

solely for the operation, maintenance, repair and decommissioning operation of the Project, the Serviced Equipment and Parts in accordance with the terms of this Agreement; provided that such third parties shall first execute a confidentiality agreement consistent with [the SMA] [and] containing restrictions on disclosure and use at least as restrictive as those in Article 15.” SMA, Section 7.1.

5. The SMA specifically identifies Vestas’s Licensed Technology as “Confidential Information” “as defined in Section 15.1, even if not marked as ‘confidential,’ ‘proprietary,’ or with such similar language.” *Id.*

6. Union Electric Company, d/b/a Ameren Missouri (“Ameren”), subsequently purchased all of TGHP’s equity interests in High Prairie, and is subject to all of the provisions in the SMA.

7. To date, Ameren has advised Vestas of one prior Request for Information (“Request”) it received from the Missouri Public Service Commission (the “Commission”) in connection with this rate case, dated October 7, 2024, that requested information and documents pertaining to Vestas and Vestas’s Confidential Information concerning High Prairie.

8. According to Ameren, in response to the October 7 Request, it disclosed to the Commission the SMA under a Highly Confidential designation pursuant to the Commission’s July 10, 2024 Order Establishing Protective Order.

9. The other documents Ameren disclosed to the Commission in response to the October 7 Request concerned turbine-inspection documents that included customer-specific information, but did not include or concern proprietary or trade secret information. Ameren therefore designated these as “Confidential” pursuant to 20 CSR 4240-2.135(8) and (2)(A)(1).

10. By letter dated November 22, 2024, Ameren’s counsel (LewisRice) advised Vestas of a second Request by the Commission in connection with this rate case, dated November 21, 2024, that requested additional information and documents pertaining to Vestas and Vestas’s Confidential Information concerning High Prairie. LewisRice further advised Vestas that Ameren is required to “produce responsive documents to the Commission as soon as possible, but no later than November 27, 2024.”

11. According to Ameren, the documents it intends to produce in response to the November 21 Request, relating for example to “insurance and/or investigative reports/presentations prepared either internally or externally as it pertains to the collapses of High Prairie Wind Farm’s turbines,” include non-public documents and information that constitute “Confidential Information” under the SMA—due to, among other characteristics, their sensitive commercial and proprietary nature (“Vestas’s Confidential Information”).

12. Although Vestas understands that Ameren intends to designate these documents as “Confidential” pursuant to 20 CSR 240-2.135(8) and (2)(B), such “Confidential” designation does not suffice to adequately protect the confidential, proprietary, and highly sensitive nature of these documents and materials.

13. Pursuant to 20 CSR 4240-2.135(3)(A), “any person may seek a protective order from the commission designating specific information as confidential,” and “[i]f a protective order is granted, the protected information shall be considered confidential information.”

14. Once a protective order is granted pursuant to 20 CSR 4240-2.135(3)(A), the corresponding confidential information “may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys

or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.” 20 CSR 4240-2.135(6).

15. A “party [who] wants any employee or outside expert to review confidential information” must make certain disclosures about such employee or outside expert, and that employee or outside expert also must “comply with the certification requirements of section (7) of this rule.” 20 CSR 4240-2.135(6)(B).

16. Under 20 CSR 4240-2.135(7), “[a]ny employee of a party or outside expert retained by a party that wishes to review confidential information shall first certify in writing that such expert or employee of a party will comply with the requirements of this rule.”

17. Because Vestas’s Confidential Information concerns Vestas’s trade secrets, and is highly sensitive commercially and competitively, it should not be available to members of the public, much less employees of any non-state agency or entity that is (or may become) a party to this rate case, as such non-state agencies or entities are not covered by statutory confidentiality requirements;¹ nor do they have any legitimate interest in accessing Vestas’s trade secrets or proprietary business information.

18. If a protective order issued pursuant to 20 CSR 4240-2.135(3) does not provide adequate protection, the Commission also “may order greater protection than that provided by a confidential designation upon a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an

¹ It is Vestas’s understanding that employees of both the Commission and the Office of the Public Counsel, and the Division of Energy “are subject to the nondisclosure provisions of section 386.480, RSMo,” which protect the confidentiality of information submitted to the Commission by Ameren.

explanation of how the information may be disclosed while protecting the interests of the disclosing entity.” 20 CSR 4240-2.135(4).

19. Information accorded the “greater protection” of 20 CSR 4240-2.135(4) “shall bear the designation ‘Highly Confidential.’” 20 CSR 4240-2.135(4)(B).

20. Due to the highly sensitive, confidential, and proprietary nature of certain documents Ameren intends to provide the Commission in response to its November 21 Request, and because these documents concern Vestas’s “trade secrets, as defined in section 417.543, RSMo” (20 CSR 4240-2.135(2)(A)(8)), Vestas respectfully seeks a protective order from the Commission allowing it, and in turn Ameren, to designate these documents as “Highly Confidential” under 20 CSR 4240-2.135(4).

21. In the November 22 Letter, Ameren expressly confirmed it “will cooperate with Vestas in its efforts to obtain additional protections by designating the documents as ‘Highly Confidential’ while Vestas’s motion is pending, pursuant to 20 CSR 240-2.135(4)(A).”

22. The documents/category of documents Ameren has advised Vestas it believes are responsive to the Commission’s November 21 Request, and that it intends to produce to the Commission on or before November 27, 2024, include:

- a. Vestas’s Preliminary Incident Review for B11;
- b. Vestas’s B11 Evidence Preservation during Clean-up;
- c. Vestas’s Agenda for Vestas-Ameren November 1 Call, including HP C12 Incident Review, HP B11 Lab Testing Update, and Open Discussion & Questions;
- d. Vestas’s Preliminary Incident Review for G08;
- e. An August 23, 2024 Letter from Environmental Works, Inc to Vestas regarding a Summary of Environmental Services – Soil Excavation and Fluid Removal G08;

- f. A July 26, 2024 Letter from Lisin Metallurgical Services to Vestas re: HP G08 Fractured Bolt Evaluation Job No. 385-24-208; and
 - g. Three Vestas Certificates of Destruction re: Destruction and Recycling of Wind Turbines and/or Related Materials (G08).
23. Information/Documents to be Designated as “Confidential,” pursuant to 20 CSR 240-2.135(8) and (2)(B)—i.e. for which Vestas is not seeking a protective order—includes materials identified in Paragraphs 20(e) and (g), above.
24. Information to be Designated and Protected as “Highly Confidential,” pursuant to 20 CSR 240-2.135(4)(B), includes the materials identified in Paragraphs 20(a)-(d) and (f). All of these materials reference or “[c]oncern [Vestas’s] trade secrets, as defined in section 417.453, RSMo,” in relation to the wind turbine equipment that Vestas supplies and services. These materials are highly sensitive (commercially and competitively), confidential, and pertain to proprietary information—including, for example, Vestas’s trade secrets, Licensed Technology, and Intellectual Property.
25. For example, a number of these documents include turbine event logs with confidential and proprietary information about turbine operation parameters, which include sensor data points and corresponding response actions by the turbine (e.g., how the turbine moves from *run* to *stop*.) This data reveals the design intent behind proprietary technology. Just one example of this is OptiStop, a Vestas trademarked name relating to its pitch control strategy. The documents also include proprietary, and unfinalized, traceability batch numbers; design specifications for certain Serviced Equipment and Parts (revealing internal design specification intellectual property, some of which relates to Vestas’ proprietary design approach); and other of Vestas’s trade secret and IP data and information.

26. Vestas therefore seeks protection of these materials under a “Highly Confidential” designation because if this non-public information becomes public, or is disclosed to intervenor non-state entities that are not covered by statutory confidentiality requirements, it (obviously) will no longer be protected, and there is an increased likelihood that it could be used by Vestas’s competitors to the severe disadvantage of Vestas.

27. None of the information or documents for which Highly Confidential designation is sought can be found in any public document; all qualifies as “Confidential Information” under the SMA; all concerns Vestas’s trade secrets; all generally concerns Vestas’s proprietary technology concerning renewable generation; and all has consistently been treated by Vestas as highly sensitive, proprietary, and confidential, both from a commercial as well as competitive standpoint.

28. The Potential Harm to Vestas From Disclosure of its Confidential Information:
The likely harm that would ensue from such disclosure is significant and immeasurable, and generally would result in substantial and immediate competitive harm to Vestas. Highly Confidential protection for these materials therefore is needed for numerous reasons including, but not limited to, that disclosure would (1) unfairly and improperly give Vestas’s competitors a distinct advantage in their efforts to usurp Vestas’s business, customers, and proprietary technology; (2) allow Vestas’s competitors to copy and employ (e.g. through reverse-engineering or otherwise) various technological know-how and advances (as well as costs and pricing, the disclosure of which could also harm the interests of solar developers and panel suppliers, among others), in relation to Vestas’s supplying and servicing of wind turbine equipment, all of which is currently only known to Vestas; and (3) further enable its competitors to copy/mimic Vestas’s

proprietary response to, and investigation, research, and evaluation of, incidents such as the turbine collapses that occurred at High Prairie.

29. 20 CSR 4240-2.135(4) is consistent with Missouri Supreme Court Rule 56.01(c)(7), which provides (in pertinent part) that protective orders such as that sought here by Vestas may be issued “to protect a party or person[’s] . . . trade secret or other confidential research, development, or commercial information,” including by ordering that such information “not be disclosed or be disclosed only in a designated way.”

30. Missouri courts consistently recognize that a company’s trade secrets are “Highly Confidential” and should be accorded significant protection from disclosure. *See, e.g., LADS Network Sols., Inc. v. Agilis Sys., LLC*, No. 4:19-CV-00011-AGF, 2019 WL 6250840, at *1 (E.D. Mo. Nov. 22, 2019)

31. Proposed Manner of Disclosing Vestas’s Confidential Information So As To Protect Vestas: Vestas’s Confidential Information may still be disclosed to attorneys of record for all parties to the case, to any state agency parties and their employees (who are governed by statutory confidentiality requirements), and to designated outside experts of any non-state agency or entity parties.

32. It is Vestas’s (and its counsel’s) understanding that the Commission has previously issued protective orders to other companies and utilities in rate cases that contain terms similar to those being requested by Vestas herein.

33. Attached to this motion as Exhibit A is a proposed Non-Disclosure Agreement form that Vestas respectfully asks the Commission to use in this rate case for any person who is authorized to access Vestas’s “Highly Confidential” information.

WHEREFORE, Vestas respectfully asks the Commission to issue its requested Protective Order, and to order use of the Non-Disclosure Agreement form, attached as Exhibit A, by any person who is authorized to access any of Vestas's Confidential Information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing were served on the following via electronic mail (e-mail) on this 26th day of November, 2024:

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/s/ Peter W. Herzog III

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NON-DISCLOSURE AGREEMENT

For Case No. ER-2024-0319

(To Access Highly Confidential Information of Vestas-American Wind Technology, Inc.)

I, _____, have reviewed the Commission's Rule at 20 CSR 4240-2.135 on this ___ day of _____, 202_.

I have requested review of the Highly Confidential information of Vestas in Case No. ER-2024-0319 on behalf of _____.

I hereby certify that:

(a) Only an outside expert retained by a party in this case may receive and review Highly Confidential information;

(b) I am an employee of _____, acting as an outside expert for [state name of party] _____, and retained to provide expert consultation or testimony in this docket; and

(c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated this _____ day of _____, 202_.

Signature & Title

Employer

Party

Address

Telephone # & E-Mail Address