

FILE

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Application of)
Hecate Energy Highland 4, LLC for)
A Certificate of Environmental Compatibility)
And Public Need.)

Case No. 20-1288-EL-BGN

PUCO

REVISED MOTION FOR SUBPOENAS FOR REPRESENTATIVES OF NEW MARKET SOLAR PROJECTCO 1, LLC AND NEW MARKET SOLAR PROJECTCO 2, LLC AND NOTICE OF SERVICE ON THE OHIO POWER SITING BOARD

Pursuant to Ohio Admin. Code 4906-2-23, EVS, Inc. ("EVS") respectfully moves to issue subpoenas to the following persons to appear and testify at the November 14, 2023, adjudicatory hearing in this matter. Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. EVS previously filed a Motion for Subpoenas seeking subpoenas for both Board Staff members and/or representatives as well as representatives from the New Market Solar ProjectCo 1, LLC and New Market Solar ProjectCo 2, LLC (collectively, "New Market Solar") on October 25, 2023. Counsel for EVS served Counsel for the Board, Assistant Attorney General Thomas Lindgren, and subsequently spoke with him and he stated he would accept service on the Board's behalf for the subpoenas directed to Board Staff and or representatives. Please accept this notice as the notice required by Ohio Adm. Code 4906-2-23(B).

The subpoenas were mailed out for the New Market Solar via certified mail and returned "Return to Sender" (see attached). Upon further investigation it became clear the subpoenas were inadvertently, incorrectly addressed to a prior corporate statutory agent. The subpoenas made part of this Revised Motion have been updated to reflect the current corporate statutory agent. The Motion in Support remains the same.

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EVS seeks subpoenas for the following persons to testify at the adjudicatory hearing related to the submission and or review of the design and or construction drawings for the project in this proceeding as well as the individuals involved in establishing and reviewing the setbacks. Specifically, EVS from New Market Solar ProjectCo 1, LLC, and New Market Solar ProjectCo 2, LLC, or their respective corporate parents EVS seeks the following persons to testify at the adjudicatory hearing:

1. The person or persons responsible for reviewing and approving design and/or construction drawings for the project at 30%, 60%, and 90% completion;
2. The person or persons who approved for submission final drawings to the Ohio Power Siting Board;
3. The person or persons who approved any drawings identifying any equipment setbacks submitted to the Ohio Power Siting Board;
4. The person or persons who consulted with or discussed with any Ohio Power Siting Board employee, agent, or board member regarding the setbacks.

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.

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.

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.)

SUBPOENA

TO: New Market Solar ProjectCo 1, LLC & New Market Solar ProjectCo 2, LLC
c/o C T Corporation System 4400 Easton Commons Way, Suite 125 Columbus, OH
43219

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 discussed the project setbacks with any Ohio Power Siting Board Staff member, agent, or Board member 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 3rd day of November 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

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c/o C T Corporation System 4400 Easton Commons Way, Suite 125 Columbus, OH
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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:

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Administrative Law Judge

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c/o C T Corporation System 4400 Easton Commons Way, Suite 125 Columbus, OH
43219

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, responsible for reviewing and approving design and or construction drawings for the solar project now known as New Market Solar 1 and New Market Solar 2 at 30%, 60%, and 90% completion, 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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43219

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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Dated at Columbus, Ohio, this 3rd day of November 2023.



Administrative Law Judge

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CERTIFIED MAIL

Kegler Brown Hill + Ritter Co. LPA
65 East Slate Street, Suite 1800
Columbus, OH 43215



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US POSTAGE

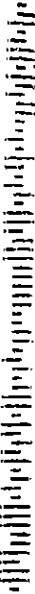
New Market Solar ProjectCo 1, LLC
& New Market Solar ProjectCo 2, LLC
c/o Corporation Service Company
50 W. Broad Street, Suite 1330
Columbus, Ohio 43215



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HILL +
RITTER

Kegler Brown Hill + Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
www.keglerbrown.com

Robert Dove, Esq.
Direct Dial: (614) 462-5443
rdove@keglerbrown.com

October 27, 2023

Via Certified Mail - Return Receipt Requested
9590 9402 8335 3094 7394 26

New Market Solar ProjectCo 1, LLC
& New Market Solar ProjectCo 2, L.L.C
c/o Corporation Service Company
50 W. Broad Street, Suite 1330
Columbus, Ohio 43215

Re: *In the Matter of the Application of Hecate Energy Highland 4, LLC*
Ohio Power Sitting Board Case No.: 20-1288-EL-BGN

To Whom it May Concern:

Please find enclosed a Subpoena commanding your appearance for an adjudicatory hearing relating to the above-captioned case on **November 14, 2023 at 10:00 a.m.**

Thank you for your cooperation in this regard.

Very truly yours,


Robert Dove

RTD/krb
Enclosure

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

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



Administrative Law Judge

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Kegler Brown Hill + Ritter Co. LPA
 65 East State Street, Suite 1800
 Columbus, OH 43215

New Market Solar ProjectCo 1, LLC
 & New Market Solar ProjectCo 2, LLC
 c/o Corporation Service Company
 50 W. Broad Street, Suite 1330
 Columbus, Ohio 43215

**KEGLER
 BROWN**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New Market Solar ProjectCo 1, LLC
 & New Market Solar ProjectCo 2, LLC
 c/o Corporation Service Company
 50 W. Broad Street, Suite 1330
 Columbus, Ohio 43215



9590 9402 8335 3094 7394 26

2. Article Number (transfer from service label)

7021 0350 0000 4407 3729

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
- X** B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below.

3. Service Type
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 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery Restricted Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

*** Return Receipt**

Domestic Return Receipt

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 For delivery information, visit our website! www.usps.com

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Extra Services & Fees (check box, add fee as appropriate)

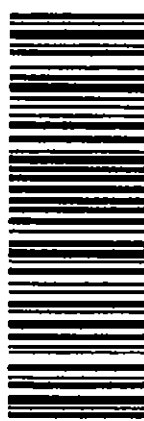
- Return Receipt (hardcopy)
- Return Receipt (electronic)
- Certified Mail Restricted Delivery
- Adult Signature Required
- Adult Signature Restricted Delivery

Postmark Here

Total: New Market Solar ProjectCo 1, LLC & New Market Solar ProjectCo 2, LLC
 c/o Corporation Service Company
 50 W. Broad Street, Suite 1330
 Columbus, Ohio 43215

PS Form 3800, April 2015 PSN 7530-02-000-3017 See Reverse for Instructions

622E 204h 0000 05E0 7202
 622E 204h 0000 05E0 7202



CERTIFIED MAIL

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. CIRCLE DOTTED LINE.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on November 3, 2023.

/s/ Robert Dove
Robert Dove

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/s/ Robert Dove
Robert Dove