

Young / Sommer LLC

ATTORNEYS AT LAW

MAIN OFFICE (FOR ALL MAIL): 500 FEDERAL STREET, 5TH FLOOR, TROY, NEW YORK 12180

ALBANY OFFICE: 41 STATE STREET, STE 604-12, ALBANY, NEW YORK 12207

Phone: 518-438-9907 • Fax: 518-438-9914

www.youngsommer.com

Jessica Ansert Klami

Telephone Extension: 272

jklami@youngsommer.com

June 17, 2026

Via Electronic Filing

Records Access Officer, Michelle Zaludek
New York State Department of Public Service
3 Empire Plaza, 18th Floor
Albany, New York 12223

Re: *Matter No. 23-03002 - Application of Agricola Wind, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission an up to 99-Megawatt (MW) Wind Energy Facility Located in the Towns of Scipio and Venice, Cayuga County.*

Site Suitability Letters - Minor Modification Request No. 1 – Facility Layout and Design

Dear Records Access Officer:

This office represents Agricola Wind, LLC (the “Permittee”) with regard to the above proceeding. On May 20, 2026, the Permittee submitted Permit Modification Request #1 pursuant to 16 NYCRR § 1100-1.11 related to Agricola’s Siting Permit issued April 1, 2026. In furtherance of the Permit Modification on June 17, 2026, the Permittee submitted Site Suitability Letters (“Letters”) in regards to the Agricola Wind Facility.

Please note, the Letters contain certain information which the Permittee asserts should be protected from disclosure under the New York Freedom of Information Law (“FOIL”), and Public Officers Law (“POL”) § 87(2)(a).

LEGAL STANDARD

Confidential protection is routinely granted to certain documents and data submitted to State agencies and boards, including the Office of Renewable Energy Siting (“ORES”), New York State Board on Electric Generation Siting and the Environment (“Siting Board”) and New York State Public Service Commission (“Commission” or “PSC”), through a suite of statutory and regulatory protections which guard such sensitive information and data from broad public release. As more fully discussed below, these protections are derived from various sources, including the statutory exemptions from disclosure under FOIL, Public Officers Law (“POL”) § 87.

With respect to the Letters, the Permittee is requesting confidential protection as follows:

- Protection of trade secret and/or confidential commercial information pursuant to POL § 87(2)(d).

CONFIDENTIALITY ANALYSIS

As required by ORES, the Permittee is submitting this information under separate cover seeking confidential protection. Where a document contains both confidential and non-confidential information, the Permittee has included a redacted version of the document and submitted a non-redacted version to ORES in conjunction with the request for a confidentiality determination.

I. Trade Secrets and Confidential Commercial Information

A document submitted for filing should be deemed exempt from disclosure under FOIL if it contains record “submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” POL § 87(2)(d). This exemption protects the interests of a commercial enterprise in avoiding a significant competitive injury as a result of disclosure of information provided to an agency, thereby fostering the State's economic development efforts to attract business to New York. *See Matter of Encore Coll. Bookstores, Inc. v. Auxiliary Serv. Corp. of State Univ. N.Y. at Farmingdale*, 87 N.Y.2d 410, 420 (1995). Courts have consistently upheld withholding from disclosure confidential commercial information which qualifies as trade secret material or confidential commercial information. *See Case 00-E-1380, Order Clarifying Information and Data to be Provided and Measures Regarding Protection of Confidential Information* (Aug. 23, 2000).

The Commission defines a trade secret as “any formula, pattern, device, or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it” (16 NYCRR § 6-1.3). The Commission requires a person submitting trade secret or confidential commercial information to establish that if disclosed, the information would be likely to cause substantial injury to the competitive position of the subject commercial enterprise. The following factors should be considered:

- (i) the extent to which the disclosure would cause unfair economic or competitive damage;
- (ii) the extent to which the information is known by others and can involve similar activities;
- (iii) the worth or value of the information to the person and the person's competitors;
- (iv) the degree of difficulty and cost of developing the information;
- (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
- (vi) other statute(s) or regulations specifically excepting the information from disclosure.

Id. § 6-1.3(b)(2).

Certain documents and commercial information may not rise to the level of bona fide trade secrets but may nevertheless be entitled to protection as confidential commercial information

where the owner of the documents or information demonstrates that disclosure of that information could cause substantial injury to the owner's competitive position. *Verizon New York Inc. v. New York State Pub. Serv. Comm'n*, 137 A.D.3d 66 (3d Dep't 2016) (outlining a "two-part inquiry" to determine whether information satisfies the trade secret exemption and, if not, whether it nevertheless satisfies the "substantial competitive injury standard"). Consistent with POL § 87(2)(d) as interpreted by the courts, information is "confidential commercial information" where it is (1) confidential or non-public information of a commercial nature which (2) would, if disclosed, cause substantial competitive injury.

The Court of Appeals has affirmed the need for this exemption in finding that

[b]ecause competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under [Freedom of Information Act (FOIA)]. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government.

Encore College Bookstores, Inc., 87 N.Y.2d at 420 (quoting *Worthington Compressors v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981)). Accordingly, the central inquiry with respect to confidential commercial information is the potential value of the requested information to competitors. *Id.* ("[b]ecause the submitting business can suffer competitive harm only if the desired material has commercial value to its competitors, courts must consider how valuable the information will be to the competing business, as well as the resultant damage to the submitting enterprise"). The entity seeking protection is not required to prove actual competitive harm; only that there exists "actual competition and the likelihood of substantial competitive injury." *Id.* at 421 (quoting *Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1980)). Courts will also examine the potential economic windfall that might result to competitors should the requested information be disclosed. *See, e.g., New York State Elec. & Gas Corp. v. New York State Energy Planning Bd.*, 221 A.D.2d 121, 125 (3d Dep't 1996) (permitting exemption from disclosure for operational data of cogeneration facility based on substantial injury to the competitive position of the subject enterprise because "the data sought is not public information and . . . the disclosure of such data could result in competitors, like petitioner, inferring essential aspects of [company's] production costs fundamental to projecting future costs"); *City of Schenectady v. O'Keefe*, 50 A.D.3d 1384, 1386 (3d Dep't 2008) (data had commercial value not only to the commercial enterprise—a utility—but also to the enterprise's competitors, where compiling that data was "a costly and complex endeavor that entails an exhaustive review" by the utility).

The Permittee is seeking confidential protection for:

- Agricola Wind LLC Suitability Letter
- GE Agricola Suitability Letter

This information is entitled to protection as trade secret/confidential commercial information which, if disclosed, would cause the Permittee substantial competitive and economic injury. Disclosure would cause substantial competitive and economic injury by revealing valuable

proprietary information that is not generally known, was developed at considerable expense, and could be used by competitors to obtain an unfair commercial advantage. The information therefore satisfies the standards for confidential treatment and should be exempt from public disclosure.

CONCLUSION

For the reasons listed above, the items identified by the Permittee should be exempted from public disclosure. Should you have any questions or require anything further in this regard, please feel free to contact us. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JK' with a large flourish.

Jessica Ansert Klami
James A. Muscato II
Attorneys for the Permittee

Enclosures

cc: Secretary to the Commission (*without enclosures*)