

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Angelina Solar I, LLC for a) **Case No. 18-1579-EL-BGN**
Certificate of Environmental)
Compatibility and Public Need)

JOINT MOTION TO REOPEN THE HEARING RECORD
AND
TO SCHEDULE A PREHEARING CONFERENCE

Pursuant to Rule 4906-2-31 of the Ohio Administrative Code, Angelina Solar I, LLC (“Angelina Solar”), the Ohio Farm Bureau Federation, the Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Dixon Township Board of Trustees, the Preble County Planning Commission and the Staff of the Ohio Power Siting Board (collectively, the “Moving Parties”) respectfully request that the Board reopen the proceedings in this matter to allow for the consideration of the Amended and Restated Joint Stipulation and Recommendation (“Amended Joint Stipulation”), recently executed by the Moving Parties and filed contemporaneously herewith. As discussed more fully in the attached Memorandum in Support, good cause exists to reopen the record to allow for consideration of the Amended Joint Stipulation. The Moving Parties further respectfully request that the Administrative Law Judge schedule a prehearing conference to discuss with all parties the appropriate procedural schedule.

Respectfully submitted,

/s/ Jodi Bair per authorization (ms)

Jodi Bair (0062921)
Assistant Attorney General
Public Utilities Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215-3793
(614) 644-8599
jodi.bair@ohioattorneygeneral.gov

Attorneys for Ohio Power Siting Board Staff

/s/ Amy Milam per authorization (ms)

Chad A. Endsley (0080648)
Chief Legal Counsel
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
(614) 246-8258
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Attorneys for Ohio Farm Bureau Federation

/s/ Kathryn West per authorization (ms)

Kathryn M. West (0073813)
Assistant Prosecuting Attorney
Preble County Prosecutor's Office
101 E. Main Street
Eaton, OH 45320
(937) 456-8156

Attorney for the Preble County Engineer, the
Preble Soil & Water Conservation District,
and the Preble County Planning Commission

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
(614) 464-5462
mjsettineri@vorys.com

Attorneys for Angelina Solar I, LLC

/s/ Dylan Borchers per authorization (ms)

Dylan F. Borchers (90690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-Mail dborchers@bricker.com

Attorneys for Preble County Commissioners

/s/ Kathryn West per authorization (ms)

Kathryn M. West (0073813)
Assistant Prosecuting Attorney
Preble County Prosecutor's Office
101 E. Main Street
Eaton, OH 45320
(937) 456-8156

Attorney for the Board of Trustees of Dixon
Township

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Through this motion, Angelina Solar I, LLC (“Angelina Solar”), the Ohio Farm Bureau Federation, the Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Dixon Township Board of Trustees, the Preble County Planning Commission and the Staff of the Ohio Power Siting Board (collectively, the “Moving Parties”) seek to reopen the record in this proceeding because the Moving Parties have executed and filed an Amended and Restated Joint Stipulation (the “Amended Joint Stipulation”). The Board has not issued a decision in this matter yet (the hearing concluded and briefs were filed by the parties in 2019). Importantly, the Amended Joint Stipulation presents both revised and new conditions that are more protective than the conditions in the original stipulation submitted on the record. Reopening the record will allow Angelina Solar to present both the Amended Joint Stipulation and allow parties to present testimony supporting the changes presented in the Amended Joint Stipulation. Accordingly, under Rule 4906-2-31 of the Ohio Administrative Code, good cause exists to reopen this proceeding. *See e.g. In the Matter of the Appl. of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Entry filed May 22, 2019 (finding good cause under Rule 4906-2-31 of the Ohio Administrative Code to reopen the record where certain parties had entered into an amended stipulation that would supersede and replace the existing stipulation).

II. PROCEDURAL BACKGROUND

On June 14, 2019, a Joint Stipulation and Recommendation was filed by Angelina, the Ohio Farm Bureau Federation, the Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Board of Trustees of Israel Township, the Board of Trustees of Dixon Township, the Preble County Planning Commission, and the Staff of the

Ohio Power Siting Board. On July 31, 2019, the adjudicatory hearing, which was originally called and continued on May 14, 2019, was held at the offices of the Board. The hearing continued for three additional days on August 1, 10, and September 10, at which time the hearing record closed. Post-hearing briefing was completed on November 1, 2019. As of this date, a final order has not issued in the proceeding.

III. LAW AND ARGUMENT

A. Standard of Review

Rule 4906-2-31 of the Ohio Administrative Code states that “the board or the administrative law judge may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.” Under the rule, “[a] motion to reopen a proceeding shall specifically set forth the nature and purpose. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of the requested reopening of such evidence and shall set forth facts showing why such evidence could not with reasonable diligence have been presented earlier in the proceeding.” The Board has previously found good cause exists to reopen the record where the parties have entered into an amended stipulation. *See In the Matter of the Appl. of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Entry filed May 22, 2019 (finding good cause under OAC 4903-2-31(A) to reopen the record where certain parties had entered into an amended stipulation that would supersede and replace the existing stipulation); *See also In the Matter of the Appl. of Nestlewood Solar I LLC*, Case No. 18-1546-EL-BGN, Entry filed February 5, 2020 (finding good cause to reopen the record under Rule 4906-2-31 of the Administrative Code where the parties had executed a supplement to the original stipulation).

B. Good Cause Exists to Reopen the Record in this Proceeding

Good cause exists to reopen the record in the matter at bar because the Moving Parties and Staff have recently executed and filed the Amended Joint Stipulation.¹ Following the adjudicatory hearing and the parties' respective post-hearing briefing last year, the parties engaged in a series of discussions and negotiations regarding the potential for a revised and amended stipulation based, in part, on issues that were raised during the hearing and in the post-hearing briefing. That effort has now proved fruitful and the Moving Parties have executed the Amended Joint Stipulation.

The Amended Joint Stipulation includes both new conditions and revised conditions which the Moving Parties would like to present to the Board for its consideration in this matter. The Moving Parties and Staff have incorporated a new condition (Condition 30) related to the management of potential post-construction stormwater flows and also a new condition (Condition 31) regarding certificate authority that has been recently incorporated by the Board into other certificates. The Amended Joint Stipulation also includes revisions to ten previously proposed conditions, including adding project setbacks, cultural resources, visual screening and lighting, complaint resolution, drainage and drain tile, road maintenance, and decommissioning (Conditions 1, 3, 9, 11, 13, 16, 18, 20, 26 and 29). The new conditions and condition revisions reflect the negotiations between the parties to this matter, the ongoing development of the project, as well as additional commitments being made by Angelina Solar (including a project setback commitment).

If this motion is granted, Angelina Solar will present the Amended Joint Stipulation and plans to support the Amended Joint Stipulation and the new conditions and revised conditions, with supporting testimony. Angelina Solar anticipates testimony from six witnesses to support the

¹ The Amended Joint Stipulation has been filed contemporaneously with this Motion.

revisions and new conditions. None of this evidence could have been presented earlier in the proceeding as the negotiations that resulted in the Amended Joint Stipulation commenced after briefing was completed. Reopening the record will allow the Board to consider the Amended Joint Stipulation and the testimony supporting the revisions and testimony. Notably, the Board has allowed the presentation of an amended stipulation with supporting testimony in prior proceedings. *See e.g. Icebreaker Windpower, supra, and Nestlewood Solar, supra.*

IV. CONCLUSION

In conclusion, for good cause shown, the Moving Parties respectfully request that the Administrative Law Judge reopen the record to allow for consideration of the Amended Joint Stipulation filed contemporaneously herewith and request that the Administrative Law Judge schedule a prehearing conference to discuss with the parties the appropriate procedural schedule.

Respectfully submitted,

/s/ Jodi Bair per authorization (ms)

Jodi Bair (0062921)
Assistant Attorney General
Public Utilities Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215-3793
(614) 644-8599
jodi.bair@ohioattorneygeneral.gov

Attorneys for Ohio Power Siting Board Staff

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
(614) 464-5462
mjsettineri@vorys.com

Attorneys for Angelina Solar I, LLC

/s/ Amy Milam per authorization (ms)

Chad A. Endsley (0080648)
Chief Legal Counsel
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
(614) 246-8258
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Attorneys for Ohio Farm Bureau Federation

/s/ Kathryn West per authorization (ms)

Kathryn M. West (0073813)
Assistant Prosecuting Attorney
Preble County Prosecutor's Office
101 E. Main Street
Eaton, OH 45320
(937) 456-8156

Attorney for the Preble County Engineer, the
Preble Soil & Water Conservation District,
and the Preble County Planning Commission

/s/ Dylan Borchers per authorization (ms)

Dylan F. Borchers (90690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-Mail dborchers@bricker.com

Attorneys for Preble County Commissioners

/s/ Katheryn West per authorization (ms)

Kathryn M. West (0073813)
Assistant Prosecuting Attorney
Preble County Prosecutor's Office
101 E. Main Street
Eaton, OH 45320
(937) 456-8156

Attorney for the Board of Trustees of Dixon
Township

CERTIFICATE OF SERVICE

The Ohio Power Siting Board'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 is also being sent via electronic mail on July 29, 2020 to:

Jodi Bair
jodi.bair@ohioattorneygeneral.gov

Dylan Borchers
dborchers@bricker.com

Kathryn West
kwest@prebco.org

W. Joseph Scholler
jscholler@fbtlaw.com

Thaddeus Boggs
tboggs@fbtlaw.com

Chad Endsley
cendsley@ofbf.org

Leah Curtis
lcurtis@ofbf.org

Amy Milam
amilam@ofbf.org

Jack Van Kley
jvankley@vankleywalker.com

Chris Walker
cwalker@vankleywalker.com

/s/ Michael J. Settineri
Michael J. Settineri

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/29/2020 4:04:29 PM

in

Case No(s). 18-1579-EL-BGN

Summary: Motion - Joint Motion to Reopen the Hearing Record and to Schedule a Prehearing Conference electronically filed by Mr. Michael J. Settineri on behalf of Angelina Solar I, LLC and Ohio Power Siting Board Staff and Ohio Farm Bureau Foundation and Preble County Engineer and Preble Soil & Water Conservation District and Preble County Planning Commission and Preble County Commissioners and Board of Trustees of Dixon Township