

Title 23.

Division 2. Department of Water Resources, California Energy Resources Scheduling Division

Chapter 5. Revenue Requirement and Just and Reasonable Determination

510. Applicability.

This chapter establishes procedures for public participation in the determination of a revenue requirement and standards for whether the revenue requirement is just and reasonable. The regulations in this chapter are not intended to implement, interpret, or make specific any other duties or responsibilities of the department under the Act.

Authority: Section 80014, Water Code; Reference: Sections 80003, 80004, 80100, 80102, 80110, 80134, and 80200(d), Water Code.

511. Definitions.

(a) "Act" means Chapter 4 of the First Extraordinary Session of 2001 of the California Legislature (commonly known as "AB1X"), as amended by Chapter 9 of the First Extraordinary Session of 2001 of the California Legislature, and as codified in part as Division 27 of the California Water Code.

(b) "Comment" means any written communication to the department regarding a proposed determination, including additional material proposed for consideration by the department, submitted in accordance with this chapter, and excluding information received at a workshop, if one is held.

(c) "Commission" means the California Public Utilities Commission.

(d) "Department" means the State of California Department of Water Resources, acting under the authority and powers granted by the Act, and not under its powers and responsibilities with respect to the State Water Resources Development System or with respect to any other program it administers.

(e) "Determination" means a determination by the department of a revenue requirement of a certain amount that, together with any moneys on deposit in the Electric Power Fund, is sufficient to provide the amounts necessary to pay obligations authorized by the Act, and that such revenue requirement is just and reasonable.

(f) "Electric Power Fund" means the Department of Water Resources Electric Power Fund established by Water Code section 80200.

(g) "Mailed" means deposited with the United States Postal Service with postage prepaid. If agreed to by the recipient, the mailing of any notice under this chapter may be accomplished by electronic-mail.

(h) "Material" means data and other factual information, technical, theoretical, and empirical studies or reports.

(i) "Notice" means a notice of opportunity to submit comments, unless otherwise specified.

(j) "Proposed determination" means a department proposal to issue a determination, presented for public comment as described in this chapter.

(k) "Rate Agreement" means the rate agreement between the department and the commission approved pursuant to Decision 02-02-051 of the commission.

(l) "Record" means, with respect to any given determination, the notices issued under this chapter with respect to the determination, written comments submitted in response to the notices, material relied on by the department, the proposed determination, requests for reconsideration, and the determination. "Record" does not include information submitted in any form at a workshop, if one is held.

(m) "Revenue requirement" means an amount, or a revision to the amount, to be established by the department, and of which the department is to notify the commission, in compliance with Water Code sections 80110 and 80134. Each revenue requirement shall relate to the period of time specified in the determination.

Authority: Section 80014, Water Code; Reference: Sections 80004, 80110, 80134, and 80200(d), Water Code.

512. Notice Of Opportunity To Submit Comments.

(a) The department shall provide to interested parties an opportunity to submit comments on each proposed determination made by the department as provided in this chapter.

(b) At least 21 calendar days prior to the close of the opportunity to submit comments on a proposed determination, or upon such shorter or longer time period as the department deems reasonably necessary under the circumstances, a notice shall be:

(1) mailed to every person who has filed a request for notice,

(2) electronically mailed to every person who requests to be notified by electronic e-mail, and

(3) posted on the department's website.

(c) For the purposes of subsection (b), seven calendar days prior to the close of the opportunity to submit comments shall be deemed to be the time period necessary under the circumstances with respect to any revenue requirement required to be filed with the commission pursuant to the second sentence of section 4.1(b) of the Rate Agreement. For the purposes of subsection (b), one business day prior to the close of such opportunity shall be deemed to be the time period necessary under the circumstances with respect to any revenue requirement required to be filed with the commission pursuant to the last sentence of section 4.1(b) of the Rate Agreement.

(d) If, after any notice, the department subsequently provides additional time to submit comments, the department shall provide notice of the additional time by posting a notice on its website, mailing a notice to every person who has filed a request for notice, and electronically mailing a notice to every person who has requested to be notified by electronic mail.

(e) A notice under this section shall include the following:

(1) The mailing and electronic-mail address at which comments must be received, and the deadline for receipt of comments.

(2) A statement explaining where a copy of the proposed determination is available for review. The proposed determination shall include the amount of the proposed revenue requirement, a written explanation of the assumptions and methodologies underlying the proposed determination, a written explanation of how the department reached the proposed determination, and reference to the material relied upon by the department to support the proposed determination.

(3) A statement explaining the process under section 514 for disclosure of certain proprietary or confidential information.

(4) The time and place of a workshop on the revenue requirement if the department, at its discretion, decides to hold a workshop.

(5) The amount of time to be allowed, after the date of electronic publication of the determination, for requests for reconsideration. A reasonable time period shall be allowed, taking into consideration the time constraints for submitting a determination to the commission.

(f) If a notice is given substantially in the manner described in this section, a deficiency in its content or delivery shall not be a basis for invalidating a determination.

Authority: Section 80014, Water Code; Reference: Sections 80110, 80134, and 80200(d), Water Code.

513. Notice Of Significant Additional Material Relied Upon.

(a) If following a notice pursuant to section 512 the department identifies significant material that it intends to rely upon in making its determination, but which was not identified in the proposed determination, the department shall provide notice of such additional material to those persons who received the original notice by the same means as the original notice. The notice will also explain how the material will be made available for review.

(b) A notice of significant additional material shall set a reasonable period of time for receipt of comments on that additional material and state the mailing and electronic-mail addresses at which the comments must be received.

Authority: Section 80014, Water Code; Reference: Sections 80110, 80134, and 80200(d), Water Code.

514. Confidential Information.

The department shall not disclose any proprietary information or other information in the record that the department must keep confidential pursuant to contract or law, but, if such contract or law permits, the department shall make such information available upon receipt, from the person requesting disclosure, of (a) a valid and binding nondisclosure agreement in a form that the department has determined meets the requirements of the applicable contractual or legal confidentiality requirements, and (b) a showing that the disclosure is necessary in order to prepare comments on a determination.

Authority: Section 80014, Water Code; Reference: Sections 80004, 80110, 80134, and 80200(d), Water Code.

515. Comments.

(a) Comments must be in typewritten form and may be submitted by electronic-mail, U.S. mail, or hand delivery, subject to the requirements set forth in this section. All copies must be clear and permanently legible.

(b) Comments must identify the determination that is the subject of the comment by referencing the deadline stated in the notice under section 512 or section 513.

(c) Comments submitted to the department must be signed. Comments submitted on behalf of a business or organization must be signed by a person authorized to comment, and must include the name and title of the signatory, the date of signing, the signatory's business address, and the signatory's business telephone number. Signatures for comments submitted by electronic-mail shall be delivered to the department pursuant to section 515(f).

(d) A signature on submitted comments certifies that the signatory has read the comment and knows its contents; that to the signatory's best knowledge, information, and belief, formed after diligent inquiry, the facts are true as stated; that any legal contentions are warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; that the comments are not tendered for any improper purpose; and that the signatory has full power and authority to sign the document.

(e) No documents or records submitted as comments which purport to be statements of fact shall be considered by the department, unless the documents or records have been certified to the best of knowledge by the person preparing or in charge of preparing them as being true and correct.

(f) Comments submitted through electronic-mail shall be considered by the department only if an original, signed copy of the comment is also received within three working days after the comment is received electronically.

Authority: Section 80014, Water Code; Reference: Sections 80110, 80134, and 80200(d), Water Code.

516. Determination On The Record.

(a) After considering comments timely received in response to a notice and otherwise in conformance with the requirements of this chapter, the department shall issue a determination on the record. Upon issuance, the department shall post a copy of a determination on its website and mail or electronically mail a notice of posting to all persons requesting such notification, to all persons who submitted comments on the proposed determination, and to all persons who submitted requests for reconsideration.

(b) Requests for reconsideration shall be considered by the department if submitted within the time set forth in the notice issued pursuant to section 512.

(c) If the department proposes to revise a determination or a revised determination, before or after it is submitted to the commission but prior to the time that the commission order implementing the determination is adopted, the department shall give notice of the proposed revision in the manner specified in section 513. The department shall consider comments received in response to the notice of proposed revision and specifically directed at the proposed revision. The department shall issue a revised determination on the record in the manner specified in section 516(a). A determination revised in accordance with this section, 516(c), shall not be subject to requests for reconsideration.

(d) Each determination, including any revised determination, shall be effective upon issuance pursuant to section 515(a), including for the purpose of submission to the commission at such time as may be determined by the department, notwithstanding any subsequent reconsideration or proposed revision.

Authority: Section 80014, Water Code; Reference: Sections 80110, 80134, and 80200(d), Water Code.

517. Standards.

(a) To protect ratepayer interests, the record of the determination must demonstrate by substantial evidence that the revenue requirement is just and reasonable, considering the circumstances existing or projected to exist at the respective times of the department's decisions concerning whether to incur the costs comprising such revenue requirement, and the factors which under the Act are relevant to such determination and such decisions, including but not limited to the following:

(1) The development and operation of the program as provided in the Act is in all respects for the welfare and the benefit of the people of the state, to protect the

public peace, health, and safety, and constitutes an essential governmental purpose;

(2) The department must do those things necessary and authorized under chapter 2 of the Act to make power available directly or indirectly to electric consumers in California; provided that except as otherwise stated, nothing in the Act authorizes the department to take ownership of the transmission, generation, or distribution assets of any electrical corporation in the State of California;

(3) Upon those terms, limitations, and conditions as it prescribes, the department may contract with any person, local publicly owned electric utility, or other entity for the purchase of power on such terms and for such periods as the department determines and at such prices the department deems appropriate taking into account all of the factors listed in section 80100 of the Water Code;

(4) The department may sell any power acquired by the department pursuant to the Act to retail end use customers, and to local publicly owned electric utilities, at not more than the department's acquisition costs, including transmission, scheduling, and other related costs, plus other costs as provided in section 80200 of the Water Code;

(5) The department must, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Electric Power Fund, to provide for all of the amounts listed in section 80134(a) of the Water Code, including but not limited to the repayment to the General Fund of appropriations made to the Electric Power Fund for purposes of the Act; and

(6) Obligations of the department authorized by the Act shall be payable solely from the Electric Power Fund.

Authority: Section 80014, Water Code; Reference: Section 80000, 80003, 80100, 80102(b), 80116, 80134 and 80200, Water Code.