

BEFORE
THE OHIO POWER SITING BOARD

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

**POST-HEARING REPLY BRIEF OF CITIZENS FOR GREENE ACRES, INC.,
JENIFER ADAMS, P. CHANCE BALDWIN, JACOB CHURCH, VERITY
DIGEL, JED HANNA, KRAJICEK FAMILY TRUST, JAMES JOSEPH
KRAJICEK, KAREN LANDON, NICOLE MARVIN, CHAD MOSSING,
KAREN MOSSING, NICHOLAS PITSTICK, KYLE SHELTON,
MARLIN VANGSNESS, JEAN WEYANDT, AND JERALD WEYANDT**

Jack A. Van Kley (0016961)
Counsel of Record
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankleywalker.com

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Intervenor Citizens for Greene Acres, Inc. (“CGA”) and its above-named members
(collectively with CGA, the “Citizens”) hereby file their Post-Hearing Reply Brief.¹

ARGUMENT

**I. Hiring Expert Witnesses To Testify That The Board’s Rules Need Not Be Followed
Is Not A Lawful Substitute For Complying With Those Rules.**

The initial brief of Kingwood Solar I LLC (“Kingwood”) refers to its witnesses as “experienced and credible.” Actually, some of its expert witnesses have been employed in their occupations for a long time, but others are inexperienced. Kingwood’s acoustics expert Alex Odom is a good example of the latter. In contrast to the 40 years of acoustics experience for Citizens’ expert Robert Rand, Mr. Odom’s acoustics job experience consisted only of about four years at Acentech and about a year at Trinity Consultants, where he spent only five percent of his time working on noise projects. Odom, Tr. II 426:17 to 428:9. Mr. Odom had never testified as a noise expert before the hearing in this case. Odom, Tr. II 429:21-23. Moreover, the ambient

¹ The Citizens hereby incorporate by reference all of the contents of the initial briefs and reply briefs filed by Intervenor Greene County Board of Commissioners, Board of Trustees of Cedarville Township, Board of Trustees of Miami Township, Board of Trustees of Xenia Township, and In Progress LLC.

sound measurement stations were not even set up by an acoustic engineer. A geologist set them up. Odom, Tr. II 431:3-15. Mr. Odom did not even visit the Project Area before the measurement stations were used; his first and only visit to the Project Area occurred just before the hearing and even then he spent only an hour looking only at the monitoring spots without touring the rest of the Project Area to look for and listen to sources of sound and noise levels throughout the Project Area. Odom, Tr. II 430:4-20.

Even where Kingwood's expert witnesses were experienced, their testimony supported the Citizens' positions on key points, as described in the Citizens' initial brief. In particular, their testimony often admitted that Kingwood has not provided rule-required information that is a prerequisite for deciding whether the Project complies with the criteria under R.C. 4906.10(A). The rule requirements at issue in this case require Kingwood to provide scientific data and other objective information so the Ohio Power Siting Board ("OPSB" or "Board") and the public can make informed judgments about the Project's impacts. Often, Kingwood is relying on experts to opine that the Project will not cause a problem without producing the information required by rule to test the accuracy of the experts' opinions. Hiring an expert to opine that rule-required data is unnecessary does not comply with the Board's rules requiring that data. Thus, while OPSB must decide whether a Project meets the statutory criteria, Kingwood wants the Board to abdicate this duty to witnesses beholden to Kingwood. Under OPSB's rules, the Board needs data to determine compliance with the statutory criteria, not self-serving statements by Kingwood's hired guns.

II. Stipulations That Do Not Settle Anything Are Not Entitled To Deference.

Kingwood makes a big deal out of the fact that Kingwood and the Ohio Farm Bureau Federation ("OFBF") filed a Joint Stipulation and Recommendation as to Certificate Conditions

on March 4, 2022, stating that its terms should be afforded substantial weight. However, the fact that only two parties agreed to the stipulation means that eight parties (counting the Citizens as one party) did not agree to the stipulation. And even OFBF did not ask the Board to approve the Project. In short, the stipulation is entitled to no weight. It is not a settlement of any magnitude.

Although Kingwood's initial brief cites the stipulation for the representation that it "incorporated feedback from and addresses concerns raised by" non-signing intervenors, the stipulation makes no such statement. It only states that the stipulation "results from" discussions with intervenors, not that it addressed or satisfied the intervenors' concerns about the stipulation's conditions. The Citizens certainly are not. In short, the stipulation does nothing to promote the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

III. Public Opposition To The Project Shows That The Project Does Not Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6).

A. The Record Reveals The Overwhelming Public Opposition To The Project.

Kingwood's opening brief betrays its realization that the public overwhelmingly hates its Project. Seeking to divert attention from the Project's poor design and terrible siting, Kingwood opens its brief with name-calling in an attempt to shame its detractors. Kingwood invokes the worn-out cliché utilized by developers everywhere who want to draw attention away from their developments' flaws – the "not in my backyard" (NIMBY) argument that its Project is opposed only because the neighbors do not want to live next to it. However, the truth is that there is nothing wrong with protecting one's home and community from a harmful project.

Ohio has provided its citizens with the right to protect themselves by insisting that utility developers satisfy the criteria of R.C. 4906.10(A). One of those criteria requires a utility developer to demonstrate that its project serves the public interest, convenience, and necessity.

Although Kingwood may prefer that citizens not be provided with these rights, the Board has a duty to respect these rights.

The opposition to this Project is head-and-shoulders above the opposition experienced at most other solar projects, and for good reasons. As described in the opening briefs of CGA and other intervenors, the haphazardly drawn boundaries of this Project have situated it in a way that maximizes its contact with, and harm to, neighboring properties. Of 18 solar projects existing or proposed for southwest Ohio that were examined by Cedarville Township witness Jeff Ewry, Kingwood's Project will be within 500 feet of 73 nonparticipating residences compared to an average of 24.6 residences for the other 17 solar projects. Cedarville Township Exh. 1, Ewry Direct Testimony, lines 102-114; Cedarville Township Exh. 1F. Kingwood has spared no one from the damage its Project would cause, seeking to impose its industrial facilities on nearby residences, yards, wildlife parks, recreational areas, cultural and historic treasures, and a scenic river. The Project's faulty design and ill-advised siting reveal that Kingwood arrogantly believed at the time of its Application that the Board would approve its Project no matter how defective the Project is. It is no wonder the public opposition to this Project is so intense.

Although Kingwood tries to downplay the extent of public opposition, Kingwood's decision to conduct an opinion poll about the Project reflects its realization that it had to manufacture the appearance of public support for its Project. And, as shown by its polling questions, Kingwood knew that it could make its Project appear popular only by concentrating primarily on respondents who knew nothing of the Project's harms and by skewing the questions so badly as to guarantee the answers it wanted. Kingwood's pollster also steered its questioners primarily towards citizens living outside of the three affected townships, thus guaranteeing that most of the respondents would know little to nothing about the Project's threats to the

community. Its pollster's argument that it had to concentrate primarily on interviewees living in cities outside of these townships because 75 to 100 phone numbers are required to complete one interview is just nonsense. There is no valid excuse for interviewing so few people from these townships. Pages 5-6 of Miami Township's initial brief and Page 15 of Cedarville Township's initial brief provide good synopses of the poll's flaws. The Board cannot gauge the public interest, convenience, and necessity of a project by polling people who know nothing or next to nothing about the project. For the poll's respondents who know little or nothing about the Project, and most of the Respondents fit those descriptions, their answers meant nothing more than the fact that they generally favored solar energy, not that they thought this Project was desirable.

If Kingwood truly thought that the public had already demonstrated its support for this Project, it would not have needed an opinion poll to make that demonstration. But, by the time Kingwood conducted its opinion poll on March 2-3, 2022 (Citizens Exh. 16, p. 2), OPSB's local public hearing had already demonstrated the public's opposition to the Project on November 15, 2021. That display of opposition, along with other considerable evidence of opposition, led Kingwood to commission its opinion poll. If Kingwood actually believed the public favored its Project, it would have employed an honest opinion poll to measure that opinion instead of a deceptive one.

B. Kingwood's Allegations, That The Staff's Recommendation To Deny The Certificate Was Procedurally Irregular, Are Fictitious And Irrelevant.

In an apparent attempt to divert the Board's attention from the overwhelming public opposition to this Project, Kingwood has assaulted the Staff for alleged "procedural irregularities" in obtaining stakeholder input to inform their recommendation on whether the Project complies with R.C. 4906.10(A)(6).

Kingwood criticizes the Staff for asking Greene County and township officials for their input on whether a certificate should be issued for the Project. As context for the absurdity of this argument, the Board should consider the fact that the Staff routinely asks applicants for information to inform the Staff's recommendations on whether the R.C. 4906.10(A) criteria have been met. In this case, the Staff sent Kingwood six sets of data requests on May 17, May 20, June 1, June 3, July 13, and July 20, 2021 for that purpose, providing Kingwood with numerous opportunities for its input on the Staff's recommendations. Yet Kingwood complains about the Staff making a single request for input from the county and the townships. Kingwood should not have a one-sided monopoly on communications with the Staff, and there is nothing improper about the Staff obtaining information from local officials or anyone else.

Kingwood contends that the Staff has not disclosed why Executive Director White directed her subordinates to contact the local officials for their input and demands that the ALJs compel Ms. White to testify to explain the reason for this outreach. However, the record identifies the purpose of this outreach. The Staff had not only the authority, but the obligation, to obtain input from the public on whether the Project "will serve the public interest, convenience, and necessity" under R.C. 4906.10(A)(6). Emphasis added. Subpoenaing Ms. White to testify will add nothing to this discussion.

Kingwood also questions why the Staff contacted the local officials on October 28, 2021, which was the day prior to issuing the Staff Report. The answer to that inquiry also is obvious. The ALJ's Entry of August 26, 2021 required the Staff to file the Staff Report by October 29, 2021. Since the Board is required to gauge the public interest under R.C. 4906.10(A)(6), the Staff needed to know whether the local government officials had taken a position on whether the Project would serve the public interest in order for the Staff to make an informed

recommendation. The Staff contacted the local officials on October 28, 2021 because the Staff needed the information prior to finishing the Staff Report that was due the next day. Thus, there is nothing curious about the timing of that outreach.

The record also discloses that the Staff only asked the local officials to express their position on the Project. The Staff did not suggest to them what their positions should be. Graham-Price, Tr. VIII 1927-1960.

Nor is there anything nefarious about the fact that the Staff reached out to local officials to make these inquiries. Gauging the public's views on a project should be done for every project in order to make recommendations under R.C. 4906.10(A)(6). In fact, this is now done routinely in all wind and solar cases. Graham-Price, Tr. VIII 1956:12-24.

Kingwood, ever seeking evidence of a conspiracy, also implied at the evidentiary hearing that the Citizens' knowledge beforehand that intervenors would be allowed to speak at the local public hearing indicated that the Staff was engaged in underhanded conduct to undermine Kingwood. Actually, the Board had previously changed its policy against intervenor testimony at local public hearings in the Birch Solar case, informing local officials prior to that local hearing that intervenors could testify at that hearing. Graham-Price, Tr. VIII 1949:6 to 1951:4. Ms. Graham-Price did not recall that she informed Kingwood or anyone else about this policy change, because her job duties are only for outreach to local government officials. *Id.* The Citizens knew about this change in policy because their counsel participated in the Birch Solar case.

Kingwood contends that a draft of the Staff Report in existence on October 28, 2021 contained a recommendation for Project approval. Citing Grant Zeto's testimony, Kingwood claims that this recommendation changed on October 29, 2021 to recommend denial based solely

on the County Commissioners' resolution opposing the Project. However, Mr. Zeto testified that the Commissioners' resolution was just "a factor" in the final recommendation, which also was based on "all the details within the case on the docket here, the Intervenor's public comments, the kind of information that we had been receiving from the public on it, to name – amongst others." Zeto, Tr. VII 1843:8-14.

Kingwood argues that the recommended denial had to be based solely on the Commissioners' resolution docketed on October 29, 2021, because the draft report still contained a recommended approval at the end of the day on October 28, 2021 following the receipt of all other information. That is, Kingwood claims that the Greene County Commissioners' resolution of opposition filed on October 29, 2021 was the only new information received by the Staff after October 28, 2021, so their changed recommendation had to be based solely on the county's resolution. However, the record does not disclose whether the prior draft with an approval recommendation was prepared before or after the Staff received the other information it consulted to inform its recommendation, including word on October 28, 2021 that the townships opposed the Project. Certainly, the record does not indicate that a revised draft was prepared on October 28, 2021. What is clear is that the Staff based its denial recommendation on the cumulative evidence received as of October 29, 2021, not just the Commissioners' resolution. The Staff Report reveals that fact, identifying opposition from township officials and local citizens, including citizen opposition "expressed at local public hearings." Staff Exh. 1, Staff Report, p. 44.

Kingwood nitpicks the Staff Report's reference to those "local public hearings," arguing that the Board's public hearing of November 15, 2021 had not yet occurred in this case and that the language in this section of the report appeared to have been cut and pasted from the Board's

opinion in the Republic Wind case. Addressing the latter point, there is nothing inappropriate about borrowing language from another document if it also applies to this case. Attorneys while drafting filings routinely borrow language from prior documents that fits the situation.

Contrary to Kingwood's assertion, the Staff's reference to local public opposition to the Project during the "local public hearings" is accurate. Although Mr. Stickney presumed that this term was a mistaken reference to the Board's local public hearing, it was Mr. Stickney who was mistaken. Since the Staff Report refers to "local public hearings" in plural form, and since the Board holds only one local public hearing in a case, that term was used in a broader sense. Mr. Stickney was attempting to skew the meaning of the Staff's text by applying his own interpretation to the Staff's term and which is unsupported by the report's text. Mr. Stickney testified that his own interpretation of a "public hearing" is an event in which the public can speak and express opinions. Stickney, Tr. I 159:16-21, 164:2-9. Mr. Stickney admitted that, prior to the Board's local public hearing on November 15, 2021, the following events had been held in which the public was allowed to express their views verbally or in online chats: (1) on April 6, 2021, the County Commissioners held a town hall in which each attendee was afforded three minutes to speak about the Project; (2) on October 26, 2021, Kingwood held a virtual public meeting in which the public could ask questions and make comments in writing; (3) on November 19, 2020, Kingwood held a public information session in which the public could ask questions and make comments; (4) on March 30, 2021, Kingwood held a Zoom meeting in which the public was allowed to ask questions and submit comments; and (5) on March 30, 2021, Kingwood held a telephone meeting in which the public was allowed to ask questions and submit comments. Stickney, Tr. I 164:20 to 167:24. Thus, there were plenty of opportunities for the public to express their displeasure with the Project prior to the Board's local public hearing

of November 15, 2021, and the public indeed expressed their displeasure as the Staff duly noted in the Staff Report.

The Staff Report's diagnosis of the public's opposition was confirmed by the Board's local public hearing two weeks later on November 15, 2021. Anyone in attendance could witness how one-sided the public's opposition was. This was borne out in the sign-in sheets for the hearing, which overwhelmingly indicated the public's opposition. The volume of this opposition was all the more impressive given that Kingwood had earlier initiated its campaign in August 2021 to pay people not to oppose the Project. Stickney, Tr. I 61:9-12.

The testimony of witnesses for the county and townships at the evidentiary hearing confirms the overwhelming nature of the public's opposition. These officials could make this judgment based on their interactions with constituents.

Kingwood states that the Staff Report mischaracterizes township resolutions as expressing opposition to the Project when they did not do so and that the Staff Report mischaracterizes township notices of intervention written by attorneys as township resolutions. But the fact is that township representatives informed Julie Graham-Price of the Staff by telephone prior to the Staff Report's issuance that all three intervening townships opposed the Project and would be adopting formal resolutions documenting that opposition. Graham-Price, Tr. VIII 1929:1421, 1932:14-21, 1936:1-13, 1960:1-21; Ewry, Tr. VI 1519:19 to 1524:3.

Kingwood contends that the Staff Report overstates the number of the docketed public comments opposed to the Project while understating favorable comments. Intervenor Cedarville Township dispels any such notion on Pages 11-12 of its opening brief.

In particular, Kingwood argues that the Staff failed to consider that many intervenors filed public comments and that this made it appear that there was more opposition than actually

existed. That is, Kingwood contends that the Staff should not count the opinions of citizens who, as the most impacted neighbors, feel strongly enough about the harmfulness of this Project to spend their time and funds to exercise their legal rights in this proceeding. Actually, the views of these citizens should be given more weight, not discounted altogether as Kingwood wishes.

Kingwood asserts that the Staff Report failed to recognize the import of 76 letters in support of the Project from union members who might work on Project construction, apparently referring to a filing on the docket on September 20, 2021. Actually, these people signed the same form letter that, based on its contents, appears to have been written by Kingwood. Mr. Stickney, when questioned about the letter, could not say whether these people live in the three townships affected by the Project. However, many of the letter's signers do not even live in Greene County, as disclosed by the signers' addresses written at the end of each copy of the letter. Mr. Stickney argued that the views of prospective construction workers should be afforded the same weight as residents of the community surrounding the Project. Stickney, Tr. I 197:20 to 199:9. However, Project construction is expected to take 16 months, so the economic benefits for a construction worker are just a "one-time economic activity during the 16-month construction period." Applic., Exh. D, p. 1. The construction worker then can get away from the damage his/her Project caused to the community. In contrast, a community resident is stuck with the Project's impacts for the next 35 years. Obviously, the surrounding community has more public interest in the outcome of the Board's certification decision than workers who make some money for 16 months by constructing solar facilities that will damage the homes of other people and then are able to escape the impacts of their work by going back to their own, unimpacted homes. In considering the "public interest, convenience and necessity" under R.C. 4906.10(A)(6), the Board should ascribe the greatest weight to the views of the members of the

public who are most impacted by a project. Those members of the public are the residents of the surrounding community, not construction workers with brief stints as employees and not Greene County residents outside of the three impacted townships who say they favor solar energy in response to a developer's deceptive opinion poll.

Kingwood concludes that the Staff Report contains such grievous mistakes and false claims that its recommendation for denial should be considered unreliable. Actually, the Staff's assessment of public interest, convenience, and necessity under R.C. 4906.10(A)(6) is accurate and reasonable. A wealthy developer's inability to buy meaningful citizen support for its Project is a telltale sign that the Project is widely recognized as contrary to the public's interest, convenience, and necessity. The Board should accept the Staff Report's recommendation and deny the Certificate.

C. Paying Off Potential Opponents Is Not The Same As Serving The Public Interest.

Kingwood is not bashful about its offers of monetary gifts to anyone who does not oppose the Project. Kingwood has tried to pay people to support the Project, including neighbors and local governments.² However, contrary to Kingwood's assertion, these donations are not community benefits resulting from the Project's operations. These gifts, where accepted, are just pay offs to incentivize people to overlook the Project's harms and let it operate.

In that regard, Dylan Stickney testified that the Little Miami Conservancy told him that it is not concerned about the Project. But no one from that organization testified that this is the case, and Mr. Stickney's assertion is rank hearsay entitled to no weight by the Board. If this organization actually is not opposed to the Project, it is apparent that Kingwood has purchased

² The Citizens' initial brief stated that \$25,000 annually has been offered to the local governments, but that number is actually \$250,000 per year. Even that large number was not enough to tempt local governments to betray the public interest.

this non-opposition through the donation Kingwood has agreed to make to the group. But this development is the exception, not the rule. Notably, the Little Miami Watershed Network vigorously opposes this Project due to its concerns about pollution and other impacts to the river, and several of its leaders including Hope Taft testified against the Project at the local public hearing. While Kingwood states that the river is about 1,300 feet from the Project, this is a very short distance that in itself is concerning, as the Greene County land use plan has a one mile setback from the river for development. Moreover, the Project Area is within the Little Miami watershed and some of the river's tributaries are inside the Project Area, so the runoff from the Project Area flows into the Little Miami River. Applic., Exh. M, pp. 7, 9.

Few people want the money badly enough to accede to such a bad project. These offers started in August 2021, but they did not have their intended effect as evidenced by their failure to suppress the public outpour of opposition on display at the local public hearing on November 15, 2021.

D. The Reasons For The Project's Lack Of Popularity Support A Finding That The Project's Is Inconsistent With R.C. 4906.10(A)(6).

Kingwood's argument that the Staff's recommendation and the public's desire to deny the Certificate are based solely on the Project's unpopularity is too simplistic. Public opposition does not occur without a reason, and the Project's unpopularity is not based simply on the community not wanting it in their back yards. The Project is opposed because it will seriously harm the community's back yards, and everything else in the surrounding community. The Board must take into account the judgment of local officials and residents about these impacts, since they are the most familiar with the area. The Staff Report recognizes this component of public interest, stating that its recommendation of disapproval under R.C. 4906.10(A)(6) is based on the fact that local officials "have responsibility for preserving the health, safety, and welfare

within their respective communities” and therefore their interest in and strong opposition to the Project is “especially compelling.” Staff Exh. 1, Staff Report, p. 44.

Thus, while the Greene County Commissioners and the township trustees recognized their constituents’ widespread opposition to the Project, these officials also based their positions on the reasons for their citizens’ opposition. Contrary to Kingwood’s assertions, the local officials’ grounds for opposing the Project are not vague, generic statements and the hearing testimony establishes that their concerns have not been eliminated by Kingwood’s changes to Project design. The County Commissioners’ resolution recited that Kingwood sited the Project within a relatively densely and growing populated area in close proximity to 51 non-participants’ houses, its proximity to numerous cultural, historic, scenic, and recreational resources, its visibility from roads leading to those vital resources, its potential economic threat to tourism, its narrow setbacks from parcel lines and public rights-of-way, and its compatibility with the county’s policies for development of renewable energy and farmland preservation as some of the reasons for the county’s opposition to the Project. Greene County Exh. 2. Xenia Township’s resolution of opposition cited reasons for opposing the Project that include its displacement of farmland, its negative impacts on neighboring property values, its placement in an area with a history of violent weather events, and its inconsistency with the principles for safeguarding the public as enunciated in the township’s zoning ordinance, the township’s land use policies, and the county’s land use plan. Xenia Township Exh. 1, Combs Direct Testimony, Attachment A. Miami Township’s resolution of opposition cited the Project’s occupation of prime farm land, its proximity to three long-protected natural areas as grounds for its opposition. Kingwood Exh. 65, Miami Township’s resolution of November 15, 2021. Cedarville Township’s resolution of opposition listed the Project’s short setbacks, its displacement of agriculture from farmland, its

incompatibility with township and county land use plans and policies, its visual impacts, its proximity to numerous residences, its negative impacts on property values, and its placement in an area with a history of violent weather events as reasons for opposing the Project. See Kingwood Exh. 86, Cedarville Township's resolution of December 8, 2021. The local governments' witnesses amplified these and other concerns with the Project at the hearing.

Similarly, while the Citizens recognize the widespread unpopularity of the Project in their community, they also have identified many substantive reasons for the community's opposition. The Citizens' initial brief describes many of the ways in which this poorly conceived Project will harm the public interest. The issues identified by the Citizens and the local governments should be considered in determining that the Project does not satisfy R.C. 4906.10(A)(6).

Kingwood contends that the Staff, in recommending denial under R.C. 4906.10(A)(6), did not account for statewide benefits in the section of the Staff Report discussing facts pertinent to that criterion. However, Kingwood does not identify any such statewide benefits in its initial brief. The economic report in Kingwood's Application had sections titled "Construction Impacts in the State of Ohio" and "Permanent Operating Impacts in the State of Ohio" with discussions of jobs and tax revenues. Applic., Exh. D, pp. 6-7. The section of the Staff Report dealing with R.C. 4906.10(A)(6) addressed these supposed statewide benefits, acknowledging that the Project's supporters "have emphasized benefits to the local economy, clean energy and the environment, tax revenue, and job creation." Staff Exh. 1, Staff Report, p. 42 (emphasis added). If the undefined reference to "statewide benefits" in Kingwood's initial brief is meant to refer to the Project's "clean energy" outputs, addressing climate change, creating tax revenue, or creating jobs in Ohio, then the Staff Report expressly considered these potential statewide benefits and rightfully found them to be outweighed by the Project's severe negative impacts.

E. The Sky Will Not Fall On Renewable Energy If The Board Disapproves This Project.

Kingwood, taking its cue from Chicken Little, makes a “sky is falling” argument that respecting community wishes as the Staff seeks to do in this case will result in “severe regulatory uncertainty” for Ohio business in Ohio. This is untrue. A utility developer can enjoy the certainty of knowing its project will be approved if it sites and designs the project in a responsible way that does not trample the community – which are principles of good citizenship that Kingwood unwisely chose to ignore.

The best way for the Board to promote renewable energy facilities is to make sure the facilities do not harm the communities in which they reside. One of the first actions taken by citizens learning about a developer’s plans for a new solar facility near them is to visit solar facilities under construction or in operation in Ohio to see for themselves whether the projects are harming the surrounding communities. At poorly sited and badly operated solar projects, these citizens talk to the neighbors about their experiences with solar facility construction and operation and they listen to the inverters’ loud humming noise, look at the overgrown weeds, and observe the awful views from roads and yards, among other problems. These objective observations, along with testimonials of the projects’ victims, fuel opposition to new facilities. If utility developers, and OPSB, wish to advance renewable energy, they need to incorporate protective setbacks and other reasonable practices into these projects. In Kingwood’s case, its project is particularly ill-sited and poorly designed. Proposing to plant solar equipment 25 feet away from yards and public roads and 250 feet from houses is hardly a way to win over one’s prospective neighbors.

With regard to the future of renewable energy, no one will miss Kingwood’s Project if it is disapproved. The Board is inundated with applications for new solar facilities. It need not

allow utilities to trample on the State's citizens with poorly sited and badly designed projects in a mad rush to build these facilities. Approving a bad project like Kingwood's will just inflame opposition to solar projects and set back the growth of solar energy in Ohio.

IV. The Project Does Not Comply With R.C. 4906.10(A)(6), Because The Project Conflicts With The Objectives Of Local Land Use Planning Codes.

Kingwood argues that the townships' codes are not applicable to the Project due to preemption under R.C. 4906.13. Regrettably, that is true. For that reason, it is all the more important for OPSB to make sure that approved utility projects protect the public, since OPSB's judgment is being substituted for local land use planning and zoning protections.

The briefs of the local government intervenors explain in more detail how this Project conflicts with and would thwart local objectives for protecting their citizens' quality of life. While local land use planning codes may not be legally applicable to the Project, their requirements are important guidelines for determining whether the Project meets the public interest under R.C. 4906.10(A)(6).

V. The Project Does Not Comply With R.C. 4906.10(A)(6), Because 1,025 Acres Of Good Farm Land Will Be Lost To Food Production For 35 Years.

Kingwood's initial brief does nothing to dispel the concerns on this topic described in the Citizens' initial brief. Taking prime farm land out of production for 35 years, with no binding promise to ever return the land to farming, does not serve agricultural objectives in a time where food shortages are becoming a reality.

VI. The Ohio Power Siting Board Cannot Issue A Certificate To Kingwood Solar, Because Kingwood Solar Has Not Evaluated The Project's Negative Economic Impacts As Required By OAC 4906-4-06(E)(4) And R.C. 4906.10(A)(6), And Because The Available Economic Data Demonstrates That The Project Fails To Comply With R.C. 4906.10(A)(6).

With regard to the Project's economic impacts, Kingwood's initial brief suffers from the same deficiency as its Application: it lacks a complete discussion of the Project's negative economic impacts. Kingwood's initial brief on this topic suffers from two important deficiencies.

First, although Kingwood attempts to paint a picture of economic health for the Project, the Project actually will cost a net loss of direct jobs, not increase direct jobs. Kingwood contends that the Project will provide a small increase in indirect and induced jobs, but neither the record nor Kingwood's initial brief explains how that could happen if the Project is killing the direct jobs. That scenario seems improbable, and Kingwood has failed its burden to prove how that could occur.

Second, neither the record nor Kingwood's initial brief contains any information about the Project's negative impacts on trades and businesses other than the loss of agricultural jobs. The Citizens' initial brief explains this point in more detail.

VII. The Application Requests A Certificate Without Offering The Setbacks Necessary To Minimize The Project's Adverse Environmental Impact Under R.C. 4906.10(A)(3).

As expected, Kingwood contends that it improved the Project's setbacks by agreeing to expand setbacks between solar equipment and houses to 250 feet, adding a 500-foot setback between inverters and houses, and adding a 200- to 300-foot setback for parts of State Road 72 and Clifton Road. As explained in the Citizens' initial brief, these new setbacks will not protect the public. Changing horrible setbacks to setbacks that are just a little less horrible is nothing to brag about. George Landon's simulations visually demonstrate what a 250-foot setback actually looks like, in contrast to the deceptive simulations provided in Kingwood's Application. Moreover, Kingwood still insists on a 25-foot setback between solar equipment and

nonparticipating properties, including neighbors' yards. The Board should not approve a Project with such short setbacks.

Kingwood also argues that its revised layout removes 300 acres of the Project Area "from consideration" for above-ground equipment. Kingwood has done no such thing. The revised layout has not been incorporated into the Application as a binding commitment. If Kingwood received its certificate, it can just ignore that revised layout and the Board will be able to do nothing about it unless the certificate binds Kingwood to that revised layout. The proposed stipulation does nothing of the sort.

VIII. The Ohio Power Siting Board May Not Issue A Certificate To Kingwood Solar, Because Kingwood Has Failed To Provide The Information Required By OAC 4906-4-08(D)(4)(e) & (f) And R.C. 4906.10(A)(2) To Describe And Mitigate The Project's Adverse Visual Impacts, And Because The Project's Adverse Visual Impacts Preclude The Issuance Of A Certificate Under R.C. 4906.10(A)(3) and R.C. 4906.10(A)(6).

Not surprisingly, Kingwood tries to focus the Board's attention on the Project's views for people far from the Project Area instead of admitting the Project's severe impacts on those living nearby. Kingwood's discussion of this topic opens with a statement that the solar panels will be only 14 feet high at maximum tilt, stating that this will have a relatively low visual profile. However, while a 14-foot high panel may have little or no visual impact from a mile away, it will have a huge, looming impact at close quarters that many neighbors will experience if this Project proceeds. Dr. George Landon's simulations visually demonstrate these views. If any persons harbor any doubt about how imposing a 14-foot industrial structure next to a person's yard would be, they should look at Dr. Landon's simulation of 14-foot solar panels behind his sons flying the kite in the simulation inserted into the Citizens' initial brief. Kingwood proposes to install solar arrays of up to 14 feet in height right next to people's yards. No reasonable person would find 35 years of life in such a setting to be tolerable. Jenifer Adam's photographic

simulations also show how far and wide the neighbors will be able to see the solar panels, especially from homes and yards on elevated land overlooking the solar fields. The Board should not be fooled by Kingwood's diversionary tactic of focusing on far views instead of near views. Nor should the Board be misled by Kingwood's deceptive simulations that omit those near views.

Kingwood asserts that the expanded setback of 250 feet from neighboring houses it proposed in the Stipulation will help the views. But it will not help much, as shown by Dr. Landon's simulations of views from that distance. And a view from 25 feet, as allowed by Kingwood's setbacks for public roads and nonparticipants' yards and land, would be truly awful.

Kingwood also argues that its landscaping plan will help with the views. The Citizens' initial brief explains that the landscaping will be ineffective to prevent the destruction of the neighbors' views due to the flaws in the landscaping plan, the length of years necessary to grow trees high enough to block the panel views, and the differences in ground elevations between solar panels and neighboring yards.

IX. The Ohio Power Siting Board Cannot Issue A Certificate To Kingwood Solar Without Receiving The Information Required By OAC 4906-4-08(B) And R.C. 4906.10(A)(2) & (3) Concerning The Project's Potential Impacts On Wildlife And Plants.

Kingwood's initial brief does not address the concerns described in this section of the Citizens' initial brief.

X. Because The Evidentiary Record Does Not Provide Water Conservation Measures For The Project As Required By OAC 4906-4-07(C)(3)(e), The Board Lacks the Necessary Information On The Nature Of The Project's Probable Environmental Impact, And The Board Has No Basis To Find That The Project Represents The Minimum Adverse Environmental Impact.

Kingwood's initial brief represents that well waters will be protected by Stipulation Condition 25, which if adopted would require Kingwood to keep its solar panels at least 50 feet

from active water wells in the Project Area. This does little to protect water wells outside of the Project Area.

More importantly, this condition does not prevent Kingwood from over-pumping the Project Area's water wells so as to dry up the neighbors' water wells. While Kingwood argues that no permit for water consumption will be required, that is because Ohio law does not require water consumption permits for anyone. Although Kingwood's initial brief represents that the Project "use very little water during operation," neither its Application nor its offered stipulation provide any such commitments nor do they commit, as required by rule, to utilize maximum feasible water conservation practices. The Citizens' initial brief describes this failure in more detail.

XI. The Project Does Not Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6), Because Its Damage To The Community's Quality Of Life Will Reduce The Neighbors' Property Values.

Kingwood argues that Andrew Lines' testimony establishes that solar projects do not impair property values, and that Mary Clay's testimony to the contrary is inaccurate. Actually, the opposite is true.

The Citizens' initial brief describes Mary Clay's well-researched evidence demonstrating that solar projects reduce neighboring property values and explaining why the opposing conclusions of Kingwood's property expert Andrew Lines are erroneous. Kingwood attempts to undercut the credibility of Ms. Clay's findings, but her findings are well-supported with facts and they comport with the principles of common sense. That is, a person need not be a property expert to realize that a residential property next to a visible industrial solar facility is worth less than a residential property with a pleasant view.

Kingwood argues that Ms. Clay was biased because she believes that solar projects can

cause erosion and pollution. Of course, they can and they do. However, those facts have no influence on Ms. Clay's opinions about property devaluation. Her conclusions are based on math, that is, whether there are statistical differences in sales prices for properties adjacent to solar projects as compared to non-adjacent properties. Her personal opinions about the damage from solar projects do not change those numbers.

Kingwood argues that Ms. Clay should not have relied on property appraisal values for one of her studies. However, Ms. Clay testified that she did not use appraisals; she used sales prices. Clay, Tr. V1116:20 to 1117:3.

Kingwood also asserts that Ms. Clay's conclusions are biased because she believes solar companies' good neighbor agreements are evidence of the solar companies' understanding that their projects do devalue adjoining properties. Ms. Clay actually is correct about this assumption. However, as explained above, the numbers do not lie, and Ms. Clay relies on the objective numbers rather than subjective opinions.

The initial brief for the Greene County Commissioners has further analysis of the flaws in Mr. Lines' conclusion that industrial solar facilities do not devalue adjoining properties. The Citizens incorporate that discussion herein by reference.

On rebuttal, Mr. Lines testified that three properties next to the Project Area were sold without a reduction of value after news of the pending Project broke. However, on cross-examination about his criticisms of Mary Lines' testimony, he stated that using properties as test sales prior to approval of a pending solar project is inappropriate because the solar projects "don't have any influence" because the solar farms are "not there." Lines, Tr. IX 2077:4 to 2078:14. In those instances, Mr. Lines did not know whether the public knew at the time of the sales that a solar farm was coming, but that did not change his view that the absence of the solar

farm negated the sales' value as test sales. *Id.* By that reasoning, the three sales around Kingwood's Project Area also are not valid test sales to show the lack of Project impacts on property values.

Kingwood also contends that Chance Baldwin was able to obtain a fair value for a property he sold after learning about the Project. However, Mr. Baldwin's sale is not an accurate test sale, because the Project has not been approved, just like the property sales that Mr. Lines said do not count as test sales. Moreover, Mr. Baldwin testified that he sold his property, since it had some repair issues, at a "bargain" price in order to unload it. Baldwin, Tr. IV 930:12-24.

Importantly, when evaluating the credibility of Mr. Lines' testimony, the Board should considered the fact that Mr. Lines has been paid by solar companies to testify more than 100 times that solar facilities do not damage adjoining property values. Lines, Tr. II 366:22 to 367:14. Andrew Lines arrived at his conclusion that this Project will not devalue neighboring properties simply because he was paid to come to that conclusion. If he testified otherwise, he would lose an enormous amount of his livelihood. Mr. Lines cannot afford to testify accurately about the financial effects of solar projects on adjoining property values, and that is why he did not do so here.

XII. The Project Does Not Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6), Because It Will Damage The Community's Historic And Cultural Resources.

Kingwood argues that the Ohio Historic Preservation Office ("SHPO") has indicated that the Project will have minimal impacts to cultural and historic resources.

Although Lynn Gresock and Amy Kramb both testified about historic and cultural resources on Kingwood's behalf, the company's study on these resources was conducted solely by Ms. Kramb. Ms. Kramb is not a resident of Greene County, unlike Citizens' expert witness

Terry Fife, and Ms. Kramb has only inconsequential familiarity with the county, its history, and its cultural resources. Prior to this Project, she had only the following occupational experience with Greene County:

1. A one-page pamphlet summarizing the history of some buildings at Wright State University based on two or three sources of facts. Kramb, Tr. IX 2180:1 to 2180:14.
2. Looking at some databases to identify historic structures along an unknown distance of U.S. Highway 42 that might be affected by bridge and culvert construction. Kramb, Tr. IX 2182:9 to 2184:20.
3. Looking for suitable land to replace land taken from a park to widen a road. Kramb, Tr. IX 2185:2 to 2186:12.

None of these very limited studies were conducted in the Project Area and, so far as can be told from Ms. Kramb limited recollection of this work, none of them were close to the Project Area. Kramb, Tr. IX 2180-2186.

Unlike Ms. Fife, Ms. Kramb has spent little time in Greene County, has no family history there, and failed to consult important historic and cultural resources such as the county historical society, other historical societies, the Greene County archives, the Greene County library, or the National Museum of Afro-American History in Wilberforce. Kramb, Tr. IX 2191:5 to 2192:22. She could not even say how many historically black colleges exist in Ohio. Kramb, Tr. IX 2192:23-25. She did not know that a historic cemetery less than two miles from the Project Area was one of the first historically racially integrated cemeteries. Kramb, Tr. IX 2194:14 to 2196:1.

Thus, Ms. Kramb's limited knowledge of Greene County history is why she had no appreciation of or knowledge about the unique qualities of Greene County's historic and cultural heritage. Her opinion that Greene County's history and culture are not unusual is borne out of

sheer ignorance. Thus, it is not surprising that her cultural resources report in the Application omits most of the discussion of the historical context for the historic, cultural, and architectural sites described in Ms. Fife's testimony.

Importantly, while SHPO and Kingwood have used Ms. Kramb's findings as the basis of their assessment that views of the Project Area are limited from historic and cultural sites, Ms. Kramb's findings also based on inadequate knowledge. She assessed the Project's visibility for 258 properties of potential historic significance. Kramb, Tr. IX 2197:1-25. All 258 of them were on private property, which she did not access. Kramb, Tr. IX 2198:7-13. She stated that her opinions about the Project's visibility from each historic property were based on what she could see "from standing at that property at the edge of the public right-of-way." Kramb, Tr. IX 2197:20-22. Sometimes she did not even get out of her vehicle to look at the views from those properties. Kramb, Tr. IX 2198:14-18. She could not even see 14 architectural sites from which views of the Project Area are likely or possible. Kingwood Exh. 109, Kramb Rebuttal Testimony, Exh. A, p. ii. Obviously, Kingwood's assessment of the Project's visual impacts on historic and cultural resources is incomplete.

Kingwood also contends that solar panels will no longer be within the view of some historic sites as a result of Kingwood's revision of its preliminary site plan attached as Exhibit B to Mr. Stickney's rebuttal testimony. However, as explained in the Citizens' initial brief, this modified preliminary site plan is not a legally binding commitment to place panels and the panel locations can be changed in the final design. Kingwood's promise to keep solar arrays out of sight from historic sites based on incomplete information and a non-binding plan. Because Kingwood has failed to protect the area's abundant historic and cultural resources, the Board should deny a certificate for the Project pursuant to R.C. 4906.10(A)(6).

XIII. Siting A Large Solar Project As A Target For Tornadoes In An Area Prone To Tornado Activity Without Requiring Solar Equipment To Be Designed To Withstand Tornado Winds Does Not Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6).

Kingwood states that its panel motor trackers will withstand winds of 105 miles per hour. That is a good feature, but, as Kingwood's expert admitted, it does not come anywhere close to withstanding wind speeds of over 200 miles per hour of which tornadoes are capable. A tornado with a 105-mile per hour wind speed is only a Category 1 tornado, whereas the Xenia tornado of 1974 was a Category 5 tornado.

Mr. Roedel may have testified that few solar facilities have been struck by tornadoes, but that is simply because the solar industry is in its infancy in the United States. An increase in solar facilities will place more of them in the path of future tornadoes, and Kingwood's Project in an area prone to tornadoes may be one of them.

Kingwood claims (at 89) Mr. Roedel testified that Greene County "does not experience a higher risk of tornadoes compared to other areas of the county." Actually, what Mr. Roedel stated in his testimony was only that "Tornado Alley" in Texas, Oklahoma, and Kansas has a higher tornado incidence rate than Greene County. Roedel, Tr. III 626:22 to 627:9. He offered no statement about how Greene County's tornado activity compares to the rest of the country, and he admitted that there are 17 recorded tornadoes in Greene County since 1950. Roedel, Tr. III 620:13-22. He also did not know how frequently tornadoes touch down in the Project Area, which has been struck at least twice -- in 1974 and 2018 -- according to eyewitness testimony at the hearing.

Mr. Roedel stated that one solar project struck by a tornado did not suffer much damage. However, the winds in that tornado were only 80 miles per hour, which the weakest category of tornado at Category 0. Roedel, Tr. III 615:19-21.

Kingwood points to Alex Roedel's testimony that Nextracker trackers have been in several hurricanes with wind events exceeding 130 miles per hour. Kingwood Exh. 16, Roedel Direct Testimony, pp. 5-6. The winds in hurricanes act differently than tornado winds, so the wind speeds in the two weather events are not comparable. Roedel, Tr. III 617:8-25. Most notably, Mr. Roedel offered no information about whether the solar panels survived those hurricanes.

What is clear are that tornadoes can scatter debris from damaged solar projects around the countryside, and that the Project Area has a high incidence of damaging tornadoes. The Project should not be sited there.

XIV. The Project Will Not Represent The Minimum Adverse Environmental Impact Under R.C. 4906.10(A)(3), Nor Will The Project Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6), Because Its Noise Will Make Life Miserable On Neighboring Properties.

Kingwood starts its discussion on noise trying to portray construction noise as not being a big deal. It is a big deal. Kingwood's acoustic expert, Alex Odom, admitted that construction noise will be about 85 A-weighted decibels ("dBA") at a distance of 275 feet. Odom, Tr. II 428:20 to 429:20. Kingwood wants to build its structures as close as 250 feet from the neighbors' houses and 25 feet from their yards. The noise will be excruciating, and it will last for a long time (16 months for the entire project).

Kingwood contends that its modeling predicts that the inverters' operational noise will not exceed the ambient sound level of the Project Area by more than five dBA. However, accurate ambient sound measurements are the key to setting such a limit. In this case, while Kingwood acoustician Alex Odom is inexperienced, even he knows the trick used by other industry acousticians to make the existing sound level appear to be loud. He simply placed his microphones in noisy places. This results in a non-protective noise limit.

Kingwood states that the Project's noise will be lower inside the neighbors' houses. That is hardly comforting. As discussed in the Citizens' initial brief, the Citizens spend considerable time in their yards on recreation, socializing, and relaxing. Their yards are an integral component of their quality of life. Driving your neighbors into their houses to escape noise that Kingwood could have avoided with decent setbacks and noise controls does not serve the public interest, convenience or necessity under R.C. 4906.10(A)(6) or represent the minimum environmental impact under R.C. 4906.10(A)(3).

Primarily, Kingwood's approach to noise control is to install the inverters without noise controls and then mitigate the noise if it is a problem. That is, Kingwood prefers that the neighbors suffer for a while after the inverters start operation. As Mr. Rand testifies, the proper professional practice is to install noise control equipment at the time of facility construction rather than waiting for complaints. This is not only more responsible to one's new neighbors, but less expensive than retrofitting noise controls. Kingwood argues that noise barrier walls can be added to the inverter installations after construction by putting in concrete footings and pads extending beyond the inverters' footprints. However, the Application contain no such requirement that Kingwood install any such footings or pads. Undoubtedly, if operational noise proves to be a problem, Kingwood will resist noise controls on the grounds that retrofitting them is too expensive. If a certificate is issued for this Project, the Board should address this issue proactively with a requirement for noise controls rather than waiting for damage to occur first.

The Board has already made a mistake at the Hardin Solar I facility, where the inverters' tonal humming sounds like "swarms of bees" outside of the facility. Citizens Exh. 12, Rand Direct Testimony, p. 15, lines 5-6. Robert Rand, based on his 40 years of acoustic experience, has informed OPSB that Kingwood's Project will cause the same problem. OPSB should not

make the same mistake here.

XV. The Ohio Power Siting Board Cannot Issue A Certificate To A Solar Energy Utility Without Receiving Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2) & (3) About The Project's Drainage Impacts And Associated Mitigation To Prevent Flooding.

Kingwood asserts that floodplains are not much of a problem in the Project Area, but citizen testimony described in the Citizens' initial brief proves that much of the Project Area is routinely covered with standing water. These observations do not even account for modifications in drainage patterns that Project construction may make.

As the Citizens' initial brief explains, the Board has rule requirements for providing the numeric calculations necessary to define the differences in drainage volumes before and after construction. Kingwood has taken a shortcut through those requirements, choosing instead to hire a witness to just say drainage and flooding will not be problematic. The Board needs, and the Board's rule requires, volumetric calculations of stormwater so that OPSB can make an independent judgment as to whether the Project will cause flooding and to identify any mitigation measures necessary to prevent flooding. Presenting a hired gun to tell the Board it does not need these calculations does not satisfy these legal requirements.

XVI. The Ohio Power Siting Board Cannot Issue A Certificate For The Project Without Receiving Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2) & (3) Concerning The Project's Pollution Impacts And Associated Mitigation.

Kingwood's only point on this topic is to represent that Kingwood will obtain a stormwater discharge permit after certification that will require pre- and post-construction stormwater calculations. As explained in the Citizens' initial brief, OPSB's rules require these stormwater calculations before certification so that the Board can determine the Project's potential water quality impacts and the necessary mitigation measures. Simply hiring a witness

to make an uninformed statement that water quality will not suffer from the Project does not satisfy these rule requirements.

XVII. Issuing A Certificate To An Inexperienced Project Owner Does Not Serve The Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6), Nor Should The Board .

The Board should not trust such a potentially harmful facility to a company that has next to no experience in building or operating a solar facility. As outlined in the Citizens' initial brief, Kingwood itself is entirely new at its trade. So is Kingwood's parent company. Kingwood's initial brief does nothing to persuade the Board that it is competent to install or operate the Project in a manner protective of the public.

XVIII. Conclusion

As explained above, there a multitude of good reasons to deny the certificate sought by Kingwood. Kingwood has failed to provide the information on the Project's adverse impacts and mitigation measurements necessary to minimize them that is required by the Board's rules. The Board cannot violate its own rules by approving the Project without this information. Nor do the criteria in R.C. 4906.10(A)(2), (3), and (6) authorize the issuance of this certificate. The Board should deny Kingwood's Application.

Respectfully submitted,

/s/ Jack A. Van Kley
Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankleywalker.com
(Willing to accept service by email)

CERTIFICATE OF SERVICE

I hereby certify that, on July 22, 2022, a copy of the foregoing brief was served by electronic mail on the following: Jodi Bair at Jodi.Bair@ohioattorneygeneral.gov; Daniel A. Brown at dbrown@brownlawdayton.com; Kevin Dunn at kdd@planklaw.com; John Hart at jehartlaw@gmail.com; Nathaniel B. Morse at nbmorse@vorys.com; Werner.Margard@ohioattorneygeneral.gov; Michael Settineri at mjsettineri@vorys.com; Lee Slone at lslone@mdllp.net; Charles Swaney at cswaney@woh.rr.com; David Watkins at dw@planklaw.com; Anna Sanyal at aasanyal@vorys.com; Thaddeus Boggs at tboggs@fbtlaw.com; Chad A. Endsley at cendsley@ofbf.org; Amy M. Milam at amilam@ofbf.org; and Leah F. Curtis at lcurtis@ofbf.com.

/s/ Jack A. Van Kley
Jack A. Van Kley

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