

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
PAULDING WIND FARM IV LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A WIND-POWERED
ELECTRIC GENERATION FACILITY IN
PAULDING COUNTY, OHIO.

CASE NO. 18-91-EL-BGN

ENTRY

Entered in the Journal on September 15, 2021

{¶ 1} Paulding Wind Farm IV LLC (Paulding Wind or Company) is a person as defined in R.C. 4906.01.

{¶ 2} Ohio Adm.Code 4906-2-21(D) provides that:

“[u]pon motion of any party or person filing a document with the board’s docketing division relative to a case before the board, the board or the administrative law judge assigned to the case may issue an order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code.

{¶ 3} On October 2, 2020, Paulding Wind provided an unredacted copy of the “Timber Road IV-Wind Turbine Incident Report,” dated September 3, 2020 (“Incident Report”) to the Board Staff. The Incident Report details an event related to the damage to one of the blades at its electric generation facility in Paulding County, Ohio and provides some context surrounding the Company’s and the manufacturer’s response.

{¶ 4} The administrative law judge (ALJ) notes that on October 22, 2020, a public comment was filed in this matter by Chris Aichholz objecting to the motion for protective order. Mr. Aichholz raised concerns about industrial wind turbine developers attempting to withhold information about wind turbine operations from the public, especially when public safety is in jeopardy.

{¶ 5} In response to the public records request made by Chris Aichholz on October 11, 2020, Paulding Wind, on October 21, 2020, filed a motion for protective order regarding portions of the Incident Report in the Board's possession. Included with the motion is a redacted version of the Incident Report. According to Paulding Wind, the Incident Report contains confidential information and trade secrets exempt from disclosure under Ohio.

{¶ 6} Specifically, Paulding Wind requests that portions of pages 2, 5, 6, 8, and 9 of the Incident Report be kept confidential. Paulding Wind explains that the subject information consists of the identity of a landowner residing in the project area, sensitive trade secret information regarding the wind turbine manufacturer's internal response process and data collection strategy with respect to turbine failure scenarios, photos of the damaged wind turbine and other closely-held information. Paulding Wind notes that the wind turbine manufacturer provided its information to the Company on a confidential basis.

{¶ 7} According to Paulding Wind, the public disclosure of the sensitive information will have a harmful effect on its ability to compete in the marketplace and negotiate contracts, now and in the future, with potential vendors. Additionally, Paulding Wind asserts that public disclosure will give manufacturer's competitors an undue advantage. Further, Paulding Wind contends that disclosure of the identified information will not assist the Board in carrying out its duties as the Board Staff can review unredacted versions of the Incident Report that have been submitted under seal. Paulding Wind also submits that disclosure would also not serve any other public policy.

{¶ 8} 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).

{¶ 9} The ALJ has examined the information filed under seal in connection with the motion for protective order, as well as the assertions set forth in the Company’s memoranda in support of the 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, the ALJ finds that the motion should be denied. In reaching this determination, the ALJ recognizes that although Paulding Wind submits that public disclosure will give the wind turbine manufacturer’s competitors an undue advantage and that the wind turbine manufacturer provided its information to the Company on a confidential basis, no support for these representations were provided from the manufacturer. Additionally, the ALJ notes that although Ohio Adm.Code 4906-2-21(B)(3) requires that a motion for a protective order should be accompanied by an affidavit setting forth the efforts which have been made to resolve any differences with the party seeking discovery, no such affidavit was included with the filing.

{¶ 10} The ALJ finds, therefore, that Paulding Wind has not sustained its burden to demonstrate that the information contained at pages 2, 5, 6, 8, and 9 warrants protective

treatment. Therefore, the motion for protective order is denied. Accordingly, the Board's docketing division should move pages 2, 5, 6, 8, and 9 of the Incident Report to the public record ten days from the issuance of this Entry.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the motion for protective order be denied consistent with Paragraphs 9 and 10. It is, further,

{¶ 13} ORDERED, That the Board's docketing division move pages 2, 5, 6, 8, and 9 of the Incident Report to the public docket ten days after the issuance of this Entry. It is, further,

{¶ 14} 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

NJW/mef

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in

Case No(s). 18-0091-EL-BGN

Summary: Administrative Law Judge Entry denying the motion for protective order as detailed herein; and, ordering the docketing division to move documents to the public docket electronically filed by Ms. Mary E. Fischer on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board