

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Arche :
Energy Project, LLC, for a :
Certificate of :
Environmental : Case No. 20-979-EL-BGN
Compatibility and Public :
Need to Construct a :
Solar-Powered Electric :
Generation Facility in :
Fulton County, Ohio. :

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PROCEEDINGS

before Ms. Patricia Schabo and Mr. David Hicks,
Administrative Law Judges, at the Ohio Power Siting
Board, via Webex, called at 10:05 a.m. on Wednesday,
February 17, 2021.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

APPEARANCES:

Bricker & Eckler, LLP
By Mr. Dylan Borchers
and Ms. Sommer L. Sheely
100 South Third Street
Columbus, Ohio 43215-4291

On behalf of the Applicant.

Ohio Farm Bureau Federation
By Ms. Amy Milam
280 North High Street
Columbus, Ohio 43215

On behalf of the Ohio Farm Bureau
Federation.

Dave Yost, Ohio Attorney General
By Mr. Robert Eubanks
and Ms. Chelsea Fletcher
Public Utilities
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Staff of the OPSB.

- - -

1	INDEX	
2	- - -	
3	WITNESS	PAGE
4	Cliff Scher	
5	Direct Examination by Mr. Borchers	13
6	- - -	
6	APPLICANT EXHIBIT	IDENTIFIED ADMITTED
7	1 Application Filed on July 30,	
8	2020, and Supplemented on	
9	September 11, 2020	11 16
10	2 Letter of Compliance	11 16
11	3 Proof of Service of Application	
12	on Local Officials and Libraries	
13	Filed October 2, 2020	11 16
14	4 Proof of Service of Application	
15	Filed December 2, 2020	11 16
16	5 Proof of Service of Application	
17	Filed January 26, 2021	11 16
18	6 Prefiled Testimony of	
19	Cliff Scher	12 16
20	7 Supplemental Testimony of	
21	Cliff Scher	12 16
22	- - -	
23	STAFF EXHIBIT	IDENTIFIED ADMITTED
24	1 Staff Report of Investigation	9 10
25	2 Prefiled Testimony of	
	James S. O'Dell	10 10
	- - -	
	JOINT EXHIBIT	IDENTIFIED ADMITTED
	1 Joint Stipulation and	
	Recommendation	12 16
	- - -	

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Wednesday Morning Session,
February 17, 2021.

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ALJ HICKS: The Ohio Power Siting Board
has set for hearing at this time and place Case No.
20-979-EL-BGN which is captioned in the Matter of the
Application of Arche Energy Project, LLC, for a
Certificate of Environmental Compatibility and Public
Need to Construct a Solar-Powered Electric Generation
Facility in Fulton County, Ohio.

My name is David Hicks, and with me is
Patricia Schabo. We are the Administrative Law
Judges assigned by the Board to hear this case.

I will note that this evidentiary hearing
is taking place pursuant to the parameters set forth
in entries issued on October 30, 2020, and
February 8, 2021. I have a couple of preliminary
matters to go through, but right now, I will go ahead
and take appearances of the parties on the record
starting with the Applicant.

MR. BORCHERS: Thank you, your Honor, and
good morning. On behalf of the Applicant, Dylan
Borchers and Sommer Sheely from the law firm of
Bricker & Eckler, 100 South Third Street, Columbus,
Ohio 43215.

1 ALJ HICKS: Thank you, Mr. Borchers.

2 And on behalf of Staff.

3 MR. EUBANKS: Robert Eubanks, Assistant
4 Attorney General, representing Staff, 30 East Broad
5 Street, Columbus, Ohio 43215.

6 ALJ HICKS: And on behalf of the
7 Intervenor.

8 MS. MILAM: Good morning, your Honor.
9 Amy Milam on behalf of Ohio Farm Bureau Federation,
10 280 North High Street, Columbus, Ohio 43215.

11 ALJ HICKS: Thank you, everyone.

12 MR. EUBANKS: Your Honor, I also should
13 say Chelsea Fletcher is also here representing Staff
14 on -- and the address is the same, 30 East Broad
15 Street, Columbus, Ohio 43215.

16 ALJ HICKS: Okay. Thank you,
17 Mr. Eubanks.

18 I believe that's all of our participants
19 we are expecting today, so I will just run through
20 the preliminary matters here, and we can proceed. I
21 will note at this time that due to the continuing
22 COVID-19 emergency that remains in effect under
23 Executive Order No. 2020-01D issued by Governor
24 DeWine in March of 2020, today's hearing is being
25 held through Webex which enables the parties to

1 participate via video conference while also affording
2 public access to hear by telephone or video over the
3 internet.

4 Before we call the first witness, just a
5 few preliminary matters. If you experience any
6 technical difficulties during the hearing, there are
7 a couple of options you could use to address the
8 issue. You can reach out to me or Judge Schabo by
9 phone or e-mail as you are able to. We also have on
10 as a host Kelli King of our office who can monitor
11 any issues and can be reached on our legal phone
12 number at (614) 466-6843.

13 There is also a chat function in Webex
14 where you can send a chat that Kelli or the Bench
15 will see and try to address any issues you have. So
16 a couple of different options. If all else fails,
17 just waive your arms on screen and I am sure someone
18 will see you and be able to assist. I would point
19 out with the chat function those are recorded and
20 should not be considered private so be mindful of
21 that if you add anything. And also they are not a
22 part of the official part of the record of the case.

23 I will also point out for those watching
24 or listening as an attendee, while you will be able
25 to observe the hearing, your microphones will remain

1 muted for witnesses that are currently attendees.
2 You will be promoted to a panelist when it is your
3 time to speak, and you will be able to turn on your
4 mic and camera and provide your testimony at the
5 appropriate time.

6 For how the hearing will be conducted,
7 just due to the remote nature of the hearing, please
8 just be mindful of background noise or any
9 unnecessary noise. With that we would ask that
10 counsel keep their microphones muted unless they are
11 speaking or there is a need for them to be unmuted
12 for you to be able to quickly interject such as
13 raising objections or anything along those lines. I
14 already mentioned microphones of witnesses are going
15 to remain muted until they are promoted and it is
16 their time to testify.

17 With respect to video, counsel should
18 leave their cameras on at all times except during any
19 breaks. You can turn your video off if you need to
20 step away and your co-counsel is taking the lead or
21 situations like that but just remember that while you
22 are sitting here to keep your camera turned on and
23 then witnesses obviously will need to have their mics
24 and cameras on when they are promoted and it is their
25 time to begin their testimony.

Please also be mindful of our court reporter. Try and speak clearly and at a reasonable pace so that she can accurately transcribe the hearing. Everyone should again avoid speaking over each other, especially in this sort of digital environment where it is kind of hard to tell who is speaking or who is about to begin speaking, so just be mindful of that, slow down, allow a little bit of lag time for the technology, and things should go smoothly.

During their testimony, witnesses should have access only to the filings of the case docket as well as other documents that have been identified as potential exhibits and previously exchanged between the parties and shared with the Bench. Witnesses should not access or seek other documents or information while testifying nor should they communicate through other means with anyone privately during their testimony.

Any exhibits admitted into the record which have not been previously docketed with the Board will need to be e-mailed to the court reporter. I believe in this case everything that has been proposed as an exhibit has already been filed, so I think that's a nonissue but just throw that out there

1 now in case it comes up. If you need the e-mail for
2 the court reporter, we can certainly provide that.

3 With that I -- I'll see if there are any
4 head nods as if anyone has any issues they need to
5 bring up on the record or discuss. I'm not seeing
6 anyone motion that they need anything, so we can go
7 ahead and proceed.

8 I will just note before we start no
9 members of the public contacted the Bench as far as
10 providing any testimony today before this evidentiary
11 hearing. And so with that I think we can go ahead
12 and proceed with the -- with the hearing, and we will
13 start with Mr. Eubanks appearing on behalf of Staff.

14 Mr. Eubanks, I will turn it over to you.

15 MR. EUBANKS: Thank you, your Honor.
16 First, I would like to start with admitting Staff's
17 Exhibit 1 which will be the Staff Report. It is the
18 Staff Report that was docketed with the Commission on
19 January 11, 2021. The parties have agreed to admit
20 that without -- without cross-examination via
21 stipulation.

22 ALJ HICKS: Okay.

23 MR. EUBANKS: Okay. Second --

24 ALJ HICKS: Go ahead.

25 MR. EUBANKS: Second, I would like to

1 have admitted into the record Staff's Exhibit 2.
 2 That would be the prefiled testimony of James S.
 3 O'Dell with one caveat. On page 3, line 2, the
 4 number "25" should be changed to "26." With that one
 5 change, the parties have stipulated to have that
 6 prefiled testimony admitted into evidence without
 7 cross-examination.

8 ALJ HICKS: Okay. So we will mark the
 9 Staff Report of Investigation as Staff Exhibit 1, the
 10 prefiled testimony of James O'Dell as Staff Exhibit 2
 11 with the one amendment that you provided.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 ALJ HICKS: Other counsel, do you have
 14 anything or have any objection to moving these
 15 exhibits into evidence?

16 MR. BORCHERS: No objection, your Honor.

17 ALJ HICKS: With that Staff Exhibit 1 and
 18 Staff Exhibit 2 will both be admitted into the
 19 record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MR. EUBANKS: And with that Staff rests.

22 ALJ HICKS: Okay. Thank you,
 23 Mr. Eubanks.

24 I believe now, Mr. Borchers, I will kick
 25 it over to you, and you can proceed.

MR. BORCHERS: Thank you, your Honor. In advance of calling the Applicant's witness, we would propose to go ahead and mark all the exhibits.

ALJ HICKS: Certainly.

MR. BORCHERS: And for the record all of these exhibits are available on the docket, and the exhibit numbering that I will provide corresponds with the exhibits listed in the Joint Stipulation on pages 7 and 8 of that Stipulation filed to the docket on February 11, 2021.

So with that there will be seven exhibits on -- for the Applicant along with one joint exhibit. Applicant Exhibit 1 is the application which was filed on July 30, 2020, and as supplemented on September 11, 2020.

Applicant Exhibit 2 is a filed letter of compliance which includes the list of property owners and adjacent property owners as filed on June 23, 2020.

Applicant Exhibit 3 is a copy of the proof of service of the application on local public officials and libraries filed on October 2, 2020.

Applicant Exhibit 4 is the proof of publication for the application filed on December 2, 2020.

Applicant Exhibit 5 is the proof of publication for the application filed January 26, 2021.

Applicant Exhibit 6 is the prefiled testimony of Cliff Scher filed on February 5, 2021.

And Applicant Exhibit 7 is the Supplemental Testimony of Cliff Scher filed on February 16, 2021.

ALJ HICKS: Okay. Each of those exhibits will be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MR. BORCHERS: Thank you. And we will also go ahead and mark the Joint Exhibit 1 which is the Joint Stipulation and Recommendation signed on behalf of the Applicant, the Staff of the Power Siting Board, and the Ohio Farm Bureau Federation which was filed on February 11, 2021.

ALJ HICKS: Okay. It will also be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. BORCHERS: So at this time the Applicant would call its first and only witness, Mr. Cliff Scher.

MS. KING: Mr. Scher, you have been promoted to the panelist position. You can go ahead

1 and turn on your camera and your mic.

2 MR. SCHER: Thank you.

3 ALJ HICKS: There you go. I can see you
4 and hear you, Mr. Scher. If you could please just
5 raise your right hand.

6 (Witness sworn.)

7 ALJ HICKS: Thank you.

8 Mr. Borchers.

9 - - -

10 CLIFF SCHER

11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Borchers:

15 Q. Good morning, Mr. Scher. Could you
16 provide your full name along with spelling for the
17 record.

18 A. My name is Cliff Scher, spelled C-L-I-F-F
19 S-C-H-E-R.

20 Q. And can you also provide your company and
21 your title at that company.

22 A. My -- I'm the Senior Development Director
23 at 7X Energy.

24 Q. And do you have before you what is marked
25 as Applicant Exhibit 6?

1 A. Yes.

2 Q. Is that your prefiled testimony that was
3 filed on February 5, 2021?

4 A. Yes.

5 Q. And if I were to ask you the same
6 questions today that are in Applicant Exhibit 6,
7 would your answers be the same?

8 A. Yes.

9 Q. Thank you. Do you also have before you
10 what is marked Applicant Exhibit 7?

11 A. Yes.

12 Q. And is that your supplemental testimony
13 that was filed on February 16, 2021?

14 A. Yes.

15 Q. And if I were to ask you the same
16 questions that are in Applicant Exhibit 7 today,
17 would your answers be the same?

18 A. Yes, they would.

19 Q. And do you have before you what is marked
20 as Joint Exhibit 1?

21 A. Yes. Yes, I do.

22 Q. And is that the Joint Stipulation and
23 Recommendation that was entered into between the
24 Applicant, the Ohio Power Siting Board Staff, and the
25 Ohio Farm Bureau Federation?

1 A. Yes, it is.

2 MR. BORCHERS: Your Honor, at this time
3 the witness is available for cross-examination.

4 ALJ HICKS: Thank you.

5 Mr. Eubanks, any questions on
6 cross-examination?

7 MR. EUBANKS: No, your Honor.

8 ALJ HICKS: Thank you. Ms. Milam, any
9 questions?

10 MS. MILAM: No cross, your Honor.

11 ALJ HICKS: Thank you. I have no
12 questions.

13 Judge Schabo, any questions from you?

14 ALJ SCHABO: No, thank you.

15 MR. BORCHERS: Thank you, your Honors.
16 So at this time I would move to enter Exhibits --
17 Applicant Exhibit 1 through 7 into the record along
18 with Joint Exhibit 1 into the record.

19 ALJ HICKS: Any objections from any of
20 the other parties?

21 MR. EUBANKS: No, your Honor.

22 MS. MILAM: No, your Honor.

23 ALJ HICKS: Okay. Thank you.

24 Then Applicant's Exhibit 1 through 7 and
25 Joint Exhibit 1 will be admitted into the record.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MR. BORCHERS: Thank you, your Honor. We
3 have no additional witnesses.

4 ALJ HICKS: Thank you, Mr. Scher, for
5 your testimony.

6 THE WITNESS: Thank you, your Honor.

7 MS. KING: Thank you.

8 ALJ HICKS: I think with that, Ms. Milam,
9 I will open it to see if you have anything. I think
10 I know the answer but.

11 MS. MILAM: Nothing, your Honor.

12 ALJ HICKS: Okay. Thank you.

13 ALJ SCHABO: If I could interrupt
14 quickly.

15 ALJ HICKS: Sure.

16 ALJ SCHABO: Applicant's 1 through 5, are
17 those being stipulated? Applicant's Exhibits 1
18 through 5?

19 MR. EUBANKS: I will stipulate to their
20 admittance, your Honor.

21 MR. BORCHERS: Yes, your Honor. Those
22 are also referenced in the Joint Stipulation and are
23 being stipulated via the Joint Stipulation.

24 ALJ SCHABO: Okay. I just wanted to make
25 sure we are actually getting them into the record.

1 ALJ HICKS: Okay. With that I don't
2 believe we have any other matters to take care of.

3 Judge Schabo, you look like you might.

4 ALJ SCHABO: Let's just go off the record
5 real quick.

6 ALJ HICKS: Okay.

7 (Discussion off the record.)

8 ALJ HICKS: Okay. Well, if there are no
9 other matters, I think that that concludes our
10 proceedings today. Thank everyone for their time and
11 attendance, for Kelli's help. So speak now or we can
12 close things out and everyone can go on with their
13 day.

14 ALJ SCHABO: Thank you, everyone.

15 ALJ HICKS: Thanks.

16 (Thereupon, at 10:23 a.m., the hearing
17 was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, February 17,
2021, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7038)

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in

Case No(s). 20-0979-EL-BGN

Summary: Transcript February 17th, 2021

In the Matter of the Application of Arche Energy Project, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Fulton County, Ohio. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.