

OHIO POWER SITING BOARD

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

CASE NO. 18-1578-EL-BGN

ENTRY

Entered in the Journal on December 28, 2021

{¶ 1} Alamo Solar I, 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 December 10, 2018, Applicant filed a motion for protective order seeking to keep pages 26-30 of the application in this matter and pages of 3, 18, and 22 of Exhibit C to the application confidential. The information consisted of total estimated capital and intangible costs of the project, estimated capital costs of solar generation projects under development by Alamo and its partners in other mid-Atlantic region states, the estimated annual operations and maintenance cost of the project for the first two years of commercial operation, the solar plant operations and maintenance, balance of plant operations and maintenance, site maintenance and unplanned maintenance reserves costs, the annual estimated operations and maintenance costs for the project in the first year of operation, the increase in the annual rate of such expenses through the life of the project, the expected operations and maintenance costs for other facilities under development by the Applicant and its partners in other mid-Atlantic states, and the assumptions and inflation rate that went into the calculation of the net present value of operations and maintenance costs per kW. The Applicant also sought protection for the estimated annual land lease payments made by it to landowners. In its original motion, Alamo explained that the public disclosure of the identified information would result in it experiencing an adverse effect.

{¶ 4} The administrative law judge granted this motion on April 30, 2019. The confidential documents were submitted into the record during the evidentiary hearing of July 17, 2019.

{¶ 5} On December 8, 2021, Alamo filed a motion to extend the prior protective order. In support of its request, Alamo submits that the circumstances for protecting the information subject to its motion have not changed. Specifically, Alamo asserts that public disclosure of the capital and intangible costs, including various operations and maintenance costs and annual lease payments would put Alamo at a competitive disadvantage due to the robust solar industry in Ohio.

{¶ 6} No memoranda contra were filed in response to the motion for an extension of the protective order.

{¶ 7} 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).

{¶ 8} 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 an extension of the 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 continues to constitute trade secret information and the motion should be granted.

{¶ 9} 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 an additional 24 months from the date of this Entry. Until such time, the Docketing Division should continue to maintain under seal the information addressed in the motion.

{¶ 10} Although a party may, pursuant to Ohio Adm.Code 4906-2-21, seek an extension of a protective order, the requesting entity must demonstrate the need for the specific time frame requested. Following the end of the aforementioned two-year period, Alamo is directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment. If no such motion is filed, the Docketing Division may release the information without prior notice to the Applicant.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Applicant's motion for an extension of a protective order be granted as stated in Paragraphs 8 and 9. It is, further,

{¶ 13} ORDERED, That the Applicant comply with the directives set forth in Paragraph 10. 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

GAP/kck

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in

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Summary: Administrative Law Judge Entry granting at Applicant's motion for an extension of a protective order as stated in Paragraphs 8 and 9 and ordering that the Applicant comply with the directives set forth in Paragraph 10. electronically filed by Kelli C. King on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board