

## DOCKETED

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*Comment Received From: Independent Energy Producers Association*

*Submitted On: 2/21/2018*

*Docket Number: 15-OII-01*

**Comments of the Independent Energy Producers Association on Proposed Changes to Siting Regulations**

*Additional submitted attachment is included below.*



February 21, 2018

Chester Hong  
California Energy Commission  
Docket No. 15-OII-01  
1516 9th Street, MS-4  
Sacramento, CA 95814

**RE: 15-OII-01: Comments of the Independent Energy Producers  
Draft Language of Amendments to Title 20 of the California Code of Regulations**

Dear Mr. Hong:

On behalf of the Independent Energy Producers Association (“IEP”), we submit these comments on the revisions to Title 20 of the California Code of Regulations proposed by California Energy Commission (“Commission”) Staff.<sup>1</sup> Overall, IEP supports Staff’s proposed revisions, and is pleased that several of its recommendations have been reflected in the proposed revisions.

IEP has three remaining chief concerns that are not addressed by Commission Staff’s proposed revisions to the Commission’s regulations. These three issues are discussed in further detail below. In addition, IEP is also proposing changes to other Staff’s proposed revisions, many of which were discussed at the January 30<sup>th</sup> workshop. These additional comments are set forth in Attachment A to these comments. IEP thanks Staff for its hard work in this proceeding, and appreciates the opportunity to provide these comments.

## **DISCUSSION**

### **I. Section 1708: Costs and Fees**

While the proposed language for Section 1708 is an improvement from previous language, IEP has remaining concerns. Specifically, IEP is concerned by the ambiguity of how the scope of “actual costs” that must be borne by a project owner will be calculated and accounted for, the

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<sup>1</sup> Staff’s draft language was provided as part of the workshop notice published on January 30, 2018 (TN#: 222142).

lack of cost containment safeguards, and the lack of a mechanism for a project owner to challenge excessive costs.<sup>2</sup>

**A. Section 1708 Does Not Provide Guidance As To How “Actual Costs” Will Be Defined Or Calculated.**

The critical, statutory term “actual costs” should be clearly defined to provide transparency and clarity regarding the costs of processing a petition to amend. For example, it is unclear how the costs of staff, staff subcontractor, and legal counsel will be assessed—whether based on salary, contract, fee schedule, or otherwise. Furthermore, the newly proposed language for Section 1708 would require reimbursement for undefined “labor and administrative expenses associated with the production and distribution of staff, committee, and commission documents.” It is not clear how such “expenses” will be characterized, tracked, and correctly charged to project owners. The new language also raises the following questions:

- Are “labor and administrative expenses” associated with “production and distribution of staff, committee, and commission documents” appropriately characterized as costs to process the petition to amend?
- Will project owners be charged for the filing and docketing of staff, committee, and commission documents?
- Does document “production” include word processing, printing, and copying of materials? How will these costs be catalogued and tracked?
- If the activities of commissioners and their advisors are excluded from the definition of “processing the petition to amend”, why are project owners responsible for the “labor and administrative expenses” associated with producing and distributing committee and commission documents?

The Commission’s regulations should be revised to provide for Commission adoption of a rate schedule on a yearly basis that clearly outlines the scope of services provided and the specific costs for activities related to the processing of petitions to amend. IEP’s proposed revisions to Section 1708 are set forth in Attachment A.

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<sup>2</sup> IEP first raised these issues in its *Post-Scoping Workshop Comments, Attachment B* submitted on December 9, 2015. (TN#: 206911; available at: [http://docketpublic.energy.ca.gov/PublicDocuments/15-OII-01/TN206911\\_20151209T134657\\_Greggory\\_L\\_Wheatland\\_Comments\\_Independent\\_Energy\\_Producers\\_Aссо.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/15-OII-01/TN206911_20151209T134657_Greggory_L_Wheatland_Comments_Independent_Energy_Producers_Aссо.pdf))

### **B. Project Owners Are Entitled To A “Full Accounting” Of The Actual Costs To Process A Petition To Amend.**

Public Resources Code Section 25806 requires the Commission to conduct “a *full accounting* of the actual cost of processing the petition to amend” (emphasis added). However, this important statutory requirement remains unaddressed by the proposed changes to Section 1708.

Section 1708 should be revised to provide a process by which “a full accounting” will occur, which includes the following elements: (1) clearly defined rates or costs for personnel time, as discussed above; (2) a clear time keeping system to record staff, subcontractor, and legal counsel time; and (3) clear documentation of the “administrative expenses” incurred, and the associated rates or costs. IEP’s proposed revisions to Section 1708 are set forth in Attachment A.

### **C. Project Owners Should Have A Mechanism To Challenge Or Appeal Costs.**

Section 1708 should be revised to include a mechanism for a project owner to challenge or appeal assessed costs. Such a mechanism will serve an important cost containment function, ensure efficient processing of a petition to amend, and provide a measure of protection to project owners against improperly assessed costs. As set forth in Attachment A, project owners should have the right to appeal items in the full accounting to the Executive Director, or his or her designee, and thereafter to the commission by motion appealing the decision of the executive director.

## **II. New Section 1769(a)(3)(B): Changes To Conform The CEC Certification To The Approvals Of The Local Air District Should Be Subject To Staff Approval Without Payment Of A Fee.**

As discussed at the January 30<sup>th</sup> workshop, new Section 1769(a)(3)(B) should be revised to provide for Staff approval of a change to conditions of certification that simply incorporates changes to the Air District’s approvals. As previously proposed by IEP, Section 1769(a)(3)(B) should be revised as follows:

(B) Staff, in consultation with the air pollution control district where the project is located, may approve any change to a condition of certification regarding air quality, provided:~~(i) that the criteria in subsections (a)(2)(A)(i) and (ii) are met; and (ii) that no daily, quarterly, annual or other emission limit will be increased as a result of the change.~~

Such revisions are essentially administrative changes to ensure that a facility's certification conforms with the language of Air District approvals, and should be exempted from the "processing" fee.

### **III. Section 1769: Post Certification Petition For Changes In Project Design, Operation, Or Performance And Amendments To The Commission Decision**

In prior submittals, IEP recommended revisions to the Commission's regulations which would exempt minor project changes from the petition to amend process as a ministerial action. Specifically, if the change is so small that it would require no local approval at all, the change should not be subject to a lengthy approval process by the Commission. This would allow project owners to promptly undergo activities such as like-kind repair and replacements, minor repairs and alterations, and emergency repairs without the need for wasteful and inefficient expenditures of Commission and project owner resources to process a petition for such minor, benign activities.

To memorialize that these minor, ministerial actions do not require a petition to amend, IEP proposes a new Subsection 1769(a)(6), as set forth below and in Attachment A:

1769(a)(6): A petition is not required for the ministerial activities, including, but not limited to, the following:

- (A) Maintenance activities routinely performed in the electric generation industry;
- (B) Like-kind replacement or repair of component parts of the thermal powerplant any related facilities;
- (C) The use of portable and prefabricated structures that would not require a building permit from the local land use authority but for the Commission's jurisdiction;
- (D) Platforms, stairs, walkways, and non-structural concrete slabs and paving;
- (E) Temporary tents, shade structures, awnings or similar facilities;
- (F) Tanks of less than 5,000 gallons capacity;
- (G) Emergency repairs;
- (H) Trenching or excavations related to any of the above; and

- (I) Any facilities, structure, or improvements that could have been approved by the CBO during the detailed design phase of construction of the thermal powerplant or related facilities.

One consistent theme has been the inability to point to any specific language in the regulations that confirms that certain activities do not require a petition to amend. Absent such language, project owners have been forced to file petitions for activities that would not require any regulatory review or approval from local governments but for the Commission's exclusive siting jurisdiction.

Adding this new language will give the public, project owners, and Staff specific authority to avoid filing a petition to amend for activities that are ministerial. CEC-jurisdictional projects are sometimes required to spend significant resources and suffer substantial time delays for approval of ministerial actions that do not require local governmental approvals for projects outside the Commission's jurisdiction. Significantly, providing clarity on the types of activities that do not require an amendment will create a level playing field for CEC and non-CEC jurisdictional projects. This is sound public policy.

### CONCLUSION

IEP appreciates the opportunity to provide comments on the proposed changes to the Commission's regulations. In large part the proposed changes are an improvement to the existing regulations. However, as described above, IEP is still concerned with the ambiguity and lack of transparency in how fees for petitions to amend will be assessed, in addition to the lack of process for a "full accounting" of costs to be rendered. Moreover, there are still important changes to the Commission's regulations that should be made to streamline the processing of minor post-certification changes to the project or air quality conditions of certification. Finally, the proposed regulations should enumerate the types of minor project changes that would be exempt from the requirement to submit a petition to amend the project. IEP has proposed a new section to effect this suggestion.

Incorporation of the revisions proposed by IEP in Attachment A will address these remaining concerns. Thank you for your hard work on these important issues.

ELLISON SCHNEIDER HARRIS & DONLAN LLP



By:

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Attorneys for IEP

## ATTACHMENT A

IEP's proposed changes to the express terms published by Staff on January 12, 2018 are **highlighted**, with proposed additions shown in **bold and double underline**, and proposed deletions are shown in ~~**bold and strikethrough**~~.

### § 1212. Rights of Parties, Record and Basis for Decision.

(a) Rights of Parties. Subject to the presiding member's authority to regulate a proceeding as prescribed in section 1210, and other rights identified in specific proceedings, each party shall have the right to call and examine witnesses, to offer oral and written testimony under oath, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence.

(b) Hearing Record.

(1) The "hearing record", in an adjudicatory proceeding, ~~is all of the information the commission may consider in reaching a decision. The hearing record shall contain:~~

(A) all documents, ~~filed comments~~, materials, ~~oral statements~~, or testimony, received into evidence by the committee or commission at a hearing;

(B) public comment, including comments from other government agencies, offered orally at a hearing, or written comments received into the record at a hearing;

(C) any materials or facts officially noticed by the committee or commission at a hearing; ~~and~~

(D) all transcripts of evidentiary hearings; and

~~(D-E)~~ for siting cases, subject to 1212(b)(3), staff's Final Staff Assessment and any timely filed supplemental assessments.

(2) Parties may move to exclude information from the hearing record ~~consideration by the commission~~ on the ground that it is not relevant, is duplicative of information already in the record, or on another basis. If the presiding member grants such a motion, the information shall be excluded from the hearing record. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency, and adequacy of the record.

(3) In a siting case, if a party requests a staff witness be present to sponsor specific portions of the Final Staff Assessment, or any supplemental assessments, and no witness is made available for questioning, the relevant portions of the staff assessment or supplemental assessments at issue shall be treated as comment and shall not be sufficient, in and of itself,

to support a finding by the commission.

**(4) Public comments and briefs filed by parties in an adjudicative proceeding, as prescribed in section 1208, may be considered by the committee or commission, but shall not be sufficient in themselves to support a finding. The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, to provide rebuttal evidence.**

(c) Basis for and Contents of Decisions.

1) Decisions in adjudicative proceedings shall be based on the evidence in the hearing record, explain the basis for the decision, and shall include but need not be limited to all legally-required findings of fact and conclusions of law.

2) A finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or opinions. ~~The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, to provide rebuttal evidence.~~ The committee or commission shall give appropriate weight to information in the record as allowed by law.

3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

**4) Public comments and briefs filed by parties in an adjudicative proceeding, as prescribed in section 1208, may be considered by the committee or commission, but shall not be sufficient in themselves to support a finding. The committee or commission may rely on public comment, standing alone, to support a finding if the committee or commission provides notice of its intent to rely upon such comment at the time the comment is presented, other parties are provided an opportunity to question the commenter, and parties are given a reasonable opportunity, as ordered by the presiding member, to provide rebuttal evidence.**

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code; and Section 11513, Government Code.

**§ 1708. Costs and Application, Compliance, and Reimbursement Fees.**

~~(a)~~ A cashier's check or wire transfer in the amount required by subsections (c) and (d) shall accompany the filing of the notice.

(a) A project owner shall pay all fees specified in Public Resources Code sections 25802 and 25806, and reimburse the commission for its actual costs of processing a petition to amend as specified in 25806(e). In calculating the fee required by Public Resources Code section 25806(a), generating capacity shall be determined in the manner specified in section 2003(a).

(b) "Processing the petition to amend," as used in Public Resources Code section 25806(e), includes the activities of staff, staff subcontractors, and legal counsel representing staff in the preparation of the staff assessment and in any proceeding on a petition through the adoption of the commission decision, as well as the labor and administrative expenses associated with the production **and distribution** of staff, **committee, and commission documents**. The activities of commissioners and their advisors, commission hearing officers, and other attorneys and commission staff advising commissioners or the commission, are not considered part of processing the petition to amend.

(c) **"Actual costs" for the activities described in subdivision (b) shall be calculated based on a rate schedule adopted by the commission. The rate schedule shall set forth: (1) the hourly rates for staff, staff subcontractors, legal counsel representing staff, and administrative staff and (2) the types of administrative activities that may be required for a petition to amend and the associated costs.**

(d) **If requested by a project owner, the commission shall, within fourteen days, provide a full accounting of the costs incurred in the processing of the petition to amend up to the date of the request. The full accounting shall include, at a minimum, the following: (1) the hours billed by staff, staff subcontractors, legal counsel representing staff, and administrative staff, as applicable; (2) the hourly rate associated with each; (3) a detailed description of the scope of work performed; and (4) supporting documentation for any administrative expenses. The activities of commission staff in preparing the accounting are not considered part of processing the petition to amend. Project owners may appeal items in the full accounting to the Executive Director, or his or her designee, and thereafter to the commission by motion appealing the decision of the Executive Director.**

~~(b)~~ Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.

~~(e)~~ A cashier's check or wire transfer for \$100,000 plus \$250 per megawatt (MW) of generating capacity shall accompany the filing of an Application for Certification

~~(AFC). Generating capacity shall be determined in accordance with Section 2003(a).~~

~~(f) — The owner of each facility granted certification shall submit a cashier's check or wire transfer for \$15,000 annually. The first payment of the annual fee shall be due on the date the Commission adopts the final decision for the facility. Subsequent payments shall be paid on July 1 of each year in which the facility retains its certification.~~

~~(g) — The fees specified in (c) and (d) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce.~~

~~(h) — A project which use a renewable resource as its primary fuel or power source is exempt from the filing and compliance fees identified in (c) and (d).~~

~~(i) — Fees paid pursuant to this section are non-refundable. Additional fees may be required in the event an amendment to the AFC increases the Gross generating capacity identified in (c).~~

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25538, 25802 and 25806, Public Resources Code.

**§ 1745.5. Presiding Member's Proposed Decision; Comment Period; Basis; Contents; Hearing.**

(a) After the end of the evidentiary hearings, the presiding member, in consultation with the other committee members, shall prepare and file a proposed decision on the application that meets the requirements of section 1748.

(b) The presiding member's proposed decision shall: ~~(1) B~~ be based on a consideration of the entire hearing record and contain the following:

~~(2)~~ Environmental Factors:

(A) a description of potential significant environmental effects;

(B) an assessment of the feasibility of mitigation measures and a reasonable range of alternatives that could lessen or avoid the adverse effects; and

(C) if any significant effects are likely to remain even after the application of all feasible mitigation measures and alternatives, whether economic, legal, social, technological or other environmental benefits of the project outweigh the unavoidable adverse effects;

~~(3)~~ Laws, Ordinances, Regulations, and Standards:

(A) a description of all applicable federal laws, ordinances, regulations and standards and an assessment of the project's compliance with them;

(B) a description of all applicable state, regional, and local laws, ordinances, regulations and

standards, and the project's compliance with them.;

(i) if the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation, a description of all staff communications with the agencies responsible for enforcing the laws, ordinances, regulations and standards for which there is noncompliance, in an attempt to correct or eliminate the noncompliance;

(ii) if the noncompliance with a state, local, or regional ordinance or regulation cannot be corrected or eliminated, the proposed decision shall discuss whether the proposed project is required for public convenience and necessity and whether there are more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability; and

(iii) If the noncompliance **with a state, local, or regional ordinance or regulation** cannot be corrected or eliminated, the proposed decision shall satisfy the commission's obligation to inform the state, local, or regional governmental agency if it makes the findings required by Public Resources Code section 25525.

(C) to the extent not already covered under subdivisions (2) or (3), and for applications for certification, as defined in Public Resources Code section 25102, concerning sites in the Coastal Zones, as defined in Public Resources Code section 30103, or the Suisun Marsh, as defined in Public Resources Code section 29101, a discussion of the issues raised by the California Coastal Commission, if any, pursuant to section 30413(e) of the California Public Resources Code; or issues raised by the San Francisco Bay Conservation and Development Commission, if any, pursuant to section 66630 of the Government Code:

(D) to the extent not already covered under subdivisions (2) or (3), and for sites in the Coastal Zones or Suisun Marsh for which a notice of intent as defined in Public Resources Code section 25113 has been filed:

(i) a discussion of provisions to meet the objectives of the California Coastal Act, as may be specified in the applicable report submitted by the California Coastal Commission under section 30413(d); or to meet the requirements of objectives of the Bay Conservation and Development Act, as may be specified in the applicable report submitted by the San Francisco Bay Conservation and Development Commission under section 66645 of the Government Code;

(ii) if the provisions described in paragraph (i) would result in greater adverse effect on the environment or would be infeasible, an explanation of why; and

(iii) a statement of whether the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500;

(43) a description of land use, as necessary, consistent with Public Resources Code section 25528.

(54) for new sites proposed for location in the coastal zone or any other area with recreational, scenic, or historic value, proposed conditions relating to land that should be acquired, established, and maintained by the applicant for public use and access consistent with Public Resources Code Section 25529;

(65) for new sites proposed along the coast or shoreline of any major body of water, proposed conditions on the extent to which the proposed facilities should be set back from the coast or shoreline to permit reasonable public use and to protect scenic and aesthetic values consistent with Public Resources Code Section 25529

(76) for sites in areas specified in section 25527 of the Public Resources Code state, regional, county, and city parks; wilderness, scenic, and natural reserves; areas for wildlife protection, recreation, and historic preservation; natural preservation areas in existence as of January 7, 1975; or estuaries in an essentially natural and undeveloped state: an analysis of whether (A) the facilities will be consistent with the primary land use of the area, (B) there will be any substantial adverse environmental effects, and ~~whether (C)~~ the approval of the public agency having ownership or control of the land has been obtained, whether or not such approval is subject to preemption under Public Resources Code section 25500.

(87) where a nuclear powered facility is proposed, an analysis of the factors in Public Resources Code sections 25524.1 and 25524.2;

(98) an analysis of the extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d);

(409) if the application is for a facility to be located on a potential multiple facility site, as determined under of the Public Resources Code section 25516.5, an analysis of the factors listed in Public Resources Code section 25524.5.

(4410) a discussion of any public benefits from the project, including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits;

(4211) provisions for restoring the site as necessary to protect the environment, if the commission does not certify the project; ~~and.~~

(4312) Aa recommendation as to whether the proposed site and related facilities should be certified, and if so under what conditions; and

(4413) an Engineering Assessment relating to facility efficiency, health and safety;

(4514) a Reliability Assessment;

(4615) A any other relevant matter identified by the presiding member;. -

~~(4716)~~ responses to all comments, on significant environmental issues, points raised during the evidentiary hearing; and

~~(4817)~~ the reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

(c) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution filing.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25519(c), 25522, 25523 and 25525-25529, Public Resources Code.

### **§ 1748. Final Decision.**

(a) At the conclusion of the hearings under Section 1747, the commission shall adopt a final written decision in conformity with section 1212 of this title, which includes all of the information specified by Public Resources Code section 25523.

(b) The decision shall not certify any site and related facility unless the commission finds that:

(1) as necessary, land use is consistent with Public Resources Code Section 25528.;

(2) if the powerplant will require reprocessing of nuclear fuel rods or off-site storage of nuclear fuel rods in order to provide continuous onsite fuel core reserve storage capacity: facilities with adequate capacity to reprocess nuclear fuel rods or with adequate capacity to store them, as applicable, have been approved by an authorized agency of the United States, and are or will be in actual operation at the time the powerplant requires such reprocessing or storage, as required by Public Resources Code sections 25524.1 and 25524.2;

(3) with respect to sites in the locations designated by the California Coastal Commission pursuant to Public Resources Code section 30413(b), or by the San Francisco Bay Conservation and Development Commission pursuant to Government Code section 66645: that the findings required by Public Resources Code section 25526 have been made by the appropriate commission;

(4) with respect to sites in the areas specified in Public Resources Code section 25527 ~~state, regional, county, and city parks; wilderness, scenic, and natural reserves; areas for wildlife protection, recreation, and historic preservation; natural preservation areas in existence as of January 7, 1975; and estuaries in an essentially natural and undeveloped state, that:~~ (A) the facility will be consistent with the primary land use of the area, (B) there will be no substantial adverse environmental effects, and (C) the approval of the public agency having ownership or control of the land has been obtained;

(5) with respect to a facility proposed to be located in the coastal zone or any other area with

regional, scenic, or historic value, as specified by Public Resources Code section 25529, a finding that an area will be established for public use, **as determined by the commission**, and that the facility to be located along the coast or shoreline of any major body of water will be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values;

(6) with respect to a facility which adds generating capacity to a potential multiple-facility site in excess of the maximum allowable capacity established by the commission pursuant to section 25516.5, the findings required by section 25524.5 of the Public Resources Code;

(47) if the site or facility does not comply with an applicable state, local or regional laws, ordinances, regulations and standards; a finding that the facility is required for public convenience and necessity, and there are no more prudent and feasible means of achieving such public convenience and necessity, a finding made pursuant to the requirements of as required by section 25525 of the Public Resources Code;

(58) if the construction, operation, or shutdown and decommissioning of the powerplant will cause a significant environmental impact, either (A) or (B):

(A) (i) with respect to matters within the authority of the commission: changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effects; and

(ii) with respect to matters not within the commission's authority but within the authority of another agency: changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency;

or

(B) (i) specific economic, social, or other considerations make infeasible all mitigation measures or project alternatives that would mitigate or avoid the significant environmental effects; and

(ii) ~~That~~ that the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 21080.1, 21081, 25216.3, 25523, 25525-25527, 25529 and 25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

### **Article 3.1. Post-Certification Activities**

### **§ 1751. Post-Certification List Serve.**

After the final decision is issued, the commission shall create an electronic list serve **for persons to receive filed documents** related to post-certification activities, **including compliance filings and proposed amendments to a facility license.** In closing the application for certification proceeding the commission shall file a notice in the application for certification project docket providing instructions on how to **receive post-certification related documents through subscribe to** the list serve.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25523, 25532 and 25534, Public Resources Code.

### **§ 1769. Post Certification Petition for Changes in Project Design, Operation or Performance and Amendments and Changes to the Commission Decision.**

(a) ~~Project Modifications~~ Change in Project Design, Operation, or Performance Requirements.

(1) After the final decision is effective under section 1720.4, the ~~applicant project owner~~ shall ~~file with petition~~ the commission a ~~petition~~ for approval of any modifications change it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed ~~modifications change~~, including new language for any conditions of certification that will be affected;

(B) A discussion of the necessity for the proposed ~~modifications; change and~~

~~(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;~~

(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;

(C) A description of any new information or change in circumstances that necessitated the change;

~~(E)(D) An analysis of the impacts the modification effects that the proposed change to the project may have on the environment and proposed measures to mitigate any significant adverse impacts environmental effects;~~

(F)(E) A discussion An analysis of the impact of how the modification on proposed change would affect the facility's ability to comply project's compliance with applicable laws, ordinances, regulations, and standards;

~~(G)(F) A discussion of how the modification affects proposed change would affect the public;~~

~~(H)(G)~~ A list of property owners potentially affected by the modification; and A list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of any affected project linears and 1000 feet of the project site;

~~(H)(H)~~ A discussion of the potential effect of the proposed change on nearby property owners, residents, and the public and the parties in the application proceedings.; and

(I) A discussion of any exemptions from the California Environmental Quality Act, commencing with section 21000 of the Public Resources Code, that the project owner believes may apply to **commission's** approval of the proposed change.

~~(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.~~

(2) Within 30 days after a petition is filed and the applicable fee is paid, staff shall review the petition to determine the extent of the proposed change and prepare a summary of the petition. The summary shall be concise and understandable, shall describe the content of the petition using the applicant's own words whenever possible, and shall include a description of the commission's procedures concerning proceedings on the petition, as appropriate. As soon as practicable after preparing the summary, staff shall provide a copy of the summary to each property owner described in subdivision (a)(1)(G) with instructions on how to receive future filings.

(3) Staff Approval of Proposed Change.

(A) Staff shall approve the change where staff determines:

(i) that there is no possibility that the change may have a significant effect on the environment, or the change is exempt from the California Environmental Quality Act;

(ii) that the change would not cause the project to fail to comply with any applicable laws, ordinances, regulations, or standards; and

(iii) that the change will not require a change to, or deletion of, a condition of certification adopted by the commission in the final decision or subsequent amendments.

~~(B)~~ Staff, in consultation with the air pollution control district where the project is located, may approve any change to a condition of certification regarding air quality, provided:

(i) that the criteria in subdivisions (a)(3)(A)(i) and (ii) are met.; and

(ii) that no daily, quarterly, annual or other emission limit will be increased as a result of the change.

(C) Staff shall file a statement summarizing its actions pursuant to subdivisions (a)(3)(A) or (B). Any person may file an objection to a staff action taken pursuant to subdivisions (a)(3)(A) or (B) within 14 days of the filing of staff's statement. Any such objection must **make a showing supported by facts that state the reasons that the change does not meet the criteria in this subdivision. Speculation, argument, conjecture, and unsupported conclusions or opinions are not sufficient to support an objection to Staff approval.**

(D) Staff may submit to the commission for consideration and a decision, a proposed change that could otherwise be approved by staff under subdivisions (a)(3)(A) or (B).

(4) Commission Approval of Proposed Change.

(A) If staff determines that a ~~modification change~~ does not meet the criteria for staff approval set forth in ~~subsection~~subdivision (a)(23), **or if staff submits the proposed change to the commission for consideration under subdivision (a)(3)(D),** or if a person objects to a ~~staff determination~~ files an objection that a ~~modification~~ does meet the criteria in ~~complies with subsection~~ subdivision (a)(23)(C), the petition ~~must shall~~ be processed as a formal amendment to the decision and ~~must be approved~~ considered by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it ~~decides to~~ or assign the matter for further ~~hearing proceedings~~ before the full commission or an assigned committee or hearing officer. The commission may approve such ~~modifications~~ a change only if it can make the following findings:

(A) ~~the findings specified in section 1748(b)(5), if applicable;~~

(B) ~~that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;~~

(C) ~~that the change will be beneficial to the public, applicant, or intervenors;~~  
and

(D) ~~that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification.~~

(4B) The staff shall compile and periodically publish a list of petitions filed under this section and their status. In any matter assigned for further proceedings pursuant to subdivision (a)(34), the presiding member shall establish the schedule and process for the proceeding.

(5) The petitioner may withdraw its petition from consideration by the commission in the manner described for withdrawal of notices or applications in section 1709.8.

**(6) A petition is not required for the ministerial activities, including, but not limited to, the following:**

**(A) Maintenance activities routinely performed in the electric generation industry;**

**(B) Like-kind replacement or repair of component parts of the thermal powerplant any related facilities;**

- (C) The use of portable and prefabricated structures that would not require a building permit from the local land use authority but for the Commission's jurisdiction;**
- (D) Platforms, stairs, walkways, and non-structural concrete slabs and paving;**
- (E) Temporary tents, shade structures, awnings or similar facilities;**
- (F) Tanks of less than 5,000 gallons capacity;**
- (G) Emergency repairs;**
- (H) Trenching or excavations related to any of the above; and**
- (I) Any facilities, structure, or improvements that could have been approved by the CBO during the detailed design phase of construction of the thermal powerplant or related facilities.**

(b) Change in Ownership or Operational Control.

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) a discussion of any significant ~~changes~~ change in the operational relationship between the owner and operator;

(B) a statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) a statement verified by the new owner or operator in the ~~same~~ manner as provided ~~described~~ in Section ~~section~~ 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) ~~The commission may approve changes in ownership or operational control after fourteen days' notice. Staff may approve a change in ownership or operational control by filing a statement approving the change no sooner than 14 days after filing of the petition. Any person may file an objection to a staff approval within 14 days of the filing of staff's statement. Any such objection must state the grounds for the objection. If a person files such an objection, the petition shall be considered by the commission at a noticed business meeting or hearing.~~

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25523, 25532 and 25534, Public Resources Code.