

**BEFORE
THE OHIO POWER SITING BOARD**

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

REPLY BRIEF OF THE BEERYS

Dated: October 18, 2024

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PRELIMINARY STATEMENT

The record in this proceeding makes clear that the Richwood Solar Project represents the minimum adverse environmental impact (in fact, the environmental impacts would be net positive); that the Project would deliver transformative economic benefits to Union County residents; and that the Applicant has committed to stringent conditions to mitigate any impacts to agricultural land and to ensure that the Project site could support agricultural production once again after decommissioning. These environmental and economic benefits would serve the public interest, convenience, and necessity.

The parties opposing certification in this proceeding primarily focus on the fact that certain local government bodies have expressed opposition to the Project. But statements of opposition are not a reliable metric for determining whether the Project would serve the public interest, convenience, and necessity, and the Board should not allow these statements of opposition to serve as a veto for the Project. Instead, the Board should approve the Richwood Solar Project on the basis of its numerous economic and environmental benefits.

ARGUMENT

This Brief will focus on three points in response to issues raised by the Governmental Intervenor and Citizens Against Richwood Solar (“CARS”).¹ First, this Brief will explain the important benefits and interests of the Project that the opposing intervenors fail to acknowledge, including the Board’s interest in upholding the rights of participating landowners like the Beerys. Second, this Brief will explain why the Board should not defer to the Governmental Intervenor’s opposition to the Project. Among other reasons, the Governmental Intervenor’s process for assessing local sentiment about the Project was methodologically unsound along multiple

¹ This Brief refers to these parties collectively as the “opposing intervenors.”

dimensions. Finally, this Brief will explain that the Board should not credit the opposing parties' unfounded concerns, which have already been addressed in the Staff Report of Investigation and the Joint Stipulation.

I. Opposing Intervenors Ignore the Project's Significant Benefits, Along with the Landowner Rights of Individuals Like the Beerys

In the Beerys' initial post-hearing brief, the Beerys outlined numerous benefits from the Project. These include tax revenue and other economic benefits. As Jerome Township Trustee Barry Adler explained, this tax revenue could "potentially transform local services allowing for major upgrades and improvement for the public safety, including infrastructures [sic], schools, parks, fire, EMS, and police services in support of the public welfare." Public Hearing Tr. at 91:10-14.² These also include the net positive local environmental benefits from reducing tilling, fertilizer, and pesticide application. Staff Report at 32. Notably, neither the Governmental Intervenors nor CARS recognize these significant public benefits in their briefs opposing the Projects.

In their direct testimony, the Beerys also explained the many benefits that the Project could bring to landowners like themselves, including by supporting Bruce Beery and his wife in retirement and assisting Ashley Beery in paying for substantial medical expenses related to her cancer treatment. Beerys Ex. 1, Bruce Beery Tr. at 3:19-21; Beerys Ex. 2, Ashley Beery Tr. at 3:14-20. These benefits are likewise left out of project opponents' arguments. In fact,

² These economic benefits could be all the more significant for residents of Claibourne and Leesburg Townships. As Ashley Beery has testified: "Claibourne and Leesburg Township[s], which include Magnetic Springs and Richwood, are poor townships according to data from the Union County Commissioners. Claibourne Township has almost 65 percent of low-moderate income, Leesburg 44, Magnetic 71, Richwood 67." *Id.* at 184:7-12 (referring to Union County Commissioners Journal Volume 2024 at 1364 (May 1, 2024), submitted as part of Public Hearing Ex. 3.).

Governmental Intervenors appear hostile to the notion that landowners like the Beerys could ever choose to lease their land for solar, *regardless* of the merits of any particular project. For example, in pre-filed testimony, Taylor Township Trustee Scott Weeks seemed to suggest a “solar exception” to landowner rights: “Sure, everyone has the right to do with their property, what is within the means of zoning, building, and established regulations. None of this required you to commit your property to solar.” Taylor Township Ex. 1, Scott Weeks Tr. 5:5-7. But the rights and interests of landowners like the Beerys should not be so easily discounted, and local government officials should have more seriously considered the interests of participating landowners before determining their position regarding the Project.

CARS has also disregarded the landowner rights of individuals like the Beerys. This disregard for the rights and agency of individual landowners is on full display in CARS’ initial brief when CARS argues that “[w]hile Richwood contends that the Project Area can be returned to agriculture after 40 years, the company has provided no guarantee that this will occur.” CARS’ Post-Hearing Br. at 18 (citing Cross-Examination of Chris Simmons, Evidentiary Hearing Tr. at 142:21-143:4). Of course Richwood cannot guarantee how the land will be used after the lease term expires: it is not Richwood’s land. The land is owned by local residents like the Beerys, and it will be their decision whether to grow crops on that land at the end of the lease term. Applicant witness Chris Simmons explained as much in response to CARS’ questioning at the evidentiary hearing:

- Q. Is there any guarantee in the Application that the land in the project area will be returned to farming after 40 years?
- A. Since the majority of the site is under an option to lease, we are committing to returning the land to substantially the same condition as it is currently being used. But once we terminate that lease at the end of the project, it would be up to the current landowner how to use that land.

Evidentiary Hearing Tr. at 142:21-143:4. This simple reality—that the owners of property will have a significant say in how it is used—cannot be reconciled with CARS’ opposition to the Project, which ignores the rights and interests of participating landowners.

In any case, however, the Board must consider the rights and interests of landowners like the Beerys in assessing whether the Project serves the public interest, convenience, and necessity. *See* Opinion, Order and Certificate, *In re* Application of Firelands Wind, LLC, Case No. 18-1607-EL-BGN (June 24, 2021) ¶ 179 (acknowledging landowner rights as one factor supporting the conclusion that a project would serve the public interest).

II. The Board Should Not Defer to Governmental Intervenors’ Opposition to the Project

In testimony and briefing, the Governmental Intervenors place great emphasis on Union County’s spreadsheet tracking comment letters about the Project. *See* Union County Ex. A to Pre-Filed Testimony of Mallory Lehman (the “Spreadsheet”); Commissioner David Burke Tr. at 5:4-23 (testifying that the spreadsheet was a key way that the County assessed residents’ sentiments about the Project); Governmental Intervenors’ Post-Hearing Br. at 18 (“Trustee Converse also testified that he had confidence in the conclusions he had drawn from his observations after reviewing the empirical data collection in the spreadsheet prepared by Mallory Lehman.”). But this spreadsheet contains numerous defects that undermine its utility as a basis for opposition. Because of these defects and local officials’ apparent reliance on this spreadsheet in opposing the Project, the Board should refrain from deferring to Governmental Intervenors as to whether the Project is in the public interest.

First, the spreadsheet misclassifies supporter letters with individualized content as “form letters,”³ resulting in the County discounting support for the Project from Union County residents. On cross-examination, the Union County administrative assistant who prepared the spreadsheet, after reviewing a list of Union County supporter letters that were improperly marked as “form letters,” admitted that each letter contained additional “individualized content for why the commenter supports the project as opposed to merely template content.” Evidentiary Hearing Tr. at 539:3-9. The comment letter of Leesburg Township resident Rodney Lowe is one such letter that Union County improperly labeled and assessed as a “form letter,” despite containing a full paragraph of personalized content explaining why Mr. Lowe supports the Project:

The major reason I support Richwood Solar is because I think it is a great opportunity for the land owners. After all, it is their land and they pay the taxes on that land so they should do with it as they see fit. The county to which the landowners pay the real-estate taxes to definitely shouldn't be allowed to collect taxes on the land and then tell the landowners what they can't do with their land. The neighborhood shouldn't be allowed to have a say either unless they are willing to let everyone else decide what they can do with their land. The solar project will also bring tax dollars to our county and schools.

Comment Letter of Rodney Lowe (June 10, 2024) (Spreadsheet Entry 1395). Governmental Intervenor's admit that they “do not believe that such form letter comments should hold nearly as much weight in the ‘public interest, convenience and necessity’ analysis as the comments received from residents of the 3 affected townships.” Governmental Intervenor's Post-Hearing Br. at 14-15. It seems obvious, therefore, that the County and Townships did not give these letters as much weight in their own decision-making process as to whether to oppose the project.

³ On cross-examination, Union County witness Mallory Lehman confirmed the following definition of “form letter”: “a letter with content based on a template rather than having individualized reasons for in this case supporting or opposing a project.” Evidentiary Hearing Tr. 535:20-536:1.

By improperly classifying certain supporter letters as “form letters,” despite those letters containing personalized content explaining why the commenter supports the Project, the County unfairly discounted public support for the Project.

Second, in addition to inaccurately labelling supporter letters as “form letters,” the spreadsheet misleadingly inflates the number of comment letters against the Project by including anyone who signed one of CARS’ petitions as a separate comment letter.⁴ The Union County witness who prepared the spreadsheet admitted on cross-examination that over half of the “comments” submitted by Claibourne Township and Leesburg Township residents in opposition to the Project were no more than signatures and addresses on two CARS petitions; the same was true of just under half of the “comments” submitted by Taylor Township residents in opposition to the Project. Evidentiary Hearing Tr. 534:7-535:17. Furthermore, despite testimony to the contrary, it appears that no effort was made to ensure that an individual who signed both petitions, or who signed a petition and submitted a separate comment letter, was not double-counted or even triple-counted in the spreadsheet’s tallies.⁵ As a result, the spreadsheet that the Governmental Intervenors claimed to use to determine public sentiment appears to have substantially overstated the number of Union County residents who opposed the project. For example, *each of the first ten* signatories⁶ of the second petition (Spreadsheet Entry 1403) also

⁴ These petitions are Spreadsheet Entries 1402 and 1403.

⁵ On cross-examination, the Union County witness stated that, if someone had signed both petitions, this would be reflected in the numbers on the spreadsheet. Evidentiary Hearing Tr. 533:17-534:6. But a review of the total signatories on the two petitions demonstrates that no downward adjustment was made on the spreadsheet to account for individuals who signed both petitions or individuals who signed one petition and separately submitted a comment letter.

⁶ For reference, these signatories are James Rensel (Entry 1402 at 7; Entry 1403 at 3), Dawn Rensel (Entry 1402 at 7; Entry 1403 at 3), Robert (Bob) Richardson (Entry 1402 at 7, Entry 1403 at 3), Danielle Richardson (Entry 1402 at 7, Entry 1403 at 3), Suzanne Richardson (Entry 1402 at 7, Entry 1403 at 3), Jason Rowe (Entry 1402 at 18; Entry 1403 at 3), Kirby Rowe (Entry 1402 at 7; Entry 1403 at 3), Daniel Wilcox (Entry 1402 at 7; Entry 1403 at 3), Barbara Kavanagh

signed the first petition (Spreadsheet Entry 1402) and were therefore double counted in the spreadsheet's tallies.⁷ Other CARS members like Roberta Wright signed both petitions and were separately counted as posting a comment on the OPSB website: she was therefore triple counted in the spreadsheet's tallies. *See* Spreadsheet Entry 3; Entry 1402 at 14; Entry 1403 at 19.

In addition to relying on a spreadsheet that overcounted opposition comment letters and mistakenly labelled certain supporter comment letters as "form letters," Union County Commissioner David Burke's testimony provides further evidence that Union County unfairly discounted the comments of project supporters in its analysis of public sentiment. In his pre-filed testimony, Commissioner Burke was dismissive of the public comments made in support of the Project on the basis that they came from leaseholders or that they expressed support for solar or property rights in general:

Other than the few lease holders, most other township commenters expressed their opposition to the Project. The few supportive comments outside of leaseholders were related to people who support solar energy policy or land use rights generally rather than the Project at this particular location.

David Burke Tr. at 6:2-5. On cross-examination, Commissioner Burke admitted that the comments submitted by supporters were for the *direct purpose* of having the Board approve the Richwood Solar project, Evidentiary Hearing Tr. at 525:22-526:8, undermining the notion that those commenters "were related to people who support solar energy policy or land use rights generally rather than the Project at this particular location." And, of course, financial benefits to leaseholders, support for landowner rights, and support for solar energy's benefits are all valid

(Entry 1402 at 18; Entry 1403 at 3), and Richard Duane Kavanagh (Entry 1402 at 18; Entry 1403 at 3).

⁷ Notably, on cross-examination, the Union County witness who prepared the spreadsheet stated that she did not "think that [she] saw any of the names come up twice." Evidentiary Hearing Tr. 533:20-21.

reasons to support a solar project like Richwood. Ultimately, Union County has not explained why those interests should be given any less weight than the interests of project opponents.

III. Opposing Intervenors' Unfounded Concerns Do No Justify Denying the Project

Finally, opposing intervenors emphasize concerns about the Project, relying on their own lay witness testimony. But the testimony of opposing witnesses in this case does not support denial of a certificate for this Project. In its recent order denying rehearing for Oak Run Solar's certificate of environmental compatibility and public need, the Board affirmed that testimony opposing a project does not justify denying a certificate for that project when opposing witnesses' concerns have been sufficiently addressed in a stipulation. Entry on Rehearing, *In re Application of Oak Run Solar Project, LLC*, Case. No. 22-549-EL-BGN (Aug. 22, 2024) ¶ 16. Such is the case here. What's more, opposing witnesses made clear on cross-examination that they were unaware of key facts pertaining to their stated concerns about the project.

For example, one of the stated concerns of Union County Commissioner David Burke was whether noise measurements from the Project were appropriate in light of the Project's battery storage component. David Burke Tr. at 6:23-7:5. However, on cross-examination, Commissioner Burke admitted that he had not read Staff's assessment of noise impacts and was not aware of whether the OPSB Staff had incorporated an assessment of the battery storage component in its analysis of noise impacts, Evidentiary Hearing Tr. at 526:21-527:7, which Staff had already done. *See* Staff Report at 15.

Similarly, Leesburg Township Trustee Jeff Robinson cited local concerns about truck traffic as a reason for opposing the Project. Leesburg Township Ex. 1, Jeff Robinson Tr. at 6:22-23. However, on cross-examination, Mr. Robinson admitted that he had not read Staff's analysis of road and traffic impacts from the project and was not aware of any factual conclusions or conditions related to traffic impacts. Evidentiary Hearing Tr. at 546:10-20. Mr. Robinson further

cited local concerns about interference with wildlife as a basis for denial. Jeff Robinson Tr. at 6:12-14. However, he admitted on cross-examination to not reading Staff's analysis of any impacts to wildlife. Evidentiary Hearing Tr. at 546:21-547:3.

Along the same lines, Taylor Township Trustee Scott Weeks expressed concerns about the process for approving a solar project. Scott Weeks' Tr. at 5:7-14. However, Mr. Weeks admitted on cross-examination that he was not aware of such a key aspect of the process as the fact that a project can only be approved if it represents the minimum adverse impact. Evidentiary Hearing Tr. at 556:5-12.

Many of CARS' witnesses also seemed to be unaware of key aspects of the Project that would seem to address their stated concerns. Evidentiary Hearing Tr. at 448:4-9 ("Q: [D]o you recall the Staff's conclusions with construction traffic? A (Mr. Caleb Speicher): I do not. Q: Do you recall any conditions for repairing roads damaged by the project? A: I do not."); *id.* at 492:10-12 ("Q: Do you recall any conditions related to limits on grading and movement of topsoil? A (Mr. Michael Callahan): I don't recall."); *id.* at 507:11-18 ("Q: [D]id you read the Siting Board Staff's conclusions about any impacts to wildlife from the project? A (Ms. Darla Oelmann): No, I have not. Q: . . . Have you read the Siting Board Staff's conclusions with how the project's vegetation management plan might impact wildlife? A: No, I have not."); *id.* at 511:3-6 (Q: Are you aware of whether the Applicant has stipulated to or agreed to any of those conditions related to weed management? A (Dawn Rensel): I'm not sure.").

Following the precedent set in the Board's recent decision in *Oak Run Solar*, the Board should not give weight to unfounded opposition of this sort when determining whether the project serves the public interest, convenience, and necessity. *See In re Application of Oak Run*

Solar Project, LLC, at ¶ 16. Indeed, all of the stated concerns referenced above are already addressed in the conditions for approval that Staff recommended and that Applicant stipulated to.

For example, any concerns about wildlife impacts are addressed in the Stipulation and Staff Report. Applicant stipulated to stringent conditions for protecting bald eagles and other species, *see* Stipulation Conditions 13-15, and Staff concluded that the Project is unlikely to pose a significant adverse impact to wildlife. *See* Staff Report at 37.

Any concerns about road impacts are also addressed. Applicant stipulated to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process, *see* Stipulation Condition 28, and Staff concluded that “[c]onstruction of the proposed solar facility is not expected to have a significant impact on the traveling public.” *See* Staff Report at 24.

Further, any impacts on soil or agricultural productivity are addressed. First, Applicant stipulated to preparing a vegetation management plan that includes planting a minimum of 70 percent of the impacted project area in beneficial vegetation that would serve as pollinator habitat, *see* Stipulation Condition 29, which Staff concluded “would enhance the visual appeal of the project, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species.” *See* Staff Report at 32. Second, Applicant stipulated to Staff’s recommended limitations on grading and to keeping all topsoil in the Project area. *See* Stipulation Condition 27(b), (d). Third, Applicant stipulated to stringent weed management protections, with the goal of having “weed eradication significantly completed by year three of operation.” *See* Stipulation Condition 52. Finally, Applicant stipulated to comprehensive conditions for the protection and repair of drain tile. *See* Stipulation Condition 26.

In other words, opposing intervenors' stated concerns do not correlate with genuine risks or impacts from the Project, and the Board should not grant these concerns significant weight when assessing the merits of the Project.

CONCLUSION

In addition to meeting all of the other certification requirements, as described in the Applicant's initial brief, the Richwood Solar Project would serve the public interest, convenience, and necessity. The Project would deliver significant public benefits; Applicant has stipulated to stringent conditions to mitigate any adverse impacts; and the opposing intervenors' arguments against the Project lack any foundation in the facts. Therefore the Board should approve the Richwood Solar Project.

Dated: October 18, 2024

Respectfully submitted,

/s/ Jacob Elkin

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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: October 18, 2024

/s/ Jacob Elkin _____
Jacob Elkin

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Summary: Reply Brief of the Beerys electronically filed by Mr. Jacob Elkin on behalf of Beery, Ashley and Beery, Bruce.