

**Midway Wind, LLC v Siemens Gamesa Renewable  
Energy, Inc.**

2025 NY Slip Op 31921(U)

May 21, 2025

Supreme Court, New York County

Docket Number: Index No. 651234/2023

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART 61M**

*Justice*

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MIDWAY WIND, LLC,

Plaintiff,

- v -

SIEMENS GAMESA RENEWABLE ENERGY, INC.,

Defendant.

-----X

INDEX NO. 651234/2023

MOTION DATE 05/20/2025

MOTION SEQ. NO. 023

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 023) 363, 364, 365, 367 were read on this motion to/for SEAL.

In this breach of contract action concerning alleged defects in wind turbines purchased by the plaintiff, the defendant moves pursuant to 22 NYCRR 216.1 to maintain redactions on the plaintiff’s memorandum of law filed in support of its motion for sanctions (NYSCEF Doc. No. 357), an attorney affirmation of Jessica Sabbath filed by the plaintiff in support of the same motion (NYSCEF Doc. No. 358). The defendant also seeks to certain maintain exhibits attached to Sabbath’s affirmation under seal, or in the alternative, accept proposed redactions to these exhibits provided to the court via email to the Part 61 Clerk (NYSCEF Doc. Nos. 360 and 361). By order dated April 14, 2025, the court granted the defendant’s request for TROs to maintain the subject documents under seal pending decision on the present motion. The motion is granted to the extent that NYSCEF Doc Nos. 357, 358, 360, and 361 are redacted.

Pursuant to 22 NYCRR 216.1(a), “a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except 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.” The Appellate Division, First Department, 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 (1<sup>st</sup> Dept. 2010). Because “confidentiality is clearly the exception, not the rule” (Matter of Hofmann, 284 AD2d 92, 93–94 [1<sup>st</sup> Dept. 2001]), that Court has authorized

sealing “only in strictly limited circumstances.” Gryphon Dom. VI, LLC v APP Intl. Fin. Co., 28 AD3d 322, 325 (1<sup>st</sup> Dept. 2006); see Mosallem v Berenson, *supra*. The burden is on the party seeking to seal court records to establish “good cause.” Maxim, Inc. v Feifer, 145 AD3d 516, 517 (1<sup>st</sup> Dept. 2017). Furthermore “[a] finding of ‘good cause’ presupposes that ... no alternative to sealing can adequately protect the threatened interest.” Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502 (2<sup>nd</sup> Dept. 2007) citing In re Herald Co., 734 F2d 93, 100 [2<sup>nd</sup> Cir. 1984]). Appropriate less restrictive alternative relief may and should be granted to balance the competing interests of public access and the need for secrecy or confidentiality. See Danco Labs v Chemical Works of Gedeon Richter, 274 AD2d 1 (1<sup>st</sup> Dept. 2000). It is well settled that redaction can be such an appropriate alternative relief and is favored over sealing. See *Id.*; Jose V. v Smiley & Smiley LLP, 214 AD3d 523 (1<sup>st</sup> Dept. 2023); Vergara v Mission Capital Advisors, LLC, 187 AD3d 495 (1<sup>st</sup> Dept. 2020); Gliklad v Derispaska, 185 AD3d 512 (1<sup>st</sup> Dept. 2020); Maxim, Inc. v Feifer, *supra*.

In the business context, good cause may be established where trade secrets are involved (see Matter of Bernstein v On-Line Software Inter. Inc., 232 AD2d 336 [1<sup>st</sup> Dept. 1996] *lv denied* 89 NY2d 810 (1997); Matter of Crain Communications, Inc., 135 AD2d 351 [1<sup>st</sup> Dept. 1987]) or “where the release of documents could threaten a business’s competitive advantage. (Matter of Twentieth Century Fox Film Corp., *supra* at 488).” Mosallem v Berenson, *supra* at 350; see Vergara v Mission Capital Advisors, LLC, *supra*; Mancheski v Gabelli Group Capital Partners, *supra*.

Here, the defendant seeks to maintain redactions to portions of the plaintiff’s memorandum of law and an attorney affirmation of Jessica Sabbath, both filed in support of the plaintiff’s motion for sanctions (NYSCEF Doc. Nos. 357 and 358). NYSCEF Doc. Nos. 357 and 358 are redacted copies. The defendant provided the court unredacted versions of these documents, with proposed redactions highlighted.

The defendant also seeks to seal two exhibits attached to Sabbath’s affirmation, consisting of emails between employees of a non-party customer who is not involved in this action (NYSCEF Doc. No. 360), and an Engineering Coordination Memorandum prepared by Gustavo Chaques regarding the Midway wind farm. (NYSCEF Doc. No. 361). In the alternative, the defendant seeks the court to accept proposed redactions to these exhibits provided to the court via email to the Part 61 Clerk.

As to NYSCEF Doc Nos. 357 and 358, the defendant contends that redaction is necessary to protect the defendant's "confidential information and trade secrets" "confidential protocols and procedures regarding investigations, analyses, and reports" and "investigations regarding technology, equipment, and software at Midway and non-party wind farms". Regarding NYSCEF Doc Nos. 360 and 361, the defendant contends that sealing is necessary to protect "proprietary and highly sensitive commercial information concerning a non-party customer not involved in this lawsuit".

The court finds "good cause" to support maintaining the provisional redactions to NYSCEF Doc Nos. 357, 358, 360, and 361, only to the extent of redacting the names of non-litigant third parties, as disclosure of this information could impinge on the privacy rights of third parties who are not litigants herein. See *Mancheski v Gabelli Group Capital Partners*, supra.

As to the remaining information sought to be kept under redaction, the defendant's conclusory assertions fall short of a "good cause" showing. A review of the proposed redactions reveals that the defendant does not seek to protect information regarding product specifications or other similar technical information. Rather, the defendant principally seeks to seal or redact information regarding fires and/or other malfunctions or defects in equipment it provided and/or serviced at other wind farms. As the court stated in an order dated January 30, 2025, information regarding such malfunctions and defects is already public, as it forms a substantial part of the plaintiff's publicly filed amended complaint. Moreover, where, as here, a case concerns an allegedly defective product, the interests of the public weighs in favor of disclosure. See *In Re East 51st Street Crane Collapse Litigation*, 106 AD3d 473 (1<sup>st</sup> Dept. 2013) (court denied sealing of settlement in wrongful death action arising from a tower crane collapse). Indeed, 22 NYCRR 216.1[a] was enacted largely in response to concerns about "the practice of sealing records of settlements in product liability and other tort actions where the information might alert other consumers to potential defects." Matter of Twentieth Century Fox Film Corp., supra at 485-86. Additionally, the fact that the documents sought to be sealed or redacted discuss information previously designated as confidential pursuant to the so-ordered confidentiality stipulation entered in this action pertaining to the production of purportedly confidential documents in discovery "is not controlling on the court's determination whether there is good cause to seal the record pursuant to 22 NYCRR 216.1." Eusini v Pioneer Electronics (USA), Inc., 29 AD3d 623, 625 (2<sup>nd</sup> Dept. 2006); see *Mosallem v Berenson*, supra.

Accordingly, it is

ORDERED that the defendant’s motion to seal documents is granted to the extent that the defendant shall file redacted versions of NYSCEF Doc. Nos. 357, 358, 360, and 361, in the with the redactions limited to those approved herein, in place of the sealed documents filed at NYCSEF Doc. Nos. Nos. 357, 358, 360, and 361, as “good cause” was shown for such redactions, and the motion is otherwise denied, it is further

ORDERED that service upon the Clerk of the Court of this order shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that the Clerk of the Court is directed to accept for filing redacted copies of NYSCEF Doc. Nos. 357, 358, 360, and 361 to be available for viewing by the public via NYSCEF, with the redactions limited to those approved herein.

This constitutes the Decision and Order of the court.

  
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NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

5/21/2025  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE