

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Willowbrook Solar I, LLC</b>	)	
<b>for a Certificate of Environmental</b>	)	<b>Case No. 18-1024-EL-BGN</b>
<b>Compatibility and Public Need</b>	)	

**MEMORANDUM CONTRA OF WILLOWBROOK SOLAR I, LLC TO THE PETITION  
TO INTERVENE OF TIMOTHY J. BRINKER**

**I. INTRODUCTION**

Mr. Brinker’s petition to intervene fails to make a showing of good cause sufficient to justify his intervention in this case. While Mr. Brinker does reside near the project area, his petition to intervene relies upon Mr. Brinker’s desire to have his property used, in some way, as part of the project. Applicant Willowbrook Solar I, LLC (“Willowbrook”) intends to continue to engage with Mr. Brinker and to explore this possibility, but intervention cannot be based solely on one’s interest in joining the project. The petition to intervene does not demonstrate a showing of good cause sufficient to justify Mr. Brinker’s intervention as a party in this case.

**II. ARGUMENT**

**A. Mr. Brinker Must Satisfy the Legal Standard for Intervention**

The standard for intervention in Board proceedings is a **showing** of good cause for the intervention. Ohio Adm.Code 4906-2-12(B)(1). In considering whether such a showing has been made, the Board or the administrative law judge may consider (a) the nature and extent of petitioners’ interest, (b) the extent to which the petitioners’ interest is represented by existing parties, (c) the petitioners’ potential contribution to a just and expeditious resolution of the issues involved in the proceeding, and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. *Id.*

Mr. Brinker raises two issues in his petition to intervene. The first is that notice regarding the project (which he has acknowledged receipt of), while compliant with the Board's rules, is somehow insufficient. Petition to Intervene at 1. This Board proceeding is not the appropriate place to raise Mr. Brinker's objections to the adequacy of the Board's rules with respect to notice. The Board's periodic review of its rules, including Ohio Adm.Code Chapter 4906-3, is the appropriate venue for any potential issues Mr. Brinker has with the Board's notice requirements.

The second issue he raises in his petition is that his property offers an opportunity for the project's use for either "underground power transmission" or for "office space and maintenance". Petition to Intervene at 2. Mr. Brinker raises no issue or concern about the impact of the project on his property leaving only his desire to benefit economically from the property. This is not a real and substantial interest justifying intervention.

Accordingly, having stated no interests that warrant intervention, Mr. Brinker's petition to intervene should be denied. Willowbrook will continue to engage with Mr. Brinker, but he is not an appropriate party in this proceeding.

#### **B. Mr. Brinker's Petition to Intervene is Untimely**

As Mr. Brinker identifies in his petition, the deadline to file petitions in this case was January 14, 2019. Petition to Intervene at 2. However, Mr. Brinker did not file his petition with the Board until January 15, 2019. The mailing and newspaper notice published by the Applicant both noted the January 14, 2019 deadline to file a petition to intervene. *See* Proof of Publication of Initial Public Notice, Case No. 18-1024-EL-BGN, Dec. 26, 2018 at 4. A petition to intervene that is untimely should be rejected by the Board, unless extraordinary circumstances justifying the granting of the petition are shown. Ohio Adm.Code 4906-2-12(C); *see e.g., In re Application*

*of Clev. Elec. Ill. Co.*, Case No. 83- 1343-HT-ATA, Entry (Feb. 17, 1984) at 1 (denying untimely petition to intervene, which did not allege extraordinary circumstances).

Having identified no such extraordinary circumstances (nor any circumstance) justifying an untimely petition to intervene, Mr. Brinker's petition to intervene should be denied.

### **III. CONCLUSION**

Mr. Brinker's petition to intervene does not show good cause to support his intervention as a party in this proceedings. Willowbrook will continue to engage with Mr. Brinker in the interest of coming to a mutually agreeable resolution with a nearby property owner, but Mr. Brinker simply should not be a party.

Respectfully submitted,

/s/ MacDonald W. Taylor

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## **CERTIFICATE OF SERVICE**

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Summary: Memorandum Contra Petition to Intervene of Timothy Brinker electronically filed by Mr. MacDonald W Taylor on behalf of WILLOWBROOK SOLAR I LLC