

## WOHIO POWER SITING BOARD

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

CASE NO. 20-1380-EL-BGN

### ENTRY

Entered in the Journal on September 2, 2020

{¶ 1} Ross County Solar, LLC (RCS) 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 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 Ohio Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of ODH 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 ODH is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 4} Pursuant to R.C. 3701.13, the Ohio Department of Health 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 Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On August 13, 2020, RCS filed a motion seeking a limited waiver of Ohio

Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. RCS is proposing to construct an up to 120 megawatt, solar-powered electric generating facility in Ross County (Project) and seeks waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person in the area in which the Project will be located.

{¶ 6} Ohio Adm.Code 4903-3-03(B) requires, in part, an applicant, to conduct at least one public informational meeting in the area in which the Project is located no more than 90 days prior to filing a standard certificate application with the Board. RCS argues that the ongoing COVID-19 pandemic and its effects on the gathering of large groups of people justifies a waiver of the requirement that the public informational meeting occur in the area in which the Project is located. RCS points to the Board's recent actions in response to COVID-19 to justify the waiver, such as the Board holding web-based meetings, the cancellation of both local public hearings and adjudicatory hearings for pending applications, the acknowledgment of the state of emergency, and adoption of certain rule waivers. *In re The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (Mar. 12, 2020); *In re Firelands Wind, LLC*, Case No. 19-1073-EL-BTX, Entry (Mar. 11, 2020); *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 (*Declared State of Emergency*), Entry (Mar. 17, 2020); and *Declared State of Emergency*, Entry (April 16, 2020) at ¶9, respectively. RCS also points to the different orders issued by the Director of ODH, including an order issued on March 22, 2020, which has been amended several times since, directing Ohio residents to stay at home. Before the expiration of that order, on April 30, 2020, ODH issued an additional order, "Director's Stay Safe Ohio Order" (Stay Safe Ohio Order). The Stay Safe Ohio Order generally prohibits gatherings of 10 or more people, and RCS asserts that public informational meetings do not fall within an exception to the order. RCS further states that if the current Stay Safe Ohio Order expires, measures against holding large gatherings will continue for some time and asserts that holding the public informational meeting in the Project area poses needless risk for members of the public, Board Staff (Staff), and RCS

representatives.

{¶ 7} In lieu of complying with the express language of Ohio Adm.Code 4906-3-03(B), RCS offers a three-pronged approach to conducting the public informational meeting that it claims will keep the public informed without having to leave their homes. The three-pronged approach includes holding an interactive web-based meeting, a telephonic meeting immediately following the virtual meeting, and, the availability of RCS representatives to discuss the Project with members of the public for those without internet access or unable to attend the meetings. RCS also notes that it will timely publish the newspaper notice and send the mailing required by Ohio Adm.Code 4906-3-03(B)(1)-(2). RCS asserts that the notice and mailing will include a description of the Project and all information required by the rules along with additional information on how to attend the virtual and/or telephonic meeting. RCS attached examples of the notice and draft mailing to its motion.

{¶ 8} On August 27, 2020, Staff filed a response to RCS'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 above circumstances, it does not object to RCS'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} Upon consideration of the unique circumstances of this case and the state of emergency, the administrative law judge (ALJ) finds that RCS's request to waive the requirement that the public information be held 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 the public information meeting is proposed to be held, as detailed in the motion and memorandum in support. If RCS wishes to proceed with planning and holding the virtual public information meeting, it carries with it the risk associated with doing so. Nonetheless,

the ALJ certainly encourages RCS to ensure all those who may wish to participate in the virtual public information meeting 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 public information meeting. 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 RCS.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That RCS's motion seeking waiver be granted, to the extent it is requesting waiver of the Board's requirement that a public information meeting be held 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 and parties of record.

THE OHIO POWER SITING BOARD

/s/ Jesse M. Davis

By: Jesse M. Davis  
Administrative Law Judge

GAP/mef

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

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**Case No(s). 20-1380-EL-BGN**

Summary: Administrative Law Judge Entry granting the motion for waiver electronically filed by Ms. Mary E Fischer on behalf of Jesse M. Davis, Administrative Law Judge, Ohio Power Siting Board