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Comment on Draft Siting Regulations Docket #14O11-01

Comments for California Energy Commission:

Re: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=14-OII-01

Thank you for the opportunity to comment on draft plant siting regulations. My comments are my own and do not reflect the views of any organizations of which I am a member.

1. In general, the draft appears to reflect Warren-Alquistâ€™s approach taken from the CPUC which does not have a public-user friendly process. The draft moves CEC process in the CPUCâ€™s direction. Instead, the Coastal Commission should be the model, conceptually if not in detail. CEC should be moving in the direction of substantially easing and facilitating more public and community input, not restricting it further.

2. CEC staff, if actually independent, should be empowered to take up issues on its own without higher authorization.

3. It is suggested that the draft contain an open-ended list of issues that if raised by the public and the hearing officer finds them reasonable and substantial, the burden should be on the applicant and staff to address the issue and be directed to report if they donâ€™t intend to. The draftâ€™s rule on qualifying public comment to support a finding is too strict â€" the presumption should be that the hearing officer accepts such comment but then determines what weight should be given to it.

4. CEC should have a site-impacts protocol for assessing carbon sequestration of arid lands, focussing on biological crusts), forests, wetlands, rangelands and other biomes mentioned in the Governorâ€™s state-of-the-state address. Ecosystem-level impacts are needed for such areas as the Mojave Desert. Ecological sciences should be involved in plant siting from the start â€" project conceptualization, location, design, operation , monitoring, transmission, closure and decommissioning.

5. Site approval should be contingent on a technology maturity assessment. Approval of still experimental technology has resulted in problematic operation of Ivanpahâ€™s solar-gathering towers, for example.

6. CEC rules should make it easier and less expensive to obtain paper copies of documents, even while CEC is generally â€œgoing electronicâ€ . Free copying of documents should be the rule at CECâ€™s Sacramento library.

7. CECâ€™s process might include â€œdeclaratory judgementsâ€ (cf. page 33) on factual issues, factual findings, during the hearing â€" leeway to terminate the proposal so more time is not wasted.

8. There should be a more active role for the public advisor and citizen intervenors. Public representation should be encouraged, not discouraged by a baffled array of legalistic and procedural hurdles. Perhaps the public advisor should even have a role in representing the public or conveying the substance of public debate. CEC training of public intervenors in the complexities of the site hearing process should be available.

9. There are additional problematic features of the draft on which clarification would be helpful, lest the impression be reinforced that the new draft deliberately tightens restrictions on filings, interventions and comments, adding to the

widespread belief that CEC â€œrubberstampsâ€ all new gas-fired and Big Solar projects that come before it. For example:

â€” The category of â€œcomplainantâ€ appears to have been expunged and â€œcomplainantsâ€ appear no longer to be qualified as a party to site proceedings.
â€” â€œNative American government has been removed from the definition of â€œlocal agencyâ€ (There is a provision elsewhere for tribal governments to â€œparticipate in consultations with CECâ€¦â€)
â€” A detailed paragraph on â€œright to commentâ€ has been deleted.
â€” â€œAll meetings shall be noticed and open to the publicâ€ has been changed to â€œall public meetings shall be noticedâ€¦â€ (however, another section says â€œall meetings â€¦ shall be public and noticedâ€¦â€ .
â€” Evidence that an applicant introduces no longer appears to be required to be â€œsubstantialâ€ .
â€” Staff communications with parties remain secret and privileged.
â€” Proposed plants, even if they contravene local or regional laws, regulations, standards and ordinances, can be approved if they are alleged to be needed for â€œpublic convenience and necessityâ€ .
â€” â€œAllâ€ mitigation measures (not just some) have to be â€œinfeasibleâ€ before a plant can be disapproved.
â€” A section of obligatory presentation of â€œfacility alternatives to the applicantâ€™s proposalâ€ has been deleted (allegedly because CEQA provisions justify â€œelimination of redundancyâ€ .

10. More generally, the draft appears to reflect CEC's pre-emption of the role of local planning processes but without the strong public involvement in land-use planning or state and regional planning seen in such bodies as Coastal Commission or TRPA.

Finally I believe the state of these draft regulations reflects how far CEC has far to go before it is procedurally enabled to squarely fact up to Californiaâ€™s energy and climate reality: there is a glut of over-procured gas-fired power, no new major gas-fired power plants are needed, they add in toto to the carbon emissions burden and climate disruption, rapidly developing alternatives of preferred resources in place of peaker power will be stifled if additional fossil-fueled capacity is approved, and CEC siting regulations (as well as the assumptions of commissioners and staffs) are still not configured to allow true evidentiary consideration of â€œneedâ€ and clean, distributed alternatives that are ready to fill that â€œneedâ€ .