

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **Juliet**)
Energy Project, LLC for a Certificate of)
Environmental Compatibility and Public Need) Case No. 20-1760-EL-BGN
for a Solar Facility Located in Wood County,)
Ohio.)

**JULIET ENERGY PROJECT, LLC’S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-21(D), Juliet Energy Project, LLC (“Juliet” or “Applicant”) respectfully moves for a protective order regarding the following information: (1) estimated capital and intangible costs, operation and maintenance costs, and other financially sensitive information—contained within certain portions of Applicant’s Exhibit D, Socioeconomic Report; and (2) information reflecting archaeological sites deemed confidential by the Ohio State Historical Preservation Office (“SHPO”)—such information is contained on page 8 of Applicant’s Exhibit F, Cultural Resources Work Plan as well as the entirety of Applicant’s Exhibit R, Phase I Archaeological Reconnaissance Report.

WHEREFORE, Applicant respectfully moves for a protective order to keep certain exhibits to the Application confidential and not part of the public record. The basis for this Motion is further described in the attached Memorandum in Support. Moreover, pursuant to Case No. 20-591-AU-UNC, copies of the exhibits in question have been electronically filed under seal and marked “confidential,” “proprietary,” or “trade secret,” as applicable.

Respectfully submitted on behalf of
JULIET ENERGY PROJECT, LLC



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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

In accordance with Ohio Revised Code (“R.C.”) Chapter 4906 and Ohio Administrative Code (“OAC”) Chapter 4906-4, Juliet Solar filed an application for a certificate to construct a solar-powered electric generation facility (“Project” or “Facility”) in Wood County, Ohio (the “Application”) on March 12, 2021. Juliet is proposing to construct a Facility of up to 101 megawatts. The general purpose of the Facility is to provide clean, cost-effective, renewable energy to the transmission grid operated by PJM Interconnection.

By this motion, Juliet seeks to protect certain confidential information contained in the Application. Namely, Juliet seeks a protective order regarding the following information: (1) estimated capital, intangible costs, and other economic information located in certain portions of Applicant’s Exhibit D, Socioeconomic Report, and (2) certain information regarding archaeological sites deemed confidential by the Ohio State Historical Preservation Office (“SHPO”) as contained in both portions of Applicant’s Exhibit F, Cultural Resources Work Plan as well as the entirety of Applicant’s Exhibit R, Phase I Archaeological Reconnaissance Report.

As discussed below, the Board should issue a protective order protecting this information from public disclosure.

II. LAW AND ARGUMENT

A. Juliet's capital and intangible costs related to the proposed Facility constitute trade secrets.

The financial proprietary information Juliet wishes to protect from the public record and to keep confidential represents estimated capital and intangible costs for the proposed Project. This information is located in portions of parts III through V of the unredacted version of Applicant's Socioeconomic Report (Exhibit D), and includes the Project's estimated capital and intangible costs, JEDI model inputs, operation and maintenance expenses, land lease payment information, and costs of delays, among others.

All of this financial information has independent economic value to Juliet and could be of value to others. The information is also subject to efforts that are reasonable under the circumstances to maintain its secrecy. Accordingly, an order providing for confidential treatment is warranted.

OAC Rule 4906-2-21(D) provides, in pertinent part, 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 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.*

(Emphasis added). Here, the nondisclosure of the information will not impair the purposes of Title 49. The Board and its Staff have full access to the information in order to fulfill their statutory obligations. Moreover, no purpose of Title 49 would be served by the public disclosure

of the information sought to be protected. Thus, the question becomes whether the confidential information may be considered a “trade secret” under Ohio law.

Ohio law recognizes the need to protect certain types of information, which is the subject of this motion. R.C. 1331.61 to 1333.69. Recognizing this need, the Board has issued orders protecting trade secrets and confidential information 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); *Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *Vinton Solar Energy, LLC*, Case No. 17-774-EL-BGN, Opinion and Order (Sept. 20, 2018); *Paulding Wind Farm IV LLC*, Case No. 18-91-EL-BGN, Opinion and Order (Feb. 21, 2019); *Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020).

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.

Importantly, the Board also protects other confidential information in addition to trade secrets. Under OAC Rule 4906-2-21(A)(7), 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.” (emphasis added).

Juliet has treated the information contained in certain portions of Exhibit D, the Socioeconomic Report, as trade secrets. In the ordinary course of business, the information is deemed confidential and is treated as proprietary and confidential by Juliet employees. Even within the Company, this information is disclosed only to those employees who “need to know.” The information for which protection is sought describes financial information and operation of the proposed Project. It contains the assumptions and rates that went into the calculation of the present value of operations and maintenance expenses, financial arrangements, and projected financial information. This financial information concerning the Project is closely guarded and not disclosed to anyone unless required pursuant to a legal proceeding. Thus, the first three factors of Ohio’s trade secret test have been met in this case.

Importantly, the disclosure of this information could give competitors of Juliet an undue advantage. Other developers seeking to compete with Applicant and build similar projects would gain the benefit of Applicant’s methodologies without having to undertake the enormous effort and expense incurred by Applicant to generate the information. This would give competitors an unfair advantage at the expense of Applicant. As such, the final three factors of Ohio’s trade secrets have been met in this case.

For all of these reasons, Juliet respectfully requests that the Board issue a protective order treating the redacted financial information in Exhibit D, the Socioeconomic Report, as confidential.

B. Certain archaeological sites submitted in the Application have been deemed to be confidential by SHPO.

Juliet also seeks a protective order for certain archaeological information that SHPO considers to be confidential. This information is contained on page 8 of Application Exhibit F, the Cultural Resources Work Plan as well as within the entirety of Exhibit R, the Phase I Archaeological Reconnaissance Report. These exhibits describe sensitive archaeological sites that SHPO wishes to protect. SHPO provided Juliet and its consultant with information regarding the location of certain archaeological sites and authorized further reconnaissance work at those sites based upon an understanding and agreement that such information would not be disclosed publicly. Under authority of Section 304 of the National Historic Preservation Act, SHPO has the right to withhold from public disclosure information that may cause a significant invasion of privacy, risk harm to a historic place, or impede the use of a traditional religious site by practitioners.

Public disclosure of sites SHPO considers confidential would negatively impact SHPO's mission to protect sensitive cultural resources. However, Juliet understands that Board staff often coordinate with SHPO to determine potential impacts to sensitive cultural resources. In order for Board Staff to perform its investigation in this case, Juliet will submit under seal confidential versions of the cultural resource information that shows these confidential archaeological sites and information. Because SHPO has requested that this information remain confidential, Juliet requests that the Board issue a protective order protecting this information from public disclosure, while still allowing it to be used and evaluated during the application process.

III. CONCLUSION

For the foregoing reasons, Juliet requests that portions of Exhibit D, the Socioeconomic Report, which contain competitively sensitive and highly proprietary

business financial information falling within the statutory characterization of a trade secret be protected from public disclosure. Likewise, Juliet asks that the Board issue a protective order as it relates to page 8 of Application Exhibit F, the Cultural Resources Work Plan as well as the entirety of Exhibit R, the Phase I Archaeological Reconnaissance Report, due to SHPO's interest in the privacy of this information.

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

Respectfully submitted on behalf of
JULIET ENERGY PROJECT, LLC



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/12/2021 2:08:02 PM

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Case No(s). 20-1760-EL-BGN

Summary: Motion by Juliet Energy Project for Protective Order and Memorandum in Support electronically filed by Teresa Orahod on behalf of Dylan F. Borchers