

**FILE**

**BEFORE  
THE OHIO POWER SITING BOARD**

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In the Matter of the Application )  
of Paulding Wind Farm II LLC for a Certificate )  
to Install Numerous Electricity )  
Generating Wind Turbines in )  
Paulding County, Ohio )

Case No. 10-369-EL-BGN

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

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Pursuant to Rule 4906-7-01(B)(8)(c) of the Ohio Administrative Code, Paulding Wind Farm II LLC ("Paulding Wind II") respectfully moves for a protective order to keep portions of pages 58-61 of the Application in this case confidential and not part of the public record. The information which is requested to be treated as confidential consists of financial data representing estimated capital and intangible cost, average estimated costs for the Applicant's similar facilities, present worth and annualized capital costs, operation and maintenance costs, present worth and annualized operation and maintenance costs, and the estimated monthly loss due to one month's delay in construction. Paulding Wind II believes that public disclosure of this confidential and sensitive information will have a deleterious effect on competition.

In addition, the Applicant requests that the brochure for one of the manufacturers of a wind turbine being considered for this project be kept confidential. The manufacturer has provided the brochure to the Applicant on a confidential basis. This brochure will be attached as part of Exhibit B to the Application.

Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the practice of the Board, three (3) unredacted copies of the confidential pages of the Application are submitted under seal.

WHEREFORE, Paulding Wind Farm II LLC respectfully moves for a protective order to keep pages 58-61 of the Application and the manufacturer's brochure confidential and not part of the public record.

Respectfully submitted,



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M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
Michael J. Settineri (0073369)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
(614) 464-5414  
(614) 719-4904  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

Attorneys for Paulding Wind Farm II LLC

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

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Paulding Wind II has filed a redacted version of the Application and requests that pages 58-61 be protected from public disclosure.

Pages 58-61 of the Application contain estimated capital and intangible costs as well as operation and maintenance expenses as well as other financial data which is sensitive and confidential. By having to reveal this sensitive and confidential information in a publicly filed document, the Applicant would be providing its competitors with a competitive advantage.

The Applicant will also provide brochures manufacturers of wind turbines being considered for the project at Exhibit B to the Application. One manufacturer has provided the brochure to the Applicant on a confidential basis, therefore the Applicant seeks a protective order to maintain the confidentiality of this brochure.

Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43 Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. State ex. Rel. Besser v. Ohio State (2000), 89 Ohio St. 3d 396, 399.

Rule 4906-7-01(B)(8)(c) of the Ohio Administrative Code provides that the administrative law judge may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Board's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the

information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure 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 its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction; the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Board to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade

Secrets Act. This Board or its Administration Law Judge has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Buckeye Wind, Case No. 08-666-EL-BCN (Entry July 31, 2009)); Paulding Wind Farm LLC, Case No. 09-980-EL-BCN (Entry, February 23, 2010).

In State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court has adopted the six factors test set forth in Pyromatics, Inc. v. Petruziello (1983), 7 Ohio App. 3d 131, 134-135, 7 OBR 165, 169, 454 N.E. 2d. 588, 592. Those factors to be considered in recognizing a trade secret are:

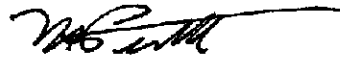
- (1) The extent to which the information is known outside the business,
- (2) the extent to which it is known to those inside the business, i.e., by the employees,
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (4) the savings effected and the 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.

Applying these factors to the information that Paulding Wind II seeks to keep confidential, it is clear that the information has independent economic value, is the subject of reasonable efforts to maintain its secrecy, and meets the six factor test set forth above.

Such sensitive information is generally not disclosed and constitutes a trade secret. Its disclosure could give competitors of Paulding Wind II and competitors of the wind turbine manufacturer an undue advantage. On the other hand, public disclosure of this information is not likely to either assist the Board in carrying out its duties under rules, especially if since the Board staff will have the full text or the agreement to look at, or serve any other public policy.

WHEREFORE, for the above reasons, Paulding Wind II requests that the Administrative Law Judge grant its motion for a protective order and to maintain the information it lists on Exhibit A as confidential and not subject to public disclosure.

Respectfully submitted,



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M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
Michael J. Settineri (0073369)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
(614) 464-5414

Attorneys for Paulding Wind Farm II LLC

## EXHIBIT A

### LIST OF EXHIBITS FOR WHICH PROTECTION IS SOUGHT

#### EXHIBITS

Pages 58-61 of the Application  
(Financial Data)

Brochure from the manufacturer of the GE 1.6  
xle wind turbine being considered for the  
project and attached to the Application in  
Exhibit B

#### REASONS JUSTIFYING PROTECTION

Disclosure of estimated capital and intangible costs, average estimated costs for the Applicant's similar facilities, present worth and annualized capital costs, operation and maintenance costs, estimated present worth and annualized operation and maintenance costs, and the estimated monthly loss due to one month's delay in construction would give an undue advantage to competitors and would hinder competition.

Disclosure could give competitors of the manufacturer an undue advantage and could hinder competition.