

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF BORDER BASIN I, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-277-EL-BGN

ENTRY

Entered in the Journal on April 20, 2021

{¶ 1} Border Basin I, LLC (Border Basin or Applicant) 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 obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} 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 Ohio Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of ODH 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 ODH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 4} Pursuant to R.C. 3701.13, the ODH 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 April 5, 2021, the Director of the ODH issued an Order indicating that “[i]ndividuals must avoid gathering in groups and attempt at all times to maintain social distancing.”

{¶ 5} On March 29, 2021, Applicant filed a motion seeking a waiver of Ohio

Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Border Basin is proposing to construct up to a 120 megawatt solar-powered electric generating facility in Cass Township, Hancock County, Ohio (Project) and seeks waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually via a web-based format and telephonically instead of in-person in the area in which the Project will be located. Additionally, Border Basin requested an expedited ruling pursuant to Ohio Adm.Code 4906-2-27(C) in order to enable Applicant to begin issuing notices of the virtual public information meeting.

{¶ 6} Ohio Adm.Code 4906-3-03(B) requires, in part, an applicant to conduct at least one public informational meeting in the area in which the Project is located no more than 90 days prior to filing a standard certificate application with the Board. Border Basin 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 occur in the area in which the Project is located. In support of its motion, Border Basin points to the Board's adoption of similar waiver requests and the scheduling of virtual public informational meetings. *See e.g., In re Application of Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (May 26, 2020); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (May 26, 2020); *In re Application of Fox Squirrel Soar, LLC*, Case No. 20-931-EL-BGN, Entry (June 30, 2020); and *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (May 22, 2020).

{¶ 7} Border Basin further references the ongoing COVID-19 pandemic and the protocols and orders issued by the Director of ODH, including an order issued on July 23, 2020, and November 13, 2020, requiring individuals in the state of Ohio to wear facial coverings at all times when in any indoor location that is not a residence; outdoors and not able to maintain a distance of six or more feet; and for public transportation purposes.

{¶ 8} In lieu of complying with the express language of Ohio Adm.Code 4906-3-03(B), Border Basin proposes an alternative virtual public information program consisting

of a web-based public information program that will provide details about Border Basin and the Project, including Project layout, timeline, and an overview of the Project website as well as a live question and answer session with options for attendees to join either by web or telephone. The web-based platform will allow participants to view the visual presentation materials, and the materials will be posted on the Project website. The information will also be mailed to other interested persons who request it. Border Basin will solicit written comments via mail and web form and provide instructions on how to request more information. To participate, attendees will call a toll-free number and use a provided access code. There will be an opportunity to ask questions and obtain additional information from Applicant's representatives during the question and answer portion of the virtual public information meeting. The meeting will be advertised in both letters sent to the public and in newspaper notices. According to Border Basin, the virtual public meeting will serve as an opportunity to gather input and hear the public's concerns, which the Applicant considers in developing its application. Further, the Board Staff will be invited to the virtual public meeting to answer process questions.

{¶ 9} Border Basin will also provide a project website with information about the Project and the virtual public informational meeting. Border Basin will send out notices of the virtual public informational meeting to every property owner and tenant within and adjacent to the proposed Project boundary and publish the notice in a newspaper of general circulation.

{¶ 10} No memoranda contra Border Basin's motion for waiver were filed in this proceeding.

{¶ 11} On April 1, 2021, Staff filed a response to Border Basin's motion for waiver, in which it acknowledged the unique nature of COVID-19 and the changed environment that has resulted from the response to the virus. Staff concluded that, due to the above circumstances, it does not object to Border Basin's 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. However, Staff acknowledges the ever-changing conditions of the declared state of emergency and the future potential that all health orders could be lifted. Therefore, Staff asserts that should statewide health orders prohibiting mass gatherings be lifted or otherwise eliminated and Border Basin is able to hold an in-person public information meeting, the Border Basin should evaluate and file an update on the record regarding the possibility of providing an opportunity of an in-person meeting for those who wish to do so.

{¶ 12} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 13} Upon consideration of the unique circumstances of this case and the state of emergency, the administrative law judge (ALJ) finds that Border Basin's motion for waiver of the requirement that the public informational meeting be held in the area where the Project is to be located is reasonable and should be granted. The request for an expedited ruling is also granted. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing or objecting to the actual manner in which the public informational meeting is proposed to be held, as detailed in the motion and memorandum in support. If Border Basin wishes to proceed with planning and holding the virtual public informational meeting, it carries with it the risk associated with doing so. Nonetheless, the ALJ certainly encourages Border Basin to ensure all those who may wish to participate in the virtual public information meeting 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 virtual public information meeting. 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 Border Basin.

{¶ 14} In the event that statewide health orders prohibiting mass gatherings are lifted, or if otherwise eliminated and Border Basin is able to hold an in-person public information meeting, Border Basin should evaluate and file an update on the record regarding the possibility of providing an opportunity of an in-person meeting for those who wish to do so.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That Border Basin's motion seeking waiver and request for expedited ruling be granted, to the extent it is requesting waiver of the Board's requirement that a public informational meeting be held in the area in which the Project is to be located. It is, further,

{¶ 17} ORDERED, That should the statewide health orders prohibiting mass gatherings be lifted or otherwise eliminated and Border Basin is able to hold an in-person public information meeting, Border Basin should evaluate and file an update on the record regarding the possibility of providing an opportunity of an in-person meeting for those who wish to do so. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Lauren L. Augostini

By: Lauren L. Augostini
Administrative Law Judge

GAP/hac

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Case No(s). 21-0277-EL-BGN

Summary: Administrative Law Judge Entry ordering that Border Basin's motion seeking waiver and request for expedited ruling be granted, to the extent it is requesting waiver of the Board's requirement that a public informational meeting be held in the area in which the Project is to be located and ordering that should the statewide health orders prohibiting mass gatherings be lifted or otherwise eliminated and Border Basin is able to hold an in-person public information meeting, Border Basin should evaluate and file an update on the record regarding the possibility of providing an opportunity of an in-person meeting for those who wish to do so electronically filed by Heather A Chilcote on behalf of Lauren L. Augostini, Administrative Law Judge, Power Siting Board