

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Richwood)
Solar, LLC for a Certificate of Environmental) Case No. 23-0930-EL-BGN
Compatibility and Public Need to Construct a)
Solar-Powered Electric Generation Facility)

ASHLEY BEERY AND BRUCE BEERY’S PETITION FOR LEAVE TO INTERVENE

Ashley Beery and her father, Bruce Beery, are participating landowners in the Richwood Solar project (the “Project”). The Beerys support the Project because it will provide them lease income to cover medical bills and other necessary expenses; bring tax revenue and other economic benefits into Union County; help them to keep their land in their family; and help to ensure that their land will remain viable for agricultural use in the long-term. Because the Beerys will be deprived of lease income and thus materially affected if the Project does not proceed, they respectfully petition to intervene in the above-captioned proceeding.

Pursuant to Ohio Administrative Code Section 4906-2-12, the Ohio Power Siting Board (“Board”) should grant the Beerys’ Petition because they have real and substantial interests in the outcome of this case, they represent interests separate from those of the existing parties, and their contribution will lead to a just and expeditious resolution of the issues involved in the proceeding without causing undue delay. This Petition is timely, as it is filed before the intervention deadline set by the Board. *See* Entry, *In re Richwood Solar, LLC*, Case No. 23-930-EL-BGN (Apr. 9, 2024) ¶ 16. The Petitioners’ bases for standing, reasons for intervention, and arguments as to why the Board should grant their Petition are set out in the accompanying Memorandum in Support.

Dated: May 23, 2024

Respectfully submitted,

/s/ Trent Dougherty

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

Jacob Elkin (PHV-27441-2024)
SABIN CENTER FOR CLIMATE CHANGE
LAW,
COLUMBIA LAW SCHOOL
435 W. 116th Street, Room 528
New York, New York 11217
Telephone: 212-853-3718
Jacob.Elkin@columbia.edu
(Willing to accept service by email)

Counsel for Ashley Beery and Bruce Beery

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**MEMORANDUM IN SUPPORT OF ASHLEY BEERY AND
BRUCE BEERY’S PETITION FOR LEAVE TO
INTERVENE**

I. Ohio Law Permits Intervention of Parties in Cases Before the Ohio Power Siting Board.

The Ohio Power Siting Board (“Board”) may grant petitions to intervene “upon a showing of good cause.” Ohio Admin. Code § 4906-2-12(B). The Administrative Code provides that, in ruling on a petition to intervene, the Board must consider the following factors:

- (a) The nature and extent of the person’s interest.
- (b) The extent to which the person’s interest is represented by existing parties.
- (c) The person’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

Id. § 4906-2-12(B)(1). As described in the next section, all four of these factors support a finding that there is good cause to permit intervention by the Petitioners.

II. The Ohio Power Siting Board Should Grant the Beerys’ Petition to Intervene.

The Petitioners, Ashley Beery and her father Bruce Beery, are participating landowners in the Richwood Solar Project (the “Project”) proposed by Richwood Solar LLC (the “Applicant”).

Ms. Beery owns 26 acres of land that she is planning to lease out to the project, and Mr. Beery owns 1077 acres that he is planning to lease out. This land is currently being used to grow corn, and it was previously used to grow soybeans. Importantly, the Beerys are not absentee landowners: their respective homes are located within the project area, adjacent to the tracts of land where the Project is planned to be sited.

The Beery family have farmed land in Union County for three generations. Mr. Beery grew up on his father's farm. He eventually purchased that land from his father, and he continued to work hard to purchase additional farmland in the area, viewing the land as a long-term investment. Ms. Beery purchased her own plot of farmland at a young age, with the same understanding that this would be an important long-term investment.

Before agreeing to lease out land for the Project, the Beerys carefully considered the future of their land, including reviewing the specifics of the Project and other potential future uses of their land. They agreed to participate because the Project would allow them to eventually return the land to full agricultural use if they so choose, in contrast to other options. The Beerys have seen other nearby farmland used for housing development, and they know that such land is much less likely to return to agricultural use.

Furthermore, the Project will help Ms. Beery to pay the significant medical expenses she has accrued from treatment for cancer and auto-immune diseases. Income from farming the land has not been sufficient to cover these expenses, and Ms. Beery was forced to sell off a portion of her land in 2023 to pay her medical bills. Lease income from the Project will help Ms. Beery pay for necessary medical care while retaining ownership of the rest of her land. This is exactly the sort of benefit landowners like the Beerys rightfully expect to be able to recover when investing in their land.

The Beerys respectfully request that the Board grant their Petition to Intervene (the “Petition”) in the Board’s review of Richwood Solar LLC’s Application for a Certificate of Environmental Compatibility and Public Need to construct a solar-powered electric generation facility. In short, all four of the factors set out under Section 4906-2-12(B)(1) of the Ohio Administrative Code support a finding of good cause for intervention: (a) Ashley and Bruce Beery have real and substantial interests in the Project as participating landowners; (b) their interests in the Project are distinct from those of other parties and intervenors, none of whom are participating landowners; (c) given their distinct interests, their participation will contribute to a just and expeditious resolution of the issues; and (d) because the petition is timely filed, their participation will not unduly delay or prejudice any party.

a. The Beerys have real and substantial interests in the Project.

In assessing the nature and extent of the person’s interest, the Board considers whether the petitioner has a “real and substantial interest” in the matter. *See* Ohio Adm. Code § 4906-2-12(D)(1)(a). The Board has found that this requirement is met when “an individual, direct interest is at stake in the outcome of a proceeding.” Order Partially Granting Motions for Intervention, *In re Republic Wind, LLC*, Case No. 17-2295-EL-BGN at ¶ 20 (Aug. 21, 2018). The Board has found, for example, that owning property inside or abutting a project area is sufficient to establish a real and substantial interest for purposes of intervention. *Id.*

Here, the Beerys have individual, direct interests at stake in the outcome of this proceeding. They each own land within the project area. As participating landowners, they will receive income from the lease agreements they each entered into with the developer if the Project is completed; they will receive no such income if the application is denied. This lease income will assist them in paying for necessary medical care and will help ensure that they do not need to sell off their land to pay those expenses. The Project will also support their interests in ensuring their land will retain

long-term viability as farmland, whereas other potential development opportunities would likely foreclose that possibility. Relatedly, the Beerys have an interest in protecting their rights as landowners to make productive use of their property, a right that is protected by the Ohio Constitution. *See* OH Const. Art. I, § 1 (“All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing, and protecting property.”).

b. The Beerys’ interests differ from those of existing parties.

The Beerys have interests that are not shared by any existing party or intervenor. Citizens Against Richwood Solar and its members have intervened in opposition to the project. *See* Petition for Leave to Intervene of Citizens Against Richwood Solar, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Feb. 7, 2024). Their interests, as community members who are seeking to block the Project, are in direct opposition to the Beerys’. The County, Township, and agency intervenors also do not represent the interests of individual participating landowners such as Ashley and Bruce Beery—nor do they claim to. *See* Notice of Intervention as a Party of the Board of County Commissioners of Union County, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Apr. 18, 2024); Notice of Intervention as a Party of the Board of Township Trustees of Taylor Township, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Apr. 18, 2024); Notice of Intervention as a Party of the Board of Township Trustees of Leesburg Township, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Apr. 18, 2024); Notice of Intervention as a Party of the Board of Township Trustees of Clairbourne Township, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Apr. 18, 2024); Notice of Intervention as a Party of the Union Soil and Water Conservation District, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (Apr. 18, 2024).

Finally, while both the Applicant and proposed intervenor Ohio Chamber of Commerce share the Beerys’ interest in seeing the Project approved, neither represents the Beerys’ unique interests: as participating landowners, the Beerys have particular interests in keeping the land

within their family, retaining its long-term viability as farmland, and generating lease income to cover medical bills and other expenses. *See* Ohio Chamber of Commerce Motion to Intervene, *In re Richwood Solar LLC*, Case No. 23-930-EL-BGN (May 17, 2024).

c. The Beerys' participation will contribute to a just and expeditious resolution of the issues involved in the proceeding and to full development and equitable resolution of factual issues in this case.

The Beerys' intervention in this proceeding will contribute to a just and expeditious resolution of the relevant issues and contribute to a full development of the factual record. Their testimony may help the Board to find and determine the information necessary to grant a Certificate of Environmental Compatibility and Public Need, including: the extent to which the Project will "serve the public interest, convenience and necessity," *see* Ohio Rev. Code § 4906.10(A)(6); the Project's anticipated "impact on the viability as agricultural land of any land in an existing agricultural district," *id.* § 4906.10(A)(7); and the extent to which the Project "represents the minimum adverse environmental impact," *id.* § 4906.10(A)(3). Specifically, as participating landowners, the Beerys can provide first-hand perspectives on: (1) the economic opportunity that the Project presents to participating landowners; (2) the ways in which the project will protect future agricultural use of the land; and (3) other economic benefits that the Project will deliver to the community.

First, the Beerys can testify as to how the Project presents a unique economic opportunity to participating landowners like themselves and how they concluded that the lease agreement would be in the best interest of their family. They can explain how leasing out land for the Project will allow them to pay for necessary expenses while maintaining ownership of land in Union County. They can also present their case as to why landowners such as themselves should have the right to make productive use of their land, such as entering into solar leases when the economics of farming are not sufficient to support their needs.

Second, the Beerys can testify as to how the Project will allow them to use the land as farmland in the future if they so choose. They can testify to the importance they placed on protecting their land's viability as farmland when deciding to lease their land for the Project. By way of contrast, they also can testify to having witnessed many individuals who lack longstanding ties to Union County permanently convert local farmland to housing subdivisions, without concern for whether that land could be farmed in the future.

Third, the Beerys can testify as to the many local benefits this Project will have for Union County and Ohio, including by increasing tax revenues and creating local jobs. At a high level, their participation will ensure that the Board hears the aims and concerns of community members who view the Project as an opportunity, in addition to any who may believe that the Project will have harmful impacts.

d. The Beerys' intervention will not cause undue delay of the Board's review of the Project.

Pursuant to an order entered April 9, 2024, petitions to intervene "will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by May 24, 2024, whichever is later." Because this Petition is timely filed, the Beerys' involvement will not cause undue delay of the Board's review. In addition, the Beerys are motivated to see the process go as smoothly as possible, as they would like to see the Project approved and completed expeditiously and without any delay.

III. Conclusion

For the reasons stated in this Memorandum in Support, the Board should grant Ashley Beery and Bruce Beery's Petition to Intervene in this proceeding concerning Richwood Solar LLC's Application for a Certificate of Environmental Compatibility and Public Need to

construct a solar-powered electric generation facility. The Beerys have real and substantial interests in the Project; they have different interests from those of the existing parties; their participation will contribute to a just and expeditious resolution of the issues involved in the proceeding; and their intervention will not cause undue delay of the Board's review of the Project.

Dated: May 23, 2024

Respectfully submitted,

/s/ Trent Dougherty

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

Jacob Elkin (PHV-27441-2024)
SABIN CENTER FOR CLIMATE CHANGE
LAW,
COLUMBIA LAW SCHOOL
435 W. 116th Street, Room 528
New York, New York 11217
Telephone: 212-853-3718
Jacob.Elkin@columbia.edu
(Willing to accept service by email)

Counsel for Ashley Beery and Bruce Beery

CERTIFICATE OF SERVICE

I certify that The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case on this May 23, 2024.

/s/ Trent Dougherty
Trent Dougherty

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Case No(s). 23-0930-EL-BGN

Summary: Petition PETITION FOR LEAVE TO INTERVENE OF ASHLEY BEERY
AND BRUCE BEERY electronically filed by Mr. Trent A. Dougherty on behalf of
Ashley Beery and Bruce Beery.