

**BEFORE THE OHIO POWER SITING BOARD**

<b>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 )</b>	<b>Case No. 12-0160-EL-BGN</b>
---	--------------------------------

---

**REPLY OF CHAMPAIGN WIND LLC TO THE  
MEMORANDUM IN OPPOSITION BY UNION NEIGHBORS UNITED, INC.,  
ROBERT McCONNELL, DIANE McCONNELL, AND JULIA JOHNSON  
TO CHAMPAIGN WIND’S MOTION FOR PROTECTIVE ORDER**

---

**I. Introduction**

On May 15, 2012, Champaign Wind LLC filed a motion for a protective order to keep certain financial information redacted at pages 53 through 56 of its Application confidential. Champaign Wind also requested protective treatment of a proprietary turbine safety manual that is not publicly available. On May 30, 2012, Union Neighbors United, Inc. along with its members Robert McConnell, Diane McConnell and Julia Johnson (collectively “UNU”) filed a memorandum in opposition to Champaign Wind’s request for a protective order. UNU seeks access to Champaign Wind’s financial information and argues that the contents of a safety manual are not trade secrets. The Board, however, has previously granted protective treatment of an applicant’s financial information just like the information Champaign Wind seeks to protect in this proceeding. Moreover, a compilation of information such as a manual can constitute a trade secret, and for this reason alone the Board may grant Champaign Wind’s request for protective treatment of the Gamesa safety manual. It is important to note that the issue presented is not whether UNU can see the information; Champaign Wind is willing to provide UNU access to the material provided an appropriate protective agreement is in place.

The issue presented is whether confidential and proprietary documents should be protected from public disclosure, an issue that Champaign Wind believes is properly addressed by granting protective treatment to the redacted financial information and turbine manual filed under seal in this proceeding.

## **II. Argument**

### **A. Champaign Wind's request for protective treatment of its confidential financial information should be granted.**

Champaign Wind's Application, at pages 53 through 56, contains redacted financial information related to capital costs, operating costs and expenses. The Board routinely grants protective treatment for this type of information. *See e.g., In re Juwi Great Lakes LLC/Hardin North Project*, Case No. 09-0277-EL-BGN, Entry, Sept. 18, 2009; *In re Paulding Wind Farm LLC*, Case No. 09-0980-EL-BGN, Entry, July 22, 2010; *In re Paulding Wind Farm LLC*, Case No. 10-0369-EL-BGN, Entry, June 21, 2010; *In re Hog Creek Wind Farm LLC/Hog Creek Wind Farm 2*, Case No. 10-0654-EL-BGN, Entry, May 2, 2011; *In re Black Fork Wind Energy LLC*, Case No. 10-2865-EL-BGN, Entry, May 3, 2011. UNU stated in its response that it does not object to the confidentiality of the information, "provided it is produced to Proposed Intervenor for possible use in the case." *See* Memorandum of UNU in Response to Application's Motion for Protective Order. Champaign Wind is willing to discuss allowing UNU access to the information subject to an agreeable confidentiality agreement. However, UNU's request to access the information has no bearing on the grounds for Champaign Wind's request for protective treatment of the redacted financial information. Given the nature of the financial information, the Board should grant the protective order as it did in the *Buckeye Wind* proceeding. *In re Buckeye Wind LLC*, Case No. 08-0666-EL-BGN, Entry, July 31, 2009.

B. The Gamesa turbine manual is entitled to protective treatment.

UNU opposes the protective treatment of the Gamesa safety manual, claiming that the contents of the manual do not constitute trade secrets, that any non-trade secret portions of the safety manual should be identified, and that failing to disclose the safety manual is inconsistent with the purposes of Revised Code Title 49. To the contrary, the safety manual does constitute a trade secret, containing confidential information such as drawings and procedures specific to the G9 series turbine. Moreover, maintaining the manual's confidentiality given its trade secret status and the fact that the manual will be available to the Staff and Board for review is not inconsistent with the purposes of Revised Code Title 49.

As an initial point, the manual and its contents are properly considered trade secrets. 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 (emphasis added).

Relevant to Champaign Wind's motion, the safety manual not only contains confidential information such as drawings, procedures and other information specific to the G9 series turbine, but also constitutes a compilation of information that taken as a whole can constitute a trade

secret. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 528 (noting that compilation of information can constitute a trade secret “if the unified result would afford a party a competitive advantage”). UNU misses the compilation component of the trade secret definition, focusing instead on the information it believes is *contained* in the wind turbine safety manual. A review of the manual will not only show that it contains confidential information specific to Gamesa’s turbine, but that it is a compilation of information that taken as a whole has independent economic value and would provide competitors with an advantage if disclosed. For this reason alone, trade secret status may be granted to the manual.

UNU also claims that the Board’s statement when adopting rules in Case No. 08-1024 undercuts Champaign Wind’s request for protective treatment. To the contrary, the Board expressly contemplated in its October 28, 2008 Opinion and Order in Case No. 08-1024-EL-ORD at pages 31–32, that applicants may have to submit manuals from turbine manufacturers under seal, despite the protestations of UNU in the rule making proceeding that safety manuals do not meet the definition of “trade secret.” The Board stated that where an “applicant has not finalized the turbine to be utilized for a particular project, the applicant must submit the required information for each of the types of turbines under consideration” and if an applicant believes the information is “confidential or proprietary, the applicant may file a motion for protective treatment with the Board[.]” *Id.* at 31–32. Champaign Wind has done exactly that, filing a motion for protective treatment for a turbine manual that is not available to the public, that is subject to efforts to retain its confidentiality, that has independent economic value, and that if disclosed would reveal confidential information and allow others to benefit without incurring the expense of developing such a manual. *See e.g. In re Paulding Wind Farm LLC*, Case No. 10-0369-EL-BGN, Entry, June 21, 2010 (granting motion to keep turbine brochure confidential).

For the foregoing reasons, Champaign Wind's request for a protective order should be granted in its entirety. To the extent UNU wishes to review the redacted financial information or the turbine safety manual, Champaign Wind is willing to discuss such a review with UNU provided the appropriate confidentiality agreements are in place.

Respectfully submitted,

s/ Michael J. Settineri

M. Howard Petricoff (0008287)

Michael J. Settineri (0073369)

Miranda R. Leppla (0086351)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

[mrleppla@vorys.com](mailto:mrleppla@vorys.com)

*Attorneys for Champaign Wind LLC*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served by electronic mail upon the following persons this 6<sup>th</sup> day of June, 2012.

Jack A. Van Kley  
Van Kley & Walker, LLC  
132 Northwood Blvd., Suite C-1  
Columbus, Ohio 43235  
[jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)

Christopher A. Walker  
Van Kley & Walker, LLC  
137 North Main Street, Suite 316  
Dayton, Ohio 45402  
[cwalker@vankleywalker.com](mailto:cwalker@vankleywalker.com)

s/ Michael J. Settineri  
\_\_\_\_\_  
Michael J. Settineri

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/6/2012 5:15:47 PM**

**in**

**Case No(s). 12-0160-EL-BGN**

Summary: Reply of Champaign Wind LLC to Memorandum in Opposition to Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of Champaign Wind LLC