

**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. 21-117-EL-BGN</b>
<b>of Environmental Compatibility and</b>	)	
<b>Public Need</b>	)	

**KINGWOOD SOLAR I LLC’S MEMORANDUM CONTRA INTERVENORS’  
MOTION TO STRIKE THE REBUTTAL TESTIMONY OF JIM HOBART AND  
MOHAMMED R. KARIM AND PORTIONS OF THE REBUTTAL TESTIMONY OF  
DYLAN STICKNEY**

**I. Introduction**

The rebuttal testimonies of Mr. Hobart, Mr. Stickney and Mr. Karim are proper for the purpose of rebuttal in all respects. Mr. Hobart presents expert witness testimony on the proper method to gauge public opinion and he uses an opinion poll that his firm conducted to show why he disagrees with the testimony of Mr. Ewry, Mr. Combs, Mr. Huddelson, Mr. Hollister and Mr. Zeto on the level of public opposition to the Kingwood Solar Project (the “Project”). Mr. Stickney rebuts the testimony of Mr. Zeto as to both the public interest of the Project as well as Mr. Zeto’s statement that any local benefits of the Project are outweighed by the “overwhelming” opposition. To do that, Mr. Stickney relies in part on an updated economic impact analysis as well as a recent granular tax analysis prepared by Mr. Karim. All of that testimony is proper for rebuttal and Kingwood could not have predicted the inferences or addressed those inferences in the direct testimony of its witnesses because the Intervenor’s and Staff’s testimony deadline was after Kingwood’s testimony filing deadline. The motion to strike should be denied in its entirety, as set forth below.

## **II. Argument**

### **A. Rebuttal testimony is proper to respond to opposing evidence and to provide a complete record.**

The Ohio Power Siting Board has held that it is proper for an applicant “to introduce testimony to rebut the inferences to be drawn from the witnesses presented by intervenors” when particular parts of the application are called into question during the hearing. *In re Jackson County Power, LLC*, Case No. 00-839-EL-BGN, Entry on Rehearing (Sept. 17, 2001), at ¶ 19. In *Jackson County Power*, the Board found that when particular parts of the application were attacked by intervenors, it was proper for the applicant to introduce testimony during a rebuttal phase of the hearing to rebut the inferences to be drawn from the intervenors’ witnesses. *Id.* Also, the Board stated that it makes “a concerted effort to balance many interests,” and a complete record with regard to the issues being contested is necessary to ensure that Ohio citizens are well served with regard to their energy needs. *Id.*

The Public Utilities Commission of Ohio, in addition, has determined in similar administrative proceedings that rebuttal testimony is appropriately offered in response to testimony from an intervenor when the intervenor’s direct testimony filing deadline was prior to the rebutting party’s direct testimony filing deadline. *See, e.g., In re Columbus Southern Power Co., Case Nos. 08-917-EL-SSO, et al.*, Order on Remand (Oct. 3, 2011), at 8 (noting that the applicant’s rebuttal testimony was in response to the direct testimony of an intervenor, and the applicant could not have presented the rebuttal testimony during its case-in-chief because the company’s direct testimony was filed before the intervenors’ testimony).

**B. Mr. Hobart’s testimony is proper rebuttal testimony because his testimony rebuts the direct testimony of opposition witnesses who submitted testimony on the opinion of local residents about the Project.**

Mr. Hobart’s testimony addresses the manner in which Mr. Ewry (Cedarville Township Exhibit 1), Mr. Huddleson (Greene County Exhibit 1), Mr. Combs (Xenia Township Exhibit 1), Mr. Hollister (Miami Township Exhibit 3) and Mr. Zeto (Staff Exhibit 11), assessed public opinion regarding the Project as well as their opinions regarding the level of public opposition to the Project, as expressed in their direct testimony.

All of the identified witnesses testified as to how they assessed the public opinion about the Project in addition to expressing their own opinion about the level of public opposition. For example:

- Mr. Ewry testified that “[b]oard members solicited and received feedback from citizens in our community in a variety of ways” including hearing from them at board meetings, talking to residents, and holding a special board meeting (Cedarville Exhibit 1 at 2). He also testified that “[t]he overwhelming majority of commenters residing in Cedarville Township oppose the Project.” (Cedarville Exhibit 1 at 3)
- Mr. Huddleson testified that Greene County evaluated public input about the Project provided at public meetings organized by Kingwood and the Board (Greene County Exhibit 1 at 3). He concluded that the “... overwhelming sentiment was that the project did not fit this area for many reasons that were expressed.” (Greene County Exhibit 1 at 3).
- Mr. Combs testified that he evaluated comments made at a public hearing, correspondence received by the Board, and general interaction with Xenia Township residents to determine that the “overwhelming opinion of the Township residents to the project is negative” (Xenia Township Exhibit 1 at 1-2).
- Mr. Hollister stated that he assessed local public opinion in various informal settings (coffee shops and on the street) and more formally at Miami Township Trustee meetings and Project-specific public meetings and came to the conclusion that Miami Township residents are opposed to the Project (Miami Township Exhibit 3 at 2-3). He then provided his assessment of the overall attitude of Miami Township residents. (Miami Township Exhibit 3 at 3).

- Mr. Zeto testified that Board Staff considered “opposition filed in the docket and expressed at local public meetings” to conclude that “any benefits to the local community are outweighed by this overwhelming public opposition” (Staff Exhibit 11 at 4).

Mr. Hobart’s rebuttal testimony directly addresses why each of the methods utilized by these witnesses to gauge public opinion is unreliable and that a public opinion poll is the best way to evaluate public opinion (Q&A 8 and Q&A 9). He then describes the poll his firm conducted and then using the poll results, presents his conclusions about local support or opposition to the Kingwood Solar Project (Q&A10 through Q&A 14) to rebut the conclusions of witnesses Ewry, Combs, Hollister, Huddleson, and Zeto (Q&A 15). Mr. Hobart’s testimony is directly rebutting opposition witnesses’ direct testimony and is proper.

The motion to strike argues that the Applicant should have brought testimony about the poll in the Applicant’s “case in chief.” At that point in the case, however, neither Mr. Ewry, Mr. Zeto, Mr. Combs, Mr. Hollister nor Mr. Huddelson had testified about the manner in which they gauged public opinion and their opinions on how citizens viewed the Project. Moreover, the fact that Mr. Stickney mentioned and discussed the poll during his cross-examination is irrelevant.<sup>1</sup> Mr. Hobart’s rebuttal testimony is proper at this juncture because it goes to addresses the manner in which certain opposition witnesses evaluated public opinion and their conclusions as to how local residents viewed the the Project. Board precedent allows Kingwood to rebut the inference raised by these witnesses during their direct testimony, and to demonstrate the proper way to gauge public interest regarding the Project in the Project Area. Board precedent also demonstrates that it is proper for Kingwood to refute during a rebuttal phase these witnesses’ testimony and

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<sup>1</sup> Notably, the poll was conducted March 2-3, 2022, and was not complete or available on February 23, 2022, the filing deadline for Kingwood’s direct testimony.

inferences about their view of how local citizens view the Kingwood Solar Project, and Mr. Hobart's use of polling information does just that.

The townships' and CGA's motion to strike Mr. Hobart's testimony should be denied. Mr. Hobart's testimony presents the Board with a "complete record with regard to issues being contested in this case" and without Mr. Hobart's testimony, the record before the Board will be "incomplete or ambiguous [and] the citizens of this state are not being well served." *Jackson County Power*, at ¶ 19. Consequently, the Administrative Law Judges should deny the Intervenors' motion to strike and allow the presentation of Mr. Hobart's rebuttal testimony so a complete record is available for the Board's evaluation of whether public interest will be served by this Project.

**C. Mr. Stickney's rebuttal testimony specifically addresses Mr. Zeto's assertion that the Project does not satisfy R.C. 4906.10(A)(6).**

Kingwood does not agree with Board Staff's conclusion that Kingwood has failed to establish that the Project will not satisfy the public interest, convenience, and necessity, as required under R.C. 4906.10(A)(6) (Staff Exhibit 11 at 3). Mr. Stickney's rebuttal testimony specifically refutes these assertions raised in Mr. Zeto's testimony. Consequently, as explained further below, the Intervenors' motion to strike certain portions of Mr. Stickney's testimony should be denied.

***1. The motion to strike Mr. Stickney's testimony at A.8, page 6, lines 14-15 should be denied.***

Mr. Stickney's response in A.8 directly rebuts Mr. Zeto's claim that "public opposition will create negative impacts on the local community" (Staff Exhibit 11 at 4). Tellingly, the townships and CGA do not move to strike the entire answer; rather, they seek to strike only a portion – Mr. Stickney's statement in the answer that "Again, as shown in the public opinion poll conducted by Public Opinion Strategies, the majority of Greene County residents support the project." That statement, however, is part of Mr. Stickney's overall answer and directly responsive to Q.8, which states "Mr. Zeto claims that the 'public opposition will create negative impacts on

the community.’ Do you agree with that statement?” The townships and CGA argue that any discussion of the poll should be limited to the Applicant’s primary presentation and therefore Mr. Stickney is precluded from referring to the poll (which is in the record) in his rebuttal testimony. But, as noted above, that is not a proper limitation on rebuttal testimony before the Board. The poll is part of the record, having been marked by CGA as an exhibit and then admitted into the record during the initial phase of the evidentiary hearing. Mr. Stickney’s reliance on the poll results in his answer to Q.8 to rebut Mr. Zeto’s claim is proper rebuttal testimony. The motion to strike should be denied.

***2. The motion to strike Mr. Stickney’s testimony at A.11, page 8, lines 14-21 and Exhibit A should be denied.***

This portion of Mr. Stickney’s rebuttal testimony directly responds to Mr. Zeto’s testimony that the Project will not serve the public interest, convenience, and necessity, pursuant to R.C. 4906.10(A)(6) (Staff Exhibit 11 at 3). After Mr. Zeto’s testified, Kingwood commissioned an updated Appendix D to the Application (Economic Impact Study) (attached as Exhibit A to Mr. Stickney’s rebuttal testimony) to analyze on a more current basis the state-wide and regional benefits that will emanate from the Project. This portion of Mr. Stickney’s testimony, including Exhibit A, demonstrates how the Project will benefit both the state and Greene County during construction via \$112,000,000 in positive economic output, the creation of 400 jobs, generation of \$4,000,000 in taxes, and additional economic output and local taxes during long-term operation of the Project. These are significant benefits based on the up-to-date information, which are in the public interest, that the Board should consider in order to determine whether the Project is in the public interest, convenience, and necessity. *See Jackson County Power*, at ¶ 19. Consequently, A.11, page 8, lines 14-21 and Exhibit A should not be stricken.

***3. The motion to strike Mr. Stickney's testimony at A.12, page 9, lines 6-23, page 10, lines 1-12; and Exhibits A and B should be denied.***

This portion of Mr. Stickney's testimony directly addresses Mr. Zeto's testimony that "Board Staff believes that any benefits to the local community are outweighed by [the] overwhelming public opposition" (Staff Exhibit 11 at 4). Indeed the question posed to Mr. Stickney in Q.12 quoted that statement verbatim from Mr. Zeto's testimony. Mr. Stickney's rebuttal testimony in A.12 refutes Mr. Zeto's belief and Mr. Stickney further responds through his answers to the rebuttal questions posed in Q.13 and Q.14. Setting up his answer. Mr. Stickney states in A.12 at lines 5-6, that "[t]he Project will provide a number of benefits to the local community that far outweigh the vocal minority that opposes the project." He then identifies the local tax revenue as one such benefit and discusses other local benefits of the Project throughout the rest of his answer.

Notably, the townships and CGA do not seek to strike Mr. Stickney's answer to Q.12. Rather, they seek to strike only parts of that answer that discuss local tax revenue. The townships and CGA claim that Mr. Zeto never challenged the adequacy of tax income generated or questioned the sufficiency of any economic impact "during cross examination." But that is not the point of Mr. Stickney's rebuttal Q.12 and A.12. That question and the answer directly rebut Mr. Zeto's direct testimony that "... any benefits to the local community are outweighed by [the] overwhelming public opposition" (Staff Exhibit 11 at 4). Regardless of any direct testimony by Mr. Stickney about the Project's economic impact and tax income, Kingwood is entitled to rebut Mr. Zeto's direct testimony that the alleged "overwhelming" opposition to the Project outweighs any local benefits.

Mr. Stickney's answer to Q.12 discusses the many local benefits. As he testifies, Kingwood commissioned the updated Economic Impact Report, which accounted for a reduction

in agricultural activity and as shown on Exhibit A, good neighbor agreement offers, community donations and potential annual contributions to townships. Kingwood also commissioned a tax analysis (attached as Exhibit B to Mr. Stickney's testimony) to measure the significant creation of new local tax incentives expected from the Project at a granular level. These local benefits include \$28,000,000 - \$40,000,000 in new tax revenues for local school districts over the Projects' 35-year operating life and \$1,500,000 in annual tax revenue above the Project Area's current land use and tax assessments. Just like Mr. Stickney's rebuttal testimony on lease payments, vegetation improvements, donations and other benefits in his answer, his rebuttal testimony on the local tax revenue (which includes Exhibits A and B) are proper rebuttal testimony. The motion to strike should be denied so the Board will have a complete record not only of the potential maximum economic impacts but also a detailed tax analysis at a granular level. Therefore, the entirety of Mr. Stickney's response in A.12 and Exhibits A and B should remain.

***4. The motion to strike the entirety of A.13 and A.14 from Mr. Stickney's testimony should be denied.***

The townships and CGA miss the point of Mr. Stickney's rebuttal testimony at A.13 and A.14 claiming that Mr. Zeto did not testify on agricultural impacts to land other than to "reiterate or confirm language contained in the Staff Report." However, as noted above, in response to rebuttal Q.12, Mr. Stickney answers that the "Project will provide a number of benefits to the local community that far outweigh the vocal minority that opposes the project." As a continuation of that questioning, Q.13 asks "[c]an preserving agricultural land benefit the local community?" Mr. Stickney responds yes and explains his answer. The follow-up rebuttal question at Q.14 is "[w]ill the Project preserve agricultural land if it is constructed?" and Mr. Stickney provides a response about the Project's ability to preserve agricultural land showing that the Project will provide a benefit to the local community by preserving agricultural farmland. That testimony is proper



rebuttal to not only Mr. Zeto's testimony that the public opposition outweighs any local benefits but also to Mr. Zeto's testimony that the Project will not serve the public interest convenience and necessity. Contrary to the townships and CGA, it is not testimony that addresses agricultural impacts. The testimony responds to opposition testimony to explain the Project's ability to act as a tool to preserve farmland, which is a local community benefit per Mr. Stickney's testimony. Again, the Board should receive a complete record, and Mr. Stickney's rebuttal testimony in response to Q.13 and Q.14 helps complete that record. The motion to strike should be denied.

**D. Mr. Karim's rebuttal testimony directly addresses inferences raised in Mr. Zeto's testimony.**

Mr. Karim's rebuttal testimony describes the projected increase in tax revenue for Greene County and its various taxing units as a result of the Project. This testimony is in direct response to Mr. Zeto's testimony that any benefits to the local community are outweighed by public opposition (Staff Exhibit 11 at 4). As Mr. Karim states in A.7 his rebuttal testimony, "the taxing alternatives presented in the summary of the analysis present a significant opportunity for increased tax revenue for Greene County and its various taxing units." He also presents his full analysis as an attachment to his testimony.

The townships and CGA seek to strike the entirety of Mr. Karim's testimony following their arguments as to parts of Mr. Stickney's testimony. They argue that, "[b]oth the economic impact and tax income resulting from the Project should have been, and were, already addressed in the Applicant's case-in-chief." They also claim (in Part II.B of their motion) that Mr. Zeto never challenged the adequacy of tax income generated or questioned the sufficiency of any economic impact during cross-examination. In making these arguments, again the townships and CGA miss the fact that Mr. Karim's and Mr. Stickney's rebuttal testimony are addressing Mr. Zeto's testimony regarding the local benefits of the Project and just as important, that the Project does not

satisfy the public interest, convenience and necessity. Mr. Zeto’s testimony should not be left unchallenged and Kingwood has every right to rebut that testimony through Mr. Karim’s detailed and thorough analysis of tax revenues, which then support Mr. Stickney’s rebuttal testimony.

For example, Mr. Karim’s tax analysis provided the below table showing the break out of property tax revenue by taxing district – a granular analysis that shows the many local benefits that would result from the Project and rebuts the inferences in Mr. Zeto’s testimony about local benefits.

Table 1 <b>35-Year Allocation of Property Tax Revenue</b>		
<b>Taxing Units</b>	<b>Regular Assessment (\$)</b>	<b>PILOT \$9,000 Per MW (\$)</b>
Greene County	12,827,322	21,142,785
Cedarville Township	1,769,653	1,226,845
Miami Township	4,651,029	3,224,414
Xenia Township	1,315,203	911,789
Cedar Cliff LSD	28,254,743	19,588,136
Xenia CSD	8,481,691	5,880,093
Joint Vocational School (JVS)	3,834,881	2,658,604
Health Services	710,163	492,334
<b>Total</b>	<b>61,844,685</b>	<b>55,125,000</b>

The Board should not be deprived of Mr. Karim’s rebuttal testimony — like other rebuttal testimony, this rebuttal testimony also presents the Board with a “complete record” with regard to issues being contested in this case” and without Mr. Karim’s testimony, the record before the Board will be “incomplete or ambiguous ....” *Jackson County Power*, at ¶ 19. The motion to strike Mr. Karim’s rebuttal testimony should be denied.

### III. Conclusion

The Board has discretion in managing its proceedings, and past decisions by both the Board and the Public Utilities Commission of Ohio support the presentation of rebuttal testimony to refute opposition testimony presented by parties in order to provide a complete record for the Board's review. The townships's and CGA's contention that the testimony presented by Mr. Hobart, Mr. Stickney, and Mr. Karim on rebuttal could have been provided in Kingwood's case-in-chief is inaccurate because Kingwood filed its direct testimony before the intervenor witnesses and Staff witness Zeto took the stand. Kingwood has a right to rebut the testimony of the intervenor and Staff witness Zeto, and has done so through the testimony of Mr Hobart, Mr. Stickney and Mr. Karim. These witnesses will be available for cross-examination of their rebuttal testimony and the Board can properly weigh the evidence including their responses to cross-examination. The Board, however, should not grant the motions to strike because to do so would leave a less than complete record. Because the rebuttal testimony presented by Kingwood supplements the record and addresses inferences raised by the intervenor witnesses and Staff's witnesses, the Administrative Law Judges should deny the motion to strike.

Respectfully submitted,

/s/ Michael J. Settineri

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## **CERTIFICATE OF SERVICE**

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Summary: Memorandum Memorandum Contra Intervenors' Motion to Strike  
Rebuttal Testimony of Jim Hobart and Mohamed R. Karim and Portions of the  
Rebuttal Testimony of Dylan Stickney electronically filed by Mr. Michael J. Settineri  
on behalf of Kingwood Solar I LLC