

OHIO POWER SITING BOARD

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

CASE NO. 20-1380-EL-BGN

ENTRY

Entered in the Journal on January 20, 2020

{¶ 1} Ross County Solar, LLC (Applicant or RCS) 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). 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 through 4906-4.

{¶ 3} 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 (DOH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the DOH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The DOH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 4} Pursuant to R.C. 3701.13, the DOH has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the DOH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On September 14, 2020, Applicant filed a pre-application notification letter with the Board regarding a proposed solar-powered electric generating facility in Buckskin and Paint townships, Ross County, Ohio.

{¶ 6} On September 30, 2020, Applicant held a virtual public information meeting to discuss the proposed project with interested persons and property owners. Previously, on September 28, 2020, Applicant filed an affidavit of publication demonstrating its compliance with the notice requirements of Ohio Adm.Code 4906-3-03.

{¶ 7} On October 30, 2020, RCS filed an application with the Board for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility (Project) of up to 120 megawatts (MW) in Ross County, Ohio.

{¶ 8} Also on October 30, 2020, 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 filed a response to RCS' motion for waiver on November 13, 2020, and a memorandum contra RCS' motion for a protective order on November 25, 2020.

Motion for Waivers

{¶ 9} Applicant 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. Applicant reports that owing to the nature of the Project as solar panels, which have a low profile, good cause

exists for it to evaluate in a “focused study area” the impact of the Project. Specifically, Applicant proposes to survey within an area of two miles for cultural resources and review of landmarks and effects in the area; and within five miles for review of recreation and scenic areas and effects in that area, and within five miles for effects on general visual impacts. Applicant further asserts 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 as submitted by Applicant in Exhibit T to the application (Section 1 of the Phase I History Architecture Reconnaissance Survey, Area of Potential Effect). Thus, Applicant seeks waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4) to allow for the focused two- and five-mile focused study areas as opposed to the required ten-mile radius.

{¶ 10} 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.

{¶ 11} Upon consideration of Applicant’s motion for waivers, the administrative law judge (ALJ) finds that good cause exists to grant waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4).

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

Motion for Protective Order

{¶ 13} Along with the motion for waivers, Applicant filed a motion for protective order. The information Applicant seeks to protect includes the total estimated capital and intangible costs, the present worth of the capital costs (pages 33-35 of application narrative), the estimated annual staffing and operations and maintenance costs for the first two years of commercial operation, and the present worth of the operations and maintenance cost of

the Project (pages 14-16 of Exhibit K to the application). Applicant also seeks protection of Exhibit B to the application, which details the specific inverter equipment, solar panels, and array tracking systems under consideration for the proposed project. Lastly, Applicant seeks confidential treatment of all disclosures set forth in Exhibit U, which is the Phase 1 Archeological Reconnaissance Report. Applicant 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, having an adverse effect on Applicant and others.

{¶ 14} 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).

{¶ 15} In support of its request, Applicant 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, Applicant 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, Applicant maintains that no purpose of Title 49 would be served by the public disclosure of the information. Applicant asserts that estimated costs and other financial information for its proposed

facility, found at pages 33-35 of the application, and the cost-related information on pages 14-16 of Exhibit K are generally not disclosed and constitutes a trade secret under R.C. 1333.61(D). Applicant affirms in an affidavit attached to its motion and memorandum in support, that it does not publicly disclose cost information about its projects, and that such disclosure would harm the Applicant. Applicant cites to previous Commission cases in which estimated project costs were found to constitute trade secret information: *In re Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Entry (July 7, 2020) at ¶ 12; *Hillcrest Solar I*, Opinion, Order, and Certificate (Feb. 15, 2018) at ¶ 19; and *In re North Coast Gas Transmission LLC for a Certificate Relative to the Oregon Lateral Pipeline*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014) at ¶ 3. Applicant asserts that the equipment information reflected in Exhibit B is trade secret information where the disclosure of the details of such equipment will allow its competitors to readily discern its estimated costs of the proposed facility. Lastly, the Applicant asserts that the archeological site and finds information in Exhibit U must be protected, as Staff will still be able to examine the information without risk of harm to the archeological sites, which would be risked if such information were disclosed. Applicant further asserts that not only would its competitors obtain an undue advantage from disclosure, such disclosure would likely neither assist Staff in carrying out its duties nor serve any public policy.

{¶ 16} On November 25, 2020, Staff filed a memorandum contra to Applicant's motion for a protective order. In its motion, Staff argues that Applicant is entitled to some, but not all of the protective treatment it moved for. Staff asserted that the Board should grant Applicant's request to keep confidential its cost-related information on pages 33-35 of the application narrative, pages 14-16 of the Socioeconomic Impact Report (Exhibit K to the application), and its disclosures in the Phase I Archeological Reconnaissance Report (Exhibit U to the application). Conversely, Staff asserts that the Board should deny Applicant's request to keep confidential equipment model information found in Exhibit B to the application. Staff argues that the equipment information Applicant seeks to protect lacks specificity such that it satisfies the requirements of R.C. 1333.61(D), which sets out

requirements of information designated and treated as trade secrets. Further, Staff argues that the public need is great where the interest of the public may be affected by the Applicant's choice of equipment, thus necessitating disclosure of the range of equipment the Applicant may choose from.

{¶ 17} 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 in part and denied in part. As such, the financial and estimated cost information on pages 33 through 35 of the application narrative and the estimated operational costs and value estimates contained in pages 14 through 16 of Exhibit K, along with disclosures in Exhibit U should be kept confidential and not be subject to public disclosure. The equipment model information found in Exhibit B to the application should not be kept confidential inasmuch as Applicant has not demonstrated that public disclosure of the information it seeks to protect will result in harm to RCS. In particular, the ALJ notes that the information is not specific enough for RCS's competition to obtain an undue advantage. Specifically, in its submission, Applicant identifies multiple potential models of both inverters and panels, along with tracking systems, but commits to none and indicates that emerging technology could influence its decision to choose another model. As noted by Staff in its memorandum, Applicant's competitors, in order to gain a competitive advantage, would need to correctly guess which equipment RCS will choose from the list of possibilities RCS provides in its application. Further, there is a considerable public interest in the technical and material information about the potential equipment Applicant may deploy (Staff's Memorandum Contra at 4.). This information could materially impact an individual's decision to support or oppose the project. The Docketing Division should release the information in Exhibit B on January 27, 2021.

{¶ 18} 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. Applicant 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 Applicant 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 4606-2-21(F). If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicant.

Procedural Schedule

{¶ 19} 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.

{¶ 20} By letter dated December 29, 2020, the Board notified RCS 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 December 29, 2020 letter directed RCS 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 RCS to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 21} On January 8, 2021, RCS 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.

{¶ 22} 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.

{¶ 23} Therefore, the effective date of the application shall be January 20, 2021. Accordingly, the local public hearing in this case will be held on Tuesday, April 6, 2021, beginning at 6:00 p.m. The adjudicatory hearing will commence on April 27, 2021, at 10:00 a.m.

{¶ 24} 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 March 8, 2021, whichever is later.

{¶ 25} In accordance with Ohio Adm.Code 4906-3-09, RCS 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 and will not be held in-person:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept oral testimony from any person on April 6, 2021, in a session beginning at 6:00 p.m.
- (b) An evidentiary hearing commencing on April 27, 2021, at 10:00 a.m.
- (c) Due to the continued state of emergency, the local public and adjudicatory hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

{¶ 26} 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 4906-3-09, or March 8, 2021, 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.

{¶ 27} Due to the continued state of emergency, the local public and adjudicatory hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet. In regard to the local public hearing, interested persons who wish to provide testimony regarding the Project must pre-register with the Commission of Ohio (Public Utilities Commission) before 12:00 p.m., on April 5, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/ross-county-solar-public-hearing> or by calling the Commission at 1-800-686-7826. Testimony to be provided will be limited to five minutes in duration.

{¶ 28} Interested individuals who wish to attend the public hearing remotely and not offer testimony can do so by calling +1-408-418-9388 and entering access code 173 492 7444. The local public hearing will also be live streamed for viewing at www.youtube.com/user/PUCOhio. Additional information is available on the Board's web site at <https://opsb.ohio.gov/wps/portal/gov/opsb/cases/20-1380-el-bgn> or by contacting the Commission's Consumer Call Center at 1-800-686-7826.

{¶ 29} RCS should issue public notice of the hearings and the application in this matter. The notice should be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the Project; a map

showing the location and general layout of the proposed facility; statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the Board; the date and time of the adjudicatory and local public hearings; a statement that the hearings will be conducted by telephone and live video on the internet; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 30} The notice should also state that interested persons who wish to provide testimony regarding the Project must pre-register with the Commission before 12:00 p.m., on April 5, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/ross-county-solar-public-hearing> or by calling the Commission at 1-800-686-7826. The notice should further indicate that the testimony to be provided will be limited to five minutes in duration.

{¶ 31} Individuals interested in providing public testimony will be required to provide their full name, home address, telephone number, and email address, if available; state that they wish to register for the local public hearing in Case No. 20-1380-EL-BGN; specify whether they plan to join the remote access event by internet or by telephone; and indicate whether they intend to offer testimony. All individuals who plan to provide testimony using video access to the WebEx event, rather than providing testimony using a telephone-only connection to the event, must have a computer or smart device with a microphone and speakers, an email address, and reliable internet service.

{¶ 32} For purposes of the local public hearing, the Board will begin hearing testimony at 6:00 p.m. on Tuesday, April 6, 2021. Individuals who have registered to testify will be asked to speak beginning shortly after 6:00 p.m., so all those who have registered should be prepared to speak at that time. For individuals who are speaking by telephone, the Board's staff will contact these individuals by telephone when it is time for their testimony and connect them to the public hearing. If access or other issues are experienced during the local public hearing, individuals should immediately use the chat function within WebEx or contact the Board's legal department at 1-614-466-6843 for assistance. For

individuals who have difficulty participating in the local public hearing, an opportunity for public testimony may also be available, for good cause shown, at the beginning of the evidentiary hearing.

{¶ 33} If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document, along with a reference to Case No. 20-1380-EL-BGN, must be provided to the Board by April 13, 2021, by email at contactOPSB@puco.ohio.gov or by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 34} Public comments can be provided in writing on the Board's website at <https://opsb.ohio.gov/wps/portal/gov/opsb/help-center/contact-us>, or by email to contactOPSB@puco.ohio.gov, or by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215. Written comments should reference the case number for this matter.

{¶ 35} Access information for the local public hearing will be provided to counsel for the parties at their email address of record.

{¶ 36} Ohio Adm.Code 4906-2-09(B) provides that the ALJ shall regulate the course of the hearing, including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation (Staff Report) on or before March 22, 2021.
- (b) On or before April 13, 2021, each party shall file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing.

- (c) All expert and factual testimony to be offered by RCS shall be filed by April 14, 2021.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by April 21, 2021.
- (e) Any stipulation entered into by the parties shall be filed by no later than 12:00 p.m. on April 22, 2021, along with the associated testimony supporting the stipulation.

{¶ 37} The ALJ reiterates that the parties are encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJs.

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That the motion for partial waivers regarding the requirements in Ohio Adm.Code 4906-4-08 be granted in accordance with Paragraphs 11 and 12. It is, further,

{¶ 40} ORDERED, That RCS's motion for protective order be granted in part and denied in part in accordance with Paragraph 17. It is, further,

{¶ 41} ORDERED, That the Docketing Division publicly release Exhibit B on January 27, 2021. It is, further,

{¶ 42} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraph 23. It is, further,

{¶ 43} ORDERED, That notice of the application and hearings be published by RCS in accordance with Paragraphs 25, 26, 29, and 30. It is, further,

{¶ 44} ORDERED, That witness registration occur pursuant to Paragraphs 27, 31, 32, and 33. It is, further,

{¶ 45} ORDERED, That a procedural schedule be established in accordance with Paragraph 36. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Jesse M. Davis

By: Jesse M. Davis
Administrative Law Judge

NJW/kck

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in

Case No(s). 20-1380-EL-BGN

Summary: Administrative Law Judge Entry granting the motion for partial waivers regarding the requirements in Ohio Adm.Code 4906-4-08 accordance with Paragraphs 11 and 12; granting in part and denying in part RCS's motion for protective order in accordance with Paragraph 17; ordering the Docketing Division publicly release Exhibit B on January 27, 2021; ordering the hearings in this matter be scheduled in accordance with Paragraph 23; ordering that notice of the application and hearings be published by RCS in accordance with Paragraphs 25, 26, 29, and 30; ordering that witness registration occur pursuant to Paragraphs 27, 31, 32, and 33 and ordering that a procedural schedule be established in accordance with Paragraph 36.

electronically filed by Kelli C. King on behalf of Jesse M. Davis, Administrative Law Judge, Ohio Power Siting Board