

## OHIO POWER SITING BOARD

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

CASE NO. 18-1360-EL-BGN

### ENTRY

Entered in the Journal on January 9, 2019

{¶ 1} On September 11, 2018, Hardin Solar Energy II, LLC (Hardin) filed a pre-application notification letter with the Ohio Power Siting Board (Board) regarding its proposed 170 megawatt (MW) solar-powered electric generation facility in Hardin County, Ohio. In the letter, Hardin explained that construction of the proposed 170 MW solar-powered electric generation facility is estimated to begin as early as July 2019, resulting in commercial operations as early as July 2020.

{¶ 2} On October 1, 2018, Hardin held a public information meeting to discuss the proposed project with interested persons and landowners. On September 24, 2018, Hardin filed an affidavit of publication demonstrating its compliance with the notice requirements of Ohio Adm.Code 4906-3-03.

{¶ 3} Next, on October 12, 2018, Hardin filed its application with the Board for a certificate of environmental compatibility and public need to construct a new 170 MW solar-powered electric generation facility in Hardin County, Ohio. Hardin filed a supplement to its application on November 14, 2018. Concurrently, Hardin filed a motion for protective order seeking to protect certain limited portions of its application as confidential.

{¶ 4} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chairman of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated December 11, 2018, the Board notified Hardin that its application was compliant

and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's December 11, 2018 letter directed Hardin to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Hardin to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 5} On December 17, 2018, Hardin filed a certificate of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. And, in compliance with Ohio Adm.Code 4906-3-07(C), on December 21, 2018, Hardin filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 6} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the administrative law judge (ALJ) shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. Under R.C. 4906.07(A), the public hearing must be held not less than 60 nor more than 90 days after the effective date.

{¶ 7} Therefore, the effective date of the application shall be January 4, 2019. The ALJ finds that a local public hearing in this matter shall be held on March 14, 2019, at 6:00 p.m., at Kenton High School located at 200 Harding Avenue, Kenton, Ohio 43326. The evidentiary hearing shall commence on March 28, 2019, at 10:00 a.m., in Hearing Room 11-D at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 8} Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by February 15, 2019, whichever is later.

{¶ 9} In accordance with Ohio Adm.Code 4906-3-09, Hardin should issue public notices of the application and hearings. Pursuant to the same rule, in addition to other required information, that notice shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person on March 14, 2019, at 6:00 p.m., at Kenton High School located at 200 Harding Avenue, Kenton, Ohio 43326.
- (b) An evidentiary hearing commencing on March 28, 2019, at 10:00 a.m., in Hearing Room 11-D at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 10} Further, under Ohio Adm.Code 4906-3-09 and R.C. 4906.06(C), the initial notice shall include the following language:

Petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following service of the notice required by Ohio R.C. 4906.06(C), or February 15, 2019, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 11} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing. In so doing, the ALJ may require expert or factual testimony to be offered at Board proceedings to be reduced to writing and filed with the Board. Accordingly, the ALJ establishes the following procedural schedule and process:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation (Staff Report) on or before February 26, 2019.
- (b) All expert and factual testimony to be offered by Hardin shall be filed by March 18, 2019. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by March 25, 2019.
- (c) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings amongst themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the assigned ALJ.

{¶ 12} As a final matter, Ohio Adm.Code 4906-2-21(A)(7) provides that an ALJ may issue a protective order so that information qualifying as a “trade secret” or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated manner. Ohio law defines 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 be 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). Further, the ALJ notes that any order issued under Ohio Adm.Code 4906-2-21 should minimize the amount of information protected from public disclosure.

{¶ 13} Hardin has requested protective treatment for portions of pages 30 through 32 of the application, which it alleges consist of financial data representing estimated capital and intangible costs, operation and maintenance costs, and the estimated total and present worth of construction and operation payroll. Hardin also requests protective treatment for the policy and certificate numbers contained in Exhibit L, the Certificate of Liability Insurance, be kept confidential. In support of its motion, Hardin argues that the information

contained in the referenced application pages and associated exhibits have independent economic value and reasonable efforts have been made to maintain secrecy pursuant to R.C. 1333.61(D). In addition, Hardin contends that the information meets the Supreme Court of Ohio's six-factor test to identify trade secret information. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 2000-Ohio-207, 732 N.E.2d 373. As a final point, Hardin argues that nondisclosure of its information is not inconsistent with the purposes of Title 49 of the Revised Code. No memoranda contra the motion for protective order were filed.

{¶ 14} The ALJ has examined the information filed under seal, as well as the assertions set forth in Hardin'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 Supreme Court of Ohio, the ALJ finds that the unopposed motion for protective order should be granted. The ALJ notes affording this information protective treatment is consistent with the Board's past precedent regarding similar types of information. See *In re the Application of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Transcript (Sept. 24, 2018) at 28; *In re the Application of Harrison Power Transmission, LLC*, Case No. 17-2084-EL-BTX, Opinion, Order, and Certificate (Nov. 15, 2018).

{¶ 15} 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." Therefore, the information protected by this Entry shall remain under seal for a period ending 24 months from the date of a final, appealable order in this proceeding.

{¶ 16} Ohio Adm.Code 4906-2-21(F) also 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.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the hearings in this matter be scheduled at the times and places designated in Paragraph 7. It is, further,

{¶ 19} ORDERED, That notices of the application and hearings be issued by Hardin in accordance with Paragraphs 9 and 10. It is, further,

{¶ 20} ORDERED, That Staff file its Staff Report pursuant to Paragraph 11. It is, further,

{¶ 21} ORDERED, That the parties file their testimony in accordance with Paragraph 11. It is, further,

{¶ 22} ORDERED, That Hardin's motion for protective order be granted, in accordance with Paragraphs 14 through 16. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Megan Addison

By: Megan J. Addison  
Administrative Law Judge

JRJ/mef

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/9/2019 2:47:45 PM**

**in**

**Case No(s). 18-1360-EL-BGN**

Summary: Administrative Law Judge Entry setting the procedural schedule and granting the motion for a protective order electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Administrative Law Judge, Ohio Power Siting Board