

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Powell )  
Creek Solar, LLC for a Certificate of )  
Environmental Compatibility and Public Need ) Case No. 20-1084-EL-BGN  
for a Solar Facility Located in Putnam )  
County, Ohio. )

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**POWELL CREEK SOLAR, LLC'S  
MOTION FOR PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-21(D), Powell Creek Solar, LLC (“Powell Creek” or the “Applicant”) respectfully moves for a protective order to keep certain equipment data in the Sound Assessment, Revised Final, filed in this case on March 1, 2021 (the “Revised Sound Assessment”) confidential and not part of the public record.

Specifically, the Applicant requests that limited vendor confidential information identified in Table 3-1 of the Revised Sound Assessment be afforded protective treatment. This information is only available to the Applicant under the terms of a Non-Disclosure Agreement with the vendor. This information is competitively sensitive, and its release would not only harm the vendor, but also the Applicant’s reputation and ability to compete in the marketplace. The Applicant has taken steps to protect the confidentiality of this information in its ordinary course of business.

**WHEREFORE**, Powell Creek Solar, LLC respectfully moves for a protective order to keep limited vendor confidential information identified in Table 3-1 of the Revised Sound Assessment confidential and not part of the public record. The basis for this Motion is further described in the attached Memorandum in Support. Pursuant to OAC Rule 4906-2-21(D)(2), three unredacted copies of the confidential pages have been submitted under seal and marked “confidential,” “proprietary,” or “trade secret” as applicable.

Respectfully submitted on behalf of  
Powell Creek Solar, LLC



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND BACKGROUND**

In accordance with Ohio Revised Code (“R.C.”) Chapter 4906 and OAC Chapter 4906-4, Powell Creek filed an application on October 7, 2020 for a certificate to construct a solar-powered electric generation facility (“Project” or “Facility”) in Putnam County, Ohio. The general purpose of the Facility is to provide clean, cost-effective, renewable energy to the transmission grid operated by PJM Interconnection, LLC.

On March 1, 2021, the Applicant sent to Staff a limited modification of the Project layout, which was filed on the docket on March 2, 2021. The purpose of this modification is to formally remove a block of solar panels from the layout, thereby increasing the distance between the Facility and certain non-participating property owners. As part of this modification filing, the Applicant included a Revised Sound Assessment, which shows reduced sound impacts to neighboring property owners from the Facility.

Table 3-1 of the Revised Sound Assessment contains confidential information about inverter equipment, for which the Applicant seeks confidential treatment. This information was provided by the equipment vendor to the Applicant for use in the Revised Sound Assessment under a Non-Disclosure Agreement between the vendor and Applicant. The Applicant sought to include this

information in the Revised Sound Assessment in order to be responsive to a prior Staff Data Request.<sup>1</sup>

Because the above-listed information contains competitively sensitive and highly proprietary business financial information, Powell Creek has submitted the information under seal. Powell Creek believes that public disclosure of this confidential and sensitive information will have an adverse effect on it.

Therefore, Powell Creek requests that the Board issue an order to protect the confidentiality and prohibit the disclosure of this information.

## **II. LEGAL STANDARD**

OAC Rule 4906-2-21 permits the Board or the administrative law judge (“ALJ”) assigned to the case to protect the confidentiality of certain information. Specifically, OAC Rule 4906-2-21(D) provides that:

Upon 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.

Here, the nondisclosure 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 their statutory obligations. Moreover, no purpose of Title 49 would be served by the public disclosure of the information sought to be protected. Importantly, the nondisclosure of this information will not impact the public’s ability to identify the potential sound impacts from the Facility. Further, the information to be

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<sup>1</sup> See Responses to Staff’s Third Set of Data Requests, filed February 22, 2021 (Question No. 7 from Staff requested this inverter information).

protected is highly limited: only a single row of data within Table 3-1 of the Revised Sound Assessment. Thus, the question becomes whether the confidential information may 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. R.C. 1331.61 to 1333.69. Recognizing this need, the Board has issued orders protecting trade secrets and confidential information in numerous proceedings. See, e.g., *Buckeye Wind*, Case No. 08-666-EL-BGN, Entry (July 31, 2009); *Paulding Wind Farm LLC*, Case No. 09-980-EL-BGN, Entry (Feb. 23, 2010); *Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN, Entry (Jan. 6, 2014); *North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014); *Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *Vinton Solar Energy, LLC*, Case No. 17-774-EL-BGN, Opinion and Order (Sept. 20, 2018); *Paulding Wind Farm IV LLC*, Case No. 18-91-EL-BGN, Opinion and Order (Feb. 21, 2019); *Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020).

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), which served to further define “trade secrets” under Ohio law. 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.

Importantly, the Board also protects other confidential information in addition to trade secrets. Under OAC Rule 4906-2-21(A)(7), the Board may issue a protective order providing that a “trade secret *or other confidential research, development, commercial, or other information* not be disclosed or be disclosed only in a designated way.” (emphasis added). Here, the need to protect the designated information from public disclosure in this case is clear.

### **III. DISCUSSION**

The information the Applicant seeks to keep confidential and outside the public record meets each of the six factors that determine the existence of a trade secret under Ohio law. Considering the competitive environment in which Powell Creek operates, the information requested is highly proprietary, confidential, and commercially sensitive.

Powell Creek has treated this information as trade secrets—indeed, it has a legal obligation to do so under the Non-Disclosure Agreement with its inverter vendor. In the ordinary course of business, the information is deemed confidential and is treated as proprietary and confidential by the vendor, and in turn, Powell Creek’s employees. Even within Powell Creek’s business, this information is disclosed only to those employees who “need to know.” The information for which protection is sought describes sensitive data related to the operation of the proposed Project.

Importantly, the disclosure of this information could give competitors of Powell Creek an undue advantage. Other developers seeking to compete with Powell Creek and build similar projects would gain the benefit of the Applicant’s methodologies without having to undertake the enormous effort and expense incurred to generate the information. This situation would give competitors an unfair advantage. Moreover, the disclosure of this information—for which Powell Creek has a legal commitment to protect---would harm the vendor and Powell Creek’s reputation with that vendor and within the industry.

#### IV. CONCLUSION

For the foregoing reasons, the limited information within Table 3-1 of the Revised Sound Assessment, described herein, contains competitively sensitive and highly proprietary business information falling within the statutory characterization of a trade secret. Powell Creek should be required to provide such commercially sensitive information only under seal, precluding potential competitors from gaining access to it, and thereby allowing it to maintain its legal obligations to its vendor.

Therefore, the Powell Creek requests that the Board or the ALJ grant its motion for protective order to maintain the information described above as confidential and not subject to public disclosure.

Respectfully submitted on behalf of  
Powell Creek Solar, LLC



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion was served upon the parties of record listed below this 2<sup>nd</sup> day of March 2021 *via* electronic mail.



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Summary: Motion for Protective Order by Powell Creek Solar, LLC electronically filed by Teresa Orahod on behalf of Dylan F. Borchers