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November 18, 2020

The Honorable Jeffery Jones
The Honorable Nicholas Walstra
Ohio Power Siting Board
180 East Broad Street, 12th Floor
Columbus, OH 43215-3793

Re: Motion for Waiver,
Case No. 20-1677-EL-BGN

Dear Judges Jones and Walstra:

On November 12, 2020, Cadence Solar Energy LLC (Applicant), filed a motion for waiver of Ohio Administrative Code (Ohio Adm.Code) 4906-3-03(B), in which it requested the Ohio Power Siting Board (Board) authorize the Applicant to comply with Ohio Adm.Code 4906-3-03(B) for a public information meeting (PIM) using an alternative approach. 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).

As a general matter, in accordance with the Governor's directives for the State of Ohio, and in light of recent record-breaking COVID-19 case numbers, and the novel circumstances facing the state and nation, staff of the Board (Staff) not only does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B).¹

As before, the public would be able to submit comments and questions in advance, and the Applicant would afterward respond to any questions not addressed at the public information meeting. Applicant would again make a presentation document available on its website, and a hard copy upon request. In its motion, Applicant averred that its request

¹ See e.g., Governor DeWine's October 29, 2020 announcement that Ohio had hit a record number of cases reported in a single 24-hour period, a situation which continued to escalate in record case numbers in following days. "The virus is raging throughout the state, and there is no place to hide," said Governor DeWine. "We must face this virus head-on with the tools that we know can beat this virus back: masks, social distancing, washing hands frequently, and good ventilation when inside." Governor DeWine further stated: "The decisions Ohioans make each day will determine the outcome of this battle. We must mask more, keep distance more, and simply be more careful."

is for good cause given the ongoing state of emergency, as the alternative approach will allow members of the public to learn about the project while staying home.

Staff notes that on March 9, 2020, the Governor of Ohio 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. Since that time, multiple applicants have filed for waivers of Ohio Adm.Code 4906-3-03(B) such that each project may conduct solely virtual PIMs, and in each case, Staff has responded that it does not object to the requested waiver.² Throughout each waiver response, Staff has recognized the unique nature of the COVID-19 pandemic, and the radically changed environment that has resulted from the response warrants an acknowledgment of the importance of social distancing. Although additional executive orders have been issued, staying at home, as opposed to congregating in groups, is still strongly recommended and social distancing is advised for the foreseeable future.

In fact, the Board and Public Utilities Commission of Ohio (among other judicial, legislative, and regulatory tribunals) have been conducting meetings, hearings, and other business exclusively from home and it is anticipated that the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future. Additionally, the overall success that applicants have faced in conducting virtual PIMs has encouraged Staff to transition from its prior response that it “does not object to the requested waiver” to *encouraging* applicants to conduct their PIMs virtually.

Each of the above factors being the case, Staff not only reiterates that it does not object to the requested waiver, but also encourages the use of a virtual PIM exclusively to satisfy the PIM requirements of Ohio Adm.Code 4906-3-03(B). Neither does Staff object to the granting of the requested waiver on an expedited basis.

² See *In the Matter of the Application of Madison Fields Solar Project LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generating Facility in Madison County, Ohio*, Case No. 19-1881-EL-BGN, May 21, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Powell Creek Solar, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Putnam County, Ohio*, Case No. 20-1084-EL-BGN, June 15, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Yellowbud Solar, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-0972-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Arche Energy Project, LLC for a Certificate of Environmental Compatibility and Public Need for a Solar Facility Located in Fulton, County, Ohio*, Case No. 20-0979-EL-BGN, May 26, 2020 Entry Granting Motion for Waiver; *In the Matter of the Application of Fox Squirrel Solar, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 20-931-EL-BGN (June 30, 2020); *In the Matter of the Application of Birch Solar LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Facility*, Case No. 20-1605-EL-BGN, October 26, 2020 Entry Granting Motion for Waiver; and, *In the Matter of the Application of Wheatsborough Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Power Facility*, Case No. 20-1529-EL-BGN, October 22, 2020 Entry Granting Motion for Waiver.

Respectfully submitted,

/s/ Robert Eubanks

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**On behalf of the Staff of the Ohio
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Summary: Correspondence Regarding Motion for Waiver electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB