

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Oak Run     )  
Solar Project, LLC for a Certificate of         )  
Environmental Compatibility and Public     ) Case No. 22-549-EL-BGN  
Need to Construct a Solar-Powered Electric   )  
Generation Facility in Madison County, Ohio   )

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**MEMORANDUM OF DR. JOHN BOECKL CONTRA  
APPLICATION FOR REHEARING**

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Dated: April 29, 2024

Matthew Eisenson (PHV-26622-2024)  
SABIN CENTER FOR CLIMATE  
CHANGE LAW,  
COLUMBIA LAW SCHOOL  
435 W. 116<sup>th</sup> Street, Room 528  
New York, New York 10027  
Telephone: (212) 853-4938  
matthew.eisenson@law.columbia.edu

Michael B. Gerrard (PHV No. 21914-2024)  
SABIN CENTER FOR CLIMATE  
CHANGE LAW,  
COLUMBIA LAW SCHOOL  
435 W. 116<sup>th</sup> Street, Room 528  
New York, New York 10027  
Telephone: (212) 836-8000  
MGerra@law.columbia.edu

Trent Dougherty (Bar No. 0079817)  
HUBAY DOUGHERTY  
1391 Grandview Ave. #12460  
Columbus, Ohio 43212  
Telephone: (614) 330-6752  
trent@hubaydougherty.com

*Counsel for Dr. John Boeckl*

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Dr. John Boeckl, a local resident of Madison County who lives approximately 1,000 feet from the project site, submits this Memorandum in opposition to the Application for Rehearing (the “Motion”) pursuant to Ohio Admin. Code 4906-2-32(B). The Ohio Power Siting Board’s decision to approve the Oak Run Solar Project was lawful and reasonable, and the Motion should be denied.<sup>1</sup>

## ARGUMENT

This Motion “epitomizes the debate term ‘Gish Gallop,’ which describes the practice of using an excessive number of arguments to overwhelm an opponent without regard to their accuracy or strength.”<sup>2</sup> The Movants advance a bewildering number of weak, trifling, and inaccurate arguments on this motion. These arguments range from wildly speculative to willfully ignorant, and from self-contradictory to nonsensical, culminating in the preposterous assertion that the head of the London School District is “motivated solely by greed” because of the fact that he supports a project that will bring funding to the schools. Mot. at 8.

Critically, the Movants have failed to identify any way in which the OPSB’s decision to approve the Project was unlawful or unreasonable within the meaning of Ohio Rev. Code

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<sup>1</sup> This Memorandum uses the following abbreviations: (1) “OPSB” for Ohio Power Siting Board; (2) “Project” for the Oak Run Solar Project; (3) “Applicant” for Oak Run Solar Project, LLC; (4) “Opinion” for the March 21, 2024 Opinion and Order issuing a Certificate of Environmental Compatibility and Public Need to the Oak Run Solar Project; (5) “Stipulation” for Joint Stipulation and Recommendation, filed May 11, 2024; (6) “Motion” or “Mot.” for the Application for Rehearing, filed April 19, 2024; (7) “Movants” for Intervenors Boards of Trustees for Deercreek, Monroe, and Somerford Townships and the Madison County Board of Commissioners; (8) “Boeckl Reply Br.” for the Post-Hearing Reply Brief of Dr. John Boeckl, filed July 31, 2023; (9) “Boeckl Tr.” for the Direct Testimony of Dr. John Boeckl, filed May 10, 2023; and (10) “Staff Report” for the Staff Report of Investigation, filed March 27, 2023.

<sup>2</sup> *Manansingh v. United States*, No. 2:20-CV-01139-DWM, 2021 WL 2080190, at \*2 (D. Nev. May 24, 2021), *aff’d*, No. 21-16192, 2023 WL 2658753 (9th Cir. Mar. 28, 2023), and *aff’d in part, rev’d in part and remanded*, No. 21-16192, 2023 WL 7295184 (9th Cir. Nov. 6, 2023).

4903.10(B). Nor have they identified any material evidence that was not previously considered that would warrant a rehearing. To the contrary, the OPSB acted lawfully and reasonably in deciding to approve the Project. In particular, the OPSB used a “broad lens” in evaluating the many ways that the Project will serve the public interest, convenience, and necessity within the meaning of R.C. 4906.10(A)(6), as well as any reasonable concerns about the Project and the extent to which such concerns are addressed by the conditions of approval.

**I. Movants Advance a Wide Variety of Weak and Speculative Arguments, None of Which Justifies a Rehearing**

The Movants do not cite any evidence or raise any arguments that justify a rehearing. Instead, they simply seek to overwhelm the Applicant and intervenors who support the project with an array of unfounded arguments. This section addresses only a subset of the Movants’ arguments, starting with some of the more trivial arguments and ending with some of the more important ones.

***A. Movants speculate that there will be too many deer—and also too few deer—visiting neighbors’ yards, with no evidence to support either scenario***

To start with a relatively trivial but illustrative example, the Movants speculate that there will be too many deer in the yards of neighboring landowners if the Project is allowed to move forward—and also too few deer. There is no evidence to support either concern. They argue on the one hand that the Project’s fencing “will increase the number of deer in the neighbors’ crops, gardens, and yards.” Mot. at 12-13. They argue on the other hand that if the project is approved, local residents may no longer experience “the excitement of seeing a deer coming into the yard.” *Id.* at 28. Both of these concerns are purely speculative.

***B. Movants speculate that too much groundwater will be withdrawn to wash solar panels, contrary to the evidence on record***

While speculation may be understandable—and even acceptable—when evidence is lacking, the record in this matter is well developed, and speculation is unwarranted. Here, the Movants speculate about hypothetical harms when there is no reason to do so, willfully ignoring facts and evidence in the record that should assuage their concerns.

For example, the Movants speculate that so much water will be pumped out of local wells to wash solar panels that it “may lower the levels of groundwater” in “the wells of neighboring residents.” Mot. at 11. In the abstract, this is not an outlandish hypothetical. But it is contradicted by the evidence on record, and it ignores the OPSB’s finding that the Project will not use significant amounts of groundwater for that purpose or any other purpose. Op. ¶ 106 (“Construction and operation of the proposed Facility will not require the use of significant amounts of water.”); *id.* ¶ 234. Instead, as the OPSB found, the Applicant plans to rely primarily on rainwater to wash the panels. *Id.* ¶ 106. If targeted cleaning is needed, the Applicant will use no more than one liter per module. *Id.*

***C. Movants willfully ignore the major benefits offered by the agrivoltaics program, pretending these benefits are too speculative to be taken seriously***

To address a more important issue, and one that is more squarely at the heart of this Project, the Movants stubbornly ignore the benefits of the agrivoltaics program and choose instead to pretend that the benefits are too speculative to warrant serious consideration. On the one hand, they claim to be concerned about the loss of valuable farmland to solar development, even going to far as to suggest that approval of the project may affect the food supply. *See* Mot. at 19 (“Farmland is needed for food production.”). On the other hand, they appear to be in denial about the many ways in which the project has been designed to alleviate any such concerns.

The agrivoltaics program offers significant benefits. As the OPSB found, “this particular project land is optimal for a solar facility because, contrary to local concern that prime farmland would be wasted, Oak Run’s Application, Stipulation, and MOU commit to preserving and coexisting with farmland within the community.” Op. ¶ 221. The OPSB further found that the agrivoltaics program will be “the nation’s largest,” *id.* ¶ 220, and it set specific benchmarks to ensure that at least 4,000 acres of crops and at least 1,000 sheep will be included on site, *id.* ¶ 221. This section will describe several ways by which the Movants ignore or mischaracterize these benefits and how doing so is reflective of their dismissive and willfully ignorant attitude toward the Project as a whole.

1. Movants misleadingly omit agrivoltaics from their economic analysis

Despite the fact that the OPSB’s Opinion set explicit benchmarks for agrivoltaics, the Movants continue to treat the agrivoltaics program as an abstract idea and one that is never going to be implemented. *See* Op. ¶ 221; Mot. at 22. For example, when arguing that solar power is an inefficient use of the project site compared to growing crops, the Movants misleadingly compare the long-term economic benefits of growing crops alone with those of producing solar energy alone. Neither of those two scenarios accurately describes the project, which will include up to 4,000 acres of crops and at least 1,000 sheep. *Id.* ¶ 221.

The Movants attempt to excuse their deliberate and highly misleading decision to ignore agrivoltaics in their economic analysis by arguing that “[a]dding agrivoltaics would increase the Project’s jobs and income, but the use of agrivoltaics is speculative given its experimental nature.” Mot. at 22. The purpose of this weak and transparent rationalization is to gloss over the fact that the agrivoltaics project, as approved, with solar generation and agricultural production side-by-side, will generate far greater economic output and create far more jobs than growing

crops alone. Indeed, if the Movants had included agrivoltaics in their analysis, they would have found that, when 2,000 acres of crops and 1,000 sheep are included, the Project's operations will create nearly twice as many jobs and generate approximately 35% more economic output statewide than existing activities at the site. *See* Boeckl Reply Br. at 10-11 (citing economic Application, Ex. I, Economic Impact and Land Use Analysis, at 23-29). When 4,000 acres of crops and 3,000 sheep are included, the Project's operations will create nearly three times as many jobs and generate approximately 74% more economic output statewide than existing activities. *Id.*

## 2. Movants misrepresent the scale and size of the agrivoltaics requirement

Whether willful or not, the Movants misinterpret the language of the OPSB's Opinion requiring the Project to include 4,000 crop acres after eight years of operation. Op. ¶ 221. The Movants incorrectly argue that only 2,800 crop acres are required. Mot. at 20. The source of confusion appears to be a sentence in the Opinion that reads as follows: "Thereafter, within eight years of the Project going into operation, at least 70percent [sic] of the farmable Project Area, or 4,000 crop acres, shall contain agrivoltaics." Op. ¶ 221. The Movants appear to have interpreted that sentence to read that only 70 percent of 4,000 crop acres, or 2,800 acres, will be used for growing crops. However, the more natural reading of that sentence, and the one supported by the record,<sup>3</sup> is that 4,000 crop acres, or 70% of the total farmable area, will be used for agrivoltaics, a difference of 1,200 acres.

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<sup>3</sup> The Staff Report found that the primary use for approximately 93% of the 6,050-acre site is agricultural, which would suggest that the site includes approximately 5,627 acres of farmable land. Staff Report at 13. If 70% of those 5,627 farmable acres were used for growing crops, the total acreage of crops would be 3,939 acres. That figure is very close to the 4,000 crop acres referenced in the Opinion. *See* Op. ¶ 221.

3. Movants ignore other features of the agrivoltaics program, including critical research partnerships and ecological benefits

The Movants ignore tangible measures in place to ensure that the agrivoltaics project will be a success, as well as the broader ecological benefits that the Project will provide. In particular, Movants ignore the “collaboration between Oak Run’s sister company and OSU,” which the OPSB found “will not only improve the effectiveness of agrivoltaics at this Facility, but it will help to establish BMPs [best management practices] for the cultivation of crops alongside utility-scale solar operations, which will further benefit future projects in the state of Ohio and around the world.” Op. ¶ 220. This collaboration will help to ensure that, although dual land-use for solar energy and growing crops is relatively new, the developer will not be alone in implementing the agrivoltaics program. The partnership will also help to replicate the success of this agrivoltaics program in future projects.

Importantly, agrivoltaics are only one part of a larger Vegetation Management Plan, which offers many additional benefits. In particular, the Vegetation Management Plan will provide significant benefits to honeybees, the local ecosystem, and surrounding farms. As the OPSB found:

Oak Run’s Vegetation Management Plan will ensure that, throughout the life of the Project, a mix of native and pollinator seeding will increase biodiversity and soil nutrients and has the potential to increase pollinators on adjacent farmed parcels

*Id.* ¶ 221. In other words, the pollinator habitat and native plantings created by this Project will help to support ecologically critical honeybees, while also increasing biodiversity, supporting local wildlife, and potentially helping to pollinate plants on neighboring farms. These benefits are particularly important to Dr. Boeckl, who is an avid beekeeper. *See* Boeckl Tr. at 3:8-12. There is no evidence on the record to suggest that there would be any equivalent plans for pollinator habitat at the site if the Project were rejected.



4. Movants' ignorance of, and dismissiveness toward, the agrivoltaics program is reflective of their attitude toward the Project in general

The Movants' ignorance concerning key details of the Project is not a new development. The OPSB correctly found that "some local opposition . . . may not be fully aware of the commitments agreed to in the Stipulation and Application." Op. ¶ 228. As the OPSB is aware, several township trustees admitted at the evidentiary hearing that they had never read the application: not before deciding to retain counsel; not before deciding to intervene in this proceeding; not before submitting written testimony; and not before sitting for cross-examination at the evidentiary hearing. Boeckl Reply Br. at 3 n.1.

In this motion, the Movants now assert that "the Trustees had no reason to study the Application, because they already had all the information they needed" and because "the Application lacks the details necessary to address their primary concerns." Mot. at 16. These post-hoc rationalizations should be viewed with skepticism. Public servants have a duty to their constituents to, at the very least, read a project's application before deciding to commit government resources to opposing it. In any event, they cannot simply assume, without reading the application, that it will or will not provide relevant information.

***D. Movants advance the nonsensical argument that public officials who support the Project because it will provide a reliable source of funding for public services are motivated by "greed"***

The Movants, as public officials who oppose the Project, urge the OPSB to give great weight to the views of local officials, as well as other local residents, who oppose the Project. See Mot. at 5-14. By contrast, the Movants appear to believe the OPSB should give no weight to local officials who support it. Take, for instance, the nonsensical accusation that the head of the London City Schools, who supports the Project, "is motivated solely by greed." Mot. at 8. The actual language of the assertion is astonishing:

“[T]he President of London City Schools . . . is motivated solely by greed for the cash offers dangled by Oak Run Solar for his schools, rather than the public interest.”

*Id.* (emphasis added). Indeed, the Movants appear to admit that the individual in question supports the Project because of a desire to obtain funding for the public schools. Yet they characterize this motivation as one of greed rather than the public interest.

To look more closely at the implications of the statement, in the Movants’ view, when a public official supports actions that will reliably increase funding for public services—such as public schools—that is a matter of greed, not public interest. However, when an abutting landowner opposes a Project because of speculative concerns that it will either increase—or decrease—the number of deer visiting his or her yard, that is a matter of public interest, not greed. *See id.* at 12-13, 28.

This is not a reasonable way to view the world, and it is certainly not a reasonable way to assess whether a critical energy project is in the public interest. In effect, the Movants would like the OPSB to view the Project through an extremely narrow lens that would spotlight local opposition and cast a shadow on local support. The OPSB should decline.

***E. Movants have failed to identify any material evidence overlooked by OPSB that would justify a rehearing***

Finally, the Movants have failed to identify any material evidence unreasonably or unlawfully overlooked by the OPSB. Indeed, the Movants do not identify any material evidence to support denial of the project that was not already on record at the time of the decision. The public comments by Brendan Shea, for example, which the Movants highlight as a reason for reopening the evidence, were already on the docket at the time the decision was announced, according to Movants’ own submissions. *Mot.* at 24-25. Movants argue, nonetheless, that the evidentiary record should be reopened to hear *testimony* from Brendan Shea and an incumbent

commissioner to learn more “about their and their constituents’ opposition to the Project as revealed in their campaign and nominations.” *Id.* at 25. This would add nothing of substance to the record and should be firmly rejected.

**II. OPSB Acted Lawfully and Reasonably in Finding that the Project Will Serve the Public Interest, Convenience, And Necessity Under R.C. 4906.10(A)(6)**

The OPSB’s determination that the Project will serve the public interest, convenience, and necessity was supported by ample evidence of the Project’s benefits, as well as a thorough analysis of the many conditions set out in the Stipulation to mitigate any reasonable concerns. *See Op.* ¶¶ 201-232. The determination was both reasonable and lawful.

The Opponents suggest that the OPSB failed to use a “broad lens” in making this determination. *See Mot.* at 5. This is precisely backwards. As described above, it is the Movants who view the Project through a narrow lens, spotlighting local opposition and casting local support and local benefits into the shadows. The OPSB did, in fact, use a broad lens in assessing the many ways that the project will serve the public interest; the OPSB also used a broad lens in assessing any reasonable concerns about the Project, as well as the many conditions in place to mitigate those concerns.

The OPSB properly used a broad lens in reaching the determination that the project will serve the public interest. *See Op.* ¶ 217 (citing *See In re Yellow Wood Solar Energy LLC*, Case No. 20-1680-EL-BGN, Opinion and Order (June 15, 2023) at 80). In its evaluation of the project’s benefits, the OPSB assessed a wide range of benefits, including—among many others—tax benefits, job creation benefits, and benefits to local farmers from the project’s groundbreaking agrivoltaics program, both in the short term and long term.

With respect to economic benefits, the OPSB reasonably found that the project will generate \$8.2 million in annual revenue for the local government and school system.” *Id.* ¶ 221. The OPSB also found that it will “create hundreds of jobs and training opportunities for electrical workers in and around Madison County,” including 500 construction jobs and 63 long-term jobs for electrical workers. *Id.* ¶ 221. The OPSB further highlighted that the agrivoltaics program “would be the nation’s largest agrivoltaics project and first of its kind utility-scale solar energy agrivoltaics plan for livestock grazing and row crops.” *Id.* ¶ 220. The OPSB found that the agrivoltaics project would place Madison, County and the State of Ohio “at the forefront” of “a new, innovative approach to farming and renewable energy production” and also create “new income and entrepreneurial opportunities for local farmers and tenants.” *Id.* ¶ 220. The OPSB highlighted in particular the collaboration with OSU, which “will not only improve the effectiveness of agrivoltaics at this Facility, but . . . will help to establish BMPs [best management practices] for the cultivation of crops alongside utility-scale solar operations, which will further benefit future projects in the state of Ohio and around the world.” *Id.* ¶ 220.

Equally important, the OPSB found that the Applicant selected the site and engaged with the public in a manner that served the public interest. The Board reasonably found that the Applicant chose the project area for sensible reasons, including: its close proximity to existing transmission lines with excess capacity to accommodate an 800-MW project; the presence of landowners interested in entering into purchase options; and the fact that demand for electricity is increasing in Ohio. *Id.* ¶ 218. The OPSB also reasonably found that the developer devoted substantial energy to community engagement. This included holding multiple meetings with local government officials and the public in the early stages of development “to provide

information and to solicit support for the Project and assure that, to the extent possible, their comments were incorporated into the construction and design of the project.” *Id.* ¶ 218.

Critically, the OPSB found that these comments from local officials were, in fact, incorporated into construction and design. For example, although the Madison County Commissioners ultimately did not execute the MOU, the Board found that “Oak Run remains committed to implementing the terms of the MOU [and] considers the terms of the MOU to be included in the requirements set forth in the Stipulation.” *Id.* ¶ 219. As the OPSB explained, the MOU included several substantive and “notable” terms, including “an increase in annual tax payments from \$9,000/MW to \$10,300/MW,” as well as “working with OSU to expand the Molly Caren Agricultural Center located in Madison County, including an Agrivoltaics Center,” and “increased job commitments.” *Id.* ¶ 219. With respect to further community engagement, the OPSB noted that the developer established a Residential Solar Program “as an opportunity for neighbors of the project,” including Dr. Boeckl himself, “to receive residential solar systems.” *Id.* ¶ 207.

The OPSB also used a broad lens in assessing any reasonable concerns that had been raised about the project. The OPSB reasonably found that these concerns were largely addressed by the conditions in the Stipulation. For example, in assessing concerns that the battery storage system would be unsafe, the OPSB explained that it “[did] not find evidence to support the Townships’ contention that the proposed [battery storage system’s] associated risks outweigh the benefits it presents.” *Id.* ¶ 227. Specifically, the OPSB found that concerns about bodily harm were unfounded in light of (a) the Townships’ concession that public exposure to lithium was unlikely as long as the battery system was properly maintained and (b) the Applicant’s commitment to comply with applicable regulations and industry best practices. *Id.* ¶ 227.

In those few instances where the OPSB found that reasonable concerns were not adequately addressed by existing conditions, the OPSB modified and strengthened the conditions. In particular, the OPSB modified Condition 25 of the Stipulation to include explicit benchmarks for agrivoltaics, including a requirement of achieving 4,000 crop acres within eight years of the project going into operation. *Id.* ¶ 221.

### **III. Conclusion**

For the foregoing reasons, the Application for Rehearing should be denied, and the Project should be permitted to move forward. Looking beyond this individual Project, the OPSB should firmly reject the Movants' unreasonably narrow interpretation of the public interest, which elevates unfounded concerns about speculative harms over well-documented benefits. Likewise, the OPSB should decline to elevate the loudest voices of opponents over the diverse perspectives of the many who support the Project.

The narrow lens through which the Movants would like the OPSB to view the Project is best exemplified by their assertion that “[T]he President of London City Schools . . . is motivated solely by greed for the cash offers dangled by Oak Run Solar for his schools, rather than the public interest.” Mot. at 8 (emphasis added). This preposterous accusation raises serious questions about the credibility of the Movants, and it is extremely revealing about their attitude toward those who do not share their desire to stop this project. Needless to say, it is not the lens through which the OPSB should be evaluating applications for critical energy projects in Ohio.

Dated: April 29, 2024

Respectfully submitted,

/s/ Matthew Eisenson

Matthew Eisenson (PHV-26622-2024)

SABIN CENTER FOR CLIMATE

CHANGE LAW,  
COLUMBIA LAW SCHOOL  
435 W. 116<sup>th</sup> Street, Room 528  
New York, New York 10027  
Telephone: (212) 853-4938  
matthew.eisenson@law.columbia.edu

Michael B. Gerrard (PHV No. 21914-2024)  
SABIN CENTER FOR CLIMATE  
CHANGE LAW,  
COLUMBIA LAW SCHOOL  
435 W. 116<sup>th</sup> Street, Room 528  
New York, New York 10027  
Telephone: (212) 836-8000  
MGerra@law.columbia.edu

Trent Dougherty (Bar No. 0079817)  
HUBAY DOUGHERTY  
1391 Grandview Ave. #12460  
Columbus, Ohio 43212  
Telephone: (614) 330-6752  
trent@hubaydougherty.com

*Counsel for Dr. John Boeckl*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this filing will be electronically served via the Ohio Power Siting Board's e-filing system and via electronic mail on all parties referenced in the service list of the docket.

Dated: April 29, 2024

*/s/ Matthew Eisenson* \_\_\_\_\_  
Matthew Eisenson



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**in**

**Case No(s). 22-0549-EL-BGN**

Summary: Memorandum Memorandum of Dr. John Boeckl Contra Application for Rehearing electronically filed by Mr. Matthew B. Eisenson on behalf of Boeckl, John Dr..