

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Kingwood Solar I LLC for a Certificate)	Case No. 21-0117-EL-BGN
of Environmental Compatibility and)	
Public Need)	

**MOTION FOR A PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT**

Pursuant to Ohio Adm.Code 4906-2-21, Kingwood Solar I LLC (the “Applicant”) respectfully moves for a protective order to keep its *Addendum Phase I Archeological Investigations for the Kingwood Solar Farm Development in Miami, Xenia, and Cedarville Townships, Greene County, Ohio* (“Report”) confidential and not part of the public record. The Report is being provided to the Ohio Power Siting Board Staff (“Staff”) to supplement a data request made on May 17, 2021. Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Pursuant to the Ohio Adm.Code 4906-2-21(D), three unredacted confidential copies of the Report are being submitted separately under seal in this proceeding.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

Kingwood Solar I LLC (the “Applicant”) has submitted its *Addendum Phase I Archeological Investigations for the Kingwood Solar Farm Development in Miami, Xenia, and Cedarville Townships, Greene County, Ohio* (“Report”) under seal as a second supplemental response to a data request made by the Ohio Power Siting Board Staff (“Staff”) and requests that this information be protected from public disclosure. The Report contains details of archaeological sites and finds in and around the project area. A Phase 1 archaeological report is not a required part of the Application and traditionally has been submitted post-certificate. *See* Ohio Adm.Code 4906-4-08(D) (requiring an applicant to include in its application a map, a general evaluation of the impact of the proposed facility on landmarks, and a description of a plan to avoid/mitigate any adverse impact); *see also, In re Hillcrest Solar I, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Green Township, Brown County, Ohio*, Case No. 17-1152-EL-BGN (*Hillcrest Solar I*), Opinion, Order, and Certificate (Feb. 15, 2018) at ¶ 67(13) (Condition 13 of the approved stipulation requires “[p]rior to the commencement of construction, Hillcrest shall prepare a Phase I cultural resources survey program for archaeological work for the project area. The survey program shall include consideration of post locations, access roads, electric collection lines, and the project substations, in consultation with Staff and the Ohio Historic Preservation Office...”); and *In re Paulding Wind Farm IV LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Paulding County, Ohio*, Case No. 18-91-EL-BGN, Opinion, Order, and Certificate (Feb. 21, 2019) at ¶ 146(9) (Condition 9 of the approved stipulation requires “[p]rior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the

proposed facility on cultural resources, if any, with Staff and the [Ohio Historic Preservation Office]...”).

The Applicant has, however, prepared the Report and is submitting it as a response to Staff’s data request. Applicant filed this exhibit under seal to protect the archaeological sites/finds, deter unauthorized field investigations, and protect the resources and locational information in the report. The Board should grant confidential treatment of the Report to protect the archaeological sites and information in the study area for these fundamental reasons. In fact, consistent with the Board’s practice to routinely grant confidentiality for sensitive archaeological information,¹ the Board has already granted confidential treatment for an earlier report containing similar archaeological information. *See In re Kingwood Solar I LLC*, Case No. 21-0117-EL-BGN, Entry (Nov. 10, 2021) at ¶ 7

Notably, several federal laws seek to protect and limit harm to archaeological resources on federal land and American Indian sacred sites for these same reasons. *See* 16 USC § 470; 54 USC § 307103; 36 CFR § 296.18 and 43 CFR § 7. Specifically, under authority of Section 304 of the National Historic Preservation Act, the Ohio State Historic Preservation Office, from whom the Applicant obtained information about the archaeological sites discussed in the, has the right to withhold from public disclosure information that may cause a significant invasion of privacy, risk harm to a historic place, or impede the use of a traditional religious site by practitioners. 16 USC § 470. Likewise, other state laws and guidelines restrict public disclosure of archaeological site information for similar reasons. *See, e.g.*, New Hampshire RSA 227-C:11. In sum, disclosing the

¹ *See, e.g., In re Sycamore Creek Solar, LLC*, Case No. 20-1762-EL-BGN, Entry (July 15, 2021) at ¶¶ 13-14 and *In re Juliet Energy Project LLC*, Case No. 20-1760-EL-BGN, Entry (Mar. 26, 2021) at ¶ 10.

archaeological sites/finds information will disclose sensitive information and unnecessarily risk harm in those areas.

Additionally, non-disclosure of the above information in the Report will not impair Staff's review of the Application. The Board and its Staff have full access to the information in order to fulfill the statutory obligations, and protective treatment will allow the Board and Staff to examine the information without risk of harm to the archaeological sites. Furthermore, public disclosure of this information is not likely to either assist the Board in carrying out its duties under the rules, or serve any other public policy.

For the above reasons, Applicant requests that the Administrative Law Judge grant its motion for a protective order to maintain the Report confidential and not subject to public disclosure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being sent via electronic mail on February 9, 2022 to:

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Summary: Motion Motion for a Protective Order and Memorandum in Support
electronically filed by Nathaniel Morse on behalf of Kingwood Solar I LLC