

OHIO POWER SITING BOARD

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

CASE NO. 20-1679-EL-BGN

ENTRY

Entered in the Journal on April 13, 2021

{¶ 1} Pleasant Prairie Solar Energy LLC (Applicant) 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 February 19, 2021, as supplemented on April 7, 2021, Applicant 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 of up to 250 megawatts (Project) located in Pleasant and Prairie townships, Franklin County, Ohio.

{¶ 4} On February 19, 2021, Applicant also 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.

Motion for Waivers

{¶ 5} 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.

{¶ 6} According to the Applicant, good cause exists for granting a waiver of these rules to allow for a focused study area of only two miles for cultural resources and landmarks, and recreational areas and five miles for the effects on general visual impacts. With respect to the requested study area of two miles for cultural resources and landmarks, and recreational areas, the Applicant believes that the area of potential effects for the Project is well below the 2-mile study area. Specific to the requested visual impact study area of 5 miles, Applicant submits that the Viewshed Analysis and Ecological Assessment (Exhibits J and R of the application) support the requested waiver. Specifically, the Applicant avers that because of the facility's low profile, as well as screening afforded by vegetation and existing structures, visibility of the planned components is anticipated to be limited to the immediate vicinity of the Project, which is under the five-mile visual impact study area.

{¶ 7} On March 9, 2021, the Board Staff filed a letter indicating to it does not oppose the requested waiver.

{¶ 8} 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.

{¶ 9} 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).

{¶ 10} Furthermore, should Staff subsequently 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

{¶ 11} Along with the motion for waivers, 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 the financial data representing estimated capital and intangible costs, and operation and maintenance costs (portions of pages 30-32-35 of the Application Narrative and p. 1 of Exhibit O to the Application). Applicant also seeks protection of the certificate and policy numbers in Application Ex. L (the Certificate of Liability Insurance).

{¶ 12} Applicant asserts that the information it seeks to protect are trade secrets under Ohio law and that public disclosure of this information will have a harmful effect on its ability to compete in the marketplace and negotiate contracts with potential vendors for the Project. Applicant asserts that the identified information has independent economic value, is subject to reasonable efforts to maintain its secrecy, and otherwise meets the six-factor test set forth in *State ex. rel. The Plain Dealer v. Ohio Dept. of Insur.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997).

{¶ 13} Specific to the identified financial information contained in the Application Narrative and Exhibit O, the Applicant represents that the information is guarded in secrecy, not found in the public domain, and is only disclosed to employees within the company that need to know.

{¶ 14} In regard to the Certificate Information in Exhibit L, Applicant contends that the information is highly confidential and closely held by the Company. Applicant cites to previous Commission cases in which similar information was protected by the Board: *In re Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (February 20, 2018) at ¶ 12; *In re Vinton Solar Energy LLC*, Case No. 17-774-EL-BGN, Opinion, Order, and Certificate (September 20, 2018); and *In re Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN Entry (February 25, 2020).

{¶ 15} On March 9, 2021, Staff filed a letter indicating that it does not oppose the motion for protective treatment.

{¶ 16} 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, the 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).

{¶ 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 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, the ALJ finds that the identified information constitutes trade secret information and the motion should be granted. As such, the estimated cost information on pages 30-32 of Application Narrative and page 1 of Application Ex. O, and the portion of Application Ex. L containing certificate and policy numbers shall be kept confidential.

{¶ 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.

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That Applicant's motion for waivers be granted as stated in Paragraph 9. It is, further,

{¶ 21} ORDERED, That Applicant's motion for a protective order be granted as stated in Paragraphs 17 and 18. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Jay S. Agranoff

By: Jay S. Agranoff
Administrative Law Judge

JRJ/mef

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Case No(s). 20-1679-EL-BGN

Summary: Administrative Law Judge Entry granting the motions for protective order and waivers as detailed herein electronically filed by Ms. Mary E Fischer on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board