

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
MARION COUNTY SOLAR PROJECT, LLC,
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
MARION COUNTY, OHIO.

CASE NO. 21-36-EL-BGN

ENTRY

Entered in the Journal on January 19, 2021

{¶ 1} Marion County Solar Project, LLC (Marion County Solar, Applicant, Company) 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 from the Ohio Power Siting Board (Board).

{¶ 3} Applicant expects, in the near future, to file with the Board, an application seeking a certificate to construct a 100-megawatt (MW) solar-powered electric generation facility in Marion County, Ohio (Project).

{¶ 4} Ohio Adm.Code 4906-3-03(B) requires, in part, that an applicant seeking to construct a major facility must, not more than 90 days prior to filing a standard certificate application with the Board, conduct at least one public informational in the area in which the project is located.

{¶ 5} Ohio Adm.Code 4906-3-01(B) provides that the Board may grant a waiver of any requirement in that chapter, other than a requirement mandated by statute.

{¶ 6} 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/.

{¶ 7} 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.”

{¶ 8} On January 13, 2021, Marion County Solar filed a motion for waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Applicant seeks this waiver due to concerns surrounding COVID-19. The Company 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 must occur as an in-person meeting, held within the project’s vicinity. The Applicant requests that the Board, in recognition of the ongoing COVID-19 pandemic and the continued state of emergency in Ohio, grant Marion County Solar’s waiver and, thereby, authorize the Company to implement, lieu of the normally required in-person informational meeting, an alternative, multi-pronged public information program. The Company-proposed alternative public information program would include, among other things, the Company conducting the required public information meeting virtually and telephonically, instead of in-person at a location within the Project’s vicinity.

{¶ 9} More specifically, as outlined in its motion for waiver and memorandum in support, the Company intends to: (a) conduct a virtual public informational meeting (VPIM) that will be hosted through a platform capable of hosting hundreds of participants, each of whom will be able to connect to the VPIM by telephone or an internet link; (b) provide notice

of the VPIM on the Applicant's website and social media pages; (c) send notice of the VPIM by letter, at least 21 days ahead of the VPIM, to each property owner or affected tenant; (d) provide one public notice of the VPIM in newspapers of general circulation in the Project area, to be published between 21 and 7 days before the event; (e) send notice to all individuals required by rule to be served notice of a public informational meeting, as well as to other persons specifically identified in the Applicant's waiver request; (d) in providing notice, each time, to comply with all content-of-notice requirements set forth in Ohio Adm.Code 4906-3-03 and also to include certain additional information specifically identified in the Applicant's waiver request, including how to participate in the VPIM; (e) prepare a Power Point presentation with Project Information, as described in the Applicant's waiver request; (f) maintain a Project Website that will include, among other things, the Power Point presentation, and other information identified in the Applicant's waiver request, including instructions regarding how to participate in the VPIM; and (g) make use of a Facebook page to broadcast information about the project and details of the VPIM. The Company seeks Board approval of its proposal as detailed in its motion.

{¶ 10} Prior to the COVID-19 pandemic, the Applicant had already taken several steps to engage with the Board, and the Marion County community and officials, and initiated its Facebook page. The Applicant's and the Board's Staff (Staff) attended a pre-application conference on October 28, 2020, in accordance with Ohio Adm.Code 4906-3-02.

{¶ 11} No memoranda contra Marion County Solar's January 13, 2021 motion for waiver were filed in this proceeding.

{¶ 12} On January 15, 2021, Staff filed a letter indicating that, under the unique circumstances created by the COVID-19 emergency, it does not object either to Marion County Solar's January 13, 2021 request for waiver of Ohio Adm.Code 4906-3-03(B), or to the Company's request for expedited treatment of that motion. In fact, Staff emphasizes that, as a general matter, in accordance the Governor's directives for the State of Ohio, especially in light of recent record-breaking COVID-19 numbers, and the novel

circumstances facing the state and nation, not only does Staff not object to the requested waiver, but also encourages the use of a virtual public informational meeting, exclusively, as the means by which to satisfy the public meeting requirements of Ohio Adm.Code 4906-3-03(B).

{¶ 13} Upon consideration of the unique circumstances of this case and the state of emergency, the administrative law judge (ALJ) finds that Marion County Solar's January 13, 2021 request to waive the requirement that the public information be held in-person in the area where the project is to be located is reasonable and should be granted on an expedited basis. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing nor 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 Marion County Solar wishes to proceed with planning and holding the public information meeting in the manner it proposes, it carries with it the risk associated with doing so. The ALJ encourages Marion County Solar to ensure that all those who may wish to participate in the company's planned meetings and calls, or who wish to access the other Project information resources, 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 meetings and information. 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 Marion County Solar.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Marion County Solar's January 13, 2021 motion for waiver be granted to the extent it is requesting to waive the Board's requirement that a public information meeting be held in-person in the area in which the project is to be located. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Daniel E. Fullin

By: Daniel E. Fullin
Administrative Law Judge

GAP/kck

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 21-0036-EL-BGN

Summary: Administrative Law Judge Entry granting Marion County Solar's January 13, 2021 motion for waiver to the extent it is requesting to waive the Board's requirement that a public information meeting be held in-person in the area in which the project is to be located. electronically filed by Kelli C. King on behalf of Daniel E. Fullin, Administrative Law Judge, Ohio Power Siting Board