

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **Union Ridge Solar, LLC** for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Licking County, Ohio. )  
)  
) Case No. 20-1757-EL-BGN  
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**UNION RIDGE SOLAR, LLC'S  
MOTION FOR PROTECTIVE ORDER**

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

Specifically, Applicant requests that a portion of Exhibit H—a report assessing the socioeconomic impact of the Project (“Socioeconomic Report”)—and Exhibit R—a survey of archaeological resources (“Phase I Archaeological Reconnaissance Survey)—be kept confidential. The portion of these Exhibits Applicant seeks to redact contains financial data representing the investment and capital cost to the Company, as well as data collected with significant time and investment on Applicant’s part. Applicant believes that public disclosure of such 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.

**WHEREFORE**, Union Ridge respectfully moves for a protective order to keep limited portions of Exhibits H and R to the Application confidential and not part of the public record. The basis for this Motion is further described in the attached Memorandum in Support. Moreover, pursuant to Case No. 20-591-AU-UNC, copies of the confidential portions of the

exhibits in question have been electronically filed under seal and marked “confidential,”  
“proprietary,” or “trade secret,” as applicable.

Respectfully submitted on behalf of  
UNION RIDGE 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 Ohio Administrative Code (“O.A.C.”) Chapter 4906-4, Union Ridge is filing an application for a certificate to construct a solar-powered electric generation facility (“Project” or “Facility”) in Licking County, Ohio (the “Application”) on March 26, 2021. Union Ridge is proposing to construct a Facility of up to 108 megawatts. The general purpose of the Facility is to provide clean, cost-effective, renewable energy to the transmission grid operated by PJM Interconnection, LLC.

Contemporaneously filed with the Application is information considered trade secret and confidential. O.A.C. Rule 4906-2-21(D) provides that the Applicant may file a motion for protective order to protect such information. In light of the highly sensitive, trade secret information contained in portions of Exhibits H (Socioeconomic Report) and R (Phase I Archaeological Reconnaissance Survey), Applicant submits that the information must be kept confidential and not be made part of the public record. Because the above-listed information contains competitively sensitive and highly proprietary business financial information, Union Ridge has submitted the information under seal. Union Ridge believes that public disclosure of this confidential and sensitive information will have an adverse effect on it.

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

## **II. LEGAL STANDARD**

O.A.C. 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, O.A.C. 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, 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. 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., *Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Opinion, Order, and Certificate (Feb. 18, 2021); *Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (Sept. 23, 2020); *Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020); *Paulding Wind Farm IV LLC*, Case No. 18-91-EL-BGN, Opinion and Order (Feb. 21, 2019); *Vinton Solar*

*Energy, LLC*, Case No. 17-774-EL-BGN, Opinion and Order (Sept. 20, 2018); *Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014); *Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN, Entry (Jan. 6, 2014); *Paulding Wind Farm LLC*, Case No. 09-980-EL-BGN, Entry (Feb. 23, 2010); *Buckeye Wind*, Case No. 08-666-EL-BGN, Entry (July 31, 2009).

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 (8th Dist. 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 O.A.C. 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 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 Union Ridge operates, the information requested in Exhibits H and R is highly proprietary, confidential, and commercially sensitive.

Union Ridge has treated the information contained in Exhibits H and R as confidential and trade secret. In the ordinary course of business, the information is deemed confidential and is treated as proprietary and confidential by Union Ridge's employees. Even within the Company, this information is disclosed only to those employees who "need to know." The information for which protection is sought describes financial information and operation of the proposed Project. It contains the assumptions and rates that went into the calculation of the present value of operations and maintenance expenses, financial arrangements, and projected financial information. This financial information concerning the Project is closely guarded and not disclosed to anyone unless required pursuant to a legal proceeding. Thus, the first three factors of Ohio's trade secret test have been met in this case.

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

#### **IV. CONCLUSION**

For the foregoing reasons, the portions of Exhibits H and R contain confidential, competitively sensitive and/or highly proprietary business financial information falling within the statutory characterization of a trade secret. Union Ridge should be required to

provide such commercially sensitive information only under seal, precluding potential competitors from gaining access to it.

Therefore, Applicant requests that the Board or 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  
UNION RIDGE SOLAR, LLC



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Summary: Motion for Protective Order and Memorandum in Support electronically filed by  
Teresa Orahod on behalf of Dylan F. Borchers