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April 1, 2021

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

Re: Motion for Waiver,  
Case No. 21-277-EL-BGN

Dear Judge Jones:

On March 29, 2021, Border Basin I, 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.

The Applicant explained that it will prepare a Power Point presentation to be shown to members of the public during the virtual PIM. The Applicant’s recorded presentation will also be available on the Applicant’s website and by alternative methods upon request. Further, members of the public will be able to join the session by both web and telephone. The Applicant’s website will contain information on how to access the virtual PIM, a downloadable version of the Power Point presentation, and contact information should members of the public have questions. Notice of the virtual PIM will also be provided in letters sent to the public and in newspaper notices.<sup>1</sup>

Of critical import in satisfying Ohio Adm.Code 4906-3-03(B) is for applicants “to ensure that all those who may wish to participate in the [a]pplicant’s planned [PIM] have the opportunity to do so, just as they would under normal circumstances.”<sup>2</sup> As a general matter, in accordance with the Governor’s directives for the state of Ohio, and the novel

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<sup>1</sup> *Border Basin I LLC*, Case No. 21-277-EL-BGN, Motion for Waiver at 6-9 (March 29, 2021).

<sup>2</sup> *In the Matter of the Application of Kingwood Solar I LLC*, Case No. 21-0117-EL-BGN, Entry at ¶12 (Mar. 26, 2021).

circumstances facing the state and nation with regard to COVID-19, staff of the Board (“Staff”) does not object to the requested waiver and recognizes the use of a virtual PIM as one avenue to achieve the “open to the public” requisite of Ohio Adm.Code 4906-3-03(B), while continuing to protect members of the public during this unique time.<sup>3</sup>

Specifically, 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. Initially, Staff responded in each case that it did not object to the requested waiver.<sup>4</sup> In the months that then followed, as the number of COVID-19 cases dramatically rose throughout the state of Ohio, Staff encouraged the applicants’ use of solely virtual PIMs.<sup>5</sup> While originally Staff did “not object to the requested waiver,”

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<sup>3</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.”

<sup>4</sup> See *In the Matter of the Application of Madison Fields Solar Project LLC*, Case No. 19-1881-EL-BGN, May 4, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Yellowbud Solar, LLC*, Case No. 20-0972-EL-BGN, May 12, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Arche Energy Project, LLC*, Case No. 20-0979-EL-BGN, May 12, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Powell Creek Solar, LLC*, Case No. 20-1084-EL-BGN, June 11, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Grover Hill Wind, LLC*, Case No. 20-0417-EL-BGN, June 16, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Fox Squirrel Solar, LLC*, Case No. 20-931-EL-BGN, June 24, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Hecate Energy Highland 4 LLC*, Case No. 20-1288-EL-BGN, July 23, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Clearview Solar I, LLC*, Case No. 20-1362-EL-BGN, August 17, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Ross County Solar, LLC*, Case No. 20-1380-EL-BGN, August 27, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of AEUG Union Solar, LLC*, Case No. 20-1405-EL-BGN, September 1, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN, October 19, 2020 Staff Response to Motion for Waiver; and, *In the Matter of the Application of Birch Solar LLC*, Case No. 20-1605-EL-BGN, October 26, 2020 Staff Response to Motion for Waiver.

<sup>5</sup> See *In the Matter of the Application of Mark Center Solar Project, LLC*, Case No. 20-1612-EL-BGN, November 5, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Grover Hill Wind, LLC*, Case No. 20-0417-EL-BGN, November 9, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Cadence Solar Energy, LLC*, Case No. 20-1677-EL-BGN, November 18, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Hardin Solar Energy III, LLC*, Case No. 20-1678-EL-BGN, November 18, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Pleasant Prairie Solar Energy, LLC*, Case No. 20-1679-EL-BGN, November 18, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Yellow Wood Solar Energy LLC*, Case No. 20-1680-EL-BGN, November 18, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Union Ridge Solar, LLC*, Case No. 20-1757-EL-BGN, December 10, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Juliet Energy Project, LLC*, Case No. 20-1760-EL-BGN, December 11, 2020 Staff Response to Motion for Waiver; *In the Matter of the Application of Sycamore Creek Solar, LLC*, Case No. 20-1762-EL-BGN, December 14, 2020 Staff Response to

and later transitioned to *encouraging* applicants to conduct PIMs virtually, Staff recognizes the “rapidly changing conditions” of this state of emergency.<sup>6</sup> Indeed, on March 18, 2021, Governor DeWine announced that Ohio’s statewide COVID-19 case rate stood at 143.8 cases per 100,000 people over the prior two weeks and that when Ohio reaches 50 cases per 100,000 people for two weeks, all health orders will be lifted.<sup>7</sup> While Ohio has not yet achieved this statewide case rate, Staff is cognizant of the state’s movement toward this objective.

Should statewide health orders prohibiting mass gatherings be lifted or otherwise eliminated and the Applicant is able to hold an in-person public information meeting, the Applicant should evaluate and file an update to the record on the possibility of providing those who wish to participate at an in-person meeting with the opportunity to do so.

Each of the above factors being the case, Staff reiterates that it does not object to the requested waiver 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,

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Motion for Waiver; *In the Matter of the Application of Dodson Creek Solar, LLC*, Case No. 20-1814-EL-BGN, January 6, 2021 Staff Response to Motion for Waiver; *In the Matter of the Application of Marion County Solar Project, LLC*, Case No. 21-0036-EL-BGN, January 15, 2021 Staff Response to Motion for Waiver; *In the Matter of the Application of Tymochtee Solar, LLC*, Case No. 21-0004-EL-BGN, January 21, 2021 Staff Response to Motion for Waiver; *In the Matter of the Application of Palomino Solar, LLC*, Case No. 21-0041-EL-BGN, January 27, 2021 Staff Response to Motion for Waiver; and, *In the Matter of the Application of Kingwood Solar I, LLC*, Case No. 21-0117-EL-BGN, February 24, 2021 Staff Response to Motion for Waiver.

<sup>6</sup> See *Statement of the Reasons for the Veto of Substitute Senate Bill 22*, State of Ohio, Executive Office of the Governor (March 23, 2021) available at: [https://content.govdelivery.com/attachments/OHOOD/2021/03/23/file\\_attachments/1732100/SB%2022%20Veto%20Message.pdf](https://content.govdelivery.com/attachments/OHOOD/2021/03/23/file_attachments/1732100/SB%2022%20Veto%20Message.pdf)

<sup>7</sup> See Ohio Department of Health, News Release (March 18, 2021), available at: <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/covid-19-update-03-18-21>

**On behalf of the Staff of the Ohio Power Siting Board**

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Summary: Motion for Waiver electronically filed by Mrs. Tonnetta Y Scott on behalf of OPSB