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CCV - Emergency Rulemaking Amending the Opt-In Certification Regulations

Additional submitted attachment is included below.

COMITE CIVICO DEL VALLE, INC.
INFORMED PEOPLE BUILD HEALTHY COMMUNITIES
www.ccvhealth.org

November 10, 2026

California Energy Commission
Docket: 26-OIR-04
715 P Street
Sacramento, CA 95814

RE: Emergency Rulemaking Amending the Opt-In Certification Regulations

Dear Commissioners:

Thank you for the opportunity to comment on the California Energy Commission's (CEC) proposed emergency amendments to the Opt-In Certification Regulations, incorporating statutory changes under SB 254 and SB 283 and additional procedural updates.

Comité Cívico del Valle (CCV) is a 501(c)(3) nonprofit advancing environmental justice, public health, and equitable development in Imperial County and surrounding border communities. Drawing on our work in environmental monitoring, community research, and advocacy, CCV offers the following comments and recommendations on the proposed amendments.

Rebuttable Presumption of Economic Benefit

- **Eliminating Data Requirements Exceeds Statutory Intent and Creates Structural Inequities**: While SB 254 establishes a rebuttable presumption that a project provides a net positive economic benefit, the statute does not require eliminating baseline economic disclosures. By eliminating, rather than modifying, the applicant's responsibility to provide information on the project's economic impact on local governments, the CEC's proposed emergency regulations create severe information asymmetries. This shifts an unfunded evidentiary burden onto resource-constrained environmental justice communities and local governments.

    - **Public Subsidies and Net Fiscal Deficits**: While CCV recognizes in-state energy generation and storage are central to California's net-zero transition, the proposed rule goes too far and impedes meaningful community review. Community members lack accessible data on the taxes, fees and other public assessments an applicant will pay, compared with what would be generated under standard local permitting. Given the extensive range of subsidies available to a project sponsor, including tax rebates, exemptions and other fiscal incentives, transparent fiscal data is essential to determine whether a project truly yields a net positive impact.

- **Economic Leakage from Out-of-Area Labor**: While project construction jobs can provide high, family-sustaining wages, specialized labor and larger projects frequently require workers from outside the host community. When non-local workers commute in for temporary (even years-long) construction phases, a substantial share of payroll dollars leaks out of the local economy rather than circulating through local businesses and sales tax bases.

- **Fiscal Externalities and Infrastructure Strain from Unmitigated Growth Impacts**: Projected economic benefits are further eroded by unmitigated negative externalities. Rapid industrial expansion places acute strain on physical and civic infrastructure, including roads, sewers, water supplies, schools, housing costs, and health care systems and facilities. Both the direct capital costs of upgrading this infrastructure and the social costs of unaddressed community needs represent significant financial liabilities to host jurisdictions.

- **Prohibitive Costs of Preparing Rebuttal**: The proposed language places the financial burden, without mitigation, of hiring economic consultants and conducting fiscal impact analysis on the public, including residents and community-based organizations (CBOs). Without accessible baseline data and financial support, a rebuttable presumption becomes functionally impossible for under-resourced communities. The proposed regulations should include provisions for a supplemental funding source and streamlined information access for disadvantaged communities, as identified by the California Environmental Screen pursuant to Health and Safety Code § 39711, that a proposed project may impact.

- **Equitable Regulatory Framework**: The regulations must account for the compounding impacts of fast-tracking applications with a rebuttable assumption of benefit. In integrating the policies advanced in SB 254, the Commission must seek a more equitable power balance. Preserving transparent financial disclosure is not only relevant to certification; understanding projects' financial impacts provides an empirical foundation for negotiating community benefits agreements that result in stronger, more economically dynamic communities for residents and businesses alike.

- **Require Subsidy and Incentive Information on the Project from Applicant**: Amend the proposed regulation to add subdivision (j) to § 1877 to read as follows:
  - <u>(j) (1)The opt-in application shall contain the sources and dollar amount of all subsidies received and applied for by the applicant and still pending at the time of submitting the application. It shall also include data on long-term permanent employment, job classifications, and professional licensing and certifications required when the facility is operational.</u>

(2) To understand potential strain on municipal services and facilities, the opt-in application shall identify road, utility, and other infrastructure demands the project will require, including requirements for environmental resources, such as access to water.

- **Require Information on Impacts from Local Government**: Amend the proposed regulations by amending subdivision (a) of §1878.1 of the proposed regulation changes so it reads as indicated below. CCV's proposed changes are in **bold** to delineate them from the CEC proposed changes:

  - §1878.1- Reimbursement of Local Agencies.
    (a) Upon receipt of an application, staff shall notify the local agencies that would otherwise have permit authority over the project, were it not for the commission's jurisdiction, that the project application has been filed and the commission is seeking comments on the application.
    (1) In this notice, staff shall identify the technical areas comments from each agency are specifically being solicited for, including but not limited to, design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of land in the area of the facility, **anticipated fees and taxes received related to the project, the value of fees or other funding the local would have received in the absence of commission jurisdiction, grants or other incentives awarded or allocated to support the project's development and operation, current capacity and cost of local government administered services and resources the project will use over the life of the project,** and other aspects of the design, construction, or operation of the proposed site and related facility. The notice shall request the agencies to provide information that is specific and potentially unique to the project location. Examples include, but are not limited to, local thresholds of significance for relevant environmental impacts, local vehicle miles traveled calculation methodologies, local land use requirements, and local noise requirements.
    (2) The notice shall instruct the agencies to provide information already within their knowledgebase and state that they are not expected to perform studies or retain expert consultants to provide comments on the application.

- **Treatment of the Rebuttable Presumption in Staff Report**: Amend the proposed regulations by amending paragraph (7) of subdivision (a) of §1879 to read as indicated below. CCV's proposed changes are in **bold** to delineate them from the CEC proposed changes:

  - "(7) ~~The overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility. Economic benefits may include, but are not limited to, employment growth, housing development, infrastructure and environmental improvements, assistance to public schools and education, assistance to~~

~~public safety agencies and departments, property taxes, and sales and use tax revenues.~~

A confirmation or finding, as indicated below, that either (A), (B), or (C) applies to the applicant's proposed project.

(A) Confirmation that **no documents have been filed to challenge the rebuttable presumption that construction or operation of the facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility.**

(B) Confirmation that documents have been filed, and based on substantial evidence **in the record, a finding is made that the information is ~~has~~** not **~~been filed~~** sufficient to overcome the rebuttable presumption that construction or operation of the facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility.

(C) Confirmation that documents have been filed, and based on substantial evidence in the record, a finding is made that the information is sufficient to overcome the rebuttable presumption that construction or operation of the facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility."

- A determination of whether submitted information is sufficient or insufficient is a staff finding and should be adopted by the Commission as a means of formalizing the determination.

- **Adopt a Process for Rebutting**: Amend the proposed regulations by adding section 1743.5 to Chapter 5 of the Opt-In Certification regulations to read as follows:

  - (a) Upon acceptance of the application pursuant to Section 1709, staff shall accept information and documentation into the record that refutes the presumption that the construction or operation of the facility will have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility.
    (b) The submission of information to refute the economic impact presumption shall be conducted under a standardized process developed by the Commission with timelines, data requirements, expanded community outreach from the environmental impact considerations, and a procedure for submitting a "Notice of Intent to Rebut" to trigger a formal evidentiary hearing on local economic impacts. The process shall be suitable for a community group to access and engage in the process.
    (c) The Commission shall issue a guidance document explaining the process, procedures, and other requirements related to the implementation of this section.

- The regulations do not identify how or when the public, including local governments, can challenge the rebuttable presumption by submitting information to the Commission. While existing regulations set timelines and procedures for the environmental assessment, "§1742. Staff Assessment," no similar provisions are proposed for the new rebuttable presumption of economic benefit.
- Modifying and upgrading community outreach activities are vital, given that the applicant has no requirement to document the project's net economic benefit and the Commission appears to have no duty to conduct an economic benefit analysis.
- Given the significance of the rebuttable presumption, the regulation must require the Commission to create an open and transparent process.

Community Benefits Agreement

- **Make a Finding Awaiting Board Approval**: Amend the proposed regulations by amending paragraph (8) of subdivision (a) of §1879 to read as indicated below. CCV's proposed changes are in **bold** to delineate them from the CEC proposed changes:

  - §1879(a)(8) "Confirmation that at least one legally binding and enforceable agreement has been executed**, and a staff finding that it is** in compliance with section 25545.10 of the Public Resources Code and section 1879.5."
    - The existence of a CBA does not guarantee compliance with current statute and regulation. The conclusion is more accurately a staff finding based on their review of the CBA. This assessment is valuable and should be acknowledged as a finding that the Commission can adopt as part of approving the document. However, using the term "confirmation" inaccurately expresses the actual undertaking.

- **Increase Minimum Rates to Reflect Market and Public Incentives**: Amend the proposed regulations by amending the minimum CBA community payment structure in §1879.5 to better reflect the market and public subsidies invested in these projects. CCV strongly opposes California joining the race to the bottom, where energy transition becomes the new driver of green sacrifice zones. Many of these new energy facilities are located in historically low-resourced communities, which are already overburdened by poor environmental conditions and limited economic opportunity. Projects are being permitted and certified based on "overriding considerations," allowing for unmitigated significant risks to public health, local communities and the environment. These same projects are receiving substantial public subsidies.

  Figure 1 compares renewable energy projects, their public subsidies, community benefits and the comparative value of the community benefit payment to the subsidy. The graphic is

from the "Building Community Power" report[1] published by the Climate and Community Institute of the Tides Foundation.

Relative value between direct federal investments in projects and direct community investments by project developers in California and New York.

Location	Project and Company	Subsidy	Federal subsidy ($)	Community benefit ($)	Benefit as % of subsidy
Imperial County, California	Perkins Renewable Energy Project, Intersect Power	30% US Investment Tax Credit (ITC) + 10% energy community bonus + 10% domestic content bonus	$1 billion	$1.5 million	0.15%
Offshore Long Island, New York	Sunrise Wind, Ørsted	30% U.S. Investment Tax Credit (ITC) + 10% energy community bonus + 10% domestic content bonus	$1.5 billion	$170 million	11%

Scale of federal subsidies and community benefits

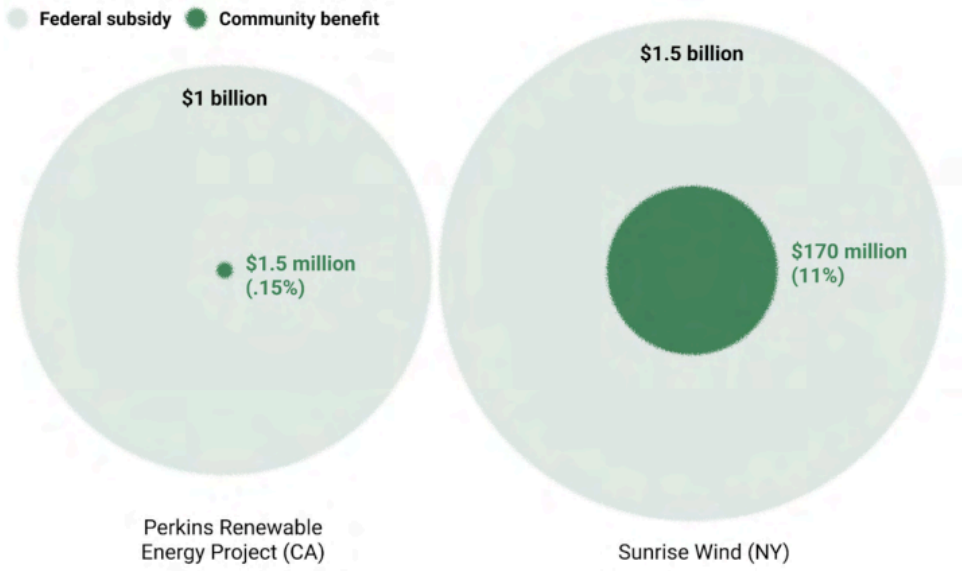


Figure 1 Community benefit agreements for energy projects across the U.S. show significant discrepancies in the scale of the federal subsidies to the value of community benefits.[2]

The same report notes that utility scale solar projects specifically have significant variations. Figure 2 shows similar policies with different terms of art such as "host community agreement"

[1] Blair, J. J. A., Hopkins, E., Koester, T. K., Berry, K., Cantor, A., Mulvaney, D., Symonds, T., Vineyard, N., Sprauer, B., Turley, B., Bui, T.-K., Butensky, R., & De la Puente Burlando, L. (2025). *Building Community Power: Community Benefits Agreements Across the Global Energy Supply Chain*. Climate and Community Institute. https://climateandcommunity.org/research/cbas/

[2] Ibid., p. 74.

and “solar benefits agreement” can vary by three orders of magnitude. We recommend the CEC use the value formulas suggested in the draft as a baseline for CBA negotiations, not as the final formula. The proposed rates would lock the Opt-In program into CBAs that are on the lowest end of the value spectrum for CBAs in the U.S. Note for example the Darden Clean Energy Project in western Fresno County is not far from the Wright Solar Energy project in western Merced County, which has a higher value CBA per MW. The CEC proposed rate is slightly higher than the CBA in the Wright Solar Project, which was approved through the typical county-led conditional use permit process. The CEC program should encourage CBA values that are more inline with practices across the U.S.

Comparisons of CBAs for solar projects across different areas in the US.

Project	Place	Term of art	Total community benefit value	Notes	Megawatt	$/MW	Acres	$/acre
South Ripley Solar Project	Ripley, NY, Chautauqua County	Host Community Agreement	$472,500		270	$1,750	1,500	$315
Excelsior Energy Project	Byron, NY	Host Community Agreement	$1,006,522		280	$3,595	3,443	$292
Mount Morris Solar Farm	Mount Morris, NY	Host Community Agreement	$10,000,000		177	$56,497	1,000	$10,000
Wright Solar Park	Merced County, CA	Solar Benefits Agreement	$500,000		233	$2,146	1,392	$359
Darden Clean Energy Project	Fresno County, CA	Community Benefits Plan	$2,000,000	At least	1,150	$1,739	9,500	$211
Perkins Renewable Energy Project	Imperial Valley, CA	Community Benefit Agreement	$1,500,000	Still negotiating	1,150	$1,304	7,295	$206
Alpine Solar	Los Angeles County, CA	N/A (confidential)	$500,000	In cash and land	92	$5,435	800	$625
Kahana Solar	Maui, HI	Community Benefits Package	$1,375,000		20	$68,750	220	$6,250
Savio Solar, Ma'ili	Oahu, HI	Community Benefit Agreement options	$1,200,000	Up to $2M suggested	8	$250,000	24	$83,333
Viking Energy Farm	Imperial Valley, CA	Public Benefit Agreement	$2,668,600		150	$17,792	604	$4,419

Figure 2 The value of community benefits agreements vary considerably for utility-scale solar projects. The CEC proposed rate of $2,500 per megawatt installed is in the lower end of the spectrum.[3]

- **Expand Content of CBA Regulations**: Amend the proposed regulations by amending §1879.5 to read as indicated below. CCV’s proposed changes are in **bold** to delineate them from the CEC proposed changes:

[3] Ibid., p. 144.

- § 1879.5 (a) Unless the executive director approves a **longer term** ~~**different date**~~, the applicant shall file at least one executed community benefits agreement no later than 120 **business** days after the application is deemed complete.

  (b) Agreements used to meet the requirements of Public Resources Code section 25545.10 or otherwise evidence project benefits shall be filed in the proceeding's docket in an unredacted form.

  (c) In order to fulfill the requirements of Public Resources Code section 25545.10, the community benefits agreement(s) shall **include each of the following:**

  (1) An amount of funding that in total provides ~~**in total, provide for funding in**~~ an amount not less than $2,500.00 per megawatt of nameplate capacity for energy generation projects, $550 per MWh of nameplate capacity for energy storage projects, $55 per square foot for manufacturing facility projects, or $1,400.00 per ton per day of hydrogen production capacity for hydrogen production facility projects.

  (A) For projects that combine energy generation, energy storage, manufacturing, or hydrogen production, the total agreement amount shall not be less than the combined component calculation.

  (B) (i) The minimum dollar amounts in subdivision (a) shall be adjusted upward based on the total amount of public subsidy received by the applicant or conveyed on the project or land, whether these subsidies are provided through direct funding, in-kind services, regulatory or financial exemptions, or tax treatment. The Commission shall adopt a formula to implement these upward adjustments. The amount of these payments may be periodically increased by the Commission as a condition of continued certification when additional public subsidies are received or applied to the project.

  (ii) In addition to any other provisions, the minimum dollar amounts in subdivision (a) shall be adjusted at least annually to accommodate inflation.

  (C) This funding is in addition to any grants, financing, donations, in-kind, and other contributions made by the project sponsor or applicant for defined community needs, such as infrastructure, scholarships, or workforce training.

  (D) This funding shall be deposited in trust accounts or community benefits funds held by a third party. The accounting for these funds shall be included in the monthly and annual reports to the Commission required by the chapter.

  (E) This funding shall not limit inclusion of other agreement provisions that establish all or partial community ownership of all or portions of the facility or site operations, or other financial or equity provisions in the agreement.

(2) The inclusion of commitments and related implementing provisions that assign implementation responsibility and set quality and quantity standards, funding, timelines, reporting, metrics, and evaluation mechanisms consistent with and in furtherance of Public Resources Code section 25545.10.

(3) The establishment, funding, and ongoing operation of an advisory council to oversee the implementation of the community benefits agreement. At least 50% of the members shall be from communities directly impacted by the project.

(4) The establishment of a community benefits fund and community consultation committee to advise on the use of the funds collected pursuant to paragraph (1), and other money specified in the agreement as a discretionary award of community benefit funds.

(5) The establishment and funding for ongoing Tribal engagement practices.

(6) The inclusion of environmental review provisions consistent with and in furtherance of Public Resources Code section 25545.10, which include the following:

- **(A) Identification of which actions are steps beyond compensatory mitigation.**
- **(B) Monitoring requirements, including funding third-party studies and capacity building to analyze project impacts, and penalties for pollution and remediation.**
- **(C) Plans for phasing out and shutting down through reclamation and decommissioning.**

(7) Documentation of the outreach, engagement, and dialogue held with community members, including number of meetings, the dates, times, duration, and attendance at those meetings, and an explanation of how and to whom invitations were extended.

(8) A stipulation that an independent Community Needs Assessment was undertaken prior to the negotiation of the agreement, and the responses to that assessment include substantial participation by communities most impacted by the project, especially individuals who live or work in areas designated as a disadvantaged community pursuant to Health and Safety Code section 39711.

(9) Identification of funding or in-kind contributions provided to community-based organizations engaged in the negotiation of the agreement to

cover the cost for independent legal counsel, technical experts, environmental consultants, and community outreach efforts.

(10) The inclusion of enforcement provisions consistent with and in furtherance of Public Resources Code section 25545.10, which include the following:

(A) Dispute resolution process and/or arbitration clause(s).
(B) Outline of penalties or legal obligations for not adhering to the CBA.
(C) Identification of who is responsible for CBA enforcement.
(D) Assumption of contract obligations in the event of acquisition, bankruptcy, foreclosure, etc.
(E) Ability to re-open or renegotiate contingent on environmental review

(d) The commission shall consider **each of the following elements when considering whether to approve the project:**

(1) The number of agreements**.**
(2) The degree to which the signatories to the agreements represent the needs and priorities of communities most impacted by the project.
(3) The level and types of benefits in the agreement relative to the impacts and timing of the project on the community, especially areas designated as a disadvantaged community pursuant to Health and Safety Code section 39711.
(4) The level of funding and other benefits in the agreement, relative to the potential revenues generated by the project
(5) The type and scale of benefits in the agreement that go beyond those that are required to meet Health and Safety Code sections 25545.3.3 and 25545.3.5 ~~and~~
(6) The degree to which individual provisions in the agreement include assignment of responsibility for completion, and set specific quality and quantity standards, timelines, funding, reporting, metrics, and evaluation mechanisms,
(7) The diversity of benefits to be provided to local communities ~~**when considering whether to approve the project**~~.

(e) Any community benefits agreement may include provisions obligating performance by the applicant **prior to the ~~upon~~** start of construction.

(f) **An agreement signed by only elected officials, or an agreement signed by other entities that have limited direct community engagement, mission, or focus, shall not meet the requirement of having an agreement with a coalition of one or more community-based organizations that represent community interests, as required in subdivision (a) of Public Resources Code section 25545.10. Signatories to the**

agreement shall have a demonstrated history of local engagement and accountability to affected residents.

(g) (1) Upon project approval, each project owner shall report on the progress of the administration **and implementation** of all the **commitments made in each of the** community benefits agreements it entered pursuant to this section, in its monthly and annual compliance reports.

(2) The Commission shall post the monthly and annual compliance reports, and provide a 30-day comment period to receive public comment on the administration and implementation of the community benefits agreement. When a related proceeding is open, these documents shall be posted on the docket.

(3) The Commission shall consider all information submitted, including public comments received, before making a determination regarding the project owner's compliance with the agreement.

Improve Public Transparency

- **Additional Information Requests**: Amend the proposed regulations by amending §1878 relating to Commission Review of Opt-In Certification Application to include public disclosure of the list of additional information requested by the Commission to undertake the staff assessment. This is an example of a specific action the Commission can take to help public and private stakeholders understand the scope of the Commission's evaluation.

- **Clarify Timeframes**: There is an inconsistent use of time periods. Sometimes the timing is described as "working day" or "calendar days," and in other instances, the number of days is listed without a notation. Among other examples are subdivision (d) of §1878.1, subdivision (a) of §1879, and §1881. CCV recommends the consistent use of "business days" to provide adequate time to complete each phase of the Opt-In Certification Process.

- **Record of Proceedings**:

    - **Including Any Information Discussed is Too Broad**: The "record" is an important and specific process, and the proposed amendments in §18805.5 are too broad. Expanding the record from public comment to "any information discussed" is vague. Does this include a Commissioner's opening comments, which are made prior to any presentations? If opening comments are treated as equivalent to information presented by invited experts, why waste the commissioner's and public's time? Including information gained from presentations and public comment is appropriate. Off-the-cuff comments, rhetorical questions, or statements made to solicit further comments from

speakers should not be part of the record, unless the Commissioner specifically asks to have the comments added to the record.

- **Modifying the Record**: Removing the process for an individual to modify the record could result in fewer public comments and open dialogue. We recommend retaining subdivisions (c) through (e). We also suggest including a notation within the record that a specific comment was modified, and where it occurs on the recording, if appropriate.

Closing

Comite Civico del Valle appreciates the opportunity to submit comments on the Emergency Rulemaking Amending the Opt-In Certification Regulations.

Respectfully,



Luis Olmedo
Executive Director
Comite Civico del Valle (CCV)