

Notice of Exemption

TO: Office of Planning and Research
1400 Tenth Street, Room 212
Sacramento, California 95814

FROM: California Energy Commission
715 P Street
Sacramento, California 95814

Project Title: Approval of Regulations for AB 1373 Publicly Owned Utility Capacity Payment Implementation

Project Location: Statewide

Description of Nature, Purpose, and Beneficiaries of Project:

Adoption of regulations to implement Assembly Bill (AB) 1373 (Garcia, Chapter 367, Statutes of 2023) by adopting Sections 1395 and 1396 in Title 20 in the California Code of Regulations (CCR). AB 1373 requires the Department of Water Resources (DWR) to determine whether local publicly owned electric utilities (POUs) in the California Independent System Operator (ISO) Balancing Authority Area (BAA) serving end-use customers have procured resources through the Electricity Supply Strategic Reliability Reserve Program (ESSRRP) in any given month to meet an identified reliability need. AB 1373 further requires the CEC to assess a capacity payment annually on each POU in the California ISO BAA that, during the same month, fails to meet its minimum planning reserve margin (PRM) and deposit those payments into the DWR's Electricity Supply Strategic Reliability Reserve Fund (Fund). These regulations define the process for assessing the new capacity payment and depositing of monies into the Fund.

Name of Public Agency Approving Project: California Energy Commission

Name of Person or Agency Carrying Out Project: California Energy Commission

Exempt Status: (Check One)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption: State type and section number:
- Statutory Exemption: State code number: _____
- Other: Adoption of the amendments not a "project" for purposes of CEQA, and is otherwise exempt from CEQA requirements pursuant to the "common sense" exemption (Cal. Code Regs., tit. 14, Section 15061(b)(3)).

Reasons why project is exempt:

Adoption of the proposed regulations poses no potential for any direct or reasonably foreseeable indirect physical change in the environment. The proposed regulations will not, directly or indirectly, trigger any additional electric generation resources. Instead, they set forth a process

for calculating and assessing a capacity payment required by statute, that POU's in the California ISO BAA must pay if they fail to meet their PRM in the same month that they procure DWR ESSRRP resources. Water Code section 80714 establishes how the capacity payments are to be calculated, the conditions under which the payment will be assessed, the timeframe for remitting the payment, and the entity to which remittance must be made. The mere act of assessing the payment results in neither a direct physical change, nor a reasonably foreseeable indirect physical change, in the environment. Rather, the proposed regulations implement a statutorily required payment assessment and, as such, merely reflect an administrative process. Therefore, adoption of the proposed regulations is not a project and is not subject to CEQA.

Adoption of the regulations is also exempt under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA applies only 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.) The action in question here concerns the adoption of regulations to implement a calculation for a payment and does not provide for any direct or indirect physical changes to the environment. Therefore, there is no potential that the regulations would have a significant effect on the environment.

Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply to this action, and there is no reasonable possibility that approval of the proposed regulations will have a significant effect on the environment due to unusual circumstances. For these reasons, the adoption of the proposed regulations implementing the calculation of capacity payments for POU's in the California ISO BAA would be exempt from CEQA if they were a project.

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Signed by the Lead Agency

Date received for filing by OPJ