

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
SPRINGWATER SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
MADISON AND FRANKLIN COUNTIES,
OHIO.

CASE NO. 22-94-EL-BGN

ENTRY

Entered in the Journal on July 25, 2022

I. SUMMARY

{¶ 1} This Entry sets out the procedural schedule applicable in this case, as regards the certification application filed by Springwater Solar, LLC. It also grants the motion for protective order and the motion for waiver filed by Springwater Solar, LLC.

II. DISCUSSION

{¶ 2} Springwater Solar, LLC (Springwater Solar or Applicant) is a person as defined in R.C. 4906.01.

{¶ 3} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without first obtaining a certificate from the Ohio Power Siting Board (Board).

{¶ 4} On February 18, 2022, Applicant filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a solar-powered electric generation facility in Fairfield Township, Madison County, and Pleasant Township, Franklin County, Ohio (Project). According to the letter, the facility will be sited on approximately 1,150 acres and have a maximum total generating capacity of up to 155 megawatts and an up to 75 megawatt battery energy storage capacity. In the letter, Applicant explained that construction on the Project is anticipated to begin as early as the first quarter of 2023, resulting in commercial operations as early as the fourth quarter of 2023. Applicant further stated in the letter that it scheduled a public information

meeting for March 9, 2022. Contemporaneously, with its preapplication notification letter, Applicant also filed a notice of compliance with the service requirement set forth in Ohio Adm.Code 4906-3-03(B)(2).

{¶ 5} On March 18, 2022, Applicant filed proof of publication in appropriate newspapers regarding its March 9, 2022, public information meeting. Publication appeared on February 20, 2022, in *The Madison Messenger*, a newspaper of general circulation in Madison County, Ohio. Publication appeared on February 23, 2022, in *The Columbus Dispatch*, a newspaper of general circulation in Franklin County, Ohio.

{¶ 6} On March 9, 2022, Applicant held a public meeting to discuss the Project with interested persons and landowners. The meeting took place at the London City Hall, 20 S. Walnut Street, London, Ohio.

{¶ 7} On April 22, 2022, Applicant filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 8} Also on April 22, 2022, Springwater Solar 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, and visual impacts.

{¶ 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 of the visual impact of the proposed facility within a ten-mile radius of the project area.

{¶ 10} In support of its waiver request, Springwater Solar points outs that a viewshed analysis, described within Exhibit R to its application, was conducted to understand the

Project's area of potential effect on recreational, scenic, and historical resources. Applicant submits that good cause exists to allow for the reduced study area it has proposed, because, based on the results of this viewshed analysis -- which reveals both a relatively flat terrain surrounding the project, as well as screening afforded by vegetation and existing structures -- visibility of the planned components of the Project is anticipated to be limited to the immediate vicinity of the Project. Beyond this, Applicant contends that the Board has granted similar waiver requests in the past, and cites: *In re Application of Willowbrook Solar I, LLC*, Case No. 18-1024-EL-BGN Entry (Oct. 4, 2018); *In re Application of Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN Entry (Jan. 17, 2019); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN Entry (Sept. 23, 2020); *In re Application of Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN Entry (Nov. 23, 2020); *In re Application of Wheatsborough Solar LLC*, Case No. 20-1529-EL-BGN Entry (Mar. 3, 2021).

{¶ 11} On May 6, 2022, Staff filed a letter stating that it does not object to Applicant's motion for waivers to allow for the use a reduced two-mile study area, as proposed. Staff clarifies that it reserves the right to require the results from the Applicant in the area covered by the requested waiver if Staff determines such information to be necessary during the course of its investigation.

{¶ 12} Ohio Adm.Code 4906-4-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-4 upon an application or motion filed by a party, other than a requirement mandated by statute.

{¶ 13} Upon consideration, the administrative law judge (ALJ) finds that good cause exists to grant Applicant's motion for waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4), to allow for a focused two-mile study area for the studies required under those sections.

{¶ 14} Also on April 22, 2022, Applicant filed a motion for protective order by which it seeks to keep confidential and protected from public exposure certain financial

information contained in Exhibit F to its certificate application.¹ Applicant submits that the information for which protective treatment is sought should be considered as trade secret and confidential and, as such, is information warranting protection from the public record, pursuant to Ohio Adm.Code 4906-2-21(A)(7). Applicant points out that the information for which protected status is sought has independent economic value that, if revealed, would provide its competitors with a competitive advantage. Applicant also states that it has taken reasonable steps to maintain the secrecy of the information and that nondisclosure of the information will not thwart the purposes of R.C. Title 49. As such, Applicant asserts that the information meets the definition of trade secret under R.C. 1333.61 to 1333.69.

{¶ 15} No entity filed a memorandum contra Applicant's motion for protective order. On May 6, 2022, Staff filed a letter indicating that it does not oppose Applicant's Motion for Protective Order.

{¶ 16} 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

¹ Applicant specifically identifies the subject of its motion for protective order as being financial information on pages 9 - 14, and 16 of Exhibit F to its certification application, which sets forth estimated capital and intangible costs, and operation and maintenance costs.

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.

{¶ 17} 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 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 in *The Plain Dealer* at 524-525, the ALJ finds that the motion should be granted. Specifically, the ALJ finds that the financial information on pages 9 - 14, and 16 of Exhibit F to the Application, representing estimated capital and intangible costs, as well as operation and maintenance costs, of the Project, should be afforded protective treatment consistent with Ohio Adm.Code 4906-2-21(D). The ALJ notes that affording this information protective treatment is consistent with the Board's past precedent regarding similar types of information. See *In re the Application of Hillcrest Solar I, LLC*, Case No. 17-1152-EL-BGN, Opinion, Order, and Certificate (Feb. 15, 2018); *In re the Application of Harrison Power Transmission, LLC*, Case No. 17-2084-EL-BGN, Opinion, Order, and Certificate (Nov. 15, 2018); *In re the Application of Big Plain Solar I, LLC*, Case No. 19-1823-EL-BGN, Entry (July 7, 2020).

{¶ 18} 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. Therefore, the information protected by this order shall remain under seal for a period ending 24 months from the date of this Entry. Should applicant 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.

{¶ 19} By letter dated June 21, 2022, the Board notified Springwater Solar that its application is compliant and provides sufficient information to permit Staff to commence its review and investigation.

{¶ 20} On June 27, 2022, Springwater Solar filed a certificate of service of its accepted and complete application and proof that it submitted its application fee, as required by Ohio Adm.Code 4906-3-07.

{¶ 21} Ohio Adm.Code 4906-3-08(A) states that, once an applicant has complied with Ohio Adm.Code 4906-3-7, 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.

{¶ 22} Therefore, the effective date of the application shall be July 25, 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 September 8, 2022, whichever is later.

{¶ 23} The local public hearing in this matter shall be held on October 11, 2022, at 6:00 p.m., at London City Hall, 20 S Walnut Street, London, OH 43140. For those individuals interested in testifying at the local public hearing, a sign-up sheet will be available at the venue and witnesses will be called to testify in the order in which they sign up to testify; testimony will 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 the any pandemic measure put in place by the London City Hall. 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.

{¶ 24} The evidentiary hearing will commence on November 2, 2022, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), Hearing Room 11-D, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793. To participate in the hearing, parties and observers should first register at the building's lobby desk and then 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.

{¶ 25} Springwater Solar 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 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 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 October 11, 2022, at 6:00 p.m., at London City Hall, 20 S Walnut Street, London, OH 43140.
- (b) An evidentiary hearing commencing on November 2, 2022, at 10:00 a.m., Hearing Room 11-D, 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 the Applicant, Staff, and any intervenors to provide evidence regarding the application.

{¶ 26} 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 of up to 30 days following service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, or September 8, 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. 22-94-EL-BGN.

{¶ 27} Applicant shall issue public notice of the hearings and the application in this matter. The notice shall be issued in newspapers of general circulation in those municipal corporations and counties in which the chief executive 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 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.

{¶ 28} 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. 22-94-EL-BGN.

{¶ 29} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing. In doing so, 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 September 26, 2022.
- (b) On or before October 14, 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 Springwater Solar shall be filed by October 21, 2022. All expert and factual testimony to be offered by intervenors and Staff shall be filed by October 27, 2022.
- (d) Any stipulation entered into by the parties shall be filed by noon on November 1, 2022, along with the associated testimony supporting the stipulation.

{¶ 30} 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.

III. ORDER

{¶ 31} It is, therefore,

{¶ 32} ORDERED, That Applicant's April 22, 2022, motion for waivers be granted as stated in Paragraph 13. It is, further,

{¶ 33} ORDERED, That Applicant's April 22, 2022, motion for protective order be granted as stated in Paragraph 17. It is, further,

{¶ 34} ORDERED, That, for a period of 24 months, the Board's docketing division maintain, under seal, the information which is the subject of the motion for protective order, as stated in Paragraph 18. It is, further,

{¶ 35} ORDERED, That the effective date of the Application be July 25, 2022, and the hearings in this matter be scheduled in accordance with Paragraphs 23 and 24. It is, further,

{¶ 36} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 29. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Daniel E. Fullin

By: Daniel E. Fullin
Administrative Law Judge

JRJ/mef

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in

Case No(s). 22-0094-EL-BGN

Summary: Administrative Law Judge Entry ordering the effective date of the Application be July 25, 2022; setting the procedural schedule including a local public hearing on October 11, 2022, at 6:00 p.m., at London City Hall, and an evidentiary hearing on November 2, 2022, at 10:00 a.m., Hearing Room 11-D; and granting the motion for protective order and the motion for waiver filed by Springwater Solar, LLC. electronically filed by Ms. Mary E. Fischer on behalf of Daniel E. Fullin, Administrative Law Judge, Ohio Power Siting Board