

DOCKETED	
Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	253385
Document Title:	Response to County of Shasta Revised Request for Reimbursement
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/29/2023 3:42:49 PM
Docketed Date:	11/29/2023



November 29, 2023

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

Response to County of Shasta Revised Request for Reimbursement

Dear Paul Hellman:

The California Energy Commission (CEC) staff has received and reviewed Shasta County's submissions entitled "Response to Staff Objection to County's Request for Reimbursement and Itemized Budget" dated October 19, 2023 (TN 252654), and "County of Shasta Revised Request for Reimbursement Pursuant to Public Resources Code Section 25538" dated November 14, 2023 (TN 253120). Staff will address portions of the response and revised reimbursement request that appears relevant to a request for reimbursement under California Code of Regulations, title 20, section 1715. Staff specifies below the proposed activities that are eligible or ineligible for reimbursement.

BACKGROUND

On August 15, 2023, Shasta County submitted a 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). In response, staff submitted an objection letter dated August 25, 2023 (TN 251926), setting forth defects in the overbroad and non-specific request (identified below), but included a recommendation that Shasta County either withdraw or resubmit its request. Staff did not reject Shasta County's submission, nor did it preclude the submission of subsequent information to complete the itemized budget filing required to obtain reimbursement.

On October 19, 2023, Shasta County submitted a Response to Staff Objection to County's Request for Reimbursement and Itemized Budget (TN 252654). Shasta County also submitted a Revised Request for Reimbursement Pursuant to Public Resources Code Section 25538 on November 14, 2023 (TN 253120).

APPLICABLE LAW

The Opt-in statute states that Public Resources Code section 25538 applies to an application submitted under the Opt-in Program. (Pub. Resources Code, § 25545.8.)

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

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.

California Code of Regulations, title 20, section 1715 implements Public Resources Code section 25538 and sets the process that CEC staff shall follow with respect to requests for reimbursement from local agencies.

Public Resources Code section 25519(f) requires CEC staff to forward the Opt-in application to local governmental agencies that are required to, "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, staff sought 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.

SHASTA COUNTY'S REQUEST FOR REIMBURSEMENT AND ITEMIZED BUDGET

A. Costs Incurred To-Date: Initial Review of Project and Project Application and Comments Submitted in the Docket Regarding AB 205 Application Requirements and Deficiencies

Shasta County is seeking reimbursement for costs incurred for the following activities:

- Initial review of the application
- Identify areas of review and comment under AB 205
- Review and comment on applicant docket submittals related to AB 205 application requirements

- This includes review of the docketed application and the applicant's submittals regarding CEC deficiency notices and data requests.
 - This includes Shasta County's comments on the community benefits agreement plan.
- Review CEC staff docket submittals related to AB 205 application requirements
 - This includes review of CEC staff deficiency notices and data requests.
- Review third party docket submittals related to AB 205 Application requirements
 - This includes review of comments regarding aerial firefighting and Tribal cultural resources impacts.

Some, but not all, of these itemized activities are eligible for reimbursement, while other activities in the bulleted "categories" are overlapping and duplicative. To the extent they describe Shasta County's work reviewing and commenting on the application, they are reimbursable, the actual payment for which will be determined upon review of itemized invoices as required by California Code of Regulations, title 20, section 1715(d). Approved invoices will be paid by the applicant.

Generally, activities beyond review of the application, and aspects of facility design, construction and operation are not eligible for reimbursement. (Pub. Resources Code, §§ 25519(f) and 25538.) The documents that comprise the application are set forth in California Code of Regulations, title 20, section 1877. While Shasta County is free to comment on a filing made by any person in the proceeding, it would not be eligible for reimbursement for reviewing documents filed by the public, other agencies, or CEC staff.

B. Review and Comments Regarding Net Positive Economic Benefit

Shasta County is seeking reimbursement for the following expenses related to the County's net economic benefit analysis of the Fountain Wind Project:

- A detailed proposal provided by an economic consultant in August 2023
- Shasta County Treasurer-Tax Collector-Public Administrator and the Shasta County Assessor-Recorder internal review of the economic benefits of the project
- Preparation and submission of Shasta County Ordinance SCC 2023-01 administrative record and County comments

Retaining an economic consultant to conduct the net economic benefit analysis on behalf of Shasta County would be an expense eligible for reimbursement. Additionally, soliciting the assistance of the Shasta County Treasurer-Tax Collector-Public Administrator and Assessor-Recorder as necessary to evaluate the net economic benefit to the local jurisdiction are also expenses eligible for reimbursement. It is unclear what is meant by "preparation and submission of Shasta County Ordinance SCC 2-23-01

administrative record and County comments.” The amount of reimbursement claims will be subject to further review for reasonableness and non-duplication when invoiced.

C. Supplemental Review and Comments Regarding Community Benefits Plan and Agreement(s)

Shasta County is seeking reimbursement to review and comment on supplemental information regarding the applicant’s Community Benefits Plan and Agreement(s). The applicant submitted a draft funding agreement on October 12, 2023 (TN 252585). The CEC cannot certify a project unless it finds that the applicant entered into one or more legally binding enforceable agreement(s) that benefit a coalition of one or more community-based organizations. (Pub. Resources Code, § 25545.10.) In anticipation of a binding agreement, Shasta County anticipates providing additional review and comment. The costs associated with this additional review would be an expense eligible for reimbursement since a binding agreement is a required component of the developer’s application. The amount of reimbursement claims will be subject to further review for reasonableness and non-duplication when invoiced.

D. Review and Comments on County Environmental Issues in the Draft and Final Environmental Impact Reports; the Design, Construction, and Operation of the Project; and Whether the Project is Required for the Public Convenience and Necessity

Shasta County is seeking reimbursement for review and comments on the following:

- Impacts to biological resources, cultural resources, tribal cultural resources, and wildfire
- Design, construction, and operation of the project
- Public convenience and necessity

The categories listed above would be expenses eligible for reimbursement for review of the application. However, the amount of reimbursement claims will be subject to further review for reasonableness and non-duplication. For example, to the extent that reimbursement is sought for review that is duplicative of Section A of initial review of the application, the expenses would not be reimbursable. Additionally, Shasta County specifies that reimbursement is sought for review and comment on the notice of preparation, public informational meeting, public workshops, public scoping meeting, notice of availability, staff assessment and draft and final environmental impact reports, consideration of final Commission certification, and other meetings, and Shasta County’s participation in the meetings. These costs are beyond the scope set forth in Public Resources Code sections 25519(f) and 25538 and are not eligible for reimbursement.

E. Development Impact (Permit) Fees

Shasta County is seeking reimbursement for Development Impact Fees. Title 20, California Code of Regulations, section 1715 (a)(1)(A) specifies that permit fees that the local agency would normally receive for a facility application in the absence of CEC's jurisdiction are eligible for reimbursement. Therefore, the permit fees outlined in the revised request for reimbursement would be expenses eligible for reimbursement.

In its Response to Staff Objection to County's Request for Reimbursement and Itemized Budget docketed on October 19, 2023 (TN 252654), Shasta County listed categories of activities it intended to review and provide comment on. Although not mentioned in the Revised Request for Reimbursement, the following categories of activities are not eligible for reimbursement:

- Reviewing AB 205 to understand County review and comment rights. The time required to learn the requirements of AB 205 would not be reimbursable as there is no right to be reimbursed for learning the law.
- 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. Portions of this category are not reimbursable to the extent they include developing litigation and advocacy strategies.

In the interest of obtaining from Shasta County facts and evidence on topics in the application it is uniquely qualified to provide, such as the net economic impact resulting from the project, if any, staff will consider the Revised Request for Reimbursement filed on November 14, 2023, to meet the requirements of title 20, California Code of Regulations, section 1715, with limitations. Specifically, non-reimbursable activities, such as legal training, advocacy-related costs, or other work not assistive to the CEC in analyzing the merits of the application, and those falling outside the statutory scope of eligible reimbursable activities, are not considered included in this approved itemized budget.

CEC staff has not requested Shasta County to undertake independent studies or perform extensive research to comment on the application. The goal is for the County to review the application for areas within its expertise, especially related to land use, special noise requirements, other local ordinances impacted by the project, or established local thresholds of significance, to provide comments that would be instructive to staff in the preparation of the environmental impact report. Examples of comment letters on an application can be found at

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-AFC-02>, TNs 243152 and 245911. The County need not address every topic contained in the application.

Paul Hellman
November 29, 2023
Page 6

CEC staff encourages Shasta County to provide responsive material relative to its obligations under Public Resources Code, section 25519(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 in County Ordinance No. SCC 2023-01, Amending section 17.88.335 (D)(2)(a). Shasta County may submit reimbursement invoices for qualifying work conducted after staff's January 25, 2023, emailed Notice of Receipt of the application. (See, Pub. Resources Code § 25519(f)).

Thank you very much.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Drew Bohan', with a stylized, sweeping underline.

Drew Bohan
Executive Director