meetings webpage provides a quick and centralized forum for those interested to learn more about agenda items up for consideration.

Furthermore, section 1208 refers to the term "Docket Unit" in multiple subsections to establish its role in filing documents to the relevant dockets. For example, section 1208, subsection (a) provides, "All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit." Removing the definition of "Docket Unit" and not repealing instances of the term in the substantive regulations would insert ambiguity into the regulations.

Steve Uhler asserts that the Chief Counsel's Office receives, distributes, and stores documents related to CEC proceedings that are not submitted to the Docket Unit for inclusion as part of the proceeding record. This is correct: the Chief Counsel's Office only files documents with the Docket Unit that are appropriate for filing with a proceeding's docket. However, nothing requires the CEC to submit documents to the Docket Unit that are not part of the proceeding's formal record, and the CEC does file all documents that are a part of a proceeding's record to the Docket Unit for filing to the appropriate docket. For example, , consistent with the requirement of the Administrative Procedure Act (Government Code sections 11347.3 and 11348), as well as section CCR, title 20, section 1208, the CEC uses the Docket Unit as a central location to keep rulemaking records for its pending rulemaking actions. The use of the Docket Unit as a central location for all proceeding documents ensures compliance with the legal requirements of current law and regulation.

Indeed, section 1208, subsection (a) specifically contemplates that some documents will not be filed with the Docket Unit and, if they are not so filed, are not deemed part of a proceeding's record. Steve Uhler's petition requests that the last sentence of section 1208, subsection (a) as follows, addition in underline: "Documents that are not filed, or submitted to the Chief Counsel Office, will not be deemed part of a proceeding's record." The proposed addition to section 1208, subsection (a) is legally unnecessary perspective because "documents that are not filed" necessarily includes documents submitted to the Chief Counsel's Office and not filed with the Docket Unit. Additionally, the proposed addition of this superfluous language could add ambiguity to the regulation.

Thus, there is no legal requirement to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a).

Further, CEC staff is also doubling its efforts to make documents available in multiple locations on its electronic systems by ensuring that documents filed in dockets for specific proceedings are also available to the public through the backup materials posted on the CEC's Business Meeting webpage. The Chief Counsel's Office notes that proposed resolutions and proposed orders considered for adoption at the CEC business meetings are posted as backup material to the Business Meeting website prior to the meeting, to inform the public of the document that will be considered by the CEC commissioners. After the CEC adopts the resolutions and orders, they are posted to the Business Meeting docket and the specific proceedings dockets to complete the record pursuant to CCR, title 20, section 1208.

Based on the foregoing, the Chief Counsel's Office recommends that the CEC deny Steve Uhler's petition requesting a rulemaking.