



Power Siting Board

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January 21, 2021

The Honorable Jeffrey Jones, Section Chief
Ohio Power Siting Board
180 East Broad Street, 12th Floor
Columbus, OH 43215-3793

Re: Motion for Waiver,
Case No. 21-0004-EL-BGN

Dear Judge Jones:

On January 15, 2021, Tymochtee Solar, LLC (Applicant), filed a motion for waiver of Ohio Administrative Code (Ohio Adm.Code) 4906-3-03(B), in which it requested the Ohio Power Siting Board (Board) authorize the Applicant to comply with Ohio Adm.Code 4906-3-03(B) using an alternative approach. Applicant proposed that it will host both a live web-based and a live teleconference question and answer virtual public information meeting (PIM) on February 25, 2021.

As a general matter, in accordance with the Governor's directives for the State of Ohio, and in light of recent record-breaking COVID-19 case numbers, and the novel circumstances facing the state and nation, staff of the Board (Staff) not only does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B).¹

The Applicant will host a live virtual presentation where the public will be able to submit questions and the Applicant will address them. The Applicant would afterward respond to any questions not capable of being addressed at the virtual PIM, either by phone, email, mail, or updates to the Applicant's website. Applicant would also make the presentation document and a recording of the presentation available on its website, and it would send a hard copy of the

¹ See e.g., Governor DeWine's October 29, 2020 announcement that Ohio had hit a record number of cases reported in a single 24-hour period, a situation which continued to escalate in record case numbers in following days. "The virus is raging throughout the state, and there is no place to hide," said Governor DeWine. "We must face this virus head-on with the tools that we know can beat this virus back: masks, social distancing, washing hands frequently, and good ventilation when inside." Governor DeWine further stated: "The decisions Ohioans make each day will determine the outcome of this battle. We must mask more, keep distance more, and simply be more careful." Available at: <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/covid19-update-10282020>.

presentation document upon request. In its motion, Applicant averred that its request is for good cause given the ongoing state of emergency, as the alternative approach will allow members of the public to learn about the project while staying home.²

The Applicant will host a live virtual presentation where the public will be able to submit questions and the Applicant will address them. The Applicant would afterward respond to any questions not capable of being addressed at the virtual PIM, either by phone, email, mail, or updates to the Applicant's website. Applicant would also make the presentation document and a recording of the presentation available on its website, and it would send a hard copy of the presentation document upon request. In its motion, Applicant averred that its request is for good cause given the ongoing state of emergency, as the alternative approach will allow members of the public to learn about the project while staying home.

Staff notes that on March 9, 2020, the Governor of Ohio signed Executive Order 2020-01D, declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. Since that time, multiple applicants have filed for waivers of Ohio Adm.Code 4906-3-03(B) such that each project may conduct solely virtual PIMs, and in each case, Staff has responded that it does not object to the requested waiver.³ Throughout each waiver response, Staff has recognized the unique nature of the COVID-19 pandemic, and the radically changed environment that has resulted from the response warrants an acknowledgment of the importance of social distancing. Although additional executive orders have been issued, staying at home, as opposed to congregating in groups, is still strongly recommended and social distancing is advised for the foreseeable future.

In fact, the Board and Public Utilities Commission of Ohio (among other judicial, legislative, and regulatory tribunals) have been conducting meetings, hearings, and other business exclusively from home and it is anticipated that the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future.

² Case No. 21-0004-EL-BGN, January 15, 2021, Motion for Waiver, at 6-11

³ See *In the Matter of the Application of Madison Fields Solar Project LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generating Facility in Madison County, Ohio*, Case No. 19-1881-EL-BGN, May 21, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Powell Creek Solar, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Putnam County, Ohio*, Case No. 20-1084-EL-BGN, June 15, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Yellowbud Solar, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-0972-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Arche Energy Project, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Fulton, County, Ohio*, Case No. 20-0979-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Fox Squirrel Solar, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-931-EL-BGN (June 30, 2020); *In the Matter of the Application of Birch Solar LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Facility*, Case No. 20-1605-EL-BGN, October 26, 2020 Entry Granting Motion for Waiver; and, *In the Matter of the Application of Wheatsborough Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Power Facility*, Case No. 20-1529-EL-BGN, October 22, 2020 Entry Granting Motion for Waiver.

Additionally, the overall success that applicants have faced in conducting virtual PIMs has encouraged Staff to transition from its prior response that it “does not object to the requested waiver” to *encouraging* applicants to conduct their PIMs virtually.

Each of the above factors being the case, Staff not only reiterates that it does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B). Neither does Staff object to the granting of the requested waiver on an expedited basis.

Respectfully submitted,

/s/ Thomas M. Shepherd

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**On behalf of Staff of the
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Summary: Correspondence Regarding Motion for Waiver electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB