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Comments on Staff Assessment Section 9 Compliance Conditions and Compliance Monitoring

See Attached Comment Letter

Additional submitted attachment is included below.

COMMENTS ON STAFF ASSESSMENT SECTION 9
COMPLIANCE CONDITIONS AND COMPLIANCE MONITORING PLAN
CORBY BATTERY ENERGY STORAGE SYSTEM PROJECT (24-OPT-05)

California Energy Commission

Docket No. 24-OPT-05

Commissioners:

I submit these comments on Section 9, Compliance Conditions and Compliance Monitoring Plan. This section is not merely administrative. The Staff Assessment repeatedly concludes in the technical sections that potentially significant effects can be reduced through Conditions of Certification (COCs), future plans, monitoring, reporting, emergency procedures, and corrective action. Section 9 is therefore the mechanism that must make those protections real, timely, enforceable, and durable for the life of the Corby BESS.

The Compliance Plan contains useful oversight provisions, including CEC access, compliance records, monthly and annual reporting, complaint procedures, incident reporting, non-operation requirements, and closure planning. My concern is not that Section 9 contains no enforcement structure. It does. The concern is that several matters central to public safety and long-term responsibility are deferred until after certification, while other provisions rely heavily on future project-owner submissions and Staff approval. For a 300 MW / 1,200 MWh BESS proposed next to rural residences and agricultural land, the Commission should make the critical performance requirements and financial protections clear before certification.

I. CONDITIONS THAT SUPPORT A LESS-THAN-SIGNIFICANT FINDING MUST BE ENFORCEABLE BEFORE THE RELEVANT ACTIVITY BEGINS

Section 9 explains that project certification occurs when the CEC adopts a decision approving the project and that all COCs then become binding on the project owner and proposed facility. It also recognizes that many compliance submittals will occur later, during preconstruction, construction, operation, and closure.

That sequence is workable only if the Decision itself contains objective requirements sufficient to determine whether the later plan complies. Where a technical section relies on a future Fire Protection Plan, Emergency Response Plan, water-supply design, monitoring program, hazardous-material procedure, groundwater measure, or other plan to reduce an impact, Section 9 should not permit the essential performance standard to be created for the first time after certification.

COM-3 expressly contemplates verification lead times associated with construction or amendment processing, and COM-4 requires a preconstruction compliance matrix before site mobilization. Those are useful administrative controls. But the Commission should distinguish between later verification of a requirement already established in the Decision and later development of the substantive requirement itself.

II. THE EMERGENCY RESPONSE SITE CONTINGENCY PLAN IS TOO IMPORTANT TO REMAIN LARGELY A POST-CERTIFICATION DOCUMENT

COM-12 requires an Emergency Response Site Contingency Plan no less than 60 days before the start of construction and an updated plan no less than 60 days before commercial operation. The required contents are substantial: responder contact information, gates and access, assembly areas, roads and hospitals, emergency equipment, communication systems, site-specific response protocols, responder training, incident scenarios, site security, contingency procedures, and safe shutdown.

Those subjects overlap directly with issues that Staff uses elsewhere to support its conclusions regarding fire protection, hazardous releases, public health, emergency access, and worker safety. The Commission should therefore identify in the certification decision the minimum emergency-response performance requirements that cannot be left open for later negotiation. At a minimum, the final conditions should establish the required emergency access concept, minimum fire-water capability and replenishment standard, responder coordination requirements, monitoring capability, evacuation/shelter decision framework, communications responsibilities, and the circumstances requiring shutdown or isolation.

A plan submitted 60 days before construction can appropriately supply names, telephone numbers, maps, equipment inventories, training schedules, and implementation details. It should not be the first document that determines whether the project has adequate emergency-response capability.

III. INCIDENT REPORTING IS NECESSARY, BUT IT IS REACTIVE AND SHOULD NOT SUBSTITUTE FOR PREVENTIVE CONDITIONS

COM-13 requires notification to the CPM within one hour after it is safe and feasible for specified incidents, including a forced outage, activation of onsite fire suppression, chemical/gas/hazardous-material releases with potential health effects or offsite odor, and notification or response by an offsite emergency-response agency. A detailed report is then due within six business days, followed by corrective actions.

That is an appropriate accountability mechanism after an event. It does not reduce the probability or initial consequence of the event itself. Where the technical analysis depends on prevention, early detection, containment, fire-water availability, toxic-gas monitoring, or responder readiness, those requirements should remain independent enforceable COCs rather than being treated as matters that can be corrected through post-incident reporting.

IV. CHANGE OF OWNERSHIP OR OPERATIONAL CONTROL REQUIRES MORE THAN A PAPER TRANSFER OF CONDITIONS

Section 9 provides that changes in ownership or operational control are subject to Staff approval and that the new owner/operator becomes obligated to follow the COCs and applicable laws. That continuity is necessary, but it does not by itself answer whether a successor has the technical and financial capacity to perform those obligations.

The Commission should require, before approving a transfer of ownership or operational control, identification of the acquiring entity, its relationship to any parent or affiliate, the party responsible for emergency response and environmental obligations, and evidence that adequate financial resources and insurance or other security remain available for compliance, incident response, remediation, decommissioning, and closure. A transfer should not reduce the practical ability of the Commission or affected members of the public to identify the responsible party.

This is particularly important because Section 9 states that failure to comply with COCs or applicable law can result in noncompliance reports, administrative enforcement, or civil penalties. Those remedies are meaningful only if the responsible owner remains identifiable and financially capable of performing the required work.

V. COM-15 REQUIRES A FINAL CLOSURE PLAN AND COST ESTIMATE, BUT SECTION 9 DOES NOT ESTABLISH FINANCIAL ASSURANCE FOR THAT COST

COM-15 requires a Final Closure Plan and Cost Estimate no less than one year before permanent closure (or another CPM-approved date). The required estimate is comprehensive: dismantling and demolition, recycling and cleanup, impact mitigation and monitoring, site remediation or restoration, security, contingencies, long-term monitoring and maintenance, equipment disposition, hazardous materials, contaminated soil, and other closure impacts.

Staff also states that the project owner remains liable for all costs of contingency planning and closure. Liability on paper, however, is not the same as financial assurance. Section 9 does not itself identify a bond, letter of credit, escrow, parent guaranty, decommissioning trust, or comparable funded security dedicated to satisfying the eventual closure obligation.

That is a significant gap. A closure cost estimate prepared near the end of a project's life is useful only if sufficient money is available when closure is required. The risk is greatest precisely when closure may be involuntary - for example, after a serious incident, prolonged non-operation, insolvency, or transfer to a financially weaker owner.

The Commission should require financial assurance tied to an independently reviewable decommissioning and remediation cost estimate, with periodic adjustment for inflation, augmentation of the battery inventory, changes in recycling/disposal costs, contamination, and other material changes. The security should remain effective through final closure and completion of required remediation and monitoring, and it should not disappear merely because project ownership changes.

VI. NON-OPERATION AND SUSPENDED FACILITY STATUS NEED CLEAR SAFETY TRIGGERS

COM-14 addresses temporary and extended non-operation. It requires plans for safely suspending operations, hazardous-material management, equipment maintenance, security, fire protection, and environmental considerations. It also allows the Executive Director, after prolonged unsuccessful repair/restoration efforts, to assign suspended status and recommend permanent closure.

This is a useful framework, but the Commission should ensure that a damaged or partially disabled BESS cannot remain indefinitely in an ambiguous status while batteries, damaged equipment, contaminated materials, or fire hazards remain onsite. The conditions should establish objective triggers for removal or stabilization of damaged battery equipment, continued fire detection and monitoring, site staffing/security, environmental sampling where warranted, and transition from repair status to closure.

VII. COMPLAINT AND PUBLIC-ACCESS PROCEDURES SHOULD PRESERVE A COMPLETE, ACCESSIBLE RECORD

COM-11 requires a prominently displayed project contact number, response to recorded complaints within 24 hours or the next business day, transmission of complaints to the CPM, and recording of complaints in the compliance file. Section 9 also provides for informal investigation and meetings and states that informal resolution is not a prerequisite to a formal Request for Investigation.

Those provisions are appropriate. For a project whose operational effects may include noise, lighting, odors, emergency events, or other offsite concerns, the Commission should ensure that complaint records remain available for the life of the project and that repeated complaints are evaluated for patterns rather than treated as isolated contacts. The compliance record should show the complaint, investigation, measurements or evidence reviewed, corrective action, and final disposition.

VIII. THE KEY EVENTS LIST CONTAINS WATER-SUPPLY MILESTONES THAT SHOULD BE RECONCILED WITH THE PROJECT DESCRIPTION

The Key Events List at the end of Section 9 includes separate milestones for 'Start Water Supply Line Construction,' 'Complete Water Supply Line Construction,' 'Start Recycled Water Supply Line Construction,' and 'Complete Recycled Water Supply Line Construction.' Section 9 does not explain what Corby facilities those entries refer to.

Because water supply has been an important issue in the Fire Protection and Water Resources analyses, the Commission should clarify whether these are project-specific anticipated facilities or generic entries carried into the compliance template. If project-specific, the source, route, capacity, construction impacts, permits, and relationship to the project's fire-water supply should be identified. If they are generic and no such facilities are proposed, the entries should be removed so the compliance record does not imply an approved water-supply component that has not been environmentally analyzed.

IX. POST-CERTIFICATION PROJECT CHANGES SHOULD NOT BE USED TO EVADE THE ENVIRONMENTAL RECORD ON WHICH CERTIFICATION IS BASED

Section 9 establishes procedures for petitions to amend the CEC decision when the project design, operation, performance, ownership, or other circumstances change. It also contemplates public comment for certain amendments. That process is important because this BESS is expected to evolve through augmentation, equipment replacement, and potentially changed ownership over a long operating life.

The Commission should require a clear determination whenever a proposed change could alter battery quantity or chemistry, maximum state of charge, fire behavior, toxic emissions, water demand, drainage, noise, visual characteristics, transmission configuration, emergency-response requirements, or decommissioning cost. Material changes should receive environmental review and public notice appropriate to their potential effects before implementation.

X. REQUESTED COMMISSION ACTION

1. Ensure that every future plan relied upon to reduce a potentially significant effect is governed by objective performance standards contained in the certification decision before the relevant activity begins.
2. Establish the minimum emergency-response, fire-water, access, monitoring, communication, and shutdown requirements in the Decision rather than leaving those essential standards to the later COM-12 Contingency Plan.
3. Preserve COM-13 incident reporting as an accountability measure, but do not use post-incident reporting or corrective action as a substitute for preventive COCs.
4. Require any successor owner or operator to demonstrate technical responsibility and adequate financial capacity, insurance, or other security for compliance, emergency response, remediation, decommissioning, and closure before a transfer is approved.

5. Require enforceable financial assurance for decommissioning, remediation, and closure, periodically updated to reflect inflation, battery augmentation, disposal/recycling costs, contamination, and other material changes.
6. Establish objective safety and environmental triggers governing prolonged non-operation, damaged batteries, repair/restoration, suspended status, and transition to permanent closure.
7. Maintain a complete public compliance record for complaints and recurring offsite effects, including investigation, evidence, corrective action, and disposition.
8. Clarify whether the water-supply and recycled-water-supply line milestones in the Key Events List are actual Corby project components or generic template entries; analyze them if project-specific and remove them if not applicable.
9. Require environmental review and appropriate public notice before post-certification changes that could materially alter battery configuration, hazards, emissions, water demand, noise, visual effects, transmission facilities, emergency response, or closure cost.
10. Do not rely on the existence of the Compliance Monitoring Plan itself to cure unresolved substantive deficiencies in the technical sections of the Staff Assessment.

XI. CONCLUSION

Section 9 provides a necessary framework for CEC oversight, but oversight after certification is not a substitute for resolving critical safety, environmental, and financial requirements before approval. The conditions should tell the project owner, the CPM, local responders, future owners, and the public what minimum performance is required - not merely establish a process for deciding those matters later.

The long-term issue is particularly important for Corby because the project may operate for decades, undergo battery augmentation and equipment replacement, experience periods of non-operation, and potentially change ownership. The Commission should ensure now that the obligations for emergency response, environmental protection, remediation, and final closure remain enforceable and funded through every phase of that life cycle.

For these reasons, I do not believe the Commission should approve the proposed Kilkenny Road project on the present record.

In addition to these comments, I formally incorporate by reference and fully support the technical comment letter submitted by Keep Vacaville Safe.

Respectfully submitted,

Michael Geller