

**BEFORE THE
OHIO POWER SITING BOARD**

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

**INITIAL BRIEF FILED ON BEHALF OF THE STAFF OF THE OHIO
POWER SITING BOARD**

INTRODUCTION

On April 16, 2021, Applicant filed an application for Kingwood Solar LLC I (Kingwood) for a certificate of environmental compatibility and public need for the Kingwood Solar 175 MW solar electric generation facility in Greene County, Ohio. Staff filed a report of investigation on October 29, 2021. Staff recognizes that the Ohio Farm Bureau and the Applicant filed a stipulation adopting certain conditions of the Staff Report. Staff recommends that, if the Board decides to grant a certificate, that the certificate be subject to the conditions set forth in Staff Report filed on October 29, 2021.

ARGUMENT

Ohio Revised Code. 4906.10(A)(6) dictates that the Board shall not grant a certificate unless it finds and determines that “the facility will serve the public interest, convenience, and necessity.” The General Assembly did not, however, define how the Board must interpret those terms.

Neither has the Board defined these terms. What the Board has done is to find that the public interest can be served in a number of ways. For instance, the Board has found that the public interest can be served by adding clean, sustainable generation capacity, and by benefitting the local economy through the addition of new jobs, wages, and local revenue.¹

This approach is consistent with traditional definitions of public interest. For example, Black’s Law Dictionary defines “public interest” as “1. The general welfare of a populace considered as warranting recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.”²

But there is no litmus test, no single factor or set of factors that defines “public interest, convenience and necessity.” More recently, Board decisions have clarified that

¹ *In the Matter of the Application of Hardin Solar Energy II, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Hardin County, Ohio*, Case No. 18-1360-EL-BGN, Opinion, Order and Certificate (16 May 2019), ¶64.

² Black's Law Dictionary (11th ed. 2019).

that “[p]ublic interest, convenience, and necessity should be examined through a broad lens.”³ That lens must “encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion.” This necessarily requires that the Board “balance projected benefits against the magnitude of potential negative impacts on the local community.”⁴

The *Republic* case is particularly instructive. There the Board acknowledged that “public benefits would potentially result from the Project,” both economic and environmental.⁵ There, as here, local governmental entities intervened in order to oppose the application. Ultimately, it was the very concerns raised by the local elected officials that formed the basis for the Board’s decision to deny the application.

Staff respectfully submits that the Board should also deny the application in this case, also based on the opposition of the local elected officials. The Boards of Trustees for all three (3) affected townships, and the Board of Commissioners for the affected county, all intervened in this case, expressing their opposition to the project. All expressed their opposition and concerns through their motions to intervene and resolutions.

³ *In the Matter of the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, Case No. 17-2295-EL-BGN, Opinion, Order & Certificate (24 Jun 2021), ¶91.

⁴ *Id.*

⁵ *Id.*

The Board of Trustees of Cedarville Township filed its Notice of Intervention on April 27, 2021, attaching a resolution to do so.⁶ In its Notice, the Trustees claimed that the “the proposed project is likely to have some adverse effect on roads, properties and citizens located and/or residing in Cedarville Township.”⁷ The Cedarville Trustees offered the testimony of its chair, Jeff Ewry, in support of its opposition. Mr. Ewry testified that the Board solicited and received feedback from the citizens in its community in a variety of ways.⁸ That feedback was unanimous in its opposition from non-participating landowners. Trustee Ewry expressed concerns about property values and the impact on tourism, the potential impacts from damaged field tiles, and nominal economic benefits, among other concerns.

The Board of Trustees of Xenia Township filed its Notice of Intervention on May 6, 2021, also attaching a resolution to do so.⁹ The Xenia Trustees offered the testimony of Trustee L. Stephen Combs in support of its opposition. Based on correspondence and general interaction with township residents, it was Trustee Combs’s opinion that “the overwhelming opinion of the Township residents to the project is negative.”¹⁰ While he reiterated a number of other concerns that the Trustees had about the project, Mr. Combs

⁶ Resolution 3.2021, Kingwood Ex. 86.

⁷ Notice of Intervention as Party by the Board of Trustees of Cedarville Township, Greene County, Ohio (27 Apr 2021), Kingwood Ex. 85.

⁸ Direct Testimony of Jeff Ewry, Cedarville Township Ex. 1 at lines 15-16.

⁹ Resolution 2021-023, Kingwood Ex. 95; Notice of Intervention as a Party of the Board of Trustees of Xenia Township, Ohio (6 May 2021), Kingwood Ex. 96.

¹⁰ Direct Testimony of Stephen Combs, Xenia Township Ex. 1, 1:4-2:1.

was clear that “the main basis for Board’s opposition is the overwhelming opposition to the Application and Facility expressed by the Xenia Township residents.”¹¹

The Board of Trustees of Miami Township filed its Notice of Intervention on May 13, 2021.¹² The Miami Board refiled its Notice on July 14, 2021, accompanied by a resolution, also claiming that the “the proposed project is likely to have some adverse effect on roads, properties and citizens located and/or residing in Miami Township.”¹³ The Miami Trustees offered the testimony of Trustee Don Hollister in support of its opposition. Having discussed the project with residents in a variety of settings, Mr. Hollister concluded that his “citizens have been overwhelmingly in opposition to the Project.”¹⁴

In addition, the three townships jointly sponsored the testimony of Eric Sauer, a Registered Landscape Architect and Planner. Mr. Sauer expressed opinions about effects that the project could have on prime agricultural soils, vegetation, drainage, and general land use planning. He concluded that the project would have “unacceptably negative effect on the local natural area and community.”¹⁵

¹¹ *Id.* at 2:18-19.

¹² Notice of Intervention as a Party by the Board of Trustees of Miami Township, Greene County, Ohio (13 May 2021), Kingwood Ex. 90.

¹³ Notice of Intervention as Party by the Board of Trustees of Miami Township, Greene County, Ohio (14 Jul 2021), Kingwood Ex. 98.

¹⁴ Direct Testimony of Don Hollister, Miami Township Ex. 3 at 2:17.

¹⁵ Direct Testimony of Eric Sauer, Miami Township Ex. 1 at 17:8-9.

The Greene County Board of Commissioners intervened on July 21, 2021, attaching a resolution specifically noting their “responsibility for preserving the general health, safety, and welfare within the territory of Greene County.”¹⁶ The Board followed up that intervention with a specific resolution opposing the project, much discussed in the evidentiary hearing, filed on October 29, 2021. Finding that the project area would be located proximate to “State and local cultural, historic, scenic, and recreational areas,” the Commissioners concluded that the application is incompatible with the general health, safety, and welfare of the residents of Greene County, and therefore will not serve the public interest, convenience, and necessity of the residents of the County or the State of Ohio.”¹⁷

The County Commissioner offered the testimony of the County Administrator, Brandon Huddleson, in support of its opposition. Mr. Huddleson, who assisted in drafting the Commissioners’ resolution opposing the project, testified that “there were far more negative comments than positive ones,” and that the “overwhelming sentiment was that the project did not fit this area for many reasons.”¹⁸

While Staff considered the totality of local input, including comments at informational meetings, local public hearings, and in the public docket¹⁹, it was

¹⁶ Notice of Intervention as Party of the Greene County Board of Commissioners (21 Jul 2021), Kingwood Ex. 88.

¹⁷ Notice of Greene County Board of Commissioners Resolution in Opposition to the Application (29 Oct 2021), Kingwood Ex. 20.

¹⁸ Direct Testimony of Brandon Huddleson, Greene County Ex. 1 at 3:P48-50.

¹⁹ Staff Report of Investigation, Staff Ex. 1 at 43-44.

undeniably the opposition of local elected officials that ultimately tipped the scales in formulating a recommendation. There is general opposition to the project from local governmental bodies, in addition to active disagreement on the project between local citizenry. These governmental bodies are local elected officials charged with representing and serving their respective communities. They are responsible for representing the interests of all of the citizens within their respective jurisdictions, not just those registered to vote or those whose votes they ultimately received. It is their responsibility for preserving the health, safety, and welfare within their respective communities. Their interest in and, in this case strong opposition to, the project is especially compelling.

The Board has recently recognized the importance of local opposition to such projects, especially where that opposition is unanimous. In denying an application of American Transmission Systems, Incorporated (ATSI) to construct an electric transmission facility the Board concluded that:

In consideration of the significant number of public comments received and the issues raised in the public comments . . . the Board finds that the requirements of R.C. 4906.10(A)(6) (that the facility will serve the public interest, convenience, and necessity) and part two of the three-part test (whether the stipulation, as a package, benefits ratepayers, and the public interest) used to evaluate stipulations have not been met. The local community has, post hearing, raised universal local opposition . . . ²⁰

²⁰ *In the Matter of the Application of American Transmission Systems, Incorporated for a certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Transmission Line in Mahoning County, Ohio*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (19 May 2022) at ¶ 81.

The Board found that the record in that case failed “to adequately establish that the Project will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).”²¹

The universality of local opposition in this case is clearly demonstrated in the unanimous opposition of all of the local elected representatives of the affected communities. That opposition, in contrast to the *ATSI* case, was clearly voiced both before and during the evidentiary hearing in this case.

²¹ *Id.* at ¶ 105.

CONCLUSION

Staff respectfully submits that any benefits to the local communities are outweighed by public opposition, and would therefore not serve the public interest, convenience, and necessity. Kingwood's Application should be denied.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Jodi J. Bair

Jodi J. Bair
Werner L. Margard
Shaun P. Lyons
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.644. 8599 (telephone)
866.849.3176 (fax)
Jodi.Bair@OhioAGO.gov
Werner.Margard@OhioAGO.gov
Shaun.Lyons@OhioAGO.com

**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Initial Brief** on behalf of the Staff of the Ohio Power Siting Board, has been served upon the below-named counsel via electronic mail, this 13th day of June 2022.

/s/ Jodi Bair

Jodi Bair

Assistant Attorney General

Parties of Record

Michael J. Settineri (0073369)
Anna Sanyal (0089269)
Nathaniel B. Morse (0099768)
Jonathan K. Stock (0065637)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street P.O. Box 1008
Columbus, OH 43216-1008
mjsettineri@vorys.com
aasanyal@vorys.com
nbmorse@vorys.com
jkstock@vorys.com

Attorneys for Kingwood Solar I LLC

Daniel A. Brown (0041132)
Brown Law Office LLC
204 South Ludlow Street, Suite 300
Dayton, OH 45402
dbrown@brownlawdayton.com

Attorney for Cedarville Township Trustees

Chad A. Endsley (0080648)
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Attorneys for Ohio Farm Bureau Federation

David Watkins (0059242)
Kevin Dunn (0088333)
Plank Law Firm, LPA
411 E. Town Street, Flr. 2
Columbus, OH 43215
dw@planklaw.com
kdd@planklaw.com

Attorneys for Xenia Township Trustees

Lee A. Slone (0075539)
Dinsmore & Shohl, LLP
Fifth Third Center
One South Main Street, Suite 1300
Dayton, OH 45402
lee.slone@dinsmore.com

Attorney for Miami Township Board of Trustees

John E. Hart (0037279)
251 N. Main St.
Cedarville, OH 45314
jehartlaw@gmail.com

Attorney for In Progress LLC

Thaddeus M. Boggs (0089231)
Jesse Shamp (0097642)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215
tboggs@fbtlaw.com
jshamp@fbtlaw.com

Attorneys for the Greene County Commissioners

Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, OH 43235
jvankley@vankleywalker.com

Attorney for Citizens for Greene Acres, Inc. And Citizen Intervenors

Charles D. Swaney (0018328)
515 North Fountain Avenue
Springfield, OH 45504
cswaney@woh.rr.com

Attorney for Tecumseh Land Preservation Association

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