

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Clearview Solar I,)
LLC for a Certificate of Environmental Compatibility)
and Public Need to Construct a Solar-Powered) Case No: 20-1362-EL-BGN
Electric Generation Facility in Champaign County,)
Ohio.)

**MOTION FOR WAIVER AND REQUEST FOR APPROVAL OF AN
ALTERNATIVE METHOD FOR THE PUBLIC INFORMATION MEETING
REQUEST FOR EXPEDITED RULING
AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-3-01(B), Clearview Solar I, LLC (“Applicant”) files this motion requesting that the Ohio Power Siting Board (“Board”) grant, on an expedited basis, a waiver of O.A.C. Rule 4906-3-03(B), insofar as it requires that the Applicant’s public informational meeting (“PIM”) “be held in the area in which the project is located.” Through this motion, the Applicant is requesting that it be allowed to use an alternative method for complying with the PIM requirement under the rule.

On March 9, 2020, the governor issued Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of Ohioans for the dangerous effects of COVID-19. This state of emergency is ongoing and it is anticipated that it will continue for some time into the future.

Since the COVID-19 pandemic is very much a concern for all Ohioans, the Applicant requests a limited waiver and proposes an alternative method for holding the PIM. As described in further detail in the memorandum in support, the alternative method will provide the maximum information about the project to the public and will enhance the PIM notice requirements set forth

in the O.A.C. to ensure that the public is aware of the alternative PIM and that the public will be able to fully participate.

Finally, the Applicant asserts that, for the reasons more fully set forth in the following memorandum in support, good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C). The Applicant's proposed public information program envisions several elements including, as a substitute for the traditional in-person PIM, a live presentation and question and answer ("Q&A") session with options for attendees to join either by web or telephone ("Virtual PIM").

The Applicant has tentatively scheduled the first of the two Virtual PIMs for September 16, 2020. Therefore, the Applicant requests that the Board rule on this motion by August 24, 2020 to enable the Applicant to issue the required notices for the Virtual PIM.

Accordingly, the Applicant respectfully moves that the Board grant this motion for waiver on an expedited basis.

Respectfully submitted,

/s/ Christine M.T. Pirik

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**MEMORANDUM IN SUPPORT OF
MOTION FOR WAIVER AND
REQUEST FOR APPROVAL OF AN
ALTERNATIVE METHOD FOR THE PUBLIC INFORMATION MEETING AND
REQUEST FOR EXPEDITED RULING**

I. Background

The Applicant is preparing to file an application with the Board for a certificate of public convenience and necessity to construct the Clearview Solar Project, an up-to-144-megawatt-ac, solar-powered electric generation facility in Adams Township, Champaign County, Ohio (“Project”).

As a result of the COVID-19 pandemic that has negatively affected not only the state of Ohio but the entire nation and world, state policy currently restricts the types of gatherings typically held, which includes such meetings as the PIM required under O.A.C. Rule 4906-3-03(B). The public has been strongly advised to maintain social distancing and avoid public gatherings. In addition, it is anticipated that for some time in the future there will be individuals who are apprehensive about attending public meetings and individuals who have high-risk conditions or other reasons that make it not possible or prudent for them to attend a public gathering.

Prior to the COVID-19 pandemic, the Applicant had already taken several steps to engage with the Board and the local community regarding the Project. As part of its extensive efforts over the past 18 months to assess and discuss land owners’ interest in the Project, the Applicant has been in contact with most large land owners in the immediate vicinity of the Project, whether or not those land owners ultimately chose to participate in the Project. Prior to the imposition of travel and meeting restrictions necessitated by the COVID-19 pandemic, the Applicant met in person with the

Trustees of Adams Township to brief them about solar energy and the Project. Since the imposition of those restrictions, the Applicant has been in contact with a variety of representatives and officials with Champaign County. The Applicant created a website and a Facebook page for the Project. In addition, the Applicant has written three separate letters to each of the owners of property adjacent to the parcels that will host the Project and endeavored to contact each of these land owners by telephone. The Applicant and the Board's Staff ("Staff") attended a (remotely held) pre-application conference on July 7, 2020, in accordance with O.A.C. Rule 4906-3-02. On August 1, 2020, the Applicant hosted a series of in person, small-group meetings (in light of the restrictions on meeting size) in Rosewood, Ohio with most of the land owners adjacent to the Project to further brief them about the Project and encourage their feedback. (In addition to inviting only a limited number of neighbors to each meeting, the Applicant stressed social distancing and had masks and hand sanitizer available for all attendees.) The Applicant continues to follow-up informally with those neighbors who are interested in receiving additional information and further dialogue.

Additional community engagement activities are planned below. More information about each of these activities is provided in Section IV below.

II. Public Information Meeting Requirements in O.A.C.

Although there is no statutory requirement that a PIM be held, the Board has established rules requiring that, prior to filing a standard certificate application, the applicant must hold at least one PIM. Specifically, O.A.C. Rule 4906-3-03(B) provides that:

1. No more than 90 days prior to submitting its application, the applicant hold an informational meeting open to the public "in the area in which the project is located."
2. Not more than 21 days or fewer than 7 days prior to the PIM, the applicant publish notice of the PIM in newspapers of general circulation in the project area.

3. At least 21 days before the PIM, the applicant send a letter to each property owner and affected tenant.
4. At the PIM, the applicant present maps showing the proposed facility.
5. At the PIM, the applicant solicit written comments from the attendees and summarize those comments in its application.

In accordance with the rule, PIMs typically are held on a weekday, for a two-hour period, at a venue located in the project area that can accommodate large groups of individuals.¹ At the PIM, the applicant usually provides hard copy materials explaining the project. In addition, there are stations staffed by the Applicant's representatives placed around the venue where the public can ask questions and obtain answers to questions they may have about different aspects of the project, including ecological, sociological, engineering etc. In accordance with the rules, large maps showing the proposed facility at a scale that allows an affected property owner to identify the location of their property to the facility also are provided.

III. Current State of Emergency in Ohio

As previously noted by the Board, on March 9, 2020, the governor 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-19.² Pursuant to Ohio Revised Code ("R.C.") 3701.13, on March 12, 2020, the Director of the Ohio Department of Health ("ODH") issued an order to prevent the spread of COVID-19 in the state of Ohio, urging all persons to maintain social distancing of approximately 6 feet from other people. Subsequently, on March 22, 2020, as amended on April 2, 2020, the

¹ See e.g., *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Preapplication Letter (Sept. 11, 2019); *In re Application of Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Preapplication Letter (Oct. 4, 2019); and *In re Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Preapplication Letter (Oct. 18, 2020).

² *In re Proper Procedures and Process for the Board's Operations and Proceedings During the Declared State of Emergency*, Case No. 20-601-GE-UNC, et al. ("*Declared State of Emergency*"), Entry (Mar. 17, 2020).

Director of the ODH issued a stay home order directing that, from March 23, 2020, until May 1, 2020, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence” (“Stay Home Order”).³ Subsequently, the Stay Home Order was extended to May 29, 2020. As of the filing of this motion, the Stay Home Order has been somewhat lifted and the governor has implemented Responsible Restart Ohio protocols (“Protocols”)⁴ aimed at responsibly restarting Ohio’s economy during the ongoing COVID-19 pandemic. These Protocols include wearing facemasks⁵ and limiting the capacity of gatherings to meet social distancing guidelines of 6 feet, with special care given to protect individuals with high-risk conditions. It is anticipated that, while there will be a gradual return back to normal practices, the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future.

IV. Proposed Alternative Public Information Program

O.A.C. Rule 4906-3-01(B) provides that the Board may grant a waiver of any requirement in that chapter, other than a requirement mandated by statute. Therefore, in recognition of the ongoing COVID-19 pandemic and the continued state of emergency in Ohio, the Applicant requests that the Board grant this waiver and, in lieu of an in-person PIM in the area of the Project as set forth in O.A.C. Rule 4906-3-03(B), the Board authorize the Applicant to implement an alternative public information program, which includes the seven primary elements outlined below.

³ *Declared State of Emergency*, Entry (Apr. 16, 2020) at ¶6.

⁴ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Responsible-Protocols/>

⁵ On July 24, 2020, the Interim Director of ODH issued an order requiring individuals in the state of Ohio to wear facial coverings at all times when: in any indoor location that is not a residence; outdoors and not able to maintain a distance of 6 feet or more; and for public transportation purposes.

(1) Slide Presentation

The Applicant will prepare a slide presentation about the Project, to which Staff will be invited to contribute regarding the OPSB process that will include information and explanations regarding:

1. The Applicant's business and experience.
2. The Applicant's involvement in the community.
3. The rationale for the Project, including its location.
4. A description of the Project including its technology, location, size, and nameplate capacity.
5. The schedule for development and construction of the Project.
6. A preliminary map of the Project area showing the closest above-ground feature of the Project to any adjoining property or nearby home.
7. The types of studies and due diligence being conducted by Applicant, including wetlands, wildlife, socioeconomic, cultural, visual, transportation, noise, and geotechnical.
8. Maps showing the proposed Project at a scale that allows affected property owners to identify the location of their property in relation to it.
9. The Board's review and certification process.
10. Contact information for the Applicant (i.e., website, Facebook, mailing address, email address, telephone number).
11. Contact information for the Board (i.e., website, mailing address, contact telephone number).

(2) Pre-Recorded Presentation

An audio and video recording of the slide presentation described above will be made available. The Applicant will narrate the presentation. The Staff will also be invited to participate in the pre-recorded presentation and provide additional information on the Board's process. The

pre-recorded presentation will be available on the Applicant's website and by alternative methods upon request.

(3) Project Website

The website dedicated to the Project will be enhanced to include the following information:

1. The slide presentation.
2. The pre-recorded presentation.
3. The dates and times of the Telephone PIM (see below) and the Web-based PIM (see below), as well as information on how to access and participate in these events.
4. A map showing the preliminary Project area, aerial imagery, and parcel information for all participating properties.
5. A downloadable PDF of the preliminary Project area.
6. Contact information and instructions for submitting questions to the Applicant regarding the Project.
7. A summary of frequently asked questions ("FAQ") and responses from the Applicant.
8. Instructions on how to request more information, including paper copies of the slide presentation and access to the pre-recorded presentation.
9. The website, mailing and email addresses, and telephone number to contact the Board.
10. Information on how to submit comments to the Board, how to participate in the proceeding before the Board, and how to request notification of the public hearing.
11. Contact information for the Applicant including the mailing and email addresses, and telephone.

(4) Project Facebook Page

The Facebook page dedicated to the Project will be enhanced to make available information about the Project and details of the Telephone PIM and Virtual PIM. The Facebook page also will serve as a resource for the community to submit comments and questions regarding the Project.

(5) Telephone PIM

The Applicant will host a live telephone conference call with members of the community to discuss the Project. Each participant will be able to hear a live presentation about the Project and be able to ask questions. In addition to a toll-free number, a URL also will be provided for residents who have internet service and prefer to join the telephone conference via the web.

(6) Web-based PIM

The Applicant will host a live web presentation and Q&A session with options for attendees to join either by web or telephone.

1. The Web-based PIM will begin with an introduction of the Applicant's representatives and a brief description of the Project as detailed in the slide presentation. Staff will be invited to participate. Participants joining the Web-based PIM via the Project's website will have access to the slide presentation described above, as well as a map of the Project area.
2. The Web-based PIM will be hosted through a platform that will allow participants to connect by telephone or an internet link. The platform will function across desktop, browser, and mobile devices. For the Q&A portion of the web-based PIM:
 - a. Participants will be able to interact with the Applicant's representatives and Staff via a moderated process.
 - b. Any questions that the Applicant is not able to be address during the web-based PIM will be addressed after the web-based PIM via telephone, email, mail, and updates to the FAQ section of the Project website.

(7) Small Group Dialogue

Opportunities for members of the community to informally discuss the Project with representatives of the Applicant in small group settings, either via teleconference or videoconference will be made available. Instructions for requesting and scheduling such dialogues will be provided in the direct mailers, on the Project's website, and on the Project's Facebook page.

V. Notices for the Proposed Alternative Public Information Program

A. Method of Notification

O.A.C. Rules 4906-3-(B)(1) and (2) require the Applicant to:

1. Provide one public notice of the PIM in newspapers of general circulation in the project area not more than 21 day or less than 7 days prior to the PIM.
2. At least 21 days before the PIM, send a letter to each property owner and affected tenant that is within the project area or contiguous to the project area.

In addition to the written and newspaper notice required under the rules, the Applicant also will provide notice on the Project website and Project Facebook page.

B. Who will be Served Written Notice

O.A.C. Rule 4906-3-03(B)(2)(a) through (d) requires that a letter for a generation facility be sent by first class mail to each property owner and affected tenant:

1. Within the planned site for the proposed facility.
2. Contiguous to the planned site of the proposed facility.
3. Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.
4. If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

In addition to the above, the Applicant will enhance notification of the PIMs by sending written notice to the following:

1. Champaign County Commissioners
2. Champaign County Auditor
3. Champaign Economic Partnership
4. Champaign County Emergency Management Agency
5. Champaign County Engineer
6. Champaign Prosecuting Attorney
7. Champaign Soil and Water Conservation District
8. LUC Regional Planning Commission
9. Adams Township Trustees
9. Adams Township-Rosewood Fire Department
10. Superintendent and Board of Education of Graham Local School District.
11. St. Paris Public Library

C. Content of Notification

The Applicant proposes to comply with the notice requirements set forth in O.A.C. Rule 4906-3-03 in full by including the following information in the both the published and written notices:

1. A brief description of the Project.
2. A description of the need for the Project.
3. The schedule for the development and construction of the Project.
4. The preliminary design of the Project.
5. The Project website.

6. The Board's website, mailing address, email address, and telephone number.

In addition to the above, the Applicant will include the following information:

1. How to participate in the proceeding.
2. How to request notification of the public hearing.
3. A description of the certification process.
4. Instructions on how to submit questions prior to, during, and after the Telephone and Web-based PIMs.
5. Instructions on how to access the PIMs.
6. Contact information for the Applicant in the event someone will not be able to access the PIMs via the internet so that the Applicant can send them a hard copy or thumb drive of the presentation.
7. The Applicant's mailing and email address, and contact telephone number

VI. Good Cause Exists to Grant the Motion for Waiver

The purpose of a PIM, which is held prior to the Applicant filing its application with the Board, is to inform the community about the Applicant's intent to file an application. In addition, the PIM provides an opportunity for the Applicant to answer questions from interested persons and gather information regarding any concerns the community might have so that the Applicant can consider the questions and concerns in its application. The public information program proposed by the Applicant accomplishes these goals.

This motion for waiver is limited to a request to hold the PIM in the Project area, and all other requirements under the Board's rules will be met and exceeded as set forth in detail herein. Understanding the purpose of the PIM and the need to provide the community with information on the Project, as well as the Applicant's need to receive constructive feedback on the plans for the Project, the public information program proposed by the Applicant satisfies the intent of the requirements in O.A.C. Rule 4906-3-03. In fact, the proposed program goes beyond the

requirements in the Board's rules and ensures that a larger range of individuals will not only receive notice of the Project and the PIMs, but will be given an opportunity to have their questions answered in an effective and timely manner.

If the Board does not grant this limited waiver of the requirement for the PIM to be held in-person in the Project area, it is not known when the PIM will be able to be held given the necessity for social distancing to protect the public. Such a delay will harm not only the Applicant, but the community where the Project will be located. Land owners may be financially harmed by disruptions in their planned farming activities caused by delays or changes in the Board's power siting process. Any unnecessary delay not only will cause financial harm to the Applicant, but stall the payments in lieu of tax ("PILOT") benefits the community and local school system would receive from operation of the Project pursuant to R.C. 5727.75. The Applicant's PILOT payments will bring millions of dollars to the local community, with a large percentage of that revenue benefiting schools of the Graham Local School District. Given the current state of the economy resulting from the COVID-19 pandemic, it is essential that the public information program move forward as expeditiously as possible, so that the Applicant is in a position to file its Application in the near future and the community can begin realizing the benefits from operation of the Project.

Granting this motion for waiver will not diminish any interested stakeholder's rights to participate in or provide comments on the Project. Rather, the public information program is merely an initial step toward providing an avenue for outreach and input in the process. Individuals may file comments in the above-captioned proceeding at any time. In addition, later in the process, once the Applicant files the application, the Board will provide stakeholders an opportunity to intervene in the proceeding and become involved in the evidentiary hearing, or to testify at a public hearing.

Finally, the Applicant notes that this motion for waiver is consistent with the General Assembly's legislation enabling public bodies to convene virtual public meetings and hearings.⁶ In addition, the Supreme Court of Ohio is currently holding oral arguments remotely.⁷ In fact, the Board itself has found that motions for waiver allowing virtual PIMs similar to the program proposed by the Applicant herein should be granted.⁸ Moreover, citing Am. Sub. H.B. 197, the Board held the local public and the adjudicatory hearing in a case currently pending before the Board using remote access technology that facilitated participation by telephone and/or live video on the internet.⁹

VII. Conclusion

Therefore, the Applicant requests the Board authorize the Applicant to implement the proposed alternative public information program, which includes a detailed slide presentation on the Project and process, a presentation of the slides from the Applicant's representatives, live web-based and teleconference Q&A PIMs, and access to the Applicant's website, which contains information about the Project. Not only does this program substantially comply with the applicable rules, but it enhances the public information program required by O.A.C. Rule 4906-3-03. In addition, the notification efforts the Applicant proposes to use comply with and enhance the notice provisions required under the rules for PIMs. Therefore, in light of the continued state of emergency in Ohio and the need for social distancing to protect the public, the Applicant respectfully requests that the

⁶ Am. Sub. H.B. 197.

⁷ See e.g., *In re Complaint of Direct Energy Business, L.C.C. v. Duke Energy Ohio, Inc.*, Case No. 2019-1058, Oral Argument (June 2, 2020) found at <https://ohiochannel.org/video/supreme-court-of-ohio-case-no-2019-1058-in-re-complaint-of-direct-energy-business-llc-v-duke-energy-ohio-inc>

⁸ See e.g., *In re Application of Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (May 26, 2020); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (May 26, 2020); *In re Application of Fox Squirrel Soar, LLC*, Case No. 20-931-EL-BGN, Entry (June 30, 2020).

⁹ *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (May 22, 2020).

Board grant this motion waiver, insofar as O.A.C. Rule 4906-3-03(B) requires that the Applicant's informational meeting "be held in the area in which the project is located."

The Applicant has tentatively scheduled the first of the two Virtual PIM for September 16, 2020. The Applicant submits that good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C), and requests that the Board consider this motion as expeditiously as possible to enable the Applicant to begin issuing notices of the Virtual PIM by August 24, 2020.

Respectfully submitted,

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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 in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 7th day of August, 2020.

/s/ Christine M.T. Pirik

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Summary: Motion for Waiver and Request For Approval Of An
Alternative Method for the Public Information Meeting Request for Expedited Ruling and
Memorandum in Support
electronically filed by Christine M.T. Pirik on behalf of Clearview Solar I, LLC