

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) Case No. 12-160-EL-BGN
Generating Facility in Champaign)
County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On May 15, 2012, Champaign Wind, LLC (Champaign) filed, with the Ohio Power Siting Board (Board), an application pursuant to the provisions of Chapter 4906-17, Ohio Administrative Code (O.A.C.), for a certificate to construct a wind-powered electric generation facility. The proposed project consists of up to 56 wind turbine generators, access roads, electrical interconnection, construction staging areas, an operations and maintenance facility, substation, and up to four meteorological towers.
- (2) By entry issued August 2, 2012, the administrative law judge (ALJ) established the following procedural schedule:
 - (a) All testimony to be offered by Champaign shall be filed by October 29, 2012.
 - (b) All testimony to be offered by intervenors and Staff shall be filed by November 5, 2012.
 - (c) The public hearing shall be held on October 25, 2012.
 - (d) The adjudicatory hearing shall commence on November 8, 2012, at the offices of the Public Utilities Commission of Ohio.
- (3) On September 28, 2012, UNU filed motions for issuances of subpoenas duces tecum to several turbine manufacturers, including Gamesa Wind US, LLC (Gamesa). Thereafter, on October 11, 2012, Gamesa filed a motion to quash the subpoena duces tecum.

- (4) By entry issued October 22, 2012, the ALJ issued an entry denying, in part, and granting, in part, Gamesa's motion to quash the subpoena duces tecum. More specifically, the ALJ found that information pertaining to turbines that were not under consideration for the proposed project were irrelevant, but that the portions of Requests No. 3 and 4 of the Gamesa subpoena referencing the Gamesa G97 turbine model, which remains under consideration for the proposed project, should not be quashed. Further, the ALJ provided that Gamesa should have until October 29, 2012, to deliver the records not quashed to UNU.
- (5) On October 26, 2012, Gamesa filed a motion for protective order and a request for an expedited ruling. In its accompanying memorandum in support, Gamesa contends that the noise data sought for the Gamesa G97 wind turbine in Request No. 3 is trade secret information, which, if obtained by Gamesa's competitors, could be used in their marketing efforts to the detriment of Gamesa. Further, Gamesa argues that significant funds and resources have been expended to create this information. Gamesa also indicates that, in accordance with Rule 4906-7-07(H)(4), O.A.C., three unredacted copies of the requested documents have been submitted to the Board under seal, and that the unredacted copies include redactions of information that is not responsive to Request No. 3. Finally, Gamesa requests that testimony regarding the confidential documents produced be conducted under seal between Gamesa and UNU only, and that any transcript of such testimony be treated as confidential information and filed under seal.
- (6) Prior to responding to Gamesa's motion for protective order, the ALJ finds it necessary to set forth the following guidelines for the parties¹ as to the process to be followed in this matter with regard to any document which a party alleges² is confidential:

¹ For purposes of this entry, the term party(ies) refers to interveners, as well as entities responding to discovery requests.

² Information shall be referred to as alleged confidential information, until such time as the ALJ or Board rules on a party's motion for protective order.

- (a) In accordance with Rule 4906-7-07(H), O.A.C., “[a]ll documents submitted pursuant to paragraph (H) of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.” Consequently, proposed redactions to documents must be strictly limited to words that the party asserts are confidential. A party seeking a protective order for allegedly confidential documents must limit redactions in such documents to only include confidential pieces of information, leaving as much of the document public as possible, including numberings, headings, and parts of sentences, where appropriate.
- (b) Any party requesting copies of allegedly confidential documents must work with the party asserting confidentiality and enter into an appropriate confidentiality agreement with the party possessing the confidential document in order to obtain a copy of the unredacted version of the document.
- (c) The party asserting confidentiality must clearly mark each page of the unredacted document being provided as confidential, and must file a motion for protective order or, if the document is being presented at the hearing, provide oral argument. The party alleging confidentiality of a document is responsible for presenting the necessary arguments in support of its allegation.
- (d) The wholly unredacted version of a document for which confidentiality is being alleged, including any portions of the document the party believes to be unresponsive to the request, shall be handled as follows:
 - (i) if the document is being filed outside of the hearing, the party filing the document shall

provide: one copy with the Board's Docketing Division; one copy to each ALJ; and one copy to each party that has entered into a confidentiality agreement with the party alleging confidentiality.

- (ii) if the document is being provided at the hearing, the party offering the document shall provide: one copy to each ALJ; one copy to the court reporter; and one copy to each party that has entered into a confidentiality agreement with the party alleging confidentiality.
 - (e) The party offering a document for which confidentiality is being alleged shall provide the necessary number of copies of the proposed redacted public version of the document in the public docket or at the hearing.
 - (f) Until a motion for protective order is decided, allegedly confidential information filed under seal will remain under seal.
 - (g) Portions of the hearing involving testimony concerning information found to constitute confidential information will be held as a closed session, only permitting the presence of parties that have entered into a confidentiality agreement with the party alleging confidentiality.
- (7) The ALJ notes that, as multiple motions for protective order have been filed for which the period for memoranda contra and replies has not yet passed, the ALJ will be taking oral arguments on these pending motions at the hearing. Any party wishing to make an argument on these pending motions should have an attorney present at the hearing.

- (8) As a final matter, upon inspection of the documents filed under seal by Gamesa, the ALJ notes that the copies include multiple redactions of information. The ALJ points out that, as discussed above, a party seeking to protect allegedly confidential information must, as set forth in Finding (6)(d) above, provide wholly unredacted versions of those documents under seal. Consequently, the ALJ directs that Gamesa shall provide the wholly unredacted copies of the requested documents under seal, as set forth in Finding (6)(d) above, by November 8, 2012.

It is, therefore,

ORDERED, That the parties comply with the directives contained in Findings (6), (7), and (8). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE OHIO POWER SITING BOARD

s/Mandy W. Chiles

By: Mandy Willey Chiles
Administrative Law Judge

JRJ/sc

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in

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

Summary: Administrative Law Judge Entry addressing confidentiality issues. - electronically filed by Sandra Coffey on behalf of Mandy Chiles, Attorney Examiner, Public Utilities Commission of Ohio