

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
ALAMO SOLAR I, LLC, FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 18-1578-EL-BGN

ENTRY

Entered in the Journal on June 10, 2019

{¶ 1} Alamo Solar I, LLC (Alamo 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 October 22, 2018, Alamo, a subsidiary of Blue Planet Renewable Energy, LLC, filed a pre-application notification letter with the Board regarding its proposed 89.9 megawatt (MW) solar electric generating facility in Gasper and Washington townships, Preble County, Ohio. After filing an affidavit of publication demonstrating its compliance with the notice requirements of Ohio Adm.Code 4906-3-03, and holding a public information meeting on November 13, 2018, Alamo filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility (the Project) of up to 69.9 MW in Preble County, Ohio on December 10, 2018, as supplemented on January 31, 2019.¹

{¶ 4} By letter dated February 8, 2019, the Board notified Applicant that its application was compliant with pertinent statutory and administrative code requirements and provided sufficient information to permit the Board to commence its review and investigation of the application. On March 20, 2019, Alamo filed its certificate of service of

¹ Alamo explains that the application seeks approval for 69.9 MW which is revised since the issuance of the pre-application notification letter.

its accepted and complete application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 5} By Entry dated April 3, 2019, the administrative law judge (ALJ) granted motions filed by Applicant to waive certain provisions of the Board's rule requirements and a motion for protective order to keep portions of its application confidential. Staff did not file a response to either motion. Additionally, the ALJ established the following procedural schedule: Staff file its report of investigation on or before May 28, 2019, each party file a list of issues on or before June 6, 2019, all expert and factual testimony to be offered by Alamo be filed by June 14, 2019, and all expert and factual testimony to be offered by Staff and intervenors be filed by June 21, 2019.

{¶ 6} Also in the April 3, 2019 Entry, the ALJ granted motions to intervene in this proceeding filed by the Eaton Community School District (Eaton CSD) and the Ohio Farm Bureau Federation. Lastly, the ALJ advised that petitions to intervene in this proceeding would be accepted by the Board up to 30 days following service of the notice required by Ohio Adm.Code 4906-3-09 or by May 15, 2019, whichever is later.

A. Notices of Intervention

{¶ 7} Notices of intervention were timely filed by the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil & Water Conservation District, the Preble County Planning Commission, and the Preble County Commissioners. The ALJ notes that the aforementioned parties are some of those persons entitled to receive service of a copy of the application under division (B) of R.C. 4906.06 and did receive service of a copy of the application on March 20, 2019. In accordance with Ohio Adm.Code 4906-2-12(A)(1), the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil & Water Conservation District, the Preble County Planning Commission, and the Preble County Commissioners will be considered interveners in this matter.

B. Motions to Intervene

{¶ 8} Pursuant to Ohio Adm.Code 4906-2-12, an ALJ may grant a timely request for intervention upon a showing of good cause, which the Board has historically held is shown when the person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010). Further, R.C. 4903.08(A) and Ohio Adm.Code 4906-2-12(B) provide that, in deciding whether to permit timely intervention, the following factors may be considered: the nature and extent of the prospective intervenor's interest; the extent to which the prospective intervenor's interest is represented by existing parties; the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; and whether the intervention by the prospective intervenor will unduly delay the proceeding or unjustly prejudice an existing party. Pursuant to Ohio Adm.Code 4906-2-12(C), the ALJ may grant an untimely filed petition to intervene only upon a showing of extraordinary circumstances and good cause, in addition to the petitioner agreeing to be bound by matters previously decided in the proceeding and providing a statement of good cause for failing to timely file its petition.

1. PREBLE SHAWNEE LOCAL SCHOOL DISTRICT

{¶ 9} On May 9, 2019, the Preble Shawnee Local School District (Preble Shawnee) filed a motion for leave to intervene in this proceeding. In its memorandum in support, Preble Shawnee states that the proposed facility includes approximately 355 acres within the school district boundaries; therefore, it will be significantly impacted by the decision to approve or deny the application. Additionally, Preble Shawnee avers that it has a real and substantial interest in participating in this proceeding in order to ascertain the demands that the facility will place on district resources. Furthermore, Preble Shawnee avers that it understands that the Eaton CSD has been permitted to intervene in this proceeding. While

Preble Shawnee anticipates that its interests generally align with those of the Eaton CSD, it argues that it is a unique entity with its own perspective. Lastly, Preble Shawnee argues that its participation would contribute to a just and expeditious resolution of the issues in the proceeding and that its participation will not unduly prejudice any existing party. No party filed memoranda contra Preble Shawnee's motion to intervene. The ALJ finds that the unopposed motion to intervene filed by Preble Shawnee is reasonable and should be granted.

2. PREBLE COUNTY RESIDENTS

{¶ 10} On May 15, 2019, the following Preble County residents jointly filed a timely motion to intervene in this proceeding: the Concerned Citizens of Preble County, LLC (CCPC); Eric and Kelly Altom; Mary Bullen; Camden Holdings, LLC; John and Joanna Clippinger; Joseph and Linda DeLuca; Jason and Tonya Heggs; Donn Kolb as the trustee for the Donn E. Kolb Revocable Living Trust; Doris Jo Ann Kolb as the trustee for the Doris Jo Ann Kolb Revocable Living Trust; Kenneth and Elaine Kolb; James and Carla Lay; Clint and Jill Sorrell; John and Linda Wambo; John Frederick Winter; and Michael and Patti Young (collectively, Preble County Residents). CCPC, as a potential intervenor, alleges that its purpose is to advocate for its members in order to address alleged problems proposed by Applicant's project. CCPC claims it has 33 members who will be directly and adversely affected by the Alamo project. The Preble County Residents represent that the following CCPC members own and/or live on properties that are adjacent to the project area: Eric and Kelly Altom; Mary Bullen; Camden Holdings, LLC; John and Joanna Clippinger; Joseph and Linda DeLuca; Jason and Tonya Heggs; Donn Kolb as the trustee for the Donn E. Kolb Revocable Living Trust; Doris Jo Ann Kolb as the trustee for the Doris Jo Ann Kolb Revocable Living Trust; Kenneth and Elaine Kolb; James and Carla Lay; Clint and Jill Sorrell; John and Linda Wambo; John Frederick Winter; and Michael and Patti Young. CCPC specifically argues that it has standing to participate as an intervenor due to the fact that one or more of its members have standing to participate as intervenors. Preble County Residents aver that the solar project will have a serious adverse impact on their homes and properties.

Preble County Residents suggest that no other party represents, or can represent, their interests in protecting themselves and their property from the impacts of the solar project, and that, as landowners adjacent to or near the project area, their participation in this case is necessary for the just and expeditious resolution of this proceeding. Lastly, Preble County Residents argue that granting their intervention will not unduly delay the proceedings or cause unjust prejudice to the Applicant.

{¶ 11} No memoranda contra were filed in response to Preble County Residents' motion to intervene.

{¶ 12} The Board has previously found that living in the county of a proposed project is not enough on its own to warrant intervention. *In re South Field Energy LLC*, Case No. 15-1716-EL-BGN, Opinion, Order, and Certificate (Sept. 22, 2016) (where the Board stated that the general concerns as citizens and ratepayers are better represented by the intervening local governments representing their citizens). While the Board's standard is generally construed in favor of intervention, a more defined nexus must be present. *In re Icebreaker Windpower Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018). The Board has granted petitions to intervene when the petitioner can demonstrate that an individual's direct interest is at stake in the outcome of a proceeding. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) (where the Board granted intervention to individuals with property that abuts directly with the proposed project site).

{¶ 13} In this case, the Preble County Residents have represented that the following CCPC members own and/or live on properties that are adjacent to the project area: Eric and Kelly Altom; Mary Bullen; Camden Holdings, LLC; John and Joanna Clippinger; Joseph and Linda DeLuca; Jason and Tonya Heggs; Donn Kolb as the trustee for the Donn E. Kolb Revocable Living Trust; Doris Jo Ann Kolb as the trustee for the Doris Jo Ann Kolb Revocable Living Trust; Kenneth and Elaine Kolb; James and Carla Lay; Clint and Jill Sorrell; John and Linda Wambo; John Frederick Winter; and Michael and Patti Young. No memorandum contra were filed in response to the Preble County Residents' motion to

intervene. Therefore, intervention shall be granted to these individuals and CCPC. However, the ALJ would note that, although intervention has been granted to CCPC, CCPC's intervention in this proceeding is limited specifically to those members who own properties located inside the project area or property that abuts the project area. The interests of any other Preble County residents may be raised during the local public hearing scheduled on June 12, 2019.

C. *Motion to Call and Continue the Evidentiary Hearing*

{¶ 14} On June 6, 2019, Alamo filed an unopposed motion to call and continue the evidentiary hearing, continue deadlines for filing expert and factual testimony, and request for an expedited ruling. In support of its request, the Applicant states that it would like to call the case as scheduled on June 26, 2019, but then continue the proceeding so that the parties can engage in settlement discussions and avoid a conflict with the continued evidentiary hearing in Case No. 18-1579-EL-BGN (*Angelina Case*), which is scheduled to continue prior to June 26, 2019. The Applicant states that the *Angelina Case* involves many of the same parties who are either parties to or have sought intervention in, the above-captioned case. After discussion among the parties as well as the entities that have sought to intervene, Alamo proposes that the evidentiary hearing would reconvene beginning July 17, 2019. Alamo also suggests that its expert and factual testimony be filed no later than July 5, 2019, and that expert and factual testimony offered by intervenors and Staff be filed no later than July 12, 2019. Alamo avers that all other deadlines established in the May 13, 2019 Entry shall remain the same and that no party objects to the granting on the call and continue motion or the issuance of a ruling without the filing of memoranda. Lastly, Alamo claims that good cause exists for granting this motion and ruling on an expedited basis.

{¶ 15} After review and in accordance with Ohio Adm.Code 4906-2-27(C), the ALJ finds that Alamo's motion to call and continue the evidentiary hearing and to continue the deadlines for filing expert and factual testimony is reasonable and should be granted. Accordingly, the ALJs will open the evidentiary hearing in this matter as scheduled on June

26, 2019, at 10:00 a.m. in Hearing Room 11-C at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793. At that time, the ALJs will take appearances of counsel and will take testimony from members of the public who are present before adjourning for the day to reconvene the hearing on July 17, 2019. All parties will be expected to remain and participate in the settlement negotiations. All expert and factual testimony offered by Alamo shall be filed no later than July 5, 2019, and all expert and factual testimony offered by intervenors and Staff be filed no later than July 12, 2019. All other deadlines established in the May 13, 2019 Entry shall remain the same.

D. Motion for Order to Publish Notice

{¶ 16} On June 7, 2019, Alamo filed a motion for an order directing for the republication of the initial public notice required by the ALJ's April 3, 2019 Entry and request for an expedited ruling. Alamo states that it discovered, on June 6, 2019, that the *Eaton Register Herald* (Newspaper), the newspaper that was to have published the initial notice, failed to actually publish the notice. Further, the Newspaper previously provided an affidavit of publication to Alamo, and it is for that reason Alamo believed the publication had occurred. Alamo believes good cause exists for the issuance of the requested order because it took all reasonable and typical steps necessary to arrange for the publication. Specifically, Alamo sent the text of its initial public notice to the Newspaper on April 5, 2019, and on April 8, 2019, the Newspaper provided a proof of the initial public notice for Alamo's approval and also confirmed that the initial public notice was scheduled to run on April 10, 2019. On May 6, 2019, Alamo received an affidavit of the publication from the Newspaper indicating that the notice was published on April 10, 2019; however, Alamo did not receive a date marked copy of the entire newspaper page on which the notice ran (tear sheet), which is typically provided. Alamo avers that its counsel made repeated requests for the tear sheet, which apparently led the Newspaper to discover that it did not publish the notice. Alamo states that the Newspaper notified Alamo's counsel of the error on June 6, 2019, and did not provide a reason for its failure to publish Alamo's notice.

{¶ 17} Alamo avers that if its motion is expeditiously granted, Alamo intends to publish a notice upon issuance of the requested order and will file proof of publication of the same. In addition, Alamo specifies that the notice will reference and allow for an intervention period in this proceeding of at least 30 days from the date of publication. Lastly, Alamo states that, due to the short time frame between the discovery of the publication issue and the need to file its motion as soon as possible, counsel for Alamo has not been able to confirm that all parties do not oppose its motion.

{¶ 18} Ohio Adm.Code 4906-3-09(B) states that the inability or inadvertent failure to notify the persons or publish notice shall not constitute a failure to give public notice, provided that substantial compliance with these requirements is met. It is evident that, based upon Alamo's representation of this issue, Alamo took all reasonable steps to publish notice, and that the failure to publish notice was a failure on behalf of the Newspaper. Furthermore, although Alamo was unable to confirm that all parties do not oppose its motion, the ALJ may, pursuant to Ohio Adm.Code 4906-2-27(F), issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party. In this case, a ruling granting Alamo's motion will not adversely affect a substantial right of any party.

{¶ 19} Therefore, in accordance with Ohio Adm.Code 4906-2-27(C) and 4906-2-27(F) and after review, the ALJ finds that Alamo's motion for an order directing for the republication of the initial public notice required by the ALJ's April 3, 2019 Entry and request for an expedited ruling is reasonable and shall be granted. Accordingly, the ALJ orders Alamo to arrange for the publication of a notice in the form of the initial notice, and this notice must reference and allow for an intervention period in this proceeding up to 30 days following the service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09.

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the notices of intervention filed by the Preble County Engineer, Washington Township, Gasper Township, the Preble Soil & Water Conservation District, the Preble County Planning Commission, and the Preble County Commissioners be accepted as timely. It is, further,

{¶ 22} ORDERED, That the motions for intervention be granted for Preble Shawnee; CCPC; Eric and Kelly Altom; Mary Bullen; Camden Holdings, LLC; John and Joanna Clippinger; Joseph and Linda DeLuca; Jason and Tonya Heggs; Donn Kolb as the trustee for the Donn E. Kolb Revocable Living Trust; Doris Jo Ann Kolb as the trustee for the Doris Jo Ann Kolb Revocable Living Trust; Kenneth and Elaine Kolb; James and Carla Lay; Clint and Jill Sorrell; John and Linda Wambo; John Frederick Winter; and Michael and Patti Young. It is, further,

{¶ 23} ORDERED, That Alamo's motion to call and continue the evidentiary hearing and continue deadlines for filing expert and factual testimony be granted in accordance with Paragraph 15. It is, further,

{¶ 24} ORDERED, That Alamo's motion for an order directing for the republication of the initial public notice be granted in accordance with Paragraph 19. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Lauren L. Augostini

By: Lauren L. Augostini
Administrative Law Judge

JRJ/hac

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Case No(s). 18-1578-EL-BGN

Summary: Administrative Law Judge Entry accepting notices of intervention as timely filed, granting motions for intervention, granting motion to call and continue evidentiary hearing and continue deadlines, and granting motion for republication of initial public notice electronically filed by Heather A Chilcote on behalf of Lauren L. Augostini, Administrative Law Judge, Power Siting Board