



DAVE YOST
OHIO ATTORNEY GENERAL

Public Utilities Section
Office 614-466-4395
Fax 614-644-8764

February 24, 2021

The Honorable Jeffrey Jones, Section Chief
Administrative Law Judge
Ohio Power Siting Board
180 East Broad Street, 12th Floor
Columbus, OH 43215-3793

Re: Motion for Waiver,
Case No. 21-0117-EL-BGN

Dear Judge Jones:

On February 9, 2021, Kingwood Solar I LLC ("Applicant"), filed a motion for waiver of Ohio Administrative Code ("Ohio Adm.Code") 4906-3-03(B), in which it requested the Ohio Power Siting Board ("Board") authorize the Applicant to comply with Ohio Adm.Code 4906-3-03(B) using an alternative approach. Applicant proposed that it will host a virtual public information meeting ("PIM") incorporating both web-based and telephone-based meetings.

As a general matter, in accordance with the Governor's directives for the State of Ohio, and in light of recent record-breaking COVID-19 case numbers, and the novel circumstances facing the state and nation, staff of the Board ("Staff") not only does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B).¹

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

¹ See, e.g., Governor DeWine's October 29, 2020 announcement that Ohio had hit a record number of cases reported in a single 24-hour period, a situation which continued to escalate in record case numbers in following days. "The virus is raging throughout the state, and there is no place to hide," said Governor DeWine. "We must face this virus head-on with the tools that we know can beat this virus back: masks, social distancing, washing hands frequently, and good ventilation when inside." Governor DeWine further stated: "The decisions Ohioans make each day will determine the outcome of this battle. We must mask more, keep distance more, and simply be more careful."

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.²

Staff notes that on March 9, 2020, the Governor of Ohio 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. Since that time, multiple applicants have filed for waivers of Ohio Adm.Code 4906-3-03(B) such that each project may conduct solely virtual PIMs, and in each case, Staff has responded that it does not object to the requested waiver.³ Throughout each waiver response, Staff has recognized the unique nature of the COVID-19 pandemic, and the radically changed environment that has resulted from the response warrants an acknowledgment of the importance of social distancing. Although additional executive orders have been issued, staying at home, as opposed to congregating in groups, is still strongly recommended and social distancing is advised for the foreseeable future.⁴

² Case No. 21-0117-EL-BGN, February 9, 2021, Motion for Waiver, at 6-9.

³ See *In the Matter of the Application of Madison Fields Solar Project LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generating Facility in Madison County, Ohio*, Case No. 19-1881-EL-BGN, May 21, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Powell Creek Solar, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Putnam County, Ohio*, Case No. 20-1084-EL-BGN, June 15, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Yellowbud Solar, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-0972-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Arche Energy Project, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Fulton, County, Ohio*, Case No. 20-0979-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *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 (June 30, 2020); *In the Matter of the Application of Birch Solar LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Facility*, Case No. 20-1605-EL-BGN, October 26, 2020 Entry Granting Motion for Waiver; and, *In the Matter of the Application of Wheatsborough Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Power Facility*, Case No. 20-1529-EL-BGN, October 22, 2020 Entry Granting Motion for Waiver.

⁴ See, e.g., Ohio Department of Health Director Stephanie McCloud's December 30, 2020 health order encouraging people to stay at home during specified hours unless they are working or engaged in an essential activity (effective until January 23, 2021).

In fact, the Board and Public Utilities Commission of Ohio (among other judicial, legislative, and regulatory tribunals) have been conducting meetings, hearings, and other business exclusively from home and it is anticipated that the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future.⁵ Additionally, the overall success that applicants have faced in conducting virtual PIMs has encouraged Staff to transition from its prior response that it “does not object to the requested waiver” to *encouraging* applicants to conduct their PIMs virtually.

Each of the above factors being the case, Staff not only reiterates that it does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B). Neither does Staff object to the granting of the requested waiver on an expedited basis.

Respectfully submitted,

/s/ Jodi J. Bair

Jodi J. Bair

Werner L. Margard III

Assistant Attorneys General

Public Utilities Section

30 E. Broad St., 26th Floor

Columbus, OH 43215

614.644.8599 (telephone)

866.431.1581 (fax)

Jodi.Bair@ohioattorneygeneral.gov

Werner.Margard@ohioattorneygeneral.gov

**On behalf of Staff of the
Ohio Power Siting Board**

cc: Parties of Record

Michael J. Settineri mjsettineri@vorys.com

Nathaniel B. Morse nbmorse@vorys.com

Counsel for Kingwood Solar I LLC

⁵ See, e.g., Sub. H.B. No. 404, which extends until July 1, 2021 the temporary authorization for members of a public body to hold and attend meetings virtually.

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Summary: Correspondence Regarding Motion for Waiver electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB