

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF PLEASANT PRAIRIE SOLAR ENERGY
LLC FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED.

CASE NO. 20-1679-EL-BGN

ENTRY

Entered in the Journal on August 5, 2021

{¶ 1} Pleasant Prairie Solar Energy LLC (Pleasant Prairie 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 November 25, 2020, Applicant filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of an up to 250 megawatt solar-powered electric generation facility located in Pleasant and Prairie townships, Franklin County, Ohio (Project). Applicant further stated in the letter that it had scheduled a virtual public information meeting for December 14, 2020.

{¶ 4} On February 19, 2021, as supplemented on April 7, 2021, and April 21, 2021, Applicant filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 5} By Entry dated May 11, 2021, as amended by the Entry dated June 28, 2021, a procedural schedule was established in this matter. As part of the June 28, 2021 Entry, the administrative law judge (ALJ) also granted the petitions and notices of intervention filed by Pleasant Township, Prairie Township, the Board of Park Commissioners of the Columbus and Franklin County Metro Parks (Metro Parks), and the Ohio Farm Bureau Federation (OFBF).

{¶ 6} On June 25, 2021, No Prairie Solar, LLC (NPS) filed a petition for intervention in this proceeding. According to its petition, NPS is a limited liability company organized under Ohio law for the purpose of protecting its members' interests in regard to Applicant's proposed Project. Its members include 75 individuals who own property nearby or adjacent to the proposed Project. NPS avers that it has a direct, real, and substantial interest in the outcome of this case inasmuch as the proposed Project will be constructed and operated near its members' homes and properties. Specifically, the petition reflects that several members own property adjacent to the proposed Project on one or more sides.

{¶ 7} NPS believes that the proposed Project will have serious adverse impacts on its members' homes and properties, including, but not limited to, an adverse effect on the visual and aesthetic enjoyment of living in the area. According to NPS, the application does not provide a detailed commitment for planting vegetation barriers between the solar project structures and equipment and its members' properties. NPS avers that, while the application provides for planting of some vegetation inside and outside of the Project area, it fails to provide for adequate measures to sustain the vegetation or keep it alive. It also submits that the application fails to adequately evaluate and protect against daily and seasonal changes to observed glare from the solar arrays. Additionally, NPS opines that the application fails to identify the specific location for the solar panels, night lights, and other components and, instead, defers this identification to post-certificate issuance. Further, NPS believes that the setbacks proposed between the neighboring properties and the proposed Project's fences and components are too short to protect the neighboring properties. Finally, NPS states that the application does not sufficiently provide for the identification, protection, and repair of drainage tiles that are damaged by the construction of the proposed Project.

{¶ 8} On July 12, 2021, Pleasant Prairie filed a memorandum contra the motion to intervene. Pleasant Prairie submits that the motion articulates a generalized interest in opposing the Project but that the interest is unsupported by specific factual allegations sufficient to demonstrate the real, substantial, and unique interest required to justify

intervention in this proceeding. Citing *State ex rel. Am. Subcontractors Ass'n, Inc. v. Ohio State University*, 129 Ohio St.3d 111, 2011-Ohio-2881, 950 N.E.2d 535, Pleasant Prairie asserts that the motion to intervene fails to include important predicate facts that the Board needs in order to assess the actual nature and extent of the relevant interests, including (a) the identities of the members of NPS, (b) whether any of those members will suffer particular harm from the types of impacts alleged beyond the effects applicable to any area resident, and (c) whether other parties to the proceeding adequately represent the interests of its members.

{¶ 9} Specifically, Applicant contends that by not identifying any specific member of NPS, the Board cannot adequately consider the applicability of the relevant criteria for intervention. Citing the Board's determinations in *In re Application of Firelands Wind, LLC*, Case No. 18-1607-EL-BGN, Entry (June 25, 2019) at 6; *In re Application of Republic Wind, LLC*, Case No. 17-2295-EL-BGN, Entry (Apr. 23, 2019) at 5; *In re Application of Republic Wind, LLC*, Case No. 17-2295-EL-BGN, Entry (Aug. 21, 2018) at 7; and *In re Application of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018) at 5-6, Applicant submits that the Board has repeatedly declined to grant intervention to individuals that do not own property within a project's footprint or abutting a project due to the failure to demonstrate a sufficient direct interest at stake in the outcome of a project application. Inasmuch as NPS failed to identify any individual member who lives or owns property within or abutting the Project area, Applicant asserts that the motion for intervention should be denied due to the fact that the Board is unable to assess the validity of alleged harm.

{¶ 10} Additionally, citing *In re Application of Republic Wind LLC*, Case No. 17-2295-EL-BGN, Entry (Aug. 21, 2018) at 7; and *In re Application of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018) at 6, Applicant opines that local input of NPS regarding generic concerns related to the Project can be provided at the local public hearing. Further, Applicant contends that existing parties to the case can sufficiently represent the interests set forth in NPS's petition to intervene and that NPS will not contribute to a just

and expeditious resolution of the proceeding. Finally, Applicant opines that its application extensively addresses the concerns raised by NPS.

{¶ 11} On July 16, 2021, NPS filed a reply in support of its petition for leave to intervene, responding to what it calls Applicant's attempts to block participation by property owners in this case. NPS asserts that its individual members have direct, real, and substantial interests in the Project. NPS states that its members are able to demonstrate a "defined nexus" to the Project, based on direct interests of each individual, and in support of this claim, NPS specifically lists 15 of its members who reside in or own property in the Project area or abutting the Project. Therefore, NPS believes that each of its members 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), but rather than intervene individually, its members are collaborating and consolidating their efforts to be more efficient and economical in their participation in the case. By forming an organization to pool resources, NPS believes that its members will contribute to judicial economy in the proceeding and will not unduly delay the case or unjustly prejudice an existing party.

{¶ 12} NPS restates the specific concerns about the Project and the application which it fully outlined in its petition. NPS stresses that its interests in these issues will not be adequately represented by existing parties. NPS believes that the cases cited by Applicant as precedent are inapplicable, as those cases included individuals that did not have a "defined nexus" to the Project. NPS does not feel that the intervening townships can adequately represent its interests, as the townships will be representing all of their constituents, not just those that reside or own property in and around the Project area. Similarly, NPS dismisses the notion that the interests of OFBF and Metro Parks align with those of its members. NPS acknowledges that many of its concerns might also be raised by other parties but asserts that NPS's *interests* differ significantly from those of other intervenors. NPS, therefore, believes that it followed Ohio law and the Board's rules and timely filed a petition that satisfies the requirements of intervention outlined in R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12, and that its petition should be granted.

{¶ 13} An ALJ may grant intervention, pursuant to Ohio Adm.Code 4906-2-12, upon a showing of good cause, which the Board has historically held is shown when the person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010). Further, R.C. 4906.08(A) and Ohio Adm.Code 4906-2-12(B) provide that, in deciding whether to permit timely intervention, the following factors may be considered: the nature and extent of the prospective intervenor's interest; the extent to which the prospective intervenor's interest is represented by existing parties; the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; and, whether the intervention by the prospective intervenor will unduly delay the proceeding or unjustly prejudice an existing party.

{¶ 14} The ALJ notes that the Board has previously determined that living in the county of a proposed project is not enough on its own to warrant intervention. *In re South Field Energy LLC*, Case No. 15-1716-EL-BGN, Opinion, Order, and Certificate (Sept. 22, 2016) (where the Board stated that the general concerns as citizens and ratepayers are better represented by the intervening local governments representing their citizens). While the Board's standard is generally construed in favor of intervention, a more defined nexus must be present. *In re Icebreaker Windpower Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018). The Board has granted petitions to intervene when the petitioner can demonstrate an individual, direct interest is at stake in the outcome of a proceeding. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) (where the Board granted intervention to individuals with property that abuts directly with the proposed project site).

{¶ 15} Specific to NPS, the ALJ notes that its initial petition to intervene contained no names or addresses for any of the NPS members or relevant maps to allow for a determination of the location of the affected properties relative to the proposed Project area.

Instead of asserting specificity with respect to its unique basis for intervention, NPS submitted generic arguments alleging close proximity to the Project area and the resulting impact. Absent a clear delineation of the specific individuals seeking intervention and their respective addresses, the ALJ is unable to determine the specific nexus of the requested intervention relative to the proposed Project. After this lack of information was highlighted by Applicant in its memorandum contra, NPS provided in its reply to the Applicant's memorandum contra the names and addresses of 15 members which it represents as residing in or owning property in the Project area or abutting the Project. With this representation, NPS has shown that it has members who have a real and substantial interest in the proceeding.

{¶ 16} With respect to Ohio Adm.Code 4906-2-12(B)(1)(b), Applicant rightly points out that one of the factors to consider when ruling upon a motion to intervene is the extent to which the person's interest is represented by existing parties. While existing parties in this case may raise similar concerns to those expressed by NPS and its members, it is not certain that the interests of other intervening parties are aligned with those of NPS. Therefore, intervention shall be granted to NPS.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the petition to intervene filed by NPS be granted, in accordance with Paragraph 16. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ David M. Hicks

By: David M. Hicks
Administrative Law Judge

SJP/kck

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

Summary: Administrative Law Judge Entry granting the petition to intervene filed by NPS, in accordance with Paragraph 16. electronically filed by Kelli C. King on behalf of David M. Hicks, Administrative Law Judge, Ohio Power Siting Board