

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :  
Application of Kingwood :  
Solar I LLC for a :  
Certificate of : Case No. 21-117-EL-BGN  
Environmental :  
Compatibility and Public :  
Need. :

- - -

PROCEEDINGS

before Mr. Michael Williams and Mr. David Hicks,  
Administrative Law Judges, at the Ohio Power Siting  
Board, via Webex, called at 10:02 a.m. on Monday,  
December 13, 2021.

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ARMSTRONG & OKEY, INC.  
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APPEARANCES:

Vorys, Sater, Seymour and Pease, LLP  
By Mr. Michael J. Settineri,  
Ms. Anna Sanyal,  
and Mr. Nathaniel B. Morse  
52 East Gay Street  
Columbus, Ohio 43215

On behalf of the Applicant.

Van Kley & Walker, LLC  
By Mr. Jack A. Van Kley  
132 Northwoods Boulevard, Suite C-1  
Columbus, Ohio 43215

On behalf of the Citizens for Green Acres  
and Individual Intervenors.

Cedarville University  
By Mr. John E. Hart  
251 North Main Street  
Cedarville, Ohio 45314

On behalf of the In Progress LLC.

Ohio Farm Bureau Federation  
By Ms. Amy Milam  
280 North High Street, 6th Floor  
Columbus, Ohio 43215

On behalf of the Ohio Farm Bureau  
Federation.

Dinsmore & Shohl LLP  
By Mr. Lee A. Slone  
One South Main Street, Suite 1300  
Dayton, Ohio 45402

On behalf of the Miami Township Board of  
Trustees, Greene County, Ohio.

Brown Law Office LLC  
By Mr. Daniel A. Brown  
204 South Ludlow Street, Suite 300  
Dayton, Ohio 45402

On behalf of the Cedarville Township  
Trustees.

APPEARANCES: (Continued)

Plank Law Firm, LPA  
By Mr. David Watkins  
and Mr. Kevin Dunn  
411 East Town Street, Floor 2  
Columbus, Ohio 43215

On behalf of the Xenia Township Board of  
Trustees.

Frost Brown Todd LLC  
By Mr. Thad Boggs  
10 West Broad Street, Suite 2300  
Columbus, Ohio 43215

On behalf of the Greene County Board of  
Commissioners.

Dave Yost, Ohio Attorney General  
Mr. John Jones, Section Chief  
By Mr. Werner L. Margard, III,  
and Ms. Jodi Bair,  
Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the OPSB.

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Monday Morning Session,  
December 13, 2021.

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ALJ HICKS: Let's go ahead and go on the  
record.

The Ohio Power Siting Board has set for  
hearing at this time and place Case No. 21-117-EL-BGN  
which is captioned in the Matter of the Application  
of Kingwood Solar I LLC for a Certificate of  
Environmental Compatibility and Public Need to  
Construct a Solar-Powered Electric Generation  
Facility in Greene County, Ohio.

Once again, good morning. My name is  
David Hicks, and with me is Mike Williams. And we  
are the Administrative Law Judges in the Legal  
Department of the Ohio Power Siting Board and have  
been assigned by the Board to hear this case.

I'll note that this hearing is being held  
via Webex in accordance with the scheduling entries  
issued on August 26, 2021, and November 10, 2021, and  
that also pursuant to a November 24, 2021, entry,  
we're doing a call and continue of the adjudicatory  
hearing scheduled to begin today. That means we have  
now opened the evidentiary hearing, we will take  
appearances of the counsel, have some discussions

1 here in terms of things going forward, and then we  
2 will adjourn and reconvene the evidentiary hearing at  
3 a later to be determined date.

4 At this time let's go ahead and take  
5 appearances by counsel. I'm just going so sort of go  
6 down the roll here, probably easier than having  
7 everyone just chime in as we could with lesser  
8 parties. So we will go ahead and start with the  
9 Applicant.

10 MR. SETTINERI: Good morning, your  
11 Honors. On behalf of the Kingwood Solar I LLC,  
12 Michael Settineri, Anna Sanyal, and Nathaniel Morse  
13 with the law firm Vorys, Sater, Seymour and Pease  
14 LLP, 52 East Gay Street, Columbus, Ohio 43215.

15 ALJ HICKS: Thank you.

16 And on behalf of Board Staff.

17 MS. BAIR: Thank you, your Honor. On  
18 behalf of the Power Siting Board Staff, Dave Yost,  
19 Attorney General, Jodi Bair, Werner Margard,  
20 Assistant Attorneys General, 30 East Broad Street,  
21 Columbus, Ohio 43215.

22 ALJ HICKS: Thank you.

23 And on behalf of the Ohio Farm Bureau  
24 Federation.

25 MS. MILAM: Good morning, your Honors.

1 Amy Milan on behalf of the Ohio Farm Bureau  
2 Federation, 280 North High Street, 6th Floor,  
3 Columbus, Ohio 43215.

4 ALJ HICKS: Thank you.

5 And for the Board of Trustees of  
6 Cedarville Township.

7 MR. BROWN: This is Attorney Daniel Brown  
8 for Cedarville Township, Brown Law Office, 204 South  
9 Ludlow Street, Suite 300, Dayton, Ohio 45402.

10 ALJ HICKS: Thank you.

11 And on behalf of the Board of Trustees of  
12 Xenia Township.

13 MR. WATKINS: Yes. Good morning, your  
14 Honors. This is David Watkins and Kevin Dunn of the  
15 Plank Law Firm which is at 411 East Town Street,  
16 Columbus, Ohio, Floor 2.

17 ALJ HICKS: Thank you.

18 And on behalf of the Board of Trustees of  
19 Miami Township.

20 MR. SLONE: Good morning. Lee Slone,  
21 Dinsmore & Shohl, One South Main Street, Suite 1300,  
22 Dayton, Ohio 45402.

23 ALJ HICKS: Thank you.

24 And on behalf of In Progress LLC.

25 MR. HART: Good morning, your Honor.

1 John Hart, 3728 Country Lane, Beavercreek, Ohio  
2 45430.

3 ALJ HICKS: And on behalf of the Tecumseh  
4 Land Preservation Association.

5 Okay. And on behalf of the Citizens for  
6 Green Acres and the Associated Individual  
7 Intervenors.

8 MR. VAN KLEY: Good morning. This is  
9 Jack Van Kley of Van Kley & Walker, 132 Northwoods  
10 Boulevard, Suite C-1, Columbus, Ohio 43235.

11 ALJ HICKS: Thank you.

12 And on behalf of the Greene County Board  
13 of Commissioners.

14 MR. BOGGS: Good morning, your Honors.  
15 Thad Boggs of the law firm Frost Brown Todd LLC, 10  
16 West Broad Street, 23rd Floor, Columbus, Ohio 43215.

17 ALJ HICKS: Thank you. I believe that's  
18 everyone, but with the long list, speak now if we  
19 have missed anyone, but I think that is the full  
20 roll.

21 And with that I think the plan here is to  
22 have some discussion here on updates and sort of  
23 trying to map out a schedule, or at least tentatively  
24 talk through how we want to move things forward.

25 Mr. Settineri, probably makes sense for

1 you to lead off. I would just go ahead and bring up  
2 though just the fact that Judge Williams and I had  
3 talked a little bit before, and we certainly want to  
4 keep things moving, as I am sure everyone else does.  
5 So I will let you give us your update and just let  
6 you know that we were, you know, hopeful looking into  
7 mid to late February at least to try and get things  
8 moving towards a hearing. And so I will throw that  
9 out there and let you provide the update you had  
10 planned to provide.

11 ALJ WILLIAMS: In all fairness, I think  
12 we did before we went on the record, but I'll caution  
13 as well, obviously as the ALJs in the case, we don't  
14 want to hear and I am not interested in the  
15 negotiation specifics, so negotiation generalities  
16 we're open to certainly to the extent they help give  
17 us a perspective as to case timeline, but we caution  
18 all the parties not to be overly disclosing of any of  
19 the details of settlement negotiations.

20 With that, Mr. Settineri.

21 MR. SETTINERI: Sure. Thank you, your  
22 Honor, be glad to. So the ball has been in our  
23 court. We appreciate all the parties agreeing to not  
24 oppose the continuance, and we're making good use of  
25 that time, although we have not yet sent anything to



1 the parties. We have been working on a draft  
2 Stipulation and looking at design features on the  
3 project which is taking time, working with our  
4 engineering team, et cetera, on that.

5 So from a scheduling perspective, what we  
6 are looking at here is actually getting some material  
7 out to the parties in the next couple of days.

8 We're -- we started working on setting up meetings  
9 with parties to follow up and discuss that package  
10 that we are going to be sending out, and I expect  
11 some of those meetings to occur in December.

12 Unfortunately the holidays are close  
13 approaching. I didn't realize this is our last  
14 really full workweek in a sense before the holidays  
15 hit. And then we have, I think, at least one meeting  
16 scheduled for January.

17 So with that being said, what I typically  
18 would see in these proceedings, we've done many  
19 times, is what I would like to do is come back  
20 either -- ideally it would be the first week of  
21 January for a status conference to be able to have  
22 pretty good follow-up where things stand with the  
23 parties, what parties are interested, maybe what  
24 parties are not interested. And then at that status  
25 conference we would go ahead then and lock in dates

1 for a hearing and stipulation going forward.

2 ALJ WILLIAMS: I am not sure you need the  
3 Bench's attention to confirm who is or who is not  
4 interested in negotiations.

5 MR. SETTINERI: That's right.

6 ALJ WILLIAMS: Let me see if we can --  
7 and as a way of example, I just had one of these  
8 conferences about a week, week and a half ago in Case  
9 20-1605. And what we did there we tried to project  
10 out as far as we thought the Board would tolerate  
11 calendars of the respective parties and clear a  
12 window of hearing time, and then Judge Hicks and I  
13 will get together offline in the next week or so and  
14 propose a new scheduling entry. I think we get to  
15 the same spot, Mr. Settineri, whether we reconvene  
16 and talk again or whether we frankly try to get a  
17 date as far out as we think the Board will tolerate  
18 but that's, I think, where we are inclined to be.

19 MR. SETTINERI: Okay.

20 ALJ WILLIAMS: Anything in follow-up to  
21 that?

22 MR. SETTINERI: Your Honor, if I may,  
23 yes. In my experience we've had settlements go  
24 months in the past, so it's always -- it depends on  
25 the complexity of the case and how long you go and I

1 have never had issue with the Board not tolerating  
2 settlement time and I have never seen the Board push  
3 to have a hearing before.

4 So obviously the status conference is  
5 helpful in January because it would allow us to get  
6 feedback; and, yes, we are not going to say which  
7 parties oppose and which parties don't oppose, but it  
8 allows us to take the temperature. So I just want to  
9 make that comment that I have never seen kind of a  
10 rush to go to hearing.

11 With that being said, again, I would like  
12 to see a status conference in January. If we are  
13 going to look at deadlines, there's a very good  
14 chance then as long as we are able to file a motion  
15 to extend those deadlines. I think that's important.

16 ALJ WILLIAMS: We certainly can't commit  
17 to -- you can file whatever motion you want, as you  
18 are well aware. We can't commit to how well it will  
19 be received. As I indicated, that there's certainly  
20 recent precedent in my case management as to the  
21 Board's desire to keep these cases moving. Obviously  
22 we were set for evidentiary hearing today. If we're  
23 to propose or settle into dates the latter part of  
24 February, the early part of March, we are already  
25 gaining a two or three months' continuance of the

process, so I think that is certainly well within the range of reason -- reasonable in terms of what the parties can and should expect in these types of cases.

MR. SETTINERI: Yeah. I'll leave that to the Bench's discretion but obviously wanted to note what I've seen for years on the record.

ALJ WILLIAMS: Okay. So noted.

Anybody else want to comment on the progress of settlement negotiations or any of the nuances of negotiations?

MR. VAN KLEY: Your Honor, this is Jack. I guess my preference would be to -- to set a hearing so that we can lock it in on all of our witnesses' calendars and our calendars. I can tell you my February calendar is really full right now, but March is still open. And if we set a hearing date in March where my calendar is more open, provided that everybody else's calendars are open during that time, I think at least we lock in the dates we -- we lock it in on our witnesses' calendars and that provides us with about three months to conclude any discussions we might have.

So that would be my preference, although I am not going to fall on my sword if the Bench

1 decides to indefinitely postpone the hearing.

2 ALJ WILLIAMS: Thank you, Mr. Van Kley.

3 Anybody else want to comment? Mr. Hart,  
4 I see the triangle of death over your name on our  
5 screens here, so if you are trying to reach us or  
6 speak, you are going to need to call in. Otherwise,  
7 we will assume you are still able to hear us; or, as  
8 you are aware, this is all being transcribed.

9 Okay. So I think what we are going to do  
10 is compromise and not set a firm date here today but  
11 really kind of hone in on what's probably going to be  
12 a firm date via some very soon scheduling entry. I  
13 think in light of my calendar, and I know Judge  
14 Hicks's calendar is equally chaotic, let's look at  
15 the week of March 7. I'm assuming we will need  
16 roughly three days obviously depending on  
17 stipulations and the like, but so I'm looking for a  
18 three-day block the week of March 7.

19 MR. VAN KLEY: Your Honor, if this is a  
20 contested hearing rather than a settled situation, I  
21 think it's going to take more than three days. It's  
22 probably going to take more like six days is my  
23 guess.

24 ALJ WILLIAMS: I appreciate that. Judge  
25 Set -- Attorney Settineri, you concur it would be six

1 days or closer to six days?

2 MR. SETTINERI: I would agree with Jack.  
3 Jack and I have been doing this for a long time; so,  
4 yeah, I think I would expect five to six days.

5 ALJ WILLIAMS: I think that -- I was  
6 already leaning toward we are going to do as much as  
7 we have to do and get it done in five so let's look  
8 at that entire week of March 7. And I'll invite one  
9 and all to let me know if they are not available that  
10 week. I'm hearing no one. Just as a backup plan,  
11 let's look at the week of March 14. Anybody have any  
12 conflicts that week?

13 ALJ HICKS: I might as the Judge.

14 ALJ WILLIAMS: How many days are you  
15 going to be out, Judge Hicks?

16 ALJ HICKS: Thursday, Friday that week.

17 ALJ WILLIAMS: Okay. Let's do one more  
18 week. The week of the 21st?

19 ALJ HICKS: Completely clear.

20 MS. MILAM: I have a conflict that week,  
21 your Honors.

22 ALJ WILLIAMS: Okay. I think with the  
23 two-week window there; and, Judge Hicks, if we do  
24 pick the week of the 14th for whatever reason, we  
25 will do the three days, and then we'll add on the

1 other two days at -- during the course of the hearing  
 2 as necessary. Again, hopefully if -- if the case  
 3 does proceed to hearing that week, maybe we get some  
 4 stipulations or we can consolidate witnesses and the  
 5 like, but I think it makes sense for us to all  
 6 reserve the weeks of the 7th and 14th of March, and  
 7 we'll get a scheduling entry out certainly in the  
 8 next week or so so that you can free up days as  
 9 necessary for your other cases.

10 Okay. So we have calendars freed up 3-7,  
 11 3-14, those weeks. Candidly we don't know whether  
 12 this is going to be virtual or in person at this  
 13 stage. It seems as though COVID precautions are --  
 14 they might have changed since we have been on this  
 15 call quite frankly. I would believe it's probably  
 16 going to be virtual, but we'll reserve the right to  
 17 set it or adjust it as necessary.

18 MR. VAN KLEY: If it does turn back into  
 19 an in-person hearing, does the Bench have any  
 20 flexibility on our being able to call some  
 21 out-of-state witnesses virtually? Some of our  
 22 witnesses right now are -- are -- their attendance is  
 23 contingent on this being a virtual hearing since it  
 24 was scheduled as a virtual hearing to start today, so  
 25 we may not be able to get them into town if it turns

1 into an in-person hearing.

2 ALJ WILLIAMS: I'll tell you what we will  
3 pledge, if it's going to be in person, we will give  
4 you, you know, as much notice as possible, presumably  
5 at least a month's notice. I think for now we will  
6 assume it's going to be virtual. If it does convert  
7 to in person, then we'll adjust accordingly in terms  
8 of witness availability. I don't know that we have  
9 the ability or the discretion at this stage to  
10 conduct an in-person hearing and bring some witnesses  
11 in virtually. I would assume the Board would not be  
12 in favor of that.

13 Any other questions?

14 Okay. Judge Hicks, you want to close us  
15 out?

16 ALJ HICKS: Sure. Again, hearing no  
17 further questions, we will reconvene at a later date  
18 and be on the lookout for a scheduling entry within  
19 the next week or so.

20 And until then we are adjourned.

21 (Thereupon, at 10:19 a.m., the hearing  
22 was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Monday, December 13,  
2021, and carefully compared with my original  
stenographic notes.

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7200)

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**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on  
12/21/2021 3:32:19 PM**

**in**

**Case No(s). 21-0117-EL-BGN**

Summary: Transcript in the matter of Kingwood Solar I LLC hearing held on  
12/13/21 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey,  
Inc. and Gibson, Karen Sue Mrs.