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February 10, 2023

Via Email

Sara Parsons
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**Application for Confidential Designation
Fountain Wind Project
Docket No. 23-OPT-01**

Dear Sara Parsons:

The California Energy Commission (CEC) has received the Fountain Wind, LLC (applicant) Application for Confidentiality (TN 248368), dated January 11, 2023, covering the following cultural resources related documents and California Independent System Operator's Phase I System Impact Study:

- 1) Fountain Wind Energy Project Cultural Resources Phase 1 Report dated December 6, 2019.
- 2) Fountain Wind Project Supplemental Cultural Survey dated November 4, 2020.
- 3) Department of Parks and Recreation Form Part 1, containing multiple dates.
- 4) Department of Parks and Recreation Form Part 2, containing multiple dates.
- 5) System Impact Study dated November 6, 2016.

1) Fountain Wind Energy Project Cultural Resources Phase 1 Report, Fountain Wind Project Supplemental Cultural Survey, and DPR Form Part 1 and 2.

The applicant states that the cultural resources documents in their entirety should be kept confidential indefinitely to protect potential cultural resources and sites. According to the application, if the descriptions and locations of the sites are released to the public, there is potential for theft, vandalism, or unauthorized collection of materials. The applicant states that they have not disclosed any of the information in the cultural reports to anyone other than employees, attorneys, and consultants working on the Fountain Wind Project. The applicant has also confidentially disclosed the cultural resources information to Shasta County during its consideration of the Fountain Wind Project.

A properly filed application for confidentiality shall be granted under California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential."

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.) The California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code § 7927.705.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

a. Executive Director's Determination

Protection of cultural resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. The applicant has made a reasonable showing that the information contained in the cultural resources-related documents and the entire Department of Parks and Recreation Forms should be maintained as confidential. Resource location data will be kept confidential for an indefinite period. Cultural staff identified the following portions of the reports as containing general information about the historical setting of the region around the project site and not specific location information that would allow one to locate archaeological resources:

- The Fountain Wind Energy Project Cultural Resources Phase 1 Report sections:
 - 1.0 Introduction pp. 1-2
 - 2.0 Regulatory Overview pp. 3-4
 - 3.0 Environmental Setting pp. 6-7
 - 4.0 Cultural Setting pp. 7-14
- The Fountain Wind Project Supplemental Cultural Survey, except for the following paragraph on page 2 of the document will be kept confidential:

“In addition, the project footprint analyzed in the DEIR locates an underground collection line within a cultural resource site (FW 11). FW 11 is comprised of prehistoric and historic cultural resources, including prehistoric basalt and black obsidian flakes and flake tools, and historic logging artifacts. The applicant has realigned the collection line to avoid intersecting FW 11, thereby avoiding impacts to that site (See Figure B1).”

These sections are not designated confidential and may be disclosed. Please docket these sections in the proceeding's docket within 14 days of receipt of this letter.

2) System Impact Study

The applicant states that the System Impact Study in its entirety should be kept confidential for the operating life of the facility. According to the application, the System Impact Study contains trade secrets related to the applicant's technologies, as well as commercially valuable information related to the applicant's interconnection queue.

The California Public Records Act allows for the non-disclosure of corporate financial records, corporate proprietary information including trade secrets, and information

relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. (Gov. Code, § 7927.605(a).)

In addition, California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: 1) the specific nature of the advantage, 2) how the advantage would be lost, 3) the value of the information to the applicant, and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Here, the applicant states that the System Impact Study contains commercially sensitive transmission planning and cost information. According to the application, disclosure of the System Impact Study may cause a loss of competitive advantage to the applicant as competitors could ascertain transmission planning and cost information that may affect bids in competitive solicitations. The application states that the System Impact Study has been shared only internally or to consultants providing essential services to the Fountain Wind Project and to the California Independent System Operator (California ISO). Finally, the applicant notes that the California ISO maintains sensitive information contained in interconnection study documents as confidential.

a. Executive Director's Determination

The applicant has made a reasonable showing that the System Impact Study should be maintained as confidential on the grounds that it is proprietary information. The System Impact Study is related to the applicant's technologies and interconnection queue contains information that is not public and has the potential for economic advantage. As such, the applicant's request for confidential designation for the System Impact Study is granted for the operating life of the Fountain Wind Project.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions about this matter, please email Mariah Ponce, staff attorney, at mariah.ponce@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director