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| Docket Number: | 24-OPT-02 |
| Project Title: | Compass Energy Storage Project |
| TN #: | 260800 |
| Document Title: | City of San Juan Capistrano Request for Reimbursement |
| Description: | City of San Juan Capistrano Request for Reimbursement re Compass Energy Storage Project |
| Filer: | Kari Cameron |
| Organization: | City of San Juan Capistrano |
| Submitter Role: | Public Agency |
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December 20, 2024

VIA EMAIL & CEC DOCKET 24-OPT-02

Renee Longman
Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814
STEPsiting@energy.ca.gov

Re: **City of San Juan Capistrano Request for Reimbursement
Pursuant to Public Resources Code Section 255538**

Dear Ms. Longman:

The City of San Juan Capistrano (“City”) submits this Request for Reimbursement (“Reimbursement Request”) for the costs associated with the actual and added costs of the City’s review of and comments on the opt-in application for certification filed by Compass Energy Storage, LLC (“Applicant”) for the Compass Energy Storage Project (“Application” or “Project”). The City submits its Reimbursement Request in light of the requirement for the City to review and comment on the Project at this stage of the proceeding, pursuant to its obligations and rights under AB 205.

The City respectfully requests Commission staff review the Reimbursement Request and deem each of the proposed activities eligible or ineligible, providing specific reasoning for *each* activity or sub-activity deemed ineligible. The City further requests that all eligible activities with sufficient time and cost estimates be deemed complete, so the City, barring any objection from the Applicant, can begin the activity and not be delayed in its review and comments.

I. REIMBURSEMENT REQUEST JUSTIFICATION

Assembly Bill (“AB”) 205 governs the City’s review and comments on the Application and its cost reimbursement as follows:

“The bill would require the Energy Commission to forward the application to a local government having land use and related jurisdiction in the areas of the

proposed site and related facility and would require the local agencies to review the application and submit comments on the application, as provided, thereby imposing a state-mandated local program. The bill would authorize local agencies to request a fee from the Energy Commission to reimburse the local agency for the actual and added costs of the review by the local agency.”

In implementing the California Legislature’s mandate that the City review, submit comments on, and receive reimbursement for its review and comments on the Application, Public Resources Code section 25545.8 expressly requires the Commission to follow certain other statutes governing local government review and reimbursement. Public Resources Code section 25519(f) requires the Commission to forward the application to the local government agency having jurisdiction over the site and facility and requires the agency to “review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.”¹ Section 25519 also requires the Commission to transmit a copy of the application “to any governmental agency . . . which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each agency.”² Furthermore, Public Resources Code section 25538 states that upon receiving the Commission’s request for review under section 25519(f), the local agency may request a fee from the Commission to reimburse the agency for the costs of its review and the Commission shall reimburse the agency for those costs. AB 205, therefore, imposes a state-mandated program, and under applicable legal authority, the City is entitled to submit and receive reimbursement for the costs of its review and participation in the Project certification proceeding.

In addition, the Commission has adopted regulations governing local agency reimbursement in Commission proceedings through the California Code of Regulations, Title 20, sections 1715 and 1878.1.³ Section 1878.1(a)(1) states that “local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency.” Under Section 1878.1(a)(1), these costs include “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 an application for a facility as defined in Public Resources Code section 25545(b) in the absence of commission jurisdiction,”⁴ as well as “the added costs of services performed directly in response to commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged.”⁵ Section 1878.1(c)(1) states that for an agency to be eligible for reimbursement, a local agency “must receive a request for review from the Executive Director or delegee.” However, Docket No. 24-OPT-02 was opened on March 29, 2024, nearly 6 months before the effective date of section 1878.1, and therefore the City

¹ Pub. Res. Code § 25519(f).

² Pub. Res. Code § 25519(k).

³ Filed 9-23-2024 as an emergency; operative 9/23/2024 (Register 2024, No. 39). Authority cited: Sections 25213, 25218(e) and 25545.12, Public Resources Code. Reference: Sections 25519(f), 25538, 25545, 25545.1 and 25545.8, Public Resources Code.

⁴ Cal. Code Regs. Tit. 20, § 1878.1(a)(1)(A).

⁵ Cal. Code Regs. Tit. 20, § 1878.1(a)(1)(B).

did not receive a request for review from the Executive Director when the docket was opened as required under Section 1878.1⁶. Section 1878.1(c)(1)(5) states that “if a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.” The City submits this Reimbursement Request because it has not yet received a commission request for review of this Project.

The Reimbursement Request is set forth in detail below listing a description of the reasonable activities the City 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 Section 1878.1, Public Resources Code section 25538, and applicable law. Such costs are reimbursable 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 City’s discretionary authority and usurp the City’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 and proposals by environmental and technical consultants. The City may apply for augmentations or other changes to its budget requests under Section 1878.1(c)(6)⁷.

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 City to make a preliminary determination regarding the scope of the City’s review and comments under AB 205 by identifying and fully understanding the areas in the Application (*i.e.*, Project) that the City is required to comment on. The City 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 City, if any, and meetings with Commission staff. This review includes time and costs for City administrative staff, the City 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.

⁶ Cal. Code Regs. Tit. 20, § 1878.1 incorporates by reference CA Pub Res Code § 25538 and CA Pub Res Code § 25506, which states “The commission *shall* request the appropriate local, regional, state, and federal agencies to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice, in relation to environmental quality, public health and safety, and other factors on which they may have expertise.”

⁷ Cal. Code Regs. Tit. 20, § 1878.1(c)(6) states “A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.”

- 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 City'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 firefighting impacts 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 City of San Juan Capistrano community organizations as contemplated by Public Resources Code sections 25519(f) and 25545.10.
 1. Eligible costs incurred by City of San Juan Capistrano staff.
 - a. City staff time incurred to-date through December 16, 2024 (82.5 hours x \$113.29/hour) – \$9,346.42
 - b. Estimated City staff time to be incurred over the next 12 months - \$20,392.20
 - c. Review costs estimated to be incurred by BBK for this matter - \$60,232
 2. Total cost for City eligible activity = \$89,970.62

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 City 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 the City of San Juan Capistrano. The City has received proposals and retained Andrew Chang and Co, Inc. to conduct the analysis. The City will also solicit the assistance of the City's Chief Financial Officer and the Orange County Assessor-Recorder to verify the City 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 City; and the preservation of property values, the tax base, and other City revenue sources, including funding for public health and safety services and associated wildfire risks and costs. The

City will also determine whether the Project is consistent with the objectives, policies, general land uses, and programs specified in the City's general plan. Moreover, the City 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 on local emergency response services and analyze whether such public services are consistent with the City's tax and spending constraints. The City will prepare and present relevant information to the Commission on these issues. Review and comment is contemplated by Section 1878.1 and by Public Resources Code sections 25519(f) and 25545.9.

1. Net Economic Impact Analysis of the Compass Energy Storage Project
 - a. A detailed proposal was provided by Andrew Chang and Co, Inc. in October 2024, which firm is aware of the AB 205 requirements and the findings needed to be made by the Commission – *\$114,000.00*
 - b. Internal City review
 - i. The City's Chief Financial Officer and County Assessor-Recorder, (estimated review time 30 hours)

The City's Chief Financial Officer and Assessor-Recorder are the elected officials that oversees all property assessment and tax issues within the City. The City's Chief Financial Officer and Assessor-Recorder would support the Andrew Chang Economics study with data support and provide any further comment on the economic benefits to the City.

2. Total Cost for City Eligible Activity = *\$114,000*

C. Supplemental Review and Comment 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 the City of San Juan Capistrano. The Applicant has not submitted an adequate community benefits plan or a finally executed agreement with the Commission, and more review and comment will be required. Review and comment is contemplated by Section 1878.1 and Public Resources Code sections 25519(f) and 25545.10.

D. Review and Comment on City 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 City 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 include wildfire impacts, storm water and 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 City's participation in the meetings thereof. All of the environmental issues of concern are specific to the City of San Juan Capistrano and the Project's impacts on the City. Review and comment is contemplated by Section 1878.1 and 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 City 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 City 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 Section 1878.1 and Public Resources Code sections 25519(f) and 25525.

The City 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. For this activity, the City 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 City's land use and other authority. The City review and comment is contemplated by Section 1878.1 and Public Resources Code sections 25519(f), 25525, 25527 and 25454.7.2.

1. Review and comment under CEQA – *\$160,000*
2. Wildfire assessment – *\$83,800*
3. Design, construction and operation of the Project; Public Convenience and necessity - *\$50,000*
4. Storm water impacts assessment - *\$39,385*
5. Total costs for City eligible activities = *\$317,800*

E. Development Impact (Permit) Fees

The City 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 Reimbursement for permit fees is contemplated by Section 1878.1 and Public Resources Code section 25538.

⁸ 20 CCR § 1715(a)(1)(A).

1. Development Impact Permit Fees = \$2,702,984.65.

III. CONCLUSION

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

Sincerely,

Paul M. Garcia

Paul M. Garcia
Principal Analyst
City of San Juan Capistrano

ATTACHMENT A
CITY BUDGET SUMMARY

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|----------------------------------------------------------------------|-----------------------|
| Costs incurred by City of San Juan Capistrano staff and Counsel | \$89,970.62 |
| Net Economic Impact Analysis | \$114,000.00 |
| Review and Comment under CEQA | \$160,000.00 |
| Wildfire Assessment | \$83,800.00 |
| Design, Construction and Operation; Public Convenience and Necessity | \$50,000.00 |
| Storm Water Assessment | \$39,385.00 |
| Development Impact Permit Fees | \$2,702,984.65 |
| TOTAL: | \$3,240,140.27 |