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Decision No. 81484

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into methods of compliance with the Environmental Quality Act of 1970.	)	Case No. 9452 (Filed October 12, 1972)

SUPPLEMENTAL OPINION DENYING REHEARING AND MODIFYING DECISION NO. 81237

The Commission is of the general opinion that Rule 17.1 as found in Appendix A to its Decision No. 81237 fully complies with both the letter and spirit of the California Environmental Quality Act of 1970 (CEQA), Public Resources Code Section 21000 et seq., and the Guidelines for Implementation of the California Environmental Quality Act, 14 Cal. Adm. Code Section 15000 et seq. (Guidelines), as promulgated by the Secretary for Resources. Nevertheless, petitions for rehearing of Decision No. 81237 have been filed contending, based on numerous grounds, that the opinion is unclear or in error. There is merit to some of these contentions. In addition, experience with Rule 17.1 to date, coupled with the promulgation by the Secretary for Resources of additional procedural requirements applicable to this Commission, indicates the necessity for modifying Rule 17.1. Therefore, the Commission takes this opportunity to make those modifications it deems necessary and to speak to the contentions raised by petitioners, while at the same time reiterating and reemphasizing what we said in D.81237.

Three petitions for rehearing have been filed. Peninsula Commute and Transit Committee, National Association for the Advancement of Colored People, Mexican-American Political Association and San Francisco Tomorrow (Peninsula) have jointly filed a petition alleging that the Commission's conclusion that ratemaking proceedings are not subject to the environmental impact report (EIR) requirements of the

CEQA is erroneous. Planning and Conservation League, High Desert Environmental Defense Fund and Sierra Club (Sierra Club) have jointly filed a petition joining in Peninsula's contention and raising additional objections. Southern Pacific Transportation Company (SP) has filed a petition also based on numerous contentions. The Commission will speak to each of these issues in turn, and then discuss the modifications it is making to Rule 17.1.

I

The most strenuous objection of Peninsula and Sierra Club is to the Commission's conclusion that ratemaking proceedings are not subject to the EIR requirements of the CEQA. Pub. Resources Code Section 21100 et seq. Petitioners' contention is based on their apparent belief that the conclusion is in conflict with the decision of the Supreme Court in Friends of Mammoth v. Board of Supervisors, 8 Cal.3d 1 (1972), mod. 8 Cal.3d 247 (November 6, 1972), and the CEQA, as amended by Assembly Bill 889. Petitioners' apparent view of A.B. 889 is that it did nothing more than indicate legislative concurrence in the result reached by the Court in Friends of Mammoth and that, therefore, the specific language of the Court's opinion may be read as controlling as to issues of interpretation which may arise under the CEQA. Thus, if the Friends of Mammoth opinion interprets the term "project" to include all activities requiring Commission approval, as Petitioners contend,[1/] then we are being asked to ignore any subsequent refinement or modification of that term which may have been adopted by the legislature in A.B. 889.

We believe that such an interpretive approach would do violence to the legislative process, the final results of which are, of course, binding upon this Commission. While it is true that the legislature had before it the Court's decision in Friends of Mammoth, it is also clear that the legislative inquiry leading to the adoption

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1/ We do not necessarily agree with this interpretation of the holding in that case.

of A.B. 889 was considerably more comprehensive and was oriented more to the practical problems of implementation than were the general issues of interpretation raised in that case.[2/] It would be improper for this Commission to ignore the final results of these legislative efforts to deal with the many broad, as well as specific, problems of implementation, which necessarily could not have been placed before the Supreme Court in Friends of Mammoth.

In our decision adopting Rule 17.1, we discussed in some detail the specific definition provided in A.B. 889 for the term "project". We indicated there our belief that the legislature did not intend the EIR requirements to apply to all activities of private persons subject to Commission approval, but merely to those physical projects subject to Commission approval by the issuance of a lease, permit, license, certificate or other entitlement for use. Ratemaking proceedings do not fall within this definition.

A repetition of the analysis of the statutory language is not necessary herein, but we do not have to depend simply on such an analysis in reaching our conclusion that the EIR requirement was not meant to, and should not, be applied to rate cases before us. The nature of the ratemaking process itself demonstrates the validity of this conclusion and the wisdom of this statutory definition.

It should be stated at the outset that although Sierra Club and Peninsula contend that all ratemaking proceedings are subject to the EIR requirements of the CEQA, the arguments they make to support this contention are offered only in the context of an electric utility rate increase proceeding. It would be appropriate, therefore, for us to respond in the same context, while at the same time noting that our considerations apply with equal or greater force to the other types of rate proceedings, including transportation rate proceedings, which come before us.

2/ See Seneker, "The Legislative Response to Friends of Mammoth," 48 Calif. State Bar J., 127-130 (March-April 1973).

The role of the Commission in a ratemaking proceeding involving the application by an electric utility company for a rate increase is threefold. Public utilities are entitled to a "fair return" on their investment and just and reasonable compensation for their services to avoid confiscation (see California Constitution, Art. 12, Sections 20, 21 and 22), and the Commission's initial role is to fix rates to achieve those goals. No rate may be increased, except upon a showing before the Commission that such increase is justified. (Pub. Util. Code Section 454.)

Secondly, utilities are required to charge just and reasonable rates, and to refrain from preferential treatment and unjust discrimination (Pub. Util. Code Section 451), and the Commission achieves this purpose through its regulation of rate schedules and rate design.

Thirdly, whereas the actual fixing of rates and approval of rate design are legislative acts,[3/] the Commission's role in the ascertainment of refunds or reparations after a rate has been fixed is in the nature of a judicial inquiry. Southern Pac. Co. v. Railroad Com., 194 Cal. 734 (1924).

Petitioners appear to be primarily concerned about the rate design phase of ratemaking, because they do not question the refund situation or the basic proposition that a utility must be allowed to recoup its expenditures and earn a reasonable return on its investment as indicated by the relevant economic factors. Determining the appropriate "design" of the rates involves a cost allocation problem: how should different classes of customers, located in different geographical service or political areas, be treated in fixing their particular shares of the total costs of the utility operation.

3/ As our own Supreme Court has pointed out, ratemaking is a legislative act; the fixing of a rate or rate design is, in the first instance, prospective in application and legislative in character. Pacific Tel. & Tel. Co. v. Public Util. Com., 62 Cal.2d 634, 647 (1965); People v. Western Air Lines, Inc., 42 Cal.2d 621, 630 (1954).

Theories as to the most appropriate rate design in a given industry are generally the products of experience and experimentation over time. These matters involve questions of basic policy which cut across the lines of particular cases and which are not susceptible to precise measurement or testing as to their effects, either environmentally or otherwise, in a given proceeding. In this respect, the question of rate design differs radically from the typical case requiring an EIR where an applicant may be seeking Commission approval to build certain facilities at a specific geographical location. Whereas in the latter instance the factors which should be considered in the environmental impact analysis are relatively finite and measurable, the variables involved in determining rate design are practically infinite and the ultimate effects of any but the most radical changes are indeterminate, at least in the short run.

It is for this basic reason that changes in rate design are best left to a process of orderly evolution on a case-by-case approach, in order that the effects over time can be properly evaluated and the prevailing theories tested before being strictly or comprehensively applied. Requiring an EIR for each individual rate case on a matter of such general policy would add nothing to the administrative process except unnecessary delay prejudicial to the company needing rate relief and needless regulatory cost which must be paid for by its customers.

Policy determinations of this nature have, therefore, wisely been excluded from the EIR requirements of the CEQA.[4/] As we stated in our original decision herein, environmental considerations in rate proceedings are best handled in more traditional fashion by the receipt of general testimony and expert opinion at hearing, followed by appropriate findings by the Commission. We believe this result is contemplated by the specific definitions of "project" contained in the CEQA and is reaffirmed by common sense and good regulatory practice.

4/ Guidelines Section 15037.

II

Aside from the ratemaking issue, Sierra Club's most strenuous objection involves its contention that Rule 17.1 (specifically Sections (f) and (g)) permits the Commission's draft and final EIR to be nothing more than a "reviewed, corrected or amended" version of the proponent's EDS. Petitioners have raised this issue before, and the Commission's position in large measure has been set forth in our decision herein; however, some additional comment may be appropriate.

First, it is theoretically conceivable, but highly unlikely, that a proponent's EDS could become, without correction or amendment, the Commission's draft and final EIR. In order for this to occur, an EDS would have to be found to be unobjectionable in every respect by: first, the Commission's staff; second, all other state agencies to whom it is circulated for comment; third, all parties to the hearing, if the case were contested in some fashion; and last, by the Commission itself. It is difficult to perceive where the defect in such a result would lie, if it were the product of this extensive a review procedure.

Petitioners also complain, however, that in some instances, the proponent's EDS, following the initial staff review for form, adequacy and objectivity, could become without substantial change the Commission's draft EIR, which would then be circulated for comment prior to hearing. (See Section (f).) This procedure is not only an appropriate accommodation to the Commission's existing procedures, but also carries out precisely the directives contained in the Guidelines.

Section 15061(b) reads in part:

> "... the public agency will prepare an EIR by its own efforts or by contract. However, the agency may require the person [who carries out the project] to supply data and information, both to determine whether the project may have a significant impact on the environment, and to assist in the preparation of an EIR by the agency. This information may take the form of a draft EIR, if the agency desires." [Emphasis added.]

Section 15085 reads:

"EIR Process. * * *

"(a) ..., the responsible agency may require such person to submit data and information necessary to enable the public agency to prepare the EIR. This information may be transmitted in the form of a draft EIR, but the responsible agency must examine this draft and the information contained within it to assure itself of its accuracy and objectivity and amend the draft if necessary. The EIR in its final form must reflect the independent judgment of the responsible agency." [Emphasis added.]

And see Section 15165 of the Guidelines, which permits and in fact recommends that the final EIR, which represents the Commission's independent detailed analysis of the environmental implications of a proposed project and which will be used by the Commission in determining whether the project should be approved, conditioned or disapproved, should be prepared after hearing.

Second, and most important, under Rule 17.1, there will be, prior to hearing in every contested case, an independent, objective and expert analysis of the environmental impact of a proposed project as a result of the circulation and consultation requirements of the CEQA. (See Section 21104, as implemented in Section (f) of Rule 17.1.) This consultation process, coupled with the initial review of the staff prior to circulation, is more than sufficient, in our opinion, to get the case to hearing.

III

Petitioner Sierra Club claims that Rule 17.1 is legally deficient because it does not require the Commission "to affirmatively develop an appropriate record upon which its decision will be made as to whether an EIR or Negative Declaration is required." (Emphasis added.) Petitioners believe that it is preferable that this determination initially be made by the Commission following an independent evaluation of the project by a cadre of experts. This is an unrealistic preference, required neither by the CEQA nor the Guidelines.

Under Section (d) of Rule 17.1, the proponent of a project bears a heavy burden of establishing that the project will not have a significant effect on the environment. An EIR must be prepared when a project merely may have a significant effect on the environment, and this must be found pursuant to Section 21083 of the CEQA whenever there is the "potentiality" or "possibility" of a substantial adverse effect on the environment. The obverse of this is that an EIR need not be prepared for a project which ordinarily would be expected to have a significant effect on the environment, but, under the circumstances peculiar to the project, no substantial adverse impact will occur. (See Sections 15060 and 15080-15083 of the Guidelines.)

The purpose of the Negative Declaration is to simplify the requirements of the CEQA where this heavy burden of proof has been successfully established. The motion procedures in Section (e) and the consultation and notice requirements in Section (f) comply completely with the letter and spirit of the CEQA.

IV

Petitioner Sierra Club alleges that Rule 17.1 is legally deficient because of its failure to provide standards on when hearings are required to consider the environmental implications of the CEQA.

Petitioner does not amplify this allegation, nor does the CEQA require formal public hearings at any stage of the environmental review procedure. (See Section 15164 of the Guidelines.) Rule 17.1, as integrated into the Commission's existing Rules of Practice and Procedure, provides due notice and opportunity to be heard for any person whose interests are affected. In Section (h) of Rule 17.1, environmental issues will be treated as any other issues which may go to hearing; therefore, there appears to be no merit to Petitioner's claim.

V.

Petitioner Sierra Club alleges that Rule 17.1 fails to provide standards of decision-making consistent with the substantive rights and duties created by CEQA. That is, public agencies should be required to explain fully their reasons for approving the project, and to indicate clearly how environmental considerations were carefully weighed in agency actions.

Sections 15085(f) and 15146 of the Guidelines and Section (j) of Rule 17.1 speak for themselves and provide the standards of decision-making necessary to ensure adequate consideration of environmental issues. There is no merit to Petitioner's claim.

VI

SP alleges that Decision No. 81237 and, specifically, Section (m) of Rule 17.1 violate Section 21082 of the CEQA and Sections 15014 and 15116 of the Guidelines in that the Commission has not listed all of the specific projects SP feels to be categorically exempt from the EIR requirements. SP's position is that the Commission must find a specific project or type of project to be categorically exempt if on its face it falls within a class as described by the Resources Agency in Sections 15100 et seq. of the Guidelines, even though the Commission finds, because of past experience, that that specific type of project may have a significant effect on the environment. This position is a misconstruction of the letter and spirit of the CEQA and Guidelines.

Pursuant to Section 21084 of the CEQA, classes of projects are categorically exempt if they are found not to have a significant effect on the environment. The Resources Agency made this determination as to those classes described in the Guidelines. But in Section 15116 it issued this instruction and caveat:

"Application by Public Agencies.

> The classes listed in this article are broadly drawn, as are the examples given with each. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each class, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes."

Clearly, then, if a specific project subject to Commission approval may have, as shown from past experience, a significant effect on the environment, the Commission cannot properly include it in its list of categorical exemptions.

The Commission is not in any sense "reviewing" the correctness of the determinations of the Resources Agency, nor "invading its jurisdiction". It is merely carrying out the mandate to "adapt" the Guidelines to its internal procedures consistent with the letter and spirit of the CEQA. See Sections 15014 and 15116.

On the other hand, it is clear that because of the shortness of time within which Rule 17.1 was developed, not all specific projects which should be categorically exempt have been so exempted. But this in no way prejudices SP. The Commission, in Decision No. 81237, was faced with devising a rule that not only fully implemented immediately the CEQA, but also would be flexible enough to grow and to meet new situations as they arose, while at the same time preserving the rights of those who appear before the Commission. Rule 17.1, especially through the motion procedures, does provide this flexibility.

After careful consideration, we find that the following specific projects will not have a significant effect on the environment and fall within the classes of categorical exemptions established by the Secretary for Resources and set forth in Section (m) of Rule 17.1:

	Project	Guidelines Authority
1.	Alteration in Railroad Crossing Protection	Section 15101(c) & (f)
2.	Minor Railroad Crossing Alterations as described in Guidelines Section 15101(c) and (f): including, but not limited to Filings under Gen. Order 88	Section 15101(c) & (f)
3.	Installation of New Railroad-Highway Signals or Signs	Section 15101(c) & (f)
4.	Minor Reconstruction or Repair of Railroad Crossings or Separations	Section 15101(d) Section 15102
5.	Abandonment, Removal or Replacement of the following Railroad Facilities (a) Stock Corrals (b) Tracks (c) Platforms	Section 15101
6.	Deviation Requests filed under Gen. Order 26-D and 118 as to Clearances and Walkways	Section 15101

VII

SP alleges that Rule 17.1 violates Section 21089 of the CEQA in that Rule 17.1 allows the recovery of "actual costs" rather than charging a set fee for recovery of "estimated costs". Section

21089 is capable of varying interpretations as to this point, but the Commission's interpretation is reasonable and in conformance with the letter and spirit of the CEQA.

Section 21089 states that a "reasonable fee" may be "charged and collected", and it is clear that a fee is reasonable only in its approximation to the actual costs incurred in complying with the CEQA. Therefore, a procedure calling for a minimum deposit, refunded or increased depending on the actual costs, is an appropriate procedure to carry out the legislative intent, which is clear on the face of the statute. The real question then becomes whether the actual costs incurred were reasonably necessary for preparation of the EIR. The Commission has provided in Section (e)(2)(G) of Rule 17.1 a procedure to resolve this question.

Until the Commission has gained some experience in preparing EIRs for transportation utility projects, it is unreasonable to expect the Commission to prepare a fixed fee schedule which would reasonably approximate the actual cost incurred in preparing such EIRs.

SP's allegations evince essentially practical concerns, which should resolve themselves as the Commission gains experience with the Rule. Moreover, the changes to Rule 17.1 authorized in this opinion, clarifying when the payment of a fee or deposit will be required, will help solve these problems. Specifically, an EIR, and therefore an environmental data statement (EDS), is not required where the specific project proposed can be seen with certainty not to have a significant effect on the environment. In addition, an EDS is not required where the activity is not a project or is specifically exempted from the CEQA.

VIII

SP alleges that a deposit cannot be required for preparation of a negative declaration. While Section 21089 speaks only in terms of EIRs, SP's contentions are not persuasive. For all practical purposes, a negative declaration is a type of EIR and subject to the

same procedural requirements of an EIR.[5/] Similarly, SP's objection that a respondent in an investigation proceeding could never be a proponent under Section 21089 is not persuasive, and this question must be decided on a case-by-case basis.

IX

SP's Petition questions some of the lead agency determinations made by the Commission in Section (n) of Rule 17.1. Some of SP's contentions have merit. While it is true that no EIR is necessary where a project is categorically exempt, the determination of which public agency is the "lead agency" for a specific project is determined independently of the question of whether the project is categorically exempt. See Section 15065 and the Flow Chart, Appendix A, of the Guidelines. It may even be that the "lead agency" is responsible for determining which specific projects are categorically exempt. See 15066(a) of the Guidelines. Nevertheless, unless a specific project is found to be categorically exempt or not covered by the CEQA, the Commission must determine whether it is the lead agency for that specific project. Section (n) of Rule 17.1 is appropriate, therefore, except for original subsections 1.b.(6), (7) and (8) entitled Railroad Crossing Protection Installation or Alteration, Railroad Agency Curtailment, and Track Removal. These subsections have been deleted in the rule as modified, because such service discontinuances and minor alterations of existing physical facilities are not covered by the CEQA.

SP's suggestion that the question of lead agency should be determined on a case-by-case basis is not persuasive. There was strong support at the hearing for an early determination by the Commission of this question--and SP raises no valid objections to the other determinations made by the Commission.

5/ See MEMORANDUM from Secretary for Resources to Executive Heads of State Departments, Boards and Commissions, dated April 6, 1973, dealing with the review procedures applicable to EIRs and negative declarations.

X

SP objects to the motion procedure set forth in Section (e) of Rule 17.1, but its objections are without merit. Clarification by the Commission may nevertheless be helpful. It is the intent of the Commission that: (1) rulings on Section (e) motions made by the presiding officer pursuant to Rule 63 shall be subject to review by the Commission as provided in Rule 65; and (2) motions made pursuant to Section (e) may be set forth in a party's initial pleading, if desired, obviating the necessity for an extra pleading.

XI

SP continues to argue that time limits should be imposed upon the Commission in carrying out the mandate of the CEQA, but asserts no legal basis therefor, and thus, in view of the practical considerations working against such limitations, its objections to the Commission's findings and conclusions lack merit.

XII

Lastly, SP alleges that D.81237 is unclear as to what review procedures, such as petitions for rehearing and petitions for review to the Supreme Court, are available. The following comments should be helpful.

Section 21100 of the CEQA requires this Commission to "prepare, or cause to be prepared by contract and certify the completion of an environmental impact report. ..." (Emphasis added.) And Section 21061 states that an EIR is an "informational document which ... shall be considered by every public agency prior to its approval or disapproval of a project". And see Section 21108. While the CEQA, itself, nowhere requires the Commission to "adopt" an EIR, whatever that word signifies, the Guidelines in Section 15085(e) and (f) read:

> "(e) The responsible agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

> "(f) The final EIR shall be presented to the decision-making body of the responsible agency. The decision-making body shall adopt the final EIR and consider the contents of the report when it makes a decision on the project." (Emphasis added.)

It is unclear whether the word "adopt" was intended to have legal significance beyond the significance of the word "certify". In any event, the Commission, in approving Rule 17.1, had these considerations in mind:

(1) To the extent appropriate, as indicated in Sections (g)(2)(A) and (g)(3), the final EIR prepared by the Presiding Officer is analogous to a "Proposed Report" (see Rule 79);

(2) that pursuant to Section 15085(f) of the Guidelines and Section (j) of Rule 17.1, the Commission shall "adopt" a final EIR when it issues a decision on the proposed project;

(3) that interested parties may file petitions for rehearing of the Commission's decision on a project based on the final EIR, and must do so in order to seek judicial review of the final EIR adopted by the Commission (see Pub. Util. Code Section 1731, Pub. Resources Code Sections 21108 and 21167 et seq.).

XIII

As discussed above, review of and experience with Rule 17.1 to date indicates the need for modifications. The modifications deemed necessary are included in Appendix A.

ORDER

IT IS ORDERED that:

1. The petitions for rehearing are denied.

2. Rule 17.1 is modified and is set forth in Appendix A.

The Secretary is directed to cause an adequate number of copies of this decision to be made available for Commission use and for service upon and distribution to the appearances in Case No. 9452 and to others concerned therewith.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19th day of JUNE, 1973.

President

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

17.1 (Rule 17.1) Special Procedure for Implementation of the California Environmental Quality Act of 1970. (Preparation and Submission of Environmental Impact Reports.)

(a) In General

(1) This rule was developed and issued pursuant to the California Environmental Quality Act of 1970 (CEQA) and the Guidelines for Implementation of the California Environmental Quality Act promulgated by the Office of the Secretary for Resources (Guidelines). It shall be the general policy of the Commission to adopt and adhere to the principles, objectives, definitions, and criteria of CEQA and of the Guidelines promulgated thereunder in its regulations under its constitutional and statutory authority. CEQA requires the Commission to prepare, or cause to be prepared by contract, and to certify the completion of an Environmental Impact Report (EIR) for any non-ministerial project which concerns activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use, for which the Commission has the principal responsibility for approving and which may have a significant effect on the environment.

(2) The requirements of CEQA, the Guidelines, and this rule do not apply to any project where it can be seen with reasonable certainty that the project involved will not have a significant effect on the environment.

(b) Objectives

(1) To carry out the legislative intent expressed in CEQA, Pub. Resources Code Sections 21000 and 21001, and specifically

(2) To ensure that environmental issues are thoroughly, expertly, and objectively considered within a reasonable period of time, so that environmental costs and benefits will assume their proper and co-equal place beside the economic, social, and technological issues before the Commission, and so that there will not be

undue delays in the Commission's decision-making process.

(3) To assess in detail, as early as possible, the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced, to the fullest extent possible.

(4) To achieve an appropriate accommodation between these procedures and the Commission's existing planning, review, and decision-making process.

(c) Proponent's Environmental Data Statement

In compliance with CEQA, and except as provided in Sections (e), (i), (k), (l), and (m), each proceeding concerning a project covered by Section (a)(1) shall include an Environmental Data Statement (EDS). Such statement shall be prepared by the proponent of the project for which Commission approval is sought. Any party may be the proponent of a project in a given proceeding.

(d) Filings

(1) Form - In addition to meeting the requirements of Rule 2 of the Commission's Rules of Practice and Procedure, the proponent's EDS shall be a separate exhibit not physically attached to the application or pleading, but accompanying such application or pleading. Except where the Commission is the proponent, proponent shall file 50 copies of its EDS.

(2) Content and Criteria - The EDS shall contain the information necessary to enable the Commission to evaluate a project and to prepare an EIR or Negative Declaration as provided herein:

(A) In particular, as part of the EDS, proponent shall include a statement as to whether the project may have a significant effect on the environment. If the proponent's position is that the project which would ordinarily be expected to have a significant

effect on the environment, will not have a significant effect, then the EDS shall accompany a motion requesting a Negative Declaration. The EDS shall provide a description of the environment existing before commencement of the project, and detailed information supporting the contention that the project will not have a significant effect on the environment.

(B) If the proponent's position is that the project may have a significant effect on the environment, the EDS shall provide sufficient information fully developing the following:

1. The environmental impact of the proposed action.
2. Any adverse environmental effects which cannot be avoided if the proposal is implemented.
3. Mitigation measures proposed to minimize the impact.
4. Alternatives to the proposed action.
5. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.
6. Any irreversible environmental changes which would be involved in the proposed action should it be implemented.
7. The growth-inducing impact of the action. In addition, the EDS shall discuss the extent of the conformity of the project with all legally applicable environmental quality standards. The EDS shall deal fully with not only the alternative courses of action to the project, but also, to the maximum extent practicable, the environmental effects of each alternative. Further, the EDS shall specifically discuss plans for future development related to the project under consideration. The above-listed factors should be considered to be illustrative and not necessarily exclusive.

(C) The EDS shall include a list of persons and their qualifications responsible for compiling the information within each

area of environmental concern, and a discussion of the methods used to produce the information.

(e) Motions

(1) Any party may file in a proceeding before the Commission a motion to determine whether or not the proceeding involves a project within the purview of CEQA.

(2) A proponent of a project within the purview of CEQA which is the subject of a proceeding before the Commission, or any party may file in such proceeding the following motions:

(A) A motion to determine whether or not the project should be included under the classes of categorical exemptions established in Section (m) of this rule which would exempt the project from the EIR requirements of CEQA.

(B) A motion to determine whether or not the project is an emergency project as defined in CEQA and the Guidelines and is exempt from the EIR requirements of CEQA.

(C) A motion to determine whether or not a project is a ministerial project as defined in CEQA and the Guidelines and is exempt from the EIR requirements of CEQA.

(D) A motion to determine whether or not the Commission is the lead agency as defined in the Guidelines and responsible for the preparation of an EIR or Negative Declaration which is required by CEQA.

(E) A motion to determine whether or not, where the Commission is the lead agency, a Negative Declaration rather than an EIR should be issued in the proceeding.

(F) A motion to determine who is the proponent of the project.

(G) A motion to determine the reasonableness of the deposit or fee required under Section (o).

(3) Section (e) motions may be filed as part of the initial pleading. Motions under Section (e)(1) may be joined with motions under Section (e)(2).

(4) A motion made under Section (e) filed in a proceeding seeking ex parte action or prior to hearing in other proceedings shall be served upon all parties upon which service of the application, complaint, order instituting investigation, or other order was made or required to be made. If a motion is made during the course of a hearing, it shall be served on all parties of record.

(5) Except for motions to determine whether or not an emergency exemption exists, the parties upon whom the motion is served and the Commission staff shall have 15 days in which to respond to the motion. In the case of a motion dealing with an emergency exemption, the time shall be 7 days. The Commission or the presiding officer may, for good cause shown, shorten or enlarge the time in which a response may be filed.

(6) Action shall be taken on Section (e) motions in accordance with Rule 63.

(f) Preparation of Draft EIR or Negative Declaration

(1) If the presiding officer determines in accordance with Section (e) or on his own motion that the Commission is the public agency which has the principal responsibility for approving the project as defined in the Guidelines, and that it should therefore be considered to be the lead agency, responsible for the preparation of the Negative Declaration or the Final EIR, then notice of such determination shall be included in the Notice of Completion filed pursuant to Section (f)(5).

(2) If the presiding officer determines in accordance with Section (e) or on his own motion, in the case of a project which would ordinarily be expected to have a significant effect on the environment, that the project will not have a significant

effect on the environment, then he shall prepare and issue a Negative Declaration pursuant to Rule 63 and in conformance with CEQA and the applicable Guidelines, unless the Commission by order otherwise provides. The Negative Declaration shall be filed by the Secretary of the Commission immediately thereafter, but not less than 30 days before the project is approved, with the Secretary for Resources. The Negative Declaration shall be prepared after consultation with all other public agencies which must approve the project in question or a part of the project.

(3) Parties shall have the opportunity to file exceptions and replies to the Negative Declaration as provided in Rules 80 and 81.

(4) If it is determined that the project may have a significant effect on the environment, the staff shall review the proponent's EDS for form, adequacy, and objectivity and, if necessary, request proponent to correct any deficiencies. The EDS reviewed, corrected, or amended by the staff may become the Commission's Draft EIR. When issued, the staff shall arrange for circulation of the Draft EIR for comment to all public agencies which have jurisdiction by law over the project, including those public agencies which must approve or disapprove the project. It may also be circulated for comment to any person who has special expertise with respect to any area of environmental concern involved in the project. The staff may also consult with and request the services of state agencies or others who have special expertise with respect to any area of environmental concern involved in the project.

(5) As soon as the Draft EIR is completed, but before copies are sent out for review, an official notice, entitled the Notice of Completion and stating that the Draft EIR has been completed, shall be filed with the Secretary for Resources. The notice shall include a brief description of the project, its proposed location,

and an address where copies of the Draft EIR are available.

(6) The procedures to be followed in consulting with other state agencies shall be those prescribed by the Resources Agency, as found in the State Administrative Manual and California Administrative Code, except where those procedures would be in conflict with the established procedures of the Commission.

(7) Notice of completion of the Draft EIR shall be given by the staff to the county and municipal planning commissions and the county and municipal legislative bodies for each county or city affected by the project, the state highway engineer, and other interested parties having requested notification.

(8) Notice shall also be given to the general public by advertisement, not less than once a week, two weeks successively in a newspaper or newspapers of general circulation in the county or counties in which the project will be located. Copies of the Draft EIR and other environmental documents shall be available to members of the public and may be purchased for their actual cost of reproduction and handling.

(9) In the event the project is the subject of a hearing, the hearing with respect to the Draft EIR shall be held not less than 60 days after the Draft EIR has been made available for inspection and comment by the public.

(g) Environmental Impact Report

(1)(A) Evidence in support of the project based on proponent's EDS shall be presented by the proponent at any hearing ordered by the Commission. All other parties may offer formal evidence for the record in support of their environmental positions.

(B) Comments received through the consultation process provided for in Section (f), although not formal evidence as such, shall be made a part of the record in the proceeding and utilized to the maximum extent consistent with the Guidelines and with general

legal and constitutional requirements applicable to Commission proceedings.

(2)(A) Unless the Commission by order otherwise provides, a Final EIR shall be prepared and filed, after hearing, in conformance with CEQA and the Guidelines, by the presiding officer.

(B) The Commission or the presiding officer, pursuant to Rule 63, in its or his discretion may provide for hearings solely on environmental issues.

(3) Parties shall have the opportunity to file exceptions and replies to the Final EIR as provided in Rules 80 and 81.

(4) The Final EIR shall be included in the Commission's regular hearing record.

(5) Copies of the Final EIR shall be made available to the Legislature. A copy of the Final EIR shall be submitted with a second Notice of Completion to the Secretary for Resources and the Office of Intergovernmental Management (State Clearinghouse).

(6) The Final EIR shall be available for inspection by the general public who may secure copies by paying for the actual cost of reproducing and handling such copies. It shall also be filed with the appropriate local planning agency of any city, county, or city and county which will be affected by the project. In addition, the Secretary's office shall cause copies of the EIR to be served upon all parties to the proceeding.

(7) Except where the staff is the proponent, a reasonable deposit or fee, as set forth in Section (o) of this rule, will be charged the proponent of a project subject to the provisions of the CEQA in order to recover the actual costs incurred by the Commission in preparing a Final EIR or Negative Declaration for such project.

(h) Ex Parte Proceedings

If no protests are received within thirty days after the date of the certificate of service of any proceeding subject to the EIR provisions of CEQA, the matter may be considered ex parte; however,

all provisions of this rule, except those relating specifically to hearings shall apply.

(i) Projects Involving Major Federal Actions Or As To Which The Commission Is Not The Lead Agency

(1) When an Environmental Impact Statement (EIS) has been, or will be, prepared for the same project pursuant to the National Environmental Policy Act of 1969 (NEPA), all or any appropriate part of such statement may be submitted by a proponent in lieu of all or any part of an EDS required by this rule, provided that the federal EIS fully develops the factors in Section (d)(2).

(2) Such an EIS prepared pursuant to NEPA may be filed in lieu of all or any part of a Final EIR or Negative Declaration required by this rule, provided that it fully develops the factors in Section (d)(2).

(3) Whenever a Final EIR or Negative Declaration has been, or will be, prepared for the same project by a public agency other than the Commission, copies shall be submitted in lieu of the EDS required by this rule.

(4) Such an EIR or Negative Declaration prepared pursuant to CEQA may be filed in lieu of a Final EIR or Negative Declaration required by this rule and shall be considered by the Commission prior to approving or disapproving the project.

(j) Final Commission Action

(1) The Commission shall adopt a Final EIR or Negative Declaration and consider its contents in making a decision on the project.

(2) The final order of the Commission approving or disapproving a project shall include findings of fact and conclusions of law based upon the environmental factors enumerated in Section (d)(2)(B).

(3) After making a decision on a project as to which a Final EIR or Negative Declaration was prepared, the Commission shall file a notice, specified the Notice of Determination, with the Secretary

for Resources. Contents of the notice shall be as provided in the Guidelines. The notice shall also be filed with the planning agencies of any city, county, or city and county which will be affected by the project, as soon as possible.

(k) Ministerial Projects

Only discretionary projects, as defined in the Guidelines, require the preparation of an EIR. The Commission shall determine which projects it proposes to approve as "ministerial", as defined in the Guidelines, and therefore not subject to CEQA.

(l) Emergency Projects

Emergency projects are not subject to the EIR requirement. Applications for approval of projects which come within the Guidelines' definition of emergency projects need not include an EDS.

(m) Categorical Exemptions

(1) The following specific projects are within the classes of projects which the Secretary for Resources has exempted from the EIR requirements of CEQA:

(A) Class 1 Exemptions.

1. Restoration and repair of existing structures when they have deteriorated or are damaged, in order to meet current standards of public health and safety under the rules of the Commission or other public authority, where the damage is not substantial and did not result from an environmental hazard.

2. The operation, repair, maintenance, or minor alteration of existing facilities used to convey or distribute electric power, natural gas, water, or other substance.

3. The maintenance of landscaping around utility facilities.

4. The maintenance of native growth around utility facilities.

5. Alteration in railroad crossing protection.

6. Minor railroad crossing alterations as described in Guidelines Section 15101(c) and (f), including, but not limited to filings under General Order 88.

7. Installation of new railroad-highway signals or signs.

8. Abandonment, removal, or replacement of the following railroad facilities: (a) stock corrals, (b) tracks, or (c) platforms.

9. Deviation requests filed under General Order 26-b and 118 as to clearances and walkways.

(B) Class 2 Exemptions.

1. The replacement or reconstruction, including reconductoring, of existing utility structures and facilities where the new structure or facility will be located on the same site as the replaced structure or facility and will have substantially the same purpose and capacity as the structure replaced.

2. Minor reconstruction or repair of railroad crossings or separations.

(C) Class 3 Exemptions.

1. Stores and offices for utility purposes if designed for an occupant load of 20 persons or less, if not in conjunction with the building of two or more such structures.

2. Water main, sewage, electrical, gas, and other utility extensions of reasonable length to serve such construction.

3. Accessory (appurtenant) structures to utility structures including garages, carports, patios, and fences.

(D) Class 4 Exemptions. New gardening or landscaping in conjunction with utility facilities or structures, not to include the removal of trees, the filling of earth into previously excavated land, with material compatible with the natural features of the site, and minor temporary uses of land having negligible or no permanent effect on the environment.

(E) Class 5 Exemptions. Projects which require the issuance of street opening permits to permit minor alterations in land use limitations.

(F) Class 6 Exemptions. The preparation and filing of basic data, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. This includes the filing of informational reports with the Commission.

(G) Class 7 Exemptions. Commission decision-making activities which are intended to assure the maintenance, restoration, or enhancement of a natural resource.

(H) Class 8 Exemptions. Commission decision-making activities if they consist of action taken to assure the maintenance, restoration, enhancement, or protection of the environment, for example, in connection with the issuance of instructions or orders having to do with existing utility facilities.

(2) The Commission may, at any time, request that a new class of Categorical Exemptions be added, or an existing one deleted, as provided in the Guidelines.

(n) Lead Agency Determinations

(1) The following are determinations of when the Commission is or is not the lead agency for the preparation of an EIR or Negative Declaration:

(A) Non-Transportation Utility Projects

The Commission is the lead agency for the following projects:

1. Electric generation projects covered by G.O. 131.

2. Electric transmission line projects covered by G.O. 131.

3. Gas storage projects.

4. Major gas transmission projects.

5. New and non-contiguous utility facility projects (independent of subdivision projects).

6. Radiotelephone utility projects.

7. Telephone service area expansion projects.

8. Applications for exemptions from undergrounding requirements.

9. Proceedings directly relating to new construction of utility facilities.

(B) Transportation Utility Projects

1. Grade Separations. If the grade separation is part of a project to be carried out by a public agency, state or local, the Commission would not be the lead agency. The Commission would be the lead agency as to all other grade separation projects.

2. New Street Crossings. If the new street crossing is part of a project to be carried out by a public agency, state or local, the Commission would not be the lead agency. The Commission would be the lead agency as to all other new street crossings.

3. New Railroad Track Crossing. If the new railroad track crossing is part of a project to be carried out by a public agency, state or local, the Commission would not be the lead agency. The Commission would be the lead agency as to all other such projects.

4. Railroad Crossing Relocations. If the project is to be carried out by a public agency, state or local, the Commission would not be the lead agency. The Commission would be the lead agency as to all other such projects.

5. Railroad Crossing Widenings. If the project is to be carried out by a public agency, state or local, the Commission would not be the lead agency. The Commission would be the lead agency as to all other such projects.

6. Certification Proceedings. The Commission would be the lead agency in the following proceedings:

(a) Air - common carrier certification.
(b) Bus - common carrier certification.
(c) Bus - Class B charter certification.
(d) Rail - common carrier certification.
(e) Truck - common carrier certification.
(f) Vessel - common carrier certification.

(2) A motion may be filed under Section (e)(2)(D) to determine whether or not the Commission is the lead agency with respect to a project not specifically enumerated herein.

(o) Fees for Recovery of Costs Incurred in Preparing EIRs

(1) For any project where the Commission is the lead agency responsible for preparing the EIR or Negative Declaration and for which a certificate of public convenience and necessity or other authority to construct facilities is required, the proponent will be charged a fee to recover the actual costs of the Commission in

preparing the EIR or Negative Declaration. A deposit will be charged the proponent as set forth below:

> A deposit of thirty dollars ($30) for each one thousand dollars ($1,000) of the estimated capital cost of the project up to one hundred thousand dollars ($100,000), ten dollars ($10) for each one thousand dollars ($1,000) over one hundred thousand dollars ($100,000) and up to one million dollars ($1,000,000), five dollars ($5) for each one thousand dollars ($1,000) over one million dollars ($1,000,000) and up to five million dollars ($5,000,000), two dollars ($2) for each one thousand dollars ($1,000) over five million dollars ($5,000,000) and up to ten million dollars ($10,000,000), one dollar ($1) for each one thousand dollars ($1,000) over ten million dollars ($10,000,000) and up to one hundred million dollars ($100,000,000), and fifty cents ($0.50) for each one thousand dollars ($1,000) over one hundred million dollars ($100,000,000). A minimum deposit in every case of five hundred dollars ($500) will be collected to cover the estimated costs to be incurred in preparing an EIR.

(2) The minimum deposit will be charged and collected whenever a Negative Declaration is requested. The costs of preparing the EIR or Negative Declaration shall be paid from such deposit. If the costs exceed such deposit, the proponent shall upon disposition of the proceeding by the Commission pay the excess costs, and if the actual costs are less than such deposit, the excess shall be refunded to the proponent.

(3) Proponent may elect to pay the applicable deposit in progressive payments due as follows: A one-third deposit at the time the application or pleading is filed, an additional one-third upon notification that the initial deposit has been expended in connection with the preparation of the EIR, and the remaining one-third upon notification that previously collected amounts have been expended.