

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF PLEASANT PRAIRIE SOLAR ENERGY
LLC FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED.

CASE NO. 20-1679-EL-BGN

ENTRY

Entered in the Journal on November 19, 2020

{¶ 1} Pleasant Prairie Solar Energy LLC (Pleasant Prairie Solar 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 obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Ohio Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of ODH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The ODH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 4} Pursuant to R.C. 3701.13, the ODH has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the ODH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On November 12, 2020, Pleasant Prairie Solar filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. The Applicant is proposing to construct a 250-megawatt, solar-powered electric generating facility in Pleasant and Prairie Townships, Franklin County (Project) and seeks waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person in the area in which the Project will be located. Additionally, the Applicant requested an expedited ruling pursuant to Ohio Adm.Code 4906-2-27(C) in order to enable to begin issuing notices of the virtual public information meeting.

{¶ 6} Ohio Adm.Code 4906-3-03(B) requires, in part, an applicant to conduct at least one public informational meeting in the area in which the Project is located no more than 90 days prior to filing a standard certificate application with the Board. Pleasant Prairie Solar argues that the ongoing COVID-19 pandemic and its effects on the gathering of large groups of people justifies a waiver of the requirement that the public informational meeting occur in the area in which the Project is located. In support of its motion, Applicant points to the Board's adoption of similar waiver requests and the scheduling of virtual public information meetings. *See, e.g., In re Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (May 26, 2020); *In re Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (May 26, 2020); *In re Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN, Entry (June 30, 2020). Additionally, Applicant notes that the Board, relying upon Am. Sub. H.B. 197, held the local public and the adjudicatory hearings in Case No. 19-1641-EL-BGN using remote access technology and facilitated participation by telephone and/or live video on the Internet.

{¶ 7} Pleasant Prairie Solar references the different orders issued by the Director of ODH, including an order issued on March 22, 2020 (Stay Home Order), which was amended several times, directing Ohio residents to stay at home. Pleasant Prairie Solar notes that, while the Stay Home Order has been somewhat lifted, the governor has implemented Responsible Restart Ohio protocols aimed at responsibly restarting Ohio's economy during the COVID-19 pandemic. These protocols include wearing facemasks and limiting the

capacity of gatherings to meet social distancing guidelines of six feet with special care given to protect individuals with high-risk conditions. Pleasant Prairie Solar submits that, while there will be a gradual return to normal practices, the necessity for social distancing and caution against holding large public gatherings will continue for the foreseeable future.

{¶ 8} In lieu of complying with the express language of Ohio Adm.Code 4906-3-03(B), Pleasant Prairie Solar proposes an alternative virtual public information program consisting of a PowerPoint presentation regarding the Project, which will be narrated by the Applicant's subject matter experts. The platform will allow participants to connect by telephone or by an Internet link. The program will allow participants to be able to interact with the subject matter experts and the Board Staff via a moderated process and have their questions answered in an effective and timely manner.

{¶ 9} Pleasant Prairie Solar will also provide a project website and Facebook page with information about the Project, the virtual public information meeting, and PowerPoint presentation. Any questions that the Applicant is unable to address during the virtual public information program will be addressed via telephone, email, mail, and updates on the Applicant's website. Pleasant Prairie Solar represents that it will timely publish the newspaper notice and send the mailing required by Ohio Adm.Code 4906-3-03(B)(1)-(2). In addition to the individuals that Pleasant Prairie Solar is required to serve under the Board's rules, the Applicant will also send written notice to the following individuals: county commissioners, township trustees for the project area, the head of each public agency charged with the duty of protecting the environment or planning land use in the project area, the county engineer, the superintendent and board for the school district in the project area, the main library in the project area, emergency responders in the project area, and the local chamber of commerce.

{¶ 10} In support of its motion, Pleasant Prairie Solar states that, in the absence of the granting of its limited waiver, the public information meeting will be delayed. According to Pleasant Prairie Solar, such a result will cause harm to the community in which the Project

will be located. Pleasant Prairie Solar notes that not only will it be harmed but landowners and tenant farmers will be financially harmed by disruptions in their farming activities caused by delays or changes in the Board's power siting process. Specifically, it references the potential delay in the payments in lieu of tax benefits to the community and local school system.

{¶ 11} On November 18, 2020, Staff filed a response to Pleasant Prairie Solar's motion for waiver, in which it acknowledged the unique nature of COVID-19 and the changed environment that has resulted from the response to the virus. Staff concluded that, due to the above circumstances, it not only does not object to Applicant's requested waiver of Ohio Adm.Code 4906-3-03(B), but encourages the use of a virtual public information meeting exclusively to satisfy the requirements of Ohio Adm.Code 4906-3-03(B).

{¶ 12} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 13} Upon consideration of the unique circumstances of this case and the state of emergency, the administrative law judge (ALJ) finds that Pleasant Prairie Solar's motion for waiver of the requirement that the public information meeting be held in the area where the Project is to be located is reasonable and should be granted. The request for an expedited ruling is also granted. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing or objecting to the actual manner in which the public information meeting is proposed to be held, as detailed in the motion and memorandum in support. If Pleasant Prairie Solar wishes to proceed with planning and holding the virtual public information meeting, it carries with it the risk associated with doing so. Nonetheless, the ALJ certainly encourages Pleasant Prairie Solar to ensure all those who may wish to participate in the virtual public information meeting have the opportunity to do so, just as they would under normal circumstances. This must include the creation of a process by which members of the public may request reasonable accommodations to obtain access to

the virtual public information meeting. The details of this process, and all requests for accommodation received, should be forwarded to Staff upon receipt. Such shared information shall include any proposed resolutions from Pleasant Prairie Solar.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Pleasant Prairie Solar's motion seeking waiver and request for expedited ruling be granted, to the extent it is requesting waiver of the Board's requirement that a public information meeting be held in the area in which the Project is to be located. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jay S. Agranoff

By: Jay S. Agranoff
Administrative Law Judge

SJP/kck

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Case No(s). 20-1679-EL-BGN

Summary: Administrative Law Judge Entry granting Pleasant Prairie Solar's motion seeking waiver and request for expedited ruling, to the extent it is requesting waiver of the Board's requirement that a public information meeting be held in the area in which the Project is to be located. electronically filed by Kelli C. King on behalf of Jay S. Agranoff, Administrative Law Judge, Public Utilities Commission of Ohio