

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE PROPER
PROCEDURES AND PROCESS FOR THE
BOARD'S OPERATIONS AND
PROCEEDINGS DURING THE DECLARED
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE NO. 20-601-GE-UNC

CASE NO. 20-2000-XX-XXX

E-FILING CONFIDENTIAL DOCUMENTS
DURING THE DECLARED STATE OF
EMERGENCY.

ENTRY

Entered in the Journal on April 16, 2020

I. SUMMARY

{¶ 1} Due to the declaration of a state of emergency, the Ohio Power Siting Board directs that certain provisions of Ohio Adm.Code Chapter 4906-2 be waived in order to permit the electronic filing of documents for which protective or confidential treatment is requested. The Board further adopts the procedures and processes for the electronic filing of confidential documents attached to this Entry for the duration of the emergency or until otherwise ordered by the Board.

II. DISCUSSION

{¶ 2} Under R.C. 4906.02, the Ohio Power Siting Board (Board) was created within the Public Utilities Commission of Ohio (Commission), with the Board's offices located in those of the Commission.

{¶ 3} The Supreme Court of Ohio has found that the Board is vested with considerable discretion "to decide how * * * it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *In re Application of American Transmission Systems, Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427; *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982).

{¶ 4} Ohio Adm.Code Chapter 4906-2 contains administrative procedure provisions applicable to cases before the Board. Included within that chapter are Ohio Adm.Code 4906-2-02, which governs the filing of pleadings and other documents, and Ohio Adm.Code 4906-2-21, which governs motions for protective orders. Additionally, Ohio Adm.Code 4906-2-01 provides that the Board may waive any requirement of this chapter, other than a requirement mandated by statute from which no waiver is permitted, upon good cause shown.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01(D) (Executive Order), declaring a state of emergency in Ohio to protect the well-being of its citizens from the dangerous effects of COVID-19. The Executive Order requires all state agencies 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. The Executive Order was effective immediately and shall remain in effect until the COVID-19 emergency no longer exists. The Ohio Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/>.

{¶ 6} Pursuant to R.C. 3701.13, the Ohio Department of Health (Ohio DOH) has authority over “all matters relating to the preservation of life and the health of the people” and is the “ultimate authority in matters of quarantine and isolation.” The Ohio DOH may further “make special or standing orders * * * for preventing the spread of contagious or infectious diseases.” R.C. 3701.13. On March 12, 2020, the Director of the Ohio DOH issued an Order to prevent the spread of COVID-19 in the State of Ohio (Director’s Order). Among other things, the Director’s March 12, 2020 Order directs that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible * * *.” Subsequently, on March 22, 2020, and amended on April 2, 2020, the Director of the Ohio DOH issued a Stay at Home Order (Order) directing that from March 23, 2020,

until May 1, 2020, with certain outlined exceptions, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence.” The Director of the Ohio DOH specified that “the intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible.”

{¶ 7} On March 17, 2020, the Board opened this proceeding in response to the current state of emergency. By Entry dated the same day, an administrative law judge (ALJ) issued directives to ensure the continued orderly flow of the Boards’ business and to mitigate risks of spreading COVID-19 through social contact. As is relevant, the March 17, 2020 ALJ Entry suspended all in-person filing of documents with the Board’s docketing division during the declared emergency. Although the ALJ encouraged use of the Board’s docketing information system to file documents electronically, the ALJ also explained that filings could also be made by mail or, unless otherwise prohibited by Ohio Adm.Code Chapter 4902, facsimile. The ALJ cautioned, however, that any document for which a filer seeks confidential treatment must be mailed to the Board. March 17, 2020 ALJ Entry at ¶4(b).

{¶ 8} In an ongoing effort to further promote the Governor’s and the Director’s endeavors to keep all Ohioans safe during this declared emergency, the Board finds it prudent to temporarily lift restrictions against the electronic filing of documents for which a filer seeks confidential treatment. Accordingly, pursuant to Ohio Adm.Code 4906-2-01, the Board directs that the provisions of Ohio Adm.Code Chapter 4906-2 regarding the electronic filing of confidential information be waived. Furthermore, the Board directs participants who intend to use electronic filing for the submission of documents for which protective or confidential treatment is requested under Ohio Adm.Code 4906-2-21 to follow the procedures attached to this Entry as Attachment A. The waiver of specified rules and the substitute procedures for the electronic filing of potentially confidential documents set

forth in Attachment A shall remain in effect for the duration of the emergency or until otherwise ordered by the Board.

{¶ 9} Specifically, the Board waives:

- (a) Ohio Adm.Code 4906-2-02(D)'s prohibition of the electronic filing of any document for which protective or confidential treatment is requested under Ohio Adm.Code 4906-02-21.
- (b) Ohio Adm.Code 4906-2-21(D)(2)'s requirement that, in filing a motion for a protective order under Ohio Adm.Code 4906-2-21, the filer submit three unredacted copies of the material for which confidential treatment is sought under seal. The Board clarifies that each page of the allegedly confidential material filed pursuant to the procedures set forth in this Entry must still be marked as "confidential," "proprietary," or "trade secret."

{¶ 10} Additionally, to the extent necessary to effectuate these primary waivers, the Board further waives:

- (a) Ohio Adm.Code 4906-2-02(D)(1) to the extent that the electronic filing manual and technical requirements at the docketing information system website may not be immediately updated.
- (b) The last sentence of Ohio Adm.Code 4906-2-21(E). The Board clarifies that no document or portion of a document will be afforded confidential treatment and protected from disclosure unless it is filed in accordance with the procedures set forth in this Entry, until otherwise ordered by the Board.

{¶ 11} Parties and persons who choose to electronically file documents containing confidential information are reminded to exercise caution in following the new filing procedures and to confirm that filings are completed correctly. All confidential electronically filed documents must be filed in Case No. 20-2000-XX-XXX and the

instructions followed as provided in Attachment A. Additionally, while the Board is providing a means by which to submit potentially confidential documents electronically, the Board will continue to accept ordinary mail filing of confidential documents at this time. Finally, the Board reiterates that in-person filing of documents with the Board's docketing division remains suspended during the declared emergency.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That, for the duration of the emergency or until otherwise ordered by the Board, provisions of Ohio Adm.Code 4906-2-02 and Ohio Adm.Code 4906-2-21 described in Paragraph 9 and Paragraph 10 are waived to permit the electronic filing of documents containing confidential information. It is, further,

{¶ 14} ORDERED, That the procedural directives set forth as Attachment A be adopted by the Board and adhered to by any party or person electronically filing documents containing potentially confidential information, in accordance with Paragraph 8, until otherwise ordered by the Board. It is, further,

{¶ 15} ORDERED, That parties and other interested persons may continue to file documents containing confidential, proprietary, or trade secret material via ordinary mail, as stated in Paragraph 11. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served via the Electric-Energy, Gas Pipeline industry, and OPSB service lists.

BOARD MEMBERS:

Approving:

Sam Randazzo, Chairman
Public Utilities Commission of Ohio

Rachel Near, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

Gene Phillips, Designee for Amy Acton, M.D., MPH, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

George McNab, Designee for Dorothy Peland, Director
Ohio Department of Agriculture

Greg Murphy, Public Member

PAS/hac

ELECTRONIC FILING OF CONFIDENTIAL DOCUMENTS

By Entry dated April 16, 2020, in response to the state of emergency declared by Governor DeWine, the Ohio Power Siting Board (OPSB or Board) authorizes the electronic filing of confidential documents in the Docketing Information System (DIS) as a temporary procedural relief from the required paper filing of confidential documents.

In accordance with the Board's April 16, 2020 Entry, parties and persons intending to file documents containing trade secret, proprietary, or otherwise confidential information via electronic filing shall adhere to the following procedures and processes during this state of emergency or until otherwise ordered by the Board.

Electronically filing a confidential document. If you do not already have an e-filing profile in DIS, you will need to create one:

<https://www.puco.ohio.gov/docketing/create-an-e-filing-profile/>.

The Board provides the following instructions, which includes several controls to ensure confidential e-filings are not made public. These requirements must be met to comply with filing a confidential document electronically in DIS:

1. File the document in Case No. 20-2000-XX-XXX, which has been opened to specifically receive confidential documents. Do NOT file a confidential document in the case number to which the document pertains.
2. Complete and submit a Confidential Electronically Filed Document Cover Sheet (see attached) as the first page of the confidential document PDF.
3. Select "Confidential Document" for the document type when e-filing and use the word "confidential" in the summary of the docketing card field. (e.g. Confidential Testimony of Bob Smith or Confidential Document: Exhibit C-3, C-5, C-7 on behalf of XYZ Company LLC).
 - a. No source files are to be filed. If Board Staff requires source files, Staff will contact the filer and those documents can be filed separately.
4. If applicable, file the public version of your confidential document in the case number to which the document pertains.

Following your confidential e-filing:

1. The Docketing Division (Docketing) will review the confidential e-filings. For the duration of the declared state of emergency, filers will receive a second email notice with the subject: **Rejection email notice**. This *does not* necessarily mean your document was rejected. As this is an emergency procedure, the document must be “rejected” by Docketing to prevent it from being publicly published.
2. If you do not receive a rejection email notice, check your spam folder. While the subject line of the email may say the document was rejected, the body of the email will have a description that indicates the status of confidential submissions: (1) the confidential filing has been received and accepted; or (2) the confidential filing has been rejected (with the reason noted).
 - a. A Confidential Target Document, a placeholder indicating a confidential document was filed, will be filed by Docketing in the actual intended case (not in Case No. 20-2000-XX-XXX). It is recommended that the filer review the intended case and “subscribe” to the case to ensure your document was filed.

Confidential Filing Disclaimer

By submitting confidential documents to DIS you agree to the following:

The OPSB is not responsible for publication of documents deemed to be confidential to the Docketing Information System (DIS) that are not filed in compliance with required confidential submission protocol in Attachment A from the Entry issued by the Board on April 16, 2020 in Case No. 20-601-GE-UNC. Confidential information being electronically filed in DIS must be filed with a completed Confidential Electronically Filed Document Cover Sheet, a document type of confidential document, descriptive language that includes the word “confidential” in the document card summary field, and filed in Case No. 20-2000-XX-XXX exclusively. Failure to file such confidential documents in accordance with the confidential submission protocols, may result in publication and incur liability for you or the organization holding the trade secret under Ohio law for misappropriation or other liability for disclosure of confidential information.

Need help filing your confidential document? Please look for our [Electronic filing manual and technical requirements](#) and [E-Filing Video Tutorial](#) on the [PUCO DIS webpage](#). You may receive assistance on filing confidential documents by emailing Docketing's staff at docketing@puco.ohio.gov.

- Instructions for the filing of confidential documents can be accessed at: (<https://www.puco.ohio.gov/docketing/emergency-procedures-electronic-filing-of-confidential-documents/>).
- A Confidential Electronically Filed Document Cover Sheet can be accessed at: (<https://www.puco.ohio.gov/docketing/emergency-procedures-electronic-filing-of-confidential-documents/>).

OPSB Docketing Emergency Operation Hours: Pursuant to Ohio Adm.Code 4906-2-02, the docketing division accepts filings from 7:30 a.m. to 5:30 p.m., Monday through Friday, except on state holidays. However, during the Covid-19 Emergency, the docketing division will respond to emails at docketing@puco.ohio.gov during the hours of 8:00 a.m. to 5:00 p.m. You may call the Docketing office at (614) 466-4095 during the hours of 1:00 p.m. to 5:00 p.m.

CONFIDENTIAL

Electronically Filed Document

*Confidential Electronic Filing Case Number: 20-2000-XX-XXX**

**All confidential filings are being e-filed into Case No. 20-2000-XX-XXX pursuant to the confidential filing protocols in Attachment A of the Commission Entry issued on April 8, 2020, in Case No. 20-591-AU-UNC and the Board Entry issued on April 16, 2020, in Case No. 20-601-GE-UNC. The confidential filing will then be associated with the actual intended case number for which the filing is being made (see "Actual Intended Case Number" below).*

*Actual Intended Case Number:**

Page Count:

Date Filed:

Filed By:

On Behalf Of:

*Summary of Document**:*

*** Please use the word "confidential" in the summary of the document. (e.g. Confidential Testimony of Bob Smith or Confidential Document: Exhibit C-3, C-5, C-7 on behalf of XYZ Company LLC).*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/16/2020 2:59:18 PM

in

Case No(s). 20-0601-GE-UNC, 20-2000-XX-XXX

Summary: Entry directing that certain provisions of Ohio Adm.Code Chapter 4906-2 be waived in order to permit the electronic filing of documents for which protective or confidential treatment is requested. The Board further adopts the procedures and processes for the electronic filing of confidential documents attached to this Entry for the duration of the emergency or until otherwise ordered by the Board. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board