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CEC Opt-in Rulemaking Comments by Engie Nov 2026

Additional submitted attachment is included below.

NOVEMBER 10, 2026

VIA ELECTRONIC DOCKET SUBMISSION

Drew Bohan, Executive Director
California Energy Commission
Docket Unit, MS-4Docket No.: 26-OIR-04
715 P Street
Sacramento, California 95814

Re: Comments of ENGIE North America Regarding Emergency Adoption of Proposed Amendments to the Opt-In Certification Regulations (Cal. Code Regs., tit. 20, §§ 1876.5–1882 and Appendix B); Docket No. 26-OIR-04 (TN 272980)

To Whom It May Concern:

ENGIE North America ("ENGIE") is pleased to provide comments on the Express Terms docketed by California Energy Commission ("CEC" or "Commission") staff on September 29, 2026, in Docket No. 26-OIR-04, *Emergency Rulemaking Amending the Opt-In Regulations* (TN 272980) (the "Proposed Regulations"). The Proposed Regulations would amend the regulations implementing the opt-in certification program in Chapter 6.2 (commencing with section 25545) of Division 15 of the Public Resources Code, which is part of the Warren-Alquist State Energy Resources Conservation and Development Act (the "Warren-Alquist Act").

ENGIE is a power generator, energy services company and retail electricity supplier committed to shaping a more sustainable future throughout the United States and Canada. ENGIE has 35 grid-scale energy storage projects in North America with the capacity to deliver ~3.5 gigawatts ("GW") of power to the grid. These projects support the growing demand for renewable energy and enable greater reliability and resilience on power grids, while enabling the net zero energy transition. They also contribute to ENGIE's global aspiration of 10 GW of energy storage installed by 2030.

ENGIE has filed opt-in applications with the Commission for battery energy storage system ("BESS") projects and intends to file more in the future. The Proposed Regulations will directly govern the content, review, cost, and timing of those applications. We support many of the proposed amendments and we appreciate the Commission's inclusion of items in the Proposed Regulations that will facilitate a more predictable and efficient pathway for certifying clean energy facilities. At the same time, there are several amendments we believe are inconsistent with the Commissions goal to clarify and streamline the CEC's review process. This letter provides a discussion of those amendment we recommend be improved or revised, or, in some cases, removed.

Specifically, ENGIE's comments can be summarized as follows:

- Section 1877(h) provides a pathway to accommodate the processing of applications for public lands projects on federal land, but does not extend this provision to accommodate state or other

public lands where final real property rights cannot be obtained after review under the California Environmental Quality Act ("CEQA") is complete and after requisite action taken by the owner public agency.

- Section 1877.5(e) authorizes early termination in circumstances that are overbroad, may be premature, and could create new financial risk to project development.
- Section 1878.1 requires clarity to ensure project applicants are not subjected to duplication of permit fees and excessive charges at the local agency level.
- Section 1879.5(d) requires additional guidance and clarification regarding the number or type of community benefits expected by the Commission before a community benefit agreement can become the basis for a project denial.
- Sections 1880.5 and 1881 do not provide adequate guidelines to ensure that certain application materials will be treated as confidential and will not be included in the record of proceedings.
- Section 1881.5 requires additional clarity regarding the timing and stage of construction where inspection of testing of the project components is appropriate. Consultation with industry developers, manufacturers and fire authorities should occur to clarify the timing and testing inspection before commercial operation.
- Many of the new BESS information requirements proposed for addition to Appendix B are premature at the application stage (eg: specific battery procurement) and others require redundant analysis of issues already resolved in prior Commission proceedings. Additionally, several are not supported by evidence as necessary – while placing additional burdens on applicants rather than streamlining the process (eg: BESS emergency thermal event soil and water and some categories of emission testing),
- Consistency on the type of and metrics for air quality testing for public health required in Appendix B should be reflected in the new regulations.

The following discussion elaborates on the basis for ENGIE's recommended changes and the attached redline of the Express Terms (Proposed Regulations) document identifies specific language to address our concerns.

1. Property Rights Requirement Exemptions Should Be Expanded (Proposed § 1877(h))

We agree with the Commission that renewable energy projects on public lands should be encouraged where suitable, and appreciate the Commission's recognition that securing real property rights for those lands is subject to a unique process and timeframe compared securing rights to private lands. Mirroring the language of Public Resources Code section 25545.2, as amended by Senate Bill (SB) 254 (2025), proposed section 1877(h) would require each opt-in application to provide evidence that the applicant

has "sufficient real property rights to the proposed location to currently access, build, and operate the proposed facility." A parallel provision in Appendix B, subdivision (a)(4), would require "[w]ritten proof of site control evidencing sufficient real property rights to currently access, construct, and operate the proposed project site, gen-tie line, and all ancillary elements of the proposed project." Proposed section 1877(h)(1) makes an exception for projects on federal land, such as land managed by the Bureau of Land Management ("BLM"), allowing the applicant to instead "describe the status of the [its] efforts to obtain a right-of-way or similar entitlement from the applicable federal agency."

The accommodation in subdivision (h)(1) recognizes that rights to use public land are typically granted only after a public process that runs on a timeline outside the applicant's control and in particular subject to a pre-decisional public environmental review process. Those considerations, however, apply with equal force to other categories of public land. Projects and their linear facilities may cross or occupy state school lands and sovereign lands under the jurisdiction of the State Lands Commission, lands owned by the Department of Water Resources and other state agencies, county- and city-owned parcels, special-district property, and tribal lands. Securing leases, easements, franchises, or encroachment permits for these lands can be as time-consuming as obtaining a federal right-of-way. Requiring present, fully executed rights for such lands, while excusing the same showing for federal lands, creates an unreasonable obstacle for otherwise excellent project opportunities.

State and local governments in particular generally cannot lease or authorize the use of their lands until after a lead agency completes an environmental review of the project's potential significant impacts in accordance with CEQA. The implementing regulations of the Warren-Alquist Act recognized the potential timing conflicts and accordingly provide that "CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility . . . if the thermal power plant site and related facility will be the subject of an [Environmental Impact Report] or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5 . . . ." (Cal. Code Regs., tit. 14, § 15271, subd. (a).) This CEQA provision "acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency." (*Id.*, § 15271, subd. (c).) The opt-in projects, however, are not thermal power plants and thus not covered by this exemption. Requiring that applicants secure most forms of property rights as an application prerequisite creates an infinite loop that would preclude projects on most forms of public land.

The property rights requirements should also take into account the realities of how energy projects come together. Specifically, while evidence that the applicant has sufficient access to the core project site for purposes of permitting is reasonable, applications are often submitted without property rights secured for ancillary and related facilities, such as a gen-tie line or secondary fire access route. These areas of the project can be flexible in some instances and the preferred route can be perfected during the permitting process before ultimately being acquired. The Proposed Rules should be amended to reflect this.

Recommendation: *The Commission should broaden subdivision (h)(1) so that it applies to any land owned or managed by a federal, state, local, or tribal governmental entity. Appendix B, subdivision (a)(4), should be conformed accordingly, and should expressly accept a description of the status of efforts to obtain rights for gen-tie and ancillary facilities, rather than requiring that they be secured in advance. These revisions would still be consistent with Public Resources Code section 25545.2 because the required rights need only be "sufficient" to demonstrate that the applicant can access the property during the permitting phase and ultimately build and operate the proposed facility. In addition, the applicant should not be required to show that all transmission easement are finalized at the time of applicant, but rather before final action is taken by the Commission*

2. Early Termination Triggers Should Be Limited (Proposed § 1877.5(e))

Proposed section 1877.5(e) would make an application subject to early termination "at any time during the review process, including prior to completion of the applicable environmental document." Under subdivision (e)(1), if staff determines the project has any one of the listed "significant deficiencies," the Executive Director "shall" file a request for early termination. The triggers include: (i) "loss of or inability to acquire site control or other entitlements . . . including but not limited to, federal agencies failing to timely process or approve applications for a right-of-way"; (ii) "inability for the project to connect to the grid"; (iii) "inability to demonstrate functioning technology that will operate at the scale proposed"; (iv) bankruptcy of the applicant "or a parent company"; and (v) "any other significant impediment that more likely than not renders the project undevelopable within a reasonable time."

Many of these triggers describe ordinary, curable development circumstances rather than project-ending defects. For example:

- **Agency delay.** A federal agency's failure to "timely process" a right-of-way application could reflect agency workload or changes in agency procedures that now follow every change in administration, not a defect in the project. Terminating the application in response would penalize the applicant for delays outside its control and compound the delay by forcing the applicant to resubmit the project to the CEC.
- **Interconnection.** Interconnection is a multiyear process administered by the California Independent System Operator and independently owned utilities. A project may need to restudy its queue position during Commission review, but this does not signal that the project will be unable to connect. In addition, Interconnection Agreements often contain conditions unrelated to project permitting, such as reconducting by the utility, that would result in delay but would not render the project inviable.
- **Bankruptcy of an applicant or parent.** A Chapter 11 reorganization of a company frequently ends with the project being sold to a new owner or kept as a valuable asset. The Commission's

own regulations already provide for transfer of ownership, and bankruptcy should not be a reason to discard a viable project. (*See* Proposed Rule § 1882, subd. (f).)

- **Site control.** Loss of a single parcel can often be addressed through a minor layout change or substitute parcel. It is not evidence of a fatal flaw in the larger project.

Because subdivision (e)(1) uses the mandatory "shall" and because the catch-all in clause (v) is open-ended, the provision introduces a new significant financing and development risk. The new financial risk to projects is not to be underestimated. Lenders and investors will discount projects that may be terminated mid-review on grounds unrelated to their environmental merits. That outcome conflicts with the program's purpose of expediting certification of eligible facilities. It also makes little sense in light of the voluntary withdrawal and suspension procedures in subdivisions (a) through (d), which already address projects that stall.

We are unclear about the rationale for this new regulation, as the Commission and staff have existing authority and alternative means to determine a project is no longer viable. For example, the Director currently can request supplemental information from an applicant at any time – and responses to that request would reveal if the project has a fatal flaw and is not longer viable. Under such conditions, the Commission can deem the application incomplete and no longer in need of staff resources.

> **Recommendation:** *The Commission should narrow section 1877.5(e) to circumstances that genuinely render a project incapable of being built. Specifically, it should (a) delete the reference to federal agencies failing to timely process applications; (b) limit the grid trigger to a final, non-appealable determination that the project cannot interconnect; (c) limit the bankruptcy trigger to a Chapter 7 liquidation or a confirmed plan that abandons the project; (d) change "shall file" to "may file"; (e) require written notice to the applicant and a reasonable cure period (for example, 90 days) before any request is filed; and (f) delete the catch-all clause (v), or require that the impediment be one the applicant has failed to address after notice and opportunity to cure.*

3. Reimbursement of Local Agencies Should Avoid Double Counting (Proposed § 1878.1)

Proposed section 1878.1(b)(1) would require the applicant to reimburse local agencies for costs "incurred in accordance with actual services performed," including (a) review of the complete application, (b) drafting of comments, and (c) "reimbursement for any permit fees the agency would have otherwise required absent commission jurisdiction if the agency performs work such as developing and providing the commission with permit language." At the same time, the Proposed Regulations would delete the existing provisions that (1) made "expenses for which it receives payment from other sources" expressly ineligible, and (2) limited fee recovery beyond permit fees to requests "not normally covered by the permit fee and for which a fee is normally charged."

Allowing both a permit fee and an unrestricted actual-cost reimbursement for the same work creates a substantial risk of double recovery. A local permit fee is, by design, the agency's charge for reviewing the very matters on which the CEC might solicit comment and more, as the fees are designed to accommodate the agency's usual permitting process. If an agency recovers its permit fee *and* bills its staff time for reviewing the application and drafting comments on those same matters, the applicant pays twice for one service. Furthermore, deleting the "payment from other sources" exclusion removes the main safeguard against that outcome. The applicant's only remaining protection is to object to individual budgets and invoices under subdivisions (d) and (e), and the proposed amendments eliminate staff's completeness review of proposed budgets.

Public Resources Code section 25538, which applies to opt-in applications (Pub. Resources Code, § 25545.8, subd. (b)), authorizes reimbursement for "the actual and added costs" of the local agency's review. It permits recovery of permit fees only "in accordance with actual services performed by the local agency." The statute thus ties every category of recovery to actual, added work. It does not provide for a permit fee on top of reimbursement for the same work.

In addition to fees, the Commission has noted in its prior project correspondence to local governments that it has the technical capability to perform detailed analysis of the project applications. Local agencies do not need to repeat that technical analysis as part of their application review. Rather, the local agencies should specify to the Commission the important issues and topics they wish to see covered in that analysis. With that in mind, section 1878.1(b)(1) should ensure that an applicant will not need to reimburse supplemental studies by local agencies as part of their project review.

> **Recommendation:** *The Commission should (a) restore the express exclusion for costs for which the agency receives payment from any other source, including permit fees; (b) provide that a local agency may recover either the permit fee or actual costs for a given category of work, but not both; (c) require each proposed budget to identify, line by line, any permit fee claimed and the specific services it covers, and to certify that no actual-cost line item duplicates those services; and (d) restore the exclusion of processing fees.*

4. Relevance of the Number and Diversity of Community Benefits Requires Explanation and/or Further Guidance (Proposed § 1879.5)

Proposed section 1879.5, subd. (d) provides that 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." Without further explanation or guidance in the text of the regulation or a statement of reasons, the weight and relevance of this consideration is unclear. Public Resource Code, § 25545.10, subd. (a) only requires one legally binding and enforceable community benefits agreement. Proposed section 1879.5, subd. (a) further already provides minimum amounts (value) for the required community benefits. ENGIE does not support proposed section 1879.5, subd. (d) because it inappropriately goes

beyond what the statute requires, with a vague suggestion that the CEC might require an unknown number of agreements with particular recipients and providing particular benefits regardless of the merits of the actual project. It further fails to recognize that in some instances a substantial donation to a community foundation where benefits can be distributed across a wide range of community needs may be preferable to multiple agreements.

In general, ENGIE appreciates the prior changes to the community benefits agreement ("CBA") requirements, as they provide additional flexibility regarding the types of entities that can receive qualifying benefits. The CEC should continue to innovate in this area to ensure consistency with the Legislature's objectives in establishing the opt-in program—to promote the development of reliable green energy projects in California in a manner that appropriately compensates the communities that host these resources. To this end, one unaddressed issue that has arisen with opt-in projects is the potential for project opponents to leverage the CBA requirement as a means to thwart the project. By refusing to negotiate a CBA in good faith, whether of their own accord or at the behest of another entity, the intended beneficiaries of the agreements can exert a small measure of control over whether a project can satisfy the necessary criteria. Expanding the universe of entities that can receive benefits under the CBA gives applicants more options to satisfy this requirement and avoid situations where the applicant is, despite genuine efforts, unable to secure a CBA due to political pressure on beneficiaries.

> **Recommendation:** *If section 1879.5, subd. (d) is retained in the regulations, it should be revised to state that the number of agreements and diversity of benefits "may" be a consideration but shall not be a basis for the Commission to reject an application. (Although ENGIE offers revisions to subdivision (d) in Attachment A, the better and requested course of action would be to delete this language altogether.) In addition, ENGIE recommends deleting or revising subd. (e), because it similarly describes permissible CBA terms (aligning the timing of construction with the start of benefits) without explaining their relevance to the permitting process.*

5. Provisions Specifying What to Include In the Record of Proceedings Should Ensure that Designated Confidential Materials Are Not Included (Proposed §§ 1880.5 and 1881)

The Proposed Regulations make clear that copyright protected records will be omitted from the record of proceedings, but fail to address the records that an applicant has petitioned the CEC to designate as confidential. Applicants frequently seek such designations to ensure that copyrighted, trade secret and other proprietary information is not publicly disclosed. Unless the CEC denies an application for confidential designation, such materials should not be included in the public record.

> **Recommendation:** *The Proposed Regulations should clarify that any documents that were submitted subject to an application for confidential designation under title 20, section 2505, of the California Code of Regulations shall not be placed in the record of proceedings if the related*

application was granted or unaddressed at the time the CEC either prepares or publishes the record.

6. Restrictions on Testing Prior to Inspection Should be Clarified (Proposed § 1881.5)

Proposed section 1881.5(a) provides that the Compliance Project Manager ("CPM") "shall not authorize commencement of testing or operation of the battery energy storage system" until the authority having jurisdiction over fire suppression ("AHJ") "has completed an inspection of the battery energy storage system," or until 90 days after the AHJ receives notice that the system "is ready for inspection." Subdivision (e) further requires the CPM to consider inspection results "before approving system testing or operations."

The provision is ambiguous in two respects that could significantly delay commissioning. First, it is unclear whether "testing" includes component-level and pre-energization testing, such as insulation-resistance, continuity, and communications tests and functional tests of fire detection, gas detection, and ventilation systems. These tests are routinely performed on individual enclosures and subsystems as they are installed. Many are prerequisites to demonstrating to the AHJ that the safety systems work. Second, it is unclear whether "the battery energy storage *system*" refers to the completed facility as a whole, or whether discrete blocks, phases, or enclosures must be inspected before testing.

Read broadly, the regulation would bar any testing of batteries until after they are inspected, and would allow up to 90 days of idle time before testing could begin. Large BESS facilities are typically built and commissioned in sequential blocks over many months and if the pre-testing inspection requirement is understood to preclude all testing until after construction and inspection of the entire system, projects will be needlessly delayed. Holding all commissioning until the last enclosure is installed would postpone commercial operation, delay resource adequacy contributions that load-serving entities and the grid depend on, and increase project costs, without a corresponding safety benefit. Alternatively, developers could schedule inspections more frequently as discrete blocks conclude physical construction, but while this could limit delays, it would tax agency inspectors' resources.

Fortunately, the underlying statute does not require what the regulations propose. Public Resources Code section 25545.16 requires an AHJ inspection "within 90 days of the project applicant providing notice of completion of installation . . . but before commencing operations or use of the batteries," and authorizes the Commission to approve operation if the inspection has not occurred within 90 days. (Pub. Resources Code, § 25545.16, subds. (a), (b).) The statute addresses *operations* and *use* of the batteries. As further illuminated by the Senate Floor Analysis for the implementing legislation, SB 283 (2025), the law "requires a facility to be inspected by fire authorities within specified times prior to . . . going online." In other words, the Legislature meant to require an inspection "before commencing operations", but not to prohibit testing needed to complete installation.

Recommendation: *The Commission should clarify section 1881.5 to (a) define the testing that is subject to the inspection prerequisite as that which is needed for the energized charging and discharging of battery cells for the purpose of delivering power to a customer (i.e., operations); and (b) expressly allow component-level, block and subsystem testing by the developer without governmental inspection during the construction process, including energization testing limited to discrete blocks, phases, or enclosures, before the required AHJ full system inspection;*

7. New BESS Information Requirements Should Take Into Account the Timing of a Project's Selection of Battery Manufacturer, Make, and Model (Appendix B)

A. Many requirements are premature at the application stage

The Proposed Regulations would add extensive new BESS-specific preapplication requirements and commitments to Appendix B. These include the upfront identification of the specific battery manufacturer, make, and model (subd. (b)(1)(E)(ii)); site plans equivalent to "at least 30 percent design plans" (subd. (b)(1)(E)(iv)); detailed augmentation construction schedules (subd. (b)(1)(E)(viii)); a Hazard Mitigation Analysis supported by large-scale UL 9540A test reports, together with cell-, module, unit-, and installation-level UL 9540A reports for the selected BESS (subd. (g)(11)(D)(vii)–(viii)); draft Hazardous Energy Control Program outlines (subd. (g)(11)(D)(x)); a water quality protection plan for BESS fire scenarios (subd. (g)(14)(F)); and indirect greenhouse gas calculations with "live, embedded" spreadsheets (subd. (g)(8)(L)(iii)).

Much of this information does not exist when an application is filed. Battery suppliers are commonly selected after permitting, through competitive procurement and taking into account equipment availability and pricing. Thirty-percent design, a final Hazard Mitigation Analysis, and Hazardous Energy Control Programs follow equipment selection and are customarily finalized during detailed design efforts or in response to conditions of certification. Requiring these items for a complete application would delay filing, or force applicants to lock in technology choices and invest heavily in project designs prematurely, and then seek amendments to match the end results of procurement. The Warren-Alquist Act already authorizes the Executive Director to request additional information after the application is deemed complete (Pub. Resources Code, § 25545.4; proposed § 1878, subd. (c)). The CEC also routinely imposes conditions of certification requiring approval of final plans and analyses before construction or operation. Those are the appropriate tools for information that matures after filing. While an applicant can in good-faith identify the battery type and technology early on (such as LFP vs NMC) , it is in the public interest to allow the final details of that selection be confirmed close to the time of construction to encourage use of the best and safest available technology at the best price for the consumer.

B. The required studies will not yield new evidence of project-specific impacts

Several other requirements would compel each applicant to repeat studies that have consistently predicted insignificant impacts when conducted on projects thus far. For example, new subdivision (g)(9)(F)

requires worst-case dispersion modeling of more than a dozen criteria pollutants and toxic air contaminants for a thermal runaway event, with health-risk comparisons. New subdivision (g)(13)(I) requires a discussion of eight categories of potential biological impacts from a BESS fire. Requiring every applicant to commission new studies of the same issues for the same technologies adds cost and time without improving decision making. The Commission should take this opportunity to assess the value of continuing to require these studies and whether to codify that requirement in a regulation rather than impose it on an ad hoc basis when existing studies cannot be cited.

C. Certain requirements, previously abandoned in other proceedings, should not be included in any new regulations

We believe there is an inconsistency between the Proposed Regulations and recent U.S. Environmental Protection Agency ("EPA") and Commission actions with respect to the use of RELs as a key metric for potential one-time public health risks associated with BESS projects. For BESS applications, the Proposed Regulations would require applicants to "demonstrate whether the acute hazard Index (HI) of TACs [(toxic air contaminants)] would be higher than the significance threshold of 1.0 at sensitive receptors." (Proposed Appendix B, subd. (g)(9)(F)(iii).) The acute HI is built from the California Office of Environmental Health Hazard Assessment ("OEHHA") and the Air Resources Board ("ARB") acute (one-hour (1-hr)) Reference Exposure Levels ("RELs"), which are used in facility health risk assessments conducted for the AB 2588 Air Toxics "Hot Spots" Program and intended for stationary sources to report the types and quantities of certain substances *routinely* released into the air. As several applicants have recently noted, EPA "and other agencies have acknowledged RELs were not designed to evaluate acute one-time exposure settings." (TN268268.) The CEC appeared to concur in this finding and drop RELs/HI as an assessment tool in recent proceedings, which makes its inclusion in the Proposed Regulations surprising. We agree that this is not a reliable metric to evaluate the risks of a BESS thermal incident.

RELs "are 'general public reference values' that 'tend to over-estimate . . . potential risks from exposures' and are designed to analyze situations where the general public has 'potential for a repeat exposure.'" (TN268268, citing U.S. EPA, Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures 5, 16 (Sept. 2009), https://nepis.epa.gov/Exe/ZyPDF.cgi/P100N7UV.PDF?Dockey=P100N7UV.PDF.) "In contrast, 'Emergency Response values' like AEGL and ERPG have the 'more specific purpose' of addressing 'a rare "once-in-a-lifetime" exposure scenario.'" (*Id.*, further citing FEMA, Planning and Decision Framework for Chemical Incident Consequence Management 113–14 (July 2022), https://www.fema.gov/sites/default/files/documents/fema_planning-framework-for-chemical-incident-consequence-management-2022.pdf ("In contrast [to AEGLs or ERPGs], the acute CA-RELs developed by the State of California address continuous or short-term emissions of airborne toxicants to which the public living or working in communities surrounding industrial facilities is at risk of being exposed."); OEHHA, Air Toxics Hot Spots Program Technical Support Document for the Derivation of Noncancer Reference Exposure Levels 81 (Dec. 2008),

https://oehha.ca.gov/sites/default/files/media/downloads/crnr/noncancertsdfinal.pdf (noting that emergency planning guidelines such as AEGL are "seldom comparable to the acute RELs," because the latter are intended for "routine emissions and exposure").) As supported by these sources, Emergency Response Planning Guidelines ("ERPGs"), which the Bay Area Air District currently recommends for use when evaluating the significance of potential air quality impacts, and EPA's Acute Exposure Guideline Levels ("AEGLs"), developed by an international coalition of government and non-government scientists for use worldwide by government and private emergency responders, are more appropriate standards in this context.

In addition, we believe the Commission should expressly take into account the Immediately Dangerous To Life or Health ("ILDH") values and related results provided in air dispersion tests conducted using Phast™ software for air quality modelling – which is designed specifically for emergency one-time exposures.

D. Certain new requirements appear to reference risks to water and soil from a BESS thermal event where evidence does not support the need for a supplemental amendment.

While certain concerns have been raised in the proposed rulemaking regarding possible soil and water impacts from a potential BESS thermal event, the likelihood for such impacts are highly speculative. While such concerns appear to derive from one rare prior thermal event involving NMC BESS technology, we are not aware that any such risk of harm has been demonstrated in testing or events utilizing lithium iron-phosphate (LFP) batteries or other current battery technologies. Adding this type of biological analysis as a mandatory element of applications seems overbroad and burdensome without evidentiary support, and without a clear protocol of how such investigation would be conducted. We believe the existing CEQA process provides direction on how to determine whether such a risk has the potential to be significant. The proposed amendment would shift the burden to applicants to prove a negative and create a rebuttable presumption without a scientific or technical basis. If there is basis for such analysis to be included in the scope of an application, this should be examined in greater detail by the Commission and stakeholders before this requirement is included as a mandatory element in project applications.

> **Recommendation:** *The Commission should revise Appendix B to (a) allow applicants to provide a list of qualified manufacturers and representative technology data at filing, with selected-equipment information, 30-percent design, the Hazard Mitigation Analysis, UL 9540A reports, and Hazardous Energy Control Program outlines submitted as conditions of certification before construction or operation; (b) expressly allow applicants to satisfy the dispersion-modeling, biological-resource, water-quality, and similar BESS-fire requirements by incorporating by reference prior Commission CEQA analyses or the program environmental impact report contemplated by Public Resources Code section 21159.32, together with a showing that the proposed technology and site conditions fall within the scope of that prior analysis; (c) require*

new project-specific studies only where the applicant cannot make that showing; (d) delete reference to the HI in subdivision (g)(9)(F)(iii), rely instead on the ERPG and AEGL thresholds already proposed for use in the same subsection and add to this consideration of IDLH values and air modeling using Phast™, and delete the mandatory requirement for soil and water impact assessment from certain BESS thermal events.

Conclusion

We sincerely appreciate the Commission's ongoing efforts to refine the opt-in program for renewable energy projects. The Proposed Regulations reflect important refinements and improvements designed to streamline and clarify the process for applicants and the Commission. At the same time, there are important corrections to the draft regulations we believe are needed to ensure the processes is technically consistent and realistic in order for us to reach our important statewide renewable energy goals.

Respectfully submitted,



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