

CALIFORNIA
ENERGY
COMMISSION

**PUBLIC PARTICIPATION
IN THE SITING PROCESS:
PRACTICE AND PROCEDURE GUIDE**

SITING PROCESS GUIDEBOOK

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Arnold Schwarzenegger, *Governor*

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DISCLAIMER

This Guide has been prepared and updated by the Public Adviser's Office and has been reviewed by the Hearing, Legal, as well as Siting Offices of the Energy Commission. It is provided to assist the public with understanding and participating in the Energy Commission's siting process. Therefore, the guide is informational in nature and does not discuss all situations, variations and exceptions in the siting processes and proceedings of the Energy Commission. For this reason, the guide should not be relied upon as legal advice. If you feel you need such advice, you are encouraged to seek competent legal help. However, you do not need an attorney to participate in the Energy Commission's proceedings. The Public Adviser's Office will assist you with information on how to participate, but cannot represent you in these proceedings.

Dear Reader:

The California Energy Commission's (Energy Commission) primary responsibility is to the people of California. As the Public Adviser at the Energy Commission, it is my responsibility and highest priority to assist the public -- including individuals, stakeholders or members of organizations -- with meaningful participation in the programs and proceedings of the Energy Commission.

This Guide has been prepared and updated by the Public Adviser's Office to help the public with understanding and, if so inclined, participating in the Energy Commission's process of licensing the construction, operation and closure of thermal power plants 50 megawatts or larger and their related facilities. It has been reviewed by experts in the Energy Commission's Hearing, Legal and Siting Offices and their constructive comments have been incorporated into the final document. I want to express my appreciation for their valuable contributions.

The Public Adviser's Office is committed to being pro-active in our outreach efforts to a broad section of society to ensure meaningful public participation. While we are ready to assist you with information about the programs and proceedings of the Energy Commission, we are not authorized to represent you in these proceedings.

We may be contacted by:

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- Toll-free phone: (800) 822-6228;
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We are looking forward to hearing from you, especially your comments about the contents and the value of this Guide as an information and reference document.

Sincerely,

MARGRET J. KIM
Public Adviser

ABSTRACT

State law established the California Energy Commission as the primary state agency for licensing power plants 50 megawatts or larger. The same law also ensures public access to and participation in this licensing process.

This Siting Process Guidebook has been prepared and updated by the Public Adviser's Office (PAO) to help the public with understanding of and – if so inclined – participating in the Energy Commission's licensing process. While the PAO provides procedural guidance to the public, it is not authorized to represent as the public's legal counsel in these proceedings.

KEY WORDS

The following key words or phrases may be used to search the California Energy Commission Website (www.energy.ca.gov) on the subject/topics of this Guidebook:

Public participation, public adviser, public access, guide to public participation, environmental justice, intervention process, intervenor, parties of interest, informational hearing/workshop, siting process, certification process, compliance process, data adequacy.

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PREFACE

The California Energy Commission has the following major responsibilities:

- Preparing a biennial Integrated Energy Policy Report for the Governor and Legislature;
- Forecasting statewide energy supply/demand and maintaining/providing energy data;
- Licensing and monitoring the siting, construction and closure of thermal power plants 50 megawatts or larger;
- Promoting energy conservation and efficiency;
- Developing renewable energy resources and alternative energy technologies; and
- Planning for and directing state response to energy emergencies.

This Siting Process Guide book addresses the second major issue area - siting and certifying power plants. It serves the public by providing information to persons wanting to participate in the siting process.

Chapters 1 through 5 provide an overview of the entire siting process; explain the roles of the participants; and describe key siting documents. Chapter 6 explains how to become an "intervenor" or a party in the siting process and the intervenor's role and responsibilities in the siting process. General procedures, requirements and practices are explained in Chapters 6 through 13. Chapters 14 through 18 take the reader through steps of the final certification decision, including the hearings, decisions, and appeals.

Appendix A describes the public notices that are frequently used by the Energy Commission. Appendix B contains blank forms an intervenor would find useful.

The siting procedures illustrated in this Guide serve the public and the Energy Commission in four basic ways:

- Maximize the time available for analysis and information gathering at the beginning of the siting proceeding;
- Provide for workshops where information can be exchanged. Energy Commission sponsored workshops provide a "rolled-up sleeves" examination and discussion of issues.¹ Workshops facilitate the resolution of substantive issues on which there is agreement;
- Identify and narrow issues that must be heard in formal hearings. Facts are gathered to form the basis for the proposed decision; and
- Afford a full opportunity to argue the importance and effect of the evidence before and after preparation of the proposed decision.

¹ Substantive issues create, define and regulate rights. Substantive matters include, but are not limited to, discussions on the project's issues and whether they are right or wrong, and any contemplated or proposed conclusions, recommendations or discussions on the case.

Using this Guide, the public can maximize opportunities for effective participation, and protect substantive and procedural rights.² No one should hesitate to use these procedures to protect or advance his/her own interest.

The Public Adviser, an attorney admitted to practice law in California, is available to provide independent advice on ways to participate in the regulatory process. The Public Adviser may be reached at (916) 654-4489 or toll-free in California at (800) 822-6228. The FAX for the Public Adviser's Office is (916) 654-4493 and the e-mail address is pao@energy.state.ca.us .

² Procedural rights prescribe methods of enforcing substantive rights or obtaining redress for their invasion. For example, procedural rights deal with questions regarding a fair process such as receiving notice; an opportunity to comment; or other questions concerning access to participation in the process.

CHAPTER 1

Overview of the Energy Commission in the Siting Process

The Energy Commission is responsible for addressing the emerging energy challenges facing our state.³ Consistent with its mandate, the Energy Commission advocates energy systems that protect the public health, safety, and preserve the environment. It also advocates efficient and reliable energy systems and provides comprehensive energy forecasting, as well as a one-stop, coordinated licensing process for power plants 50 megawatts or larger.

The energy industry is shifting toward greater competition and away from direct government intervention. With deregulation and competition in energy generation, the Energy Commission is challenged to ensure that all new power plants are fully evaluated in a timely and consistent manner for their impacts on health, safety and the environment.

This chapter:

- Defines the term "siting process" and clarifies its purpose;
- Explains that a certificate of approval by the Energy Commission must be obtained before constructing a power plant; and
- Directs the reader to the sources of information about the proposed siting project.

What Does the Term "Siting Process" Mean?

The "siting process" is a chain of events leading to a decision by the five-member Energy Commission to approve or to disapprove construction of a power facility. Literally, "site" means the location of a place. At the Energy Commission, the siting process is used to evaluate the proposed power plant project⁴ -- the location, design and construction as well as the impact on public health, safety, the environment, and the general welfare.

The Energy Commission is assisted in the siting process by the staff of the Systems Assessment and Facilities Siting Division. The Division plays a key role in gathering information about proposed sites and evaluating both the engineering and environmental details of the proposed project. Impacts of the proposal on transportation, health, air quality and possible hazardous materials are among the concerns that are analyzed.

What Is the Purpose of the Siting Process?

The purpose of the siting process is to: "...ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection" (Public Resources Code § 25001).

³ The Warren-Alquist State Energy Resources Conservation and Development Act created the Energy Commission in 1974. The statutes are found in the Public Resources Code beginning at section 25000.

⁴ Including all related power plant facilities, electric transmission lines, gas and water lines.

To meet this purpose, the Energy Commission has compiled the “Rules of Practice and Procedure and Power Plant Certification” which guide the conduct of participants in the Siting Process. The “Rules” are contained in Title 20, California Code of Regulations, Chapters 1,2,5,6,and 7.

A Certificate Is Needed To Build A Power Plant

Often referred to as a permit or license, a certificate designating approval of the Energy Commission must be obtained before constructing, or expanding, a power plant and/or electric transmission line and related facilities.⁵ Projects requiring a certificate include:

- A power plant with a net generating capacity of 50 megawatts⁶ or larger.
- The plant must be a "thermal electric" power plant, meaning the production of electricity by the direct action of heat.⁷ These technologies usually use the following heat sources: natural gas, biomass, geothermal, solar thermal, oil, coal and nuclear. Other technologies, such as wind, hydroelectric, fuel cells, and solar photovoltaic power facilities would not be included because they are not thermal electric plants.
- An electric transmission line from a jurisdictional thermal power plant to the first point of interconnection with the existing transmission system.
- The line carrying power from the plant to distribution lines is covered. Generally, replacement of existing electric power lines with equivalent lines is not covered.
- Related facilities include fuel supply lines, access roads, and water and waste facilities.⁸

The Energy Commission certification process examines engineering and environmental aspects of power plant proposals. The Energy Commission’s review process for Application for Certification has been deemed by the Secretary of Resources functionally equivalent to a review under the California Environmental Quality Act (CEQA).⁹

Public Information Sources On a Proposed Siting Project

Ask the Public Adviser

The Energy Commission's Public Adviser is available to advise the public on the most effective methods of participation in siting projects and to assist in obtaining copies of public records. The Public Adviser can be reached by calling (916) 654-4489 or toll free

⁵ Public Resources Code section 25500.

⁶ One megawatt will provide electricity for approximately 750 homes.

⁷ A thermal power plant is any stationary or floating electrical generating facility using any source of thermal energy (Public Resources Code § 25120).

⁸ Title 20 California Code of Regulations (CCR) § 1702(n).

⁹ However, Energy Commission certification requirements sometimes exceed CEQA requirements, especially in the area of compliance conditions.

in California at (800) 822-6228. The FAX number for the Public Adviser is (916) 654-4493. The e-mail address for the Public Adviser is pao@energy.state.ca.us.¹⁰

Ask the Project Manager

The Energy Commission's Project Manager is the principal contact person for parties interested in upcoming activities of Energy Commission staff's review of a proposed siting project. The name and contact information for the assigned Project Manager can be found on the website for a proposed project at www.energy.ca.gov/sitingcases. The Project Manager is usually the best source of information on the technical aspects of the proposed project, as well as for information regarding the project schedule and upcoming staff events.

Go to a Local Library

Current law requires that a summary of a proposed siting project be prepared by the Executive Director of the Energy Commission and delivered to the main branch of the public library in the county where the proposed project will be located.¹¹ In addition, copies of the summary will be delivered to public libraries in Eureka, Fresno, Los Angeles, Sacramento, San Diego and San Francisco.

A complete copy of the filing - the Notice of Intention, the Application for Certification or Small Power Plant Exemption - is also delivered to the libraries listed above. An Application for Certification is physically a large document, often filling multiple three-ring binders. The Energy Commission also sends copies of pleadings, comments and other documents to libraries in counties affected by the proposed project to assist the public in the review process.¹²

In addition to libraries, the Docket Unit at the Energy Commission can assist in locating documents related to siting cases. Dockets can be reached at (916) 654-5076 or via e-mail at www.docket@energy.state.ca.us.

Place Your Name on the Interested Person List to Receive Mailings

Each siting case has an "Interested Person's List." People on this list receive notices of all meetings, workshops, conferences and hearings for the particular siting case. To get on the list and request future mailings the public can:

- Contact the Public Adviser's Office;
- Sign-in at an Energy Commission siting meeting and indicate you want your name added to the mailing list;
- Contact the staff project manager for the specific siting case; or
- Enter an e-mail address on the Energy Commission's list server located on the Energy Commission Website at www.energy.ca.gov/html/listservers.

¹⁰ The role of the Public Adviser is discussed in Chapter 2.

¹¹ Title 20 CCR § 1713(a), (b).

¹² Title 20 CCR § 1717(d).

