

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of Oak Run)	
Solar Project, LLC for a Certificate of)	Case No. 22-0549-EL-BGN
Environmental Compatibility and Public Need)	
to Construct a Solar-Powered Generation Facility)	
)	
In the Matter of the Application of Oak Run)	
Solar Project, LLC for a Certificate of)	Case No. 22-0550-EL-BTX
Environmental Compatibility and Public Need)	
to Construct a Solar-Powered Generation Facility)	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Werner L. Margard III
Werner L. Margard III (0024858)
Robert A. Eubanks (0073386)
Ambrosia Wilson (0096598)
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, OH 43215
(614) 466-4397
FAX: (614) 644-8764
Werner.Margard@OhioAGO.gov
Ambrosia.Wilson@OhioAGO.gov
Robert.Eubanks@OhioAGO.gov

**On Behalf of the Staff of the
Ohio Power Siting Board**

Date: July 10, 2023

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
I. Procedural History.....	2
II. Senate Bill 52.	5
DISCUSSION.....	5
I. Board Review of the Application.....	5
A. R.C. 4906.10.....	5
B. Staff Report of Investigation.....	7
II. The Board should determine the Project, with conditions as recommended in the Staff Report, satisfies the criteria of R.C. 4906.10.	10
A. R.C. 4906.10(A)(1) – Basis of Need.....	10
B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact...	10
C. R.C. 4906.10(A)(3) – Minimum Adverse Impact.....	13
D. R.C. 4906.10(A)(4) – Electric Grid	13
E. R.C. 4906.10(A)(5) – Air, Water, Solid Waste and Aviation.....	14
F. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity	15
1. Public Safety	15
2. Public Participation	16
G. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land	20
H. R.C. 4906.10(A)(8) – Water Conservation Practice	21
CONCLUSION	21
CERTIFICATE OF SERVICE.....	23

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of Oak Run)	
Solar Project, LLC for a Certificate of)	Case No. 22-0549-EL-BGN
Environmental Compatibility and Public Need)	
to Construct a Solar-Powered Generation Facility)	
)	
In the Matter of the Application of Oak Run)	
Solar Project, LLC for a Certificate of)	Case No. 22-0550-EL-BTX
Environmental Compatibility and Public Need)	
to Construct a Solar-Powered Generation Facility)	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

INTRODUCTION

Building a solar farm in a rural, agricultural setting will undoubtedly change the landscape. The proposed project will remove farm land from production. “Quality of life” factors such as aesthetic views need to be ameliorated. Care will need to be taken to avoid damaging, and to promptly repair any damage, to drainage tiles that affect neighboring farms. That such factors or “impacts” accompany commercial solar farming does not make the activity unlawful or even unreasonable. Quite to the contrary, the Ohio General Assembly has declared renewable energy development to be both lawful and important to promote a diversified state energy portfolio. Local opposition, while vocal and passionate, contrasts with many farming families who welcome the economic development and tax and other benefits that this development brings to the area. There are a finite number of sites in Ohio that can support a commercial-size solar farm. The

proposed project site in Madison County is well-suited for such development, and that is why it has been selected.

To sustain legal muster, the proposed Oak Run Solar Project (Project) need not be impact-free or without risk. Improvements and maintenance to local roads will be required and made. Aesthetics and other impacts will be addressed and minimized where possible. The passion of folks who oppose the project, while admirable, must not be allowed to cloud the task before the Board. Its adjudicatory role is to identify expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. The Board's Staff (Staff) submits that the Application and the numerous conditions proposed by its Staff to address and mitigate impacts adequately account for this. Staff's recommended conditions have been modified by the Joint Stipulation and Recommendation (Joint Stipulation) proposed by a broad range of interested parties. Staff respectfully requests that the Board approve the Project as proposed to be conditioned in the Staff Report of Investigation. Staff further represents that the modifications to its proposed conditions contained in the Joint Stipulation are all acceptable to Staff.

BACKGROUND

I. Procedural History.

On September 2, 2022, Oak Run Solar, LLC¹ (Oak Run or Applicant) filed this application to construct and operate a commercial solar farm in Madison County, Ohio.

¹ The Applicant is a subsidiary of Savion, LLC (Savion), a part of Shell group.

Prior to filing the application, Oak Run engaged in certain public outreach activities, including filing project descriptive pre-application letters on June 7, 2022 and July 18, 2022, and holding public informational meetings on June 22, 2022 and August 2, 2022.

The application purposed to construct arrays of ground-mounted photovoltaic (PV) modules, commonly referred to as solar panels, in Monroe, Somerford, and Deercreek Townships in Madison County. The project would also include associated support facilities, such as access roads, underground and overhead electric collection lines, weather stations, inverters and transformers, a collector substation, and 230 kV electric transmission lines. The project would occupy up to 4,400 acres within a 6,050-acre project boundary, and is projected to generate 800 MW. In addition, the Applicant also proposed a 300 MW alternating current (AC) battery energy storage system (BESS). The Staff completed its investigation and filed its Report of Investigation (Staff Report) on March 28, 2023. Staff Ex. 1.

On May 11, 2023, a Joint Stipulation and Recommendation was filed by a number of parties. Joint Ex. 1. The signatory parties, in addition to the Applicant, included the Ohio Farm Bureau Federation, Ohio Partners for Affordable Energy (OPAE), the Ohio Environmental Council (OEC), the International Brotherhood of Electrical Workers (IBEW), Local Union 683, and Dr. John Boeckl. Although Staff was not a signatory party, Staff does not object to the conditions outlined in the Joint Stipulation to the extent that they modify conditions proposed in the Staff Report. The Board of Trustees for Monroe, Somerford, and Deercreek Townships (collectively, Townships), also intervened and actively participated in the case, opposing the Project. Although the Board of County

Commissioners of Madison County and the Madison Soil and Water Conservation District (collectively, County) intervened in the case, neither offered testimony in opposition to the Stipulation, nor did either participate in the evidentiary hearing or conduct examination of any of the witnesses offered during the hearing.

Adjudicatory hearings commenced on May 15, 2023 and concluded on May 17, 2023. Testimony in support of the Project was offered or elicited from fifteen (15) Applicant witnesses, four (4) intervenor witnesses, and seven (7) Staff witnesses. Testimony in opposition to the Project was offered or elicited from five (5) intervenor witnesses. The Applicant, intervening parties (both supporting and opposing), and the Staff all received a full and fair opportunity to be heard on the merits.

The law requires the Board's Staff to investigate an application to assess likely impacts and to recommend conditions to the Board to mitigate or minimize impacts to the project environment. The law does not, of course, require a finding that the project be totally free of safety or other risks, or even minor annoyances to the public, as a precondition to Board approval. The Staff has proposed comprehensive recommendations for the Board's studied consideration in order to address and reduce Project impacts to reasonably acceptable levels. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

A number of Staff's proposed conditions were significantly expanded through the negotiations that resulted in the Joint Stipulation. Staff submits that, if implemented, including those modified by the Joint Stipulation, will also allow this project to satisfy the requisite statutory criteria. While Staff does not object to the conditions as stated in

the Stipulation, it does not believe that adoption of those modifications is necessary for issuance of a certificate in this case.

II. Senate Bill 52.

The passage of Ohio Senate Bill 52 provides new opportunities for county commissioners and township trustees to participate in the siting of solar projects in their community. The Project is partially impacted by the new legislation; it is grandfathered under S.B. 52 except for the ad hoc board member provision. County commissioners may choose one commissioner, or a designee, to serve as an ad hoc board member. In addition, township trustees may choose one trustee, or a designee, to serve as their ad hoc board member representative. Local government boards must designate ad hoc members within 30 days of notice of application completion. The Board of Pickaway County Commissioners initially appointed Commissioner Mark Forrest as its ad hoc board member. Commissioner Forrest subsequently resigned, and Commissioner Chris Wallace as appointed as the ad hoc member for the County. The Boards of Trustees of Deercreek and Monroe Townships appointed Jim Moran as their ad hoc board member for this Project.

DISCUSSION

I. Board Review of the Application.

A. R.C. 4906.10

The governing law is straightforward. The Ohio Power Siting Board is created by statute and its powers and duties are delineated under Chapter 4906 of the Ohio Revised

Code. Simply, the Board must approve applications for certificates, either as filed or with conditions, or deny the application. R.C. 4906.03(D). Thus, the role of the Board is to evaluate and decide whether the applicant's proposal in its application, with any supplemental information, meets the statutory criteria. Again, the Board must render a decision based upon the record either granting or denying the application, as filed, or granting it upon such terms, conditions, and modifications as it deems appropriate. R.C. 4906.10 requires that the Board must make each of the following findings to grant a certificate:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) 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;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural

district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The Board is asked to apply its judgment and expertise to evaluate the merits of the application. It must interpret the criteria of R.C. 4906.10 in the context of current law and regulations. The sufficiency of the evidence is a matter for the Board's judgment.

Based upon the detailed information contained in the application and supplements, the Staff's interrogatories and investigation of that information, intervenor discovery, and the evidentiary record, the Staff recommends that the Board find that each criterion enumerated in R.C. 4906.10 has been met.

B. Staff Report of Investigation

The Staff's Report of Investigation ("Staff Report") must be filed not less than 15 days before the date that the application is set for public hearing. R.C. 4906.07(C). The Staff Report in this case was filed on March 28, 2023. Staff Ex. 1. As required, the Staff evaluated the application in light of the factual findings that the Board must make. Staff's analysis and comprehensive recommendations are intended to assist the Board in its deliberations. It is part, but only part, of the evidentiary record in a case. The Staff's report reflects its investigation of the application and its findings up to the date of its submittal, that being two weeks or more prior to the time both Applicant and Intervenor

testimony was filed. It was not intended to represent a consensus reflecting the views of all intervenors to the case. The Report was not required, intended, or able to represent a consensus reflecting the views of the parties to the case. Rather, the Staff Report is just that – a report compiled by Staff that summarizes Staff positions, at the time of publication of the report, on topics specifically addressed in R.C. 4906.10. The Staff Report is just one piece of the record in a siting proceeding before the Board. The Board will review and weigh all evidence in the record. This would include, but not be limited to, testimony provided at the public hearing, as well as materials related to the adjudicatory hearing, such as pre-filed testimony, hearing transcripts, and exhibits.

Because Staff is required to submit its Staff Report prior to the public and adjudicatory hearings, it is conceivable that positions articulated in the Staff Report could evolve as a result of additional information presented throughout the hearing process. While Staff is not obligated to alter its findings and recommendations based on information provided in the hearings, neither is it precluded from doing so.

Staff's findings and recommendations are not static. The Staff Report itself makes this clear when it stated that the "recommended conditions may be modified as a result of public or other input provided subsequent to issuance of this report." In other words, all parties were on notice that Staff was willing to consider modifications to its recommendations based on evidence provided after the report was published.

The proposed facility has minimal environmental impacts. It will produce electricity without polluting the air and without using, much less polluting, water. This stands in stark contrast to the environmental issues posed by nuclear, coal, or even natural

gas fueled electric generating units. When operational, this facility promises a negligible environmental impact and, certainly, minimum adverse environmental impact in comparison to other electricity generating methods.

Nevertheless, Staff conducted a comprehensive review scrutinizing nearly two dozen areas including: socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and speaks for itself.

Staff also recommended conditions to reasonably minimize impacts and risks. Staff believes that its recommended conditions will sufficiently mitigate any such impacts and allow the Board to find overall minimal adverse environmental impact. Through negotiations, some of parties agreed to even more stringent conditions that further minimize environmental impact.

The Staff carefully fulfilled its statutory and Board defined role in this case. It fully evaluated the application, analyzed it in light of the statutory criteria and it developed recommendations and conditions that it believes will ameliorate project impacts. The Staff performed its role in a fair and balanced manner. The Staff Report provides the Board with a sound, objective, evidentiary basis for determining the existence of all R.C. 4906.10 criteria, and, the Staff submits, supports Board issuance of a

certificate conditioned as Staff has recommended.

II. The Board should determine the Project, with conditions as recommended in the Staff Report, satisfies the criteria of R.C. 4906.10.

A. R.C. 4906.10(A)(1) – Basis of Need

Because the solar and BESS portions of the proposed facility are neither an electric transmission line nor a gas pipeline, R.C. 4906.10(A)(1) does not apply to parts of the Project. The Applicant proposes to construct two 3.45 mile long 230 kV transmission tie lines to assist with connecting the facility to the bulk power system (BPS) through AEP's existing Marysville-Flatlick 765 kV transmission line.

Staff found that the PJM system impact studies showed that the facility could be safely connected to the PJM regional system, provided the upgrades and contingency overloads identified in the studies are addressed. Staff Ex. 1 at 11. Staff therefore recommends that the Board find that the basis of need for the transmission line project has been demonstrated and therefore complies with the requirements specified in R.C. 4906.10(A)(1), provided that any certificate include the conditions specified in the Staff Report.

B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact

The Board must determine that nature of the probable environmental impact of the facility. Staff's evaluation is set forth in its Report of Investigation, Staff Ex. 1 at 13-34, and adopted by the Joint Stipulation.

The Staff Report found that no recreational areas would be within the Project boundaries. Staff further determined that any visibility of the Project from recreational

resources would be unlikely to negatively affect recreational land use or the ability to use any of these recreational resources. Staff Ex. 1 at 14-15.

Staff determined that the project would be consistent with the protection and preservation of the agricultural industry since it would provide supplemental income to farmers/landowners, the land would be protected from permanent industrial or residential development, and the land could be returned to agricultural land use upon decommissioning. Staff agrees this project would not directly conflict with local land use plans and would be likely to align with goals set forth in the county's land use plan. Staff Ex. 1 at 14.

Landscape and vegetative screening would be used to minimize visual impacts. Staff recommends that the Applicant's landscape and lighting plans include design features to reduce visual impacts of the facility and infrastructure where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project, as well as the travelling public, nearby communities, and recreationalists. Staff Ex. 1 at 16.

Studies conducted by the Applicant found a fairly significant number of archaeological cultural resources within the Project area. With the exception of a small handful of sites, Staff found that all that there would be no potential effect from the project because the resources would have a limited or non-existing view of the Project. With respect to potentially impacted resources, Staff found no evidence that, with proposed avoidance and buffers, there would be minimal adverse environmental impact. Staff Ex. 1 at 17.

Staff found the Applicant's economic analysis to be reasonable. The economic

impacts, in terms of jobs, earnings, and output, both locally and to the State of Ohio, were all reasonably determined to be positive. Staff Ex. 1 at 18.

The Applicant has committed to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration. Staff Ex. 1 at 20-22.

The Project will not adversely impact public or private water supplies. There are no geological features that would restrict construction of the facility. No wetlands, ponds or lakes would be affected. Staff Ex. 1 at 28-29.

The only identified endangered mammals that might be impacted were the Indiana, Northern Long-Eared, Little Brown, and Tricolored bats. In order to avoid impacts to listed bat species, Staff recommends that the Applicant adhere to specified seasonal tree cutting dates. While the Project area is within the known range of a number of endangered and threatened bird species, it was determined that there was no potentially suitable nesting habitat in the Project area for any of those species. The Project area is also within the known range of a number of endangered and threatened fish and mussel species. Due to lack of in-water work, the avoidance of surface waters, and lack of suitable habitat, Staff determined that impacts to these species is not expected. Staff Ex. 1 at 30-33.

Traffic would be affected, although almost exclusively during the construction phase. While that impact may be inconvenient, there is no evidence that it would be any greater than that caused by current farming operations, or any effect at all once construction was complete. Staff's proposed conditions require the Applicant to develop

a transportation plan in conjunction with the county engineer. Staff Ex. 1 at 23-24.

Finally, Staff found that operational noise would be relatively minor, and would only occur during the daytime hours. Staff Ex. 1 at 24-25. According to the Applicant's noise expert, Robert O'Neal, sound from the facility would be a general "humming sound." Tr. II at 266. Mr. O'Neal further stated that the manufacturers of the inverters expected to be used in the Project determined that the sound produced at night would be so minimal that sound data wasn't even provided. Tr. II at 269.

In conclusion, Staff reported that it believed that the Applicant had determined the nature of the probable environmental impact and had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff's recommended conditions when issuing any certificate.

C. R.C. 4906.10(A)(3) – Minimum Adverse Impact

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Staff Ex. 1 at 35-36.

D. R.C. 4906.10(A)(4) – Electric Grid

The Project must be consistent with regional plans for expansion of the electric

power grid of the electric systems serving this state and interconnected utility systems, and that the facilities will serve the interests of electric system economy and reliability. Staff found that the Project, as conditioned, would satisfy that requirement. The record contains no evidence to the contrary, and Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(4).

E. R.C. 4906.10(A)(5) – Air, Water, Solid Waste and Aviation

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. The Applicant will hire a licensed construction firm with knowledge and experience in dust minimization to comply with those rules. Nor will construction nor operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary permits for construction and operation sufficient to comply with the requirements of R.C. Chapter 6111. The record reveals no dispute on these points.

Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff believes this also is not disputed.

There are no public use airports, helicopter pads, or landing strips within five miles of the project, and no aeronautical study regarding glare was needed for this Project. The Ohio Department of Transportation Office of Aviation identified no impacts

on local airports.

Staff recommends that the Board find that the proposed facility complies, subject to the conditions proposed in the Staff Report, with the requirements specified in R.C. 4906.10(A)(5).

F. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity

In evaluating R.C. 4906.10(A)(6), Staff considers both the impact that the Project may have on public safety, and the opportunities for public participation in the siting process.

1. Public Safety

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Fire Protection Association. It will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to a solar farm.

The Applicant has further committed to ensuring that the BESS would conform to National Fire Protection Association's (NFPA) "Standard for the Installation of Stationary Energy Storage Systems," and would incorporate several fire protections measures into the system's design. Staff Ex. 1 at 44. Staff recommends that the Applicant provide fire and emergency first responders with proper firefighting equipment as reasonably required to enable them to respond to emergency situations at the BESS. Staff Ex. 1 at 45.

2. Public Participation

Ohio Revised Code. 4906.10(A)(6) dictates that the Board shall not grant a certificate unless it finds and determines that “the facility will serve the public interest, convenience, and necessity.” The General Assembly did not, however, define how the Board must interpret those terms.

Neither has the Board defined these terms. What the Board has done is to find that the public interest can be served in a number of ways. For instance, the Board has found that the public interest can be served by adding clean, sustainable generation capacity, and by benefitting the local economy through the addition of new jobs, wages, and local revenue.²

This approach is consistent with traditional definitions of public interest. For example, Black’s Law Dictionary defines “public interest” as “1. The general welfare of a populace considered as warranting recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.”³

But there is no litmus test, no single factor or set of factors that defines “public interest, convenience and necessity.” More recently, Board decisions have clarified that that “[p]ublic interest, convenience, and necessity should be examined though a broad

² *In the Matter of the Application of Hardin Solar Energy II, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Hardin County, Ohio*, Case No. 18-1360-EL-BGN, Opinion, Order and Certificate (16 May 2019), ¶64.

³ Black’s Law Dictionary (11th ed. 2019).

lens.”⁴ That lens must “encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion.” This necessarily requires that the Board “balance projected benefits against the magnitude of potential negative impacts on the local community.”⁵

Oak Run held two public information meetings and provided copies of its application to all relevant local officials. Many of those, including the Madison County Commissioners, the Boards of Trustees of Deercreek, Somerset and Monroe Townships, and the Madison Soil and Water Conservation District, were actively involved in the development of this case, at least up until the evidentiary hearing.

Staff considered the totality of local input, including comments at informational meetings, local public hearings, and in the public docket.⁶ There is general opposition to the project from local governmental bodies, in addition to active disagreement on the project between local citizenry.

The Board has recently recognized the importance of local opposition to such projects. The Board has, however, accorded greater weight to that opposition where it was not only unanimous, but where the intervenors were active in advocating their opposition. In a recent case, for example, the Board found it compelling that the local government opposition was communicated not only via resolutions in opposition, but also

⁴ *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), ¶91.

⁵ *Id.*

⁶ Staff Report of Investigation, Staff Ex. 1 at 43-44.

by the “active opposition in th[e] case from each of the . . . local government entities that participated in the evidentiary hearing.” *In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, OPSB Case No. 21-0117-EL-BGN, Opinion and Order (Dec. 15, 2022) at ¶143. From Staff’s perspective, there is neither unanimity of opposition among the local governmental entities, nor was there participation in litigation by the county entities.

On March 28, 2023, the Madison County Board of Commissioners filed a memorandum indicating that it opposed the Project. Attached to that memorandum was a series of resolutions, including one appointing Mark Forrest as the county’s ad hoc representative on the Project, and another that “the Ad Hoc Committee vote no” on the Project. Despite being selected as the representative, Commissioner Forrest voted against the latter resolution. On April 4, 2023, the Commissioners filed a formal resolution opposing the Project, with Commissioner Forrest again voting “no,” “because of the potential economic and commercial growth for Madison County if that was to proceed.”

Unlike the *Kingwood* case, and despite the resolution, the county did not participate in the evidentiary hearing. Counsel, in fact, did not even enter an appearance. Moreover, Commissioner Forrest, appearing in an individual and not an official capacity, testified in support of the Project. In general, he testified that the Project would mean increased funding for county services such as roads and bridges, particularly noting the inadequacy of gasoline tax receipts. Tr. Vol. I at 17. More than that, however, Mr. Forrest testified that proposals such as Oak Run’s agrivoltaics plan might encourage younger generations to continue farming. *Id.*

Equally important, he noted that a number of problems observed in other solar projects in the county have either been successfully resolved, or alternative solutions have been formulated. He testified that local services are successfully managing drainage issues, and that “there is nothing we can’t control and take care of with the policies we have in place.” Tr. Vol. I at 25. Nor has he observed any concerns relating to grading and top soil loss. Tr. Vol. I at 26. And while there has been issues with roads, particularly due to increased amounts of mud, much of that has been due to other business operations, including farming. Acknowledging that there has been road damage, Mr. Forrest testified that “it’s being taken care of and it will be fixed like any other – no different than any other construction site.” Tr. Vol. I at 29. In the final analysis, Mr. Forrest expected that the roads “will actually be better in the end.” Tr. Vol. I at 26. Of particular significance in this case, Commissioner Forrest testified that Savion, which is currently constructing the Madison Fields solar project in Madison County, had been responsive and cooperating in resolving issues and complaints, and has been a good partner in the community. Tr. Vol. I at 33.

Not only is the Madison County Board of Commissioners not unanimous in their opposition to this Project, but one of their members testified, albeit in an individual capacity, that he strongly favored approval of the Application. Staff once again notes that this stands in stark contrast to the county’s failure to so much as appear at the evidentiary hearing of this case.

The opposition to this Project, especially among local elected governmental officials, is neither unanimous nor especially compelling. Staff recommends that the

Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

G. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land

The Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles.

The Applicant will endeavor to avoid damaging drainage tiles. It will locate drainage tiles as accurately as possible prior to construction. Applicant witness Pursifull testified that Oak Run would be working with government officials, records, and local property owners to document and map the existing conditions of surface and subsurface drainage systems. The Applicant would then develop a field tile avoidance and repair plan to maintain drainage conditions throughout the life of the Project. Direct Testimony of Andrew Pursifull, Applicant Ex. 31 at 3-5. The Applicant will repair all tiles damaged during construction or operation of the facility. Staff Ex. 1 at 48.

On decommissioning, the Applicant will return the land to original or similar conditions, and capable to be returned to agricultural use. Staff Ex. 1 at 14.

Indeed, Oak Run is exploring opportunities to continue using the land for agricultural use, even in the midst of the solar arrays. Savion has already planted crops among the arrays at its Madison Fields project. Tr. Vol. II at 206. Oak Run witness Moser testified that many different agrivoltaic practices may be utilized, from row cropping,

livestock grazing, pollinator habitat, and bee keeping. Direct Testimony of Sarah Moser, Applicant Ex. 26 at 6. The demonstration will provide both critical research as to the viability of this kind of dual-purpose farming, as well as provide an educational platform for both farmers and project developers. Ms. Moser testified that agrivoltaics can improve soil health and promote decompaction. Tr. Vol. II at 213-214.

Staff recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(7).

H. R.C. 4906.10(A)(8) – Water Conservation Practice

Other than for dust control as needed, construction of the proposed facility would not require the use of significant amounts of water. Nor would facility operations require a significant use of water, and nearly no water or wastewater discharge is expected. The Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

CONCLUSION

Staff has concluded that the proposed project would introduce both temporary and permanent impacts on the surrounding community. After an exhaustive investigation, the Staff has developed a number of conditions that, if adopted by the Board would minimize environmental and other impacts to the project area.

Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the criteria in R.C. 4906.10. The Staff recommends that, if a certificate is issued to applicant for this project, the Board require applicant to comply with all of Staff's recommended conditions.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Werner L. Margard III

Werner L. Margard III (0024858)

Robert A. Eubanks (0073386)

Ambrosia Wilson (0096598)

Assistant Attorneys General

Public Utilities Section

30 East Broad Street, 26th Floor

Columbus, OH 43215

(614) 466-4397

FAX: (614) 644-8764

Werner.Margard@OhioAGO.gov

Ambrosia.Wilson@OhioAGO.gov

Robert.Eubanks@OhioAGO.gov

**On Behalf of the Staff of the
Ohio Power Siting Board**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief Submitted on Behalf of the Staff of the Ohio Power Siting Board was served by electronic mail to the following parties of record, this 10th day of July, 2023.

/s/ Werner L. Margard III

Werner L. Margard III
Assistant Attorney General

PARTIES OF RECORD:

Christine M.T. Pirik (0029759)
Terrence O'Donnell (0074213)
Matthew C. McDonnell (0090164)
Jonathan R. Secrest (0075445)
David A. Lockshaw, Jr. (0082403)
Dickinson Wright PLLC
180 E. Broad Street, Suite 3400
Columbus, Ohio 43215
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mmcdonnell@dickinsonwright.com
JSecrest@dickinson-wright.com
DLockshaw@dickinson-wright.com

Attorneys for Oak Run Solar Project, LLC

Chad A. Endsley (0080648)
Leah F. Curtis (0086257)
Leah Hetrick (0101374)
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org
lcurtis@ofbf.org
lhetrick@ofbf.org

Attorneys for Ohio Farm Bureau Federation

Nicholas A. Adkins (0083889)
Prosecuting Attorney
Madison County, Ohio
59 North Main Street
London, Ohio 43140
Nick.Adkins@madison.oh.gov

Attorney for the Board of County Commissioners of Madison County and the Madison Soil and Water Conservation District

Jack A. Van Kley (0016961)
Van Kley Law, LLC
132 Northwoods Blvd., Suite C-1
Columbus, OH 43235
jvankley@vankley.law

Attorney for the Boards of Trustees of Deercreek, Monroe and Somerford Township

Trent Dougherty (0079817)
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212 T
trent@hubaydougherty.com

Daniel F. Loud (pro hac vice pending)
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY
danielloud@quinnemanuel.com

*Counsel for the International Brotherhood
of Electrical Workers, Local Union 683*

Trent Dougherty (0079817)
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212 T
trent@hubaydougherty.com

Michael B. Gerrard (PHV No. 21914-
2023)
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, New York 10019
Michael.Gerrard@arnoldporter.com

Counsel for Dr. John Boeckl

ADMINISTRATIVE LAW JUDGES:

David Hicks
david.hicks@puco.ohio.gov

Isabel Marcelletti
isabel.marcelletti@puco.ohio.gov

Karin Nordstrom (0096713)
Chris Tavenor (0096642)
Ohio Environmental Council
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212
knordstrom@theoec.org
ctavenor@theoec.org

Counsel for Ohio Environmental Council

Robert Dove (0092019)
Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215
rdove@keglerbrown.com

*Attorney for Ohio Partners for Affordable
Energy*

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

7/10/2023 3:07:06 PM

in

Case No(s). 22-0549-EL-BGN, 22-0550-EL-BTX

Summary: Brief Post-Hearing Brief Submitted on Behalf of the Staff of the Ohio Power Siting Board electronically filed by Mrs. Kimberly M. Naeder on behalf of OPSB.