

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Hog)
Creek Wind Farm, LLC for an Amendment)
to its Certificate of Environmental) Case No. 11-757-EL-BGA
Compatibility and Public Need for the Wind-)
Powered Electric Generation Facility in)
Hardin County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On March 22, 2010, in Case No. 09-277-EL-BGN, the Ohio Power Siting Board (Board) issued an Opinion, Order and Certificate (certificate), approving a stipulation entered into by the parties to that case and granting to JW Great Lakes Wind, LLC (JWGL) a certificate to construct, operate, and maintain a wind-powered electric generation facility in Hardin County, Ohio.
- (2) By entry issued July 15, 2010, in Case No. 09-277-EL-BGN, the Board granted a joint application filed by JWGL and Hog Creek Wind Farm, LLC (Hog Creek), approving the transfer of the certificate from JWGL to Hog Creek.
- (3) On February 11, 2011, as supplemented on March 24, 2011, Hog Creek filed an application in the instant case to amend the certificate issued in Case No. 09-277-EL-BGN. Specifically, Hog Creek seeks approval of two additional turbine models, the Vestas V100 and GE 1.6-100.
- (4) On March 24, 2011, Hog Creek filed a motion for protective order pursuant to Rule 4906-7-07(H), Ohio Administrative Code (O.A.C.). Hog Creek seeks to protect certain documents filed in support of its amendment application on March 24, 2011. Hog Creek filed documents marked as Exhibits A and B under seal because it regards them as trade secret and confidential material. Exhibit A is Hog Creek's financial data. Hog Creek also filed Exhibit A-1, which is a redacted version of Exhibit A that Hog Creek filed in the public record. Exhibit B is a complete version of the Vestas Americas Health Safety & Environment Manual. Hog Creek requests that the entire

document marked as Exhibit B be given protective treatment. No memorandum contra has been filed regarding the motion for protective order.

- (5) In support of the motion for protective order, Hog Creek states that the information contained in Exhibits A and B has independent economic value and reasonable efforts are made to maintain its secrecy pursuant to Section 1333.61(D), Revised Code. In addition, Hog Creek contends that the information meets the Ohio Supreme Court's six-factor test to identify trade secret information.¹ As a final point, Hog Creek argues that nondisclosure of its information is not inconsistent with the purposes of Title 49 of the Revised Code.
- (6) Rule 4906-7-07(H)(4), O.A.C., provides that, upon motion of any party or person filing a document with the Board's Docketing Division relative to a case before the Board, the administrative law judge (ALJ) assigned to the case may issue any order, which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: the information is deemed by the ALJ to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Any order issued under this rule should minimize the amount of information protected from public disclosure.
- (7) With regard to Exhibit A, the ALJ has reviewed the information covered by Hog Creek's motion for protective order, as well as the assertions set forth in the supporting 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,² the ALJ finds that the information in Exhibit A contains financial trade secret information. Release of the information is, therefore, prohibited under state law. The ALJ also finds that nondisclosure of the information is not

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

² *Id.*

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 Hog Creek's motion for protective treatment of Exhibit A, filed under seal on March 24, 2011, is reasonable and should be granted.

- (8) Confidential treatment shall be afforded for a period ending 18 months from the date of this entry, or until November 5, 2012. Until that date, the Docketing Division should maintain, under seal, Exhibit A, filed under seal on March 24, 2011.
- (9) Rule 4906-7-07(H)(6), O.A.C., requires a party wishing to extend a protective order beyond 18 months to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If Hog Creek 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 Hog Creek.
- (10) With regard to Exhibit B, which is the Vestas Americas Health Safety & Environment Manual, Hog Creek states that Vestas Americas has requested that its manual be protected from public disclosure. In a proprietary notice, Vestas Americas states that its manual contains confidential information that is protected by copyright law as an unpublished work.
- (11) A cursory review of Exhibit B reveals that every page of the manual is marked "trade secret" and "confidential." However, many of the pages of the manual do not appear to contain trade secret information that should be the subject of a protective order under Rule 4906-7-07(H), O.A.C. For example, certain pages are blank forms and include no information. Many pages contain non-specific information about general subject matters. Other pages describe publicly available standards from the United States Occupational Safety and Health Administration and other federal regulatory agencies, and still other pages contain photographs of containment devices appearing to be empty and not in use. In addition, the ALJ notes that a similar document was filed in the public record on January 8, 2010, in *In the Matter of the Application of Black Fork*

Wind, LLC for a Certificate of Environmental Compatibility and Public Need for the Siting of a Wind-Powered Electric Generating Facility in Richland and Crawford Counties, Case No. 09-546-EL-BGN.

- (12) Therefore, the ALJ finds that Hog Creek should file an amended motion for protective order by June 6, 2011, which specifically identifies the information on each page of Exhibit B that it believes should be considered as a trade secret and provide a specific explanation as to why such information should be considered as such.

It is, therefore,

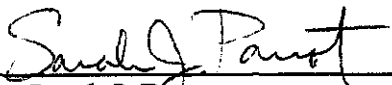
ORDERED, That the motion for protective order pertaining to Exhibit A, filed under seal on March 24, 2011, be granted. It is, further,

ORDERED, That the Commission's Docketing Division maintain, under seal, Exhibit A, filed under seal on March 24, 2011, for a period of 18 months, ending on November 5, 2012. It is, further,

ORDERED, That, with regard to Exhibit B, filed under seal on March 24, 2011, Hog Creek file an amended motion for protective order by June 6, 2011, in accordance with finding (12). It is, further,

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

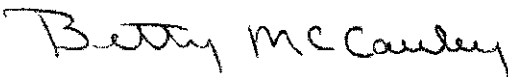
OHIO POWER SITING BOARD


By: Sarah J. Parrot
Administrative Law Judge

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Entered in the Journal

MAY 05 2011


Betty McCauley
Secretary