

DOCKETED

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Comment Received From: Tori Ballif Gibbons

Submitted On: 6/23/2015

Docket Number: 15-OIR-01

Comments of the Colorado River Indian Tribes on the Proposed Amendments to the Title 20 Process and Procedure Regulations

Additional submitted attachment is included below.



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE RD.
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
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June 23, 2015

Sent Via CEC E-Comment and U.S. Mail

Docket Unit
California Energy Commission
Docket No. 15-OIR-01
1516 9th Street, MS-4
Sacramento, CA 95814

Commissioner Karen Douglas
California Energy Commission
1516 Ninth Street, MS-16
Sacramento, CA 95814

Re: Comments of the Colorado River Indian Tribes on the Proposed Amendments to the Title 20 Commission Process and Procedure Regulations

Dear California Energy Commission,

Thank you for the opportunity to comment on the proposed amendments to the Title 20 Commission Process and Procedure Regulations. As you know, the Colorado River Indian Tribes was the first federally recognized Indian Tribe to intervene in a Commission siting proceeding, and consequently offers a unique perspective on the proposed amendments. The Tribes provided comments on the Commission's initial proposal on November 17, 2014 and on the Commission's revised update on January 30, 2015.

The Colorado River Indian Tribes' most pressing concerns—outlined in the January 30, 2015 letter attached here and incorporated by reference—remain unaddressed by the proposed amendments. In particular, while the most recent update does clarify who will engage in consultation with Indian Tribes (i.e., Commission Staff, as described in Section 1714(d)), these revisions move further away from the government-to-government consultation desired by the Colorado River Indian Tribes.

Moreover, the revisions render the section internally inconsistent: Section 1714(d) states that consultation will be consistent with Public Resources Code section 21080.3.1, which in turn adopts the definition of consultation found in Government Code section 65352.4. But that section states that "Consultation between government agencies and Native American tribes shall

June 23, 2015

Page 2

be conducted in a way that is *mutually respectful of each party's sovereignty*" (emphasis added). The Colorado River Indian Tribes submit that *only* consultation between decisionmakers (rather than with staff) can respect the sovereignty of Indian nations. Consequently, the Commission cannot delegate consultation to its staff and act consistently with Public Resources Code section 21080.3.1 and Government Code section 65352.4.

In addition, the Tribes' other concerns regarding consultation and confidentiality, as outlined in its January 30, 2015 letter, remain. Consequently, the Colorado River Indian Tribes urge the Commission to defer its adoption of the proposed amendments to the Title 20 regulations until these deficiencies are addressed. Should you have any questions about our concerns, please contact the Office of the Attorney General for the Colorado River Indian Tribes (Rebecca A. Loudbear, Attorney General, at rloudbear@critdoj.com, or Nancy H. Jасulca, Deputy Attorney General, at njasculca@critdoj.com).

Thank you again for this opportunity to comment on the proposed amendments. We look forward to hearing from the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Patch", written over a large, stylized initial "D".

Chairman Dennis Patch
Colorado River Indian Tribes

Enclosures: (1)

cc: Tribal Council
Rebecca A. Loudbear, Attorney General, Colorado River Indian Tribes
Wilene Fisher-Holt, Museum Director, Colorado River Indian Tribes
David Harper, Chairman/Spokesman, Mohave Elders Committee



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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January 27, 2015

Via CEC E-Comment and U.S. Mail

Commissioner Karen Douglas
California Energy Commission
1516 Ninth Street, MS-16
Sacramento, CA 95814

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 14-OII-01
1516 Ninth Street
Sacramento, CA 95814-5512

Re: **Comments of the Colorado River Indian Tribes on the Revised Updates to the Commission's Process and Procedure Regulations**

Dear California Energy Commission,

Thank you for the opportunity to comment on the revised updates proposed for the California Energy Commission's Process and Procedure Regulations. As you know, the Colorado River Indian Tribes was the first federally recognized Indian tribe to intervene in a Commission siting proceeding, and consequently offers a unique perspective on the proposed revisions. CRIT provided comments on the Commission's initial proposal on November 17, 2014 and reviewed the latest update to understand how the Tribes' concerns were taken into account.

While CRIT appreciates the Commission's efforts to accommodate a number of our suggestions, the Tribes are disappointed that the Commission has not taken this opportunity to revise its regulations to better support tribal consultation. In December 2014, Commissioner Karen Douglas explained to the CRIT Tribal Council that the CEC's recently adopted Tribal Consultation Policy was not the appropriate vehicle for addressing some of the substantive issues CRIT has identified. Yet rather than address those issues in the Process and Procedure Regulations—arguably, a more appropriate venue—the Commission has again left these concerns to a later day. In particular:

- Section 1714(d) implies that the Energy Commission itself will engage in tribal consultation, yet the updates do not address the statutory bar on ex parte communication with Commissioners still present in Section 1216 or the bar on private substantive discussion between Commission Staff and Intervenors still present in Section 1711.
- While CRIT appreciates the additional requirement regarding consultation timing now contained in Section 1714(d), the regulations contain inadequate guidance for the

Commission and its Staff regarding how and when tribal consultation must occur. While the Tribal Consultation Policy—not even mentioned in these regulations—can help fill some of the gaps, CRIT remains concerned that neither the policy nor these regulations provide guidance on what adequate consultation must look like.

- The revised regulations do not provide a clear or automatic mechanism for protecting the confidential nature of sensitive cultural material shared with the Commission during a siting proceeding.

We hope the Commission will take the opportunity to address these important issues prior to finalizing the proposed Process and Procedure Regulations. Should you have any questions about our concerns, please contact the CRIT Office of the Attorney General (Rebecca Loudbear, rloudbear@critdoj.com or Nancy Jасulca, njasculca@critdoj.com).

Sincerely,



Chairman Dennis Patch
Colorado River Indian Tribes

CC: CRIT Tribal Council
Rebecca A. Loudbear, CRIT Attorney General
Wilene Fisher-Holt, CRIT Museum/Cultural Resources
David Harper, Mohave Elders Committee