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BEFORE  
THE OHIO POWER SITING BOARD

In the Matter of the Application	)	
of Black Fork Wind Energy, LLC for	)	Case No. 10-2865-EL-BGN
a Certificate to Install Numerous Electricity	)	
Generating Wind Turbines in	)	
Crawford and Richland Counties, Ohio	)	

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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, Black Fork Wind Energy, LLC ("Black Fork" or "the Applicant") respectfully moves for a protective order to keep portions of pages 50 and 51 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, 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. Black Fork believes that public disclosure of this confidential and sensitive information will have a deleterious effect on competition. Additional 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.

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WHEREFORE, Black Fork Wind Energy, LLC respectfully moves for a protective order to keep pages 50 and 51 of the Application confidential and not part of the public record.

Respectfully submitted,



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Attorneys for Black Fork Wind Energy, LLC

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

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Black Fork has filed a redacted version of the Application and requests that pages 50 and 51 be protected from public disclosure. Redacted copies of those pages are attached to this motion. Pages 50 and 51 of the Application contain estimated capital and intangible costs, operation and maintenance expenses and 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.

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 Ohio Power Siting 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 Ohio Power Siting Board (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 Commission 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 Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order,

September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

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.

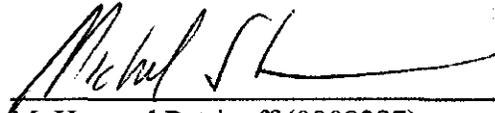
Applying these factors to the information that Black Fork seeks to keep confidential, it is clear that the information has independent economic value, is the subject of reasonable efforts to maintain its secrecy, and meets the six factor test set forth above.

Such sensitive information is generally not disclosed and constitutes a trade secret. Its disclosure could give competitors of Black Fork 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 as the Board staff will have the full text of the Application to review, or serve any other public policy.

WHEREFORE, for the above reasons, Black Fork 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,

A handwritten signature in black ink, appearing to read "Michael J. Settineri", written over a horizontal line.

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EXHIBIT A

LIST OF EXHIBITS  
FOR WHICH PROTECTION IS SOUGHT

EXHIBITS

Pages 50 and 51 of the Application  
(Financial Data)

REASONS JUSTIFYING PROTECTION

Disclosure of estimated capital and intangible costs, 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.

- The Project will potentially utilize, but are not limited to, Vestas V100 1.8 MW turbines, GE 1.6 MW turbines, or Siemens 2.3 MW turbines, or comparable models;
- 91 WTG locations will be used, resulting in a total nameplate capacity of up to 200 MW; and;
- Construction will begin in 2012 and continue for one year.

Results of the JEDI model are discussed below and in Section 4906-17-06(C). All monetary results are in 2011 dollars.

**(1) Estimated Project Costs**

Full construction and installation costs (i.e. capital costs) for the Project, including all intangible costs associated with project management, insurance, permitting, and financing are estimated to be between \_\_\_ and \_\_\_ million. Of this, turbines, blades, towers, and other large equipment will account for approximately \_\_\_ to \_\_\_, raw materials, including both construction and electrical materials, will account for \_\_\_ to \_\_\_ million, and estimated construction payroll will account for approximately \$17 to \$24 million. In addition, the substation and switchyard will cost between \$ \_\_\_ million and \$ \_\_\_ million. The remainder of the construction cost will be associated with intangible costs, such as engineering, site investigation and preparation, legal and land easement fees, and other equipment such as electric collection infrastructure, labor, and associated development costs.

**Table 6-1 Estimated Costs for 200 MW Project**

<b>Project Component</b>	<b>Total Cost</b>	<b>Cost per kW</b>
Turbines	\$XX	\$XX
Balance of Plant	\$XX	\$XX
Network Upgrades	\$XX	\$XX
Development	\$XX	\$XX
Other	\$XX	\$XX
<b>Total</b>	<b>\$XX</b>	<b>\$XX</b>

**(2) Cost Comparison**

The Applicant expects the overall cost of the Project to be approximately \$ \_\_\_ to \_\_\_ million, or approximately \$ \_\_\_ per kilowatt (kW) of installed capacity. This cost is consistent with research compiled by the Berkeley Lab Database and presented by the United States Department of Energy, New England Wind Forum, which shows an average installed cost per kW of approximately \$1,200 to \$2,600 per kW (Wiser and Bolinger 2010). The Applicant does not currently have facilities in commercial operation and therefore a waiver has been requested to allow for a comparison to the Berkeley Lab Database.

### **(3) Present Worth and Annualized Cost**

Capital costs include development costs, engineering, site investigation and preparation, equipment costs, and labor/construction costs. The costs will be incurred within the first year of the Project during the construction phase and, as such, the present worth of these capital costs will be similar to the costs presented above. Capital costs are limited to the Project only.

## **(C) Operation and Maintenance Costs**

### **(1) Annual Operation and Maintenance Costs**

The estimated operation and maintenance (O&M) costs for the Project during the first two years of commercial operation are estimated to be between \$\_\_\_\_ and \$\_\_\_\_ annually (excluding costs associated with tax and lease payments, or increases due to inflation), for a total of between \$\_\_\_\_ and \$\_\_\_\_ million.

### **(2) Cost of Similar Facilities**

The Applicant expects the annual O&M cost of the Project, including labor, to be approximately \$\_\_\_\_ to \$\_\_\_\_ or approximately \$\_\_\_\_ per kW, excluding taxes, land leases, and inflation. This is generally consistent with the research compiled by the Berkeley Lab Database for other recently developed projects throughout the United States (Wiser and Bolinger 2010). The Applicant does not currently have facilities in commercial operation and therefore a waiver has been requested to allow for a comparison to the Berkeley Lab Database.

### **(3) Present Worth and Annualized Expenditures**

The present worth of the total annual O&M cost, excluding taxes, land leases, and inflation, can be calculated using a nominal 10% discount rate and 2% escalation over the 20-year lifespan of the wind farm. Based on these assumptions, the present worth of the O&M costs over the life of the Project is between \$\_\_\_\_ and \$\_\_\_\_.

## **(D) Delays**

Due to the complexity of preparing a modern wind energy facility for permitting, construction, financing, off-takes, etc., impacts of any delays can vary widely. Critical delays may have material, adverse effects on Facility financing, including the Applicant's ability to procure turbines and other Facility components. Such delays may push the in-service date back. Considerable cost for delays would be incurred if the delays prevented the Facility from meeting deadlines for Federal incentive programs. Delays could result in lost opportunities to utilize the renewable energy grants that are available for a limited time under the American Recovery and Reinvestment Act of 2009. A monthly delay in the in-service date is estimated to have a net present value loss of \$\_\_\_\_ to \$\_\_\_\_ per month.