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**CESA's Comments on Opt-In Certification Webinar**

*Additional submitted attachment is included below.*

September 30, 2022

Email to: [docket@energy.ca.gov](mailto:docket@energy.ca.gov)

Docket Number: 22-OIR-01

Subject: Webinar on Emergency Rulemaking for Assembly Bill 205, Opt-In Certification Provisions

**Re: Comments of the California Energy Storage Alliance on the Webinar on  
Emergency Rulemaking for Assembly Bill 205, Opt-In Certification  
Provisions**

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Dear Sir or Madam:

The California Energy Storage Alliance (“CESA”) appreciates the opportunity to comment on the Webinar on Emergency Rulemaking for Assembly Bill (“AB”) 205, Opt-In Certification Provisions held on September 19, 2022. CESA appreciates the California Energy Commission (“CEC”) hosting this forum to allow for stakeholders to understand and provide feedback on this new certification process for clean energy resources which aims to accelerate our ability to bring new electric resources online to both meet our climate goals and increase electric reliability in California.

CESA is a 501(c)(6) organization representing over 120 member companies across the energy storage industry. CESA member companies span the energy storage ecosystem, involving many technology types, sectors, configurations, and services offered. As the definitive voice of energy storage in California, CESA is involved in a number of proceedings and initiatives in which energy storage is positioned to support a more reliable, cleaner, and more efficient electric grid. As large amounts of storage have already been procured by load-serving entities (“LSE”), getting projects online in a timely and efficient manner is becoming increasingly important.

**I. INTRODUCTION & SUMMARY.**

Currently, California is facing energy supply challenges in the near term, as supply chain challenges and more frequent and severe extreme weather events, including heat waves, drought, and wildfire magnified by climate change, are creating compounding risks to electric reliability. Consequently, in September 2022, the California Independent System Operator (“CAISO”) called ten straight days of Flex Alerts, with Energy Emergency Alerts (“EEAs”) declared throughout the week. In the next 2-3 years, the CEC estimates that California is potentially facing significant amounts of capacity shortfall, up to 10,000 MW through 2025.<sup>1</sup>

At the same time, meeting California’s long-term electricity needs and climate goals will require unprecedented levels of new resource buildout and deployment that require broader reforms to

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<sup>1</sup> *DSGS Program Staff Workshop* presented by the CEC on July 25, 2022 at slide 6.

resource planning and procurement. The California Public Utilities Commission’s (“CPUC”) Integrated Resource Plan (“IRP”) and the Joint Agency Senate Bill (“SB”) 100 studies show that California will require historic amounts of development of energy storage to the tune of: (1) tripling of the current energy storage fleet by 2032;<sup>2</sup> (2) developing an average of 2,000 MW of energy storage every year until 2045; and (3) achieving over 40,000 MW of operating energy storage by 2045.<sup>3</sup> In order to meet the needs highlighted above, many clean energy projects, including both renewable generation and energy storage, are in the process of being developed. Allowing projects to pursue a streamlined permitting process at the CEC, where appropriate, can help to ensure that resources reach commercial operation on time.

With its expertise in power plant permitting, the CEC is an agency that is capable of helping ensure that delivery dates and commercial operation timelines are met. In many cases, local jurisdictions have the expertise to permit projects, and as such, these projects there are better served following the local process instead of a CEC process. However, where jurisdictions lack resources, the CEC is well-poised to provide permitting support, and thus the CEC’s Opt-In process represents a helpful backstop to meeting the state’s reliability needs and decarbonization goals.

While generally supportive of the establishment of the Opt-In certification process at the CEC, we would like to ask for clarification on some items surrounding the program and propose recommendations to ensure that this program is established successfully:

- Hiring additional CEC staff is of utmost importance to ensure that the Opt-In process is resourced and outlined processing timelines can be met.
- Eligible projects currently going through the CEC’s Application for Certification (“AFC”) process should be allowed to move to the Opt-In process.
- Projects going through the Opt-In process should not be prioritized over the projects currently in the AFC queue.
- Additional clarification on the eligibility of pumped hydroelectric energy storage (“PHS”) is needed.

## **II. HIRING ADDITIONAL CEC STAFF IS OF UTMOST IMPORTANCE TO ENSURE THAT THE OPT-IN PROCESS IS RESOURCED AND OUTLINED PROCESSING TIMELINES CAN BE MET.**

In the September 19, 2022 webinar, CEC staff outlined the timeline at which they intend to conduct the Environmental Impact Review (“EIR”) and associated processes, including public workshops and engagement with local governments and tribes. Staff proposed a 270-day process from the time the application is deemed complete to the time that the final EIR and certification is

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<sup>2</sup> CPUC Decision 22-02-004, *Decision Adopting 2021 Preferred System Plan*

<sup>3</sup> 2021 Joint Agency SB 100 Report at p. 10. Available at: <https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity>

approved or denied at a CEC Business Meeting. CESA is hopeful that this expedited timeline will help move projects towards commercial operation, and we recommend defining timelines for interim steps in the process, including the publication of a draft EIR. We also recommend enforcing those timelines to ensure certifications are prepared in a timely manner.

Importantly, ensuring that these established timelines are realistic will depend on the bandwidth of CEC staff to conduct all of the necessary staff reports and review. On top of this, given the completeness and details required for an application to be deemed complete under this process, CESA anticipates that developers and stakeholders will be conducting additional outreach to CEC staff to ask questions and seek feedback before the submission of an application, including outside of the proposed pre-filing meeting.

In anticipation of increased need for staff and resources, the Legislature authorized the Department of Finance to augment the CEC budget for energy facility licensing and compliance by up to \$1,500,000.<sup>4</sup> CESA urges the CEC to take advantage of this extra budget and prioritize onboarding additional staff as soon as possible to handle these additional inquiries. Without sufficient resources, it is unlikely that this streamlined permitting process will meet the 270-day timeline for application review and assessment. The timeline for pre-application processes would also likely be extended.

### **III. ELIGIBLE PROJECTS CURRENTLY IN GOING THROUGH THE CEC'S AFC PROCESS SHOULD BE ALLOWED TO MOVE TO THE OPT-IN PROCESS.**

Currently, the CEC already oversees certification for some types of electric generators through the AFC process. There are currently projects in the AFC process that qualify for the Opt-In process at the CEC. Given the importance of getting these projects online, CESA urges the CEC to allow eligible projects to switch from the AFC process to the Opt-In process.

In switching from the AFC process to the Opt-In process, CESA hopes that any transitions would be as smooth as possible. Given that these projects have already paid an application fee for processing, any Opt-In application fee should be waived or offset proportionally. Documentation that was submitted in the AFC process should also be automatically transferred to the Opt-In process. It is likely that applicants will need to gather any missing elements required for a complete application to begin the Opt-In process but would then be able to switch their permitting pathway. However, given the variety in stages of different projects in the AFC process, CESA hopes that applicants and CEC staff can collaborate to come up with transition plans on a case-by-case basis where appropriate.

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<sup>4</sup> SB 179 *Budget Act of 2022* at Section 55.

**IV. PROJECTS GOING THROUGH THE OPT-IN PROCESS SHOULD NOT BE PRIORITIZED OVER THE PROJECTS CURRENTLY IN THE AFC QUEUE.**

In the September 19, 2022 webinar, an attendee raised a question surrounding prioritization of projects going through the Opt-In process and whether they would be processed before projects going through the traditional AFC process. In response, CEC staff stated that they are planning on hiring additional staff to process all applications for both the Opt-In process and the traditional AFC process on their designated timelines.

Getting all potential electric capacity online as quickly as possible is crucial to meeting our electric needs. At the same time, CESA believes that it is most fair to process applications in the order that they were received, regardless of whether applications are in the Opt-In or AFC process. Opt-In projects should not be automatically prioritized over projects already and currently in the AFC queue. However, as mentioned during the webinar and highlighted in our comments above, hiring and onboarding additional staff as quickly as possible will be crucial to ensuring that these permitting processes run smoothly and efficiently to achieve their intended purpose.

**V. ADDITIONAL CLARIFICATION ON THE ELIGIBILITY OF PUMPED HYDROELECTRIC ENERGY STORAGE IS NEEDED.**

In the webinar, questions were raised surrounding whether PHS would be eligible for the CEC Opt-In process, with some stakeholders stating that it was the Legislature’s intention to have PHS be ineligible for this process. It is important that this element is clarified by CEC staff before the Opt-In process begins.

Currently, the majority of PHS projects fall under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) as hydroelectric projects that are either: (1) located on navigable waters of the United States; (2) occupying public lands or reservations of the United States; (3) utilizing surplus water or waterpower from a federal dam; or (4) located on a body of water over which Congress has Commerce Clause jurisdiction and the project affects the interests of interstate or foreign commerce.<sup>5</sup> Since the CEC is unable to subsume permits from a federal agency, such as FERC, unless permitted by federal law, these projects will have to continue through FERC permitting pathways.

It is appropriate for projects under federal jurisdiction to be excluded from the CEC’s Opt-in process, and CESA anticipates that this is the reason why most PHS would be excluded from this Opt-in process. However, PHS should not be universally excluded from this process as a technology type, given that this exclusion was not outlined in AB 205. Instead, it should be clarified in final CEC guidelines or materials that PHS under FERC jurisdiction is not eligible for the CEC Opt-in process due to federal law. The CEC should be aware that PHS resources can take many forms and configurations (*e.g.*, underground modular PHS, tanks on a hill), such that the exclusion of an entire

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<sup>5</sup> *Federal Power Act* at Section 23(b)(1).

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technology type would be unnecessary and excessive when novel PHS applications can support the state's reliability objectives and decarbonization goals.

**VI. CONCLUSION.**

CESA appreciates the opportunity to provide these comments and feedback on the webinar and looks forward to collaborating with the CEC and other stakeholders in this docket.

Respectfully submitted,



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