

DOCKETED

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E-Filing Docket 23-OPT-01
Via Email

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**Re: County of Shasta Supplemental Information re Reimbursement
Requests**

Dear Mr. Bohan and Ms. Chang:

The County of Shasta (County) has reviewed the California Energy Commission's (CEC) letter from Ms. Kaycee Chang, STEP Division, entitled *Request for Reimbursement, Invoice 1 & 2*, dated February 14, 2025, sent to both the County and legal counsel for the Fountain Wind Project. The CEC's response was not filed in the administrative record for the proceeding and is included herein.

As you know, the County's budget request and individual reimbursement requests have been routinely objected to by ConnectGen LLC, now Repsol. The County has repeatedly requested CEC guidance on the form and substance of local government reimbursement requests. After Repsol's objection to the County's November 2023 budget request, the County filed a request for dispute resolution on January 26, 2024. The CEC did not respond to the County's request for guidance raised in the two budgets it submitted or the dispute resolution request that was properly filed per CEC regulations. Because of this and the various Repsol objections, we requested the CEC facilitate a meeting between the County and Repsol to help resolve the dispute. We believed this would have brought the parties closer together and mitigated substantial costs that have been expended by the County in filing its requests and seeking reimbursement. Instead,

the County has had to “chase money” owed to it. We also think that staff guidance is common at other State agencies, and would have been helpful here. Frankly, local agency reimbursement is a State constitutional matter. Although CEC regulation shifts the reimbursement obligation to an applicant, it is ultimately the CEC’s obligation as a State agency under applicable unfunded state mandate laws to reimburse the local government for its review and comment on an opt-in application. The CEC’s February 14, 2025 letter, however, does not facilitate a meeting, and instead, encourages the parties to “meet and seek common ground” and “provide staff with an update of progress reached.”

We want to inform the CEC that the County and Repsol met and conferred on March 13, 2025 to discuss whether there was, in fact, common ground. From the County’s perspective, there still is no common ground. In that meeting, Repsol indicated it did not know which of the County comments in the proceeding were part of the reimbursement requests. In an effort to provide clarification and engage in good faith, the County provided Repsol with a list of the comments for which the County is submitting for reimbursement. The list is attached herein and should be considered as a supplemental filing to our budget request and three reimbursement requests. The County has not heard back from the applicant. The County is willing to abide by the direction of the CEC but it is not willing to spend many more weeks or months “kicking the can” further down the road.

We also note that the CEC’s February 14 letter appears to question the County’s use of legal counsel in its review and comments on the application and imply that reimbursable comments can only come from local government staff. We again point the CEC to the administrative record where almost all of the comments that have been filed by the County were authored by staff or were summarized as the County’s comments based on the review of the application by technical consultants on issues within the scope of the County’s review, where one such consultant worked on the local denial of the Project and has significant experience with it. The activities the County commented on were approved by CEC staff on November 23, 2023 as eligible reimbursement activities and included time and budget for County Counsel and outside counsel. Any review and comments by legal counsel does not in and of itself make the review ineligible under state mandates or Public Resources Code reimbursement laws or the CEC’s own regulation. In fact, it is evident that many issues that fall under the review and comment of local governments are legal in nature and are not “advocacy.” These issues may include whether a community benefits agreement meets AB 205 requirements or has meaningful benefits to the local jurisdiction or whether other project alternatives exist and are feasible for purposes of CEQA and the CEC’s LORS override consideration.

The County appreciates the CEC providing sample comment letters from local jurisdictions in prior power plant cases. The inclusion of the sample letters, however, lacks context on the issue of reimbursement. In the letters the CEC provides, the local governments were largely supportive of the project with conditions. There does not appear to be an example where a local agency opposed the project. This suggests that the CEC expects a local agency to provide limited comments on measures to improve the project. But in the case of the Fountain Wind Project, the application continues to be incomplete, many of the project impacts cannot be mitigated, and

certain requirements under AB 205 cannot be met. Inclusion of the sample comment letters also suggests that a local agency's role is circumscribed, but that is not what AB 205 says. On projects where a local agency is opposed but provides objective comments on the application, it would follow that such agency would take a closer review of those items that would normally fall under its discretionary authority, particularly when a project was already reviewed and denied at the local level.

In reviewing the sample comment letters, we initially note that the County has provided the CEC with three examples of precedent on the CEC's reimbursement of local government, but those examples are noticeably absent from the CEC's sample comment letters.¹ A deeper review of the samples also shows the following:

1. Docket 09-AFC-5, County of San Bernardino (April 15, 2010):² The local agency commented on various mitigation measures, similar to Shasta County's comments on fire and other mitigation, but ultimately supported the project with conditions.³ Also, this sample comment letter is the local agency's comments on a Commission Staff Assessment. We find this curious because the CEC has previously indicated in the Fountain Wind proceeding, which we respectfully disagree with, that local government comments can only be on the application and not on other documents posted in the record, such as a staff assessment or draft EIR. In addition, the local agency in this case acquired intervenor status in the proceeding, reimbursement for which is prohibited under CEC regulation.⁴ Importantly, there is nothing in the proceeding record that shows this local agency filed a budget or reimbursement request, so the example provided does not seem applicable or precedential.
2. Docket 23-AFC-02, County of Imperial (August 18, 2023):⁵ The local agency very clearly supports the project in this sample comment letter.⁶ The local agency's comments are on fiscal and sales tax impacts, which are the same issues as the County's comments on the Fountain Wind Project regarding the "overall net positive economic benefit" of the Project. The local agency also comments on preservation of land similar to the County's land use comments. The local agency submitted numerous comments in the proceeding record, and one such comment was submitted by the local agency's

¹ County of Yolo, Docket 84-NOI-1 (August 14, 1984 – transcript of hearing); City of Pittsburg, Docket 08-AFC-06; Southern Inyo Fire Protection District, Docket 11-AFC-2.

² Docket 09-AFC-5, TN 56264.

³ For example, "The County supports the applicant's proposal to either place a minimum of 128 acres of important Farmland under permanent agricultural conservation easement or provide adequate mitigation fees in lieu of providing land." *Id.* at 2.

⁴ Docket 09-AFC-5, TN 56914.

⁵ Docket 23-AFC-02, TN 251675.

⁶ "For these reasons, the County of Imperial supports the three aforementioned projects and we would be pleased to work with the Commission to assist in permitting these projects." *Id.* at 2.

outside counsel on the issue of Tribal cultural resources.⁷ There is nothing in the proceeding record that shows this local agency filed a budget or reimbursement request.

3. Docket 23-AFC-02, Imperial Irrigation District (August 24, 2023):⁸ The local agency comments on concerns with the project's water supply, which is the same issue commented on by the County in the Fountain Wind proceeding. We also note that the local agency in this example is an irrigation district and the retail water purveyor throughout this county. It is not the "local government agenc[y] having land use authority" under Public Resources Code section 25519(f) entitled to reimbursement under Public Resources Code section 25538. The County of Imperial would have been that eligible agency. If a local water agency is entitled to reimbursement then the CEC would have in this proceeding, or maybe should have, provided the required application and reimbursement notices to the Burney Water District. We also note that there is nothing in the proceeding record that shows this local agency filed a budget or reimbursement request.
4. Docket 23-AFC-02, Imperial County Workforce & Economic Development Board (August 23, 2023):⁹ The local agency in this example is a department of the County of Imperial, which is the actual local agency. The board is an advisory body to the county's board of supervisors.¹⁰ The board's comments are on the economic and workforce benefits of the project, which is the same issue commented on by the County on Fountain Wind Project's community and workforce benefits and overall net positive economic benefit. The local agency also supports the project. There is nothing in the proceeding record that shows that the board or the local agency filed a budget or reimbursement request.
5. Docket 13-AFC-01, City of Long Beach (May 17, 2016):¹¹ The local agency comments on project landscaping concerns. The comments are the same as and no different than the County's comments on visual impacts of the Fountain Wind Project. The sample comment was also filed by the local agency's engineering consultant, who presumably reviewed the issue and prepared the comment. The local agency supported the project.¹² The local agency also filed other comments in the proceeding, including a Record of Conversation submitted by CEC staff, regarding applicability of the municipal code (similar to applicability of the Shasta County large wind energy ordinance, the administrative record of which was filed in this proceeding). There is nothing in the

⁷ Docket 23-AFC-02, TN 260925.

⁸ Docket 23-AFC-02, TN 251870.

⁹ Docket 23-AFC-02, TN 251881.

¹⁰

<https://www.ivworkforce.com/assets/policies/BYLAWS%20of%20the%20Imperial%20County%20Workforce%20Development%20Board.pdf>.

¹¹ Docket 13-AFC-01, TN 211504.

¹² *Id.* at TN 215139.

proceeding record that shows that the local agency filed a budget or reimbursement request.

6. Docket 12-AFC-02, City of Huntington Beach (September 27, 2012):¹³ The local agency provides voluminous comments on its jurisdiction over the project, the city code and other standards the CEC would need to consider under a LORS override, substantive local agency requirements, and whether the project would be able to comply with substantive CEC requirements. All of these are areas that have been commented on by the County. The local agency also provided numerous comments in the proceeding, including a 182-page condition of certification and detailed comments on the Staff Assessment.¹⁴ There is nothing in the proceeding record that shows that the local agency filed a budget or reimbursement request.
7. Docket 21-AFC-02, County of Kern (May 19, 2022; September 6, 2022):¹⁵ The local agency provided comments on environmental impacts of the project construction and mitigation and attached relevant sections of the application. The agency also provided comments on zoning and environmental concerns. The sample comments are similar to the County's comments on the environmental impacts of the Fountain Wind Project and the inability to mitigate those impacts. The local agency provided numerous comments in the proceeding, and does not appear to have opposed the project. There is nothing in the proceeding record that shows that the local agency filed a budget or reimbursement request. We also note that the CEC sent a detailed notice letter to all agencies requesting comment and outlining reimbursement, which was not done in the Fountain Wind Project proceeding.

In sum, the County believes that it has filed reimbursable comments the same as or similar to local agencies in other CEC proceedings and that it is entitled to full reimbursement for its costs. The County should not be punished or its costs reduced simply because its factual comments on the application, which are now supported by CEC staff's recommendation to deny certification, come with opposition to the Project. The use of legal counsel and technical consultants is also of no relevance or legal bearing to the issue of reimbursement. City and county planning and engineering departments throughout California routinely rely on outside experts to review projects against state and local requirements. Certainly, the CEC is doing so with the use of Aspen Environmental Group, Risk Science Associates, or other consultants that advise it on the application.

The County has diligently and painstakingly attempted to follow an undefined process, and has reasonably and conservatively estimated its time and costs and invoiced for those costs, while not including non-reimbursable items. The current objections to the County's budget and reimbursement requests are arbitrary. Moreover, the process has only served to drag on

¹³ Docket 12-AFC-02, TN 68804.

¹⁴ *Id.* at TN 203070 and TN 202629.

¹⁵ Docket 21-AFC-02, TN 243152 and TN 245911.

unreasonably and put the County in a detrimental position where the refusal to pay the County's costs forces it to expend substantial sums to chase funds owed to it under the law and thereby prejudice the County's participation in this proceeding.

If the CEC or Repsol have concrete direction, questions or requests that would move reimbursement forward, the County is open to discussing this forthwith. It is not open, however, to further prolonging reimbursement eligibility or the payment of costs. Furthermore, it is our understanding that the CEC has collected funds from the applicant to reimburse agency staff for its costs in processing the application, but it has not collected funds or required a deposit for local government reimbursement in this proceeding. ***Now that the CEC is recommending denial of the project, the CEC should immediately require a deposit from Repsol for the full amount of \$473,304 approved in the County's budget request in case Repsol withdraws its application while reimbursement remains unresolved.*** This would serve to hold the disputed funds in trust while reimbursement is still considered, or even litigated, and remedy the oversight of not requiring a deposit for local agency review of the application.

We are glad to meet with CEC officials and staff to discuss the outstanding issues. Thank you for your consideration.

Respectfully,



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



February 14, 2025

Via Email

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**Request for Reimbursement, Invoices 1 & 2
Docket #: 23-OPT-01**

Dear Alan Cox, Ryan Baron, and Anne Mudge:

Staff has reviewed the reimbursement requests, invoices #1 and #2 filed by Shasta County on January 8 and 31, 2025, (TNs 260946 and 261499) and objections #1 and #2, filed by the Applicant on January 16, and February 6, 2025. (TNs 261108 and 261574 .) California Code of Regulations, title 20, section 1878.1(e) provides for a dispute process when efforts to resolve matters between an applicant and the local agency reach an impasse. “If there is a dispute over...a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency . . . the local agency or applicant shall notify the Executive Director . . .” (Cal. Code Regs., tit. 20, §1878.1, subd. (e).)

In advance of taking the matter to the Executive Director, staff believes it would be beneficial for the Applicant and County to meet and attempt to seek common ground and reach at least a partial resolution. The Applicant’s objections identify areas in which they agree reimbursement is appropriate stating, “The Applicant concedes that if the County actually provides specific comments on the application materials pursuant to section 25519(f), it is due a reasonable ‘fee’ for that service...” (TN 261108.) The Applicant in both objections provides four specific examples of County activities that potentially may qualify for reimbursement. These examples are a good starting point for further discussions between the Applicant and County.

In its January 16, 2025 objection, the Applicant states, “Fountain also questions why the County required the significant use of outside counsel, as commenting of the design, aesthetics, highway access and other operational features of the Project does not require a law degree.” (TN 261108.) Typically, the types of comments submitted to the CEC on an application come from the planning department or permitting department staff and focus on specific local requirements or suggested conditions of certification that the local government would routinely impose on projects under their jurisdiction. (See links below for sample comment letters reflecting the type of information typically provided to the CEC.)

The County and Applicant may find common ground to resolve this reimbursement matter. After the County and Applicant have engaged such discussions, please provide staff with an update of progress reached.

Sample comment letters from local jurisdictions on prior CEC powerplant cases:

- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=243152&DocumentContentId=76834>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=245911&DocumentContentId=80088>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=68804&DocumentContentId=46742>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=211504&DocumentContentId=6960>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=251881&DocumentContentId=86879>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=251870&DocumentContentId=86863>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=251675&DocumentContentId=86576>
- <https://efiling.energy.ca.gov/GetDocument.aspx?tn=56264&DocumentContentId=52408>

Sincerely,

Kaycee Chang
Supervisor, CEQA Project Management Unit
Siting, Transmission, and Environmental Protection
Division

Fountain Wind Project - 23-OPT-01
County of Shasta Submissions

TN	Date	Document Title
252457	9/29/2023	County of Shasta Objection to Applicant Confidentiality Request re Community Benefits Agreement Data Response
253290-1	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 1 of 8
253290-2	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 2 of 8
253290-3	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 3 of 8
253290-4	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 4 of 8
253290-5	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 5 of 8
253290-6	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 6 of 8
253290-7	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 7 of 8
253290-8	11/22/2023	County of Shasta Wind Ordinance Administrative Record Part 8 of 8
253348	11/28/2023	County of Shasta Information Request re Community Benefits Plan
253797	1/4/2024	County of Shasta AB 205 Review and Comments on Fountain Wind Project Community Benefits Agreement Update and Submittal
253813	1/5/2024	County of Shasta AB 205 Review and Comments on Fountain Wind Project Community Benefits Agreement Update and Submittal with Exhibits
254275	1/31/2024	Certified Transcript of Shasta County Board of Supervisors Meeting of October 26_ 2021
254383	2/8/2024	2024-02-08 County of Shasta Comments on Application for Confidential Designation
254693	2/26/2024	Shasta County Air Quality Management District Input on the Opt-in Application for Certification of the Fountain Wind Project
259437	10/3/2024	County of Shasta's AB 205 Review and Comments on Fountain Wind Project
259533	10/14/2024	County of Shasta Comments on Shasta College Foundation CBA
260101	11/15/2024	County of Shasta Comments on Wildfire, Economics, and Various Project Environmental Issues
260646	12/13/2024	County of Shasta's AB 205 Continuing Review and Additional Comments on Fountain Wind Project
260765	12/20/2024	County of Shasta's AB 205 Review on Fountain Wind Project - Wildfire Air Attack Comments