

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION  
OF CADENCE SOLAR ENERGY LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1677-EL-BGN

### ENTRY

Entered in the Journal on February 18, 2021

#### I. SUMMARY

{¶ 1} This Entry grants both the motion for waivers and the motion for protective order filed by Cadence Solar Energy, LLC.

#### II. DISCUSSION

##### *A. Procedural History*

{¶ 2} Cadence Solar Energy, LLC (Cadence or Applicant) is a person as defined in R.C. 4906.01.

{¶ 3} 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).

{¶ 4} On November 12, 2020, Cadence filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Cadence is proposing to construct a 275-megawatt, solar-powered electric generating facility in York, Liberty, and Taylor townships in Union County (Project). Cadence sought waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person in the area in which the Project will be located.

{¶ 5} On November 20, 2020, the administrative law judge (ALJ) issued an Entry granting Cadence's motion for a limited waiver of the requirements of Ohio Adm.Code 4906-3-03(B).

{¶ 6} On November 25, 2020, Cadence filed a pre-application notification letter with the Board regarding the Project. The public informational meeting was held as scheduled on December 18, 2020.

{¶ 7} On February 1, 2021, Cadence filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project. On that same date, Cadence also filed a motion for protective order and a motion for waiver.

### ***B. Motion for Waiver***

{¶ 8} Applicant requests a waiver from Ohio Adm.Code 4906-4-08(D)(2)-(3). 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. Applicant submits that good cause exists for granting waiver of these rules to allow for a focused study area of two miles for cultural resources and landmarks, given that the area of potential effects for the Project is well below this range. Applicant further notes that the State Historic Preservation Office has accepted the Project's two-mile study area, as reflected in Applicant's Exhibit BB to the application. Finally, Applicant notes that the Board has granted similar waivers in other cases involving solar projects. *In re Application of Willowbrook Solar I, LLC*, Case No. 18-1024-EL-BGN, Entry (Oct. 4, 2018); *In re Application of Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN, Entry (Jan 17, 2019); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (Sept. 23, 2020); *In re Application of Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN, Entry (Nov. 23, 2020).

{¶ 9} 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.

{¶ 10} On February 16, 2021, Staff filed correspondence indicating that it does not object to Applicant's motion for waiver of Ohio Adm.Code 4906-4-08(D)(2)-(3). Staff indicates that it finds Applicant's submitted studies sufficient and that the rule should be waived in this case. Staff reserves the right to require the results from the Applicant in the area covered by the requested waiver if Staff determines such information necessary during the course of its investigation.

{¶ 11} Upon consideration of Applicant's motion for waiver and Staff's response, the ALJ finds that good cause exists to grant waiver of Ohio Adm.Code 4906-4-08(D)(2)-(3) to allow for a focused two-mile study area.

### *C. Motion for Protective Order*

{¶ 12} Along with the motion for waiver, Applicant filed a motion for protective order. Applicant moves the Board to keep portions of its application confidential and not part of the public record. The information Applicant seeks to protect includes estimated capital and intangible costs, as well as operation and maintenance costs (pages 31-34 of the Application Narrative and page 1 of Application Exhibit K). Applicant also seeks to protect the certificate and policy numbers in Application Exhibit N, the Certificate of Liability Insurance. 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 by harming its ability to compete in the marketplace and negotiate contracts with potential vendors.

{¶ 13} Pursuant to Ohio Adm.Code 4906-2-21(D) and upon motion, the Board “may issue any order which 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 \* \* \* [t]he 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).

{¶ 14} 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.

{¶ 15} On February 16, 2021, Staff filed correspondence indicating that it does not oppose Cadence's request for a protective order of financial information found in pages 31-34 of the Application Narrative, page 1 of Exhibit K to the application, and both the certificate and policy numbers contained in Exhibit N to the application.

{¶ 16} 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. Accordingly, the estimated capital and intangible cost information, and the operation and maintenance cost information, on pages 31 through 34 of the Application Narrative and Page 1 of Exhibit K to the application, as well as the Certificate of Liability Insurance, filed as Applicant's Exhibit N, should be kept confidential and not subject to public disclosure.

{¶ 17} 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 4906-2-21(F). If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicant.

### III. CONCLUSION

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Applicant's motion seeking waiver be granted as stated in Paragraph 11. It is, further,

{¶ 20} ORDERED, That Applicant's motion seeking a protective order be granted as stated in Paragraph 16. It is, further,

{¶ 21} 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

SJP/kck

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 20-1677-EL-BGN**

Summary: Administrative Law Judge Entry granting Applicant's motion seeking waiver as stated in Paragraph 11; and granting Applicant's motion seeking a protective order as stated in Paragraph 16.  
electronically filed by Kelli C. King on behalf of Jesse M. Davis, Administrative Law Judge,  
Ohio Power Siting Board