



**California Energy Commission
September 11, 2024 Business Meeting
Backup Materials for Emergency Rulemaking Amending the Opt-In Regulations
to Add Reimbursement Procedures for Local Agencies**

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

1. Proposed Resolution, attached below.
2. Revised Notice of Proposed Emergency Action, attached below and available at:
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=258711>
3. Express Terms, attached below and available at:
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=258715>
4. Revised CEQA Memo, attached below and available at:
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=258716>
5. Form STD 399: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=258235>
6. Form STD 400: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=258236>

For the complete rulemaking record, please visit:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=24-OIR-02>.

To stay informed about this rulemaking and receive documents as they are filed, please subscribe to the Rulemaking on Procedural Changes topic at this link:

<https://public.govdelivery.com/accounts/CNRA/signup/31719>

and subscribe to Opt-In Certification Program Update at this link:

<https://public.govdelivery.com/accounts/CNRA/signup/31796>

The Topics send out email notifications and direct links when documents are filed in the proceeding docket.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION ADOPTING OPT-IN AMENDMENTS

WHEREAS, on June 30, 2022, the Legislature enacted, and the Governor signed Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code; and

WHEREAS, to expedite the State's transition to clean energy projects and maintain energy reliability in the face of climate change, Public Resources Code section 25545.12 authorizes the CEC to adopt and amend regulations to implement the optional permitting program (Opt-In) for non-fossil fueled power plants, energy storage facilities, and related facilities; and

WHEREAS, Public Resources Code section 25545.12 states that the adoption of these regulations shall be considered by the Office of Administrative Law (OAL) as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other area of law, the emergency regulations adopted to implement this chapter shall remain in effect until amended by the commission; and

WHEREAS, in the proceeding's docket on August 28, 2024, and the business meeting webpage on August 30, 2024, the CEC provided notice that it designated September 11, 2024, as the date for the business meeting to consider adoption of the proposed emergency regulations; and

WHEREAS, on August 28, 2024 and August 30, 2024, at least five working days prior to submission of the proposed emergency action to OAL, the CEC provided notice of the proposed action, which included the proposed emergency regulations, to every person who has filed a request for notice of regulatory action with the agency; and

WHEREAS, on September 11, 2024, the CEC considered the proposed emergency regulations at its business meeting and adopted the proposed emergency regulations as published on August 28, 2024 and August 30, 2024.

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 emergency regulations and concluded that adoption of the proposed emergency regulations is not a project under CEQA (Cal. Code Regs., tit. 14, § 15378(a)) because the

regulations will not result in a physical change to the environment or reasonably foreseeable indirect physical change to the environment. In the alternative, adoption is exempt from the CEQA as a categorical exemption under the Class 6 Information Collection exemption (Cal. Code Regs., tit. 14, §§ 15061(b)(2), 15306) and adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).); and

With regard to the Administrative Procedure Act:

- The proposed regulations are deemed an emergency by statute, and the CEC has express statutory authority to seek approval or amendment of these regulations implementing Chapter 6.2 of Division 15 of the Public Resources Code through OAL's emergency rulemaking procedures; and
- The proposed emergency 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 emergency regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed emergency regulations will result in no nondiscretionary costs or savings to any state agencies, local agencies, or school districts; and
- None of the comments received at the business meeting on September 11, 2024, and nothing else in the record, justified any changes to the proposed emergency regulations.

THEREFORE, BE IT RESOLVED, that, based on the entire record before it, the CEC finds that adoption of the proposed emergency regulations is not a project under CEQA (Cal. Code Regs., tit. 14, § 15378(a)) because the regulations will not result in a direct physical change to the environment or reasonably foreseeable indirect physical change to the environment. The adoption of the proposed emergency regulations is also exempt from CEQA as a categorical exemption under the Class 6 Information Collection exemption (Cal. Code Regs., tit. 14, §§ 15061(b)(2), 15306) and adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).); and

FURTHER BE IT RESOLVED, that, after considering all comments received and based on the entire record of this proceeding, the CEC hereby adopts emergency regulations amending the Opt-In program. The CEC takes this action under the authority of sections 25213, 25218(e) and 25545.12 of the Public Resources Code, which authorize the CEC to adopt and amend emergency regulations, as reasonable and necessary, to implement the Opt-In program; 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 24-OIR-02, <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=24-OIR-02>; and

FURTHER BE IT RESOLVED, that, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed emergency regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and filing a notice of exemption with the Office of Planning and Research.

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 September 11, 2024.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

Kristine Banaag
Secretariat

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION
ADOPTION OF EMERGENCY RULEMAKING ACTION

Docket No. 24-OIR-02

Reimbursement of Local Agencies for Review of Applications for
Certification of Nonfossil-Fueled Powerplants,
Energy Storage Facilities, and Related Facilities
Chapter 6.2 of Division 15 of the Public Resources Code

NOTICE OF PROPOSED EMERGENCY ACTION

Government Code section 11346.1(a)(2) requires that at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency action to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The California Energy Commission (CEC) intends to submit this proposed emergency rulemaking action for OAL review on **September 12, 2024**. Upon submission, OAL will have 10 calendar days within which to review and decide on the proposed emergency rulemaking action. If approved, OAL will file the regulations with the Secretary of State, and the regulations will become effective. Under Public Resources Code section 25545.12, these emergency regulations remain in effect until amended by the Commission.

The submitted emergency action, including the specific language of the proposed emergency regulations, will appear on the list of “Emergency Regulations Under Review” on OAL’s website at

https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/

and is included with this notice.

Comments must be submitted in writing to **both** CEC and OAL by September 17, 2024 if the CEC submits the proposed emergency rulemaking action for OAL review on September 12, 2024 as intended.

For CEC:

Comments should be e-filed in the 2024 Emergency Rulemaking Docket at 24-OIR-02, <https://efiling.energy.ca.gov/EComment/EComment.aspx?docketnumber=24-OIR-02>.

For e-filing questions, contact docket@energy.ca.gov.

In the alternative, written comments may also be submitted by email. Include Docket Number 24-OIR-02 in the subject line and email to docket@energy.ca.gov.

A paper copy may be sent to:

California Energy Commission
Docket Unit
Docket No. 24-OIR-02
715 P Street, MS-4
Sacramento, CA 95814

and

For OAL:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826
Email: staff@oal.ca.gov

FINDING OF EMERGENCY

In June 2022, the Legislature enacted, and the Governor signed Assembly Bill (AB) 205 (Ch. 61, Statute of 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code. Chapter 6.2 creates a new path for certain eligible facilities to optionally apply to the CEC's exclusive licensing jurisdiction and allows the CEC to process the applications under a more streamlined and expedited certification process. The new process is efficient, prioritizes reliability, maximizes public input, applies rigorous environmental review, and includes provisions to ensure that local governments, workers, California Native American tribes, and communities reap the benefits of renewable and zero-carbon resource development in the state. The new program supports an acceleration in the state's transition to clean energy to reduce greenhouse gas emissions that are driving climate change. Simultaneously, the new program will help maintain energy reliability by supporting the licensing of energy storage projects and facilities that can help increase energy storage in the state.

Public Resources Code section 25545.12 authorizes the CEC to adopt emergency regulations to implement an optional certification program (opt-in) for nonfossil-fueled power plants, energy storage facilities, and related facilities. Section 25545.12 specifically states:

Regulations adopted to implement this chapter, or any amendment to those regulations, shall be adopted by the commission in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other [sic] of law, the emergency regulations adopted to implement this chapter shall remain in effect until amended by the commission.

Therefore, these regulations are deemed an emergency by statute, and the CEC has express statutory authority to seek approval or amendment of these regulations by implementing Chapter 6.2 of Division 15 of the Public Resources Code through OAL's emergency rulemaking procedures. The regulations implementing the opt-in certification program were adopted in 2022. The CEC is proposing to amend those regulations by adding clarifying procedures implementing the statutory authority allowing local agencies to be reimbursed for their review of opt-in applications and for lost permit fees for opt-in projects.

DOCUMENTS RELIED UPON

The CEC did not rely on any documents in adopting these emergency regulations.

AUTHORITY

Public Resources Code sections 25213, 25218(e), and 25545.12.

REFERENCE

Public Resources Code sections 25519(f), 25538, 25545, 25545.1, and 25545.8.

INFORMATIVE DIGEST

Prior to the June 30, 2022, signing of AB 205, the CEC's powerplant licensing jurisdiction was limited to thermal powerplants 50 MW or larger. To accelerate the state's transition to renewable energy and to maintain electrical system reliability under this transition and during extreme climate-change-driven events, AB 205, as modified by AB 209 (ch. 251, stats. 2022), expanded the types of facilities that can be certified by the CEC to include a variety of nonfossil- and non-nuclear-fueled generation and energy storage facilities, transmission from these facilities to the first point of interconnection, and facilities that manufacture or assemble clean energy or storage technologies or their components. AB 205 adds Chapter 6.2 commencing with section 25545 to Division 15 of the Public Resources Code, which authorizes the CEC to accept applications for these additional facilities and provides a new, streamlined process for their review and approval by the CEC.

When the CEC receives an opt-in application, the CEC must forward the application to local agencies with land use and related jurisdiction in the area of the proposed project. (Pub. Res. Code § 25519(f)., incorporated into opt-in pursuant to Pub. Res. Code, § 25545.8). Local agencies must “review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.” (*Ibid.*)

Local agencies may seek reimbursement from the CEC for reviewing opt-in projects as well as for lost permit fees pursuant to Public Resources Code section 25538 (incorporated into opt-in pursuant to Pub. Res. Code, § 25545.8). Section 25538 states:

Upon receiving the commission's request for review under subdivision (f) of Section 25519 and Section 25506, the local agency may request a fee from the commission to reimburse the local agency for the actual and added costs of this review by the local agency. The commission shall reimburse the local agency for the added costs that shall be actually incurred by the local agency in complying with the commission's request. The local agency may also request reimbursement for permit fees that the local agency would receive but for the operation of Section 25500, provided, however, that such fees may only be requested in accordance with actual services performed by the local agency. The commission shall either request a fee from the person proposing the project or devote a special fund in its budget, for the reimbursement of such costs incurred by local agencies.

California Code of Regulations, title 20, section 1715 (section 1715) is an existing regulation implementing Public Resources Code section 25538 for the CEC's licensing of thermal powerplants 50 MW or larger. Section 1715 provides a process for local agencies to obtain reimbursement and for the CEC to resolve reimbursement disputes. The current opt-in regulations do not expressly incorporate section 1715. In contrast, several other regulations from CEC's licensing of thermal powerplants 50 MW or larger are expressly incorporated into the Opt-in program.

To provide regulatory clarity and consistency for reimbursement of local agencies, the CEC proposes an amendment to the opt-in regulations modeled after section 1715. Under the emergency process, the CEC proposes to add California Code of Regulations, title 20, section 1878.1 (section 1878.1). The added section is nearly identical to section 1715. Both sections define costs which are and are not eligible for reimbursement; procedures for approving budgets for reimbursement; procedures for approving reimbursement invoices; and a procedure for resolving disputes.

The procedures of section 1878.1 are tailored to the statutorily required streamlined project review process, which necessitates some differences with the reimbursement process outlined in section 1715. This includes requiring the Executive Director to resolve cost disputes as opposed to a committee.

Adopting section 1878.1 will help to ensure that local agencies are reimbursed for their eligible costs by clarifying the procedure for reimbursement. Having a clear process also supports AB 205 and the state's comprehensive accelerated efforts to address climate change and grid reliability. It supports participation by local agencies by efficiently and consistently resolving reimbursement claims under the statute and helps the CEC to receive important information efficiently and early in the process.

As part of this amendment package, the CEC is also proposing to add a new subdivision (e) to California Code of Regulations, title 20, section 1701 (section 1701). Section 1701 serves as a table of contents for CEC regulations. The new subdivision clarifies that Article 4.1 contains the regulations implementing the opt-in program. This non-substantive change provides greater organizational clarity of the CEC's powerplant certification and exemption regulations.

Existing law and regulations directly related to the proposed action include:

- Public Resources Code sections 25519(f), related to review by local agencies of CEC certification applications.
- Public Resources Code section 25538, related to reimbursement of local agencies for review of CEC certification applications and lost permit fees for thermal powerplants 50 MW or larger as well as nonfossil-fueled powerplants, energy storage facilities, and related facilities as defined in Public Resources Code section 25545(b).
- Public Resources Code section 25545, establishing the new opt-in certification program and providing definitions applicable to opt-in.
- Public Resources Code section 25545.1, specifying that opt-in certification shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency.
- Public Resources Code section 25545.8(b), incorporating Public Resources Code sections 25519(f) and 25538 into Chapter 6.2 of Division 15 of the Public Resources Code.
- California Code of Regulations, title 20, division 2, chapter 5, article 1, section 1701, listing the articles within chapter 5 power plant site certification.

- California Code of Regulations, title 20, division 2, chapter 5, article 1, section 1715, implementing Pub. Resources Code section 25538 by providing the criteria for reimbursement of local agencies for traditional powerplant certification applications.

The proposed regulations are not inconsistent or incompatible with existing regulations or statutes. Section 1878.1 is consistent with statutory authority provided by Public Resources Code sections 25519(f) and 25538 (incorporated by reference by 25545.8(b)), which authorize the reimbursement of local agencies for review of opt-in applications and for permit fees specific to nonfossil-fueled powerplants, energy storage facilities, and related facilities. Section 1878.1 is also consistent with existing regulations, such as section 1715 with modifications tailored to comport with the opt-in process and statute.

DOCUMENTS INCORPORATED BY REFERENCE

None.

OTHER MATTERS PRESCRIBED BY STATUTE

The CEC has determined that the proposed emergency rulemaking is not a “project” subject to CEQA because the proposed rulemaking relates to the process for submitting and reviewing an opt-in application, and so does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the activity is not subject to CEQA.

LOCAL MANDATE DETERMINATION

The CEC has determined that the proposed changes do not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

The CEC does not anticipate any additional costs or savings to state agencies as a result of this emergency rulemaking action. Section 1878.1 is limited to the process to be followed by local agencies, not state agencies.

The proposed regulations will not result in any reimbursable costs to local government agencies, school districts, nondiscretionary costs or savings to local government agencies, or costs or savings in federal funding to the state. The proposed regulation, section 1878.1, makes only technical, non-substantive or clarifying changes to current law and regulations. Public Resources Code section 25538 requires local agencies to present any reimbursement requests they have to the CEC. Proposed section 1878.1 would clarify the process by which a local agency should present reimbursement

requests, should the local agency seek reimbursement for its review of an opt-in application.

NONDUPLICATION

These regulations do not duplicate or serve the same purpose as any existing state or federal statute or regulation. (Gov. Code, § 11349, subd. (f); Cal. Code Regs., tit. 1, §12.) The statutory provision governing reimbursement of local agencies for the review of applications and lost permit fees applies to both the traditional powerplant applications for certification and opt-in projects. To ensure the proposed regulation is clear and provides comprehensive direction for opt-in reimbursement requests, it was necessary to duplicate some of the regulatory language used for traditional powerplant projects into the proposed regulation. All instances where existing regulations are identical have been determined to be necessary for the clarity of the proposed regulation and consistent with the standard for permissible duplication contained in California Code of Regulations, title 1, section 12(b)(1).

NECESSITY

The following description of facts demonstrates the need for the proposed regulations to effectuate the provisions of Chapter 6.2 of Division 15 of the Public Resources Code being implemented, interpreted, or made specific and to address the demonstrated emergency. The emergency regulations support and effectuate the purpose of addressing climate change and grid reliability by expediting the certification of renewable energy and energy storage facilities, and facilities that manufacture those systems and components.

Section 1701(e). Scope of Regulations.

Adding section 1701(e) is a non-substantive addition necessary to clarify that California Code of Regulations, title 20, article 4.1 applies to the certification of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code. Section 1701 serves as a table of contents for Chapter 5 of Division 2 of Title 20 of the Code of California Regulations. For completeness, it is necessary to include a reference to article 4.1 of Chapter 5, which was added to Chapter 5 in 2022.

Section 1878.1. Reimbursement of Local Agencies.

This section is necessary to clarify how local agencies may request reimbursement for the review of opt-in applications and lost permit fees. By clearly articulating the process by which local agencies may be reimbursed, they can more efficiently and consistently satisfy reimbursement requirements and the CEC can more efficiently analyze the provided information. Adding the section effectuates the purpose of Chapter 6.2 to Division 15 of the Public Resources Code, which requires that review of opt-in applications be done in a streamlined and timely manner.

Section 1878.1(a)(1)

With two exceptions described below, the added language is identical to section 1715(a), which has been proven to be an adequate method for defining eligible costs and is needed for consistency between programs. First, in Section 1878.1(a)(1)(A), the CEC added language clarifying that local agencies can recoup lost permit fees they would normally receive for an application for a facility as defined in Public Resources Code section 25545(b). This is necessary to capture the full universe of lost permit fees for opt-in projects. Next, in Section 1878.1(a)(1)(B), the CEC has added language emphasizing that reimbursement does not include expenses incurred prior to a CEC request for review or expenses incurred for review beyond the scope of the CEC request. This is necessary for clarity and to comply with the scope of reimbursement set forth in Public Resources Code sections 25519(f) and 25538.

Section 1878.1(b)(1)-(3)

The proposed language identifies specific categories of costs that are not eligible for reimbursement. These categories are common expenses that a local government may attempt to include in a budget and for clarity, are identified in the text. With two exceptions described below, the categories are the same as those in section 1715(b), which have been proven to be an adequate method for defining ineligible costs and are needed for consistency between programs. As a first exception, CEC added language to category (b)(1) emphasizing that reimbursement does not include certain attorneys' fees and costs. This clarifies the existing category by providing an example of ineligible expenses "for the presentation or defense of positions" outside the scope of the requested review. Next, the CEC removed a category (taking a position as an intervenor) from the list of ineligible categories since the intervention procedure does not apply to the opt-in process. Eliminating that category increases clarity and prevents confusion as to whether the opt-in process allows for intervention.

Section 1878.1(c)(1)-(6)

The proposed language sets forth the process for a budget to be approved and, with one exception described below, is the same as section 1715(c), which has proven to be an adequate method for budget approval and is needed for consistency between programs. The one difference between the two procedures is that proposed 1878.1(c)(1) removes the reference to a CEC request for review sent to a local agency by the CEC Chair or Presiding Member. This scenario would not apply to the opt-in program, since all requests are sent by the Executive Director or his or her delegee. Eliminating the inapplicable reference increases clarity and prevents confusion.

Section 1878.1(d)(1)-(3)

The proposed language sets forth the process for invoices to be submitted and reviewed by the CEC and applicant. The language is the same as section 1715(d). That approach has proved to be an adequate method for invoice submittal and review.

Incorporating it here for the opt-in program is necessary for consistency between programs.

Section 1878.1(e)

The proposed language sets forth the process to reconcile budget and invoice disputes. While historically applicants and local jurisdictions have resolved cost reimbursement matters, the proposed text is necessary to provide a backstop process in the event mutual agreement between applicant and local jurisdiction is not reached. The language is similar to section 1715(e) but is tailored to avoid the use of a committee, since opt-in does not utilize committees as part of the project review and decision process. Although the Commission could assign a reimbursement fee dispute to a committee, such process is cumbersome, creates delay, and is inconsistent with the overall framework of the opt-in non-adjudicative process. Therefore, the task of considering reimbursement disputes is assigned to the Executive Director who is empowered to manage the day-to-day operations of the CEC. In addition, the Executive Director, through staff, is already engaged in the proceeding and would have knowledge of the project, any requests made to the local jurisdiction for comments on the application and the status of staff's environmental review. Thus, the proposed language authorizes the Executive Director to issue a decision on budget and invoice disputes.

§ 1701 Scope of Regulations

(a) Article 1 applies to all notice of intent proceedings and all application for certification proceedings.

(b) Article 2 of this chapter shall apply to all notices except as provided in Article 4.

(c) Article 3 of this chapter shall apply to all applications for certification except as provided in Article 4.

(d) Article 4 of this chapter shall apply to all geothermal notices and applications for certification.

(e) Article 4.1 of this chapter shall apply to all certifications of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code.

(f)(e) Article 5 of this chapter shall apply to all applications for a Small Power Plant Exemption.

(g)(f) Article 6 of this chapter shall apply to all powerplant and transmission line jurisdictional determinations.

(h)(g) Article 7 of this chapter shall apply to all Expedited Applications under Public Resources Code Section 25550.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25545, and 25545.1, Public Resources Code.

§ 1878.1 Reimbursement of Local Agencies

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for an application for a facility as defined in Public Resources Code section 25545(b) in the absence of commission jurisdiction, and

(B) the added costs of services performed directly in response to commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged. This does not include expenses incurred prior to a commission

request for review or expenses incurred for review beyond the scope of the commission request.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters that the agency is requested to review or not within the area of the agency's expertise; this includes attorneys' fees and costs associated with advocating for or against commission approval of the facility.

(2) expenses for which it receives payment from other sources; or

(3) entertainment and first class travel expenses.

(c) Procedure for approving reimbursement budgets.

(1) To be eligible for reimbursement, a local agency must receive a request for review from the Executive Director or delegee.

(2) To apply for reimbursement, a local agency shall, within 21 days of receiving a request for review from the commission, file an itemized proposed budget with the staff and the applicant estimating the actual and added costs that are likely to be incurred during such review. The proposed budget shall justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review. A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

(3) Within 10 working days of receiving a proposed budget, the staff shall notify the agency, in writing, whether the proposed budget is complete or incomplete. If the proposed budget is incomplete, the staff shall provide the local agency with a list of deficiencies that must be corrected to complete the proposed budget request.

(4) If neither the commission staff nor the project applicant files a written objection to the proposed budget within 10 working days after the proposed budget is determined to be complete, then the proposed budget is deemed approved.

(5) If a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.

(6) A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

(d) Procedure for approving reimbursement invoices.

(1) A local agency seeking reimbursement must receive approval of its proposed budget before it files an invoice for expenses actually incurred. Reimbursement may not exceed the approved budget.

(2) On either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.

(3) If the applicant does not object to the invoice within 10 days after receipt, then it shall pay the local agency the amount of the invoice within 14 days of the receipt of the invoice.

(e) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (c) above, or a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency, the local agency or applicant shall notify the Executive Director in writing of the dispute. The Executive Director shall resolve the dispute by filing a written decision based on good cause and any information provided by the applicant and local agency on the merits of reimbursement.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25519(f), 25538, 25545, 25545.1, and 25545.8, Public Resources Code.

Title 20 of the California Code of Regulations

The proposed new adopted language appears as underline (example) and proposed deletions appear as strikethrough (~~example~~). Existing language appears as plain text.

§ 1701 Scope of Regulations

(a) Article 1 applies to all notice of intent proceedings and all application for certification proceedings.

(b) Article 2 of this chapter shall apply to all notices except as provided in Article 4.

(c) Article 3 of this chapter shall apply to all applications for certification except as provided in Article 4.

(d) Article 4 of this chapter shall apply to all geothermal notices and applications for certification.

(e) Article 4.1 of this chapter shall apply to all certifications of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code.

~~(f)(e)~~ Article 5 of this chapter shall apply to all applications for a Small Power Plant Exemption.

~~(g)(f)~~ Article 6 of this chapter shall apply to all powerplant and transmission line jurisdictional determinations.

~~(h)(g)~~ Article 7 of this chapter shall apply to all Expedited Applications under Public Resources Code Section 25550.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25545, and 25545.1, Public Resources Code.

§ 1878.1 Reimbursement of Local Agencies

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency

would normally receive for an application for a facility as defined in Public Resources Code section 25545(b) in the absence of commission jurisdiction, and

(B) the added costs of services performed directly in response to commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged. This does not include expenses incurred prior to a commission request for review or expenses incurred for review beyond the scope of the commission request.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters that the agency is requested to review or not within the area of the agency's expertise; this includes attorneys' fees and costs associated with advocating for or against commission approval of the facility.

(2) expenses for which it receives payment from other sources; or

(3) entertainment and first class travel expenses.

(c) Procedure for approving reimbursement budgets.

(1) To be eligible for reimbursement, a local agency must receive a request for review from the Executive Director or delegee.

(2) To apply for reimbursement, a local agency shall, within 21 days of receiving a request for review from the commission, file an itemized proposed budget with the staff and the applicant estimating the actual and added costs that are likely to be incurred during such review. The proposed budget shall justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review. A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

(3) Within 10 working days of receiving a proposed budget, the staff shall notify the agency, in writing, whether the proposed budget is complete or incomplete. If the proposed budget is incomplete, the staff shall provide the local agency with a list of deficiencies that must be corrected to complete the proposed budget request.

(4) If neither the commission staff nor the project applicant files a written objection to the proposed budget within 10 working days after the proposed budget is determined to be complete, then the proposed budget is deemed approved.

(5) If a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.

(6) A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

(d) Procedure for approving reimbursement invoices.

(1) A local agency seeking reimbursement must receive approval of its proposed budget before it files an invoice for expenses actually incurred. Reimbursement may not exceed the approved budget.

(2) On either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.

(3) If the applicant does not object to the invoice within 10 days after receipt, then it shall pay the local agency the amount of the invoice within 14 days of the receipt of the invoice.

(e) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (c) above, or a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency, the local agency or applicant shall notify the Executive Director in writing of the dispute. The Executive Director shall resolve the dispute by filing a written decision based on good cause and any information provided by the applicant and local agency on the merits of reimbursement.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25519(f), 25538, 25545, 25545.1, and 25545.8, Public Resources Code.

Memorandum

To: Docket 24-OIR-02 Date: August 28, 2024

From: Alex Mayer, Senior Attorney and Crystal Cabrera, Staff Counsel
Chief Counsel's Office
California Energy Commission

Subject: California Environmental Quality Act Compliance

At the September 11, 2024 California Energy Commission (CEC) Business Meeting, CEC staff will propose that the CEC adopt a proposed resolution amending the Opt-In emergency regulations by adding clarifying procedures implementing Public Resources Code sections 25538 and 25545.8 to allow local agencies to be reimbursed for their review of opt-in applications and for lost permit fees for opt-in projects. The Opt-In program is authorized by Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code, which authorizes the CEC to accept applications for nonfossil-fueled powerplants, battery storage, and related facilities and provides a new, streamlined process for their review and approval by the CEC.

I. Adoption of the Regulations is Not a Project.

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 emergency regulations is not a project under CEQA. The proposed emergency regulations implement a process for reimbursement for local agencies that clarifies how the CEC will determine which local agency costs incurred to review opt-in applications are eligible for reimbursement; procedures for approving budgets for reimbursement; procedures for approving reimbursement invoices; and a procedure for resolving disputes.

California Code of Regulations, title 14, section 15060 states, in part, that a lead agency must first determine whether an activity is subject to CEQA and that an activity is not subject to CEQA if the activity is not a project as defined in section 15378. CEQA Guidelines section 15378 states that an activity is a project if it has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

In the case of this rulemaking, the proposed emergency regulations set forth a process for reviewing requests for reimbursement by local agencies for review of opt-in applications and lost permit fees for opt-in projects. The action to establish procedural requirements in emergency regulations does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but implements an administrative process. Therefore, the adoption of the emergency regulations is not a project and is not subject to CEQA.

II. Even if Adoption of the Regulations Were a Project, the Class 6 Exemption and the Common Sense Exemption Would Apply.

The adoption of the emergency regulations clarifying how local agencies may seek reimbursement for review of opt-in applications and for lost permit fees for opt-in projects is also exempt from CEQA as a categorical exemption under the Class 6 Information Collection exemption. (Cal. Code Regs., tit. 14, §§ 15601(b)(2), 15306.) Pursuant to section 15306, activities that involve data collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource, have been determined not to have a significant effect on the environment and are therefore exempt from CEQA. In this case, the regulations pertain solely to data collection and therefore, if they were a project, would fall within the Class 6 exemption.

Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply here, and there is no reasonable possibility that the approval will have a significant effect on the environment due to unusual circumstances. For these reasons, the adoption of the opt-in emergency regulations is exempt from CEQA.

Adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA only applies to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) Because the action concerns the adoption of regulations covering procedures for the opt-in program and it does not provide for any physical changes to the environment, it can be seen with certainty that there is no possibility that the adoption of the reimbursement procedures may have a significant effect on the environment.

III. Conclusion.

As shown, adoption of the emergency regulations implementing a reimbursement process for local agencies is not a project under CEQA and thus CEQA does not apply. Even if the adoption is a project and CEQA does apply to the agency action, consistent with the Class 6 exemption in section 15306 of the CEQA Guidelines, the adoption is exempt from CEQA as information gathering and resource evaluation. Additionally, adoption of the regulations is consistent with the common sense exemption under section 15061(b)(3) of the CEQA Guidelines. For these reasons, the adoption of these emergency regulations by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.