

FILE

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
Champaign Wind LLC, for a Certificate )  
to Construct a Wind-Powered Electric )  
Generating Facility in Champaign )  
County, Ohio )

Case No. 12-0160-EL-BGN

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MOTION FOR PROTECTIVE ORDER  
AND MEMORANDUM IN SUPPORT

Pursuant to Rule 4906-7-07(H)(4) of the Ohio Administrative Code, Champaign Wind LLC ("Champaign Wind" or "the Applicant") respectfully moves for a protective order to keep portions of pages 53 to 56 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 costs, present worth and annualized capital costs, operation and maintenance costs, and the estimated monthly loss due to one month's delay in construction. Champaign Wind believes that public disclosure of this confidential and sensitive information will have a deleterious effect on competition.

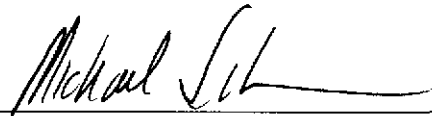
In addition, Champaign Wind further requests that the safety manual for one manufacturer of a wind turbine being considered for this project be kept confidential. The manufacturer has provided the safety manual to the Applicant on a confidential basis. This manual will be submitted under seal to maintain the confidentiality of the manual. The Commission, in adopting rules in its October 28, 2008 Opinion and Order in Case. No. 08-1024-EL-ORD at pages 31-32, contemplated that applicants may have to submit safety manuals from turbine manufacturers under seal pursuant to Rule 4906-7-07(H)(4) of the Ohio Administrative Code.

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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 and the safety manual are submitted under seal.

**WHEREFORE**, Champaign Wind LLC respectfully moves for a protective order to keep the financial information contained in the Application and the manufacturer's safety manual confidential and not part of the public record.

Respectfully submitted,



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*Attorneys for Champaign Wind LLC*

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

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Champaign Wind has filed a redacted version of the Application and requests that the pages containing certain financial information be protected from public disclosure. These pages of the Application contain estimated capital and intangible cost, in addition to other sensitive financial data that is confidential. Revealing this sensitive and confidential information in a publicly filed document would provide the Applicant's competitors with a competitive advantage. The Applicant will also provide under seal the safety manual of a Gamesa wind turbine being considered for the project. The safety manual was provided to the Applicant on a confidential basis and contains sensitive and proprietary information. Champaign Wind seeks a protective order to maintain that confidentiality.

Rule 4906-7-07(H)(4) of the Ohio Administrative Code provides that:

“[u]pon 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.

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. Furthermore, no purpose of Title 49 would be served by the public disclosure of the information sought to be protected.

State law recognizes the need to protect certain types of information which are the subject of this motion. Sections 1331.61 to 1333.69, Revised Code. The need to protect the designated information from public disclosure in this case 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 Ohio 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; a 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, 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 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. The factors to be considered in recognizing a trade secret are:

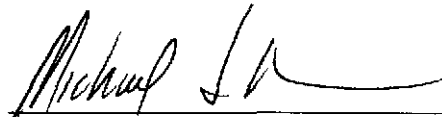
- (1) The extent to which the information is known outside the business,
- (2) the extent to which it is known to those inside the business, i.e., by the employees,
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information,
- (4) the savings effected and the 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 Champaign Wind 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. In addition, the Board, in its October 28, 2008 Opinion and Order in adopting rules in Case No. 08-1024-EL-ORD at pages 31-32 contemplated that applicants may have to submit safety manuals from turbine manufacturers under seal pursuant to Rule 4906-7-07(H)(4) of the Ohio Administrative Code.

Turbine manufacturer safety manuals are generally not disclosed and constitute a trade secret. Disclosure of a confidential safety manual could give competitors of Champaign Wind and the wind turbine manufacturer an undue competitive advantage. On the other hand, public disclosure of the manual is not likely to either assist the Board in carrying out its duties, especially since the Board staff will have the full text to look at, nor would it serve any other public policy.

**WHEREFORE**, for the above reasons, Champaign Wind requests that the Administrative Law Judge grant its motion for a protective order to maintain the financial information and the safety manual from the turbine manufacturer as confidential and not subject to public disclosure.

Respectfully submitted,

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

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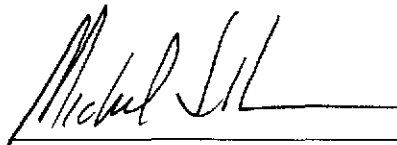
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served by electronic mail upon the following persons this 15th day of May, 2012.

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

Michael J. Settineri