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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF AN APPLICATION OF CALISOLAR, INC. FOR APPROVAL OF A UNIQUE ARRANGEMENT FOR CALISOLAR, INC'S ONTARIO, OHIO FACILITY	: : : :	Case No. 11-2336-EL-AEC

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Calisolar, Inc. ("Calisolar") respectfully moves the Public Utilities Commission of Ohio ("Commission) for a protective order to keep certain proprietary information contained within the Application confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) un-redacted copies of the confidential pages are submitted under seal.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Contemporaneously with this Motion for Protective Order and Memorandum in Support, Calisolar, Inc. ("Calisolar") filed an Application seeking approval of a Unique Arrangement ("Application") for its Ontario, Ohio facility. Certain information related to Calisolar which is proprietary and confidential has been redacted from the Application. Specifically, the items at issue that have been redacted are: 1) competitively sensitive electricity pricing information; and 2) information concerning Calisolar's electric generation purchasing strategy. Consequently, Calisolar requests that the Commission maintain the confidential nature of this information and protect this information from public disclosure.

Calisolar manufactures solar silicon and high performance multicrystalline solar cells. Its products are shipped globally into the renewable energy supply chain and are being used in grid-tied photovoltaic systems to produce electricity directly from the sun. If the above information is released to the public, it could harm Calisolar by providing its domestic and international competitors with proprietary information concerning the energy pricing, usage and generation purchasing strategy of Calisolar's Ontario, Ohio facility.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission'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 Commission 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. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

> *"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.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C, § 4901-1-24(A)(7)).

The information submitted under seal is competitively sensitive and highly proprietary information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Revised Code The definition of trade secret contained in Section 1333.61(D), Revised Code, is as follows:

> *"Trade secret means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, 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."*

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the pricing information and generation purchasing strategy which is the subject of this motion.

In State ex rel. The Plain Dealer the Ohio Dept. of Ins., (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

> *"(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."*

Id. at 524-525 (quoting *Pyromatics. Inc. v. Petmziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)). Applying these factors to the confidential information Calisolar seeks to protect, it is clear that a protective order should be granted. The information redacted from the Application contains information regarding energy usage, electricity pricing and electric generation purchasing strategy related to Calisolar. Such sensitive information is generally not disclosed. Its disclosure could give competitors an advantage that would hinder the ability of Calisolar's Ohio manufacturing facility to compete nationally and internationally. Additionally, Calisolar has treated this information as confidential in the general course of its business and has taken precautions in order to guard its secrecy.

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. The 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).

WHEREFORE, for the above reasons Calisolar requests the Commission grant its motion for a protective order and to maintain the confidential information contained in the Application under seal.

Respectfully submitted,

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