

## 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 May 17, 2018

#### I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the interlocutory appeal and motion for protective order filed by Hardin Solar Energy LLC.

#### II. DISCUSSION

{¶ 2} On July 5, 2017, Hardin Solar Energy LLC (Hardin Solar or Applicant) filed a motion for protective order to maintain the confidentiality of certain exhibits filed with its application to construct an array of solar panels.

{¶ 3} On February 20, 2018, the administrative law judge (ALJ) denied in part and granted in part Hardin Solar's motion for protective order.

{¶ 4} On February 27, 2018, Hardin Solar filed an interlocutory appeal seeking to prevent the disclosure of one of its application exhibits, Item 5 of Exhibit C. The exhibit contains GE Inverter manufacturer's specifications. Hardin Solar also requested a one-day extension of time to file its motion for interlocutory appeal.

{¶ 5} Regarding Applicant's request for a one-day extension of time, Hardin Solar acknowledges that Ohio Adm.Code 4906-2-29(C) requires that an interlocutory appeal be filed within five days after the ruling is issued. The ALJ issued a ruling on the motion for protective order on February 20, 2018. Hardin Solar filed its interlocutory appeal on February 27, 2018, one day beyond the deadline. In support of its request for

a one-day extension of time, Hardin Solar explains that the ALJ's ruling required it to engage in an extensive review of information and to communicate with affected entities to determine which information it would seek to maintain as confidential. Hardin Solar requests that its interlocutory be accepted as timely.

{¶ 6} The Board finds that it is reasonable that the review of exhibits, in consultation with third parties, could extend beyond the five days noted in the rule. Moreover, a delay of one day, without prejudice to any party and without undue delay, does not appear to us to warrant a dismissal of an interlocutory appeal. Consequently, the Board finds that Hardin Solar has stated extraordinary circumstances for filing out of time. Accordingly, the interlocutory appeal shall be accepted as if timely filed.

{¶ 7} Regarding Applicant's interlocutory appeal, Hardin Solar argues that the information contained in the exhibit meets the Ohio Supreme Court's six-factor test<sup>1</sup> that defines a "trade secret," which is as follows:

- (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.

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

{¶ 8} In support of its motion, Hardin Solar states that the GE Inverter specifications are not available outside the company. Nor is the information available in the public domain. The information is closely held by the manufacturer and by the Applicant. It is disclosed only to those employees who “need to know.” Hardin Solar received the information with instructions to maintain strict confidentiality. Hardin Solar adds that the document contains insider information that reveals the source within the company that authored the modifications. That information is closely held by the company and does not appear in the public domain. Confirming the ALJ’s finding, Hardin Solar acknowledges that some documents appearing in Exhibit C can be found on the Internet, but the GE Inverter manufacturer’s specification documents can not. Hardin Solar believes that these facts meet the first three criteria of a trade secret.

{¶ 9} Hardin Solar claims that if the information contained in the GE Inverter manufacturer’s specification documents were publicly available, competitors could unfairly reap the benefits of the time and money expended by the manufacturer to develop the information. Moreover, Hardin Solar contends that developers seeking to compete could unfairly gain the benefit of Hardin Solar’s methodologies without undertaking the enormous effort and expense to produce the information. For these reasons Hardin Solar believes that it has satisfied the final three criteria of the trade secret test.

{¶ 10} Hardin Solar stresses that the exhibit information was provided to Hardin Solar on a confidential basis. The exhibit contains the manufacturer’s technical specifications that address reliability and safety certifications for the equipment. Because the information has independent economic value, the manufacturer takes measures to maintain its secrecy. Hardin Solar has agreed with the manufacturer to protect the information from public disclosure.

{¶ 11} Disclosure of the information, Hardin Solar believes, would not benefit the Board in its review of the application. If necessary, the Board’s Staff may view the

unredacted version filed under seal. Moreover, Hardin Solar argues that disclosure of the information would not serve public policy.

{¶ 12} Upon examining the contents of Item 5 of Exhibit C, considering Hardin Solar's arguments, and taking into account the six-factor test for a "trade secret," the Board concludes that Hardin Solar has established that Item 5 of Exhibit C is trade secret material and should be granted protective treatment in accordance with Ohio Adm.Code 4906-2-21(D).

{¶ 13} 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.

### III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the motion for a one-day extension of time to file an interlocutory appeal be granted. It is, further,

{¶ 16} ORDERED, That Hardin Solar's interlocutory appeal of the ALJ's partial denial of its motion for protective order be granted. It is, further,

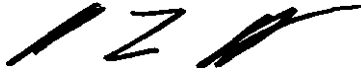
{¶ 17} ORDERED, That a protective order for Item 5 of Exhibit C of the application be granted. It is, further,

{¶ 18} ORDERED, That, in accordance with Paragraph 12, the Commission's Docketing Division maintain as confidential and under seal, Item 5 of Exhibit C of Hardin Solar's application. It is, further,

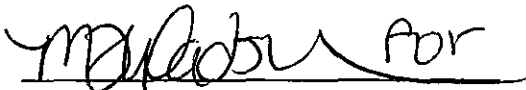
{¶ 19} ORDERED, That this protective order shall be effective for a period of 24 months, until May 17, 2020. It is, further,

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

THE OHIO POWER SITING BOARD



Asim Z. Haque, Chairman  
Public Utilities Commission of Ohio



David G. Goodman, Board Member  
and Director of the Ohio  
Development Services Agency



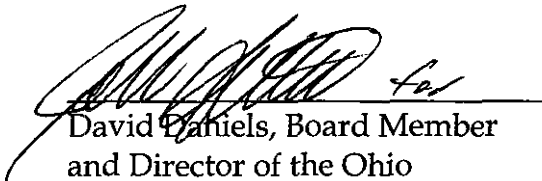
James Zehring, Board Member  
and Director of the Ohio  
Department of Natural Resources



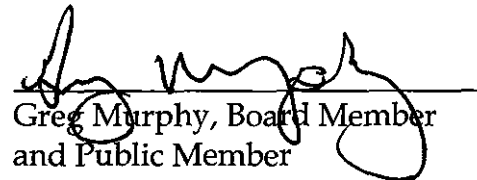
Lance Himes, Board Member  
and Director of the Ohio  
Department of Health



Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency



David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

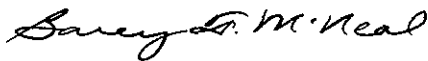


Greg Murphy, Board Member  
and Public Member

LDJ/sc

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**MAY 17 2018**



Barcy F. McNeal  
Secretary