

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
ELECTRIC GENERATION FACILITY IN
CHAMPAIGN COUNTY, OHIO.

CASE NO. 20-1362-EL-BGN

ENTRY

Entered in the Journal on August 19, 2020

{¶ 1} Clearview Solar I, LLC (Clearview) 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 first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} Ohio Adm.Code 4906-3-03(B), requires, in part, that an applicant, no more than 90 days prior to filing a standard certificate application with the Board, to conduct at least one public information meeting (PIM) in the area in which the project is to be located.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health (DOH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the DOH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The DOH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the DOH has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters

of quarantine and isolation.” On March 12, 2020, the Director of the DOH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 6} On August 7, 2020, Clearview filed a motion for waiver and a request for expedited ruling requesting an alternative method for the PIM required pursuant to Ohio Adm.Code 4906-3-03(B), for a yet to be proposed 144 megawatt solar generation facility in Champaign County, Ohio (Project). Clearview contends that good cause exists for granting its request to conduct the PIM by alternate means, as opposed to an in-person meeting, as the public has been advised to maintain social distancing and avoid large public gatherings. In lieu of the usual PIM, Clearview proposes to meet the requirements of Ohio Adm.Code 4906-3-03(B) through a multi-pronged approach. As outlined in its motion, Clearview proposes the public information process include: (a) a slide presentation to include, among other information, the rationale for and location of the Project, a description of the Project, including technology, location, size and nameplate capacity, the schedule for development and construction, a preliminary map of the Project area, the types of studies being conducted by Clearview for the Project, the Board’s review and certification process, contact information for Clearview and contact information for the Board; (b) the slide presentation with audio and video recording; (c) a Project-specific website to include, among other information, the pre-recorded slide presentation, the dates and times of the telephone PIM and the web-based PIM with information on how to access and participate in each event, a map showing the preliminary Project area, contact information and instruction on how to submit questions to Clearview, a list of frequently asked questions and contact information for Clearview. The website shall also include instructions on how to submit comments to the Board and to participate in the proceeding before the Board; (d) a Project-specific Facebook page to include, among other details, the dates and times of the telephone PIM and the web-based PIM with information on how to access and participate in each event and serve as a resource for the community to submit comments and questions regarding the Project; (e) informal small group discussions, via teleconference or videoconference,

between members of the community and Project representatives, with instructions for scheduling such dialogues to be provided via direct mail and on the Project's website and Facebook page; and (f) Clearview will host a live telephone conference call with members of the community able to hear a presentation on the Project and ask question, via a toll-free number and a URL via the web. In addition, Clearview will host a web presentation, with a question and answer session, where attendees will be able to join either by web or telephone. Clearview seeks Board approval of its alternate PIM proposal. In addition to the notice requirements of Ohio Adm.Code 4906-3-03(B), Clearview states it will provide notice on the Project website and Facebook page.

{¶ 7} No memorandum contra Clearview's request for waiver was filed.

{¶ 8} On August 17, 2020, Staff filed a response to Clearview's motion for waiver, in which it acknowledged the unique nature of COVID-19 and the changed environment that has resulted from the response to the virus. Staff concluded that, due to the circumstances, it does not object to Clearview's requested waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 9} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 10} The administrative law judge (ALJ) notes due to the ongoing COVID-19 pandemic and its effects on the gathering of large groups of people the prerequisite PIM in the area in which the Project is located is prohibited pursuant to orders issued by the Director of the ODH to protect public health. The ALJ notes that ODH orders include an order issued on March 22, 2020, which has been amended several times since, directing Ohio residents to stay at home. Since the original ODH order, ODH has issued an additional "Director's Stay Safe Ohio Order" (Stay Safe Ohio Order), as well as providing continuing public safety guidance as part of the state's "Responsible Restart Ohio" plan. The Stay Safe Ohio Order and continuing Responsible Restart Ohio guidance generally prohibit

gatherings of 10 or more people. Accordingly, in light of the unique circumstances of this case and the state of emergency, the ALJ finds that Clearview's request to waive the requirement that the PIM be held in-person, in the area where the Project is to be located is reasonable and should be granted. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing or objecting to the actual manner in which Clearview proposes the PIM to be held, as detailed in the motion and memorandum in support. If Clearview wishes to proceed with planning and holding the virtual PIM, it carries with it the risk associated with doing so. Nonetheless, the ALJ certainly encourages Clearview to ensure that all those who may wish to participate in the virtual PIM have the opportunity to do so, just as they would under normal circumstances. This must include the creation of a process by which members of the public may request reasonable accommodations to obtain access to the PIM. The details of this process, and all requests for accommodation received, should be forwarded to Staff upon receipt. Such shared information shall include any proposed resolutions from Clearview.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Clearview's motion seeking waiver of Ohio Adm.Code 4906-3-03(B) be granted to the extent Clearview is requesting waiver of the Board's requirement that a PIM be held in-person, in the area in which the Project is to be located. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Greta See

By: Greta See
Attorney Examiner

NJW/hac

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Summary: Administrative Law Judge Entry granting motion electronically filed by Heather A Chilcote on behalf of Greta See, Administrative Law Judge, Power Siting Board