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DOW CBD Comments CEC AB 205 Opt-In Proposed Regulations 22-OIR-01

Additional submitted attachment is included below.



September 30, 2022

California Energy Commission
Docket Unit, MS-4
Docket No. 22-OIR-01
715 P Street
Sacramento, CA 95814-5400
Email: docket@energy.ca.gov

Re: Docket #22-OIR-01, Comments on Emergency Rulemaking for Assembly Bill 205 Opt-In Certification Provisions

Dear Energy Commission Members:

On behalf of Defenders of Wildlife and the Center for Biological Diversity, we are writing to provide comments in response to the draft emergency rulemaking package for Assembly Bill 205 Opt-In Certification Provisions. We appreciate the opportunity to provide these comments. The draft regulations are helpful in providing a roadmap for submission and processing of applications but are missing some key components required by Assembly Bill 205. We urge the California Energy Commission (CEC) to circulate an amended version for public review prior to finalization that incorporates the proposed changes discussed in this letter. Below is a list of the omissions and/or clarifications that must be addressed in final regulations.

1. The regulations need to include a definition for what is meant by a manufacturing/assembly facility for renewable energy/energy storage systems or components with at least \$250 million investment as set forth in Public Resources Code (PRC) Section 25545(b)(4). For example, what is meant by “specialized products, components, or systems that are integral to renewable energy or energy storage technologies?” What is meant by “component manufacturing?”
2. The regulations need to be clarified as to whether a “facility” that is “[a]n energy storage system as defined in Section 2835 of the Public Utilities Code that is capable of storing 200 megawatts or more of electric energy” includes large scale pump storage projects. See PRC Section 25545(b)(2). In the September 19, 2022, workshop, representatives of the Pechanga Tribe

stated that the Governor's office had informed them that facility did not include the Eagle Crest Pump Storage Project. Environmental groups had also raised this issue with the Governor's office and were informed it was not the intent of the bill. We urge that the definition of facility **does not include** large-scale pump storage projects such as the Eagle Crest Pump Storage Project.

3. The regulations need to include the details of the plans developed between the CEC and the Department of Fish and Wildlife, State Water Resources Control Board (SWRCB), and Department of Toxic Substances Control (DTSC), as required by PRC Section 25545.5, for "timely and effective" consultation between the CEC and these state agencies so that the public and project applicants will understand how and when the public trust and environmental state agencies will evaluate and provide input into the proposed CEC findings and actions. In addition, PRC Section 25545.5 requires that there is a "process to ensure that all such take [of endangered, threatened and candidate species] and impacts are consistent with the California Endangered Species Act." The regulations provide no details regarding this process or any of the consultation proceedings to ensure that the public will be able to review this information in a timely manner to so that it can inform meaningful public comment on these issues. During the workshop, CEC staff indicated that the plans between the state agencies and CEC will become public at some undetermined point in time but provided no details regarding when this information will be available or how it relates to the certification public review process.
4. In Section 1876.5(b), we recommend that relevant state agencies are included in the pre-application meeting(s) pursuant to Section 1876.5(a). As noted above, there is no detail in the proposed regulations regarding **when and where** the CEC will consult with state agencies.
5. Section 1877 should be revised to include a requirement for the application to include similar information from the SWRCB, DTSC or other relevant agencies similar what is proposed in this regulation for the Department of Fish and Wildlife. Appendix B does not cover the information needs relevant to the SWRCB, DTSC, or the State Lands Commission.
6. The regulations need additional detail regarding the timing of review of an application by trustee agencies prior to submitting comments or requests for further information and when these agencies must be providing their feedback to the CEC.
7. The regulations need to include the conditions for requiring an initial study as per PRC Section 25545.7(c). That information does not appear in the current draft regulations. Given the short timelines in this process, an initial study should be prepared and provided to the public early in the process to help inform public review and comment and the formulation of alternatives.
8. Section 1881 needs to be clarified so that the CEC's written decision must include consideration of the information and recommendations generated by the state agencies during the consultation process required under PRC Section 25545.5. The current version of section 1881 includes consideration of the final environmental impact report, staff's assessment of the opt-in application, the executive director's recommendation at the public meeting and any public comment received at the public meeting. This section should also be revised to clarify that the

CEC decision can deny the application or approve an alternative that would avoid significant impacts of “the facility” initially proposed in the application.

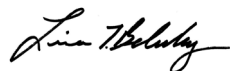
9. The regulations need to be revised to provide for a clear timeline and instructions for the submission of written public comment. As currently written, the regulations appear to only require public comment received at the public meeting. Since the CEC process is intended to mirror the California Environmental Quality Act process, it must include an opportunity and defined process for submitting written public comment outside of the one public meeting but within the specified timeframe for public review at both the scoping stage and for the draft EIR.
10. The regulations need to be revised to include the monitoring requirements as set forth in PRC Section 25532 (see PRC section 25545.11). PRC Section 25532 states that “[t]he commission shall establish a monitoring system to assure that any facility certified under this division is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions adopted or established by the commission or specified in the written decision on the application. In designing and operating the monitoring system, the commission shall seek the cooperation and assistance of the State Air Resources Board, the State Water Resources Control Board, the Department of Health, and other state, regional, and local agencies which have an interest in environmental control.”
11. The regulations need to be revised to include the requirement for a hearing for a project that meets the conditions in PRC Section 25534(a)(1) – (4). According to PRC Section 25545.11, Section 25534 applies to a certification issued pursuant to this chapter.
12. The regulations need to be revised to include details regarding what happens when the “owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved,” as set forth in PRC Section 25534.

Thank you again for the opportunity to review the proposed regulations. If you have any questions, please do not hesitate to contact Kim Delfino at kdelfino@earth-advocacy.com or Lisa Belenky at lbelenky@biologicaldiversity.org.

Sincerely,



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