

Terraform Power Parent, LLC v Orrick, Herrington & Sutcliffe LLP
2022 NY Slip Op 31568(U)
May 13, 2022
Supreme Court, New York County
Docket Number: Index No. 159383/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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TERRAFORM POWER PARENT, LLC, TERRAFORM
POWER, LLC,

INDEX NO. 159383/2021

Plaintiffs,

MOTION DATE N/A, N/A, N/A

- v -

MOTION SEQ. NO. 001 008 010

ORRICK, HERRINGTON & SUTCLIFFE LLP, CLEARY
GOTTLIEB STEEN & HAMILTON LLP,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49
were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 138, 139, 140, 141,
142
were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 155, 156, 157, 158
were read on this motion to SEAL.

Defendant Orrick, Herrington & Sutcliffe LLP’s (“Orrick”) moves for an order sealing
and/or redacting portions of certain documents filed in connection with this action. In Mot. Seq.
001, Orrick seeks to seal and/or redact NYSCEF 18, 20, 24, and 32, which were filed in
connection with Orrick’s Motion to Compel Arbitration and Stay this Action. In Mot. Seq. 008,
Orrick seeks seal and/or redact NYSCEF 134, 136 which were filed in connection with Orrick’s
Motion to Dismiss. In Mot. Seq. 010, Orrick seeks to seal and/or redact NYSCEF 149, 151, 152,
and 154 which were also filed in connection with Orrick’s Motion to Compel Arbitration and
Stay this Action. No parties oppose these requests. For the following reasons Orrick’s motion to
seal and/or redact is **granted in part and denied in part.**

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the documents at issue and finds the following:

The Settlement Agreement (NYSCEF 32), the Issues List (NYSCEF 20), and the excerpt from the deposition testimony of Bryan Martin (NYSCEF 134) are properly sealed because they contain nonpublic, negotiation terms and/or privately negotiated settlement terms among several parties who are not parties to the instant case (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [“disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”]; *IDW Group, LLC v Levine Ins. Risk Mgt. Services, Inc.*, 40 Misc 3d 368, 382 [Sup Ct, NY County 2013] [finding good cause to seal a settlement

agreement]). The reference to the contents of the Settlement Agreement in Orrick's Memorandum of Law in support of its Motion to Compel Arbitration (NYSCEF 23), as well as a reference to Martin's testimony in Orrick's reply brief (NYSCEF 136) are likewise properly redacted. The proposed redactions are narrowly tailored and satisfy the requirements of 22 NYCRR § 216.1 (a).

However, the Court does not find that good cause has been shown to seal TerraForm's Reply Brief in filed in the underlying litigation (*D. E. Shaw Composite Holdings, LLC et al. v. TerraForm Power, LLC et al.*, Index No. 651752/2016 [Sup Ct New York County]) (NYSCEF 18) on the sole basis that this document was sealed in that action. The parties do not submit any affirmative support for sealing the document in this case under the applicable legal standards.

Additionally, Orrick has failed to demonstrate good cause for the sealing of Exhibit 1 (NYSCEF 152), which reflects administrative information with respect to Orrick's opening of new matters. Orrick's assertion of confidentiality does not, by itself, require granting of the motion (*see, e.g., Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324). And unlike in *Dawson v White & Case* (184 AD2d 246, 247 [1st Dept 1992]), Exhibit 1 does not contain confidential financial information. Further, any claim of attorney-client privilege would belong to TerraForm, which is not asserting it here. Likewise, the Court finds no basis for the redactions of references to Exhibit 1 made in Orrick's reply brief (NYSCEF 149) and Supplemental Weitzel Affidavit (NYSCEF 151).

Accordingly, it is:

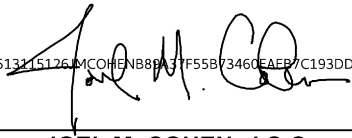
ORDERED that Defendant's Motions to Seal and/or Redact are **granted in part**; the County Clerk shall maintain NYSCEF Document Numbers 23 and 136 in their current, redacted form; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers NYSCEF 20, 24, 32, 134, 137 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; it is further

ORDERED that Defendant’s motion is otherwise **denied**, and Defendant shall within three business days file unredacted/unsealed copies of the documents on NYSCEF; it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

5/13/2022
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: