

DOCKETED	
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Project Title:	Fountain Wind Project
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Document Title:	CEC's Response Letter to Fountain Wind LLC re June 20-21 & June 26-28, 2023 Confidentiality Applications
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July 26, 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 16 Applications for Confidentiality from Fountain Wind, LLC (applicant), docketed June 20-21, 2023 (TNs 250682 and 250697) and June 26-28, 2023 (TNs 250736, 250738, 250740, 250754, 250755, 250756, 250760, 250763, 250764, 250765, 250787, 250789, 250790, and 250798) covering the following records:

Filed June 20-21, 2023 (TNs 250682 and 250697), relating to transmission planning.

- California ISO (CAISO) Queue Cluster 8 Phase II Study dated November 22, 2016
- Subsequent Material Modification Assessment Modification Request #1 dated February 22, 2018
- Subsequent Material Modification Assessment Modification Request #2 dated December 27, 2018
- Large Generator Interconnection Agreement dated November 29, 2017
- North Area Reassessment Report dated July 31, 2019

Filed June 26-28, 2023 (TNs 250736, 250738, 250740, 250754, 250755, 250756, 250760, 250763, 250764, 250765, 250787, 250789, 250790, and 250798), relating to cultural resources.

- Northeast Information Center (NEIC) Search Results (Attachments 1-67 and 75-91)
- Department of Parks and Recreation Forms (Attachments 68-74)
- Updated Cultural Resources Phase I Inventory Report (Attachments 92-95)
- Native American Heritage Commission (NAHC) Records Search Results (Attachment 96)
- Tribal Addendum (Attachment 97)

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 Commission to keep the record confidential."

1) CAISO Queue Cluster 8 Phase II Study, Subsequent Material Modification Assessment – Modification Request #1 and #2, Large Generator Interconnection Agreement, and North Area Reassessment Report

The application states that these documents include information related to transmission planning, including a contractual agreement with CAISO which includes scope of service, technical requirements, interconnection process, cost allocation, and operation procedures, and updated technical studies, data, reports, interconnection studies, cost and schedule updates, and revised agreements.

The applicant states that the documents relating to transmission planning should in their entirety be kept confidential for the operating life of the facility. According to the application, the documents contain trade secrets related to the applicant's technologies, as well as commercially valuable information related to the applicant's interconnection queue, including costs and operating procedures. The application also states that these documents are accessible only to employees or consultants providing essential services to the project, and to certain entities such as the CAISO and CEC that have responsibilities relating to transmission planning or the Fountain Wind Project.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The documents include commercially sensitive transmission planning and cost information that has independent economic value from not being generally known to the public or to the applicant’s competitors.
- 2) *How the advantage would be lost* – Disclosure of the information may result in competitors ascertaining transmission planning and cost information that may affect bids in competitive solicitations.
- 3) *The value of the information to the applicant* – The documents include commercially sensitive transmission planning and cost information related to the siting of a wind energy facility.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is accessible only to employees or consultants providing essential services to the applicant and has been disclosed to certain entities such as the CAISO and the CEC that have responsibilities relating to transmission planning or the project. Additionally, the CAISO maintains as confidential all commercially sensitive information relating to a submitter’s technology, research and development, business affairs, and pricing contained in interconnection study documents for the term of the interconnection agreement.

Executive Director’s Determination

The applicant has made a reasonable claim that the documents listed above, relating to transmission planning can be maintained as confidential for the life of the facility. As such, the applicant’s request for confidential designation of the documents listed above is granted.

2) NEIC Search Results (Attachments 1-67 and 75-91), Department of Parks and Recreation Forms (Attachments 68-74), Updated Cultural Resources Phase I Inventory Report (Attachments 92-95), NAHC Records Search Results (Attachment 96), and Tribal Addendum (Attachment 97)

The applicant states that the documents contain information on cultural resources, including NEIC and NAHC record search results, communications, reports, and maps containing historical information on tribal cultural resources and archeological resources, and Department of Parks and Recreation cultural resource forms. The applicant requests that these documents be kept confidential in their entirety for an indefinite period to protect the resources identified therein. According to the application, the public interest served in nondisclosure and protection of cultural resources, clearly outweighs that of disclosure. Disclosing the information may enable location of sensitive cultural and archeological resources by thieves, vandals, or persons conducting unauthorized collection of materials. The applicant further states that this information should not be aggregated or masked to avoid improperly disclosing the location of sensitive cultural resources sites. The application notes that the information within these documents that can be publicly disclosed will be provided in the proceeding’s

docket. The applicant states that these documents have not been disclosed to anyone other than its 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 previous consideration of the project.

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 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.)

The California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

Executive Director's Determination

Protection of cultural and archeological 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 claim that the documents identified above, containing information on cultural and archeological resources, records, reports, and maps can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the documents listed above is granted.

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 questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director