

DOCKETED

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February 14, 2024

Drew Bohan
Executive Director
California Energy Commission
715 P Street Sacramento, CA 95814

Re: Fountain Wind Project; Response to Shasta County's Challenge to Application for Confidential Designation

Dear Mr. Bohan:

On February 8, 2024, Shasta County ("County") docketed comments (TN 254383) challenging the propriety of Fountain Wind's Application for Confidential Designation (TN 254006) regarding certain transmission upgrade reports and assessments and interconnection queue information submitted to the California Independent System Operator ("CAISO"). The County's claims lack merit and should be rejected.

The County erroneously believes the information contained in the records subject to the Application for Confidential Designation are or may be public records under California law. However, as discussed below, such records are exempt from disclosure under the California Public Records Act ("PRA"), which protections are expressly recognized by the Commission's regulations. (See 20 CCR 2502(b) ("Nothing in this article shall be construed to require disclosure of a record that is exempt from disclosure under the California Public Records Act, Government Code sections 6250 et seq. This provision is declarative of existing law.)) Notably, the CEC has accepted five confidentiality requests from the Applicant containing substantially similar documents (TN 252403 (addressing July 31 and August 10, 2023 requests), TN 251176 (addressing June 20 and June 21, 2023 requests), TN 248746 (addressing January 11, 2023 request).) Moreover, the CEC has upheld these protections for similar documents submitted by applicants in other CEC proceedings. (See, e.g., TN 241305 (Willow Rock Energy Storage Center), TN 241297 (Sunrise Power Project).) The CEC should do so again here.

I. The records are exempt from disclosure under Government Code section 7927.605.

The County claims that Government Code section 7927.605(a), pertaining to "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," does not apply to protect the Applicant's documents. The County suggests this section only applies to companies obtaining tax incentives from the State for job

growth and business assistance through the Governor's Office of Business and Economic Development. The County is incorrect and provides no support for this claim. Rather, by its express terms, section 7927.605(a) generally protects corporate records "for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California." Although subsections (b) and (c) address specific instances in which companies receive incentives from the State or local government agencies, they do not eliminate the general protection for other corporate documents.

The County further indicates that the California Public Utilities Commission ("CPUC") has taken a narrow view of this provision. However, CPUC positions are not controlling here. Further, the CPUC decision cited by the County is inapposite. That decision addressed financial statements from a company with facilities "already within California," which were substantially similar to financial statements already posted to CPUC's website. The same is not true here.

Instead, the relevant inquiry is how CAISO treats the documents submitted under the Application for Confidential Designation, as the documents at issue were prepared specifically for CAISO for purposes of ensuring efficient use and reliable operation of the electric transmission grid. Notably, CAISO's "Records Availability Policy"¹ considers as confidential "records that refer to commercially sensitive matters, disclosure of which may affect the competitive positions of ISO market participants, or otherwise compromise the efficiency of the market as a whole or of the efficient and nondiscriminatory access to the transmission grid." The Applicant's documents fit directly within this protected category, as they present commercially sensitive transmission planning and cost information that, if disclosed, would result in the loss of a competitive advantage to the Applicant. Accordingly, the Applicant's documents should be kept confidential consistent with CAISO's policies.

II. The records are exempt from disclosure as trade secrets.

Alternatively, or in addition, to the exemption for corporate records under Government Code section 7927.605(a), the Applicant's documents are protected as trade secrets. The County's arguments to the contrary are misguided.

The PRA protects from disclosure trade secrets. (Gov. Code §§ 7927.705(k), 7930.005, 7930.205; Civ. Code § 3426.1; Evid. Code § 1060.) The term "trade secret" is defined in California's Uniform Trade Secrets Act (Civ. Code § 3426 et seq.) as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives 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) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."² Additionally, California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes a record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how

¹ Available at <https://www.caiso.com/Documents/RecordsAvailabilityPolicy.pdf>.

² The County incorrectly cites to Government Code section 7924.510(f) for the definition of trade secret. That section applies only to air pollution data.

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 Applicant's Application for Confidential Designation unequivocally meets these requirements. The Application for Confidential Designation clearly states the materials are trade secrets and addresses each required element for confidential treatment in accordance with 20 CCR section 2505(a)(1)(D), as follows:

- 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”;
- How the advantage would be lost: “disclosure of [the information] 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 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”; and
- The ease or difficulty with which the information could be legitimately acquired or duplicated by others: “the trade secret information is 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 Project. ... 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.”

The County plainly is wrong to suggest that the Applicant has not explained why the documents constitute trade secrets.

The Applicant notes that the Commission promulgated regulations to protect the type of documents at issue. The protection of such documents strongly supports the Applicant's request for confidentiality here. For example, 20 CCR 2505(a)(5) *automatically* protects energy consumption metering, energy load metering research projects, energy surveys, energy sales data, load forecasts and customer projections, electric power plant-specific hourly generation data, and certain electric power plant names, nameplate capacity, and interconnection voltage. Each of these automatically protected items are similar in type to the information provided by the Applicant to CAISO, information which CAISO treats as confidential.

Further, 20 CCR 2505(d) states that “when another federal, state, regional, or local agency or state-created private entity, *such as the California Independent System Operator*, possesses information pertinent to the responsibilities of the Commission that has been *designated by that agency as confidential* under the Public Records Act, or the Freedom of

Information Act, the Commission, the Executive Director, or the Chief Counsel may request, and the agency shall submit the information to the Commission without an application for confidential designation. *The Commission shall designate this information confidential.*” (emphasis added.) As CAISO considers these documents confidential, 20 CCR 2505(d) indicates that the Commission *shall* do the same.

Finally, the County asserts that the Applicant did not apply the test for determining whether some of the information submitted under the Application for Confidential Designation could be disclosed. However, the County ignores that the Applicant indicated in its request that “it *may be* possible to aggregate or redact certain portions. However, to the extent required, the Applicant requests that the CEC consult with both the CAISO and the Applicant to make this determination to ensure important trade secret information is not disclosed.”

The County claims the documents at issue are “pertinent to the County’s review and comment obligations on the Fountain Wind Project application.” As previously discussed (see TN 253590), the Warren Alquist Act delineates for the County very *narrow* application review obligations related to the design and function of the proposed facility. The records submitted under the Application for Confidential Designation are squarely outside of the County’s scope, as they address upgrades to PG&E transmission infrastructure and queue positioning for Project interconnection. The County has no authority or control over these items. For the foregoing reasons, the County’s objections to the Application for Confidential Designation should be rejected.

Sincerely,

Cox, Castle & Nicholson LLP



Anne E. Mudge

AEM/mp