



Scott C. Smith  
Partner  
(949) 263-6561  
scott.smith@bbklaw.com

Via Docket 24-OPT-02

July 18, 2025

Drew Bohan  
Executive Director  
California Energy Commission  
715 P Street  
Sacramento, CA 95814  
[drew.bohan@energy.ca.gov](mailto:drew.bohan@energy.ca.gov)

**Re: City of Laguna Niguel Objection to Engie Request to Modify the Compass Energy Storage Project**

We are writing on behalf of the City of Laguna Niguel regarding the July 11, 2025 request from Engie North America (Compass Energy Storage, LLC), the applicant on the Compass Energy Storage Project (Docket 24-OPT-02), that the California Energy Commission (Commission) pause its consideration of the current application so that Engie can submit “additional design and technical materials” on the geotechnical portion of its application.<sup>1</sup> Laguna Niguel demands that the Commission reject this request. The Commission must inform the applicant that: (1) geotechnical flaws in the original application of this magnitude warrant its immediate rejection, or (2) a project alteration of this magnitude may only be considered as part of a new, amended application, following Engie’s withdrawal of its current application and filing of a new one, subject to the same public review process that applied to the original application.

Engie claims that the request is made to provide adequate information regarding long-term slope stability of Oso Creek adjacent to the project site. Engie further claims that it only received “new” information in the last three weeks that increased erosion and slope stabilization conditions have occurred in the last 12 months, and that project design changes are needed to mitigate issues with the creek. Engie requests the 270 day proceeding schedule be paused and that it be allowed to submit new information to the Commission in the next 60 days. The City of Laguna Niguel objects to Engie’s request. The City also objects to the new geotechnical evaluation report and hazardous consequence analysis submitted in the docket on June 27, 2025 and July 2, 2025.<sup>2</sup>

Engie filed its application on April 8, 2024. As part of the application, it filed several sub-chapters purporting to analyze issues with Oso Creek.<sup>3</sup> Engie was required by Assembly Bill 205 and Commission regulation to file all necessary and required information with the Commission as

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<sup>1</sup> TN 264698, *Letter Geotech Supplement* (July 11, 2025).

<sup>2</sup> TN 264482, 264483, 264492, 264550, 264551, 264552, 264553, 264554, 264555, 264556, 264557, and 264558.

<sup>3</sup> See, e.g., TN 255561-6-8, Appendix 4-4A\_Geotechnical Evaluation Report Parts 1-3 (Apr. 8, 2024).

part of its application.<sup>4</sup> Commission regulations consists of 38 pages of required data that includes geologic hazards, geotechnical information and impacts to and constraints of adjacent waterbodies.<sup>5</sup> The Commission’s review of the application is an “adequacy” review whereby it reviews the application for compliance with its application requirements prior to deeming it complete. During this review, the Commission can issue data requests to the applicant if certain portions of the application are incomplete.<sup>6</sup> On April 30, 2025, the Commission deemed the application complete finding that the applicant had met its application requirements.<sup>7</sup> In bold letters, the Commission stated **“Based on this review, and in conjunction of the totality of the record present in the project docket, the CEC staff has determined that the submitted application complies with Public Resources Code, section 25545.2 and therefore is complete.”**<sup>8</sup>

The Commission is in the process of preparing the draft Staff Assessment and Environmental Impact Report, as required by AB 205.<sup>9</sup> There is no basis by law or in the Commission’s regulations by which Engie can now supplement its application with new geotechnical data, pause the proceeding, or modify its project. The application was deemed complete as to all issues related to Oso Creek. The Commission must evaluate the application information it has before it, which would lead to a denial of the project since Engie is now on record indicating that its current design is infeasible and here are significant, unavoidable and unmitigable impacts to Oso Creek.

Engie attempts to cite to “new” information in the last three weeks regarding erosion in the prior 12 months that now necessitates more studies. This is preposterous and in bald contradiction to the history of Oso Creek and comments that have been filed in this proceeding. It has been well-documented stemming from studies and publicly available data from 1983 that there is severe bank erosion, loss of valuable land, and flooding and stability impacts to the adjacent property and rail lines. Not only is such information available through the regional water board, the Orange County Flood Control District,<sup>10</sup> and Army Corps of Engineers, it was publicly commented on in the record of this proceeding by the Orange County Transportation Authority at least six months prior to the application being deemed complete.<sup>11</sup> There is absolutely no new information that has come to light since the application was deemed complete and there has not been any new information regarding erosion of the creek in the prior 12 months that was not already known or

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<sup>4</sup> Pub. Res. Code §§ 25520 and 25545.2; 20 C.C.R. § 1878.

<sup>5</sup> 20 C.C.R. App. B.

<sup>6</sup> 20 C.C.R. § 1878(a).

<sup>7</sup> 20 C.C.R. § 1878(b); TN 262874, *Determination of Complete Application for the Compass Energy Storage Project (24-OPT-02)* (Apr. 30, 2025).

<sup>8</sup> *Id.* at 1.

<sup>9</sup> TN 262903, *Notice of Preparation of a Draft Environmental Impact Report for the Compass Energy Project* (May 2, 2025).

<sup>10</sup> See, e.g., *San Juan Creek Flood Risk Management Feasibility Study*, available at <https://ocip.ocpublicworks.com/san-juan-creek-flood-risk-management-feasibility-study> (discussing the background and impacts for flooding, erosion, channel instability and habitat function in Oso Creek).

<sup>11</sup> TN 259591, *Orange County Transportation Authority Comments – Comment Letter* (Oct. 17, 2024) (providing the full history of erosion in the creek).

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should have been known at the time the application was filed and reviewed by the Commission during its adequacy review. The assertion that there is new information is a complete misrepresentation of the facts, so much so that Engie does not offer what the information even is in its request letter. In reality, the request shows the utter lack of due diligence by the applicant and the failure to work with the regional, state and federal agencies that have information about and discretionary authority over the creek (independent of the Commission's jurisdiction). It also shows that the application was likely deficient and should not have been deemed complete.

The law is replete with examples where once an application is deemed complete, it is considered final. AB 205 does not allow Engie at this stage to substitute an amended project for the one included in the public review to date, and the Commission as a hearing body should not enable this. Information and amendments arising after an application is deemed complete cannot be applied to that application, and any supplemental information or modifications to a completed application constitute a re-submittal of the original application. In other words, Engie cannot provide supplemental information to the Commission or modify its project without submitting a new application or re-starting the review and timing under AB 205. Therefore, the only option is a withdrawal or denial of the current project because Engie by its own admission acknowledges that the project design is deficient and infeasible.

Engie's request also states that it wants to continue its scheduled site visit (this week) with Commission staff "to obtain CEC SME input as we clarify the design considerations."<sup>12</sup> Given the lack of transparency by Engie throughout this project that has been well-documented in the proceeding, the City requests that any dialogue with the applicant about supplementing the application or modifying its project take place in public. The City objects to staff deliberations about an unlawful project modification, and asks that any communications that have occurred be filed in the docket as a full and detailed record of conversation, as the Commission has done in other opt-in proceedings like the Darden Energy Project.

The Commission must deny the existing application or demand that Engie withdraw its application. Amending the application to this extent at this stage violates AB 205 and the due process rights of Laguna Niguel and other public and private stakeholders.

Very truly yours,



Scott C. Smith  
Ryan M. F. Baron  
of BEST BEST & KRIEGER LLP

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<sup>12</sup> TN 264698 at 1.