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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Fountain Wind Project Opt-In
Application for Certification

Docket No. 23-OPT-01

**COUNTY OF SHASTA
REVISED REQUEST FOR REIMBURSEMENT
PURSUANT TO PUBLIC RESOURCES CODE SECTION 25538**

Paul Hellman, Director
Department of Resource Management
County of Shasta
1855 Placer St., Suite 102
Redding, CA 96001
(530) 225-5114
phellman@co.shasta.ca.us

November 14, 2023

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Fountain Wind Project Opt-In
Application for Certification.

Docket No. 23-OPT-01

**COUNTY OF SHASTA
REVISED REQUEST FOR REIMBURSEMENT
PURSUANT TO PUBLIC RESOURCES CODE SECTION 25538**

The County of Shasta (“County”) submits this Revised Request for Reimbursement (“Revised Reimbursement Request”) for the costs associated with the actual and added costs of the County’s review of and comments on the opt-in application for certification filed by Fountain Wind LLC (“Applicant”) for the Fountain Wind Project (“Application” or “Project”).¹ The County has reviewed the *CEC Objection to Shasta County’s Request for Reimbursement and Itemized Budget*, dated August 25, 2023 (“Staff Objection”), met with Commission staff on September 8, 2023, and, in good faith, is re-filing its reimbursement request based on the limited feedback it has received from the Commission. The County also submits its Revised Reimbursement Request in light of the Application being deemed complete by the Commission’s Executive Director on October 31, 2023,² a Notice of Preparation issued on November 6, 2023, and the requirement for the County to review and comment on the Project at this stage of the proceeding. The County is providing supplemental information and analysis

¹ The County continues to reserve its rights in challenging the Commission’s AB 205 jurisdiction. See TN251628, *Shasta County CEC Cost Reimbursement Request* (Aug. 15, 2023); TN252439, *County of Shasta Standing Reservation of Rights* (Sept. 28, 2023).

² The County maintains that the true and correct date of the determination of application completion is October 31, 2023 based on the County’s comments filed in TN252889.

of its proposed budget and further refinement of its estimated time and costs in reviewing and commenting on the Project pursuant to its obligations and rights under AB 205.

The County notes that it has filed a detailed response to the Staff Objection setting forth why the objections are in conflict with state law and Commission regulations and precedent, and, are therefore, unlawful.³ The County submits this Revised Reimbursement Request in good faith, but under protest without waiving its rights to claim any of the costs that were unlawfully rejected in the Reimbursement Request or any arguments in its response to the Staff Objection.

The County respectfully requests Commission staff review the Revised Reimbursement Request and deem each of the proposed activities eligible or ineligible and provide specific reasoning for *each* activity or sub-activity deemed ineligible. The County further requests that all eligible activities with sufficient time and cost estimates be deemed complete, so the County, barring any objection from the Applicant, can begin the activity and not be further delayed in its review and comments. Those eligible yet incomplete activities, or sub-items within an activity, are requested to contain detailed reasons why the individual activity is incomplete and what supplemental information is being sought by Commission staff to deem the activity complete, similar to how Commission staff has addressed Application incompleteness through formal information requests filed in the docket and informal information requests in emails to the Applicant.

After further review of the County's rights to reimbursement under Public Resources Code section 25538, the County requests clarification whether the Commission's reimbursement procedure at 20 C.C.R. section 1715 even applies and if the Commission has arbitrarily omitted a reimbursement procedure for local governments in its emergency adoption of the Article 4.1

³ TN252654, *County of Shasta Response to CEC Staff Objection to Cost Reimbursement Request* (Oct. 19, 2023) ("County Response to Staff Objection").

Certification of Non-Fossil fueled Powerplant procedures on October 12, 2022. Although the Staff Objection cites to the section 1715 as the operating regulation for local government reimbursement, the County notes that 20 C.C.R. section 1701 states that Article 1 procedures apply to all notice of intent and application for certification proceedings. In prior Commission staff analysis of its “opt-in” regulations conducted in a Commission webinar held on September 22, 2022, staff indicated that Article 4.1 establishes a new certification scheme and that applications are exempt from other Chapter 5 regulations unless such regulations are expressly referenced and incorporated, such as sections 1208, 1208.1 and 1707. It also appears that the Commission did not follow all Article 1 notice and other procedural requirements and such notice procedures were not carried forward into Article 4.1. Therefore, it appears that the Commission may not have an express reimbursement provision for local governments as required by the Public Resources Code. In the absence of applicable agency procedure and out of an abundance of caution, in the event of further objections by Commission staff or the Applicant, the County reserves the right, without waiving any of its jurisdictional arguments, to participate in a dispute resolution process, where the full Commission resolves the dispute by written order, including a possible request for hearings and cross-examination.

I. Reimbursement Request Justification⁴

The Revised Reimbursement Request is set forth in detail below listing a description of the various activities the County has conducted or will conduct to incur costs, and is further summarized and attached hereto as Attachment A. All line items in the proposed budget represent a detailed estimate of activities, sub-activities and costs eligible for reimbursement under Public Resources Code section 25538 and applicable law. Such costs are reimbursable

⁴ For ease of reference, the County hereby incorporates by reference the Project Background and Legal Justification from its prior Reimbursement Request and the legal support from its County Response to Staff Objection.

because the Applicant has filed an opt-in application and has requested that the Commission exercise its purported authority under AB 205 in lieu of the County's discretionary authority and usurp the County's local control. The proposed budget is based on a reasonable estimate of time and resources necessary to perform tasks eligible for reimbursement, which includes cost estimates from staff, outside counsel and proposals by environmental and technical consultants.

II. Proposed Activities and Budget Items

A. Costs Incurred To-Date: Initial Review of Project and Project Application and Comments Submitted in the Docket Regarding AB 205 Application Requirements and Deficiencies

Initial review of the Application has been necessary for the County to make a preliminary determination regarding the scope of the County's review and comments under AB 205 by identifying and fully understanding the areas in the Application (*i.e.*, Project) that the County is required to comment on. The County is seeking reimbursement for its review of the Application filed by the Applicant prior to any Commission determination regarding completeness as well as comments by the County, if any, and meetings with Commission staff. This review includes time and costs for County administrative staff, the County Counsel's Office, and Outside Counsel, and includes the following activities:

- Initial review of the Application.
- Identify areas of review and comment under AB 205.
- Review and comment on Applicant docket submittals related to AB 205 Application requirements.
 - This includes review of the docketed application and the Applicant's submittals regarding Commission deficiency notices and data requests.
 - Also includes the County's comments on the community benefits agreement plan.
- Review Commission staff docket submittals related to AB 205 Application requirements.
 - This includes review of Commission staff deficiency notices and data requests.
- Review third party docket submittals related to AB 205 Application requirements.

- This includes review of comments regarding aerial firefighting and Tribal cultural resources impacts.

Review and comments directly relate to the Project location, general health and safety and welfare of the public, community benefits agreement and information specific to Shasta County community organizations as contemplated by Public Resources Code sections 25519(f) and 25545.10. The County's review and proposed costs does not include the County's review or comments regarding Commission jurisdiction under AB 205 or review or comments regarding the Reimbursement Request.

1. *Eligible costs incurred to-date through September 30, 2023*

- a. Resource Management (\$152/hour - Director) – \$12,160
- b. County Counsel's Office (\$227/hour – County Counsel; \$188/hour – Assistant County Counsel) – \$15,260
- c. Outside Counsel (\$350/hour - Partner; \$300/hour - Of Counsel; \$275/hour - Associate) – \$24,243

2. **Total cost for County eligible activity = \$51,663**

B. Review and Comments Regarding Net Positive Economic Benefit

AB 205 requires the Commission as a condition of certification to make a determination that there is a net positive economic benefit. The County proposes to review the documents submitted by the Applicant on this issue and prepare an analysis of whether there is a net positive economic benefit to Shasta County. The County will retain an economic consultant to conduct the analysis. The County will also solicit the assistance of the Shasta County Treasurer-Tax Collector-Public Administrator and the Shasta County Assessor-Recorder to verify the county specific numbers put forward by the Applicant. The analysis will focus on property taxes; public funding; wildfire and other environmental costs; the impact on the orderly development of property within the County; and the preservation of property values, the tax base, and other County revenue sources, including funding for public health and safety services and associated

wildfire risks and costs. The County will also determine whether the Project is consistent with the objectives, policies, general land uses, and programs specified in the County’s general plan. Moreover, the County will also evaluate whether the Project would pose a nuisance to surrounding property owners and whether and to what extent the Project will create a demand for public services to the County Fire Department and Sheriff and analyze whether such public services are consistent with the County’s tax and spending constraints. The County will prepare and present relevant information to the Commission on these issues. At the September 8, 2023 meeting between the County and Commission staff, staff and counsel indicated that the broader activity is reimbursable. In addition, and although this activity has not been expressly requested by Commission staff, the Staff Objection cites this activity as one requested for comment.⁵ Review and comment is contemplated by Public Resources Code sections 25519(f) and 25545.9.

1. *Net Economic Impact Analysis of the Fountain Wind Project*

a. A detailed proposal was provided by an economic consultant in August 2023, which firm is aware of the AB 205 requirements and the findings needed to be made by the Commission – \$94,000

b. *Internal County review*

i. Shasta County Treasurer-Tax Collector-Public Administrator and Shasta County Assessor-Recorder, (\$152/hour) – \$4,560

The Treasurer-Tax Collector-Public Administrator and Assessor-Recorder are the elected officials that oversees all property assessment and tax issues within the county. The Treasurer-Tax Collector-Public Administrator and Assessor-Recorder would support the economic impact analysis with data support and provide any further comment on the economic benefits to the County.

2. *Preparation and submission of Shasta County Ordinance SCC 2023-01 administrative record and County comments – \$7,812*

⁵ “Additionally, Shasta County has not provided information related to the Opt-in specific provisions including a finding of net positive economic benefit to the local government required under Public Resources Code section 25549.5.” Staff Objection at 4.

- a. Ordinance SCC 2023-01 prohibits large wind energy systems in the unincorporated area. It contains findings regarding the economic impacts of potential wildfire hazards caused or exacerbated by the Project. A copy of the ordinance has been provided to the Commission by the County and the Applicant. The County will submit the administrative record regarding the Ordinance's adoption into the Fountain Wind Project docket so Commission staff can further evaluate the Project's economic benefits. A detailed proposal for submitting the administrative record and comments by the County has been provided to the County by outside counsel.

3. Total Cost for County Eligible Activity = \$106,372

C. Supplemental Review and Comments Regarding Community Benefits Plan and Agreement(s)

AB 205 requires the Applicant to enter into a community benefits agreement with certain qualifying community-based organizations located within Shasta County. The Applicant has submitted different plans to the Commission including an initial plan for funding distribution to various organizations within the County to a new plan to distribute \$3,000,000 to the Community Foundation of the North State. County has reviewed and commented on the Applicant's community benefits plan and is requesting those costs in Section A, above. The Applicant has stated in its docket submissions that it is continuing to negotiate a plan and that an agreement has not yet been executed. Therefore, the County anticipates additional review and comment on this requirement, including, but not limited to, Applicant and Commission staff submittals on its community benefits plan and any proposed agreements. The Applicant has not submitted an adequate community benefits plan, a finally executed agreement, and negotiations with the Foundation may have been terminated. Therefore, more review and comment will be required. The proposed plan is to purportedly benefit three unincorporated area communities within the County, and therefore, the County's review is required as its elected representatives speak on behalf of and represent that constituency. Review and comment is contemplated by Public Resources Code sections 25519(f) and 25545.10. This requirement is subject to continued

negotiations between the Applicant and a community organization, whether the plan and agreement meet the requirements of AB 205, and Commission staff review and comments. Therefore, the County requests approval of a line-item budget for this activity and will submit invoices accordingly.

1. *Review and Comment on Supplemental Information regarding Community Benefits Plan and Agreement(s)*

a. County staff and legal counsel (Director of Resource Management, \$152/hour; Assistant County Counsel, \$188/hour; Outside Counsel - Partner, \$350/hour) – \$10,000

i. The \$10,000 estimate is approximately 40 hours of work divided by a blended rate of \$230/hour using the three rates listed above.

2. **Total Cost for County Eligible Activity = \$10,000**

C. Review and Comments on County Environmental Issues in the Draft and Final Environmental Impact Reports; the Design, Construction, and Operation of the Project; and Whether the Project is Required for the Public Convenience and Necessity

The County is seeking reimbursement for its review and comments on the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report and any staff assessments. The major issues of analysis are wildfire impacts, biological impacts, tribal cultural resource impacts, location, land use designation, alternatives to the Project site and facility, and whether the Project is required for the public convenience and necessity. This includes review and comment on the notice of preparation, public informational meeting, public workshops, public scoping meeting, notice of availability, staff assessment and draft and final environmental impact reports, consideration of final Commission certification, and other meetings, and the County's participation in the meetings thereof. All of the environmental issues of concern are specific to Shasta County and the

Project's impacts on the county and unincorporated area. Review and comment is contemplated by Public Resources Code sections 25519(f), 25525 and 25454.7.2.

In accordance with the express language in Public Resources Code section 25519(f), and as part of its environmental review, the County will review and submit comments on the design of the facility and the design, construction and operation of the proposed site and related facility. The County will evaluate the project design, construction and operation of the Project, including site and interconnection issues and operational impacts on the immediate project area. Review and comment is contemplated by Public Resources Code sections 25519(f) and 25525.

The County is also required to review and comment on whether the Project is consistent with the purposes of the land use district in which the Project is proposed to be constructed. Shasta County Ordinance SCC 2023-01 prohibits large wind energy systems in the unincorporated area. A copy of the Ordinance has already been provided to the Commission by the County and the Applicant. For this activity, the County proposes to review and comment on (1) the Project location and current land use designation and prohibition, (2) alternatives to the Project site and facility, (3) the public convenience and necessity of the Project, and (5) any proposed override by the Commission of the County's land use and other authority. The County review and comment is contemplated by Public Resources Code sections 25519(f), 25525, 25527 and 25454.7.2.

1. *Review and comment on CEQA – \$124,705*

- a. Biological resources consultant – \$57,500
- b. Cultural resources consultant – \$7,935
- c. Tribal cultural resources consultant – \$25,000
- d. Wildland fire assessment consultants – \$34,270
- e. Resource Management (100 hours, \$152/hour – Director; 100 hours, \$140/hour – Planning Division Manager) - \$29,200

- f. County Counsel’s Office (20 hours, \$227/hour – County Counsel; 80 hours, \$188/hour – Assistant County Counsel) – \$19,580
 - g. Outside Counsel (\$300/hour – Of Counsel) - \$49,800
2. *Design, construction and operation of the Project* (\$275/hour; 46 hours) – \$12,650
 3. *Public Convenience and necessity* - \$55,540⁶
 - a. Location and land use designation (Director of Resource Management, \$152/hour) – \$1,520
 - a. Alternatives technical analysis (121 hours, \$275/hour) – \$33,350⁷
 - b. Public convenience and necessity and proposed LORS override (Assistant County Counsel, 10 hours, \$188/hour; Director of Resource Management, 20 hours, \$152/hour; Outside Counsel - Partner, 45 hours, \$350/hour) – \$20,670
 4. **Total costs for County eligible activities = \$291,475**

D. Development Impact (Permit) Fees

The County is authorized to seek reimbursement of “permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for a powerplant or transmission line application in the absence of Commission jurisdiction.”⁸ The proposed 5,460-square-foot operations and maintenance building is subject to Shasta County public facility impact fees applicable to industrial development pursuant to Ordinance No. 665, attached hereto. In the Staff Objection, it was intimated that these fees were reimbursable but the entire Reimbursement Request was objected to and directed to be withdrawn or re-submitted. Therefore, the County

⁶ The County would normally include public convenience and necessity as a separate eligible activity but has included it as a sub-activity in the environmental review because the Commission has included this issue in its Notice of Preparation.

⁷ The estimated amount for this sub-activity is set forth in the attached SHN proposal under the “energy evaluation.”

⁸ 20 CCR § 1715(a)(1)(A).

is uncertain if the Commission has or will deem the County's permit fees eligible or complete. Reimbursement for permit fees is contemplated by Public Resources Code section 25538.

1. Development Impact Fees

- a. Operations and Maintenance Building – 5,460 sq. ft.
 - i. Public protection, \$202.28/1,000 sf – \$1,104
 - ii. Sheriff, \$96.45/1,000 sf – \$527
 - iii. General government, \$143.32/1,000 sf – \$783
 - iv. Fire protection, \$517.07/1,000 sf – \$2,823
 - v. Traffic, \$1,567.25/1,000 sf – \$8,557

2. Total costs for County eligible activity = \$13,794

CONTACT

Please direct all questions and communications regarding this Revised Reimbursement

Request to:


Paul Hellman, Director
Department of Resource Management
County of Shasta
1855 Placer St., Suite 102
Redding, CA 96001
(530) 225-5114
phellman@co.shasta.ca.us

CONCLUSION

For the reasons set forth herein, the County requests that the Commission deem this Revised Reimbursement Request complete. The County appreciates the Commission's attention to this request.

Dated: November 14, 2023

Respectfully submitted,

By: 
Paul Hellman, Director
Department of Resource Management
County of Shasta

ATTACHMENT A
COUNTY BUDGET SUMMARY

Costs Incurred To-Date

Resource Management	\$ 12,160
County Counsel	\$ 15,260
Outside Counsel	<u>\$ 24,243</u>
Subtotal:	\$ 51,663

Net Positive Economic Benefit

Economic Consultant Review	
1. Net Economic Impact Analysis	\$ 94,000
Treasurer-Tax Collector-Public Administrator	\$ 4,560
Ordinance SCC 2023-01 Administrative Record	<u>\$ 7,812</u>
Subtotal:	\$106,372

Community Benefits Plan & Agreement(s)

Resource Management, County Counsel, Outside Counsel	<u>\$ 10,000</u>
Subtotal:	\$ 10,000

Design, Construction & Operation/Public Convenience & Necessity (PC&N)/LORS Override

Energy Review	
1. Design, Construction & Operation	\$ 12,650
2. Review of Project Alternatives	\$ 33,350
Land Use - Resource Management (RM)	\$ 1,520
PC&N/LORS Override – RM, County Counsel, Outside Counsel	<u>\$ 20,670</u>
Subtotal:	\$ 68,190

CEQA Review & Comment

Resource Management	\$ 29,200
County Counsel	\$ 19,580
Outside Counsel	\$ 49,800
Environmental Consultant Review	
1. Wildland Fire	\$ 34,270
2. Biological Resources	\$ 57,500
3. Cultural Resources	\$ 7,935
4. Tribal Cultural Resources	<u>\$ 25,000</u>
Subtotal:	\$223,285

Development Impact Fees

Public Protection	\$ 1,104
Sheriff	\$ 527
General Government	\$ 783
Fire Protection	\$ 2,823
Traffic	<u>\$ 8,557</u>
Subtotal:	\$ 13,794

TOTAL: \$473,304

ATTACHMENT B
DETAILED COUNTY BUDGET

Costs Incurred To-Date

Department of Resource Management			
Director	80 hrs.	\$152/hr.	\$ 12,160
County Counsel's Office			
County Counsel	9.25 hrs.	\$227/hr.	\$ 2,100
Assistant County Counsel	70 hrs.	\$188/hr.	\$ 13,160
Outside Counsel			
Partner	51.6 hrs.	\$350/hr.	\$ 18,060
Of Counsel	17.4 hrs.	\$300/hr.	\$ 5,220
Associate	3.5 hrs.	\$275/hr.	\$ 963
Subtotal:			\$ 51,663

Net Positive Economic Benefit

Economic Consultant Review			
Net Economic Impact Analysis			\$ 94,000
Treasurer-Tax Collector-Public Administrator's (TTCPA) Office			
TTCPA	20 hrs.	\$152/hr.	\$ 3,040
Assessor-Recorder's Office			
Assessor-Recorder	10 hrs.	\$152/hr.	\$ 1,520
Shasta County Ordinance SCC 2023-01 Administrative Record			
Outside Counsel			\$ 7,812
Subtotal:			\$106,372

Community Benefits Plan and Agreement(s)

Department of Resource Management			
Director		\$152/hr.	
County Counsel's Office			
Assistant County Counsel		\$188/hr.	
Outside Counsel			
Partner		\$350/hr.	
Estimate of approximately 40 hours at a blended rate of \$230/hr. = \$10,000			
Subtotal:			\$ 10,000

Design, Construction and Operation/Public Convenience and Necessity/LORS Override

Department of Resource Management			
Director	30 hrs.	\$152/hr.	\$ 4,560
County Counsel's Office			
Assistant County Counsel	10 hrs.	\$188/hr.	\$ 1,880
Outside Counsel			
Partner	45 hrs.	\$350/hr.	\$ 15,750
Energy Consultant			
Principal	167.3 hrs.	\$275/hr.	\$ 46,000
Subtotal:			\$ 68,190

CEQA Review and Comment

Department of Resource Management			
Director	100 hrs.	\$152/hr.	\$ 15,200
Planning Division Manager	100 hrs.	\$140/hr.	\$ 14,000
County Counsel's Office			
County Counsel	20 hrs.	\$227/hr.	\$ 4,540
Assistant County Counsel	80 hrs.	\$188/hr.	\$ 15,040
Outside Counsel			
Of Counsel	166 hrs.	\$300/hr.	\$ 49,800
Environmental Consultant Review			
Wildland Fire			\$ 34,270
Biological Resources			\$ 57,500
Cultural Resources			\$ 7,935
Tribal Cultural Resources			\$ 25,000
Subtotal:			\$223,285

Development Impact Fees

Public Protection			
O&M Building	5,460 sf	\$202.28/1,000 sf	\$ 1,104
Sheriff			
O&M Building	5,460 sf	\$96.45/1,000 sf	\$ 527
General Government			
O&M Building	5,460 sf	\$143.32/1,000 sf	\$ 783
Fire Protection			
O&M Building	5,460 sf	\$517.07/1,000 sf	\$ 2,823
Traffic			
O&M Building	5,460 sf	\$1,567.25/1,000 sf	\$ 8,557
Subtotal:			\$ 13,794

County Budget Subtotals and Total

Costs Incurred To-Date	\$ 46,643
Net Positive Economic Benefit	\$106,372
Community Benefits Plan and Agreement(s)	\$ 10,000
Design, Construction & Operation/PC&N/LORS Override	\$ 68,190
CEQA Review and Comment	\$223,285
Development Impact Fees	\$ 13,794
Total:	\$473,304