

BEFORE THE OHIO POWER SITING BOARD

**In the Matter of the Application of)
Kensington PV I, LLC for a) Case No. 21-764-EL-BGN
Certificate of Environmental)
Compatibility and Public Need)**

KENSINGTON PV I, LLC'S REPLY IN SUPPORT OF ITS MOTION TO SUSPEND PROCEDURAL SCHEDULE AND STAY PROCEEDING

Kensington PV I, LLC submits this reply to the memorandum contra by the Columbiana County Board of Commissioners, the Columbiana County Soil and Water Conservation District Board of Supervisors and the Franklin Township Board of Trustees (the “Governmental Entities”). Kensington’s reply also responds to the memorandum contra filed by “FAKS” with its petition to intervene yesterday, January 11, 2024. As discussed below, neither the Governmental Entities nor FAKS present valid arguments against Kensington’s request to stay this proceeding.

There are multiple reasons why the Governmental Entities and FAKS’ arguments should be rejected. First, contrary to the claims in the memoranda contra, it is appropriate to stay this proceeding because the legal issue being litigated in the *Kingwood* and *Birch Solar* Supreme Court of Ohio appeals **is squarely applicable to this proceeding**. As the Ohio Power Siting Board is aware, R.C. 4906.10(A)(6) does not define the phrase “public interest, convenience, and necessity.” In the *Birch Solar* and *Kingwood* cases, the Board interpreted R.C. 4906.10(A)(6) to mean that when a project faces “unanimous” local public opposition, it does not satisfy the “public interest, convenience, and necessity” criterion. *In re Birch Solar I, LLC*, Case No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022), at ¶72; *In re Kingwood Solar I LLC*, Case No. 21-117-EL-BGN, Opinion and Order (Dec. 15, 2022), at ¶ 45. In their memorandum contra, the Governmental Entities and FAKS allege that the Kensington Solar Project faces significant local opposition and local residents’ opinions cannot be swayed in support of the Project (Governmental

Entities Memo Contra at 3-4, 6; FAKS Memo Contra at 2). Like in *Birch Solar* and *Kingwood*, in this proceeding, the Board will again have to decide what weight to assign to alleged significant local opposition when performing its “public interest” analysis under R.C. 4906.10(A)(6). Thus, resolution of the *Kingwood* and *Birch Solar* appeals will confirm whether the Board’s prior analysis of this criterion is correct and the Court’s guidance on this issue is inherently related to this proceeding.

Second, contrary to FAKS’ claims, a resolution on how R.C. 4906.10(A)(6) should be interpreted is imminent and it would be most practical and judicially efficient to await a decision from the Court. Briefing in *Birch Solar* will be complete on January 22, 2024.¹ Briefing in *Kingwood* should be complete during the first quarter of 2024.² To not grant the stay and proceed through an expensive and time intensive evidentiary hearing and briefing process would not be practicable. Neither would it be expeditious, as needless time and expense could be wasted in this proceeding through discovery, trial preparation, hearing, and briefing, especially if the Supreme Court finds that R.C. 4906.10(A)(6) requires a more expansive examination than simply considering the level of local opposition to a Project. The Court’s guidance will also assist Staff as it reviews the Application and presents its recommendation to the Board. Thus, awaiting the Court’s interpretation of R.C. 4906.10(A)(6) would be consistent with R.C. 4906.07(A) which requires the Board to conclude a proceeding after a public hearing as “expeditiously as practicable.”

Third, neither the Governmental Entities nor FAKS have demonstrated any actual harm. FAKS makes vague claims stating that local residents have endured ongoing stress due to the Project, but provides no actual data or direct examples of how citizens have “delayed their plans

¹ <https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2023/1011>.

² <https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2023/1286>.

to improve or expand homes, replace aging business equipment and facilities, and expand family farms and businesses” (FAKS Memo Contra at 2). Similarly, the Governmental Entities state that citizens’ “lives have been hanging in balance” due to the Project and citizens have experienced “discomfort,” but provide no concrete evidence of actual harm (Governmental Entities Memo Contra at 4). In sum, the memoranda contra filed indicate that no party will suffer any real, demonstrable harm if this proceeding is stayed pending the resolution of either the *Birch Solar* or *Kingwood* appeal. A stay will prevent harm through the incurrence of time, expense, and judicial resources for the parties, the Board’s Staff and the Board because a significant legal issue is pending before the Supreme Court of Ohio that will be determinative of Kensington’s application.

Kensington would also like to correct statements made by the Governmental Entities in their memorandum contra. The Governmental Entities’ claim that the Project has doubled in size and has a greater generating capacity than initially identified in the public information meeting (Governmental Entities Memo Contra at 2). That is inaccurate. The Kensington Solar Project will have a generating output of 135 MW consistent with prior public notices, as confirmed in a data response provided to Board Staff on November 19, 2021 and docketed on May 3, 2022. Additionally, while the Project Area occupies 2,264 acres, Project components will only occupy around 1,132 acres (Application at 13, 16).

For the above reasons, Kensington respectfully renews its request that the Board grant the pending Motion to Stay and (i) suspend the procedural schedule issued by the ALJ on December 12, 2023, and (ii) stay the proceeding.

Respectfully submitted,

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

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Summary: Reply Kensington PV I, LLC's Reply in Support of Motion to Suspend Procedural Schedule and Stay Proceeding electronically filed by Mr. Michael J. Settineri on behalf of Kensington PV I, LLC.