

**ORDER NO. 89939**

Skipjack Offshore Energy, LLC and US  
Wind, Inc.’s Offshore Wind Applications  
under the Clean Energy Jobs Act of 2019

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9666  
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**Issue Date: September 20, 2021**

**Order Granting Motion to Compel**

1. On September 8, 2021, Skipjack Offshore Energy, LLC (“Skipjack”), filed a Motion to Compel US Wind, Inc. (“US Wind”) to provide Skipjack with certain financial and spending information contained in US Wind’s July 27, 2021 application for offshore wind renewable energy credits and supporting attachments (collectively, US Wind’s “Application”). For the reasons discussed below, that motion is granted.

**Background**

2. Skipjack states that on August 25, 2021, US Wind provided it access to some, but not all, of its confidential Application materials.<sup>1</sup> Skipjack asserts that it requested the full set of US Wind’s confidential Application materials on August 26, 2021; however, US Wind refused to comply. Instead, it provided a redaction log, which Skipjack has calculated lists at least 48 Application narrative pages and 117 pages of Application appendices as “proprietary protected.”<sup>2</sup> Subsequent communications between the

<sup>1</sup> Skipjack Motion to Compel at 1.

<sup>2</sup> *Id.*

attorneys for Skipjack and US Wind were not successful in resolving the dispute, and on September 8, 2021 Skipjack filed its Motion to Compel.<sup>3</sup>

3. In that motion, Skipjack acknowledges that the Protective Agreement entered into between the parties to this proceeding provides for the protection of proprietary information; but asserts that the designation should be narrowly applied “because it shields information from Skipjack, preventing a robust review and analysis of US Wind’s applications for the Commission’s and ratepayers’ ultimate benefit.”<sup>4</sup> Skipjack further asserts that (i) US Wind has failed to substantiate its designation of the disputed materials as proprietary, such as by demonstrating irreparable harm; (ii) US Wind is shielding core information and preventing comparison about a crucial element of its project, thereby contravening the statutorily-required transparent nature of this proceeding; and (iii) allowing US Wind to designate its entire Financial Information section as “proprietary” would obstruct the ability of Skipjack to participate in the comparative process for evaluating proposed offshore wind projects that is required by the 2019 Clean Energy Jobs Act.<sup>5</sup> Accordingly, Skipjack requests that the Commission direct US Wind to produce to Skipjack “unredacted versions of Sections 4.1, 4.2, 4.3, 4.4, and Appendix 4.3.1.”<sup>6</sup>

4. On September 13, 2021, US Wind filed its Opposition to Skipjack’s Motion to Compel. US Wind claims that the information Skipjack seeks includes internal rates of returns, financing documents, capital construction models and other sensitive financial

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<sup>3</sup> On September 3 and 7, 2021, counsel for Skipjack emailed US Wind’s counsel to challenge US Wind’s designation of certain portions of its redaction log as proprietary, and filed the instant Motion to Compel when the parties were unable to resolve the dispute. Specifically, counsel for Skipjack challenged Application Sections 4.1, 4.2, 4.3, and 4.4, and Appendix 4.3.1, as “proprietary protected.”

<sup>4</sup> Skipjack Motion to Compel at 2.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 2.

information that is business proprietary information that if disclosed, “would irreparably harm US Wind’s business interests by...providing Skipjack with a roadmap to bid against US Wind in competitive processes.”<sup>7</sup> US Wind requests that the Commission deny Skipjack’s Motion to Compel, arguing that (i) Skipjack failed to consult with US Wind before and after objection, as required under the Protection Agreement; (ii) US Wind’s designations are appropriate and reasonable under the Protective Agreement; and (iii) US Wind filed its proprietary information with the Commission, and the Commission accepted it, pursuant to the business records/trade secret exemption in § 4-335 of the General Provisions Article (“GP”) of the Maryland Code, which prohibits a state agency from disclosing PIA exempt information.<sup>8</sup>

5. On September 13, 2021, Skipjack filed a reply to US Wind’s Opposition, claiming that further consultation would have been fruitless given US Wind’s intransigence on the issue; that disclosure is necessary to analyze the commercial reasonableness of US Wind’s project; and that US Wind would not be irreparably harmed because the information sought would be provided to Skipjack confidentially in accordance with the Protective Agreement.<sup>9</sup>

6. On September 15, 2021, US Wind moved to strike Skipjack’s Reply, arguing that reply briefs were not provided for in Order No. 89907.

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<sup>7</sup> US Wind Opposition at 1.

<sup>8</sup> *Id.* at 2, citing Order No. 89907.

<sup>9</sup> Skipjack Reply at 1. In its Reply, Skipjack clarified that it was requesting that US Wind provide the disputed information under a reduced designation of either “confidential” or “confidential – attorneys’ eyes only.” In its Motion to Compel, Skipjack had simply requested all information unredacted.

## **Decision**

7. The Commission agrees with US Wind that the parties should have engaged in a more extensive consultation, where they could have explored potential solutions to confidentiality concerns, such as by reducing the breadth of the information requested. They could also have limited the number of people who can view the information, such as by classifying certain sections of the documents as “confidential – attorneys’ eyes only.” A good-faith, in-person consultation might have obviated the need for the Motion to Compel. Reviewing the six-day email communications between counsel for Skipjack and US Wind, however, the Commission finds that sufficient consultation transpired to rule on Skipjack’s Motion.

8. The Commission finds that US Wind’s designation of its entire Section 4 as “proprietary protected,” including 48 pages of Application and 117 pages of Application appendices is overbroad. US Wind should have made an effort to redact particular sections that could in good faith have been labeled proprietary. The Commission agrees that the PUA envisions a comparative process for evaluating proposed offshore wind projects, and that the transparency of the process ultimately inures to the benefit of ratepayers. The Commission finds US Wind’s reference to GP § 4-335 inapplicable, given that the Commission is not releasing any proprietary information to the public or ordering the same.

9. The Commission therefore directs US Wind to produce to Skipjack unredacted versions of Sections 4.1, 4.2, 4.3, 4.4, and Appendix 4.3.1, subject to US Wind’s designation as “confidential” or “confidential – attorneys’ eyes only” as appropriate. If there is particular information the release of which, even on this restricted basis, US

Wind deems would create irreparable harm, it may temporarily continue to withhold it. Thereafter the parties may, after a consultation, request that the Commission review that information in camera.

**IT IS THEREFORE**, this 20<sup>th</sup> day of September, in the year Two Thousand Twenty One by the Public Service Commission of Maryland;

ORDERED: (1) That the Motion to Compel of Skipjack Offshore Energy, LLC is granted as provided herein; and

(2) That the Motion of US Wind to Strike Skipjack's Reply is denied.

By Direction of the Commission,

*/s/ Andrew S. Johnston*

Andrew S. Johnston  
Executive Secretary