

March 7, 2025

Via FedEx and Electronic Filing

Chief Administrative Law Judge
James McClymonds
Department of Public Service
W.A. Harriman State Office Campus
Building 9, 4th Floor
1220 Washington Avenue
Albany, NY 12226

Re: Matter No. 24-03029: Application of Valcour Altona NewCo, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Repower and Operate a 107.5-Megawatt (MW) Wind Energy Facility Located in the Town of Altona, Clinton County, NY.

Dear Chief Administrative Law Judge McClymonds:

We represent Valcour Altona NewCo, LLC (“the Applicant”), in the above-referenced proceeding. The Applicant is developing the Altona Wind Repowering Project (the “Project”). On or about March 7, 2025, the Applicant will submit application materials set forth in 16 NYCRR Part 1100 (the “Application”). Concurrent with the Application submission, the Applicant hereby submits this request for confidential treatment of portions of the materials included in the Application because, as described in further detail herein, certain materials contain information that should be protected from disclosure pursuant to a suite of state and federal laws and regulations. Confidential information will be submitted to the Office of Renewable Energy Siting and Electric Transmission (the “Office”) and the Administrative Law Judge in this proceeding under separate cover. Redacted versions of the documents containing confidential information have been provided for posting to the public docket for this matter.

I. Information Protected From Disclosure

The Application contains certain information that is entitled to confidential protection under a suite of state and federal laws and regulations. This information also appears in electronic shapefiles provided to the Office, and Staff of the New York State Department of Public Service (NYSDPS) and New York State Department of Environmental Conservation (NYSDEC) to aid in their review of certain Application data. The Applicant requests confidential treatment of the

following information in all places in which it appears in the Application and pre-application materials shared with the Office and State agencies:

- (1) the location of archaeological resources pursuant to New York State Parks, Recreation and Historic Preservation Law § 14.07;
- (2) trade secret and/or confidential commercial information pursuant to New York State Public Officer's Law ("POL") POL § 87(2)(d);
- (3) information pertaining to the location of endangered, protected, threatened or rare animal species or rare/protected plants pursuant to New York State Environmental Conservation Law ("ELC") § 3-0301(2)(r), POL § 87(2)(a), and the Protective Order in this proceeding;
- (4) information that, if disclosed, would constitute an unwarranted invasion of personal privacy pursuant to POL §§ 87(2)(b) and 96(1)(c); and
- (5) critical energy infrastructure information (CEII) pursuant to POL §§ 86(5) and 89(5)(a)(1-a) and the Protective Order issued in this proceeding.

II. Legal Standard

A. Location of Archaeological Resources

POL § 87(2)(a) grants an exemption from disclosure for records that are specifically identified as protected from disclosure under other provisions of state or federal law. Federal and State historic preservation laws contain provisions authorizing agencies to withhold from disclosure information on the location of archeological sites to protect against possible damage. In particular, New York State Historic Preservation Law § 14.07 authorizes the withholding of information on archeological sites from the public where sites "may be damaged by unauthorized investigators if their locations be generally publicized." *See* 9 NYCRR § 427.8; *see also* 54 USC § 307103(a) (authorizing federal agencies to withhold information from disclosure if information about the location, character, or ownership of historic property may risk harm to the historic property). Consistent with these provisions, the Office has recognized the need to protect the location of archeological sites from disclosure. Specifically, 16 NYCRR § 1100-1.4(a)(6) requires that,

[i]n compliance with the provisions of Section 304 of the National Historic Preservation Act, and 9 NYCRR Section 427.8, information about the location, character, or ownership of a cultural resource shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall clearly be marked and only included in applications filed with the Office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of information redacted in accordance with Section 304 of the National Historic Preservation Act, and 9 NYCRR Section 427.8.

With respect to the Application, the Applicant seeks confidential protection of certain archaeological, historic, and cultural resource information contained in the following Application materials, and which is protected by state and federal law:

- Appendix 9-A: Cultural Resources Correspondence;
- Appendix 9-B: Phase IA Archaeological Survey;
- Appendix 9-C: Phase IB Archaeological Survey;
- Appendix 9-D: Unanticipated Discoveries Plan; and
- Appendix 9-E: Historic Resources Survey

These Application materials summarize the results of the comprehensive review of archaeological and cultural resources within the area of the Project. These materials include pictures, figures, and descriptions of the specific location of cultural resource surface finds identified during site investigations and the location and nature of indigenous resources. This information was assembled for purposes of assessing the impact of the Project on cultural and archaeological resources and enabling the Applicant to design the Project to site Project components away from these resources to the maximum extent practicable, in consultation with the Office and the New York State Historic Preservation Office (“SHPO”). Disclosure of this information would facilitate identification of the specific location of this resource by the public, thereby increasing the risk of damage by third parties. Confidential treatment of this information would advance the State’s goal of protecting locations where archeological resources may be found to prevent harm to these resources by “unauthorized investigators.” The protection of these resources outweighs the public’s general interest in free access to government information.

B. Trade Secret and/or Confidential Commercial Information

POL § 87(2)(d) deems certain information exempt from disclosure when such information comprises “trade secrets” or records “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.” This exemption protects the interest of a commercial enterprise by avoiding a significant competitive injury as a result of disclosure of information to a State agency, thereby fostering the State’s economic development efforts to attract business to the State. *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).

“Whether information is a trade secret depends, in part, upon the ease or difficulty with which the information could be acquired or duplicated by others.” *Verizon New York Inc. v. New York State Pub. Serv. Comm’n*, 46 Misc. 3d 858, 872-73 (NY Sup. 2014), affirmed, 137 A.D.3d 66 (3d Dept. 2016) (quoting *Savannah Bank v. Savings Bank of Fingerlakes*, 261 A.D.2d 917, 918 (4th Dept.1999)).

Documents found to be trade secret are exempt from disclosure without further inquiry. *Verizon New York Inc. v. New York State Pub. Serv. Comm’n*, 137 A.D.3d 66 (3d Dept. 2016). “Thus, the rationale for not subjecting a trade secret to a further requirement of showing

‘substantial injury’ to the commercial enterprise’s competitive position likely stems from the fact that the definition of the term already takes into account that such information took considerable effort and resources to develop, has real economic value to the business and gives the business an advantage over competitors who are unaware of it.” *Verizon New York Inc. v. New York State Pub. Serv. Comm’n*, at 873.

Information is “confidential commercial information” where it is confidential or non-public information of a commercial nature and would, if disclosed, cause substantial competitive injury. *Encore Books*, 87 N.Y.2d at 420 (“because 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.”). Accordingly, the central inquiry with respect to confidential commercial information is the potential value of the requested information to competitors. *Id.*

With respect to the Application, the Applicant seeks confidential protection of the following information as trade secret and/or confidential commercial information:

- Exhibit 4: Real Property, selected redaction of Table 4-3.1 containing information pertaining to the status of the Applicant’s contracts and contract negotiations with landowners;
- Appendix 5-G: Wind Turbine Technical Manuals, selected redaction of information containing specifications of different turbine designs which information is treated as confidential by the third-party preparer and which the Applicant obtained at private expense for business use;
- Appendix 7-H: Turbine Noise Data Sheets, selected redaction of information containing specifications of different turbine designs, which information is treated as confidential by the third-party preparer and which the Applicant obtained at private expense for business use;
- Appendix 8-B: Shadow Flicker Analysis, selected redactions of shadow flicker information, which information is treated as confidential by the third-party preparer and which the Applicant obtained at private expense for business use;
- Exhibit 18: Socioeconomic Effects, selected redactions of text and tables containing job earnings, economic impact analyses, and operation and maintenance costs incurred by the Applicant which were gathered, modeled, analyzed, prepared, and in some cases, negotiated, by the Applicant for business use within the competitive energy market; and
- Appendix 23-A: Decommissioning and Site Restoration Plan, containing a compilation of financial information pertaining to the total cost of the Project and the cost of decommissioning and site restoration.

These Application materials contain economic analyses, cost figures, contract information, technical specifications and related analyses, and similar information that is used in the Applicant's business and which provides an opportunity to obtain an advantage over competitors who do not know or use it. This information is critical to the Applicant's ability to develop competitive generation projects. Assembling this information required considerable investments of time and capital, is treated as confidential by the Applicant (and in some cases, the third-party preparer), and is not known to others. Accordingly, this information could not be readily obtained or duplicated by others without the Applicant's consent, but obtaining such information would be valuable to the Applicant's competitors who could use such information to undermine the Applicant's position in the competitive power market to gain a competitive advantage. Accordingly, the Applicant requests that this information be treated as trade secret, and therefore, exempt from disclosure.

Pricing and cost information, information pertaining to the Applicant's contract negotiations, and technical specifications are entitled to trade secret protection because such information is used in the Applicant's business and is data that provides an opportunity to obtain an advantage over competitors who do not know or use it. This information was generated through the use of proprietary company formulas and strategies that are unknown to others outside of the company. Additionally, some information was obtained by the Applicant only after obtaining requisite authorizations from the third-party preparer of the information. Information relating to the cost of constructing the Project is not known or available to competitors and is closely guarded by the Applicant to protect its competitive position. This information was compiled, gathered, developed, generated, and analyzed by the Applicant or its consultant and involved significant investments of time, resources, human capital, and business expertise that is not available to other companies. Release of this information would compromise the Applicant's ability to compete in the marketplace.

Even if this information was not a trade secret, it would be entitled to protection as confidential commercial information which, if disclosed, would cause the Applicant substantial competitive and economic injury. The analyses, projections, pricing, contract information, cost information, and technical specifications contained in the Application materials described above are non-public information which was developed at a substantial cost to the Applicant to conduct the Applicant's business. Such information is commonly considered confidential information of a commercial nature and should be protected from disclosure.

C. Information Related to Endangered, Threatened, or Protected Species

POL § 87(2)(a) grants an exemption from disclosure for records that are specifically identified as protected from disclosure under other provisions of state or federal law. ECL § 3-0301(2)(r) specifically authorizes the New York State Department of Environmental Conservation to "deny access to inspection of records which identify locations of habitats of species" designated as endangered, threatened, or species of special concern under ECL § 11-0535, plants protected under ECL § 9-1503, or "any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species therefrom would impair their ability to survive." Further, pursuant to the Protective Order in this proceeding, "Protected Information" includes "any information learned on any site visit to the project area about the location of any threatened or endangered species, or species of special concern, or location or characteristics of the habitat of such species." ORES Permit Application Number 24-00103,

Application of Hecate Energy Columbia County I, LLC, Ruling Adopting Protective Order (issued April 29, 2024) at ¶ 2 (the “Protective Order”).

The State has determined that environmental protections are afforded when certain information pertaining to protected species is kept confidential, including information pertaining to where protected species live, roost, gather, or winter. Such information is treated as confidential to prevent injury or death by hunters or disturbance of critical habitat by visitors. The protection of such information outweighs the public’s general interest in free access to government information. *See* Case 12-T-0248, *New York State Electric & Gas Corp.*, Ruling Granting Requests for Protection of Information Concerning Critical Electrical Infrastructure and Rate, Threatened, or Endangered Species (Oct. 17, 2013).

The requester need only show that data or documents provided to a state agency contain information relating to the habitat of endangered, protected or threatened species. If such information is in fact contained therein, the agency shall afford the requested confidential treatment.

With respect to the Application, the Applicant seeks confidential protection of certain protected species information contained in the following materials, which is protected from disclosure under state law:

- Appendix 11-B: Wildlife Species List;
- Appendix 12-A: Wildlife Site Characterization Report;
- Appendix 12-B: Wintering Grassland Raptor Survey;
- Appendix 12-C: Grassland Breeding Bird and Marsh Bird Surveys;
- Appendix 12-D: Forest Raptor Survey Report;
- Appendix 12-E: Bat Mist Net Report;
- Appendix 12-F: Agency Correspondence;
- Appendix 12-G: Avoidance and Minimization Measures for Species of Special Concern;
- Appendix 12-H: Net Conservation Benefit Plan; and
- Associated shapefiles.

These Application materials reference the presence or absence of protected species in a particular area. Certain of these Application materials were prepared for the purpose of providing an overview of the wildlife conditions within the area of the Project, and therefore necessarily contain significant information pertaining to endangered, protected, threatened, rare, or special concern species and their habitats, including the presence or absence of those species in a particular area, the use by those species of a certain habitat, and/or the location of critical habitat. This

information is entitled to confidential treatment under ECL § 3-0301(2)(r) without any further showing.

D. Personal Privacy Information

POL § 87(2)(a) provides an exemption from public disclosure for records or portions thereof that are specifically exempted from disclosure by state or federal statute. POL § 87(2)(b) provides an exemption from public disclosure for records or portions thereof that, if disclosed, would constitute an unwarranted invasion of personal privacy. Further, the New York State Personal Privacy Protection Law, POL § 96(1)(c), prohibits an agency from disclosing any personal information unless such disclosure is subject to disclosure under the Freedom of Information Law, except where such disclosure would constitute an unwarranted invasion of personal privacy, as defined in POL § 89(2)(a). “Personal information” is defined as “any information concerning a [natural person about whom personal information has been collected by an agency] which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject.” POL §§ 92(3), 92(7).

Pursuant to POL § 89(2)(a), in the absence of guidelines promulgated by the Committee on Open Government regarding deletion of identifying details or withholding of records to prevent unwarranted invasions of personal privacy, an agency may delete identifying details when it makes records available. POL § 89(2)(b) provides, in pertinent part, that an unwarranted invasion of personal privacy includes, but shall not be limited to: (1) the release of lists of addresses if such lists would be used for solicitation or fund-raising purposes; (2) disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; and (3) disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law. Accordingly, POL § 89(2) contemplates that the release of personal email addresses, addresses, and cell-phone numbers may constitute an unwarranted invasion of personal privacy where the release could result in solicitation or personal hardship.

With respect to the Application, the Applicant seeks confidential protection of the following information as personal information protected from disclosure:

- Appendix 2-D: Community Meeting Sign-In Sheets

These Application materials contain a list of names of individuals who attended the pre-application community meeting, including their personal phone numbers, email addresses, and mailing addresses. POL § 89(2)(c) provides that disclosure will not constitute an unwarranted invasion of personal privacy when, in pertinent part, identifying details are deleted. Accordingly, to avoid the potential disclosure of personal information which, if disclosed, may constitute an unwarranted invasion of personal privacy, the Applicant has redacted the names, personal email addresses, phone numbers, and mailing addresses in Appendix 2-D.

E. Critical Energy Infrastructure Information

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.” POL § 87(2) grants an exemption from disclosure for records which, if disclosed, “could endanger the life or safety of any person” and records which, if disclosed, “would jeopardize the capacity of an agency or entity” to ensure the “security of its information technology assets,” including electronic information systems and infrastructure. *See* POL §§ 87(2)(f), (i).

A person or entity making a submission that contains CEII may request protection of that information from disclosure pursuant to POL § 89(5)(a)(1-a). The State has determined that the public interest is best served by maintaining CEII as strictly confidential, even if the public is denied access to such information. *See* Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Ruling Granting Protection for Critical Energy Infrastructure Information (July 31, 2008) (disclosure of System Reliability Impact Study (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 all of the SRIS except the Executive Summary and Sections 1 and 2 of the SRIS should be exempted from disclosure); Case 08-T-0034, *Application of Hudson Transmission Partners, LLC*, Ruling Granting Protection for Critical Energy Infrastructure Information (Apr. 25, 2008); Case 07-T-0140, *Application of Noble Wethersfield Windpark, LLC*, Ruling Granting Protection from Disclosure for Critical Infrastructure Information (Mar. 15, 2007).

In addition, documents such as the SRIS, or similar system reliability analyses, required for all proposed Major Renewable Energy Facilities are routinely considered confidential CEII because they include information related to transformer settings, potential weaknesses in the system, overhead transmission standards, and other similar information that qualifies as critical infrastructure information. Furthermore, NYISO considers its power flow, stability and short-circuit data—which are included in the SRIS and similar system reliability analyses—to be critical energy infrastructure information and restricts access to this information to parties who agree not to disclose the data to other parties.

Finally, the Protective Order in this proceeding provides that “[a]ny Site Security Plan is “critical infrastructure information” as defined by POL § 86(5) and is exempt from disclosure pursuant to POL § 87(2)(f) and (i)...Any Site Security Plan is exempt from the sharing of Protected Information procedures of this Order.” *See* Protective Order Para. 2(b). Accordingly, any Site Security Plan must be provided directly to ORES staff. *See* Protective Order Para. 10(b).

With respect to the Application, the Applicant seeks confidential protection of the following information as CEII:

- Appendix 6-B: Site Security Plan;
- Appendix 21-A: Non-Material Modification Confirmation; and

- Appendix 21-B: Material Modification Assessment Consultant Report.

These Application materials contain information pertaining to the system reliability analysis, power flow, stability, short-circuit data and information related to transformer settings, potential weaknesses in the State grid system, and/or transmission constraints that are routinely considered CEII, as well as the proposed Site Security Plan for the Project. This information should be treated as strictly confidential and should be protected from disclosure. Due to the nature of the system reliability analysis and the sensitivity of the information involved, the above-listed documents containing CEII have not been uploaded to DMM, but rather, provided to authorized Office staff, consistent with standing requirements for handling this sensitive data.

III. Conclusion

For the reasons set forth above, the Application materials identified by the Applicant should be exempted from public disclosure. Please contact the undersigned with any questions.

Respectfully,



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Enclosures

Cc: ORES (via mail, email, and USB drive)
Party List (via DMM and email)