

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of JW Great Lakes Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generation Facility in Hardin County, Ohio.) Case No. 09-277-EL-BGN

ENTRY

The administrative law judge finds:

- (1) On August 14, 2009, as amended on September 15, 2009, JW Great Lakes Wind, LLC, (JWGL or applicant) filed, with the Ohio Power Siting Board (Board), an application for a certificate to site a wind-powered electric generation facility in Hardin County, Ohio, pursuant to Chapter 4906-17, Ohio Administrative Code (O.A.C.).
- (2) On August 7, 2009, JWGL filed a motion requesting waivers of the notice period required by Section 4906.06(A)(6), Revised Code, as well as various provisions of Chapter 4906-17, O.A.C. On August 24, 2009, the Board's staff filed a memorandum in response to JWGL's motion for waivers. JWGL's waiver requests and staff's responses are as follows:
 - (a) JWGL requests a waiver of the one-year notice period required by Section 4906.06(A)(6), Revised Code, stating that it wishes to begin the application process in August 2009 and desires to begin construction in 2010, in order to take advantage of federal incentives. Staff does not contest this waiver request.
 - (b) JWGL requests a waiver of the alternative site information and the formal site selection study required by Rule 4906-17-04(A), (B), and (C), O.A.C., stating that it intends to provide a significant amount of information regarding the applicant's selection of its site with the application. Staff does not contest this waiver request, provided JWGL includes the information about its site selection process which it references in its waiver request.

- (c) JWGL requests a waiver from the requirement that it provide mapping of all buildings and structures in a five-mile radius pursuant to Rule 4906-17-05(A)(1)(g), O.A.C., explaining that officials in Hancock County, which neighbors the Hardin County site, have told JWGL that the applicant cannot obtain maps for buildings in Hancock County that are within the five-mile radius. Thus, JWGL proposes to provide a map that is compliant, except where the data is not available from Hancock County. Staff does not contest this waiver request, provided JWGL includes information about any buildings and installations in Hancock County that it is aware of, from which the wind turbines could be visible or on which the turbines could have other anticipated impacts.
- (d) JWGL requests a waiver from the requirement that it provide certain cross-sectional views and locations of borings pursuant to Rule 4906-17-05(A)(4), O.A.C., committing that it will provide a geological desktop study and a generalized cross-sectional view based on available information with its application. Further, JWGL states that, at a later date, once the information is available, it will provide a detailed cross-sectional view and the location of the test borings. Staff does not contest this waiver request, provided JWGL submits the requisite information prior to the determination of final locations for turbine foundations and other project-related features.
- (e) JWGL requests a waiver of the requirement related to water consumption budgets pursuant to Rule 4906-17-05(A)(5)(a), O.A.C., stating that the proposed project will not directly affect any body of water. Staff contests this waiver request, offering that, if the applicant believes that water budget information is not applicable, it should explain this belief in its application.

- (f) JWGL requests a waiver of the requirement for costs of various alternatives pursuant to Rule 4906-17-06(B)(1), O.A.C., pointing out that the Board has recognized that providing this information for alternatives is optional for projects of this kind. Staff contests this waiver request, stating that this information is important for internal evaluation purposes.
 - (g) JWGL requests a waiver of the requirement for detailed preconstruction air quality information pursuant to Rule 4906-17-07(B)(1), O.A.C., stating that the proposed facility will generate virtually no air emissions after construction. Staff contests this waiver request, stating that this information is important for internal evaluation purposes and that, if JWGL believes that it will not impact the air quality, it should provide information to that effect.
 - (h) JWGL requests a waiver of the requirement for detailed information about site and operational water quality pursuant to Rule 4906-17-07(C)(3), O.A.C., stating that the project will produce no water effluent of any kind following construction, other than storm water run off. Staff contests this waiver request, submitting that, if JWGL believes that it will have no impact, it should provide information to that effect.
- (3) Upon consideration of JWGL's waiver requests and staff's response, the administrative law judge (ALJ) finds:
- (a) Pertaining to Section 4906.06(A)(6), Revised Code, and Rules 4906-17-04(A), (B), and (C); 4906-17-05(A)(1)(g); and 4906-17-05(A)(4), O.A.C., provided JWGL complies with staff's expectations, as set forth in staff's August 24, 2009, memorandum, these requests for waiver are reasonable and should be granted.

- (b) Pertaining to Rules 4906-17-05(A)(5)(a), 4906-17-06(B)(1), 4906-17-07(B)(1), and 4906-17-07(C)(3), O.A.C., these waiver requests should be denied.
- (4) In its August 7, 2009, filing JWGL also submitted a motion for a protective order regarding certain financial data filed in accordance with Rule 4906-17-06, O.A.C., which is contained in its August 14, 2009, application, as amended on September 15, 2009. In support of its request, JWGL states that certain information contained in its application, which is responsive to the requirements of Rule 4906-17-06, O.A.C., is confidential business information and should, therefore, be protected in accordance with Rule 4906-7-07(H)(1)(g), O.A.C.
- (5) The ALJ has reviewed the information covered by JWGL's motion for a protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the ALJ finds that the information covered by the motion contains trade secret information. Its release is, therefore, prohibited under state law. The ALJ also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the ALJ concludes that this document has been reasonably redacted to remove the confidential information contained therein. Therefore, the ALJ finds that JWGL's motion for a protective order is reasonable and should be granted.
- (6) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4906-7-07(H)(6), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until March 18, 2011. Until that date, the docketing division should maintain, under seal, the information filed confidentially on August 14, 2009.
- (7) Rule 4906-7-07(H)(6), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion in

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If JWGL wishes to extend this confidential treatment, it should 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 Board may release this information without prior notice to JWGL.

- (8) On August 26, 2009, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this matter, stating that it meets the standards for intervention pursuant to Rule 4906-7-04, O.A.C. No one filed in opposition to this motion to intervene. Therefore, the ALJ finds that OFBF's motion to intervene is reasonable and should be granted.

It is, therefore,


ORDERED, That JWGL's waiver requests be granted, in part, and denied, in part, as set forth in finding (3) and, where the request for waiver has been denied, JWGL is directed to file the information as stated in this entry. It is, further,


ORDERED, That JWGL's motion for protective order regarding certain data filed in accordance with Rule 4906-17-06, O.A.C., be granted. It is, further,

ORDERED, That OFBF's motion to intervene be granted. It is, further,

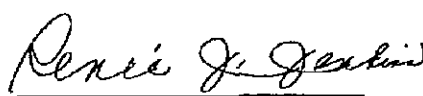
ORDERED, That a copy of this entry be served upon JWGL and all other interested persons of record.

THE OHIO POWER SITING BOARD


By: Christine M.T. Pirik
Administrative Law Judge


/vrn
Entered in the Journal

SEP 18 2009


Renee J. Jenkins

Renee J. Jenkins
Secretary