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Submitted On: 11/10/2026
Docket Number: 26-OIR-04

COMMENT LETTER - Emergency Rulemaking Amending the Opt-In Regulations

Please see attached Comment Letter regarding Docket No. 26-OIR-04, Emergency Rulemaking Amending the Opt-In Regulations.

Thank you,
Solano County
Department of Resource Management

Additional submitted attachment is included below.

DEPARTMENT OF RESOURCE MANAGEMENT

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November 10, 2026 *via email and e-filing CEC Docket 26-OIR-04*

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

RE: **Docket No. 26-OIR-04 – Emergency Rulemaking Amending the AB 205 Opt-In Regulations (20 CCR §§ 1875–1882 and Appendix B); Comments on Proposed Express Terms (TN 272980)**

Dear Chair and Commissioners:

Solano County appreciates the opportunity to comment on the proposed emergency regulations for the California Energy Commission's (CEC or Commission) Opt-In Certification Program. We thank Commission staff for extending the comment deadline and for holding the October and November workshops.

Solano County has direct experience with the program. The Corby Battery Energy Storage System Project (Docket 24-OPT-05) is a 300 MW, 1,200 MWh lithium-ion project proposed on about 40 acres of privately owned land in the unincorporated area of Solano County, southwest of Kilkenny and Byrnes Roads near Vacaville. In January 2024 the Solano County Board of Supervisors paused local approval of large-scale battery energy storage system (BESS) projects so that the County could develop safety-focused siting standards within its Zoning Regulations. On November 4, 2025, the County adopted its permanent regulations governing the safe siting of BESS projects (Solano County Code section 28.83).

The Corby Project elected to pursue opt-in certification through the CEC, rather than seek entitlement through the local County process. The County has tracked and participated in that opt-in certification process and therefore has direct experience navigating the applicable statutes and regulations as a local agency that would otherwise have permitting authority but-for the Opt-In Certification Program.

Many of the proposed emergency regulations strengthen the program, particularly the community benefits and battery fire safety provisions. The County supports those provisions below and asks for targeted improvements. The County opposes the proposed changes that would reduce the local government's role in reviewing economic benefit claims and recovering its costs and asks that those changes not be adopted as proposed.

SAEED IRAVANI Building Official Building & Safety
ALLAN CALDER Program Manager Planning Services
EDMOND STRICKLAND Manager Environmental Health
NATALIA SMITH Administrative Services Manager
RILEY MARTINSON Engineering Manager Public Works Engineering
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CHRIS DRAKE Parks Services Manager Parks
AUSTIN MILLER Water & Natural Resources Program Manager

I. PROVISIONS THE COUNTY SUPPORTS

A. Community Benefits Agreements (§ 1879.5)

Funding minimums, § 1879.5(c). The County supports minimum funding of $550 per MWh of nameplate capacity for storage projects and $2,500 per MW for generation projects. With that amendment, a 400 MWh battery project would require community benefits agreement(s) totaling at least $220,000. The Corby Project at 1,200 MWh would require community benefits agreement(s) totaling at least $660,000. Fixed thresholds replace the case-by-case negotiation that has produced uneven benefits. The CEC's own May 2026 news release reported more than $3 million in direct community benefits and investments across the first three certified projects, which together total 1,450 MW of solar generation and 9,000 MWh of storage. By the County's arithmetic, the proposed minimums applied to those same capacities would produce about $8.6 million. The proposed floors are therefore a meaningful, not excessive, benchmark for communities that host these facilities.

The County asks that § 1879.5 require community benefit funds to provide direct, measurable benefits to the community hosting the project. Eligible recipients should include local governments, community-based organizations, and regional organizations that demonstrate direct service to the affected community. Agreements should identify the intended beneficiaries, funding commitments, implementation schedule, and reporting requirements. Without these requirements, a project could satisfy the funding minimum without providing meaningful benefits to the community experiencing its impact.

Timing, transparency and reporting, § 1879.5(a), (b) and (f). The County supports requiring at least one executed agreement within 120 days after the application is deemed complete, filing agreements in the docket in unredacted form, and reporting on agreement administration in the monthly and annual compliance reports. Local governments and residents need to see what was promised and whether it was delivered. Other host jurisdictions have raised the same concern. For example, the City Attorney of San Juan Capistrano wrote to the CEC in March 2025 about the legal adequacy of the community benefits plan for the Compass project (Docket 24-OPT-02). The County asks that the compliance report sections on agreement progress be posted in the project docket so that they are available to the public and to the local government.

B. Battery Fire Safety and Public Health

Thermal runaway dispersion modeling, Appendix B(g)(9)(F). The County supports requiring worst-case plume modeling for a thermal runaway event, with results compared against the Acute Exposure Guideline Level (AEGL) and Emergency Response Planning Guideline (ERPG) thresholds. The County asks that CEC staff send the modeling results directly to the local fire agency and the County Office of Emergency Services when they are received, rather than leaving them in the docket. Those agencies use the results to set evacuation

zones and plan staffing before the project operates. After the January 2025 Moss Landing fire, local authorities initiated evacuations of residents, and the information needed to plan for such an event should reach them early.

Fire protection submittals, Appendix B(g)(11)(D). The County supports requiring UL 9540A test reports at all four test levels (cell, module, unit and installation) and a Hazard Mitigation Analysis. The County also supports requiring a description of remote monitoring capability, the anticipated time for operations personnel to arrive on site after an emergency notification, and a discussion of the project's consistency with local response times and fire station distances. These items let the local fire agency judge whether it can respond to a facility that will be unstaffed and remotely operated.

Fire agency consultation, § 1877(i). The County supports requiring battery applicants to document their consultation with the authority that has jurisdiction over fire suppression before filing, including the date, the participants, the matters discussed, and how the project addresses them. This implements Public Resources Code section 25545.19, added by SB 283 (Stats. 2025, ch. 407). The County asks that the applicant be required to provide the documentation to the fire agency so that the agency can correct or supplement the record.

Fire water quality and runoff, Appendix B(g)(14)(F) and (g)(19)(D). The County supports requiring a water quality protection plan with best management practices for a battery fire, and a plan to contain firefighting runoff on site, including when the volume exceeds the capacity of the stormwater system.

Emergency response costs and local agency coordination. The County requests that the regulations expressly address the project owner's responsibility for costs associated with a thermal runaway event, including emergency response, investigation, monitoring, remediation, and restoration. Solano County's BESS Ordinance, Section 28.83(E)(2), establishes owner responsibility for costs associated with thermal runaway events. The CEC should incorporate comparable protections into enforceable Conditions of Certification and require consultation with the affected local emergency response agencies before certification.

C. Decommissioning, Appendix B(e)(2)

The County supports the new decommissioning requirements for battery projects. As drafted, however, the applicant need only describe the parties responsible for closure and the contingency measures proposed to ensure financial and operational capability. A description is not a guarantee. Solano County's BESS Ordinance, Section 28.83(I)(3), requires financial assurance for decommissioning before full commercial operation. The County asks that the CEC establish comparable requirements for a decommissioning bond, irrevocable letter of credit, or other financial security sufficient to cover equipment removal, hazardous material management, and site restoration. The security should remain effective throughout the

project's operating life and be available to the responsible public agency if the owner fails to perform its obligation, so that these costs do not fall on local taxpayers

D. Early Termination and Site Control, §§ 1877.5(e) and 1877(h)

The County supports terminating applications that lack site control, interconnection or a viable developer. Local staff should not spend time and public resources reviewing projects that will never be built. The County asks for two refinements. First, § 1877(h) says that an applicant's affirmation of its property rights and a description of those rights is adequate evidence, while Appendix B(a)(4)(i) calls for written proof of site control. The regulations should be reconciled in favor of documentary proof, such as a deed, lease or option, and should allow the local government to submit contrary evidence. Second, the Executive Director should notify the local government when a request for early termination or suspension is filed.

II. PROVISIONS THE COUNTY OPPOSES

A. Deletion of § 1877(f): Local Review of Economic Benefit Information

Current § 1877(f) requires the applicant to submit preliminary information on economic benefit and requires staff to provide it to the local government for review and comment. The proposal deletes that step. It is the County's main opportunity to check the applicant's fiscal claims before the Staff Assessment is written. Local governments asked for this review when the regulations were first adopted. In 2022 the Rural County Representatives of California (RCRC) asked the CEC to ensure local review and verification of a project's claimed economic benefits, and the League of California Cities proposed amendments to the same effect (Docket 22-OIR-01). The County asks that § 1877(f) be retained.

B. Section 1879(a)(7): Application of the Rebuttable Presumption

Public Resources Code section 25545.9, as amended by SB 254 (Stats. 2025, ch. 119), keeps the Commission's duty to find that a facility will have an overall net positive economic benefit to the local government, and adds a presumption that is rebuttable. The proposed § 1879(a)(7) replaces the Staff Assessment's analysis of that benefit with "confirmation that evidence has not been filed sufficient to overcome" the presumption. That language turns a substantive analysis into a docket check. It does not say who may file rebuttal evidence, when, in what form, or how staff will weigh it. Read together with the deletion of § 1877(f), it leaves the local government without the information it would need to rebut the presumption.

The County's review of the Corby BESS Staff Assessment illustrates the importance of retaining meaningful local review. Although the Staff Assessment identifies substantial projected tax revenues, it does not adequately identify the County's share of those revenues or account for costs associated with emergency response, road maintenance, environmental health oversight, compliance monitoring, and eventual decommissioning. Without an

opportunity to review the underlying assumptions and provide local fiscal information, the County cannot meaningfully evaluate whether a project will provide an overall net positive economic benefit to the local government.

The County asks that the CEC (1) restate the statutory presumption in the regulation without paraphrase; (2) retain the analysis of economic benefits that § 1879(a)(7) now requires, including employment, housing, infrastructure, assistance to public safety agencies, and tax revenues; (3) provide that evidence may be filed by the local government and the public through the close of the comment period on the Staff Assessment; (4) require the Staff Assessment to evaluate any evidence filed and explain how the presumption was applied; and (5) provide that when rebuttal evidence is filed, the full economic benefit analysis is performed rather than a confirmation of the docket.

C. Section 1878.1(a)(2): Limit on Local Agency Studies

The proposal would require the CEC's notice to local agencies to state that they "are not expected to perform studies or retain expert consultants," and ties reimbursement to the technical areas CEC staff choose to identify in that notice. The County opposes both changes. The County is best positioned to decide what review its own standards require. The Staff Assessment still addresses the project's conformity with local ordinances and standards (§ 1879(a)(2)), and in the Corby review, evaluating the project against County standards has required specialists across multiple divisions of the Department of Resource Management. A statement that agencies need not retain experts invites applicants to dispute the costs of exactly the work that a competent review requires. Reimbursement under Public Resources Code sections 25538 and 25545.8 is for the local agency's actual costs, and a limit based on the technical areas CEC staff select appears inconsistent with that purpose.

The County's experience reviewing Corby demonstrates that evaluating a large-scale energy storage project requires coordination among multiple County divisions and technical specialists. This includes reviewing consistency with local land-use and safety standards, hazardous materials, emergency response, groundwater, County roads, and decommissioning requirements. The scope of necessary review cannot always be anticipated or limited to the technical areas initially identified by CEC staff. Reasonable and documented costs associated with these reviews should remain eligible for reimbursement.

The County asks that the CEC strike § 1878.1(a)(2), provide that the technical areas identified in staff's notice are illustrative and not exclusive, and provide that actual, reasonable costs of review under the agency's own standards, including consultants and specialists, are reimbursable.

D. Removal of the Explicit Impact Fee List

The current regulations list traffic impact, drainage, park-in-lieu, sewer and public facilities fees as reimbursable. The proposal replaces the list with general language that reimburses permit fees only where tied to work the agency performs, such as developing permit language for the Staff Assessment. The infrastructure and service costs that these fees fund stay with the County whether or not the project is permitted locally. The County asks that the CEC retain the explicit recognition of applicable local development impact fees and other legally authorized charges, separately from reimbursement for reasonable staff and consultant review costs, and clarify that CEC certification does not automatically eliminate otherwise applicable obligations to address impacts on local infrastructure and public facilities.

E. Deletion of Retroactive Cost Recovery and the Budget Completeness Notice

The proposal removes the provision allowing a local agency to include, in its reimbursement budget, costs reasonably incurred in responding to a CEC request before the budget is approved. This change leaves early review work on highly complex projects unreimbursed, even when such review otherwise qualifies for reimbursement under the CEC staff request. This disincentives early review to ensure timely, complete comments on these projects. The County asks that a provision allowing reimbursement for reasonable costs incurred before the budget is approved be retained in the regulations.

F. Use of the Emergency Rulemaking Process

The County recognizes that Public Resources Code section 25545.12 authorizes the CEC to adopt and amend regulations under the emergency process. Some of the proposed amendments implement new statutory requirements, such as the presumption in SB 254, the property rights evidence required by SB 254, and the fire consultation required by SB 283. The proposed changes to local reimbursement and local review of economic benefit are different. These are substantive policy decisions that extend beyond implementation of the new statutory requirements and could significantly affect local government participation and financial responsibilities. Given these consequences, the County requests that the CEC reconsider and defer these discretionary amendments to the regular rulemaking process to allow more extensive public review and consideration of their effect on local governments.

G. Applicability to Pending Opt-In Applications

The County requests that the CEC clarify how the amended regulations will apply to pending Opt-In applications that have not received final certification. In particular, enhanced fire safety, emergency response, water quality, and decommissioning requirements should apply to pending projects. The regulations should identify any transitional provisions and establish how these protections will be implemented before certification or operation.

III. CONCLUSION

The County supports a program that is more predictable for developers, local agencies, and the public, and that gives host communities real benefits and real protection. The community benefits minimums and the battery fire safety requirements move the program in that direction. The County asks the CEC to make those provisions stronger as described above, and to keep local governments in the program as informed reviewers who are paid for the work the Commission asks of them and which is critical to ensure protection of the community.

Thank you for considering these comments.

Sincerely,

James Bezek
Solano County Director of Resource Management