

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION  
OF JULIET ENERGY PROJECT LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1760-EL-BGN

### ENTRY

Entered in the Journal on March 26, 2021

{¶ 1} Juliet Energy Project, LLC (Juliet 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 obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On December 5, 2020, Juliet filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Juliet is proposing to construct an up to 101-megawatt, solar-powered electric generating facility in Wood County, Ohio (Project). Juliet sought 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 in the area in which the Project will be located.

{¶ 4} On December 15, 2020, the administrative law judge (ALJ) issued an Entry granting Juliet's motion for a limited waiver of the requirements of Ohio Adm.Code 4906-3-03(B).

{¶ 5} On December 23, 2020, Juliet filed a pre-application notification letter with the Board regarding the Project. The public informational meeting was held as scheduled on January 20, 2021.

{¶ 6} On March 12, 2021, Juliet filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project. On that same date, Juliet also filed a motion for protective order.

Applicant moves the Board to keep portions of its application confidential and not part of the public record. The information Applicant seeks to protect includes (1) estimated capital and intangible costs, as well as operation and maintenance costs located in parts III-V of Applicant's Exhibit D, Socioeconomic Report; and (2) certain information regarding archaeological sites deemed confidential by the Ohio State Historical Preservation Office (OSHPO) contained in both portions of Applicant's Exhibit F, Cultural Resources Work Plan, and in the entirety of Applicant's Exhibit R, Phase I Archaeological Reconnaissance Report. Applicant represents that its motion targets sensitive and confidential financial information that is generally not disclosed and – if revealed – would provide competitors and others with a competitive advantage, having an adverse effect on Applicant by harming its ability to compete in the marketplace and negotiate contracts with potential vendors. Applicant further represents that the information it seeks to protect in its Archaeological Reconnaissance Report and Cultural Resources Work Plan is information OSHPO considered confidential and that its disclosure risks harm.

{¶ 7} Pursuant to Ohio Adm.Code 4906-2-21(D) and upon motion, the Board “may issue any order which 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 \* \* \* [t]he 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). Additionally, 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).

{¶ 8} In support of its request, Applicant asserts that the financial information it seeks to protect has independent economic value, is subject to reasonable efforts to maintain

its secrecy, and otherwise meets the six-factor *Plain Dealer* test. Further, Applicant contends that non-disclosure of the information will not impair the purposes of Title 49, as the Board and its Staff have full access to the information. In the same vein, Applicant maintains that no purpose of Title 49 would be served by the public disclosure of the information. Further, Applicant asserts that the information in its Archaeological Reconnaissance Report and Cultural Resources Work Plan that it seeks to protect is information the OSHPO has requested be kept confidential under authority granted it by Section 304 of the National Historic Preservation Act.

{¶ 9} On March 16, 2021, Staff filed correspondence indicating that it does not oppose Cadence's request for a protective order of financial information found in portions of Exhibit D, and the information in its Archaeological Reconnaissance Report that OHSPPO requested be kept confidential.

{¶ 10} The ALJ has examined the information filed under seal, as well as the assertions set forth in the Applicant's memorandum in support of its motion for a protective order. Applying the requirements discussed above, the ALJ finds that the motion should be granted. Accordingly, the estimated capital and intangible cost information, and the operation and maintenance cost information, found in parts III through V of Exhibit D to the application, as well as the entirety of the Archeological Reconnaissance Report and the information contained on page eight of the Cultural Resources Work Plan, filed as Applicant's Exhibits R and F, respectively, should be kept confidential and not subject to public disclosure.

{¶ 11} 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. Applicant does not seek a different time frame; thus, the information protected by this order shall remain under seal for a period ending 24 months from the date of this Entry. Should Applicant 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 4906-

2-21(F). If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicant.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Applicant's motion for protective order be granted, as stated in Paragraphs 10 and 11. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jesse M. Davis

By: Jesse M. Davis  
Administrative Law Judge

MJA/kck

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

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**Case No(s). 20-1760-EL-BGN**

Summary: Administrative Law Judge Entry granting Applicant's motion for protective order, as stated in Paragraphs 10 and 11. electronically filed by Kelli C. King on behalf of Jesse M. Davis, Administrative Law Judge, Ohio Power Siting Board