

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Kingwood Solar I LLC, for a Certificate of Environmental Compatibility and Public Need to Construct a Solar Electric Generation Facility in Greene County, Ohio))))	Case No. 21-0117-EL-BGN
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**APPLICATION FOR REHEARING
OF THE GREENE COUNTY COMMISSIONERS**

Now come the Greene County Commissioners (“the Commissioners” or “the County”) to apply for rehearing in Power Siting Board Case No. 21-0117-EL-BGN on the limited grounds set forth herein. The Commissioners support the outcome of the Power Siting Board’s opinion and order rejecting the stipulation and denying the application, entered December 15, 2022. There are, however, additional or alternative grounds for the Board’s decision that should be incorporated into its opinion, and the Commissioners apply for rehearing for the limited extent that it was unreasonable or unlawful to exclude these additional or alternative grounds in support of the Board’s order.

The following represent the specific grounds on which the Commissioners seek limited rehearing:

Assignment of Error 1: To the extent that the findings and conclusions in the Commissioners’ resolutions relative to the Perspectives 2020 land use plan amendments and in opposition to this project application were not expressly adopted, the Ohio Power Siting Board acted unlawfully and unreasonably by failing to expressly adopt those findings and conclusions as additional reasons that the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6).

Assignment of Error 2: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to identify the Project’s threat to the neighbors’ property values as another reason why the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6).

Assignment of Error 3: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to find that the Project's proven negative economic impacts are an additional reason why the Project does not serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6), and by failing to find that Kingwood's failure to evaluate the Project's other potential negative economic impacts as required by OAC 4906-4-06(E)(4) and R.C. 4906.10(A)(6) are additional reasons for denying the certificate.

Assignments of Error 2 and 3 herein are identical to Assignments of Error 4 and 9 in the application for rehearing filed on behalf of the Citizens for Greene Acres ("CGA") and intervening townships.

A memorandum in support accompanies this application.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

INTRODUCTION

The Commissioners fully support the order of the Power Siting Board rejecting the proposed joint stipulation between the Applicant Kingwood Solar I LLC and the Ohio Farm Bureau Federation, and denying the application for certificate of environmental compatibility and public need to construct a solar-powered electric generation facility (“the Order”). The Commissioners further believe that the Order, taken as a whole, is lawful and reasonable. The Commissioners do, however, submit this application for rehearing for the limited purpose of including additional or alternative grounds for the Order’s decision rejecting the stipulation and denying the certificate.

STANDARD OF REVIEW

Section 4906.11 of the Revised Code provides that “[i]n rendering a decision on an application for a certificate, the power siting board shall issue an opinion stating its reasons for the action taken.” Like the Public Utilities Commission, the Power Siting Board must comply with Section 4903.09 of the Revised Code, providing for “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” The purpose of this requirement is that “[f]or a reviewing court to do its job, it needs to have enough information to know how the commission [or board] reached its result.” *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator*, 166 Ohio St.3d 519, 188 N.E.3d 140, ¶21, citing *Allnet Communications Servs., Inc. v. Pub. Utilities Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994).

ARGUMENT

- A. **Assignment of Error 1:** To the extent that the findings and conclusions in the Commissioners' resolutions relative to the Perspectives 2020 land use plan amendments and in opposition to this project application were not expressly adopted, the Ohio Power Siting Board acted unlawfully and unreasonably by failing to expressly adopt those findings and conclusions as additional reasons that the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6).

The Board's Order reasonably and lawfully determines that the unanimous opposition of local government entities is a dispositive and sufficient reason for the Board to reject the stipulation and deny the certificate. (Order at ¶¶145, 152). In doing so, the Board properly states that its "focus goes beyond merely counting local government resolutions to determine whether a certificate is warranted," and instead "focus[es] on the vigor and rationale of the local government opposition, which clearly serves as an indicator of this Project's lack of public support." (Order at ¶145). The Board's Order goes on to describe the concerns raised in the Commissioners' amendment to the Perspectives 2020 land use plan and the opposition resolution specific to this project application. (Order at ¶146).

The Board's discussion of these items is reasonable and lawful, and supports the decision to reject the stipulation and deny the certificate application. The Board's discussion makes clear that it found the rationale credible and compelling, which is why it gave credence to the Commissioners' opposition (and the opposition of the intervening townships). The only potential or arguable shortcoming in the Board's Order on this point is to the extent it could be read as relying upon only the fact of the Commissioners' opposition (and that of the townships), rather than the merits of the rationale underlying the Commissioners' opposition. This application for rehearing should be granted for the limited purpose of amending the Order to unequivocally adopt the contents of the Commissioners' Resolution No. 21-10-28-8 (Greene County Exhibit 2)

and Resolution No. 21-8-26-10 (Greene County Exhibit 3) as additional grounds for the Board's Order.

- B. Assignment of Error 2: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to identify the Project's threat to the neighbors' property values as another reason why the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6).**

In support of this assignment of error, the Commissioners adopt and incorporate by reference the arguments advanced by Citizens for Greene Acres in support of their Assignment of Error 4 (CGA Memorandum in Support of Application for Rehearing, at 21-28).

- C. Assignment of Error 3: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to find that the Project's proven negative economic impacts are an additional reason why the Project does not serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6), and by failing to find that Kingwood's failure to evaluate the Project's other potential negative economic impacts as required by OAC 4906-4-06(E)(4) and R.C. 4906.10(A)(6) are additional reasons for denying the certificate.**

In support of this assignment of error, the Commissioners adopt and incorporate by reference the arguments advanced by Citizens for Greene Acres in support of their Assignment of Error 9 (CGA Memorandum in Support of Application for Rehearing, at 57-60).

CONCLUSION

For the reasons set forth herein, the Commissioners' respectfully request that their application for rehearing be granted, limited to the revision of the Order to adopt the specific findings as stated or incorporated herein by reference.

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 17th day of January 2023.

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Summary: Application for Rehearing of the Greene County Commissioners
electronically filed by Mr. Thaddeus M. Boggs on behalf of Shamp, Jesse J. Mr. and
Boggs, Thaddeus M. Mr. and Greene County Board of Commissioners