

OHIO POWER SITING BOARD

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

CASE NO. 18-1579-EL-BGN

ENTRY

Entered in the Journal on January 17, 2019

{¶ 1} On October 22, 2018, Angelina Solar I, LLC (Angelina or Applicant), a subsidiary of Open Road Renewables, LLC, filed a pre-application notification letter with the Ohio Power Siting Board (Board) regarding its proposed 100 megawatt (MW) solar electric generating facility in Israel and Dixon townships, Preble County, Ohio (the Project).

{¶ 2} Thereafter, on December 3, 2018, Angelina filed an application with the Board for a Certificate of Environmental Compatibility and Public Need to construct the Project.

{¶ 3} In addition to filing its application, Angelina filed two motions: one seeking waivers from certain provisions of the Board's rule requirements and one seeking a protective order to keep portions of its application confidential and not part of the public record. Neither motion is opposed or otherwise received comment.

Motion for Waivers

{¶ 4} Angelina contends that good cause exists for granting a waiver, in whole or in part, from Ohio Adm.Code 4906-4-05(B)(2) (requiring submission of PJM interconnection system impact study), 4906-4-08(A)(1)(c) (manufacturers' safety manual documents and recommended setbacks), 4906-4-08(A)(5)(c) (description of its plan for test borings, including appropriate closure plans), and 4904-4-08(D)(2)-(4) (reduced study area regarding the impact on landmarks).

{¶ 5} Ohio Adm.Code 4906-4-05(B) requires an applicant to provide information on interconnection of the proposed facility to the regional electric power grid. Subpart (B)(2)

requires the applicant to provide system studies on the generation interconnection request, including the feasibility study and system impact study. Angelina reports that it has provided the feasibility study associated with PJM Queue Position AC2-111 with its application but the system impact study (SIS) for AC2-111 is still in progress. Angelina states that it anticipates receiving the SIS within 90 days of its motion and will submit the SIS to Board Staff as soon as it is available. Because Staff will have the opportunity to consider the SIS in its review of the application, Angelia submits that good cause exists to allow for the delayed submission of the SIS.

{¶ 6} Ohio Adm.Code 4906-4-08(A)(1)(c) requires an applicant to provide information regarding the safety and reliability of all equipment including the generation equipment manufacturer's safety standards, a copy of the manufacturer's safety manual or similar document, and any recommended setbacks from the manufacturer. Angelina explains that the nature of the Project and timing of panel model selection warrant a waiver because the final panel model will not be selected until after the final engineering of the Project is complete. Once selected, Angelina commits to providing Board Staff with the manufacturer's safety standards, including complete copies of its safety manuals or similar documents, as part of the final construction plans for the Project; Angelina will also identify any recommended setbacks.

{¶ 7} Ohio Adm.Code 4906-4-08(A)(5)(c) requires an applicant to provide and describe plans for test borings, including closure plans for such borings. Pursuant to the regulation, the plans shall contain a timeline for providing the test boring logs and information regarding subsurface conditions. The Applicant requests waiver of this rule because the panel layout will not be complete until final engineering drawings are developed and, given that the Project is a solar farm, it expects that equipment will impact the subsurface to a very limited degree. Additionally, Angelina expects to conduct only limited test borings in connection with the construction of the Project. If the waiver is approved, Angelina commits to provide its plan for borings, including appropriate closure

plans, to Board Staff no less than 30 days prior to the commencement of the field work and after the Project's layout has been finalized. Further, within 60 days following the receipt of all relevant data from the borings, Angelina will provide Board Staff with all of the information required by the plan, including subsurface soil properties, status water level, rock quality description, percent recovery, and the depth and description of bedrock contact.

{¶ 8} Angelina also seeks waivers from Ohio Adm.Code 4906-4-08(D)(2)-(4) regarding impacts on landmarks, recreation and scenic areas, and the visual impact of the facility. Ohio Adm.Code 4906-4-08(D)(2) requires an applicant to provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of mapped landmarks within a ten-mile radius and to describe plans to avoid or mitigate any adverse impact. Ohio Adm.Code 4906-4-08(D)(3) requires an applicant to describe and evaluate impacts to the identified recreation and scenic areas within ten miles of the project area. Ohio Adm.Code 4906-4-08(D)(4) requires an applicant to evaluate the visual impact of the proposed facility within a ten-mile radius from the project area. Angelina reports that it has evaluated the impact of the Project on the presentation and continued meaningfulness of the registered landmarks, scenic and recreation areas, and visibility and viewshed within a five-mile vicinity of the project area in the submitted Cultural Resources Report (Exhibit H) and Visual Impact Report (Exhibit I). Angelina further represents that, because of the Project's low profile and anticipated screening afforded by vegetation and existing structures, visibility of the planned components is expected to be limited to the immediate vicinity of the Project. Furthermore, the Cultural Resources Report indicates that no effects are anticipated on landmarks or scenic and recreation areas outside a two-mile radius. Thus, Angelina seeks waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4) to allow for the focused five-mile study area and review of landmarks, as opposed to the required ten-mile radius.

{¶ 9} Ohio Adm.Code 4906-4-01(B) expressly provides that the Board may waive any requirement in Ohio Adm.Code Chapter 4906-4, other than one mandated by statute, upon motion.

{¶ 10} Upon consideration of Angelina’s motion for waivers, the administrative law judge (ALJ) finds that good cause exists to grant waivers of Ohio Adm.Code 4906-4-05(B)(2), 4906-4-08(A)(1)(c), 4906-4-08(A)(5)(C), and 4906-4-08(D)(2)-(4). As committed to within its motion, Angelina is expected to provide its plan for test borings, including appropriate closure plans, to Board Staff no less than 30 days prior to the commencement of field work and after the Project’s layout has been finalized in order to ensure that Staff has sufficient time to review the information prior to commencement of such work. Furthermore, should Staff determine that information regarding areas covered by the requested waivers is necessary for its investigation of the application, Angelina is expected to comply with any resulting requests for information from Staff.

Motion for Protective Order

{¶ 11} Along with the motion for waivers, Angelina filed a motion for protective order. Angelina moves the Board to keep portions of its application confidential and not part of the public record. The information Angelina seeks to protect includes estimated capital and intangible costs, operations and maintenance costs, rates of increases, rates of inflation and assumptions that go into the calculation of Net Present Value of operations and maintenance costs, and other sensitive financial data. Angelina also seeks to keep confidential the estimated annual payments to landowners. Angelina represents that its motion targets sensitive and confidential information that is generally not disclosed and – if revealed – would provide competitors and others with a competitive advantage.

{¶ 12} Pursuant to Ohio Adm.Code 4906-2-21(D) and upon motion, 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). Additionally, 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).

{¶ 13} In support of its request, Angelina asserts that the information it seeks to protect has independent economic value, is subject to reasonable efforts to maintain its secrecy, and otherwise meets the six-factor *Plain Dealer* test. Further, Angelina contends that non-disclosure of the information will not impair the purposes of Title 49, as the Board and its Staff have full access to the information. In the same vein, Angelina maintains that no purpose of Title 49 would be served by the public disclosure of the information.

{¶ 14} The ALJ has examined the information filed under seal, as well as the assertions set forth in the Applicant’s memorandum in support of its motion for a protective order. Applying the requirements discussed above, the ALJ finds that the motion should be granted. As such, the financial and estimated cost information on pages 26 through 30 of the application and the estimated annual land lease payments made to landowners contained in pages 3, 17, and 21 of Exhibit C should be kept confidential and not subject to public disclosure.

{¶ 15} 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. Angelina does not seek a different time frame; thus, the information protected by this order shall remain under seal for a period ending 24 months from the date of this Entry. Should Angelina 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 to the Applicant.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That Angelina's motion for waivers be granted as stated in Paragraph 10. It is, further,

{¶ 18} ORDERED, That Angelina's motion for a protective order be granted as stated in Paragraph 14. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Patricia A. Schabo

By: Patricia A. Schabo
Administrative Law Judge

NJW/hac

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1/17/2019 2:18:02 PM

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Summary: Administrative Law Judge Entry granting motion for waivers and motion for protective order electronically filed by Heather A Chilcote on behalf of Patricia A. Schabo, Administrative Law Judge, Power Siting Board