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BEFORE THE OHIO POWER SITING BOARD PUCO

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 :

POST-HEARING BRIEF OF INTERVENOR
IN PROGRESS LLC

Intervenor In Progress LLC of Cedarville, Greene County OH ("In Progress LLC") hereby submits this Post-Hearing Brief stating its concerns and questions with respect to the Kingwood Solar project application. In addition to referencing or deferring to the arguments raised on other Intervenor's briefs, In Progress LLC asks this Board to take into account the following points when making their determination in this matter.

INTRODUCTION

I. Standards for Certification of Major Utility Facilities

No person may construct a major utility facility without first obtaining a certificate for the facility. R.C. 4906.04. The Kingwood Solar project ("Project") is a "major utility facility" as defined by R.C. 4906.01(B)(1)(a) because it is designed to generate more than 50 megawatts (MW) of electricity. Before the Ohio Power Siting Board ("Board") may lawfully issue a certificate for a major utility facility, the Board must hold a hearing on the application. R.C. 4906.07. The Board must render a decision on the record either granting or denying the certificate based on the application as filed, or granting it with such terms, conditions, or

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modifications as the Board considers appropriate. R.C. 4906.10. The Board may not grant a certificate unless it finds and determines the following:

- (a) “The nature of the probable environmental impact.” R.C. 4906.10(A)(2);
- (b) “That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.” R.C. 4906.10(A)(3); and
- (c) “That the facility will serve the public interest, convenience, and necessity.” R.C. 4906.10(A)(6).

Regarding the requirements of R.C. 4906.10(A)(3), the common meaning of “minimum” is “the least quantity assignable, admissible, or possible.”¹

The Board has recognized that its determination of public interest, convenience, and necessity under R.C. 4906.10(A)(6) must be examined through a “broad lens” that balances a project’s projected benefits against the magnitude of potential negative impacts on the local community.² In that case, the “especially prominent and one-sided” local opposition to the disapproved wind project was an important factor in Board’s determination that the Republic Wind project did not serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).

In a more recently decided case resulting in the denial of an application to construct an overhead electric transmission facility through downtown Youngstown, the Board found that “the consideration of public interest, convenience, and necessity requires a balancing analysis as to the public’s interest in energy generation that ensures continued utility services and the prosperity of the state versus the local public’s interest in ensuring a process that allows for local citizen input, and the consideration of impacts to natural resources. As part of the Board’s responsibility under R.C.

¹ See the Merriam-Webster Dictionary at <https://www.merriam-webster.com/dictionary/minimum>.

² *In re Application of Republic Wind*, Ohio Power Siting Board Case No. 17-2295-EL-BGN, 2021 WL 2667132, at *1, *18 (June 24, 2021).

4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community.”³

In that case, the Board restated its position that “public interest, convenience, and necessity should be examined through a broad lens” and that that Board should “also consider the impact to recreation, cultural resources, regional planning, and the prosperity of the local community and the state of Ohio.”⁴ In support of its denial decision, the Board noted that the local community “raised universal local opposition to the installation of the proposed aerial transmission line along the preferred route and its impact to the downtown Youngstown area.”⁵

ARGUMENT

II. The Board should consider the public opposition to the Project

In Progress LLC recognizes the position as claimed by Cedarville Township that there is strong local public opposition to the Kingwood Solar application in the Cedarville Township, Miami Township and Xenia Township areas of Greene County that will be most affected by the Project.

Based on the information contained in an internally prepared spreadsheet, Cedarville Township determined that “the overwhelming majority of commenters residing in Cedarville Township oppose the Project. Other than the few lease holders, all other Cedarville Township commenters expressed their opposition to the Project.”⁶ In fact, if the Board undertakes a close, independent review of the comments provided at the local public hearing, and the written

³ *In re Application of American Transmission Systems*, Ohio Power Siting Board Case No. 19-1871-EL-BTX at ¶58 (May 19, 2022).

⁴ *Id.* at ¶79.

⁵ *Id.* at ¶81.

⁶ Cedarville Township Exhibit 1, Lines 54-56.

comments filed on the Board's docket that are all part of the record in this case, such a review will show that the vast majority of the most directly impacted public are opposed to the Project.

Also of concern was the poll testified to by Mr. Hobart, who admitted that the poll was designed to generate responses from a "representative sample" of all registered voters in Greene County. It was not designed to solicit the comments of persons who reside nearby and would be most directly affected by the Project.⁷

Furthermore, the telephone poll of remote Greene County residents asking generic questions about the respondent's support for solar power generally is not particularly pertinent to the question of more localized public sentiment toward the specific nature of this Project. In Progress LLC believes the phrasing and framing of the questions led to a less than reasonably objective response and analysis of the results, instead creating a bent towards a conclusion sought by the pollsters consistent with expectations for which they were retained.

III. The Board should consider the Project's impact on the community

In its Resolution in Opposition to the Kingwood Solar Project dated December 9, 2022, Cedarville Township expressed its concerns that the Project design: i) does not include adequate setbacks from the generating facilities as recommended by the Greene County Land Use Plan; ii) does not adequately assess the visual impacts to nearby properties and public roads; iii) does not adequately consider the risks involved in placing the Project in an area that has experienced

⁷ Hearing Transcript Volume VIII, Page 2046/1-7.

numerous violent weather events in the past; and iv) may cause a diminution of property value to non-participating properties located near the Project.

In direct testimony presented to the Board on behalf of Cedarville Township, the following additional points, among others, were made: i) its industrial purpose is out of character for the agricultural community; ii) the potential impacts on adjacent property owners from damaged field tiles is significant without an adequate process for identifying and repairing such field tiles damaged during construction and operation of the Project; and iii) the risk of a violent weather event damaging the Project and nearby properties has still not been adequately considered.⁸

Intervenor Citizens for Greene Acres ("CGA") also presented direct testimony in opposition to the Project during the hearing. CGA currently consists of 92 members, most of which reside on property located adjacent to the proposed Project area. CGA was formed for the preservation and stewardship of agricultural, cultural, and natural resources in Greene County and to advocate for responsible solar policies and practices that balance the demand for renewable energy with the interests of the communities in Greene County, Ohio.⁹

CGA's direct testimony included lay and expert witness testimony in support of the following issues: i) negative effects on the views from nearby properties; ii) increased background noise in the Project area; iii) detrimental effects on nearby property values; iv) disruption of drainage and surface water runoff in the Project area; v) negative effects on the agricultural nature of the community; and vi) negative effects on nearby historic and cultural landmarks.

⁸ Cedarville Township Exhibit 1.

⁹ Citizens Exhibit 1, Page 2/14-17.

On those issues raised by these intervenors, In Progress LLC also recognizes these concerns as well as others raised in the petitions, testimonies and hearings, including but not limited to the economic impact, visual impacts, water conservation as well as intrusions into plant and wildlife ecosystems. In Progress LLC believes the Board should carefully consider these perspectives of its neighbors and experts in making its final determination.

IV. Conclusion

As explained above, there are several key concerns for the Board in considering whether to deny the certificate sought by Applicant Kingwood Solar in this matter. The evidence clearly calls into question whether the Project will have adverse environmental impacts on the surrounding area, considering the state of available technology and the nature and economics of the various alternatives as required by R.C. 4906.10(A)(3). Furthermore, the Board should take into account the significant public opposition to the Project from nearby residents in considering whether the applicant showed that the Project will serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

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 Post-Hearing Brief was served via email to the counsel indicated below on this 13th day of June 2022.

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