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Leadership Counsel et al Comments on Emergency Rulemaking Amending the Opt-In Regulations

Additional submitted attachment is included below.

November 10, 2026

Submitted via CEC Docket Log 26-OIR-04

RE: Comments on Emergency Rulemaking Amending the Opt-In Regulations

Dear California Energy Commission Commissioners and Staff,

The undersigned organizations appreciate the opportunity to submit the following comments in response to the Emergency Rulemaking Amending the Opt-In Regulations (Amended Regulations).

Community Benefits Agreement (§1879.5)

CBAs are an essential tool for ensuring that communities and populations impacted by projects receive some relief and benefit from the projects that will impact them for years to come. Such benefits must be more than a procedural requirement or a measure of funds committed. Instead, they should serve as an enforceable mechanism that ensures that impacted communities and populations have a voice in project development and share in its benefits. However, the existence of CBAs does not demonstrate community support for the project or justify the impacts the community will endure from the project. The following recommendations outline ways to strengthen the proposed requirements and ensure CBAs fulfill this critical role.

While we support outlining minimum standards for a CBA (§1879.5(c)), these standards should go beyond the number of CBAs secured and the amount of money provided. Instead, minimum standards should be focused on ensuring a range of direct benefits to local communities that reflect the needs and priorities of those communities. We recommend that the Amended Regulations require CBAs to include at least three forms of community-shaped benefits through policies, programs, and direct financial contributions. Recommended categories given common community priorities include the following, with the caveat that benefits are not restricted to these three and should be determined by the community impacted: (1) direct financial contributions or investments in community and/or household infrastructure, services, and amenities or other locally identified priorities; (2) access to clean energy affordability, which may include financial contributions to energy affordability programs benefiting local community members, low-cost or no-cost access to clean energy generation, and no-cost household clean energy. (3) workforce development and worker transition efforts, including commitment to collaborate with and financial contributions to local workforce development organizations that can guide these efforts. These categories would establish a more meaningful framework for evaluating community benefits while allowing flexibility to tailor individual agreements to local priorities.

Establishing minimum standards for direct financial contributions based on averages from existing CBAs is not an appropriate approach, as historical investment levels are not necessarily adequate or equitable. Instead, minimum standards should be tied to the anticipated economic value generated by each project type. For energy generation and energy storage projects, minimum standards should be based on the current market's average profit generated per megawatt-hour (MWh) and the project's anticipated MWh generation or storage over the lifespan of that project. For hydrogen production facilities, minimum standards should be based on the anticipated market value per ton of hydrogen produced and the facility's anticipated annual production volume over the expected operating life of the project. For manufacturing facilities, we recommend establishing minimum standards as a percentage of the facility's anticipated annual profit. These calculations should account for anticipated changes in market prices and inflation over the expected life of each project, rather than relying solely on current market conditions. Minimum standards should be adjusted periodically to market prices and inflation.

This will ensure the contribution in the CBAs is proportionate to the funds generated by that project, allowing the community to receive a more equitable share of the benefits of a project. The combined contribution of both the direct financial contributions and investments in other forms, such as programs and policies, should meet or exceed the minimum standard. Whatever methodology the commission adopts, minimum contribution levels should be indexed to inflation so that commitments made today retain their value over the life of a project that may operate for 20 to 30 years or more.

The commission’s consideration of CBAs in project approval decisions should not be based solely on the number and diversity of CBAs secured (§1879.5(d)). Instead, the commission must consider the diversity of direct benefits to local communities across the CBAs; the extent to which CBAs respond to identified community needs and opportunities; and the processes through which the CBAs were developed, including the degree of meaningful community collaboration and whether the CBAs reflect community preferences.

Allowing the executive director to approve a timeline that differs from the 120 days provides flexibility and can allow for sufficient time to develop a thoughtful and comprehensive CBA (§1879.5(d)). However, we recommend that any timeline change not be under 120 days and that the level of community collaboration and input throughout the CBA development process be considered before making accommodations. CBA development should not be expedited solely for the purpose of securing a CBA.

We support the requirement that CBAs be publicly posted in unredacted form to improve transparency and accountability (§1879.5(b)). We recommend requiring that as many CBA provisions as reasonably possible begin implementation upon the start of project construction (§1879.5(e)).

The Amended Regulations should also specify who is responsible for monitoring CBA compliance, require periodic public reporting on implementation, and establish a clear process for resolving disputes when commitments are not met. Additionally, CBA obligations should transfer with any change in project ownership under §1882(f), and the commission should require that successor owners affirm these commitments.

Lastly, we recommend including language that requires the CBAs to be entered directly with or in a manner that ensures, community residents have the main decision-making authority in CBA development and implementation efforts. This can include, but is not limited to, community collaboratives, community groups, and community-based organizations. We recommend that the commission review the *Standards and Guidelines for Community Benefit Plans and Community Benefit Agreements, Executive Office of Energy and Environmental Affairs Office of Environmental Justice and Equity* from the state of Massachusetts, released in March 2026.[1]

Environmental Review Requirements

We are concerned by the change in terminology from "environmental impact report" to "environmental document." This change creates ambiguity regarding the types of documents that will satisfy the requirement and the level of environmental review that will be required. It also raises concerns about allowing less comprehensive environmental review and little opportunity for meaningful public input. If the intent is to allow projects to merely complete a negative declaration, mitigated negative declaration, or other less comprehensive form of environmental review, we do not support this approach.

We recommend keeping the term "environmental impact report" throughout the Amended Regulations. Amended Regulations should clearly establish that all projects must undergo a comprehensive environmental review consistent with the analytical and public participation requirements of a formal Environmental Impact Report process.

Given the potentially significant environmental and public health impacts of these projects, particularly in communities already experiencing disproportionate environmental burdens, the

[1] Massachusetts Executive Office of Energy and Environmental Affairs, Office of Environmental Justice and Equity, Standards and Guidelines for Community Benefit Plans and Agreements (CBP/CBA) (March 1, 2026)

Amended Regulations must ensure clearly defined requirements. The use of broad terminology risks transparency and public accountability of the environmental review process.

Pre-Filing Consultation (§1876.5), Contents of Opt-In Application (§1877), and Staff Assessment and Executive Director's Recommendation (§1879)

We appreciate the added language requiring discussion of potential issues that may arise during formal project review (§1876.5(a)). We recommend expanding this discussion to include consideration of the local community's historical experience with industry-related impacts, cumulative impacts, and community needs. Additionally, the pre-filing consultation phase must include a discussion to establish a pathway for addressing the identified issues. A summary of the consultation, including meeting date, participants, identified concerns, and proposed approaches for addressing those concerns, must be made publicly available on the project docket.

The opt-in application should include a summary of the pre-filing consultation discussions, including the pathways with clear timelines for resolving identified issues and a status of these efforts. This will ensure that the identified issues during pre-filing consultation are not simply acknowledged but are effectively addressed. (§1877)

We recommend requiring the participation of at least one representative from the government entity that would have otherwise held permitting authority over the proposed project (§1876.5(b)). The relevant city or county, regardless of whether it would have a permitting role, should be required to participate in the consultation. In the case of a project including an energy storage system, we recommend the participation of the authority that has jurisdiction over fire suppression in this same consultation process.

The application should include a comprehensive assessment of the relevant fire department's capacity to adequately serve the proposed project (§1877(i)). Where gaps in capacity are identified, the applicant should describe how, by when, and by whom those gaps will be addressed before project construction. The commission should deny the project if it fails to clearly demonstrate a pathway that ensures this capacity will exist by the time the project is operational.

The opt-in application and staff assessment must require an analysis of the existing environmental conditions and community needs, with the support of the relevant local government entities in the consultation process. This should include potential cumulative impacts, project-specific additive impacts, and relevant community priorities and concerns. This includes but is not limited to assessment of the local Environmental Justice Elements, General Plans, CalEnviroScreen Scores, AB 617 Community Emissions Reduction Program, and Local Community Emission Reduction Plans. (§1877 and § 1879)

We recommend that the stricken language in §1879(2) to include a statement of effort made to correct or eliminate noncompliance remain in the Amended Regulations. Similarly, we recommend that the stricken language in §1879(7) to include an overall net positive economic benefit report in the staff assessment remain in the Amended Regulations.

Approval to Operate a Battery Energy Storage System

As discussed above, we recommend requiring the authority having jurisdiction over fire suppression to participate in the pre-filing consultation process for projects involving battery energy storage systems. This consultation should assess the fire department's capacity to respond to an emergency and a pathway to address any challenges in doing so. The consultation process must also include a pathway to setting a community emergency notification system and evacuation plan that is accessible to the community.

We support requiring inspections of energy storage systems but recommend establishing minimum inspection standards (§1879.6). However, the 90-day provision must be revised to not allow a project to proceed without an inspection (§1879.6(a)(2)). As currently drafted, the provision allows the inspection requirement to be bypassed if the fire department does not complete the inspection within 90 days, undermining the purpose of the requirement.

Request Two-Track Process

We urge the commission to establish a two-track process for this proceeding. The statutory amendments to the Opt-In regulations can proceed on the emergency rulemaking timeline, while the CBA regulatory language should be split off into a separate track to ensure sufficient time for deliberation. CBAs will determine how impacted communities share in the benefits of these projects for decades, and parties need time to dig into these questions with meaningful community input. If a separate track is adopted, the commission should establish a clear scope and schedule for resolving Track Two issues. In the meantime, the recommendations enclosed in the letter should guide any interim CBA requirements adopted through this rulemaking.

Conclusion

We appreciate the opportunity to provide comments on the Amended Regulations and the commission's efforts to improve this program. As the commission continues to establish streamlining processes, it is critical that these do not come at the expense of comprehensive environmental reviews, adequate mitigation planning, and meaningful public engagement. The process must always prioritize protections for the most vulnerable communities, which have historically and continue to disproportionately bear the burdens associated with energy development. Achieving the state's climate goals must go hand in hand with ensuring that these projects are responsive to the needs of the communities most impacted by them. For any inquiries, please contact Mariela Loera at mloeara@leadershipcounsel.org.

Sincerely,

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