

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Kingwood Solar I LLC, for a</b>	)	
<b>Certificate of Environmental Compatibility</b>	)	<b>Case No. 21-0117-EL-BGN</b>
<b>and Public Need to Construct a Solar</b>	)	
<b>Electric Generation Facility in</b>	)	
<b>Greene County, Ohio</b>	)	

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**POST-HEARING REPLY BRIEF**

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## INTRODUCTION

The Greene County Board of Commissioners (“the County” or “the Commissioners”) provides this brief reply to the initial post-hearing brief of the Applicant, Kingwood Solar LLC (“the Applicant” or “Kingwood”) to respond to the Applicant’s assertion that the Board should disregard the judgment of local elected officials and the overwhelming sentiment of residents engaged enough in the process to state their opinions. The Board does in fact have the discretion to consider these voices and, as the Staff Report recognizes, the opposition of the local elected officials is a valid consideration under R.C. 4906.10.

## ARGUMENT

**A. The determinations of local governments, including the County, are valid factors for the Board’s consideration of whether the project has shown it will serve the public interest, convenience, and necessity.**

The Applicant’s reply brief misinterprets the use of the local governments’ opposition to the Kingwood project, dismissing these elected officials’ resolutions against the project as simply “local government opinion” rather than indicative of whether the project does, in fact, serve the public interest, convenience, and necessity. For their part, the Commissioners’ resolution in opposition to the project was specific in identifying the “potential economic detriment to tourism” as a result of the Kingwood project’s location within the five-mile viewshed of Clifton Gorge Dedicated Nature Preserve, Clifton Mill, Clifton River Road Reserve, John Bryan State Park, and numerous other historic, natural, and recreational resources, (Greene County Exhibit 2 (“Opposition Resolution”) at 2), as characteristics driving, at least in part, the Commissioners’ opposition to the project. Moreover, the project is contrary to the County’s land-use plans, both prior to the amendments that were adopted in August 2021 (when large-scale renewable energy is not addressed at all), and with the amendments (where large-scale renewable

energy projects are considered under certain circumstances). As the unit of general government for the area where the project is proposed, these considerations by the Commissioners are germane to whether the project does, indeed, serve the public interest, convenience, and necessity. They are not just a meaningless opinion poll, and the Commissioners have no expectation that the Board will blindly follow the Commissioners' conclusion. It is proper, however, for the Board to consider the Commissioners' opposition and the bases for that opposition as the Board weighs whether the Applicant has met its burden to show that the project will serve the public interest, convenience, and necessity.

The economic output projections set forth by the Applicant also do not demonstrate conclusively that this project would serve the public interest, convenience, and necessity. For example, the Applicant points to jobs and indirect economic impact generated during the construction period. (*See* Kingwood Initial Post-Hearing Reply Brief, at 21). If creation of jobs and spending were sufficient to demonstrate public interest, convenience, and necessity, then this provision of Section 4906.10 would be satisfied every time, for every project—every project built necessarily generates construction jobs and economic impact from that income being spent. This tells the Board little or nothing about whether the project at the requested site would serve public interest, convenience, and necessity.

The Applicant also relies upon the tax revenue and payments-in-lieu-of-taxes (“PILOTs”) that would be generated during the project's operation, as evidence of service to the public interest, convenience, and necessity. The local governments opposing the project, including the County, certainly were aware of the tax structure with or without the project, and the revenues that may be produced under either scenario. The Commissioners ultimately determined, as

shown in their Opposition Resolution, that the detrimental impacts they identified outweighed the revenue from statutory taxes or PILOTs that the project would generate.

**B. The Applicant's arguments about the creation of the Staff Report do not provide evidence or that the project does, in fact, serve the public interest, convenience, and necessity.**

The Applicant's initial post-hearing brief devotes several pages to the circumstances in which the Board Staff drafted and filed its Staff Report recommending denial of the certificate. But the Applicant's dissatisfaction with the outcome of the Staff Report process, and the Staff Report's reference to the Commissioners' Opposition Resolution, does not move the ball to show that the project serves the public interest, convenience, and necessity. While the Applicant characterizes the Staff's attention to the Commissioners' opposition resolution as some kind of ill-considered buckling to local opinion, it is just as consistent with the facts to characterize the Commissioners' Opposition Resolution as the last grain of sand that tipped the scales on a marginal recommendation from Staff.

Even if the Board looks at the evidence without giving weight to the recommendation in the Staff Report, the evidence produced by the Applicant does not prove that the project will serve the public interest, convenience, and necessity. The tax or PILOT revenues from the project were not seen as sufficient by the beneficiaries of those revenues (i.e., the County and townships)—and no affected school district has intervened to support the project here, either. The economic impacts of the project, even taking their job and impact numbers at face-value, do not speak to whether the siting of *this project at this requested location* serves the public interest, convenience, and necessity; the construction of any facility, anywhere, would necessarily generate construction and operations jobs. If that is all that the Applicant must show, without placing those economic impacts in the greater context of the requested site, then Section

4906.10(A)(6) may as well be amended out. Lastly, the real-estate-impact testimony and report from Andrew Lines, which on its best day shows only a lack of harm to property values, does not demonstrate service to the public interest, convenience, and necessity. (As noted in the County’s initial post-hearing brief, Mr. Lines’ report falls short of providing apples-to-apples comparisons and its conclusions are faulty).

**C. The Perspectives 2020 Amendment adopted August 16, 2021, articulates the County’s vision of land-use policy and per the Opposition Resolution the vision for public interest, convenience, and necessity; it is not a regulatory document for the Applicant.**

The Applicant also spends time in its initial post-hearing brief reiterating that the Perspectives 2020 Amendment adopted by the County August 16, 2021, does not regulate the Applicant. (*See* Kingwood Initial Post-Hearing Brief, at 39–40). This is a straw-man—the County was never under any illusion that the Perspectives 2020 Amendment would regulate the siting of Applicant’s project. This Board has the sole jurisdiction on that question.

The import of the Perspectives 2020 Amendment, with respect to the Applicant’s project, is that it shows the consideration undertaken by the regional planning commission, and adopted by the Commissioners, for the impact of large-scale renewable energy generation in Greene County. (*See* Greene County Ex. 3, the “Perspectives 2020 Amendment Resolution”). That deliberative and public process reached a conclusion with the adoption of the Amendment, and the Commissioners relied on that in determining whether the project benefits the public health, safety, and welfare—and, by extension, the public interest, convenience, and necessity referenced in Section 4906.10. (*See* Opposition Resolution).

The Perspectives 2020 Amendment identifies the concerns related to these “land-intensive” developments and how they can come into conflict with the rural character of much of

the County. The narrative set forth in the Perspectives 2020 Amendment articulates the local view of factors that play into the public health, safety, and welfare, and the Commissioners applied these considerations to oppose the project on the basis that it does not serve the public interest, convenience, and necessity. The Perspectives 2020 Amendment is not, and never was intended to, directly regulate the Applicant; it should be considered in light of its actual purpose, which was to identify the considerations at play and mitigating strategies for siting of large renewable energy projects in Greene County. It articulates factors of public interest, convenience, and necessity, as the Commissioners and others who participated in the amendment process see it from the local perspective.

## CONCLUSION

The Board should deny the Certificate of Environmental Compatibility and Public Need in this proceeding. Despite the Applicant's attempts in its initial post-hearing brief to shift the burden to the opposing intervenors, the Applicant has failed to meet its burden of proof to show that its application satisfies the criteria set forth in R.C. 4906.10, and specifically that its project would serve the public interest, convenience, and necessity.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The docketing system will electronically notify counsel of record in this proceeding. Additionally, the undersigned hereby certifies that a courtesy copy of the foregoing was served via email to the counsel indicated below on this 22nd day of June, 2022.

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