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Proposed Opt-In Emergency Regulations

November 2, Public Workshop
Docket Number: 26-OIR-04

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Meeting Logistics

- Meeting is recorded.
- Instruction for Zoom closed captioning service:
  - **To Activate**: click on “live transcript” icon and then choose either “show subtitle” or “view full transcript”.
  - **To Stop**: click "exit" from “live transcript” or select “hide subtitle” icon.
- Agenda includes time for public comment and input.

Agenda

- Welcome
- CEC Staff Presentation
- Public Comment
- Closing Remarks

Welcome

Proposed Amendments to the Opt-In Regulations

Purpose

The main purpose of this rulemaking is to:

- Incorporate the statutory revisions in SB 254 and SB 283
- Refine previously adopted regulations to enhance clarity based on lessons learned from Opt-In cases.

Benefits of the Proposed Amendments

- Statutory revisions in SBs 254 and 283 are incorporated, ensuring the regulations match statutory requirements.
- Streamlined local agency reimbursement process.
- Standardized processes for suspension, withdrawal, and change in ownership.
- More Opt-In technology specific information requested in the application means fewer data requests and potentially faster application completeness determinations.

Emergency Authority

- Public Resources Code § 25545.12 gives the CEC express statutory authority to adopt regulations pertaining to Opt-In as emergency regulations.
- Emergency regulations are effective immediately upon Office of Administrative Law (OAL) approval.
- Emergency regulations adopted under section 25545.12 are permanent.

Public Resources Code § 25545.12 (a)

"Regulations adopted to implement this chapter, or any amendment to those regulations, shall be adopted by the commission in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other [*sic*] of law, the emergency regulations adopted to implement this chapter shall remain in effect until amended by the commission."

Section 1876.5 - Pre-Filing Consultation

- This provision requires applicants to meet with CEC staff at least 30 days prior to submitting an application to ensure that the application contains the required information. The CEC shall invite the local government and may invite relevant state and federal agencies.
- The amended provision would require that this meeting address potential issues that may arise during formal review of the project.
- The amended provision would also expressly allow the CEC to invite relevant California Native American tribes to participate in the pre-filing consultation.

Section 1877 - Contents of Opt-In Application

- Section 1877 describes the form and content of an Opt-In application.
- SB 254 amended Public Resources Code section 25545.9 to provide a statutory presumption of net economic benefits for construction and operation of the facility.
- Due to the statutory presumption of net economic benefits, CEC proposes to eliminate subsection (f), which requires that an opt-in application contain preliminary information demonstrating overall net positive economic benefit to the local government and that staff provide the information to the local government for review and comment.

Section 1877 - Contents of Opt-In Application

- SB 254 amended Public Resources Code section 25545.2 to require an applicant to provide evidence of sufficient real property rights to the proposed location.

- CEC proposes a new subsection (h) that reflects this requirement and:
  - clarifies that affirmation by the applicant of such rights is sufficient evidence.
  - clarifies how an applicant may describe real property rights for projects on federal land.

Section 1877 - Contents of Opt-In Application

- SB 283 added section 25545.19 to the Public Resources Code to require that applicants consult with the local fire department for BESS applications.
- To implement this new requirement, the CEC proposes subsection (i) to ensure that BESS applications filed with the CEC contain information about the applicant's consultation with the local fire department.

Section 1877.5 - Withdrawal, Suspension, and Early Termination of Opt-In Application

- SB 254 added subsection (F) to Public Resources Code section 25545.4(e)(2) – allowing applicants to request a pause in proceedings.
- CEC proposes adding subsection (d) to establish a process for these requests for a pause.

Section 1877.5 - Withdrawal, Suspension, and Early Termination of Opt-In Application (cont.)

- CEC also proposes to add subsection (e), which provides a defined process for the CEC to terminate a project that has significant deficiencies.

Section 1878 - Commission Review of Opt-In Application

- This section sets forth the process for CEC staff to review the application and obtain additional information needed to perform the required environmental review, respond to public comments, and address other statutory requirements.
- The proposed amendment addresses new statutory language from SB 254, clarifying a distinction between information needed to deem an application complete and information needed to complete the staff assessment.
- The proposed amendment also authorizes the executive director to use the investigative authority conferred under Government Code section 11181 to issue subpoenas and promulgate interrogatories.

Section 1878.1 - Reimbursement of Local Agencies

- This section outlines the process for local agencies to obtain reimbursement for costs associated with reviewing Opt-In applications.
- The proposed amendment restructures the reimbursement provisions to improve clarity and more precisely define the scope of eligible costs.
- The amendment corrects timing issues that previously required a local government to produce a budget well before the CEC deemed the application complete.

Section 1879 - Staff Assessment and Executive Director's Recommendation

- The proposed amendment revises subsection (a)(7) by replacing the existing language on net economic benefit with language that utilizes the new rebuttable presumption in Public Resources Code section 25545.9.

- Additionally, subsection (a)(8), which addresses the community benefits agreement, is simplified to require only confirmation that at least one legally binding and enforcement agreement has been executed in compliance with Public Resources Code section 25545.10 and the new section 1879.5 of these regulations.

Section 1879.5 - Community Benefits Agreements



- Provides guidance for the community benefits agreement (CBA) process:
  - Requires applicants to file in the docket in unredacted form an executed CBA no later than 120 days after the application is deemed complete.
  - Requires CBAs to be filed in an unredacted form.
  - Clarifies that CBAs may include provisions obligating performance by the applicant upon the start of construction.
  - Requires project owners to report on the progress of all CBAs in monthly and annual compliance reports.

Section 1879.5 - Community Benefits Agreements (continued)

Establishes a minimum amount for CBA(s)

- $2,500 per MW for energy generation projects
- $550 per MWh for energy storage projects
- $55 per square foot for manufacturing, or
- $1,400 per ton per day of hydrogen production capacity for hydrogen production facility projects.

Section 1879.5 - Community Benefits Agreements (continued)

- CEC will consider the **number of agreements** and **diversity of benefits** being provided when considering whether to approve the project.

Section 1880.5 - Record of Proceedings

- The process for creating the concurrent Record of Proceedings (Administrative Record) was simplified and updated to remove unnecessary and duplicative procedures.

- Proposed language addresses the handling of the few categories of records, mostly GIS layered maps, that are not compatible with the docketing system.

Section 1881 - Commission Certification of the Environmental Document

- This section explains the process for final consideration of the environmental impact report and project certifications.
- The proposed amendment clarifies the timing for CEC certification of the record of proceedings - Upon project certification, the commission shall also certify the final record of proceedings, or the commission may delegate certification to the executive director, who must certify the record within five days of the commission's action.

Section 1881.5 - Approval to Operate a Battery Energy Storage System

- SB 283 added Public Resources Code section 25545.16, which requires BESS applicants to provide notice of completion of installation to the authority that has jurisdiction over fire suppression.

- The new language authorizes the CEC's compliance project manager to authorize operations once section 25545.16 is complied with and to determine if any design or equipment changes are necessary after the inspection.

Section 1882 - Post Certification Project Changes

- To address a gap in the regulations CEC proposes a process for a certified facility to change ownership or operational control.
- This process ensures the CEC is notified of and approves any such change, and that there is public transparency regarding the entity operating the facility and subject to compliance with all conditions of certification and other requirements set forth in the final decision and any amendments.

Appendix B

- The Appendix B amendments implement SB 254's directive for the CEC to establish clear project developer permit application requirements, as required in Public Resources Code section 25545.4(a)(2).
- Site control for opt-in projects – Subsection (a)(4)
  - Requires written proof of site control.
  - Incorporates the new requirement in Public Resources Code section 25545.2 to ensure that an applicant has secured control of the site necessary to construct the proposed project.
- Facility closure – Subsection (e)(2)
  - For BESS applications, requires a discussion of the decommissioning and permanent closure process.
  - Ensures that BESS applicants have adequately planned for responsible and complete facility closure.
- Environmental Information – Subsection (g): Additional opt-In requirements for solar photovoltaic and BESS applications
  - Incorporates the application requirements in Public Resources Code § 25545.2 for information to support the preparation of an environmental document.
  - Ensures that information essential to environmental review is collected at the application stage, reducing the need for subsequent information requests and facilitating a more efficient review process.

Next Steps

- Written public comments are due by November 10.
- After considering public comment, seek CEC approval for the proposed amendments at a future Business Meeting.
- If approved at a Business Meeting, the proposed amendments will be submitted to the Office of Administrative Law (OAL) for final review and approval.

Public Comment

Public Comment

Instruction
- 2 minutes or less per person
- 1 representative per organization

Zoom App/Online
- Click “raise hand”

Telephone
- Press *9 to raise hand
- Press *6 to mute and unmute

When called upon
- CEC staff will open your line
- Unmute, spell name and state affiliation, if any

2-MINUTE TIMER



Timer

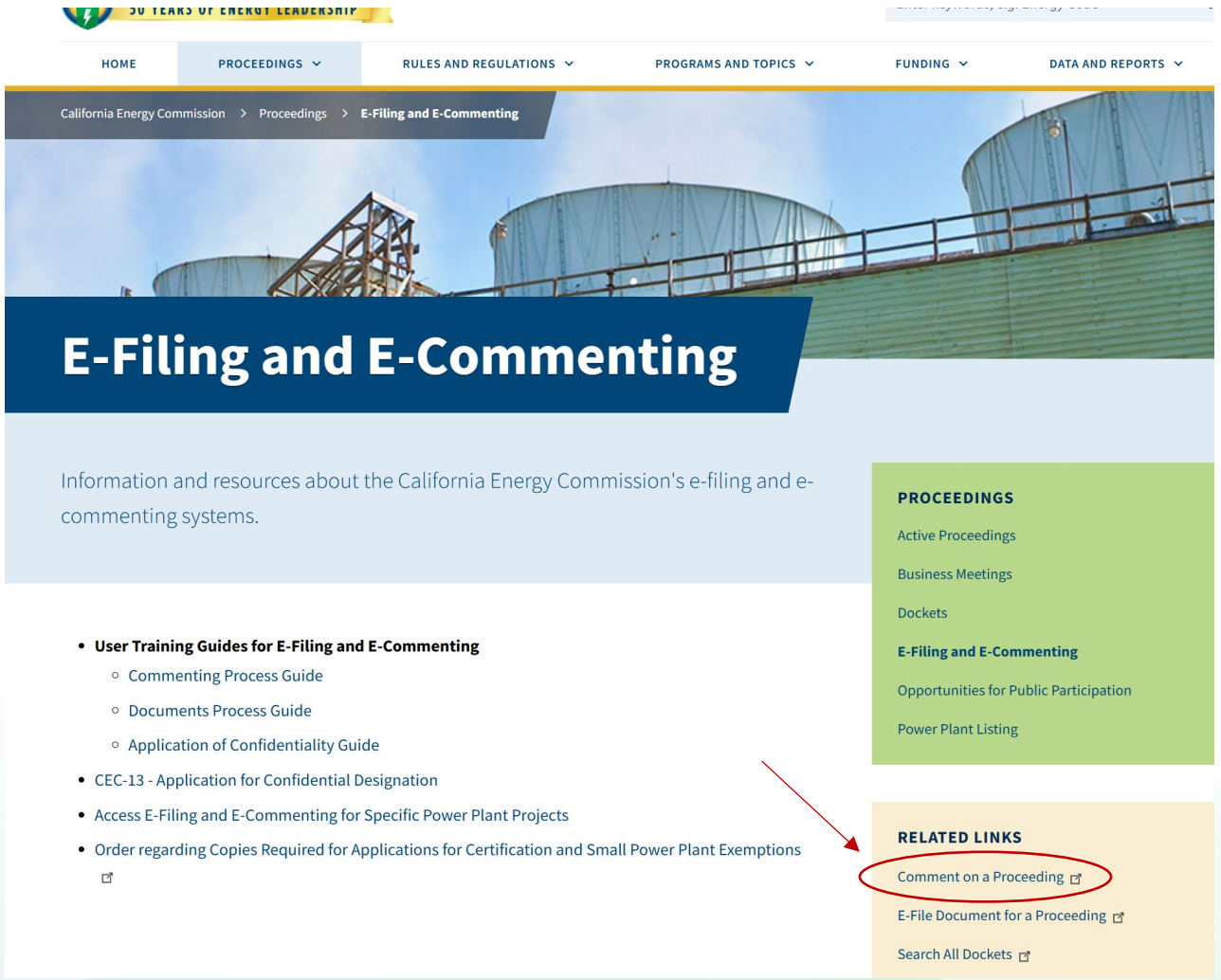
Comments Due

November 10, 2026

Methods to Submit

1. Submit comments on our homepage at https://www.energy.ca.gov/. Click on the **PROCEEDINGS** arrow for the drop-down menu. Then click on "**E-filing and E-commenting**"
2. Email comments to: docket@energy.ca.gov* **Please include "26-OIR-04" in subject line*
3. Send via U.S. mail, public comments postmarked by November 10, 2026, to:

   California Energy Commission
   Docket Unit
   Docket No. 26-OIR-04
   715 P Street, MS 4
   Sacramento, CA 95814



Thank You!