

THE OHIO POWER SITING BOARD

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

ENTRY

Entered in the Journal on January 22, 2021

{¶ 1} Fox Squirrel Solar, LLC (Applicant or Fox Squirrel) 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 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 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 July 1, 2020, Applicant filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 577 megawatt (MW) solar-powered electric generation facility in Madison County, Ohio (Project). In the letter, Applicant explained that construction on the Project is estimated to begin as early as the second quarter of 2021, resulting in commercial operations in the fourth quarter of 2021. Applicant further stated in the letter that it scheduled a public information meeting for July 21, 2020. Contemporaneous with its preapplication notification letter, Applicant also filed a notice of compliance with the service requirement set forth in Ohio Adm.Code 4906-3-03(B)(2).

{¶ 6} Thereafter, Fox Squirrel filed its application with the Board for a certificate of environmental compatibility and public need to construct the facility on October 14, 2020.

{¶ 7} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chairman 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. By letter dated December 14, 2020, the Board notified Fox Squirrel that its application was compliant and 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 letter directed Fox Squirrel 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 the Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 8} On December 16, 2020, Fox Squirrel filed a certificate of service of its accepted and complete application. Thereafter, on January 7, 2021, the Applicant filed notice that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 9} 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.

{¶ 10} Therefore, the effective date of the application shall be January 21, 2021. Accordingly, the local public hearing in this case will be held on Tuesday, March 30, 2021, beginning at 6:00 p.m. The evidentiary hearing will commence on Tuesday, April 13, 2021, at 10:00 a.m.

{¶ 11} Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09.

{¶ 12} In accordance with Ohio Adm.Code 4906-3-09, the Applicant should issue public notices of the application and hearings. Pursuant to the same rule, in addition to other required information, that notice shall include a statement that the public hearing in this case shall consist of two parts and will not be held in-person:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept oral testimony from any person on March 30, 2021, in a session beginning at 6:00 p.m.
- (b) An evidentiary hearing commencing on April 13, 2021, at 10:00 a.m.
- (c) Due to the continued state of emergency, the local public and adjudicatory hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

{¶ 13} Further, under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, the initial notice shall include the following language:

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. 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, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 14} Due to the continued state of emergency, the local public and adjudicatory hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet. In regard to the local public hearing, interested persons who wish to provide testimony regarding the Project must pre-register with the Board before 12:00 p.m. on March 29, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/fox-squirrel-public-hearing> or by calling the Commission at 1-800-686-7826. Testimony will be limited to five minutes in duration.

{¶ 15} Interested individuals who wish to attend the public hearing remotely and not offer testimony can do so by calling +1-408-418-9388 and entering access code 173 947 9770. The local public hearing will also be live streamed for viewing at www.youtube.com/user/PUCOhio. Additional information is available on the Board's web site at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/fox-squirrel-public-hearing> or by contacting the Commission's Consumer Call Center at 1-800-686-7826.

{¶ 16} Fox Squirrel should issue public notice of the hearings and the application in this matter. The notice should be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. The notice should be

published with letters not less than ten-point type, bear the heading “Notice of Proposed Major Utility Facility” in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the Project; a map showing the location and general layout of the proposed facility; statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the Board; the date and time of the adjudicatory and local public hearings; a statement that the hearings will be conducted by telephone and live video on the internet; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 17} The notice should also state that interested persons who wish to provide testimony regarding the Project must pre-register with Commission before 12:00 p.m., on March 29, 2021, at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/fox-squirrel-public-hearing> or by calling the Commission at 1-800-686-7826. The notice should further indicate that the testimony to be provided will be limited to five minutes in duration.

{¶ 18} Individuals interested in providing public testimony will be required to provide their full name, home address, telephone number, and e-mail address, if available; state that they wish to register for the local public hearing in Case No. 20-931-EL-BGN; specify whether they plan to join the remote access event by internet or by telephone; and indicate whether they intend to offer testimony. Individuals that plan to attend the remote access event through internet access must have a computer or smart device with a microphone and speakers, an e-mail address, and reliable internet service.

{¶ 19} For purposes of the local public hearing, the Board will begin hearing testimony at 6:00 p.m. on Tuesday, March 30, 2021. Individuals who have registered to testify will be asked to speak beginning shortly after 6:00 p.m., so all those who have registered to testify should be prepared to speak at that time. For individuals who are speaking by telephone, the Board’s staff will contact those individuals by telephone when it is time for their testimony and connect them to the public hearing. If access or other issues

are experienced during the local public hearing, individuals should immediately use the chat function within Webex or contact the Board's legal department at 1-614-466-6843 for assistance.

{¶ 20} If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document, along with a reference to Case No. 20-931-EL-BGN, must be provided to the Board by March 30, 2021, if possible, but no later than April 6, 2021, by e-mail to contactOPSB@puco.ohio.gov or by mail to the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 21} Public comments can be provided in writing on the Board's website at <https://opsb.ohio.gov/wps/portal/gov/opsb/help-center/contact-us>, by e-mail to contactOPSB@puco.ohio.gov, or by mail to the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215. Written comments should reference the case number for this matter, which is 20-931-EL-BGN.

{¶ 22} Access information for the local public hearing will be provided to counsel for the parties at their e-mail address of record.

{¶ 23} For individuals who have technical difficulties in participating in the local public hearing, an opportunity for public testimony will also be available, at the commencement of the evidentiary hearing, for good cause shown.

{¶ 24} Ohio Adm.Code 4906-2-09(B) 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 should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation (Staff Report) on or before March 15, 2021.

- (b) On or before April 2, 2021, 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 adjudicatory hearing.
- (c) All expert and factual testimony to be offered by the Applicant shall be filed by April 6, 2021.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by April 8, 2021.
- (e) Any stipulation entered into by the parties shall be filed by no later than 4:00 p.m. on April 9, 2021, along with the associated testimony supporting the stipulation.

{¶ 25} The ALJ reiterates that the parties are encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJs.

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraph 10. It is, further,

{¶ 28} ORDERED, That notice of the application and hearings be published by the Applicant in accordance with Paragraphs 12, 13, 16, and 17. It is, further,

{¶ 29} ORDERED, That witness registration occur pursuant to Paragraphs 14, 18, and 19. It is, further,

{¶ 30} ORDERED, That a procedural schedule be established in accordance with Paragraph 24. It is, further,

{¶ 31} ORDERED, That a copy of this Entry be served upon all parties of record.

THE OHIO POWER SITING BOARD

/s/ Nicholas J. Walstra

By: Nicholas J. Walstra
Administrative Law Judge

MJA/hac

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Case No(s). 20-0931-EL-BGN

Summary: Administrative Law Judge Entry ordering that the hearings in this matter be scheduled in accordance with Paragraph 10; ordering that That notice of the application and hearings be published by the Applicant in accordance with Paragraphs 12, 13, 16, and 17; ordering that witness registration occur pursuant to Paragraphs 14,18, and 19; and, ordering that a procedural schedule be established in accordance with Paragraph 24 electronically filed by Heather A Chilcote on behalf of Nicholas Walstra, Administrative Law Judge, Ohio Power Siting Board