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Questions Regarding Emergency Amendments and Opt-In Changes

Additional submitted attachment is included below.

November 10, 2026

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

Re: Comments on Proposed Emergency Amendments to the Opt-In Certification Program, Docket No. 26-OIR-04

Dear Commissioners and CEC Staff,

Following the California Energy Commission's November 2, 2026, workshop on proposed emergency amendments to the Opt-In Certification Program, Controlled Thermal Resources Holdings Inc. (CTR) respectfully submits these comments to further the discussion and request clarification on provisions that could affect the program's effectiveness. We appreciate the Commission's continued engagement with stakeholders and the opportunity to provide written feedback following the workshop.

CTR is advancing the Hell's Kitchen project in Imperial County, California, an integrated geothermal energy and critical minerals development intended to support reliable renewable electricity generation, domestic lithium production, workforce development, and regional economic growth. CTR supports the objectives of the Opt-In Certification Program, including coordinated review, environmental protection, meaningful community engagement, and public benefits. California competes with other states and countries for investment in geothermal energy, critical minerals, domestic manufacturing, and supporting infrastructure. We encourage the CEC to ensure these amendments further the intent of AB 205, which was to establish a streamlined, centralized state permitting pathway to accelerate the deployment of large-scale clean energy infrastructure and bolster grid reliability, provide clarity for the applicant and the public alike, and make responsible development more efficient, predictable, and attractive, not less.

1. Emergency Rulemaking Justification

Emergency rulemaking should be strictly limited to the immediate, non-discretionary implementation of new statutory mandates under SB 254 and SB 283. Several proposed amendments, including but not limited to the sections regarding pre-filing, Community Benefits Agreement, and early termination make substantive policy changes that are not required by statute and should undergo the standard rulemaking process.

We respectfully request further explanation of the need for emergency procedures, particularly for provisions that may impose additional costs or discretion.

Questions for Clarification

1. What specific evidence supports the necessity for emergency adoption?
2. Which amendments are statutorily required, and which are discretionary?
3. How will the amendments measurably improve permitting efficiency and project delivery?

While the Public Resources Code provides a statutory mechanism for emergency rulemaking and authorizes emergency rules necessary to implement the identified senate bills any proposed regulatory changes that go beyond strict statutory mandates such as the discretionary changes mentioned above should be part of the standard rulemaking with a full comment period.

CTR recommends identifying and presenting the evidence supporting the necessity for any proposed change outside of implementing SB 254 and 283 and allowing the standard process for those discretionary changes to ensure adequate and meaningful public review and comment.

2. Application Completeness and the 270-Day Review Period (Sections 1876.5, 1877, 1878)

Early consultation is valuable, but extensive pre-filing demands and repeated completeness requests could shift much of the substantive permitting process outside the statutory 270-day review period. Complex geothermal and integrated industrial projects must be able to refine technical and environmental issues during formal review.

For example, proposed 1876.5(a) expands the pre-filing meeting from a procedural check-in on application requirements to a potential substantive review of *"significant project impacts, local concerns, grid connectivity, water supply, and site access."* Expanding the scope of pre-filing meetings without clear boundaries risks turning a mandatory administrative step into an open-ended, informal environmental review and turns valuable early coordination into uncertainty and expanded timelines.

Questions for Clarification

4. Will the CEC establish defined timelines for pre-filing consultation and completeness decisions?
5. What distinguishes information necessary for completeness from information appropriately developed during environmental review?
6. How will repeated requests be prevented from creating open-ended pre-application review?
7. Has the CEC evaluated total elapsed permitting time, including the period before the 270-day clock begins?

CTR recommends objective completeness standards, predictable milestones, and timely resolution of substantive issues within the formal certification process to preserve the integrity of the 270 statutory review period. CTR also recommends clarification of § 1876.5 to include that the pre-filing meeting is strictly informational and advisory, and that participation in a single pre-filing

consultation at least 30 days prior to submission satisfies the requirement regardless of whether substantive issues remain unresolved and those issues can be resolved in the formal 270 process.

3. Site Control and Ancillary Infrastructure (Section 1877(h) and Appendix B)

CTR supports demonstrating a credible pathway to property rights. However, gen-tie routes, pipelines, water lines, and other ancillary facilities may change through environmental review and engineering. Certain agencies may not grant project-specific rights-of-way until CEQA review is complete. The proposed text also warrants reconciliation: Section 1877(h) recognizes an applicant affirmation absent contrary evidence, while Appendix B refers to written proof for the project site, gen-tie line, and ancillary elements.

Questions for Clarification

8. Will an applicant affirmation and a reasonable pathway to securing property rights satisfy the requirement?
9. May final ancillary easements be conditions of construction rather than application completeness?
10. How will the CEC address agencies that require CEQA completion before issuing rights-of-way?
11. Can preliminary infrastructure alignments be revised during environmental review?

CTR recommends distinguishing primary site control from final ancillary property rights, while ensuring no construction proceeds without required legal access. CTR further recommends clarifying 1877(h) to ensure that disputes over underlying private property interests or pending ROW applications that will not be granted until after CEQA certification do not prevent an application from being deemed complete, provided the applicant demonstrates a valid legal pathway to acquire site control.

4. Minimum Community Benefits Funding (Section 1879.5(c))

CTR supports meaningful community benefits, but the proposed minimums of $2,500 per MW of generation, $550 per MWh of storage, and $55 per square foot of manufacturing require clarification. In particular, the language does not expressly state whether funding is one-time or annual. At 250 MW of gross nameplate capacity, an illustrative geothermal portfolio would have a generation-based minimum of approximately $625,000, with substantially different economics if recurring.

Questions for Clarification

12. Are minimum CBA amounts one-time commitments or annual obligations?
13. Does generation capacity mean gross or net nameplate capacity?
14. Has the CEC analyzed effects on financing, project costs, and interstate competitiveness?
15. Will existing workforce, infrastructure, and community investments count toward the minimum?
16. How will the CEC accommodate differing project economics and technologies?

17. Has the CEC conducted an economic analysis justifying why $2,500/MW or $550/MWh is appropriate across vastly different California counties and power markets?
18. Is there statutory or other authority that allows the CEC to impose a statewide per-MW and per-MWh financial mandate?[1]

CTR requests an economic analysis or any other evidence to support the fees and recommends explicit timing and calculation rules, with flexibility to recognize qualifying existing commitments.

5. Manufacturing and Duplicative Contributions (Section 1879.5(c))

The $55 per square foot minimum could be disproportionate for large-footprint facilities if applied to the full site rather than enclosed manufacturing space. For illustration only, an entire one-acre footprint would yield approximately $2.4 million; 50 acres, $119.8 million; and 80 acres, $191.7 million. These examples do not presume the CEC intends to use total acreage.

Integrated lithium extraction and processing facilities warrant particular attention because California already imposes a lithium extraction excise tax under SB 125, with revenues allocated 80 percent to Imperial County and 20 percent to Salton Sea restoration. Additional obligations without recognizing those contributions may discourage domestic lithium and supply chain investment.

Questions for Clarification

19. How was $55 per square foot determined?
20. Does manufacturing square footage mean enclosed floor area, developed operating area, or the full site?
21. Are geothermal-integrated lithium extraction and processing facilities included as manufacturing?
22. Will existing lithium excise tax obligations be exempted or credited?
23. Has the CEC evaluated impacts on large-footprint manufacturing and critical minerals projects?
24. Would caps or alternative proportional formulas be considered?

CTR recommends excluding facilities subject to the lithium extraction excise tax from duplicative manufacturing CBA requirements or, at minimum, providing credit for existing statutory contributions. Additionally, if a per square foot rate is going to be set at a high rate, CTR recommends the fee being one-time and not annual or reoccurring to ensure development remains economically feasible in California. CTR further recommends maintaining the flexible statutory framework of Public Resources Code § 25545.10, allowing applicants and local community-based organizations to negotiate tailored monetary and in-kind community benefits suited to each

[1] Public Resources Code § 25545.10 requires a CBA but leaves the financial terms to good-faith negotiation between the applicant and local community groups. It does not appear that AB 205, AB 254, or AB 283 create any such mandate.

project's specific local context instead of per unit funding minimums that undervalue other commitments that local communities frequently prioritize over cash disbursements.

6. Objective Community Benefits Standards (Section 1879.5(d))

The proposed consideration of the number of agreements and diversity of benefits would benefit from objective standards. A single comprehensive agreement may deliver greater long-term value than several smaller agreements and is specifically authorized. The statute expressly mandates that an applicant enter into *"one or more"* legally binding CBAs. As such, a single comprehensive agreement could satisfy the Legislature's mandate. This provision introduces an undefined, subjective hurdle at the final stage of certification and at least requires further clarity.

Questions for Clarification

25. What objective criteria will determine whether CBAs are sufficient?
26. Will satisfaction of the minimum funding requirements establish a predictable compliance pathway?
27. How will comprehensive single agreements be evaluated?
28. Does weighing the number of agreements as an evaluative factor unlawfully penalize applicants who consolidate community investments into one unified agreement?
29. Will applicants have an opportunity to remedy identified deficiencies?

CTR recommends deleting the proposed § 1879.5(d) and preserving the existing framework or deferring consideration of these rules to a standard rulemaking process. Leaving key approval criteria open to subjective interpretation at end of the process undermines the regulatory predictability AB 205 was designed to establish. In the alternative, CTR recommends creating objective standards, evaluating measurable benefit and implementation quality, and rewarding substance not merely the number of agreements.

7. Early Termination and Regulatory Certainty (Section 1877.5)

CTR recognizes the need to allocate CEC resources efficiently. Yet grid interconnection, financing, technical scaling, and infrastructure challenges can be normal and resolvable parts of complex project development. Temporary uncertainty should not automatically establish infeasibility. Further, investors rely on the regulatory certainty of the 270-day certification pathway. Introducing unilateral early termination triggers, without clear cure periods or objective thresholds, creates additional subjective permitting risk that can stall project financing.

Questions for Clarification

30. Does AB 205, SB 254, or SB 283 authorize the CEC to create a new early termination of application?
31. What objective criteria will determine whether a project is unlikely to advance?
32. Will applicants receive written notice and a meaningful opportunity to cure?
33. How will temporary development challenges be distinguished from fundamental infeasibility?

34. Will the CEC account for geothermal and integrated industrial development timelines?

CTR recommends deferring consideration of administrative termination rules to a standard rulemaking process. At a minimum, if any termination mechanism is retained, revise § 1877.5 to require: (1) formal written notice specifying the deficiency; (2) a mandatory cure period; and (3) an exclusion for routine issues such as financing or grid interconnection that does not alter the physical project footprint.

8. Competitiveness and Disadvantaged Communities

The CEC should assess the cumulative economic effects of these amendments, particularly in disadvantaged communities such as those in Imperial County, where new geothermal and industrial development can create jobs, tax revenues, training, infrastructure, and local business opportunities. These benefits depend on projects being financed and built. Requirements that render California projects less competitive could ultimately deprive communities of the benefits the regulations seek to advance.

Questions for Clarification

35. Has the CEC conducted an economic or fiscal analysis of cumulative project costs?
36. Has it compared California permitting timelines and obligations with competing states?
37. Has it assessed whether otherwise viable projects might be delayed, relocated, or canceled?
38. Has it evaluated foregone jobs, tax revenues, workforce training, and investment in disadvantaged communities if projects do not proceed?
39. How will cumulative taxes, fees, compliance expenses, and CBAs be considered together?
40. Could alternative approaches deliver community benefits while maintaining project viability?

CTR encourages an economic impact assessment that considers both direct regulatory costs and the opportunity costs of projects that are not developed.

9. Integrated Energy, Manufacturing, and Digital Infrastructure

Integrated developments can share land, interconnection, and infrastructure across geothermal generation, critical minerals, manufacturing, and energy-intensive users. While standalone data centers may not independently qualify for Opt-In certification, changes affecting eligible energy and manufacturing components can affect the viability of co-located digital infrastructure and other high-load industry.

Questions for Clarification

41. How will multiple eligible components and shared infrastructure be evaluated?
42. How will duplicative requirements and overlapping contributions be avoided?
43. How will shared facilities serving eligible and non-eligible components be treated?
44. Will the CEC consider broader reliability, land-use, and economic benefits of integrated development?

CTR recommends practical guidance that supports coordinated, efficient co-location without duplicative burdens.

Conclusion

CTR appreciates the CEC's efforts to refine the Opt-In Certification Program and shares its commitment to responsible development, strong environmental review, and meaningful community benefits. We respectfully request clarification of the emergency justification, completeness and site-control standards, the frequency and calculation of CBA obligations, treatment of existing statutory contributions, and the economic impacts on California investment.

CTR urges the CEC to defer the discretionary pre-application, Community Benefits Agreement, application termination rules, and any other discretionary modifications to a standard rulemaking proceeding where stakeholders have adequate time to thoroughly evaluate and provide meaningful input.

The Opt-In Certification Program should ultimately make responsible development in California more efficient, predictable, and attractive, not less. We welcome continued collaboration with the Commission to achieve these shared objectives.

Respectfully,



Rod Colwell
Chief Executive Officer
Controlled Thermal Resources Holdings Inc.
E: Rod.Colwell@cthermal.com