

DOCKETED

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Filer:	Lon Payne
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**CALIFORNIA
ENERGY COMMISSION**



August 25, 2023

Paul Hellman, Director
Planning Division
Shasta County, Department of Resource Management
1855 Placer Street
Redding, CA 96001

Re: CEC Objection to Shasta County's Request for Reimbursement and Itemized Budget

Dear Paul Hellman:

The California Energy Commission has received Shasta County's Request for Reimbursement and Itemized Budget (TN 251628) for the proposed costs associated with Shasta County's review of the Fountain Wind Project (Docket No. 23-OPT-01). Pursuant to Title 20, California Code of Regulations, section 1715(c)(3) the CEC staff finds that the proposed budget is incomplete and objects to the budget for the following reasons: 1) Shasta County failed to file an itemized proposed budget within 21 days of receiving a request for review from the CEC staff pursuant to Title 20, California Code of Regulations, section 1715(c)(2), 2) the proposed budget contains items that are invalid, ineligible for reimbursement, or exceed the scope of review that the CEC staff has requested or will request, and 3) the request for reimbursement is overbroad and unreasonable pursuant to Title 20, California Code of Regulations, section 1715(c)(4). For these reasons, the CEC staff objects to Shasta County's request for reimbursement and recommends that Shasta County either withdraw or re-submit its request.

Background

The CEC staff is currently engaged in data completeness review of an Opt-in application for the Fountain Wind Project. Shasta County was provided notice of receipt of the application and request for comments and information pursuant to Public Resources Code section 25545.8 by email on January 25, 2023. That email provided notice of the laws relevant to Opt-in applications. Public Resources Code section 25545.8 provides that Public Resources Code sections 25519, subdivisions (f) and (k) and 25538 apply to Opt-in applications.

With respect to input from local agencies, Public Resources Code section 25519, states, in relevant part:

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Those local agencies shall 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.

[¶]...[¶]

(k) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but 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. The commission shall request any relevant laws, ordinances, or regulations that an agency has promulgated or administered.

Additionally, the CEC staff is seeking Shasta County's input on Opt-in specific provisions including a finding of net positive economic benefit to the local government under Public Resources Code section 25545.9.

With respect to cost reimbursement to a local agency, Public Resources Code section 25538 states, in relevant part:

Upon receiving the commission's request for review under subdivision (f) of Section 25519 and Section 25506, the local agency may request a fee from the commission to reimburse the local agency for the actual and added costs of this review by the local agency. The commission shall reimburse the local agency for the added costs that shall be actually incurred by the local agency in complying with the commission's request... The commission shall either request a fee from the person proposing the project or devote a special fund in its budget, for the reimbursement of such costs incurred by local agencies. (Italics added.)

In the seven months since this notice was provided, Shasta County has not docketed any responsive material relative to its obligations under Public Resources Code, section 25519, subdivision (f), nor has it responded to the CEC's staff request for input under subdivision (k). Additionally, Shasta County has not provided information related to Opt-in specific provisions including a finding of net positive economic benefit to the local government under Public Resources Code section 25545.9.

The CEC staff met with representatives of Shasta County on June 2, 2023. At that meeting, the CEC staff and Shasta County representatives discussed cost reimbursements under Public Resources Code section 25538. The CEC staff stated that to qualify for reimbursements, Shasta County would need to submit an itemized budget for its review and have that budget approved by the CEC staff. Shasta County docketed a request for reimbursement and itemized budget on August 15, 2023. [TN 251628]

The CEC's regulations implement and make specific provisions in Public Resources Code sections 25519, subdivision (f) and 25538. See Title 20, California Code of Regulations, section 1715, which sets forth procedures a local agency must follow to participate in the process and to seek allowable reimbursement.

Basis for Objection to Reimbursement Request

A. Failure to Timely File a Request for Reimbursement

Title 20, California Code of Regulations, section 1715(c)(2) requires that a local agency file, within 21 days of receiving a request for review from the CEC staff, an itemized proposed budget with the CEC staff and the project applicant estimating the actual and added costs that are likely to be incurred during such review. As noted above, the CEC staff provided Shasta County notice of receipt of the application and request for comments and information by email on January 25, 2023. The CEC staff also informed Shasta County that it may request a fee from the CEC staff to reimburse it for the actual and added costs of the requested review under Public Resources Code section 25538. Additionally, the CEC staff clarified any questions posed by Shasta County regarding the CEC's cost reimbursement process in a meeting on June 2, 2023. Since then, Shasta County did not provide the CEC staff and project applicant with a request for cost reimbursement until August 15, 2023. Failure to use the approval process within 21 days of receiving a request for review from the CEC staff creates a risk that the local agency will not be reimbursed for work already performed. (Cal. Code Regs, tit. 20, § 1715(c)(2).)

B. Shasta County is Seeking Reimbursement for Invalid Activities

Shasta County is seeking reimbursement for work it performed prior to the CEC's staff determination regarding completeness including its initial review of the Fountain Wind application, comment filing by Shasta County, and meetings with the CEC staff. This review includes time and costs for Shasta County administrative staff, the Shasta County Counsel's office, and outside counsel. (See Attachment A: County Budget Summary; Attachment B: Detailed County Budget.)

Since January 25, 2023, when the CEC staff sent the notice of receipt of the application and request for comments, Shasta County has failed to comply with Public Resources

Code section 25519(f). This provision mandates that: "local agencies *shall* 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." (*Italics* added.) Additionally, Shasta County has not provided information related to Opt-in specific provisions including a finding of net positive economic benefit to the local government required under Public Resources Code section 25545.9. The only comment the CEC staff has received from Shasta County is its Opposition to AB 205 Jurisdiction and Objection to Notice of Completion Request, filed on August 14, 2023. [TN251601] The CEC staff does not consider this comment to be responsive to its request for information under Public Resources Code section 25519(f), and therefore objects to reimbursement for Shasta County's costs associated with producing the comment.

As previously stated, on June 2, 2023, the CEC staff met with Shasta County at their request. This meeting was used as a general information session to discuss the CEC's authority under AB 205 (Committee on Budget, Ch. 61, Statutes of 2022), the process of local agencies' review of Opt-in projects, cost reimbursement, and a status update on the Fountain Wind project. To date, Shasta County has not provided the CEC staff with information requested by CEC staff or relevant comments regarding the Fountain Wind project.

C. Shasta County's Activities are Ineligible for Reimbursement and/or Exceed the Scope of Review that the CEC has Requested or Will Request

Allowable Reimbursements Cost are described in statute and regulations. The process requires the local agency to review and comment on aspects of the application that will assist the CEC staff in evaluating the project, and envisions consultation with the local agency as needed. Title 20, California Code of Regulations, section 1715, subdivisions (a) and (b) clearly set forth the type of costs that are and are not eligible for reimbursement:

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) 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,
and

(B) 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.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise;

[¶]...[¶]

The costs included in Shasta County's reimbursement request to cover initial reviews regarding the scope of the Shasta County's interests are not reasonable. The costs set forth in the County Budget Summary total \$585,514 and are categorized as follows: 1) Review of Application Prior to Notice of Completion, \$47,670, 2) Review and Comment on application, \$295,470, 3) CEQA Review and Comment, \$228,580, and 4) Public Facility Impact Fees, \$13,794.

Except for the category of Public Facility Impact Fees, none of the other itemized activities are eligible for reimbursement. The CEC staff objects to Shasta County's proposed costs to review the Fountain Wind application. The CEC staff recommends that Shasta County review its request and determine appropriate and accurate costs of reviewing the project for information requested under Public Resources Code section 25519(f) and 25545.9 and Title 20, California Code of Regulations, section 1715.

D. Shasta County's Request for Reimbursement is Overbroad and Unreasonable

The scope of the work described, including extensive outside legal fees to draft the County's objection to CEC's jurisdiction, is overbroad and unreasonable. The CEC staff objects to the use of general numbers unsupported by realistic time estimates, given that Shasta County has extensively reviewed and evaluated all aspects of this project previous to it being filing with the CEC. The CEC staff will ask for information and consultation as needed to process the application. Comments or review by the County that are not responsive to a request from the CEC staff are outside the scope of relevant legal provisions and not subject to reimbursement.

The figures included in the reimbursement request do not represent a reasonable amount of time to fulfill Shasta County's obligations under Public Resources Code

section 25529(f) or 25545.9. Notably, in section D of their request for reimbursement, Shasta County outlines "Other Added Costs of Services." The itemized list in Section D of the request and itemized budget are all issues Shasta County has fully evaluated in its own Environmental Impact Report.

A local agency may not be reimbursed for "costs, even if actually incurred, [of] expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise" (Cal. Code Regs, tit. 20, § 1715, subd. (b)(1).) The reimbursement will not cover litigation costs or other legal work, including filings not related to the County's role as a reviewer regarding impacts applicable to regulations and permitting rules.

For these reasons, the CEC staff objects to Shasta County's request for reimbursement and recommends that Shasta County either withdraw or re-submit its request. The CEC staff encourages Shasta County to provide responsive material relative to its obligations under Public Resources Code, section 25519, subdivision (f) and (k), and Opt-in specific provisions under Public Resources Code, section 25545.9, including but not limited to its "comment letter regarding the economic impacts of the proposal," as set forth in County Ordinance No. SCC 2023-01, Amending section 17.88.335 (D)(2)(a).

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director