

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
FOUNTAIN POINT SOLAR ENERGY LLC
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
LOGAN COUNTY, OHIO.

CASE NO. 21-1231-EL-BGN

ENTRY

Entered in the Journal on September 15, 2022

{¶ 1} Fountain Point Solar Energy LLC (Fountain Point 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} On December 28, 2021, Fountain Point filed its preapplication notice informing the Board of a to be proposed 280 megawatt (MW) solar-powered electric generation facility to be constructed on approximately 3,860 acres in Bokescreek, Perry, and Rushcreek townships, Logan County, Ohio (Project). Further, the notice stated that Fountain Point would be hosting a public information meeting on January 12, 2022, at Benjamin Logan Middle School, in Bellefontaine, Ohio 43311.

{¶ 4} Ohio Adm. Code 4906-3-03(B)(2) directs that the applicant notify each property owner and affected tenant of the public information meeting and provide other pertinent information about the proposed project and Board process.

{¶ 5} On December 28, 2021, Fountain Point also filed a letter indicating compliance with the requirements of Ohio Adm.Code 4906-3-03(B)(2) to notify property owners and affected tenant within the project area of the public information meeting.

{¶ 6} On January 10, 2022, Fountain Point filed its notice of compliance with Ohio Adm.Code 4906-3-03(B)(1), which requires the Applicant to publish notice of the public information meeting in a newspaper of general circulation in the project area. Notice of the public information meeting was published in the *Bellefontaine Examiner* on December 30, 2021.

{¶ 7} On various dates, petitions and motions to intervene were filed by: Kara M. Slonecker, Paul William Schaller, Jeny Hammer, Jocelyn Kavanagh, and Logan County Board of Commissioners. No memoranda contra the petitions or motions to intervene were filed. The administrative law judge (ALJ) finds that the motions are reasonable and should be granted.

{¶ 8} On April 11, 2022, as amended on May 16, 2022, Fountain Point filed its application (Application) for a certificate to construct the Project.

{¶ 9} 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 requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 10} On June 10, 2022, the Board notified Fountain Point that its Application, including data request responses, was found to be sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., 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 letter instructed Fountain Point 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. Staff also identified additional information that would be requested during its investigation including, but not limited to, identification of proposed locations within the

project area of any electric transmission lines and associated facilities with a design capacity of 100 kilovolts (kV) or more.

{¶ 11} Pursuant to Senate Bill 52, by correspondence filed July 5, 2022, the Bokescreek/Rushcreek Township Trustees notified the Board that it had designated Jeff Spencer as its ad hoc representative to the Board. By correspondence docketed on July 8, 2022, the Logan County Board of Commissioners informed the Board that it had designated Michael E. Yoder as its ad hoc representative to the Board.

{¶ 12} On August 23, 2022, Fountain Point filed a second supplement to the Application (Amended Application). In the Amended Application, Fountain Point seeks approval to construct a 280-MW solar-powered electric generation facility on approximately 2,768 acres (as opposed to 3,860 acres) in Bokescreek and Rushcreek townships (excluding all of Perry Township) (Amended Project). As with the initial project proposal, the Amended Project will consist of photovoltaic panels, access roads, electric collection cables, a collection substation, a laydown area for construction staging, an operation and maintenance building, and pyranometers.

{¶ 13} On August 25, 2022, Fountain Point filed proof of service of its accepted and complete Application on local government officials and the main public library, as required by Ohio Adm.Code 4906-3-07(A), on June 16, 2022. Further, Fountain Point states that it maintains access to a copy of its accepted complete Application on its website, along with instructions how to request a paper copy of the Application.

{¶ 14} On August 25, 2022, Fountain Point also filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 15} Ohio Adm.Code 4906-3-08(A) states that, once an 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. R.C.

4906.07(A) directs that the public hearing be held not less than 60 nor more than 90 days after the effective date.

{¶ 16} The effective date of the Application shall be September 15, 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 October 25, 2022, whichever is later.

{¶ 17} The local public hearing in this matter shall be held on December 14, 2022, at 5:00 p.m., at Benjamin Logan High School, 6609 OH-47, Bellefontaine, OH 43311. 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 venue. 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.

{¶ 18} The evidentiary hearing will commence on January 23, 2023, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), Hearing Room A, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793. Everyone must register at the lobby desk and then proceed to the 11th floor to participate in the hearing. Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, 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.

{¶ 19} Fountain Point should issue public notice of the Amended 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 December 14, 2022, at 5:00 p.m., at Benjamin Logan High School, 6609 OH-47, Bellefontaine, OH 43311.
- (b) An evidentiary hearing commencing on January 23, 2023, at 10:00 a.m., Hearing Room 11-A, 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.

{¶ 20} 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 October 25, 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 the docketing division, Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 with a reference to Case No. 21-1231-EL-BGN.

{¶ 21} Applicant shall issue public notice of the hearings and Amended Application in this matter pursuant to Ohio Adm.Code 4906-3-09. 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 Amended 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; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 22} 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. 21-1231-EL-BGN.

{¶ 23} 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 November 29, 2022.
- (b) On or before December 19, 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 Fountain Point shall be filed by January 6, 2023. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by January 18, 2023.

(d) Any stipulation entered into by the parties shall be filed by noon on January 20, 2023, along with the associated testimony supporting the stipulation.

{¶ 24} In conjunction with filing the Application on April 11, 2022, Fountain Point filed a motion for waivers of Ohio Adm.Code 4906-4-08(D)(2) through (4) to allow for a reduced study area regarding the review of cultural resources, landmarks, recreation areas, and visual impacts.

{¶ 25} 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.

{¶ 26} Fountain Point states it has evaluated the cultural resources, landmarks, and recreational areas within a two-mile vicinity of the Project area and the visual impact within a five-mile vicinity of the Project area in the Visual Resource Assessment (Exhibit N). Applicant states that the area of potential effects for cultural resources, landmarks, and recreational areas is well below the two-mile study area. Fountain Point avers 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, which is well under the five-mile visual impact study area. Applicant also asserts that similar waivers have been granted for other solar projects, citing *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).

{¶ 27} On April 20, 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, 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 investigation.

{¶ 28} Upon consideration of Fountain Point's request for waivers, the 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, and waivers of Ohio Adm.Code 4906-4-08-(D)(3)-(4) to allow for a five-mile radius study area.

{¶ 29} Also on April 11, 2022, Applicant filed a motion for a protective order to keep pages 32-34 of the application narrative and pages 1 and 8 of Exhibit F, which includes financial data representing estimated costs, and the certificate and policy numbers in Exhibit I, confidential and not part of the public record. Applicant asserts that disclosure of the 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." Contemporaneous with its motion, Fountain Point submitted the unredacted filings under seal. Applicant also filed a redacted application narrative, and a redacted version of Exhibits F and I 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.

{¶ 30} On April 20, 2022, Staff filed a letter stating that it does not oppose Applicant's motion for a protective order.

{¶ 31} 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.

{¶ 32} 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, pages 32-34 of the application narrative, pages 1 and 8 of Exhibit F, and the certificate and policy numbers in Exhibit I that Fountain Point filed under seal should be kept confidential and not subject to public disclosure.

{¶ 33} 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 Fountain Point 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.

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the motions to intervene in this proceeding filed by Kara M. Slonecker, Paul William Schaller, Jeny Hammer, Jocelyn Kavanagh, and Logan County Board of Commissioners be granted. It is, further,

{¶ 36} ORDERED, That the effective date of the Amended Application be September 15, 2022, and the hearings scheduled as set forth in Paragraphs 17 and 18. It is, further,

{¶ 37} ORDERED, That notice of the Amended Application and the hearings be published by Fountain Point in accordance with Paragraphs 19, 20, and 21. It is, further,

{¶ 38} ORDERED, That the parties observe the filing deadlines set forth in Paragraphs 16 and 23. It is, further,

{¶ 39} ORDERED, That Fountain Point's motion seeking waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted pursuant to Paragraph 28. It is, further,

{¶ 40} ORDERED, That Fountain Point's motion for protective order be granted as stated in Paragraphs 32 and 33. It is, further,

{¶ 41} ORDERED, That, for a period of 24 months, the Board's Docketing Division maintain, under seal, certain information in pages 32-34 of the application narrative, pages 1 and 8 of Exhibit F, and the certificate and policy numbers in Exhibit I of the Application, which were filed under seal in this docket on April 11 and May 6, 2022. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Greta See

By: Greta See
Administrative Law Judge

JRJ/hac

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in

Case No(s). 21-1231-EL-BGN

Summary: Administrative Law Judge Entry ordering that the motions to intervene in this proceeding filed by Kara M. Slonecker, Paul William Schaller, Jeny Hammer, Jocelyn Kavanagh, and Logan County Board of Commissioners be granted; that the effective date of the Amended Application be September 15, 2022, and the local public hearing be held on December 14, 2022, at 5:00 p.m., at Benjamin Logan High School, 6609 OH-47, Bellefontaine, OH 43311 and the evidentiary hearing will commence on January 23, 2023, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), Hearing Room A, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793; that notice of the Amended Application and the hearings be published by Fountain Point; that the parties observe the filing deadlines set forth herein; that Fountain Point's motion seeking waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted; and, that Fountain Point's motion for protective order be granted; that, for a period of 24 months, the Board's Docketing Division maintain, under seal, certain information in pages 32-34 of the application narrative, pages 1 and 8 of Exhibit F, and the certificate and policy numbers in Exhibit I of the Application, which were filed under seal in this docket on April 11 and May 6, 2022 electronically filed by Heather A. Chilcote on behalf of Greta See, Administrative Law Judge, Power Siting Board