

**BEFORE  
THE OHIO POWER SITING BOARD**

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

**MOTION FOR SUBPOENA FOR GREENE COUNTY BOARD OF  
COMMISSIONERS-DESIGNATED REPRESENTATIVES TO ATTEND  
AND TESTIFY AT THE ADJUDICATORY HEARING**

Pursuant to Ohio Adm.Code 4906-2-23, Kingwood Solar I LLC (the “Applicant”) respectfully moves to issue a subpoena to the following persons to appear and testify at the March 7, 2022 Adjudicatory Hearing in this matter. Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support.

Kingwood seeks a subpoena for the followings persons to testify at the adjudicatory hearing:

1. The County Administrator, Brandon Huddleson;
2. the Greene County Board of Commissioners staff member(s) or any representative or employee of Greene County, who spoke or communicated with, to or from any representative or employee of the Public Utilities Commission of Ohio and/or of the Ohio Power Siting Board regarding the passing of a resolution related to the proposed Kingwood Solar Project in Greene County, Ohio; and
3. the Greene County Board of Commissioners staff member(s) or any representative or employee of Greene County, who spoke or communicated with, to or from any representative or employee of the Public Utilities Commission of Ohio and/or of the Ohio Power Siting Board between October 1, 2021 and October 29, 2021.

Respectfully submitted,

/s/ Nathaniel B. Morse

Michael J. Settineri (0073369) Counsel of Record

Anna Sanyal (0089269)

Nathaniel B. Morse (0099768)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

aasanyal@vorys.com

nbmorse@vorys.com

*Attorneys for Kingwood Solar I LLC*

**BEFORE  
THE OHIO POWER SITING BOARD**

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

**MEMORANDUM IN SUPPORT OF**  
**MOTION FOR SUBPOENA FOR GREENE COUNTY**  
**BOARD OF COMMISSIONERS-DESIGNATED REPRESENTATIVES TO**  
**ATTEND AND TESTIFY AT THE ADJUDICATORY HEARING**

**I. Introduction**

Kingwood Solar I LLC (the “Applicant”) seeks the issuance of a subpoena to require the certain representatives of the Greene County Board of Commissioners to appear at the hearing in this matter. The Applicant seeks to examine those representatives on the scope and content of communications between the Ohio Power Siting Board Staff and/or any employee of the Public Utilities Commission of Ohio with the Greene County Board of Commissioners or any representative of the Board of Commissioners. The basis for this request is more fully set forth below.

**II. Background**

On April 16, 2021, Kingwood Solar I LLC (the “Applicant”) filed an Application for a Certificate of Environmental Compatibility and Public Need (the “Application”) with the Ohio Power Siting Board (the “Board”) to construct a 175 megawatt (“MW”) solar-powered generating facility in Cedarville, Miami, and Xenia Townships in Greene County. Each of the townships, the Greene County Board of Commissioners, the Ohio Farm Bureau Federation, Citizens for Greene Acres along with named individuals (collectively, “CGA”), In Progress LLC, and Tecumseh Land Preservation Association intervened in the proceeding. After submitting the Application, the Applicant held informational meetings with various stakeholders.

On October 28, 2021, the Greene County Board of Commissioners passed a resolution that stated its opposition to the application for the Kingwood Solar Project. *See In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-0117-EL-BGN, Notice of Resolution of the Greene County Board of Commissioners in Opposition to the Kingwood Solar Application (October 29, 2021). In support, the resolution concluded that the Project was “incompatible with the general health, safety, and welfare of the residents of Greene County.” *Id.* at 2. Counsel for the Greene County Board of Commissioners filed a copy of that resolution on the docket at 10:02 a.m. the morning of October 29, 2021.

At 4:10 p.m. on that same day, a mere six hours after that filing, Mr. Butler filed the Staff Report of Investigation (“Staff Report”) on the docket. *In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-0117-EL-BGN, Staff Report of Investigation Recommending Denial of Certificate (October 29, 2021). That Staff Report included multiple references to the October 28, 2021 Greene County resolution. *See, e.g.*, Staff Report at 6, 12, 31, 42, and 44. The Staff Report also concluded that because the local government has responsibility for “preserving the health, safety, and welfare,” their opposition to the Kingwood Project is “especially compelling.” *Id.* at 44.

The Adjudicatory Hearing is now scheduled to begin on March 7, 2022 in a virtual format. At that hearing, the Applicant will need to better understand the extent and scope of communications between Staff and the Greene County Board of Commissioners regarding the Project and the passing of the resolution.

## **II. Law and Argument**

Ohio Adm.Code 4906-2-23 establishes a right for parties to obtain subpoenas for testimony at the adjudicatory hearing. The Ohio Supreme Court explicitly affirmed this right in *In re Application of Black Fork Wind Energy, L.L.C.* 138 Ohio St. 3d 43 at 48 (2013).

The Staff Report recommendation that the Board deny the Application is central to the Applicant's development of a record upon which the Board will decide whether or not to issue a certificate in this proceeding. Central to Staff's recommended denial of a certificate was the resolution passed by the Greene County Board of Commissioners, a resolution passed just before the Staff report issued. Understanding the nature and extent of communications between Staff or any other employee of the Public Utilities Commission of Ohio with the Greene County Board of Commissioners is important to determine the rationale for and motivations underlying the Board Staff's decision to recommend denial of the certificate.

As a party to the proceeding, the Applicant wishes to subpoena certain representatives of the Greene County Board of Commissioners to testify at the Adjudicatory Hearing. Failure to issue the subpoenas would unreasonably and prejudicially restrict the Applicant's opportunity to present a complete record for the Board.

## **III. Conclusion**

For the above reasons, Applicant respectfully requests that the Administrative Law Judge grant its motion for the attached subpoenas.

Respectfully submitted,

/s/ Nathaniel B. Morse

Michael J. Settineri (0073369) Counsel of Record

Anna Sanyal (0089269)

Nathaniel B. Morse (0099768)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

[aasanyal@vorys.com](mailto:aasanyal@vorys.com)

[nbmorse@vorys.com](mailto:nbmorse@vorys.com)

*Attorneys for Kingwood Solar I LLC*

## **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 25, 2022 to:

Jodi J. Bair Werner L. Margard <i>Attorneys for Ohio Power Siting Board Staff</i>	Jodi.bair@ohioattorneygeneral.gov Werner.margard@ohioattorneygeneral.gov
---	---

Daniel A. Brown <i>Attorney for Cedarville Township Trustees</i>	dbrown@brownlawdayton.com
---	---------------------------

David Watkins Kevin Dunn <i>Attorneys for Xenia Township Trustees</i>	dw@planklaw.com kdd@planklaw.com
---	-------------------------------------

Lee A. Slone <i>Attorney for Miami Township Board of Trustees</i>	lee.slone@dinsmore.com
--	------------------------

John E. Hart <i>Attorney for In Progress LLC</i>	jehartlaw@gmail.com
---	---------------------

Charles D. Swaney <i>Attorney for Tecumseh Land Preservation Association</i>	cswaney@woh.rr.com
---	--------------------

Jack A. Van Kley <i>Attorney for Citizens for Greene Acres, Inc.</i>	jvankley@vankleywalker.com
---	----------------------------

Thaddeus M. Boggs <i>Attorney for the Greene County Commissioners</i>	tboggs@fbtlaw.com
--	-------------------

Chad A. Endsley Leah F. Curtis Amy M. Milam <i>Attorneys for Ohio Farm Bureau Federation</i>	cendsley@ofbf.org lcurtis@ofbf.org amilam@ofbf.org
---	--

/s/ Nathaniel B. Morse

**BEFORE  
THE OHIO POWER SITING BOARD**

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

**SUBPOENA**

TO: Brandon Huddleson, County Administrator  
Greene County Board of Commissioners  
35 Greene Street  
Xenia OH 45385-3101

Upon application of Kingwood Solar I LLC, Brandon Huddleson as County Administrator is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

**Case No.** 21-0117-EL-BGN

**Case Title:** In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear via Webex virtual hearing technology at the adjudicatory hearing on the 7<sup>th</sup> day of March, 2022 at 10:00 a.m., Eastern time. You will be provided instructions to access the virtual hearing prior to this date and time.

That Greene County Board of Commissioners staff member(s) is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this \_\_\_\_ day of February 2022.

---

Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.



**BEFORE  
THE OHIO POWER SITING BOARD**

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

**SUBPOENA**

TO: Greene County Board of Commissioners  
35 Greene Street  
Xenia OH 45385-3101

Upon application of Kingwood Solar I LLC, the Greene County Board of Commissioners staff member or members, who spoke or communicated with, to or from any representative or employee of the Public Utilities Commission of Ohio and/or the Ohio Power Siting Board regarding the passing of a resolution related to the proposed Kingwood Solar Project in Greene County, Ohio, is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

**Case No.** 21-0117-EL-BGN

**Case Title:** In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear via Webex virtual hearing technology at the adjudicatory hearing on the 7<sup>th</sup> day of March, 2022 at 10:00 a.m., Eastern time. You will be provided instructions to access the virtual hearing prior to this date and time.

That Greene County Board of Commissioners staff member(s) is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this \_\_\_\_ day of February 2022.

\_\_\_\_\_  
Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**BEFORE  
THE OHIO POWER SITING BOARD**

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

**SUBPOENA**

TO: Greene County Board of Commissioners  
35 Greene Street  
Xenia OH 45385-3101

Upon application of Kingwood Solar I LLC, the Greene County Board of Commissioners staff member or members, who spoke or communicated with, to or from any representative or employee of the Public Utilities Commission of Ohio and/or the Ohio Power Siting Board between October 1, 2021 and October 29, 2021, is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

**Case No.** 21-0117-EL-BGN

**Case Title:** In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear via Webex virtual hearing technology at the adjudicatory hearing on the 7<sup>th</sup> day of March, 2022 at 10:00 a.m., Eastern time. You will be provided instructions to access the virtual hearing prior to this date and time.

That Greene County Board of Commissioners staff member(s) is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this \_\_\_\_ day of February 2022.

\_\_\_\_\_  
Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**2/25/2022 1:01:13 PM**

**in**

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

Summary: Motion for Subpoena for Greene County Board of Commissioners-  
Designated Representatives to Attend and Testify at the Adjudicatory Hearing  
electronically filed by Nathaniel Morse on behalf of Kingwood Solar I LLC