

OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
CHESTNUT SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT AND OPERATE THE
CHESTNUT SOLAR PROJECT.

CASE NO. 22-988-EL-BGN

ENTRY

Entered in the Journal on April 10, 2024

{¶ 1} Chestnut Solar, LLC (Chestnut Solar) 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 March 2, 2023, and March 3, 2023, Chestnut Solar filed its application (Application) with the Board for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility in Pleasant Township, in Marion County, Ohio (Facility). Pursuant to Ohio Adm.Code 4906-3-06, a determination of completeness of Chestnut Solar's Application was due by May 1, 2023. On March 2, 2023, Chestnut Solar filed a motion for partial waiver of Ohio Adm.Code 4906-4-08(A)(5)(c) to defer submission of plan for additional test borings until after the project layout has been finalized; and Ohio Adm.Code 4906-4-08(D) to allow reduced study areas relative to evaluation of cultural, historical, and visual impacts.

{¶ 4} On March 17, 2023, Board Staff (Staff) filed a memorandum partially in support of and partially in opposition to Chestnut Solar's request for partial waivers as filed on March 2, 2023.

{¶ 5} On April 27, 2023, Chestnut Solar and the Staff jointly filed a motion to stay the completeness review date. By Entry issued April 28, 2023, Chestnut Solar and Staff's motion for a stay of the completeness review deadline was granted.

{¶ 6} On May 5, 2023, Chestnut Solar filed a separate motion seeking a partial waiver of Ohio Adm.Code 4906-4-05(B)(2), specific to an uprate impact study.

{¶ 7} On June 20, 2023, Chestnut Solar filed a stipulated disposition agreement between Staff and Chestnut Solar, regarding the three pending motions, and continuance of the May 1, 2023 completeness deadline.

{¶ 8} By Entry on June 22, 2023, the administrative law judge (ALJ) granted the request for partial waiver of Ohio Adm.Code 4906-4-01(B) and 4906-4-08(D). In the Entry, the ALJ also recognized that Chestnut Solar's request for a partial waiver of Ohio Adm.Code 4906-4-08(A)(5)(c) was moot. Lastly, the Entry directed Staff to issue correspondence regarding the Application's completeness by June 23, 2023.

{¶ 9} On July 19, 2023, Chestnut Solar filed proof of service of its accepted and complete Application on local government officials and the main public library, as required by Ohio Adm.Code 4906-3-07(A).

{¶ 10} On July 19, 2023, Chestnut Solar also filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 11} On July 20, 2023, the Marion County Board of Commissioners filed its resolution regarding the appointment of Mr. Appelfeller as the ad hoc representative for the county, pursuant to Senate Bill 52 (SB 52)¹. Relatedly on July 27, 2023, the Pleasant

¹ Effective October 11, 2021, S.B.52 modified certain requirements for the application process for large solar facilities to provide local officials with more opportunity to participate in the siting of such projects in their communities. As such, the application process for the project is altered only by the requirement, pursuant to R.C. 4906.021, that the Board shall include two voting ad hoc members to represent the interests of the residents of the area in which the Facility is to be located.

Township Trustees filed correspondence indicating the appointment of Mr. Schrote as the ad hoc representative for the townships pursuant to SB 52.

{¶ 12} By Entry on July 27, 2023, the effective date of the Application was established as July 26, 2023. In the same Entry, the local public hearing in this matter was scheduled to be held on October 17, 2023, and the adjudicatory hearing was scheduled to commence on November 1, 2023. The Entry also set forth additional deadlines, including that petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by September 8, 2023, whichever is later.

{¶ 13} On August 9, 2023, Chestnut Solar and Staff (Joint Movants), filed a motion to amend the procedural schedule and requested expedited treatment.

{¶ 14} On August 10, 2023, the ALJ issued an entry canceling the current procedural schedule and granting the Joint Movants' motion to amend the procedural schedule, while also directing the Joint Movants to file correspondence indicating when the Application would be sufficiently completed to Staff's satisfaction.

{¶ 15} On December 22, 2023, Chestnut Solar filed a notice of completion of its geotechnical studies.²

{¶ 16} On January 31, 2024, the ALJ determined that it was appropriate to reestablish the effective date of the completed Application as January 31, 2024. In the same Entry, the local public hearing in this matter was scheduled to be held on April 29, 2024, and the adjudicatory hearing was scheduled to commence on May 20, 2024. The Entry also set forth additional deadlines, including that petitions to intervene in this proceeding will be

² During an informal status conference, the ALJ was notified by Staff that it supported a finding of Application completeness upon Applicant's correspondence filed on December 22, 2023.

accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by March 18, 2024, whichever is later.

{¶ 17} On March 14, 2024, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene pursuant to Ohio Adm.Code 4906-2-12. In its motion, OFBF states that it has a real and substantial interest in this matter as the non-profit organization representing agricultural interests at the state and local levels with member families in every county, including hundreds of families in Marion County. Additionally, OFBF asserts that its interests are not represented by existing parties and that its participation will not cause undue delay, not unjustly prejudice any existing party, and contribute to the just and quick resolution of issues and concerns raised.

{¶ 18} On March 15, 2024, Concerned Citizens of Pleasant Township LLC (Citizens), Eric Queen, Melodie Little, Noel Jerome, Joe Barney, Clint Canterbury, Betty Jo Lill, Judy Lehner, George William Stump, and Jeff Shetler (collectively, Joint Intervenors) filed a joint petition for leave to intervene in this case pursuant to Ohio Adm.Code 4906-2-12(B). Citizens was established for the purpose of organizing, pooling resources, and representing the interests of citizens dedicated to opposing the construction of the Facility. According to Joint Intervenors, they are comprised of 11 members, who will be directly and adversely affected by the Facility, as they all live either adjacent to or near the proposed project. Joint Intervenors, thus, assert that their participation in the case is necessary for a just and expeditious resolution of these proceedings and that their participation would not unduly delay the proceedings or unjustly prejudice an existing party.

{¶ 19} On March 18, 2024, the Marion County Board of Commissioners (Marion County) filed a petition for leave to intervene in this matter pursuant to Ohio Adm.Code 4906-2-12(B). In its filing, Marion County highlights that the Board of Commissioners is the duly elected body authorized to act for the county and is, thus, responsible for preserving the general health, safety, and welfare within the county. Marion County states that it has an extensive interest in the project regarding the protection of county roads, waterways, and

environment so that no harm is done to the county. Marion County argues that no other party represents or can represent its interest in protecting the county from the project's impacts. Additionally, Marion County represents that granting its request to intervene will not unduly delay the proceedings or cause unjust prejudice to Chestnut Solar.

{¶ 20} On March 21, 2024, Applicant filed a non-opposition memorandum in response to the pending requests to intervene from OFBF, Joint Intervenors, and Marion County. Overall, Chestnut Solar does not object to OFBF or Joint Intervenors' requests to intervene. However, Applicant qualifies its non-opposition to Marion County's request to intervene, such that Applicant states that the Commissioners received service of a copy of the Application pursuant to R.C. 4906.06(B) and are, thus, subject to the intervention requirements set forth in Ohio Adm.Code 4906-2-12(A)(1). Chestnut Solar states that Marion County did not timely file a notice of intervention pursuant to that section and did not provide a statement of good cause for failing to do so as required by Ohio Adm.Code 4906-2-12(C). In light of these alleged procedural deficiencies, and due to concern over the scope of Marion County's purported concerns, Chestnut Solar asks the Board to consider exercising its authority under Ohio Adm.Code 4906-2-12(D) and limit Marion County's participation. Specifically, Applicant identifies that Marion County's intervention should be limited to issues over which Marion County retains jurisdiction during construction and operation of the project.

{¶ 21} In response, Marion County filed a reply in support of its petition to intervene on March 22, 2024. Marion County corrects Chestnut Solar, such that Marion County did not file a request to intervene under Ohio Adm.Code 4906-2-12(A)(1), which allows government officials to file a notice of intervention within 30 days after receiving a copy of an application. Instead, Marion County states that it filed a petition to intervene under Ohio Adm.Code 4906-2-12(A)(2), which allows for all other persons to request to intervene. Marion County notes that the ALJ set an intervention deadline for March 18, 2024, and that Marion County filed their petition to intervene in accordance with that deadline. Marion County claims that the enabling statute, R.C. 4906.08, provides local

government officials with two pathways to participate in a Board case. They can file a notice of intervention under R.C. 4906.08(A)(2), which is due 30 days after receiving the application, in which case they need not demonstrate good cause to intervene in recognition of their role in protecting the local public. Alternatively, Marion County states that it can file a petition to intervene in accordance with a later deadline set under R.C. 4906.08(A)(3) applicable to county residents “and any other person,” in which they need to demonstrate good cause to intervene. Moreover, Marion County states that the ALJ’s scheduling entry does not state that the March 18, 2024 deadline only applies to non-governmental persons. Marion County notes that Ohio Adm.Code 4906-2-12(C) provides that the Board can grant intervention “in extraordinary circumstances” “in subsequent phases of the proceeding” to petitioners who did not file for intervention prior to the intervention deadline. However, Marion County explains that its petition was not late, and is, thus, not required to demonstrate extraordinary circumstances justifying the granting of the petition under Ohio Adm.Code 4906-2-12(C)(1).

{¶ 22} Marion County also states that Chestnut Solar’s qualified non-opposition to Marion County’s intervention seeks to cripple the Commissions’ involvement and effectiveness in the case by limiting Marion County to issues over which the county retains jurisdiction during construction and operation of the project. Marion County acknowledges that limiting the scope of involvement might make sense if the commissioners were trying to intervene on the eve of the hearing after the other parties had already finished their hearing preparations. However, Marion County states that since it petitioned to intervene within the established deadlines, the timing of their intervention does not prejudice the Board or other parties. Lastly, Marion County states that its listed nine concerns fall squarely within the topics that the Board assesses and does not provide an overbreadth, as alleged by Chestnut Solar.

{¶ 23} At this time, the ALJ finds that OFBF’s, Marion County’s, and Joint Intervenors’ motions are reasonable and should be granted. The ALJ notes that OFBF and Joint Intervenors’ requests to intervene were unopposed. Relative to Marion County’s

motion to intervene, the ALJ finds that the motion was timely filed pursuant to Ohio Adm.Code 4906-2-12(A)(2) and presents good cause. Moreover, the ALJ is unpersuaded by Chestnut Solar's request to limit Marion County's participation to issues over which the county retains jurisdiction during project construction and operation. Therefore, Marion County's intervention will not be limited at this time.

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the requests to intervene in this proceeding filed by OFBF, Marion County, and Joint Intervenors be granted. It is, further,

{¶ 26} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE OHIO POWER SITING BOARD

/s/Isabel M. Marcelletti

By: Isabel M. Marcelletti
Administrative Law Judge

NJW/dmh

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in

Case No(s). 22-0988-EL-BGN

Summary: Attorney Examiner Entry that the requests to intervene in this proceeding filed by OFBF, Marion County, and Joint Intervenors be granted electronically filed by Ms. Donielle M. Hunter on behalf of Isabel M. Marcelletti, Administrative Law Judge, Ohio Power Siting Board.