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October 26, 2012

FILED VIA COURIER

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The Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215

Re: Case No. 12-0160-EL-BGN

Dear Sir or Madam:

Enclosed on behalf of Gamesa Wind US, LLC please find *Motion For A Protective Order and Expedited Ruling*.

Very truly yours,



Maureen A. Brennan

Enclosure

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BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Champaign Wind LLC for a Certificate to) Case No. 12-0160-EL-BGN
Install Electricity Generating Wind Turbines)
in Champaign County)
)
)
)

MOTION FOR PROTECTIVE ORDER AND EXPEDITED RULING FILED BY GAMESA WIND
US, LLC REGARDING
DOCUMENTS COVERED BY REQUEST 3 OF THE SUBPOENA DUCES TECUM FILED BY
UNION NEIGHBORS UNITED, INC., ET AL.

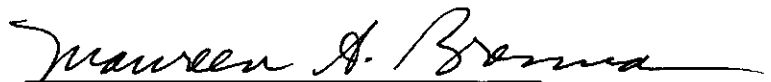
Pursuant to the Ohio Power Siting Board's (Board) October 22, 2012 Entry, Gamesa Wind US, LLC (Gamesa) is directed to produce documents responsive to Request 3 in Union Neighbors United, Inc., et al.'s (UNU) subpoena duces tecum by October 29, 2012. Under Ohio Administrative Code (OAC) 4906-7-01(B)(8)(c) and 4906-7-07(H)(1), Gamesa moves the Board to place the documents that Gamesa supplies under a Protective Order, retain a single copy of the documents in the Board's office, limit access to the documents to inspections in the office of the Board and restrict discussions of the contents of the documents to pleadings filed or testimony taken under seal for the reasons stated below and in the accompanying Memorandum in Support:

1. Gamesa is competing with other wind turbine companies for the contract to supply turbines to the Champaign Wind LLC project and other wind energy projects throughout the world;
2. Detailed information about its G97 turbine, under consideration for the Champaign Wind LLC project is confidential, proprietary and contains trade secrets;

3. Gamesa does not share this information with the general public and requires confidentiality agreements from customers to which it supplies this information;
4. Gamesa is at a competitive disadvantage in this project and in the marketplace in general if this information becomes publically available.
5. Union Neighbors United, Inc. et al. have displayed in their previous filings with the Board a bias against the wind industry which would likely result in a misuse of this confidential, proprietary and trade secret information.

Therefore, Gamesa moves the Board to place all documents produced in response to Request 3 of UNU's subpoena duces tecum under a Protective Order, retain a single copy of the documents in the Board's office, limit access to the documents to inspectors in the office of the Board and restriction discussions of the contents of the documents to pleadings filed or testimony taken under seal. Consistent with the requirements of Ohio Administrative Code (OAC) 4906-7-07(H)(4), three (3) unredacted copies of the documents are being submitted under seal. The submitted copies include redactions of information which is not responsive to Request 3 of UNU's subpoena.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

1. THE PROTECTIVE ORDER SHOULD BE ISSUED TO PROTECT INFORMATION THAT IS CONFIDENTIAL, PROPRIETARY AND A TRADE SECRET

Gamesa Wind US LLC (Gamesa) seeks a Protective Order pursuant to Ohio Administrative Code (OAC) 4906-7-07(H)(1) for any and all documents produced by Gamesa in response to Request 3 of Union Neighbors United et al.'s (UNU) subpoena duces tecum (the Subpoena). Gamesa requests that the Ohio Power Siting Board (the Board) waive the OAC 4906-7-07(H)(2) requirement that Gamesa's counsel exhaust all reasonable means to settle the discovery dispute with UNU and file an affidavit reflecting that effort. The first attempt at narrowing the scope of UNU's subpoena was unsuccessful. Given (1) that the Board's October 22, 2012 Entry establishes an October 29, 2012 response date, (2) the divergent interests of Gamesa and UNU, and (3) the desire of the Board to expedite this hearing, Gamesa does not believe it would reach an acceptable solution on the confidentiality of its documents with UNU before the October 29 production date.

OAC Rule 4906-7-07(H)(4) provides that the Board 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, including where it is determined that both of the following criteria are met: The information is deemed 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 Ohio Revised Code ("R.C."). Gamesa asserts that the information required by the Subpoena constitutes trade secrets and as such state law prohibits the release of the information.

The information at issue is a trade secret under Ohio law. The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act, R. C. Section 1333.61 (D):

"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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the scientific and technical information, which is the subject of this motion.

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

- (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.

Gamesa meets these considerations and the noise data sought for Gamesa's G97 wind turbine is clearly trade secret information. Gamesa only provides this data to legitimate customers under the condition of confidentiality as a means of marketing the G97 turbine and assisting its customers in the proper design and operation of its wind energy facilities. In

addition, Gamesa does not provide this information to potential customers or any other party unless a confidentiality agreement containing appropriate terms has been executed. Employees of Gamesa are given access to this information only on a need-to-know basis. If Gamesa's competitors obtained this information, they could use it in their marketing efforts to the detriment of Gamesa. In addition, Gamesa has expended significant funds and resources to create this information as the information is the product of not only the noise data collected, but also the design and development of the turbines. Competitors would need to spend extensive amounts of money to replicate these results because they would need, among other things, access to the G97 turbines, which Gamesa would not grant. For these reasons, Gamesa's noise data is a trade secret.

The second requirement for the protection of trade secret information also is satisfied under the current circumstances. The protection of trade secret information from public disclosure is consistent with the purposes of R.C. Title 49 because the Board has access to the information, but at the same time the information is protected from other competitors. Thus the protection of trade secret information as requested by Gamesa will not impair the Board's regulatory responsibilities.

Looking to the Public Utilities Commission of Ohio (the Commission) for further guidance on this issue, it is apparent that the Commission recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

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 (OAC Rule 4901-1-24(-A)(7)).

For the Board to do otherwise with the information provided by Gamesa in this proceeding would be to negate the protections the Ohio legislature has granted to all businesses through the Uniform Trade Secrets Act. When faced with the possible disclosure of confidential information, the Board has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Columbus Southern Power Co., Case No. 07-715-EL-BTX (Finding an Order, February 5, 2008); American Transmission Systems, Inc., Case No. 12-864-EL-BSB (Finding an Order, August 10, 2012). The Board should rule similarly here.

The Board's October 22, 2012 Entry directs Gamesa to provide information to UNU that is confidential, proprietary, and contains trade secrets. The noise information sought in Request 3 are proprietary research that Gamesa is undertaking for the development of its wind turbine products. Revealing that information in a proceeding where all information is available to the public puts Gamesa at a competitive disadvantage. In addition, it is specifically in competition with other wind turbine manufacturers for the contract to supply turbines to the Champaign Wind LLC project itself. Being required to put its proprietary information into the public domain while also trying to negotiate a customer contract gives Gamesa's rivals for this work an unfair advantage.

Gamesa seeks a Protective Order from the Board and needs, in addition, to work out a confidentiality agreement with UNU and any other party whom the Board may allow to view the information. A Protective Order and confidentiality agreement would protect information produced pursuant to Request 3 and restrict its use by UNU to the current proceeding only. In addition, Gamesa requests that any testimony taken of a Gamesa witness in regard to the documents produced be conducted under seal before counsel for Gamesa and UNU only. Gamesa would also request that any transcript of such testimony be treated as confidential information and, if the transcript is filed, that it be filed under seal and be available only to UNU and solely for the purposes of the above-captioned proceedings. Also, Gamesa requests that in the event there is a hearing, OAC 4906-7-01(B)(8)(c) procedures for in camera review and the

sealing of the record be followed to prevent the disclosure of confidential or proprietary information and trade secrets.

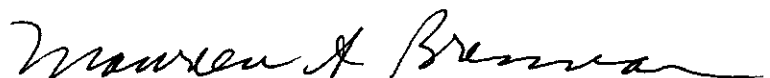
2. THE REQUEST FOR AN EXPEDITED RULING SHOULD BE GRANTED TO PROTECT INFORMATION THAT IS CONFIDENTIAL, PROPRIETARY AND A TRADE SECRET

Gamesa requests the Board to expedite its ruling on the issuance of the Motion for a Protective Order pursuant to OAC 4906-7-12(C). Failing to expedite this ruling would result in the improper production of information that is confidential, proprietary and a trade secret. The Board's Entry dated October 22, 2012 requires Gamesa to respond to the Subpoena by October 29, 2012. If the Motion for the Protective Order is not ruled on prior to that time, to be in compliance with the Board's Entry, Gamesa will be required to disclose information that is confidential, proprietary and a trade secret. For the reasons stated above relating to the disclosure of such information, Gamesa has the right to keep this information out of the public domain and away from its competitors. Therefore, an expedited ruling is necessary to prevent any unwarranted disclosure of information.

3. CONCLUSION

Although Gamesa is not a party to the above-captioned proceedings it is a person from whom discovery is being sought. Pursuant to OAC 4906-7-07(H)(1), Gamesa respectfully requests the Board to issue a Protective Order and Expedited Ruling as outlined in its Motion and this Memorandum of Support.

Respectfully submitted,

A handwritten signature in cursive script, reading "Maureen A. Brennan".

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties or record via e-mail and U.S. Mail this 26th day of October, 2012.

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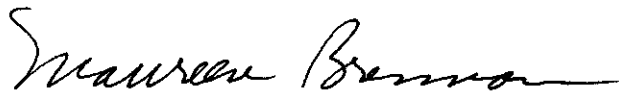
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 	GENERAL CHARACTERISTICS MANUAL (GCM)	Code: GD154515-en Rev: 0
Documentation Type: PDTD - Product	Title: G97 2.0MW CII/CIIA 50/60 Hz	Date: 28/05/12 Page: 1 of 6
Deliverable: S12	Noise Emission Levels	Approval process: Electronic: PDM Flow + Translation
		Prepared: PSEGRS
		Verified: JEJGUERRERO
		Approved: BLC
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	GENERAL CHARACTERISTICS MANUAL (GCM)	Code: GD154515-en Rev: 0
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Title: G97 2.0MW CII/CIIIA 50/60 Hz Wind Turbine Power Curve and Noise Emission Levels		


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 	GENERAL CHARACTERISTICS MANUAL (GCN)	Code: GD149685-en Rev: 1
Documentation Type: PDTD - Product	Title: G97 2.0MW CIIA 50/60 Hz	Date: 24/05/12 Page 1 of 17
Deliverable: S12	Noise Curves for Low Noise Operating Mode	Approval process: Electronic: PDM Flow + Translation
		Prepared: PSEGRS
		Verified: JEJGUERRERO
		Approved: BLC
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5.11.1.3. G97 2.0MW CITA 50/60 Hz [REDACTED] Noise Curves for Low Noise Operating Mode


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