

THE OHIO POWER SITING BOARD

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

CASE NO. 21-823-EL-BGN

ENTRY

Entered in the Journal on March 3, 2022

{¶ 1} Wild Grains Solar, LLC (Wild Grains 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 July 27, 2021, Applicant filed a preapplication notification letter with the Board regarding the proposed solar facility (Project). In the letter, Wild Grains explained that construction of the proposed 150 megawatt solar-powered electric generation facility is estimated to begin no earlier than the third quarter of 2022, resulting in commercial operations by December 31, 2023.

{¶ 5} On August 26, 2021, Wild Grains filed proof of its compliance with Ohio Adm.Code 4906-3-03(B)(1), requiring notice of the public information meeting to be published in a newspaper of general circulation in the Project area.

{¶ 6} On September 1, 2021, Wild Grains filed proof of its compliance with Ohio Adm.Code 4906-3-03(B)(2), in sending the required notification to each property owner and affected tenant within the Project area. An in-person public information meeting was held at the Van Wert Fairgrounds on August 18, 2021.

{¶ 7} On November 16, 2021, Wild Grains filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 8} Also on November 16, 2021, Wild Grains filed a motion for waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4) to allow for a reduced study area regarding the review of cultural resources, landmarks, recreation areas, and visual impacts and Ohio Adm.Code 4906-3-14(D) to allow an interim Interconnection Service Agreement (ISA) be in place prior to the start of construction.

{¶ 9} 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 of the project area and 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. Ohio Adm.Code 4906-3-14(D) requires that a signed ISA be in place prior to the start of construction.

{¶ 10} Wild Grains claims it has evaluated the impact of the Project on the preservation and continued meaningfulness of the registered landmarks within a two-mile vicinity of the Project area and within a five-mile vicinity of the Project area for the scenic and recreation areas, visibility, and viewshed in the Visual Impact Assessment (Exhibit V). Applicant states that visibility of the planned components is anticipated to be limited to the immediate vicinity of the Project because of the Project's low profile and screening afforded by vegetation and existing structures. Wild Grains also explains that its feasibility study and system impact study are complete, but the facilities study is in progress and can take considerable time. Wild Grains states that as a result of increasing delays in the PJM Interconnection review process, it may be necessary to execute an interim ISA, rather than

the final ISA, prior to the commencement of construction of the Project. Wild Grains seeks a waiver to allow for the submission of an interim ISA prior to construction.

{¶ 11} On February 7, 2022, Staff filed a letter stating that it does not oppose Applicant's motion for waivers to allow for the use of reduced study areas of two- and five-miles, as proposed in the motion. Staff clarifies that it reserves the right to require the results from the Applicant for the full ten-mile radius if Staff determines such information to be necessary during the course of investigation. Staff adds that it does not oppose the motion for a waiver of Ohio Adm.Code 4906-3-14(D) to use an interim ISA.

{¶ 12} Upon consideration of Wild Grains' request for waivers, the administrative law judge (ALJ) finds that good cause exists to grant Applicant's request for a waiver of Ohio Adm.Code 4906-4-08-(D)(2) to allow for a two-mile radius study area, waivers of Ohio Adm.Code 4906-4-08-(D)(3)-(4) to allow for a five-mile radius study area, and waiver of Ohio Adm.Code 4906-3-14(D) to allow for the submission of an interim ISA prior to construction.

{¶ 13} Also on November 16, 2021, Applicant filed a motion for a protective order to keep limited portions of Exhibit H, which assesses the socioeconomic impact of the Project, and the entire Exhibit U, which is a survey of archeological resources, confidential and not part of the public record. Additionally, Wild Grains notes that Application Section 4906-4-06(B)-(E) incorporates, without reproducing, Exhibit H with respect to financial data and seeks to keep this information confidential and not part of the public record. Applicant asserts that disclosure of the socioeconomic information would have a harmful effect on its ability to compete in the marketplace and negotiate contracts with potential vendors for the Project. Applicant states that the information it seeks to protect meets the definition of a trade secret under Ohio law. Further, Applicant represents that it has treated the information as trade secret, only disclosing the sensitive information to those who "need to know." As to the archaeological information in Exhibit U, Applicant also identifies various federal and state laws that are intended to restrict public disclosure of archaeological site

information. Applicant believes that keeping this information confidential will protect the archeological sites/finds, deter unauthorized field investigations, and protect the resources and locational information in the report. Contemporaneous with its motion, Wild Grains submitted Exhibits H and U under seal. Applicant also filed a complete Application, including Section 4906-4-06(B)-(E), and a redacted version of Exhibit H in the public docket and requests that the Board approve its motion for protective order to keep the confidential information out of the public record.

{¶ 14} On February 7, 2022, Staff filed a letter stating that it does not oppose Applicant's motion for a protective order.

{¶ 15} 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.

{¶ 16} The ALJ has examined the information filed under seal, as well as the assertions set forth in Applicant's memorandum in support of its motion for protective

order. Applying the requirements discussed above, the ALJ finds that Applicant's motion should be granted. Consequently, the limited portions of Exhibit H and the whole of Exhibit U to the Application that Wild Grains filed under seal should be kept confidential and not subject to public disclosure. Additionally, the information referenced in Application Section 4906-4-06(B)-(E) should also be treated as confidential and not subject to public disclosure.

{¶ 17} 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 Wild Grains wish to extend that 24-month period, it shall file an appropriate motion at least 45 days in advance of the expiration date. If no such motion is filed, the docketing division may release the information without prior notice.

{¶ 18} By letter dated January 18, 2022, the Board notified Wild Grains that its Application is compliant and provided sufficient information to permit Staff to commence its review and investigation.

{¶ 19} On February 10, 2022, Wild Grains filed a certificate of service of its accepted and complete Application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 20} 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.

{¶ 21} Therefore, the effective date of the Application shall be March 3, 2022. Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by April 14, 2022, whichever is later.

{¶ 22} The local public hearing in this matter shall be held on May 3, 2022, at 6:00 p.m., at the EMR Room of the Van Wert County Fairgrounds, 1055 S. Washington Street, Van Wert, Ohio 45891. For those individuals interested in testifying at the local public hearing, a sign-in sheet will be available at the venue and witnesses will be taken in the order in which they sign up to testify; testimony should be limited to five minutes in duration. 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 before the end of the local public hearing. Further, all individuals should adhere to any pandemic measures put in place by the Van Wert County Fairgrounds. In this regard, Applicant should contact local health and safety authorities regarding the local public hearing to ensure the health and safety of all in attendance at this event.

{¶ 23} The evidentiary hearing will commence on May 25, 2022, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), Hearing Room 11-C, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793. To participate in the hearing, parties and observers should register at the lobby desk and proceed to the 11th floor. Any accommodations necessary to ensure the availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions continue to evolve, additional instructions regarding further safety requirements or accommodations for the hearing room will either be posted on the Commission/Board website or communicated to the parties.

{¶ 24} Wild Grains should issue public notice of the application and scheduled hearings in accordance with Ohio Adm.Code 4906-3-09. Pursuant to the same rule, in addition to other required information, the notice should include the following statement: "Attendees at the local public hearing and the evidentiary hearing should follow the most recent CDC and/or local health authority guidelines. Please contact the legal department at 614-466-6843 to ask any questions or request accommodations related to health protocols." In addition, the notice shall include a statement that the public hearings in this case shall consist of two parts and will be conducted in-person:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person on May 3, 2022, at 6:00 p.m., at the EMR Room of the Van Wert County Fairgrounds, 1055 S. Washington Street, Van Wert, Ohio 45891.
- (b) An evidentiary hearing commencing on May 25, 2022, at 10:00 a.m., Hearing Room 11-C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215. The purpose of the evidentiary hearing is for Applicant, Staff, and any intervenors to provide evidence regarding the application.

{¶ 25} Further, under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, the initial notice shall include the following language:

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 April 14, 2022, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the evidentiary 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 with a reference to Case No. 21-823-EL-BGN.

{¶ 26} Applicant shall issue public notice of the hearings and Application in this matter. The notice should be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the Application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the Project; a map showing the location and general layout of the proposed facility; a statement, including the

assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is pending before the Board; the date and time of the evidentiary and local public hearings; a statement that the hearings will be conducted by telephone and live video on the internet; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 27} Public comments can be provided in writing on the Board's website at <https://opsb.ohio.gov/wps/portal/gov/opsb/help-center/contact-us>, by e-mail at contactOPSB@puco.ohio.gov, or by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215, along with a reference to Case No. 21-823-EL-BGN.

{¶ 28} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing. In so doing, the ALJ may require expert or factual testimony to be offered at Board proceedings to be reduced to writing and filed with the Board. Accordingly, the ALJ establishes the following procedural schedule and process:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation on or before April 18, 2022.
- (b) On or before May 6, 2022, each party shall file a list of issue(s) 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 Wild Grains shall be filed by May 13, 2022. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by May 19, 2022.
- (d) Any stipulation entered into by the parties shall be filed by noon on May 24, 2022, along with the associated testimony supporting the stipulation.

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That Wild Grains' motion for waivers be granted as stated in Paragraph 12. It is, further,

{¶ 31} ORDERED, That Wild Grains' motion for protective order be granted as stated in Paragraphs 16 and 17. It is, further,

{¶ 32} ORDERED, That, for a period of 24 months, the Board's docketing division maintain, under seal, certain information in Exhibit H and the entire Exhibit U of the Application, which were filed under seal in this docket on November 16, 2021. It is, further,

{¶ 33} ORDERED, That the effective date of the Application be March 3, 2022, and the hearings in this matter be scheduled in accordance with Paragraphs 22 and 23. It is, further,

{¶ 34} ORDERED, That the notice of the Application and hearings be published by Wild Grains in accordance with Paragraphs 24, 25, and 26. It is, further,

{¶ 35} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 28. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Administrative Law Judge

SJP/mef

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Case No(s). 21-0823-EL-BGN

Summary: Administrative Law Judge Entry granting the motions for waivers and for a protective order; setting the effective date of the Application to be 3.3.22; setting a procedural schedule including a local public hearing on 5.3.22 and an adjudicatory hearing on 5.25.22 and requiring notice be published of the same electronically filed by Ms. Mary E. Fischer on behalf of Jacky Werman St. John, Administrative Law Judge, Ohio Power Siting Board