DOCKETED	
Docket Number:	26-OIR-04
Project Title:	Emergency Rulemaking Amending the Opt-In Regulations
TN #:	273505
Document Title:	Large-scale Solar Association Comments - LSA Comments RE Docket No 26-OIR-04 Opt-In Emergency Rulemaking
Description:	N/A
Filer:	System
Organization:	Large-scale Solar Association
Submitter Role:	Public
Submission Date:	11/10/2026 4:29:51 PM
Docketed Date:	11/10/2026

Comment Received From: Large-scale Solar Association
Submitted On: 11/10/2026
Docket Number: 26-OIR-04

LSA Comments RE Docket No 26-OIR-04 Opt-In Emergency Rulemaking

Additional submitted attachment is included below.

November 10, 2026

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

Submitted Electronically

Re: Docket No. 26-OIR-04 — Large-Scale Solar Association (LSA) Comments on the Emergency Rulemaking Amending the Opt-In Certification Program Regulations

The Large-Scale Solar Association ("LSA") appreciates the opportunity to comment on the California Energy Commission's ("CEC" or "Commission") proposed emergency regulations for the AB 205 Opt-In Certification Program and the November 2 workshop. The Large-scale Solar Association (LSA) is a non-partisan association of solar and battery storage developers that advocates appropriate policies to enable market penetration of utility-scale solar technologies in California and the Western United States. LSA's members are leaders in the utility-scale solar industry with deep experience in all disciplines necessary to site development, engineer, construct, finance and operate utility-scale solar and battery storage systems. LSA's member companies are principally responsible for developing much of the operational and planned solar and storage capacity in California today.

We appreciate the extension of the workshop and comment deadlines and the intervening discussions with CEC staff. LSA supports the Opt-In Certification Program and the timely implementation of SB 254 and SB 283. Our comments recommend a two-track rulemaking: Track 1 should address the amendments required to implement those statutes, and Track 2 should address the remaining substantive proposals and additional stakeholder recommendations to improve the program. This approach would allow the Commission to implement the Legislature's direction promptly while providing sufficient time to evaluate changes that could materially affect the availability and effectiveness of the state permitting pathway.

1. Rulemaking Procedure and Program Purpose

LSA recommends that the Commission bifurcate the rulemaking to implement the requirements of SB 254 and SB 283 first and consider the remaining substantive proposals in a second track. This approach is consistent with Commissioner Gallardo's comments during the

workshop and would preserve momentum on the statutory amendments without prematurely adopting broader policy changes.

The changes directed by statute received review and consideration through the legislative process. The proposed Express Terms also include significant requirements not prescribed by those statutes, including changes concerning CBAs (section 1879.5), site control (section 1877(h) and Appendix B, subsection (a)(4)(i)), early termination (section 1877.5(e)), investigatory authority (section 1878(d)), and application-stage information (Appendix B, subsections (b)(1)(E)-(F) and (g)). The rulemaking materials have not adequately explained the need for these proposals, and the November 2 workshop did not provide opportunity to examine their rationale or discuss their practical implications with the Commission. The proposals would materially impact the Opt-In Program and could have far-reaching policy implications beyond the CEC's authority.

AB 205 was intended to provide a predictable, expedited state permitting pathway and a relief valve alternative to local permitting for a substantial, time-sensitive project pipeline. Amendments should advance that purpose rather than impose requirements that make the state process less flexible or less efficient than the local processes it supplements. For each discretionary proposal, the Commission should identify the problem to be addressed, explain how the requirement would improve review or project outcomes, and evaluate whether it would introduce delay, cost, uncertainty, or duplicative analysis.

Track 2 would also provide an opportunity to consider applicants' experience with the program to date. LSA and other renewable trade associations have previously discussed reforms with CEC staff to reduce unnecessary application-stage requirements, improve determinations of completeness and processing times, and make the program more workable. We welcome the opportunity to develop these recommendations through additional workshops, stakeholder discussions, and comment periods.

2. Applicability

The Commission should establish clear transition rules before adopting the amendments. LSA recommends that new requirements apply only to applications filed after the regulations take effect, with the treatment of BESS inspection and operation requirements (section 1881.5, including the applicability language in subsection (a)) addressed separately. Applicants that entered the program in reliance on the existing regulations should not be required to revisit completed application phases or revise project designs and commercial arrangements to satisfy later-adopted requirements.

The final regulations should expressly protect completed procedural steps, including determinations of completeness (section 1878(b)), consistent with the prospective-only approach described above. The Commission should also explain how any transition

requirements will be administered and confirm that amendments beyond the BESS inspection and operation requirements (section 1881.5) are intended to apply only to new applications. Clear applicability provisions are necessary to prevent uncertainty and avoid delays for projects already participating in the Opt-In process.

3. Community Benefit Agreements

LSA supports meaningful community engagement and locally responsive community benefits. Greater predictability regarding the Commission's CBA expectations can benefit both applicants and host communities. The proposed regulations, however, introduce substantial new requirements (section 1879.5) that are not prescribed by the recent legislation and warrant further discussion before adoption. LSA recommends addressing these proposals in Track 2.

At the workshop, staff indicated that the proposed dollar-per-megawatt and dollar-per-megawatt-hour figures were based on averages from existing Opt-In project CBAs and projects in other states. However, the methodology remains unclear and is not replicable with public figures in the finalized agreements.

The uncertainty in these values underscores the need for transparency before establishing statewide minimums. The Commission should disclose how it calculated the benchmarks, identify the agreements and benefits included in its analysis, and explain whether it counted benefits outside the published CBAs for these projects.

Community benefits should reflect the circumstances of each project and the priorities of its host communities. They are intended to result from outreach, negotiation, and relationship building, not solely from a fixed capacity formula. Statewide benchmarks do not account for differences in project characteristics or local needs, and they do not recognize other economic benefits, including property taxes and local fees. The Commission should preserve sufficient flexibility for those considerations to inform the agreements.

The proposed approach would also require co-located and hybrid facilities to provide both generation-based and storage-based amounts (section 1879.5(c)). This would substantially increase CBA obligations and project costs without a clear explanation of why the technologies should produce cumulative funding requirements of that magnitude. Track 2 should examine the purpose of the CBA requirement and whether the proposed formula appropriately serves that purpose.

The proposed standards concerning the number and diversity of CBAs (section 1879.5(d)) could create uncertainty even where a single agreement or community organization can deliver a broad range of locally supported benefits. Evaluation criteria should remain closely tied to the findings required by statute (Public Resources Code section 25545.10; see also section

1879(a)(8)) and allow applicants to meet a flexible, predictable standard through meaningful community engagement.

The proposed 120-day execution deadline (section 1879.5(a)) should also account for negotiations with independent third parties. Applicants should not face adverse consequences where they can demonstrate substantial, good-faith progress, but execution is delayed by negotiations or circumstances beyond their control.

The Opt-In program introduced California's first CBA requirements for clean energy projects. At this stage, the Commission should evaluate the effectiveness of the existing framework with applicants and stakeholders before adopting more prescriptive requirements. Track 2 provides the appropriate forum for that discussion.

4. Site Control

LSA supports clear site-control requirements that demonstrate a viable path to project development. Those requirements should reflect renewable development practice, however, and should not require property rights or third-party approvals before they can reasonably be secured. LSA recommends considering the new provisions (section 1877(h) and Appendix B, subsection (a)(4)(i)) in Track 2 and aligning the Opt-In requirements with established CAISO site-control standards.

Binding options to lease or purchase should qualify where they provide meaningful control of the project site and access for development activities, even if construction or operating rights become effective later. The regulations should distinguish those core site interests from ancillary rights commonly obtained later in development (Appendix B, subsection (a)(4)(i)), including rights for generation-tie facilities, access routes, franchise agreements, and certain rights-of-way.

Projects on state or federal lands may also depend on separate agency processes that cannot be completed before an application is filed (see section 1877(h)(1) for projects on federal land). Requiring all such approvals at the application stage could create sequencing conflicts or duplicate environmental review. Pending or minor property interests should not prevent an otherwise complete application from proceeding where the applicant demonstrates a viable path to obtaining the necessary rights.

Before adopting these provisions, the Commission should explain the problem the new requirements are intended to address and how they would improve the Opt-In process. Further discussion is necessary to develop a standard that establishes project viability without requiring premature completion of later-stage development activities.

5. Early Termination and Investigatory Authority

LSA recommends removing or substantially narrowing the proposed early-termination provisions in section 1877.5(e) and addressing them in Track 2. The current proposal would allow termination based on temporary circumstances, events outside an applicant's control, or broad and subjective judgments about project viability. Terms such as "significant impediment," "undevelopable," and "reasonable time" in section 1877.5(e)(1)(v) do not provide applicants with a predictable standard.

Proposed section 1877.5(e) would also create a new barrier to development. The breadth of the termination authority would cause financing parties to perceive the Opt-In process as carrying unmitigable new permitting risk that make financing more difficult to obtain and more expensive, including the development funding needed to complete permitting. This would undermine the program's purpose of providing a predictable, expedited pathway for needed clean energy projects.

The regulations should clearly distinguish involuntary early termination from voluntary suspension or withdrawal (section 1877.5(d) and (a)-(c), respectively). If an early-termination provision is retained, it should be limited to objective circumstances demonstrating that a project cannot reasonably proceed. Applicants should receive written notice, an opportunity for consultation, and a meaningful period to respond or cure before termination takes effect.

Delays involving state or federal approvals, interconnection, site-control arrangements, financing, ownership changes, or routine technology validation (see section 1877.5(e)(1)(i)-(iii) and (v)) should not alone justify termination where the applicant is actively working toward resolution. Bankruptcy or financial constraints (see section 1877.5(e)(1)(iv)-(v)) likewise should not be treated as evidence that a project is no longer viable; projects may be transferred, restructured, or acquired by another developer. Suspension may be appropriate for genuinely inactive projects or where additional time is needed. Termination should remain exceptional, not become a routine administrative tool.

The Commission should explain the purpose and intended scope of the proposed authority under Government Code section 11181 in section 1878(d), including when it anticipates using subpoenas, document requests, interrogations, or other investigatory procedures in an Opt-In proceeding. The proposal should be considered in Track 2, so applicants and stakeholders can evaluate its necessity and practical implications.

If retained, the authority should be limited to information materially related to environmental, health, or safety issues, with reasonable deadlines for staff and applicant responses and appropriate procedural safeguards. The regulations should expressly clarify that an investigation will neither pause nor extend the statutory 270-day review period (Public Resources Code section 25545.4(e)(1)). Open-ended investigatory processes would

undermine the predictability and expedited review the program is intended to provide. Such authority should be used only where necessary, not as a routine component of application review.

6. Solar and Battery Energy Storage System Requirements

LSA recommends reconsidering the discretionary additions to Appendix B, including subsections (b)(1)(E)-(F) and (g), in Track 2. Application requirements should be tied to project-specific review needs and information reasonably available at filing. They should not require speculative submissions or duplicate issues already addressed through environmental review or other permitting processes.

Biological-resource information (Appendix B, subsection (g)(13)(J)) should focus on project-specific impacts and the findings necessary for certification. The regulations should not treat lake effect or altered migration behavior (see Appendix B, subsection (g)(13)(J)(ii), (iv), and (v)) as inherent impacts of modern utility-scale photovoltaic ("PV") facilities. Recent peer-reviewed research indicates that much of the historical evidence supporting the lake-effect hypothesis concerns older fixed-tilt facilities that predate regular use of anti-reflective coatings.[1] Migration-related conclusions have also relied primarily on concentrating solar power facilities rather than PV projects. Those findings should not be generalized to modern PV facilities without project-specific evidence.

Requirements for battery energy storage systems ("BESS") should recognize that long-term augmentation plans (Appendix B, subsection (b)(1)(E)(viii)) and future dispatch, charging, discharging, and control strategies (see Appendix B, subsection (b)(1)(F)(i)-(ii), for solar and solar-plus-storage operational information) may not be settled at filing. Applicants may also lack access to manufacturer failure-history information (Appendix B, subsection (b)(1)(E)(iii)) where relevant incident data is proprietary or confidential. The regulations should allow information unavailable at the application stage to be refined later in development.

Consistent with prior discussions between CEC staff and renewable trade associations, construction-level engineering (see the site-plan and drawing requirements in Appendix B, subsection (b)(1)(E)(iv)-(vi)) should generally not be required for a determination of completeness where it can appropriately be finalized through conditions of certification. This is particularly important for information dependent on final equipment selection (see Appendix B, subsection (b)(1)(E)(ii)), detailed design, or later operational and environmental permitting decisions. Requirements for hybrid solar-plus-storage projects should also remain proportionate to the component under review.

[1] "Lake effect or data mirage? How accounting for technology differences at utility scale solar energy facilities can change data interpretation". Karl Kosciuch et al 2025. https://largescalesolar.org/wp-content/uploads/2025/12/Kosciuch_2025_Environ._Res._Lett._20_124023.pdf

The Commission should clarify how BESS setbacks are measured (Appendix B, subsection (b)(1)(E)(i)), including whether the relevant reference point is an individual battery container, an equipment area, or another project boundary. It should also establish a defined period for Compliance Project Manager review following fire-authority inspection (section 1881.5(d)-(e)). Without a clear deadline, projects could face open-ended delays before operation. The regulations should identify which routine modifications, if any, require reinspection or trigger a new review period (see section 1881.5(a) and (e)).

7. Environmental Review and Certification Conditions

LSA supports implementing the statutory changes that allow the Commission to use an environmental document other than an Environmental Impact Report ("EIR") where appropriate (sections 1879(a)-(c), 1880.5(a), 1881, and 1882(d)-(e)). Those amendments should proceed in Track 1. Track 2 should establish a clear and transparent framework for determining when a Mitigated Negative Declaration ("MND") or another streamlined document under the California Environmental Quality Act ("CEQA") may be used.

The level of analysis should reflect the specific project, its location, and its potential impacts. The Staff Assessment process (section 1879(a)-(c)) should not default to a full EIR regardless of project circumstances. Meaningful use of environmental document flexibility is important to fulfilling the program's expedited permitting purpose.

Track 2 should also improve transparency and predictability in conditions of certification and mitigation requirements (see section 1881). Mitigation should have a clear nexus to an identified project impact and be proportionate to that impact. The Commission should explain the basis and expected cost of significant conditions and should not impose requirements beyond those recommended by the responsible resource agency.

Finally, the Commission should establish a streamlined process for minor post-certification changes that do not create new significant environmental effects (section 1882(d)-(e)). Routine design refinements needed to comply with certification conditions, applicable requirements, or improved engineering should not unnecessarily reopen environmental review. These reforms would improve the program's effectiveness while maintaining appropriate environmental protections.

8. Agency Timelines

The regulations should provide predictable timelines for Commission decisions and responses, not only for applicant submissions. Open-ended review can delay time-sensitive projects, including those seeking to qualify for federal investment tax credits. Clear agency deadlines would allow applicants to plan development activities and understand when outstanding issues will be resolved.

Prior discussions with renewable trade associations emphasized timely determination of completeness and prompt, targeted requests for additional information (section 1878(a)-(c)). Such requests should be limited to material reasonably necessary for environmental review and certification and issued within predictable periods, allowing applicants to resolve outstanding matters without repeated, uncertain review cycles.

LSA recommends establishing reasonable Commission deadlines for determinations of completeness, Commission decisions, resolution of information disputes, responses to applicant requests, post-inspection Compliance Project Manager determinations, and other discretionary staff actions (see sections 1878(a)-(c), 1879(a)-(c), 1881, and 1881.5(e)). A predictable process requires clear expectations for both applicants and the Commission. These improvements should be developed through Track 2 alongside the broader program reforms discussed above.

CONCLUSION

LSA appreciates the Commission's work on the proposed regulations and its efforts to provide a clearer framework for applicants. We recommend the Commission adopt the amendments required by SB 254 and SB 283 in Track 1, defer the remaining substantive proposals to Track 2, and address the concerns identified above through meaningful engagement with applicants and stakeholders who have practical experience using the program. We look forward to continued collaboration with CEC staff to improve the predictability, efficiency, and effectiveness of the Opt-In Certification Program and appreciate your consideration of our views.

Please contact Shannon Eddy at shannon@largescalesolar.org with any questions or requests for additional information.

Respectfully submitted,

/s/

Shannon Eddy
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