

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Carroll County Energy, LLC for a)
Certificate of Environmental Compatibility) Case No. 13-1752-EL-BGN
and Public Need to Construct an Electric)
Generation Facility in Carroll County,)
Ohio.)

ENTRY

The administrative law judge finds:

- (1) On November 15, 2013, Carroll County Energy, LLC (CCE or Applicant) filed its application with the Ohio Power Siting Board (Board) pursuant to the requirements of Ohio Adm.Code Chapter 4906-13. CCE describes the proposed generation facility as consisting of two combined-cycle, natural gas fired turbines with two heat recovery steam generators and a steam turbine. The proposed facility, which will also include a switchyard and other ancillary equipment, will have a nominal net output of 742 megawatts and will be located on approximately 77 acres in Washington Township, Carroll County, Ohio.

Waiver Requests

- (2) On November 14, 2013, CCE filed with the Board a motion for waivers of four specific provisions of Ohio Adm.Code Chapter 4906-13.
- (3) On December 17, 2013, the Board's Staff (Staff) filed a letter indicating that, with certain provisions, Staff does not object to CCE's waiver requests.
- (4) CCE requests waiver of Ohio Adm.Code 4906-13-03(A) and (B). Ohio Adm.Code 4906-13-03(A) and (B) require that an applicant conduct a site selection study, evaluating all practicable sites for the proposed facility and provide a summary table comparing the sites evaluated. The Applicant submits that it did not formally evaluate

alternative sites but evaluated quantitative and qualitative factors within Carroll County. CCE requests approval to submit a discussion of its site selection process, the site selection criteria utilized in identifying the proposed facility site, and the key attributes met by the site. CCE states that the site information to be submitted will assist the Board in its review and support a finding that the site represents the minimum adverse environmental impact as required by R.C. 4906.10. CCE also notes that the Board has granted several similar waivers.

- (5) Ohio Adm.Code 4906-13-04(A)(3)(b) and (g) requires that the applicant provide a map showing, among other things, existing vegetative cover and vegetative cover to be removed during construction. CCE requests that, rather than submitting this information when the application is filed, it be permitted to provide the required information as a part of the preliminary grading plan for the site. CCE offers that delaying the submission of this information will enable the Applicant to balance weather, logistics, and engineering requirements to provide a meaningful characterization of subsurface conditions. Staff states that it is not opposed to this waiver request, provided CCE submits the vegetative cover information in its facility site preliminary grading plans.
- (6) Ohio Adm.Code 4906-13-04(B)(2)(d) requires that an applicant provide a map showing the existing and proposed water supply and sewage lines. CCE states that it is in discussions with the Village of Carrollton and Carroll County to provide water services to the proposed facility. Accordingly, CCE contends that the routing of the water supply and sewage pipes will not be determined until a supplier has been selected and will be sited in the final engineering design work. CCE requests a waiver to allow the Applicant to submit the layout and location of the water and sewage lines in the final engineering drawings. Staff states that it does not oppose CCE's waiver request, to the extent that the water supply and sewage lines are not subject to the Board's jurisdiction. However, Staff will require information on any associated water and sewage facilities

that CCE plans to construct as a part of Staff's investigation of the application.

- (7) Ohio Adm.Code 4906-13-04(B)(2)(i) requires that an applicant provide a map showing the existing and proposed grade elevations where the elevations will be modified during construction. CCE proposes to provide grade elevation information with its site preliminary grading plans. According to CCE, the preliminary grading plans will include detailed information about the 17-acre facility and project area including the construction laydown area and access road. Staff states that it is not opposed to this waiver request, provided CCE submits the grade elevation information in its facility site preliminary grading plans.
- (8) The administrative law judge (ALJ) notes that CCE has committed to submit with the application sufficient information to support a finding that the site represents the minimum adverse environmental impact, pursuant to R.C. 4906.10(A)(3). For that reason, the ALJ finds the Applicant's request for a waiver from the site selection study requirements of Ohio Adm.Code 4906-13-03(A) and (B) to be reasonable and should be granted.
- (9) Ohio Adm.Code 4906-13-04(A)(3), 4906-13-04(B)(2)(d), and 4906-13-04(B)(2)(i) require that an applicant submit with the application specific information on vegetative cover, water supply and sewage lines, and grade elevations. CCE requests waivers to submit the vegetative cover and grade elevation information with its preliminary grading plans and to provide the water supply and sewage line information with the final engineering drawings. The ALJ notes that Staff does not oppose these waivers; therefore, the ALJ finds the request for such waivers of Ohio Adm.Code 4906-13-04 to be reasonable. Accordingly, CCE's request for waivers of Ohio Adm.Code 4906-13-03(A) and (B), 4906-13-04(A)(3), 4906-13-04(B)(2)(d), and 4906-13-04(B)(2)(i) should be granted.
- (10) In granting CCE's motion for waivers, the ALJ emphasizes that the Applicant is not relieved of its responsibility to provide Staff with information in the areas subject to the

waivers, if, in the determination of Staff, the information becomes necessary during the course of its investigation of the application.

Protective Order

- (11) On November 15, 2013, CCE filed a motion for protective order to maintain the confidentiality of financial data regarding the development, construction and operation of the proposed generation facility, the Applicant's proprietary methods for selecting potential sites for a generation facility, and estimated tax revenues subject to negotiations with local authorities. CCE asserts that the financial information has independent economic value to CCE and to others, which the Applicant states that it takes reasonable efforts, under the circumstances, to maintain the secrecy of the information. Further, CCE contends that revealing the information would provide its competitors with a competitive advantage and prejudice CCE in negotiations. On that basis, CCE argues that the information meets the definition of a trade secret under R.C. 1333.61 to 1333.69. CCE requests that the confidentiality of the information be maintained, in accordance with Ohio Adm.Code 4906-7-07(H)(4).
- (12) Ohio Adm.Code 4906-7-07(H)(4) 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 ALJ 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.
- (13) The ALJ has reviewed the information covered by CCE's motion for protective order, as well as the assertions of CCE in its memorandum, and finds that the information filed under seal contains financial and site selection information. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), 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 finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Therefore, the ALJ finds that CCE's motion for protective order regarding pages 5, 26-27, 69-73, and 149 of the application filed on November 15, 2013, should be granted.

- (14) Ohio Adm.Code 4906-7-07(H)(6) provides that, unless otherwise ordered, protective orders under Ohio Adm.Code 4906-7-07 automatically expire after 18 months. Therefore, confidential treatment shall be afforded in this case for a period of 18 months, until July 6, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially in this docket on November 15, 2013.
- (15) Ohio Adm.Code 4906-7-07(H)(6) 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 CCE wishes to extend this confidential treatment, CCE 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 CCE.

It is, therefore,

ORDERED, That, in accordance with the above Findings, CCE's motion for waivers be granted. It is, further,

ORDERED, That, in accordance with the above findings, CCE's motion for protective order be granted. It is, further,

ORDERED, That, in accordance with Finding (14), the docketing division maintain under seal the information filed confidentially in this docket on November 15, 2013, for a period of 18 months, until July 6, 2015. It is, further,

¹ 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).

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

THE OHIO POWER SITING BOARD

s/Greta See

By: Greta See
Administrative Law Judge

JRJ/sc

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in

Case No(s). 13-1752-EL-BGN

Summary: Administrative Law Judge Entry grants CCE's motion for waivers and motion for protective order and orders the docketing division to maintain under seal the information filed confidentially in this docket on 11/15/2013, for a period of 18 months, until 07/06/2015. - electronically filed by Sandra Coffey on behalf of Greta See, Attorney Examiner, Public Utilities Commission of Ohio