

OHIO POWER SITING BOARD

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

CASE NO. 23-931-EL-BGN

ENTRY

Entered in the Journal on May 31, 2024

{¶ 1} Stark Solar, LLC (Applicant or Stark Solar) 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 November 14 and 21, 2023, Applicant filed a preapplication notification letter and a second preapplication notification letter, respectively, informing the Board of a to be proposed 150 megawatt (MW) solar-powered electric generation facility to be constructed on approximately 816 acres in Washington Township, Stark County, Ohio (Project). Further, the first notice stated that Stark Solar would be hosting a public information meeting on November 29, 2023, at Washington Elementary School, in Alliance, Ohio; the second notice stated it would host a second public information meeting on December 6, 2023, at the same location.

{¶ 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 November 14 and 21, 2023, Stark Solar also filed letters, respectively, 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 meetings.

{¶ 6} On November 21 and 27, 2023, Applicant filed proof of publication for the public information meetings for the Project, respectively, each scheduled for November 29, 2023, and December 6, 2023. The public information meetings were held, as scheduled, on those dates.

{¶ 7} On February 28, 2024, Applicant filed an application for a certificate of environmental compatibility and public need to develop, construct, and operate the Project.

{¶ 8} Also on February 28, 2024, Applicant filed two 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, recreational and scenic areas, and visual impacts.

{¶ 9} 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.

{¶ 10} By letter dated April 26, 2024, 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 April 26, 2024 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.

{¶ 11} On May 1, 2024, Applicant filed a (i) certificate of service of its accepted and complete application and (ii) notice that it delivered its application fee to the Fiscal Division of the Board.

{¶ 12} On May 10, 2024, the Stark County Commissioners filed a notice advising that Janet Weir Creighton, President of the Stark County Commissioners, has been appointed as an ad hoc Board member in this proceeding.

{¶ 13} On May 28, 2024, the Board of Trustees of Washington Township filed correspondence advising the Board that Jimmy Jones, Washington Township Fiscal Officer, has been appointed as an ad hoc Board member in this proceeding.

{¶ 14} 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 administrative law judge (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.

{¶ 15} The effective date of the application shall be May 31, 2024. The ALJ finds that a local public hearing in this matter shall be held on August 5, 2024, at 5:00 p.m., at Marlinton High School, 10450 Moulin Avenue, Alliance Ohio, 44601, Ohio. 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 three minutes in duration.

{¶ 16} The evidentiary hearing will commence on September 17, 2024, 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.

{¶ 17} 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 July 12, 2024, whichever is later.

{¶ 18} 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 August 5, 2024, at 5:00 p.m., at Marlinton High School, 10450 Moulin Avenue, Alliance Ohio, 44601, Ohio.
- b) An evidentiary hearing to commence on September 17, 2024, 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.

{¶ 19} 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 July 12, 2024, 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.

{¶ 20} 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 July 19, 2024.
- (b) On or before August 20, 2024, 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 August 27, 2024.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by September 10, 2024.
- (e) Any stipulation entered into by the parties shall be filed by noon on September 13, 2024, along with the associated testimony supporting the stipulation.

Motion for protective order

{¶ 21} As mentioned above, on February 28, 2024, Applicant filed a motion for protective order to keep confidential certain sections of the application. First, Applicant requests confidential treatment of portions of pages 21-22 of the application narrative and pages 11-14, 16, and 18 of Exhibit E 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 Y 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.

{¶ 22} Staff filed a response to the motion for protective order, stating that it does not oppose the motion.

{¶ 23} 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.

{¶ 24} 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 Y to the application which Applicant filed under seal should be kept confidential and not subject to public disclosure.

{¶ 25} 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

{¶ 26} Also on February 28, 2024, 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.

{¶ 27} 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.

{¶ 28} 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 two miles for cultural resources and landmarks and a focused study area of five miles for recreational and scenic areas and visual impacts, such as was submitted as part of the application. Applicant explains that the area of potential effects for the Project is within the two-mile study area. With respect to the visual impact, as explained in the Visual Resources Assessment attached to the application as Exhibit W, 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, which is well under the five-mile visual impact study area. 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).

{¶ 29} Staff filed a response to Stark Solar's motion, stating that it believes good cause exists for granting the requested waivers. Staff asserts that, because of the Project's low profile, as well as screening afforded by vegetation and existing structures, visibility of the planned components is to be limited to the immediate vicinity of the Project, which is well under the five-mile visual impact study area. Also, Staff states that the area of potential effects for the Project is within the two-mile study areas, and the State Historic Preservation Office accepted the work plan, which includes a two-mile study radius.

{¶ 30} 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.

{¶ 31} 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 two-mile study area for cultural resources and landmarks and focused five-mile study area for recreational and scenic areas and visual impacts rather than the 10-mile study area.

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraphs 15 and 16. It is, further,

{¶ 34} ORDERED, That notice of the application and hearings be published by Applicant in accordance with Paragraphs 18 and 19. It is, further,

{¶ 35} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 20. It is, further,

{¶ 36} ORDERED, That Applicant's motion for protective order be granted as stated in Paragraphs 24 and 25. It is, further,

{¶ 37} ORDERED, That Applicant's motion for waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted as stated in Paragraph 31. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Matthew J. Sandor

By: Matthew J. Sandor
Administrative Law Judge

JRJ/dmh

This foregoing document was electronically filed with the Public Utilities Commission of Ohio Docketing Information System on

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Case No(s). 23-0931-EL-BGN

Summary: Administrative Law Judge Entry ordering that a local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing August 5, 2024, at 5:00 p.m., at Marlinton High School, 10450 Moulin Avenue, Alliance Ohio, 44601, Ohio; that an evidentiary hearing to commence on September 17, 2024, 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; on or before August 20, 2024, each party shall file a list of issues citing specific concerns: expert and factual testimony to be offered by Applicant shall be filed by August 27, 2024; expert and factual testimony to be offered by intervenors and Staff shall be filed by September 10, 2024; any stipulation entered into by the parties shall be filed by noon on September 13, 2024, along with the associated testimony supporting the stipulation electronically filed by Ms. Donielle M. Hunter on behalf of Matthew J. Sandor, Administrative Law Judge, Ohio Power Siting Board.