

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Fox Squirrel)	
Solar, LLC for a Certificate of Environmental)	
Compatibility and Public Need to Construct a Solar-)	Case No: 20-931-EL-BGN
Powered Electric Generation Facility in Madison)	
County, Ohio.)	

**MOTION FOR
NOTICE FINDING AND WAIVER
REQUEST AND
MEMORANDUM IN SUPPORT**

Pursuant to Rule 4906-2-21(D) of the Ohio Administrative Code (“OAC”), Fox Squirrel Solar Project, LLC (the “Applicant” or “Company”) respectfully moves the Ohio Power Siting Board (“Board”) for a finding that the Applicant has complied with Ohio Revised Code (“R.C.”) Section 4906.06(C), in accordance with R.C. Section 4906.06(D), and a waiver of Ohio Administrative Code (“O.A.C.”) Rule 4906-3-09(A)(1).

The Applicant has consulted with counsel for the Board Staff, as well as all of the parties to this case, and no party opposed this motion.

Therefore, the Applicant submits that, for the reasons more fully set forth in the following memorandum in support, good cause exists to grant this motion, in accordance with O.A.C. Rule 4906-2-27(C).

Respectfully submitted,

/s/ Christine M.T. Pirik
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**MEMORANDUM IN SUPPORT OF
MOTION FOR NOTICE FINDING AND WAIVER AND
REQUEST FOR AN EXPEDITED RULING**

On October 14, 2020, as supplemented on November 3, 2020, the Applicant filed an application with the Board for a certificate to construct a solar-powered electric generation facility in Madison County, Ohio. On January 22, 2021, the Board issued an entry establishing the procedural schedule in this case and setting January 21, 2021, as the effective date of the application.

Within 15 days after the filing date of the application (the “effective date of the application”), the Applicant is to:

1. Publish a summary of the application in newspapers of general circulation in the project area in accordance with R.C. Section 4906.06(C); and
2. Send written notice to landowners and adjacent landowners, government officials, and libraries in accordance with O.A.C. Rule 4906-3-09(A)(1).

The Board established January 21, 2021, as the effective date of the application, which means that the notices required under R.C. Section 4906.06(C) and O.A.C. Rule 4906-3-09(A)(1) were to be completed before February 5, 2021. Until the January 21, 2021 entry was issued by the Board, the Applicant did not know the effective date and did not have the procedural schedule information that needed to be included in the notices. In light of this situation, through no fault of the Applicant, the Applicant was not able to publish the first notice in the 15-day time period set forth in R.C. Section 4906.06(C) and O.A.C. Rule 4906-3-09(A)(1). Rather, the first notice was published in *The Madison Messenger*, a newspaper of general circulation in Madison County, 17 days after the effective date, on February 7, 2021. *The Madison Messenger* is published once a week on Sunday. In order to meet the publication deadline for the paper, one must provide the paper with the notice five days prior to publication. Given the short timeframe between the issuance of the Board’s entry establishing the procedural schedule and the due date for publications set by the *Messenger*, the Applicant was not able to publish until February 7, 2021. However, the Applicant notes that it was able to send the first written notice within the 15-day time period set by the Board for the first notice.

R.C. Section 4906.06(D) and O.A.C. Rule 4906-3-09(B) provide that the inability or inadvertent failure of the Applicant to publish the notices required under R.C. Section 4906.06(C) and O.A.C. Rule 4906-3-09(A)(1), shall not constitute failure to give public notice, provided substantial compliance with the requirements is met. Further, R.C. Section 4906.06(D) states that any inadvertent failure of service may be cured by order of the Board as long as the notice is designed to afford adequate notice and enable participation effectively in the proceeding.

O.A.C. Rule 4906-3-09 requires the Applicant to provide two notices of the procedural schedule prior to the local hearing. The first notices, as explained previously, are to be sent and published within 15 days after the effective date of the application. The second notices are to be sent and published at least 7 days, but no more than 21 days before the public hearing.

The public hearing in this matter is scheduled for March 30, 2021, therefore, there is adequate time for the Applicant to provide the second public notices. The combination of the first notices and the second notices will afford interested persons adequate notice and enable them to fully participate in the proceeding.

Therefore, the Applicant requests that, in accordance with R.C. Section 4906.06(D), the Board find that, by publishing the notice required under R.C. Section 4906.06(C) on February 7, 2021, only 2 days after the date set by the Board's January 22, 2021 entry, the Applicant has provided individuals with the ability to effectively participate in this proceeding. Therefore, the Applicant requests that this motion be granted for good cause shown.

Respectfully submitted,

/s/ Christine M.T. Pirik

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 1st day of March, 2021.

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Summary: Motion for Notice Finding and Waiver Request and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Fox Squirrel Solar, LLC