

BEFORE THE OHIO POWER SITING BOARD

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

JOINT POST-HEARING REPLY BRIEF FILED BY INTERVENORS THE BOARDS OF TRUSTEES OF MIAMI, XENIA AND CEDARVILLE TOWNSHIPS

Intervenors Board of Trustees of Miami Township, Greene County, Ohio (“Miami Township”) and Board of Trustees of Xenia Township, Greene County, Ohio (“Xenia Township”) and Board of Trustees of Cedarville Township, Greene County, Ohio (“Cedarville Township”), by and through their undersigned counsel, submit the following Post-Hearing Reply Brief in opposition to the Application filed by to Kingwood Solar I LLC (“Kingwood”) seeking a certificate to construct and operate a solar-powered electric generation factory (the “Project”) within an area of approximately 1,500 acres of farmland (the “Project Area”) located in Cedarville, Miami and Xenia Townships in Greene County, Ohio.

1. Recent rulings demonstrate that “local government” opinion weighs heavily on power siting decisions.

The Ohio Power Siting Board’s (“Board’s”) recent decisions in *Republic Wind* ¹ and *American Transmission Systems* ² to evaluate local government opinion of a proposed facility

¹ *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)

² *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)

represents the evolution of analysis regarding what serves the public interest, convenience, and necessity. Such a thorough analysis is essential and not contrary to any part of R.C. 4906.10(A)(6) where “public interest, convenience, and necessity” is undefined.

For the Board to include an evaluation of local government opinion of a proposed major utility facility can only help it analyze the totality of a project’s impact on the public interest, convenience, and necessity. In fact, when the Board considers local government opinion in its analysis of whether a project serves public interest, convenience, and necessity, it is considering local public opinion of the project. Local governments, including county boards of commissioners and boards of township trustees represent their constituents. Those constituents are members of the public who elect their government to represent and act on their opinion and concerns. So local government opinion *is* local public opinion. Kingwood would have the Board exclude local government opinion in this case, probably because it is unanimously opposed to the project. Yet to exclude it has no basis in statute; there is no part of R.C. 4906.10(A)(6) that says that local public opinion about a proposed facility should be disregarded from the Board’s analysis of what serves the public interest, convenience, and necessity. Indeed, it is illogical to think that public opinion can be divorced from an analysis of what serves the public interest.

2. Farmland preservation measures are already in place in Greene County, and local governments don’t need Kingwood or any other solar developer for this purpose.

With a combination of local zoning and land use planning/preservation already in place in the project area, there is no need or desire for Kingwood to utilize the Greene County farmland and the prime soils there for a utility scale, industrial solar facility.

Greene County has a comprehensive land use plan that includes preservation of agricultural land as a critical component. Greene County’s Perspectives 2020 and Farmland Preservation Plan (“Plan”) seeks to maintain the agricultural flavor of the County in agricultural districts, such as

where the Project is proposed. The three townships where the Project is proposed to be located (Cedarville, Miami, and Xenia) each incorporate the Greene County Plan as a foundational element of their local zoning ordinances.

Miami Township's land use plan encourages a mix of village life, farming related business and nature preserves.³ In addition, Miami Township has adopted local zoning that restricts non-agricultural development in the Township's agricultural zone where much of the solar project is proposed to be sited.⁴ The proposed solar facility is not a permitted use under the zoning code, and that restriction was a basis for Miami Township's opposition to the project.⁵

The stated intentions of the Cedarville Township Zoning Resolution include promoting the health, safety, comfort, and general welfare of its present and future inhabitants, protecting the agriculturally based economy and promoting orderly development of the township in accordance with the Greene County Plan, and maintaining the quality of life and general character within the township.⁶ In his direct testimony, Cedarville Township Trustee Jeff Ewry referenced the Greene County Plan, the local zoning ordinance, and the desire to preserve farmland as the basis for the township's conclusion that the Kingwood Project was not compatible with land use objectives in the affected area.⁷

The Kingwood Project is incompatible with the Xenia Township Zoning Ordinance and the land use policies of Xenia Township.

³ Hollister Testimony, p 5:10–16.

⁴ *Id.*

⁵ See Transcript Volume VI, pp 1467–1469; Kingwood Exhibit 65.

⁶ See Article 1, Section 101, <https://www.greenecountyohio.gov/DocumentCenter/View/7860/Cedarville-Township-Zoning-Resolution-11-25-2021-PDF>

⁷ Cedarville Township Exhibit 1, Lines 15-31.

3. Questionable Credibility of Kingwood Experts.

In its Post-Hearing Brief, Kingwood claims that its 12 expert witnesses are “experienced and credible” and that each has “significant experience in renewable generation, and solar facilities in particular.”⁸ Although it may be true that Kingwood’s experts are experienced, the credibility of their testimony should be closely scrutinized by the Board. During the cross-examination of such experts at the hearing, it became clear that each expert has only testified “in favor of” solar facility applications. Not one of those “experienced experts” explained a circumstance in which they testified that a solar facility was not appropriate for the location where it was proposed.

Kingwood also tries to minimize the testimony of Cedarville Township board member Jeff Ewry by quoting his statement that the Project has caused “angst” and “high tensions” in the township, which Kingwood argues is not “evidence of actual harm to the community.”⁹ What Kingwood failed to mention is that Mr. Ewry also testified that his constituents were concerned about property value declines and damage to farm drainage tiles that could negatively affect surface water drainage in the Project area.¹⁰ He also testified that virtually every person he talked to about the Project, opposed it.¹¹ That is strong evidence that the Project is not compatible with the “public welfare.”

On the property value issue, Kingwood offered the testimony of expert Andrew Lines. His job was to show that installation of solar panels would not negatively affect property values in the nearby area. He did not conclusively make that showing. The best he could do, based on limited data, was to offer his opinion that “I would not expect the Project to be the cause of a decrease in

⁸ Kingwood’s Post-Hearing Brief, p. 11.

⁹ Kingwood’s Post-Hearing Brief, p. 40.

¹⁰ Cedarville Township Exhibit 1, Lines 116-134.

¹¹ Cedarville Township Exhibit 1, Lines 15-19 and 53-57; Hearing Transcript Vol. VI, p. 1542, Lines 19-24.

property values in the Project area.”¹² Of course, that opinion is rebutted by the expert opinion of Mary McClinton Clay on behalf of intervenor Citizens for Greene Acres (“CGS”).

On the drainage tile issue, Kingwood offered the testimony of expert Noah Waterhouse. Although he explained Kingwood’s plan to seek and review available governmental records to help locate existing drainage tiles, and Kingwood’s proposed process for addressing tile damage that is expected to occur during construction of the project, he could not provide assurances that drainage tile damage would be prevented.¹³ Consequently, the concerns expressed by opponents of the Project about damage to drainage tiles have not been resolved.

On the public opinion issue, Kingwood offered the testimony of expert Jim Hobart. Mr. Hobart described how the telephone poll of Greene County residents was designed using registered voter data and what the results were.¹⁴ On cross-examination, Mr. Hobart could not explain why the telephone poll did not focus on the opinions of residents in the 3 affected townships.¹⁵ On redirect examination, Mr. Hobart explained that the purpose of the telephone survey was to show that support for the Project was “widespread across the county.”¹⁶

In its Post-Hearing Brief, Kingwood quoted Mr. Hobart as saying that “a telephone survey of the three townships solely is not feasible.”¹⁷ Obviously, that statement is false; under cross-examination, Mr. Hobart admitted that the registered voter data used to design the telephone poll included address information. That address data could have been used to focus the telephone survey on opinions in the affected area. Clearly, Kingwood was not interested in actually learning

¹² Kingwood Exhibit 9, p. 8, Lines 11-12.

¹³ Kingwood Exhibit 14, p. 3-5.

¹⁴ Kingwood Exhibit 104, p. 4-5.

¹⁵ Hearing Transcript Vol. VIII, p. 2048.

¹⁶ Hearing Transcript Vol. VIII, p. 2065.

¹⁷ Kingwood’s Post-Hearing Brief, p. 43.

how the persons most affected by the Project really felt about it, but instead designed the survey in a way to assure that the results showed public support for the Project.

Finally, in its Post-Hearing Brief, Kingwood criticized the intervening townships for not offering expert opinions on technical aspects of the application. However, that argument completely ignores that fact the intervenor Citizens for Greene Acres presented expert witnesses to rebut the testimony of Kingwood's experts on each of those technical issues. Because that rebuttal testimony is in the record for the Board's consideration, intervenor townships reasonably chose not to engage its own experts.

Respectfully submitted,

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Summary: Reply Joint Post-Hearing Reply Brief Filed by Intervenor the Boards of Trustees of Miami, Xenia and Cedarville Townships electronically filed by Mr. Lee A. Slone on behalf of Miami Township, Greene County, Ohio, Board of Trustees