

DOCKETED

Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	254168
Document Title:	County of Shasta's Request for Formal Dispute Resolution and Written Order per 20 CCR sec 1715(e)pdf
Description:	N/A
Filer:	Kelly Lotz
Organization:	County of Shasta
Submitter Role:	Public Agency
Submission Date:	1/26/2024 2:53:51 PM
Docketed Date:	1/26/2024



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

File No. 55398.00043

January 26, 2024

VIA E-MAIL AND DOCKET 23-OPT-01

Commissioner Noemí Otilia Osuna Gallardo
Executive Director Drew Bohan
California Energy Commission
715 P Street
Sacramento CA 95814

Re: *Fountain Wind Project: County of Shasta Request for Dispute Resolution and Written Order under 20 C.C.R. § 1715(e) (Local Agency Reimbursement)*

Dear Commissioner Gallardo & Executive Director Bohan:

Best Best & Krieger LLP represents the County of Shasta (“County”) in Docket 23-OPT-01. The County hereby requests resolution of a local agency reimbursement dispute between the County and Fountain Wind, LLC (“Applicant”) regarding the County’s request for reimbursement under Assembly Bill (“AB”) 205 and 20 California Code of Regulations (“C.C.R.”) section 1715 for the County’s review and comments on the Fountain Wind Project in Docket 23-OPT-01. The County requests that you review its reimbursement requests and all documents that have been filed in the docket, and, pursuant to Section 1715(e), that California Energy Commission (“Commission”) staff forward the dispute to Commissioner Gallardo for resolution by written order. As the Lead Commissioner to Siting, Transmission and Environmental Protection and to the Fountain Wind Project proceeding, the County asserts that Commissioner Gallardo has the necessary authority as the “committee” referenced under Section 1715(e) to issue an order on this matter. The County has filed this request in Docket 23-OPT-01.

In resolving the reimbursement dispute, the County directs the Commission to the following documents that have been filed in the proceeding:

1. TN251628, *Shasta County CEC Cost Reimbursement Request* (Aug. 15, 2023) (“Reimbursement Request”);
2. TN251926, *Objection to Shasta County Reimbursement Request* (Aug. 25, 2023) (“Staff Objection”);
3. TN252654, *County of Shasta Response to CEC Staff Objection to Cost Reimbursement Request* (Oct. 19, 2023) (“County Response to Staff Objection”);

4. TN253120, *Revised Request for Reimbursement Pursuant to Public Resources Code Section 25538* (Nov. 14, 2023) (“Revised Reimbursement Request”);
5. TN253385, *Response to County of Shasta Revised Request for Reimbursement* (Nov. 29, 2023) (“Staff Reimbursement Determination”); and
6. TN253590, *FWP Letter – Objections to Shasta County Reimbursement Request* (Dec. 12, 2023) (“Applicant Objection”).

I. BACKGROUND

The County hereby summarizes the dispute and the facts to-date.

In accordance with AB 205, Public Resources Code sections 25519, 25538 and 25545.8; 20 C.C.R. section 1715; and an informal email sent by Commission staff on January 25, 2023 requesting review and comment on the Fountain Wind Project application,¹ the County submitted a Reimbursement Request on August 14, 2023 for the costs associated with the actual and added costs of the County’s review of and comments on the opt-in application for certification of the Fountain Wind Project (“Application”). The County included a detailed description of its review and comment activities and a budget based on estimated costs eligible for reimbursement. The County’s costs were based on actual costs incurred in the proceeding and on estimated internal budgets and proposals from outside consultants and legal counsel. The County explicitly reserved its 20 C.C.R. section 1715(c)(6) right to file a request for an amended budget if the need for augmentations or other changes to the budget arose.

On August 25, 2023, Commission staff filed a Staff Objection in response to the Reimbursement Request finding that it contained costs ineligible for reimbursement. The Staff Objection deemed the entire Reimbursement Request incomplete and objected to the County’s costs and budget as untimely, invalid, unreasonable, and in excess of the County’s scope of review. The Reimbursement Request was objected to in its entirety and none of the County’s activities were deemed to be complete or eligible.

On October 19, 2023, the County filed its County Response to Staff Objection detailing the unlawfulness of the objection: (1) the Staff Objection did not identify a list of curable deficiencies or explain why certain activities were invalid or provide any guidance on what activities were eligible; (2) the County’s timing was reasonable and per Section 1715 not a bar to reimbursement; (3) the County’s legally-mandated review was broad under AB 205 and Commission precedent and it was not limited to responding to specific requests from Commission staff, and to the extent it was, Section 1715 or Commission interpretation thereof was inconsistent with the Public Resources Code; and (4) denial of the County’s reimbursement request would

¹ Email from Leonidas Payne, Project Manager, CEC, to County of Shasta, *Notice of application receipt for Fountain Wind project (23-OPT-01) / request for comments and information* (Jan. 25, 2023).

unfairly prejudice its participation and would be in conflict with the constitutional prohibition on unfunded state mandates.²

On November 14, 2023, the County filed its Revised Reimbursement Request. The Revised Reimbursement Request included supplemental information and analysis of the County's proposed budget and further refinement of the County's estimated time and costs in reviewing and commenting on the Application pursuant to its obligations and rights under AB 205. The County submitted the Revised Reimbursement Request in good faith, but under protest, and without waiving its rights to claim any of the costs that were unlawfully rejected in the Reimbursement Request or any arguments in the County Response to Staff Objection.³ The County specifically asked the Commission to deem each of the proposed activities eligible or ineligible and provide specific reasoning for *each* activity or sub-activity deemed ineligible. Moreover, the County explicitly reserved the right, without waiving any of its jurisdictional arguments, to participate in a dispute resolution process, in which the Commission resolves the dispute by written order including through hearings.

On November 29, 2023, Commission staff docketed its Staff Reimbursement Determination confirming that a portion of the costs sought in "reviewing and commenting on the application" are reimbursable and that the Applicant will pay eligible invoices. Staff opined, however, that costs the County incurs in reviewing documents filed by the public, other agencies, or Commission staff would not be reimbursable. Commission staff also took a similar position that the County's review and comment on the notice of preparation and draft and final environmental impact reports, and the County's participation in Commission workshops and meetings, are ineligible for reimbursement.

On December 12, 2023, Fountain Wind LLC filed its Applicant Objection arguing that effectively all of the review and comment activities are ineligible.

Pursuant to Section 1715(e), in the event of a dispute over a reimbursement budget, as is the case here, Commission staff "shall notify the Committee in writing of the dispute" and the "committee shall resolve the dispute by written order." The County's initial Reimbursement Request was objected to in its entirety by Commission staff and deemed incomplete, with no response by the Applicant. The County's Revised Reimbursement Request was deemed complete and certain activities were deemed eligible while other activities were deemed ineligible. The Applicant has now objected effectively to the entire Revised Reimbursement Request and has asked that Commission staff "reconsider its determination that, apart from actual review and comment on the application, some of the other activities . . . are reimbursable."⁴ Based on the nature and totality of the Applicant Objection, the County and Applicant cannot directly resolve the dispute. Although Commission staff has reconsidered certain activities and has now found them eligible subject to further review upon invoicing, the Applicant has waited since August 2023 to file comments or objections to the County's requests. It is now effectively objecting to each

² County Response to Staff Objection at 2-3.

³ *Id.*

⁴ Objection at 2.

activity and the entire budget estimate proposed by the County, and also to those determinations made by Commission staff in the Staff Reimbursement Determination. Therefore, the County believes that more time on this issue and further discussions with the Applicant are futile, the Applicant will not process County invoices, and that Commission staff is required to notify the proceeding “committee,” in this case the Lead Commissioner, of the dispute. The County is unaware that such notification by staff to the committee has occurred, and is therefore requesting resolution under Section 1715(e) through written order.

In light of the amount of time that has passed on this issue, particularly given the expedited opt-in certification review contemplated by AB 205, further requests that have been received from Commission staff on the Applicant’s community benefits plan, and the financial certainty the County requires in order to exercise its review and comment rights, the County requests immediately referral of the dispute for an expedited written order.

II. COMMENTS ON APPLICANT’S OBJECTION

Without duplicating or restating the County’s prior arguments on local agency reimbursement, the County responds to the Applicant Objection as part of this request for dispute resolution. Where applicable, the County cites to its prior analysis on a particular issue.

Because the Applicant has filed a blanket objection, it is helpful for the Commission to review the specific activities it found eligible and ineligible. On November 29, 2023, Commission staff deemed the Revised Reimbursement Request complete and deemed the following activities eligible for reimbursement:

1. *Initial review of the project and project application and documents that comprise the application;*
2. *Review and comments regarding net positive economic benefit;*
3. *Supplemental review and comments regarding community benefits plan and agreement(s);*
4. *Review and comments on impacts to biological resources, cultural resources, tribal cultural resources, and wildfire; design construction and operation of the project; and public convenience and necessity; and*
5. *Development impact fees.*

Commission staff deemed the following activities ineligible for reimbursement:

1. *Activities beyond review of the application and aspects of facility design, construction and operation;*
2. *Review and comments on documents filed by the public, other agencies, or Commission staff;*

3. *Duplication of review;*
4. *Review and comment on notice of preparation, public informational meeting, public workshops, public scoping meeting, notice of availability, staff assessment, draft and final environmental impact reports, consideration of final Commission certification and other meetings, and the County's participation in the meetings; and*
5. *Legal training, advocacy-related costs, or other work not assistive to the CEC in analyzing the merits of the application.*

Despite the significant limitation by Commission staff on eligibility, the Applicant Objection broadly argues against all costs reimbursable to the County. In sum, the objection states that (1) the scope of activities is narrow, (2) reimbursable costs do not include costs for the County to participate in the proceeding, and (3) reimbursable costs are only those where the County provides a service in direct response to a Commission request for review. For ease of review, we address the Applicant Objection in the order of its arguments therein.

A. The Scope of the County's Review Is Not Narrow

The first area of analysis in the Applicant Objection is that the scope of activities available for reimbursement is narrow. The Applicant's analysis here largely analyzes the language of Public Resources Code sections 25519 and 25538 and 20 C.C.R. section 1715 and cites to the chronology of the various reimbursement filings by the County and Commission staff.⁵ The ultimate conclusion is that the scope of activities is limited to a direct and specific response to a Commission request for review and must be related to a service that would have been provided at the local level and subject to a fee had the project been subject to local discretionary review. The County has previously addressed this argument, and the Applicant Objection does not cite to any authority or precedent in this area and does not at all refer to or refute the County's analysis on this issue. In response to the Applicant Objection on the breadth of the County's review and comment obligations, the County summarizes its prior arguments and reiterates the following:

1. The County's review and comment obligations stem from its underlying local discretionary authority over the entire project, and, under AB 205, the Public Resources Code and Commission regulation such review and comment is broad.⁶
2. The plain language of the legislative text of AB 205 requires local agency review and comment and reimbursement, and are state-mandated, non-discretionary activities.⁷

⁵ Applicant Objection at 2-5.

⁶ Reimbursement Request at 3-5; County Response to Staff Objection at 8-19; Revised Reimbursement Request at 3-4.

⁷ County Response to Staff Objection at 8-9.

3. As the local agency with discretionary authority prior to a lawful opt-in application, the County has the required and necessary expertise regarding the project, and the Legislature has intended that the Commission provide great weight to local agency comments.⁸
4. The County received informal notice from Commission staff on January 25, 2023 requesting review of the Application, and staff has not narrowed or otherwise limited that review.⁹ The Staff Objection indicated that staff has requested comments on the Project's net positive economic benefit.¹⁰
5. Prior Commission notices requesting local agency review and precedent indicate that local agency review and comment is broad.¹¹
6. Neither the Public Resources Code nor Section 1715(a)(1)(B) states that a local agency must receive a specific Commission request for information. A "sit-and-wait" approach for specific requests would render local agency reimbursement review meaningless, particularly given the 21-day budget submittal requirement. The County received a broad request from the Commission to provide comments on the application with no limitations or specific subject matter.¹²

The Applicant Objection further states that County costs must represent a "fee" for the actual and added costs of review of an opt-in application. That is, the Applicant suggests that review and comment would stem from the local agency's underlying permitting process and be related to a service or approval that would have been provided through a fee structure had the project been reviewed at the local level. As previously discussed by the County, however, Public Resources Code section 25538 does not limit local agency reimbursable costs to those services that would have been provided by the agency at the local level but more generally allows review and comments on the application. Section 25538 states:

"Upon receiving the commission's request for review under subdivision (f) of Section 25519 and Section 255206, 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 local agency may also request reimbursement for permit fees that the local agency would receive but for the operation of Section 25500, provided, however, that such fees may only be requested in accordance with actual services performed by the local agency. The commission shall either request

⁸ *Id.* at 9-10; see also 58 Op.Cal.Atty.Gen 729, 745-746 (1975).

⁹ County Response to Staff Objection at 14-15.

¹⁰ *Id.* at 11-12; Staff Objection at 2.

¹¹ County Response to Staff Objection at 15-18 (citing to prior notices and reimbursement requests in Dockets 08-AFC-6, 84-NOI-1, and 11-AFC-2).

¹² County Response to Staff Objection at 13-14 and 17-18.

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.”

Section 25538 clearly states that the local agency, in this case the County, shall be reimbursed for its costs associated with reviewing the application. There is no limitation or other qualification that such review be for services for which a fee is normally charged. There is absolutely no condition on reimbursement or mention of “fees” except in the context of being reimbursed for “permit fees” that the local agency would have imposed if it had jurisdiction through the local permitting process, *e.g.*, use permit. To the extent section 1715 imposes such a limitation, and as the County has previously argued, it is entirely inconsistent with section 25538¹³ and unlawful under the California Constitution and AB 205.¹⁴

Notwithstanding the plain language of section 25538, however, it is abundantly clear that when the Project was before the County during the prior EIR and use permit process, the County through its local discretionary authority reviewed the specific issues that are currently before the Commission in this proceeding and evaluated those issues as part of its review and ultimate denial of the Project, *and did so through a use permit application whereby the County requires the developer to pay the required fees as part of the use permit and CEQA review process.*¹⁵ The County’s use permit and CEQA review included all the items deemed eligible in the Staff Reimbursement Determination, including, but not limited to, economic benefits; community benefits and related agreements; land use and environmental impacts; and the public’s need for the project, among other things.¹⁶ Therefore, the entirety of activities submitted by the County for reimbursement, and those activities deemed eligible in the Staff Reimbursement Determination, were performed by the County in its prior role and are properly reviewed and commented on by the County here.¹⁷

¹³ County Response to Staff Objection at 3

¹⁴ *Id.* at 19-20.

¹⁵ Shasta County Municipal Code § 17.92.020; see also *Staff Report to the Shasta County Planning Commission*, Use Permit 16-007 (Fountain Wind Project) (June 22, 2021) (describing the use permit application and the areas of review by the County), available at <https://www.shastacounty.gov/sites/default/files/fileattachments/planning/page/3363/r2062221.pdf>; see also Shasta County Department of Resource Management Planning Division, *Fountain Wind Project: Final Environmental Impact Report, Volumes I and II and Appendix* (April 2021), available at <https://www.shastacounty.gov/planning/page/final-eir-fountain-wind-project>. A review of the use permit staff report and associated environmental documents show that the topics at issue in the reimbursement request were reviewed by the County through a fee process in the preceding review.

¹⁶ These issues are reviewed in detail and were a part of Fountain Wind LLC’s use permit application, supporting documents, and the Draft and Final Environmental Impact Reports and administrative record.

¹⁷ Although the Applicant Objection notes a “relatively small amount” of costs that are eligible, it does not identify what those costs are and further objects to them outright on budgetary grounds and through a caveat that such costs have “yet to be evaluated for reasonableness when comments are actually provided on the application.” Applicant Objection at 1 and 5. The County notes that it has already provided comments on areas of the application, such as the community benefits agreement.

B. The County Can Be Reimbursed for Costs for Participating in the Proceeding

The Applicant Objection indicates that the County can only be reimbursed for providing factual information and that it cannot otherwise be reimbursed for participating in the proceeding or for comments with factual information related to positions or for alleged defects in the application. This objection is directly contrary to the Public Resources Code and Commission's own regulation and precedent in this area.

As previously indicated, the legislative text of AB 205 requires the County to participate in the proceeding and places no limitation on the form or manner of the comment. Neither do Public Resources Code sections 25519 or 25538. Public Resources Code section 25519 describes the agencies that are required to receive a copy of the application and who the Commission must take comments from. Not only does subsection (f) provide that a local agency "shall" review and submit comments on issues related to its jurisdiction, which under its constitutional police powers are broader than a state agency's review, all other agencies charged with review are afforded the same obligations. For example, the Department of Fish & Wildlife or the California Public Utilities Commission can provide comments related to their subject matter jurisdiction that could result in a recommendation to deny the project or comments that lead to Commission denial of a project, such as coastal or species impacts or system reliability implications, as these agencies commonly do. Such comments would provide factual information to the Commission while communicating that agency's position on the subject matter jurisdiction they occupy and whether further information or approvals are warranted. In fact, subsection (k), which applies to other governmental agencies not mentioned in the Warren-Alquist Act, such as Native American Tribes, can provide "*any information or interest in the proposed site and related facilities.*" Indeed, 20 C.C.R. section 1715 expressly contemplates the "presentation and defense of positions" so long as it is reasonably related to the matter under the local agency's review and expertise.¹⁸ And, furthermore, the Commission in prior practice on the issue of local agency reimbursement has recognized the breadth of local agency review and comment and even noted that such comments can encompass "significant concerns" and whether the proposed project would "be able to comply with your agency's applicable substantive requirements."¹⁹

Lastly, the Applicant Objection tries to label the County as an "intervener" noting that such status is exempt from cost reimbursement. Although section 1715 does not apply to costs of interveners, it is important to note that Article 4.1 opt-in certification procedures do not have the typical adjudicatory procedures afforded to parties in Application for Certification proceedings. Therefore, there is no ability to be an intervenor in an opt-in certification proceeding. In fact, the County has previously indicated that it is not seeking costs outside of its review and comment obligations, such as seeking reimbursement for its jurisdictional comments. The County has also

¹⁸ Section 1715(b)(1) states that an ineligible expense is "(1) expenses incurred by a local agency for *the presentation or defense of positions not reasonably related to the matters which the agency is requested to review* or not within the area of the agency's expertise." Emphasis added.

¹⁹ See, e.g., TN61960, *Request for Agency Participation in the Review of the Hidden Hills Solar Energy Project, Application for Certification (11-AFC-2)* (Aug. 19, 2011); see also County Response to Staff Objection at 15-16 and 18 (discussing Commission notices and local agency reimbursement requests in the Willow Pass Generating Station, Geothermal Public Power Line, and Hidden Hills Solar proceedings).

not filed motions or attempted to file motions, as has been attributed to the County by the Applicant. It has filed all comments on the Application as “comments” or has used existing Commission procedures for such comments, where applicable, such as 20 C.C.R. sections 1715 and 1716. Simply because the County has filed comments that resemble traditional agency comment templates used at the federal and state level in all manner of rulemaking, rate setting and quasi-adjudicatory proceedings, and that the County’s comments contain a defense of its positions, does not mean that it is an “intervenor” under Commission regulations.²⁰

C. The County’s Review and Comments Are Eligible for Reimbursement

As previously discussed herein and in prior County comments, the County is not required to provide comments or a service in response to a specific or direct Commission request.²¹ Rather than rehash this discussion, the County provides the following summary comments on the activities the Applicant Objection deems excessive or unreasonable.

1. *Initial Review of the Application is Eligible*

In order to determine what areas of the Application fall within the scope of the County’s AB 205 review, the County was required to have reviewed the Application and subsequent Applicant submittals in their entirety.²² This includes identification of those issues that affect location, health and safety, community benefits, environmental impacts and economic benefits.

2. *All Estimated Costs Are Based on Actual Estimates and Proposals and are Reasonable Given the Magnitude of the Project and the Breadth of the County’s Expertise and Review*

The Applicant Objection states that no County comments have been received by the Commission. This statement is incorrect as the County has submitted multiple comments on the community benefits agreement.²³ The County’s comments consist of its position on a requested confidentiality designation request regarding the community benefits plan, comments and information on a purported community benefits agreement with the Community Foundation of the North State (“Community Foundation”), comments by Shasta County Supervisor Mary Rickert on the purported Community Foundation community benefits agreement, and comments and information on a purported community benefits agreement with the Northeastern California Building and Construction Trades Council (“NCBCTC”). In addition, the County has also provided information and comments on the Commission’s Notice of Preparation. The County has also been invited by Commission staff to submit comments on the net positive economic benefits analysis. The County is submitting comments on eligible activities now that the Application has been deemed complete, Commission staff has approved reimbursement activities, and prior to issuance of the draft environmental impact report.

²⁰ 20 C.C.R. § 1211.7.

²¹ County Response to Staff Objection at 13-14 and 17-18.

²² Reimbursement Request at 6; Revised Reimbursement Request at 4-5.

²³ See TN253813, TN253797, TN253348, TN252912 and TN252457.

Regarding the specific objection to \$51,663 in County application review costs that the Applicant deems unreasonable, the County intends to submit eligible costs related to this work through forthcoming invoices. Indeed, legal counsel for the County, both in-house and outside counsel, have conducted certain work that has been provided to the Commission in the form of information that is of a legal and regulatory nature and that is directly relevant to the Application and the County's review, comments and expertise thereupon. Such work is evident in comments and information that has been submitted on the community benefits plan and in future invoices. The County further notes that neither the Public Resources Code nor Section 1715 limits the *source* of reimbursable comments, only some of the scope and procedures.

The Applicant Objection further states the hours by County staff are unreasonable because the County should already be familiar with the project based on its prior review. Although the County is familiar with the Project, it is required to review what has been submitted by the Applicant, compare such information against the prior review and record, and determine and provide comments on eligible activities within its expertise. The County also respectfully reminds the Applicant that the prior review encompassed over 2,000 pages of administrative record, much of which has been re-submitted to the Commission, and the County expects the same given the size and magnitude of the project and the substantial and unmitigatable impacts related to wildfires and Tribal cultural resources. The County has submitted a budget based on actual incurred costs and proposals. A challenge to 80 hours then is purely conjectural.

3. *Review and Comment on the Net Positive Economic Analysis Is Reimbursable*

The Applicant Objection argues that County review and comments on the net positive economic analysis are not reimbursable on the grounds that this is a discretionary topic and that any comments would only amount to advocacy. The objection further states that no service is being provided for which a fee would be charged. The County directs the Commission to its prior comments and reimbursement requests where it has demonstrated that such analysis is specific to the geographic area over which the County presides as the local agency with taxing, budgetary and land use authority, and as contemplated by AB 205; the County and the Treasurer-Tax Collector is the elected official that can verify the Applicant's information with a focus on property tax and public revenue implications; the County is uniquely situated to comment on the impacts and demand to public services, such as public safety and first responder demands due to wildfire; and verification of the Applicant's analysis by a well-respected, independent economics firm.²⁴

The County reminds the Commission that Commission staff has affirmatively raised review of the project economic benefits²⁵ and impliedly requested the County submit comments on the issue. The County is intending to submit comments on this activity now that the Application has been deemed complete, Commission staff has approved reimbursement activities, and prior to issuance of the draft EIR.

²⁴ Reimbursement Request at 8-9; Revised Reimbursement Request at 5-7. The County broadly commented on this issue in its Response to Staff Objection at 10-12 and 18.

²⁵ Staff Objection at 4; Response to Staff Objection at 12.

4. *Review and Comment on the Community Benefits Plan is Reimbursable*

The County has previously provided the Commission with authority on why its review and comment on the Applicant's community benefits plan and agreement is reimbursable.²⁶ In sum, the community benefits plan/agreement is for the benefit of Shasta County and the affected unincorporated areas; the County Board of Supervisors, and certain other elected and appointed officials, represent these constituencies and speak on their behalf on such matters; and as the local agency is the agency with the most expertise on what will benefit the community and what are legitimate organizations that meet AB 205 criteria and the status of the negotiations and plans therein.²⁷ For instance, the County was aware that negotiations with the Community Foundation had terminated and that there was no community benefits agreement being executed per the Applicant's representations to the contrary.²⁸ (To date, the Applicant has refused to acknowledge or respond to this issue.) In addition, the County had access to and provided the Commission with specific information regarding the NCBTC community benefits agreement that it was not a Shasta County community-based organization, had not engaged in workforce training or development, was not a local labor union, offered one-time programming in the Shasta County area, offered services to the Pit River Tribe that were called into question and rejected by the Tribe, and that such financial contribution by the Applicant to NCBTC was not meaningful in any way. The County's comments at all times reflected fact-based information and were not "opinion" on the plans or agreements themselves. On January 26, 2024, the Commission Executive Director invited the County to submit comments on issues regarding the NCBTC agreement.²⁹

5. *Review and Comments on Environmental Issues are Reimbursable*

The Applicant Objection contends that any review of the Application related to the EIR process is not reimbursable. The Staff Reimbursement Determination has limited the County's review in this area by allowing reimbursable comments on the Application but not on the draft or final EIRs or meetings related to those documents. The County again points the Commission to its prior comments on this issue and where the Commission has authorized broad environmental review by local agencies.³⁰

The Applicant Objection further notes that the County's reliance on sections 25525, 25527 and 25454.7.2 is misplaced. Respectively, these sections address the public convenience and necessity finding the Commission needs to make to override a local agency law, project inconsistencies to lands owned or under control of another public agency, and the breadth of public outreach that must be conducted as part of the application review. These specific statutes provide the context and relevance for the requirement for local agency review. Certainly, if the

²⁶ Reimbursement Request at 9; County Response to Staff Objection at 10, 12, and 18; Revised Reimbursement Request at 7-8.

²⁷ See e.g., TN252923, Letter to CEC Chair from Supervisor Rickert (Nov. 3, 2023) ("Supervisor Rickert Comments").

²⁸ Supervisor Rickert Comments at XX; TN253348, *County of Shasta Information Request re Community Benefits Plan* (Nov. 28, 2023); TN253813, *County of Shasta AB 205 Review and Comments on Fountain Wind Project Community Benefits Agreement Update and Submittal* (Jan. 4, 2023).

²⁹ TN254155.

³⁰ County Response to Staff Objection at 12-18; Revised Reimbursement Request at 8-10.

Commission was to propose project certification in light of nonconformance with local agency law or substantial environmental impacts to lands under the land use control of a local agency, the Commission would specifically seek comments from that local agency and reimburse it accordingly.

III. THE COUNTY REQUESTS DISPUTE RESOLUTION BY WRITTEN ORDER

The Applicant Objection largely ignores the letter of the law and the Commission's regulations implementing the law, broadly asserting that the County is seeking reimbursement for ineligible costs. The County strongly disagrees with the Applicant's unsupportable and exceedingly narrow identification of activities that relate to "reviewing and commenting on the application." The County included in both its Reimbursement Request and Revised Reimbursement Request only those costs associated with the actual and added costs of the County's review of and comments on the Application. Thus, they are eligible for—and in fact the County is legally entitled to—reimbursement under Public Resources Code section 25538 per the process laid out in 20 C.C.R. section 1715.³¹

The County appreciates Commission staff's further guidance as provided in the Staff Reimbursement Determination, yet both Commission staff and the Applicant have objected to the County's lawful reimbursement requests. The County, therefore, asks the Commission to resolve these budgetary disputes pursuant to its 20 C.C.R. section 1715(e) obligation to do so. Specifically, the County asks Commission staff to notify the "committee" in writing of the dispute—constructive notification of which has already occurred by way of the two objections—so the committee can "resolve the dispute by written order."³² The County also asks that the committee conduct hearings so the County, Applicant, and Commission staff can resolve this dispute over a reimbursement budget under subdivision (c) of 20 C.C.R. section 1715. Any additional delay or resolution of this issue significantly affects the ability of the County to comment on the application due to its budgetary restraints as a rural county and the due process implications thereof.

While maintaining its reservation of rights and entitlement to the activities and costs identified in the Reimbursement Request and Revised Reimbursement Request, the County will, in the meantime, be submitting invoices to the Applicant for reimbursement consistent with activities identified as eligible in the Staff Reimbursement Determination, and until such time when a written order is issued. And, to clarify, the County will not seek reimbursement for its jurisdictional comments and objections and the related litigation thereof.

³¹ As the County noted in its Revised Reimbursement Request, if 20 C.C.R. section 1715 does not apply, the Commission arbitrarily omitted a reimbursement procedure for local governments in its emergency adoption of the Article 4.1 Certification of Non-Fossil fueled Powerplant procedures on October 12, 2022.

³² 20 C.C.R. section 1715(e).

The County requests that the Lead Commissioner reconsider all activities that have been submitted by the County, including travel-related costs which are not excluded by section 1715 in any way.³³

III. CONCLUSION

For the reasons set forth herein, the County asks Commission staff to notify the committee in writing of the dispute that exists between the County, the Applicant, and Commission staff over the reimbursement budget as reflected in its Revised Reimbursement Request.

Sincerely,



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

RMB:

³³ Section 1715 only excludes first class travel and entertainment.