

4. The person or persons who consulted with or discussed with any Ohio Power Siting Board employee, agent, or board member regarding the setbacks.

From the Ohio Power Siting Board (the "Board"), EVS seeks subpoenas of the following persons to testify at the adjudicatory hearing:

5. The Board Staff member or members or responsible reviewing the construction plans submitted in accordance with Condition 8 of the project certificate in this proceeding.
6. Board Staff member, Robert Ashton Holderbaum and any Board Staff members involved in creating the Compliance Inquiry Report filed in this proceeding.

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)

Kegler Brown Hill + Ritter Co., L.P.A.

65 E State St., Ste. 1800

Columbus, OH 43215-4295

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rdove@keglerbrown.com

(Willing to accept service by email)

Attorney for EVS, Inc.

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Hecate Energy Highland 4, LLC for) Case No. 20-1288-EL-BGN
A Certificate of Environmental Compatibility)
And Public Need.)

**MEMORANDUM IN SUPPORT OF THE MOTION FOR SUBPOENAS FOR OHIO
POWER SITING BOARD STAFF AND REPRESENTATIVES OF NEW MARKET
SOLAR PROJECTCO 1, LLC AND NEW MARKET SOLAR PROJECTCO 2, LLC**

I. Introduction

EVS, Inc. (“EVS”) seeks a subpoena to require certain members of the Ohio Power Siting Board Staff and representatives from New Market Solar ProjectCo 1, LLC and New Market Solar ProjectCo 2, LLC (collectively, “New Market”) or other designated representatives of Staff or New Market to appear at the hearing in this matter. EVS seeks to examine such individuals on various matters related to the development and acceptance of the initial construction and design drawings for the project as well as regarding discussions and decisions related to the determination the design and construction was out of compliance with the certificate in this proceeding. The basis for these requests is more fully set forth below.

II. Background

This proceeding began in 2020 and the original intervention deadline was December 30, 2020.¹ On March 18, 2021, the Board issued its Opinion and Order granting a certificate in this proceeding. Over a year and a half later, on October 18, 2022, Staff issued a Compliance Inquiry Report regarding certain setbacks that were allegedly constructed out of compliance with the certificate. Specifically, the Compliance Inquiry Report indicated that several areas of the solar

¹ Entry ¶32 (Nov. 18, 2020).

array were not in compliance with a purported 100' setback requirement. On February 16, 2023, almost a full two years after the original Opinion and Order, the Board directed the ALJ to set the matter for hearing on the alleged non-compliance.

EVS is an engineering firm hired to design the facility layout for the Project. EVS worked with the Project owner's contractor and submitted designs through multiple stages which, to EVS' understanding, were then reviewed and approved by the contractor and Project owner in consultation with Board Staff. EVS was not a part of the review process which was intended to confirm the Project's design was in accordance with the certificate. Now, at the November 14, 2023, adjudicatory hearing, the purported non-compliance of the Project's design is at issue. At that hearing, EVS will need to better understand the analysis, reasoning, process, and motivations for Staff's determination that the Project is out of compliance as well as the communications between Staff and the Project owner during the design and construction phase. The requested subpoenas will ensure EVS the opportunity to gather the necessary information to create a complete record for the Board.

III. Law and Argument

Ohio Admin. Code 4906-2-23 establishes a right for parties to obtain subpoenas for testimony at the adjudicatory hearing. The Ohio Supreme Court has explicitly affirmed that this right extends to members of the Board Staff: "If appellants desired to examine the seven [Board] staff members, they also had mechanisms available to compel their attendance. Most importantly, as parties to the certification proceeding, appellants had the ability to subpoena the staff members under Ohio Adm.Code 4906-7-08."¹ *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43 at 48 (2013).

The Staff's determination and rationale behind the determination that the Project is out of compliance, despite being built to the specifications the Staff presumably reviewed and approved consistent with the certificate conditions is key to understanding whether the Project is out of compliance and, if so, the appropriate and equitable remedy. Understanding the analysis, reasoning, process, and motivations underlying the Board Staff's decision to allege non-compliance after review and approval is essential. And the only way to fully understand the reasoning, process, and motivations is to speak directly with the persons involved in making those determinations.

Therefore, EVS seeks to use the administrative mechanism available to it to compel certain Board Staff members and Project owner representatives' presence at the adjudicatory hearing. As a party to the proceeding, EVS wishes to subpoena members of both the Board Staff and or any designated employees of the Public Utilities Commission of Ohio as well as Project owner representatives to testify at the adjudicatory hearing. Failure to issue the subpoenas would unreasonably and prejudicially restrict EVS' opportunity to present a complete record for the Board.

IV. Conclusion

For the foregoing reasons, EVS respectfully requests that the Administrative Law Judge grant its motion for subpoenas.

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)

Kegler Brown Hill + Ritter Co., L.P.A.

65 E State St., Ste. 1800

Columbus, OH 43215-4295

Office: (614) 462-5443

rdove@keglerbrown.com

(Willing to accept service by email)

Attorney for EVS, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on October 25, 2023.

/s/ Robert Dove
Robert Dove

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
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And Public Need.)

SUBPOENA

TO: New Market Solar ProjectCo 1, LLC & New Market Solar ProjectCo 2, LLC
354 Davis Rd.
Oakville, ON Canada L6J 2X1
c/o Corporation Service Company 50 W. Broad St., Suite 1330 Columbus, OH 43215

Upon application of EVS, Inc., the person or persons employed or contracted by New Market Solar ProjectCo 1, LLC and or New Market Solar ProjectCo 2, LLC or their respective owners or predecessors in interest, who approved final construction drawings for submission to the Ohio Power Siting Board for the solar project now known as New Market Solar 1 and New Market Solar 2, is hereby required to appear before the Ohio Power Siting Board as a witness for EVS, Inc. in the following proceeding:

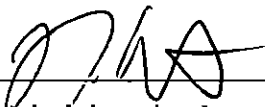
Case No. 20-1288-EL-BGN

Case Title: In the Matter of the Application of Hecate Energy Highland 4, LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear in person at the adjudicatory hearing on the 14th day of November, 2023 at 10:00 a.m., Eastern time at the Ohio Power Siting Board’s offices at 180 East Broad Street, Columbus Ohio 43215, 11th Floor, Hearing Room 11-D.

That identified representatives of New Market Solar ProjectCo 1, LLC and or New Market Solar ProjectCo 2, LLC or their respective owners or predecessors in interest are requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this 25th day of October 2023.



Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Hecate Energy Highland 4, LLC for) Case No. 20-1288-EL-BGN
A Certificate of Environmental Compatibility)
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SUBPOENA

TO: New Market Solar ProjectCo 1, LLC & New Market Solar ProjectCo 2, LLC
354 Davis Rd.
Oakville, ON Canada L6J 2X1
c/o Corporation Service Company 50 W. Broad St., Suite 1330 Columbus, OH 43215

Upon application of EVS, Inc., the person or persons employed or contracted by New Market Solar ProjectCo 1, LLC and or New Market Solar ProjectCo 2, LLC or their respective owners or predecessors in interest, who approved any drawings identifying any equipment setbacks submitted to the Ohio Power Siting Board for the solar project now known as New Market Solar 1 and New Market Solar 2, is hereby required to appear before the Ohio Power Siting Board as a witness for EVS, Inc. in the following proceeding:

Case No. 20-1288-EL-BGN

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That identified representatives of New Market Solar ProjectCo 1, LLC and or New Market Solar ProjectCo 2, LLC or their respective owners or predecessors in interest are requested to appear at the beginning of the hearing and be available day-to-day to testify.

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SUBPOENA

TO: Robert Ashton Holderbaum, Utility Specialist 2
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of EVS, Inc, Robert Holderbaum is hereby required to appear before the Ohio Power Siting Board as a witness for EVS, Inc. in the following proceeding:

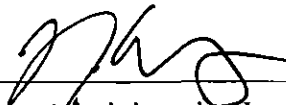
Case No. 20-1288-EL-BGN

Case Title: In the Matter of the Application of Hecate Energy Highland 4, LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear in person at the adjudicatory hearing on the 14th day of November, 2023 at 10:00 a.m., Eastern time at the Ohio Power Siting Board’s offices at 180 East Broad Street, Columbus Ohio 43215, 11th Floor, Hearing Room 11-D.

Robert Holderbaum is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this 25th day of October 2023.



Administrative Law Judge

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SUBPOENA

TO: Ohio Power Siting Board Staff Member
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of EVS, Inc, the Ohio Power Siting Board Staff member or members, responsible for reviewing the construction places submitted in accordance with Condition 8 of the Certificate issued in this proceeding is hereby required to appear before the Ohio Power Siting Board as a witness for EVS, Inc. in the following proceeding:

Case No. 20-1288-EL-BGN

Case Title: In the Matter of the Application of Hecate Energy Highland 4, LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear in person at the adjudicatory hearing on the 14th day of November, 2023 at 10:00 a.m., Eastern time at the Ohio Power Siting Board’s offices at 180 East Broad Street, Columbus Ohio 43215, 11th Floor, Hearing Room 11-D.

The Ohio Power Siting Board Staff member is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this 25th day of October 2023.



Administrative Law Judge

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And Public Need.)

SUBPOENA

TO: Ohio Power Siting Board Staff Member
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of EVS, Inc, the Ohio Power Siting Board Staff member or members, responsible for drafting the Compliance Inquiry Report is hereby required to appear before the Ohio Power Siting Board as a witness for EVS, Inc. in the following proceeding:

Case No. 20-1288-EL-BGN

Case Title: In the Matter of the Application of Hecate Energy Highland 4, LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear in person at the adjudicatory hearing on the 14th day of November, 2023 at 10:00 a.m., Eastern time at the Ohio Power Siting Board’s offices at 180 East Broad Street, Columbus Ohio 43215, 11th Floor, Hearing Room 11-D.

The Ohio Power Siting Board Staff member is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this 25th day of October 2023.



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