

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF CHAMPAIGN WIND LLC FOR A
CERTIFICATE TO INSTALL ELECTRICITY
GENERATING WIND TURBINES IN
CHAMPAIGN COUNTY.

CASE NO. 12-160-EL-BGN

ENTRY

Entered into the Journal on June 15, 2017

{¶ 1} On May 15, 2012, Champaign Wind, LLC (Champaign) filed, with the Ohio Power Siting Board (Board), an application pursuant to the provisions of Ohio Adm.Code Chapter 4906-17, for a certificate to construct a wind-powered electric generation facility in Champaign County, Ohio.

{¶ 2} Gamesa Wind US, LLC (Gamesa) filed motions for protective order on October 26, 2012, and November 13, 2012, seeking to protect certain noise data contained in the Gamesa General Characteristics Manual for the G97 turbine model. In its motions for protective order, Gamesa contended that this information constituted trade secrets and could not, therefore, be included in the public record.

{¶ 3} On May 28, 2013, the Board issued its Opinion, Order, and Certificate approving the application, with modifications, and ordering that a certificate be issued, subject to 72 conditions set forth in the Opinion, Order, and Certificate. The Board granted Gamesa's request for protective treatment of the trade secret information for a period of 18 months.

{¶ 4} By Entry issued June 1, 2015, the administrative law judge (ALJ) extended the protective treatment for an additional 24-month period, ending on June 1, 2017.

{¶ 5} Gamesa filed a motion to extend the protective order for an additional 24-month period on May 30, 2017, noting the circumstances warranting protective treatment for this information in the May 28, 2013 Opinion, Order, and Certificate had

not changed. Further, Gamesa alleged it had continued to take reasonable steps to protect this information from disclosure. No memoranda contra Gamesa's motion to extend the protective order have subsequently been filed.

{¶ 6} R.C. 4905.07 provides that all facts and information in the possession of the Board shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399 (2000).

{¶ 7} Similarly, Ohio Adm.Code 4906-7-07(H)(4) provides that, upon motion of any party or person filing a document with the Board's docketing division relative to a case before the Board, 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 to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 8} Ohio law defines a trade secret as "information 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 Supreme Court of Ohio has established a six-factor test to be used in analyzing a claim that information is a trade secret under that section. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).

{¶ 9} Ohio Adm.Code 4901-1-24(D)(1) also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than the wholesale removal of the document from public scrutiny.

{¶ 10} The ALJ has reviewed the information contained in Gamesa's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court of Ohio, the ALJ finds that the redacted information contained in the Gamesa General Characteristics Manual for the G97 turbine model continues to contain trade secret information. Its release is, therefore, prohibited under state law. The ALJ also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the ALJ 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.

{¶ 11} Confidential treatment shall be afforded for a period ending 24 months from the date of this Entry or until June 15, 2019. Until that date, the docketing division should maintain, under seal, the information filed confidentially.

{¶ 12} Ohio Adm.Code 4906-7-07(H)(6) requires a party wishing to extend a protective order beyond 24 months to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If Gamesa wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board may release this information without prior notice to Gamesa.

{¶ 13} As a final matter, Gamesa filed an additional motion for protective order to extend the June 1, 2017 expiration date of the prior 24-month protective timeframe while the other motion for protective order was pending with the Board. As the Gamesa General Characteristics Manual for the G97 turbine model has been granted an additional 24-month period of protective treatment, the ALJ finds that the second motion for protective order is now moot and should be denied.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the motion to extend protective treatment for an additional 24-month period filed by Gamesa be granted. It is, further,

{¶ 16} ORDERED, That the motion to extend the June 1, 2017 expiration date of the prior 24-month period of protective treatment be denied. It is, further,

{¶ 17} ORDERED, That the Board's docketing division maintain, under seal, the unredacted copy of the Gamesa General Characteristics Manual for the G97 turbine model, which was filed under seal on June 1, 2017, for a period of 24 months, ending on June 15, 2019. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

s/Megan Addison

By: Megan J. Addison
Administrative Law Judge

SEF/sc

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

Summary: Administrative Law Judge Entry granting motion to extend protective order. -
electronically filed by Sandra Coffey on behalf of Megan Addison, Attorney Examiner, Public
Utilities Commission of Ohio