

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Hillcrest Solar I, LLC for a Certificate</b>	)	
<b>of Environmental Compatibility and</b>	)	<b>Case No. 17-1152-EL-BGN</b>
<b>Public Need Issued to Construct an</b>	)	
<b>Electric Generation Facility in Green</b>	)	
<b>Township, Brown County, Ohio</b>	)	

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

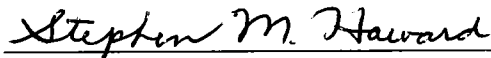
Pursuant to Rule 4906-2-21 of the Ohio Administrative Code, Hillcrest Solar I, LLC (“Hillcrest” or “the Applicant”) respectfully moves for a protective order to keep portions of pages 27-30 of the Application for a Certificate of Environmental Compatibility and Public Need in the above-captioned case confidential and not part of the public record. The information which is requested to be treated as confidential consists of: total estimated capital and intangible costs of the project, estimated capital costs of solar generation projects under development by the applicant and its partners in other mid-Atlantic region states, the estimated annual operations and maintenance cost of the project for the first two years of commercial operation, the solar plant O&M, balance of plant O&M, site maintenance and unplanned maintenance reserves costs, the annual estimated operations and maintenance costs for the project in the first year of operation, the increase in the annual rate of such expenses through the life of the project, and the expected operations and maintenance costs for other facilities under development by the applicant and its partners in mid-Atlantic states, and the assumptions and inflation rate that went into the calculation of the Net Present Value of operations and maintenance costs per kW. The Applicant also seeks protection of the estimated annual and estimated total land lease payments made by it to landowners as shown on pages 18 and 20 of Exhibit D to the Application (Socioeconomic

Report). Hillcrest believes that public disclosure of this confidential and sensitive information will have an adverse effect on it.

Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the practice of the Board, two (2) unredacted copies of pages 27-30 of the Application and pages 18 and 20 of Exhibit D are submitted under seal.

**WHEREFORE**, Hillcrest Solar I, LLC respectfully moves for a protective order to keep such cost information and related figures and the estimated annual and total land lease payments contained in the Application and Exhibit D confidential and not part of the public record.

Respectfully submitted,



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

**I. INTRODUCTION**

Through this motion, Hillcrest Solar I, LLC (“Hillcrest”), seeks to protect certain information that it deems confidential, and appropriate for protective treatment. The information Hillcrest wishes to protect consists of total estimated capital and intangible costs, capital costs of solar generation projects developed by Hillcrest and its partners in other mid-Atlantic states, estimated annual operations and maintenance costs for the first two years of commercial operation, solar plant O&M expenses, balance of plant expenses, maintenance expenses and unplanned maintenance expenses, annual operations and maintenance costs for the project, the estimated increase in such operations and maintenance costs per annum, the operations and maintenance costs for similar projects in mid-Atlantic states, the rate of inflation and the assumptions that go into the calculation of the Net Present Value of operations and maintenance expenses. Hillcrest also seeks to keep confidential the estimated annual and total land lease payments made by it to landowners. All of the information has independent economic value to Hillcrest and could be of value to others. The information is also subject to efforts by the Applicant 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

Hillcrest has filed a redacted version of the application and requests that portions of certain pages of the application be kept under seal. Pages 27-30 of the application and pages 18 and 20 of Exhibit D to the application contain confidential financial information that should be protected from public disclosure. These pages contain estimated capital and intangible costs, operations and maintenance costs, rates of increases, rates of inflation and assumptions that go into the calculation of Net Present Value of operations and maintenance costs, as well as estimated annual and total land lease payments, all of which constitute sensitive and confidential information. Because revealing this information in a publicly filed document would provide the Applicant's competitors and others with a competitive advantage, Hillcrest seeks a protective order under Rule 4906-2-21 to maintain that confidentiality.

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 Hillcrest 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.

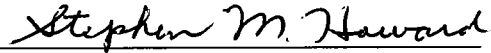
Estimated costs for facilities and estimated land lease payments to landowners are generally not disclosed and constitute a trade secret. Disclosure of such information could give competitors of Hillcrest and others an undue competitive advantage. Public disclosure of the information is not likely to 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, Hillcrest Solar I, LLC requests that the Administrative Law Judge grant its motion for a protective order to maintain the total estimated capital and intangible costs of the project, estimated capital costs of solar generation projects under development by the applicant and its partners in other mid-Atlantic region states, the estimated annual operations and maintenance costs of the project for the first two years of commercial operation, the solar plant O&M, balance of plant O&M, site maintenance and unplanned maintenance reserves costs, the annual estimated operations and maintenance costs for the project in the first year of operation, the increase in the annual rate of such expenses through the life of the project, and the expected operations and maintenance costs for other facilities under development by the applicant and its partners in mid-Atlantic states, and the assumptions and inflation rate that went into the calculation of the Net Present Value of operations and maintenance costs per kW, as well as the

estimated annual and total land lease payments made by Hillcrest to landowners, 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 Hillcrest Solar I, LLC