

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Dodson Creek Solar, LLC for a)	Case No. 20-1814-EL-BGN
Certificate of Environmental)	
Compatibility and Public Need)	

**MOTION FOR A PROTECTIVE ORDER
OF DODSON CREEK SOLAR, LLC
AND
MEMORANDUM IN SUPPORT**

Pursuant to Ohio Adm.Code 4906-2-21, Dodson Creek Solar, LLC (“the Applicant”) respectfully moves for a protective order to keep the following portions of its Application confidential and not part of the public record: the cost-related information on pages 35-37 of the Application narrative; the cost-related information on pages 10-14 of Exhibit J to the Application (Socioeconomic Report); and the cost-related information on pages 6, 8, and 9 of Exhibit M to the Application (Decommissioning Report).

The information that is requested to be treated as confidential consists of: namely the total estimated capital and intangible costs of the project, cost comparison with a similar facility, present worth of the capital costs, estimated annual staffing and operations and maintenance (“O&M”) cost of the project for the first two years of commercial operation, O&M cost comparisons, and present worth of the O&M cost. The Applicant also seeks confidential treatment of cost-related information included in Exhibit M to the Application (Decommissioning Plan).

The Applicant believes that public disclosure of this confidential and sensitive information will have an adverse effect on it and others. The Applicant, therefore, respectfully moves for a protective order to keep cost-related information on pages 35-37 of the Application narrative, the

cost-related information on pages 10-14 of Exhibit J, the cost-related information on pages 6, 8, and 9 of Exhibit M, and all disclosures set forth in Exhibit T as 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 the Ohio Adm.Code 4906-2-21(D), three unredacted confidential copies of pages 35-37 of the Application narrative, the cost-related information on pages 10-14 of Exhibit J, and the cost-related information on pages 6, 8, and 9 of Exhibit M are being submitted separately under seal in this proceeding.

Respectfully submitted,

/s/ Anna Sanyal

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

Dodson Creek Solar, LLC (“the Applicant”) has submitted the estimated costs and other financial information for its proposed facility at pages 35-37 of the Application narrative, the cost-related information on pages 10-14 of Exhibit J, and the cost-related information on pages 6, 8, and 9 of Exhibit M. The three pages of the Application narrative and the cost-related information on pages 10-14 of Exhibit J contain highly sensitive cost information, namely the total estimated capital and intangible costs of the project, cost comparison with a similar facility, present worth of the capital costs, estimated annual staffing and operations and maintenance (“O&M”) cost of the project for the first two years of commercial operation, O&M cost comparisons, and present worth of the O&M cost. Disclosure of this financial information would provide the Applicant’s competitors (and others in the industry) with details of its business operations, to the advantage of its competitors.

Next, the Decommissioning Plan reveals commercially sensitive information regarding the Applicant’s decommissioning cost projections as of the start of commercial operation of the Project. Public accessibility of this information would cause the Applicant harm because other solar project developers and potential competitors would have access to the information calculated specifically for this Project. As a result, the Applicant’s ability to compete would be hindered as other solar projects would have information on whether Applicant would be required to incur (or not incur) decommissioning bonding costs at the start of commercial operation.

In sum, revealing the cost-related information in a publicly filed document would provide the Applicant’s competitors and others with a competitive advantage. Further, disclosing proprietary, cost-related information related to decommissioning will decrease the Applicant’s ability to compete in the solar development market. Therefore, the Applicant seeks a protective

order under Ohio Adm.Code 4906-2-21 to keep the above-identified information confidential.

Ohio Adm.Code 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 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 above information in the Application will not impair the purposes of Title 49. The Board and its Staff have full access to the information in order to fulfill the 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 the types of information that are the subject of this motion. R.C. 1331.61 to 1333.69. 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.

R.C. 1333.61(D), Revised Code (emphasis added). This definition clearly reflects Ohio's 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.

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*, 7 Ohio App. 3d 131, 134-135, 7 OBR 165, 169, 454 N.E. 2d. 588, 592 (1983). 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 the Applicant seeks to keep confidential, it is clear that the information for which it seeks protective treatment has independent economic value, is the subject of reasonable efforts to maintain its secrecy, and meets the six-factor test set forth above. First, its estimated cost information is generally not disclosed and it constitutes a trade secret. In addition, this Board or its Administrative Law Judge has previously concluded that estimated project costs is trade secret information. *See, e.g., In re Ross County Solar*, Case No. 20-1380-EL-BGN, Entry (Jan. 20, 2021) at ¶ 17; *In re Big Plain Solar, LLC*, Case No. 19-

1823-EL-BGN, Entry (July 7, 2020) at ¶ 12; *Hillcrest Solar I*, Opinion, Order, and Certificate (Feb. 15, 2018) at ¶ 19; and *In re North Coast Gas Transmission LLC for a Certificate Relative to the Oregon Lateral Pipeline*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014) at ¶ 3. A similar conclusion should be reached in this matter with regard to estimated project and decommissioning costs.

For the above reasons, Applicant requests that the Administrative Law Judge grant its motion for a protective order to maintain the cost information on pages 35-37 of the Application narrative, the cost-related information on pages 10-14 of Exhibit J, and the cost-related information on pages 6, 8, and 9 of Exhibit M under seal and requests that this information be protected from 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 on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 27th day of May, 2021 upon all persons/entities listed below:

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/s/ Anna Sanyal
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Summary: Motion Motion For a Protective Order and Memorandum in Support electronically filed by Ms. Anna Sanyal on behalf of Dodson Creek Solar, LLC