

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Marion County	)	
Solar Project, LLC for a Certificate of	)	
Environmental Compatibility and Public Need to	)	Case No: 21-36-EL-BGN
Construct a Solar-Powered Electric Generation	)	
Facility in Marion County, Ohio.	)	

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

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Pursuant to Rule 4906-2-21(D) of the Ohio Administrative Code (“O.A.C.”), Marion County Solar Project, LLC (the “Applicant” or “Company”) respectfully moves the Ohio Power Siting Board (“Board”) for a protective order to keep certain portions of the Application in this case confidential and not part of the public record.

First, the Applicant requests that portions of pages 24-25 of the Application Narrative and pages 1, 10, and 35 of Application Exhibit G, the Economic Impact and Land Use Analysis (jointly referred to as the “Financial Information”), which include financial data representing estimated capital and intangible costs, and operation and maintenance costs, be kept confidential. The Applicant believes that public disclosure of this confidential and sensitive information will have a harmful effect on the Company’s ability to compete in the marketplace and negotiate contracts with potential vendors for the Project.

Second, the Applicant requests that the certificate and policy numbers in Application Exhibit I, the Certificate of Liability Insurance (“Certificate”), be kept confidential. The certificate and policy numbers are the subject of reasonable efforts to maintain their secrecy and are not otherwise available in the public domain.

An explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the practice of the Board, unredacted copies of the

confidential pages of the Application Narrative, as well as the confidential portions of Application Exhibits G and I, have been submitted to the Docketing Division under seal.

Accordingly, the Applicant respectfully moves for a protective order to keep the Financial Information and portions of the Certificate under seal and not part of the public record.

Respectfully submitted,

/s/ Christine M.T. Pirik

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

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**I. INTRODUCTION**

In accordance with Ohio Revised Code (“R.C.”) Chapter 4906 and O.A.C. Chapter 4906-4, the Applicant filed an application for a certificate to construct a solar-powered electric generation facility (“Project” or “Facility”) in Marion County, Ohio (the “Application”) on March 5, 2021. Included in the materials supporting the Application is information considered trade secret and confidential. O.A.C. Rule 4906-2-21 provides that the Applicant may file a motion for protective order to protect such information. Accordingly, the Applicant requests a protective order covering the following portions of the Application and designated exhibits:

- A. Financial Information: Portions of pages 24-25 of the Application Narrative and pages 1, 10, and 35 of Application Exhibit G, which contain estimated capital and intangible costs, and operation and maintenance costs.
- B. Certificate: A portion of Application Exhibit I, which contains the certificate and policy numbers.

In light of the highly sensitive, trade secret information contained in the above-listed pages of the Application Narrative and Application Exhibits G and I, the Applicant submits that the information must be kept confidential and not be made part of the public record. Therefore, the Applicant has submitted these pages under seal to maintain their confidentiality.

**II. PROJECT BACKGROUND**

The Applicant is proposing to construct a solar-powered electric generation Facility of up to 100 megawatts (“MWs”), located in Marion Township, Marion County, Ohio. The purpose of the Project is to provide 100-MW of clean, cost-effective, renewable energy to the PJM Interconnection, LLC transmission grid.

### III. LEGAL AUTHORITY

The O.A.C. 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 O.A.C. Rule 4906-2-21. In particular, O.A.C. Rule 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.”

Here, nondisclosure of the information requested to be kept confidential will in no way impair the purposes of R.C. Title 49. The Board and its staff already have full access to the information in order to fulfill the Board’s statutory obligations. Thus, the question becomes whether the confidential information may be considered a “trade secret” under Ohio law.

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.

R.C. Section 1333.61(D).

Courts of other jurisdictions have held that a public utilities commission has the authority to protect trade secrets of companies subject to its jurisdiction. *New York Tel. Co. v. Pub. Serv. Comm.*, 56 N.Y. 2d 213 (1982). In fact, the existence of a state trade secret statute creates a duty of the public utilities commission to protect them. *Id.* Recognizing this duty, the Board has issued orders protecting trade secrets in numerous proceedings. See, e.g., *In re Application of Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN, Entry (Jan. 6, 2014); *In re Application of North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014); *In re Application of Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *In re Application of Cadence Solar Energy LLC*, Case No. 20-1677-EL-BGN (Feb. 18, 2021); *In re Application of Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN (Mar. 3, 2021).

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.

Note that the Board is not necessarily limited to protecting information meeting the precise definition of “trade secret.” 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.” O.A.C. Rule 4906-2-21(A)(7) (*emphasis added*). As will

be discussed in the next section, the information the Applicant seeks to protect should be considered trade secret. In addition, all of the confidential and sensitive information contained in the Application Narrative and Application Exhibits G and I, and described in this motion and memorandum in support, would be considered “confidential research, development, commercial, or other” information warranting protection from the public record, pursuant to the O.A.C.

#### **IV. APPLICATION OF “TRADE SECRET” FACTORS**

The information the Applicant seeks to keep confidential and not part of the public record meets each of the six factors that determine the existence of a trade secret under Ohio law. As detailed in the preceding section, the information would rise to the level of a trade secret if it is not generally known outside (or inside) the Applicant’s business, if sufficient precautions were taken to guard the secrecy of the information, if the information has competitive value, if the Applicant spent significant time and resources developing the information, and if it would take significant time and resources to duplicate the information. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997).

##### **A. Financial Information**

The confidential Financial Information contained in the Application Narrative and Application Exhibit G is not available outside the Company and cannot be found in the public domain. Not only is this information not publicly available, but it is closely held within the Company and is only disclosed to those employees who “need to know.” Such heightened confidentiality 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 this information were made available to the public, the time and money expended for purposes of developing this Application would be unfairly bestowed on competitors.

Other developers seeking to compete with the Applicant and build similar projects would gain the benefit of the Applicant's methodologies without having to undertake the enormous effort and expense incurred by the Applicant to generate the information. This would give competitors an unfair advantage at the expense of the Applicant. As such, the final three factors of Ohio's trade secret test have been met in this case.

## **B. Certificate**

The Board has recognized that the certificate numbers and policy numbers contained in certificates of liability insurance should be granted protective treatment under the rules and regulations. See *In re Application of Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *In re Application of Vinton Solar Energy, LLC*, Case No. 17-774-EL-BGN, Opinion and Order (Sept. 20, 2018); *In re Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020); *In re Application of Cadence Solar Energy LLC*, Case No. 20-1677-EL-BGN (Feb. 18, 2021). The certificate numbers and policy numbers contained in Application Exhibit I are highly confidential and closely held by the Applicant. Therefore, those portions of the Certificate are being submitted under seal to maintain their confidentiality. Further, the Applicant notes that disclosure of this information is unlikely to assist the Board in carrying out its duties, especially since the Board and its staff can view unredacted versions placed under seal. Disclosure would similarly not serve any other public policy.

## V. CONCLUSION

For the foregoing 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,

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## CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 5<sup>th</sup> day of March 2021.

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4848-5441-7631 v1 [88534-4]

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 21-0036-EL-BGN**

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Marion County Solar Project, LLC