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Terra-Gen, LLC Comments on Proposed Opt-In Emergency Regulations (26-OIR-04)

Additional submitted attachment is included below.

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Date: Tuesday November 10, 2026

To: California Energy Commission
Docket Unit
Docket No. 26-OIR-04
715 P Street, NS 4
Sacramento, CA 95815
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Re: Proposed Opt-In Emergency Regulations (26-OIR-04)

Terra-Gen appreciates the opportunity to provide feedback to the California Energy Commission (CEC) on the proposed Opt-In Emergency Regulations. Terra-Gen owns and operates over 3.1 Gigawatts ("GWs") of solar, wind, and energy storage capacity in Kern, San Bernadino, Riverside, Los Angeles, and San Diego counties and has over 4 GWs in construction and development.

New suspension and early termination provisions present unique project financing risks

Section 1877.5(d)–(e) provides in part that the Executive Director of the CEC may file a request for early termination based upon the recommendation of Staff. Staff's recommendation can be based on several identified deficiencies including issues surrounding site control, interconnection issues, technology risk, bankruptcy proceedings, or a catch-all provision providing for a "significant impediment that more likely than not renders the project undevelopable within a reasonable time frame." Furthermore, the proposed regulations allow the Commission to consider any other factors deemed relevant when determining whether to terminate a project within the Opt-In program. Terra-Gen understands that the CEC may want to provide Staff with additional tools to keep the Opt-In process moving without losing valuable personnel time on projects that may not be viable. However as drafted, these proposed regulations will make it harder for developers to finance projects if there's an overarching concern that a permit application via the Opt-In process may be terminated with very little input or recourse from the developer. Instead, Terra-Gen recommends that the CEC continue to proactively communicate with developers utilizing the Opt-In pathway to identify problems early such that they can be resolved or the developer can proactively elect to withdraw from the process of their own accord. Of most concern to Terra-Gen is the lack of definition on what constitutes a "significant" impediment to development and the lack of clarity on how Staff would use such a barrier to determine if a project is more likely than not (i.e., a probabilistic analysis) to be undevelopable. Project developers are ultimately in the best position to determine viability, and it is exceedingly unlikely that a potential project would enter the Opt-In process if there were other major developmental barriers.

Community Benefits Agreements (CBAs) Provisions Should be Modified to Provide Clearer Guidance

The proposed emergency regulations create new requirements applicable to CBAs under the CEC's Opt-In program. Of note, applicants would need to file unredacted versions of the CBA to the docket, CBAs must meet minimum funding levels of $2500/MW for generation and $550/MWh for BESS, and the CEC would consider the number and diversity of benefits provided when considering whether to approve an application. CBAs are an important tool to ensure that communities see direct benefits from project development that may not be captured in other traditional ways. Like many other parts of a project's development cycle, negotiation of CBAs is a context-specific activity. What works for one community or one developer may not be the best fit for other communities or other developers. Due to these dynamics, filing a CBA unredacted may create unreasonable expectations for future projects. Additionally, Terra-Gen recommends that the CEC clearly define standards for what is meant by the number and diversity of benefits. Applicants currently do not have a way to assess how many CBAs a project would need to execute in good faith to meet the CEC's regulations. Layering a diversity consideration on top of this creates more confusion: is the CEC



looking for a diversity of organizations as counterparties to a CBA, a diversity of benefits (i.e., workforce, conservation, ecosystem), or something else entirely? Acquiring clear up-front guidance on how projects will be judged along these dimensions will allow applicants to better meet the CEC's intent.

Additional Opt-In Requirements for Battery Energy Storage Systems (BESS) must be streamlined and set to a standards basis

Appendix B within the proposed emergency regulations includes several new provisions for BESS applications. While we understand that the CEC is attempting to provide clearer expectations up front about informational requirements included within an Opt-In application, many of these provisions confuse estimation with accuracy, create vague requirements that project developers may not be equipped to answer during the permitting component of the development cycle, or otherwise could be restructured as a standard for developers to meet as a condition of successfully moving through the process. Below we provide greater feedback on several of the proposed provisions.

Subsection (b)(1)(E)(ii)-(iii) contains requirements to identify the selected BESS technology, the manufacturer, make, model, along with a description of failure incidents within the last 5 years of the selected manufacturer. During the permitting process it is rare that developers have already selected a specific manufacturer, make, and model. While developers can provide a list of "qualified" manufacturers, producing a list on all failures can become burdensome if the list is large. Additionally, the data requirement is broad, and developers often do not have access to the full universe of failures that any single manufacturer may have experienced. If the CEC moves forward with these requirements, Terra-Gen recommends limiting this to failures within the US applicable to utility-scale developments and clarifying the information is to be provided at the time of building permit application which is specific to the chosen BESS manufacturer. A potential unintended consequence of this provision is that it may incentivize developers to use older models simply because more data is available. This could prove problematic as technology and codes are constantly changing, and developers should be incentivized to use the newest and safest technology available.

In Subsection (b)(8)(L) and (M), the proposed emergency regulations discuss informational requirements for any emergency back-up generators. These requirements include specification sheets with emission rates, exhaust parameters, and engine tiers. Additionally, this subsection requires a demonstration that refrigerants within the BESS and HVAC cooling systems will comply with relevant hydrofluorocarbon (HFC) regulations. Such a demonstration will obligate the project to provide Staff with data calculations including transmission and cycle-loss emissions, annual indirect greenhouse gas (GHG) emissions, auxiliary load emissions, and grid-charging assumptions along with applicable emissions factors. Providing the information as described at the time of an application submittal is overly burdensome as the exact makes and models will not be known. Several of the proposed requirements hinge on highly variable assumptions that may vary with a developer's final decision on which specific technology to implement and assumptions around failure rates that can only be speculated. Instead, Terra-Gen recommends that CEC Staff convene a workshop to develop capped values for constituents of concern or to identify minimum equipment specifications under which the developer can meet. Determining this type of standard or threshold up front will better allow developers to select appropriate technologies to meet the requirements. Terra-Gen's concern is that as proposed, Staff may be inundated with a variety of unstandardized data and information across project applications without an ability to methodically analyze project specific data. For a project developer, it will provide much more certainty in the process if CEC provides a clear standard to meet. This will also benefit CEC and allow for more transparent decision-making on whether a project meets specified requirements.

Like (b)(8)(L), Subsection (b)(9)(F) mandates BESS applications must include dispersion modeling of all potential criteria air pollutants and toxic air contaminants. This data would be utilized in a "worst-case impact analysis." Dispersion modeling and analysis for a facility without continuous emissions is overly burdensome and highly variable.



This is especially true without testing standards for point source data and a clearly laid out framework for modeling. Terra-Gen does not believe that any other industries are asked to model unknown constituents from a fire event. Instead, it is only facilities with a continuous emissions profile using a consistent fuel source of well-known composition that are asked to prepare such analyses. None of the constituents provided in Subsection F except for carbon monoxide are captured under a nationally recognized testing standard. As a result, any inputs are left to fluctuating assumptions depending on the modeler. Additionally, multiple real-world fires of containerized BESS have shown no values of concern based on the suggested health-based exposure thresholds outside of the property boundary. Terra-Gen supports limiting BESS projects only to outdoor modular listed cabinet-type enclosures which are large-scale fire tested to show a fully involved fire does not propagate beyond a single BESS skid/enclosure. This exponentially limits the scale of gas/smoke release compared to “warehouse type” BESS designs which in turn ensures no health impacts outside of the property boundary.

Project Developers Do Not Directly Transport Items to the Project Site

Within Subsection (b)(10)(H), the proposed emergency regulations obligate the applicant to include a discussion of actions that a developer would undertake to reduce the impacts to nearby motorists from the transport of BESS materials. Transportation of materials is typically not completed by a developer directly and instead is contracted out to the requisite subcontractor through the OEM or balance-of-plant contractor (the “EPC”). Instead, Terra-Gen recommends that the CEC require an affirmation that any transportation will be conducted in accordance with Department of Transportation and Federal Motor Carrier Safety Administration requirements.

The Proposed Regulations should utilize NFPA 855 for Best-Practices around Safety and Fire Issues

The proposed emergency regulations include new provisions in Subsection (b)(11)(D) that detail additional requirements for BESS applications pertaining to worker safety, emergency response, and fire protection. Of note, these provisions would require applicants to detail any BESS UL testing reports, hazard mitigation analysis, detailed fire protection designs, remote monitoring technologies, anticipated time for operations staff to arrive onsite during emergency conditions, descriptions of emergency response training, and other narrative obligations detailing that the applicant has communicated with the local emergency response agency. Much of information contained within this subsection is not typically available during early-stage permitting. Final make and models of equipment are not yet selected, contractors are not chosen, and as a result project documents cannot easily be created until later in the project lifecycle. Many of these same requirements are repeated in Subsection 11(E) which pertains to solar applications. SB 283's provisions related to local agency notifications are applicable only to BESS. Solar facilities are already well-regulated and understood widely by fire departments. Fire detection and alarm systems are rarely used in solar development given the large land-use scale of those developments. Typically, the focus on fire prevention for solar is on clearing vegetation management around equipment to prevent ignitions from occurring. Terra-Gen suggests requiring this kind of information to be submitted at the time of building permit application when equipment makes and models are known and detailed designs are available. Otherwise, only “representative” information can be provided at the early stage. To alleviate the concerns of having major failure events, Terra-Gen supports the CEC limiting BESS projects only to outdoor modular listed cabinet-type enclosures which are large-scale fire tested to show a fully involved fire does not propagate beyond a single BESS skid/enclosure. This ensures any fires are limited in scale, and the duration of fire department intervention can be reduced to a few hours or less.

There are additional requirements in Subsection (b)(13)(I) creating new obligations for applicants to discuss potential impacts to biological resources from BESS fires. Substantiation of these analyses cannot be made with any certainty. Instead, Terra-Gen recommends that the CEC focus on ensuring BESS applicants follow NFPA 855 to limit the scale and spread of a potential fire to a single BESS unit. As noted above, the CEC could limit projects to outdoor modular

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listed cabinet-type designs to further this cause and limit potentially concerning design choices. Additionally, the CEC may consider requiring post-event environmental sampling and remediation if needed.

Conclusion

Terra-Gen appreciates the opportunity to submit these comments and respectfully requests that the CEC adopt the modifications outlined above.

Thank you for considering these recommendations.

Sincerely,

Mark Turner
Vice President, Energy Storage
Terra-Gen, LLC