

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Champaign Wind LLC for a Certificate) Case No. 12-0160-EL-BGN
to Install Electricity Generating Wind)
Turbines in Champaign County)
)
)

MOTION TO EXTEND PROTECTIVE ORDER FILED BY GAMESA WIND US, LLC

On May 28, 2013, the Ohio Power Siting Board (the “Board”) granted the Motion for Protective Order filed by Gamesa Wind US, LLC (“Gamesa”) on November 13, 2012 to keep certain documents, namely the Gamesa General Characteristics Manual for the G97 turbine model (the “Manual”), confidential (the “Order”). On June 1, 2015, the Board granted Gamesa’s Motion to Extend its Protective Order.

Gamesa, by and through its attorneys, and pursuant to Rule 4906-2-21 of the Ohio Administrative Code, now moves the Board to extend the Order and keep the documents confidential for an additional twenty-four months for the reasons stated below and in the accompanying Memorandum in Support:

1. Gamesa competes with other wind turbine companies for contracts to supply turbines to wind energy projects, such as the Champaign Wind LLC project, throughout the world;
2. As this Board previously found, detailed information about Gamesa’s G97 turbine in the Manual constitutes trade secret materials;

3. Gamesa does not share this information with the general public and requires confidentiality agreements from customers to which it supplies this information;
4. Gamesa is at a competitive disadvantage against its competitors and in the marketplace generally if this information becomes publically available;
5. Portions of the trade secret materials disclosed to the Board were only disclosed to the Board for the limited purpose of evaluating Gamesa's October 26, 2012 Motion for Protective Order, which the Board subsequently granted; and
6. Disclosure of the Manual could result in a misuse of this confidential, proprietary and trade secret information.

For these reasons, Gamesa moves the Board to grant its Motion to Extend Protective Order. Consistent with the requirements of Rule 4906-2-21(D)(2) of the Ohio Administrative Code, and for the convenience of the Board, three (3) unredacted copies of the relevant documents are being submitted again under seal.

A memorandum in support of this Motion is filed herewith.

Date: May 30, 2017

Respectfully submitted,

/s/ David Proano_____

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MEMORANDUM IN SUPPORT OF GAMESA WIND US, LLC'S MOTION TO EXTEND
PROTECTIVE ORDER

Gamesa Wind US LLC ("Gamesa") seeks an extension of the protective order entered by the Ohio Power Siting Board (the "Board") in the above-captioned case on May 28, 2013 (the "Order") pursuant to Ohio Administrative Code ("OAC") 4906-7-07(H)(4), which found certain documents produced by Gamesa, namely the Gamesa General Characteristics Manual for the G97 turbine model (the "Manual"), to contain confidential trade secret information.

Introduction

In the above-captioned proceeding, to which Gamesa is not a party, upon application by Intervenors Union Neighbors United, Inc., Julie Johnson, and Robert and Diane McConnell, Gamesa was served with a subpoena duces tecum (the "Subpoena") that requested Gamesa's trade secret information. Gamesa filed Motions for Protective Order before this Board to prevent public disclosure of trade secret information on October 26, 2012 and November 13, 2012. On May 28, 2013, the Board entered an

Order finding the Manual to contain trade secret information and granting Gamesa the protection it sought. On March 19, 2015, Gamesa sought an extension of the protections ordered in the Board's Order to keep information within the Manual, which remains highly sensitive trade secret information, confidential. On June 1, 2015, the Board granted Gamesa's Motion to Extend its Protective Order. Gamesa again seeks an extension of the protections ordered in the May 28, 2013 order as the Manual still constitutes highly sensitive trade secrets.

Argument

I. Standard of Law

The Manual should remain confidential and protected from public disclosure because, as this Board previously held, the Manual satisfies the requirements of Rule 4906-2-21(D) and constitutes trade secrets under Ohio law.

Rule 4906-2-21(D) provides that the Board may issue any order "which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code."¹

Section 1333.61(D) of the Revised Code defines "trade secret" as:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation,

¹ The requirement of Rule 4906-7-07(H)(2) that Gamesa must exhaust all other reasonable means of resolving any differences with the party seeking discovery is inapplicable. While Gamesa has been informed that a public records request has been received by the Board, Gamesa does not know the identity of the requesting party.

program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It 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.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D). The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes trade secrets:

1. The extent to which the information is known outside the business;
2. The extent to which it is known to those inside the business, i.e., by the employees;
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
4. The savings effected and the value to the holder in having the information as against competitors;
5. The amount of effort or money expended in obtaining and developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (1997).

II. Analysis

The Board reviewed Section 1333.61(D) and the *Plain Dealer* factors in its May 28, 2013 Order and found:

Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court, the Board finds that the redacted information contained in the Gamesa General Characteristics Manual for the G97 turbine model contains trade secret information. Its release is, therefore, prohibited under state law. The Board also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the Board finds that Gamesa's

motion for protective order is reasonable with regard to the redacted information contained in the Gamesa General Characteristics Manual for the G97 turbine model and should be granted.

The status of the noise data within the Manual as trade secret information has not changed. Gamesa continues to take all reasonable precautions to guard the information's secrecy. This information is not known outside of Gamesa's business, and is only provided to legitimate customers under the condition of confidentiality and is not provided to potential customers or any other party unless a confidentiality agreement containing appropriate terms has been executed. Further, employees of Gamesa are given access to this information only on a need-to-know basis.

Similarly, the value to Gamesa of keeping this information confidential, and the potential competitive advantage that Gamesa's competitors could obtain through this information, has not changed. Gamesa expended significant funds and resources to create the Manual, which is based on the noise data collected by Gamesa and the proprietary design and development of Gamesa's G97 turbines. Replicating the Manual's trade secret information would require Gamesa's competitors to spend extensive amounts of money and resources as doing so would require access to the G97 turbines, which Gamesa restricts. Public disclosure of the information in the Manual could be damaging to Gamesa, as, for example, Gamesa's competitors could use it in their marketing efforts to Gamesa's disadvantage. For these reasons, Gamesa actively protects its trade secret information.

Finally, the protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49 because the Board has access to the information, but at the same time the information is protected from other competitors.

Thus the continued protection of Gamesa's trade secret information will not impair the Board's regulatory responsibilities.

For each of these reasons, Gamesa's information contained with the Manual remains a trade secret.

Conclusion

Pursuant to Rule 4906-2-21(D), Gamesa respectfully requests the Board to issue an order extending its May 28, 2013 Protective Orders for an additional twenty-four months.

Respectfully submitted,

/s/ David Proano

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically on May 30, 2017 and was served by operation of the PUCO's electronic filing system upon all consenting parties. The foregoing document was also served upon the following parties via U.S. Mail:

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This foregoing document was electronically filed with the Public Utilities

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5/30/2017 4:44:56 PM

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Case No(s). 12-0160-EL-BGN

Summary: Motion to Extend Gamesa's Protective Orders electronically filed by Kendall C Kash on behalf of Gamesa Wind US, LLC