

## THE OHIO POWER SITING BOARD

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

CASE NO. 21-270-EL-BGN

### ENTRY

Entered in the Journal on October 15, 2021

{¶ 1} Nottingham Solar LLC (Nottingham or 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 first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} Ohio Adm.Code 4906-3-03 requires an applicant, no more than 90 days prior to submitting a standard application, to conduct at least one informational meeting that is open to the public and is “held in the area in which the project is to be located.”

{¶ 4} 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 were 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 were 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 The Executive Order was effective immediately and was to remain in effect until rescinded. The DOH is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 5} 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.”

{¶ 6} On March 25, 2021, Nottingham filed a motion for waiver from Ohio Adm.Code 4906-3-03(B), proposing to hold web- and phone-based meetings in lieu of a traditional public information meeting in the area in which Nottingham is proposing to construct a 100 megawatt solar powered electric generating facility in Harrison County, Ohio (Facility). By Entry issued April 9, 2021, the administrative law judge (ALJ) granted Nottingham’s motion.

{¶ 7} On April 12, 2021, Nottingham filed a preapplication notification letter with the Board regarding the proposed Facility. The letter states that construction of the Facility is estimated to begin in 2022 and that the Facility is scheduled to be in commercial operation in 2023.

{¶ 8} On April 14 and April 20, 2021, Nottingham filed proof of its compliance with Ohio Adm.Code 4906-3-03(B), requiring notice of the public information meeting be sent to each property owner and affected tenant and published in a newspaper of general circulation in the project area, respectively.

{¶ 9} On July 26, 2021, Nottingham filed an application with the Board for a certificate of environmental compatibility and public need to construct the Facility.

{¶ 10} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair 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.

{¶ 11} On July 26, 2021, as amended on August 3, 2021, Nottingham also filed a motion for protective order and memorandum in support, pursuant to which Nottingham seeks protective treatment of certain information contained in its application.

{¶ 12} On August 11, 2021, Applicant filed a motion for waiver of Ohio Adm.Code 4906-4-08(D)(2-4), which requires a ten-mile study area with respect to the impact on cultural and archaeological resources.

{¶ 13} By letter dated September 24, 2021, the Board notified Nottingham 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 September 24, 2021 letter directed the Applicant 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 the Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 14} On September 30 and October 1, 2021, the Applicant filed a certificate of service of its accepted and complete application and filed proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07, respectively.

{¶ 15} 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.

{¶ 16} Therefore, the effective date of the application shall be October 15, 2021. The ALJ finds that a local public hearing in this matter shall be held on January 6, 2022, at 6:00 p.m., at the New Athens Volunteer Fire Department, 101 Franklin Dr., New Athens, Ohio 43981. Consistent with Centers for Disease Control and Prevention Guidelines and the May 17, 2021 DOH Order, attendees of the local public hearing must abide by mitigation measures required by the venue, and individuals who are not fully vaccinated should continue to wear a face covering and socially distance. For those individuals interested in

testifying at the local public hearing, a sign-in sheet will be available at the facility and witnesses will be taken in the order in which they register to testify. If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document should be provided to the ALJ during the local public hearing. Testimony to be provided will be limited to five minutes in duration.

{¶ 17} The adjudicatory hearing will commence on January 26, 2022, at 10:00 a.m., using remote access technology via Webex. Instructions for participation in the adjudicatory hearing by the parties will be emailed to counsel at their email address of record prior to the event. Any person observing the hearing as a nonparty can access the hearing using the link <https://bit.ly/21-270-ADJ> and entering the password OPSB, or by calling 1-408-418-9388, and entering access code/event number 2339 634 8233.

{¶ 18} Additionally, the ALJ finds that petitions to intervene in this proceeding will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by November 30, 2021, whichever is later.

{¶ 19} Nottingham should issue public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Nottingham shall include a statement that the public hearing in this case shall consist of two parts, as well as information concerning guidelines for attendance:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing January 6, 2022, at 6:00 p.m., at the New Athens Volunteer Fire Department, 101 Franklin Dr., New Athens, Ohio 43981.
- (b) An adjudicatory hearing to commence on January 26, 2022, at 10:00 a.m., using remote access technology via Webex. Instructions for participation in the adjudicatory hearing by the parties will be emailed to counsel at their email

address of record prior to the event. Any person observing the hearing as a nonparty can access the hearing using the link <https://bit.ly/21-270-ADI> and entering the password OPSB, or by calling 1-408-418-9388, and entering access code/event number 2339 634 8233.

- (c) Consistent with Centers for Disease Control and Prevention Guidelines and the May 17, 2021 DOH Order, attendees must abide by mitigation measures required by the venue, and individuals who are not fully vaccinated should continue to wear a face covering and socially distance.

{¶ 20} Further, regarding the initial public notice required under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, Nottingham shall include the following statement as part of the public notice:

Petitions to intervene in the evidentiary 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 November 30, 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.

{¶ 21} Ohio Adm.Code 4906-2-09 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 and process should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06, Staff shall file its report of investigation on or before December 22, 2021.

- (b) On or before January 10, 2022, 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 evidentiary hearing.
- (c) All expert and factual testimony to be offered by Nottingham shall be filed by January 13, 2022. All expert and factual testimony to be offered by intervenors and Staff shall be filed by January 20, 2022.
- (d) Any stipulation entered into by the parties shall be filed by noon on January 24, 2022, along with the associated testimony supporting the stipulation.

{¶ 22} The ALJ encourages the parties 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 ALJ.

{¶ 23} As noted above, on July 26, 2021, Nottingham filed a motion for protective order and memorandum in support, pursuant to which Nottingham seeks protective treatment of certain information contained in its application. Specifically, Nottingham moves to have cost-related information on pages 24 and 26-29 of the application narrative to be treated as confidential and not part of the public record. Nottingham explains that the information that is requested to be treated as confidential consists of capital and intangible costs, operation and maintenance costs, and the estimated loss due to delay in construction of the project. Further, the information at page 24 of the application discusses initial estimates of potential transmission system upgrade costs that may be necessary to facilitate the interconnection of the project. This information comes from a Draft PJM Facilities Study that is not being submitted as part of the application. As Nottingham is still in the process of reviewing and seeking revisions to these estimated upgrade costs, the Applicant believes that this information should be protected from public disclosure. Nottingham next seeks protective treatment of certificate numbers and policy numbers on the Certificate of Liability Insurance noting that the Board has protected such information in past cases. Finally, Nottingham requests protective treatment of certain archaeological information within and

surrounding the project area as Nottingham has agreed to protect such information at the request of the Ohio Historical Preservation Office (OHPO). Nottingham asserts that all of the information in its request for protective order is generally not disclosed and constitutes trade secrets under relevant Ohio law. The Applicant cites a number of Board decisions in which the Board or an ALJ previously concluded that such information constitutes trade secret information. *See, e.g., In re Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Opinion, Order, and Certificate (Feb. 18, 2021); *In re Ross County Solar, LLC*, Case No. 20-1380-EL-BGN, Entry (Jan. 20, 2021); *In re Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Entry (July 7, 2020); *In re Vinton Solar Energy, LLC*, Case No. 17-774-EL-BGN, Opinion, Order, and Certificate (Sept. 20, 2018); *In re Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *In re Hillcrest Solar I, LLC*, Case No. 17-1152-EL-BGN, Opinion, Order, and Certificate (Feb. 15, 2018) at ¶ 19; and *In re North Coast Gas Transmission LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014).

{¶ 24} On August 3, 2021, Nottingham filed an amended motion for protective order seeking to extend the July 26, 2021 motion for protective order to also cover maps in Nottingham's Application Figure 8-6 and in the Phase IA Desktop Archaeological Review as OHPO has marked such maps as confidential. No one filed a memoranda contra Applicant's July 26, 2021 or August 3, 2021 motions for protective treatment.

{¶ 25} Staff filed a response in the docket on September 17, 2021, stating that Staff does not oppose Applicant's motions for protective treatment.

{¶ 26} 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 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.

{¶ 27} The ALJ has examined the information filed under seal, as well as the assertions set forth in Nottingham's memorandum in support of its motions for a protective order. Applying the requirements discussed above, the ALJ finds that Nottingham's motions should be granted. Consequently, the information listed in Nottingham's July 26, 2021 and August 3, 2021 motions for protective treatment should be kept confidential and not subject to public disclosure.

{¶ 28} 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. Should Nottingham 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.

{¶ 29} As noted above, on August 11, 2021, Nottingham filed a motion seeking waiver of Ohio Adm.Code 4906-4-08(D)(2-4) which requires a ten-mile study area with respect to the evaluation of impacts on landmarks, identification of and evaluation of impacts to recreation and scenic areas, and visual impacts of the facility. In support, Nottingham claims that a waiver to allow a reduction in the area of analysis better aligns with the characteristics of the project as the project is located on reclaimed surface coal mine



land in scarcely populated Athens Township, Harrison County. Due to the remote location, low-profile nature of the project, and existing vegetation, Nottingham evaluated the impact of the project within the immediate vicinity of the project. Specifically, the Applicant's Visual Impact Assessment (Exhibit W) and architectural analysis (Exhibit E) focused on resources within two miles of the project area and the archaeological analysis (Exhibit D) focused on resources within one mile of the project area.

{¶ 30} No memoranda contra Applicant's motion for waiver was filed. On September 17, 2021, Staff filed a response in the docket stating that Staff does not oppose Nottingham's motion for waiver for the use of a more focused study area rather than a ten-mile study area.

{¶ 31} The ALJ finds that, based on the unique circumstances presented in this application, good cause has been demonstrated to grant Nottingham's motion for waiver of Ohio Adm.Code 4906-4-08(D)(2-4).

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraphs 16 and 17. It is, further,

{¶ 34} ORDERED, That notice of the application and hearings be published by Nottingham in accordance with Paragraphs 19 and 20. It is, further,

{¶ 35} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 21. It is, further,

{¶ 36} ORDERED, That Nottingham's motions for protective order be granted as stated in Paragraphs 27. It is, further,

{¶ 37} ORDERED, That Nottingham's request for waiver of Ohio Adm.Code 4906-4-08(D)(2-4) be granted as stated in Paragraph 31. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jeffrey R. Jones

By: Jeffrey R. Jones  
Administrative Law Judge

MJA/mef

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

**Commission of Ohio Docketing Information System on**

**10/15/2021 2:03:12 PM**

**in**

**Case No(s). 21-0270-EL-BGN**

Summary: Administrative Law Judge Entry Scheduling a Local Public Hearing for 1/6/22 at 6:00pm and an Adjudicatory Hearing for 1/26/22 at 10:00am and requiring applicant to publish notice of the same; setting a procedural schedule; granting the motions for protective order; and granting the motion for waiver. electronically filed by Ms. Mary E. Fischer on behalf of Jeffrey R. Jones, Administrative Law Judge, Ohio Power Siting Board