

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **REPUBLIC**)
WIND, LLC for a Certificate of Environmental)
Compatibility and Public Need for a Wind-) 17-2295-EL-BGN
Powered Electric Generating Facility in Seneca)
and Sandusky Counties, Ohio)

MOTION FOR A PROTECTIVE ORDER

On February 2, 2018, Republic Wind, LLC (“Republic” or “Applicant”) pursuant to Ohio Administrative (“OAC”) Rule 4906-2-21(D) filed a Motion for Protective Order with the Ohio Power Siting Board (“OPSB” or “Board”) to shield proprietary information from the public record and keep confidential: estimated capital and intangible costs; estimated annual operation and maintenance expenses and estimated operation and maintenance expense comparisons; and the estimated lost energy revenues due to delays. Republic believes that public disclosure of the confidential and sensitive information will have a deleterious effect on competition and will prejudice Republic. This Motion for Protective Order is intended to extend the reach of the February 2, 2018 Motion for Protective Order to include Republic’s Amended Application filed on December 26, 2018.

As required by OAC Rule 4906-2-21(D)(2), three copies of the unredacted information are included with this motion and are identified as confidential information in a sealed envelope. A Memorandum in Support, as required by OAC 4906-2-21(D)(3), is also attached.

Republic respectfully moves for a protective order to keep the information described above contained in the Application and Amended Application confidential and not part of the public record.

Respectfully submitted on behalf of
Republic Wind Energy, LLC



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MEMORANDUM IN SUPPORT

On February 2, 2018, and as amended on March 27, 2018, Republic filed an application with the Board for a certificate of environmental compatibility and public need to construct a wind powered electric generating facility in Seneca and Sandusky Counties, Ohio. By letter filed on May 23, 2018, the Board notified Applicant that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. On July 19, 2018, the Board issued an entry establishing a procedural schedule. Subsequently, on September 4, 2018, the Administrative Law Judge granted a motion by Republic to suspend the procedural schedule in order to prepare and file the Amended Application. On December 26, 2018, Republic submitted the Amended Application to the Board.

By this motion, Republic seeks to protect certain information that it deems confidential, and appropriate for protective treatment. The financial proprietary information Republic wishes to protect from the public record and keep confidential includes: estimated capital and intangible costs; estimated annual operation and maintenance expenses and estimated operation and maintenance expense comparisons; and the estimated lost energy revenues due to delays. This information is located on pages 33-36 of the Amended Application.

All of the information has independent economic value to Applicant and could be of value to others. The information is also subject to efforts that are reasonable under the circumstances to maintain its secrecy. All of the redacted information in the public version will be available for review by the Board and the Board's Staff during the application review process. Accordingly, an order for protective treatment of the confidential treatment is warranted.

OAC Rule 4906-2-21(D) provides, in the pertinent part:

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 or the administrative law judge 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 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.*

(Emphasis added).

A "trade secret" is defined by the Uniform Trade Secrets Act, as set forth in Ohio Revised Code Section ("R.C.") 1333.61(D) to mean:

... 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.

Courts of other jurisdictions not only have held that a state public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them. *See New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

Furthermore, this Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

The Commission is of the opinion that the “public records” statute must also be read *in pari materia* with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

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).

The project financial information at issue meets this standard. Project specific information such as estimated capital and intangible costs; estimated annual operation and maintenance expenses and estimated operation and maintenance expense comparisons; and the estimated lost energy revenues due to delays are all generally not disclosed and constitute a trade secret.

Republic has internal document controls and processes to protect against unnecessary disclosure of this information. Disclosure of this information would give competitors insights about Republic's internal project development processes and cost inputs relevant to the development of a project. Republic has invested significant resources in establishing its project development processes. Access to this information would enable competitors to effectively learn Republic's project development formulas and potentially undermine Republic's position in the competitive marketplace. Further, public disclosure of this information is not likely to either assist the Board in carrying out its duties, nor does it serve any other public policy. Accordingly, protective treatment of all of the redacted portions of the Application is warranted.

Moreover, the Board has granted similar motions for protective orders to protect such confidential financial information—see e.g. *Hardin Wind LLC*, Case Nos. 13-1177-EL-BGN, 13-1767-EL-BSB, and 13-1768-EL-BTX (ALJ Entry dated November 28, 2013); *Paulding Wind Farm, LLC*, Case No. 09-980-EL-BGN (ALJ Entry dated February 23, 2010); and *Black Fork Wind Energy, L.L.C.*, (ALJ Entry dated May 3, 2011).

The non-disclosure of the information will not impair the purposes of Title 49. The Board and its Staff will have full access to the information in order to fulfill the Board's statutory obligations. Furthermore, no purpose of Title 49 would be served by the public disclosure of the information sought to be protected.

According, Republic respectfully requests that the redacted financial information in the Amended Application be kept confidential.

Respectfully submitted on behalf of
Republic Wind Energy, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Amended Motion for Protective Order has been served upon the following parties listed below by electronic mail, this 26th day of December 2018.



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Summary: Motion Motion for a Protective Order for Confidential Treatment of Economic Data in Amended Application and Memorandum in Support electronically filed by Mr. Devin D. Parram on behalf of Republic Wind