

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF AEUG UNION SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1405-EL-BGN

ENTRY

Entered in the Journal on March 17, 2021

{¶ 1} AEUG Union Solar, LLC (Union Solar or Applicant) is a person as defined in R.C. 4906.01.

{¶ 2} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On March 9, 2020, Governor Mike DeWine signed Executive Order 2020-01(D) (Executive Order), declaring a state of emergency in Ohio to protect the well-being of its citizens from the dangerous effects of COVID-19. The Executive Order requires all state agencies to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health risks associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and shall remain in effect until the COVID-19 emergency no longer exists. The Ohio Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/>.

{¶ 4} On August 19, 2020, Union Solar filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B). Union Solar sought a waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person.

{¶ 5} On September 2, 2020, the administrative law judge (ALJ) granted Union Solar's motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 6} On September 21, 2020, Union Solar filed a pre-application notification letter with the Board. In the letter, Union Solar explained that for its proposed 325 megawatt solar-powered electric generation facility in Union County, Ohio (Project), construction is estimated to begin in early 2022, and it is scheduled to be in service by early 2023.

{¶ 7} On October 6, 2020, Union Solar held two public information meetings to discuss the proposed Project with interested persons and landowners. Union Solar filed its proof of publication regarding the public information meetings with the Board on October 6, 2020.

{¶ 8} On October 6, 2020, Union Solar submitted a copy of the notification of the proposed Project and the public information meetings and a list of addresses that the notice was sent to, in accordance with Ohio Adm.Code 4906-3-03(B)(2).

{¶ 9} On December 10, 2020, Union Solar held two more public information meetings to discuss the proposed Project with interested persons and landowners. Applicant filed a copy of the notification of the public information meetings and a list of addresses that the notice was sent to on December 2, 2020. Union Solar filed its proof of publication regarding the public information meetings with the Board on December 9, 2020.

{¶ 10} On December 23, 2020, Union Solar filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 11} Also on December 23, 2020, Applicant filed a motion for a protective order to keep limited portions of pages 30-33 of the Application narrative confidential and not part of the public record. The information that Union Solar seeks to protect consists of the total estimated capital and intangible costs of the Project, present worth of the capital costs, operations and maintenance costs, and cost of delays. Union Solar argues that disclosure of

this information will have a harmful effect on its ability to compete. Applicant states that the information it seeks to protect meets the definition of a trade secret under Ohio law. Further, Union Solar represents that it has engaged in reasonable efforts to maintain its secrecy. Contemporaneous with its motion, Union Solar submitted the information under seal and requests that the Board approve its motion for protective order to keep the confidential information out of the public record.

{¶ 12} On January 8, 2021, Staff filed a letter stating that it does not oppose Applicant's motion for a protective order.

{¶ 13} Pursuant to Ohio Adm.Code 4906-2-21(D), the Board "may issue any order that is necessary to protect the confidentiality of information contained in [a] document, to the extent that state or federal law prohibits release of the information, including where it is determined that both * * * the information is deemed * * * to constitute a trade secret under Ohio law * * * and non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code." To be designated a trade secret under R.C. 1333.61, financial information must both: (1) derive 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 and (2) be subject to reasonable efforts under the circumstances to maintain its secrecy. R.C. 1333.61(D). Moreover, the Supreme Court of Ohio has established a six-part test to apply when analyzing a trade secret claim. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). In addition to information deemed to be a trade secret, Ohio Adm.Code 4906-2-21(A)(7) empowers the Board to issue a protective order providing that other confidential research, development, commercial, or other information not be disclosed, or be disclosed only in a designated manner.

{¶ 14} The ALJ has examined the information filed under seal, as well as the assertions set forth in Union Solar's memorandum in support of its motion for protective order. Applying the requirements discussed above, the ALJ finds that Applicant's motion

should be granted. Consequently, the limited portions of pages 30-33 of the Application narrative that Union Solar filed under seal should be kept confidential and not subject to public disclosure.

{¶ 15} Ohio Adm.Code 4906-2-21(F) specifies that, unless otherwise ordered, a protective order issued under Ohio Adm.Code 4906-2-21(D) expires 24 months after the date of its issuance. Should Union Solar wish to extend that 24-month period, it shall file an appropriate motion at least 45 days in advance of the expiration date. Ohio Adm.Code 4609-2-21(F). If no such motion is filed, the docketing division may release the information without prior notice.

{¶ 16} 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 February 19, 2021, corrected on February 22, 2021, the Board notified Union Solar 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 February 19, 2021 letter directed Union Solar 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 Union Solar to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 17} On March 8, 2021, Union Solar filed a certificate of service of its accepted and complete Application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 18} 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 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.

{¶ 19} Therefore, the effective date of the Application shall be March 17, 2021. The ALJ finds that a local public hearing in this matter shall be held on June 3, 2021, at 6:00 p.m. The evidentiary hearing shall commence on July 7, 2021, at 10:00 a.m.

{¶ 20} 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 April 30, 2021, whichever is later.

{¶ 21} In accordance with Ohio Adm.Code 4906-3-09, Union Solar 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 June 3, 2021, at 6:00 p.m.
- (b) An evidentiary hearing commencing on July 7, 2021, at 10:00 a.m.
- (c) Due to the continued state of emergency, the local and evidentiary hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

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

Petitions to intervene in the evidentiary hearing will be accepted by the Board up to 30 days following service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, or April 30, 2021, whichever is later. However, the

Board strongly encourages interested persons who wish to intervene in the evidentiary 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 with a reference to Case No. 20-1405-EL-BGN.

{¶ 23} With regard to the local public hearing, interested persons who wish to provide testimony regarding the Project must pre-register with the Public Utilities Commission of Ohio (Commission) before 12:00 p.m. EST, on June 2, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/aeug-union-solar-public-hearing> or by calling the Commission at 1-800-686-7826. Testimony to be provided will be limited to five minutes in duration.

{¶ 24} Interested individuals who wish to attend the local public hearing remotely and not offer testimony can do so by calling 408-418-9388 and entering access code 129 950 8994. The local public hearing will also be live streamed for viewing at www.youtube.com/user/PUCOhio. Additional information is available on the Board's website at <https://opsb.ohio.gov/wps/portal/gov/opsb/cases/20-1405-el-bgn> or by contacting the Commission's Consumer Call Center at 1-800-686-7826.

{¶ 25} Applicant shall issue public notice of the hearings and Application in this matter. The notice should be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the Application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the Project; a map showing the location and general layout of the proposed facility; a statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is pending before the Board; the date and time of the evidentiary and

local public hearings; a statement that the hearings will be conducted by telephone and live video on the internet; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 26} The notice shall also state that interested persons who wish to provide testimony regarding the Project must pre-register with the Commission before 12:00 p.m. EST, on June 2, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/aeug-union-solar-public-hearing> or by calling the Commission at 1-800-686-7826. Testimony to be provided will be limited to five minutes in duration.

{¶ 27} Individuals interested in providing testimony will be required to provide their full name, home address, telephone number, and e-mail address, if available; state that they wish to register for the local public hearing in Case No. 20-1405-EL-BGN; specify whether they plan to join the remote access event by internet or by telephone; and indicate that they intend to offer testimony. All individuals who plan to provide testimony using video access to the WebEx event, as opposed to providing testimony by telephone, must have a computer or smart device with a microphone and speakers, an e-mail address, and reliable internet service.

{¶ 28} For purposes of the local public hearing, the Board will begin hearing testimony at 6:00 p.m. EST on June 3, 2021. Individuals who have registered to testify will be asked to speak beginning shortly after 6:00 p.m., so all those who have registered to testify should be prepared to speak at that time. For individuals who are speaking by telephone, the Board's staff will contact those individuals by telephone when it is time for their testimony and connect them to the public hearing. If access or other issues are experienced during the local public hearing, individuals should immediately use the chat function within WebEx or contact the Board's legal department at 614-466-6843 for assistance.

{¶ 29} If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document, along with a reference to Case No. 20-1405-

EL-BGN, should be provided to the Board by June 2, 2021, if possible, but no later than June 7, 2021, by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 30} Public comments can be provided in writing on the Board's website at <https://opsb.ohio.gov/wps/portal/gov/opsb/help-center/contact-us>, by e-mail at contactOPSB@puco.ohio.gov, or by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215. Written comments should reference the case number for this matter.

{¶ 31} Access information for the local public hearing will be provided to counsel for the parties at their e-mail address of record.

{¶ 32} For individuals who experience difficulty participating in the local public hearing, an opportunity for public testimony may also be available, for good cause shown, at the beginning of the evidentiary hearing.

{¶ 33} 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 on or before May 18, 2021.
- (b) On or before June 10, 2021, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by Union Solar shall be filed by June 23, 2021. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by July 1, 2021.

(d) Any stipulation entered into by the parties shall be filed by noon on July 6, 2021, along with the associated testimony supporting the stipulation.

{¶ 34} The ALJ encourages the parties to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJs.

{¶ 35} It is, therefore,

{¶ 36} ORDERED, That Union Solar's motion for protective order be granted as stated in Paragraphs 14 and 15. It is, further,

{¶ 37} ORDERED, That, for a period of 24 months, the Board's docketing division maintain, under seal, certain information in the Application narrative, which was filed under seal in this docket on December 23, 2020. It is, further,

{¶ 38} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraph 19. It is, further,

{¶ 39} ORDERED, That the notice of the Application and hearings be published by Union Solar in accordance with Paragraphs 21, 22, 25 and 26. It is, further,

{¶ 40} ORDERED, That witness registration occur pursuant to Paragraphs 23, 27, and 28. It is, further,

{¶ 41} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 33. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Administrative Law Judge

NJW/mef

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Case No(s). 20-1405-EL-BGN

Summary: Administrative Law Judge Entry granting the motion for protective order; setting the procedural schedule, including a local public hearing on 6/3/21 at 6:00 pm and an evidentiary hearing on 7/7/21 at 10:00 am; and, ordering publication of notice electronically filed by Ms. Mary E Fischer on behalf of Jacky Werman St. John, Administrative Law Judge, Ohio Power Siting Board