

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF THE OHIO STATE UNIVERSITY FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A COMBINED HEAT AND
POWER FACILITY IN FRANKLIN COUNTY,
OHIO.

CASE NO. 19-1641-EL-BGN

ENTRY

Entered in the Journal on September 14, 2020

{¶ 1} The Ohio State University (Ohio State or University) 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 September 11, 2019, Ohio State filed a preapplication notification letter with the Board regarding its proposal to construct a combined heat and power (CHP) major utility facility on the University's campus in Clinton Township in Franklin County, Ohio. According to Ohio State, the CHP facility would serve as a primary source of heating and electricity to its Columbus campus.

{¶ 4} On November 6, 2019, Ohio State filed with the Board an application for a certificate of environmental compatibility and public need to construct the new CHP facility.

{¶ 5} On that same date, Ohio State also filed a motion for protective order, seeking to protect certain financial information on pages 38, 41, and 42 of its application. Specifically, Ohio State requests protection of certain cost comparison data and estimated costs associated with delay beyond the projected in-service date. Ohio State asserts that this information constitutes confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4906-2-21(D). Additionally, Ohio State notes that the Board has granted similar motions for protective

orders. *See, e.g., In re Harrison Power, LLC*, Case No. 17-1189-EL-BGN, Opinion, Order, and Certificate (June 21, 2018) at ¶¶ 22-27; *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN, et al., Entry (Nov. 8, 2013) at 3-5; *In re Paulding Wind Farm, LLC*, Case No. 09-980-EL-BGN, Entry (Feb. 23, 2010) at 4-5. No memoranda contra the motion for protective order were filed.

{¶ 6} Ohio law defines a trade secret as “information * * * that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 7} The administrative law judge (ALJ) has reviewed the information that is the subject of the motion for protective order, as well as the assertions set forth in the supportive memorandum. 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 cost comparison and other financial information constitutes trade secret information. Its release is, therefore, prohibited under state law. The ALJ also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the ALJ finds that the motion for protective order is reasonable and should be granted.

{¶ 8} Ohio Adm.Code 4906-2-21(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4906-2-21 automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Board’s docketing division should

¹ *See State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).

maintain, under seal, the information filed confidentially by Ohio State on November 6, 2019.

{¶ 9} Ohio Adm.Code 4906-2-21(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Ohio State wishes to extend this confidential treatment, it 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 Ohio State.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That Ohio State's motion for protective order be granted. It is, further,

{¶ 12} ORDERED, That the Board's docketing division maintain, under seal, the confidential information filed by Ohio State on November 6, 2019, for a period ending 24 months from the date of this Entry. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

THE OHIO POWER SITING BOARD

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Administrative Law Judge

JRJ/kck

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Case No(s). 19-1641-EL-BGN

Summary: Administrative Law Judge Entry granting Ohio State's motion for protective order; ordering the Board's docketing division maintain, under seal, the confidential information filed by Ohio State on November 6, 2019, for a period ending 24 months from the date of this Entry.
electronically filed by Kelli C. King on behalf of Sarah J. Parrot, Administrative Law Judge, Ohio Power Siting Board