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BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Application of
Champaign Wind LLC for a Certificate to
Install Electricity Generating Wind Turbines
in Champaign County

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) Case No. 12-0160-EL-BGN
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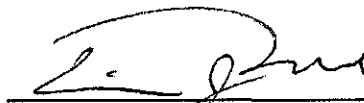
MOTION FOR PROTECTIVE ORDER AND EXPEDITED RULING FILED BY GAMESA WIND
US, LLC REGARDING
DOCUMENTS REQUESTED BY THE OHIO POWER SITING BOARD

Pursuant to the Ohio Power Siting Board's (Board) November 5, 2012 Entry, Gamesa Wind US, LLC (Gamesa) is directed to produce documents filed on October 26, 2012 in a completely unredacted form. On October 26, 2012, Gamesa filed certain documents with a Motion for a Protective Order to comply with the Board's October 22, 2012 Entry related to producing documents responsive to Request 3 in Union Neighbors United, Inc., et al.'s (UNU) subpoena duces tecum (Subpoena). Gamesa produced documents responsive to Request 3, which included information not responsive to the Subpoena. Those portions not responsive to the Subpoena were redacted. The Board now requests that we submit the redacted information for its review. 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 for the Board's review only as it relates to determining the confidentiality of the information supplied on October 26, 2012 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 the Board's November 5, 2012 Entry under a Protective Order for the Board's review only. 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.

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 the Board's November 5, 2012 Entry. Gamesa notes that this is not in response to a subpoena, so the requirement in OAC 4906-7-07(H)(2) that Gamesa's counsel exhaust all reasonable means to settle a discovery dispute is not applicable. There is no discovery dispute with another party as these documents are being produced solely upon the Board's demand and solely for the Board's review to enable the Board to evaluate whether to grant Gamesa's October 26, 2012 Motion for Protective Order.

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 Board's November 5, 2012 Entry 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 information sought in the Board's November 5, 2012 Entry about 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. 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, the information provided in response to the Board's November 5, 2012 Entry is *confidential, proprietary, and contains trade secrets and should be protected from disclosure.*

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 November 5, 2012 Entry directs Gamesa to provide information to the Board that is confidential, proprietary, and contains trade secrets. The information sought in this Entry is 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. A Protective Order would protect information produced pursuant to the Board's November 5, 2012 Entry from public disclosure and would limit its use to allowing the Board to evaluate whether to grant Gamesa's October 26, 2012 Motion for Protective Order. .

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

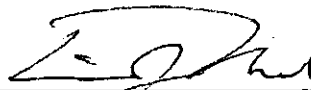
Gamesa requests the Board to expedite its ruling on the issuance of the Motion for a Protective Order pursuant to OAC 4906-7-12(C). Failing to expedite this ruling would result in the improper production of information that is confidential, proprietary and a trade secret. The Board's Entry dated November 5, 2012 requires Gamesa to respond to the Entry by November

8, 2012. To prevent delay in the proceeding, Gamesa requests an expedited review of this Motion.

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,



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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 13 day of November, 2012.

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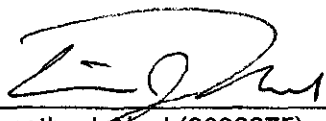
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