FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Thomas Melone and
Allco Renewable Energy
Limited,

Complainants

against Docket #FIC 2017-0101

Commissioner, State of Connecticut,
Department of Energy and Environmental
Protection; and State of Connecticut,
Department of Energy and Environmental
Protection,

Respondents January 24, 2018

The above-captioned matter was heard as a contested case on October 16, November 9, and November 17, 2017, at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On November 6 and November 7, 2017, Antrim Wind Energy LLC, and Cassadaga Wind, LLC, respectively, moved to intervene, without objection. Such unopposed motions were granted by the hearing officer at the November 9th hearing.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that by email dated December 1, 2016, Thomas Melone, on behalf of the complainants, requested the following records from the respondents:

> Responses to the New England Clean Energy RFP [Request for Proposals] (https://cleanenergyrfp.com/) of [1] Antrim Wind [2] Ranger Solar [3] Cassadaga Wind [and] RES Americas – Both Submissions [,]
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> including all responses to requests for further information submitted with respect to any of thise [sic] responses, AND any record or file made by the Department of Energy & Environmental

> Protection in connection with the contract award process. ("December 1st request").

3. It is found that, by email dated January 17, 2017, the respondents denied the complainants' request claiming that such records were exempt pursuant to §§1-210(b)(4), 1-210(b)(5) and 1-210(b)(24), G.S.[1]

4. It is found that on or about January 26, 2017, in response to an inquiry from Melone, the respondents provided Melone with a statement from Tracy Babbidge, Bureau Chief for the Department of Energy and Environmental Protection ("DEEP") Bureau of Energy and Technology Policy, certifying that "consistent with the requirements of Section 1-210(b)(24) of the Connecticut General Statutes…the public interest in the disclosure of the [requested] information is outweighed by the public interest in the confidentiality of [such] information, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier…."

5. By letter filed February 16, 2017, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of all of the records responsive to their December 1st request, described in paragraph 2, above.

6. Section 1-200(5), G.S., provides:

> Public records or files means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, …whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides, in relevant part:

> Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, … or (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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[1] As of the November 17, 2017 hearing in this matter, the respondents no longer claimed that the records at issue were exempt from disclosure pursuant to §§1-210(b)(4) and 1-210(b)(24), G.S. Accordingly, such exemptions will not be further addressed herein.

9. It is found that all the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. It is found that on November 12, 2015, DEEP issued a request for proposals, in coordination with Connecticut, Rhode Island and Massachusetts, to procure renewable energy contracts ("Three State RFP"). It is found that DEEP solicited such proposals pursuant to Public Act 15-107, *An Act Concerning Affordable and Reliable Energy* and Public Act 13-303, *An Act Concerning Connecticut's Clean Energy Goals*, which provided the Commissioner of DEEP with the authority to conduct renewable energy procurements.

11. It is found that the Three State RFP was conducted to help meet the clean energy goals of Connecticut, Massachusetts and Rhode Island, in a cost-effective manner for ratepayers, and consistent with their procurement statutes. The RFP explained that the:

> [s]oliciting parties in the three states have decided to act jointly to open the possibility of procuring large-scale projects that no state could procure if it acted unilaterally. Although the three-state process opens up the possibility of large-scale projects, parties in each state will select the project(s) that is/are most beneficial to its customers and consistent with its particular Procurement Statutes. Consequently, evaluation and selection will involve an iterative process by which, after an initial threshold examination followed by a quantitative analysis of the bids, the parties from each state will review and rank bids based on the qualitative requirements of their respective state.... [Respondents' Exhibit B, RFP, page 2, section 1.1].

12. It is found that the Three State RFP required bidders to submit copies of a "public version" of each proposal. If a bidder opted to redact what it considered to be "confidential business information" in the "public version" of its proposal, then it was also required to submit an unredacted version of such materials and "clearly identify all confidential or proprietary information including pricing...." (Respondents' Exhibit B, RFP, page 13, section 1.3.3). The "public version" of each proposal was posted on the public website for the New England Clean Energy RFP.[2]

13. It is found that the Three State RFP established an "Evaluation Team," consisting of the soliciting parties, electric distribution companies ("EDCs") (*e.g.,* Connecticut Light & Power Company ("CL&P") and the United Illuminating Company ("UI")), the Connecticut Procurement Manager, the Connecticut Office of Consumer Counsel, the Connecticut Attorney General and the Massachusetts Department of Energy Resources, who evaluated and ranked the bids. Independent consultants (*e.g.,* Levitan and Associates, Inc. ("Levitan")) were retained to

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[2] The Commission notes that the New England Clean Energy RFP website can be found at https://cleanenergyrfp.com/.

assist in the evaluation. The RFP also included input from ISO New England ("ISO-NE"), a regional grid operator which is federally regulated.[3]

14. It is found that all communications regarding the RFP with the Evaluation Team were required to be directly submitted via email to the Evaluation Team. Bidders were prohibited from direct contact with the individual members of the Evaluation Team or the team's consultants. (Respondents' Exhibit B, RFP, pages 11-12).

15. It is found that the RFP informed bidders that:

> The Evaluation Team shall use commercially reasonable efforts to treat the confidential information that it receives from bidders in a confidential manner and will not use such information for any purpose other than in connection with this RFP.... If confidential information is sought in any regulatory or judicial inquiry or proceeding or pursuant to a request for information by a government agency with supervisory authority over any of the EDCs, reasonable steps shall be taken to limit disclosure and use of said confidential information through the use of non-disclosure agreements or requests for orders seeking protective treatment, and bidders shall be informed that the confidential information is being sought. [Respondents' Exhibit B, RFP, pages 13-14].

16. It is also found that the RFP informed bidders that:

> As it has done with previous RFPs, CT DEEP intends to disclose certain bid information in its final determination once contract negotiations are completed and a filing is made with PURA [Connecticut Public Utilities Regulatory Authority] for review and approval. At this time, DEEP anticipates such disclosure will include some information attributed to named projects responsive to the CT portion of the RFP: specifically, the qualitative and quantitative score and threshold eligibility determinations attributed to specific projects responsive to the CT portion of this RFP, and pricing data for winning bids. DEEP may also disclose aggregate or average pricing data for all bids responsive to the CT portion of the RFP but without attribution to specific projects." [Respondents' Exhibit B, RFP, page 13, section 1.3.3, footnote 11].

17. It is found that additional state-specific information concerning the confidentiality of information pursuant to state statutes was also included in Appendix G of the RFP. Specifically, with respect to Connecticut, the RFP provided that:

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[3] The Commission notes that, among other functions, ISO-NE operates the power system in the New England region. See https://www.iso-ne.com/.

> With this submission of information claimed and labeled as confidential, you must provide the legal basis for your confidentiality claim, describe what efforts have been taken to keep the information confidential, and provide whether the information sought to be protected has an independent economic value by not being readily known in the industry. With your legal support and reasonable justification for confidentiality…the Connecticut state agencies participating on the Soliciting Parties will be better equipped to safeguard your confidential information should it become the subject of a [CT FOI Act] inquiry. Subject to footnote 11, supra, Information deemed confidential will remain confidential for losing bidders. [Respondents' Exhibit B, RFP, Appendix G].

18. In addition, it is found that DEEP informed bidders that "[a]ll information for winning bidders, including confidential information, will be released and become public 180 days after contracts have been executed and approved by all relevant regulatory authorities [in CT, Massachusetts and Rhode Island], unless otherwise ordered by the Connecticut PURA." (Respondents' Exhibit B, RFP, Appendix G) (Emphasis omitted).

19. It is found that, under the RFP, the Evaluation Team members, including all Connecticut members, and Levitan, were required to sign nondisclosure agreements to maintain the confidentiality of the redacted information. In addition, representatives of the utility companies on the Evaluation Team were required to sign an Utility Standard of Conduct agreement prohibiting any discussion of the RFP between EDC personnel participating on the Evaluation Team and EDC personnel involved in the preparation of bids in response to the RFP.

20. It is found that 31 sets of project proposals were submitted from solar, wind, large-scale hydropower, fuel, cell and transmission developers. It is found that Connecticut selected nine Class 1 renewable energy projects including, but not limited to, projects proposed by two wind power developers, Antrim Wind Energy, LLC ("Antrim Wind"), and Cassadaga Wind, LLC ("Cassadaga").

21. It is found that on February 28, 2017, the Commissioner of DEEP issued a letter to EDCs UI and CL&P, notifying them that it had selected nine bids and directing them to enter into contract negotiations with the nine selected projects. The EDCs executed contracts for six of the nine selected projects, including Cassadaga. Two bidders, including Antrim Wind, withdrew their offers during contract negotiations with the EDCs. DEEP relinquished Connecticut's share of one of the selected projects to Rhode Island.

22. It is found that any large-scale energy resource agreements entered into by the EDCs with the selected bidders were subject to regulatory review and approval by PURA.[4] It is found that on September 13, 2017, PURA issued a decision approving the long-term contracts

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[4] Pursuant to section 6 of P.A. 13-303, "power purchase agreements for energy, capacity and environmental attributes, or any combination thereof, for periods of not more than twenty years…shall be

between UI and CL&P and the six bidders.[5] It is found that at the time of the hearings in this matter, regulatory review was still ongoing in Massachusetts and Rhode Island.

23. It is found that at the November 9th hearing, the respondents provided the complainants with a CD containing copies of unredacted documents responsive to the December 1st request for which no exemption from disclosure was being claimed. It is also found that the complainants narrowed the scope of their request to those records relating to the Cassadaga and Antrim Wind proposals, and a document to which the parties referred as the "Levitan Answer Key."

24. It is found that at the November 17th hearing, pursuant to an order of the hearing officer, the respondents submitted into evidence redacted copies of the records, described in paragraph 23, above,[6] except for two Antrim Wind records.[7] The respondents also submitted a list describing the Antrim Wind and Cassadaga records, or portions thereof, which were still at issue.[8] Subsequently, by letter dated November 30, 2017, pursuant to an order of the hearing officer, the respondents informed the hearing officer that Cassadaga was no longer seeking to protect certain information, and submitted a revised list highlighting those Cassadaga records that were still at issue.[9] In its November 30th letter, the respondents also informed the hearing officer that copies of the records which Cassadaga was no longer seeking to protect were placed in the mail to the complainants.

25. On November 30, 2017, pursuant to an order of the hearing officer, the respondents submitted unredacted copies of the records that remained at issue for in camera review, along with an in camera Index. The respondents grouped the in camera records into three categories:

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subject to review and approval by [PURA], which review shall commence upon the filing of the signed power purchase agreement with the authority."

[5] See Docket No. 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements.

[6] The Commission notes that although the original order, dated November 1, 2017, indicated that the redacted versions of the records at issue would be identified as Respondents' Exhibit F, such records were marked as follows: Respondents' Exhibits O (Disc, Antrim Wind), P (Disc, Cassadaga) and Q (Levitan Answer Key). Subsequently, on November 20, 2017, pursuant to an order of the hearing officer, the respondents submitted a redacted copy of "Antrim-RFP Response-Appendix B, Section 15, Exceptions to Form PPA," as an after-filed exhibit. Such record has been marked as Respondents' Exhibit O2.

[7] Respondents' Exhibit O1 (after-filed) states that copies of a PSSE Model and PSCAD Model are "1) executable files (models) that cannot be redacted and 2) contain highly sensitive technical and commercial information belonging to Siemens and protected under NDA [nondisclosure agreement] with Antrim Wind. Antrim is unable to provide the redacted versions of those documents."

[8] The lists were marked as Respondents' Exhibits O1 (Antrim Wind) and P1 (Cassadaga).

[9] A copy of the November 30th letter and revised listing have been marked as Respondents' Exhibit P2 (after-filed).

Levitan Answer Key, Cassadaga Records and Antrim Wind Records. On December 22, 2017, pursuant to an order of the hearing officer, the respondents submitted a revised in camera Index for the Antrim Wind Records. The respondents also submitted copies of certain Antrim Wind Records with line numbers.[10] In addition, the respondents submitted a flash drive containing additional Antrim Wind Records for in camera review.

26. On the in camera indices, described in paragraph 25, above, the respondents claim that the in camera records, or portions thereof, are exempt from disclosure, pursuant to §§1-210(a) and 1-210(b)(5), G.S. and the Federal Power Act, respectively.

27. Section 1-210(b)(5), G.S., provides that a public agency is not required to disclose:

> (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including
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> formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and
>
> (B) Commercial or financial information given in confidence, not required by statute....

28. With respect to the in camera records that the respondents claim are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S., the definition of "trade secret" in §1-210(b)(5)(A), G.S., "on its face, focuses exclusively on the nature and accessibility of the information, not on the status or characteristics of the entity creating and maintaining that information." University of Connecticut v. FOI Commission, 303 Conn. 724, 734 (2012). The information claimed to be a trade secret must "be of the kind included in the nonexhaustive list contained in [§1-210(b)(5)(A), G.S.]." Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999). In addition, "to qualify for a trade secret exemption under §1-210(b)(5)(A)[, G.S.], a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means." (Citation omitted; internal quotation marks omitted.) Director, Dept. of Information Technology of Town of Greenwich v. FOI Commission, 274 Conn. 179, 194 (2005).

29. In determining whether information qualifies as a trade secret, the following factors should be considered: "(1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the

[10] The respondents submitted copies of the following Antrim Wind Records with numbered lines: AW-1 through 55, AW-150 through 154, AW-392, and AW-1603 through 1605.

information to the employer and to its competitors; (5) the amount of effort or money expended by the employer in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." Town & Country House & Homes Service, Inc. v. Evans, 150 Conn. 314, 319 (1963). See Department of Public Utilities of City of Norwich v. FOI Commission, 55 Conn. App. 527, 531-32 (1999) (Court found that "the definition of trade secrets adopted by our Supreme Court in Town & Country House & Homes, Inc. v. Evans, supra, 150 Conn. at 318-19, is applicable.")(emphasis added).

30. The CT Supreme Court has also held "financial details [such as] costs, pricing and bidding...fully meet the definition of trade secrets...." Triangle Sheet Metal Works v. Silver, 154 Conn. 116, 126 (1966).

31. Further, the Supreme Court has noted that although "disclosure under the [FOI] act does not turn on the motive for the request...the question of whether [a requester], or other persons similarly situated, could obtain economic value from the disclosure would be relevant in assessing whether the information constitutes a trade secret." University of Connecticut v. FOI Commission, supra, 303 Conn. at 727- 728, footnote 5.

32. With respect to the in camera records that the respondents claim are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S., Connecticut appellate case law has not defined "commercial or financial information, given in confidence" as used in §1-210(b)(5)(B), G.S. However, the similar provision in the federal FOI Act exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S. Code §552 (b)(4). "Although our Freedom of Information Act does not derive from any model act or the federal Freedom of Information Act, other similar acts, because they are in pari materia,[11] are interpretatively helpful, especially in understanding the necessary accommodation of the competing interests involved." Wilson v. FOI Commission, 181 Conn. 324, 333 (1980); Dept. of Public Utilities v. FOI Commission, Superior Court, judicial district of New Britain, Docket #CV99-0498510 (Jan. 12, 2001).

33. "Commercial" and "financial," as used in the federal FOI Act, 5 U.S.C. 552, have been given their ordinary meanings. See Watkins v. U.S. Bureau of Customs and Border Protection, 643 F.3d 1189, 1194 (9th Cir. 2011); Pub. Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983); James Craven and the Norwich Bulletin v. Governor, State of Connecticut; and State of Connecticut, Office of the Governor, Docket #FIC2011-152, (March 14, 2012).

34. Under a standard first articulated by the federal District of Columbia Circuit Court, commercial or financial information voluntarily provided to the government may be withheld from disclosure under Exemption 4 of the federal FOI Act if it "would customarily not be released to the public by the person from whom it was obtained." Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878-79 (D.C.Cir. 1992) (en banc), cert. denied, 507 U.S. 984 (1993).

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[11] *In pari materia*: "on the same subject; relating to the same matter." Black's Law Dictionary, 8th Ed. (1994).

35. "The exemption does not apply if identical information is otherwise in the public domain." Inner City Press/Community on the Move v. Board of Governors of the Federal Reserve System, 463 F.3d 239, 244 (2d Cir. 2006).

36. Two Connecticut Superior Court decisions have ruled that commercial information "given in confidence" is exempt pursuant to §1-210(b)(5)(B), G.S., if given under an express or implied assurance of confidentiality. See Dept. of Public Utilities, supra; Chief of Staff v. CT FOI Commission, Superior Court, judicial district of New Britain, Docket No. 492654 (August 12, 1999). "Whether the circumstances show an implied assurance of confidentiality is ordinarily a question of fact." Id.; James Craven and the Norwich Bulletin v. Governor, State of Connecticut; and State of Connecticut, Office of the Governor, supra, Docket #FIC 2011-152.

37. "To imply" is defined as "to indicate by "logical inference, association, or necessary consequence rather than by direct statement." Webster's Third New International Dictionary of the English Language, Unabridged (Springfield, MA: Merriam-Webster, 1993).

38. Two years after the Superior Court decisions referenced in paragraph 36, above, the Connecticut Supreme Court in Lash v. FOI Commission, 300 Conn. 511, 519-520 (2011), construed the term "made in confidence" as part of a four-part test to determine whether the attorney-client privilege applied to records requested pursuant to the FOI Act. The test requires, inter alia, that "communications must be made in confidence." The Court concluded that a communication made in confidence is one that is intended to be a confidential communication, based on the context in which it is made, including indicia such as the content of the communication and whether any other party ever had access to the document at issue.

39. It is concluded, based on all of the above, that "given in confidence" within the meaning of §1-210(b)(5)(B), G.S., requires an intent to give confidential information, based on context or inference, such as where there is an express or implied assurance of confidentiality, where the information is not available to the public from any other source, or where the information is such that would not customarily be disclosed by the person who provided it.

40. Further, with respect to the phrase "required by statute," it is found that such term is not defined in the FOI Act. However, in the construction of statutes, words and phrases must be construed according to the commonly approved usage. See §1-1(a), G.S. ("Words and phrases. Construction of statutes.").

41. The term "require" is defined, in relevant part, as: "[T]o demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation)...." (Webster's Third New International Dictionary, supra), and "to direct, order, demand, instruct, command, claim, compel, request, need, exact" (Black's Law Dictionary (6th Ed., 1990). See also Lewis v. Connecticut Gaming Policy Bd., 224 Conn. 693, 706 (1993) (the Supreme Court held that the phrase "required by statute" "in §4-166(2) [, G.S.], if construed to its commonly approved usage, can only mean that before a proceeding qualifies as a contested case, *an agency must be obligated by an act promulgated by the legislature* to determine the legal rights, duties or privileges of a party.") (emphasis added); Advisory Opinion #69, In the Matter of a Request for Advisory Opinion, Connecticut Association of Assessing Officers, Applicant (the FOI

Commission opined that "in the absence of *any express legal authority* that would enable assessors *to compel* disclosure of the information at issue…such information, when given to assessors, is 'not required by statute'…."(emphasis added); Advisory Opinion #82, In the Matter of a Request for Advisory Opinion, Under Secretary, Intergovernmental Policy Division, Office of Policy Management, Applicant (the FOI Commission opined that "statutes [did] *not require* the submission of the cost of acquisition data at issue. Rather, they *merely authorize[d]* the Secretary of OPM to prescribe forms, or mandate documentation, that may require such data.")(emphasis added).

42. At the hearings and in their post-hearing briefs, the complainants argued that the respondents have failed to show that the withheld information was exempt from disclosure. With respect to the Cassadaga and Antrim Wind Records, the complainants contended that the respondents failed to prove that such records satisfy the "confidentiality" requirements within §§1-210(b)(5)(A) and 1-210(b)(5)(B), G.S. The complainants also contended that the information submitted by bidders in their respective proposals was "required" under the Three State RFP and by statute, and was therefore not exempt from disclosure pursuant to §1-210(b)(5)(B), G.S. In addition, with respect to the Answer Key, the complainants contended that the respondents have failed to prove that such record is exempt from disclosure pursuant to §§1-210(b)(5)(A), or 1-210(b)(5)(B), G.S. They argued that DEEP was acting as a "regulator" in issuing the RFP, and therefore, was not engaged in a "trade" for purposes of §1-210(b)(5)(A), G.S. The complainants also contended that the Answer Key is not "of the kind" to be a trade secret, derives no independent economic value, and is "not secret."

43. It is found that the renewable energy market and the procurement process for renewable energy is highly competitive, and that the information at issue in this matter including, but not limited to, costs, pricing and bidding information, is highly market sensitive and unique to the particular RFP proposals.

44. It is found that complainant Melone is a solar developer, an unsuccessful past participant in DEEP's renewable energy procurements, and involved in several lawsuits with the State of Connecticut.

LEVITAN ANSWER KEY

45. With respect to in camera record BETP-1, which the respondents have described publically as the "Levitan Answer Key" to DEEP's Three State RFP, the respondents argued that such record, in its entirety, is DEEP's trade secret and therefore exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. On the in camera Index, the respondents describe such record, which is in the form of a four-page spreadsheet, as "compilations and pattern of economically valuable data and commercial and financial information, given in confidence, that constitute an agency trade secret." The respondents also submitted in camera a one-page document consisting of a list of abbreviations. It is found that such document is not responsive to the complainants' December 1st request, and therefore shall not be further addressed herein.

46. It is found that DEEP retained Levitan to assist in the evaluation process. It is found

that Levitan used a market simulation model known as "Aurora" to evaluate and compare the costs and benefits of bids received. The Answer Key is the result of the modeling performed by Levitan and used by DEEP to evaluate and rank bids based on their benefit-to-cost ratios. The respondents testified that the Answer Key is a "compilation of extraordinarily complicated data, huge amounts of data" and includes, among other information, confidential proprietary information submitted by all bidders, and cannot be replicated.

47. At the hearings and in their post-hearing brief, the respondents argued that maintaining the confidentiality of the in camera records, including the Answer Key, is essential to maintaining the integrity of the state's procurement process, confidence of prospective bidders in future RFPs, and quality and competitiveness of the bids received. They contended that the disclosure of the Answer Key would have a chilling effect on the number and competitiveness of future proposals. They contended that the disclosure of the information would also impact their ability to secure clean, renewable energy and to meet the state's aggressive renewable energy targets at a reasonable cost to ratepayers.

48. The respondents testified that, in addition to the steps taken, as described in paragraphs 15 through 19, above, to maintain the confidentiality of certain information, DEEP took the following steps to maintain the confidentiality of the Answer Key: The specific criteria and information provided by DEEP were shared only with those individuals on the Evaluation Team and Levitan. Further, within DEEP, limited access to the Answer Key was granted only to a small set of employees within its Bureau of Energy and Technology Policy assigned to work on the procurement process. During the PURA regulatory review of the executed contracts, DEEP also sought to protect the Answer Key by filing a motion for protective order, which was granted and still in effect at the time of the hearings in this matter.

49. At the hearings and in their post-hearing brief, the respondents contended that "[w]ith respect to DEEP, there is a high value to this information [*i.e.,* the Answer Key] as the RFP process involves millions of Connecticut ratepayer dollars that if mishandled could result in further burdening Connecticut ratepayers." (Respondents' Brief, page 10). The respondents testified that the projected savings to Connecticut ratepayers from this particular RFP is $330 million. According to the respondents, "if the Levitan Answer Key is made public, bidders will be able to adjust their proposals just enough to 'teach to the test'.... [I]f a bidder knew the formula by which DEEP makes its decisions, then it could slightly alter its proposal in order to score higher on the evaluation and perhaps without any commensurate rise in value to the ratepayers." (Respondents' Brief, page 10). In addition, the respondents contended that the release of the Answer Key would have "substantial negative ramifications for the energy procurement process in Connecticut, as well as Massachusetts and Rhode Island... [as]...the request for evaluation materials like the Levitan Answer Key will give away the answers for future solicitations. " (Respondents' Brief, page 10). The respondents further testified that DEEP has invested significant resources in the Three State RFP including the expenditure of $330,000 on the contract with Levitan and the expenditure of hundreds of hours by DEEP employees involved in the procurement process.

50. Based on the testimony provided at the hearings and upon a careful review of the Answer Key, it is found that such record, in its entirety, is "of the kind included in the nonexhaustive list contained in [§1-210(b)(5)(A), G.S.]." Elm City Cheese Co., Inc. v. Federico, supra, 251 Conn. 70. It is found that the Answer Key (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that were reasonable under the circumstances to maintain secrecy.

51. It is concluded that the Answer Key is a trade secret that is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded the respondents did not violate the FOI Act by withholding such record from the complainants.

CASSADAGA RECORDS

52. With respect to the Cassadaga Records at issue, the respondents and Intervenor Cassadaga claim that such records, or portions thereof, are exempt pursuant to §§1-210(b)(5)(A) and 1-210(b)(5)(B), G.S., respectively.[12]

53. It is found that the Cassadaga Records have been described publically (in Respondents' Exhibit P2) as:

> Record 1 (Bid Form, Section 1);
> Record 2 (Bid Form, Section 2 through 15);
> Record 4, Attachment 3.4 (Moderation of System Peak Load);
> Record 5, Attachment 4.1.1 (Wind Data Summary, 12x24 Energy Production);
> Record 7, Attachment 4.1.3 (Wind Energy Projects, Site Adjusted Power Curve);
> Record 8, Attachment 4.1.4 (Energy Assessment Assumptions);
> Record 9, Attachment 4.1.5 (1-20130110 to 20150430, Filtered Hourly Data);
> Record 10, Attachment 4.1.6 (2-20130110 to 20150430, Filtered Hourly Data);
> Record 11, Attachment 5.2 (Anticipated Project Financial Structure);
> Record 13, Attachment 5.5.1 (2012 Audited Financial Statements, Trireme Energy Holdings, Inc.);
> Record 14, Attachment 5.5.2 (2013 Audited Financial Statements, Trireme Energy Holdings, Inc.);
> Record 15, Attachment 5.5.3 (2014 Audited Financial Statements, Trireme Energy Holdings, Inc.);
> Record 17, Attachment 6.2 (Executed Option to Purchase Real Property); and
> Record 24, Attachment 8.1 (Track record G97 @Mar 2015).

54. At the November 9th hearing, Cassadaga testified that the Cassadaga records at issue

[12] The respondents submitted the Cassadaga Records on a disc. The Commission notes that the respondents did not number the in camera pages chronologically. Accordingly, references to the Cassadaga Records contained herein mirror the specific record and line reference numbers provided by the respondents on the in camera Index.

contain development information, operational information, commercial pricing and information obtained from third parties, and that such information (*e.g.,* how the delivery of energy is effectuated by the project), if disclosed, could be used by Cassadaga's competitors and place Cassadaga at a competitive disadvantage when developing and bidding on future projects.

55. Cassadaga testified that it expended significant financial resources (*i.e.,* millions of dollars), as well as time and effort, to develop a wind farm project that is unique to and unable to be replicated outside of the company.

56. Cassadaga testified that the information at issue is not otherwise known or available to anyone outside of the company, and that it went to "great lengths" to protect the confidentiality of the company's information as well as the information of certain third-parties (*e.g.,* Gamesa Wind US, LLC, a manufacturer of wind turbine generators), with whom Cassadaga entered into nondisclosure agreements in order to submit the third-party's information as part of Cassadaga's RFP proposal.

57. It is found that Cassadaga submitted redacted and unredacted versions of its RFP proposal with the understanding that the unredacted information would be kept in confidence, and that they would receive notice from DEEP if a request was made for information pertaining to Cassadaga. Cassadaga also sought confidential treatment of certain information through the PURA process by filing two motions with PURA for protective order, which were granted and still in effect at the time of hearings in this matter.[13] In addition, Cassadaga employees are required to enter into nondisclosure agreements.

58. On the in camera Index, the respondents identify and describe certain information in Cassadaga Record 1 as follows:

"estimated net capacity factor - estimate of generated power" (page 8, line 14);[14]

"expected annual availability" (page 8, line 15);[15]

"operational information – 12 x 24 profile - proprietary monthly power generation proje[ct]" (page 12, lines 7 through 30); and

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[13] Pursuant to an order of the hearing officer, Intervenor Cassadaga submitted a copy of its motion for protective order in its power purchase agreement with UI, dated August 25, 2017, as an after-filed exhibit. Such record has been marked as Intervenor Cassadaga Exhibit C5a. A copy of Cassadaga's motion for protective order in its purchase agreement with CL&P, dated August 25, 2017, had already been marked as Intervenor Cassadaga Exhibit C4.

[14] The in camera Index identifies such record as Record 1, page 8, line 7. However, the "estimated net capacity factor" appears on Record 1, page 8, line 14, and will be referenced accordingly.

[15] The in camera Index identifies such record as Record 1, page 8, line 8, "estimate annual availability." However, the information has been publically identified in Intervenor Cassadaga Exhibit C3 as the "expected annual availability" and appears on Record 1, page 8, line 15, and will be referenced accordingly.

"pricing information" (page 15, lines 9 through 28).

59. It is found, based on the testimony provided at the hearings and upon a careful in camera review, that the information described in paragraph 58, above, is "of the kind" to be a trade secret. It is also found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy.

60. It is concluded that the information described in paragraph 58, above, is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

61. On the in camera Index, the respondents also claim that certain information identified and described in Cassadaga Record 1 (page 14, lines 15, 17, 19, 21, 23 and 25) as "operational information - power generation projections", is exempt from disclosure. It is found, however, that such information has already been publically disclosed in Intervenor Cassadaga Exhibit C3.

62. It is found that the respondents did not claim an exemption for the remaining information contained in pages 8, 12, 14 and 15 of Cassadaga Record 1.

63. On the in camera Index, the respondents identified and described certain information in Cassadaga Records 2, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 and 24 as follows: "pricing and price increase information"; "wind turbine manufacturer turbine information"; "estimated annual power generation information"; "estimated total availability"; "estimated turbine availability"; "estimated balance of plant availability, estimated electrical grid availability"; "electrical efficiency of the project - site specific power generation losses"; "turbine performance losses - site specific power generation losses"; "environmental losses - site specific weather related power generation losses"; "curtailment estimates - site specific to reduce bat fatalities"; "turbine manufacturer information"; "proprietary operational information of privately held company"; "power generation projections"; "site specific meteorological data"; "site specific turbine performance estimates"; "financial information"; "financial statements"; "financial information of privately held company"; "financial information/strategy of privately held company"; and "lender to a privately held company".

64. It is found, based on the testimony provided at the hearings and upon a careful in camera review, the following information is "of the kind" to be a trade secret:

Cassadaga Record 2,
page 3, line 24 (after "documents" to end of sentence);

page 9, line 28 (after 2nd "the" and before "turbine");

page 10, line 21 (after 2nd "the" and before "turbine"), line 24 (after 2nd "the" and before "is"), and line 30 (after "of" and before "for");[16]

page 11, line 1 (information in parenthesis), line 3 (information in parenthesis), line 4 (information in parenthesis), line 5 (information in parenthesis), line 9 (information in parenthesis), line 14 (information in parenthesis), line 20 (information in parenthesis), line 31 (after "of" and before "wind"), lines 32-33 (after the 2nd "the" and before "turbine");

page 17, line 22 (after "approximately" and before "Our");

page 19, line 2 (after "at" and to end of sentence);

page 38, line 23;

page 39, lines 6-7 (after "the" and before "is"), line 23 (after "the" and before "turbine");

page 40, line 1 (up to end of sentence);

page 52, line 28 (after " : ");

page 53, line 1 (after " : "), line 2 (after " : "), line 3(after " : "), line 6 (after " : "), line 7 (after " : "), line 8 (after " : ");

page 54, line 4 (after " : "), line 5 (after " : "), line 6 (after " : "), line 7 (after " : "), line 10 (after " : "), line 11 (after " : "), line 12 (after " : ");

page 55, line 8 (after " : "), line 9 (after " : "), line 10 (after " : "), line 13 (after " : "), line 14 (after " : "), line 15 (after " : ");

page 56, line 11 (after " : "), line 12 (after " : "), line 13 (after " : "), line 14 (after " : ") and line 17 (after " : ");

page 57, line 1 (after " : "), line 2 (after " : "), line 15 (after " : "), line 16 (after " : "), line 17 (after " : ");

page 58, line 1 (after " : "), line 4 (after " : "), line 5 (after " : "), line 6 (after " : ");

page 64, line 12 (after " : "), line 13 (after " : "), line 14 (after " : "), line 15 (after " : "), line 16 (after " : "), line 17 (after " : "), line 18 (after " : "), line 23 (after " : "), line 24 (after " : ");

Record 4 (all); Record 5 (all); Record 7 (all); Record 8 (all); Record 9 (all); Record 10 (all); and

Record 24 (all).

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[16] The in camera index identifies such record as Record 2, page 10, line 29. However, the "estimated annual power generation information" appears on page 10, line 30, and will be referenced accordingly.

65. It is further found that the information described in paragraph 64, above, (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy.

66. It is concluded that the information described in paragraph 64, above, is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

67. It is found, based on the testimony provided at the hearings and upon a careful in camera review, the following information is "commercial or financial information given in confidence, not required by statute," within the meaning of §1-210(b)(5)(B), G.S., and therefore exempt from disclosure:

Cassadaga Record 2,
page 16, line 15 (after "a" and before "in");[17]

page 17, line 12 (after "over" and before "of"), line 13 (after "and" and before "of"), line 15 (after "over" and before "of"), line 16 (after "of" and before "since");

page 22, line 4 (after "over" and before "of"), line 5 (after "and" and before "of"), line 11 (after "over" and before "of"), line 12 (after "of" and before "since"), lines 24 through 27, line 30 (after 2nd "of" and before "with"), line 31 (after 1st "of" and before "and", and after 2nd "of" and before "By"), lines 32-33 (after 2nd "to" to end of sentence, and after "generate" and before "of");

page 23, line 16 (after "a" and before "PTC");

page 59, line 3 (after "over" and before "of"), line 4 (after "with" and before "a"), line 8 (after "over" and before "of"), line 9 (after "with" and before ","), line 10 (after "from" and before "and");

page 65, line 1 (after " : " and before "/"), line 33 (after "be" to end of sentence);

page 66, line 2 (after "be" and before "per");[18]

Record 11 (all); Record 13 (all); Record 14 (all); and Record 15 (all).

68. It is concluded that the respondents did not violate the FOI Act by withholding

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[17] The in camera index identifies such record as Record 2, page 16, line 14. However, the "financial information of privately held company" appears on page 16, line 15, and will be referenced accordingly.

[18] The in camera index identifies such record as Record 2, page 66, line 1. However, the "financial information of privately held company" appears on page 66, line 2, and will be referenced accordingly.

the information, described in paragraph 67, above, from the complainants.

69. With respect to Cassadaga Record 2, page 39, lines 29-34, which the respondents describe on the in camera Index as "turbine manufacturer information," it is found that the following information has already been publically disclosed in Intervenor Cassadaga Exhibit C2: Record 2, page 39, line 29 (from "Information" to the 2nd "the"), line 30 (in its entirety) and line 31 (from "technology" to "the"). It is further found, however, based on the testimony provided at the hearings and upon a careful in camera review, that the remaining information contained in Record 2, page 39, lines 29-34, is "of the kind" to be a trade secret. It is found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that such information is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

70. It is found that the respondents did not claim an exemption for the remaining information contained in pages 3, 9, 10, 11, 16, 17, 19, 22, 23, 38, 39, 40, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65 and 66 of Cassadaga Record 2.

71. With respect to Cassadaga Record 17, which is described on the in camera Index as a "Lease Agreement between landowner and privately held company," it is found, after careful examination of such record, that the respondents failed to prove that such record, or portions thereof, is exempt from disclosure. Accordingly, it is concluded that Record 17 is not exempt from disclosure pursuant to §§1-210(b)(5)(A) or 1-210(b)(5)(B), G.S., and that the respondents violated §1-210(a) of the FOI Act by withholding such record from the complainants.

ANTRIM WIND RECORDS

72. With respect to the Antrim Wind Records at issue, the respondents and Intervenor Antrim Wind claim that such records, or portions thereof, are exempt from disclosure pursuant to §§1-210(a), 1-210(b)(5)(A) and 1-210(b)(5)(B), G.S., and the Federal Power Act.[19]

73. It is found that the Antrim Wind Records have been described publically (in Respondents' Exhibits O1, O2, O3 and O4, respectively] as:

> Appendix B, Section 1, Certification, Project and Pricing Data [AW 1-29];
> Appendix B, Section 2, Executive Summary [AW 30-32];
> Appendix B, Section 5, Financial/Legal [AW 41-48];
> Appendix B, Section 15, Exceptions to Form PPA [AW 83-153];
> Exhibit B, Moderation of Peak Load [AW 154];
> Exhibit D, V-Bar Report [AW 155-389];

[19] The Antrim Wind Records consist of 1605 pages of documents and two flash drives.

Exhibit E, Siemens Site Specific Power Curve [AW 390-391];
Exhibit F, Detailed Energy Loss Assumptions [AW 392];
Exhibit M, Steady State Study [AW 393-1447];
Exhibit N, Stability Study [AW 1448-1551];
Exhibit O, PSSE Model [AW 1552-1602];
Exhibit P, PSCAD Model [AW EX-P]; and
Exhibit AR, Financial Statements [AW1603-1605].[20]

74. At the November 6th hearing, Intervenor Antrim Wind testified that the Three State RFP is a competitive solicitation issued in a competitive industry wherein companies compete for long-term contracts that are in short supply. The information at issue is valuable, highly sensitive commercial and proprietary information (*e.g.,* pricing, construction costs, detailed energy production information) that gets at "the heart of the commercial competitiveness" of the Antrim Wind project, or was covered under third-party confidentiality agreements (*e.g.* Antrim Wind entered into a contract with Siemens, a turbine manufacturer, which was still in place at the time of the hearings in this matter).

75. Antrim Wind testified that the Antrim Wind project has been in development for nine years and that the company has invested nearly $10 million in the project.

76. Antrim Wind testified that the disclosure of the information at issue could be used by Antrim Wind's competitors and place Antrim Wind at a competitive disadvantage and would affect their ability to develop other projects. Antrim Wind also testified that some of the records contain information (*e.g.,* moderation peak load and hourly energy generation information, detailed energy loss assumptions) that is specific to the Antrim Wind project and would not be known to the public, and is an important factor in the evaluation of a project proposal.

77. Antrim Wind testified that they made efforts to maintain the confidentiality of the records at issue. Antrim Wind maintains the information on secure servers and is accessible only by those employees who have signed nondisclosure agreements. In addition, relying on the representations in the Three State RFP, as described in paragraphs 15, 17 and 19, above, concerning the handling and protection of confidential information, Antrim Wind submitted redacted and unredacted versions of its RFP proposal, along with a letter explaining why the redacted information should be handled in a confidential manner. Antrim Wind testified that it would not have submitted a proposal to the RFP without those confidentiality protections in place.

78. On the revised in camera Index for the Antrim Wind Records, the respondents identify and describe the Antrim Wind Records, or portions thereof, as follows: "estimated net capacity factor % (proprietary operational info)"; "hourly generation table (proprietary operational info)"; "generation conversion information"; "price information"; "construction cost

[20] On December 22, 2017, the Commission received the following documents from the respondents: (1) Affidavit of Eric Annes, a research analyst with DEEP's Bureau of Energy and Technology Policy, dated December 21, 2017, with an attachment titled "List of Indexed Documents *As Submitted By:* Antrim Wind Energy LLC", and (2) a letter from Antrim Wind, dated December 21, 2017. Such documents have been marked as after-filed Respondents' Exhibits O3 and O4, respectively.

figure"; "generation output (proprietary operational info)"; "energy resource report (operational info)"; "gross to net energy projections (proprietary operational info)"; "critical energy infrastructure information"; "technical proprietary info"; "executable files"; and "financial data".

79. With respect to AW-1 through 153, it is found, based on the testimony provided at the hearings and upon a careful in camera review, the following information is "of the kind" to be a trade secret:

AW-9, line 21 (between 1st and 2nd "%" signs);

AW-13, lines 7-27;

AW-15, lines 16, 18, 20, 22, 24, 26;

AW-16, lines 15-37;

AW-17, lines 15-37;

AW-32, line 22 (after "of" to end of sentence), lines 23-24 (after 3rd "of" to end of sentence);

AW-42, line 33 (after "is" to end of sentence);

AW-150, line 16 (after "to" and before "per"), line 20 (after "=" to end of line), line 22 (after "=" to end of line);

AW-150, lines 28-45 (information in columns); and

AW-151, line 8.

80. It is found that the information described in paragraph 79, above, (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that such information is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding the information described in paragraph 79, above, from the complainants.

81. It is found that the respondents did not claim an exemption for the remaining information contained in AW-1 through 153.

82. With respect to AW-154, which the respondents describe on the revised in camera Index as "generation output", it is found that the following information has already been publically disclosed in Respondents' Exhibit O: AW-154, lines 1-10, line 11 (nonnumerical information), line 12, line 13 (nonnumerical information), lines 14-24, line 25 (nonnumerical information), line 26 (nonnumerical information), and line 27. It is further found, however, that

based on the testimony provided at the hearings and upon a careful in camera review, the following information contained in AW-154 is "of the kind" to be a trade secret: AW-154, line 11 (numerical information before "monthly"), line 13 (numerical information before "Daily"); line 25 (numerical information before "/Mo"), and line 26 (numerical information before "/Day"). It is found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that AW-154, line 11 (numerical information before "monthly"), line 13 (numerical information before "Daily"), line 25 (numerical information before "/Mo"), and line 26 (numerical information before "/Day"), are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

83. With respect to AW-155 through 389, which the respondents describe on the revised in camera Index as "energy resource report", it is found that the following information has already been publically disclosed in Respondents' Exhibit O: AW-155, lines 1-20, line 21 (up to "within" and after "of" to end of line), lines 22-29 and line 31 (after "see" to end of sentence).[21] It is further found, however, that based on the testimony provided at the hearings and upon a careful in camera review, AW-155, line 21 (after "within" and before "of"), line 30, line 31 (beginning of line to "see"), lines 32-39, and AW-156 through 389, are "of the kind" to be a trade secret. It is also found that such records (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that AW-155, line 21 (after "within" and before "of"), line 30, line 31 (beginning of line to "see"), lines 32-39, and AW-156 through 389, are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such records from the complainants.

84. With respect to AW-390 and AW-391, which the respondents describe on the revised in camera Index as "generation output", it is found that the following information has already been publically disclosed in Respondents' Exhibit O: AW-390, lines 1-7, line 8 (1st and 2nd word), line 9 (1st and 2nd word), and AW-391, lines 1-5 and 7.[22] It is further found, however, that based on the testimony provided at the hearings and upon a careful in camera review, the remaining information contained in AW-390 and AW-391 is "of the kind" to be a trade secret. It is also found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of

[21] The respondents did not number the lines on AW-155; therefore, the hearing officer numbered such lines in pencil in order to identify which portion of AW-155 is exempt from disclosure.

[22] The respondents did not number the lines on AW-390 and AW-391; therefore, the hearing officer numbered such lines in pencil in order to identify which portion of AW-390 and AW-391 is exempt from disclosure.

efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that such information is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

85. With respect to AW-392, which the respondents describe on the revised in camera Index as "gross to net energy projections", it is found that based on the testimony provided at the hearings and upon a careful in camera review, AW-392, line 11 and lines 15-41 (columns 2 and 3), are "of the kind" to be a trade secret. It is also found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that AW-392, line 11 and lines 15-41 (columns 2 and 3), are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants. It is found, however, that the remaining information on AW-392 has already been publically disclosed in Respondents' Exhibit O.

86. With respect to AW-1552 through 1602 and those records described on the revised in camera Index as "executable files"[23] , it is found that such records have been publically identified as "PSSE Model" and "PSCAD Model", and records relating thereto. Antrim Wind testified that such models are power system engineering models that contain detailed proprietary information from a third-party and demonstrate how turbines perform under a variety of different grid conditions. Such models were subject to nondisclosure agreements between Antrim Wind and Siemens.

87. It is found, based on the testimony provided at the hearings and upon careful in camera review, the information described in paragraph 86, above, is "of the kind" to be a trade secret. It is also found that such information (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. It is concluded that such information is exempt from disclosure pursuant to §1-210(b)(A), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.

88. With respect to AW-1603 through 1605, which the respondents describe on the revised in camera Index as "financial data", it is found, based on the testimony provided at the hearings and upon a careful in camera review, the following information is "commercial or financial information given in confidence, not required by statute", within the meaning of §1-210(b)(5)(B), G.S., and therefore exempt from disclosure:

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[23] With their in camera submission, the respondents submitted to the Commission two flash drives containing certain documents and "executable files" relating to the PSSE Model and PSCAD Model, respectively. The Commission notes that it was unable to access the "executable files" contained on the flash drives.

AW-1603, lines 7-9, 12, 14, 20, 21, 23, 26, 29, 30, 31-34, 36 (all of column 2);

AW-1604, lines 1, 2, 6, 8, 9, 10, 12, 14-17, 21-23, 26-28, 32-33, 35, 37-39, 42, 43, 45-47 (all of column 2); and

AW-1605, lines 7-13, 16-21, 23, 25 (all of column 2).

89. It is concluded that the respondents did not violate the FOI Act by withholding the information described in paragraph 88, above, from the complainants.

90. It is found that the respondents did not claim an exemption for the remaining information contained in AW-1603 through 1605.

91. With respect to AW-393 through 1447, and AW-1448 through 1551, such information is described on the revised in camera Index as "Critical Energy Infrastructure Information" ("CEII") and has been publically identified as a "Steady State Study" and "Stability Study" The respondents and Antrim Wind argued that certain information contained in such studies are exempt from disclosure pursuant to §1-210(a), G.S., and the Federal Power Act for reasons of national security.[24]

92. Section 1-210, G.S, provides that: "Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records...."

93. The Federal Power Act provides that CEII "(A) shall be exempt from disclosure under [the federal Freedom of Information Act] and (B) shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records." 16 U.S.C. §824o-1(d)(1). CEII is defined as "information related to critical electric infrastructure,[25] or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure information by the Commission or the Secretary pursuant to subsection (d). Such term includes information that qualifies as critical energy infrastructure information under the Commission's regulations." 16 U.S.C. §824o-1(a)(3).

94. The Commission notes that the Federal Energy Regulatory Commission has

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[24] The Commission notes that the information in AW-393 through 1447, and AW-1448 through 1551, for which the respondents claim an exemption, is the same information that was redacted in Antrim Wind's public submission to the RFP and in Respondents' Exhibit O.

[25] "Critical electric infrastructure" means "a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters." 16 U.S.C. §824o-1(a)(2).

identified the following as CEII: specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: (1) relates details about the production, generation, transmission, or distribution of energy; (2) could be useful to a person planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act; and (4) gives strategic information beyond the location of the critical infrastructure.[26]

95. At the November 6th hearing, Antrim Wind testified that the Steady State Study and Stability Study are studies performed by ISO-NE relating to the transmission and capacity of the electric grid, and contain critical electric infrastructure information, which, if disclosed, "could compromise the security and safety of the electric grid." In order for Antrim Wind to obtain access to such information, they were required to obtain clearance from and sign a nondisclosure agreement with ISO-NE.[27] In addition, the redactions made to the studies that were submitted with the Antrim Wind RFP response, were made by ISO-NE at Antrim Wind's request.

96. It is found, based on the testimony provided at the hearings and upon a careful review of AW-393 through 1447, and AW-1448 through 1576, that such information is CEII. It is concluded that AW-393 through 1447, and AW-1448 through 1576, are exempt from disclosure pursuant to §1-210(a), G.S., and the Federal Power Act. Accordingly, it is further concluded that the respondents did not violate the FOI Act by withholding such records from the complainants.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith provide the complainants with unredacted copies of the records described in paragraph 71 of the findings, above, free of charge.

2. In addition, if the respondents have not already done so, they are hereby ordered to provide the complainants with copies of those portions of the in camera records for which no exemption from disclosure is claimed, as described in paragraphs 62, 70, 81 and 90, above.

3. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2018.

Cynthia A. Cannata

Cynthia A. Cannata
Acting Clerk of the Commission

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[26] See Federal Energy Regulatory Commission, Critical Energy/Electric Infrastructure Information (CEII): https://www.ferc.gov/legal/ceii-foia/ceii.asp.

[27] See Federal Energy Regulatory Commission, Electronic CEII Request Form: https://www.ferc.gov/legal/ceii-foia/ceii/eceii.asp

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

THOMAS MELONE, AND ALLCO RENEWABLE ENERGY LIMITED, c/o Attorney Thomas Melone, c/o ALLCO, 1745 Broadway, 17th Floor, New York, NY 10019

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION, c/o Attorney Kirsten Rigney, Office of Legal Counsel, 10 Franklin Square, New Britain, CT 06051

Intervenor: Attorney Philip M. Small, Brown Rudnick LLP, 185 Asylum Street, 38th Floor, Hartford, CT 06103

Intervenor: Attorney Calvin K. Woo, Verrill Dana LLP, 33 Riverside Avenue, Westport, CT 06880

Cynthia A. Cannata
Acting Clerk of the Commission

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