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CESA Comments on Proposed Opt-In Amendments

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 California Energy Storage Alliance Comments on Proposed Amendments to the Opt-In Regulations

Dear Commissioners and Staff:

The California Energy Storage Alliance (CESA) appreciates the California Energy Commission's (CEC) continued collaboration with stakeholders as it works to refine and improve the Opt-In Certification Program.

We recognize the significant effort CEC staff has invested in implementing this important permitting pathway and appreciate the Commission's willingness to engage with industry stakeholders to identify opportunities to improve the process. CESA and its members remain committed to working collaboratively with the CEC to ensure the Opt-In Program provides a predictable, efficient, and transparent permitting process while maintaining California's rigorous environmental and public safety standards.

CESA believes several of the proposed revisions represent welcome improvements to the existing regulations. In particular, we appreciate two revisions proposed pursuant to SB 254 (Becker, 2025): the rebuttable presumption of overall net positive economic benefit and the additional flexibility in the types of environmental documents that may be prepared under the California Environmental Quality Act (CEQA). These changes recognize the significant economic and reliability benefits of clean energy and energy storage projects and provide additional flexibility to appropriately evaluate projects based on their individual circumstances.

At the same time, CESA believes several provisions would benefit from further clarification or refinement to avoid creating unintended barriers to project development. Many of these policy proposals are not specifically directed by statute. As such, we recommend that the CEC proceed with the rulemaking in two tracks. Track 1 would move forward with regulations necessary to implement the statutory requirements of SB 254 and SB 283 (Laird, 2025). Track 2 would provide additional time to evaluate the broader regulatory changes proposed by CEC staff.

CESA respectfully offers the following comments on four areas: Community Benefits Agreements, the CEC's proposed authority to terminate applications, site control requirements, and the additional battery energy storage system (BESS) application requirements in Appendix B.

1. Community Benefits Agreements – Section 1879.5

CESA appreciates the CEC's desire to establish greater certainty and consistency regarding Community Benefits Agreements (CBAs). Establishing clear expectations for applicants can help facilitate meaningful community investments while providing greater predictability in the permitting process.

However, we are concerned that the proposed regulations establish a minimum financial contribution while also requiring the Commission to consider the number of agreements and diversity of benefits when determining whether to approve a project. These provisions appear to create potentially conflicting expectations. While a minimum contribution provides applicants with a defined financial obligation, consideration of the number and diversity of agreements could create an additional, subjective standard that is difficult to satisfy and may undermine the certainty the proposed regulations seek to foster.

Importantly, applicants pursuing the Opt-In Program often do so because they face challenging local permitting dynamics. In these circumstances, there may be a limited number of community-based organizations willing or able to enter into agreements with a project applicant. The availability of willing community partners is not necessarily reflective of the applicant's commitment to providing meaningful community benefits. CESA is concerned that evaluating the number of agreements could inadvertently penalize applicants for circumstances beyond their control or create pressure to enter into multiple agreements simply to satisfy an undefined expectation. A single agreement with a willing community organization may provide substantial and meaningful benefits to the surrounding community.

CESA recommends removing the requirement that the Commission consider the number of agreements when evaluating project approval. Instead, the regulations should focus on whether an applicant has satisfied the established minimum financial contribution and demonstrated that the agreement or agreements provide meaningful benefits to the local community. This approach would preserve flexibility, recognize the varying circumstances of individual projects, and provide the regulatory certainty the CEC is seeking to achieve.

2. CEC Authority to Terminate Applications – Section 1877.5

CESA respectfully questions the need for the proposed new authority allowing the CEC to terminate an application before completion of the environmental review process. We recognize the Commission's interest in efficiently managing its resources and ensuring that applications moving through the Opt-In Program represent viable projects.

However, the proposed provision would introduce a broad new mechanism for terminating applications based on circumstances that may be temporary, outside an applicant's control, or capable of resolution during the normal course of project development.

Energy infrastructure projects are complex and frequently encounter challenges involving interconnection, land rights, financing, equipment procurement, and coordination with other agencies. These challenges do not necessarily indicate that a project is infeasible or should be removed from the permitting process.
We are particularly concerned with the breadth of the proposed language allowing termination based on *any other significant impediment* that renders a project unlikely to be developed within a reasonable time. This standard could introduce considerable uncertainty for applicants that have already committed substantial resources to the Opt-In process.

The proposed regulations also provide mechanisms for applicants to voluntarily withdraw or suspend an application. CESA believes these provisions, together with the Commission's existing application review authority, provide more appropriate mechanisms for addressing project delays and development challenges.

CESA recommends that the CEC reconsider the need for additional termination authority. If the Commission determines that such authority is necessary, we request that it be narrowly defined and include clear standards, notice to the applicant, and a meaningful opportunity to address identified deficiencies before termination is considered.

3. Site Control Requirements – Section 1877(h) and Appendix B

CESA appreciates the proposed recognition that an applicant's affirmation of sufficient property rights, together with a description of those rights, may serve as adequate evidence of site control absent evidence to the contrary. However, we request that the CEC clarify the scope of the site control requirements, particularly the Appendix B provision requiring written proof of sufficient property rights for the project site, generation-tie line, and all ancillary project elements.

For large-scale energy storage projects, securing property rights for generation-tie lines, access easements, and other ancillary facilities can involve multiple landowners, utilities, and governmental entities. These rights are frequently finalized at different stages of project development and may not be fully secured when an applicant is ready to submit its Opt-In application. Requiring applicants to demonstrate completed site control over all ancillary project components at the time of application could unnecessarily delay projects that otherwise have sufficient control of the primary facility site and are actively advancing the remaining easements and property rights. Furthermore, CAISO’s site control requirements for the interconnection queue process do not extend to land associated with generator tie-lines, but instead apply to the site of the generating facility itself.

CESA recommends limiting the application-stage site control requirement to the primary facility site and excluding generation-tie lines and other ancillary easements. Applicants should instead be permitted to describe the status of efforts to secure these additional rights, with final acquisition addressed through appropriate conditions of certification or subsequent project development milestones.
This clarification would better reflect the practical realities of energy project development while ensuring that necessary property rights are secured before construction.

4. **Additional BESS Application Requirements – Appendix B**

CESA appreciates the CEC's commitment to ensuring that battery energy storage facilities are designed, constructed, and operated safely. Our members share this commitment and support the use of established fire safety standards, appropriate technical analyses, and coordination with local emergency responders. However, several of the proposed Appendix B requirements would significantly expand the information applicants must provide. We encourage the CEC to ensure these requirements are appropriately tailored to the proposed technology, supported by available testing and technical information, and consistent with established industry standards.

Manufacturer Identification and Failure History – Appendix B(b)(1)(E)(ii)–(iii)

The proposed regulations require applicants to identify qualified manufacturers, provide detailed information regarding safety mechanisms, and disclose manufacturer failure incidents within the preceding five years. CESA recognizes the value of this information in evaluating project safety. However, battery manufacturers and equipment selections may not be finalized when an application is submitted. Requiring detailed safety information for every potential qualified manufacturer could create unnecessary administrative burdens without materially improving the evaluation of the proposed project.

Additionally, the proposed requirement to disclose manufacturer failure incidents is broad and does not clearly define the types of incidents that must be reported. It could be interpreted to require disclosure of incidents involving unrelated products, battery chemistries, or equipment configurations. Some information may also be proprietary or unavailable to project developers.

CESA recommends that the CEC:

- Limit detailed safety-mechanism disclosures to the manufacturer and equipment ultimately selected for the project.
- Narrow failure-incident reporting to relevant thermal runaway or comparable safety events involving the same product, model, and battery chemistry.
- Allow confidential treatment of proprietary manufacturer and testing information.

- Limit required descriptions of corrective or preventive measures to information relevant to the proposed project's design and safety systems.

These refinements would allow the CEC to obtain relevant safety information without imposing requirements that applicants may be unable to satisfy.

Thermal Runaway and Air Dispersion Modeling – Appendix B(b)(9)(F)

CESA supports appropriate evaluation of potential public health impacts associated with BESS thermal runaway events. However, the proposed requirement to model all potential criteria air pollutants and toxic air contaminants presents significant technical and practical challenges. The availability of emissions data varies by battery chemistry, manufacturer, and testing methodology. Developing reliable information for every pollutant identified in the proposed regulations could require extensive additional testing and significantly delay application preparation, potentially by many months.

CESA recommends narrowing the modeling requirements to pollutants reasonably expected to be present based on the proposed battery chemistry and supported by available testing data and applicable health-based exposure criteria. We also request clarification regarding the proposed use of a "well-validated model" and the definition of a "worst-case scenario." Applicants should be able to rely on representative testing conducted under established standards, including UL 9540A large-scale fire testing, to develop technically defensible modeling assumptions.

CESA recommends that the CEC identify acceptable modeling methodologies, clarify how worst-case scenarios should be developed using representative testing, and provide appropriate protections for proprietary test data. These changes would support meaningful public health analysis while ensuring the requirements are technically achievable and consistent across applications.

Transportation Safety – Appendix B(b)(10)(H)(i)

The proposed requirement to describe measures addressing potential hazardous BESS incidents during transportation to and from the project site would benefit from additional clarification. Battery equipment is transported through established domestic and international shipping networks governed by applicable transportation safety requirements. Project applicants may have limited control over transportation activities occurring well before final delivery to the project site.

CESA recommends clarifying the intended scope of this requirement and recognizing compliance with applicable U.S. Department of Transportation and other relevant federal and international shipping requirements as an appropriate means of demonstrating transportation safety.

Firefighting Water and Runoff – Appendix B(b)(19)(D)

CESA also requests clarification regarding the proposed requirement to discuss containment of runoff from wildfire or BESS firefighting activities, including circumstances where runoff exceeds the capacity of the stormwater system. Fire response strategies vary depending on battery technology, facility design, and coordination with the local fire authority. Some BESS facilities utilize emergency response strategies that do not contemplate direct water application to battery enclosures. The regulations should recognize these differences and avoid assuming that water will necessarily be used for firefighting at every facility.

CESA recommends allowing applicants to describe their project-specific emergency response strategy and evaluate runoff impacts based on the actual firefighting methods and water use reasonably anticipated for the facility. Where water application is not part of the proposed response strategy, applicants should be permitted to explain that approach rather than develop speculative runoff scenarios unrelated to the project's design and emergency response plan.

CESA appreciates the CEC's continued efforts to strengthen the Opt-In Program and its willingness to work collaboratively with stakeholders throughout this rulemaking. We believe the proposed regulations include several meaningful improvements that will enhance the predictability and effectiveness of the program.

Our recommendations are intended to build on that progress by ensuring that the regulations remain practical, clearly defined, and appropriately tailored to the circumstances of individual projects.

The Opt-In Program is a valuable tool for advancing the energy infrastructure necessary to support California's reliability and clean energy goals. Maintaining a predictable and efficient permitting pathway, while upholding strong environmental and public safety protections, will be essential to its continued success. We thank the Commission and its staff for their thoughtful engagement and consideration of these comments. CESA looks forward to continuing to work together to refine these regulations and support the successful implementation of the Opt-In Program.

Sincerely,



Scott Murtishaw, Executive Director
California Energy Storage Alliance (CESA)