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Comments of Clearway Energy Group LLC on Opt-In Program Regulations

Additional submitted attachment is included below.

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November 10, 2026

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

Via Electronic Submittal

Dear Commissioners and Staff:

Clearway Energy Group LLC ("Clearway") appreciates the opportunity to comment on the proposed amendments to the Opt-In Program regulations. Clearway is a California-based company and one of the largest energy companies in the United States, with an operating fleet in California that generates enough energy to power 1.3 million homes. Clearway is the developer of the Potentia-Viridi Battery Energy Storage System ("Potentia Viridi"), which received its certification under the Opt-In Program on May 26, 2026.

Clearway appreciates the Commission and staff's work implementing the Opt-In Program with diligence and care. The Opt-In Program is a valuable alternative pathway to enable development of clean energy generation and storage projects that generate benefits for the grid and economic benefits for communities. In the case of Potentia Viridi, the local jurisdiction was supportive of the project but had not yet established an ordinance to permit battery energy storage, so the Opt-In Program was critical in allowing the project to move forward.

Some of the proposed changes to the Program regulations are significant and merit more time for discussion and feedback from stakeholders. Clearway encourages the Commission to move forward with the set of changes required by recent legislation while providing more time to consider the additional proposed changes, including the early termination provision, community benefit requirements, and additional information required upfront in applications for certification for battery energy storage systems (BESS) and solar energy projects. Clearway offers comments on these three elements of

the proposed regulations below. We also offer an additional proposal to more closely align the requirements of the Opt-In Program with comparable permitting processes at the local level. Further time for stakeholder engagement would allow for consideration of this and other suggestions from developers with experience with the Opt-In Program.

Withdrawal, Suspension, and Early Termination

Clearway supports the proposed addition of a clearly defined process for an applicant to temporarily suspend an application. The defined 270-day timeline from application to Commission decision is an important feature of the Opt-In Program and was a factor in Clearway's decision to acquire and advance development of the Potentia Viridi project. However, there are cases when a project requires more time to work through issues, and a formal suspension process would allow for that flexibility.

Clearway urges the Commission to reconsider the proposed early termination provision, which would make the Opt-In Program a significantly riskier permitting pathway than it is today. Unlike suspension, the proposed early termination is unilateral: An applicant with a complex but viable project could have its application terminated involuntarily if staff believes it is "more likely than not" that the project is "undevelopable within a reasonable time." This broad and undefined language creates a risk that would be nearly impossible for applicants to mitigate, since staff could reach this conclusion unilaterally at any point during the application process with no defined standard. This heightened risk would have a negative impact on project financing costs and future applicant interest in the program.

Several of the "significant deficiencies" identified as reasons for early termination are not fatal flaws. Clearway has successfully completed development of projects that have experienced delays in applications for federal rights-of-way (a common occurrence when working on federal land), as well as projects acquired from a prior owner that was the subject of a bankruptcy proceeding. Projects may also change sites or interconnection positions during the development process. None of these factors alone would be a valid reason to unilaterally terminate a project's application under the Opt-In Program.

When projects face development complications, the response should be engagement between staff and the applicant and, if necessary, a suspension of the application. Unilateral termination is an extreme action that should only be available in rare circumstances – for example, if an applicant ceases operations without transferring ownership of the project and is no longer communicating with staff.

Community Benefits Agreements

Clearway would welcome further opportunity to engage with the Commission and other stakeholders on the goals and requirements for community benefits agreements (CBAs) within the Opt-In Program. The Legislature defined the CBA requirement broadly rather than prescribing specific dollar amounts, uses of funds, or distribution of funds among recipients. Clearway does not in principle oppose more specific programmatic requirements for CBAs within the Opt-In Program, but this topic merits more time for careful consideration, including engagement with clean energy and storage operators and local partners.

Clearway's community engagement program is rooted in local engagement and local decision-making and has been well-received in communities across the country. For Potentia Viridi, Clearway has signed two CBAs with local organizations; additional donations will be guided by the local site team during operations. This community benefit package received a positive response from the Commission during the application and certification process, as well as from local stakeholders. If the Commission adopts more prescriptive requirements for CBAs, these must not replace or overshadow the on-the-ground engagement that is vital to building community support for new infrastructure projects.

Any new requirements applied to CBAs under the Opt-In Program must be clearly defined so that applicants know if they have met the standard or not. Under the proposed regulations, the Commission could approve or deny an application based on the "number and diversity of benefits," with no standard specified. It is unclear if a new project with two CBAs would meet the new standard, even though Potentia Viridi's CBA package was well received by the Commission and local government and approved by the Commission less than six months ago. Clearway requests removal or clarification of this language if the Commission proceeds with adoption of regulations on this topic.

Additional Requirements for BESS and Solar Applications

The proposed regulations include extensive additional information required at the application stage for both BESS and solar projects. Some of these requirements go beyond the information that would reasonably be available at that stage of development; others need to be more clearly defined. Further workshops or other stakeholder process, including equipment manufacturers and other technical experts, would be very helpful in arriving at a workable set of requirements. Clearway notes concerns with the following provisions.

For BESS applications:

- The requirement to disclose any failure incidents within the last 5 years of the selected BESS manufacturer, or of multiple qualified manufacturers if one has not been selected yet, should only include incidents involving the same technology that will be used in the proposed project. As written, the required disclosure could include incidents involving entirely different technologies not relevant to the project, introducing confusion into the public process.
- The requirement to provide site plans equivalent to 30% design is not reasonable at this stage of development. Typically, site plans upon submittal of a permit application reflect a 10% design, which is considered to be of sufficient detail to analyze under CEQA. Even if a 30% design is included in the application, the applicant must retain the flexibility to update the design as the project advances.
- There is a requirement for a detailed discussion about non-operation "that ceases operations for a period of 90 days or less." This may have been intended to read "90 days or more." If "or less" is correct, the regulations should also set a minimum period of time for the plant to be offline to be considered non-operational, to avoid excessive reporting requirements for routine maintenance or other brief outages.
- The term "worst-case impact analysis" for dispersion modeling is not defined. If this is intended to refer to UL 9540A testing, that should be specifically cited.
- A water quality protection plan should be required only if the specific project design necessitates it. For sites designed to have no drainage offsite, there should be no impact to water quality.

For solar photovoltaic applications:

- A "comprehensive description of the operational relationship between the solar facility and the BESS" will not be possible to provide at this early stage. The control strategies and specific operational patterns of a solar and BESS facility will be guided by the needs of the load-serving entity that ultimately contracts for its energy and capacity, and they may change over time as the needs of the grid change.
- The description of "potential impacts of installation and operation of solar panels on biological resources" appears to be based on a discredited theory that birds are specifically attracted to solar panels. This section should be revised to reflect current science or removed. This is one example where the Opt-In Program regulations would benefit from coordination with local governments to follow current practices in permitting and mitigation requirements.

Aligning with Local Permitting Processes

To enhance the transparency and usability of the Opt-In Program, Clearway suggests that staff reference requirements implemented by counties for projects approved at the local level and revise the data requirements for Opt-In Program applications to align with typical county-level requirements. Counties have decades of practical experience implementing CEQA and have developed standardized, well-tested mitigation measures for many common environmental impacts. As part of the process of refining implementation of the Opt-In Program, we encourage the Commission to consider using established mitigation measures developed by counties and other local lead agencies as a benchmark. Doing so could help ensure that Opt-In Program projects are subject to mitigation that is appropriately tailored to the identified impact and generally consistent with measures applied to comparable projects undergoing local CEQA review.

Clearway appreciates the opportunity to comment on the proposed changes to the Opt-In Program.

Respectfully submitted,

/s/ Julia Zuckerman
Senior Director, External and Market Affairs
Clearway Energy Group LLC