

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of Pleasant Prairie Solar)
Energy, LLC for a Certificate of) Case No. 20-1679-GA-BGN
Environmental Compatibility and Public)
Need for the Construction of a Solar-)
Powered Electric Generation Facility in)
Franklin County, Ohio)

**REPLY IN SUPPORT
OF
PETITION FOR LEAVE TO INTERVENE
BY
NO PRAIRIE SOLAR, LLC**

I. INTRODUCTION

Pleasant Prairie Solar Energy, LLC’s (Applicant) opposition to No Prairie Solar, LLC’s (No Prairie Solar) intervention in this case is a baseless attempt to prevent local property owners from raising their specific concerns about the Applicant’s solar project. No Prairie Solar’s members have a real, substantial, and unique interest in the Applicant’s proposed Pleasant Prairie Solar project (Project) and have a legal right under Ohio law and the Board’s rules to participate in the proceeding and voice their specific concerns that are not being raised by any other party to the proceeding. R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12(A)(2). It is telling that the Applicant is attempting to block property owners from participating in the case and force them to incur additional legal costs instead of addressing their valid concerns that No Prairie Solar has been raising for months to the Applicant and others.

Ohio law and the Board’s rules explicitly allow timely interventions by “any person residing in a municipal corporation or county entitled to receive service of a copy of the application under division (B) of section 4906.06 of the Revised Code and any other person, if the person has

petitioned the board for leave to intervene as a party within thirty days after the date of publication of the notice required by division (C) of section 4906.06 of the Revised Code, and if that petition has been granted by the board for good cause shown.” R.C. 4906.08(A)(3).

After Applicant filed its application for a certificate of environmental compatibility and public need concerning the Pleasant Prairie Solar project (Project) on February 19, 2021, the Board invited interested persons to intervene by June 25, 2021.

No Prairie Solar followed Ohio law and the Board’s directive and timely filed its petition for leave to intervene pursuant to R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12(A)(2) on June 25, 2021.¹ Nonetheless, Applicants are challenging No Prairie Solar’s intervention in an attempt to limit participation of persons with valid concerns in its case.² Applicant’s challenge to No Prairie Solar’s intervention and attempt to limit participation of interested persons, such as property owners, contravenes Ohio law, is without merit, and should be rejected in its entirety.

As such, the Board should grant No Prairie Solar’s timely petition for leave to intervene for good cause shown in its entirety with the full powers and rights granted to intervening parties. Pursuant to a directive from the Administrative Law Judge to file its reply early, prior to the deadline established by Ohio Adm.Code 4906-2-27(B)(2), and in advance of the scheduled public hearing, No Prairie Solar hereby submits its reply memorandum in support of its petition for leave to intervene.

¹ See Petition for Leave to Intervene of No Prairie Solar, LLC (June 25, 2021).

² See Memorandum Contra Petition to Intervene of No Prairie Solar, LLC (July 12, 2021) (Memo Contra).

II. ARGUMENT

1. Individual No Prairie Solar members have direct, real, and substantial interests in the Project.

The Applicant grossly misrepresents the individual members of No Prairie Solar (Members) as having “generic concerns about the impact” of the Project.³ This claim is without merit and is simply incorrect. The Members each have an individual, direct, real, and substantial interest at stake in the outcome of this Application. As will be explained more fully below, although each Member would individually have standing to intervene in this case under R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12(A)(2), the Members are collaborating and consolidating their efforts and using economies of scale to be efficient in their examination of witnesses and presentations of testimony at hearing as encouraged by the Board’s rules.⁴ As such, No Prairie Solar should be granted the opportunity to participate in this proceeding, including, but not limited to, the evidentiary hearing.

The Applicant begins its Memorandum Contra by mischaracterizing the Board’s precedent governing intervention in these types of cases. According to the Applicant, “the Board has emphasized that local input properly can and should be provided at the local public hearings.”⁵ Unfortunately for the Applicant, the Entry that it cites actually states the opposite of what the Applicant claims—where there is a “defined nexus” to the project, individual petitioners may properly intervene.⁶

³ Memo Contra at 4-6.

⁴ See Ohio Adm.Code 4906-2-12(D)(2).

⁵ Memo Contra at 5, *citing In re Application of Republic Wind, LLC, for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, Case No. 17-2295-EL-BGN, Entry at 7 (Aug. 21, 2018).

⁶ Case No. 17-2295-EL-BGN, Entry at ¶ 20 (Aug. 21, 2018).

According to the Board, it “has granted petitions to intervene when the petitioner can demonstrate an individual, direct interest is at stake in the outcome of a proceeding.”⁷ Indeed, the Board finds that such a “defined nexus” exists for individuals who “reside inside the project area” or whose “property abuts the project area.”⁸ The Board distinguishes these individuals from individuals who “reside outside of the project area and do not have property that abuts the project area.”⁹ The Board routinely grants intervention to such individuals with a defined nexus to the project, including when they are concerned with project setbacks or with lines of sight from their properties.¹⁰

While the Applicant misrepresents the interests of the Members of No Prairie Solar, in reality, they are able to demonstrate a “defined nexus” to the Project based on the “individual, direct interest...at stake in the outcome of a proceeding.”¹¹ Allowing No Prairie Solar to intervene will not extend participation to “any other individual living anywhere in the general vicinity of the Project who might have an opinion about whether or not it should be constructed” as the Applicant argues.¹² Pursuant to the Board’s precedent and Ohio law, the Board will allow participation to those who own property or reside in or adjacent to the Project area. R.C. 4906.08 is even broader. R.C. 4906.08(A)(3) envisions parties to the proceeding to include “[a]ny person residing in a municipal corporation or county entitled to receive service of a copy

⁷ Case No. 17-2295-EL-BGN, Entry at ¶ 20 (Aug. 21, 2018).

⁸ *Id.*

⁹ *Id.* at ¶ 21.

¹⁰ See, e.g., *In the Matter of the Application of Icebreaker Windpower, Inc. for a Certificate to Construct a Wind-Powered Electric Generation Facility in Cuyahoga County, Ohio*, Case No. 16-1871-EL-BGN, Entry at ¶¶ 19-20 (May 23, 2018) (granting intervention to individual property owners with a direct line of sight to an offshore wind farm); *In the Matter of the Application of Black Fork Wind LLC for a Certificate of Environmental Compatibility and Public Need for the Siting of a Wind-Powered Electric Generating Facility in Richland and Crawford Counties, Ohio*, Case No. 09-546-EL-BGN, Entry at ¶¶ 8-13 (Mar. 2, 2010).

¹¹ Case No. 17-2295-EL-BGN, Entry at ¶ 20 (Aug. 21, 2018).

¹² See Memo Contra at 5.

of the application under division (B) of section 4906.06 of the Revised Code *and any other person* . . . for good cause shown.”¹³ Members of No Prairie Solar who reside in or own property in the

Project area or abutting the Project include the following:

- Kimberly V. Cox—1215 Murnan Road, Galloway, OH 43119;
- Michael G. Curtiss—12-45 Murnan Road, Galloway, OH 43119;
- Timothy P. Faust—6515 Cabin Croft Drive, Galloway, OH 43119;
- Elzie W. Harvey—1044 Murnan Road, Galloway, OH 43119;
- John C. Hemphill—7400 Kuhlwein Road, Galloway, OH 43119;
- Stephen F. Hennosy—1265 Alton Road, Galloway, OH 43119;
- Melvin L. and Patricia C. Jones—7495 Kuhlwein Road, Galloway, OH 43119;
- Michael R. Koenig—7525 Kuhlwein Road, Galloway, OH 43119;
- Lawrence J. Krist—635 Murnan Road, Galloway, OH 43119;
- Garry M. Lynd—1050 Murnan Road, Galloway, OH 43119;
- Michael L. Merrill—6516 Cabin Croft Drive, Galloway, OH 43119;
- Rodney A. Pritchard—955 Murnan Road, Galloway, OH 43119;
- Rita Sharrock-Collins—6495 Cabin Croft Drive, Galloway, OH 43119; and
- Cynthia A. Tabor—1084 Murnan Road, Galloway, OH 43119.

Beyond the fact that they reside in or own property in or adjacent to the Project area, the Members have identified a number of individual, direct interests at stake in this proceeding, which were set forth in No Prairie Solar’s petition for leave to intervene and demonstrate that good cause exists to grant No Prairie Solar’s intervention in an application concerning the Project and Project area. The Members have a number of specific concerns with the Project that they have raised, which include but are not limited to the following:

- The placement of hundreds of acres of solar panels and fences surrounding

¹³ R.C. 4906.08(A)(3) (emphasis added).

the Members' properties and on the public roads near the Members' properties is not in the public interest as it will spoil the visual and aesthetic enjoyment of living and working there. The Application is not in the public interest as it fails to provide adequate or sufficiently detailed commitments for planting vegetation barriers between the solar project structures and equipment and Members' properties to minimize visual impacts.

- The Application is not in the public interest as it fails to provide for vegetation barriers in the setbacks between the Project area and neighboring properties that are sufficient to protect the aesthetic enjoyment of the Members' properties. In addition, while the Application calls for planting a minimal amount of vegetation inside and outside of the Project area, the Application fails to provide for sufficient measures to maintain and sustain healthy vegetation that will be aesthetically pleasing and that will sufficiently create a barrier.
- The Application is not in the public interest as it fails to adequately evaluate and protect against daily and seasonal changes to prevent glare being observed from the solar arrays.
- The Application is not in the public interest as it fails to identify the specific locations for the solar panels, night lights, and other Project components, leaving this important information unknown and the Application and Project plan incomplete, only to be determined at a later date subsequent to the certificate's issuance. Applicant's failure thwarts review and deprives the Board and the Members of the opportunity to review the Project and determine whether the components are appropriately placed, sufficiently

installed, and in furtherance of the Application to determine whether the utility facility represents the minimum adverse environmental impact and will serve the public interest, convenience, and necessity as required by R.C. 4906.10. For example, this would necessarily include a review of the placement of the night lights to determine whether they will contravene the public interest and have a negative impact on the property owners by creating an annoyance to the Members. It would also include a review of the placement of other Project components to determine whether any components will contravene the public interest and have a negative impact on the property owners by being placed in the line of sight from the Members' lands and homes.

- The setbacks proposed between the neighboring properties (including the Members' properties) and the Project's fences and other components are too short to protect the neighboring properties and not in the public interest.
- The Application is not in the public interest and may have an adverse environmental impact as it does not sufficiently provide for the identification, protection, and repair of public drainage tiles that are damaged by the Project's construction.
- The Application is not in the public interest and may have an adverse environmental impact as it does not properly protect the existing storm water drainage patterns that protect the Members' land from being flooded by runoff from the Project area.
- The Application is not in the public interest and may have an adverse environmental impact as it fails to incorporate drainage improvements

previously planned for in the area by the Franklin County Engineers Office (“Foley Ditch Project”). This improvement is critical to the health and safety of at least ten adjacent and seven non-adjacent property owners.

- The Application is not in the public interest and may have an adverse environmental impact as it fails to adequately evaluate and protect against noise from the Project’s components, including but not limited to the inverters. In particular, the Project’s inverters are proposed for locations that are too close to Members’ homes and yards, so that the inverters’ humming noises will be heard at high, and annoying, levels.
- The Application is not in the public interest and may have an adverse environmental impact as it fails to adequately evaluate and protect against noise from the Project during the construction phase, including but not limited to, pile driving and site preparation work.
- The Application is not in the public interest and may have an adverse environmental impact as it fails to adequately identify, mitigate, and provide bonding for potential well water contamination from installed systems and structures related to the Project.
- The Application is not in the public interest and may have an adverse environmental impact as it fails to adequately evaluate, mitigate, and prepare for site equipment fire and other emergency events.
- The Application is not in the public interest as it fails to adequately provide financial assurance (e.g., bonding) for decommissioning, fire, flood, tornado or other catastrophic events.

- The Application is not in the public interest as it fails to adequately evaluate and address negative impact on residential property values.

Despite these well-pleaded concerns, Applicant attempts to downplay the Members' individual, substantial, and direct interests in this case by inappropriately offering arguments on the merits of the substance of the concerns.¹⁴ At this stage, the Members have not had the opportunity to issue or review discovery requests, to submit testimony, or to cross-examine the Applicant's witnesses. It is not a requirement for intervention that a party proves its concerns by a preponderance of the evidence; it is simply required that the party, "upon a showing of good cause," demonstrates "the nature and extent of the person's interests."¹⁵ The Members have thoroughly done so in their petition for leave to intervene and again herein.

Given the above-referenced concerns, and the fact that the Members own property in or reside in the Project area or adjacent to the Project area, the Members each have an individual, substantial, and direct interest in this proceeding to warrant intervention pursuant to Ohio Adm.Code 4906-2-12(B)(1). As such, No Prairie Solar, as the representative entity of the Members, is able to intervene on their behalf.

¹⁴ See, e.g., Memo Contra at 5 (claiming the petition for leave to intervene "is not accompanied by any indication that any [Member] would experience drainage tile impacts").

¹⁵ Ohio Adm. Code 4906-2-12(B)(1).

2. No Prairie Solar has a direct, real, and substantial interest in the Project on behalf of its Members.

The Applicant raises the issue of representational standing.¹⁶ Given the obvious standing of the individual Members and the interests of those Members, as well as Board and Public Utilities Commission of Ohio (PUCO) precedent, it seems unnecessary to fully address this issue. The Board (as well as the PUCO) routinely allows representative groups¹⁷ to participate in proceedings before it without a lengthy discussion of representational standing. Nevertheless, these arguments are easily dismissed.

First, an association has standing where its members would otherwise have standing to sue in their own right.¹⁸ As discussed above,¹⁹ No Prairie Solar's Members would have the standing to intervene on their own right, given their direct, real, and substantial interests in the Project.

Second, an association has standing where the interests it seeks to protect are germane to the organization's purpose.²⁰ The very purpose of No Prairie Solar is to represent its Members in this proceeding. Therefore, the interests that No Prairie Solar seeks to protect in this proceeding are not only germane to the organization's purpose, they are the organization's purpose itself. Indeed, the Applicant seems to concede this point, by noting that No Prairie Solar was formed in response to this proceeding.²¹ Furthermore, the Board has specifically allowed interested

¹⁶ Memo Contra at 2-3.

¹⁷ Such as the Ohio Hospital Association, the Ohio Manufacturers' Association Energy Group, the Industrial Energy Users of Ohio, Ohio Energy Group, Mission Data Coalition, the Smart Thermostat Coalition, and Retail Energy Supply Association.

¹⁸ *State ex rel. Am. Subcontractors Ass'n, Inc. v. Ohio State University*, 129 Ohio St.3d 111, 950 N.E.2d 535, 2011-Ohio- 2881, ¶ 12.

¹⁹ *See supra* Part II.1.

²⁰ *Am. Subcontractors Ass'n*, 2011-Ohio- 2881, ¶ 12.

²¹ *See* Memo Contra at 2 (noting No Prairie Solar did not exist prior to its participation in this proceeding).

individuals to form organizations for the purpose of collectively opposing utility facility projects in past proceedings.²²

Lastly, none of the claims asserted by No Prairie Solar require the participation of individual members of the proceeding rather than that of No Prairie Solar itself. In fact, by forming an organization to pool their resources and effectively, collectively represent their interests, the Members have ensured that they best serve the interests of judicial economy. The alternative, that each member files individually, using limited resources, would confuse and clutter the docket and lead to needless costs in time and expenses to all parties involved. By forming No Prairie Solar, the Members both contribute “to a just and expeditious resolution of the issues involved in the proceeding” and ensure their participation does not “unduly delay the proceeding or unjustly prejudice an existing party.”²³ By forming this organization and consolidating their participation on similar issues, the Members have further met the Board’s standard for granting intervention.

3. No other parties will adequately protect No Prairie Solar’s interests.

Without No Prairie Solar’s intervention, the interests of No Prairie Solar and its Members will not be “represented by existing parties.”²⁴ The Applicant falsely asserts that “other parties have already intervened specifically to provide input on all of these issues.”²⁵ In reality, the interests of No Prairie Solar, and its Members, differ significantly from those of existing parties.

²² See, e.g., *In the Matter of the Application of American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company for a Certificate of Environmental Compatibility and Public Need for the Geauga County 138 kV Transmission Line Supply Project*, Case No. 07-171-EL-BTX, Entry at ¶ 5 (Mar. 3, 2008) (granting intervention to Citizens Advocating Responsible Energy, a group whose “membership consists primarily of concerned residents” and whose “main purpose is to preserve and promote the existing natural environment and oppose the construction of a new transmission line.”).

²³ See Ohio Adm.Code 4906-2-12(B)(1).

²⁴ *Id.*

²⁵ Memo Contra at 7.

It is clear that existing parties do not and could not adequately or completely represent the interests of No Prairie Solar.

Again, the cases that the Applicant cites to provides precedent that undermines the Applicant's argument and favors the granting of No Prairie Solar's intervention. In a previous case, *In re Application of Republic Wind, LLC, for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, the Board granted intervention to individual property owners with a "defined nexus" to the project area.²⁶ It did so, despite the simultaneous intervention of the townships in which the project would be sited, and the OFBF.²⁷ The OFBF asserted to represent the interests of farmers with properties within the project area or adjacent to the project.²⁸ The townships asserted that the project would be located within their boundaries.²⁹ While these interests may have overlapped to some degree with the interests of the property owners, the Board accepted the property owners' argument that no other party adequately represented their interests and granted both interventions.³⁰

In another case cited by the Applicant, the Board denied intervention to a single individual who merely lived in the same county as the project and did "not make any specific claims about how the project will impact his well-being."³¹ This ruling clearly does not apply to No Prairie Solar. As described above, numerous Members reside or own property in or adjacent to the Project area. No Prairie Solar has identified a host of specific concerns regarding the impact of the Project

²⁶ Case No. 17-2295-EL-BGN, Entry at ¶ 20 (Aug. 21, 2018).

²⁷ *Id.* at ¶ 23.

²⁸ *Id.* at ¶ 24.

²⁹ *Id.* at ¶ 27.

³⁰ *See id.* at ¶ 10.

³¹ *In the Matter of the Application of South Field Energy LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Columbiana County*, Case No. 15-1716-EL-BGN, Opinion, Order, and Certificate at 4 (Sept. 22, 2016).

on their health, safety, and property and whether the Project will serve the public interest, convenience, and necessity.³²

Without support, the Applicant claims that the elected representatives of the Prairie Township and Pleasant Township (collectively, the Townships) “are well able to hear and convey their constituents’ concerns regarding each of the potential impacts cited in the Petition.”³³ Although the Applicant cannot speak for the Townships, the Townships’ own pleadings make it abundantly clear they are neither “hearing” their constituents’ concerns nor “conveying” their constituents’ concerns to the Board, as they have not even raised those concerns to the Board. In fact, to date, neither of the Townships has raised any concerns, let alone the concerns voiced by No Prairie Solar and its Members.³⁴ While the Townships may be aware of No Prairie Solar’s concerns, they have not truly heard those concerns or raised those concerns with the Board. How can Applicant be so sure that the Townships will do it sometime in the future through this proceeding? For months, the Members have voiced these concerns at regular and special Township meetings, with the hope that the Townships would in turn advance these concerns in the proceeding, and raise the concerns in their pleadings. The Townships did not commit to do such. In fact, before No Prairie Solar was organized and sought intervention, the Members waited to see if the Townships would raise their issues through the Townships’ intervention petitions. They did not. At this point, it seems apparent that the Townships will not raise No Prairie Solar’s issues, or at least not adequately and completely, which is the appropriate standard for the Board’s consideration.

³² See R.C. 4906.10.

³³ Memo Contra at 8.

³⁴ See, e.g., Notice of Intervention of Pleasant Township, Franklin County, Ohio and Memorandum in Support (May 12, 2021); Notice of Intervention of Prairie Township, Franklin County, Ohio and Memorandum in Support (May 7, 2021). Neither intervention raises any concerns at all with the Project.

Regardless of Applicant's skewed reading of Ohio law and the Board's rules, the standard is not whether the Townships could or will raise an intervenor's issues in the case or at some future point in time in the case, the standard is the nature and extent of the intervenor's interest, the extent to which an intervenor's interests are already being represented by existing parties, whether the intervenor will contribute to a just and expeditious resolution of the issues, whether the intervention will unduly delay the proceeding or unjustly prejudice an existing party, and whether good cause has been shown to grant the intervention. All of these factors weigh in favor of granting No Prairie Solar's intervention.

Furthermore, the Townships simply cannot and do not represent the same interests as No Prairie Solar or its Members. As discussed above,³⁵ the Members have a "defined nexus"³⁶ to the Project by virtue of residing or owning property in or adjacent to the Project area. Each of the Townships, meanwhile, stated that they "desire to represent the interests of the Township."³⁷ This includes all residents of the Townships, the majority of whom do not reside or own property in or adjacent to the Project area and includes each's Township's own interests as a governmental body. As discussed above, there are vastly different interests between individuals with a defined nexus to the Project, and those who merely live in the same county or township, as well as the Township itself.³⁸

Without support, the Applicant also claims that the Ohio Farm Bureau Federation (OFBF) and the Franklin County Metro Parks (Metro Parks) share the same interests as No Prairie Solar.

³⁵ *Supra* Part II.1.

³⁶ *See* Case No. 17-2295-EL-BGN, Entry at ¶ 20 (Aug. 21, 2018).

³⁷ *See, e.g.*, Notice of Intervention of Pleasant Township, Franklin County, Ohio and Memorandum in Support, Exhibit A at ¶ C (May 12, 2021); Notice of Intervention of Prairie Township, Franklin County, Ohio and Memorandum in Support, Exhibit A at ¶ C (May 7, 2021).

³⁸ Case No. 17-2295-EL-BGN, Entry at ¶¶ 20-21 (Aug. 21, 2018).

Applicant's sole reasoning for this claim is that OFBF and the Metro Parks have raised some of the same concerns with the Project, such as with insufficient drainage or setbacks.³⁹ While Applicant does correctly note that several parties have raised *concerns* with the adequacy of its Application and certain aspects of its Application, the fact remains that the parties do not share the same *interests* in the Project. Again, the Board considers "[the] extent to which the person's interest is represented by existing parties,"⁴⁰ not the extent to which they have similar concerns. It is quite a leap to suggest that the OFBF or the Metro Parks interests lie in ensuring the safety or protecting the value of residential property owned by the Members. Despite Applicant's attempts to minimize No Prairie Solar's valid concerns regarding the Project, it is clear that No Prairie Solar's interests are not being represented at all by other existing parties. It is also clear that No Prairie Solar's concerns are also not being represented adequately or completely by any existing parties.

III. CONCLUSION

By virtue of residing or owning property in or adjacent to the Project area, No Prairie Solar's Members each have a direct, real, and substantial interest in the Application. No other parties will represent their interests, and their intervention will not unduly delay the proceeding. As such, No Prairie Solar has standing to intervene on its Members' behalf. Applicants Memorandum Contra is without merit, fails to raise any legitimate and compelling arguments to demonstrate that good cause does not exist to grant No Prairie Solar's intervention, and should be rejected in its entirety. As such, No Prairie Solar respectfully requests that this Board grant it the

³⁹ Memo Contra at 8.

⁴⁰ Ohio Adm.Code 4906-2-12(B)(1).

right to intervene as a full party of record with all rights given to parties pursuant to Ohio Adm.Code 4906-2-11(A), Ohio Adm.Code 4906-2-12(A) and R.C. 4906.08(A)(3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Kimberly W. Bojko _____
Kimberly W. Bojko

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Case No(s). 20-1679-EL-BGN

Summary: Reply in Support of Petition for Leave to Intervene by No Prairie Solar, LLC electronically filed by Mrs. Kimberly W. Bojko on behalf of No Prairie Solar, LLC