

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Carroll County Energy LLC for a)	
Certificate of Environmental)	Case No. 13-1752-EL-BGN
Compatibility and Public Need to)	
Construct an Electric Generation Facility)	

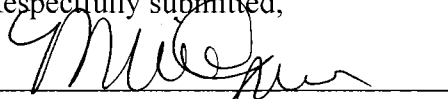
**MOTION FOR PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 4906-7-07(H)(4) of the Ohio Administrative Code, Carroll County Energy LLC (“CCE” or “the Applicant”) respectfully moves for a protective order to keep portions of the Application for a Certificate of Environmental Compatibility and Public Need in the above-captioned case confidential and not part of the public record. The information which is requested to be treated as confidential consists of: (1) financial data representing estimated costs for development, construction and operation of the electric generation facility, and lost revenues related to delays; (2) estimated tax revenues; and (3) CCE’s proprietary methods used for identifying potential sites for generation plants. CCE believes that public disclosure of this confidential and sensitive information will have a deleterious effect on competition and will prejudice CCE in discussions/negotiations on any proposed payments in lieu of taxes.

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 pages 5, 26-27, 69-73 and 149 of the Application are submitted under seal.

WHEREFORE, Carroll County Energy LLC respectfully moves for a protective order to keep the financial information, estimated tax revenues, and CCE's proprietary methods used for site selection contained in the Application confidential and not part of the public record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Howard Petricoff", is written over a horizontal line.

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

I. INTRODUCTION

Through this motion, Carroll County Energy LLC (“CCE”), seeks to protect certain information that it deems confidential, and appropriate for protective treatment. The information CCE wishes to protect consists of certain financial data regarding its capital and operating costs and lost revenues resulting from delays; CCE’s proprietary methods for selecting a potential site for a generation facility; and an estimate on tax revenues that will be the subject of discussions and negotiations. All of the information has independent economic value to CCE and could be of value to others. The information is also subject to efforts that are reasonable under the circumstances to maintain its secrecy. All of the redacted information in the public version of the application will be available for review by the Board and the Board’s Staff during the application review process. Accordingly, an order for protective treatment of the confidential treatment is warranted.

II. ARGUMENT

CCE has filed a redacted version of the application and requests that portions of certain pages of the application be kept under seal. Pages 69-73 of the application contain confidential financial information that should be protected from public disclosure. These pages contain estimated capital and intangible costs for development and construction of the electric generation facility and operational costs, all of which constitute sensitive and confidential information. The redacted information also includes estimates of monthly revenue loss as a result of delays.

Pages 5 and 26-27 of the Application contain information on CCE's proprietary methods for identifying potential sites for development as power generation facilities, while Page 149 of the Application contains an estimate on tax revenues proposed to be paid under an Enterprise Zone agreement that has yet to be negotiated with local authorities. The redacted site selection information summarizes how Advanced Power, CCE's affiliate, identifies potential sites for power generation facilities out of the land mass of North America and Europe, and on a regional basis. This process constitutes a company trade secret and is kept confidential in order to maintain a competitive advantage over other companies. CCE's estimate on local tax revenues should also remain confidential, as disclosure could prejudice CCE in any discussions on the formation of an Enterprise Zone agreement and any payments in lieu of tax under that agreement.

Because revealing this information in a publicly filed document would provide the Applicant's competitors with a competitive advantage and prejudice CCE in its project development discussions, CCE seeks a protective order under Rule 4906-7-07(H)(4) to maintain that confidentiality. That rule 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 will have full access to the information in order to fulfill the Board's 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. *See* 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 (emphasis added). 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 CCE 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.

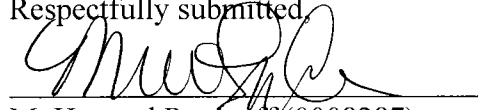
Economic analyses and estimated costs for facilities are generally not disclosed and constitute a trade secret. Disclosure of the tax estimates would prejudice CCE in the formation of the Enterprise Zone agreement and the payments that would be negotiated under that agreement. Further, the methods that Advanced Power, CCE's affiliate, uses to identify sites for future facilities are proprietary trade secrets, and disclosure of such information could give competitors of CCE an undue competitive advantage. Public disclosure of the information is not likely to either assist the Board in carrying out its duties, nor does it serve any other public

policy. Accordingly, protective treatment of all of the redacted portions of the Application is warranted.

III. CONCLUSION

For the foregoing reasons, CCE requests that the Administrative Law Judge grant its motion for a protective order to maintain the financial data, tax revenue estimate, and CCE's proprietary methods used to identify potential sites for development as confidential and not subject to public disclosure.

Respectfully submitted,



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Summary: Motion Motion for Protective Order and Memorandum in Support electronically filed by Mr. Stephen M Howard on behalf of Carroll County Energy LLC