

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF AEUG UNION SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1405-EL-BGN

ENTRY

Entered in the Journal on July 22, 2021

{¶ 1} AEUG Union Solar, LLC (Union Solar 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 first 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 were 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 were urged to heed the advice of ODH regarding this public health emergency in order to protect their health and safety.

{¶ 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 March 12, 2020, the Director of the ODH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On August 19, 2020, Union Solar filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B). Union Solar sought a waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person.

{¶ 6} On September 2, 2020, the administrative law judge (ALJ) granted Union Solar's motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 7} On September 21, 2020, Union Solar filed a pre-application notification letter with the Board. In the letter, Union Solar explained that for its proposed 325 megawatt solar-powered electric generation facility in Union County, Ohio (Project), construction is estimated to begin in early 2022, and it is scheduled to be in service by early 2023.

{¶ 8} On October 6, 2020, Union Solar held two public information meetings to discuss the proposed Project with interested persons and landowners.

{¶ 9} On October 6, 2020, Union Solar also filed its proof of publication for the public information meetings and submitted a copy of the notification of the proposed Project and the public information meetings and a list of addresses that the notice was sent to, in accordance with Ohio Adm.Code 4906-3-03(B)(2).

{¶ 10} On December 10, 2020, Union Solar held two more public information meetings to discuss the proposed Project with interested persons and landowners. Applicant filed a copy of the notification of the public information meetings and a list of addresses that the notice was sent to on December 2, 2020. Union Solar filed its proof of publication regarding the public information meetings with the Board on December 9, 2020.

{¶ 11} On December 23, 2020, Union Solar filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 12} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated February 19, 2021, corrected on February 22, 2021, the Board notified Union Solar that its application was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-

3-07, the Board's February 19, 2021 letter directed Union Solar to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Union Solar to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 13} On March 8, 2021, Union Solar filed a certificate of service of its accepted and complete application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 14} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the ALJ shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. Under R.C. 4906.07(A), the public hearing must be held not less than 60 nor more than 90 days after the effective date.

{¶ 15} By Entry issued March 17, 2021, the effective date of the application was established as March 17, 2021, the public hearing scheduled for June 3, 2021, and the adjudicatory hearing scheduled to commence on July 7, 2021. Also, the March 17, 2021 Entry advised that the Board would accept petitions to intervene up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by April 30, 2021, whichever is later, and established a procedural schedule directing Staff to file its report of investigation (Staff Report) on or before May 18, 2021; parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing by June 10, 2021; Union Solar to file all expert and factual testimony by June 23, 2021; Staff and intervenors to file all expert and factual testimony by July 1, 2021; and parties to file any stipulation along with associated testimony by July 6, 2021.

{¶ 16} On March 24, 2021, pursuant to R.C. 4906.08(A)(2) and Ohio Adm.Code 4906-2-12(A)(1), the Union Solar and Water Conservation District (WCD) timely filed a notice of intervention in this proceeding. On April 6, 2021, the Board of Trustees of York Township

in Union County (York Township Trustees) and Union County Board of County Commissioners (Union County Board) timely filed notices of intervention in this proceeding. No memoranda contra were filed opposing the notices filed by the above parties. By Entry issued June 17, 2021, the ALJ granted intervention for the WCD, York Township Trustees, and Union County Board.

{¶ 17} On April 12, 2021, Union Solar filed a proof of service regarding the accepted, complete application being sent to government officials, libraries, and affected property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(1). Union Solar also filed proof of publication of the accepted, complete application being published on March 22, 2021, in the *Marysville Journal-Tribune*, a newspaper of general circulation in Union County, in accordance with R.C. 4906.06(C).

{¶ 18} On April 27, 2021, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene pursuant to Ohio Adm.Code 4906-2-12. No parties filed a memorandum contra the motion to intervene. By Entry issued June 17, 2021, the ALJ granted OFBF's motion to intervene.

{¶ 19} On May 17, 2021, Staff filed a motion for a one-day extension of time to file the Staff Report and a request for an expedited ruling. By Entry issued on May 18, 2021, the ALJ, pursuant to Ohio Adm.Code 4906-2-07, granted Staff's motion for an extension of time. The ALJ further directed that the remaining procedural deadlines established in the March 17, 2021 Entry would remain the same.

{¶ 20} On May 17, 2021, the Director of the ODH issued an Order indicating that "except in certain limited circumstances, fully vaccinated persons may safely do most activities without a facial covering and without socially distancing." This Order was intended to align the state of Ohio's health orders with new guidance from the Centers for Disease Control and Prevention (CDC). These new guidelines became effective in the state of Ohio on June 2, 2021.

{¶ 21} The Staff Report was filed on May 19, 2021.

{¶ 22} On May 27, 2021, Applicant filed the proof of service and publication of the second public notice pursuant to Ohio Adm.Code 4906-3-09(A)(2). The second public notice included information regarding the date, time, and process to participate in the public hearing, as well as the date and time of the adjudicatory hearing.

{¶ 23} The local public hearing was held, as scheduled, via Webex on June 3, 2021; 15 people provided testimony.

{¶ 24} On June 10, 2021, the Applicant filed its list of issues citing specific concerns about which it may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing. On the same date, WCD and York Township Trustees jointly filed their list of issues. On June 11, 2021, the Union County Board filed its respective list of issues.

{¶ 25} On June 16, 2021, Union Solar, Staff, WCD, York Township Trustees, Union County Board, and OFBF filed a joint motion to continue the deadlines for the filing of testimony and to call and continue the adjudicatory hearing and a request for expedited ruling. By Entry issued June 17, 2021, the ALJ granted the joint motion to continue the deadlines, to allow the parties to engage in settlement discussions, and to call and continue the July 7, 2021 hearing via Webex.

{¶ 26} The hearing was called and continued, as scheduled, via Webex on July 7, 2021. At the status conference following the hearing, the parties indicated that they are still engaged in settlement negotiations. The ALJ also notified the parties that a second local public hearing would be scheduled in this matter and agreed to another status conference.

{¶ 27} As noted above, the local public hearing in this matter was held through Webex on June 3, 2021. However, to afford the public an additional opportunity to testify regarding the proposed Project, a second local public hearing will be held on August 16, 2021, for individuals who did not provide testimony at the first local public hearing on June

3, 2021, and are not a party in the case. The August 16, 2021 local public hearing shall be held at 6:00 p.m., at Bunsold Middle School, 14198 OH State Route 4, Marysville, Ohio 43040. Consistent with CDC Guidelines and the May 17, 2021 ODH Order, individuals who are not fully vaccinated should continue to wear a face covering and socially distance. For those individuals interested in testifying at the in-person local public hearing, a sign-in sheet will be available at the facility and witnesses will be taken in the order in which they register to testify. If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document should be provided to the ALJ during the local public hearing. Testimony to be provided will be limited to five minutes in duration.

{¶ 28} The Applicant should issue public notice of the second local public hearing. The notice should be published, at least 15 days before the second local public hearing, in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the Project; a map showing the location and general layout of the proposed facility; a statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the Board; the date and time of the second local public hearing; a statement that the hearing will be held in person and the location of the hearing; and a statement that the public will be given an opportunity to comment on the proposed facility. Additionally, the notice should include the following statement: "Consistent with CDC Guidelines and the May 17, 2021 Ohio Department of Health Order, unless otherwise specified by the facility, individuals who are not fully vaccinated should continue to wear a face covering and socially distance. Please contact the legal department at 614-466-6843 to ask any questions or request accommodations related to health protocols."

{¶ 29} A second status conference shall be scheduled for August 18, 2021, at 10:00

a.m., for the parties to update the ALJs on the status of negotiations and the future procedural schedule. To participate in the status conference, the parties shall call 614-721-2972 and enter 620 461 917 #, when prompted.

{¶ 30} It is, therefore,

{¶ 31} ORDERED, That a second local public hearing in this matter be scheduled and held in accordance with Paragraph 27. It is, further,

{¶ 32} ORDERED, That notice of the second local public hearing be published by the Applicant in accordance with Paragraph 28. It is, further,

{¶ 33} ORDERED, That a second status conference be scheduled and held in accordance with Paragraph 29. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Matthew J. Sandor

By: Matthew J. Sandor
Administrative Law Judge

SJP/kck

This foregoing document was electronically filed with the Public Utilities

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7/22/2021 3:11:58 PM

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Summary: Administrative Law Judge Entry ordering that a second local public hearing in this matter be scheduled and held in accordance with Paragraph 27; ordering that notice of the second local public hearing be published by the Applicant in accordance with Paragraph 28 and ordering that a second status conference be scheduled and held in accordance with Paragraph 29.
electronically filed by Kelli C. King on behalf of Matthew Sandor, Administrative Law Judge, Ohio Power Siting Board