

THE OHIO POWER SITING BOARD

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

CASE NO. 18-1579-EL-BGN

ENTRY

Entered in the Journal on September 14, 2020

{¶ 1} Angelina Solar I, LLC (Angelina 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, Angelina, a subsidiary of Open Road Renewables, LLC, filed a pre-application notification letter with the Board regarding a proposed solar electric generating facility in Israel and Dixon townships, Preble County, Ohio. Subsequently, on December 3, 2018, and having completed steps mandated by Ohio law, Angelina 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 of up to 80 megawatts in Preble County, Ohio.

{¶ 4} By Entry dated January 17, 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.

{¶ 5} By letter dated February 1, 2019, the Board notified Angelina that its application was compliant with pertinent statutory and administrative code requirements and provided sufficient information to permit Staff to commence its review and investigation. And, on February 7, 2019, Angelina filed a certificate of service of 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.

{¶ 6} By Entry issued February 14, 2019, the ALJ issued a procedural schedule, which was altered by subsequent Entries such that the evidentiary hearing was called-and-continued on the original hearing date but eventually scheduled to reconvene on July 31, 2019.

{¶ 7} On June 14, 2019, a Joint Stipulation and Recommendation (Stipulation) executed 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 Board Staff (collectively, Signatory Parties). The Eaton Community School District did not join the Stipulation. The Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, Michael Irwin, Campbell Brandly Farms, LLC, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms, Inc. (collectively, CCPC) actively opposed the Stipulation.¹

{¶ 8} On July 31, 2019, the hearing reconvened as scheduled, carried over to August 1, 2019, and convened again on August 12, 2019; the hearing reconvened on September 10, 2019, for the purpose of taking rebuttal testimony. On October 18, 2019, Angelina, Staff, and CCPC filed initial post-hearing briefs. Reply briefs were submitted by the same parties on November 1, 2019. To date, the Board has not issued a final order regarding Angelina's application.

{¶ 9} 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 to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding

¹ The ALJ granted intervenor status to each of these named entities in an April 18, 2019 Entry.

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 Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 10} On July 29, 2020, the Signatory Parties filed an Amended and Restated Joint Stipulation and Recommendation (Amended Stipulation). With the Amended Stipulation, these parties also filed a joint motion to reopen the hearing record and to schedule a prehearing conference.

{¶ 11} Ohio Adm.Code 4906-2-31 provides that the Board or ALJ may, upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order. The rule also states that a motion to reopen a proceeding shall specifically set forth the nature and purpose; and, if that purpose is to permit the presentation of additional evidence, the motion must specifically describe the nature and purpose of the requested reopening of the evidence and show why the evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

{¶ 12} Citing to Ohio Adm.Code 4906-2-31, the Signatory Parties represent that good cause exists to reopen the record in this matter for consideration of the Amended Stipulation and anticipated testimony in support of the Amended Stipulation. The Signatory Parties explain that the Amended Stipulation is the product of a series of discussions and negotiations that took place after both the adjudicatory hearing and the post-hearing briefing concluded and includes both new and revised conditions that the Signatory Parties wish to present to the Board for consideration. These new and revised conditions include adding project setbacks, cultural resources, visual screening and lighting, complaint resolution, drainage and drain tile, road maintenance, and decommissioning, which reflects the post-hearing negotiations of the parties, the ongoing development of the project, and additional commitments being made by Angelina. The Signatory Parties further explain that, if the motion is granted, Angelina will present the Amended Stipulation and testimony

of six witnesses in support of the revisions and new conditions contained in the Amended Stipulation, none of which could have been presented earlier in the proceeding as the negotiations that resulted in the Amended Stipulation commenced after briefing was completed. The Signatory Parties also note that the Board has allowed the presentation of an amended stipulation with supporting testimony in prior proceedings. Finally, a prehearing conference to discuss an appropriate procedural schedule is requested.

{¶ 13} Upon review, the ALJ concludes that the Signatory Parties have demonstrated good cause to reopen the record in this proceeding for the purpose of considering the Amended Stipulation and any testimony in support of, or in opposition to, the same. Additionally, the ALJ finds that all interested parties to the proceeding should participate in a prehearing conference in order to determine a mutually agreeable and efficient procedural schedule. Accordingly, the joint motion to reopen the hearing record and for a prehearing conference should be granted.

{¶ 14} To that end, a prehearing conference will be conducted on September 18, 2020, at 10:00 a.m. EST. In light of the Executive Order and present pandemic circumstances, the prehearing conference will be conducted via remote-access technology. Instructions for participation in the prehearing conference will be emailed to the parties.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the joint motion to reopen the hearing record and to schedule a prehearing conference be granted as stated in Paragraph 13. It is, further,

{¶ 17} ORDERED, That the parties participate, via remote-access technology, in a prehearing conference on September 18, 2020, as stated in Paragraph 14. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Patricia A. Schabo

By: Patricia A. Schabo
Administrative Law Judge

JRJ/hac

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/14/2020 2:38:47 PM

in

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

Summary: Administrative Law Judge Entry granting the joint motion to reopen the hearing record and to schedule a prehearing conference and scheduling a prehearing conference on September 18, 2020 electronically filed by Heather A Chilcote on behalf of Patricia A. Schabo, Administrative Law Judge, Power Siting Board