

OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
REPUBLIC WIND, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A TRANSMISSION LINE IN
SENECA COUNTY, OHIO.

CASE NO. 19-1066-EL-BTX

ENTRY

Entered in the Journal on March 31, 2020

{¶ 1} Republic Wind, LLC (Republic) is a person as defined in R.C. 4906.01.

{¶ 2} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Ohio Power Siting Board (Board). In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.04, as well as Ohio Adm.Code Chapters 4906-2 and 4906-5.

{¶ 3} On May 14, 2019, Republic, a wholly-owned subsidiary of Apex Clean Energy Management, LLC, filed a pre-application notification letter with the Board regarding its proposed transmission line and point of interconnection (POI) switchyard. Republic proposes construction of a new, approximately 7.2-mile long 138 kilovolt overhead transmission line with a POI switchyard in Pleasant and Adams townships, Seneca County, Ohio (the Facility).

{¶ 4} On August 27, 2019, Republic filed an application with the Board for a Certificate of Environmental Compatibility and Public Need to construct the Facility.

{¶ 5} Simultaneous with the application, Republic filed a motion for waiver from the requirement of Ohio Adm.Code 4906-3-05 which requires that the alternative route have no more than 20 percent in common with the preferred route and a waiver from the requirement of Ohio Adm.Code 4906-5-04(A) which requires submittal of a formal route selection study.

{¶ 6} Finally, also on August 27, 2019, Republic filed a motion for a protective order

regarding certain trade secret information and confidential archaeological sites contained in its application.

{¶ 7} Ohio Adm.Code 4906-3-06 states that upon receipt of a standard certificate application for a major utility facility, the Chairman, within 60 days following receipt, shall either accept the application as complete and complying with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 to 4906-7 or reject the standard certificate application as incomplete, setting forth specific grounds on which the rejection is based.

{¶ 8} On October 28, 2019, Staff filed a motion seeking an extension of the completeness deadline set forth in Ohio Adm.Code 4906-3-06(A) for five days or until November 1, 2019.

{¶ 9} By Entry dated October 28, 2019, the administrative law judge (ALJ) determined that the request for a limited extension of the completeness deadline for five days or until November 1, 2019, was warranted to allow Staff to finalize its review in light of the two waivers sought by Republic in this matter.

{¶ 10} By letter dated November 1, 2019, the Staff notified Republic 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 November 1, 2019 letter directed Republic 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 Republic to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 11} On December 12, 2019, Republic filed proof of compliance that it had submitted its application fee pursuant to Ohio Adm.Code 4906-3-07(C) on November 14, 2019.

{¶ 12} On December 16, 2019, Republic filed a certificate of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07.

{¶ 13} By Entry dated December 17, 2019, and pursuant to R.C. 4906.07(A) and Ohio Adm.Code 4906-3-08(A), the ALJ set the effective date of the application as of December 16, 2019, February 26, 2020 as the date for the local public hearing, and March 11, 2020 as the date for the evidentiary hearing. In the same Entry the ALJ also granted both of Republic's motions filed on August 27, 2019.

{¶ 14} On February 5, 2020, Republic filed a motion to suspend the procedural schedule in this matter. In the motion, Republic indicated that it was in the process of amending its initial application to propose a relatively minor modification to the proposed route of the transmission line. Because of approaching procedural deadlines, Republic requested a suspension of the procedural schedule to prepare its amended application. Republic also indicated that after filling its amended application, it intended to file a motion proposing a new procedural schedule providing Staff adequate time to review and ample time for notice of the hearings.

{¶ 15} On February 7, 2020, Staff filed communication in the docket stating that it did not oppose Republic's request to extend the procedural schedule.

{¶ 16} By Entry dated February 7, 2020, the ALJ granted Republic's motion and suspended the procedural schedule in this matter until February 25, 2020. The ALJ also canceled the hearings scheduled for February 26, 2020 and March 11, 2020, to be rescheduled at a later time, and directed Republic to issue public notices of cancellation of the two meetings.

{¶ 17} On February 25, 2020, Republic filed its amended application with the Board for a Certificate of Environmental Compatibility and Public Need to construct the Facility.

{¶ 18} Simultaneous with the amended application, Republic filed a motion for a protective order regarding certain information reflecting archaeological sites deemed confidential by the Ohio State Historical Preservation Office (SHPO).

{¶ 19} On February 28, 2020, Republic filed a certificate of service of its accepted and

complete amended application as required by Ohio Adm.Code 4906-3-07.

{¶ 20} Finally, on March 2, 2020, Republic and Staff filed a joint motion requesting that the ALJ issue an entry establishing a procedural schedule.

{¶ 21} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety.

{¶ 22} On March 22, 2020, Dr. Amy Acton, Director of the Ohio Department of Health, issued an order (Stay at Home Order) intended to ensure that the maximum number of Ohioans self-isolate in their residences to the maximum extent feasible, while enabling essential services to continue and help slow the spread of COVID-19. Specifically, the Stay at Home Order, among other things, directs all individuals in the State of Ohio to stay at home unless engaged in essential work or activity. The Stay at Home Order further directs all non-essential businesses and operations to cease all activities. Additionally, except for limited purposes, the Stay at Home Order prohibits all public and private gatherings of any number of individuals outside of a single household or living unit. The Stay at Home Order remains in full force and effect until April 6, 2020, unless Dr. Acton modifies or rescinds the order at an earlier time and date.

{¶ 23} In light of the governor's declaration of a state of emergency in the Executive Order, as well as the provisions of the Stay at Home Order, the ALJ finds that the procedural schedule in this matter should be suspended; 30 days after the Stay at Home Order expires or has been rescinded, the ALJ will work with Republic and Staff to establish a new procedural schedule which sets new hearing dates and ensures continued compliance with any orders or restrictions issued by the governor and Dr. Acton in response to the COVID-

19 pandemic.

{¶ 24} As noted above, also on February 25, 2020, Republic filed a motion for a protective order regarding certain information reflecting archaeological sites deemed confidential by the Ohio State Historical Preservation Office (“SHPO”). Republic explains that Figure 07.3 and select portions of the Cultural Resources Record Review (Exhibit F) at Section 2.2.6, page 5, and Figure 3 describe sensitive archaeological sites. According to Republic, SHPO provided Republic and its consultant information regarding the location of certain archaeological sites based upon an understanding and agreement that such information would not be disclosed publicly. Republic represents that in accordance with Section 304 of the National Historic Preservation Act, SHPO has the right to withhold from public disclosure information that may cause a significant invasion of privacy, risk harm to the historic place, or impede the use of a traditional religious site by practitioners. Republic indicates that it will submit, under seal, confidential versions of the cultural resource information to allow Staff to perform its investigation in this case.

{¶ 25} Pursuant to Ohio Adm.Code 4906-2-21(D), 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). Moreover, 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). In addition to information deemed to be a trade secret, Ohio Adm.Code 4906-2-21(A)(7) empowers the Board to issue a protective order providing that other confidential research, development,

commercial, or other information not be disclosed or be disclosed only in a designated manner.

{¶ 26} The ALJ has examined the information filed under seal, as well as the assertions set forth in Republic's memorandum in support of its motion for a protective order. Applying the requirements discussed above, the ALJ finds that Republic's motion should be granted. Consequently, Figure 07.3 and select portions of the Cultural Resources Record Review, Exhibit F, at Section 2.2.6, page 5, and Figure 3 should be kept confidential and not subject to public disclosure.

{¶ 27} 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. Should Republic 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.

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That the procedural schedule in this matter be suspended as stated in Paragraph 23. It is, further,

{¶ 30} ORDERED, That Republic's motion for protective order be granted as stated in Paragraph 26 and 27. It is, further,

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

THE OHIO POWER SITING BOARD

/s/David M. Hicks

By: David M. Hicks
Administrative Law Judge

JRJ/kck

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Case No(s). 19-1066-EL-BTX

Summary: Administrative Law Judge Entry the procedural schedule in this matter is suspended; Republic's motion for a protective order is granted. electronically filed by Mrs. Kelli C King on behalf of David M. Hicks, Administrative Law Judge, Public Utilities Commission of Ohio