

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application)	
of Alamo Solar I, LLC for a)	Case No. 18-1578-EL-BGN
Certificate of Environmental)	
Compatibility and Public Need)	

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

Pursuant to Rule 4906-2-21 of the Ohio Administrative Code, Alamo Solar I, LLC (“Alamo” or “the Applicant”) respectfully moves for a protective order to keep portions of pages 26-30 of the Application and pages 3, 18, and 22 of Exhibit C to the Application 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 land lease payments made by it to landowners as shown on pages 3, 18, and 22 of Exhibit

C to the Application (Socioeconomic Report). Alamo believes that public disclosure of this confidential and sensitive information will have an adverse effect on it.

WHEREFORE, Alamo respectfully moves for a protective order to keep portions of pages 26-30 of the Application and pages 3, 18, and 22 of Exhibit C confidential and not part of the public record. Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Pursuant to Ohio Adm.Code 4906-2-21(D)(3), three unredacted copies of the confidential pages 26-30 of the Application and pages 3, 18, and 22 of Exhibit C are being submitted under seal.

Respectfully submitted,

/s/ MacDonald W. Taylor

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

Alamo Solar I, LLC has submitted the estimated costs and other financial information for the Project found at pages 26-30 of the Application and pages 3, 18, and 22 of Exhibit C under seal and requests that it 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 payments to landowners, 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, Alamo seeks a protective order under Rule 4906-2-21 to maintain that confidentiality. Rule 4906-2-21(D) of the Ohio Administrative Code 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 have full access to the information in order to fulfill its 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. 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. 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, including the protection of estimated costs. *See, e.g., North Coast Gas Transmission LLC*, Case No. 14-1754-GA-BLN (Entry Dec. 30, 2014).

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 Alamo 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.

Such estimated cost information is generally not disclosed and constitutes a trade secret. Its disclosure could give competitors of Alamo an undue advantage. On the other hand, public disclosure of this information is not likely to either assist the Board in carrying out its duties under the rules, or serve any other public policy.

WHEREFORE, for the above reasons, Alamo requests that the Administrative Law Judge grant its motion for a protective order to maintain the estimated cost information on pages

26-30 of the Application and pages 3, 18, and 22 of Exhibit C as confidential and not subject to public disclosure.

Respectfully submitted,

/s/ MacDonald W. Taylor

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Summary: Motion for Protective Order electronically filed by Mr. MacDonald W Taylor on behalf of Alamo Solar I, LLC