

DOCKETED	
Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	259533
Document Title:	County of Shasta Comments on Shasta College Foundation CBA
Description:	County of Shasta Comments on Shasta College Foundation Community Benefits Agreement
Filer:	Kari Cameron
Organization:	County of Shasta
Submitter Role:	Public Agency
Submission Date:	10/14/2024 2:22:56 PM
Docketed Date:	10/14/2024

Office of the County Counsel

County of Shasta

JOSEPH LARMOUR, COUNTY COUNSEL

ASSISTANT

Trisha C. Weber

DEPUTIES

Alan B. Cox
Autumn A. Sepulveda
Michael D. Brenn
Gretchen M. Stuhr
Ashley J. Jones
Ryan C. Hurley
Cedar E. Vaughan

1450 Court Street, Suite 332
Redding, California 96001-1675
(530) 225-5711
(530) 225-5817 FAX
Relay Service, dial 711
countycounsel@shastacounty.gov

October 14, 2024

VIA E-FILING DOCKET 23-OPT-01

VIA E-MAIL

Leonidas Payne
Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814

**Re: Docket 23-OPT-01: County of Shasta AB 205 Review and Comments
re Fountain Wind Project – Shasta College Foundation Community
Benefit Agreement Analysis**

Dear Mr. Payne:

In accordance with the County of Shasta’s (“County”) obligation under Assembly Bill (“AB”) 205 to review and comment on the Fountain Wind Project (“Project”) application (“Application”), the County hereby submits the comments below. The comments contained herein address Application issues related to a purported community benefits agreement between Fountain Wind, LLC (the “Applicant” or “Fountain Wind”) and The Shasta College Foundation (“Foundation”), dated May 17, 2024, and filed in the Project docket in support of the Application as *FWP_CBA#2_Submittal_20240520* on May 20, 2024 (“CBA” or “Agreement”). These comments are submitted within the scope of the County’s cost reimbursement budgets, dated August 15 and November 14, 2023, and approved by California Energy Commission (“Commission”) staff on November 29, 2023.

The County submits these comments as “the local government having land use and related jurisdiction in the areas of the proposed [Project] site and related facility,”[1] as contemplated by

AB 205, and as the local agency that has discretionary authority over the Project and previously denied a use permit for it in 2021. The County submits these comments on Application areas within the scope of its subject matter expertise to provide further information to the Commission in assisting it with its review of the Application.

The following comments are a summary of the County's analysis of the CBA between the Applicant and Shasta College Foundation. They are not exhaustive. The County intends to conduct further follow-up with the Pit River Tribe (the "Tribe") and may provide additional comments on the CBA as more information becomes available.

The following is a summary of relevant summary information concerning the CBA:

As a procedural matter, the CBA does not comply with state law or Commission regulations. Public Resources Code section 25545.10 states that "the commission shall not certify a site or related facility . . . 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 . . ." In implementing this requirement, the Commission has adopted 20 C.C.R. section 1877(g) that the opt-in application "shall include the applicant's plan or strategy, including a timeline for execution, to obtain legally binding and enforceable agreement(s) with, or that benefit, a coalition of one or more community-based organizations prior to project certification, consistent with Public Resources Code section 25545.10." In reviewing the opt-in application, and upon deeming the application complete, the applicant is required to "provide information updating or supplementing the information in the application to support the findings required by Public Resource Code sections 25545.9 and 25545.10" *no later than 45 days after the application is deemed complete*. As the Commission has already recognized, 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."¹

Here, the Foundation was not identified in the Applicant's community benefits plan that was submitted as part of the Application in January 2023. And, in response to Commission data requests submitted to the Applicant in August and September 2023, the Applicant did not identify the Foundation in its supplement to its community benefits plan, but rather identified negotiations with the Community Foundation of the North State. Lastly, the Agreement with the Foundation was submitted on May 20, 2024, 16 months after the Application was filed and five months after the deadline for the Applicant to supplement its Application. Therefore, the CBA does not meet the opt-in application requirements for community benefits agreements and cannot be considered by the Commission.

More importantly, the CBA was submitted without knowledge of the Shasta County community, including, without limitation, the County or the Tribe, and based on information and belief executed under false pretenses.

¹ TN252320, *Community Benefits Data Request for the Fountain Wind Project* (Sept. 20, 2023).

Unlike previous CBAs prepared by the applicant Fountain Wind , the CBA at issue here included a confidentiality provision that prevents both parties from making any statements concerning the Agreement. The County believes this is no accident. The lack of support in the community for the Applicant’s project, including opposition by the Tribe, was evidenced and documented without question when the Project was presented to the Shasta County Planning Commission and then the Shasta County Board of Supervisors in 2021. The evidence of general community opposition is already before the Commission, but of note here is that neither the Foundation nor Shasta College (“College”) contacted the County or the Tribe to discuss the Agreement. The College and the Foundation are traditional community partners with both the County and the Tribe.

Surprised by the CBA, the County and the Tribe separately approached the College and Foundation to better understand their participation in the CBA. In these meetings, including a meeting with the County on August 13, 2024, both the College and the Foundation indicated surprise when they discovered that the CBA offered to the Foundation had previously been offered to the Tribe and the Tribe had rejected it because of the catastrophic damage to its ancestral lands caused by the proposed project that was not mitigatable by any amount of financial reimbursement. The Applicant apparently did not disclose this fact to the Foundation and, instead, included a confidentiality clause in the CBA. Furthermore, the Applicant seems to have failed to disclose to the College or the Foundation the actual importance and relevance of the CBA as a requirement for the Commission’s approval of the Project under AB 205 and Public Resources Code section 25545.10 or the controversy surrounding the Project or that the Applicant has been unable to enter into other community benefits agreements due to this controversy, such as the fallacious community benefits plan that was proffered in the Application. The Applicant also did not disclose its failed negotiations with the Community Foundation of the North State to the Shasta College Foundation, and such details were not disclosed by the Applicant to the Commission despite that agreement not being provided in the Application, but instead in a supplement to the Application on October 12, 2023-- some nine months after the Application was filed.²

This latest effort by Applicant to try to divide and conquer the community, and apparently mislead the College and Foundation, is just symptomatic of previous inaccurate representations made by Applicant to the Commission in connection with previous CBAs. Those previous efforts have already been noted to the Commission in previous comments submitted to the Commission.³

² TN 252585, *FWP Community Benefits DRAFT Fund Agreement* (Oct. 12, 2023); TN252586 *FWP Response to Community Benefits Data Request* (Oct 12, 2023).

³ TN252457, *County of Shasta Objection to Applicant Confidentiality Request re Community Benefits Agreement Data Response* (Sept. 29, 2023) (objecting to unlawful Public Records Act exemptions asserted by the Applicant to try and mask the identity of and negotiations with a new community-based organization, the Community Foundation of the North State); TN252625, *Pit River Tribe Comments – Objection to Fountain Wind Project* (Oct. 18, 2023) (noting the Tribe “**vehemently object[ing] to the misleading claims**” of the Applicant’s community benefits plan with the Community Foundation of the North State “suggesting that the . . . Tribe has consented to receive financial benefits from the collaboration” and the “**misrepresentations**” and “**serious ethical and transparency concerns**” of **Connect Gen, LLC** (i.e., Fountain Wind, LLC); TN252912, *Letter to CEC Chair from Supervisor Rickert* (Nov. 3, 2023) (commenting that there was no indication that Connect Gen was negotiating, or was no longer negotiating a community benefits agreement with the Community Foundation of the North State); TN253797, *County of Shasta AB 205 Review and Comments on Fountain Wind Project Community Benefits Agreement Update and Submittal*

The CBA provision that prevents both parties from making public statements or opining about the CBA without permission of the other (See Section 2E, pp.3-4 of CBA) can have no other purpose than the inevitable and designed effect to obscure the Agreement from the community and preclude any public debate about the extent of the negative effects of the Project would have on the Tribe's religious and cultural use of their ancestral land. In this context, the payment to the Foundation contemplated by the CBA is a mere pittance compared to the effect the Project will have on the Community. The fact that the Applicant offered a similar CBA to the Tribe and the Tribe rejected it is a strong indication of the Tribe's position as members of the community. The decision by the Community Foundation of the North State to refuse an offer of the same funds "promised" to the Tribe is notable. The fact that the Applicant apparently went to great lengths not to share this with subsequent parties to the proposed CBA demonstrates the Applicant's attitude towards the community.

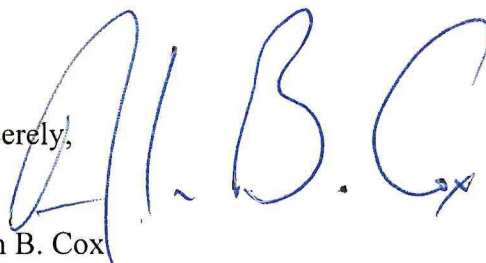
The Applicant's decision to surreptitiously engage the Foundation and the College without disclosing to them all the facts of the Project placed long time valuable community partners at odds with both the County and Tribe. The Foundation and the College are now placed in the unenviable position of providing support for the Project without being aware that the Tribe had turned down the CBA on principle because the effect this Project would have on its ancestral lands. Furthermore, participation by the College in the CBA seems patently inconsistent with the College's prior positions with regards to support to aboriginal communities in the defense of their cultural heritage and ancestral lands. ***Through its actions, the Applicant has created, and purposively exacerbates, a community rift that could take years to heal if the Foundation receives and uses money at the cost of the degradation of vital tribal resources and cultural interests.***

The County and Tribe are continuing discussions with the College and Foundation and will provide the Commission with further information on this matter as it becomes available. At this time, however, the County believes that this background is relevant to the Commission's consideration of the Project and its effects on the Shasta County community. Not only does the Agreement not satisfy the requirements of opt-in applications, but the Applicant's apparent failure to disclose information to the College and Foundation in order to secure a community benefits agreement continues to support the "serious ethical and transparency concerns" raised by the Tribe and further demonstrates the destructiveness of the Project. The Agreement appears to have been obtained under false pretenses and offers no benefit to the Foundation should it choose later to not accept the funding or if it decides to terminate the Agreement or if those community members that

(Final) (Jan. 4, 2024) (raising issues with ***the false community benefits plan*** filed with the Application and commenting that the Northeastern California Building & Construction Trades Council was not identified in the Application, was not a *bona fide* community-based organization under Public Resources Code section 25545.10 in that it was an entity formed for lobbying and administering political action committee funds, was not otherwise a labor union, and did not provide workforce development and training to Shasta County or as a purpose of its organization); and TN 253801, 20 CCR § 1231 – Request for Investigation into Fountain Wind, LLC Regarding Fountain Wind Project (Jan. 4, 2024 (requesting ***a formal investigation by the Commission of Fountain Wind, LLC*** for submitting a false community benefits plan as part of its Application, submitting misleading information regarding negotiations with the Community Foundation of the North State and representations regarding a purported financial arrangement with the Tribe, failing to comply with Commission regulations regarding third party data requests, and otherwise violating Commission regulations regarding attesting to applications under penalty of perjury to the truth and accuracy of the Application).

are purported recipients of the financial benefits choose not to avail themselves of the funding due to their concerns for the Project.

Sincerely,

A handwritten signature in blue ink that reads "A.B.C." with a stylized flourish at the end of the "C".

Alan B. Cox
Senior Deputy County Counsel

ABC/als

Attachments