

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Kingwood Solar I LLC for a Certificate)	Case No. 21-0117-EL-BGN
of Environmental Compatibility and)	
Public Need)	

MOTION FOR WAIVER

Pursuant to R.C. 4906.06(A)(6) and Ohio Adm.Code 4906-3-01, Kingwood Solar I LLC (“Applicant”) moves the Ohio Power Siting Board (“the Board”) to grant a waiver of Ohio Adm.Code 4906-3-03(B). This rule requires, in part, that an applicant conduct a public information meeting “in the area in which the project is located.” As discussed more thoroughly in the attached Memorandum in Support, a waiver of this rule requirement is justified based on the ongoing COVID-19 pandemic as well as the gathering and social distancing restrictions in effect in Ohio at the time of the filing of this Motion that are likely to continue to be in effect through the anticipated date of Applicant’s public information meeting, currently anticipated to be held during March 2021.

In lieu of complying with the express language of Ohio Adm.Code 4906-3-03(B), Applicant is proposing a three-prong approach designed to provide the public with as much, or more, opportunity to learn about the proposed Project than would be required by the rule. Significantly, Applicant’s proposal does not ask members of the public to leave their homes to learn about the Project. First, Applicant will host a web-based virtual public information meeting, which will offer attendees the opportunity to submit live questions to Applicant’s representatives. Second, for those individuals who are unable to attend or participate in the web-based virtual public information meeting, Applicant will offer a phone-based meeting coupled with paper copies of the material that will be presented at the web-based virtual public information meeting. Finally, for

any individuals who are either unable to attend these meetings, or have more specific questions about the Project, Applicant will provide Project information on request and make representatives available on a one-to-one basis to have a phone conference with any member of the public that would like to ask questions and learn more about the Project.

The public notice mailing and newspaper notice required by Ohio Adm.Code 4906-3-03(B)(1)-(2) will include not only the information required by rule, but also specific information about all three of the above options, and a map of the proposed Project area. The required public notice mailing will also include paper copies of the materials that will be presented at the web-based and phone-based meetings. These materials will also be available to any other members of the public upon request.

Notably, the Board has granted similar waiver requests by other applicants, recently for Marion County Solar Project, LLC, in Case No. 21-0036-EL-BGN by Entry dated January 19, 2021.

WHEREFORE, for all the reasons described more fully in the attached Memorandum in Support, Applicant respectfully requests that the Board grant a waiver in part from Ohio Adm.Code 4906-3-03(B).

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369) Counsel of Record

Nathaniel B. Morse (0099768)¹

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

nbmorse@vorys.com

(Willing to accept service via
electronic mail)

Attorneys for Kingwood Solar I LLC

¹ Ohio practice temporarily authorized pending admission under Gov. Bar R. I, Sec. 19.

MEMORANDUM IN SUPPORT

I. Introduction

Kingwood Solar I LLC (“Applicant”) is proposing to construct an up to 175 MW solar powered electric generating facility in Greene County, Ohio (the “Project”). As part of the pre-application process, Applicant is required by rule (and not statute) to hold a public information meeting “in the area in which the project is located.” Ohio Adm.Code 4906-3-03(B). While a project’s public information meeting is traditionally held in person from 6:00 p.m. to 8:00 p.m. near a project area, Applicant is seeking a waiver from the rule requirement to hold the public meeting in the Project area due to the ongoing COVID-19 pandemic, and orders issued by the Ohio Department of Health (“ODH”). To protect the health and safety of members of the public, the Board’s Staff and Applicant’s representatives, a waiver of this rule requirement is justified. In lieu of an in-person meeting in the area in which the Project is located, Applicant has developed a plan for both a web-based and telephone-based meeting, as well as providing a way for members of the public to obtain the same Project information by calling or writing to Applicant which would then be followed by a one-on-one teleconference with that person.

Importantly, Applicant’s pre-application public information program is designed to provide the public with as much, or more, opportunity to learn about the proposed Project than the traditional project meeting (6:00 p.m. to 8:00 p.m. on one night), all without requiring any in-person meetings. Good cause exists to grant the waiver.

II. The Ongoing COVID-19 Pandemic Justifies a Waiver of the Rule Requirement to Host a Public Information Meeting in the Area in which the Project is Located

The COVID-19 pandemic has had wide-ranging effects on public life in the State of Ohio, especially as it relates to the gathering of large groups of people. 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 has also begun hosting its own monthly meetings through a web-based process.

The Board's recognition of the difficulty of hosting an in-person meeting during the pandemic supports a finding of good cause for this waiver. As acknowledged by the Board, on March 9, 2020, the governor 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. *In re Proper Procedures and Process for the Board's Operations and Proceedings During the Declared State of Emergency*, Case No. 20-0601-GE-UNC, ("Declared State of Emergency"), Entry (Mar. 17, 2020). The Board later adopted blanket waivers of certain rules regarding the filing of confidential documents, due to the ongoing COVID-19 pandemic. *Declared State of Emergency*, Entry at ¶ 9 (Apr. 16, 2020).

In addition to the Board's own proactive and responsible actions, orders and actions by ODH justify the waiver requested through this Motion. ODH issued an order on July 23, 2020, requiring facial coverings throughout the State of Ohio and limiting the capacity of gatherings to meet social distancing guidelines of six feet. That order remains in place until the Governor's emergency order is cancelled or the order is further modified.

Thus, in light of the ongoing COVID-19 pandemic, good cause exists to grant a waiver, in part, from Ohio Adm.Code 4906-3-03(B). As described below, Applicant has developed an

alternative to hosting an in-person public meeting in the area of the Project that will allow members of the public to learn about the Project from the comfort and safety of their own homes.

III. Applicant's Proposed Pre-application Public Information Program

Applicant's proposed pre-application public information program is summarized below. It is designed to provide the public with as much or more information and opportunities to learn about the Project than would be required by rule, all from their own homes.

A. Public Notices

Applicant will timely publish the newspaper notice and send the mailing required by Ohio Adm.Code 4906-3-03(B)(1)-(2). These notices will include all information required by the rule, in addition to the following:

- A link to the Applicant website, hosted by the Applicant, that includes all information required at the public information meeting;
- Instructions for attending the web-based meeting, which will be hosted through Zoom, a platform capable of hosting hundreds of participants;
- Instructions for an alternative phone-based meeting;
- Instructions for sharing written comments via mail and a web form; and
- Instructions for requesting information about the Project, including paper copies of materials specific to the virtual meeting via telephone.

The mailing will also include a copy of the materials that will be presented at the web-based and phone-based meetings.

B. The Web-Based Meeting

Applicant plans to hold an interactive web-based meeting, currently anticipated to be held during March 2021, to allow the public to learn about the Project and also ask questions of Applicant representatives.

- The meeting will utilize the Zoom application, which is capable of hosting hundreds of participants and allows people to connect via the web application.

- Zoom requires signup to participate prior to the meeting, and maintains a record of participants and of all written comments solicited during the meeting.
- For users who prefer not to register, another live stream option that does not require registration will also be available via the Project website prior to the start of the meeting.
- At the start and midway point of the meeting, users will be encouraged to submit questions via the Project website or via email if they desire in lieu of the Zoom option.
- During the web-based public information meeting, web participants would be able to view the presentation by Applicant representatives.
- At the beginning of the presentation, a moderator would explain the meeting format and the methods available to participants to submit questions to Applicant representatives.
- Depending upon the number of participants, for practical purposes, and to provide a quality sound experience for participants, telephone and web access would be for listening only. The meeting platform would allow participants to listen and submit questions or comments through a chat function.
- Comments and questions submitted would be read and addressed after the presentation by the Applicant. Comments and questions would be addressed on a first-come, first-serve basis, much like standing in line at an in-person meeting.
- Any questions and comments that cannot be addressed during the meeting will be answered directly to the participant after the meeting via telephone, email, or mail.

C. The Phone-Based Meeting

A phone-based meeting will be held immediately following the web-based meeting, on the same date.

- The content presented in the phone-based meeting will be substantively identical to that in the web-based meeting.
- Prior to the phone-based meeting, paper presentation materials will be distributed to members of the public upon request.
- Paper presentation materials will also be provided to all those who receive a mailing sent as required by Ohio Adm.Code 4906-3-03(B)(2).
- Materials provided will include a paper copy of the presentation and also a pre-paid envelope or comment card to provide feedback regarding the Project.

D. Other Public Outreach Information

In addition to all of the information and opportunities that will be provided to the public described above, Applicant representatives will be available to discuss the Project with any

member of the public. Applicant will confirm members of the public are aware of this opportunity through mailings to adjacent landowners, a newspaper notice and the Project website.

Importantly, for members of the public unable to access the internet, the newspaper notice will include:

- A map identifying the location of the Project area and general layout;
- A statement that members of the public can request a Project information packet free of charge by calling or writing to Applicant; and
- An offer by Applicant to speak one-on-one with any member of the public about the Project information packet or any other questions about the Project.

These additions to the newspaper notice contents will confirm that all members of the public, regardless of internet access, have the opportunity to learn about the Project and have the opportunity to meet with Applicant to ask questions and discuss the Project.

Applicant will also maintain an online presence through the project website. Information available online will include:

- A description of the Project;
- A registration link for attending the virtual public information meeting;
- A map showing the proposed facility at a scale that allows affected property owners to identify the location of their property in relation to the facility;
- A web form for submitting written comments;
- A phone number for requesting additional information, including paper copies of virtual meeting materials; and
- A recorded copy of the web-based public information meeting following the meeting.

All of the above steps, including the landowner mailings, will confirm members of the public have the opportunity to request information about the Project and to meet with Applicant representatives (through the webinar, through the group phone conference or in a one-on-one phone call) to discuss the Project. And most importantly, members of the public can do so without having to leave their homes.

IV. Conclusion

The ongoing COVID-19 pandemic has required changes to the Board's ordinary meeting procedures. Thus, good cause exists to allow for the waiver of the in-area meeting requirement for an applicant's public information meeting in Ohio Adm.Code 4906-3-03(B). In addition, the public information program described by Applicant provides as much, or more, opportunities for public engagement and information than exist under applicable rules. As good cause exists for granting the waiver and given the grant of other similar waivers,² Applicant respectfully requests that the Board grant a waiver in part from Ohio Adm.Code 4906-3-03(B).

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369) Counsel of Record

Nathaniel B. Morse (0099768)³

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

nbmorse@vorys.com

Attorneys for Kingwood Solar I LLC

² See e.g., *Marion County Solar Project, LLC*, Case No. 21-0036-EL-BGN, Entry (January 19, 2021).

³ Ohio practice temporarily authorized pending admission under Gov. Bar R. I, Sec. 19.

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Summary: Motion Motion for Waiver electronically filed by Mr. Michael J. Settineri on behalf of Kingwood Solar I LLC