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NRDC Comments on Docket 26-OIR-04 re AB 205 Opt In Regs

Additional submitted attachment is included below.

November 10, 2026

California Energy Commission
Re: Docket No. 26-OIR-04
715 P Street
Sacramento, CA 95814
docket@energy.ca.gov

Dear Commissioners and CEC Staff:

The Natural Resources Defense Council (NRDC) submits the following comments on behalf of its members and activists in California who support affordable and equitable decarbonization and clean air policies to help mitigate the climate crisis and advance a sustainable and inclusive economy. The following comments are specific to the proposed "§ 1879.5. Community Benefits Agreements" express terms pursuant to the Emergency Rulemaking Amending the Opt-In Regulations, Docket 26-OIR-04.

1. **The CEC should provide the background information used to propose required minimum value community benefit contributions from developers [§ 1879.5(c)].** NRDC supports clarifying expectations for how much investment is expected for robust community benefits agreements (CBAs). At the November 2, 2026 CEC workshop, staff mentioned that they conducted research to evaluate similar programs around the country to inform the proposed monetary values. We request that such data be provided for review to better be able to provide recommendations and/or support. In addition, these minimums should be tied to a metric to ensure scaling over time (e.g., inflation), and be adjusted on a regular basis (e.g., every 2 years).

2. **The CEC should provide specific guidance in the updated regulations to ensure consistent application of the requirement to "consider the number of agreements and diversity of benefits" when assessing to approve a project [§ 1879.5(d)].** NRDC appreciates the intent of this provision, which – as we understand it – is to allow for flexibility for communities across the state. As staff said at the workshop, "Each proposed project that comes before the CEC is unique, and so are the local communities and the specific needs of those communities near the facilities." We agree. We therefore recommend that this section explicitly require that the Commissioners, when considering whether to approve a project, also consider the quality of the community engagement process (e.g. how

representative and equitable was the negotiation) and whether the benefits are clearly defined, including clear metrics and timelines. In addition, several questions arise from this provision. For example, how will the Commissioners assess whether one CBA was appropriate for a particular opt-in project versus several CBAs? What would be the criteria to determine if the proposed CBA is sufficient to warrant approval?

Given the lack of clarity, we recommend that the CEC amend this section to specifically define what the Commission intends by this provision and develop a complementary guidance document to ensure effective implementation. Without further defining what "consider" means or providing clear criteria and/or implementation guidance for the Commissioners to use when reviewing projects, this provision could easily lead to confusion, disagreement, and frustration.

3. **The CEC should require clear enforcement mechanisms for developers who do not comply with the signed community benefit agreement [§ 1879.5(e)].**
We appreciate the addition of this section, which is responsive to parties requesting more certainty in the process if the developer does not follow through on their obligations through the signed CBA. However, the language as written states that parties "may" include language to determine the enforcement process if obligations are not met. This optional language will likely create disagreement and frustration amongst the negotiating parties and would most likely benefit the developer. We therefore recommend striking "may" to ensure that all CBAs clearly state the legal enforcement obligation of the developer to comply with the activities in the CBA.

4. **The CEC should provide guidance to developers and the communities to aid in the efficient and effective development of a community benefits agreement, including recommendations for how to address resource and capacity inequities.**
We understand that the CEC does not currently have a division focused on community benefit agreements. However, given the required oversight of implementing the opt-in process, we urge the Commission to include specific guidance to all parties regarding the development of a CBA. This should include expectations for how to ensure each negotiating party is equally represented.

For example, guidance could include items such as, but not limited to: (a) How to define what a "community" is (e.g., does community mean non-profits that have an annual budget of a certain amount? Or foundations that disperse funding to local community groups? Etc.), (b) How to set up a meaningful engagement process (e.g., best practices for where and when to hold meetings, transportation support, childcare, co-creation of process agreements, etc.),[1]

[1] NRDC. May 2025. "Winds of Change: Transforming California's Ports to Improve Public Health and Support Equitable Offshore Wind - REPORT (PDF)," < https://www.nrdc.org/sites/default/files/2025-05/CA_Offshore_Wind_R_25-05-A_06_locked.pdf > p.28 - Appendix A: Recommendations for creating transparent and accessible community forums and engagement plans.

(c) What resources are made available to communities to be able to effectively negotiate on their behalf (e.g., access to a lawyer, funding for staff, etc.).

The following list includes additional examples of guidance that should be included for developers and the communities:

- Best practices for how developers can effectively be transparent and provide information to communities at the start of negotiating before major project decisions are underway, including an outline of possible impacts (e.g., environmental, economic, infrastructure, housing and displacement).
- Criteria to assess whether agreements address the full lifecycle of a project (e.g., including construction, operation, and decommissioning or site restoration).
- Options for how communities can report violations of the agreement (e.g., to the CEC, another government body, ombudsman, etc.).
- Guidelines and requirements for how the agreement will be negotiated or renewed if the project's ownership or development changes.

This guidance could be in the form of a checklist, model CBA agreement contract, implementation guidance document, or other methods to provide consistent guidelines to ensure clarity for both the community and developer as they negotiate a CBA contract.

We appreciate the opportunity to submit these comments and look forward to working with staff and the Commissioners to ensure the opt-in certification process and associate community benefit agreements are implemented effectively to equitably provide host communities with tangible benefits from the project.

Sincerely,

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