

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Hecate Energy Highland 4 LLC for a)	Case No. 20-1288-EL-BGN
Certificate of Environmental)	
Compatibility and Public Need)	
For a Solar- Powered Electric)	
Generating Facility to be Located in)	
Highland County, Ohio)	

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

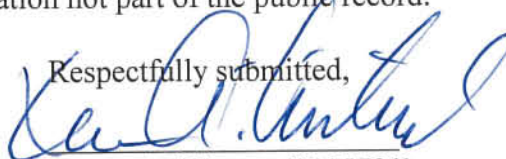
Pursuant to Ohio Admin. Code 4906-2-21(D), Hecate Energy Highland 4 LLC and Hecate Energy Highland 2, LLC (“Hecate Energy ” or “Applicant”) respectfully move the Ohio Power Siting Board (“Board”) for a protective order to keep a portion of the application for a Certificate of Environmental Compatibility and Public Need (“Application”) in the above-captioned case confidential and not part of the public record.

The Applicant requests that portions of pages 26 through 28 of the Application, which consist of financial data representing estimated capital and intangible costs, operation and maintenance costs, estimated capital costs of other solar generation projects under development by the Applicant and its partners in other states, and estimated monthly losses due to delay in construction be kept confidential. The Applicant also requests that portions of Exhibit F (“Geotechnical Boring Schedule”) be kept confidential as it contains information on the cost of geotechnical services. The Applicant believes that public disclosure of this confidential and sensitive information will have a harmful effect on the company’s ability to compete and negotiate contracts with potential vendors for the Projects.

Hecate Energy believes that public disclosure of the above-described confidential and sensitive information will have an adverse effect on it and give its competitors an unfair advantage. An 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 the confidential pages of the Application plus the original have been submitted to the Docketing Division under seal.

WHEREFORE, Hecate Energy respectfully moves for a protective order to keep the confidential information contained in the Application not part of the public record.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

Pursuant to Chapter 4906 of the Ohio Revised Code (“R.C.”) and Ohio Admin. Code Chapter 4906-4, Hecate Energy Highland 4 LLC and Hecate Energy Highland 2, LLC (“Hecate Energy” or “Applicant”) filed, on August 28, 2020, an application for a Certificate of Environmental Compatibility and Public Need to construct New Market Solar I, a 65 MW solar-powered electric generation facility to be located in Clay and Whiteoak Townships, Highland County Ohio and New Market Solar II, a 35 MW solar-powered electric generation facility to be located in Whiteoak Township, Highland County, Ohio (“Projects”). Included in the material supporting the Application is information that is considered trade secret and confidential. Ohio Admin. Code 4906-2-21 provides that the Applicant may file a motion for protective order to protect such information.

Accordingly, Hecate Energy requests a protective order covering the following portions of the Application:

- Financial Data: Pages 26 through 28 contain estimated capital and intangible costs, operation and maintenance costs, estimated capital costs of other solar generation projects under development by the Applicant and its partners in other states, and estimated monthly losses due to delay in construction
- Cost of Services: Portions of Exhibit F contain the cost of geotechnical services by Applicant

As will be further discussed below, the above-described information has independent economic value to Hecate Energy 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.

Therefore, the Applicant has submitted these pages of the Application under seal to maintain their confidentiality and requests that they be kept confidential and not part of the public record.

II. PROJECT BACKGROUND

The Applicant is proposing to construct a New Market Solar I, a 65 MW solar-powered electric generation facility to be located in Clay and Whiteoak Townships, Highland County, Ohio and New Market Solar II, a 35 MW solar powered electric generation facility to be located in Clay and Whiteoak Townships, Highland County, Ohio.

Both of these facilities will generate clean, renewable electricity through arrays of ground-mounted photovoltaic ("PV") modules and associated facilities. The electricity will be gathered through separate networks of collection lines and conveyed to a Project substation, which in turn will deliver power to the PJM network through a 345 kV three-breaker ring bus switchyard to be constructed, owned and operated by Dayton Power & Light to be known as its Clay Substation. The purpose of the Project is to provide power to the PJM grid. Construction is anticipated to begin with respect to both facilities in early 2021, with completion and the start of commercial operations by the fourth quarter of 2021.

III. ARGUMENT

Hecate Energy has filed a redacted version of its Application with the Board's Docketing Division and requests that portions of certain pages of the Application be kept under seal. Pages 26 through 28 and portions of Exhibit F contain confidential financial information that should be protected from public disclosure. These pages contain estimated capital and intangible costs, operation and maintenance costs, estimated capital costs of other solar generation projects under development by the Applicant and its partners in other states, estimated monthly losses due to delay in construction, and cost of geotechnical services. Because revealing this information in a publicly filed document would provide the Applicant's competitors and others with a competitive

advantage, Hecate Energy seeks this protective order under Ohio Admin. Code 4906-2-21(D) to maintain that confidentiality.

The Ohio Administrative Code expressly permits the Board or the administrative law judge (“ALJ”) assigned to the case to protect the confidentiality of certain information filed with the Board’s Docketing Division. *See* Ohio Admin. Code 4906-2-21. In particular, Ohio Admin. Code 4906-2-21(D) 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 [ALJ] 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 [ALJ] 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.

See Ohio Admin. Code § 4906-2-21(D). First, non-disclosure of the information Hecate has requested to be kept confidential will not impair the purposes of R.C. Chapter 4906. 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 in order to fulfill its statutory obligations. Furthermore, no purpose of R.C. Chapter 4906 would be served by the public disclosure of the information sought to be protected.

Second, the confidential information which Hecate Energy has requested be kept confidential would be considered a “trade secret” under Ohio law. Ohio law recognizes the need to protect certain types of information, which are the subject of this motion. *See* R.C. §§ 1331.61 to 1333.69. The definition of a “trade secret” is set forth in Ohio’s Uniform Trade Secrets Act, which states:

“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.

See R.C. 1333.61(D) (emphasis added). This definition clearly reflects an Ohio policy favoring the protection of trade secrets including the confidential financial information which is the subject of this motion.

Courts in Ohio have further defined “trade secret” as well. In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997), the Ohio Supreme Court adopted the six factor test set forth in *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d. 588, 592 (1983). The six 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.

Using the above-described factors, the Board, too, has recognized its duty to protect trade secrets of companies subject to its jurisdiction and has granted protection to the same type of financial information Hecate Energy is requesting be kept confidential in this motion. See *Buckeye Wind*, Case No. 08-666-EL-BGN (Entry July 31, 2009) (original construction investment, estimated lease payments, estimated operation and maintenance costs, estimated budget, gross annual revenues, and wages); *Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN (Entry Jan. 6, 2014) (financial data regarding the development, construction and operation of the proposed generation facility, proprietary methods for selecting potential sites for a generation facility, and estimated tax

revenues subject to negotiations with local authorities); North Coast Gas Transmission, LLC, Case No. 14-1754-GA-BLN (Entry Dec. 30, 2014) (estimated capital costs of the project); Hillcrest Solar I LLC, Case No. 17-1152-EL-BGN (Entry February 15, 2017) (total estimated capital and intangible costs of the proposed facility and similar projects under development in other regions, estimated annual operations and maintenance costs, and other financial data).

Applying these factors to the information Hecate Energy 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 ultimately meets the six factor test adopted in *State ex rel. The Plain Dealer*. Estimated costs for facilities are generally not disclosed and constitute a trade secret within a company. The above-described information contained in the Application is not available outside the company and cannot be found in the public domain. Not only is this information not publicly available, but the financial data within the Application is closely held within the company and/or is only disclosed to members on a “need-to-know” basis. This heightened confidentiality and protection evidences the significant precautions taken by the company to guard the secrecy of the information. Thus, the first three factors of Ohio’s trade secret test have been met in this case.

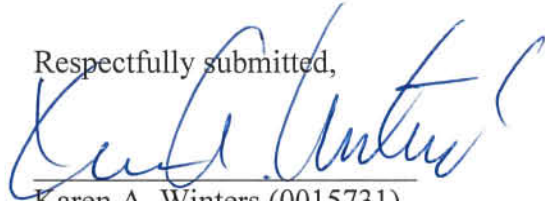
Further, if the above-described information were made available to the public, the time and money expended for purposes of developing this Application would be unfairly bestowed on competitors. Developers seeking to compete with the Applicant and build similar projects would gain the benefit of the Applicant’s methodologies and costs without undertaking the enormous effort and expense incurred by the Applicant to produce the information. This would give competitors an unfair advantage at the expense of the Applicant and to its detriment. As such, the final three factors of Ohio’s trade secret test have also been met.

Finally, public disclosure of the information will likely not assist the Board in carrying out its duties, nor does it serve any other public policy purpose. Accordingly, protective treatment of all of the redaction portions of the Application is justified.

IV. CONCLUSION

For the above reasons, the Applicant requests that the Board or the ALJ grant its motion for a protective order to maintain the information described above as confidential and not subject to public disclosure.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Karen A. Winters", is written over a horizontal line.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will automatically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case.



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Case No(s). 20-1288-EL-BGN

Summary: Motion Motion for Protective Order and Memorandum in Support electronically filed by Ms. Karen A. Winters on behalf of Hecate Energy Highland 4 LLC