DOCKETED	
Docket Number:	26-OIR-04
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations
TN #:	273319
Document Title:	Linda Geller Comments - Public Comments on Proposed Express Terms, TN 272980 — Public Safety, Environmental Review, Accountability, and Applicability to
Description:	N/A
Filer:	System
Organization:	Linda Geller
Submitter Role:	Public
Submission Date:	11/2/2026 3:14:15 PM
Docketed Date:	11/2/2026

Comment Received From: Linda Geller
Submitted On: 11/2/2026
Docket Number: 26-OIR-04

Public Comments on Proposed Express Terms, TN 272980 â€” Public Safety, Environmental Review, Accountability, and Applicability to

Additional submitted attachment is included below.

November 2, 2026

Via CEC Electronic Comment System

California Energy Commission
Docket No. 26-OIR-04 — Emergency Rulemaking Amending the Opt-In Regulations

Re: Public Comments on Proposed Express Terms, TN 272980 — Public Safety, Environmental Review, Accountability, and Applicability to Pending BESS Applications

Dear Commissioners and Commission Staff:

We submit these comments on behalf of concerned community members affected by proposed battery energy storage system (BESS) facilities, including the Corby and Vaca Dixon projects in Solano County. We support reliable energy infrastructure and responsible development. We also expect the Commission to exercise independent judgment, evaluate credible contrary evidence, and establish enforceable protections before authorizing facilities with potentially serious consequences for neighboring residents, agricultural lands, emergency responders, and historic resources.

The September 29, 2026 Express Terms (TN 272980) present an opportunity to improve the opt-in process. The amendments should be strengthened, and the Commission should expressly address their application to applications that remain pending when the regulations become effective. These comments distinguish requests for new regulatory safeguards from duties that already exist under CEQA and the opt-in statutes.

Applicability to Pending Applications

The Commission should adopt a clear transition provision requiring compliance by pending, unapproved applications to the extent legally authorized. This is not necessarily a request to impose new consequences on completed conduct. Rather, it concerns the information, consultation, findings, and conditions required before future certification decisions. California law generally disfavors genuinely retroactive application absent sufficient authorization. Western Security Bank v. Superior Court (1997) 15 Cal.4th 232, 243. That principle does not automatically prevent the Commission from imposing prospective requirements on pending proceedings.

We request that the Commission identify, provision by provision, whether any legal restriction prevents application to pending projects, and provide a written explanation of any exemption. A prior application-completeness determination should not be treated as conclusive proof of environmental adequacy or as a bar to requesting additional evidence. In particular, existing CEQA requirements for a good-faith, reasoned environmental analysis and, where triggered, recirculation, apply independently of these proposed regulations. (Pub. Resources Code, § 25545.7.6; Cal. Code Regs., tit. 14, §§ 15088.5, 15151.)

Proposed transition provision: “The Commission shall apply the amendments adopted under this rulemaking to every application for certification pending and not finally certified on the effective date of the regulations, including the Corby and Vaca Dixon BESS projects. The Commission shall obtain supplemental information, analysis, consultation, and enforceable conditions necessary to evaluate such applications under applicable law before certification. An application filing date, completeness determination, or commencement of environmental review shall not, by itself, exempt a pending project. If the Commission determines that a specific requirement cannot apply to a pending application, it shall identify the precise statutory or other controlling legal authority and explain its

determination in writing in the public rulemaking record. Nothing in this section limits the Commission's existing authority or obligations under CEQA."

Investigative Authority and Responses to Material Public Evidence — Proposed § 1878

Proposed § 1878(c) recognizes that additional information may be needed after completeness, including to address issues raised by members of the public. Proposed § 1878(d) identifies investigative authority under Government Code § 11181. These are important acknowledgments, but the permissive wording does not establish a transparent process for resolving substantial contradictory evidence. The Commission should require a written disposition when material, reasonably supported concerns about public health, safety, or environmental impacts are submitted. The response should identify the evidence considered, any independent verification obtained, unresolved disputes, and reasons for declining further investigation. This does not require agreement with every commenter; it requires accountable consideration of material evidence.

Our community has submitted detailed concerns regarding Corby's toxic dispersion assumptions, emergency response, biological surveys, visual effects, cultural resources, alternatives, and related infrastructure. We request that the Commission clarify that rulemaking changes do not excuse the agency from addressing those existing evidentiary issues in the individual certification proceeding.

BESS Fire Safety, Toxic Releases, and Emergency Preparedness — Proposed § 1877(i) and Appendix B

Documented consultation with the fire authority is useful, but consultation is not a substitute for demonstrated response capability. The regulations should require a written evaluation of personnel, specialized equipment, training, water supply, mutual aid, incident command, response limitations, and sustainable funding. Material gaps should be resolved through enforceable measures before certification or operation, as appropriate.

For thermal runaway and toxic release analyses, require disclosure of the battery chemistry, credible failure and propagation scenarios, emissions/speciation assumptions, release rates and durations, meteorological inputs, model configuration, uncertainty and sensitivity analyses, and receptor-specific exposure results. Applicants should provide native model files and underlying data where not lawfully confidential. Where substantial conflicting technical evidence is presented, independent verification should be required.

Emergency plans must be operationally realistic for rural communities, including residents with disabilities, households requiring evacuation assistance, and people who cannot immediately relocate. The Commission should require coordinated evacuation and shelter-in-place criteria, accessible alerts, drills, and verified interagency responsibilities. Plans must address contaminated firewater, runoff, sampling, containment, disposal, irrigation conveyances, and domestic wells.

The regulations must require a site-specific, independently reviewable evacuation and emergency-access analysis. For rural roads such as Kilkenny Road near the Corby project, the analysis must address circumstances in which residents have only one practical means of egress and the roadway is too narrow to accommodate simultaneous outbound evacuation traffic and inbound fire engines, ambulances, law-enforcement vehicles, and other emergency personnel. An emergency response plan cannot assume two-way traffic capacity that the roadway does not physically provide. The Commission should require verified roadway widths, turnouts, shoulders, intersections, obstructions, emergency-vehicle dimensions, evacuation demand, traffic queues, travel times, and realistic incident

scenarios, including road blockage and impaired visibility. Where a single access route creates a conflict, the applicant must identify and fund workable mitigation and coordinated traffic-control procedures, and demonstrate that emergency access and safe evacuation can actually be maintained.

Resident notification must likewise be specified rather than left to general assurances. The plan should identify who has authority to order evacuation or shelter in place; what incident thresholds trigger each action; which agencies issue the warnings; how quickly notifications must occur; and how instructions are transmitted through multiple redundant channels, including Wireless Emergency Alerts, reverse-911 or county alert systems, direct contact where necessary, and accessible formats. It must address power, internet, and cellular failures; people who are asleep or away from electronic devices; non-English-speaking households; residents with hearing or vision disabilities; people with mobility or medical needs; and individuals who require assistance to evacuate. The plan must provide clear route-specific instructions, designated safe destinations, and procedures for accounting for residents who cannot leave independently.

The evacuation plan must also address residents and property owners who are away from home when an evacuation or shelter-in-place order is issued and therefore cannot safely return to retrieve pets, horses, livestock, or other animals remaining on their property. This is particularly important in rural agricultural areas where animals may be confined in residences, barns, paddocks, or pastures and cannot be evacuated without assistance, trailers, or specialized handling. The plan must establish how absent owners will be notified of the order and of restrictions on reentry; how they may report the location, number, species, and immediate needs of animals; which authorized agencies or trained animal-response organizations will coordinate access, rescue, transport, temporary shelter, veterinary care, and reunification; and how those operations will be conducted without obstructing emergency vehicles or exposing owners and responders to hazardous conditions. It must identify prearranged resources, including livestock trailers and suitable receiving facilities, and establish protocols for circumstances in which immediate animal evacuation is unsafe or impossible, including provision of water, feed, and welfare checks when safely feasible. Residents must not be expected to violate evacuation orders or enter hazardous areas to protect their animals. The CEC should require documented coordination with county animal services, emergency management, agricultural officials, and affected property owners before certification.

We request an express prohibition on reliance upon unverified assumptions that residents can evacuate while responders enter along the same constrained roadway. The CEC should require consultation with affected residents, the responsible fire and law-enforcement agencies, road authorities, and emergency-management personnel; documented field verification; scenario-based exercises; and publicly available findings resolving conflicts between evacuation and ingress. If a safe and feasible evacuation or shelter-in-place strategy cannot be demonstrated, certification should not proceed on the premise that the issue can be resolved after approval. These requirements should also be applied, to the extent legally authorized, to pending projects such as Corby and Vaca Dixon before certification.

Inspection and Operational Clearance — Proposed § 1881.5

Any inspection timetable should not operate as deemed safety approval merely through the passage of time. The Commission should require affirmative, documented clearance before testing or operation where the regulations require inspection, with correction of material deficiencies and clear authority to delay operations. The final rule should specify the inspection scope, responsible agency, documentary record, and public availability of results, subject to legitimate security limitations.

Adequate Design, Site Control, and Related Facilities — Proposed § 1877 and Appendix B

A preliminary design milestone cannot replace the design detail needed to assess environmental impacts. Before certification, the record should adequately establish equipment layout, spacing, drainage, grading, access, fire protection, electrical connections, and reasonably foreseeable off-site facilities. Significant design changes should trigger additional review when warranted by law.

Proposed § 1877(h) permits an applicant's affirmation of property rights to suffice absent contrary evidence. The Commission should instead require reasonable affirmative documentation of rights necessary for the site, access, generation-tie infrastructure, and related facilities, with an appropriate mechanism to protect confidential commercial information. An applicant's unsupported statement should not shift the practical burden of disproving site control to neighboring landowners.

Public Records, Reproducibility, and Meaningful Participation — Proposed § 1880.5

Technical records should be accessible early enough to permit meaningful public scrutiny. If GIS layers, model files, or other native materials are part of the administrative record but not directly posted to the docket, the Commission should establish a straightforward, timely process to obtain nonconfidential copies. The rules should preserve a reasonable opportunity to identify omissions and request correction, without treating the docket index as a substitute for access to the underlying evidence. Any exclusion or removal of a docketed document should be accompanied by a public explanation and preserved audit trail, consistent with applicable confidentiality and records laws.

Independent Local Agency Review — Proposed § 1878.1

The proposal's direction that local agencies are not expected to conduct studies or retain experts, combined with reimbursement tied to the scope of the Commission's request, risks limiting the quality of local technical participation. Local agencies may need independent fire engineering, toxicology, hydrology, cultural resource, or other expertise to evaluate highly specialized claims. The Commission should permit reimbursement for reasonable, necessary technical review relevant to an agency's responsibilities, subject to transparent budget controls, and should not define the requested scope so narrowly that significant local concerns are excluded.

Historic Resources, Visual Impacts, Alternatives, and Cumulative Effects

The regulations should explicitly require assessment of a historic resource's setting where that setting contributes to its significance, rather than limiting the analysis to direct physical alteration. The Catherine Kilkenny Residence has been identified in the Corby proceeding as historically eligible. Visual review should examine seasonal leaf-off conditions where deciduous orchards are used as screening, nighttime lighting, proposed walls and transmission infrastructure, and the full project context. These requests reinforce, rather than replace, existing CEQA requirements.

The Commission should also require transparent evaluation of reasonable alternatives, including feasible sites and generation-tie configurations, and cumulative effects of nearby or related BESS proposals. Applicant preferences or unsupported assumptions should not substitute for the Commission's independent analysis. (See Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, §§ 15126.6, 15130.)

Economic Benefit and Community Benefits — Proposed §§ 1879 and 1879.5

The proposed treatment of net positive economic benefit should preserve meaningful consideration of evidence that may rebut a statutory presumption, including public service costs, infrastructure burdens, agricultural effects, and reasonably supported adverse economic consequences. Community benefit agreements should be publicly disclosed to the extent permitted by law, identify beneficiaries and enforceable commitments, and be developed through meaningful community engagement. Such agreements must not be used as substitutes for required mitigation, environmental findings, or independent consideration of project impacts.

Requested Commission Action

We respectfully request that the Commission revise the Express Terms to: (1) expressly require application to pending, unapproved projects; (2) establish documented resolution of material public evidence and independent verification where warranted; (3) require demonstrated fire-response capacity and enforceable preoperation inspection clearance; (4) strengthen toxic-release modeling, emergency response, runoff and groundwater safeguards; (5) provide timely access to underlying nonconfidential technical records; (6) support independent local agency technical review; (7) require adequate design and property-rights documentation; and (8) reinforce meaningful analysis of historic settings, seasonal visual impacts, alternatives, cumulative effects, and economic costs. We additionally request mandatory site-specific verification of rural evacuation routes, two-way emergency-access constraints, redundant resident notification protocols, and workable mitigation before certification, including for all pending, unapproved applications.

We further request that the Commission explain how these proposed changes interact with existing obligations in the Corby and Vaca Dixon proceedings, and identify any provisions it concludes cannot be applied to pending applications. We ask that these comments be included in the rulemaking record and receive a substantive written response.

Respectfully submitted,

Linda Geller

Linda Geller

Keep Vacaville Safe