

OHIO POWER SITING BOARD

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

CASE NO. 18-1578-EL-BGN

ENTRY

Entered in the Journal on April 3, 2019

{¶ 1} Alamo Solar I, LLC (Alamo or Applicant) is a person as defined in R.C. 4906.01.

{¶ 2} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On October 22, 2018, Alamo, a subsidiary of Open Road Renewables, LLC, filed a pre-application notification letter with the Board regarding its proposed 89.9 megawatt (MW) solar electric generating facility in Gasper and Washington townships, Preble County, Ohio.

{¶ 4} On November 13, 2018, Applicant held a public information meeting to discuss the proposed project with interested persons and property owners. Previously, on November 5, 2018, Alamo filed an affidavit of publication demonstrating its compliance with the notice requirements of Ohio Adm.Code 4906-3-03.

{¶ 5} On December 10, 2018, Alamo filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility (the Project) of up to 69.9 MW in Preble County, Ohio.¹

¹ Alamo explains that the application seeks approval for 69.9 MW which is revised since the issuance of the pre-application notification letter.

{¶ 6} Also on December 10, 2018, Applicant filed a motion seeking waivers from certain provisions of the Board's rule requirements and a motion for protective order to keep portions of its application confidential. Staff did not file a response to either motion.

Motions to Intervene

{¶ 7} On March 22, 2019, the Eaton Community School District (Eaton CSD) filed a motion to intervene in this proceeding. In its memorandum in support, Eaton CSD states the decision to approve or deny the application will have significant financial impacts on Eaton CSD and Eaton CSD has a real and substantial interest in participating in this proceeding to ascertain the demands that the facility will place on district resources and to advocate for Eaton CSD's interests, which are not represented by other parties. No party filed memoranda contra Eaton CSD's motion to intervene. In accordance with Ohio Adm.Code 4906-2-12, the Administrative Law Judge (ALJ) finds the motion to intervene filed by Eaton CSD is reasonable and should be granted.

{¶ 8} On March 26, 2019, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding. In its memorandum in support, OFBF asserts that it has a real and substantial interest in this matter. More specifically, OFBF asserts that it is a non-profit organization representing agricultural and rural community interest, and includes as members hundreds of families in Preble County. OFBF asserts that its members have an interest in solar energy development in order to enhance their income and ensure construction activities adhere to proper procedures and address environmental considerations. No party filed memoranda contra OFBF's motion to intervene. In accordance with Ohio Adm.Code 4906-2-12, the ALJ finds the motion to intervene filed by OFBF is reasonable and should be granted.

Motion for Waivers

{¶ 9} Alamo contends that good cause exists for granting a waiver, in whole or in part, from Ohio Adm.Code 4906-4-03(A)(1)(a), 4906-4-03(B)(4)(b), 4906-4-08(A)(5), 4906-4-08(B)(1)(a)(i), 4906-4-08(C)(1)(a)(i), and 4906-4-08(E)(1) (maps provided with the application do not show the short gen-tie connecting the project substation to the point of interconnection), 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 4906-4-08(D)(2)-(4) (reduced study area regarding the impact on landmarks).

{¶ 10} Ohio Adm.Code 4906-4-03(A)(1)(a), 4906-4-03(B)(4)(b), 4906-4-08(A)(5), 4906-4-08(B)(1)(a)(i), 4906-4-08(C)(1)(a)(i), and 4906-4-08(E)(1) requires the submission of maps showing the proposed facility. Alamo explains that the maps as submitted do not show the short gen-tie that will connect the project substation to the 69 kilovolt (kV) transmission line. The gen-tie will be approximately 300 feet in length and will run to the west of the project substation site in an agricultural field within the evaluated project boundaries. The mapping as submitted with the application does not show the specific location of the gen-tie because the PJM Facilities Study has yet to be completed. The PJM Facilities Study is necessary to determine where the exact location of the point of interconnection to the 69 kV transmission line should be, which in turn will drive the location of the gen-tie. Alamo states that the general location of the gen-tie can be easily ascertained from the figures.

{¶ 11} 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. Alamo 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, Alamo 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; Alamo will also identify any recommended setbacks.

{¶ 12} 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, Alamo expects to conduct only limited test borings in connection with the construction of the Project. If the waiver is approved, Alamo 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, Alamo 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.

{¶ 13} Alamo 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. Alamo 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). Alamo 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, Alamo 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.

{¶ 14} 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.

{¶ 15} Upon consideration of Alamo's motion for waivers, the ALJ finds that good cause exists to grant waivers of Ohio Adm.Code 4906-4-03(A)(1)(a), 4906-4-03(B)(4)(b), 4906-4-08(A)(5), 4906-4-08(B)(1)(a)(i), 4906-4-08(C)(1)(a)(i), and 4906-4-08(E)(1), 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, Alamo 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. Additionally, Alamo is expected to provide Staff the 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 and also identify any recommended setbacks.

{¶ 16} Furthermore, should Staff determine that information regarding areas covered by the requested waivers is necessary for its investigation of the application, Alamo is expected to comply with any resulting requests for information from Staff.

Motion for Protective Order

{¶ 17} Along with the motion for waivers, Alamo filed a motion for protective order. Alamo moves the Board to keep portions of its application confidential and not part of the public record. The information Alamo 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. Alamo also seeks to keep confidential the estimated annual payments to landowners. Alamo 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.

{¶ 18} 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).

{¶ 19} In support of its request, Alamo 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, Alamo 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, Alamo maintains that no purpose of Title 49 would be served by the public disclosure of the information.

{¶ 20} 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, 18, and 22 of Exhibit C should be kept confidential and not subject to public disclosure.

{¶ 21} } 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. Alamo 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 Alamo 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 4906-2-21(F). If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicant.

Procedural Schedule

{¶ 22} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chairman of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

By letter dated February 8, 2019, the Board notified Alamo that its application was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's February 8, 2019 letter directed Alamo to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Alamo to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 23} On March 20, 2019, Alamo filed a certificate of service of its accepted and complete application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 24} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the ALJ shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. Under R.C. 4906.07(A), the public hearing must be held not less than 60 nor more than 90 days after the effective date.

{¶ 25} Therefore, the effective date of the application shall be March 27, 2019. The ALJ finds that a local public hearing in this matter shall be held on June 12, 2019, at 6:00 p.m., at Eaton Fire Division Station #2, 391 West Lexington Road, Eaton, Ohio 45320. The evidentiary hearing shall commence on June 26, 2019, at 10:00 a.m., in Hearing Room 11-D at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 26} Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by May 15, 2019, whichever is later.

{¶ 27} In accordance with Ohio Adm.Code 4906-3-09, Alamo should issue public notices of the application and hearings. Pursuant to the same rule, in addition to other required information, that notice shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person on June 12, 2019, at 6:00 p.m., Eaton Fire Division Station #2, 391 West Lexington Road, Eaton, Ohio 45320.
- (b) An evidentiary hearing commencing on June 26, 2019, at 10:00 a.m., in Hearing Room D at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 28} Further, under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, the initial notice shall include the following language:

Petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4606-3-09, or May 15, 2019, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 29} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing. In so doing, the ALJ may require expert or factual testimony to be offered

at Board proceedings to be reduced to writing and filed with the Board. Accordingly, the ALJ establishes the following procedural schedule and process:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation (Staff Report) on or before May 28, 2019.
- (b) On or before June 6, 2019, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by Alamo shall be filed by June 14, 2019. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by June 21, 2019.
- (d) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings amongst themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the assigned ALJ.

{¶ 30} It is, therefore,

{¶ 31} ORDERED, That OFBF and Eaton CSD's motions to intervene be granted as stated in Paragraphs 7 and 8. It is, further,

{¶ 32} ORDERED, That Alamo's motion for waivers be granted as stated in Paragraph 15. It is, further,

{¶ 33} ORDERED, That Alamo's motion for a protective order be granted as stated in Paragraph 20. It is, further,

{¶ 34} ORDERED, That the hearings in this matter be scheduled at the times and places designated in Paragraph 25. It is, further,

{¶ 35} ORDERED, That notices of the application and hearings be issued by Alamo in accordance with Paragraphs 27 and 28. It is, further,

{¶ 36} ORDERED, That Staff file its Staff Report pursuant to Paragraph 29. It is, further,

{¶ 37} ORDERED, That the parties file their issues lists and testimony in accordance with Paragraph 29. It is, further,

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

THE OHIO POWER SITING BOARD

s/Stacie Cathcart

By: Stacie E. Cathcart
Administrative Law Judge

JRJ/sc

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in

Case No(s). 18-1578-EL-BGN

Summary: Administrative Law Judge Entry granting Alamo's motion for a protective order, scheduling hearings in accordance with Paragraph 25, directing that the notices of the application and hearing be issued by Alamo in accordance with Paragraphs 27 and 28, directing Staff to file its report pursuant to Paragraph 29, and directing that the parties file their issues lists and testimony in accordance with Paragraph 29 - electronically filed by Sandra Coffey on behalf of Stacie Cathcart, Attorney Examiner, Public Utilities Commission of Ohio