

**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 the information under Exhibit W, which includes the turbine safety manuals of the turbines under consideration by Republic, because this information contains confidential and sensitive information. This Amended Motion for Protective Order is intended to extend the reach of the February 2, 2018 Motion for Protective Order to include Republic’s Exhibit W to the Amended Application filed on December 26, 2018.

As required by OAC Rule 4906-2-21(D)(2), three copies of each turbine safety manual are included with this motion and are identified as confidential trade secret and competitively sensitive 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.

OAC Rule 4906-04-08(A)(1)(c) requires an Applicant to include the “equipment manufacturer's safety standards” including “a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.” In order to satisfy this requirement, Republic is filing under seal, along with this Motion for Protective Order, three copies of the safety manuals for the three turbines under consideration by Republic in its Amended Application: the Vestas V150 (4.2 MW), Siemens SG145 (4.5 MW), and Nordex N149 (4.5 MW).

Republic seeks to extend protective treatment to the safety manuals for the three turbines described above, each of which is deemed confidential by the Turbine Manufacturers and appropriate for protective treatment. All of the information has independent economic value to the Turbine Manufacturers 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 information will be available for review by the Board and the Board's Staff during the Amended 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 safety manuals submitted under seal meet this standard. The safety manuals contain specific information detailing the design and operation of the Turbine Manufacturers’ wind turbines not otherwise available or shared with the general public. Such information is central to

the Turbine Manufacturers' businesses and its release could provide an unfair advantage to the Turbine Manufacturers' competitors. As a result, the safety manuals were only released to Republic after the execution of confidentiality agreements with each of the Turbine Manufacturers. Pursuant to the confidentiality agreements with the Turbine Manufacturers, Republic takes measures to protect the safety manuals from disclosure, including internal document controls and processes to maintain confidentiality.

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. However, at the same time, the turbine safety manuals, which contain information regarding the technical aspects of the wind turbine's design and operation, and which Republic is obligated to keep protected under confidentiality agreements, will be protected from disclosure from competitors

Accordingly, Republic respectfully requests that the safety turbines in Exhibit W of the Application and Amended Application be kept confidential.

Respectfully submitted on behalf of
Republic Wind, 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 Exhibit W and Memorandum in Support electronically filed by Mr. Devin D. Parram on behalf of Republic Wind