

DOCKETED

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September 20, 2023

Henry Woltag
Fountain Wind, LLC
1001 McKinney, Suite 700
Houston, Texas 77002
HWoltag@connectgenllc.com

Community Benefits Data Request for the Fountain Wind Project (23-OPT-01)

Dear Henry Woltag:

The California Energy Commission (CEC) has received Fountain Wind LLC's (applicant) response, dated September 8, 2023 (TN 252187), to CEC staff's request for additional data regarding the Fountain Wind Project's impacts on wildfire and community benefits agreements. The CEC staff finds that the additional information applicant provided regarding community benefits agreements fails to meet both the letter of the law and the purpose of the Opt-in provisions related to community benefits. The application is deficient in information related to community benefits agreements as required under Public Resources Code section 25545.10 and Title 20, California Code of Regulations, sections 1877(g) and 1878(c). Therefore, the CEC staff requests that the applicant docket the information outlined below related to community benefits agreements.

Applicable Law Respecting Community Benefits Agreement(s)

Public Resources Code section 25545.10, states, in relevant part:

- (a) The commission shall not certify a site and related facility under this chapter unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement. The topics and specific terms in the community benefits agreements may vary and may include workforce development, job quality, and job access provisions...
- (b) The topics and specific terms in the community benefits agreement may also include, but not be limited to, funding for or providing specific community

improvements or amenities such as park and playground equipment, urban greening, enhanced safety crossings, paving roads and bike paths, and annual contributions to a nonprofit or community-based organization that awards grants to organizations delivering community-based services and amenities.

To implement this statutory requirement, Title 20, California Code of Regulations, section 1877(g) requires that the Opt-in application include the applicant's "plan or strategy, including a timeline for execution," to obtain legally binding and enforceable agreements. Additionally, under Title 20, California Code of Regulations, section 1878(c), no later than 45 days after an application is deemed complete, or a later date set forth by the executive director, the applicant shall provide the executed agreements required under Public Resources Code section 25545.10.

Here, in response to the CEC staff's request for additional information regarding community benefits agreements, the applicant stated in its September 8, 2023 (TN 252187) response that it "proposes to contract with a community-based foundation with an established presence in Shasta County to guide the distribution of funds for various community improvement projects to benefit the immediate project area, such as the communities of Burney, Montgomery Creek, and Round Mountain. Funding for these improvement projects will be made via grants from the foundation from an endowment supplied by the applicant."

Requirements Under Public Resources Code section 25545.10(a).

The application does not contain sufficient detail to meet the requirements of Public Resources Code section 25545.10(a). The applicant has not docketed a response that identifies a plan or strategy with a timeline, to enter into one or more legally binding and enforceable agreements "that benefit, a coalition of one or more community-based organizations ...where there is *mutual benefit* to the parties to the agreement." (*Italics added*; Pub. Resources Code, § 25545.10, subd. (a).) The applicant did not identify any organization that represents community interests that will benefit from the binding agreement as required under Public Resources Code sections 25545.10(a). For data adequacy, the requirement to execute the agreement within 45 days of the application being deemed complete must include an anticipated timeline for entering into a binding and enforceable agreement with a specific beneficiary in the community. For these reasons, the applicant's response does not describe an enforceable agreement that will benefit a specific member of the community, but rather an intention to fund a community grants program that may, in the future, create enforceable agreements with community benefits. Intending to enter into future binding agreements with community members does not meet the requirements of Public Resources Code section 25545.10(a). The CEC staff requests that the applicant docket this additional, required information.

Requirements Under Public Resources Code section 25545.10(b).

Public Resources Code section 25545.10(b) sets forth supplemental terms that may be included in the benefits agreement. Providing one of these optional additional features is not an alternative method to satisfy the requirements of subdivision (a). It states, "The topics and specific terms in the community benefits agreement *may also include*, ...funding for or providing specific community improvements... and annual contributions to a nonprofit or community-based organization that awards grants to organizations delivering community-based services and amenities." (*Italics added*; Pub. Resources Code, § 25545.10, subd. (b).) Contributing to a grant-awarding entity does not in itself satisfy subdivision (a). Further, in its docketed response the applicant did not identify the foundation that may be tasked with distributing future grants. If such an entity will be included in the terms of the agreement, the CEC staff requests that the applicant docket this information.

Requirements Under Title 20, California Code of Regulations, sections 1877(g) and 1878(c).

The applicant's response amounts to a plan to reach an agreement with a funding institution that the applicant has not identified in the docket, to receive an undisclosed amount of money from the applicant, to award grants to unidentified future community projects. While the use of an intermediary institution to manage funds for community benefits could be a condition of such an agreement (Pub. Resources Code, § 25545.10, subd. (b)), the information provided by applicant does not constitute a plan or strategy with a timeline, to "benefit, a coalition of one or more community-based organizations...where there is *mutual benefit* to the parties of the agreement." (*Italics added*; Pub. Resources Code, § 25545.10, subd. (a).) Sufficient foundational information demonstrating applicant's ability to enter into one or more such agreements is required before the CEC can deem the application complete. Thereafter, applicant has 45 days (or more as set forth by the executive director) to supplement the record demonstrating that applicant has obtained "legally binding and enforceable agreement(s) *with, or that benefit*, a coalition of one or more community-based organizations." (*Italics added*; Title 20, California Code of Regulations, § 1877 subd. (g) and § 1878 subd. (c).)

Purpose of the Opt-in Provisions Related to Community Benefits Agreement(s)

The applicant's response also fails to meet the purpose of the Opt-in provisions governing community benefits agreements. Community benefits agreements allow for meaningful community involvement in the land development process. These agreements are intended to be negotiated by community groups and stakeholder organizations to address community needs and to deliver economic and social benefits. Community benefit groups represent the interests of residents who will be impacted by the proposed development. These agreements "ensure that measurable, local benefits will be given to a community... and are the direct result of substantial community

input.”¹ Applicant has not identified through the docket a community member or group who is likely to agree, within 45 days of data adequacy, to receive any held funds for the benefit of the community. This information is needed by CEC staff to ensure that members of the community have the opportunity to shape the project’s contributions to the community.

For these reasons the CEC staff finds that the application is deficient in information related to community benefits agreements. The CEC staff requests that the applicant docket the information outlined above, pursuant to Public Resources Code section 25545.10 and Title 20, California Code of Regulations, sections 1877(g) and 1878(c).

If you have any questions, please email Leonidas Payne, project manager, at leonidas.payne@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Knight", with a stylized flourish at the end.

Eric Knight
Manager, Siting and Environmental Branch

¹ U.S. Department of Energy. Guide to Advancing Opportunities for Community Benefits through Energy Project Development. Dated August 1, 2017. Available online at: <https://www.energy.gov/diversity/articles/community-benefit-agreement-cba-resource-guide>.