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Request for Bifurcation, Stronger Site-Control Requirements, Comprehensive Emergency Response Coordination, and Mandatory Safety

PUBLIC COMMENTS ON PROPOSED EMERGENCY AMENDMENTS TO THE OPT-IN CERTIFICATION REGULATIONS

California Energy Commission
Docket No. 26-OIR-04
Reference: TN 272980 â€” Express Terms, filed September 29, 2026

Subject: Request for Bifurcation, Stronger Site-Control Requirements, Comprehensive Emergency Response Coordination, and Mandatory Safety Verification

I. INTRODUCTION AND REQUESTED ACTION

I submit these comments concerning the California Energy Commission's proposed emergency amendments to the Opt-In Certification Program regulations.

While improvements to battery energy storage system (BESS) safety are necessary, the proposed amendments also address property rights, application procedures, local agency participation, and certification requirements. These changes have significant consequences for affected communities, property owners, local governments, and emergency service providers.

The Commission should not combine genuinely urgent safety requirements with broader procedural changes without providing sufficient justification and opportunity for public review.

I request that the Commission:

1. Bifurcate the rulemaking into an expedited track for legally justified emergency safety provisions and a standard rulemaking for broader procedural amendments.
2. Require documentary proof of legally enforceable property rights rather than relying on applicant affirmations.
3. Expand fire authority consultation to require documented coordination with all emergency-response agencies and medical resources reasonably expected to be involved in a BESS emergency.
4. Strengthen pre-operational safety verification and address the proposed 90-day alternative to completed fire inspection.
5. Clarify how the amendments apply to applications already filed, pending certification proceedings, and previously certified facilities.

The following comments identify the concerns and provide proposed substitute regulatory language.

II. BIFURCATION OF THE EMERGENCY RULEMAKING

A. Basis for bifurcation

The proposed amendments address several substantially different subjects, including fire safety, site control, application suspension and termination, local agency reimbursement, and certification procedures.

These provisions do not necessarily present the same degree of urgency.

For example, mandatory fire authority consultation and pre-operational inspection may address immediate public safety concerns. By contrast, changes affecting the evidence required to establish property rights or the procedures governing application suspension and termination warrant broader legal and public review.

The Commission should explain the statutory authority and specific emergency necessity for each amendment rather than treating the entire package as equally urgent.

Bifurcation would allow time-sensitive safety protections to advance while preserving meaningful review of changes affecting property rights, local government participation, and procedural protections.

B. Requested division

Track One â€” Emergency Safety Regulations

This track should include provisions demonstrated to require immediate adoption, including fire safety consultation, emergency preparedness, inspection requirements, and other time-sensitive protections.

Track Two â€” Standard Rulemaking

This track should address site-control documentation, application completeness, withdrawal and suspension procedures, early termination, local agency participation and reimbursement, public participation, and other changes not demonstrated to require emergency adoption.

C. Recommended timeline

The Commission should publish a bifurcation decision and provision-by-provision justification within 15 days.

The emergency safety track should proceed under the applicable emergency procedures and statutory deadlines, with focused consultation involving fire authorities, emergency management agencies, and other responsible public agencies.

The standard rulemaking should provide:

- Approximately 30â€“45 days for preliminary public workshops and agency consultation.
- The applicable formal notice-and-comment period, ordinarily at least 45 days under regular California rulemaking procedures.
- Additional review of material revisions, as required by law.
- Written responses to substantive objections and recommendations before adoption.

A reasonable planning objective would be approximately five to six months for the standard track, subject to applicable legal requirements.

D. Applicability to pending projects

The Commission must also clarify whether each amendment applies to applications submitted before the effective date, applications already deemed complete, projects awaiting certification, or previously certified facilities.

Proposed regulatory language â€” Applicability and transition:

"Unless otherwise required by statute, amendments adopted pursuant to this rulemaking shall apply prospectively. The Commission shall identify the applicability of each amended requirement to applications filed before its effective date, applications deemed complete, pending certification proceedings, and certified facilities.

"No applicant shall be exempt from an otherwise applicable public health or safety requirement solely because an application was submitted before the effective date of the regulation.

"Where application of a new requirement to a pending proceeding raises a question of statutory authority, the Commission shall issue a written determination identifying the governing law and the basis for its decision."

III. PROOF OF SITE CONTROL â€” SECTION 1877(h) AND APPENDIX B(a)(4)(i)

A. Concern with the proposed language

Proposed Section 1877(h) provides that an applicant must demonstrate sufficient real property rights to access, build, and operate a proposed facility.

However, it further states:

"Absent evidence to the contrary, an affirmation by the applicant of such rights and a description of those rights, shall be adequate evidence."

This language is inadequate.

An applicant's statement that it possesses necessary property rights should not substitute for documentation establishing those rights.

The proposed approach risks placing the practical burden on affected property owners or members of the public to discover and challenge claims that the applicant should be required to substantiate.

It also creates an inconsistency with Appendix B(a)(4)(i), which calls for written proof of site control covering the project site, generation interconnection, and ancillary project elements.

Property rights may involve multiple owners, leases, easements, access agreements, governmental property, and third-party authorizations. These matters are particularly important where emergency-access routes cross land outside the primary project site.

B. Proposed replacement language â€” Section 1877(h)

Replace proposed Section 1877(h) with:

(h) The opt-in application shall include documentary evidence demonstrating that the applicant possesses sufficient, legally valid, binding, and enforceable real property rights to access, construct, operate, maintain, and decommission the proposed facility, including all ancillary facilities, transmission interconnections, utility corridors, and primary and secondary emergency-access routes.

(1) Documentary evidence shall include, as applicable, recorded deeds, executed leases, enforceable options or agreements, easements, licenses, rights-of-way, access agreements, and other instruments establishing the applicant's claimed legal authority.

(2) The applicant shall identify each affected parcel by assessor's parcel number, identify the record owners, and describe the nature, duration, conditions, and limitations of the property rights claimed.

(3) Where authorization by multiple property owners, trustees, governmental entities, or other parties is legally required, the applicant shall provide documentation establishing that all necessary authorizations have been obtained.

(4) An applicant's statement, declaration, attestation, or affirmation, standing alone, shall not constitute sufficient evidence of site control.

(5) The applicant shall separately identify any proposed project component or emergency-access route dependent upon an agreement that has not been executed or a property right that has not been secured. Such a component or route shall not be represented as legally secured.

(6) The applicant shall disclose known material disputes, pending litigation, or written objections concerning property rights necessary for project construction, operation, emergency access, or decommissioning.

(7) Before determining an application complete, the Commission shall evaluate whether sufficient documentary evidence has been submitted to support meaningful review of the proposed project and its essential components.

(8) Before certification, the Commission shall make a written finding, supported by substantial evidence, that the applicant has demonstrated sufficient legal authority for the project as certified.

(9) Commission certification shall not independently confer ownership, an easement, a right of entry, or any other private property interest, nor shall it adjudicate disputed title.

(10) Material changes affecting necessary property rights or emergency access shall be promptly disclosed to the Commission and reviewed before the affected activity proceeds."

C. Conforming amendment â€” Appendix B(a)(4)(i)

Replace the proposed Appendix B site-control language with:

(i) A parcel-specific site-control report containing the documentary evidence required by Section 1877(h), including a map identifying all property interests, access routes, easements, utility corridors, and rights-of-way necessary for the proposed project.

The report shall distinguish between existing enforceable rights, conditional rights, pending agreements, and rights not yet obtained.

Confidential personal information may be protected in accordance with applicable law, but confidentiality shall not relieve the applicant of the obligation to provide sufficient evidence for Commission verification."

D. Relevance to pending applications

The Seahawk Battery Energy Storage System application, Docket 26-OPT-02, TN 270250, illustrates the importance of these requirements.

The application identifies three possible secondary emergency-access routes, including routes crossing County-owned or other adjoining property. The application also states

that the applicant plans to enter into an agreement for the secondary access road.

A proposed future agreement is not equivalent to a presently enforceable right of access.

The Commission should require verification of the selected route and the legal rights necessary to construct, maintain, and use that route for emergency response before certification.

This is not a determination that the applicant lacks site control. It is a request that the Commission independently verify the necessary legal documentation rather than relying solely on developer representations.

IV. FIRE AUTHORITY AND INTERAGENCY EMERGENCY COORDINATION â€” SECTION 1877(i)

A. Concern with the proposed language

Proposed Section 1877(i) requires documentation of consultation with the authority having jurisdiction over fire suppression.

The proposed documentation includes the consultation date, participants, matters discussed, and how the project would address those matters.

Although this is a useful requirement, it is insufficient for a large utility-scale battery energy storage facility.

A serious BESS incident may involve thermal runaway, fire propagation, explosion hazards, toxic smoke, hazardous gas emissions, contaminated runoff, road closures, evacuation orders, medical treatment, and prolonged emergency operations.

Responsibility for these consequences extends beyond the primary fire department.

Law enforcement may be responsible for evacuation and road closures. Emergency management agencies may coordinate public warnings and shelters. Medical providers may receive exposed or injured patients. Transportation agencies may control access to affected roads. Public health and environmental agencies may evaluate contamination and exposure.

The Commission should require documented coordination with these agencies before certification, rather than accepting consultation with a single fire authority as sufficient evidence of emergency preparedness.

B. Proposed replacement language â€” Section 1877(i)

Replace proposed Section 1877(i) with:

(i) For an energy storage system, the opt-in application shall include a site-specific Emergency Response Coordination and Capability Assessment documenting consultation and coordination with the authority having jurisdiction over fire suppression and all other public agencies and emergency service providers reasonably expected to have responsibility for responding to or managing a foreseeable emergency at the facility.

(1) The applicant shall identify and consult, as applicable, with:

(A) The fire department having primary response responsibility, neighboring mutual-aid fire agencies, and specialized hazardous-materials response teams;

(B) The county sheriff, local police departments, California Highway Patrol, and other law enforcement agencies responsible for evacuations, traffic control, security, or emergency access;

(C) County and municipal offices of emergency services or emergency management and agencies responsible for public warning and emergency coordination;

(D) Emergency medical services authorities, ambulance providers, emergency medical transport agencies, receiving hospitals, emergency departments, and other medical facilities reasonably expected to treat persons affected by facility-related injuries or hazardous exposure;

(E) The California Department of Transportation, local public works and transportation departments, and other roadway authorities responsible for emergency access, evacuation routes, or road closures;

(F) Public health agencies, environmental health departments, air quality agencies, water agencies, and other entities responsible for hazardous exposure, environmental monitoring, contamination, or public health advisories;

(G) Agencies responsible for schools, evacuation centers, emergency shelters, animal shelters, livestock evacuation, and other public facilities or vulnerable populations that may be affected by a facility emergency.

(2) The assessment shall document consultation dates, participating representatives, information exchanged, agency recommendations, concerns identified, and the applicant's proposed resolution of each material concern.

(3) The assessment shall evaluate credible emergency scenarios, including thermal runaway, fire propagation, explosion or deflagration, toxic gas release, hazardous smoke dispersion, contaminated runoff, loss of communications or electrical power, and simultaneous emergencies affecting regional response resources.

(4) The assessment shall identify emergency personnel, specialized equipment, training, hazardous-materials capabilities, water supplies, medical resources, emergency-access routes, evacuation routes, and mutual-aid resources necessary for an effective response.

(5) The applicant shall prepare a written interagency emergency response plan identifying incident command responsibilities, notification procedures, emergency communications, protective actions, evacuation and shelter-in-place procedures, traffic management, medical response, environmental monitoring, contaminated runoff management, and post-incident recovery procedures.

(6) Each consulted agency shall be provided a reasonable opportunity to review the draft assessment and emergency response plan. Written agency comments, objections, recommendations, and the applicant's responses shall be included in the application record.

(7) An agency's failure to respond shall not constitute approval, concurrence, or a determination that emergency-response capabilities are adequate.

(8) Before certification, the Commission shall determine, based on substantial evidence, whether foreseeable emergency-response needs have been adequately evaluated and whether necessary protective measures, resources, and enforceable mitigation requirements have been identified.

(9) The assessment and emergency response plan shall be updated before initial operation and whenever a material change in battery technology, facility design, emergency access, or emergency-response capability could affect public safety.

(10) Nonconfidential portions of the assessment, agency comments, and emergency response plan shall be made publicly available with sufficient opportunity for review and comment before certification, subject to applicable confidentiality and security requirements."

C. Required supporting documentation

The Commission should require the following materials as part of the Emergency Response Coordination and Capability Assessment:

1. Interagency coordination matrix:** Identify each agency, its responsibilities, dates of consultation, recommendations, outstanding concerns, and status of review.
2. Emergency response capability assessment:** Identify available personnel, equipment, specialized training, hazardous-materials capabilities, and mutual-aid resources.
3. Evacuation and transportation assessment:** Evaluate emergency-access routes, potential road closures, traffic control, evacuation routes, and conflicts with other emergency operations.

4. Medical response assessment:** Document coordination with emergency medical services, ambulance providers, and receiving medical facilities.
5. Public health and environmental response assessment:** Address hazardous emissions, air monitoring, contaminated water and soil, agricultural impacts, and post-incident recovery.
6. Funding and resource commitments:** Identify who will provide and pay for necessary equipment, training, emergency planning, exercises, and continuing response support.

Documentation should distinguish between agencies merely contacted, agencies that participated in technical review, agencies that provided recommendations, and agencies that formally approved an applicable plan.

Consultation should not be represented as agency approval.

D. Particular concerns for agricultural communities

Where a proposed BESS is located near agricultural operations, residences, schools, or public evacuation facilities, the emergency assessment should specifically evaluate potential effects on those uses.

This includes smoke exposure, contamination of agricultural land and crops, impacts to water resources, disruption of agricultural operations, and the possible loss of evacuation facilities during an emergency.

For the Seahawk project, the Commission should specifically evaluate potential impacts on the Santa Cruz County Fairgrounds, including its role as an evacuation resource for people and animals, and document coordination with the agencies responsible for those facilities.

V. PRE-OPERATIONAL FIRE SAFETY VERIFICATION â€” SECTION 1881.5

A. Concern with the proposed 90-day provision

Proposed Section 1881.5 would permit the Compliance Project Manager to authorize battery system testing or operation when either:

1. The responsible fire authority has completed an inspection; or
2. The fire authority has not completed the inspection within 90 days after receiving notice that the system is ready for inspection.

The passage of 90 days does not establish that a battery facility has been inspected, that identified hazards have been corrected, or that emergency-response resources are adequate.

An inspection delay may result from staffing limitations, incomplete documentation,

unresolved technical issues, or other circumstances unrelated to the safety of the facility.

The Commission should not treat the expiration of a time period as evidence of compliance.

The governing statutory requirements must be respected. To the extent that Public Resources Code Section 25545.19 mandates the 90-day alternative, the Commission should adopt all additional safety verification requirements permitted by law and seek legislative amendment where necessary.

B. Proposed substitute language â€” Section 1881.5

Replace or supplement proposed Section 1881.5 with the following, to the extent authorized by governing law:

(a) Before authorizing initial battery system testing, commissioning involving energized battery equipment, or commercial operation, the Compliance Project Manager shall determine that all applicable fire safety, emergency-access, and emergency-response conditions of certification have been satisfied.

(b) The project owner shall provide the authority having jurisdiction over fire suppression with written notice that the facility is ready for inspection, together with the final facility plans, equipment specifications, hazard mitigation analysis, emergency response plan, and documentation of required safety-system testing.

(c) Before authorization, the project owner shall submit to the Compliance Project Manager:

(1) Any completed inspection report issued by the responsible fire authority;

(2) Documentation of correction of identified deficiencies materially affecting fire or life safety;

(3) Verification of installation and functional testing of applicable fire detection, gas detection, emergency shutdown, ventilation, communications, and other protective systems;

(4) Documentation that required emergency-access routes are legally secured, constructed, unobstructed, and available for emergency use;

(5) The final Emergency Response Coordination and Capability Assessment required by Section 1877(i), including the status of material agency concerns;

(6) Documentation of required emergency-response training, notification procedures, and exercises;

(7) Identification of the final battery manufacturer, model, chemistry, configuration, and applicable testing and certification records.

(d) The Compliance Project Manager shall evaluate all available inspection findings, material agency objections, and identified safety deficiencies before authorizing testing or operation.

(e) If the responsible fire authority has not completed an inspection within the period specified by applicable law, the Compliance Project Manager shall document the reasons for the delay, the project owner's efforts to obtain the inspection, and any known unresolved safety concerns.

(f) Where applicable law permits authorization without a completed fire authority inspection after a specified period, expiration of that period shall not independently establish compliance with applicable safety requirements or satisfaction of conditions of certification. The Compliance Project Manager shall make written, evidence-supported findings addressing all remaining legally applicable prerequisites.

(g) Where authorized by law, the Commission may require additional independent inspection or technical verification by qualified fire protection professionals. Such review shall not be represented as an inspection by the responsible fire authority.

(h) Testing or operation shall not be authorized where an unresolved deficiency violates an applicable mandatory safety requirement or condition of certification.

(i) Inspection reports, corrective-action documentation, and the Compliance Project Manager's written findings shall be docketed and made publicly available, subject to applicable confidentiality and security requirements.

(j) Material changes in battery equipment, chemistry, configuration, fire protection systems, or emergency-access arrangements shall be evaluated for their effect on safety compliance and shall require additional verification when necessary before affected equipment is placed into service."

C. Requested additional action

If the governing statute requires the Commission to retain the 90-day inspection alternative, I request that the Commission seek a statutory amendment requiring completed fire safety inspection before battery testing or operation, with an appropriate independent inspection mechanism when the responsible fire authority cannot act within a reasonable period.

The solution to limited inspection resources should be additional funding, technical assistance, and inspection capacityâ€”not an assumption that a facility is safe because time has elapsed.

VI. LOCAL AGENCY PARTICIPATION AND APPLICATION PROCEDURES

The Commission should also review proposed Sections 1877.5 and 1878.1 through the standard rulemaking track.

Section 1877.5 addresses withdrawal, suspension, and early termination of applications, including circumstances involving site control and project feasibility.

Section 1878.1 addresses local agency participation and reimbursement.

Local agencies may possess essential information concerning land use, emergency response, transportation, agricultural resources, and community safety. Their participation should not be restricted in a manner that prevents meaningful technical review.

The Commission should ensure that:

- Material application changes, suspensions, and resumptions are publicly docketed.
- Resumption of a suspended application includes an updated schedule and appropriate notice.
- A project with unresolved essential property rights is not treated as fully developable merely because the applicant anticipates obtaining those rights.
- Local agencies can submit material information outside narrowly defined technical categories when relevant to public health, safety, or environmental review.
- Reimbursement procedures do not discourage necessary agency participation or shift unreasonable project-review costs to local taxpayers.

These matters deserve full public consideration rather than expedited adoption without a demonstrated emergency necessity.

VII. CONCLUSION

The Opt-In Certification Program provides an expedited state-level process for major energy projects. That process must retain meaningful safeguards for property rights, emergency preparedness, public health, environmental protection, and local agency participation.

The proposed amendments should not substitute applicant assurances for legally enforceable property rights, documentation of consultation for demonstrated emergency-response capability, or expiration of an inspection period for verified safety compliance.

I respectfully request that the California Energy Commission:

1. Bifurcate the emergency rulemaking and provide a clear public-review timeline.

2. Adopt the proposed replacement language for Section 1877(h) and Appendix B(a)(4)(i).
3. Expand Section 1877(i) to require documented, comprehensive interagency emergency coordination.
4. Strengthen Section 1881.5 to require independently supported safety findings before battery testing or operation, consistent with governing statutory requirements.
5. Clarify the applicability of the amendments to pending applications and existing certifications.
6. Preserve meaningful local agency review and public participation.

These changes would improve accountability, reduce uncertainty, and help ensure that expedited energy certification does not compromise the safety and rights of California communities.

Respectfully submitted,

Linda Santos
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References

California Energy Commission, Docket 26-OIR-04, TN 272980, *Express Terms*, filed September 29, 2026, proposed Sections 1877, 1877.5, 1878.1, 1881.5, and Appendix B.

California Energy Commission, Docket 26-OPT-02, TN 270250, *Seahawk Battery Energy Storage System â€” Application for Opt-In Certification Part 1*, filed May 27, 2026, Chapter 1, including Sections 1.2 and 1.4.