

BEFORE THE OHIO POWER SITING BOARD

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

**INTERLOCUTORY APPEAL AND REQUEST FOR CERTIFICATION OF
KINGWOOD SOLAR I LLC**

Pursuant to Ohio Adm.Code 4906-2-29(B), Kingwood Solar I LLC (“Kingwood” or the “Applicant”) submits this interlocutory appeal. On April 25, 2022, the Administrative Law Judge’s (“ALJ”) denied Kingwood’s renewed motion for the Executive Director of the Ohio Power Siting Board (Theresa White) to appear at the hearing. Kingwood made the oral motion because Ms. White is an important fact witness in the Applicant’s case in chief. Her subordinate, Ms. Juliana Graham-Price, testified that Ms. White directed her to contact the intervening public entities the day before the Staff Report was due to be issued. That action is highly unusual and only Ms. White knows why she directed Ms. Graham-Price to make those calls. If left in place, the ALJ’s denial of the motion will prevent the Board from having a complete record of the nature of Staff’s investigation leading up to Staff’s decision to recommend that the Project was not in the public interest, convenience and necessity. This raises a new and novel question of policy and one which the ALJ should certify for the Board’s review given that the denial is contrary to the ability of parties to subpoena Staff witnesses as fact witnesses (which was the case with Ms. Graham-Price) and if not reversed, will result in undue prejudice to Kingwood in this proceeding. As a party who is adversely affected by the ALJ’s oral ruling, the Applicant submits this interlocutory appeal and request for certification, requesting an immediate determination from the Board to

prevent undue prejudice. A copy of the relevant transcript from the hearing with the ALJ's oral ruling is attached as Attachment A to this interlocutory appeal.

Respectfully submitted,

/s/Michael J. Settineri
Michael J. Settineri (0073369) Counsel of Record
Jonathan Stock 0065637)
Anna Sanyal (0089269)
Nathaniel B. Morse (0099768)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5462
(614) 719-5146 (fax)
mjsettineri@vorys.com
jkstock@vorys.com
aasanyal@vorys.com
nbmorse@vorys.com
Attorneys for Kingwood Solar I LLC

**MEMORANDUM IN SUPPORT OF THE INTERLOCUTORY APPEAL AND
REQUEST FOR CERTIFICATION OF KINGWOOD SOLAR I LLC**

I. INTRODUCTION

On April 25, 2022, the Administrative Law Judge made an oral ruling denying Kingwood's renewed motion that Ms. Theresa White, the Executive Director of the Ohio Power Siting Board appear to testify as part of Kingwood's case in chief. Ms. White directed her subordinate to contact intervening public entities, the purpose of which, according to her subordinate, was to inquire whether the intervening public entities would be taking a position on the case. That action is highly unusual as there is no Board rule directing Staff to make those types of inquiries and even more unusual is that the communications took place the day before the Staff was required to docket its Staff Report. To ensure a complete record, Ms. White must testify as to why she directed Ms. Graham-Price to make those calls, and how and if she used the information provided to her by Ms. Graham-Price. That testimony will allow both Kingwood and the Board to fully understand the nature of Staff's investigation for its Staff Report because currently, that report is silent on Ms. Graham-Price's October 28th communications with the local public entities. The Board should also have the benefit of a record that includes the Staff's process for reaching its conclusions, especially as R.C. 4906.07(C) requires the Staff Report to include the nature of Staff's investigation. The ALJ's denial of Kingwood's call for Ms. White to testify creates a new and novel question that is ripe for an interlocutory appeal to the Board. Accordingly, Kingwood requests that the ALJ certify this interlocutory appeal and that the Board reverse the ALJ's decision and direct that Ms. White appear to answer questions on the communications that she directed be made to the intervening local public entities.

II. BACKGROUND

On October 29, 2021, Board Staff issued the Staff Report in this proceeding, recommending that the Board deny Kingwood's application for a certificate of environmental compatibility and public need. Staff, according to the Staff Report, made this recommendation due to the Applicant's inability to establish whether the Project would serve the public interest, convenience, and necessity as required under R.C. 4906.10(A)(6). On February 25, 2022, the Applicant filed a motion to subpoena certain members of the Ohio Power Siting Board Staff and other designated Staff representatives, or employees of the Public Utilities Commission of Ohio, to appear at the hearing in this matter. Among other things, the Applicant sought to specifically examine Theresa White in addition to any Board Staff members that spoke or communicated with representatives of Greene County, Ohio regarding the Kingwood Solar project and/or the Greene County Board of Commissioners resolution on the Project.

Board Staff filed a memorandum contra on March 4, 2022 stating that it had filed the testimony of ten separate Board Staff witnesses and arguing that the Applicant's request to subpoena the individuals identified in its motion was moot. In its reply to Staff's memorandum contra on March 8, 2022, Kingwood requested that the ALJ hold the ruling on the motion in abeyance until after the ten Staff witnesses had testified. During the hearing, the ALJ orally ruled that a decision on the pending motion for subpoena would be held in abeyance until after the examination of Staff witnesses.

After the presentation of Staff witnesses, the ALJ orally ruled on Kingwood's motion and denied the Applicant's request to subpoena Ms. Theresa White. The ALJ did, however, grant the Applicant's request to subpoena Ms. Juliana Graham-Price, due to her "interactive role with some of the Intervenor." Tr. Vol. VII at 1912: 11-15.

On April 25, 2022, Applicant had an opportunity to examine Ms. Graham-Price about her role in reaching out to various intervenors in the case. Following, Ms. Graham-Price's testimony, and in conjunction with the testimony from prior Staff witnesses, a number of salient facts are now clear on the record:

1. On the morning of October 28, 2021, Theresa White directed Ms. Graham-Price to contact each set of township trustees and the Greene County Commissioners, to determine whether the townships and Greene County "were for or against the Kingwood Project." Tr. Vol. VIII at 1942: 10-16.
2. When asked as to her belief as to why Ms. White gave her that direction, Ms. Graham-Price stated "[w]ell, we had not received their views whether they were for or against the project, and we would have included those had we known them." Tr. Vol. VIII at 1942: 11-15.
3. On October 28, 2021, Ms. Graham-Price spoke with Vicki Abel, administrative assistant to the Greene County Administrator, who informed Ms. Graham-Price that the Greene County Commissioners would be voting on a resolution "against the project." Tr. Vol. VIII at 1941: 20-22.
4. On October 28, 2021, Ms. Graham-Price also spoke with Mr. Ewry, a Cedarville Township Trustee, who explained that he "thought that there was going to be a joint resolution [with all three townships], but [Staff] would not have it in time for the Staff Report." Ms. Graham-Price had further e-mail communication with Mr. Ewry that day, which included Mr. Brown, who was representing Cedarville Township. Tr. Vol. VIII at 1932: 18-20; 1961: 20-22.
5. On October 28, 2021, Ms. Graham-Price also spoke with Mr. Stock, the Xenia Township administrator, because "they had not indicated whether they were for or against the Kingwood Project." Mr. Stock informed Ms. Graham-Price that "the three [Xenia Township] Trustees were 100 percent against the Project but that they would not be able to meet the October 29 deadline." Tr. Vol. VIII at 1934: 19-23.
6. Also on October 28, 2021, Ms. Graham-Price called Miami Township and left a message. No Miami Township representative called her back that day or the next. Tr. Vol. VIII at 1941: 20-22
7. Ms. Graham-Price immediately informed Ms. White about her communications with the three townships and Greene County. Tr. Vol. VIII at 1932: 25; 1933: 1-4; 1938: 5-22. But Ms. Graham-Price took no further action based on that information. She did not revise the Staff Report or debrief any additional Staff members.
8. At the Greene County Commissioners meeting the afternoon of October 28, 2021, the Greene County Commissioners passed a resolution opposing the Kingwood Application.

As stated by Commissioner Rick Perales, “Staff needs our input tomorrow.” *See* Kingwood Exhibit 24. The resolution was then filed on the docket at 10:02 AM on the morning of October 29, 2021.

9. At some point on October 29, Staff reversed its draft report from an approval to a denial. Tr. Vol. VII at 1785: 5-12; 1842: 21-25; 1843: 1-2.

Following Ms. Graham-Price’s testimony, the Applicant renewed its motion for Ms. White to appear to provide testimony on the communications as being relevant to the Staff Report. Tr. Vol. VIII at 1962: 14-24. The ALJ denied that request. Tr. Vol. VIII at 1962: 25; 1963: 1-11.

III. STANDARD OF REVIEW

Ohio Adm.Code 4906-2-29 provides, in pertinent part, that any party that is adversely affected by a ruling can take an interlocutory appeal of that ruling to the Board if it is one of four specific rulings enumerated in paragraph (A) of the rule or if the appeal is certified to the Board by the administrative law judge pursuant to paragraph (B) of the rule. The administrative law judge may certify the appeal if “the appeal presents a new or novel question of interpretation, law, or policy” and is “taken from a ruling which represents a departure from past precedent and an immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.” Ohio Adm.Code 4906-2-29(B). This interlocutory appeal warrants certification and a ruling from the Board given that (1) the Board should have a complete record on its Staff’s process for reaching its recommendation in the Staff Report; (2) Staff witnesses can be subpoenaed under Board precedent and the ALJs previously allowed testimony on Staff’s last minute communications with the local public intervenors but did not require Ms. White to testify on why she directed Ms. Graham-Price to make those communications; and (3) the Applicant will be unduly prejudiced if it is not allowed to develop a complete record on this issue.

IV. ARGUMENT

A. This Interlocutory Appeal Should be Certified.

1. This appeal presents a new and novel policy issue for the Board's consideration.

This interlocutory appeal presents an important policy issue for the Board to consider. Specifically, should the process by which the Board's Staff reached its recommendation in the Staff Report be subject to review and be part of the record? The answer should be "yes" because the "nature" of Staff's investigation is a required component of the Staff Report. As stated in R.C. 4906.07(C):

The chairperson of the power sitting board shall cause each application filed with the board to be investigated and shall, not less than fifteen days prior to the date any application is set for hearing **submit a written report to the board** and to the applicant. A copy of such report shall be made available to any person upon request. Such report shall set forth **the nature of the investigation**, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and shall become part of the record and served upon all parties to the proceeding.

R.C. 4906.07(C) (emphasis added).

Although required by statute to set forth the nature of investigation in the Staff Report, Staff left out of the Staff Report its communications with the three townships and County representatives that took place on the morning of October 28, 2021. Nowhere in the Staff Report is there a discussion of those communications or why those communications were made. Instead, the Applicant had to subpoena County witnesses to discover that Ms. Graham-Price had made the calls and only at the April 25, 2022 hearing did it discover that Ms. White directed Ms. Graham-Price to contact the three townships and the Greene County Board of Commissioners on the morning of October 28th. If this "investigation" was part of Staff's process, it should have been included in the Staff Report to ensure the Board was aware of that part of the investigation. The Staff, however, did not include that part of the investigation in its Staff Report.

The importance of this new and novel question of policy is elevated by the circumstances surrounding Ms. Graham-Price's communications. There can be no dispute that this directive was highly unusual given that (1) the Staff Report was due the next day; (2) there is no Board rule directing Staff to seek intervenor input for the Staff report and (3) at the time of Ms. White's directive to Ms. Graham-Price, the draft Staff Report recommended approval of the Project. Tr. Vol. VII at 1785: 5-12; 1842: 21-25; 1843: 1-2. Also unusual is that Mr. Zeto, as the Staff member in charge of the Staff Report, was not aware of the substance of those communications. Tr. Vol. VII at 1902: 14-16.

Lastly, it is important to understand that the Staff report is a significant milestone in the Board's application process. As noted by Staff witness Zeto, the Staff report is a significant milestone and can set the dynamic for the rest of the proceeding. Tr. Vol. VII at 1903: 5-15. The Staff report not only is submitted to the Board but, when favorable, can influence settlement negotiations and dictate how Staff approaches the evidentiary hearing. The nature of Staff's investigation is just as important as the recommendations in the Staff Report, ensuring a thorough report for the Board's consideration. But here, Staff did not include a significant part of its "investigation" in its Staff Report. That omission has created a new or novel policy question. Should the process by which Staff arrived at its recommendation be subject to review and be part of the record? The answer is "yes" and Ms. White should testify to ensure that Staff's process for reaching its recommendation is fully documented for the Board.

2. The ALJ's decision represents a departure from past precedent.

The ALJ's refusal to allow Ms. White to be called by Kingwood represents a departure from past precedent. It is well established that a party to a proceeding before the Ohio Power siting Board has "... the right to participate in discovery, take depositions, file motions to compel, and

serve subpoenas.” *In re Application of Duke Energy Ohio, Inc.*, 158 Ohio St.3d 1501, 2020-Ohio-2803 at ¶ 25 citing Ohio Adm.Code 4906-2-14 (discovery); Ohio Adm.Code 4906-2-18 (depositions); Ohio Adm.Code 4906-2-22 (motions to compel); Ohio Adm.Code 4906-2-23 (subpoenas). The Supreme Court of Ohio has explicitly affirmed that this right extends to members of the Board Staff. *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43, 48 (2013). Interpreting a rule similar to Ohio Adm.Code 4906-2-3¹, the Public Utilities Commission of Ohio has noted that an attorney examiner may direct Staff to produce a witness to testify at the hearing on matters that are relevant to the proceedings. *See, e.g., In re PALMco Power OH, LLC d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy (PALMco)*, Case No. 19-957-GECOI, Transcript Vol. I (Sept. 19, 2019) at 98; *In re the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018, et al.*, Case No. 18-1004-EL-RDR, et al., Entry (Jan. 6, 2022) at ¶ 14.

While the ALJs in this proceeding denied a prior interlocutory appeal by Kingwood seeking to have Ms. White testify on Staff’s decision in the Staff Report, this interlocutory appeal presents a different issue that warrants Ms. White’s appearance as a fact witness. Ms. Graham-Price gave her testimony in this proceeding, because, as noted in the ALJ’s April 14, 2020 Entry denying Kingwood’s first interlocutory appeal, her “... testimony was warranted based on her interactive role with some of the intervenors during the pendency of this case.” Entry at ¶ 11. Like Ms. Graham-Price’s testimony, Ms. White’s testimony is warranted because she is the one that directed Ms. Graham-Price to make those calls and only Ms. White knows why she issued that directive.

Yet, when Kingwood renewed its call for Ms. White to testify, the ALJ reversed course on this line of questioning by denying Kingwood’s request for Ms. White to testify. Tr. Vol. VIII at

¹ In these cases, the Commission was interpreting Ohio Adm.Code 4901-1-25, which is substantially similar to Ohio Adm.Code 4906-2-23.

1962: 14-25; 1963: 1-11. In doing so, the ALJ issued a ruling that is contrary to both the Board's past precedent on the ability to use subpoenas to compel the testimony of Staff witnesses and the precedent the ALJ had previously applied in this proceeding when requiring Ms. Graham-Price to testify on her communications to the local public entities. While perhaps a matter of first impression given the unusual circumstances of Staff's last minute communications to the public entities, the Board's long-standing precedent of allowing Staff witnesses to testify pursuant to subpoenas should be continued to ensure a complete record exists on the nature of Staff's investigation of the Application and the process utilized by Staff to reach its conclusions in the Staff Report.

3. Kingwood will be unduly prejudiced if Ms. White does not testify.

As has been apparent from Kingwood's case in chief, Kingwood's concern in this proceeding is that the process Staff used to reach its recommended denial of the Project was unusual and outside of the normal Staff process. Kingwood has successfully solicited testimony from Brandon Huddleson, the Greene County Administrator, about communications from Staff prior to October 29th as well as introduced exhibits into the record showing that the Board of County Commissioners were aware that Staff needed their input by October 29th. Tr. Vol. IV at 778-779. Kingwood also solicited testimony from Vicki Abel, Mr. Huddleson's assistant, that an OPSB Staff member called her office inquiring about whether the County would be taking a position on the Kingwood Solar project. Tr. Vol. V at 1088-1090. Likewise, Cedarville Township Trustee Jeff Ewry testified that Ms. Graham-Price called him on October 28th asking about his township's position. Tr. Vol. VI at 1521: 6-15.

Next, Kingwood was successful in calling Ms. Graham-Price as a fact witness for its case. Ms. Graham-Price testified that Ms. White directed her to make the communications and that she

provided the information from her calls and emails back to Ms. White. Tr. Vol. VIII at 1932: 25; 1933: 1-4; 1938: 5-22; 1942: 10-16. But that is where the record now goes silent, and absent Ms. White's testimony, Kingwood will not have the ability to present a complete record on the reason for Ms. White's directive and the calls/emails by Ms. Graham-Price. Kingwood will also not have the ability to introduce evidence on how the information received from those calls and emails influenced the Staff's investigation of the Application and whether that information was part of the Staff's investigation. Ms. White's testimony as a fact witness is a critical part of Kingwood's case in chief. To not allow her to testify will be unduly prejudicial to Kingwood. Now is the time to develop a complete record for the Board's review, not after a Board decision on the Application.

B. Ms. White's Testimony as a Fact Witness is Relevant.

Ms. White's testimony as a fact witness in this proceeding will be relevant. "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ohio Rul. Evid. 401. In this proceeding, testimony and exhibits relating to Staff's communications to the three townships and to the Greene County Board of Commissioners has been found to be relevant and admitted into the record. Ms. White's testimony should be no less relevant. She directed Ms. Graham-Price to make the calls. That raises the questions of why did she direct Ms. Graham-Price to make those calls and what did she do with that information. The answers to those questions are relevant to this proceeding to determine how Staff arrived at its conclusion in the Staff Report – which, as noted above, must include the nature of Staff's investigation. Lastly, Ms. Graham-Price's belief that Ms. White wanted her to make the calls because Staff had not received "their views whether they were for or against the project" does not answer the question of what Ms. White believed. Only Ms. White can testify as to why she

directed Ms. Graham-Price to make the calls and only Ms. White can say why that information was sought the day prior to the Staff Report being due. Her testimony is relevant to this proceeding and the Applicant should be allowed to call her to the stand.

V. CONCLUSION

Ms. White is the Executive Director for the Ohio Power Siting Board and a central figure in the development of the Staff Report. It has been now discovered that she also was the central figure in Staff's communications to the four intervening public entities the day before the Staff Report was due to be issued, asking for the positions of these four entities. This creates the perception that Staff went outside its normal process for investigating an application, especially given that none of these communications were disclosed to the Board in the Staff Report. The Applicant has the right to call Ms. White by subpoena to testify as a fact witness because her testimony will be relevant to the Board's determination in this proceeding. This interlocutory appeal should be certified to the Board. A full and transparent record is necessary.

Respectfully submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369) Counsel of Record
Jonathan K. Stock (0065637)
Anna Sanyal (0089269)
Nathaniel B. Morse (0099768)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5462
(614) 719-5146 (fax)
mjsettineri@vorys.com
jkstock@vorys.com
aasanyal@vorys.com
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 May 2, 2022 to:

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

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

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

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

John E. Hart	johnhart@cedarville.edu
<i>Attorney for In Progress LLC</i>	

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

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

Thaddeus M. Boggs	tboggs@fbtlaw.com
Jesse Shamp	jshamp@fbtlaw.com
<i>Attorneys for the Greene County Commissioners</i>	

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

/s/Michael J. Settineri
Michael J. Settineri

Attachment A

BEFORE THE OHIO POWER SITING BOARD

- - -

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. :

- - -

EXCERPT OF PROCEEDINGS

before Mr. Michael Williams and Mr. David Hicks,
Administrative Law Judges, at the Ohio Power Siting
Board, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:03 a.m. on Monday, April 25, 2022.

- - -

VOLUME VIII

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481

- - -

1918

1 APPEARANCES:

2 Vorys, Sater, Seymour and Pease, LLP
3 By Mr. Michael J. Settineri,
4 Ms. Anna Sanyal,
5 and Mr. Nathaniel B. Morse
6 52 East Gay Street
7 Columbus, Ohio 43215

8 On behalf of the Applicant.

9 Van Kley & Walker, LLC
10 By Mr. Jack A. Van Kley
11 132 Northwoods Boulevard, Suite C-1
12 Columbus, Ohio 43215

13 On behalf of the Citizens for Greene
14 Acres and Individual Intervenors.

15 Cedarville University
16 By Mr. John E. Hart
17 251 North Main Street
18 Cedarville, Ohio 45314

19 On behalf of In Progress LLC.

20 Ohio Farm Bureau Federation
21 By Ms. Amy Milam
22 280 North High Street, 6th Floor
23 Columbus, Ohio 43215

24 On behalf of the Ohio Farm Bureau
25 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.

- - -

1 APPEARANCES: (Continued)

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

5 On behalf of the Cedarville Township
6 Trustees.

7 Plank Law Firm, LPA
By Mr. David Watkins
and Mr. Kevin Dunn
8 411 East Town Street, Floor 2
Columbus, Ohio 43215

9 On behalf of the Xenia Township Board of
10 Trustees.

11 Frost Brown Todd LLC
By Mr. Thaddeus M. Boggs
12 and Mr. Jesse J. Shamp
10 West Broad Street, Suite 2300
13 Columbus, Ohio 43215

14 On behalf of the Greene County Board of
Commissioners.

15 Dave Yost, Ohio Attorney General
16 Mr. John Jones, Section Chief
By Mr. Werner L. Margard, III,
17 Ms. Jodi Bair,
and Mr. Shaun Lyons
18 Assistant Attorneys General
Public Utilities Section
19 30 East Broad Street, 26th Floor
Columbus, Ohio 43215

20 On behalf of the Staff of the OPSB.

21 - - -
22
23
24
25

1925

Monday Morning Session,

April 25, 2022.

- - -

* * * * *

ALJ WILLIAMS: The Bench has agreed to do that, and so with that I will invite Applicant to call its next witness.

MR. SETTINERI: Thank you, your Honor. Kingwood Solar I, LLC, would call Juliana Graham-Price. That is via a subpoena that was issued.

ALJ WILLIAMS: Good morning, Ms. Graham-Price. Before you sit down, I will swear you in. Would you raise your right hand.

(Witness sworn.)

1926

1 ALJ WILLIAMS: Thank you. Please be
2 seated.

3 Mr. Settineri.

4 MR. SETTINERI: Thank you, your Honor.

5 - - -

6 JULIANA M. GRAHAM-PRICE
7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 CROSS-EXAMINATION

10 By Mr. Settineri:

11 Q. Good morning, Ms. Graham-Price.

12 A. Good morning.

13 Q. My name is Mike Settineri. It's nice to
14 see you and meet in person. Would you please go
15 ahead and state and spell your full name and business
16 address for the record, please.

17 ALJ WILLIAMS: Mr. Settineri, I'm sorry
18 to interrupt. Maybe scoot that closer. We are
19 getting a little bit of volume there, but to the
20 extent we are going to have some protracted
21 questioning, it would be hard for them to hear.

22 Please continue.

23 A. Juliana, J-U-L-I-A-N-A, M. Graham-Price.
24 I work for the Ohio Power Siting Board at 180 East
25 Broad Street, Columbus.

1 MR. SETTINERI: And, your Honor, if I may
2 request to be able to treat this witness as if on
3 cross?

4 ALJ WILLIAMS: That's granted.

5 Q. (By Mr. Settineri) Ms. Graham-Price, did
6 you review any documents to prepare for your
7 appearance today?

8 A. I reviewed the Staff Report.

9 Q. Any other documents that you reviewed?

10 A. I think I also looked at some news
11 coverage of the hearing.

12 Q. Did you review your e-mail records to
13 prepare for your appearance today?

14 A. Yes, I did. Yes, I did.

15 Q. And what records did you review?

16 A. I reviewed the e-mails that I sent to the
17 Greene County County Commissioners as well as the
18 Township Trustees.

19 Q. While we are on that subject, in terms of
20 e-mails to the Greene County Commissioners, do you
21 recall what e-mails you sent to the Greene County
22 Commissioners?

23 A. I sent an e-mail with a -- with a link to
24 a copy of the Staff Report and that would have been
25 sent around October 29 to give them a copy of the

1 Staff Report as well as next steps in the process and
2 any upcoming dates like the public hearing.

3 Q. Any other e-mails to the Commissioners?

4 A. I may have sent them an e-mail about --
5 when the evidentiary hearing date was changed.

6 Q. Any other e-mails?

7 A. Not that I can think of.

8 ALJ WILLIAMS: Let's go off the record
9 just a minute here.

10 (Discussion off the record.)

11 ALJ WILLIAMS: Back on the record. Thank
12 you.

13 Q. (By Mr. Settineri) And I can't recall if
14 I had a question pending, so I will -- I think I know
15 what I may have asked, but when you refer to the
16 "Greene County Commissioners," would that include any
17 representative of the Greene County Commissioners?

18 A. I sent -- any e-mails I would have sent I
19 also copied to Mr. Brandon Huddleson.

20 Q. Did you send any independent e-mails,
21 separate e-mails to Mr. Huddleson about the project?

22 A. No.

23 Q. So based on your recollection, there were
24 two e-mails sent, one after the Staff Report was
25 issued and another about the evidentiary hearing.

1 A. That's right.

2 Q. What about e-mails to the Townships?

3 What e-mails did you review?

4 A. Anything I sent to the County
5 Commissioners, I would have also sent to the
6 Cedarville, Xenia, and Miami Township Trustees for
7 whom I had e-mail addresses.

8 Q. Would that have been in the same e-mail
9 as to the Commission?

10 A. It would have been the same content, yes.

11 Q. Any other separate e-mails to the
12 Townships separate and apart from the Commissioner
13 e-mails?

14 A. I did e-mail back and forth with
15 Cedarville Township Jeff Ewry when I had contacted
16 him to ask if they were going to be sending us a
17 resolution either for or against the project. He
18 said he thought the three Townships were going to be
19 working together, but he would check and e-mail me
20 with the information. He copied Mr. Dan Brown who
21 was their attorney.

22 Q. In regards to the e-mails with Mr. Ewry,
23 did you have any other -- any e-mails with any other
24 trustees of Cedarville, Miami, or Xenia?

25 A. No.

1 Q. And do you recall the approximate time
2 frame you were e-mailing Mr. Ewry?

3 A. It would have been the morning of
4 October 28 and then throughout the day.

5 Q. And I assume -- is there one e-mail with
6 a long chain of files?

7 A. Probably, yes, back and forth.

8 Q. And who wrote the first e-mail?

9 A. I don't remember. I know it started with
10 a phone call.

11 Q. Okay. Just a quick question, did you
12 review your phone log records to prepare for your
13 appearance today?

14 A. I had some scribbles, but I don't have an
15 official phone log.

16 Q. So when you say "scribbles," are those
17 just notes of calls?

18 A. Just notes.

19 Q. Going back to then you mentioned the
20 phone call to Mr. Ewry, I believe you said it was the
21 morning of October 28?

22 A. Yes.

23 Q. And you called Mr. Ewry?

24 A. Yes, I did.

25 Q. And what was the substance of your

1931

1 conversations on that phone call, if you recall, with
2 Mr. Ewry?

3 A. I had called him to say that -- to thank
4 them for -- they had passed a resolution and filed a
5 notice to intervene but had not indicated whether
6 they were for or against the project, and if they
7 wanted to include their views in our Staff Report
8 through a resolution, we would need that by
9 October 29.

10 Q. And who directed you to make that call?

11 A. Theresa White.

12 Q. Are you aware of any communications to
13 the Greene County Board of Commissioners by any other
14 either PUCO employee or Power Siting Board Staff
15 member asking for -- whether they would pass a
16 resolution?

17 A. No, I do not.

18 Q. When did Ms. White direct you to call
19 Mr. Ewry?

20 A. It would have been the morning of, I
21 believe, the 28th.

22 Q. And do you recall the substance of your
23 conversation with Mr. Ewry?

24 A. Yes. I called him to say that we had
25 received their notice to intervene. However, they

1 had not indicated whether they were for or against
2 the project.

3 Q. And I guess I should follow up, do you
4 recall his response to you?

5 A. He said he thought the three Townships
6 were going to be putting together a joint resolution,
7 but he wasn't sure where it was in the process.

8 Q. Do you recall whether he told you whether
9 Cedarville Township Trustees support or oppose the
10 project?

11 A. He didn't say. He said that he was going
12 to talk to Mr. Brown and -- to find out whether that
13 resolution stood.

14 Q. On any -- let me ask, in any of the
15 e-mails that you received from Mr. Ewry, did he
16 indicate whether Cedarville Township would be passing
17 a resolution that would oppose the project?

18 A. He thought that there was going to be a
19 joint resolution, but we would not have it in time
20 for the Staff Report. But I believe he -- and he
21 said the Township Trustees were against the project.

22 Q. In regards to the e-mails you exchanged
23 and received from Mr. Ewry, did you forward those
24 e-mails to anybody?

25 A. I would have shared them with Theresa

1 White.

2 Q. And when do you think you would have
3 shared them with her?

4 A. Almost immediately.

5 Q. And why did you share those with her?

6 A. She had asked me to contact them to find
7 out their views.

8 Q. And when you say "them," who is the
9 "them"?

10 A. The three sets of Township Trustees and
11 Greene County Commissioners.

12 Q. So with Mr. Ewry, you had telephoned him
13 and --

14 A. IT has been working.

15 ALJ WILLIAMS: Thank you.

16 A. I should have warned you, sorry.

17 MR. SETTINERI: Off the record.

18 (Discussion off the record.)

19 ALJ WILLIAMS: Back on the record.

20 Q. (By Mr. Settineri) All right. So in
21 regards to Mr. Ewry, you had an e-mail -- e-mail
22 communication with him on the 28th.

23 A. Uh-huh.

24 Q. And you also had a phone call with him on
25 the 28th.

1 A. Uh-huh.

2 Q. Did you have any other communications
3 with Mr. Ewry about the Kingwood Solar project?

4 A. We went back and forth that day, and I
5 thanked him for the information.

6 Q. And then those communications were
7 limited to October 28.

8 A. 28th and then the 29th when I sent him a
9 copy of the Staff Report.

10 Q. And then just for the record, later then
11 you also sent an e-mail, a group e-mail, about the
12 evidentiary hearing?

13 A. Yes.

14 Q. Which probably included him.

15 A. Right.

16 Q. Now, when -- you mentioned -- I asked you
17 about who -- you know, the them, and you said the
18 three sets of Trustees and the Commissioners. So
19 let's start with Miami Township. Did you have any
20 communications with Miami Township or any
21 representative about the Kingwood Solar?

22 A. No. I left a message for them, and they
23 did not call me back.

24 Q. Do you recall what you said in the
25 message?

1 A. The -- I said that they had -- we had
2 received their notice to intervene, but they had not
3 indicated whether they were for or against the
4 Kingwood project. And we would be happy to include
5 their views, but we needed it by the 29th.

6 Q. And then any other -- now, I think you
7 testified that you also sent an e-mail that included
8 the Miami Township Trustees about the evidentiary
9 hearing as well as the Staff Report, two separate
10 e-mails.

11 A. Right.

12 Q. Did you have any other communications
13 with any other representative of Miami Township about
14 the project?

15 A. No, I did not.

16 Q. Let's turn to Xenia Township.

17 A. Okay.

18 Q. Did you have any communications with
19 Xenia Township representatives about the project?

20 A. Yes, I did.

21 Q. And when did you have those
22 communications?

23 A. On October 28 and 29.

24 Q. All right. And let's start with
25 October 28. What communications did you have?

1 A. I called Alan Stock who is with the Xenia
2 Township, thanked him for filing the notice to
3 intervene, but they had not indicated whether they
4 were for or against the Kingwood project and that we
5 would include their views, but we needed them by
6 October 29.

7 Q. And did you speak directly with him?

8 A. Yes, I did.

9 Q. And did he -- do you recall how he
10 responded to you?

11 A. He said that the three Trustees were
12 100 percent against the project but that they would
13 not be able to meet the October 29 deadline.

14 Q. And did you have any e-mails with
15 Mr. Stock?

16 A. I included him on an e-mail I sent to the
17 other Trustees.

18 Q. Those are the two e-mails referred to
19 earlier.

20 A. Correct.

21 Q. Did Mr. Stock -- did your conversation
22 include any other topics or?

23 A. No. It was fairly short.

24 Q. Did you tell anyone about your
25 conversation with Mr. Stock?

1937

1 A. I shared that information with Theresa
2 White.

3 Q. And did you share that in an e-mail?

4 A. Yes.

5 Q. Okay. And the same -- your message to
6 Miami Township, did you communicate to anyone that
7 you left a message with Miami Township?

8 A. Yes.

9 Q. Who did you communicate with?

10 A. Theresa White.

11 Q. That was via e-mail as well?

12 A. Yes.

13 Q. Did she respond to you via e-mail with
14 those communications?

15 A. Yes.

16 Q. And how did she respond to you?

17 A. Thank you.

18 Q. Anything more than thank you?

19 A. It's -- I don't remember her exact words,
20 no, but the message was thanks for reaching out to
21 them.

22 Q. And I think we covered this already, but
23 other than the two separate e-mails, the group
24 e-mails, did you have any other conversations with
25 Mr. -- with anyone from Xenia Township other than the

1 call you just mentioned?

2 A. No, I did not.

3 Q. Did you have any -- well, strike that.
4 Hold that.

5 After -- on -- after you communicated the
6 results of your outreach, we will call it, on
7 October 28 and you communicated that to Ms. White,
8 did you have any further communications with
9 Ms. White about that outreach?

10 A. The -- just the Trustees would not have
11 anything in time for the Staff Report and that they
12 could include -- as long as we received it by the
13 evidentiary hearing, we would include whatever they
14 sent us in the case record.

15 Q. Make sure I am clear, so let me back up.
16 Did you have any in-person discussions with Ms. White
17 about your communications with the Township Trustees,
18 the representatives?

19 A. What do you mean by in person? Face to
20 face or?

21 Q. Other than e-mail.

22 A. E-mail and phone calls.

23 Q. Okay. And did you speak -- do you recall
24 if you spoke to Ms. White on October 28 about your
25 outreach?

1 A. Yes, I did.

2 Q. Okay. And what do you recall the
3 substance of that conversation?

4 A. That the Trustees were not able to meet
5 the Staff Report deadline but I let her know what the
6 status was speaking with Cedarville Trustees as well
7 as the Xenia County -- or the Xenia Township
8 Trustees.

9 Q. Okay. And did you speak to Ms. White
10 also on October 29?

11 A. I don't remember.

12 Q. Um -- go ahead.

13 A. Oh, yes. I was on a conference call with
14 other Staff members on the 29th. Theresa was on that
15 conference call.

16 Q. All right. That call was to discuss the
17 Staff Report.

18 A. Correct.

19 Q. And that was to discuss -- well, strike
20 that for now.

21 Let me ask you this, in regards to that
22 discussion, what was your role in that discussion
23 about the Staff Report?

24 A. That was -- I had only been at the Power
25 Siting Board for a little over a month, so I was

1940

1 really more a fly on the wall. That was my first
2 Staff Report. I was just really listening in, and I
3 read the Staff Report but.

4 Q. And on that point did you provide any
5 input on the Staff Report?

6 A. Only what I told them -- told Matt
7 Butler, who wrote the Staff -- had reviewed the Staff
8 Report, as well as Theresa White about my
9 conversations with the Trustees and the
10 Commissioners.

11 Q. Did -- in terms of -- let's be clear for
12 the record, you didn't draft any language in the
13 Staff Report, correct?

14 A. No, I did not.

15 Q. All right. And you didn't provide any
16 recommended edits to the Staff Report, correct?

17 A. No. I just read it.

18 Q. Greene County Commissioners, did you have
19 any -- we covered this. I don't know if we did
20 though. Make sure we did. I think you said earlier
21 that you had sent -- you had two e-mails that went to
22 the Greene County Commission representatives. Did
23 you make any phone call to any representative of the
24 Greene County Commissioners?

25 A. I called the Greene County Commissioners

1 and asked for Brandon Huddleson, and he was not
2 available. I spoke to his administrative assistant
3 Vicki, and I explained why I was calling, that we had
4 received their notice to intervene and that they
5 hadn't weighed in either for or against the project.
6 And if they wanted to include their views in our
7 Staff Report, we would need to get those -- that
8 resolution by October 29, and she put me on hold.

9 Q. And do you recall what -- did she come
10 back off hold?

11 A. Yeah. She came back off hold and said,
12 yes, the Commissioners are voting today on a
13 resolution against the project and that they would
14 file that with us, and they filed it the next
15 morning.

16 Q. All right. And did you take any notes
17 from that phone call?

18 A. Just that the note of who I talked to and
19 what time.

20 Q. Okay. And then what did you do with that
21 information? Let me stop there, back up. Did
22 Mr. Huddleson's assistant tell you anything else?

23 A. No.

24 Q. And then what did you do with that
25 information that you received from her?

1 A. I shared it as part of my report to
2 Theresa White.

3 Q. And when you say a "report to Theresa
4 White," what do you mean by a "report"?

5 A. Just a phone call or e-mail.

6 Q. Did you do separate e-mails after every
7 call? Would you write a quick e-mail to her?

8 A. No. These calls were fairly quick one
9 right after the other.

10 Q. And you made the call to the Greene
11 County Commissioner's Office at the request of
12 Ms. White, correct?

13 A. Correct.

14 Q. And that's the same with the Miami and
15 Xenia Township calls as well, correct?

16 A. That's right.

17 Q. Am I correct that sitting here today, you
18 don't know why Ms. White asked you to make those
19 calls?

20 A. Well, we had not received their views
21 whether they were for or against the project, and we
22 would have included those had we known them.

23 Q. Okay. And is that your belief as to why
24 Ms. White asked you to make the calls?

25 A. Yes.

1943

1 Q. Okay. I haven't asked you this, what's
2 your title of your current position?

3 A. The official title is Program
4 Administrator 3. The title I use when working with
5 local officials is Community Liaison.

6 Q. And I think you already said, who is your
7 employer?

8 A. The Public Utilities Commission.

9 Q. And who do you report to?

10 A. I report to Theresa White.

11 Q. Have you always reported to Ms. White?

12 A. Yes.

13 Q. Briefly what is your work experience
14 leading up to your current position?

15 A. My background is in communications, and
16 so I have lots of experience in community outreach,
17 working grassroots organizations, the whole gamut of
18 communications, media relations.

19 Q. And you briefly worked for PERS and STRS;
20 is that right?

21 A. I worked for the Ohio Public Employees
22 Retirement System, and before that I worked with the
23 School Employees Retirement System.

24 Q. How would you describe your current job
25 responsibility at the Ohio Power Siting Board?

1 A. I work with local officials to help them
2 through the siting process. So I attend public
3 hearings and public meetings, talk to local officials
4 on the phone, and there may be different times that I
5 am sending an e-mail or phone call, you know, here is
6 the date for the application that's just been filed,
7 dates have been set for the public hearing, those
8 kinds of communications to keep them up to date.

9 Q. And when you say public officials, what
10 types of public officials?

11 A. Almost exclusively Township Trustees and
12 County Commissioners.

13 Q. And is that outreach limited to only
14 solar projects?

15 A. Solar and wind. We've had one wind
16 project, but it has been almost exclusively solar.

17 Q. And are you aware of any -- that type of
18 outreach being conducted for a transmission line
19 application?

20 A. I don't -- I don't work with transmission
21 lines, so I'm not aware.

22 Q. And the same question for gas pipelines?

23 A. Yeah. I don't really work with any gas
24 pipeline projects.

25 Q. Is it fair to say that your

1 responsibilities are limited to renewable energy
2 projects such as solar and wind?

3 A. That is correct.

4 Q. And to be a little more precise, are
5 limited to wind and solar projects; is that correct?

6 A. Solar and wind, wind and solar, yep.

7 Q. Did you watch the live feed of the
8 Commissioners' October 28, 2021, meeting?

9 A. No, I did not.

10 Q. What was your role with regard to the
11 Kingwood Solar project?

12 A. My role was to contact the Trustees and
13 Commissioners about the -- whether they wanted to
14 include their views either for or against the project
15 in the Staff Report, and then later I attended the
16 public hearing.

17 Q. So fair to say you had a limited role.

18 A. That's correct.

19 Q. And at that time you had only been with
20 the Commission for a month.

21 A. For a month, right.

22 Q. You mentioned being in a meeting on the
23 Staff Report on October 29, correct?

24 A. Correct.

25 Q. Were you in any other meetings about the

1 Staff Report?

2 A. I don't remember. That one I remember
3 but I don't remember any others.

4 Q. Do you remember the substance of the
5 conversations in that meeting about the Staff Report?

6 A. The due date was the 29th and it was
7 making sure we had everything we needed so that it
8 would be filed in time.

9 Q. And just to be clear for the record, you
10 had indicated that I believe you attended the local
11 public hearing for the Kingwood Solar project?

12 A. That's correct.

13 Q. Did you attend any meetings in person or
14 via computer with any representatives of the local
15 public entities, the Townships and the Commissioners?

16 A. No.

17 Q. Are you familiar with Senate Bill 52?

18 A. Yes, I am.

19 Q. Would you say that's the genesis for your
20 position?

21 A. That was what prompted my hiring but I
22 don't work solely on Senate Bill 52 projects.

23 Q. And you understand -- is it your
24 understanding that the Kingwood Solar project is
25 grandfathered under Senate Bill 52?

1 A. That's correct.

2 Q. Did you review any meeting minutes from
3 the Greene County Commissioners at all about the
4 Kingwood Solar project?

5 A. No, no.

6 Q. Did you review the notices of
7 intervention for any of the Townships in the County?

8 A. I reviewed the parties of record that are
9 listed on the website.

10 Q. Let me -- so a specific question then,
11 did you review Xenia Township's notice to
12 intervene -- notice to intervene in the proceeding?

13 A. I did review before I -- quickly before I
14 called them.

15 Q. All right. And did you do the same
16 review for Miami, Cedarville, and Greene County?

17 A. That's right.

18 Q. And did you look at any of the attached
19 resolutions --

20 A. Yes.

21 Q. -- if there were any?

22 A. Yes.

23 Q. Well, did you review any drafts of the
24 Staff Report before you made your phone calls to the
25 Township Trustees?

1 A. Yes; yes, I did.

2 Q. And why did you review that?

3 A. To familiarize myself on the project
4 before I made those calls.

5 Q. Were there any particular sections that
6 you reviewed?

7 A. I looked only in the public participation
8 section.

9 Q. Now, that section -- well, strike that.

10 Now, I think -- I believe -- did you in
11 any of your communications with the Township Trustees
12 that we discussed earlier, did you inform any of them
13 that the Intervenors could testify at the public
14 hearing?

15 A. Yes, that they could testify at the
16 public hearing but members of the public would be
17 asked to testify first and Intervenors last.

18 Q. Okay.

19 A. But that did not -- they didn't have to
20 testify at the public hearing and that didn't have
21 any impact on whether or not they testified at the
22 evidentiary hearing.

23 Q. Okay. And just to walk through the list
24 then, starting with Cedarville Township and Mr. Ewry,
25 was that a telephone communication or an e-mail to

1 Mr. Ewry with that information?

2 A. It would have been part of that standard
3 e-mail.

4 Q. And how did you, I guess -- let me strike
5 that.

6 What led you to tell them -- or to inform
7 Mr. Ewry that Intervenors could testify at the public
8 hearing?

9 A. We had another case for solar where we
10 started to allow Intervenors to testify and so that
11 was something new.

12 Q. Did you pass that information on also to
13 Cedarville and Miami Townships?

14 A. Yes.

15 Q. And did you pass that on to Greene County
16 Commissioners?

17 A. Yes.

18 Q. Did you pass it on to anyone else?

19 A. I -- I don't remember if I told anyone
20 else. Farm Bureau maybe.

21 Q. Were you directed to provide that
22 information to the Township Trustees and County
23 Commissioners?

24 A. I was for the Birch project which was
25 going on at the same time, so I also provided it

1 to -- to the Intervenor in this project.

2 Q. Did you -- just to be clear for the
3 record, when you say Intervenor, the information you
4 provided about that Intervenor could testify at the
5 public hearing, you provided it to the
6 representatives of the three Townships and the
7 County.

8 A. Right.

9 Q. But you don't recall whether you provided
10 it to anyone else; is that correct?

11 A. That's right.

12 Q. All right. So, for instance, did you
13 inform Kingwood Solar representatives that that would
14 be the case, that Intervenor could testify?

15 A. No, I would not have communicated with
16 them.

17 Q. Are you aware in the past that the Board
18 has not allowed Intervenor to testify at the public
19 hearing?

20 A. Yes.

21 Q. Do you know why this practice was
22 changed?

23 A. It was to give the public an opportunity
24 to hear their testimony as well, and we do it now for
25 all of our projects.

1 Q. Let me ask you a question, why -- why
2 didn't you inform Kingwood Solar that the Intervenors
3 could testify at the public hearing?

4 A. I communicate with local officials.

5 Q. Let me ask, if you recall, did you
6 communicate with any other entities or persons about
7 the Kingwood Solar project the week of October 25
8 that are not parties to the proceeding and ignoring
9 fellow Staff members?

10 A. No.

11 Q. Did you communicate with any PUCO
12 employees that are not part of the Ohio Power Siting
13 Board Staff with the Kingwood Solar project?

14 A. No.

15 Q. Have you had any -- other than the
16 communications we've discussed today, hopefully you
17 can remember what we've covered, have you had any
18 other communications with the parties to this case
19 about the Kingwood Solar project?

20 A. No, I have not.

21 Q. Are you aware of any communications by
22 OPSB Staff members to any of the local public
23 entities that are parties in this case outside of the
24 public information meeting or public hearing?

25 A. I -- no, I am not aware of any.

1 Q. And the same question but are you aware
2 of communication by any PUCO employee who may not be
3 an OPSB Staff member to any of the local public
4 entities that are parties in this case about the
5 Kingwood Solar project?

6 A. I am not aware of any.

7 Q. Let's -- just to confirm for the record,
8 I would like you to look at some exhibits here that
9 are e-mails.

10 MR. SETTINERI: And if I may approach,
11 your Honor?

12 ALJ WILLIAMS: Please.

13 MR. SETTINERI: I will pass out some
14 copies. I haven't done this walk in a long time.

15 Q. (By Mr. Settineri) Ms. Graham-Price,
16 these are exhibits that have been admitted previously
17 in this proceeding, but I just want to verify that
18 your knowledge of these e-mails and whether these are
19 the e-mails you discussed earlier today in your
20 testimony. Let's start with Kingwood Exhibit 77.

21 A. Okay.

22 Q. Are you familiar with this document?

23 A. Yes, I am.

24 Q. Is this one of the e-mails you reviewed
25 prior to appearing here today?

1 A. Yes.

2 Q. And this is an October 29 e-mail,
3 correct?

4 A. Correct.

5 Q. And would this be the e-mail you
6 referenced in your testimony earlier about passing on
7 a link to the Staff Report to certain individuals?

8 A. Yes.

9 Q. Now I want to drill down a little bit
10 here. You mentioned earlier that you thought you had
11 informed Mr. Ewry via an e-mail about the Intervenors
12 being able to testify at the local public hearing.
13 And I just want to make it clear for the record I
14 don't see that in this e-mail so could that have been
15 via a telephone call or was there another e-mail?

16 A. You know, I thought I would have included
17 that. I don't see it here.

18 Q. Can you recall how you would have
19 communicated to him about it?

20 A. It would have been in an e-mail.

21 Q. And that would have been another group
22 e-mail?

23 A. Correct.

24 Q. And let's look at Exhibit 78. And this
25 e-mail has also been admitted. This is -- you are

1 familiar with this e-mail, correct?

2 A. Yes.

3 Q. And this is another e-mail you reviewed
4 in -- before appearing here today?

5 A. Right.

6 Q. And this e-mail actually is about the
7 evidentiary hearing and this is -- but this is
8 setting a new date, correct?

9 A. Correct.

10 Q. I should say it's an e-mail about that.
11 So we have two e-mails, 77 and 78. There may be
12 another e-mail regarding appearing -- Intervenor
13 being able to testify at the public hearing; is that
14 correct?

15 A. Yes.

16 Q. Okay. Other than let's say those three
17 e-mails, assuming the third one exists, would there
18 be any other e-mail communications to the public
19 entities that are parties in this case that you can
20 recall at this time?

21 A. Just the e-mail I had mentioned with
22 Mr. Ewry, Cedarville Township Trustee.

23 MR. SETTINERI: Thank you. Your Honor,
24 if I could just take a brief 5 minutes to go through
25 my notes here?

1955

1 ALJ WILLIAMS: Sure. We will go ahead
2 and go off the record.

3 (Discussion off the record.)

4 ALJ WILLIAMS: We will go back on the
5 record.

6 As we do, I note that counsel for Greene
7 County has arrived. I will invite Mr. Boggs to make
8 his appearance.

9 MR. BOGGS: Thank you very much, your
10 Honor. Thad Boggs, Frost Brown Todd, 10 West Broad
11 Street, 23rd Floor, Columbus, Ohio, for Greene County
12 Board of Commissioners.

13 ALJ WILLIAMS: Thank you, sir.

14 Mr. Settineri, any further questions?

15 MR. SETTINERI: Yes, your Honor. Thank
16 you for the time.

17 Q. (By Mr. Settineri) Ms. Graham-Price,
18 after -- I guess prior to the Staff Report being
19 issued, you didn't receive any new resolutions from
20 the three Townships, correct?

21 A. That's correct.

22 Q. In your current role, approximately how
23 many solar projects have you been involved in?

24 A. I'm not sure. I know that -- all I know
25 is five years ago we had three. Today we have over

1956

1 50, so I would guess that I attend a public hearing
2 or public meeting maybe twice a week.

3 Q. Have you been involved in more Staff
4 Reports since the Kingwood Solar Staff Report?

5 A. Yes.

6 Q. Was Kingwood Solar your first Staff
7 Report that you were involved in?

8 A. Yes. First one I read.

9 Q. And in any of the -- and so since then,
10 you've worked on other Staff Reports, correct?

11 A. I have not written any Staff Reports.

12 Q. Have you conducted -- have you reached
13 out to any Township Trustees and Commissioners for
14 other projects about their positions on the project?

15 A. Yes.

16 Q. Okay. And do you typically do that the
17 day before the Staff Report is due?

18 A. Now it's much more -- it's proactive. As
19 part of that, I mentioned I contact Commissioners and
20 Trustees maybe eight times through a project and
21 that's one of the e-mails that I -- that I include is
22 that here are the ways you can participate in the --
23 in the process, and once deadlines are set, I share
24 that with them.

25 Q. I don't know if I asked you this

1 question, I was asking about the information about
2 the Intervenors testifying at the public hearing.
3 Did anyone direct you to provide that information to
4 the Trustees and the Commissioners about -- in the
5 Kingwood Solar project?

6 A. No.

7 Q. Now, I think you said prior to making the
8 calls to the Commissioners, you said you had reviewed
9 a draft Staff Report; is that correct?

10 A. I glanced at it, yes.

11 Q. And that -- that report had recommended
12 approval of the project, correct?

13 A. It was still in draft form. I don't know
14 where -- where it stood.

15 Q. Okay. When you say "in draft form," what
16 do you mean?

17 A. It wasn't the final report.

18 Q. If you could -- do you have a copy of
19 what's been marked as Staff Exhibit 1, the Staff
20 Report of Investigation?

21 A. I have a copy of the Staff Report, but
22 it's not -- it doesn't indicate its number. I mean,
23 it's just the Staff Report.

24 Q. Okay. And just for the record, that's
25 dated October 29, 2021?

1 A. Correct.

2 Q. If you could turn then to page 42 of the
3 Staff Report, please.

4 A. Uh-huh.

5 Q. We will wait a second for people to pull
6 it up.

7 MR. SETTINERI: When the Bench is ready,
8 I'll proceed.

9 ALJ WILLIAMS: Please proceed.

10 Q. (By Mr. Settineri) You -- what section
11 specifically did you say you reviewed of the Staff
12 Report before you made your calls?

13 A. I glanced through the beginning of the
14 Staff Report that like gives you some background on
15 the application itself.

16 Q. Okay.

17 A. And just the public interaction,
18 participation.

19 Q. Would that be starting at page 41?

20 A. Yes.

21 Q. And you may not recall this, but the last
22 paragraph before public comments, do you recall
23 whether that was in the draft when you reviewed it
24 before you made your calls?

25 A. I don't remember.

1959

1 MR. SETTINERI: All right. I think no
2 further questions at this time, your Honor. And,
3 Ms. Graham-Price, thank you.

4 ALJ WILLIAMS: Thank you, Mr. Settineri.

5 As we were doing before, I will invite
6 what would be direct on behalf of the Citizens for
7 Greene Acres.

8 MR. VAN KLEY: We have no questions, your
9 Honor.

10 ALJ WILLIAMS: Miami Township.

11 MR. SLONE: No questions, your Honor.
12 Thank you.

13 ALJ WILLIAMS: Greene County.

14 MR. BOGGS: No questions, your Honor.

15 ALJ WILLIAMS: Xenia Township.

16 MR. WATSON: No questions.

17 ALJ WILLIAMS: Cedarville Township.

18 MR. BROWN: Yes, I have one. I am going
19 to move over here so I can see the witness.

20 ALJ WILLIAMS: Of course.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Brown:

24 Q. Good morning, Ms. Price.

25 A. Good morning.

1960

1 Q. I am Daniel Brown, counsel for Cedarville
2 Township. There's been questions today about your
3 communications with me on a particular day,
4 October 28, 2021. Do you remember that day and your
5 communications with me on that day?

6 A. Yes.

7 Q. I just wanted to clear it up. It got a
8 little muddled in my opinion. So I wanted to ask you
9 if you remember me sending you an e-mail on
10 October 28 that told you that at this point in time
11 counsel for Cedarville, Miami, and Xenia Township
12 Boards of Trustees plan to work with counsel for the
13 Greene County Board of Commissioners to draft and
14 file separate and/or joint written testimony in
15 opposition to the Kingwood Solar application pending
16 before the Ohio Power Siting Board? Do you remember
17 when I sent you that e-mail?

18 A. Yes, I do.

19 Q. So did you understand that the townships
20 were planning to oppose the application?

21 A. Yes.

22 MR. BROWN: Thank you.

23 ALJ WILLIAMS: Thank you.

24 In Progress.

25 MR. HART: No questions, your Honor.

1961

1 ALJ WILLIAMS: Farm Bureau.

2 MS. MILAM: No questions, your Honor.

3 ALJ WILLIAMS: Thank you.

4 Staff.

5 MR. MARGARD: No, thank you, your Honor.

6 ALJ WILLIAMS: Mr. Settineri.

7 MR. SETTINERI: Yeah, just to follow up
8 on that.

9 - - -

10 FURTHER CROSS-EXAMINATION

11 By Mr. Settineri:

12 Q. Mr. Brown just read you an e-mail that we
13 haven't seen, but do you recall when you received
14 that e-mail?

15 A. It would have been, I think, the 28th.
16 It was part of the e-mail chain that I referenced
17 earlier.

18 Q. Okay. And that was an e-mail chain that
19 you recall that you initiated; is that correct?

20 A. That was the e-mail chain with Mr. Ewry,
21 the Trustee with Cedarville Trustees. He had copied
22 Mr. Brown on any e-mails to me.

23 Q. Okay. And was -- no representative of
24 Kingwood Solar was on that e-mail chain, correct?

25 A. That's correct.

1962

1 MR. SETTINERI: No further questions,
2 your Honor. Thank you.

3 ALJ WILLIAMS: Thank you,
4 Ms. Graham-Price.

5 THE WITNESS: Okay.

6 ALJ WILLIAMS: Enjoy the rest of your
7 day.

8 THE WITNESS: Thank you.

9 ALJ WILLIAMS: We will go off the record
10 briefly.

11 (Discussion off the record.)

12 ALJ WILLIAMS: Back on the record.
13 Mr. Settineri.

14 MR. SETTINERI: Thank you, your Honor.
15 At this time given Ms. Graham-Price's testimony, we
16 would renew our motion for the appearance of Theresa
17 White through subpoena. The basis is that as you
18 heard Ms. Graham Price say that she was directed by
19 Ms. White to make these telephone calls and get that
20 information, we continue to have concerns with that
21 and believe that for the record having Ms. White
22 appear to answer questions about those communications
23 in that direction is relevant as to the Staff Report
24 itself.

25 ALJ WILLIAMS: Your motion is continuing

1963

1 to be denied. Ms. Graham-Price didn't provide any
2 testimony that led the Bench or the parties to hear
3 anything other than she was instructed to make
4 follow-up calls as part of her job responsibilities.
5 She certainly wasn't instructed to make any changes
6 to the Staff Report of Investigation.

7 She testified that she only briefly
8 reviewed it at the outset in order to provide context
9 for those phone calls which is what she did which is
10 apparently part of her job duties. So with that,
11 your motion is denied.

12 MR. SETTINERI: Thank you, your Honor.


13 ALJ WILLIAMS: You're welcome, sir.

14 * * * * *

15 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct excerpt of the proceedings taken
by me in this matter on Monday, April 25, 2022, and
carefully compared with my original stenographic
notes.


Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7273)

- - -

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

5/2/2022 5:11:42 PM

in

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

Summary: Request Interlocutory Appeal and Request for Certification electronically
filed by Mr. Michael J. Settineri on behalf of Kingwood Solar I LLC