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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Fountain Wind Project Opt-In
Application for Certification

Docket No. 23-OPT-01

**COUNTY OF SHASTA
RESPONSE TO STAFF OBJECTION TO COUNTY'S REQUEST FOR
REIMBURSEMENT AND ITEMIZED BUDGET**

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October 19, 2023

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**COUNTY OF SHASTA
RESPONSE TO STAFF OBJECTION TO COUNTY’S REQUEST FOR
REIMBURSEMENT AND ITEMIZED BUDGET**

The County of Shasta (“County”) hereby files this response to the California Energy Commission’s (“Commission”) *CEC Objection to Shasta County’s Request for Reimbursement and Itemized Budget*, dated August 25, 2023 (“Staff Objection”).¹

The County filed its *Request for Reimbursement and Itemized Budget*, dated August 15, 2023 (“Reimbursement Request”) in accordance with Assembly Bill (“AB”) 205, Public Resources Code Sections 25519 and 25545.8, and 20 C.C.R. Section 1715, and in response to the purported notice of application receipt and request for comments and information email it received from Commission staff on January 25, 2023.² Pursuant to Section 1715, the County filed its Reimbursement Request for costs incurred—and costs that will be incurred—for actual services performed by the County in reviewing and submitting comments on Fountain Wind LLC’s (“Applicant”) AB 205 opt-in application for certification of the Fountain Wind Project (“Application” or “Project”). Accordingly, the County expected the Commission to notify it within 10 business days whether its Reimbursement Request was complete or incomplete,³ and if

¹ TN No. 251926.

² Email from Leonidas Payne, Project Manager, California Energy Commission, to County of Shasta, *Notice of application receipt for Fountain Wind project (23-OPT-01) / request for comments and information* (Jan. 25, 2023) (“Commission Application Notice”).

³ 20 C.C.R. § 1715(c)(3).

incomplete, to provide a list of deficiencies for the County to correct to complete its request.⁴ Instead of providing the County with a list of deficiencies, however, Commission staff objected to the Reimbursement Request and recommended the County either withdraw or re-submit it.⁵ While Commission regulations do contemplate that Commission staff or the project applicant may object to a proposed budget after the proposed budget has already been determined to be complete,⁶ Section 1715 does not contemplate a staff objection and summary rejection of a budget request without providing a list of curable deficiencies.⁷

The Staff Objection is legally impermissible for several reasons. *First*, Commission staff objects to the entire Reimbursement Request and deems it incomplete. The Staff Objection does not, however, identify a list of curable deficiencies or explain why certain reimbursement categories are invalid or provide any guidance on what is an eligible local agency reimbursement cost. *Second*, the Staff Objection itself acknowledged that any “delay” is not a bar to reimbursement.⁸ The County acknowledges that it did not file its Reimbursement Request within 21 days, but the County’s timing was reasonable and similar to that of other local agencies making similar requests to the Commission in accordance with Public Resources Code Sections 25519(f) and 25538, and those requests were not automatically barred.⁹ The County needed this reasonable amount of time to fully review the information submitted by the Applicant, understand its rights under AB 205 and applicable Commission regulations, identify the potential costs and scope of review, and solicit proposals for consultants to assist with the County’s review. *Third*, the County

⁴ *Id.*

⁵ Staff Objection at 1, 6.

⁶ Section 1715(c)(4) states that a proposed budget will be deemed approved if neither Commission staff nor the project applicant file a written objection “within 10 working days after the proposed budget is *determined to be complete*.” (Emphasis added). Per the Staff Objection, the County’s proposed budget has not been “determined to be complete.”

⁷ The County further notes that the Applicant has not filed any response or objections to the Reimbursement Request as other applicants have in similar proceedings, discussed herein. The only objection is from the Commission.

⁸ Staff Objection at 3.

⁹ *See, e.g.*, Southern Inyo Fire Protection District’s request in AFC-11-02, discussed *infra*.

disagrees with the objection that the Reimbursement Request includes items that are invalid, ineligible or beyond the scope of the County’s review, or that costs and time estimates are unreasonable. The County’s scope of review is not limited to responding to specific requests from the Commission or Commission staff. The scope of the County’s legally-mandated review is actually quite broad and includes full review and comment on the Application from the application adequacy review through the conclusion of the opt-in certification proceeding.¹⁰ To the extent that Commission staff interprets Section 1715 as to limit reimbursements to specific Commission requests, this interpretation is unlawful and inconsistent with Public Resources Code Sections 25519 and 25538, and the plain language and legislative intent of AB 205. The Reimbursement Request is not “overbroad and unreasonable.”¹¹ Instead, it is based on reasonable fact-based estimates of costs the County has incurred, both in its prior review and denial of the Fountain Wind Project (*e.g.*, CEQA) and its costs related to the Application, or that it will incur in reviewing and commenting on the Application pursuant to its statutory obligations. *Fourth*, any denial of the Reimbursement Request unfairly prejudices the County’s participation in the proceeding as a matter of due process and violates the prohibition on unfunded state mandates set forth in the California Constitution.

I. The Staff Objection Does Not Follow Section 1715 and Presents an Impermissible and Unhelpful Interpretation of the Commission’s Duties Related to Local Agency Reimbursement Under Public Resources Code Sections 25519(f) and 25538

The Staff Objection formally “objects” to the Reimbursement Request, finding it incomplete, but fails to provide a list of curable deficiencies, explain why certain categories are

¹⁰ For example, Public Resources Code Section 25519(f) says that “upon receipt of an application,” Staff must forward the application to certain local governmental agencies, which agencies must “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.”

¹¹ Staff Objection at 5.

invalid or unreasonable, cite any deficiencies grounded in law or Commission regulation, or clarify or request the supplemental information needed for Commission staff to deem the Reimbursement Request complete. The Commission’s duty under Section 1715 is to deem the request “complete” or “incomplete,” and, if incomplete, to “provide [...] a list of deficiencies that must be corrected.”¹² The Staff Objection does not satisfy this duty and is therefore procedurally and legally improper. The Staff Objection merely states in summary fashion that the request is untimely, reimbursement is being sought for invalid activities, activities are ineligible or exceed the scope of the County’s review, and the request is overbroad and unreasonable. The specific reimbursement items sought by the County are not discussed in any detail. The entire Reimbursement Request is rejected even despite staff’s recognition that the category of Public Facility Impact Fees are eligible.¹³ There is no other discussion of the categories put forward by the County or what supplemental information or documentation within those categories would be needed in order to satisfy Commission requirements to be deemed complete. The Staff Objection and the Commission’s Section 1715 review in this matter is essentially a “black box,” and the purported “denial” of the County’s costs is arbitrary and capricious and an abuse of the agency’s discretion.

The Commission has a duty to assist the requestor by identifying deficiencies that the local agency can cure to complete its budget request, not play the role of arbiter when the Applicant itself did not object to the request. Objecting to the County’s request is therefore not only unhelpful, it also conflicts with the Commission’s own rules and precedent. For example, in response to a reimbursement request for over \$311,400 quarterly by the City of Pittsburg (“City”) in the Application for Certification in the Willow Pass Generating Station in Docket 08-AFC-6,¹⁴

¹² 20 C.C.R. § 1715(c)(3).

¹³ Staff Objection at 5. A proper response would be to deem the Public Facility Impact Fees category “complete” or request additional back-up documentation to support the fees. The Staff Objection does neither.

¹⁴ For comparison, the County’s proposed budget in the instant proceeding is for a total of \$585,514.

the Commission acknowledged its duty under Section 1715(c)(3) to “respond within ten working days with a determination of whether the proposed budget is complete” and—having determined that the proposed budget was incomplete—supplemented its initial request for review with a “more tailored request” so that the City of Pittsburg could submit a revised budget.¹⁵ Despite the City submitting the same form of budget and reimbursement categories submitted by the County and the City’s budget exceeding what is proposed here, Commission staff did not reject or object to the City of Pittsburg’s request and did not recommend that the City withdraw or revise its request. Instead, the Commission deemed the request incomplete and provided a list of deficiencies that the City could correct “to complete the proposed budget request.” Thus, the Commission, pursuant to its obligations under the law and its own regulations, assisted the requestor with its reimbursement request. By analogy, the Applicant submitted a grossly deficient Application that was subject to a 243-page deficiency letter and supplemental data requests. As has been pointed out by the County in prior comments,¹⁶ the Applicant re-filed the prior Project documentation that was part of the County’s environmental review and permitting process and never subsequently updated it to comply with AB 205 or Commission Exhibit B application requirements for opt-in applications. The deficiency letter was more extensive than any recent deficiency letter in other Commission dockets. The Application was not objected to or directed to be withdrawn and re-filed, but within 30 days of its receipt, a deficiency notice was issued with a detailed list of deficiencies, which deficiencies continue to be addressed by the Applicant.

¹⁵ *Staff Response to the Itemized Budget and Request for Reimbursement in Review of the Willow Pass Generating Station, Application for Certification (08-AFC-6)*, Docket 08-AFC-6, TN49096 (Nov. 21, 2008) (“Staff’s Response to Pittsburg’s Request”).

¹⁶ TN No. 251601, *County of Shasta Opposition to Commission Jurisdiction Under AB 2015 and Objection to Fountain Wind LLC Request for Application Completion Determination*, at 4-5, 11-13 (Aug. 14, 2023).

The Commission’s duty is to deem reimbursement requests complete or incomplete, and, if incomplete, provide a list of curable deficiencies, not assert broad challenges and provide limited actionable guidance.

II. The Reimbursement Request Is Timely and Remains Timely, and There is No Law or Commission Regulation that Bars the Request

The Staff Objection objects to the Reimbursement Request on the grounds that the County did not file it within 21 days,¹⁷ but Section 1715 makes clear that timing is not a bar to reimbursement. In fact, Section 1715(c)(2) expressly states that timeliness will not bar reimbursement, stating in part that:

A local agency’s failure to file a proposed budget within the time period specified herein *shall not prevent it from receiving reimbursement*; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

A plain reading of this subsection dictates that the County submitting its Reimbursement Request outside of the 21 days is not a bar to the County receiving reimbursement for any of its eligible expenses, but instead creates *a risk* that the County may not be reimbursed for work it undertook *prior to submitting its request*. The Staff Objection acknowledged as much when it advised that failure to submit the request within 21 days of receiving a request for review from the Commission “creates a risk” of not being reimbursed for work already performed.¹⁸ What is more troubling is that the timeliness objection is not limited to those costs incurred by the County prior to the Reimbursement Request submittal, but appears to apply to the entire request.

Prior to filing the Reimbursement Request, and as indicated in the Staff Objection, the County met with Commission staff on June 2, 2023 and discussed, among other things, the

¹⁷ Staff Objection at 1 and 6.

¹⁸ Staff Objection at 3. Presumably, this provision of Section 1715 is in place to put requestors on notice that there is a risk to pre-request expenses being ineligible for reimbursement because such expenses may be out of scope.

Commission's local agency reimbursement process. At that meeting, Commission staff acknowledged that the agency had little experience with local government reimbursement requests. It advised the County that the agency could file a cost reimbursement request and understood that the 21 days contemplated by Section 1715 was unreasonable recognizing the size of the proposed Project and the County needing to fully understand its rights under AB 205, review the entirety of the Application, solicit and review third-party proposals for review and comment support, and seek direction from the County's governing body.

In addition, the timing of the County's request aligns with the timing of other agency reimbursement requests. For example, the Southern Inyo Fire Protection District apparently submitted its reimbursement request nearly nine months after receiving a request for agency participation¹⁹ in the Commission's review of the Hidden Hills Solar Energy Project,²⁰ yet its request does not seem to have been denied by the Commission or even objected to by Commission staff.²¹ Here, it would not have been possible to prepare the Reimbursement Request within 21 days of receiving the request from Commission staff because the size of the Project and scope of the County's review and comments are considerable. Moreover, the County needed to seek

¹⁹ The Southern Inyo Fire Protection District appears to have submitted its *Request for Cooperative Reimbursement Agreement; Southern Inyo Fire Protection District* on May 17, 2012 despite receiving the Commission's *Request for Agency Participation in the Review of the Hidden Hills Solar Energy Project, Application for Certification (11-AFC-2)*, Docket 11-AFC-2, TN61960 (May 17, 2012) ("SIFPD Request") nearly nine months prior on August 19, 2011.

²⁰ Despite a thorough review of the Commission's docket for 11-AFC-2, filing a Public Records Act request, and requesting the document directly from Staff, the County has been unable to locate Southern Inyo Fire Protection District's reimbursement request. However, in its response to Southern Inyo Fire Protection District's reimbursement request, the applicant stated that the request was dated May 17, 2012. *Hidden Hills Solar Electric Generating System (11-AFC-2): Response to "Request for Cooperative Reimbursement Agreement; Southern Inyo Fire Protection District"* by William Ross, Pursuant to 20 C.C.R. § 1715, 11-AFC-2, TN65480 (May 29, 2012).

²¹ Shortly after the applicant filed its May 29, 2012 response, the applicant and the Southern Inyo Fire Protection District asked the Commission to not take "further action" on the reimbursement request so that the parties could try to resolve the reimbursement request bilaterally. *Joint Recommendation and Request of Southern Inyo Fire Protection District and the Applicant Regarding Pending Request Pursuant to 20 C.C.R. § 1715*, Docket 11-AFC-2, TN No. 61960 (May 30, 2012).

approval from its governing body for such review and take the necessary time and resources to create a detailed budget including actual scopes of work and cost proposals.

III. The County Has Broad Rights to Review and Comment on the Proceeding Consistent with Commission Precedent, and Is Eligible for Reimbursement of the Costs for the Review and Comment

The Staff Objection further objects to the Reimbursement Request for the following reasons: (1) reimbursement is sought for invalid activities; (2) the County’s activities are ineligible or exceed the scope of review the Commission has requested or will request; and (3) the request is overbroad and unreasonable. Because the County’s responses to these objections are similar in nature and legal reasoning, it addresses them collectively below.

The Reimbursement Request includes the costs the County has already incurred and costs the County will incur in reviewing and submitting comments on the Application and participating in the proceeding within the scope of those comments. The request represents only those costs eligible for reimbursement pursuant to applicable law. The County is required by statute to review the Application and submit comments on a broad range of topics related to the Project. The County’s review and comments are then state-mandated, non-discretionary activities that will cause the County to incur significant costs. These costs are reimbursable and have been appropriately captured in the Reimbursement Request, despite the Staff Objection and assertions to the contrary. Specifically, Public Resources Code Section 25519(f) states, in relevant part, 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.”²²

²² Emphasis added. Public Resources Code Sections 25519(f) and (k) and 25538 apply to opt-in applications per Public Resources Code Section 25545.8(b).

A plain reading of this statute illuminates the broad scope of the County’s legally mandated review, which review includes a review of the “application,” documents submitted regarding the application and submitting “comments” to the Commission, on “among other things,” multiple site issues, as well as the construction and operation of a proposed project and the site itself. The Legislature presumably provided for the breadth of this review and reimbursement because the local agency with underlying land use authority has the broadest authority over and the most germane information about a proposed renewable energy project, such as the project site, community and stakeholder interests, underlying land use, zoning and environmental impacts, to name a few. The Legislature also provided for the full review of the local agency because, in an opt-in application proceeding, and in a thermal application for certification proceeding, the Commission has exclusive certification authority, which is *in lieu* of the local agency, and can preempt its discretionary authority (notwithstanding any AB 205 jurisdictional conflicts, as is the case here). That is, the Legislature removed local agency discretionary authority and replaced it with review, comment, and reimbursement rights intending that the local agency be allowed to provide considerable comments and the Commission afford great weight to those comments.²³ The Reimbursement Request, however, conflicts with this legislative intent.

Specifically, the County as the local agency with discretionary authority over the Fountain Wind Project has expertise on and would review and comment on the following eligible reimbursement items:

1. Reviewing AB 205 to understand County review and comment rights;

²³ “Taken together, the above provisions demonstrate that the Legislature intends the Energy Commission to give great weight to the comments, opinions, ordinances and standards of local governments. The concerns of counties and cities are not to be ignored or to be given secondary consideration. As representatives of the people who live in the immediate area of proposed thermal power plants, county and city government officers are to be listened to and respected. In fact, local ordinances, laws and standards are to be given such weight as to prevent or substantially influence the construction of a proposed facility not in compliance therewith if there exists a more prudent and feasible means of achieving the public convenience and necessity than constructing the facility as proposed or on the site proposed.” 58 Op.Cal.Atty.Gen 729, 745-746 (1975).

2. Internal County discussions and review, including meetings with the Shasta County Board of Supervisors, regarding its review and comment rights and strategies in reviewing and commenting;
3. Obtaining community feedback and interest in shaping the County's review and comments;
4. Meetings with the Commission to discuss review and comment rights and potential areas of review and comment;
5. County land use, zoning and municipal requirements;
6. County's prior review and denial of the Project;
7. Energy aspects of the Project, including, but not limited to, alternative sites and site necessity;
8. Full participation in the CEQA process, including review and comment on all aspects of the Draft and Final EIRs, such as wildfire impacts and tribal impacts;
9. Review and comments on the community benefits agreement plan;
10. Review and comments on the net positive economic benefit of the Project;
11. Participation and attendance in all Commission meetings and public outreach proceedings; and
12. Reimbursement of County costs for staff, counsel, consultants, and outside counsel in support of the above activities.

AB 205 supports this interpretation because 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 . . .”²⁴ In fact, the County has more information about the Project than all other state or local agencies because it previously reviewed the same project that has been re-submitted to the Commission for approval and included an extensive environmental review. The County's review and comments are also not limited to when the Application is undergoing an adequacy review for completeness, but is applicable throughout the entire opt-in application certification portion of the proceeding.

The Staff Objection indicates that the County is seeking reimbursement for invalid activities incurred prior to any Commission determination of Application completeness, including the County's initial review of the Application, comments filed and meetings with Commission

²⁴ Reimbursement Request at 5.

staff.²⁵ The Staff Objection does not specifically list which activities are invalid and appears to deny all of them as such. There is also no explanation as to why the County is not entitled to reimbursement for these costs, which have been incurred as part of the County's review of the Application and in anticipation of its forthcoming comments. Certainly, such activities are reimbursable given the scope of review discussed above because the County would need to review the Application and other documents filed in the docket in order to determine which items are relevant to its scope of review and what it will comment on and respond to.

There is also a statement and other reference in the Staff Objection that the County in the seven months between the Commission Application Notice and the filing of the Reimbursement Request "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).²⁶ 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."²⁷ The Staff Objection further states that the only comment received by the Commission is regarding its AB 205 jurisdiction.²⁸ As the County and Commission staff discussed at the June 2, 2023 meeting, and Commission staff made

²⁵ To the extent the Staff Objection suggests that the County is seeking reimbursement for its oppositional comments to the Commission's AB 205 jurisdiction over the project, the Reimbursement Request does not include these costs or any other costs outside the scope of the County's AB 205 review.

²⁶ Public Resources Code Section 25519(k) does not appear to apply to the County in this proceeding. Subsection (k) requires the Commission to provide notice 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 County is a "governmental agency" specifically mentioned in the Warren Alquist Act by virtue of its mention in subsection (f) as the "local governmental [agency] having land use and related jurisdiction in the area of the proposed site and related facility." Subsection (k) review is also not reimbursable by the Commission under Public Resources Code Section 25538. Subsection (k) notice then is applicable to the Pit River Tribe, the cities and local agencies within Shasta County, and all other governmental agencies that provided comments on the County's Final EIR and Planning Commission and Board of Supervisors' meetings. The County is not aware that formal notice has been provided to those agencies.

²⁷ Staff Objection at 2.

²⁸ As both a policy and legal matter, the County raised its jurisdictional comments prior to formal participation in the proceeding as it should.

clear, the Application is currently undergoing an adequacy review prior to any determination of completeness. The County is not required to provide all of its comments at this stage of the proceeding, and the timing is not yet ripe for many comments, when the Application is being reviewed for factual completeness with Commission AB 205 and Exhibit B application requirements. And, as Commission staff more importantly indicated to the County, a finding of completeness does not result in or equate to any determinations the Commission is required to make under AB 205 or applicable law to certify the Project, such as determinations on a net positive economic benefit; community benefits plan; the adequacy or legality of the environmental impact report, environmental impacts and statements of overriding consideration; or an override of the County's large wind energy systems ordinance. In other words, there is a distinct difference between a Commission staff adequacy review of an application for completeness and substantive areas of the Commission's final determination, certification and approval (or denial) under AB 205.

What is puzzling is the Staff Objection stating that County comments on the net positive economic benefit have not been filed when the Reimbursement Request expressly contemplates and requests a budget for this very activity. The request seeks \$94,000 for economic impact review based on the costs of consultants to review and study the issue. The Staff Objection denies eligibility for the very activity that the Commission has not expressly sought comment on from the County, appears to now seek comment on by being included in the Staff Objection, and then objects to the County not having submitted this information prior to a reimbursement request being submitted. This is the definition of a "Catch-22."

The Staff Objection in Section C goes on to state that the County's activities are ineligible and exceed the scope of the review that the Commission has requested or will request.

Commission staff summarizes the four areas of the Reimbursement Request in this regard: review of the Application prior to a notice of completion, review and comment post-notice of completion, CEQA review, and public facility impact fees. The Staff Objection also states in Section C that the costs requested by the County “are not reasonable.” It is not clear, therefore, if Commission staff is objecting to all of the categories outright or it is approving some of the categories subject to more information to support the estimates. There is simply a blanket objection that the activities are ineligible followed by a statement that the estimates themselves might exceed what staff deems is reasonable (despite no threshold for reasonable time and cost estimates or other guidance on local agency reimbursement budgets). For instance, CEQA review clearly falls under the County’s obligation to review and comment. As indicated in its Reimbursement Request, the CEQA amount for \$228,580 is based on the actual costs the County incurred in reviewing the EIR at the local level, which EIR was re-submitted in portions to the Commission. The County is not seeking to be reimbursed for its costs from its *prior review and denial* of the Project as is intimated in the Staff Objection, but is basing its estimate on the forward review of the draft and final EIRs that may be circulated by the Commission based on the actual costs the County incurred. This would include retaining consultants with subject matter expertise to review Commission draft and final EIRs, analyzing those documents against the County’s prior review, and providing extensive comments to the Commission. Yet, despite the particularity of this activity, the Staff Objection dismisses the item outright on the grounds that it is altogether ineligible and any of the proposed costs are unreasonable (which assumes some portion is eligible as the activity is eligible or not, an issue separate from whether the estimate is reasonable).

The Staff Objection also indicates that reimbursement is predicated on receiving specific Commission requests for information. Although the origin of staff’s interpretation is unclear, it is

presumably based on a misinterpretation of Section 1715(a)(1)(B) that states “the added costs of services performed directly in response to Commission requests for review . . .” This subsection refers to the notice that is provided by the Commission when an application is received and the review and comment that local agencies are required to do and have done in response to notices of intention, applications for certification and opt-in applications. It is not drafted or intended to function as a “sit-and-wait” for a specific Commission data request and then get reimbursed for the incremental information being provided by the local agency to the Commission in that instance. There is absolutely no basis in the Public Resources Code, legislative history or in the Commission’s regulations or prior precedent to support that interpretation. Moreover, such an interpretation would render Section 1715 meaningless because it requires a reimbursement request to be submitted within 21 days of the notice. Most specific Commission requests would come much later in the proceeding and would occur in such a way as to not allow a local agency time to submit a budget for its overall activities.

It is quite clear that AB 205 obligates the County to review and comment on a breadth of issues related to an application or notice of intention, and this is how the Commission has previously interpreted the law and its own regulation. The County specifically tailored its Reimbursement Request to conform with this interpretation despite the Commission not following its notice procedures or providing clear guidance. The Commission Application Notice did not conform to 20 C.C.R. Section 1715(c)(1) in that it was not issued by the Chair, Presiding Member, or Executive Director of the agency as prior local agency notices have been issued. Therefore, there is inherent prejudice to the County in that the notice was deficient and did not properly set forth what the County’s rights were. In addition, the Commission Application Notice may have been styled as a “notice” pursuant to Public Resources Code Section 25545.8 but contained little

content beyond vague references to statutes and some “guidance” on how the County could access the project’s web page and relevant documents. The only discernable “request for comments and information,” was (i) a comment directing the County to “note the review and commenting obligations placed on [County] to comply with [Public Resources Code Section] 25519(f); (ii) a comment making the County aware that Public Resources Code Section 25545.8 states that Public Resources Code Section 25538 applies to Opt-in applications; and (iii) an invitation for the County to provide “comments and recommendations” and “any relevant laws, ordinances, or regulations that Shasta County has promulgated” that are applicable to the opt-in application.²⁹ This “notice” was inconsistent with prior Commission notices that included detailed descriptions of the projects and the rights the local agency has to review, comment, and seek reimbursement for its participation.

For example, when seeking agency participation in the review of the Willow Pass Generating Station, Commission staff described the project and the Commission’s facility certification process in great detail and asked the affected agencies to “provide any written comments ... regarding potential issues of concern.”³⁰ In similar precedent, the Commission has clearly outlined for local agencies the breadth and scope of their review under the Public Resources Code and the fact that they will be reimbursed for their participation in the siting proceeding.³¹ In Commission proceeding 84-NOI-1, the Commission reviewed the Notice of Intention for a geothermal power line project. Local agencies with permitting authority over the project were invited to comment on all aspects of the project “in making the [CEC] decision to accept,

²⁹ Commission Application Notice.

³⁰ TN47020, *Request for Agency Participation in the Review of the Willow Pass Generating Station, Application for Certification (08-AFC-6)*, Docket 08-AFC-6 (July 14, 2008).

³¹ *In the Matter of: Notice of Intention To File An Application For Certification For the Geothermal Public Power Line*, at 3, 84-NOI-1 (Jan. 25, 1984).

conditionally accept, or reject the document.”³² Furthermore, the Commission stated that “continued agency participation in the proceedings” was “necessary to identify and resolve issues that may develop during the proceedings.”³³ Various agencies were invited to comment on such areas as the agency’s interest in the project; the agency’s laws that applied to the project; the procedures, information, and data collection the Commission should perform; conduct an analysis and provide comments on the project’s environmental quality and public health and safety; and submit to the Commission the agency’s “analyses, studies, or other reviews relevant to the [project].”³⁴ The Commission was clear that requests by local agencies for the costs based on their full review of the project throughout the proceeding were eligible for reimbursement.³⁵ Similarly, in the Hidden Hills Solar Energy proceeding, the Commission formally requested local agency participation setting forth a detailed description of the project and the broad information sought by the Commission.³⁶ Although the notice does not cite to Section 1715, it is analogous because it sets forth the broad scope of local agency review and applied to Public Resources Code Section 25519(f) entities that had “laws, ordinances, regulations, or standards” that were applicable to the site and facilities.³⁷

In fact, the Commission Application Notice broadly invited “*the comments and recommendations of Shasta County*, and request[ed] that you send us any relevant laws,

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 3-4.

³⁵ *Id.* at 4. The County notes that the precedent cited in 84-NOI-1 was during the Notice of Intention portion of the proceeding prior to an Application for Certification. A NOI is not required, however, in an opt-in application under AB 205 there is no distinguishable reimbursement issue between 84-NOI-1 and the current Application, and nothing in Public Resources Code Sections 25519 and 25538 or 20 C.C.R. Section 1715 indicates otherwise. Furthermore, the Commission has received and evaluated local agency reimbursement requests during AFC proceedings as well. *See generally*, Staff’s Response to City of Pittsburgh Request and SIFPD Request.

³⁶ *Request for Agency Participation in the Review of the Hidden Hills Solar Energy Project, Application for Certification (11-AFC-2)*, TN 61960 (Aug. 19, 2011) (“Hidden Hills Notice”).

³⁷ *Id.* at 2-3.

ordinances, or regulations that Shasta County has promulgated or administered that are applicable to the proposed project.” Based on the language in the notice, Commission staff very broadly sought comments on the application, or if it did not, then there was not clear guidance or other direction on what it intended. And, although the notice requested applicable County ordinances, a copy of the County’s ordinance prohibiting large wind energy systems had already been provided to Commission staff in November 2022 prior to the Application being filed³⁸ and was part of Staff’s review per a data request that was issued to the Applicant by the Commission in February 2023.³⁹ Therefore, if reimbursement is, in fact, limited to specific Commission requests for information, then the Reimbursement Request is not untimely because the Commission’s “notice” did not conform to Section 1715 and staff has not requested any specific information to-date.

Furthermore, a narrow interpretation of Section 1715 limiting reimbursement to specific Commission requests is unreasonable and in direct conflict with Public Resources Code Sections 25519 and 25538, and with AB 205, which require the County to undertake a comprehensive review of the Application.⁴⁰ Nothing in the law suggests that reimbursement is limited to costs incurred in responding to specific Commission data requests. Nor does the law limit the timing of local agency review and comment, such as before or after the Commission

³⁸ A copy of the ordinance was provided prior to the filing of the Application by Paul Hellman, Shasta County Director of the Department of Resource Management, in an email to Jon Hilliard, CEC Biological Resources Supervisor, dated October 26, 2022, incorporated herein by this reference.

³⁹ TN 248759, *Deficiency Letter, Attachment B Addendum*, at 1 (Feb. 13, 2023). “Since the public release of the 2020 Draft EIR and 2021 Final EIR documents, the Shasta County Board of Supervisors adopted Ordinance No. SCC 2022-04 on July 12, 2022, which amended Section 17.88.035 and Section 17.88.100 of the Shasta County Code, and added Section 17.88.335, effectively prohibiting large wind energy systems in all zone districts within the County’s unincorporated areas. County Code Section 17.88.335 further states that no permit or approval of any type shall be issued for a large wind energy system. This prohibition includes unincorporated County areas that are within a Timber Production (TP) zone district, such as the proposed project site.”

⁴⁰ Local agencies must review opt-in applications 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.” Pub. Res. Code § 25519(f) (emphasis added).

deems an application complete.⁴¹ As discussed with Commission staff at the June 2, 2023 meeting, the current stage of the proceeding is an adequacy review of the Application. Commission review of the Application at this time is to ensure it provides sufficient information to meet Commission opt-in application requirements and whether the Application is complete, but it does not, in any way, go to the ultimate Commission determinations on such as areas as environmental impacts, net positive economic benefit or community benefits. Therefore, the County can review and comment on the adequacy of the Application while providing further review and comment on the substantive areas of the Application, and presumably, the forthcoming Commission documents such as any scoping memos, draft and final environmental documents and other proposed Commission determinations.⁴²

Lastly, Section D of the Staff Objection states that the Reimbursement Request is overly broad and unreasonable, particularly as to the County's environmental review and the estimated time and rates to conduct this activity. This objection is conflated with the objection stated in Section C, and is, therefore, subject to the same discussion and arguments raised above. More specifically, the figures in the Reimbursement Request represent a reasonable amount of time to fulfill the County's review and comment obligations. Contrary to the Staff Objection, the County did not use "general numbers unsupported by realistic time estimates," but instead conducted due diligence by identifying the scope of the County's mandatory review and related time estimates and obtained quotes from qualified third parties that could assist in that review. As discussed

⁴¹ The Staff Objection at 3 makes note of the County seeking reimbursement "for work it performed prior to [Staff's] determination regarding completeness." It is unclear whether Commission staff is suggesting that agencies can be reimbursed only to the extent that their review occurs after the completeness determination. If so, such a position is not supported by law or regulation.

⁴² See, e.g., Hidden Hills Notice, *supra*.

above, the scope of the County's review and its ability to recover its expenses for the same are not limited to responding to specific requests from the Commission.

IV. Any Unlawful Limitation on Reimbursement Unfairly Prejudices the County and Violates the California Constitution

The Staff Objection, if left intact, would unfairly prejudice the County's participation in the proceeding and would violate due process by effectively preventing the County from participating in the proceeding to the full extent it is legally allowed to do. There is a constitutional guarantee of due process in administrative proceedings. The County has limited resources to allow it to review and comment on the Application and participate fully pursuant to its AB 205 obligations (notwithstanding the Commission's lack of jurisdiction). Denying its reimbursement costs on unlawful grounds deprives it of such rights and may suggest partiality by the Commission.⁴³ Such conflict is avoided, however, through a plain reading of the statutes, which place no such limitation on the County's review.⁴⁴ Moreover, to the extent eligible reimbursement is unlawfully denied, the Staff Objection conflicts with the California Constitution's prohibition against unfunded state mandates. Specifically, Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government ... the State shall provide a subvention of funds to reimburse that local government [...]."⁴⁵ This obligation was "enshrined in the Constitution . . . to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources"⁴⁶ and prevents "the state from shifting financial responsibility for carrying out

⁴³ *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009), 45 Cal.4th 731.

⁴⁴ If the language of a law is "clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute)[.]" *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

⁴⁵ Subvention is a "grant of financial aid or assistance, or a subsidy." *County of San Diego v. State of California* (2008) 164 Cal.App.4th at 588, fn. 4.

⁴⁶ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282.

governmental functions to local agencies[.]”⁴⁷ As the County has previously indicated, AB 205 expressly acknowledges that local agency review and participation is a state mandated program. The bill “. . . 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.”⁴⁸ Although the Commission’s regulation in Section 1715 allows the agency to shift local agency reimbursement costs to the Applicant, both the law and the regulation expressly indicate that the obligation is the Commission’s. If permitted then, any unlawful interpretation of Section 1715 would result in an unfunded state mandate because the full review and comment by a local agency review under Public Resources Code Section 25519 is required and non-discretionary. The Staff Objection is, therefore, patently unconstitutional.

⁴⁷ *County of San Diego v. State of California, supra*, 15 Cal.4th at 81.

⁴⁸ Reimbursement Request at 5 (emphasis added).