

## 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 February 2, 2024

{¶ 1} Frasier Solar, LLC (the 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 solar-powered electric generation facility in Clinton and Miller townships and the city of Mount Vernon in Knox County, Ohio (Facility or Project).

{¶ 4} On August 23, 2023, Frasier filed a notice of compliance with Ohio Adm.Code 4906-3 concerning its public information meeting planned for that same day. The public information meeting was held as scheduled on August 23, 2023.

{¶ 5} On October 10, 2023, as supplemented on November 28, 2023, Frasier filed an application for a certificate of environmental compatibility and public need for the Project.

{¶ 6} On various dates, timely petitions and notices for intervention in this proceeding were filed by: Preserve Knox County Ohio, LLC and 13 named landowners (collectively, PKC); Knox Smart Development and Jared Yost (collectively, KSD); and, the

Ohio Environmental Council. Each of these parties were granted intervenor status in subsequent entries issued by the administrative law judge (ALJ).

{¶ 7} By Entry issued January 5, 2024, the effective date of the application was established as January 5, 2024. The Entry set a local public hearing on the matter for April 4, 2024, to be held at the Woodward Opera House in Mount Vernon, Ohio, and set the adjudicatory hearing to commence on April 29, 2024, at the offices of the Public Utilities Commission of Ohio, along with establishing other procedural deadlines. The Entry further directed Frasier to publish notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09, with such notices to include the dates and locations of the hearings and communicating that petitions to intervene in the case would 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 February 19, 2024, whichever is later.

{¶ 8} On January 8, 2024, a petition to intervene was filed on behalf of Gary Keesee, Brenda and Rick McCament, and Keith and Patricia Strait (collectively, the Petitioners). The petition states that the Petitioners are additional members of Preserve Knox County Ohio, LLC who own and/or reside on properties adjacent to the proposed Project site. No memoranda contra the petition to intervene were filed. Having reviewed the petition, the ALJ finds it reasonable and grants intervenor status to Petitioners, who will be considered a part of PKC when referenced to herein and in subsequent filings.

{¶ 9} On January 30, 2024, Frasier filed a motion for approval of additional public notice and a request for expedited ruling on the motion. In the motion, Frasier explains that the initial public notice to be published in a newspaper of general circulation, as directed by the ALJ and pursuant to R.C. 4906.06(C), was slated to be timely published in the Mount Vernon News on January 20, 2024, within the 15 days required under Commission regulations. Due to an internal staff miscommunication at the newspaper, however, the notice was belatedly published on January 27, 2024. Frasier avers that no harm has occurred to the public due to the delayed publication, as Frasier had already previously published a

notice regarding the Project in the Mount Vernon News on December 23, 2023, in compliance with R.C. 4906.06(C). While that notice did not contain the procedural schedule and hearing dates for the case, Frasier believes that the January 27, 2024 publication still provides sufficient notice to the public. Further, Frasier highlights that the landowner mailings required by Ohio Adm.Code 4906-3-09(A)(1) were timely completed on January 19, 2024, were sent to the appropriate entities, and contained the required information concerning the Project, the intervention process, and the intervention deadline. Frasier now proposes to publish an additional newspaper notice to eliminate any confusion regarding the intervention deadline. Based on the January 27, 2024 newspaper publication, Frasier proposes moving the intervention deadline to February 26, 2024, which would alert the public to the latest date at which the Board would accept petitions to intervene. Frasier believes that these circumstances show that good cause exists to allow a second publication to be issued and for the 15-day requirement in Ohio Adm.Code 4906-3-09 to be waived. Frasier points to prior Board cases in which similar requests have been granted. *See, e.g., In re Alamo Solar I, LLC*, Case No. 18-1578-EL-BGN, Entry (June 10, 2019), at ¶ 16. Finally, due to a need to finalize plans for the second public notice, Frasier requests an expedited ruling on the motion. Frasier was unable to confirm that parties do not oppose the motion or expedited treatment.

{¶ 10} On January 31, 2024, PKC filed a response to Frasier's motion. PKC states that it does not object to Frasier's request for leave to republish the newspaper notice or to extend the intervention deadline an additional week. PKC does request, however, that the local public hearing be moved to a larger venue. PKC believes that, based on the public interest that the Project has generated, the Woodward Opera House is too small to accommodate the number of citizens expected to attend the hearing. PKC recommends locations that it believes would be better suited for the hearing, among which it lists the Knox Memorial Theater. PKC believes that a new location for the local public hearing should then be included in the republished notice.

{¶ 11} Also on January 31, 2024, KSD filed a response to Frasier's motion, stating its non-opposition to the request. KSD also agrees with PKC that the Woodward Opera House will be too small for the expected turnout at the local public hearing, and requests that the venue be changed to a larger site.

{¶ 12} After reviewing Frasier's motion and the filings made in response, the ALJ finds that Frasier's motion is reasonable and should be granted. Ohio Adm.Code 4906-3-09(B) states that the inability or inadvertent failure to notify the persons or publish notice shall not constitute a failure to give public notice, provided that substantial compliance with these requirements is met. Frasier took reasonable steps to publish the notice and a miscommunication on the part of the newspaper, and not any action from the Applicant, resulted in its belated publication,. Further, the notice was published one week later, which still provided the information to the public over two months in advance of the scheduled local public hearing. The ALJ finds that this represents substantial compliance with Ohio Adm.Code 4906-3-09 and R.C. 4906.06(C). The ALJ agrees that extending the intervention deadline to February 26, 2024, and making this deadline clear in the second published notice, is also sensible. Although Frasier was unable to confirm that all parties do not oppose the motion, the ALJ may, pursuant to Ohio Adm.Code 4906-2-27(F), issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party. In this case, two of the intervening parties already responded with their non-opposition to Frasier's request. With the imminent need for Frasier to finalize the form of the second public notice, an expedited ruling is appropriate and the granting of the motion will not adversely affect a substantial right of any party.

{¶ 13} However, based upon the representations made by PKC and KSD in their replies, the ALJ finds it appropriate to ensure that the local public hearing will be held in a venue large enough to accommodate all citizens who wish to attend or provide testimony. The local public hearing, therefore, will now be at the Knox Memorial Theater, 112 E. High St., Mount Vernon, Ohio 43050, on April 4, 2024, at 5:00 p.m., which remains the original

date and time. This ruling amends no other procedural dates, deadlines, or locations contained in the January 5, 2024 Entry.

{¶ 14} Accordingly, the ALJ orders Frasier to publish new public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09 and consistent with the modifications ordered by this Entry. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Frasier shall include a statement that the public hearing in this case shall consist of two parts, as well as information concerning guidelines for attendance:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing April 4, 2024, at 5:00 p.m., at the Knox Memorial Theater, 112 E. High St., Mount Vernon, Ohio 43050. Further, Frasier shall indicate in the public notices that the location of the local public hearing has been changed from the location listed in the original scheduling entry issued in this case.
- (b) An adjudicatory hearing to commence on April 29, 2024, at 10:00 a.m., in Hearing Room 11-A at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 15} Further, regarding the public notice required under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, Frasier shall include the following statement as part of the public notice:

Petitions to intervene in the adjudicatory hearing will be accepted by the Board until February 26, 2024. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory 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.

{¶ 16} The ALJ will note that while Frasier did timely comply with the notice requirements to landowners laid out in Ohio Adm.Code 4906-3-09(A)(1), updated notices with the revised local public hearing information will need to be re-sent to those entities along with the second newspaper publication. The notices sent to these landowners should also clearly indicate that the location of the local public hearing has been changed from the location listed in the original scheduling entry.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Petitioner's petition for leave to intervene be granted, consistent with Paragraph 8. It is, further,

{¶ 19} ORDERED, That Frasier's motion for approval of additional public notice be granted, consistent with Paragraph 12. It is, further,

{¶ 20} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraphs 14. It is, further,

{¶ 21} ORDERED, That notice of the application and hearings be published and sent by Frasier in accordance with Paragraphs 14, 15, and 16. It is, further,

{¶ 22} 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

JSA/dmh

**This foregoing document was electronically filed with the Public Utilities  
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**in**

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

Summary: Administrative Law Judge Entry that a local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing April 4, 2024, at 5:00 p.m., at the Knox Memorial Theater, 112 E. High St., Mount Vernon, Ohio 43050 and an adjudicatory hearing to commence on April 29, 2024, at 10:00 a.m., in Hearing Room 11-A at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215 electronically filed by Ms. Donielle M. Hunter on behalf of David M. Hicks, Administrative Law Judge, Ohio Power Siting Board.