

**DOCKETED**

<b>Docket Number:</b>	23-OPT-01
<b>Project Title:</b>	Fountain Wind Project
<b>TN #:</b>	252403
<b>Document Title:</b>	Response Letter to Fountain Wind, LLC re Confidentiality Applications on July 31, 2023 and August 10, 2023
<b>Description:</b>	N/A
<b>Filer:</b>	Ngoc Tran
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	9/25/2023 2:02:01 PM
<b>Docketed Date:</b>	9/25/2023



September 25, 2023

**Via Email**

Henry Woltag  
Fountain Wind, LLC  
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Houston, Texas 77002  
[HWoltag@connectgenllc.com](mailto:HWoltag@connectgenllc.com)

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

Dear Henry Woltag:

The California Energy Commission (CEC) has received two Applications for Confidentiality from Fountain Wind, LLC (applicant), docketed July 31 (TN 251392) and August 10, 2023 (TN 251563), covering the following records:

Filed July 31, 2023 (TN 251392), relating to transmission planning and cultural resources.

- Cluster 8 Phase I PG&E North Interconnection Area Appendix D – Power Flow Plots dated January 15, 2016
- Cluster 8 Phase I PG&E North Interconnection Area Appendix E – Reliability Power Flow Results dated January 15, 2016
- Cluster 8 Phase 1 PG&E North Area Appendix I – Deliverability Assessment Results dated January 15, 2016
- Cluster 8 Phase I PG&E Appendix B – System Assumptions dated January 15, 2016
- Cluster 8 Phase I PG&E Appendix H – Short Circuit Study Results dated January 15, 2016
- Cluster 8 Phase I PG&E North Interconnection Area Appendix C – Contingency Lists for Outages dated January 15, 2016
- Response to CUL-003 and CUL2-02 Data Requests – Previous Resources dated July 17, 2023
- Response to CUL-003 and CUL2-02 Data Requests – Previous Study Areas dated July 17, 2023
- Queue Cluster 8 Phase I Interconnection Study Report dated January 15, 2016

Filed August 10, 2023 (TN 251563) relating to transmission planning and cultural resources.

- Cluster 8 Phase 2 Attachment 1, Table 1: C8P2 PG&E North Group Projects - Allocation of Network Upgrades for Cost Estimates dated November 18, 2016
- Cluster 8 Phase 2 Attachment 6 – Generator Dynamic Data dated October 18, 2016
- Cluster 8 Phase 2 Attachment 7 – Transient Stability Plots dated October 27, 2016
- Cluster 8 Phase 2 Attachment 8 – Preliminary Protection Requirements
- Cluster 8 Phase 2 Attachment 10 – Substation and Transmission Line Work Scope dated November 4, 2016
- Cover Letter for Q1106 McCloud Wind Project dated November 22, 2016
- Appendix A – Q1106 Queue Cluster 8 Phase II Study dated November 22, 2016
- Response to CUL-003 and CUL2-02 Data Requests – Previous Resources Version 2 dated August 8, 2023
- Response to CUL-003 and CUL2-02 Data Requests – Previous Study Areas Version 2 dated August 8, 2023

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) Documents Related to Transmission Planning**

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 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) Documents Related to Cultural Resources**

The applicant states that the maps were submitted in response to CEC staff’s CUL-003 and CUL2-02 data requests and that the maps contain information related to cultural

resources. The applicant requests that these maps 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 (23-OPT-01). 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 maps identifying cultural and archeological resources 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](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director