

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Clear)
Mountain Energy Center, LLC for a) Case No. 23-0045-EL-BGN
Certificate of Environmental Compatibility)
and Public Need to develop, Construct, a 100)
megawatt Solar-Powered Electric Facility
located in Clermont County, Ohio

**GREGORY BRUNS, GREGORY VESTRING, AND THE VESTRING FAMILY
PRESERVATION TRUST’S PETITION FOR LEAVE TO INTERVENE**

Gregory Bruns, Gregory Vestring, and the Vestring Family Preservation Trust are participating landowners in the Clear Mountain Energy Center Project (the “Project”). Mr. Bruns is a farmer who has lived with his family in the community for more than 35 years. Mr. Vestring and his sister Beth Fischer Reinhart are co-trustees of the Vestring Family Preservation Trust, and their grandmother lived on the land for decades.¹ Mr. Bruns and Mr. Vestring support the Project because it will provide financial security for their families while ensuring that the land leased out for the Project will be viable for farming at the end of the lease. They also support the Project because it will benefit the community with new tax revenue and a new source of energy generation. Because Mr. Bruns and Mr. Vestring will be deprived of lease income and thus materially affected if the Project does not proceed, they respectfully petition to intervene in the above-captioned proceeding.

Pursuant to Ohio Administrative Code Section 4906-2-12, the Ohio Power Siting Board (“Board”) should grant the Petition because each landowner has a real and substantial interest in

¹ Both Mr. Vestring and the Vestring Family Preservation Trust petition to intervene because Mr. Vestring may be unable to attend the adjudicatory hearing due to a work trip. Granting the petition with respect to the Trust as well would allow his co-trustee Ms. Reinhart to submit direct testimony and attend the hearing instead. Allowing both parties to intervene will not create any redundancy because, no matter what, only one of Mr. Vestring and Ms. Reinhart will submit testimony.

the outcome of this case that is distinct from those of the existing parties. Further, their 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 the Matter of the Application of Clear Mountain Energy LLC*, Case No. 23-0045-EL-BGN (May 6, 2024) ¶ 12. The Petitioners' basis for standing, reasons for intervention, and arguments as to why the Board should grant their Petition are set out in the accompanying Memorandum in Support.

Dated: June 20, 2024

Respectfully submitted,

/s/ Trent Dougherty

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In the Matter of the Application of Clear)	
Mountain Energy Center, LLC for a)	Case No. 23-0045-EL-BGN
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and Public Need to Develop, Construct, and)	
Operate a 100 Megawatt Solar-Powered		
Electric Facility in Clermont County, Ohio		

**MEMORANDUM IN SUPPORT OF GREGORY BRUNS,
GREGORY VESTRING, AND THE VESTRING FAMILY
PRESERVATION TRUST’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 Petitioners.

II. The Ohio Power Siting Board Should Grant the Petition to Intervene.

Gregory Bruns, Gregory Vestring, and the Vestring Family Preservation Trust

(collectively, “Petitioners”) are participating landowners in the Clear Mountain Energy Center Project (the “Project”) proposed by Clear Mountain Energy Center, LLC (“Clear Mountain” or the “Applicant”), a subsidiary of Savion, LLC.

Mr. Bruns is a farmer who owns a 39-acre parcel in Jackson Township, about eight miles away from his own home.² He purchased the land in 2008, and in the years since, has leased the land to a farmer. Mr. Bruns is now in his mid-seventies, and the farmer to whom he leases the land is also getting older. Mr. Bruns agreed to lease this property to the Applicant, contingent on the Project’s approval, to provide more income and more opportunity to his family. Mr. Bruns has deep roots in Clermont County: he has lived in Stonelick Township for 35 years and raised his three daughters there. His wife’s family has roots in the area going back a century. Two of his daughters live in the area, both under a ten-minute drive away. The lease to the Project will generate greater benefits for Mr. Bruns, his daughters, and his family than if the land continues to be used as farmland, while ensuring that it can be returned to agricultural use after the lease term. He preferred to lease rather than sell their land due to his family ties to the area.

Mr. Vestring and his sister Beth Fischer Reinhart are trustees of the Vestring Family Preservation Trust (collectively, “Mr. Vestring”),³ which owns just over 66 acres consisting of a 31.7-acre parcel in Williamsburg Township and a 34.5-acre parcel in Jackson Township. The land has been in the Vestring family for three generations. Their grandmother lived on the property from 1987 to 2017, during which she tended horses and was a frequent visitor to the library and active community member until she passed away at the age of 101. Several years after her passing,

² Mr. Bruns owns this property through the entity Bruns Jackson Pike LLC. He and his wife are the sole members.

³ Both Mr. Vestring and the Vestring Family Preservation Trust petition to intervene because Mr. Vestring may be unable to attend the adjudicatory hearing due to a work trip. Granting the petition with respect to the Trust as well would allow his co-trustee Ms. Reinhart to submit direct testimony and attend the hearing instead. Allowing both parties to intervene will not create any redundancy because, no matter what, only one of Mr. Vestring and Ms. Reinhart will submit testimony.

Mr. Vestring's father began discussions with the Applicant regarding a potential lease, but he passed away in 2023. Mr. Vestring and Ms. Reinhart both live about 45 minutes away, in Deerfield Township and West Chester, respectively. When his father was alive, Mr. Vestring would visit every weekend to cut the grass. The land is currently farmed by Hal Herron, a neighbor. Mr. Vestring and Ms. Reinhart were interested in leasing to the Project in part to provide a steady stream of income for themselves and for the next generation, including Ms. Reinhart's daughter. Before agreeing to lease the land to the Applicant, Mr. Vestring and Ms. Reinhart and their attorney spent nearly twelve months negotiating an arms-length agreement to ensure that the land is tillable after the lease term. For example, the contract requires the Applicant to purchase additional liability insurance coverage and, after the lease is concluded, to remove all facilities or conduits buried in the soil above 48 inches in depth and to provide drawings specifying the location of all facilities or conduits buried in the soil below 48 inches in depth. They preferred to lease rather than sell their land due to their grandmother's close ties to the area and their commitment to maintaining the land so that it remains fit for farming.

Petitioners request that the Board grant their Petition to Intervene (the "Petition") in the Board's review of Clear Mountain Energy Center, LLC's Application for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation facility. 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. Bruns and Mr. Vestring have a real and substantial interest in the Project as participating landowners; (b) Mr. Bruns and Mr. Vestring's interest in the Project is distinct from those of other parties and intervenors, none of whom are participating landowners; (c) given their distinct interests, Mr. Bruns and Mr. Vestring's participation will contribute to a just and expeditious resolution of the issues; and (d) because the

petition is timely filed, Mr. Bruns and Mr. Vestring's participation will not unduly delay or prejudice any party.

a. The Petitioners have 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.*

Both Mr. Bruns and Mr. Vestring have an individual, direct interest at stake in the outcome of this proceeding. As participating landowners, each will receive income from the lease agreements they entered into with the Applicant if the Project is completed. Mr. Bruns and Mr. Vestring expect to generate significantly increased income from their land if the Project is approved, compared to what their land generates today from farming and renting. Neither will receive this increased income if the application is denied. Mr. Bruns and Mr. Vestring negotiated lease agreements that require that measures be taken to maintain and return the land in a condition suitable for farming. Thus, the Project presents a unique opportunity for each landowner to keep income-generating land in the family while allowing their children and other family members to decide whether to farm the land again in the future. Relatedly, Mr. Bruns and Mr. Vestring each has an interest in protecting their right as landowners to make productive and zoning-compliant use of their property, a right that is protected by the Ohio Constitution. *See* Ohio Const. Art. I, § 1 ("All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing, and protecting property.")

b. The Petitioners' interests differ from those of existing parties.

Mr. Bruns and Mr. Vestring have interests that are not shared by any existing party or intervenor. None of the existing parties are participating landowners. Nor can the Applicant itself represent Mr. Bruns and Mr. Vestring's interests. While Mr. Bruns and Mr. Vestring share the Applicant's interest in seeing the project approved, both negotiated at arm's length with the Applicant over the terms of the lease agreement to ensure that the agreement accommodated their distinct interest in protecting agricultural land while generating income for their families. Accordingly, they have a unique perspective and distinct interests. Further, the only other party that has petitioned to intervene as of the filing of this Petition is the International Brotherhood of Electrical Workers, Local Union 212 ("IBEW"). *See* Petition to Intervene of International Brotherhood of Electrical Workers, Local Union 212, *In the Matter of the Application of Clear Mountain Energy LLC*, Case No. 23-0045-EL-BGN (June 20, 2024). The IBEW generally supports the project and its job creation prospects; however, the union represents local members who are potential workers on the project, and whose interests and perspectives are thus not entirely aligned with those of participating landowners. *See generally id.*

c. The Petitioners' 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. Bruns and Mr. Vestring'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. Their 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 participating

landowners, Mr. Bruns and Mr. Vestring can provide a first-hand perspective on: (1) the economic opportunity that the Project presents to participating landowners; (2) the environmental stewardship guarantees that they have sought and obtained from the Applicant, including provisions to protect agricultural qualities and ensure environmental clean-up at the end of the lease period; and (3) other economic benefits that the Project will deliver to the community.

First, Mr. Bruns and Mr. Vestring can testify as to how the project presents a unique economic opportunity to participating landowners like themselves and how each concluded that the lease agreement would be in the best interest of their families. Mr. Bruns can testify to explain how, as the owner of a small farm, he decided to participate in the project and negotiated the lease contract to provide financial benefits and security for his daughters while maintaining ownership of the land. Mr. Vestring can explain how leasing out land for the Project will allow him and his sister to put the land to productive use while also protecting it for future generations, including Ms. Reinhart's daughter.

Second, as parties who have negotiated at arm's length with the developer for land stewardship provisions in the lease agreements, Mr. Vestring and Mr. Bruns can testify as to how the Project is being designed to protect the land for potential future agricultural use. Good stewardship of the land is extremely important to both landowners. Both landowners sought to maintain the agricultural viability of the land for later generations, and decided on a lease arrangement to keep the land in the family. Both executed lease agreements that require the Applicant, at the end of the lease period, to comply with all environmental laws to clean up the property and restore the land to a condition reasonably similar to its condition when the Project began development. Mr. Vestring also worked for many months to negotiate additional contractual provisions, including that the Applicant would provide additional insurance coverage covering

property damage and liability for bodily injury and provide drawings specifying the location of any facilities buried in the soil at a depth below 48 inches. Mr. Bruns can further testify to the potential benefits of agrovoltaics—simultaneous use of the property for solar generation and farming. Mr. Bruns and Mr. Vestring can therefore shed light on how the Project will protect the agricultural nature of the land in furtherance of the community’s long-term public interest.

Third, Mr. Bruns and Mr. Vestring can testify as to the many local benefits this Project will have for Clermont County, including by increasing tax revenues and sending a positive signal to the business community that the county is open to economic development. Mr. Bruns can also testify to the potential for the project to promote clean local energy and keep electricity costs in check. As a longtime community member, Mr. Bruns can testify about how tax revenues from the project could benefit local schools and other public services, all while reducing the tax burden on individuals. Mr. Bruns and Mr. Vestring’s participation will ensure that the Board hears the perspectives of community members who view the Project as an opportunity for economic revitalization.

d. The Petitioners’ intervention will not cause undue delay of the Board’s review of the Project.

Pursuant to an order entered May 6, 2024, petitions to intervene “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 June 20, 2024, whichever is later.” Entry, *In the Matter of the Application of Clear Mountain Energy LLC*, Case No. 23-0045-EL-BGN (May 6, 2024) ¶ 12. Because this Petition is timely filed, Mr. Bruns and Mr. Vestring’s involvement will not cause undue delay of the Board’s review. In addition, Mr. Bruns and Mr. Vestring are motivated to see the process go as smoothly as possible, as they would like to see the Project approved and completed expeditiously and without any delay. As noted *supra* note 1, there is no risk of redundant testimony, as only one representative of the

Vestring Family Preservation Trust will participate in the proceedings. Finally, allowing Mr. Bruns and Mr. Vestring to intervene jointly due to their shared interests and perspectives will provide the Board the opportunity to consider their views and interests more efficiently and expeditiously.

III. Conclusion

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

Dated: June 20, 2024

Respectfully submitted,

/s/ Trent Dougherty

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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: June 20, 2024

/s/ Trent Dougherty
Trent Dougherty

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Case No(s). 23-0045-EL-BGN

Summary: Petition Petition to Intervene and Memorandum in Support of Gregory Bruns, Gregory Vestring, and the Vestring Family Preservation Trust electronically filed by Mr. Trent A. Dougherty on behalf of Mr. Gregory Bruns and Mr. Gregory Vestring and Vestring Family Preservation Trust.