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Brightline Defenseâ€™s Comments on the California Energy Commissionâ€™s Emergency Rulemaking Amending the Opt-In Regulations

Additional submitted attachment is included below.

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November 10th, 2026

Re: Brightline Defense's Comments on the California Energy Commission's Emergency Rulemaking Amending the Opt-In Regulations

Brightline Defense (Brightline) is an environmental justice non-profit organization focused on advancing clean energy and air quality improvements in the San Francisco Bay Area and across California. We support accelerating permitting for clean energy projects that protect public health and deliver meaningful community benefits. We appreciate the California Energy Commission's (CEC's) leadership on the Opt-In Certification Program including updating the regulations in light of recent legislation and lessons from project reviews. Brightline particularly supports the proposed minimum funding and public disclosure requirements for community benefits agreements (CBAs), stronger battery safety provisions, and clarification of the CEC's investigative authority.

We urge the CEC to build on these proposals in three areas. First, strengthen CBAs through higher funding commitments, outreach to the residents most impacted, opportunities to revisit terms when environmental review reveals new information, and preserving commitments through changes in ownership or control. Second, strengthen battery safety by coordinating state inspection support where local capacity is limited and requiring applicants to demonstrate how mitigation would reduce modeled exposure to toxic exposures to protective levels. Third, make nonconfidential evidence obtained through the CEC's investigative authority available in time for meaningful public comment.

1. **Make Community Benefits Agreements (CBAs) Responsive and Durable**

Recommendation A. Increase minimum funding requirements for energy generation projects

Brightline supports establishing minimum CBA funding levels under § 1879.5(c)[1] and recommends increasing the energy generation floor from $2,500/MW to $10,000/MW. As an alternative, the CEC should consider a recurring funding requirement of or $2,500/MW annually, beginning at commercial operation and continuing through the project's operating life to provide sustained support for community priorities. In our review of several publicly documented CBAs, we identified annual commitments at or above $2,500. For example, Fenner Wind's host community agreement in New York provided $5,000/MW annually for 15 years, separate from tax payments.[2] Fountain Wind's executed CBAs totaled $2.175 million, approximately

[1] The amendments include a proposed rate of $2,500.00 per megawatt for energy generation projects and $550 per MWh for energy storage projects. For the Darden Clean Energy Project, this would equal $5.415 million for 1150 megawatt generation and 4600 MWh battery storage, comparable to the ~$5 million in CBA benefits negotiated over the lifetime of the project.

[2] U.S. Department of Energy, WINDExchange, "Community Benefit Agreements," entry for "Fenner," accessed November 9, 2026, WINDExchange database. https://www.energy.gov/cmei/systems/windexchange/local-benefit-mechanisms

$10,600/MW based on its 205 MW capacity, although the project was ultimately denied.[3] These examples support a higher total floor already established by developers and the private market, and consideration of an annual requirement. We encourage the CEC to track commitments and actual payments by project type and size to inform future adjustments to the minimum floors selected for the different categories.

We also support requiring agreements to be filed unredacted in the public docket under § 1879.5(b), allowing host communities to see what benefits were promised, who will receive them, and how funding will be used.

Recommendation B. Require outreach that reaches the communities most affected

The proposed requirement to consider the number of agreements and the diversity of benefits under § 1879.5(d) is a useful step, but does not establish whether affected residents helped shape those agreements. Without more specific guidance, applicants can easily reach organizations with established staff and existing relationships, instead of those nearest to the project or facing language, cultural, and economic barriers. The Commission should assess both the breadth of outreach and whether it reached the people most likely to experience project impacts.[4] [5]

> **Add to § 1879.5(d).** In evaluating a CBA, the Commission shall consider whether the organizations involved serve or represent affected communities, giving particular consideration to residents immediately adjacent to the proposed project and those likely to experience impacts from air emissions, noise, construction, traffic, or other project activities.
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> **Add to § 1880.** The applicant shall file a public CBA outreach record identifying affected communities, the groups contacted, the methods and accessibility measures used, the priorities raised, and how those priorities informed the agreement. Applicants should engage organizations in at least seven of the following nine categories, where applicable: labor, environmental organizations, local government, neighborhood and community groups, social justice organizations, agriculture, education, faith-based

[3] Fountain Wind LLC, "Fountain Wind Project, Second Community Benefit Agreement Submittal," May 20, 2024, 1, California Energy Commission, docket 23-OPT-01, TN 256472, https://efiling.energy.ca.gov/GetDocument.aspx?DocumentContentId=92303&tn=256472

[4] The Imperial County Good Neighbor CBA has minimum requirements for engagement, requiring developers to meet with at least 7 out of 10 categories of community organizations. This ensures a wide variety of engagement with community organizations, with additional engagement requirements with a local community based organization and resident. See Imperial County, *Good Neighbor Community Benefits Agreement Program*. 2024. p.7. https://lithiumvalley.imperialcounty.org/about/good-neighbor-cba/#docaccess-9c330a65ce148b01bb590c8dbde9a0af

[5] Weimer, Daniel. *Legal Enforcement of CBAs – Research & Recommendations for Community Coalitions*. Fair Shake Environmental Legal Services, 2023. https://static1.squarespace.com/static/52d06637e4b03daab13b67f6/t/667ac3b31327a578367a8710/1719321524606/Legal+Enforcement+of+Community+Benefit+Agreements.pdf.

organizations, and veterans' organizations. An applicant proposing a different mix shall explain how its outreach reached affected communities. The Commission shall consider the quality and geographic reach of engagement in determining its sufficiency. Engagement with California Native American tribes shall be addressed separately and shall respect each tribe's decision whether and how to participate.

Recommendation C. Allow communities to revisit agreements after environmental review

Proposed § 1879.5(a) generally requires applicants to file at least one executed CBA within 120 days after the application is deemed complete, unless the Executive Director approves a different date. That milestone can secure early commitments, but § 1879 generally gives staff 150 days from the same completeness date, with allowances for later filing, to release the draft Staff Assessment. Community organizations should have an opportunity to revisit benefits in light of new information about who will experience project impacts and where those impacts will occur.[6] [7] CBA benefits should be additional to required environmental mitigation.

> **Add to § 1879.5.** Community signatories shall have the opportunity to request amendments based on information disclosed during environmental review. The applicant shall meet and confer in good faith on requests made during the public comment period and, before the certification decision, file any executed amendments or a written explanation of how it responded. Existing commitments shall remain enforceable unless the parties amend them in writing.

Recommendation D. Preserve enforceable commitments after a transfer of ownership

Proposed § 1882 requires an incoming owner or operator to agree to comply with certification conditions. A transfer petition should also demonstrate how existing CBA obligations will remain enforceable. The Climate and Community Institute's CBA Toolkit recommends assigning responsibility for implementation and specifying monitoring and enforcement procedures.[8]

> **Add to § 1882(f)(1)(B).** The verified transfer statement shall include an executed assumption of outstanding CBA obligations by the successor. A replacement agreement shall require the affected signatories' written consent and preserve accrued obligations.

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[6] The Climate and Community Institute's CBA Toolkit says that it is optimal for CBAs to be negotiated prior to EIR declarations, in order for communities to leverage pre-mitigation bargaining power. See Toni Symonds and Reva Butensky, et al. CBA Toolkit: Leveraging Community Power in the Energy Transition. Climate and Community Institute, 2026. p.65 https://climateandcommunity.org/wp-content/uploads/CBAToolkitFiles/CBA-Toolkit.pdf

[7] The Darden Energy project signed CBAs that were not publicly available and contained redacted total dollar amounts, leading to a call for greater transparency. See Branson-Potts, Hailey. 2025. "Fast-Tracked Battery Project Has Residents Near Fresno Worried." Los Angeles Times. August 25, 2025. https://www.latimes.com/california/story/2025-08-25/battery-solar-project-darden-fresno-county-community-impacts.

[8] The Climate and Community Institute's CBA Toolkit Section 4 p. 95-96 "Clear Commitments" https://climateandcommunity.org/wp-content/uploads/CBAToolkitFiles/CBA-Toolkit.pdf

Under § 1879.5(f), the owner's compliance reports should identify the party responsible for each commitment, its due date, and any overdue payment or deliverable.

2. Strengthen Battery Safety Planning and Community Protections

The CEC proposes several additional requirements for battery energy storage systems (BESS), including information on facility layout, nearby receptors, battery chemistry, emergency response planning, hazardous materials, as well as modeling of worst-case air pollution impacts from a thermal runaway event or fire. Proposed § 1881.5 also establishes a local fire inspection process, while allowing authorization after 90 days without a completed inspection. These provisions would strengthen safety, and the CEC should build on them by addressing local inspection capacity and ensuring modeled risks lead to enforceable community protections.

Recommendation A. Provide inspection support when local capacity is limited

Proposed § 1881.5 would allow the Compliance Project Manager (CPM) to authorize testing or operation if the local fire authority has not completed an inspection within 90 days after receiving notice that the system is ready. We support a role for local fire authorities; however, smaller and rural departments may need technical support to inspect a large battery facility within that window. Earlier coordination would give them time to secure assistance and help ensure a qualified inspection occurs before testing or operation.[9]

> **Revise § 1881.5(a)(2).** If the local fire authority has not completed the inspection within 60 days of receiving notice, the owner shall promptly notify the CPM. The CPM shall coordinate with the local fire authority and the Office of the State Fire Marshal to arrange qualified on-site inspection support at the owner's expense. After 90 days without a completed local inspection, authorization to test or operate shall require a qualified on-site inspection documenting compliance with California Fire Code requirements for energy storage systems and verification that safety issues have been addressed.

Recommendation B. Connect modeled toxic exposures to enforceable mitigation

Proposed Appendix B, subdivision (g)(9)(F), requires applicants to model how toxic air contaminants (TACs) could spread during a battery thermal runaway event or fire and describe planned mitigation if the modeled acute hazard index exceeds 1.0 at sensitive receptors.[10]

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[9] Fire Districts Association of California, California Fire Chiefs Association, and California Volunteer and Combination Chiefs, "Fighting Fire With Funding: The Urgent Need for Adequate Fire Service Resources in California," February 2025, https://www.wmfire.org/files/9290dfde9/FightingFireWithFundingPacket.pdf.

[10] Planned measures for mitigating TACs may include, but are not limited to the six strategies outlined by the Bay Area Air Quality Management District. See Bay Area Air Quality Management District, "Reduction of Risk From Air Toxic Emissions at Existing Facilities," Regulation 11: Hazardous Pollutants, Rule 18 (Bay Area Air Quality Management District, June 3, 2026), https://www.baaqmd.gov/~/media/dotgov/files/rules/regulation-11-rule-18-reduction-of-risk-from-air-toxic-emissions-at-existing-facilities/2024-amendments/documents/20260603_rg1118_clean-pdf.pdf?rev=be6a420c1494495e903fcc7c74131be1&sc_lang=fil-ph.

Brightline supports these requirements and recommends updated modeling to demonstrate how proposed design changes or mitigation would reduce exposure at nearby homes, schools, and other sensitive locations.[11] [12]

> **Revise Appendix B, subdivision (g)(9)(F)(iv).** If the modeled acute hazard index exceeds 1.0 at an off-site sensitive location, the applicant shall submit updated modeling demonstrating how proposed design changes or mitigation would bring the index to 1.0 or below. The CEC should explain its findings in the Staff Assessment and incorporate the measures it relies on into enforceable conditions of certification.

In a future rulemaking, the CEC should consider comparable safety requirements for other eligible facilities with foreseeable hazardous materials risks.

3. Disclose Technical Evidence in Time for Public Comment

Recommendation A. Disclose nonconfidential evidence obtained through investigative authority

Brightline supports early coordination with affected local governments, relevant state and federal agencies, and California Native American tribes under § 1876.5; remote participation where feasible under § 1880; and the Executive Director's investigative authority to issue subpoenas and require document production under § 1878. The CEC should clarify when nonconfidential evidence obtained through that authority will be disclosed so residents and local agencies can evaluate the information supporting staff's conclusions.[13]

> **Add to § 1878(d).** Staff shall make nonconfidential materials obtained under Government Code § 11181 publicly available through the docket by publication of the draft Staff Assessment. If staff obtains material information later, staff shall disclose the nonconfidential information available and provide a meaningful opportunity for public comment before the Commission acts.

We urge the Commission to adopt these amendments to strengthen community benefits, ensure battery safety protections are enforceable, and make technical evidence available for meaningful public review. Thank you for considering our comments. We look forward to continued collaboration.

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[11] "Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects (Cal. Code Regs. Tit. 14, § 15126.4)." 2026. Thomson Reuters Westlaw (California Code of Regulations). Thomson Reuters. 2026. https://govt.westlaw.com/calregs/Document/I895A79285B4D11EC976B000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default).

[12] Center for Effective Government, "Low-Income Residents and People of Color in California Are Living Near Chemical Dangers," n.d., https://www.foreffectivegov.org/sites/default/files/info/factsheet-california.pdf. Disclosure alone does not guarantee any protection against acute chemical exposure, as one in every ten Californians live within one mile of an extremely toxic facility, with roughly three-quarters being people of color.

[13] Proposed § 1880.5 addresses public access to the record when staff files the Staff Assessment, however § 1878 does not specify whether obtained evidence would go on the record.

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Sincerely,

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