

<b>DOCKETED</b>	
<b>Docket Number:</b>	23-OPT-01
<b>Project Title:</b>	Fountain Wind Project
<b>TN #:</b>	253348
<b>Document Title:</b>	County of Shasta Information Request re Community Benefits Plan
<b>Description:</b>	N/A
<b>Filer:</b>	Dawn Forgeur
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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  
COMMENTS REGARDING COMMUNITY BENEFITS PLAN AND  
APPLICATION COMPLETENESS DETERMINATION**

Matthew McOmber  
Assistant County Counsel  
Office of County Counsel  
County of Shasta  
1450 Court Street, Suite 332  
Redding, CA 96001  
[mmcomber@co.shasta.ca.us](mailto:mmcomber@co.shasta.ca.us)

Ryan M. F. Baron  
BEST BEST & KRIEGER LLP  
18101 Von Karman Avenue, Suite 1000  
Irvine, CA 92612  
Telephone: (949) 263-6568  
[ryan.baron@bbklaw.com](mailto:ryan.baron@bbklaw.com)

Tim Lyons  
BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
San Diego, CA 92101  
Telephone: (619) 525-1300  
[timothy.lyons@bbklaw.com](mailto:timothy.lyons@bbklaw.com)

Attorneys for  
**COUNTY OF SHASTA**

November 28, 2023

**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  
COMMENTS REGARDING COMMUNITY BENEFITS PLAN AND  
APPLICATION COMPLETENESS DETERMINATION**

The County of Shasta (“County”) is hereby docketing its November 13, 2023 information request sent to Fountain Wind LLC (“Applicant”) regarding the Applicant’s community benefits plan as well as the Applicant’s November 16, 2023 response refusing to provide information regarding the status of its negotiations with the Community Foundation of the North State (“Foundation”). The attached records are being submitted in the docket (1) so the California Energy Commission (“Commission”) is aware that the Applicant materially misrepresented its community benefits plan and that based on information and belief there is no community benefits agreement with the Foundation; (2) to request the Commission enforce 20 C.C.R. section 1716 and order the Applicant to provide updated information on its negotiation with the Foundation, or in the alternative, request that Commission staff issue a data request for the same information requested by the County; and (3) to object to the Application being deemed complete by the Executive Director and that the proceeding be paused until the misrepresentations and omissions can be fully investigated by the Commission.

**I. FOUNTAIN WIND LLC HAS REFUSED TO PROVIDE THE COMMISSION WITH UPDATED INFORMATION ON ITS COMMUNITY BENEFITS PLAN NEGOTIATIONS DESPITE A LAWFULLY ISSUED INFORMATION REQUEST**

Based on information and belief, the County understands that the Foundation did not approve the purported community benefits agreement that was submitted under false pretenses to the Commission, negotiations have concluded, and that there is no community benefits plan or agreement with the Foundation. In order to corroborate the information and ensure that the Applicant is correctly, and truthfully, reporting updated information on its community benefits plan, the County on November 13, 2023, submitted an information request to the Applicant, with copies to Commission staff, pursuant to 20 C.C.R. section 1716. The County requested the following information from the Applicant:

1. *whether the Applicant had executed a community benefits agreement;*
2. *whether good faith negotiations are ongoing with the Foundation;*
3. *whether the Foundation has concluded negotiations or otherwise indicated that it will not enter into a community benefits agreement with the Applicant; and*
4. *the date on which the Foundation indicated that it was not entering into an agreement with the Applicant.*

On November 16, 2023, the Applicant responded that the County was not legally entitled to send an information request to the Applicant and that it had no duty to provide any information to the County whatsoever. The Applicant further responded that even if it did have a duty to provide information pursuant to a lawfully made request under section 1716, it would not do so because community benefits plan information was not necessary for the County to comment on the Fountain Wind Project. ***Therefore, despite information that may be known to the Applicant that the Foundation has concluded its negotiations and there is no community benefits plan or***

*agreement, the Applicant refuses to verify or otherwise provide this information to the County, and more importantly, to the Commission and to the public.*

**II. FOUNTAIN WIND LLC FILED A FALSE COMMUNITY BENEFITS PLAN WITH THE COMMISSION, HAS MISREPRESENTED ITS CURRENT PLAN AND EVADED COMMISSION REQUIREMENTS AND PUBLIC SCRUTINY**

Pursuant to AB 205, the Commission cannot certify the Fountain Wind project “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.”<sup>1</sup> The Project application requirements require the Applicant to provide significant, detailed information regarding the design, construction and operation of the Project.<sup>2</sup> This includes information about the Applicant’s community benefits plan.<sup>3</sup> The Applicant was required to provide the “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.”<sup>4</sup>

On January 3, 2023, the Applicant submitted as part of its application a document entitled *Community Benefits Program*.<sup>5</sup> The *Community Benefits Program* document was dated June 2021 and had been previously submitted to the County when the County previously reviewed the Project and denied it. At that time, none of the organizations listed in the program document were in discussions with or agreed to a community benefits agreement with the Applicant. The same

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<sup>1</sup> Pub. Res. Code § 25545.10(a).

<sup>2</sup> Pub. Res. Code §§ 25520, 25545.4(b), and 25545.6; 20 C.C.R. Div. 2 Ch. 5 App. B; 20 C.C.R. § 1877(a).

<sup>3</sup> Moreover, 20 C.C.R. § 1876 mandates that opt-in applications be “authorized and verified” as set forth in 20 C.C.R. § 1707, which requires every notice and application to be dated and signed by each applicant “attesting under penalty of perjury to its truth and accuracy.” Based on information and belief, the Applicant did not authorize and verify its application as required by 20 C.C.R. § 1707 and the Commission has therefore not followed its own regulations in deeming the Application complete.

<sup>4</sup> 20 C.C.R. § 1877(g).

<sup>5</sup> TN 248296-2.

community benefits program document that was submitted to the Commission as part of the Applicant’s opt-in application consisted of the same 17 pages of purported financial commitments of approximately \$2,000,000 to Shasta County organizations including Cedar Creek Elementary School Redevelopment, the Fall River Resource Conservation District Fuel Reduction Project, ShastaBeam Internet Expansion, a contribution to the Pit River Tribe Tribal Employment Rights Office (“TERO”), Shasta County Sheriff’s Office, and community access to the Shasta Cascade Timberlands Property. The program document contained a summary of the proposed projects and included a March 17, 2021 letter from the Applicant to the Pit River Tribe TERO; a March 1, 2021 letter from the Northeastern California Building and Construction Trades Council to the Applicant discussing the potential for trade work for the Pit River Tribe; and a March 24, 2021 non-binding memorandum from Forestry Services California, LLC, a forestry operation management limited liability company who controls the project site in question, to the Applicant outlining a generalized plan to allow limited community and Tribal access to the Project site, including a permit system for such access. The “community benefits program” was not updated or modified before being submitted to the Commission or during the Commission’s application adequacy review. The submittal itself did not include any documentation or information that the Applicant was in negotiations with any of the subject fund recipients, letters of support from those organizations, or drafts or outlines of community benefits agreements. Furthermore, on January 4, 2023, the Applicant submitted another document as part of its opt-in application entitled *Appendix B Opt-In Application Crosswalk Matrix* (“Crosswalk Matrix”).<sup>6</sup> On page 43 of the Crosswalk Matrix, the Applicant buried supplemental information in the matrix regarding its community benefits plan that was not disclosed in the program document that the community benefits agreements identified

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<sup>6</sup> TN248321.

in the plan would not be executed “until the second half of 2024 after the CEC permit is granted.” No other information was provided or updated regarding the “2021 plan.”

On February 10, 2023, Commission staff docketed a 243-page document entitled *Deficiency Letter* that included a “Data Adequacy Worksheet” showing areas of the application that were determined by staff to be adequate or inadequate for purposes of making an application completeness determination pursuant to 20 C.C.R. section 1878(b).<sup>7</sup> The Data Adequacy Worksheet on pages 10-14 showed that Commission staff determined that the community benefits plan was adequate except for project specific community improvements contemplated by Public Resources Code section 25545.10(b).<sup>8</sup> The rest of the Applicant’s plan was determined to be complete.

On July 31, 2023, Save Our Rural Town filed comments in the docket noting that the application did not comport with the community benefits agreement requirement of AB 205 or with the Commission’s own regulations at 20 C.C.R. section 1877(g).<sup>9</sup> Save Our Rural Town indicated in detailed analysis that, among other things, agreement execution was contemplated in 2024 after CEC certification contrary to statutory requirements that it be done before certification; there was no evidence of actual negotiations, commitments or agreements with community-based organizations; and that projects were “self-serving” and not “community-oriented.” In short, the community benefits agreement portion of the application was inadequate and should not have been deemed adequate by Commission staff.

On August 3, 2023, the Applicant submitted a request for a completion determination at the request of Commission staff “to confirm that as of August 2, 2023, the Applicant has responded to and submitted all docketed requests and deficiencies related to application sufficiency pursuant

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<sup>7</sup> TN248742.

<sup>8</sup> Data Adequacy Worksheet at 13.

<sup>9</sup> TN251380.

to Public Resource Code section 25545.5(b) and is seeking a determination of completeness.”<sup>10</sup>

On August 31, 2023, five months after the Commission deemed this portion of the application “adequate,” Commission staff filed a response to the request for determination of completeness indicating for the first time publicly that the community benefits plan was indeed “inadequate.”<sup>11</sup>

Specifically, the staff response stated:

“On January 3, 2023, the applicant filed a document entitled, Community Benefits Program (TN 248296-2). The document was drafted in 2021 and contains a list of projects the applicant proposes to fund to benefit the local community. The document largely contains descriptions of specific projects that the applicant is willing to fund purportedly based on community feedback. The project list is not current and contains outdated information. On several occasions, including most recently on July 27, 2023, in a meeting with CEC staff regarding outstanding data requests, the applicant has stated its intent to provide updated information on community benefits. However, to date the applicant has not submitted updated information and details about the proposed community benefits including a plan or strategy, and a timeline for execution, to obtain legally binding and enforceable agreements as required under Title 20, California Code of Regulations, section 1877(g).”

Prior to the August 31 response, there has been no other public indication by the Commission that the community benefits plan was inadequate, that staff and the applicant were in discussions about the inadequacy of the application, and the Applicant failed to provide the Commission with updated information. And, as the local government agency that represents many of the communities and organizations at the local electoral level and who previously reviewed the “2021 plan,” there was no discussion by staff with the County about the inadequacy of the plan, or any information request by staff of the County as allowed and required by Public Resources Code section 25519(f). There is also no indication in the record of this proceeding or in Public Records Act disclosures by the Commission to date that the Commission attempted to verify the original

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<sup>10</sup> TN251479, *Fountain Application Completion Letter 2023-0803*.

<sup>11</sup> TN252072, *Staff’s Response to Applicant Request for Determination of Completeness, Wildfire Data Requests*.



plan submitted on January 3, 2023 with any of the organizations identified in the plan. Clearly, the Applicant misrepresented its community benefits plan with little follow-up and no public disclosure of this issue until six months after the “plan” was filed.

Rather than being forthright and providing an adequate or updated plan as requested by Commission staff, the Applicant sought to further obstruct the application process and avoid the plain requirements of AB 205 by refusing to provide full and accurate information of the actual plan it was proposing. On September 8, 2023, the Applicant filed a response to Commission staff’s August 31 deficiency letter, and in four short bullet points, summarized that conversations with the Commission were held on July 27; the Applicant was negotiating an agreement with an unidentified foundation where funds would benefit the project area and the Burney, Montgomery Creek, and Round Mountain unincorporated area communities; and that an agreement would be executed by the “end of September” and submitted to the Commission 45 days after the application was determined to be complete.<sup>12</sup> No other information about the plan was provided. The Applicant’s response was not written or signed by Fountain Wind LLC or ConnectGen LLC or its legal counsel despite containing legal analysis of AB 205 requirements, but was submitted unsigned in a memorandum format by the outside environmental consultant and project manager, Caitlin Burns, Stantec, the same individual that submitted the crosswalk matrix and original false plan.

In response to the lack of information again provided by the Applicant, Commission staff issued a docketed data request on September 20, 2023 to the Applicant.<sup>13</sup> The data request set forth staff’s interpretation of Public Resources Code section 25545.10 and 20 C.C.R. sections 1877 and 1878, determined that the application did not comply with community benefits plan legal

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<sup>12</sup> TN252187, *FWP Response to Deficiency Letter*.

<sup>13</sup> TN252320, *Community Benefits Data Request for the Fountain Wind Project*.

requirements, and that the Applicant needed to docket additional detailed information, which the Applicant failed to do.

Despite Commission staff's admonition to the Applicant in the September 20 data response that community benefits plan information is required so "that members of the community have the opportunity to shape the project's contributions to the community," the Applicant submitted its response and a "draft agreement" in the docket on September 28, 2023 disclosing so-called "negotiations" with a foundation, but redacting all pertinent information from the public version of the document, including the name of the foundation and material terms and amounts of the agreement, and requesting confidential designation of the redactions on the grounds that the information was exempt under the California Public Records Act.<sup>14</sup> The redacted response provided no specific information about the community benefits plan and no evidence that the Applicant was actually in discussions with a foundation. The next business day, on September 29, 2023, the County objected to the confidential designation request and provided legal analysis why the Applicant's submittal was not entitled to confidentiality under the Public Records Act. Commission staff did not in any way address the County's objection or the Applicant's designation request. On October 12, 2023, the Applicant re-filed its community benefits plan response in the docket in unredacted form, and did not provide a further response as to why it filed the redacted documents, and did not rescind the confidentiality designation request.<sup>15</sup> In its unredacted response, the Applicant cited negotiations with the Community Foundation of the North State and that approximately \$3,000,000 in Foundation funds was earmarked for the Pit River Tribe and the Shasta County unincorporated area.

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<sup>14</sup> TN252430, *Cover Letter re Confidential Designation September 2023*; TN252431 *REDACTED Response to Community Benefits Data Request*.

<sup>15</sup> TN252585, *FWP Community Benefits DRAFT Fund Agreement*; TN252586, *FWP Response to Community Benefits Data Request*.

On October 18, 2023, the Pit River Tribe objected to Fountain Wind Project. In the Tribe's comments, it "vehemently" objected to the misleading claims by Fountain Wind regarding its community benefits plan and assertions that 50 percent of the funding was dedicated for Tribal resources. The Tribe opposed any financial arrangement with Fountain Wind. Likewise, Shasta County Supervisor Mary Rickert filed comments that, in part, objected to the proposed funding arrangement, noting that funds had previously been rejected and that organizations in the county have clearly indicated that they would not accept funds attributable to the Fountain Wind Project.

Despite these objections and the lack of evidence that a community benefits plan existed or that negotiations were ongoing, Commission staff deemed the Fountain Wind Project application complete.<sup>16</sup> After the Applicant evaded Commission and public scrutiny of its plan for 9 months, Commission staff on October 31,<sup>17</sup> and in a mere 12 calendar days after the unredacted plan was filed, determined the application was complete, and with no evidence that the Applicant was, in fact, negotiating a community benefits plan with the Foundation.

### **III. THE COUNTY HAS THE LEGAL RIGHT TO ISSUE AN INFORMATION REQUEST FOR UPDATED COMMUNITY BENEFITS PLAN INFORMATION**

The County believes that the Foundation is not currently negotiating a community benefits agreement with Fountain Wind LLC and that any negotiations that Applicant had have been terminated. Because a foundation is a non-profit corporation, its records can only be released by the foundation itself. In order to verify the negotiations, the Applicant's veracity, and the Commission's error in determining the application complete, the County utilized 20 C.C.R.

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<sup>16</sup> TN252844, *Determination of Complete Application for the Fountain Wind Project*.

<sup>17</sup> Commission determination of complete application was dated October 30, 2023, but the filing was submitted after 5pm and therefore, should have been docketed and effective October 31, 2023. The County filed an objection to the docketing date noting the error. TN252889, *County of Shasta Comments re Incorrect Docketed Date re Determination of Complete Application for Fountain Wind Project* (Nov. 1, 2023). The CEC Docket Unit has since verified in writing with the County that the date was incorrectly docketed in violation of Commission filing regulations, yet the Commission has not taken any action to correct the date and has since issued multiple public notices with the wrong date.

section 1716 and issued a data request to the Applicant. Section 1716 authorizes a local government that is required to review and comment on a project application to issue data requests to an applicant. This procedure has been available to local governments for years and is identical to similar procedures allowed by the California Public Utilities Commission. The County issued its information request, and to ensure it would be reviewed and enforced, served the request on the Commission's Siting Division.

In the attached response, Fountain Wind refused to provide the information stating that section 1716 was not available to the County in an opt-in proceeding. The Applicant also indicated that to the extent a request could be issued, a community benefits plan was not within the scope of the County's review and comment obligations, and thus, it was not entitled to the information.

The County contends that it is entitled to issue information requests to the Applicant. Section 1716 is available to all local governments with the exact review and comment obligations in other siting proceedings. Moreover, Commission staff recently indicated in its objection to the County's reimbursement request that the neighboring regulation, section 1715, setting forth a procedure for local government reimbursement, applied in this proceeding despite section 1715 not being expressly referenced in the Commission's opt-in regulations.<sup>18</sup> In addition, the community benefits plan information being requested is squarely within the County's review and comment obligations. Public Resources Code section 25545.10 requires an agreement with a community-based organization. The Applicant has acknowledged in its October 12 response that such an organization by law is to be within and for the benefit of Shasta County. The County is the representative agency for the entire county and has specific jurisdictional authority over the unincorporated area where the communities of Burney, Round Mountain, and Montgomery Creek

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<sup>18</sup> TN251926, *Objection to Shasta County Reimbursement Request* (Aug. 25, 2023).

are located, and are identified as recipients of Fountain Wind's funding. The County is the only local government entity that can speak on behalf of these constituencies, and it has a right and obligation to review and comment on a plan for the purported benefit of the Shasta County communities. To the extent that section 1716 does not apply, however, then the Commission failed to adopt a procedure allowing for local government review and comment, contrary to AB 205, and in violation of the County's rights.

As a matter of law and for the sake of the public and the transparency of the opt-in certification process, the County requests that Commission enforce the County's information request. In the alternative, the County requests that Commission staff issue a data request to the Applicant for the status of negotiations with the Foundation and if such negotiations have concluded. Otherwise, the Applicant will not update the Commission until 45 days after the application has been determined complete and the proceeding will, unlawfully, move forward with no repercussions for the Applicant's false statements, omissions, and misrepresentations of the Applicant to the Commission and to the public about its community benefits plan. If the Applicant's community benefits plan has been deficient all along, which, based on the information available to it, the County believes it has, the Commission should not have deemed the Application complete and the County continues to object to the Commission deeming it complete.

If the Commission is unwilling to enforce the information request or issue its own or otherwise investigate the misrepresentations and omissions of the Applicant, the County will consider filing a formal complaint against the Applicant or utilize other remedies available to it under Commission regulations and the law.

Dated: November 28, 2023

Respectfully submitted,

By:   
Ryan M. F. Baron



Ryan M. F. Baron  
Partner  
(949) 263-6568  
ryan.baron@bbklaw.com

November 13, 2023

**VIA E-MAIL**

Anne E. Mudge  
Cox Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111  
amudge@coxcastle.com

Re: *County of Shasta Title 20 C.C.R. Section 1716 Request for Information re  
Fountain Wind Project (23-OPT-01) Community Benefits Agreement*

Dear Ms. Mudge:

**INSTRUCTIONS**

Best Best & Krieger LLP represents the County of Shasta (“County”) on the Fountain Wind Project opt-in application at the California Energy Commission (“CEC”). Pursuant to Title 20, California Code of Regulations (“C.C.R.”), Section 1716(c), the County hereby requests responses to the Data Requests below seeking information related to the binding legal agreement that your client, Fountain Wind, LLC (“Fountain Wind”), is purportedly negotiating with the Shasta Regional Community Foundation, Inc. dba Community Foundation of the North State (“Foundation”), which legally binding agreement Fountain Wind identified in its October 12, 2023 “CONFIDENTIAL Response to Community Benefits Data Request (TN 252320, Docketed September 20, 2023)” (TN 252586), a draft copy of which Fountain Wind filed with the CEC in CEC Docket 23-OPT-01 on or about October 12, 2023 (TN 252585).

It is the County’s understanding that the Pit River Tribe and the unincorporated areas of Round Mountain, Montgomery Creek and Burney have been identified in the draft Foundation agreement but have indicated in public comments that they will not accept any of the funding that has been proposed by Fountain Wind in its docketed submissions. ***It is also the County’s understanding that the Foundation did not approve the draft copy of the community benefits agreement that was filed with the CEC, negotiations have concluded, and there is no community benefits agreement or plan with the Foundation.*** Based on the County’s information and belief, the County is hereby filing this Data Request pursuant to its rights under Section 1716(c) to request supplemental information about Fountain Wind’s community benefits plan that has not been shared with the CEC. CEC staff is hereby copied in an effort to avoid duplicative requests.

Each Data Request is continuing in nature. Please provide your responses to these Data Requests as they become available, but **not later than November 20, 2023**. If you are unable to

provide a response by this date, please notify me as soon as possible, with a written explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional responsive information after providing an answer to any request, please supplement your response following the receipt of such additional information.

Please identify the person providing the answer to each Data Request and his or her contact information. Responses should be provided in original electronic format, if available. If available in Word format, please send the Word document, not a PDF file. All electronic documents submitted in response to these Data Requests should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets, with data and formulas intact and functioning. Documents provided in response to the Data Requests should be Bates-numbered, and indexed if voluminous. Responses to the Data Requests that refer to or incorporate documents should identify the particular documents referenced by Bates numbers or Bates-range.

Where you cannot fully answer or respond to any Data Request, state, in detail, the reasons for your inability to fully answer or respond. If you object to any Data Request or portion thereof on the ground that it requests information that is privileged or is encompassed within the attorney work-product doctrine, then please provide the following information, except to the extent it may call for the precise information you object to disclosing:

- a) The nature of the privilege or doctrine you claim;
- b) The identity of all documents subject to the privilege or doctrine you claim and the identity of all persons known to you to have seen each such document;
- c) The identity of all oral communications subject to the privilege or doctrine you claim and the identity of all persons to whom the substance of the oral communication has been disclosed or made known.

As used herein, the singular shall include the plural, and vice versa; the use of the word “any” shall include and encompass the word “all,” and vice versa; the use of the word “each” shall include and encompass the word “every,” and vice versa; the use of the disjunctive shall include the conjunctive, and vice versa; and, unless the context indicates otherwise, the use of any gender includes the other gender.

### **DEFINITIONS**

In preparing your answers to the Data Requests set forth herein, the following definitions and instructions should control unless expressly indicated otherwise by the context:

1. The term “Person” or “Persons” means a natural person, corporation, association, partnership, sole proprietorship, public entity, or other entity of any nature or kind.

2. “You” and “Your” means Fountain Wind, LLC, including its agents, employees, attorneys, accountants, investigators, and anyone else acting on behalf of Fountain Wind, LLC.
3. “County” means the County of Shasta, California.
4. “Proposed Project” means the proposed Fountain Wind Project, docketed at the California Energy Commission as 23-OPT-01.
5. “Foundation” means the Shasta Regional Community Foundation, Inc. dba Community Foundation of the North State.
6. “Commission” or “CEC” means the California Energy Commission.
7. “TN 252586” means Your “CONFIDENTIAL Response to Community Benefits Data Request (TN 252320, Docketed September 20, 2023)”.
8. “TN 252585” means the document entitled “Funding Agreement Between Community Foundation of the North State and Fountain Wind LLC” that You submitted to the California Energy Commission on or about October 12, 2023.
9. “Document” or “Documents” shall mean any book, pamphlet, periodical, letter, electronic mail message, report, memorandum, record, study, summary, list, working paper, chart, paper, graph, index, data sheet, data processing card, tape, contract, agreement, lease, ledger, journal, balance sheet, account, invoice, purchase order, receipt, billing, record, file diary, film, trip tickets, expense vouchers, instructions, bulletins, photographs, video tape, microfilm, telegram, analysis, license, agreement, message, and all other “writings”, as that term is defined in section 250 of the California Evidence Code, however produced or reproduced, and also means any mechanical recording, reproductions, draft or other copy in the custody or control of Fountain Wind, LLC or of any of its representatives or any other person, firm, association, corporation or entity willing to make the document available to Fountain Wind, LLC. Such term also includes any copies of a document that bear notations, writing, or other marks not found on the original of such document.

### **DATA REQUESTS**

A. Relating to TNs 252585 and 252586

1. Please confirm whether You have executed a legally binding agreement with the Foundation.
2. If You have not executed a legally binding agreement with the Foundation, please confirm whether good faith negotiations with the Foundation are ongoing.
3. Please confirm whether the Foundation has “called off negotiations” or in any way or manner or by any means indicated to You that the Foundation disapproved or will not enter into a legally binding agreement with You.



4. If the Foundation has indicated to You that the Foundation will not enter into a legally binding agreement with You, please identify the date on which the Foundation indicated to You that the Foundation would not enter into a legally binding agreement with You and all written records indicating the same.

Thank you for your consideration of this important matter. Please do not hesitate to contact me with any questions or to discuss.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ryan Baron", with a long horizontal flourish extending to the right.

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

Cc: Lisa M. DeCarlo, CEC  
Elizabeth Huber, CEC  
Eric Knight, CEC  
Leonidas Payne, CEC  
Matthew McOmber, County of Shasta  
Paul Hellman, County of Shasta



**Cox, Castle & Nicholson LLP**  
50 California Street, Suite 3200  
San Francisco, California 94111-4710  
P: 415.262.5100 F: 415.262.5199

Anne E. Mudge  
415.262.5107  
amudge@coxcastle.com

November 16, 2023

Mr. Ryan Baron  
Best, Best & Krieger  
18101 Von Karman Avenue, Suite 1000  
Irvine CA 92612

Re: Shasta County Request for Information Pursuant to 20 CCR section 1716

Dear Mr. Baron:

I have received your request dated November 13, 2023, requesting information on behalf of Shasta County related to the Fountain Wind Project. Your letter seeks data from Fountain Wind LLC, regarding its communications with the Community Foundation of the North State, purportedly under the authority of 20 California Code of Regulations (CCR) section 1716.

Fountain Wind, LLC declines to provide the information you are requesting.

First, Fountain Wind's application before the California Energy Commission (CEC) is pending under the CEC's opt-in procedures, contained in 20 CCR 1875-1882. The authority to obtain information invoked in your letter (20 CCR section 1716 entitled "Obtaining Information") is not applicable in an opt-in proceeding.

The provision on which you rely is found in the regulations applicable to thermal power plant applications filed pursuant to Title 20, Chapter 5, Article 1 entitled "General Provisions Applicable to Notices of Intent and Applications for Certification." Applications filed in accordance with these procedures are known as "Applications for Certification" or AFCs. Under an AFC proceeding, "Any public agency which is not a party and which has been requested to provide comments on the notice or application shall have the same rights as a party to obtain information necessary to comply with the commission's request for comments. To the extent practicable, the staff shall coordinate requests from agencies to the applicant to avoid duplicative requests."

In contrast, no such rights are provided in Chapter 5, Article 4.1 entitled "Certification of Nonfossil Fueled Power Plants, Energy Storage Facilities and Related Facilities." These procedures were adopted in response to the Legislature's directive to adopt regulations to implement AB 205. See Public Resources Code section 25545.12 (a): "Regulations adopted to

implement this chapter, or any amendment to those regulations shall be adopted by the commission....” The regulations adopted by the CEC to implement AB 205 cross-reference some provisions of its previously adopted regulations, but not section 1716 and no other provision of the opt-in regulations allow for anyone other than the executive director to obtain information from the applicant. It also appears that the Commission knows how to provide such rights when it wants to since it has done so for AFCs as well as for applications filed under the Small Power Plant Exemption (SPPE) review process (see for example 20 CCR section 1941 have specific regulations regarding “Obtaining Information”). The regulations adopted to implement AB 205 do not.

It is also noteworthy that section 1716 refers to “parties,” “petitions,” “service of documents,” and a “committee” convened to order compliance with the request for information. The opt-in procedures do not involve “parties,” do not require “service” of any documents, do not call for preparation of “petitions” and do not call for the identification of a “committee” to resolve disputes over requests for information by entities opposed to the project. The absence of procedures in the opt-in process that are adjudicative in nature such as exist in the AFC process further supports the conclusion that the “discovery”-type provisions of section 1716 do not apply to the opt-in process.

Finally, even if section 1716 were applicable here, section 1716 requires that the information requested be “necessary to comply with the commission's request for comments.” The information you have requested is not necessary for Shasta County to comply with the commission’s request for comments about the project.

Thank you.

Sincerely,

Cox, Castle & Nicholson LLP



Anne E. Mudge

cc: Jared Babula, CEC  
Elizabeth Huber, CEC  
Eric Knight, CEC  
Leonidas Payne, CEC

AEM:mp