

THE OHIO POWER SITING BOARD

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

CASE NO. 20-1678-EL-BGN

ENTRY

Entered in the Journal on July 13, 2021

{¶ 1} Hardin Solar Energy III LLC (Hardin 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, Governor Mike DeWine signed Executive Order 2020-01(D) (Executive Order), declaring a state of emergency in Ohio to protect the well-being of its citizens from the dangerous effects of COVID-19. The Executive Order requires all state agencies to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health risks associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and shall remain in effect until the COVID-19 emergency no longer exists. The Ohio Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/>.

{¶ 4} On November 11, 2020, Hardin Solar filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B). Hardin Solar sought a waiver of Ohio Adm.Code 4906-3-03(B) to conduct the required public informational meeting virtually and telephonically instead of in-person.

{¶ 5} On November 20, 2020, the administrative law judge (ALJ) granted Applicant's motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 6} On December 15, 2020, Hardin Solar filed a letter with the Board stating that it complied with Ohio Adm.Code 4906-3-03-(B)(2) in sending the required notification of the public informational meeting to each property owner and affected tenant within the Project area.

{¶ 7} Also on December 15, 2020, Applicant filed a pre-application notification letter with the Board regarding the proposed Project. In the letter, Hardin Solar explained that construction of the proposed 300 megawatt (MW) solar-powered electric generation facility is estimated to begin as early as the second quarter of 2022, resulting in commercial operations in the fourth quarter of 2023.

{¶ 8} On January 5, 2021, Hardin Solar held public informational meetings to discuss the proposed Project with interested persons and landowners. Applicant filed its proof of publication regarding the public informational meetings with the Board on January 4, 2021.

{¶ 9} On February 11, 2021, Hardin Solar filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Project, which was supplemented on February 19 and April 13, 2021.

{¶ 10} On February 11, 2021, simultaneous with its Application, Hardin Solar filed a motion for waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4) to allow for a reduced study area regarding the review of cultural resources, landmarks, recreation areas, and visual impacts.

{¶ 11} Also on February 11, 2021, Applicant filed a motion for a protective order to keep limited portions of pages 32-35 of the Application Narrative, page 1 of Application Exhibit K, and the certificate and policy numbers in Application Exhibit N confidential and not part of the public record.

{¶ 12} On February 26, 2021, Staff filed a letter stating that it does not oppose Hardin Solar's motion for a waiver to allow for the use of more focused study areas as proposed in the motion. In the letter, Staff also stated that it does not oppose Applicant's motion for a protective order.

{¶ 13} On March 5, 2021, the ALJ found good cause to grant Applicant's motion for waivers and its motion for a protective order.

{¶ 14} On March 1, 2021, in accordance with R.C. 4906.04, Hardin Solar Energy II LLC (Hardin Solar II) and Applicant filed a request to transfer 20 MW and a portion of the certificated project area held by Hardin Solar II to Applicant.

{¶ 15} On March 18, 2021, the Board granted the request to transfer 20 MW and a portion of the certificated project area from Hardin Solar II to Applicant.

{¶ 16} By letter dated April 12, 2021, the Board notified Hardin Solar that its application was compliant and provided sufficient information to permit Staff to commence its review and investigation.

{¶ 17} On April 13, 2021, Hardin Solar filed a certificate of service of its accepted and complete Application. On April 20, 2021, Hardin Solar 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.

{¶ 18} 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 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.

{¶ 19} By Entry dated April 26, 2021, the effective date of the Application was established as April 26, 2021, the public hearing was scheduled for July 13, 2021, and the adjudicatory hearing was scheduled to commence on July 29, 2021, with both hearings to be conducted via Webex. Additionally, the April 26, 2021 Entry advised that the Board would accept petitions to intervene up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by June 7, 2021, whichever is later, and established a procedural schedule directing Staff to file its report of investigation on or before June 28, 2021; parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing by July 16, 2021; Hardin Solar to file all expert and factual testimony by July 21, 2021; Staff and intervenors to file all expert and factual testimony by July 26, 2021; and any stipulation entered into by the parties be filed by noon on July 28, 2021, along with the associated testimony supporting the stipulation.

{¶ 20} On May 24, 2021, Hardin Solar filed a proof of service regarding the accepted, complete application being sent to government officials, libraries, and affected property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(1).

{¶ 21} On May 17, 2021, the Director of the Ohio Department of Health issued an Order indicating that “except in certain limited circumstances, fully vaccinated persons may safely do most activities without a facial covering and without socially distancing.” This Order was intended to align the state of Ohio’s health orders with new guidance from the Center for Disease Control. These new guidelines became effective in the state of Ohio on June 2, 2021.

{¶ 22} On June 23, 2021, the ALJ issued an entry converting the local public hearing and the adjudicatory hearing scheduled in this matter from Webex hearings to in-person hearings and noting that the remaining procedural deadlines set forth in the April 26, 2021 Entry will remain the same.

{¶ 23} On June 3, 2021, the Ohio Farm Bureau Federation (OFBF) timely filed a motion to intervene in the proceeding. No memoranda contra were filed.

{¶ 24} The ALJ finds that OFBF has satisfied the intervention requirements set forth in Ohio Adm.Code 4906-2-12 and that the motion to intervene is reasonable and should be granted.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the motion to intervene in this proceeding filed by OFBF be granted. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Administrative Law Judge

GAP/mef

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Case No(s). 20-1678-EL-BGN

Summary: Administrative Law Judge Entry granting the motion to intervene of the Ohio Farm Bureau Federation electronically filed by Ms. Mary E Fischer on behalf of Jacky Werman St. John, Administrative Law Judge, Ohio Power Siting Board