

DOCKETED	
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Project Title:	Fountain Wind Project
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Document Title:	County of Shasta - Objection to Item 3h Emergency Rulemaking Amending the Opt In Regulations to Add Reimbursement Procedures
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Docket Number: 23-OPT-01

**County of Shasta Objection to Item 3h Emergency Rulemaking
Amending the Opt In Regulations to Add Reimbursement
Procedures**

Additional submitted attachment is included below.



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August 13, 2024

VIA E-MAIL

David Hochschild
Chair
California Energy Commission
715 P Street
Sacramento, CA 95814

Re: County of Shasta Objection to Item 3h: Emergency Rulemaking
Amending the Opt-In Regulations to Add Reimbursement Procedures for
Local Agencies (Docket 24-OIR-02)

Dear Chair Hochschild:

Best Best & Krieger LLP represents the County of Shasta (“County”) in the Fountain Wind Project proceeding (Docket 23-OPT-01) and in the above-referenced emergency rulemaking amending the opt-in regulations to add reimbursement procedures for local agencies. This item is proposed on the August 14, 2024 Consent Calendar as Item 3.h. The County is hereby objecting to the proposed regulations on the grounds that they are not an emergency regulation, the County has sought clarification on the application of 20 C.C.R. § 1715 and dispute resolution from the Commission on its reimbursement issue that remain unaddressed, the proposed regulations could materially and prejudicially alter rights the County has relied upon in submitting its current reimbursement request, and the County has been not been given a notice of the regulations or opportunity to comment despite meeting with Commission staff just **one day** prior to the regulations being posted in the docket or any other courtesy notice after that time. We respectfully request that Item 3.h be pulled and sent back to Commission staff for further consideration and discussion with the County on the regulation’s impact on the County’s reimbursement request, and that any regulation be properly noticed as a non-emergency item in compliance with the law.¹

On August 15, 2023, the County filed a cost reimbursement request for its review and comments on the Fountain Wind Project proposing a budget of approximately \$500,000 in reimbursable costs.² Commission staff objected to the budget request in its entirety despite an

¹ The proposed regulation would eliminate the reimbursement of attorney costs despite that certain opt-in findings eligible for review and comment are legal in nature, unlawfully limit the scope of review by stating that reimbursement is limited to direct staff requests, among other things. The County files these comments on the agenda item and further reserves comments that it will with the Office of Administrative Law.

² See TN251628, *Shasta County CEC Cost Reimbursement Request* at 3-5 (Aug. 15, 2023); TN252654, *County of Shasta Response to Staff Objection to County’s Request for Reimbursement and Itemized Budget* at 8-19 (Oct. 19, 2023); *County of Shasta Revised Reimbursement Request* (Nov. 14, 2023); and TN154168, *County of Shasta’s*

earlier meeting in July 2023 with the County indicating that the County was entitled to reimbursement. On October 19, 2023, the County responded to the objection and outlined the Commission's prior precedent on the issue of local agency reimbursement, the lack of notice and clarification to the County, and the legal issues involving reimbursement. *At that time, the County pointed out that while Commission staff cited to 20 C.C.R. § 1715 as the governing regulation, it appeared that section 1715 was not pulled through into the Article 4.1 opt-in regulations and the County requested clarification on whether it applied.* The County did not receive a response, and in good faith, re-filed its budget request on November 14, 2023 providing more detail on the proposed activities and budget for its review. In December 2023, Fountain Wind LLC, the project application, objected summarily to the County's request. On January 26, 2024, the County filed a request for formal dispute resolution and written order per section 1715(e). As of this date, the request was not acted upon and no other clarification of section 1715 has been made.

In April 2024, assuming that the Commission was not going to act on the dispute resolution request, the undersigned contacted the Chief Counsel's office as to the status and was informed that the County should submit invoices per the approved budget. On July 30, 2024, the County met with the Chief Counsel's office requesting procedural details on how it was submitting its invoices and eligible activities and informing staff that its filing was imminent. *There was no discussion or other indication that emergency regulations would be posted to the emergency docket the following date – July 31 – or that Bagley-Keene notice would be given on August 2 or any other indication that a new regulation was being adopted even though the County had been actively communicating with the Commission and was in a meeting to discuss this very issue.* As an active stakeholder on this issue and a local government directly affected by the proposed change in law, the County is alarmed that it would not have been informed of the regulation or be given an opportunity to comment more formally on it.

The proposed regulation could materially alter local agency reimbursement procedures, which are state mandates, and unduly prejudice the County's current budget request and forthcoming invoice submittal while the issue is pending before the agency, particularly when the County on multiple times sought formal clarification of the procedures. The proposed regulation would also significantly curtail the ability for local agencies to be reimbursed by excluding eligible activities that are not expressly at the direction of Commission staff and certain costs like attorney's fees, which are not excluded in Commission's staff's November 23, 2023 budget approval letter or in section 1715 itself. In fact, there is no explanation why the proposed regulation differs from section 1715 at all and why section 1715 is not simply incorporated into Article 4.1, potentially creating an unlawfully discriminatory reimbursement procedure for local governments depending on whether they are commenting on a thermal proceeding or an opt-in proceeding. The proposed regulation, if adopted, could hinder local government review and comments on an opt-in application contrary to AB 205 and applicable law and even an opinion of the California Attorney General on the rights of cities and counties to review CEC applications.

Request for Formal Dispute Resolution and Written Order per 20 CCR sec 1715(e) at 5-7 (Jan. 26, 2024). The County summarizes its review rights herein and incorporates this analysis by reference.

David Hochschild

August 13, 2024

Page 3

In addition, there is no basis for adopting Item 3h on an emergency basis. Although Public Resources Code section 25545.12 states that regulations adopted to implement AB 205 are to be done on an emergency basis, those regulations were adopted by the Commission in that fashion in November 2022. This issue has been pending before the Commission for approximately one year where there are now four opt-in projects before the Commission and where local governments are reviewing and commenting and have a significant obligation to do so as mandated by the California Legislature as a recognized state mandate. ***There is simply no legal basis or policy reason why a change in regulation on how local governments are reimbursed is necessary for the “immediate preservation of the public peace, health, safety and general welfare.”*** Both CSAC and the League of California Cities opposed AB 205 and the process by which it was adopted through a budget trailer bill. Certainly, local governments if given the time to review this regulation would comment on its procedural requirements.

Lastly, this item should not be placed on the Commission’s consent calendar. It is being adopted on an emergency basis and will affect every local government with a renewable energy project proposed in its jurisdiction where an applicant has lawfully opted-in to Commission jurisdiction.

We request that Item 3h be pulled from the agenda.

Thank you for your consideration.

Respectfully,



Ryan M. F. Baron
of BEST BEST & KRIEGER LLP

RMB:pa

cc: CEC Commissioners
Elizabeth Huber, CEC
Chief Counsel’s Office