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January 25, 2019

*Via Electronic Filing*

Ms. Barcy McNeal  
Administration/Docketing  
Ohio Power Siting Board  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

**Re: Seneca Wind, LLC,  
Case No. 18-488-EL-BLN**

Dear Ms. McNeal:

On July 16, 2018, as amended on July 20, 2018, and as supplemented on September 14, 2018, Seneca Wind, LLC ("Seneca Wind") filed its application for a certificate of environmental compatibility and public need for a wind-powered generating facility in Seneca County, Ohio ("Application"). In its September 14, 2018 supplement to the Application, Seneca proposed to include the Siemens Gamesa ("SG") Model 2.7-129 turbine as an alternative to the GE 2.5-127 turbine, which was proposed in the initial application.

Seneca Wind is submitting the Environmental Health and Safety Plan for Project Execution ("EHS Plan") for the SG Model 2.7-129 turbine under seal. Three copies of the EHS Plan are being filed separately under seal pursuant to Ohio Administrative Code 4906-2-21(D)(3).

Please do not hesitate to contact me if you have any questions.

Sincerely,

Devin D. Parram

Attachment

Cc: Jim O'Dell (w/Attachment)  
Parties of Record (w/Attachment)

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Seneca	)	
Wind, LLC for a Certificate of Environmental	)	
Compatibility and Public Need for a Wind-	)	Case No. 18-488-EL-BGN
Powered Electric Generating Facility in Seneca	)	
County, Ohio.	)	

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**MOTION FOR A PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code (“OAC”) 4906-2-21(D), Seneca Wind, LLC (“Seneca Wind” or “Applicant”) moves the Ohio Power Siting Board (“OPSB” or “Board”) for a protective order to protect trade secret information from the public disclosure, and to keep confidential the Environmental Health and Safety Plan for Project Execution (“EHS Plan”) for the Siemens Gamesa (SG) Model 2.7-129 turbine. The SG Model 2.7-129 has been proposed as part of Seneca Wind’s application in this case, and is currently under consideration for approval by the Board. As required by OAC 4906-2-21(D)(2), three copies of the EHS Plan are being submitted under seal with this motion, and are marked as confidential/trade secret/competitively sensitive information in a sealed envelope. As required by OAC 4906-2-21(D)(3), a memorandum in support of this motion is set forth below.

Respectfully submitted on behalf of  
Seneca Wind, LLC



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Sally W. Bloomfield (0022038)  
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**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Seneca	)	
Wind, LLC for a Certificate of Environmental	)	
Compatibility and Public Need for a Wind-	)	Case No. 18-488-EL-BGN
Powered Electric Generating Facility in	)	
Seneca County, Ohio.	)	

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**MEMORANDUM IN SUPPORT**

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On July 16, 2018, as amended on July 20, 2018, and as supplemented on September 14, 2018, Seneca Wind, LLC (“Seneca Wind”) filed its application for a certificate of environmental compatibility and public need for a wind-powered generating facility in Seneca County, Ohio (“Application”). In its September 14, 2018 supplement to the Application, Seneca proposed to include the Siemens Gamesa (SG) Model 2.7-129 turbine as an alternative to the GE 2.5-127 turbine, which was proposed in the initial application. Pursuant to OAC 4906-04-08(A)(1)(c), Seneca Wind is required to submit “equipment manufacturer's safety standards” including “a complete copy of the manufacturer's safety manual or similar document” as part of its Application. In order to satisfy this requirement, Seneca Wind is filing under seal the Environmental Health and Safety Plan for Project Execution (“EHS Plan”) for the SG Model 2.7-129 turbine.

Seneca Wind requests that the Board treat the EHS Plan as confidential and protect the EHS Plan from public disclosure. OAC 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 (“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, the Public Utilities Commission of Ohio (“Commission”) 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.

*In re General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982).

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 EHS Plan meets this standard. The EHS Plan contains specific safety and operational information upon which Siemens has expended significant resources developing for potential users of its turbine models. Siemens does not publicly publish the EHS Plan, and only provides the plan to certain entities that may potentially purchase Siemens' turbines. It is Siemens' general practice to require parties to execute a confidentiality agreement before providing the EHS Plan. Seneca Wind has executed such a confidentiality agreement with Siemens and, therefore, is obligated to take efforts to protect the EHS Plan from public disclosure. Further, the information within the EHS Plan is central to Siemens' business, and release of the information could provide an unfair advantage to Siemens' competitors.

In addition, the non-disclosure of the EHS Plan 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 EHS Plan, which Seneca Wind is obligated to protect under its confidentiality agreement with Siemens, will be protected from disclosure

from competitors. Further, it is common practice for the Board to provide protective treatment for turbine operational and safety manuals.

Accordingly, Seneca Wind respectfully requests that Board grant the motion for protective order and treat the EHS Plan as confidential.

Respectfully submitted on behalf of  
Seneca Wind, LLC



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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion for Protective Order has been served upon the following parties listed below by electronic mail, this 25<sup>th</sup> day of January 2019.



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Devin D. Parram

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Summary: Correspondence Transmitting Motion for Protective Order electronically filed by  
Teresa Orahod on behalf of Devin D. Parram