



September 30, 2022

VIA ELECTRONIC TRANSMISSION

California Energy Commission  
Docket Unit, MS-4  
Docket No. 22-OIR-01

<https://efiling.energy.ca.gov/EComment/EComment.aspx?docketnumber=22-OIR-01>

**Re: Comments on 22-OIR-01 Emergency Rulemaking for AB 205, Opt-In Provisions**

Dear California Energy Commission,

The League of California Cities (Cal Cities) is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. These comments are submitted as part of CEC Docket No. 22-OIR-01.

Assembly Bill 205 (Chapter 61, Statutes of 2022) ("AB 205") establishes a new program for certain non-fossil-fueled power plants and clean energy manufacturing facilities to optionally seek a permit to construct and operate from the California Energy Commission (the "Commission") in lieu of most other local, state, and regional permits, and federal permits to the extent allowed by federal law.<sup>1</sup>

Now that AB 205 has been signed into law, Cal Cities appreciates the opportunity to provide comments and suggested amendments to the AB 205 Opt-In Permitting draft regulations. In particular, Cal Cities' comments will be directed to (1) the process for involving local governments in the staff and Commission decision-making; and (2) the standards by which the Commission determines a site and related facility's overall net positive economic benefit.

AB 205 grants the Commission the exclusive power to certify a site and eligible facility (as defined by Public Resources Code section 25545(b) and (c)). However, the Commission is prohibited from certifying a site and related facility unless it finds that the construction or operation of the facility will have an "overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility."<sup>2</sup> "Economic benefits" may include, but are not limited to:

- Employment growth
- Housing development

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<sup>1</sup> Cal Cities opposed AB 205 on the grounds that it bypasses the traditional local permitting process designed to ensure a project's impacts on local communities and residents will be minimized.

<sup>2</sup> Cal. Pub. Res. 25545.9



- Infrastructure and environmental improvements
- Assistance to public schools and education
- Assistance to public safety agencies and departments
- Property taxes and sales and use tax revenues.<sup>3</sup>

The finding required by Section 25545.9 must be supported by substantial evidence which means the Commission will need to gather and evaluate information about whether the construction or operation of the facility will have a positive, negative or neutral economic benefit to the local government that would have had permitting authority over the site and related facility.

Cal Cities respectfully suggests the following changes be made to “DRAFT 9-14-2022 of Emergency Rulemaking for AB 205, Opt-In Provisions” to support the Commission’s work in considering and making the finding of “overall net positive economic benefit” required by Section 25545.9:

#### **Section 1876.5. Pre-filing Consultation: Notice to local government(s)**

Section 1876.5 requires a pre-filing meeting between the staff and the applicant at least 30 days before an application is submitted. Cal Cities appreciates Section 1876.5(b), which requires staff to invite the local government(s) that would have had permitting authority over the site and related facility or the construction and operation of the facility but for AB 205. In order to ensure that the invited local government(s) are able to fully participate in the meeting, Cal Cities suggests the following changes<sup>4</sup> to Section 1876.5(b):

Staff shall invite the local government(s) that would have had permitting authority over the site and related facility of the construction and operation of the facility but for Chapter 6.2 of Division 15 of the Public Resources Code to participate in the meeting(s) held pursuant to subdivision (a) ***by giving the local government(s) notice at least 10 days before the meeting. Notice consists of sending the notice electronically to the city manager(s) or county administrative officer(s) of the local government(s).***

#### **Section 1877(f). Contents of Opt-in Application: Sources of information of “net positive economic benefit”**

Section 1877(f) requires the opt-in application to contain preliminary information identifying the overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility of the

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<sup>3</sup> Cal. Pub. Res. 25545.9(a) – (f).

<sup>4</sup> All suggested amendments are shown in ***bold italics***.



construction and operation of the facility. Cal Cities welcomes this requirement but respectfully suggests that it falls short in two ways:

- (1) In order for the Commission to determine whether a site and related facility has a net positive economic benefit, the Commission must analyze the actual economic impact and then determine whether the impact is net positive, net negative, or neutral. The regulation asks the applicant only for information identifying the "overall net positive economic benefit." The outcome has been determined before the analysis begins.
- (2) In order to ensure that the Commission receives neutral information which does not exaggerate economic benefit or minimize economic detriment, the information provided by the applicant must be verified before it becomes the basis for the Commission's certification decision.

To address these shortcomings, Cal Cities suggests the following changes to Section 1877(f):

The opt-in application shall contain preliminary information identifying the **overall net positive** economic benefit **and economic detriment** to the local government that would have had permitting authority over the site and related facility of the construction and operation of the facility, consistent with Public Resources Code section 25545.9. ***Upon receipt of the opt-in application, the staff shall send a copy of the preliminary information required by this paragraph to the local government for its review and comment. The assessment filed by staff pursuant to paragraph (7) of subdivision (a) of Section 1879 shall take into consideration the preliminary information included in the opt-in application, the review and comments of the local government, and any other relevant information.***

**Section 1879(a)(7). Environmental Document and Executive Director's Recommendation: Components of economic impact**

Staff's assessment of the opt-in application must include a section addressing "the overall net economic *impact* to the local government" (emphasis added) of the site and eligible facility. Topics that may be considered include, but are not limited to, employment growth, housing development, infrastructure and environmental improvements, assistance to public schools and education, assistance to public safety agencies and departments, property taxes and sales and use tax revenues.

Cal Cities suggests changes to Section 1879(a)(7) to bring the language more closely into conformance with AB 205 and to require the analysis of economic impact to include facts and information rather than conclusory statements, as follows:

The overall net economic impact to the local government that would have had permitting authority over the site and related facility **and whether that impact is positive, negative or neutral. Such discussion may include consideration of For purposes of this assessment, economic benefits may include, but are not limited to any of the following:** employment growth, housing development, infrastructure and environmental improvements, assistance to public schools and education, assistance to public safety agencies and departments, property taxes and sales and use tax revenues. **The analysis of economic impact shall be comprised of facts and information that can be relied upon as the evidentiary basis for the Commission's decision.**

### **Section 1882. Post Certification Project Changes: Local government input and “net economic benefit.”**

Section 1882 requires staff to approve any change to the design, operation or performance requirements of the project if staff finds the proposed project change does not require the preparation of a subsequent or supplemental environmental impact report. In addition to determining the environmental impacts of the change, the change must be reviewed to determine:

- (1) If it continues to comply with the requirements for approval set forth in AB 205; and
- (2) If the project will continue to have an overall net positive economic benefit to the local government.

Therefore, Cal Cities suggests the following changes to Section 1882(a):

Upon project certification, any change to the design, operation or performance requirements of the project shall be approved by the staff if the staff finds that **(1) the project change does not require the preparation of a subsequent or supplemental environmental impact report as set forth in Title 14 of the California Code of Regulations section 15162 and 15163; (2) the project with the change to the design, operation or performance requirements complies with Chapter 6.2 of Division 15 of the Public Resources Code; and (3) the project continues to have an overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility of the construction and operation of the facility, consistent with Public Resources Code section 25545.9. The staff shall provide a copy of the summary prepared pursuant to subdivision (c) to the local government that would have had permitting authority over the site and related facility and an opportunity to comment on the proposed change to the design, operation or performance requirements and the economic impact of the change. The staff shall consider the comments of the local government prior to approving the change.**



Thank you again for the opportunity to comment and for your consideration of these proposed amendments to the draft opt-in regulations. If you have any questions, please do not hesitate to contact me at [ddolfie@calcities.org](mailto:ddolfie@calcities.org).

Sincerely,

A handwritten signature in blue ink that reads "Derek Dolfie".

Derek Dolfie  
Legislative Affairs, Lobbyist  
League of California Cities