

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of Frasier)
Solar, LLC for a Certificate of Environmental)
Compatibility and Public Need) Case No. 23-796-EL-BGN

**PETITION FOR LEAVE TO INTERVENE OF:
KNOX SMART DEVELOPMENT, LLC AND MR. JARED YOST**

Pursuant to Ohio Administrative Code § 4906-2-12 and applicable law, the following
Petitioners submit their Motion for Leave to Intervene:

- 1) Knox Smart Development, LLC
 PO Box 125
 Mount Vernon, OH 43050

- 2) Jared Yost
 15301 Sycamore Rd.
 Mount Vernon, OH 43050

A Memorandum in Support of this Petition follows.

MEMORANDUM IN SUPPORT

I. Introduction

Landscapes and visions are seen most clearly when exposed to the brightest light. Petitioners have standing to shine additional light on Frasier’s Pending Application.

II. Background / Good Cause Exists

Mr. Jared Yost (“Yost”) owns real property (located in Knox County, OH) immediately adjacent to one of the parcels designated for development by the Applicant, Frasier Solar, LLC (“Frasier.”) Mr. Yost has very legitimate concerns regarding the potential consequences to his real property should the pending Application be approved.¹

Knox Smart Development, LLC (“KSD”) is a single Member Ohio limited liability company formed for the purpose of and championing and supporting the voices of similarly concerned and like-minded residents and citizens of Knox County, OH. Like Mr. Yost, KSD has very legitimate concerns regarding potential consequences to the health, safety, and welfare of the Knox County, OH community, as well as forecasted short and long term economic and environmental impacts, should the pending Application be approved.²

Pursuant to § 4906-2-12(B) of the Ohio Administrative Code (“OAC”) “all persons may petition for leave to intervene . . .” Moreover, the OAC provides further “(T)he Ohio Power Siting Board (the “Board”) or administrative law judge shall grant petitions for leave to intervene only

¹ Mr. Yost’s position in this regard is more fully developed, *supra*.

² KSD’s position in this regard is also more fully developed, *supra*.

upon a showing of good cause. OAC § 4906-2-12. (Emphasis added). In deciding whether to permit intervention, the Board or administrative law judge may consider:

- a) The nature and extent of the person's interest.
- b) The extent to which the person's interest is represented by existing parties.
- c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- d) Whether granting the requested intervention would unduly delay the proceedings or unjustly prejudice an existing party.

OCA § 4906-2-12 (B)(1).

Using these established criteria, all Petitioners have standing to petition the Board for intervention and there exists good cause to grant Petitioners intervenor status in these proceedings.

II. Nature and Extent of Interests

KSD has standing to intervene in this action as it meets the definition of a "person" as defined by OAC § 4906-1-01. Under this provision, a "'Person' means an individual, corporation, business trust, association, estate, trust, or partnership, or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity." OAC § 4906-1-01(DD) (Emphasis added). KSD is a registered Ohio Limited Liability Company operating in Knox County, Ohio. *See attached, Ex, "A."*

Additionally, KSD has standing to intervene in this action under the traditional legal theories of standing. *See State ex rel. Am. Subcontractors Assn., Inc. v. Ohio State Univ.* 129 Ohio St.3d 111, 2011-Ohio-2881, 950 N.E.2d 535. KSD's sole member, Jared Yost, has standing to intervene in this action as an individual as defined in OAC § 4906-1-01 and as a landowner directly impacted by the Frasier Application.

KSD's primary purpose is to educate the residents of Knox County, OH and residents throughout the State of Ohio regarding issues related and relevant to proposed developments affecting and impacting local communities. Further, KSD offers a platform for Ohio residents to which and through which they may voice their concerns freely and openly. Such interaction and communication occur in a number of ways, including through open forums held by KSD during which residents freely and openly speak directly with community leaders and elected officials.

In addition to such community outreach, KSD offers a community's residents a platform by which they may engage in legal action such as (*without limitation*) intervention before this Board or in courts throughout Ohio to ensure that the citizens of this state are adequately protected.

A) *The Present Application*

In the present matter, KSD has very legitimate concerns regarding construction, operation and eventual decommissioning of the major solar utility facility currently proposed by Frasier (the "Facility") and KSD will be affected by the construction, extended operation, and eventual decommissioning of this Facility. Additionally, Petitioner Yost, is a Member of KSD and owns property adjacent to the proposed Frasier Facility and is and will further be directly affected by Frasier's Application.

Petitioners also maintain, as will be shown, that the proposed Facility fails to comply with all necessary requirements of the Ohio Revised Code, the Ohio Administrative Code and applicable law. As Intervenors, Petitioners will present evidence related to the legal deficiencies in Frasier's Application, the short- and long-term deficiencies in both the Application now before the Board

as well as construction, operation, and decommissioning of the proposed Facility. These concerns include but are not limited to the following:³

1. To expedite the application process, Frasier improperly combined multiple projects into a single Application without fulfilling all necessary requirements of the OAC.
2. To circumvent the requirements of the OAC and Ohio law, the Frasier Application improperly requests a waiver of PJM studies for one third of the Solar Project.
3. Frasier's request for a waiver of the required PJM studies is based on wholly inapplicable precedent.
4. Frasier's Application fails to consider the effects on the proposed Facility should PJM determine the outstanding portion of the proposed Facility is unviable.
5. Frasier added a new service request to the PJM New Service Queue *after* the effective date of 2021 Am.Sub.S.B. No. 52. As a result, the entire Application is subject to the requirements of 2021 Am.Sub.S.B. No. 52.
6. Frasier's Application fails to fully establish that it is not subject to the requirements established by 2021 Am.Sub.S.B. No. 52.
7. Frasier's Application fails to adequately address the ecological impacts of the proposed Facility.
8. Frasier's Application fails to provide long term monitoring to ensure the Facility has no continuing impact on wildlife, water quality, and the local environment. Instead, the Application indicates that Frasier will not monitor the post-construction impact of the Facility because Frasier does not expect any long-term impact.
9. Frasier's Application fails to address the effect of the proposed Facility's decommissioning on the projected increase in ecological habitability of the area(s) impacted by the proposed Facility.

³ Importantly, of these the following reasons have not previously, to the undersigned's knowledge, been argued (*or fully argued and developed*) by any other Intervenor or party seeking intervention: ##1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,19, 20, 21, 22.

- 10.** Frasier's Application does not adequately consider setback requirements of the proposed Facility in conjunction with future land use development of commercial or residential buildings.
- 11.** Frasier's Application incorrectly states that it is a 'qualified energy project' as defined by R.C. 5727.75 and that it has a Payment in Lieu of Tax Agreement with Knox County subject to 2023 Am.Sub.H.B. No 33.
- 12.** Frasier's Application fails to detail the socioeconomic effects of the proposed Facility upon the expiration of the Payment in Lieu of Tax Agreement in 2026.
- 13.** Frasier's Application fails to provide an accurate description of the economic impact of the proposed Facility based upon the projected dates the tangible personal property is to be placed into service.
- 14.** Frasier's Application fails to adequately identify how Frasier will comply with the requirements of R.C. 5727.75(F).
- 15.** Frasier's Application states that construction and operation of the Facility will have no impact on subsurface water and local wells. The Application provides no commitment of continual testing/inspection to ensure the health and safety of the surrounding and surely impacted residents.
- 16.** Frasier's Application is overly vague and merely general. Throughout, the Application provides merely for 'anticipated future' plans to seek approval and/or certification from various government entities as may be needed during construction. These deficiencies and failures to commit clearly demonstrate the Application is, overall, inadequate, and not ripe for approval by the Board. Any "future" rejections from outside sources and governmental authorities certainly would subject the proposed Facility to delays, modification, or disqualifications.
- 17.** Frasier's Application fails to provide any final decommissioning plan for Board review and instead, Frasier simply promises to provide a final plan prior to construction, *following* Board approval.
- 18.** Frasier's current decommissioning plan fails to provide any adequate assurance regarding the requisite financial resources needed for decommissioning, all as otherwise required by OAC § 4906-4-06(F)(5).

- a. Subject to evidence presented at a hearing of this matter, Petitioners believe a conservative estimated decommissioning cost may well approach or exceed \$17,000,000.

19. Frasier's proposed decommissioning plan allows for abandoning buried nonorganic material. Further, the Application does not provide for the economic or ecological impact of the buried materials.
20. Frasier's Application does not provide an accurate description of any future additional electric power generation units for the site, as is otherwise required by OAC § 4906-4-02. The Application also fails to provide adequate assurances that no future generating units are in consideration.
21. Frasier's proposed decommissioning plan fails to address the effects of long-term storage of topsoil.
22. Frasier's Application presents multiple self-serving studies for consideration. Frasier provides no assurances to the Board that it will follow any of the recommendations contained within these studies. Further, Petitioners deserve the right to present the Board with additional scientific studies for consideration as to each of the Application's requirements for the benefit of the Knox County community and surrounding property owners.

Petitioners should be granted intervention so they can adequately address these and other legitimate concerns and material issues concerning the proposed Facility.

B) Representation by Existing Parties; Contribution to a just and Expeditious resolution.

Petitioners do not object to those concerns raised by other Interveners and would be supportive of their positions. However, Petitioners have their own unique concerns related to Frasier's proposed Facility unique and distinct from all others who may intervene in this matter. Further, Petitioners believe any other interveners do not adequately represent their needs and the inclusion of these moving Petitioners is necessary to ensure their interests and concerns are heard and a just resolution of this matter is achieved.

Further, Petitioners believe the Board cannot come to a just resolution of this matter without permitting these Petitioners the opportunity to present their concerns and the concerns of those certainly to be impacted directly by the Frasier Facility. Board review of the Application, without input from all interested local parties, would prevent a fair and just adjudication.

C) Potential for Undue Delay or unjust prejudice.

Granting Petitioners Intervenor status will not unduly delay these proceedings, cause injury, nor cause any prejudice to Applicant. Petitioners will be represented by counsel throughout these proceedings before the Board who can clearly and succinctly articulate the concerns of the Petitioners. For all the foregoing reason, the Petitioners request the Board grant this Motion for Leave to Intervene.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Doug Holthus

DOUG HOLTHUS (0037046)

Counsel of Record

ZACHARY T. WEIGEL (0100050)

65 East State Street, Suite 2550

Columbus, OH 43215

T: 614-683-8411 | F: 833-330-3669

Doug.Holthus@fmglaw.com

Zachary.Weigel@fmglaw.com

(Willing to accept service by email)

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, I hereby certify that on, December 8, 2023, a copy of the foregoing document was also served by electronic mail on the following:

Jack A. Van Kley
jvankley@vankley.law

*Attorney for Preserve Knox County Ohio,
LLC*

Michael J. Settineri
Anna Sanyal
mjsettineri@vorys.com
aasanyal@vorys.com

Attorneys for Frasier Solar, LLC

Amy Botchner O'Brien
Janet Gregory
Amy.BotschnerO'Brien@OhioAGO.gov
Janet.Gregory@OhioAGo.gov

Attorneys for Ohio Power Siting Board Staff



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
11/13/2023	202331004552	OHIO LLC - ARTICLES OF ORGANIZATION (LCP)	99.00	100.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

**EXHIBIT
A**

DOUG HOLTHUS
65 EAST STATE STREET
SUITE 2550
COLUMBUS, OH 43215

**STATE OF OHIO
CERTIFICATE**

**Ohio Secretary of State, Frank LaRose
5138149**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

KNOX SMART DEVELOPMENT, LLC

and, that said business records show the filing and recording of:

Document(s)

OHIO LLC - ARTICLES OF ORGANIZATION

Effective Date: 11/10/2023

Document No(s):

202331004552



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio this
13th day of November, A.D. 2023.

Ohio Secretary of State

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/8/2023 3:26:22 PM

in

Case No(s). 23-0796-EL-BGN

Summary: Petition Petition to Intervene and Memorandum in Support electronically filed by Mr. Doug Holthus on behalf of Knox Smart Development LLC and Mr. Jared Yost.