

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Buckeye Wind LLC to Amend the)
Certificate of Environmental) **Case No. 17-2516-EL-BGA**
Compatibility and Public Need Issued)
In Case No. 08-0666-EL-BGN)

In the Matter of the Application of)
Champaign Wind LLC to Amend the)
Certificate of Environmental) **Case No. 17-2517-EL-BGA**
Compatibility and Public Need Issued)
In Case No. 12-0160-EL-BGN)

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

Pursuant to Rule 4906-2-21 of the Ohio Administrative Code, Buckeye Wind LLC and Champaign Wind LLC (“the Applicants”) respectfully move for a protective order to keep portions of pages 38-40 of the Applications for Amendments to Certificates of Environmental Compatibility and Public Need in the above-captioned cases 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, the estimated annual operations and maintenance cost of the operating facilities for the first two years of commercial operation, and the estimated yearly per kW O&M costs for the facilities of Buckeye Wind and Champaign Wind. The Applicants believe that public disclosure of this confidential and sensitive information will have an adverse effect on them.

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 38-40 of the Applications are submitted under seal.

WHEREFORE, Buckeye Wind LLC and Champaign Wind LLC respectfully move for a protective order to keep such estimated cost information contained on pages 38-40 of the Applications confidential and not part of the public record.

Respectfully submitted,

/s/ Michael J. Settineri

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

I. INTRODUCTION

Through this motion, Buckeye Wind LLC and Champaign Wind LLC seek to protect certain information that they deem confidential, and appropriate for protective treatment. The information the Applicants wish to protect consists of total estimated capital and intangible costs, the estimated annual operations and maintenance costs of the operating facilities for the first two years of operation, and the estimated yearly per kW O&M costs for the facilities of Buckeye Wind and Champaign Wind. All of the information has independent economic value to the Applicants and could be of value to others. The information is also subject to efforts by the Applicants that are reasonable under the circumstances to maintain its secrecy. All of the redacted information in the public versions of the applications 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

The Applicants have filed a redacted version of the applications and request that portions of certain pages of the applications be kept under seal. Pages 38-40 of the applications contain confidential financial information that should be protected from public disclosure. These pages contain estimated capital and intangible costs, the estimated operations and maintenance costs for the first two years of commercial operations, and the estimated yearly per kW O&M costs for the facilities of Buckeye Wind and Champaign Wind. Because revealing this information in a publicly filed document would provide the Applicants' competitors and others with a

competitive advantage, Buckeye Wind LLC and Champaign Wind LLC seek 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 the Applicants seek 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 capital, intangible, operations and maintenance costs for facilities are generally not disclosed and constitute a trade secret. Disclosure of such information could give competitors of the Applicants 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, Buckeye Wind LLC and Champaign Wind LLC request that the Administrative Law Judge grant their motion for a protective order to maintain the confidentiality of the total estimated capital and intangible costs of the project, the estimated annual operations and maintenance costs of the project for the first two years of commercial operation, and the estimated yearly per kW O&M costs for the facilities of Buckeye Wind and Champaign Wind.

Respectfully submitted,

/s/ Michael J. Settineri

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Summary: Motion for Protective Order electronically filed by Mr. Michael J. Settineri on behalf of Buckeye Wind LLC and Champaign Wind LLC