STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE
OFFICE OF RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION

Matter 24-03066 - Application of TERRA-GEN, 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 a 250-Megawatt Wind Energy Facility Known as the Rolling Hills Wind Project Located in the Towns Of Warren, Stark, German Flatts, Little Falls, and Danube, Herkimer County, and the Town Of Springfield, Otsego County.

PROCEDURAL RULING REQUIRING FURTHER BRIEFING

(Issued November 18, 2026)

MAUREEN F. LEARY, Administrative Law Judge:

Background

On October 6, 2026, Archimandrite Nektarios Harding, on behalf of Holy Trinity Russian Orthodox Monastery (Monastery), submitted two Freedom of Information Law (FOIL) requests (FOIL No. 1976-100626) to the Department of Public Service (Department) Records Access Officer (RAO) in this Public Service Law (PSL) Article VIII permit proceeding. This proceeding is now in the pre-application phase pending before the Office of Renewable Energy Siting and Electric Transmission (ORES) and involves construction of a 250 megawatt (MW) renewable wind energy facility in the Towns of Warren, Stark, German Flatts, Little Falls, and Danube, Herkimer County, and the Town of Springfield, Otsego County, New York.

On November 12, 2026, the Office of Hearings and Alternative Dispute Resolution issued a Ruling Adopting Protective Order in this proceeding, which was served electronically on the Monastery and others on the party list. The Protective Order allows access to confidential information

filed in the proceeding if an Acknowledgement of the Protective Order is executed and filed.

On November 17, 2026, Otsego 2000, Inc. (Otsego 2000) filed and served an executed Acknowledgement of the Protective Order. As of the date of this Ruling, the Monastery has not executed the requisite Acknowledgement of the Protective Order. On November 12, 2026, ORES issued a notice stating that the undersigned ALJ was assigned to this proceeding.

In a November 13, 2026 letter, the RAO notified the Monastery that additional time was needed to process portions of FOIL Requests I and II, and extended until December 3, 2026 the timeframe for responding. The RAO's letter also advised that the Monastery's FOIL Request I related to T&E records filed in the proceeding had been referred to, and would be addressed by, the assigned ALJ pursuant to 16 NYCRR § 6-1.4(a)-(b).

FOIL Request I: Threatened/Endangered Species Information

In its FOIL request, the Monastery seeks the following pre-application documents related to threatened and endangered (T&E) species, which the Applicant, Terra-Gen LLC (Terra-Gen), and/or ORES claim to be confidential, as noted on the Department of Public Service Document and Matter Management system:[1]

November 27, 2024 Terra-Gen Confidential Wildlife Site Characterization

November 27, 2024 Confidential Year 1 Wintering Grassland Raptor Survey Work Plan

January 6, 2025 ORES Confidential Pre-Application Wildlife Site Characterization Consultation and attachments:

Attachment A – Listed Eagle Species ORES 1/6/2025

[1] Both the confidential and redacted versions of the requested documents are filed in the Department of Public Service Document and Matter Management (DMM) system. See DMM Item Nos. 1, 3, 4, 6, and 8 - 13.

Attachment B – Listed Grassland Bird Species
Attachment C – Listed Marsh Birds
Attachment D – Listed Forest Raptor Species
Attachment E – Other Listed Avian Species
Attachment G – Significant Natural Communities and Rare Plants[2]

May 16, 2025 Terra-Gen Wintering Grassland Raptor Survey

May 16, 2025 Terra-Gen Wintering Grassland Raptor Survey – and attachment:

Appendix B - Wintering Grassland Raptor Photos

June 26, 2025 Terra-Gen Wintering Grassland Raptor Survey Report

October 28, 2025 Terra-Gen Wintering Raptor Survey Work Plan

December 8, 2025 ORES Comments on Winter Raptor Survey Work Plan and Attachment B – ORES Recommended Survey Points

March 30, 2026 Terra-Gen Breeding Bird Survey Work Plan

April 6, 2026, ORES Comments on Breeding Bird Survey and Attachment A – Recommended Survey Points

May 5, 2026 Terra-Gen Marsh Bird Survey Work Plan and Figures

June 26, 2026 Terra-Gen Wintering Grassland Raptor Survey Report

For each of the foregoing pre-application T&E records, Terra-Gen claimed confidentiality upon filing. ORES did not provide a request for non-disclosure of those records that it and Terra-Gen claimed were confidential.

[2] Terra-Gen did not assert a confidentiality claim for Attachment F (Significant Landscape Features) to the Wildlife Site Characterization Consultation and it is publicly available.

FOIL Request II: Project-Related Documents/Communications

In a separate part of its FOIL request (Request II), the Monastery also requests the following information related to pre-application communications between Terra-Gen and ORES:

> (1) All documents, comments, correspondence, records of emails, and meeting notes or minutes related to the Terra Gen prepared by or received by the NYS Office of Renewable Energy Siting (ORES), Office of Renewable Energy Siting and Electronic Transmission (ORES), including the unredacted versions of all such documents such as listed in the "Describe the Record(s) Requested" section on the website:
>
> • All documents constituting communications from Terra-Gen, or referencing Terra-Gen or its representatives;
>
> • All documents constituting communications with the NYS Department of Public service, ORES, and ORESET, regarding in any way the Terra-Gen project;
>
> • Any other documents, of whatever kind, received, reviewed or maintained by you personally or the NYS DPS from any source whatsoever regarding the Terra-Gen project.

In FOIL Request II, the Monastery expressed a willingness to sign an agreement not to disclose the requested information.

The Monastery's June 2025 FOIL Request

These were not the Monastery's first FOIL requests. In a June 23, 2025 letter, the Monastery made its first request for the unredacted versions of the confidential filings in this proceeding pertaining to the permit application (FOIL No. 1227-062725). It also requested the ability to enter into a confidentiality/non-disclosure agreement, but at the pre-application stage, a ruling adopting a protective order had not been issued in order to allow the Monastery to gain access to information claimed to be confidential under its terms.

On August 22, 2025, the RAO determined that certain confidential T&E species records were responsive to the

Monastery's FOIL request. The RAO noted that Terra-Gen initially had requested non-disclosure of same on the grounds of trade secret, critical infrastructure, and the locations of T&E.[3] The RAO requested that Terra-Gen submit a statement of necessity justifying the reasons supporting continued confidential treatment of such responsive records, pursuant to 16 NYCRR 6-1.3. The RAO indicated that the statement must include substantive justification for each claimed FOIL exception that supported confidential protection and non-disclosure.

On September 8, 2025, Terra-Gen submitted a statement of necessity, claiming that the requested information contained: (1) trade secrets and confidential commercial information under POL § 87(2)(d); (2) critical energy infrastructure information under POL § 87(2)(f); and (3) locational information for T&E species protected under POL § 87(2)(a) and Environmental Conservation Law §§ 3-0301(2)(r), 9-1503, and 11-0535.

In two letters dated September 15, 2025, the RAO determined that information identifying the locations of habitats of endangered and threatened species and species of special concern was excepted from disclosure under FOIL. Citing POL § 87(2)(a), the RAO determined that the requested species-locational documents were exempted from disclosure under New York law, specifically, ECL §§ 3-0301(2)(r), 9-1503, and 11-0535. The RAO also notified the Monastery of its right to

[3] The RAO identified the following confidential T&E-related records as responsive to the Monastery's previous FOIL request: November 27, 2024 Terra-Gen Confidential Wildlife Site Characterization; November 27, 2024 Confidential Year 1 Wintering Grassland Raptor Survey Work Plan; May 16, 2025 Terra-Gen Wintering Grassland Raptor Survey and Appendix B - Wintering Grassland Raptor Photos. In FOIL Request I, the Monastery again requests the foregoing, along with several additional confidential filings.

appeal the determination to the Secretary to the Public Service Commission within 30 days pursuant to POL § 89(4)(a).

The Monastery did not timely appeal the RAO's September 15, 2025 determination.[4]

Discussion

Public Officers Law (POL) § 87(2)(a) and (d) protect information "specifically exempted from disclosure by state or federal statute" and information containing trade secrets or obtained from a commercial enterprise "which if disclosed would cause substantial injury to the competitive position" of the party claiming that the information is confidential and subject to non-disclosure. A denial of access to information cannot be based solely on the category or type of information and is valid only when the agency articulates "a particularized and specific justification for denying access." Gartner v. NYS Attorney General's Office, 160 A.D.2d 1087, 1090 (3d Dept. 2018).

Pursuant to 16 NYCRR § 6-1.4(a)(2), a party submitting information claimed to be confidential "shall also submit a comprehensive brief specifying in detail the reasons why such information should be accorded confidential status as provided for in section 6-1.3(b)(2) of this Subpart."

FOIL Request I: T&E Species Information

The T&E species information identified in FOIL Request I is relevant to this proceeding insofar as it details the

[4] On August 29, 2025, prior to the RAO's September 15, 2025 determination, the Monastery filed an appeal to the "constructive denial" of its June 2025 FOIL request. The Secretary denied the appeal as premature. In November 13, 2025 letter, the Monastery sent a letter to the Department's Public Information Officer purporting to appeal the September 15, 2025 RAO determination. In a November 26, 2025 decision, the Secretary determined that the Monastery had failed to timely appeal the RAO's September 5, 2025 determination and otherwise had not followed appropriate procedures.

project's potential impacts on wildlife. Terra-Gen and ORES have not sufficiently supported their claims that the records are confidential. Consequently, Terra-Gen and ORES are directed to submit comprehensive briefs setting forth particularized reasons and specific justifications for claiming the T&E species information sought in FOIL Request I should not be disclosed. The briefs shall address each of the requested items and substantiate the continuation of maintaining the confidentiality of each redaction. In addition, Terra-Gen and ORES must identify redacted information, if any, that should no longer be deemed confidential and may be disclosed.

Terra-Gen and ORES are directed to serve the briefs electronically on the ALJ and file same in DMM, on notice to the Monastery and the party list **by no later than December 2, 2026.** Responsive briefs, if any, are **to be filed no later than December 11, 2026.** Any other participant in the proceeding may, but is not required to, file a brief setting forth their position on FOIL Request I. Reply briefs will not be considered.

Following submission of the foregoing, the ALJ will issue a written determination addressing the confidentiality claims and the FOIL exceptions from disclosure and will provide the reasons therefore in accordance with Public Officers Law § 89(5)(b)(3).

In view of the issuance of the Ruling Adopting Protective Order on November 12, 2026, and to the extent that the Monastery executes the required Acknowledgement of the Protective Order in this proceeding, the briefing requirements under this Ruling with respect to FOIL Request I will be vacated. In that case, Terra-Gen and ORES are directed to provide the requested confidential and unredacted documents in FOIL Request I to the Monastery and any other participant

executing the Protective Order Acknowledgement, including Otsego 2000, within ten days of execution of the Acknowledgment, on notice to the ALJ and the party list.

FOIL Request II: Terra-Gen Communications with ORES/DPS

As noted above, the Monastery also requests documents and communications between ORES/DPS Staff and Terra-Gen. That request will be addressed by the RAO and is subject to submission of a statement of necessity pursuant to 16 NYCRR § 6-1.3(f)(2) that details justification for any exception(s) from public disclosure, which shall be directed to the RAO.

(SIGNED) Maureen F. Leary

cc: Party List – Matter No. 24-03066
Hon. James A. Costello
Hon. James T. McClymonds