

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Hardin Wind LLC for a Certificate to)
Construct a Wind-Powered Electric) Case No. 13-1177-EL-BGN
Generation Facility in Hardin and Logan)
Counties, Ohio.)

In the Matter of the Application of)
Hardin Wind LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 13-1767-EL-BSB
Need for a Substation Project in Hardin)
County, Ohio.)

In the Matter of the Application of)
Hardin Wind LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 13-1768-EL-BTX
Need for a 345 kV Transmission Line in)
Hardin County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On May 10, 2013, Hardin Wind LLC (Hardin) filed in *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (13-1177), pursuant to Rule 4906-5-08, Ohio Administrative Code (O.A.C.), a preapplication notification letter regarding its application to construct a wind generating facility in Hardin and Logan counties.
- (2) On August 27, 2013, Hardin filed, pursuant to Rule 4906-5-08, O.A.C., its preapplication notification letters regarding its application in Case No. 13-1767-EL-BSB (13-1767) to construct a point of interconnect switchyard to interconnect to the East Lima-Marysville 345 kilovolt (kV) circuit, and its application in Case No. 13-1768-EL-BTX (13-1768) to construct a 345 kV transmission line to interconnect its wind generating facility to the East Lima-Marysville 345 kV circuit.

- (3) By entry of September 17, 2013, the administrative law judge (ALJ) granted Hardin's motion to consolidate the applications in 13-1177, 13-1767, and 13-1768 for purposes of all public hearings, evidentiary hearings, and public notices.
- (4) On September 10, 2013, Hardin filed motions for waivers from the requirement to provide fully-developed information in 13-1767 on an alternate location for a 345 kV switchyard that will connect a 345 kV generator lead line from Hardin's proposed wind generating facility to an existing American Electric Power (AEP) 345 kV transmission line, and in 13-1768 on an alternate route for a 345 kV generator lead line that will connect a wind generating facility to an AEP 345 kV transmission line. According to Hardin, the preferred route for the generator lead line and the preferred site for the point of interconnect switchyard have been leased by Hardin and constitute the most direct route to the preferred point of interconnect. In addition, Hardin notes that PJM Interconnection, Inc. (PJM) has completed its initial studies based on the preferred interconnect point to the AEP East Lima-Marysville 345 kV circuit. Hardin asserts that shifting to the alternate interconnect point could result in PJM requiring Hardin to submit a new queue request that could add over a year delay, if not more, to the project.
- (5) On September 30, 2013, Hardin filed, in 13-1767 and 13-1768, motions for waiver of Rule 4906-15-04(B)(2)(a)(i), O.A.C.¹ According to Hardin, Rule 4906-15-04(B)(2)(a), O.A.C., requires an applicant to supply a map of the proposed layout for associated facilities, and Subpart (i) of that rule requires the applicant to identify proposed final grades after construction, including the site and access roads on the map. Hardin contends that proposed modifications of grade elevations will not be known until after final engineering for the project is complete and after a certificate is issued for the

¹ Also on September 30, 2013, Hardin inexplicably refiled, in 13-1767 and 13-1768, its September 10, 2013 motions for waivers, filed the September 17, 2013 ALJ entry consolidating the above-captioned cases, cross-filed, in 13-1767 and 13-1768, its motions for waivers filed in those cases on September 10, 2013, twice filed its motion for waiver of Rule 4906-15-04(B)(2)(a)(i), O.A.C., and identified the waiver motions and the ALJ entry as application exhibits. However, it is unnecessary to address those filings.

applications. Hardin notes that similar waivers in other proceedings have been granted by the Board in *In re Paulding Wind Farm II LLC*, Case No. 10-369-EL-BGN, and *In re Champaign Wind LLC*, Case No 12-160-EL-BGN. Hardin maintains that, in lieu of the rule requirement, it will generate proposed contours/grade modifications during preparation of the facility construction drawings, which can be provided to Staff for review prior to construction of the facilities.

- (6) On October 9, 2013, Staff filed a memorandum in response to the motions for waivers. Staff indicates that it does not object to the waiver of Rule 4906-17-05(A)(4), O.A.C., of certain requirements to provide fully-developed information on an alternate route for the proposed transmission line and alternate location for the proposed substation. Staff notes that it does not object to the waiver of Rule 4906-15-04(B)(2)(a)(i), O.A.C., of certain requirements for mapping of all grade elevations modified during construction. In addition, Staff states that, rather than provide a detailed map, Hardin may provide a description of the standard grade elevations that will occur across the project when constructing all project components.
- (7) Rule 4906-1-03, O.A.C., provides that, where good cause exists, the ALJ may permit departure from Chapters 4906-1 to 4906-15 O.A.C. Upon review, the ALJ concludes that Hardin's motions for waivers of Rules 4906-17-05(A)(4) and 4906-15-04(B)(2)(a)(i), O.A.C., are reasonable and should be granted.
- (8) The ALJ wishes to clarify that, although he is willing to grant the requested waivers, this does not preclude Staff from requesting the waived information and Hardin must provide to Staff any and all waived information requested during the completeness review or through discovery in these proceedings.
- (9) On September 30, 2013, Hardin filed a motion for a protective order to keep confidential portions of page 49 of its application, which were filed in accordance with Rule 4906-17-06, O.A.C. In support of its motion, Hardin submits

that the information on page 49 of its application contains estimated capital and intangible cost data which is sensitive and confidential, the information has independent economic value, and is the subject of reasonable efforts to maintain its secrecy. Hardin claims that, by having to reveal this sensitive and confidential information in a publicly filed document, it would be providing its competitors with a competitive advantage. Hardin states that confidential treatment has previously been granted for the same type of information in *In re Paulding Wind Farm II*, Case No. 09-980-EL-BCN (Entry February 23, 2010). No one filed in opposition to this motion for protective order.

- (10) The ALJ has reviewed the information covered by Hardin'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,² 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 these documents cannot be reasonably redacted to remove the confidential information contained therein. Therefore, the ALJ finds that Hardin's motion for a protective order is reasonable and should be granted.
- (11) Rule 4906-7-07(H)(6), O.A.C., provides that, unless otherwise ordered, protective orders under Chapter 4906-7, 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 May 8, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially on September 30, 2013.

² See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- (12) Rule 4906-7-07(H)(6), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If Hardin 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 Hardin.

It is, therefore,

ORDERED, That Hardin's motions for waivers be granted, in accordance with this entry. It is, further,

ORDERED, That Hardin's motion for protective order be granted, in accordance with this entry. It is, further,

ORDERED, That the Board's docketing division maintain, under seal, the information, which was filed under seal in this docket on September 30, 2013, for a period of 18 months, ending on May 8, 2015. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

OHIO POWER SITING BOARD

s/Scott Farkas

By: Scott E. Farkas
Administrative Law Judge

JRJ/sc

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in

Case No(s). 13-1177-EL-BGN, 13-1767-EL-BSB, 13-1768-EL-BTX

Summary: Administrative Law Judge Entry grants Hardin's motions for waivers and for protective order in accordance with the findings in this entry. - electronically filed by Sandra Coffey on behalf of Scott Farkas, Attorney Examiner, Public Utilities Commission of Ohio