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IEPA & WPTF Comments on AB 205 Emergency Regulations

Additional submitted attachment is included below.

November 10, 2026
California Energy Commission
Docket No. 26-OIR-24
715 P Street
Sacramento, CA 95814

RE: Emergency Rulemaking Amending the Opt-In Regulations

Introduction

The Independent Energy Producers Association (IEPA)[1] and the Western Power Trading Forum (WPTF)[2] ("Joint Parties") appreciate the opportunity to submit joint comments in response to the Emergency Rulemaking Amending the Opt-In Regulations ("Rulemaking"). We have a shared interest in this emergency regulation because member companies of both IEPA and WPTF have utilized, or are currently utilizing, the AB 205 Opt-In Certification Program ("AB 205 Program"). The successful administration of the AB 205 program is critical to meeting California's SB 100 goals, but most importantly, it is critical to keeping California's energy costs affordable for ratepayers.

Rulemaking Bifurcation and Legacy Policies

[1] IEPA is a trade association that represents the interest of developers and operators of independent energy facilities before the California Energy Commission (CEC) and other relevant agencies, advocating for market competition and a reliable clean energy transition.

[2] WPTF is a broad-based industry organization of companies that do business and advocate for competitive market rules throughout the Western Interconnection.

In recognition of the amendments made to the AB 205 process through SB 254 (Becker, 2025) and SB 283 (Laird, 2025)--two bills that IEPA supported through the legislature—the Joint Parties respectfully recommend the Commission to bifurcate the Rulemaking. The Commission and interested stakeholders should ensure the amendments made to the AB 205 Program via the authority of the aforementioned bills are within the scope of the directive language within one phase of the proceeding. Following the implementation of SB 254 and SB 283 within the AB 205 Program, the Commission should open a second phase, that addresses changes beyond the activating legislation.

Upon the approval of the Office of Administrative Law (OAL), the Joint Parties respectfully request that the emergency regulations be applicable only to those applications yet to be submitted. Developers have structured their applications to reflect the existing requirements of the AB 205 Program and should be afforded the opportunity to meet those requirements while their applications are processed. Those with active applications play a role in helping California meet our SB 100 goals and meet the more immediate need of the state's exponentially growing loads.[3]

Comments on Express Terms Document

The following comments on the Commission's "Express Terms" document are provided for your consideration. Overall, the Joint Parties' recommended changes reflect our concerns about overly broad applicability, proposed timelines, and affordability. We support the AB 205 Program and the spirit of the proposed emergency regulations as directed by SB 254 and SB 283; however, the implementation of the language as proposed will unnecessarily put future AB 205 Program applicants' projects at risk.

Section 1877 Contents of Opt-In Application, subsection h, page 2:

[3] CALIFORNIA ENERGY COMMISSION, "ADOPTED 2025 INTEGRATED ENERGY POLICY REPORT." PAGE 54.

Recommended Change: "(h) The opt-in application shall provide evidence that the applicant has sufficient real property rights to the proposed location to currently access, build, and operate the proposed facility. *Documentation reasonably demonstrating a right to locate the Generating Facility on real estate or real property improvements, owned, leased, or otherwise legally held by another is sufficient evidence.* Absent evidence to the contrary, an affirmation by the applicant of such rights and a description of those rights, shall be adequate evidence."

Reasoning: SB 254 requires the AB 205 Program application to include evidence that the applicant has "sufficient real property rights to the proposed location to currently access, build, and operate the proposed facility." However, site control of real property rights at the time of an AB 205 Program application is not aligned with the industry standard process of project development. At the time of the application, rerouting of auxiliary equipment such as waterlines, pipelines, and gen-ties are not yet determined by the issuing utility. Further, rights-of-way and easements might not be granted by public agencies or authorities having jurisdiction until the California Environmental Quality Act (CEQA) process is complete. In recognition of the requirements of SB 254, the Joint Parties respectfully recommend further explanation of what evidence is "sufficient," by adding the proposed language above.

The Joint Parties reiterate the same concerns and recommendations as it relates to "Appendix B Information Requirements for an Application for Certification (AFC), Opt-In, or Small Power Plant Exemption (SPPE)" subsection (a)(4)(i).

Section 1877.5 Withdrawal, Suspension, and Early Termination of Opt-in Application

(e) Application review may be subject to early termination *following notice to the applicant that information is needed to counter the early termination recommendation, and an opportunity to respond within 30 days of receiving the notice,* at any time during the review process, including prior to completion of the applicable environmental document.

(1) If staff determines that the project will have *either* ~~one or more~~ of the following significant deficiencies, the executive director shall file a request for early termination of the application for the commission's consideration at a business meeting:

(i) ~~loss of or inability to acquire site control or other entitlements necessary for project construction or operations, including but not limited to, federal agencies failing to timely process or approve applications for a right-of-way or similar entitlement;~~

(ii) ~~inability for the project to connect to the grid;~~

(iii) inability to demonstrate functioning technology that will operate at the scale proposed by the applicant; *or*

(iv) the applicant or a parent company is the subject of a bankruptcy proceeding.~~; or~~

~~(v) any other significant impediment that more likely than not renders the project undevelopable within a reasonable time.~~

Reasoning: SB 254 provides that the AB 205 Program applicant may request a pause in the proceeding, but the language does not prescribe the Commission to add language that allows the executive director to terminate an application. Further, if the Commission adds language that allows for an early termination, it should only be allowed following sufficient notice and a request for information as demonstrated in Section 25545.4 (d)(2)-(3). As noted in our comments to Section 1877, requiring full site control can be out of the hands of the developer, as well as interconnection to the grid (material shortages, utility capital expenditure limitations, etc.), and therefore should not be grounds for early termination. Finally, subsection (e)(1)(v) is incredibly broad, unclear, and should not be grounds for early termination; "significant impediment" and "reasonable time" are too subjective to be reasons for early termination, especially without an opportunity to receive and respond to notice.

Section 1878 Commission Review of Opt-in Application

(c) *Within 30 days* ~~A~~*a*fter the application is deemed complete, the executive director may request from the applicant additional information necessary to complete the staff assessment, including information to address issues raised by public agencies or members of the public, and if necessary, information to support the findings required under Public Resources Code section 25545.9.

Reasoning: To ensure timelines are met and the developer can maintain progress on the project, the Joint Parties respectfully recommend timelines be added to requests for information from the executive director to the applicant.

Section 1878.1 Reimbursement of Local Agencies

(d)(3) If neither the commission staff nor the project applicant submits a written objection to the proposed budget within 14 working days setting forth the basis for the objection, then the proposed budget is deemed approved. If a written objection is filed, the local agency ~~may~~ *must* address the objection within *14 working days* and, if changes to the proposed budget are warranted, resubmit it.

(d)(4) A local agency may apply for augmentations or other changes to an approved budget *within 14 working days* by submitting a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

...

(f) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (d) above, or a reimbursement invoice under subdivision (e) above, which cannot be directly resolved between the applicant and the local agency, the local agency or applicant shall notify the executive director in writing of the dispute. The executive director shall resolve the dispute by filing a written decision based on good cause as demonstrated by any information provided by the applicant and local agency on the merits of reimbursement *within 14 working days of receiving the notification of dispute*.

Reasoning: To ensure timelines are met and the developer can maintain progress on the project, the Joint Parties respectfully recommend timelines be added to written objections, augmentations, and dispute resolutions.

Subsection 1879.5 Community Benefits Agreements

(c) In order to fulfill the requirements of Public Resources Code section 25545.10, the community benefits agreement(s) shall in total provide for funding in an amount ~~not less~~ *not more* than ~~$2,500.00~~ *$1,500.00* per megawatt of nameplate capacity for energy generation projects, ~~$550~~ *$350* per MWh of nameplate capacity for energy storage projects, ~~$55~~*$5* per square foot for manufacturing facility projects, or ~~$1,400.00~~ *$1,000* per ton per day of hydrogen production capacity for hydrogen production facility projects. For projects that combine energy generation, energy storage, manufacturing, or hydrogen production, the total agreement amount shall not be less than the combined component calculation.

~~(d) The commission shall consider the number of agreements and diversity of benefits to be provided to local communities when considering whether to approve the project.~~

~~(e) Any community benefits agreement may include provisions obligating performance by the applicant upon start of construction~~.

Reasoning: SB 254 does not require a funding amount for community benefits agreements (CBA). Instead, the bill language states that "the topics and specific terms in the community benefits agreements may vary," and "may also include, but not limited to, funding for or providing specific community improvements." Proposing this specific funding amount, which adds up to more than the total of the AB 205 Program's highly renowned Darden Energy Project's CBA, goes beyond the scope of the legislative language and will become an expense that ratepayers will cover. Clean energy projects that use the AB 205 Program will pay substantial property taxes and continue the industry standard of engaging in CBAs with the local community organizations and/or agencies. The Joint Parties respectfully recommend the Commission reconsider their proposal to add a

cost-floor and, instead, implement a cost ceiling based on data that is presented to stakeholders in phase two of this proceeding. Otherwise, the cost-ceiling that has been proposed will lead to an expensive cost shift to ratepayers that is entirely avoidable.

Further, subsections (d) and (e) should be redacted because the sections go beyond the requirements of SB 254. Subsection (d) will lead to the unfair weighing of CBAs because local organizations and/or agencies might not request various agreements but could agree to a targeted, singular agreement that meets the locality's needs. Subsection (e) is problematic because developers are expected, under this proposal, to find debt financing to support a CBA because the project has not yet generated revenue. These two requirements are unnecessary, go beyond the scope of legislation, and add costs that will not reach the communities.

We know already that ratepayers are at their breaking point; we cannot add costs to development with no basis in fact as to why those particular costs are necessary. At the workshop on the "Express Terms" document, staff noted the CBA amendments were modeled after New York and other states. California is vastly different from New York. Data should be presented to showcase why a floor, and this particular floor, are needed for the proper administration of the AB 205 Program. If ratepayers cannot foot the bill, and developers cannot foot the bill, we will lose these essential projects to other states. That is the reality.

Section 1881.5 Approval to Operate a Battery Energy Storage System

(d) The project owner shall submit to the CPM, within *7 working days* ~~48 hours~~, any inspection results provided by the authority having jurisdiction over fire suppression.

Reasoning: The timeline of 48 hours is unreasonably short, especially if the Commission chooses to adopt the new early termination authority due to "significant impediments." Providing seven working days to the developer to submit inspection results reflects the reality of communication timelines and personnel availability. Each requirement that does not allot for notice or appropriate response time, runs the risk of the project's early termination, and therefore threatens project financing and other development support. The

Joint Parties respectfully recommend reconsideration of this timeline, and all timelines identified in the comments above.

Appendix B: Additional Opt-In Requirements for Battery energy Storage System (BESS) Applications

(E)(b)(iii) (iii) A description of any failure incidents involving at least one enclosure within the last 5 years of the selected BESS battery manufacturer *or the specific prototype of BESS* at a single facility, and a complete description of the proposed measures to prevent failure incidents for the proposed project.

Reasoning: The requirements should match the breadth of information available to the developer at the time of the application.

Conclusion

The Commission thoroughly responded to the requirements in SB 254 and SB 283, and the Joint Parties applaud the quick action taken to address the changes directed by these bills. However, the Commission should bifurcate the proceeding to focus solely on the amendments that stem from the legislation in one phase and address all other proposed changes in a second phase. Data and reasoning should be presented to stakeholders to explain the proposed changes that go beyond the scope of SB 254 and SB 283. Many of the changes put project applications at risk unnecessarily, add unpredictable timelines, increase costs, and reduce the likelihood of permitting clean energy projects on time to meet our SB 100 and reliability goals. We appreciate the workshop and comment timeline extension, and we hope the Commission will consider our comments with the same earnestness. We look forward to continued collaboration with your dedicated staff and leadership.

Signed,

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