

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Vinton Solar)
Energy LLC for a Certificate of Environmental) Case No: 17-774-EL-BGN
Compatibility and Public Need to Construct a Solar-)
Powered Electric Generation Facility in Vinton)
County, Ohio.)

**MOTION FOR PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-21(D), Vinton Solar Energy LLC (“Applicant” or “company”) respectfully moves the Ohio Power Siting Board (“Board”) for a protective order to keep several portions of the Application in this case confidential and not part of the public record.

First, the Applicant requests that portions of pages 29 through 31 of the Application, which consist of financial data representing estimated capital and intangible costs, operation and maintenance costs, and the estimated total and present worth of construction and operation payroll, be kept confidential. The Applicant believes that public disclosure of this confidential and sensitive information will have a harmful effect on the company’s ability to compete and negotiate contracts with potential vendors for the Project.

Second, the Applicant requests that Exhibits A and B, the manufacturers’ technical specifications that address the reliability and safety certifications for the modules and inverters that are currently being considered for the Project, be kept confidential. The manufacturers provided the specifications to the Applicant on a confidential basis and they contain information that is not publicly available. As such, the documents have been submitted under seal to maintain their confidentiality.

Third, the Applicant requests that Exhibit J, the Certificate of Liability Insurance, be kept confidential. Exhibit J contains financial information that, if disclosed, could prove harmful to the company. Therefore, this document is being submitted under seal to maintain its confidentiality.

An explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the practice of the Board, unredacted copies of the confidential pages of the Application, as well as the confidential exhibits, have been submitted to the Docketing Division under seal.

Accordingly, the Applicant respectfully moves for a protective order to keep the confidential information contained in the Application and certain exhibits under seal and not part of the public record.

Respectfully submitted,

/s/ Christine M.T. Pirik

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

In accordance with Chapter 4906 of the Ohio Revised Code (“RC”) and OAC Chapter 4906-4, the Applicant filed an application for a certificate to construct a solar-powered electric generation facility (“Project” or “Facility”) in Vinton County, Ohio (the “Application”) on July 5, 2017. Included in the materials supporting the Application is information that is considered trade secret and confidential. OAC Rule 4906-2-21 provides that the Applicant may file a motion for protective order to protect such information. Accordingly, the Applicant requests a protective order covering the following portions of the narrative of the Application and the designated exhibits:

- A. Financial Narrative: Pages 30-32 of the Application contain estimated capital and intangible costs, operation and maintenance costs, and the estimated total and present worth of construction and operation payroll.
- B. Exhibits A, B, and C, Module, Tracking, and Inverter Specifications: These documents contain the manufacturers’ technical specifications that address the reliability and safety certifications for the modules, tracking systems, and inverters that are currently being considered for the Project.
- C. Exhibit J, Certificate of Insurance Liability: This document includes financial information regarding the Applicant’s insurance for the development,

construction, operation, and decommissioning of the Facility that will ensure proper indemnification for third parties and maintain the interests of the company.

In light of the highly sensitive, trade secret information contained in the above-listed pages of the Application and the exhibits, the Applicant submits that the information must be kept confidential and not be made part of the public record. Therefore, the Applicant has submitted these pages of the Application and exhibits under seal to maintain their confidentiality.

II. PROJECT BACKGROUND

The Applicant is proposing to construct a solar-powered electric generation Facility of up to 125 megawatt, in Elk Township, located in Vinton County, Ohio. The general purpose of the Project is to produce clean, renewable, reliably-priced, low-cost electricity.

III. LEGAL AUTHORITY

The OAC expressly permits the Board or the administrative law judge (“ALJ”) assigned to the case to protect the confidentiality of certain information filed with the Board’s Docketing Division. See OAC Rule 4906-2-21. In particular, OAC Rule 4906-2-21(D) provides that:

[u]pon motion of any party or person filing a document with the board’s docketing division relative to a case before the board, the board or the [ALJ] assigned to the case 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 [ALJ] 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.

Here, nondisclosure of the information requested to be kept confidential will in no way impair the purposes of RC Title 49. The Board and its staff already have full access to the

information in order to fulfill the Board's statutory obligations. Thus, the question becomes whether the confidential information may be considered a "trade secret" under Ohio law.

The definition of a "trade secret" is set forth in Ohio's Uniform Trade Secrets Act, which states:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, 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.

RC Section 1333.61(D).

Courts of other jurisdictions have held that a public utilities commission has the authority to protect trade secrets of companies subject to its jurisdiction. *New York Tel. Co. v. Pub. Serv. Comm.*, 56 N.Y. 2d 213 (1982). In fact, the existence of a state trade secret statute creates a duty of the public utilities commission to protect them. *Id.* Recognizing this duty, the Board has issued orders protecting trade secrets in numerous proceedings. See, e.g., *Buckeye Wind*, Case No. 08-666-EL-BGN, Entry (July 31, 2009); *Paulding Wind Farm LLC*, Case No. 09-980-EL-BGN, Entry (Feb. 23, 2010); *Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN, Entry (Jan. 6, 2014); *North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014).

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997), the Ohio Supreme Court adopted the six factor test set forth in *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d. 588, 592 (1983), which served to further define “trade secrets” under Ohio law. The six factors to be considered in recognizing a trade secret are:

- (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.

Note that the Board is not necessarily limited to protecting information meeting the precise definition of “trade secret.” The Board may issue a protective order providing that a “trade secret *or other confidential research, development, commercial, or other information* not be disclosed or be disclosed only in a designated way.” OAC Rule 4906-2-21(A)(7) (*emphasis added*). As will be discussed in the next section, the information the Applicant seeks to protect should be considered trade secret.

IV. APPLICATION OF “TRADE SECRET” FACTORS

The information the Applicant seeks to keep confidential and not part of the public record meets each of the six factors that determine the existence of a trade secret under Ohio law. As detailed in the preceding section, the information would rise to the level of a trade secret if it is not generally known outside (or inside) the Applicant’s business, if sufficient precautions were taken to guard the secrecy of the information, if the information has competitive value, if the

Applicant spent significant time and resources developing the information, and if it would take significant time and resources to duplicate the information. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997).

The information contained in the narrative and the exhibits is not available outside the company and cannot be found in the public domain. Not only is this information not publicly available, but it is closely held within the company and is only disclosed to those employees who “need to know.” Such heightened confidentiality and protection evidences the significant precautions taken by the company to guard the secrecy of the information. Thus, the first three factors of Ohio’s trade secret test have been met in this case.

Further, if this information were made available to the public, the time and money expended for purposes of developing this Application would be unfairly bestowed on competitors. Developers seeking to compete with the Applicant and build similar projects would gain the benefit of the Applicant’s methodologies without having to undertake the enormous effort and expense incurred by the Applicant to produce the information. This would give competitors an unfair advantage at the expense of the Applicant, who would be put at an unfair disadvantage. As such, the final three factors of Ohio’s trade secret test have also been met.

V. ADDITIONAL SUPPORTING INFORMATION

As previously stated, the information the Applicant seeks to protect should be considered trade secret. However, it should also be noted that, at a minimum, all of the confidential and sensitive information contained in the narrative and the exhibits, and described in this motion and memorandum in support, would be considered “confidential research, development,

commercial, or other information” warranting protection from the public record consistent with OAC Rule 4906-2-21(A)(7).

A. Financial Narrative

Pages 29-31 of the Application consist of financial data representing estimated capital and intangible costs, operation and maintenance costs, and the estimated total and present worth of construction and operation payroll. This information has independent economic value, is the subject of reasonable efforts to maintain its secrecy, is not generally known outside the Applicant’s business, and is not otherwise available in the public domain. Disclosure of this information to competitors would result in a significant competitive disadvantage for the Applicant as cost data is frequently factored into the overall development plan of a solar project.

In addition, public disclosure of this information would have an adverse effect on the application process moving forward, given the Applicant’s current and ongoing negotiations with contractors and vendors involved in the Project. This Board has previously recognized such adverse effects and has protected the confidentiality of this type of information. See *North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014). Hence, the Applicant requests that this information be kept confidential and not part of the public record.

B. Exhibits A and B, Module and Inverter Specifications

The manufacturers of the module and inverter equipment, which are currently being considered for this Project, provided their specification documents to the Applicant on a confidential basis. These documents contain the manufacturers’ technical specifications that address the reliability and safety certifications for the equipment; therefore, they were submitted under seal to maintain their confidentiality. This information has independent economic value, is

the subject of reasonable efforts to maintain its secrecy, is not generally known outside the business of the Applicant or manufacturer, and is not otherwise available in the public domain.

The Applicant has agreed with the manufacturers to protect them from public disclosure.

The Applicant would also note that disclosure of this information is not likely to assist the Board in carrying out its duties, especially since the Board staff can view the unredacted versions that were submitted under seal. Disclosure would similarly not serve any other public policy. It should be noted that the Board, in addressing the issue of confidential manufacturers' manuals, has contemplated that applicants may have to submit such information under seal consistent with the Board's rules. See *Power Siting Board Requirements for Electric Generating Wind Facilities*, Case No. 08-1024-EL-ORD, Order (Oct. 28, 2008) at 31-32. Thus, the Applicant requests that this information be kept confidential and not part of the public record.

C. Exhibit J, Certificate of Insurance Liability

This document includes financial information regarding the Applicant's insurance for the development, construction, and operation, and decommissioning of the Facility. This document is, therefore, being submitted under seal to maintain its confidentiality. The information contained in this document is not publicly available and the Applicant has taken measures to protect the information from public disclosure. Further, the Applicant notes that disclosure of this information is unlikely to assist the Board in carrying out its duties, especially since the Board and its staff can view unredacted versions placed under seal. Disclosure would similarly not serve any other public policy.

VI. Conclusion

For the above reasons, the Applicant requests that the Board or the ALJ grant its motion for a protective order to maintain the information described above as confidential and not subject to public disclosure.

Respectfully submitted,

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Vinton Solar Energy LLC