

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **Juliet Energy**)
Project, LLC for a Certificate of Environmental)
Compatibility and Public Need for a Solar)
Facility Located in Wood County, Ohio.)

Case No. 20-1760-EL-BGN

**MOTION FOR WAIVER AND APPROVAL OF AN
ALTERNATIVE PUBLIC INFORMATION MEETING PROGRAM
AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Ohio Administrative Code (“O.A.C.”) 4906-3-01(B) and 4906-2-27(C), Juliet Energy Project, LLC (“Juliet Energy”) files this motion requesting that the Ohio Power Siting Board (“Board” or “OPSB”) grant, on an expedited basis, a waiver of O.A.C. 4906-3-03(B), insofar as it requires that Juliet Energy’s public informational meeting (“PIM”) “be held in the area in which the project is located.” Through this motion, Juliet Energy requests that it be permitted to use an alternative method for complying with the PIM requirement under the rule (“Virtual PIM”).

As discussed in the attached Memorandum in Support, a waiver of this rule requirement is justified based on the ongoing COVID-19 pandemic and the social distancing restrictions in effect in Ohio at the time of the filing of this Motion. These restrictions will likely be in effect through the anticipated date of Juliet Energy’s PIM, currently anticipated to be held on or around January 13, 2021. This proposal would ensure that the public is able to safely and effectively participate in the PIM.

WHEREFORE, Juliet Energy Project, LLC respectfully requests that the Board grant waivers from O.A.C. 4906-3-03.

Respectfully submitted on behalf of
JULIET ENERGY PROJECT, LLC



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Juliet Energy Project, LLC (“Juliet Energy”) is proposing to construct an up to 101 MW solar powered electric generating facility in Wood County, Ohio (the “Project”). As part of the pre-application process, Juliet Energy is required to hold a public information meeting “in the area in which the project is located.” O.A.C. 4906-3-03(B). Because of the ongoing COVID-19 pandemic and protocols issued by the Ohio Department of Health (“ODH”), Juliet Energy is seeking a waiver from the rule requirement to hold the public meeting in the Project area.¹ Instead, Juliet Energy has made plans to provide a way for members of the public to obtain the same Project information. In lieu of an in-person meeting, Juliet Energy has developed a plan for a Virtual PIM, incorporating both web-based and telephone-based meetings.

For reasons more fully set forth in this Memorandum in Support, good cause exists to grant this motion on an expedited basis in accordance with O.A.C. 4906-2-27(C).

¹ On July 24, 2020, the Interim Director of ODH issued an order requiring individuals in the state of Ohio to wear facial coverings at all times when: in any indoor location that is not a residence; outdoors and not able to maintain a distance of 6 feet or more; and for public transportation purposes (<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Responsible-Protocols/>). This motion is further supported by the significant quantity of positive COVID19 cases in Ohio, which further promotes the need for social distancing (See <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/covid-19-update-10-29-20>).

II. LEGAL STANDARD

Upon a motion by a party, the Board may waive requirements for the public information meeting.² O.A.C. 49062-27(A) provides: “All motions [made to the Board] ... shall be in writing and shall be accompanied by a memorandum in support,” containing “a brief statement of the grounds for the motion and citations of any authorities relied upon.” Motions may be made with a request for an expedited ruling. O.A.C. 49062-27(C).

While there is no statutory requirement that a PIM be held, the Board has established rules requiring that, prior to filing a standard certificate application, the applicant must hold at least one PIM. Specifically, O.A.C. 4906-3-03(B) provides that:

1. No more than 90 days prior to submitting its application, the applicant hold an informational meeting open to the public in the area in which the project is located.
2. Not more than 21 days or fewer than 7 days prior to the PIM, the applicant publish notice of the PIM in newspapers of general circulation in the project area.
3. At least 21 days before the PIM, the applicant send a letter to each property owner and affected tenant.
4. At the PIM, the applicant present maps showing the proposed facility.
5. At the PIM, the applicant solicit written comments from the attendees and summarize those comments in its application.

The purpose of a PIM is to inform the community about the applicant’s intent to file an application.³ In addition, the PIM provides an opportunity for the applicant to answer questions from interested persons and gather information regarding any concerns from community.⁴ In doing so, the applicant may consider the questions and community concerns in its application.

² O.A.C. 4906-2-01(B).

³ See *In Re Rev. of Chapters 4906-1*, Case No. 12-1981-GE-BRO (stating that the purpose of the public information meeting is to inform affected property owners and the surrounding community of the project that will be presented to the Board).

⁴ *Id.*

Traditionally, an applicant would hold an open house where members of the public obtained information about the project. Hard copies and poster boards displaying details about the project would be accessible to the attendees. Further, company representatives would be available at the PIM to answer any questions about the project. Prior to the COVID-19 pandemic, public information meetings were typically held on a single weekday evening, for a period of approximately two hours.⁵ The Virtual PIM proposed by Juliet Energy below accomplishes these goals, and even exceeds all other requirements under the Board's rules.

The Board has recognized the difficulty of hosting an in-person meeting during the pandemic. The Board itself has cancelled both local public hearings and adjudicatory hearings for pending applications. *See In re The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (Mar. 12, 2020); and *In re Firelands Wind, LLC*, Case No. 19-1073-EL-BTX, Entry (Mar. 11, 2020). The Board also begun hosting its own monthly meetings through a web-based process. Further, the Board recently issued an order directing a solar project to hold a virtual PIM in lieu of an in-person meeting, noting that it would be “unwise to hold a Board-sanctioned public event that could result in further spread of the virus.”⁶

III. DISCUSSION

A. Juliet Energy's Public Information Meeting Program

Juliet Energy has designed Virtual PIM program to provide the public with as much or more information and opportunities to learn about the Project as required by the rule. Members of the public will have access to all relevant information from the safety of their own homes and

⁵ See, e.g., *Nestlewood Solar*, Case No 18-1546-EL-BGN (holding a single meeting from 6:00 p.m. to 8:00 p.m. on a Wednesday evening); *AEP Rouse-Bell Ridge 138 kV Transmission Line Project*, Case No. 17-1908-EL-BTX (holding a single meeting from 5:30 p.m. to 7:30 p.m. on a Thursday evening); and *Guernsey Power Station*, Case No. 16-2443-EL-BGN (holding a single meeting from 5:30 p.m. to 7:30 p.m. on a Wednesday evening)

⁶ *In re Mark Center Solar Project LLC*, Case No 20-1612-EL-BGN (November 5, 2020 Entry).

in compliance with the protocols issued by ODH. Additional details about Juliet Energy's Virtual PIM are included below.

Juliet Energy will hold a web-based and telephonic PIM on or around January 13th, 2021, beginning at 6 PM or later. The presentation will set forth details about the Project, including Project layout, timeline, and an overview of the Project website. This information will include:

- Company information about Juliet Energy Project, LLC, the applicant;
- The Project's location, size, and the supporting rationale;
- A preliminary scaled map of the Project, showing both the Project area and proximity to adjoining properties;
- The types of studies and due diligence that will be conducted by Juliet Energy;
- The Board's review and certification process;
- The expected timeline of the Project;
- Responses to any questions submitted by the public prior to the Virtual PIM;
- Contact information for Juliet Energy, including website, email, mailing, and phone.

Participants will be able to view the visual presentation materials in real time, and these materials will be posted on the Project website in advance of the Virtual PIM. Hard copies of the presentation materials will be available upon request. Additionally, members of the public will be able to join the session by calling a toll-free number and use an access code, both of which will be provided in the letters sent to the public and in the newspaper notices.

Juliet Energy will send out notices of the Virtual PIM to adjacent property owners to the proposed Project boundary as set forth in O.A.C. 4906-3-B(2), and publish in a newspaper of general circulation. The OPSB Staff will also be given advanced notice and invited to attend to answer process questions.

O.A.C. 4906-3-03(B)(4) further requires applicants to solicit written comments from the attendees of the public informational meeting. In order to meet this requirement, Juliet Energy will solicit written comments via a web form, e-mail, and postal mail. The written comment period will continue for at least three business days following the Virtual PIM. Comments and questions submitted prior to the meeting will be addressed, to the extent possible, during the Virtual PIM. Comments and questions may also be submitted by attendees during the Virtual PIM through a chat function, by phone, or by e-mail.

Further, Juliet Energy will maintain a public website, which will contain an overview of the Project and accompanying maps, contact information for company representatives, the OPSB permitting process, FAQs, and the Application once it has been filed.

B. Good Cause Exists to Grant the Motion

As stated by the OPSB, the purpose of the public information meeting is “to inform stakeholders about plans to file an application with the OPSB.”⁷ In addition, “[t]he meeting also serves as an opportunity to gather input and hear the public’s concerns, which the company considers in developing its application.”

Juliet Energy’s proposed Virtual PIM will achieve these purposes. The public will be able to attend the public information meetings via phone or internet and will be able to interact with Project representatives in a variety of ways before, during, and after the meetings. Notably, Juliet Energy’s proposal creates more opportunities for direct stakeholder engagement than the traditional approach to the public information meeting.

In addition, the waiver request and proposed alternative only pertains to a limited *pre-application* requirement established by OPSB rule. Granting the motion will not affect or

⁷ See, OPSB website, <https://www.opsb.ohio.gov/opsb/index.cfm/information/public-participation/>.

diminish the rights of interested parties to participate in the proceeding after the application is filed.⁸ All other rules related to the OPSB's public information program under O.A.C. 4906-3-03, including the notification requirements, will be followed. As discussed, Juliet Energy also commits to additional direct outreach and project information beyond the current OPSB rule requirements. Juliet Energy is not seeking to circumvent the OPSB's public information meeting rules or objectives. To the contrary, Juliet Energy is seeking a narrow adjustment to the rules to accommodate a robust alternative public information program in light of the unique circumstances caused by a global pandemic.

Granting Juliet Energy's motion is consistent with state policy to find alternative ways to continue operations during the pandemic. For instance, the Ohio General Assembly approved legislation enabling public bodies to hold virtual meetings and hearings, and the Ohio Supreme Court is holding oral arguments remotely.⁹ The Public Utilities Commission of Ohio and OPSB have adopted a series of orders to adjust operations as a result of the pandemic, including holding its meetings virtually.¹⁰

IV. CONCLUSION

As good cause for granting the waivers, Juliet Energy respectfully requests that the Board or Administrative Law Judge grant waivers to O.A.C. 4906-3-03(B).

⁸ After the application is filed, interested parties have, by rule and by statute, multiple ways to participate in the proceeding. This includes filing public comments to the OPSB docket, formally intervening as a party, giving sworn testimony at a local public hearing, and participating in the adjudicatory hearing process.

⁹ Am. Sub. H.B. 197; "Ohio Supreme Court to Hold Arguments Remotely Due to Coronavirus," Court News Ohio (March 31, 2020) available at: http://courtnewsoriohio.gov/bench/2020/remoteOralArguments_033120.asp#.Xqw5FilKg2w.

¹⁰ See, *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (multiple entries).

Respectfully submitted on behalf of
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Case No(s). 20-1760-EL-BGN

Summary: Motion of Juliet Energy Project, LLC for Waiver and Approval of an Alternative Public Information Meeting Program and Request for Expedited Treatment electronically filed by Teresa Orahoud on behalf of Dylan F. Borchers