

OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF OAK RUN SOLAR PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY.

CASE No. 22-549-EL-BGN

IN THE MATTER OF THE APPLICATION OF
OAK RUN SOLAR PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A TRANSMISSION LINE.

CASE No. 22-550-EL-BTX

ENTRY

Entered in the Journal on January 20, 2023

{¶ 1} Oak Run Solar Project, LLC (Applicant or Oak Run) 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 May 26, 2022, Applicant filed a motion for waiver and request to file a joint generation and transmission application. Applicant stated in the accompanying memorandum in support that it intends to file an application with the Board for a certificate to construct a solar-powered electric generation facility with a generating capacity of up to 800 megawatts (MW) alternating current, up to 300 MW of battery storage facilities, substations, and associated 230 kilovolt (kV) transmission lines of approximately 3.5 miles in Monroe, Somerford, and Deercreek Townships, Madison County, Ohio (collectively, the Project or Facility).

{¶ 4} On June 7, 2022, Applicant filed a preapplication notification letter for the Project.

{¶ 5} On June 15, 2022, Staff filed correspondence regarding Applicant's motion for waiver, in which Staff stated that it finds Applicant's reasoning to be sufficient to grant the motion to file a joint generation and transmission application.

{¶ 6} On June 17, 2022, Applicant filed proof of publication for the public information meeting for the Project, scheduled for June 22, 2022. The public information was held, as scheduled, on June 22, 2022.

{¶ 7} By Entry issued June 24, 2022, the administrative law judge (ALJ) granted the motion for waiver to allow the standard generation and associated electric transmission certificate applications to be filed jointly.

{¶ 8} On July 18, 2022, Applicant filed a second preapplication notification letter for the Project.

{¶ 9} Also on July 18, 2022, Applicant filed a notice of compliance with Ohio Adm.Code 4906-3 with respect to its planned second public information meeting scheduled for August 2, 2022.

{¶ 10} On July 20, 2022, the Madison County Commissioners filed a resolution appointing Commissioner Mark Forrest as an ad hoc Board member in this proceeding.

{¶ 11} On August 1, 2022, Applicant filed proof of publication for the second public information meeting for the Project, scheduled for August 2, 2022. The second public information meeting was held, as scheduled, on August 2, 2022.

{¶ 12} On September 2, 2022, Applicant filed an application for a certificate of environmental compatibility and public need to develop, construct, and operate the Facility.

{¶ 13} Also on September 2, 2022, Applicant filed three separate motions. First, Applicant filed a motion for protective order, pursuant to which Applicant seeks protective treatment of certain portions of the application which it believes contain trade secret and

confidential information. Second, Applicant filed a motion for waiver from 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. Finally, Applicant filed a motion for waiver from certain requirements pertaining to the alternate transmission line route.

{¶ 14} The Board of Trustees of Monroe Township and the Board of Trustees of Deercreek Township each filed a resolution appointing Jim Moran as an ad hoc Board member in this proceeding on September 29, 2022, and October 7, 2022, respectively.

{¶ 15} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7, or reject the application as incomplete.

{¶ 16} By letter dated November 1, 2022, Staff notified Applicant that its application 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 November 1, 2022, letter directed Applicant 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 Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 17} On November 14, 2022, Applicant filed a (i) certificate of service of its accepted and complete application and (ii) notice that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 18} On November 21, 2022, Applicant filed a supplement to the application to attach its Phase I archaeology survey to the application.

{¶ 19} 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.

{¶ 20} The effective date of the application shall be January 20, 2023. The ALJ finds that a local public hearing in this matter shall be held on April 11, 2023, at 5:00 p.m., at Jonathan Alder High School, 9200 US-42, Plain City, Ohio 43064. For those individuals interested in testifying at the local public hearing, a sign-in sheet will be available at the facility and witnesses will be taken in the order in which they register to testify. 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 during the local public hearing. Testimony to be provided will be limited to five minutes in duration.

{¶ 21} The evidentiary hearing will commence on May 15, 2023, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio (Commission), Hearing Room 11-A, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215. The parties should register at the lobby desk and then proceed to the 11th Floor in order to participate in the hearing.

{¶ 22} Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by March 7, 2023, whichever is later.

{¶ 23} Applicant should issue public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Applicant shall include a statement that the public hearing in this case shall consist of two parts, as well as information concerning guidelines for attendance:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing April 11, 2023,

at 5:00 p.m., at Jonathan Alder High School, 9200 US-42, Plain City, Ohio 43064.

(b) An evidentiary hearing to commence on May 15, 2023, at 10:00 a.m., in Hearing Room 11-A at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 24} Further, regarding the initial public notice required under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, Applicant shall include the following statement as part of the public notice:

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 4606-3-09, or March 7, 2023, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 25} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule and process should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06, Staff shall file its report of investigation on or before March 27, 2023.
- (b) On or before April 27, 2023, each party shall file a list of issues 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 Applicant shall be filed by May 2, 2023.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by May 10, 2023.
- (e) Any stipulation entered into by the parties shall be filed by noon on May 12, 2023, along with the associated testimony supporting the stipulation.

Motion for protective order

{¶ 26} As mentioned above, on September 2, 2022, Applicant filed a motion for protective order to keep confidential certain sections of the application. First, Applicant requests confidential treatment of portions of pages 48-49 of the application narrative and portions of pages 1-10 of Exhibit I attached to the application (collectively, the Financial Information). Applicant explains that these portions of the application contain financial data representing estimated capital and intangible costs, and operation and maintenance costs, which Applicant believes are sensitive and should remain confidential. Applicant believes that public disclosure of the Financial Information will have a harmful effect on Applicant's ability to compete in the marketplace and negotiate contracts with potential vendors for the Project. Second, Applicant requests that the certificate and policy numbers in Exhibit K of the application, containing the Certificate of Liability Insurance, be kept confidential. Applicant states that the certificate and policy numbers are the subject of reasonable efforts to maintain their secrecy and are not otherwise available in the public domain. Further, Applicants points out that the Board has previously recognized that certificate and policy numbers contained in certificates of liability insurance should be granted protective treatment under the Board's rules and regulations.

{¶ 27} No memoranda contra the motion for protective order were filed.

{¶ 28} 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.

{¶ 29} 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. Applying the requirements discussed above, the ALJ finds that Applicant’s motion should be granted. Consequently, the Financial Information and the certificate and policy numbers in the Certificate of Liability insurance contained in Exhibit K to the application which Applicant filed under seal should be kept confidential and not subject to public disclosure.

{¶ 30} 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 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 4609-2-21(F). If no such motion is filed, the Docketing Division may release the information without prior notice.

Motion for waivers

{¶ 31} Also on September 2, 2022, Applicant filed a motion requesting a waiver from Ohio Adm.Code 4906-4-08(D)(2)-(4) and asserts that good cause exists for granting the requested waivers.

{¶ 32} Ohio Adm.Code 4906-4-08(D)(2) requires an applicant to provide an evaluation of the proposed facility's impact on the preservation and continued meaningfulness of nearby landmarks as well as describe plans to avoid or mitigate any adverse impact on them. 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 4906-4-08(D)(4) also requires the visual impact evaluation to consist of several analysis components, including a viewshed analysis and visual effect, a description of the existing landscape and its corresponding scenic quality, alterations to the landscape caused by the facility, photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points, and a description of measures that will be taken to minimize adverse visual impacts created by the proposed facility.

{¶ 33} In support of its motion, Applicant submits that good cause exists for granting a waiver from those rules to allow for a focused study area of five miles for cultural resources, landmarks, and recreational areas, such as was submitted as part of the application. Applicant explains that the area of potential effects for the Project is well below the five-mile study area. With respect to the visual impact, as explained in the Visual Resources Technical Report attached to the application as Exhibit X, because of the Facility's low profile and screening afforded by vegetation and existing structures, visibility of the planned components is anticipated to be limited to the immediate vicinity of the Project. Applicant notes that the Board granted similar waivers to other recent solar projects. See, e.g., *Willowbrook Solar I, LLC*, Case No. 18-1024-EL-BGN, Entry (Oct. 4, 2018); *Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN, Entry (Jan. 17, 2019); *Arche Energy Project, LLC*, Case No.

20-979-EL-BGN, Entry (Sept. 23, 2020); *Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN, Entry (Nov. 23, 2020).

{¶ 34} No memoranda contra the motion for waiver of Ohio Adm.Code Ohio Adm.Code 4906-4-08(D)(2)-(4) were filed.

{¶ 35} 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 a motion filed by a party, other than a requirement mandated by statute.

{¶ 36} Upon consideration of Applicant's request for waiver, the ALJ finds that good cause exists to grant Applicant's request for waiver of Ohio Adm.Code 4906-4-08-(D)(2)-(4) to allow for its focused five-mile study area rather than the 10-mile study area.

{¶ 37} Finally, Applicant also filed on September 2, 2022, a motion for waiver from certain requirements relating to the alternate transmission line route (Alternate Route). Specifically, Applicant requests waiver of the following requirements of Ohio Adm. Code 4906-3-05: (1) that the application includes fully-developed information on two sites/routes, such as certain information requirements set forth in Ohio Adm.Code Rules 4906-2-04(C)(4), 4906-5-05(B), 4906-5-06, 4906-5-07, and 4906-5-08; and (2) that not more than 20 percent of the preferred transmission line route (Preferred Route) and the Alternate Route be in common. Applicant first points out that there is no statutory requirement that an alternate route be included in an application for a transmission line but is rather a requirement of the Board's rules. Pursuant to Ohio Adm.Code 4906-5-01(B), the Board has authority to waive any requirements in the rules pertaining to transmission line facilities, other than those mandated by statute. Further, Applicant points out that while it is seeking a waiver of certain section of Ohio Adm.Code Rule 4906-3-05, and certain requirements set forth in Ohio Adm.Code 4906-2-04(C)(4), 4906-5-05(B), 4906-5-06, 4906-5-07, and 4906-5-08, the application still provides a significant amount of information concerning the Alternate Route. For instance, Applicant points out that the application describes the route selection process and a quantitative comparison between the Preferred and Alternate Routes. The

application also provides information on the Alternate Route that addresses hydrogeology and geotechnical information, acoustic assessment, land use and acreage impacts along the Alternate Route, and potential environmental impacts. Applicant believes that the information provided in the application is sufficient to allow Staff to conduct its review of the Alternative Route and make any necessary findings.

{¶ 38} With respect to the requirement in Ohio Adm.Code 4906-3-05 that the Preferred and Alternate Routes have no more than 20 percent of the routes in common, Applicant also requests a waiver. Applicant states that it worked closely with all landowners and local governments to determine the preferred location for the transmission facilities in an effort to ensure that all stakeholders agree with the Preferred Route. Thus, while Applicant did provide an Alternate Route for review and consideration by the Board, the design goals were to site the transmission lines on land where landowners have agreements with the Applicant, to avoid environmentally sensitive areas, and ensure proximity near the Project and point of interconnection. Applicant also highlights that this Project is unique in that, because the transmission facilities are fully within the Facility's project area, the most viable alternative route, by necessity, has more than 20 percent in common with the Preferred Route.

{¶ 39} In support of the requested waivers of Ohio Adm. Code 4906-3-05, Applicant highlights that the Board has granted similar waiver requests in other Board proceedings. See, e.g., *Am. Transm. Sys.*, Case No. 11-5856- EL-BTX, Entry (Jan. 5, 2012); *Am. Transm. Sys.*, Case No. 12-1727-EL-BSB, Entry (Dec. 10. 2012); *Hardin Wind LLC*, Case No. 13-1768-EL-BTX, Entry (Sept. 17, 2013); *Paulding Wind Farm III*, Case No. 15-1737-EL-BTX, Entry (Dec. 9, 2015); *Paulding Wind Farm IV*, Case No. 18-1293-ELBTX, Entry (Dec. 5, 2018); *Firelands Wind LLC*, Case No. 19-1073-EL-BTX, Entry (Oct. 16, 2019); *Grover Hill Wind, LLC*, Case No. 22-269-EL-BTX, Entry (Jun. 1, 2022).

{¶ 40} Upon consideration of Applicant's motion for waiver, the ALJ finds that good cause exists to grant the requested waivers regarding fully developed information relating

to the Alternate Route only, as well as the requested waiver of the 20 percent in common requirement. However, should Staff determine that information regarding areas covered by the requested waivers is necessary for its investigation of the application, Applicant is expected to comply with any resulting requests for information from Staff.

{¶ 41} It is, therefore,

{¶ 42} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraphs 20 and 21. It is, further,

{¶ 43} ORDERED, That notice of the application and hearings be published by Applicant in accordance with Paragraphs 23 and 24. It is, further,

{¶ 44} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 25. It is, further,

{¶ 45} ORDERED, That Applicant's motion for protective order be granted as stated in Paragraph 29. It is, further,

{¶ 46} ORDERED, That Applicant's motion for waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted as stated in Paragraph 36. It is, further,

{¶ 47} ORDERED, That Applicant's motion for waiver of certain requirements in Ohio Adm.Code 4906-3-05 be granted as stated in Paragraph 40. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ David M. Hicks

By: David M. Hicks
Administrative Law Judge

MJA/dmh

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in

Case No(s). 22-0549-EL-BGN, 22-0550-EL-BTX

Summary: Administrative Law Judge Entry ordering the effective date of the application shall be January 20, 2023. a local public hearing in this matter shall be held on April 11, 2023, at 5:00 p.m., at Jonathan Alder High School, 9200 US-42, Plain City, Ohio 43064; Staff shall file its report of investigation on or before March 27, 2023; the evidentiary hearing will commence on May 15, 2023, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, Hearing Room 11-A, 11th Floor, 180 East Broad Street, Columbus, Ohio 43215; on or before April 27, 2023, each party shall file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing; all testimony be offered by applicant shall be filed by May 2, 2023; testimony by intervenors and Staff be filed by May 10, 2023 and any stipulation by the parties shall be filed by noon on May 12, 2023 along with associated testimony supporting the stipulation electronically filed by Ms. Donielle M. Hunter on behalf of David M. Hicks, Administrative Law Judge, Ohio Power Siting Board