

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
HARDIN SOLAR ENERGY, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED ELECTRIC
GENERATION FACILITY IN HARDIN
COUNTY, OHIO.

CASE NO. 17-773-EL-BGN

ENTRY

Entered in the Journal on February 20, 2018

{¶ 1} On July 5, 2017, Hardin Solar Energy, LLC (Hardin or Applicant) filed an application to construct a solar-powered electric generation facility in Hardin County, Ohio. With its application, Hardin filed a motion for protective order to maintain as confidential portions of its application which it filed under seal. The information that Hardin seeks to protect falls into three areas. The first is the financial data appearing on pages 30-32 of the application. Hardin seeks to protect estimated capital and intangible costs, operation and maintenance costs, and estimated total and present worth of construction and operation payroll from public disclosure. The second area of information Hardin seeks to protect is manufacturers' equipment specification documents, identified as Exhibits A (module specifications), B (tracking specifications), and C (inverter specifications). Hardin claims that the documents were provided to Hardin on a confidential basis and provides manufacturers' technical specifications that address the reliability and safety certifications for the equipment. The third area of information is found in Exhibit M, the Certificate of Liability Insurance. Exhibit M contains financial information regarding Hardin's insurance for the development, construction, operation, and decommissioning of the facility.

{¶ 2} Hardin claims that the information that it seeks to keep confidential and not part of the public record meets the Ohio Supreme Court's six-factor test¹ to qualify as trade secret information. In support of its motion, Hardin states that the information contained in the exhibits is not available outside the company and cannot be found in the public

¹ *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

domain. Moreover, the information is closely held within the company and is only disclosed to those employees who “need to know.” If the information were made available to the public, competitors would benefit from the time and money expended by Hardin. Others wishing to compete with Hardin would build similar projects with the benefit of Hardin’s methodologies without undertaking the effort and expense incurred by Hardin. This would convey an unfair advantage to competitors. For these reasons, Hardin believes it has satisfied the criteria in Ohio Adm.Code 4906-2-21(D), the Uniform Trade Secrets Act, and the six-factor test adopted by the Ohio Supreme Court in *The Plain Dealer* at 524-525.

{¶ 3} Hardin urges the Board to find that the information it seeks to protect is “trade secret” material and, in accordance with Ohio law, must be protected from public disclosure. Hardin points out that the Board or the administrative law judge (ALJ) has authority under Ohio Adm.Code 4906-2-21(D) to issue an order to protect the confidentiality of trade secrets to the extent that state or federal law prohibits release of the information, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 4} Ohio law defines a trade secret as “information 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).

{¶ 5} The ALJ has examined the information filed under seal, as well as the assertions set forth in the Applicant’s memorandum in support of a protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *The Plain Dealer* at 524-525, the ALJ finds that the motion should be granted, in part, and denied, part. Specifically, the ALJ

finds that the financial data on pages 30-32 of the application should be afforded protective treatment consistent with Ohio Adm. Code 4906-2-21(D).

{¶ 6} Ohio Adm.Code 4906-2-21(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” The information protected by this order shall remain under seal for a period ending 24 months from the date of this Entry.

{¶ 7} Ohio Adm.Code 4906-2-21(F), requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Docketing Division may release the information without prior notice to the Applicant.

{¶ 8} With respect to Exhibits A (module specifications), B (tracking specifications), and C (inverter specifications), the ALJ finds that Hardin has not shown that the information contained within the exhibits derives independent economic value from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use or demonstrated that the information in the exhibits is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Further, much of the information regarding technical specifications contained in Exhibits A, B, and C is publicly available on the website of the equipment manufacturers or is otherwise available on the internet. For similar reasons, the ALJ determines that the entirety of Exhibit M (Certificate of Liability Insurance) does not warrant protective status. Therefore, Hardin is instructed to file in the public docket Exhibit M with only the policy numbers and certificate number redacted or, in the alternative, Hardin may file a narrative explaining the types of insurance included in the comprehensive package of liability insurance and stating at a minimum the coverage limits of such insurance.

{¶ 9} In making the determination that Exhibits A, B, C, and the entirety of M do not qualify as a trade secret under R.C. 1333.61(D) and are not entitled to protection, the ALJ notes that, apart from indicating that the information is not generally known to others, Hardin proffered no information or evidence to support its trade secret claim under the factors set forth for consideration in *The Plain Dealer*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661. Nor is satisfaction of these factors self-evident upon review of the information. The ALJ finds that Hardin has not sustained its burden to demonstrate that Exhibits A, B, C, and M, to the extent discussed herein, constitute trade secret information. Accordingly, the Commission's docketing division should move Exhibits A, B, and C to the public record ten days from the issuance of this Entry. Further, Hardin must file a public version of Exhibit M or file the alternative description of liability insurance described above in the public docket, within ten days from issuance of this Entry.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the motion for protective order filed by Hardin be granted, in part, and denied, in part. It is, further,

{¶ 12} ORDERED, That the Commission's docketing division maintain, under seal, the financial information contained on pages 30-32 of the application. It is, further,

{¶ 13} ORDERED, That the Commission's docketing division move Exhibits A, B, and C to the public docket ten days after the issuance of this Entry. It is, further,

{¶ 14} ORDERED, That the Commission's docketing division maintain, under seal, Exhibit M but that Hardin otherwise comply with Paragraph 8 within ten days after issuance of this Entry. It is, further,

{¶ 15} ORDERED, That the Commission's Docketing Division maintain as confidential all information and documents afforded protective treatment by this Entry. It is, further,

{¶ 16} ORDERED, That this protective order shall be effective for a period of 24 months, until February 20, 2020. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

/s/ L. Douglas Jennings

By: L. Douglas Jennings
Administrative Law Judge

jrj/vrm

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Case No(s). 17-0773-EL-BGN

Summary: Administrative Law Judge Entry granting in part and denying in part motion for protective order; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Administrative Law Judge, Ohio Power Siting Board