

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Hecate)
Energy Highland 4 LLC for a Certificate of) Case No. 20-1288-EL-BGN
Environmental Compatibility and Public Need)

**MOTION FOR SUBPOENA OF OHIO POWER SITING BOARD STAFF
REPRESENTATIVE(S)**

Pursuant to Ohio Adm.Code 4906-2-23, New Market Solar ProjectCo 1, LLC and New Market Solar ProjectCo 2, LLC (collectively, “New Market Solar”) hereby move the Ohio Power Siting Board (the “Board”) to issue a subpoena for a representative(s) of the Board Staff to appear and testify at the November 14, 2023 adjudicatory hearing in this matter. Specifically, New Market Solar seeks a subpoena of the Board Staff member who was responsible for reviewing the final civil engineering drawings submitted on or about March 19, 2021 to Board Staff. Under Ohio Adm.Code 4906-2-23, an “administrative law judge assigned to a case may issue a subpoena . . . upon motion of any party.” The grounds for this Motion are fully set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Michael J. Settineri

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUBPOENA OF OHIO POWER SITING BOARD
STAFF REPRESENTATIVE(S)

New Market Solar ProjectCo 1, LLC and New Market Solar ProjectCo 2, LLC (collectively, “New Market Solar”) seek a subpoena of the Ohio Power Siting Board (“Board”) Staff member who was responsible for reviewing the final civil engineering drawings submitted to Staff on or about March 19, 2021. Good cause exists to grant this motion.

Board Staff review of the final engineering drawings was an explicit condition of the certificate issued by the Board. *See In re the Application of Hecate Energy Highland 4 LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-1288-EL-BGN, Opinion, Order and Certificate (Mar. 18, 2021) at 26 (the “Certificate”). Specifically, Condition 8 of the Certificate required that engineering drawings be provided to Staff for review. Given that this proceeding involves the issue of whether the Project is in compliance, the parameters, substance and results of Staff’s review of these final engineering drawings¹ pursuant to Condition 8, are relevant to this matter.

Ohio Adm.Code 4906-2-23 establishes a right for parties to obtain subpoenas for testimony at the adjudicatory hearing. The Supreme Court of Ohio explicitly affirmed this right in *In re the Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43, 48 (2013). Here, issuance of the requested subpoena is necessary for a full factual development of the record before the Board

¹ The pre-filed testimony of Staff witness Robert Holderbaum in this proceeding, while not yet on the record, references Staff’s review of the final engineering drawings that were submitted but does not indicate who reviewed the drawings.

and is not unreasonable or oppressive. On the contrary, failure to issue the subpoena will deprive New Market Solar of the opportunity to present to the Board all relevant evidence with respect to this matter.

For these reasons, New Market Solar respectfully requests that the Administrative Law Judge grant its motion for the attached subpoena.

Respectfully submitted,

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document and attachment is also being served via electronic mail on November 9, 2023 upon all persons/entities listed below:

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/s/ Michael J. Settineri _____
Michael J. Settineri

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SUBPOENA

TO: Staff of the Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215

Upon application of New Market Solar ProjectCo 1, LLC and New Market Solar ProjectCo 2, LLC (collectively, “New Market Solar”), the Ohio Power Siting Board Staff member who was responsible for reviewing the final civil engineering drawings submitted on or about March 19, 2021 for the project that is the subject of the above-referenced proceeding is hereby required to appear before the Ohio Power Siting Board as a witness for New Market Solar in the following proceeding:

Case No. 20-1288-EL-BGN

Case Title: In the Matter of the Application of Hecate Energy Highland 4 LLC for a Certificate of Environmental Compatibility and Public Need

The Board Staff member is to appear in person at the adjudicatory hearing on the 14th day of November 2023, at 10:00 a.m., Eastern time at the Ohio Power Siting Board's offices at 180 East Broad Street, Columbus, Ohio 43215, 11th Floor, Hearing Room 11-D.

The Ohio Power Siting Board Staff member is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this 9th day of November 2023.

Patricia Shultz
Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 20-1288-EL-BGN

Summary: Subpoena Motion for Subpoena of Ohio Power Siting Board Staff
Representative(s) electronically filed by Mr. Michael J. Settineri on behalf of New
Market Solar Project Co 1, LLC and New Market Solar Project Co 2, LLC.