

OHIO POWER SITING BOARD

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

CASE NO. 18-1579-EL-BGN

ENTRY

Entered in the Journal on February 7, 2022

{¶ 1} Angelina Solar I, LLC (Applicant or Angelina) 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} On December 3, 2018, Angelina filed a motion for protective order seeking to keep pages 26-30 of its application in this matter, and pages 3, 17, and 21 of Exhibit C to the application, confidential and not part of the public record. The information Angelina sought protection for consisted of total estimated capital and intangible costs of the project, estimated capital costs of solar generation projects under development by Angelina and its partners in other mid-Atlantic region states, the estimated annual operations and maintenance (O&M) cost of the project for the first two years of commercial operation, the solar plant O&M, balance of plant O&M, site maintenance and unplanned maintenance reserves costs, the annual estimated O&M costs for the project in the first year of operation, the increase in annual rate of such expenses through the life of the project, the expected O&M costs for other facilities under development by Angelina and its partners in mid-Atlantic states, and the assumptions and inflation rate that went into the calculation of the net present value of O&M costs per kW. Angelina also sought protection for the estimated annual land lease payments made by it to landowners. In its original motion, Angelina explained that the public disclosure of the identified information would result in it experiencing an adverse effect. The relevant documents were filed under seal on December 3, 2018.

{¶ 4} The administrative law judge (ALJ) granted the motion for protective order on January 17, 2019. The confidential documents were submitted into the record during the evidentiary hearing on July 31, 2019.

{¶ 5} On December 8, 2021, Angelina filed a motion to extend the prior protective order. In support of its request, Angelina submits that the circumstances for protecting the information subject to its motion have not changed. Specifically, Angelina asserts that public disclosure of the capital and intangible costs, including various O&M costs and annual lease payments, would put Angelina 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 Angelina’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. Angelina 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, Angelina 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 Angelina.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Angelina's motion to extend protective order be granted as stated in Paragraph 8. It is, further,

{¶ 13} ORDERED, That Angelina 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/ David M. Hicks

By: David M. Hicks
Administrative Law Judge

JRJ/kck

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in

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Summary: Administrative Law Judge Entry granting Angelina's motion to extend protective order be as stated in Paragraph 8 and ordering that Angelina comply with the directives set forth in Paragraph 10. electronically filed by Kelli C. King on behalf of David Hicks, Administrative Law Judge, Ohio Power Siting Board