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Project Should Not Be Certified With Material Plans, Approvals, and Requirements Still Unresolved

Additional submitted attachment is included below.

To: California Energy Commission

Re: Corby Battery Energy Storage System Project — Docket No. 24-OPT-05

Location: Kilkenny Road, Vacaville, Solano County, California

Subject: Formal Opposition — Project Should Not Be Certified With Material Plans, Approvals, and Requirements Still Unresolved

Dear Commissioners and CEC Staff:

I am writing to formally oppose certification of the proposed Corby Battery Energy Storage System Project on Kilkenny Road.

I have worked in the construction industry for **46 years**. During that time, I have been involved in projects where plans, engineering, site requirements, agency requirements, inspections, and permits must be addressed before a project is allowed to proceed.

I have never understood the normal construction permitting process to work in reverse — where a project receives approval first and critical plans, designs, agency coordination, safety measures, and other requirements are left to be completed afterward.

That is my fundamental concern with the Corby BESS project.

The CEC's Staff Assessment is being presented as the basis for moving this project forward, yet the administrative record continues to identify significant unresolved issues, additional data requests, proposed conditions, agency concerns, and plans that are to be completed or finalized at later stages.

Why is this project being allowed to move toward certification when so many material details remain unresolved?

1. My 46 years in construction tell me this is backwards

In ordinary construction, the owner does not receive a permit to construct a complex project and then tell the permitting agencies:

"We will finish the engineering later."

The normal process is to establish the project requirements, prepare the necessary plans and specifications, obtain the required agency approvals, resolve conflicts, demonstrate compliance, and then issue the authorization to construct.

I recognize that the CEC's Opt-In process is a specialized statutory permitting process and is not identical to a municipal building permit.

However, the existence of a different statutory process does not eliminate the underlying responsibility to establish that a project is **safe, feasible, adequately designed, environmentally**

evaluated, and capable of complying with all applicable requirements before final certification is issued.

The Corby project should not receive a blank check to resolve critical matters after certification.

2. The administrative record demonstrates that important matters are still being developed

This is not speculation.

The project record itself demonstrates that important plans and requirements are contemplated for completion at later stages.

For example, the project applicant has stated that the construction and operational Hazardous Materials Business Plans would be developed at later stages, with the construction plan being prepared once the project is fully designed and a construction contractor has been selected.

The record also shows proposed conditions dealing with fire protection, emergency response, training, fire protection systems, site design, access roads, signage, ventilation, backup power, and other matters. Some of these are intended to be implemented through Conditions of Certification rather than being fully resolved before certification.

That raises an obvious question:

How can the Commission determine that this project is ready for final certification when some of the very information necessary to determine whether it can safely and properly operate will not exist until after certification?

3. Conditions of Certification should not substitute for completed project design

I understand that Conditions of Certification are an established part of the CEC's regulatory process.

But there is a critical difference between:

A. imposing ordinary construction and operational conditions on an adequately designed project;

and

B. using future conditions to fill material gaps in the project's design, engineering, emergency planning, agency coordination, or feasibility.

The latter approach creates a serious problem.

If a future plan could change the project's safety characteristics, emergency response requirements, water requirements, access requirements, fire protection system, hazardous-

material controls, drainage, or other material characteristics, then those matters should be sufficiently resolved before the Commission determines that the project can be certified.

The public should not have to accept:

"The details will be worked out later."

That is not how I have seen responsible construction projects permitted during 46 years in the industry.

4. Fire and emergency response are not matters that should be left open

This concern is particularly important for a large battery energy storage facility.

The project record contains continuing discussion of fire protection, emergency response, training, fire protection systems, access, ventilation, backup power, and related safety measures. The applicant has proposed conditions addressing these issues.

The Commission should require the public to know **before certification**:

- What is the final fire protection design?
- What is the final emergency response plan?
- What are the final evacuation and access procedures?
- What water supply is actually available and adequate?
- What equipment and personnel will the responding fire agency have?
- Who pays for specialized equipment and training?
- What happens when a battery fire continues for an extended period?
- What is the final design for ventilation and explosion control?
- What happens if the proposed safety systems fail?
- What are the final distances and setbacks from neighboring properties?
- What is the final configuration of the battery containers and associated equipment?
- What conditions must be satisfied before energization?

These are not minor details.

They go directly to whether the project is suitable for the proposed location.

5. Local fire agencies and other affected agencies should not be placed in a position of approving a moving target

A project of this magnitude affects numerous public agencies.

Those agencies should have the opportunity to review a sufficiently complete project before the CEC grants final certification.

The CEC docket continues to contain comments concerning fire protection, emergency response capability, water supply, traffic, soil and water, hazardous materials, public health, land use, and other issues.

The fact that these issues continue to generate substantive comments demonstrates that the project is not simply a completed design awaiting a permit.

It remains a project under active scrutiny.

That is exactly why final certification should not occur until the material issues have been resolved.

6. The Staff Assessment should not be treated as proof that every requirement has been satisfied

The CEC describes the Staff Assessment as its independent evaluation of the proposed project and the Draft EIR.

That is important.

An assessment is an evaluation.

It is not the same thing as proof that every required plan, approval, engineering document, agency determination, and operational safeguard has been completed.

The Commission should therefore distinguish between:

"Staff has identified a condition that can potentially be imposed later"

and

"The project has demonstrated that it satisfies the requirement now."

Those are not the same thing.

7. The public should not have to rely on promises about what will happen after certification

I am particularly concerned about the precedent this creates.

If a major industrial project can obtain state certification while material design and agency requirements remain unresolved, then the public is effectively being asked to approve the **concept of the project** rather than the completed project that will actually be constructed.

Once certification has been granted, the practical ability of surrounding property owners and affected communities to challenge fundamental project decisions may be substantially reduced.

That is why the burden should be on the applicant to demonstrate compliance **before** final certification, not on the community to discover problems afterward.

8. The Corby project is not an ordinary construction project

The proposed facility involves lithium-ion battery energy storage technology and is proposed in an agricultural/rural setting near existing homes, agricultural operations, roads, utilities, and other community resources.

That combination makes complete pre-certification review particularly important.

The Commission should not use the urgency of energy storage as a reason to reduce the level of certainty required before approving a specific site.

California needs energy storage.

That does not mean every proposed location is appropriate.

And it does not mean that an incomplete project should be certified simply because the applicant promises to resolve outstanding matters later.

9. This issue also relates directly to Measure T and local land-use authority

There is an additional fundamental issue that should not be overlooked.

If the CEC ultimately uses its Opt-In authority to authorize this project despite local land-use restrictions and voter-enacted Measure T, then the Commission would be exercising an extraordinary form of state authority over local land-use decisions.

As I have stated in my prior comments, the Commission should specifically address whether approval would result in a **de facto displacement of voter-enacted local land-use authority**.

That issue is particularly important here because the proposed project would industrialize agricultural land.

The Commission should not simultaneously:

1. override local land-use authority;
2. authorize an industrial use on agricultural property; and
3. permit material project requirements to remain unresolved.

The more extraordinary the State's authority becomes, the more important it is that the administrative record demonstrate that every substantive requirement has actually been satisfied.

10. My request to the Commission

I respectfully request that the California Energy Commission **not certify the Corby BESS project in its current state.**

Before any final certification is considered, I request that the Commission require the applicant to provide and resolve, in the public record:

1. Final engineering and site plans;
2. Final fire protection plans;
3. Final emergency response plans;
4. Final hazardous-material plans;
5. Final water supply and fire-flow calculations;
6. Final drainage and stormwater plans;
7. Final access and road plans;
8. Final traffic and construction access approvals;
9. Final agreements and determinations from affected fire and emergency-response agencies;
10. Final battery technology and equipment specifications;
11. Final setbacks and safety distances;
12. Final ventilation and explosion-control design;
13. Final plans for emergency training and specialized equipment;
14. Resolution of all outstanding agency comments;
15. Resolution of all material deficiencies identified through CEC data requests;
16. Complete documentation demonstrating compliance with applicable requirements;
17. A clear determination regarding Measure T and voter-enacted local land-use authority; and
18. A clear explanation of why the proposed agricultural site is appropriate when industrially designated alternatives may exist.

11. The Commission should not approve a project first and finish designing it afterward

After 46 years in construction, I understand that projects evolve.

I also understand that not every detail can be known on day one.

But there is a fundamental difference between **normal construction refinement** and **leaving material safety, engineering, agency, and feasibility questions unresolved while seeking project approval.**

The Corby project should reach a point where the Commission can say:

This is the project being approved. These are the plans. These are the safety systems. These are the agency requirements. These are the environmental protections. These are the emergency procedures. These are the conditions. And the applicant has demonstrated that the project can comply with all of them.

That is not what the current record gives me confidence has occurred.

I therefore respectfully request that the Commission **deny certification of the Corby BESS project in its current form, or at a minimum defer any final decision until all material plans, engineering, agency approvals, safety requirements, environmental deficiencies, and land-use issues have been fully resolved and placed into the public record.**

The public should not be asked to approve a project and then wait to find out what the final project will actually look like.

After 46 years in construction, I believe that is backwards.

The plans should be complete enough to know what is being approved before the approval is granted.

Respectfully submitted,

Neil Serr
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