

DOCKETED

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February 20, 2024

Via Email

Henry Woltag
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**Application for Confidential Designation: Fountain Wind Project
Docket No. 23-OPT-01**

Dear Henry Woltag:

The California Energy Commission (CEC) has received an application for confidential designation from Fountain Wind, LLC (applicant), docketed January 19, 2024 (TN 254006), covering the following 12 records relating to transmission planning:

1. Fountain Wind 2019 Reassessment Report Cover Letter
2. 2019 Generator Interconnection Reassessment Study Report
3. Fountain Wind 2019 Generator Interconnection Reassessment Report Addendum
4. 2019 Generator Interconnection Reassessment Study Appendix B – System Assumptions
5. 2019 Generator Interconnection Reassessment Study Appendix E – Reliability Power Flow Results
6. 2019 Reassessment PGE North Interconnection Area Appendix G – Reliability Assessment Results
7. 2019 Reassessment PG&E North Interconnection Area Appendix I – Deliverability Assessment Results
8. Response to Modification Request for Fountain Wind (CAISO Queue #1106) Letter – February 15, 2018
9. Response to Modification Request for Fountain Wind (CAISO Queue #1106) Letter – December 27, 2018
10. Response to Suspension Request for Fountain Wind (CAISO Queue #1106) Letter – December 27, 2018
11. Request to Recommence only Design and Engineering Work on the Fountain Wind Project (Queue #Q1106) Letter – July 23, 2020
12. Response to Modification Request for Fountain Wind (CAISO Queue #1106) Letter – October 31, 2022

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."

Trade Secret Exemption

The applicant states that the documents listed above related to transmission planning qualify as corporate financial records and/or corporate proprietary information including trade secrets. The application states that these documents include commercially sensitive transmission planning and cost information related to siting of the Fountain Wind Project. The applicant states that the documents relating to transmission planning should be kept confidential in their entirety 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 California Independent Systems Operator (CAISO) and the 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 documents 2-7 related to the 2019 Generator Interconnection Reassessment Study Report including the Report, Addendum, and Appendices B, E, G, and I contain commercially sensitive transmission planning and cost information related to siting of the Fountain Wind Project. In addition, the CAISO has labeled the Addendum and Appendices as confidential. Therefore, the 2019 Generator Interconnection Reassessment Study Report, Addendum, and Appendices will be maintained as confidential for the life of the facility.

The remaining documents including document 1, Fountain Wind 2019 Reassessment Report Cover Letter, and documents 8-12, which are letters responding to modification and suspension requests for Fountain Wind and requesting to recommence the Fountain Wind Project, do not contain specific information related to the applicant's technologies or commercially valuable information regarding the applicant's interconnection queue, including costs and operating procedures.

Therefore, the applicant's request for confidential designation of documents 2-7 related to the Generator Interconnection Reassessment Study Report is granted and the applicant's request for confidential designation of documents 1, 8, 9, 10, 11, and 12 is denied. Please docket the documents that have been denied confidential designation on the Fountain Wind Project's docket within 14 business days.

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,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director