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January 15, 2021

The Honorable Daniel Fullin  
Administrative Law Judge  
Ohio Power Siting Board  
180 East Broad Street, 12th Floor  
Columbus, OH 43215-3793

Re: Motion for Waiver,  
Case No. 21-0036-EL-BGN

Dear Judge Fullin:

On January 13, 2021, Marion County Solar Project, 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) using an alternative approach. Applicant proposed that it will host a virtual public information meeting ("PIM") incorporating both web-based and telephone-based meetings.

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).<sup>1</sup>

The Applicant explained that participants will be able to view the visual presentation materials in real-time, and these materials will be posted on its website in advance of the virtual PIM. Hard copies of the presentation materials will be available upon request.

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<sup>1</sup> 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."

Further, members of the public will be able to join the session by both web and telephone. Instructions for doing so will be provided in the letters sent to the public and in the newspaper notices.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Additionally, the overall success that applicants have faced in conducting virtual PIMs has encouraged Staff to transition from its prior response that it

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<sup>2</sup> Case No. 21-0036-EL-BGN, January 13, 2021, Motion for Waiver, at 6-10.

<sup>3</sup> 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.

<sup>4</sup> See, e.g., Ohio Department of Health Director Stephanie McCloud's December 30, 2020 health order encouraging people to stay at home during specified hours unless they are working or engaged in an essential activity (effective until January 23, 2021).

<sup>5</sup> See, e.g., Sub. H.B. No. 404, which extends until July 1, 2021 the temporary authorization for members of a public body to hold and attend meetings virtually.

“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.

Respectfully submitted,

/s/ Chelsea R. Fletcher

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Summary: Correspondence Regarding Motion for Waiver electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB