

Emma E. Marshall
Associate

May 2, 2024

VIA ELECTRONIC MAIL

Molly Magnis
Records Access Officer
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12227

Re: Case: 21-T-0366 - Application of Empire Offshore Wind LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 17.5 Miles of Transmission Lines from the Boundary of New York State Territorial Waters to a Point of Interconnection in Brooklyn, Kings County.

REQUEST FOR EXCEPTION FROM DISCLOSURE

Dear Records Access Officer Magnis:

Pursuant to section 6-1.3 of the Commission's Procedural Rules, 16 N.Y.C.R.R. § 6-1.3, and Article 6 of the New York Public Officers Law ("POL"), commonly known as the Freedom of Information Law ("FOIL"), Empire Offshore Wind, LLC ("Empire" or the "Applicant"), respectfully request exemption from disclosure under FOIL for certain confidential information (the "Confidential Information") contained in the attached executed Crossing Agreement between the City of New York and Empire.

The Applicant has redacted the Confidential Information from the copies of the EM&CP filed and served on the persons identified on the service list and hereby is submitting a confidential version of the redacted materials to the Commission's Records Access Officer with this letter. A redacted version of the Confidential Information have been filed with the Secretary's Office in the above-referenced proceeding. All of the Confidential Information is exempted from disclosure under FOIL and/or under the federal Freedom of Information Act ("FOIA") for the reasons noted below.

ANALYSIS

Under Section 6-1.3 of the Commission's regulations, 16 N.Y.C.R.R. § 6-1.3, and POL § 87(2), a "person or entity submitting, or otherwise making available, critical infrastructure information to the department shall clearly state the reason(s) why the information should be

excepted from disclosure, as provided in section 87(2) of the POL.” Applicant hereby respectfully request confidential treatment of this information, for the reasons set forth below.

POL § 87(2)(f) exempts from disclosure under FOIL all materials that, if disclosed, could endanger the life or safety of any person. POL § 86(5) defines “critical infrastructure” as “systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.” As the Records Access Officer for the Department of Public Service has previously held:

[I]nformation concerning specific structures, potential weakness in the system, maps and drawings of the existing electric system (including configurations of various components), overhead transmission standards, structure work lists, and ratings on certain circuits constitutes critical infrastructure information that should be excepted from public disclosure because such information, if disclosed, could endanger the life or safety of people. This is so because the information would allow particular parts of the electric system to be targeted by those planning harm to the State’s electric grid.¹

The statutory definition of Critical Infrastructure Information “CII” encompasses the information redacted by the Applicant, which consists of photographs and general arrangements that reveal detailed information about the New York State electric transmission system (“Transmission System”), including the design and operation of transmission and substation assets and components, the release of such information increases the vulnerability of the Transmission System. Any disruption to the Transmission System risks jeopardizing the health, safety, welfare and security of New York State, its residents and its economy. Public disclosure of this information could endanger the life or safety of people and, thus, this information should be excepted from disclosure pursuant to POL § 87(2)(f).

The Confidential Information contains CEII information, disclosure of which could be useful to a person planning an attack on New York’s Bulk Electric System and is therefore also exempt from public disclosure under both FOIA and FOIL. Information of this type has routinely been granted CII status and excepted from public disclosure.² Protection of this information is

¹ Case 06-M-0878, *Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and Other Regulatory Authorizations*, Request for Unredacted Exhibits 14, 15, and 16 to the Petition (July 10, 2008).

² See Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Ruling Granting Protection for Critical Energy Infrastructure Information (July 31, 2008) (finding that disclosure of the SRIS “has the potential to lead to disruption of New York’s power system, which could endanger the life and safety of the public”); Case 08-T-0746, *Application of the Village of Arcade and Noble Allegany Windpark, LLC*, Ruling Granting Request for Confidential Status (July 30, 2008) (finding that portions of the SRIS should be exempted from disclosure as CII); Case 11-T-0534, *Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the “Rochester Area Reliability Project*, Ruling on the Request for Confidential Status

required to avoid jeopardizing public health, safety, welfare and security. Accordingly, the Applicant respectfully requests that the documents identified be treated as confidential and exempt from public disclosure.

CONCLUSION

Based on the foregoing, the Applicant respectfully requests that the Confidential Information be considered exempt from public disclosure under FOIL, as it contains critical energy infrastructure information. To protect the confidentiality of this information, the Confidential Information must be maintained in the Department of Public Service's confidential files and must be provided only to interested members of the Commission and DPS Staff, and not otherwise be disclosed or made available, either through FOIL or otherwise.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Respectfully Submitted,

/s/ Emma E. Marshall

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for System Impact Study and Related Drawings (issued March 6, 2012) (holding that the System Impact Study and related figures are protected as CII); Case No. 13-T-0456, *Part A Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Oakdale to Fraser Project*, Ruling Adopting Protective Order (issued March 9, 2015) (adopting a protective order in response to the applicant's request that a project one-line and breaker diagram of existing substations be treated as confidential); *see also Living Rivers, Inc. v. U.S. Bureau of Reclamation*, 272 F.Supp.2d 1313 (D. Utah 2003) (in applying federal FOIA, court held that inundation maps showing areas below Hoover Dam and Glen Canyon Dam were exempt from disclosure due to concerns of terrorist threat and risks to life and personal safety of those downstream).