

**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 a)	Case No. 22-0117-EL-BTX
Generation Tie Transmission Line in Pickaway)	
County, Ohio)	

MOTION FOR A PROTECTIVE ORDER

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

Specifically, the Applicant requests that Table 6-1 of Application Section 4906-5-06 ("Narrative") be redacted as it includes sensitive economic information. 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.

WHEREFORE, the Applicant respectfully moves for a protective order to keep Table 6-1 of Application Section 4906-5-06 confidential. 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 portion has 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

In accordance with Ohio Revised Code ("R.C.") Chapter 4906 and OAC Chapter 4906-5, the Applicant filed an application for a certificate to construct a Generation Tie Transmission Line ("Project" or "Facility") in Pickaway County, Ohio (the "Application") on June 8, 2022. Circleville Solar is proposing to construct an approximately 3.6-mile, 138 kilovolt (kV) generation tie (gen-tie) transmission line. The general purpose of the Project is to transmit energy generated by the Circleville Solar generation facility to the Circleville 138-kV Substation (Circleville Substation or Substation) in Circleville, Ohio.

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 Table 6-1 of Application Section 4906-5-06, 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, the Applicant has submitted the information under seal. The Applicant

believes that public disclosure of this confidential and sensitive information will have an adverse effect on it.

Therefore, the Applicant 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); *Pauldine 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 the Applicant operates, the information in

Table 6-1 of Application Section 4906-5-06 is highly proprietary, confidential, and commercially sensitive.

The Applicant has treated the information contained in Table 6-1 of Application Section 4906-5-06 as confidential and trade secrets. In the ordinary course of business, the information is deemed confidential and is treated as proprietary and confidential by the Applicant'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. 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 the Applicant's competitors 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.

III. CONCLUSION

For the foregoing reasons, Table 6-1 of Application Section 4906-5-06, contains confidential, competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret. 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 electronically
filed by Teresa Orahoad on behalf of Dylan F. Borchers