

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
MARION COUNTY SOLAR PROJECT, LLC
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
MARION COUNTY, OHIO.

CASE NO. 21-36-EL-BGN

ENTRY

Entered in the Journal on March 22, 2021

{¶ 1} Marion County Solar Project, LLC (Marion County Solar, Applicant, Company) 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 first obtaining a certificate from the Ohio Power Siting Board (Board).

{¶ 3} On February 4, 2021, Applicant filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 100-megawatt (MW) solar-powered electric generation facility in Marion County, Ohio (Project). In the letter, Applicant explained that construction on the Project is anticipated to begin as early as the fourth quarter of 2022, resulting in commercial operations in the fourth quarter of 2023. Applicant further stated in the letter that it scheduled a public information meeting for February 17, 2021. Contemporaneously with its preapplication notification letter, Applicant also filed a notice of compliance with the service requirement set forth set forth in Ohio Adm.Code 4906-3-03(B)(2).

{¶ 4} On February 5, 2021, Applicant filed proof of publication regarding its planned public information meeting.

{¶ 5} On February 17, 2021, Applicant held a virtual public meeting to discuss the Project with interested persons and landowners.

{¶ 6} On March 5, 2021, Applicant filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 7} Simultaneously with its application, Applicant filed a motion for protective order by which it seeks to keep confidential and protected from public exposure certain financial information as well as insurance certificate and policy numbers contained in Exhibit I to the Application.¹ Applicant believes that public disclosure of the involved financial information would have a harmful impact on the Company's ability to compete in the marketplace. Additionally, Applicant avers that certificate and policy numbers are the subject of reasonable efforts to maintain their secrecy and are not otherwise available in the public domain. Insurance certificate and policy numbers have been granted protective treatment by the Board in similar proceedings. See *Hardin Solar Energy, LLC*, Case No, 17-773-EL-BGN, Entry (Feb. 20, 2018); *Vinton Solar Energy, LLC* Case No. 17-774-EL-BGN, Opinion, Order, and Certificate (Sep. 20, 2018); *Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020).

{¶ 8} No party filed a memorandum contra Applicant's motion for protective order.

{¶ 9} Board Staff filed a letter on March 15, 2021, stating that Staff does not oppose the Applicant's motion for protective order.

{¶ 10} 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

¹ Applicant specifically identifies the subject of its motion for protective order as being "portions of pages 24-25 of the Application Narrative and pages 1, 10, and 35 of Application Exhibit G, the Economic Impact and Land Use Analysis (jointly referred to as the "Financial Information"), which include "financial data representing estimated capital and intangible costs, and operation and maintenance costs," as well as "the certificate and policy numbers in Application Exhibit I, the Certificate of Liability Insurance."

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.

{¶ 11} The ALJ has examined the information filed under seal, as well as the assertions set forth in Applicant's memorandum in support of its motion for protective order. 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 in *The Plain Dealer* at 524-525, the ALJ finds that the motion should be granted. Specifically, the ALJ finds that the financial data contained in the narrative portion of the Application and in Exhibit G to the Application, representing estimated capital and intangible costs, as well as operation and maintenance costs, of the Project, should be afforded protective treatment consistent with Ohio Adm.Code 4906-2-21(D). Additionally, the ALJ finds that the insurance certificate and policy numbers in Exhibit I should be afforded protective treatment consistent with Ohio Adm.Code 4906-2-21(D). The ALJ notes that affording this information protective treatment is consistent with the Board's past precedent regarding similar types of information. See *In re the Application of Hillcrest Solar I, LLC*, Case No. 17-1152-EL-BGN, Opinion, Order, and Certificate (Feb. 15, 2018); *In re the Application of Harrison Power Transmission, LLC*, Case No. 17-2084-EL-BGN, Opinion, Order, and Certificate (Nov. 15, 2018); *In re the Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 20, 2020);); *In re the Application of Big Plain Solar I, LLC*, Case No. 19-1823-EL-BGN, Entry (July 7, 2020).

{¶ 12} 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. Therefore, 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.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That Applicant's March 5, 2021 motion for protective order be granted as stated in Paragraph 11. It is, further,

{¶ 15} ORDERED, That the Commission's docketing division maintain, under seal, the information which is the subject of the motion for protective order, as stated in Paragraph 12. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Daniel E. Fullin

By: Daniel E. Fullin
Administrative Law Judge

JRJ/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/22/2021 12:04:52 PM

in

Case No(s). 21-0036-EL-BGN

Summary: Administrative Law Judge Entry ordering that Applicant's March 5, 2021 motion for protective order be granted as stated in Paragraph 11 and ordering that the Commission's docketing division maintain, under seal, the information which is the subject of the motion for protective order, as stated in Paragraph 12.
electronically filed by Kelli C. King on behalf of Daniel E. Fullin, Administrative Law Judge,
Ohio Power Siting Board