

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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**FINAL STATEMENT OF REASONS**

Amendments to the Definition of Related Facility and Adding a Definition of Appurtenant Facility

OAL Z # 2026-0526-04

Docket No. 25-RULE-01

INTRODUCTION

The California Energy Commission (CEC) proposes to adopt changes to the definition of related facility and add a definition of appurtenant facility in the California Code of Regulations (CCR), Title 20, Article 2, after considering all comments, objections, and recommendations regarding the proposed regulation.

The purpose of this rulemaking is to update the terminology and criteria for determining the equipment, structures, or accessories that are jurisdictional to the CEC whether initially proposed as part of a project or added to an operating facility previously certified by the CEC.

Adding the definition of “appurtenant facility” and amending the definition of “related facility” will provide clarity regarding the scope of the CEC’s certification for both applicants who seek a certification for a powerplant project or seek to amend an existing powerplant certification.

UPDATE OF THE INITIAL STATEMENT OF REASONS

The California Energy Commission did not make any edits to the proposed regulations after publication of the express terms and the end of the 45-day comment period

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose a mandate on local agencies or school districts.

CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The CEC determined pursuant to Government Code section 11346.9(a)(4) that no alternative before it would be more effective in carrying out the purpose for which this action is proposed; no alternative would be as effective as and less burdensome to affected persons than the adopted regulations; and no alternative would be more cost effective to affected private persons and equally effective in implementing the statutory

policy or other provision of law.

The adopted regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business.

DOCUMENTS INCORPORATED BY REFERENCE

The CEC has not relied upon any technical, theoretical, or empirical studies, reports, or similar documents in drafting the proposed regulations. No documents are incorporated by reference.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS

The CEC has not relied upon any technical, theoretical, or empirical studies, reports, or similar documents in drafting the proposed regulations.

UPDATED INFORMATIVE DIGEST

The CEC finds that no revisions have been made that would warrant a change to the informative digest contained in the Notice of Proposed Action.

SUMMARY OF RESPONSES TO PUBLIC COMMENTS RECEIVED

All responses to public comments, including acceptance of recommendations and justification when recommendations were not accepted, are appended to this Final Statement of Reasons, and included in the final rulemaking record.

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**WRITTEN AND ORAL COMMENTS RECEIVED**

Amendments to the Definition of Appurtenant Facility and Related Facility
OAL Z # 26-0526-04
Docket No. 25-RULE-01

45-Day Written and Oral Comments Received:
March 20, 2026, through May 5, 2026
Public Hearing held May 26, 2026

COMMENTS RECEIVED WITH SUGGESTED CHANGES

Commenter(s) Name(s)	Comment type	Organization	Assigned number
Harrison Beck	Written comment	Center for Biological Diversity	1

Comment 1.1: 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.

Response to Comment 1.1: No change. The proposed definition of “appurtenant facility” is structured to provide a framework for addressing the jurisdiction of project features that are proposed for a new facility or added to an existing operating facility without relying on a list of examples that is unintentionally limiting or which could quickly become outdated as project descriptions and technologies evolve. This definition is clear especially when read in the context of key statutory definitions found in Public Resources Code sections 25107, 25110, 25119, 25120, 25123, and 25545(b)(5), covering “electric transmission line”, “facility”, “site”, “thermal powerplant”, and “modification of an existing facility.” Additionally, the terms “equipment”, “structure”, or “accessory” found in the proposed definition of “appurtenant facility” are original language from the definition of “related facility” and have been in use since that definition was adopted in 1993.

Site is defined in Public Resources Code sections 25119 and 25545(c), as any location on which a facility (or in the case of section 25545(c) “eligible facility”) is constructed or is proposed to be constructed. The project description found in the application and environmental documents will include the specific parcels that comprise the site so the geographic area can be identified. Powerplants are typically fenced, which also provides a means to determine the project site.

As detailed below in the response to the comment on access roads, the term “physically connected” also is to be read using its plain meaning

Comment 1.2: “[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.

Response to Comment 1.2: No change. Due to the scale and complexity of powerplants, it is difficult to fully define the specific scope of the CEC’s jurisdiction over various project elements based on a hypothetical. Generally, if a water intake or discharge structure is proposed to service a powerplant at a minimum it is going to be physically connected to it to fulfill its function of either providing the water to the powerplant or discharging it therefrom.

Additionally, the definition of “appurtenant facility” makes clear that a waste disposal site, such as an existing offsite landfill, would not be jurisdictional to the CEC even if solid waste from the construction of the powerplant is deposited at the landfill because the landfill is not operated in coordination with the powerplant and is not physically connected to the powerplant.

While an existing landfill would not be jurisdictional, other types of waste disposal features, such as land treatment units, septic system leach fields, or evaporation ponds, servicing the facility would be jurisdictional if they are on – or physically connected to – the project site and necessary for the operations of the powerplant. For example, evaporation ponds and the water conveyance equipment and structures running from the cooling towers to the pond are typically located on the project site and are physically connected to the powerplant. Even if an applicant were to propose placing an evaporation pond outside the project site, the evaporation pond would still need to be connected to the powerplant in order to deliver the wastewater to the pond for evaporation.

Other types of water-related structures used to control stormwater on site would also meet the definition of “appurtenant facility” because the stormwater structures are always onsite and necessary for the operations of the powerplant to prevent damaging flooding of facility equipment.

The vast majority of appurtenant equipment, structures, and accessories involved in the operation of a powerplant are constructed on the site of the powerplant. Those few that might not be proposed directly on the powerplant site have some sort of physical connection to the powerplant in order to support its operation and, thus, fall within the CEC’s jurisdiction. CBD does not provide any specific examples of any equipment, structure, or accessory that should be jurisdictional but would not meet the proposed definition.

Comment 1.3: 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.

Response to Comment 1.3: No change. As noted above, fully assessing the CEC’s jurisdictional scope of a powerplant depends on specific project details that are often not provided in a hypothetical. Typically, access roads would be within the CEC’s certification jurisdiction because such roads are physically connected to the project site. Access roads are specifically identified in the definition as an example of a feature operated in coordination with or necessary for the operation of the related facility. Without site access and onsite mobility, the powerplant could not be built or maintained. Thus, access roads meet the two prongs of the definition, physically connected to and necessary for the operation of the related facility (i.e. powerplant or electric transmission line). New access roads required for the construction and maintenance of jurisdictional transmission lines would also be jurisdictional for the same reasons in that there is connectivity to the related facility (in this case, the electric transmission line) and the access road is necessary for operation of the facility.

Specific project facts are important because there are scenarios where a road used by the project developer may not be appurtenant and, therefore, not under the CEC’s jurisdiction.

Comment 1.4: 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.

Response to Comment 1.4: No change. As detailed in the prior responses, the definition of “appurtenant” coupled with the definitions of “electric transmission line”, “facility”, “site”, “thermal powerplant”, and “modification of an existing facility” provide a clear framework to determine the scope of the CEC’s siting jurisdiction consistent with the Public Resources Code based on the specific facts of an application. The phrase “on the same site” and “physically connected” are to be given their common meaning and specifically crafting a unique definition is unnecessary, especially since a powerplant project site is clearly established in the application, including by describing the legal parcel(s) being used and where the physically demarcated security fencing that will envelop the project will be located. Likewise, the specific design of the facility, as thoroughly

described in the application, will identify the connectivity of all equipment, structures, or accessories and if these elements operate in coordination with or are necessary for the powerplant.

Comment 1.5: 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 powerplant 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.

Response to Comment 1.5: No change. The Warren-Alquist Act provides jurisdiction to the CEC to license power generation facilities, not the users of the power that is generated. In the past, the typical powerplant was not co-located with the intended user of the electricity and the CEC’s jurisdiction was clear – anything proposed to be located on the powerplant site was an aspect of the powerplant and, thus, within the CEC’s jurisdiction. This changed with the advent of the data center, which is often co-located with backup generation (and increasingly with generation that provides primary power) that meets the definition of powerplant, triggering CEC jurisdiction. Because these proposals include CEC-jurisdictional components and non-jurisdictional components, these regulations are necessary to clarify what is and isn’t within the scope of the CEC’s jurisdiction. The Warren-Alquist Act does not give

jurisdiction to the CEC to license anything that just happens to be co-located with a jurisdictional powerplant; the Act is clear the CEC has authority to license the site itself and the powerplant (including its components) and that is it.

Nor is the CEC in the best position to permit the office buildings and other unremarkable features that constitute the non-powerplant-related aspects of a data center. As with regular office buildings, these are best permitted and overseen by the local government and is consistent with local authority over the design and construction of office and commercial buildings as well as business parks where data centers may be located. This is also consistent with the fact that the CEC approves powerplants, not the multitude of buildings, homes, and factories, that use the power generated by a CEC approved powerplant.

However, this does not mean that the environmental analysis will be bifurcated. Even with the proposed regulations the CEC will still complete an environmental review of the whole of the project, including the non-powerplant-related features, under CEQA. The Warren-Alquist Act designates the CEC as the lead agency under CEQA for any project that appears before it.

CEQA requires the lead agency to consider and evaluate/analyze the whole of the action as set forth in the CEQA Guidelines at section 15378. It is expected that project applicants will seek a license from the CEC for the powerplant component of a proposed data center before obtaining a permit from the local government for the actual data center/office building component. In this case, the CEC will analyze the environmental impacts of the entirety/whole of the project and the local government will use this analysis when permitting their portion of the project. If, on the other hand, the project applicant seeks review by the local government first, the local government would still have to review the whole of the project, including the powerplant portion and would have to solicit the CEC's input as if the CEC were a responsible agency. When the project is then presented to the CEC for certification, the CEC would still have the ability to augment the analysis further if needed. Thus, these regulations do not affect the thoroughness of the environmental review of any projects that come before the CEC.

Comment 1.6: 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].)

Response to Comment 1.6: No change. As discussed above, the environmental analysis of data center/powerplant combination projects will not be bifurcated as a result of these regulations. The CEC disagrees also with the assertion that the CEC has previously failed to adequately analyze or mitigate the cumulative air quality impacts associated with data center diesel backup generators.

Comment 1.7: 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.

Response to Comment 1.7: No change. As discussed above, staff concurs that for any given data center project, the lead agency is required to analyze the whole of the action, which would include power generation portion and the data center building portion. The proposed definition of "appurtenant facility" does not change this.

Comment 1.8: 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.

Response to Comment 1.8: No change. The proposed regulations will not change the CEC’s environmental analysis of projects proposed for CEC certification. Even if the data center/office building component of a co-located data center/powerplant were eligible for a ministerial permit, the project would still require a CEC license and, as discussed above, as part of its consideration of the project application, the CEC is required to analyze the whole of the project, even any data center building components entitled to a ministerial permit.

COMMENTS RECEIVED IN SUPPORT OF AMENDED LANGUAGE

Commenter(s) Name(s)	Comment type	Organization	Assigned number
John Trujillo	Written comment	BHE Renewables	2
Scott Lipton	Written comment	Enchanted Rock	3

Commenter Number and Comment Number	Comment or Suggested Revision	Energy Commission Response
2.1	BHE Renewables is supportive of this rulemaking and offered no suggested changes.	No change. The CEC appreciates the support.
3.1	Enchanted Rock is supportive of this rulemaking and offered no suggested changes.	No change. The CEC appreciates the support.

**COMMENTS RECEIVED ON MAY 26, 2026
BUSINESS MEETING**

Commenter(s) Name(s)	Comment type	Organization	Assigned number
Josh Harmon	Individual oral comment	PG&E	4

Commenter Number and Comment Number	Comment or Suggested Revision	Energy Commission Response
4.1	PG&E is supportive of this rulemaking and offered no suggested changes.	No change. The CEC appreciates the support.