

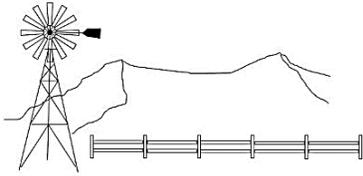
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Comments by Save Our Rural Town

Additional submitted attachment is included below.



SAVE OUR RURAL TOWN

Leonidas Payne
Siting, Transmission & Environmental Protection Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Electronic Submittal of nine (9) pages to:
Docket 23-OPT-01

July 28, 2023

Subject: Save Our Rural Town Comments on the Fountain Wind “Opt In” Project Application.

Reference: Docket 23-OPT-01

Dear Mr. Payne;
Save Our Rural Town (“SORT”) appreciates the opportunity to offer comments in Docket 23-OPT-01 pertaining to the Fountain Wind Project because we recognize that, as the first “Opt-In” proceeding initiated pursuant to Assembly Bill 205, Docket 23-OPT-01 will, in many ways, establish precedent for how the California Energy Commission (“Commission”) reviews and processes future “Opt-In” applications. The focus of the comments presented herein is on the extent to which the Fountain Wind “Opt-In” Application complies with Section 1877(g) of Title 20 of the California Code of Regulations (“CCR Title 20”) and, by extension, whether the Fountain Wind Project is materially “on track” to comply with Section 1879(a)(8) of CCR Title 20. Additionally, the following comments include recommendations for ensuring that “Opt-In” projects comport with both the language and intent of Section 1877(g) and 1879(a)(8).

BACKGROUND

Save Our Rural Town is a grassroots organization of rural residents formed in north Los Angeles County to advocate for the interests of rural unincorporated communities that are affected by private developments and large “public benefit” projects. In our experience, decisionmakers who consider such projects within rural areas tend to apply a distinctly “urban lens” to their review and approval processes and thus often overlook project characteristics and impacts that are substantially adverse in rural communities; to address these concerns, SORT actively strives to bring the “rural perspective” into all our public participation activities. SORT has successfully represented rural interests before numerous local, state, and federal agencies, including the City of Lancaster, the County of Los Angeles, the California Air Resources Board, the California High Speed Rail Authority, and the U.S. Environmental Protection Agency; we look forward to participating in Commission proceedings as well.

SORT is aware that at least four¹, and perhaps as many as six², utility scale battery storage projects have been proposed for the Community of Acton where the Vincent substation is located; Vincent is the southerly terminus of WECC Path 26 and it is owned and operated by Southern California Edison. It is also understood that the proponents of these battery projects are contemplating whether they should pursue the Commission’s “Opt-In” review process rather than undergo discretionary review by the County of Los Angeles. Given this, SORT is keenly interested in the policies and procedures that the Commission has implemented for “Opt-In” projects; we are particularly focused on ensuring robust compliance with Section 1879(a)(8) requirements which compel “Opt-In” projects to provide real and substantial community interest benefits. With this aim, SORT has evaluated the “Community Benefits Plan” offered for the Fountain Wind project and we note that, if implemented as written, it would not materially satisfy the requirements imposed by Section 1879(a)(8) of CCR Title 20. SORT is also concerned by the Commission’s assessment of the adequacy of the Fountain Wind application vis a vis community benefits; these concerns are set forth below.

THE FOUNTAIN WIND APPLICATION DOES NOT COMPORT WITH THE REQUIREMENTS IMPOSED BY SECTION 1877(g) OF CCR TITLE 20

According to the Deficiency Letter issued February 10, 2023, the Commission concluded that the Fountain Wind application was sufficient to comply with Section 1877(g) of CCR Title 20 which requires every “Opt-In” application to 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”*. Specifically, page 12 of the “Data Adequacy Worksheet” for the “Mandatory Opt In Requirements” provided in the Deficiency letter³ concludes that both the “Community Benefits Plan” and the “Cross Walk Matrix” were adequate to comply with Section 1877(g). SORT respectfully disagrees with this conclusion.

The Applicant’s “Crosswalk Matrix” Does Not Comply With 1877(g)

The “Crosswalk Matrix” included in the Fountain Wind application states “The applicant has made voluntary commitments to a number of organizations as part of its proposed Community Benefits Program. The applicant plans to enter into legally binding and enforceable agreements in the second half of 2024 after the CEC Permit is granted and

¹ The 1,150 MW Angeleno Project (CAISO Queue position 1625), the 300 MW Humidor Project (CAISO Queue position 1629), the 250 MW Maathai Project (CAISO Queue position 2091), and the 200 MW Flea Flicker Project (CAISO Queue position 2110).

² The 400 MW Quercus Project (CAISO Queue position 2056) and the 150 MW Juniper Project (CAISO Queue position 2061).

³ TN 248742 in Docket 23-OPT-01.

before the project starts construction activities.”⁴ The assertion that no agreements will be executed until “the second half of 2024 after the CEC permit is granted” does not comply with the “letter of the law” set forth in Section 1877(g) which requires Fountain Wind to execute legally binding and enforceable agreements *prior* to project certification (i.e., licensing). It also does not comply with the “spirit of the law” in Section 1877(g) because it suggests that Fountain Wind is not collaborating with community organizations to develop agreements that provide “mutual benefits to the parties to the agreement” as required by Public Resources Code section 25545.10; instead, Fountain Wind appears to have unilaterally developed a suite of activities that it is committed to implementing without any particular regard for the opinions of said affected local communities. The “Crosswalk Matrix” does not identify any community organizations that have expressed any interest in the “commitments” that Fountain Wind has offered and it certainly does not indicate that any community organizations have agreed that the “commitments” will provide substantial community benefits. The Commission should have found that the Applicant’s “Crosswalk Matrix” discussion pertaining to Section 1877(g) was substantially deficient; the fact that the Commission did not find anything amiss or awry with this discussion is very troubling.

The “Community Benefits Plan” Does not Comply With 1877(g).

The “Community Benefits Plan” (“Plan”) offered by Fountain Wind has 6 components: 1) Donating to the refurbishment of a closed elementary school campus that will be used for youth education and community events; 2) Developing a 23 mile Fuel Break along Highway 299 and Big Bend Road; 3) Constructing two new cellular towers; 4) Donating to the Pit River Tribe Tribal Employment Rights Office; 5) Donating to the Shasta County Sheriff’s Office for county-wide services; and 6) Offering limited public access to lands owned by Shasta Cascade Timberlands. However, close inspection reveals that the Plan merely describes proposed activities which Fountain Wind is willing to pursue and then asserts (without substantiation) that these activities will benefit local communities; while the Plan lists organizations that could perhaps participate in the activities offered, it does not indicate that any of these organizations concur that the activities will indeed benefit the local community. There is actually very little substance to several of the activities that the Plan offers and there is even less substance to the claimed community benefits that will be derived from these activities. For instance, the Plan actually states that the benefits enumerated for the proposed “Cedar Creek” refurbishment are in fact “merely ideas and suggestions” (page 6); the Plan also states that Fountain Wind has not even consulted with “community leaders to confirm the feasibility and reception of this proposal”. Additionally, the Plan does not adequately demonstrate that the proposed “wireless internet” project will provide substantial benefits because it does not include a service area map for the existing wireless facilities; this makes it impossible to assess whether the proposed service area that is mapped on page 12 is in fact much larger than

⁴ TN 248321 at Page 43
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=248321&DocumentContentId=82718>.

what already exists. Furthermore, the Plan provides no evidence that local community interest organizations are actually amenable to any of the programs that the Plan offers; in fact, though the Plan claims that community interest organizations are in favor of the programs that are offered, these claims are not corroborated by any letters of support or positive communications from any community interest organizations⁵. For instance, the Plan proposes a "Workforce Program" to offer tribal members apprenticeship opportunities through donations made to the Pit River Tribe "Employment Rights Office", however the Plan does not include any communications from tribal members indicating that they are interested in such a proposal and it certainly does not identify a plan to secure a binding and enforceable agreement with the Pit River Tribe to implement the proposed "Workforce Program". In other words, the Plan itself appears to be largely "pie in the sky" with little substance and no demonstrable "buy in" from any community interest organizations⁶.

The Plan clearly demonstrates that Fountain Wind has not firmly "nailed down" the "mutually beneficial" activities that will be the subject of the legally binding agreements required by AB205 and it certainly has not made any specific arrangements with any community interest organizations to enter into said agreements; thus, it is axiomatic that Fountain Wind does not have an actual strategy to obtain the legally binding agreements mandated by AB205. Accordingly, the Plan does not comport with the strategy requirements imposed by Section 1877(g). Furthermore, the "schedule" set forth in the Plan does not appear to comport with Section 1877(g); for instance, the Plan states that Fountain Wind will wait until *after* the Project is approved to establish the feasibility and reception of, and the Advisory Committee for, the proposed "Cedar Creek" refurbishment program. The Commission should have concluded that the Community Benefits Plan is deficient for the purpose of complying with Section 1877(g) because 1) it provides little evidence that the programs it offers are materially beneficial; 2) it provides no evidence that any community based organizations are even interested in any of the programs that it offers; 3) it does not demonstrate that any community based organizations are willing to enter into "binding and enforceable agreements" pertaining to the proposed programs; and 4) it offers no schedule demonstrating that binding and enforceable agreements will be in place prior to Commission certification.

⁵ The commitment letter from the "Northeastern CA Building & Construction Trades Council" merely states the Council is committed to offering training opportunities for Pit River Tribal Members; the Council is **not** a community-based organization representing community interests. Similarly, the letter to the Pit River TERO merely offers to donate to TERO; it does not evince any interest expressed by TERO. Finally, the FWS Forestry letter merely offers limited access to portions of SCT property to certain groups for certain timeframes under certain circumstances; it does not reflect any interest expressed by any community organizations.

⁶ NOTE: SORT does not argue whether or not the Plan provides community benefits; that will be decided by community itself. What SORT *does* argue is that Fountain Wind has not demonstrated that community groups concur that the Plan will provide community benefits; we also contend that there is no evidence that any community organizations are even interested in collaborating with Fountain Wind (let alone entering into binding contractual agreements).

Some of the Programs Offered in the Community Benefits Plan Appear to Be Either Self-Serving or Not Community Oriented.

SORT is concerned that the Programs offered by the Plan are either not “community based” or are actually self-serving. For instance, the Shasta County Sheriff Department donation offered by the Plan will be used for countywide public safety purposes and is not restricted to providing local community-based services in the project area. Additionally, it is clear that the "Fuel Break Program" offered by the Plan will overwhelmingly benefit the Shasta Cascade Timberlands Corporation (“SCT”), PG&E, and the Fountain Wind Project itself because the Fuel Break that is proposed predominantly protects SCT timberlands, PGE infrastructure, and the proposed wind turbines (see pages 9 and 10). Furthermore, page 8 actually admits that the Fuel Break Program will "increase timberland access through a network of new and enhanced roads"; this means SCT (which actually controls the land on which the Fountain Wind project is located) will benefit financially from additional timber harvesting opportunities that will be created by the Fuel Break Program. The Fountain Wind project and the associated Fuel Break Program that is billed as a community benefit actually provides a trifecta of significant benefits for SCT because it increases wildfire protection for SCT timber assets, it increases timber access (and thus timber harvesting opportunities), and it provides a regular revenue stream from operation of the windfarm itself. Finally, while the Plan does not clearly demonstrate that the proposed cellular towers will provide significant public benefits (as discussed above), the proposed locations indicated in the Plan do suggest that SCT will enjoy greatly improved cellular communications on its timberlands.

THE FOUNTAIN WIND PROJECT DOES NOT APPEAR TO BE ON A PATH TO COMPLY WITH SECTION 1879(a)(8) OF CCR TITLE 20

Section 1879(a)(8) of CCR Title 20 specifies “*The Commission shall not certify a site and related facility under this chapter 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..... that represent community interests, where there is mutual benefit to the parties to the agreement.*” The Fountain Wind project does not appear to be on a path that will allow the Commission to make the finding required by Section 1879(a)(8). For instance, Fountain Wind has evinced a clear intent to not enter into any agreements until *after* Commission approval (as indicated above). Furthermore, because the Application does not provide *any* information about *any* community-based organizations at all, the Commission has no basis to conclude that the agreements which Fountain Wind will eventually execute are in fact with, or benefit, organizations which represent community interests. In other words, the record provides no information pertaining to the community-based organizations with which Fountain Wind will execute agreements; therefore, the Commission cannot find that Fountain Wind agreements will actually involve or even benefit any community-based organizations which represent community interests.

THE COMMISSION SHOULD DEVELOP STANDARDS TO ASSESS THE EFFICACY AND COMPLETENESS OF “OPT-IN” APPLICATIONS PERTAINING TO SECTION 1877(g).

The Legislature recognized the need to protect communities where “Opt-In” projects are proposed and concluded that the burdens imposed on local communities by “Opt-In” projects must be counterbalanced by clearly enumerated benefits which are conferred to these communities; that is why the Legislature added Section 25545.10 to the Public Resources Code. It is also important that stakeholders participating in “Opt-In” proceedings have abundant opportunity to weigh the community benefits that an applicant claims will be provided by their proposed project and assess the legitimacy and motives of the community-based organizations that are slated to deliver these benefits; that is why the Commission included Section 1877(g) in CCR Title 20. Despite these requirements, the Fountain Wind Application does not provide sufficient information for the public or the Commission to properly weigh the community benefits that will accrue from the project; instead, the Application only identifies hypothetical local programs that could be initiated, donations that provide non-community (i.e., county wide) benefits, and programs that appear to benefit the Applicant and SCT far more than the community. The scant information provided by the Fountain Wind “Opt-In” Application also prevents the public from evaluating the legitimacy and commitment of the organizations that will be tapped to deliver the hypothetical project benefits which Fountain Wind offers; this is because the Application does not identify any community-based organizations that have expressed an interest in entering into binding agreements with Fountain Wind. Nonetheless, the Commission concluded that the Fountain Wind Application was sufficient for complying with Section 1877(g); as a result, the public has been denied the opportunity to provide comprehensive and informed comments regarding the adequacy of the actual community benefits that will be delivered by the Fountain Wind Project or the appropriateness of the organizations that will deliver said benefits. This trend must not persist.

To eliminate such concerns and ensure the public has sufficient information to provide informed and substantive comments pertaining to community benefits claimed by future “Opt In” Applicants, SORT recommends that the Commission develop standards that will be used to assess the efficacy and completeness of future “Opt-In” Applications with respect to Section 1877(g). The standards should specify that Applicants:

1. Identify each specific program and activity that will be implemented to provide community benefits and which will be conducted pursuant to a binding and enforceable agreement between the applicant and a community-based organization representing community interests.
2. Identify and quantify the specific community benefit(s) that will result from each program and activity that is identified and which will be implemented pursuant to a binding and enforceable agreement between the applicant and a community-based organization representing community interests.

3. Identify all the community-based organizations representing community interests that have expressed an interest in entering into binding and enforceable agreements with the applicant to secure the programs and activities which are proposed for the purposes of providing community benefits.
4. Provide extensive background information on each community-based organization that is identified.
5. Include letters of support from all the community-based organizations representing community interests that are willing to enter into binding and enforceable agreements with the applicant to secure the programs and activities which are proposed for the purposes of providing community benefits.

Additionally, if a proposed community benefit that is offered in the Applicant cannot be delivered before the Commission approves the project, then it must be replaced by a commensurate community benefit and the public must be given an opportunity to comment on the adequacy and appropriateness of the substituted benefit. If the Commission does not adopt the abovementioned standards to assess future “Opt-In” Applications, then neither the Commission nor the public will have the information needed to properly and timely assess the efficacy and robustness of the community benefits that are claimed by “Opt In” Applicants.

A MECHANISM SHOULD BE DEVELOPED TO ASSESS THE LEGITIMACY OF COMMUNITY BASED ORGANIZATIONS THAT ENTER INTO BINDING CONTRACTS WITH “OPT-IN” PROJECT APPLICANTS.

SORT believes it is essential that the Commission develop a mechanism to assess the legitimacy of organizations identified in “Opt-In” Applications and affirm that they genuinely represent community interests. Anybody can file paperwork with the Secretary of State and form a non-profit organization that claims to represent the interests of a community; a mere claim that an organization represents community interests is not dispositive. The issue is of particular concern to the rural community of Acton where the proponents of numerous battery storage projects appear inclined to pursue the AB205 approval process. Battery project proponents have reached out to local community organizations representing sports, civic, school, and community facility interests and to our knowledge, no organizations have been receptive. There are several reasons for this, not the least of which is the sheer scope and extent of these projects (one project alone is more than a mile long and is located along a scenic corridor in Acton); many in the community are also very concerned by the fire hazards posed by these projects (particularly because Acton is in a Very High Fire Hazard Severity Zone). SORT understands that the proponents of these battery projects could easily form their own “community interest” organizations and then enter into binding contracts with these organizations which they control and have suddenly sprung into being; we also

understand that project proponents could enter into binding contracts with broad-based organizations that have regional, statewide, or nationwide interests and then claim that community interests are being served by such contracts because broader interests are benefitted. SORT does not consider that either of these scenarios comport with the letter or the spirit of AB205; therefore, guardrails must be established regarding what constitutes a community-based organization that represents community interests.

It is expected that proponents of the proposed battery storage projects in Acton will implement either one or both of these strategies; thus, SORT recommends that a mechanism be established to assess the legitimacy of community-based organizations that are identified in “Opt-In” applications and the extent to which they do indeed represent community interests. SORT suggests that the Commission consider the following parameters in ascertaining such matters:

- How, when and why the organization was formed.
- The stated purpose of the organization.
- How the organization represents community interests.
- The size of the organization (i.e., the number of members).
- How membership is established (i.e., is membership restricted or is it open to the residents of the community? Is a fee required to join? If so, what is the fee? How are members selected?).
- How decisions are made by the organization (i.e., are decisions made in the public eye or behind closed doors? Are community members able to comment or vote on the decisions that are made, or is there a governing board that make the decisions? If the latter, how are governing board members selected and do community members choose the governing board members?).

This information will allow the Commission to objectively assess whether community organizations are authentic and legitimately represent community interests; it will also allow the Commission to “weed out” organizations that are controlled by non-community stakeholders or preclude the participation of community members in decision-making processes.

A MECHANISM SHOULD BE DEVELOPED TO ASSESS WHETHER PROPOSED COMMUNITY BENEFITS ARE REAL AND DURABLE.

SORT recommends that the Commission develop standards to assess whether the community benefits that are claimed in an “Opt-In” Application are real and legitimately accrue to the community (as required by Section 1877(g)) and not to special interest “pop up” organizations or to organizations that represent regional, statewide, or nationwide interests. It is anticipated that some “Opt-In” Applicants will portray a proposed activity as benefitting the community when in fact it expressly benefits the project itself. An example of this is the “Fuel Break Program” proposed by Fountain

Wind which, as discussed above, will substantially benefit project proponents (Fountain Wind, SCT, and PG&E) far more than the community. To address these concerns, SORT suggests that the Commission request the following information pertaining to each “community benefit” that is claimed by an “Opt-In” Applicant:

- A statement from the community organization that will accept the benefit which details how the benefit specifically advances community interest and describes the extent to which the benefit advances non-community interests and special interests. The statement should also explain how the community-oriented attributes of the benefit will be sustained in the future.
- A statement from the Applicant regarding how the benefit that is being offered also advances the interests of proponents of the “Opt-In” application.

With this information, the Commission and the public can objectively assess whether the benefits identified in “Opt-In” applications are durable and legitimately accrue to the community; it will also allow the Commission to reject benefits that serve non-community interests or the interests of project proponents because they are inconsistent with Section 1877(g).

CONCLUSION.

For the reasons set forth herein, SORT respectfully requests the Commission re-evaluate the “Community Benefit Plan” provided with the Fountain Wind Application and find that it is deficient. We also ask that the Commission direct Fountain Wind to supplement the Plan with specific information about the community-based organizations with which Fountain Wind intends to enter into agreements and provide letters of interest and/or commitments from these organizations. We also respectfully request that the Commission 1) develop standards that will be used to assess the compliance status of future “Opt-In” Applications with regard to Sections 1877(g) and 1879(a)(8) of CCR Title 20; 2) establish mechanisms for evaluating the legitimacy of community-based organizations that express an intent to enter into binding and enforceable agreements with “Opt-In” applicants; and 3) establish mechanisms for assessing the veracity and authenticity of benefits claimed by “Opt-In” applicants.

Sincerely;

/S/ Jacqueline Ayer
Jacqueline Ayer, Director
Save Our Rural Town