

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
SOUTH BRANCH SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
HANCOCK COUNTY, OHIO.

CASE NO. 21-669-EL-BGN

ENTRY

Entered in the Journal on November 1, 2021

{¶ 1} South Branch Solar, LLC (South Branch 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 June 8, 2021, South Branch filed its preapplication notice informing the Board of a to be proposed 205 megawatt (MW) solar-powered electric generation facility to be constructed in Washington Township, Hancock County, Ohio (Project). Further, the notice stated that South Branch would be hosting a public information meeting on June 24, 2021 in Arcadia, Ohio.

{¶ 4} On June 17, 2021, South Branch filed its notice of compliance with Ohio Adm.Code 4906-3-03(B)(1), which requires the Applicant to publish notice of the public information meeting in a newspaper of general circulation in the project area. Notice of the public information meeting was published in *The Courier* on June 12, 2021.

{¶ 5} Ohio Adm. Code 4906-3-03(B)(2) directs that the applicant notify each property owner and affected tenant of the public information meeting and provide other pertinent information about the proposed project and Board process.

{¶ 6} On June 21, 2021, South Branch filed a letter indicating compliance with the requirements of Ohio Adm.Code 4906-3-03(B)(2) to notify property owners and affected tenant within the project area.

{¶ 7} On July 22, 2021, South Branch filed its application for a certificate to construct the Project.

{¶ 8} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair 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.

{¶ 9} On September 20, 2021, the Board notified South Branch that its application, including data request responses, was found to be sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., 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 letter instructed South Branch 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 the Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12. Staff also identified additional information that would be requested in the course of its investigation to ensure that Staff would be able to conduct its review of the application, including but not limited to, an updated decommissioning plan, a concurrence from Ohio Environmental Protection Agency regarding the Arcadia Village Dump, identification of any proposed electric transmission lines and associated facilities to be constructed by South Branch within the project area and an Engineering Constructability Report.

{¶ 10} On September 24, 2021, South Branch filed proof of service of its accepted and complete application on local officials and the main public library as required by Ohio Adm.Code 4906-3-07(A). Further, South Branch states that it maintains a copy of its accepted complete application on its website.

{¶ 11} On September 24, 2021, South Branch also filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 12} 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 administrative law judge (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. R.C. 4906.07(A) directs that the public hearing be held not less than 60 nor more than 90 days after the effective date.

{¶ 13} The effective date of the application shall be November 1, 2021. The ALJ finds that the local public hearing in this matter shall be held on January 26, 2022, at 6:00 p.m., at Findlay Elks Lodge #75, 900 W. Melrose Avenue, Findlay, Ohio 45840. Consistent with CDC Guidelines and the May 17, 2021 Ohio Department of Health 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.

{¶ 14} The evidentiary hearing will commence on February 14, 2022, at 10:00 a.m., EST, and shall be conducted via remote access technology. Instructions for participation in the adjudicatory hearing will be emailed to the parties. Additionally, all exhibits intended to be used on direct and cross-examination shall be marked and exchanged by the parties and provided to the ALJ via electronic means prior to the hearing. Individuals interested in attending the evidentiary hearing as a non-party can access the hearing using the link <https://bit.ly/21-669-ADI> and entering the password OPSB, or by calling 1-408-418-9388 and entering the access code 2339 180 1428.

{¶ 15} Additionally, the ALJ finds that petitions to intervene in this proceeding will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by December 17, 2021, whichever is later.

{¶ 16} South Branch should issue public notice of the application and scheduled hearings in accordance with Ohio Adm.Code 4906-3-09(A)(2). Consistent with Ohio Adm.Code 4906-3-09(A)(2), the notice should be a written notice to those persons that received the initial notice pursuant to Ohio Adm.Code 4906-3-09(A)(1) and should be published 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 at least seven days before the public hearing. 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 pending before the Board; the date and time of the evidentiary and local public hearings; a statement that the evidentiary and local public hearings will be held in person and the location of each 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.” In addition, the notice shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written and oral testimony from members of the public who are not parties to the case on January 26, 2022, in a session

beginning at 6:00 p.m., at Findlay Elks Lodge #75, 900 W. Melrose Avenue, Findlay, Ohio 45840.

- (b) An evidentiary hearing to commence on February 14, 2022, at 10:00 a.m. EST, via Webex, remote access technology that facilitates participation by telephone and/or live video on the internet. The purpose of the evidentiary hearing is for South Branch, Staff, and intervenors to provide evidence regarding the Project.

{¶ 17} Further, regarding the initial newspaper notice required pursuant to R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, South Branch shall include the following statement as part of the public notice:

Petitions to intervene in the evidentiary hearing will be accepted by the Board up to 30 days following service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, or December 17, 2021, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the evidentiary hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 18} Ohio Adm.Code 4906-2-09(B) provides that the ALJ shall regulate the course of the hearing, including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation (Staff Report) on or before January 11, 2022.

- (b) On or before January 31, 2022, each party shall file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by Applicant shall be filed by February 2, 2022.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by February 7, 2022.
- (e) Any stipulation entered into by the parties shall be filed by noon on February 11, 2022, along with the associated testimony supporting the stipulation.

{¶ 19} The ALJ encourages the parties to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJs.

{¶ 20} In conjunction with the application, on July 22, 2021, South Branch also filed a motion for waiver of Ohio Adm.Code 4906-4-08(D)(2) through (D)(4). Ohio Adm.Code 4906-4-08(D)(2) through (4) require that an applicant provide information regarding the cultural resources and landmarks within ten miles of the project area, including information and an evaluation of the impact of the proposed project on landmarks, and recreation and scenic areas, a plan to avoid and mitigate any adverse impacts on landmarks, as well as an evaluation of the visual impact of the proposed project within a ten-mile radius of the project area. In its motion for waiver, South Branch requests a reduction in the study area of the impact of the proposed project on the preservation and continued meaningfulness of the registered landmarks from a ten-mile radius to a two-mile radius and, in regard to scenic and recreation areas, and visibility and viewshed, from a ten-mile radius to within a five-mile vicinity of the Project area. South Branch asserts that good cause exists to grant the waiver, as explained in the Visual Impact Assessment at Appendix R of the application, as

a result of the low profile of the facility, the screening afforded by vegetation and existing structures, and given that the visibility of the planned components is anticipated to be limited to the immediate vicinity of the Project. The Applicant notes that the Visual Impact Assessment provides information on the lack of impacts to landmarks. According to the Assessment, as a result of the nature of the technology and the setting, no effects are anticipated on landmarks or scenic and recreation areas outside of the immediate Project area, although the effects beyond the immediate area were studied and considered within a five-mile radius of the Project. Finally, South Branch notes that the Board has approved similar requests for waiver to other solar projects. *In re Application of Union Ridge Solar, LLC*, Case No. 20-1757-EL-BGN, Entry (June 25, 2021); *In re Application of Ross County Solar, LLC*, Case No. 20-1380-EL-BGN, Entry (Jan. 20, 2021); *In re Application of Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (July 9, 2020).

{¶ 21} No memorandum contra South Branch's request for waiver was filed.

{¶ 22} On September 29, 2021, Staff filed leave to respond out of time and filed a response to the Applicant's motion for waiver. Staff states that the studies submitted by South Branch are sufficient and that the rule should be waived in this case. Staff further notes, as the Applicant observed, the Board has granted similar waivers to other solar projects. Accordingly, Staff does not object to the request for waiver. However, Staff states that it reserves the right to require the results from the Applicant in the area covered by the requested waiver if Staff determines such information to be necessary in the course of its investigation.

{¶ 23} Ohio Adm.Code 4906-4-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-4 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 24} In consideration of South Branch's motion for waiver and the information provided in the Visual Impact Assessment, the ALJ finds that good cause exists to grant South Branch's motion for waiver of Ohio Adm.Code 4906-4-08(D)(2) through (D)(4).

Further, the ALJ finds that should Staff determine that information regarding areas covered by the requested waiver is necessary for Staff's investigation of the application, the Applicant is expected to comply with any resulting requests for information from Staff.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the effective date of the application be established, and the hearings scheduled as set forth in Paragraphs 13 and 14. It is, further,

{¶ 27} ORDERED, That notice of the application and the hearings be published by South Branch in accordance with Paragraphs 16 and 17. It is, further,

{¶ 28} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 18. It is, further,

{¶ 29} ORDERED, That South Branch's motion seeking waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted pursuant to Paragraph 24. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Greta See

By: Greta See

Administrative Law Judge

JRJ/hac

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 21-0669-EL-BGN

Summary: Administrative Law Judge Entry ordering that the effective date of the application be established, and the hearings scheduled as set forth in Paragraphs 13 and 14; that notice of the application and the hearings be published by South Branch in accordance with Paragraphs 16 and 17; the parties observe the filing deadlines set forth in Paragraph 18; and, that South Branch's motion seeking waiver of Ohio Adm.Code 4906-4-08(D)(2) through (4) be granted pursuant to Paragraph 24 electronically filed by Heather A. Chilcote on behalf of Greta See, Administrative Law Judge, Power Siting Board