

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application)	
of Angelina Solar I, LLC for a)	Case No. 18-1579-EL-BGN
Certificate of Environmental)	
Compatibility and Public Need)	

**ANGELINA SOLAR I, LLC’S MOTION TO EXTEND PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Adm.Code 4906-2-21, on December 3, 2018, Angelina Solar I, LLC (“Angelina”) filed a motion for protective order to keep pages 26-30 of its Application for a Certificate of Environmental Compatibility and Public Need (“Application”) and pages 3, 17, and 21 of Exhibit C to the Application confidential and not part of the public record. The administrative law judge granted this motion on January 17, 2019. These confidential documents were submitted into the record during the evidentiary hearing on July 31, 2019. Angelina now requests continuing protection of these parts of its Application, pursuant to Ohio Adm.Code 4906-2-21(F). The reasons underlying this motion are detailed in the attached Memorandum in Support.

WHEREFORE, Angelina respectfully requests that this motion be granted and that the unredacted portions of Angelina’s Application remain under seal.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri, Counsel of Record (0073369)

Gretchen L. Petrucci (0046608)

Clifford W. Lauchlan (0092357)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street,

Columbus, Ohio 43215

Telephone: (614) 464-5462

Fax: (614) 791-5146

mjsettineri@vorys.com

glpetrucci@vorys.com

cwlauchlan@vorys.com

Attorneys for Angelina Solar I, LLC

**MEMORANDUM IN SUPPORT OF
ANGELINA SOLAR I, LLC’S MOTION TO EXTEND PROTECTIVE ORDER**

On December 3, 2018, Angelina Solar I, LLC (“Angelina” or “Applicant”) commenced this proceeding by filing an Application for a Certificate of Environmental Compatibility and Public Need (“Application”). Along with the Application, Angelina filed a motion for protective order to keep portions of pages 26-30 of the Application and pages 3, 17, and 21 of Exhibit C to the Application confidential and not part of the public record.

The information Angelina sought protection for consisted of total estimated capital and intangible costs of the project, estimated capital costs of solar generation projects under development by the Applicant and its partners in other mid-Atlantic region states, the estimated annual operations and maintenance (“O&M”) cost of the project for the first two years of commercial operation, the solar plant O&M, balance of plant O&M, site maintenance and unplanned maintenance reserves costs, the annual estimated O&M costs for the project in the first year of operation, the increase in the annual rate of such expenses through the life of the project, the expected O&M costs for other facilities under development by the Applicant and its partners in mid-Atlantic states, and the assumptions and inflation rate that went into the calculation of the net present value of O&M costs per kW. The Applicant also sought protection for the estimated annual land lease payments made by it to landowners as shown on pages 3, 17, and 22 of Exhibit C to the Application (Socioeconomic Report). In the original motion for protective order, Angelina explained that public disclosure of this confidential and sensitive information would have an adverse effect on it. These documents were filed under seal on December 3, 2018. The administrative law judge (“ALJ”) granted Angelina’s motion on January 17, 2019 and submitted them into the record during the evidentiary hearing on July 31, 2019.

Angelina now seeks to obtain continuing protective treatment for the documents at issue. While Angelina, through inadvertent oversight, did not file this renewed motion on or before January 17, 2021, as discussed further, the circumstances for protecting this information have not changed. Public disclosure of the capital and intangible costs; various O&M costs; and annual lease payments would put Angelina at a competitive disadvantage due to the robust solar industry in Ohio. Currently, there are over 40 solar facilities that have been proposed in Ohio.¹ Consequently, disclosure of this sensitive information would hinder Angelina from competing with other solar facility developers in Ohio.

The need to protect the designated information from public disclosure is evident, and there is clear legal authority supporting the protective order. 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 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. Likewise, the Board’s own rules support trade secret protection. Ohio Adm.Code 4906-2-21(D).

¹ <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/solar-farm-map-and-statistics>.

The Board's rules also contemplate extension of protective orders that are granted by the Board. Ohio. Adm.Code 4906-2-21(F).

Additionally, 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.

The Ohio Supreme Court adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (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.

State ex rel The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 3d 513, 524-525 (1997) (internal citation and quotation omitted).

Applying these factors to the confidential information Angelina seeks to protect, the need for extension of the previously granted protection is obvious. The original circumstances for granting the protective order have not changed. The documents at issue contain estimated capital and intangible costs, operations and maintenance costs, rates of increases, rates of inflation and assumptions that go into the calculation of net present value of operations and maintenance costs, as well as estimated annual payments to landowners, all of which constitute sensitive and confidential information. None of this information is generally disclosed and constitutes a trade secret. Revealing this proprietary information in a publicly filed document would provide the

Applicant's competitors and others with a competitive advantage, especially due to the highly-competitive state of solar development in Ohio.

As well, no party will be prejudiced if the protective order is extended. Ohio Adm.Code 4906-2-21(D) provides for the protection of confidential information contained in documents filed with the Board's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. The non-disclosure of confidential information in Angelina's Application will not impair the purposes of Title 49. The ALJ has previously examined the information under seal and found that protective order should be granted to the information. Entry (Jan. 17, 2019), at ¶ 14. The Board and its Staff also retain access to the confidential information in order to fulfill any statutory obligations. As well, no party challenged the original motion for protective order nor does any party have a right to public access to Angelina's confidential, proprietary and trade secret information. Finally, the Board, or its Administrative Law Judge, has routinely granted protection of such documents. *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.

WHEREFORE, for the above reasons, Angelina respectfully requests that the protective order previously granted in this proceeding be extended and that the confidential information in Angelina's Application continue to remain under seal.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri, Counsel of Record (0073369)

Gretchen L. Petrucci (0046608)

Clifford W. Lauchlan (0092357)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street,

Columbus, Ohio 43215

Telephone: (614) 464-5462

Fax: (614) 791-5146

mjsettineri@vorys.com

glpetrucci@vorys.com

cwlauchlan@vorys.com

Attorneys for Angelina Solar I, LLC

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio’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 this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the following persons below via electronic mail on December 8, 2021:

Jodi Bair	jodi.bair@ohioattorneygeneral.gov
Kathryn West	kwest@prebco.org
W. Joseph Scholler	jscholler@fbtlaw.com
Thaddeus Boggs	tboggs@fbtlaw.com
Chad Endsley	cendsley@ofbf.org
Leah Curtis	lcurtis@ofbf.org
Amy Milam	amilam@ofbf.org
Jack Van Kley	jvankley@vankleywalker.com
Chris Walker	cwalker@vankleywalker.com

/s/ Michael J. Settineri

Michael J. Settineri

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Summary: Motion Renewed Motion to Extend Protective Order and Memorandum
in Support electronically filed by Mr. Michael J. Settineri on behalf of Angelina Solar
I, LLC