

**BEFORE
THE OHIO POWER SITING BOARD**

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

ETHAN ROBERTSON’S PETITION FOR LEAVE TO INTERVENE

Ethan Robertson is a participating landowner in the Frasier Solar project (the “Project”), as well as a small business owner in Clinton Township, Knox County. Mr. Robertson’s family has lived and worked in Knox County for four generations. Mr. Robertson supports the project because it will allow him to diversify his assets, while ensuring that any land leased out for the project will be viable for farming at the end of the lease. He also supports the project because it will benefit the community with new tax revenue and with a new source of energy generation. Because Mr. Robertson will be deprived of lease income and thus materially affected if the Project does not proceed, he respectfully petitions to intervene in the above-captioned proceeding.

Pursuant to Ohio Administrative Code Section 4906-2-12, the Ohio Power Siting Board (“Board”) should grant Mr. Robertson’ Petition because he has a real and substantial interest in the outcome of this case, he represents interests separate from those of the existing parties, and his contribution will lead to a just and expeditious resolution of the issues involved in the proceeding without causing undue delay. This Petition is timely, as it is filed by the intervention deadline set by the Board. *See Entry, In re Frasier Solar, LLC*, Case No. 23-0796-EL-BGN (Jan. 5, 2024)

¶ 22. The Petitioner’s basis for standing, reasons for intervention, and arguments as to why the Board should grant his Petition are set out in the accompanying Memorandum in Support.

Dated: February 16, 2024

Respectfully submitted,

/s/ Trent Dougherty

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**MEMORANDUM IN SUPPORT OF ETHAN
ROBERTSON’S PETITION FOR LEAVE TO INTERVENE**

I. Ohio Law Permits Intervention of Parties in Cases Before the Ohio Power Siting Board.

The Ohio Power Siting Board (“Board”) may grant petitions to intervene “upon a showing of good cause.” Ohio Admin. Code § 4906-2-12(B). The Administrative Code provides that, in ruling on a petition to intervene, the Board must consider the following factors:

- (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 proceeding or unjustly prejudice an existing party.

Id. § 4906-2-12(B)(1). As described in the next section, all four of these factors support a finding that there is good cause to permit intervention by the Petitioner.

II. The Ohio Power Siting Board Should Grant Mr. Robertson’s Petition to Intervene.

The Petitioner, Ethan Robertson, is a participating landowner in the Frasier Solar Project (the “Project”) proposed by Frasier Solar LLC (the “Applicant”), a subsidiary of Open Road Renewables. Mr. Robertson has deep roots in Knox County, where his family has lived, worked,

and farmed the land for four generations. Mr. Robertson has a 50% ownership stake in two parcels of land that he has agreed to lease out to the Applicant, contingent on approval of the Project. The two parcels encompass 72.92 acres and 242.842 acres respectively. The remaining 50% interest is held by Mr. Robertson's cousin, an active farmer in Knox County. Before agreeing to lease out land for the Project, Mr. Robertson negotiated with the Applicant to obtain assurances in the lease agreement that agricultural soils and sub-surface drainage at the property will be maintained in good condition, so that the land will remain suitable for farming when the lease expires. The Applicant agreed to Mr. Robertson's terms.

In addition to being a participating landowner, Mr. Robertson owns and operates the Robertson Truck family of businesses, which employs around 55 people in the greater Knox County area. Although the company has two locations, one in Columbus and one in Mount Vernon, Mr. Robertson spends the majority of his working hours in Mount Vernon.

Mr. Robertson respectfully requests that the Board grant his Petition to Intervene (the "Petition") in the Board's review of Frasier Solar LLC's Application for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation facility. In short, all four of the factors set out under Section 4906-2-12(B)(1) of the Ohio Administrative Code support a finding of good cause for intervention: (a) Mr. Robertson has a real and substantial interest in the Project as a participating landowner; (b) Mr. Robertson's interest in the Project is distinct from those of other parties and intervenors, none of whom are participating landowners; (c) given his distinct interests, Mr. Robertson's participation will contribute to a just and expeditious resolution of the issues; and (d) because the petition is timely filed, Mr. Robertson's participation will not unduly delay or prejudice any party.

a. Mr. Robertson has a real and substantial interest in the Project.

In assessing the nature and extent of the person's interest, the Board considers whether the

petitioner has a “real and substantial interest” in the matter. *See* Ohio Adm. Code § 4906-2-12(D)(1)(a). The Board has found that this requirement is met when “an individual, direct interest is at stake in the outcome of a proceeding.” Order Partially Granting Motions for Intervention, *In re Republic Wind, LLC*, Case No. 17-2295-EL-BGN at ¶ 20 (Aug. 21, 2018). The Board has found, for example, that owning property inside or abutting a project area is sufficient to establish a real and substantial interest for purposes of intervention. *Id.*

Here, Mr. Robertson has an individual, direct interest at stake in the outcome of this proceeding. Mr. Robertson owns land within the project area. As a participating landowner, Mr. Robertson will receive income from the lease agreements he entered into with the developer if the Project is completed; he will receive no such income if the application is denied. In addition, Mr. Robertson has negotiated with the developer to ensure that the lease agreement will protect the integrity of agricultural soils and sub-surface drainage at the site so that the land will be suitable for farming at the end of the lease period. Thus, the Project represents a unique opportunity for Mr. Robertson to keep income-generating land in his family while allowing Mr. Robertson’s children to decide whether to farm the land again in the future. Relatedly, Mr. Robertson has an interest in protecting his right as a landowner to make productive and zoning-compliant use of his property, a right that is protected by the Ohio Constitution. *See* OH Const. Art. I, § 1 (“All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing, and protecting property.”)

b. Mr. Robertson’s interests differ from those of existing parties.

Mr. Robertson has interests that are not shared by any existing party or intervenor. None of the existing parties or intervenors are participating landowners. In addition, no other party or intervenor has negotiated at arms’ length with the developer of the Project to ensure that agricultural soils and sub-surface drainage are protected on leased properties.

The existing parties do not represent Mr. Robertson's interests. Preserve Knox County and its members, along with Knox Smart Development and Jared Yost, have intervened in opposition to the project. *See* Petition for Leave to Intervene of Preserve Knox County, *In re Frasier Solar LLC*, Case No. 23-796-EL-BGN (Oct. 23, 2023); Petition for Leave to Intervene of Knox Smart Development and Jared Yost, *In re Frasier Solar LLC*, Case No. 23-796-EL-BGN (Dec. 8, 2023). Their interests are in direct opposition to Mr. Robertson's. In addition, while the Ohio Environmental Council has intervened in support, its stated interest is to "ensur[e] the project creates a net positive environmental impact," with a particular focus on "climate implications." This focus differs from Mr. Robertson's interest in the Project as an opportunity to earn lease income and to keep ownership of income-generating land while preserving its suitability for farming in the future. *See* Petition for Leave to Intervene of the Ohio Environmental Council, *In re Frasier Solar LLC*, Case No. 23-796-EL-BGN (Dec. 14, 2023). Finally, while the Applicant also shares Mr. Robertson's interest in seeing the Project approved, the Applicant does not represent Mr. Robertson's unique interests: as a participating landowner, Mr. Robertson negotiated at arm's length with the Applicant over the terms of the lease agreement and has a particular interest in measures to protect agricultural land while generating solar energy.

c. Mr. Robertson's participation will contribute to a just and expeditious resolution of the issues involved in the proceeding and to full development and equitable resolution of factual issues in this case.

Mr. Robertson's intervention in this proceeding will contribute to a just and expeditious resolution of the relevant issues and contribute to a full development of the factual record. Mr. Robertson's testimony may help the Board to find and determine the information necessary to grant a Certificate of Environmental Compatibility and Public Need, including the extent to which the Project will: "serve the public interest, convenience and necessity," *see* Ohio Rev. Code § 4906.10(A)(6); "impact the viability of farmland," *id.* § 4906.10(A)(7); and "represent[] the

minimum adverse environmental impact,” *id.* § 4906.10(A)(3). Specifically, as a participating landowner, Mr. Robertson can provide a first-hand perspective on: (1) the economic opportunity that the Project presents to participating landowners; (2) the environmental stewardship guarantees that he has sought and obtained from the Applicant, including provisions to protect agricultural soils and sub-surface drainage at the site; and (3) other economic benefits that the Project will deliver to the community.

First, Mr. Robertson can testify as to how the project presents a unique economic opportunity to participating landowners like himself and how he concluded that the lease agreement would be in the best interest of his family. Mr. Robertson can explain how leasing out land for the Frasier Solar Project will allow him to diversify his family’s assets, while maintaining ownership of land in Knox County, where he has deep roots.

Second, as someone who has negotiated at arm’s length with the developer for strong land stewardship provisions in the lease agreement, Mr. Robertson can testify as to how the Project is being designed to protect agricultural soils and sub-surface drainage. Good stewardship of land is extremely important to Mr. Robertson. When Open Road Renewables contacted Mr. Robertson’s family about the possibility of a lease, Mr. Robertson scheduled a meeting with management in Croton, Ohio. At the meeting, Mr. Robertson and the developer went line-by-line through the contract to ensure that the developer would take care of the property so that it would be viable for agricultural use at the end of the lease, which would not be possible if the land were sold to a real estate developer for a housing subdivision.

Third, Mr. Robertson can testify as to the many local benefits this Project will have for Knox County, including by increasing tax revenues and sending a positive signal to the business community that Knox County is open to economic development. At a high level, Mr. Robertson’s

participation will ensure that the Board hears the concerns of community members who view the Project as an opportunity, in addition to any who may believe that the Project will have harmful impacts.

d. Mr. Robertson's intervention will not cause undue delay of the Board's review of the Project.

Pursuant to an order entered January 5, 2024, petitions to intervene "will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by February 19, 2024, whichever is later." Because this Petition is timely filed, Mr. Robertson's involvement will not cause undue delay of the Board's review. In addition, Mr. Robertson is motivated to see the process go as smoothly as possible, as he would like to see the Project approved and completed expeditiously and without any delay.

III. Conclusion

For the reasons stated in this Memorandum in Support, the Board should grant Mr. Robertson's Petition to Intervene in this proceeding concerning Frasier Solar LLC's Application for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation facility. Mr. Robertson has a real and substantial interest in the Project; he has different interests from those of the existing parties; his participation will contribute to a just and expeditious resolution of the issues involved in the proceeding; and his intervention will not cause undue delay of the Board's review of the Project.

Dated: February 16, 2024

Respectfully submitted,

/s/ Trent Dougherty

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Counsel for Ethan Robertson

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Ohio Power Siting Board's e-filing system and via electronic mail on all parties referenced in the service list of the docket.

Dated: February 16, 2024

/s/ Trent Dougherty
Trent Dougherty

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 23-0796-EL-BGN

Summary: Petition PETITION FOR LEAVE TO INTERVENE OF ETHAN
ROBERTSON electronically filed by Mr. Trent A. Dougherty on behalf of Mr. Ethan
Robertson.