

**BEFORE  
THE OHIO POWER SITING BOARD**

In The Matter of The Application of **Circleville** )  
**Solar, LLC** for a Certificate of Environmental )  
Compatibility and Public Need For The ) Case No. 21-1090-EL-BGN  
Construction of a Solar Powered Electric )  
Generation Facility in Pickaway County, Ohio )

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**MOTION FOR A PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code ("O.A.C") Rule 4906-2-21(D), Circleville Solar, LLC ("Circleville Solar" 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, the Applicant requests that portions of Exhibit H, a report assessing the socioeconomic impact of the Project ("Socioeconomic Report"), Exhibit R, a visual impact assessment ("Visual Impact Assessment"), and Exhibit F, a survey of archeological resources ("Archeological Resources Survey"), to be kept confidential. Further, portions of pages 28-30 of Application Section 4906-4-06(B)-(C) ("Narrative") include sensitive economic information similar to that to Exhibit H. The information 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 Applicant's ability to compete in the marketplace and negotiate contracts with potential vendors for the Project. In addition, Applicant seeks to protect information identifying archeological sites as a result of the fieldwork described in Exhibit F and Exhibit R. Applicant believes that public disclosure of this

confidential and sensitive information will have an adverse effect on it and risk harm to archeological sites

**WHEREFORE**, Circleville Solar respectfully moves for a protective order to keep limited portions of Exhibit H, Exhibit R, and Exhibit F to the Application, as well as the information referenced in Application Section 4906-4-06(B)-(C), 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 the Commission Entry issued on October 20, 2021 in Case No. 20-591-AU-UNC, the confidential portions have been electronically filed under seal and marked “confidential,” “proprietary,” or “trade secret,” as applicable.

Respectfully submitted on behalf of  
Circleville Solar, LLC



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**MEMORANDUM IN SUPPORT**

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In accordance with Ohio Revised Code ("R.C.") Chapter 4906 and OAC Chapter 4906-4, Circleville Solar filed an application for a certificate to construct a solar-powered electric generation facility ("Project" or "Facility") in Pickaway County, Ohio (the "Application") on December 30, 2021. Circleville Solar is proposing to construct a Facility of up to 70 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. OAC 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 Exhibit H (Socioeconomic Report) incorporated into Application Section 4906-4-06(B)-(C), Exhibit R (Visual Impact Assessment) and Exhibit F (Archeological Resources 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,

Circleville Solar has submitted the information under seal. Circleville Solar believes that public disclosure of this confidential and sensitive information will have an adverse effect on it. In addition, Circleville Solar seeks to protect information identifying archeological sites as a result of the fieldwork described in Exhibit F and Exhibit R. Circleville Solar believes that public disclosure of this confidential and sensitive information will have an adverse effect on it and risk harm to archeological sites

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

## **I. 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. 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 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 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.

## **II. 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 Circleville Solar operates, the information requested in Exhibit H, Exhibit R and Exhibit F, as well as the information referenced in Application Section 4906-4-06(B)-(C) is highly proprietary, confidential, and commercially sensitive.

Circleville Solar has treated the information contained in in Exhibit H, Exhibit R and Exhibit F, as well as the information referenced in Application Section 4906-4-06(B)-(C) as confidential and trade secrets. In the ordinary course of business, the information is deemed confidential and is treated as proprietary and confidential by Circleville Solar's employees and 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 including the assumptions and rates that went into the calculation of the present value of operations and maintenance expenses, financial arrangements, and projected financial information. It describes locations of archeological sites/finds that are not currently available in the public domain. This financial and sensitive 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 Circleville Solar an undue advantage. Other developers seeking to compete with the Applicant and build similar projects would gain the benefit of the Applicant's methodologies and findings without having to undertake the enormous effort and expense incurred by 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 secrets have been met in this case.

Furthermore, the Board should protect the archeological site/finds information in Exhibit R and Exhibit F. Protective treatment will allow the Board and Staff to examine the information without risk of harm to the archeological sites. Notably, several federal laws seek to protect and limit harm to archeological resources on federal land and American Indian sacred sites for these same reasons. *See* 16 USC § 470hh; 54 USC § 307103; 36 CFR § 296.18 and 43 CFR § 7. Likewise, other state laws and guidelines restrict public disclosure of archeological site information for similar reasons. *See, e.g.,* New Hampshire RSA 227-C:11. Public disclosure of this information is not likely to either assist the Board in carrying out its duties under the rules, or serve any other public policy.

Thus, Applicant filed these reports under seal to protect the archeological sites/finds, deter unauthorized field investigations, and protect the resources and locational information in the report. The Board should grant confidential treatment of Exhibit R and F to protect the archeological sites and information in the study area for these fundamental policy reasons.

### **III. CONCLUSION**

For the foregoing reasons, portions of the Narrative, Exhibit H, Exhibit R, and Exhibit F contain confidential, competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret, as well as information pertaining to sensitive archeological sites. Circleville Solar should be required to provide such sensitive information only under seal, precluding potential competitors or bad actors 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  
Circleville Solar, LLC



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