

DOCKETED

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Article 4.1 Certification of Nonfossil-Fueled Powerplants, Energy Storage Facilities, and Related Facilities

§ 1875. Scope.

This Article implements Chapter 6.2 of Division 15 of the Public Resources Code related to certification of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code.

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

§ 1876. Filing of Opt-in Application.

Applications filed under this article shall be known as "opt-in" applications. All opt-in applications shall be filed following the requirements set forth in sections 1208 and 1208.1. All opt-in applications shall be authorized and verified as set forth in section 1707.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, 25545.2 and 25545.4, Public Resources Code.

§ 1876.5. Pre-filing Consultation.

(a) At least 30 days before submitting an opt-in application under this Article, the applicant shall meet with staff to discuss information requirements for the opt-in application.

(b) Staff shall invite the local government(s) that would have had permitting authority over the site and related facility of the construction and operation of the facility but for Chapter 6.2 of Division 15 of the Public Resources Code to participate in the meeting(s) held pursuant to subdivision (a).

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, 25545.2 and 25545.4, Public Resources Code.

§ 1877. Contents of Opt-in Application.

(a) The opt-in application shall contain all the information specified by Appendix B and meet the general requirements set forth in section 1704(a). For categories of information contained in Appendix B not relevant to the project, the application shall include a discussion explaining why a category does not apply. If the applicant is seeking incidental take authorization as described in California Fish and Game Code section 2081(b), the application shall include the information required in California Code of Regulations title 14, section 783.2(a)(1)-(a)(10). If the applicant is seeking lake and streambed alteration authorization under Fish and Game Code Section 1602, the

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application shall include the information required in California Fish and Game Code sections 1602(a)(1)(A)-(F).

(b) The opt-in application shall contain an explanation of how the facility meets one or more of the definitions of "facility" in section 25545(b).

(c) The opt-in application shall contain all certifications required by Public Resources Code sections 25545.3.3 and 25545.3.5. The executive director may request, and the applicant shall provide, documentation verifying any certification in the opt-in application. Unless confidential information is requested by the executive director, all supporting documentation shall be filed as a public record.

(d) The opt-in application shall identify and discuss whether the applicant has submitted any state or federal permit applications, for permits required prior to any construction, to other relevant state agencies with authority over the project. For any required permit that has not yet been submitted to the relevant state agency, the opt-in application shall include a plan for submitting the application and any discussions that have occurred with the relevant state agency with authority over the project.

(e) The opt-in application shall identify whether the project is on a prohibited site as identified in Public Resources Code section 25527 or on a site designated by the California Coastal Commission under Public Resources Code section 30413(b) or on a site designated by the San Francisco Bay Conservation and Development Commission under Public Resources Code section 66645(b). For projects on such a site, the opt-in application shall include documentation of the approval of the public agency having ownership or control of the land.

(f) The opt-in application shall contain preliminary information identifying the overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility of the construction and operation of the facility, consistent with Public Resources Code section 25545.9.

(g) The opt-in application shall include the applicant's plan or strategy, including a timeline for execution, to obtain legally binding and enforceable agreement(s) with, or that benefit, a coalition of one or more community-based organizations prior to project certification, consistent with Public Resources Code section 25545.10.

(h) The opt-in application shall include a discussion of whether the project meets the requirements of Public Resources Code sections 21183 and 21183.6.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25527, 25545, 25545.1, 25545.2, 25545.3.3, 25545.3.5, 25545.9, 25545.10, 30413, and 66645, Public Resources Code.

§ 1877.5. Withdrawal of Opt-in Application.

(a) Any time after acceptance, the applicant may withdraw the opt-in application by filing a written notice of withdrawal. The notice of withdrawal must be authorized and verified in the same manner as the original opt-in application, as provided in Section 1707.

(b) Upon receipt of a properly executed withdrawal, the executive director shall immediately file a statement that the application has been withdrawn and closing the docket. The documents of the proceeding shall continue to be maintained by the Docket Unit.

(c) If the applicant decides to go forward with commission review and approval of a project after filing a notice of withdrawal, the applicant must file a new opt-in application under section 1876, except that an applicant for facilities described in section 25545(b)(3) of the Public Resources Code must either file a new opt-in application under section 1876 or a new notice or application under section 1709.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, and 25545.2, Public Resources Code.

§ 1878. Commission Review of Opt-in Application.

(a) The commission may request additional information from the applicant as set forth in Public Resources Code section 25545.4.

(b) Consistent with Public Resources Code section 25545.4, the executive director shall file a statement when the application is complete.

(c) No later than 45 days after an application is deemed complete, or a later date set forth by the executive director, the applicant shall provide information updating or supplementing the information in the application to support the findings required by Public Resources Code sections 25545.9 and 25545.10.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.4, 25545.9, and 25545.10, Public Resources Code.

§ 1878.5. Tribal Consultation.

(a) In addition to formal tribal consultation required in the California Environmental Quality Act, the commission shall follow the additional requirements governing tribal engagement, related to opt-in applications, as set forth in Public Resources Code section 25545.7.4.

(b) The commission may initiate tribal engagement earlier than required under Public Resources Code section 25545.7.4 to ensure meaningful process and information exchange.

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Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25545, 25545.7.2, and 25545.7.4, Public Resources Code.

§ 1879. Environmental Document and Executive Director's Recommendation.

(a) Within 150 days from the date the application is deemed complete, or as soon thereafter as is practicable, staff shall file an assessment of the opt-in application that consists of a draft environmental impact report following the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) which includes consideration on whether the project satisfies the conditions in Chapter 6.5 (commencing with Section 21178) of Division 13, including Sections 21183 and 21183.6, of the Public Resources Code, and a separate section addressing the following:

(1) The extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d).

(2) The conformity of the facility with public safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws and a statement of efforts made to correct or eliminate any noncompliance.

(3) The potential for restoring the site as necessary to protect the environment if the commission denies approval of the application.

(4) The public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

(5) Identification of public agencies that received notice of the opt-in application.

(6) Identification of whether the site is located at a prohibited area as identified in Public Resources Code sections 25526 and 25527 and any proposed findings relevant to that location.

(7) The overall net economic impact to the local government that would have had permitting authority over the site and related facility. Such discussion may include consideration of employment growth, housing development, infrastructure and environmental improvements, assistance to public schools and education, assistance to public safety agencies and departments, property taxes and sales and use tax revenues.

(8) Any legally binding and enforceable agreements by the applicant with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that

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represent community interests, where there is mutual benefit to the parties to the agreement.

(b) After conclusion of at least a 60-day public comment period on the assessment of the opt-in application, including the draft environmental impact report, staff shall publish an updated assessment of the opt-in application that consists of a final environmental impact report following the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3), and any updates or changes to the sections of the assessment addressing section 1879, subdivisions (a)(1)-(a)(8). The updated assessment, including the final environmental impact report, shall be filed no sooner than 30 days before the commission's consideration at a public meeting.

(c) After the publication of the updated assessment and final environmental impact report, the executive director shall file a recommendation on whether the commission shall certify the environmental impact report and issue a certificate for construction and operation of the facility.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545.1, 25545.6, 25545.8, 25545.9, and 25545.10, Public Resources Code.

§ 1880. Public Outreach.

(a) Noticing of meetings, workshops, hearings and similar public events shall be done as set forth in section 1209.

(b) The timing and number of public events shall be consistent with Public Resources Code section 25545.7.2.

(c) For purposes of conducting a meeting, informational workshop, or scoping workshop as close as practicable to the proposed site consistent with Public Resources Code sections 25545.7.2 and 25545.7.6, the commission or applicant shall secure a space with adequate technological capacity to support remote participation that is near the project site.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, and 25545.7.2, Public Resources Code.

§ 1881. Commission Certification of the Environmental Impact Report and Certification to Construct and Operate the Facility.

After consideration of the final environmental impact report, staff's assessment of the opt-in application, the executive director's recommendation at a public meeting held under section 1101, and any public comment received at the public meeting, the commission shall issue a written decision on the certification of the environmental

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impact report and the application to construct and operate the facility, which may be in the form of an order incorporating the staff assessment and executive director's recommendation. Any decision to approve the facility shall be consistent with Public Resources Code sections 25545.8, 25545.9 and 25545.10.

Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.8, 25545.9, and 25545.10, Public Resources Code.

§ 1882. Post Certification Project Changes.

(a) Upon project certification, any change to the design, operation or performance requirements of the project shall be approved by staff if staff finds the proposed project change does not require the preparation of a subsequent or supplemental environmental impact report as set forth in Title 14, California Code of Regulations sections 15162 and 15163.

(b) A project owner seeking a change to the design, operation or performance shall file a petition containing the payment required under Public Resources Code section 25806(e) and a complete description of the proposed change and whether any of the conditions requiring a subsequent or supplemental environmental impact report set forth in Title 14, California Code of Regulations sections 15162 and 15163 are met. The petition shall also include 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.

(c) Within 30 days of receiving a completed petition and the applicable fee, staff shall file a summary describing the content of the petition and shall include a description of the commission's procedures concerning review and consideration of the petition. As soon as practicable after filing the summary, staff shall provide a copy to each property owner described in subdivision (b) with instructions on how to receive future filings.

(d) If staff finds a subsequent or supplemental environmental impact report is not required, staff shall file a statement to that effect and approve the project change. Any person may file an objection to a staff's approval of the project change within 14 days of the filing of staff's statement. Any such objection must make a showing supported by facts that the change requires the preparation of a subsequent or supplemental environmental impact report as set forth in Title 14, California Code of Regulations sections 15162 and 15163. Speculation, argument, conjecture, and unsupported conclusions or opinions are not sufficient to support an objection to staff approval.

(e) If staff finds a subsequent or supplemental environmental impact report is required, or if a person files an objection that complies with subdivision (d), the subsequent or supplemental environmental impact report and the petition shall be submitted to the commission for consideration at a publicly noticed meeting. The commission shall issue an order approving, rejecting, or modifying the petition.

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Note: Authority cited: Sections 25213, 25218(e), and 25545.12, Public Resources Code.
Reference: Sections 25545, 25545.11, and 25806 Public Resources Code.

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