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Center for Biological Diversity Comments on the Proposed Regulation Defining “Appurtenant” and “Related” Facilities

Additional submitted attachment is included below.



California Energy Commission
715 P Street
Sacramento, CA 95814

Docket No.: 25-RULE-01

**Re: Center for Biological Diversity Comments on the Proposed Regulation Defining
“Appurtenant” and “Related” Facilities**

Dear California Energy Commission,

The Center for Biological Diversity (“Center”) appreciates the opportunity to provide comments on the proposed amendments to the definitions of appurtenant and related facilities. The Center is concerned that the proposed definition of appurtenant facilities may elicit as much or more confusion as it is intended to alleviate. For the reasons elaborated upon below, the Center urges the California Energy Commission (“CEC”) to amend or otherwise clarify the proposed definitions to ensure regulated entities, regulators, and the public are each on the same page as to what constitutes “appurtenant” and thereby “related” facilities within the scope of the rule.

The proposed definition of “appurtenant facility” is overbroad and as a result unclear. The proposed definition defines “appurtenant facility[ies]” as, among other things, “equipment, structure[s], [and] accessory[ies] ... on the same site as, or physically connected to, a related facility” without ever defining what it means for a structure to be “on the same site as” or “physically connected to” the facility at issue. This will inevitably lead to confusion. “[W]ater intake and discharge structures and equipment” and “waste disposal sites[,]” for example, are often located at a distance from the relevant thermal powerplant or electric transmission line or connected to them via access roads, and it is unclear from the proposed definition whether such structures would be located “on the same site as” the related facility within the ambit of the definition. Neither is it clear from the proposed definition whether the access roads themselves would be “on the same site as” or “physically connected to” the related facility within the scope of the definition. Given that access roads to thermal powerplants and electric transmission lines can sometimes extend for miles through otherwise intact habitats, the proposed definition’s lack of clarity on this point is particularly concerning. The Center therefore urges the CEC to amend or otherwise clarify its proposed definition of “appurtenant” facilities to more clearly and comprehensively articulate when a structure or piece of equipment is “on the same site as” or “physically connected to” the facility at issue.

Further, the proposed definition’s exemption for data centers “served by a thermal powerplant or a facility as the term is defined in Public Resources Code section 25545(b)” from the definition of “appurtenant” raises the potential that permitting and environmental review for such projects could be bifurcated pursuant to the proposed regulatory definition. This could happen in several ways—depending on the size of thermal power plant proposed to serve the data center or if a

non-fossil fuel power plant is proposed under the CEC jurisdiction under Public Resources Code section 25545 et seq. (i.e., “opt-in” jurisdiction).

For example, some data centers that propose to use arrays of diesel backup generators under 100 megawatts (“MW”) have applied to the CEC under for Small Power Plant Exemptions. (*See, e.g.,* 25-SPPE-01 (docket for the Vernon Backup Generating Facility); 25-SPPE-02 (docket for the NorthTown Backup Generating Facility); 21-SPPE-01 (docket for the CA3 Backup Generating Facility).) Section 25519(c) of the Public Resources Code which designates the CEC as the “lead agency” under the California Environmental Quality Act (“CEQA”) for all facilities seeking Small Power Plant Exemptions. (Pub. Resources Code, § 25519(c)) (“The commission shall be the lead agency as provided in Section 21165 for all projects that require certification pursuant to this chapter and for projects that are exempted from such certification pursuant to Section 25541.”). And under CEQA, the term “project” means the “whole of an action.” (Pub. Res. Code § 21065.) Accordingly, in those cases, the CEC has evaluated the entire proposed project, including backup generators and the data center itself, under CEQA, and subsequent decision-makers (like cities or counties) have then acted as “responsible agencies” for CEQA and permitting purposes.

Yet, here, under the proposed Section 1201(c)(2)(B), “a data center served by a thermal powerplant ... [would not be] an appurtenant facility” except for “equipment conveying electricity to the data center[.]” which “would be appurtenant if it meets the definition provided in” proposed Section 1201(c)(1)(A). The proposed exemption suggests that the permitting and associated CEQA review for proposed data center projects would or could be bifurcated, whereby the CEC would analyze and permit only the backup generator arrays associated with proposed data center projects and the relevant cities or counties would then analyze and permit the actual data centers themselves (but not their associated generator arrays), despite what Sections 25519(c) and 21065 of the Public Resources Code otherwise mandate.

In addition, the Center is concerned that treating the data center and associated backup generation arrays as separate projects would undermine permitting agencies’ robust analysis of the full air quality impacts associated with proposed data center projects, whether those impacts are reviewed as direct, indirect, or cumulative impacts. Concerns have already been raised by responsible agencies that the CEC has previously failed to adequately analyze or mitigate the cumulative air quality impacts associated with the diesel backup generator arrays associated with proposed and permitted data center projects in the state. (*See, e.g.,* Bay Area Air Quality Management District Comments on CA3 Data Center-Vantage Draft Environmental Impact Report (21-SPPE-01, TN#242229) [identifying ways that the CEC could improve mitigation measures to minimize the cumulative air quality impacts associated with a proposed data center facility’s backup diesel generator array]; Bay Area Air Quality Management District Comments on Draft Environmental Impact Report for STACK Trade Zone Park (21-SPPE-02, TN#249100) [same].) Similar bifurcation could also occur where a data center proposes to rely on non-fossil fuel backup power generation from solar and batteries or geothermal or hydrogen under the CEC’s opt-in jurisdiction. In all of these instances, the project environmental review should be undertaken by a single lead agency and include all of the direct, indirect, and cumulative impacts of the data center and its needed power generation components.

Moreover, when a data center is proposed in an area already zoned for industrial uses, there arguably might be no discretionary approval needed from the county or city for the data center alone, without its needed power generation. In such cases, by bifurcating the approvals, the CEC exclusion proposed could undermine needed impacts analysis of proposed projects which the county or city or CEC would have otherwise undertaken. The Center accordingly urges the CEC to clarify how, if at all, the proposed exemption of data centers from the definition of “appurtenant” would modify the permitting and CEQA review processes for proposed data center projects and their needed backup generators moving forward.

Thank you for your time and consideration. Please feel free to contact us with any questions.

Sincerely,



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