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Objections to Community Benefits Agreement (TN 267229) & Draft Staff Assessment Omissions Under PRC Â§ 255459

Additional submitted attachment is included below.



Date: September 14, 2026

To: California Energy Commission, Docket Unit (MS-4)

Docket No.: 24-OPT-05 (Corby Battery Energy Storage System)

Subject: Specific Objections to Executed Community Benefits Agreement (TN 267229) & Draft Staff Assessment Omissions Under PRC § 25545.9

Dear Commissioners and CEC Siting Staff,

On behalf of Keep Vacaville Safe and affected local residents across Solano County, we submit this formal public comment letter specifically targeting the legal, structural, and disclosure deficiencies of the executed Community Benefits Agreement ([TN 267229](#)) for the proposed Corby Battery Energy Storage System (Docket No. 24-OPT-05).

Under **Public Resources Code section 25545.9**, the California Energy Commission (CEC) cannot certify an opt-in application without an affirmative finding that a "*legally binding and enforceable*" community benefits agreement exists to secure a net positive economic benefit for the host community. Furthermore, CEC Staff directly relies on this agreement to justify its economic benefit conclusions and proposed override findings under Section 10.4.

A rigorous legal and textual analysis of the executed agreement in the docket demonstrates that [TN 267229](#) is legally illusory, unenforceable, and fundamentally incapable of supporting the statutory findings required for certification.

I. Primary Legal Deficiencies in the Executed Agreement (TN 267229)

1. The Unilateral 5-Day Termination Clause Renders the Agreement Illusory

The executed agreement ([TN 267229](#)) explicitly permits the project owner to terminate the contract upon **5 days' written notice** at its sole discretion including the day immediately following CEC certification.

Under established California contract law, a contract that can be unilaterally terminated without cause by one party creates an **illusory promise**. An illusory contract carries no enforceable obligation and cannot constitute substantial evidence of a permanent, net positive benefit to Solano County.

2. Operation-Only Payment Contingencies Leave the Host Community Unprotected

Under [TN 267229](#), zero funds are due or payable until the facility reaches full Commercial Operation.

If the project receives certification, undertakes ground disturbance, creates pre-construction infrastructure strain, or is subsequently sold, transferred, or abandoned prior to full commercial operation, **not a single dollar is paid** to the host community or local beneficiaries.

3. Lack of Performance Guarantees and Long-Term Binding Mechanisms

The agreement contains no performance bonds, escrow requirements, or successor-in-interest binding provisions to ensure funds remain available if the project entity undergoes corporate restructuring, bankruptcy, or asset transfer over its multi-decade lifecycle.

II. Material Omissions in the Draft Staff Assessment

The Draft Staff Assessment (DSA) devotes significant space (pages 10-7 through 10-9, and 11-3) to extolling the Community Benefits Plan and naming recipient funds, yet it completely omits critical legal terms and restructuring facts from the public narrative:

Omission of the Financial Total: The overall **\$500,000** financial figure appears nowhere in the 1,402-page Draft Staff Assessment, preventing the public and Commissioners from evaluating whether the monetary contribution is proportional to the risks and land-use burdens imposed.

Concealment of Local Beneficiary Declinations: The DSA conceals the fact that the plan was consolidated into a single grant maker (Solano Community Foundation) only after three primary local institutions actively declined to participate:

- 1. Solano Community College** declined a \$200,000 allocation.
- 2. Travis Fisher House Foundation** declined a \$200,000 allocation.
- 3. Local Vacaville Veterans Organizations** refused to execute a formal agreement.

Scrubbing these rejections and omitting the actual terms of [TN 267229](#) creates a misleading administrative record that masks local opposition and institutional rejection.

III. Mandatory Remedies & Requested Commission Action

To satisfy Public Resources Code section 25545.9 and ensure local communities are not left with revocable, paper-only promises, Keep Vacaville Safe requests that the Commission take the following actions prior to any certification decision:

1. **Reject TN 267229 as Non-Compliant:** Issue an explicit administrative finding that the current executed agreement ([TN 267229](#)) fails to satisfy PRC § 25545.9 due to its 5-day termination clause and operation-only contingencies.
2. **Require an Irrevocable, Enforceable Instrument:** Condition any consideration on a revised, fully binding agreement that is **irrevocable, non-cancelable**, enforceable across all project successors for the entire 30-year operational lifecycle, and backed by a financial bond or escrow fund.
3. **Issue Full Narrative Disclosure:** Direct Staff to publish an updated assessment disclosing the \$500,000 total commitment, the full terms of [TN 267229](#), and the complete history of local institutional declinations.

Respectfully submitted,

Keep Vacaville Safe