

DOCKETED	
Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	261574
Document Title:	FWP Objection to County Invoice Reimbursement #2
Description:	N/A
Filer:	Caitlin Barns
Organization:	Stantec Consulting Services, Inc.
Submitter Role:	Applicant Consultant
Submission Date:	2/6/2025 2:12:36 PM
Docketed Date:	2/6/2025

February 6, 2025

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814

Paul Hellman
Director of Resource Management
Shasta County
1855 Placer Street
Redding, California 96001

Re: Fountain Wind's Objections to Shasta County Invoice Reimbursement Request #2
(TN 261499; docketed January 31, 2025)

Dear Mr. Bohan and Mr. Hellman:

This firm represents the applicant Fountain Wind, LLC ("Fountain" or "Applicant"). We write to object to Shasta County's Invoice Reimbursement Request #2, docketed January 31, 2025 (TN 261499), and seeking \$110,968.30 (referred to herein as "Reimbursement Request #2"). This objection is filed pursuant to 20 CCR sections 1878.1(c)(4), (d)(3).

Reimbursement Request #2 follows the County's Reimbursement Request #1, docketed January 8, 2025 (TN 260946), which requested \$152,631.98 from the Applicant. With Reimbursement Request #2, the County now seeks reimbursement for approximately \$260,000 in costs it claims are eligible for reimbursement under AB 205 and its implementing regulations. However, like its first reimbursement request, Reimbursement Request #2 fails to provide any explanation for why these costs are eligible for reimbursement, and it fails to provide any support for the claimed fees and expenses, again attaching redacted invoices from its outside counsel as "proof" of eligible costs. Fountain therefore incorporates by reference and reasserts the objections stated in its January 16, 2025, letter objecting to County Reimbursement Request #1 (TN 261108), and requests that the Commission reject Reimbursement Request #2 in its entirety.

I. Reimbursement Request #2 Seeks Reimbursement for Ineligible Costs

As discussed in Fountain's January 16, 2025, letter, the scope of County activities eligible for reimbursement is narrow. To be reimbursable, the County's costs must either relate to permit and impact fees or fees for actions that perform a "service" that is "directly in response to Commission requests for review."

In its first reimbursement request, the County sought reimbursement for alleged fees and costs associated with eight broad categories. Reimbursement Request #2 seeks further reimbursement for purported activities associated with six of those eight categories, including:

- Category 2: Applicant docket submittals related to its application requirements;
- Category 4: Overall net positive economic benefit;
- Category 5: Community benefits plan and agreement(s);
- Category 6: Impacts to biological resources, habitat, species, cultural resources, tribal cultural resources, and wildfire;
- Category 7: Design, construction, and operation of the project, including architectural and aesthetics features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects;
- Category 8: Public convenience and necessity for the project.

However, as discussed in detail in Fountain's January 16 letter, Categories 4, 5, 6, and 8 are beyond the scope of Public Resources Code sections 25519(f) and 25538 and 20 CCR 1878.1, or previously were deemed ineligible by Commission staff. While the County may, in its discretion, comment on these topics, comments on these topics are not mandated and therefore the cost to undertake these comments is not reimbursable. Rather, County comments on these topics amount to advocacy positions regarding the merits of the Project, and costs associated with advocacy positions are not reimbursable. All costs associated with these categories should be denied.

While Fountain concedes that if the County actually provides specific comments on the application materials (Category 2), or comments on the design, construction, and operation of the project (Category 7), then it is due a reasonable "fee" for that service under section 25538 and 20 CCR section 1878.1. But, as explained in our January 16 letter, the Project's online docket includes only *four* County activities which potentially may qualify for reimbursement under the statute and regulations:

- November 1, 2023, Report of Conversation (TN 254899);
- January 24, 2024, Report of Conversation (TN 254432);
- January 25, 2024, Report of Conversation (TN 254837);
- February 20, 2024, Report of Conversation (TN 254875).

The Applicant is willing to pay actual costs related to these four eligible activities. However, the County still has not provided any invoices related to these phone conversations. Rather, the County continues to provide redacted invoices from the law firm of Best Best & Krieger, even though none of these conversations with CEC staff included the County's outside counsel.

Indeed, the fact that the County only has provided redacted invoices from its outside counsel underscores that these costs are not subject to reimbursement. AB 205 requires the County to provide a "service" to the Commission by providing comments on relevant portions of the project application. In exchange for that mandated service, the County may be entitled to reimbursement. Except for the four conversations Fountain has identified above, the County has pointed to no actual work product—and certainly no work product from outside counsel—that it has submitted to the Commission "directly in response to Commission requests." Fountain also continues to question why the County has required the significant use of outside counsel, as commenting on the design, aesthetics, highway access and other operational features of the Project does not require counsel. Commenting on these topics generally is not a job for lawyers, and the alleged privileged work product from County's outside counsel has not resulted in any appropriate comments on the application. Thus, no service has been provided which would allow for reimbursement.

Finally, the dates associated with the invoices support the conclusion that no service has been provided and that reimbursement should be rejected. The invoices state that they are for work conducted in August 2024 through November 2024, which are not related to the four conversations with Commission staff identified above. Further, none of the documents docketed by the County during that time provide relevant comments on the project application in response to a Commission request. Rather, the documents docketed during that time frame include the following:

- TN 260101: discretionary review activities conducted by the County regarding wildfire impacts, Project alternatives, Project visual simulations, and peer review of aquatic and plant surveys, and which advocate against Commission approval of the Project;
- TN 259533: discretionary comments containing the County's opinion on the Project's community benefits agreement;
- TN 259437: discretionary review activities conducted by the County regarding wildfire impacts, economic impacts, and water supply, and which advocate against Commission approval of the Project;
- TN 259336 and TN 258488: comments on the Commission's Emergency Rulemaking amending the Opt-In Regulations to add reimbursement procedures for local agencies, which is entirely unrelated to the Fountain Wind Project.

Accordingly, the County seeks reimbursement for costs associated with discretionary review activities conducted by the County and its outside counsel which advocate against Commission approval of the Project, or for comments wholly unrelated to the Project. None of these costs are reimbursable. If the County can demonstrate that it provided relevant and appropriate comments on the application, the Applicant will be in a better position to evaluate whether the amounts incurred are reasonable. But unless and until the County provides descriptions of the work performed *and* can point to a specific work product or service it performed for the Commission, then the Commission should reject these requests for reimbursement.

II. Conclusion

The entirety of the requested \$110,968.30 should be denied. The County has not performed a service directly in response to a Commission request, but instead has attempted to obtain reimbursement for advocacy positions against the certification of the Project. The County also has failed to provide adequate support for any of the claimed fees and expenses. Reimbursement Request #2 should be denied.

Sincerely,

Cox, Castle & Nicholson LLP



Anne E. Mudge