

## OHIO POWER SITING BOARD

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

CASE NO. 23-796-EL-BGN

### ENTRY

Entered in the Journal on December 15, 2023

{¶ 1} Frasier Solar, LLC (Applicant or Frasier) 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 August 9, 2023, Frasier filed a preapplication notification with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 120 megawatt (MW) solar-powered electric generation facility in Clinton and Miller townships and the city of Mount Vernon in Knox County, Ohio (Facility or Project). Frasier stated it planned to hold a public information meeting on August 23, 2023.

{¶ 4} On August 18, 2023, Frasier filed a motion for a waiver, in part, from Ohio Adm.Code 4906-4-05(B)(2) (First Waiver Motion). In the motion and supporting memorandum, Frasier explains that while the Project has obtained a feasibility study and system impact study for 80 MW of the proposed 120 MW Project, studies for the remaining 40 MW are pending due to changes in how PJM Interconnection LLC (PJM) now processes queue requests. Frasier states that the pending studies for the remaining 40 MW of the Project will be submitted prior to construction of that portion of the Project in order to show that any grid impacts due to this additional 40 MW have been addressed through

appropriate PJM processes. Frasier commits to submitting the applicable PJM studies as soon as they are available. Frasier also points out that the Board has recently granted a similar waiver request in Case No. 22-988-EL-BGN. See *In re Chestnut Solar, LLC*, Case No. 22-988-EL-BGN, Entry (June 22, 2023) at ¶ 16.

{¶ 5} On October 10, 2023, Frasier filed an application for a certificate of environmental compatibility and public need for the Project.

{¶ 6} Also on October 10, 2023, Frasier filed a motion for waivers of certain requirements (Second Waiver Motion) relating to existing water quality (Ohio Adm.Code 4906-4-07(C)(1)(b)-(e)), water quality during construction (Ohio Adm.Code 4906-4-07(C)(2)), water quality during operation (Ohio Adm.Code 4906-4-07(C)(3)(d)(i)-(vii)), provision of equipment safety manuals (Ohio Adm.Code 4906-4-08(A)(1)(c)), and study area distance for landmarks (Ohio Adm.Code 4906-4-08(D)(2)-(4)). In the accompanying memorandum in support, Frasier argued that good cause exists for the granting of each waiver request. With respect to the requested waiver of Ohio Adm.Code 4906-4-08(A)(1)(c), Frasier states that the final equipment selection and final engineering for the Project has not yet taken place so final equipment specifications have not yet been selected. Frasier states that it seeks only a limited waiver of this provision and commits to submitting the generation equipment manufacturer's safety standards and a safety manual, if available, after final engineering and design of the Project is complete. For the requested waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4), Frasier requests that the waiver be granted to allow for the visual impact study to be focused on a study area of two miles for cultural resources and landmarks, five miles for recreation and scenic areas, and five miles for general visual impacts.

{¶ 7} On October 23, 2023, Preserve Knox County Ohio, LLC (Preserve Knox County), Beth Bartley, Connie and James Boeshart, Benjamin and Sarah Dean, Tina Hoover, Rhonda Noble, Charles and Emily Rowley, Karen and Stephen Schmitt, and Koey and Kari Thomas (collectively, the Petitioners) filed a petition for leave to intervene. Petitioners argue

that they meet the requirements of Ohio Adm.Code 4906-2-12(B) and that good cause exists to grant them intervenor status in this case. The petition explains that the primary purpose of Preserve Knox County is to address issues related to energy, agriculture, and economic development in Knox County and adjacent Ohio counties, and that it is particularly concerned about the proposed Project. Further, each of the individual Petitioners owns properties that are adjacent to the Project area. Because all of the individual Petitioners are members of Preserve Knox County, Petitioners state that Preserve Knox County has associational standing to participate in this proceeding.

{¶ 8} Also on October 23, 2023, Petitioners filed a memorandum in opposition to Frasier's Second Waiver Motion. Petitioners state that they do not object to Frasier's request for a waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4), which concerns the study area distances of visual impact studies, but Petitioners do oppose all other waiver requests in the First Waiver Motion. Petitioners argue that the Board should require Frasier to produce equipment safety manuals pursuant to Ohio Adm.Code 4906-4-08(A)(1)(c) in order to protect the public from harm caused by solar panels. Petitioners acknowledge that Frasier has not yet chosen the specific panels to be used at the Facility, but believe that Frasier should be required to submit, as part of the application, safety manuals for solar equipment on the market that most closely resembles ones that Frasier may select. Petitioners believe that this type of general safety information could be probative to guide the Board's judgment on potential safety issues.

{¶ 9} On October 25, 2023, Staff filed a memorandum contra the Second Waiver Motion. Like Petitioners, Staff does not object to the requested waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4) but does object to the other requested waivers. Specific to the requested waiver of Ohio Adm.Code 4906-4-08(A)(1)(c), Staff does not believe that the requested waiver is ripe. Staff acknowledges that final equipment selection and engineering for the Project will not take place for some time, but Staff does not believe that the requirement to submit the manufacturer's safety information and manual should be "waived" because Frasier will ultimately provide such information to Staff should the Project be approved.

{¶ 10} On October 30, 2023, Frasier filed a reply brief regarding the Second Waiver Motion. In this reply, Frasier withdraws its requests for waivers of Ohio Adm.Code 4906-4-07(C)(1)(b) – (e), Ohio Adm.Code 4906-4-07(C)(2), and Ohio Adm.Code 4906-4-07(C)(3)(d)(vii). Instead of seeking these waivers, Frasier stated its intention to supplement its application to indicate what information sought by the rules is not applicable to the Project and to provide additional information regarding potential water discharges at the Project site. Since its requested waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4) was not opposed by Staff or Petitioners, Frasier believes that it should be granted. Finally, Frasier states that it continues to seek its requested limited waiver of Ohio Adm.Code 4906-4-08(A)(1)(c) regarding the submission of safety standards and safety manuals of solar equipment. Since all parties have acknowledged that the applicable safety information/ manuals cannot be submitted until after final engineering is completed, Frasier requests that its waiver be granted to allow it to submit any applicable safety manual after final engineering is completed and a particular panel model is selected.

{¶ 11} On November 7, 2023, Frasier filed a memorandum in opposition and request to consolidate witness examination and presentation of testimony. Frasier argues that if Petitioners’ petition for leave to intervene is granted, the Board should order the 14 Petitioners to consolidate their examination of witnesses and presentation of testimony in this proceeding. Frasier states that the interests of each of the individual Petitioners and the interests of Preserve Knox County are aligned and that nowhere in the petition are their interests differentiated. Further, Frasier points out that all named landowners are members of Preserve Knox County and that all Petitioners are represented by the same counsel. Frasier argues that if intervention is granted to the Petitioners, the Board should order Preserve Knox County and the 13 individual landowners to consolidate their examination of witnesses and presentation of testimony pursuant to Ohio Adm.Code 4906-2-12(D)(2).

{¶ 12} On November 28, 2023, Frasier filed its first supplement to the application, in which it filed the information described in its November 7, 2023 reply.

{¶ 13} On December 7, 2023, Staff notified Frasier that its application was compliant 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 December 7, 2023 letter directed Frasier 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 Frasier to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12, as well as outlining certain additional information that Staff may require to continue its review of the application.

{¶ 14} On December 8, 2023, Jared Yost and Knox Smart Development, LLC filed a joint petition to intervene, which remains pending.

{¶ 15} On December 11, 2023, Staff filed correspondence regarding Frasier's First Waiver Motion. Staff states that PJM's review of the second queue position for the additional 40 MW of power was submitted on July 16, 2021. Because of delays in PJM's review process, however, Staff states that PJM's assessment is not likely to occur until the fourth quarter of 2026. Because of this significant delay, Staff states that Frasier seeks a comprehensive review of the entire Project, as it relates to both queue positions, with the understanding that if the certificate is approved by the Board, construction of the 40 MW portion of the Project will not occur unless and until PJM approves the queue position associated with that portion of the Project. Staff believes there is good cause for granting this requested waiver, based upon Frasier's commitment to submitting the applicable studies and signed interconnection agreements prior to construction. Staff also notes its reservation of the right to document such a commitment as part of its report of investigation.

{¶ 16} The administrative law judge (ALJ) will first address Petitioners' petition for leave to intervene and Frasier's associated request to consolidate witness examination and testimony. The ALJ finds that Petitioners' petition for leave to intervene meets the criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4906-2-12, and should, therefore, be granted for good cause shown. With respect to Frasier's request to consolidate witness examination

and presentation of testimony, the ALJ finds the request to be reasonable and grants the request. As pointed out by Frasier, all individual Petitioners are members of Preserve Knox County, and the petition makes no differentiation of interests between any of the individual Petitioners and Preserve Knox County. While such a consolidation of witness examination and testimony is likely to naturally occur in this type of proceeding, the ALJ orders that, pursuant to Ohio Adm.Code 4906-2-12(D)(2), the Petitioners shall consolidate their examination of witnesses and presentation of testimony. This ruling is in line with a previous Board determination under similar circumstances. *In re Kingwood Solar I LLC*, Case No. 21-117-EL-BGN, Entry (Aug. 26, 2021), at ¶ 31.

{¶ 17} Next, the ALJ finds that Frasier's First Waiver Motion is reasonable and should be granted. This motion was unopposed by any party and the rationale for the request is understandable. In its December 11, 2023 correspondence, Staff supports the granting of this waiver. The ALJ, therefore, grants Frasier's requested waiver of Ohio Adm.Code 4906-4-05(B)(2), subject to Frasier's commitment to submit, should the Project be approved, the applicable studies and signed interconnection agreements prior to any construction of the 40 MW portion of the Project.

{¶ 18} Turning to Frasier's Second Waiver Motion, only two waiver requests remain outstanding: Ohio Adm.Code 4906-4-08(D)(2)-(4) and Ohio Adm.Code 4906-4-08(A)(1)(c). With respect to the requested waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4), no party opposed the request. The ALJ finds that the requested waiver of Ohio Adm.Code 4906-4-08(D)(2)-(4) is reasonable and should be granted and that the focused study areas for each required visual study be the distances requested in the Second Waiver Motion. With respect to the requested waiver of Ohio Adm.Code 4906-4-08(A)(1)(c), the ALJ agrees with Staff that an outright waiver of the requirement to submit the generation equipment manufacturer's safety standards and associated safety manual or similar documentation is not warranted. Frasier does not seek a complete waiver of the requirement, however, as Staff seems to acknowledge in its memorandum contra — it is understood by all parties that this information will ultimately be provided by Frasier once

final engineering for the Project is completed and the particular equipment is chosen. The ALJ believes this procedure to be reasonable and in line with the submission of certain information to Staff once engineering and other plans are finalized. As Staff has already determined that it has sufficient information to begin its review of the application, the ALJ finds Frasier's requested limited waiver of Ohio Adm.Code 4906-4-08(A)(1)(c) to be reasonable; provided, however, that Frasier is required to submit the generation equipment manufacturer's safety standards, and any associated safety manual, promptly upon completion of the final engineering and design of the Project.

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the Petitioners' petition for leave to intervene be granted as stated in Paragraph 16. It is, further,

{¶ 21} ORDERED, That the Petitioners shall consolidate their examination of witnesses and presentation of testimony, in accordance with Paragraph 16. It is, further,

{¶ 22} ORDERED, That the First Waiver Motion be granted, in accordance with the terms of Paragraph 17. It is, further,

{¶ 23} ORDERED, That Frasier's requested limited waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4) and Ohio Adm.Code 4906-4-08(A)(1)(c) be granted, all in accordance with the terms of Paragraph 18. It is, further,

{¶ 24} 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

JRJ/dr

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Commission of Ohio Docketing Information System on**

**12/15/2023 11:15:44 AM**

**in**

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

Summary: Administrative Law Judge Entry granting Petitioners' petition for leave to intervene; ordering that Petitioners consolidate their examination of witnesses and presentation of testimony; granting the First Waiver Motion; and granting Frasier's requested limited waivers of Ohio Adm.Code 4906-4-08(D)(2)-(4) and Ohio Adm.Code 4906-4-08(A)(1)(c) electronically filed by Debbie S. Ryan on behalf of David M. Hicks, Administrative Law Judge, Ohio Power Siting Board.