

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF KINGWOOD SOLAR I LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-117-EL-BGN

ENTRY

Entered in the Journal on November 10, 2021

{¶ 1} Kingwood Solar I LLC (Kingwood 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 April 16, 2021, Kingwood filed an application with the Board for a certificate of environmental compatibility and public need to construct a 175 megawatt solar powered electric generating facility in Greene County, Ohio (Facility).

{¶ 4} By Entry issued August 26, 2021, the administrative law judge (ALJ) set the effective date of the application as August 26, 2021, scheduled a local public hearing for November 15, 2021, and scheduled the adjudicatory hearing to commence on December 13, 2021, at the offices of the Ohio Power Siting Board (Board). The Entry also set a procedural schedule for the case and granted various notices and petitions of intervention.

{¶ 5} On September 27, 2021, Kingwood filed a motion for protective order and memorandum in support requesting protective treatment of its *Phase I Archaeological Investigations for the 600 Ha (1,482.5 Ac) Kingwood Solar Farm Development in Miami, Xenia, and Cedarville Townships, Greene County, Ohio* (Report). Kingwood confidentially filed the full report on the same day. In its motion, Kingwood explains that the Report contains details of archaeological sites and finds in and around the project area. Applicant states that the Report is not a required part of the application and traditionally it has been submitted to Staff after a certificate is issued. Having already prepared the Report, however, Kingwood

submitted it in response to a data request from Staff. Citing entries issued in prior Board proceedings, Kingwood believes that affording the Report confidential treatment is consistent with Board precedent. See, e.g., *In re Sycamore Creek Solar, LLC*, Case No. 20-1762-EL-BGN, Entry (July 15, 2021) at ¶¶ 13-14; *In re Juliet Energy Project LLC*, Case No. 20-1760-EL-BGN, Entry (Mar. 26, 2021) at ¶ 10. Kingwood also identifies various federal and state laws that are intended to restrict public disclosure of archaeological site information. Kingwood believes that disclosure of the archaeological sites identified in the Report will release sensitive information and unnecessarily risk harm in the areas. Additionally, Kingwood points out that Staff still has full access to the Report and, therefore, confidential treatment will not impair Staff's ability to review it and/or the application. No memoranda contra the motion for protective order were filed.

{¶ 6} 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.

{¶ 7} The ALJ has examined the information filed under seal, as well as the assertions set forth in Kingwood's memorandum in support of its motion for protective order. Applying the requirements discussed above, the ALJ finds that Kingwood's motion is reasonable and should be granted. Consequently, the Report filed by Kingwood on September 27, 2021 shall be kept confidential and not subject to public disclosure.

{¶ 8} 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 Kingwood 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.

{¶ 9} On September 28, 2021, Kingwood filed a motion for partial waiver and memorandum in support in which it seeks a partial waiver of Ohio Adm.Code 4906-3-09(A)(1). This rule requires an applicant to provide timely notice of the accepted, complete application. Kingwood explains that when it was mailing such notice to all property owners adjacent to the proposed project area, a copy of the initial notice was inadvertently not sent within the required 15 days to those persons that received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. Upon discovering the error, Applicant sent the required notice four days later via overnight delivery. Kingwood asserts that based upon these actions, it substantially complied with the notice requirements of Ohio Adm.Code 4906-3-09(A)(1), as notice was delivered to all necessary parties no later than September 15, 2021, two full months before the scheduled local public hearing. Kingwood, therefore, believes that the requested partial waiver is justified. No memoranda contra the motion for partial waiver were filed.

{¶ 10} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or motion filed by a party, other than a requirement mandated by statute. Further, Ohio Adm.Code 4906-3-09(B)

states that inability or inadvertent failure to notify the persons described in that rule shall not constitute a failure to give public notice, provided substantial compliance with the requirements is met.

{¶ 11} The ALJ finds that Kingwood's motion for partial waiver is reasonable and should be granted. While the notice required under Ohio Adm.Code 4906-3-09(A)(1) was not delivered within the prescribed 15 days, upon realizing the oversight Kingwood promptly sent the notice four days later via overnight mail. The notice was delivered two full months prior to the local public hearing, thus giving all affected persons ample notice of the application prior the scheduled hearings. Accordingly, the ALJ finds that Kingwood has substantially complied with Ohio Adm.Code 4906-3-09(A)(1) and that the motion for partial waiver should be granted.

{¶ 12} With respect to the adjudicatory hearing scheduled to commence on December 13, 2021, at the offices of the Board, the ALJ finds that, considering the continuing COVID-19 pandemic, the adjudicatory hearing should be held remotely. Accordingly, the ALJ hereby directs that the adjudicatory hearing will begin as scheduled on December 13, 2021, at 10:00 a.m., but will be conducted via Webex virtual hearing technology. Instructions for participation in the adjudicatory hearing will be emailed to the parties. Additionally, all exhibits intended to be used on direct and cross-examination shall be marked and exchanged by the parties and provided to the ALJs via electronic means prior to the hearing. Individuals interested in attending the adjudicatory hearing as a non-party can access the hearing using the link <https://bit.ly/21-117-ADI> and entering the password OPSB, or by calling 1-408-418-9388 and entering the access code 2338 855 9142.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That Kingwood's motion for protective order be granted as stated in Paragraphs 7 and 8. It is, further,

{¶ 15} ORDERED, That Kingwood's motion for partial waiver be granted as stated in Paragraph 11. It is, further,

{¶ 16} ORDERED, That the adjudicatory hearing commence as scheduled on December 13, 2021, and that it be held via Webex virtual hearing technology, as outlined in Paragraph 12. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ David M. Hicks

By: David M. Hicks
Administrative Law Judge

NJW/kck

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

Case No(s). 21-0117-EL-BGN

Summary: Administrative Law Judge Entry granting Kingwood's motion for protective order as stated in Paragraphs 7 and 8; granting Kingwood's motion for partial waiver as stated in Paragraph 11 and ordering that the adjudicatory hearing commence as scheduled on December 13, 2021, and that it be held via Webex virtual hearing technology, as outlined in Paragraph 12. electronically filed by Kelli C. King on behalf of David Hicks, Administrative Law Judge, Ohio Power Siting Board