

**IN THE SUPREME COURT OF OHIO**

In the Matter of the Application of ) CASE NO.: 2023-1286  
Kingwood Solar I, LLC for a Certificate )  
of Environmental Compatibility and )  
Public Need ) On Appeal from The Ohio Power Siting Board  
) Case No. 21-0117-EL-BGN

---

**MERIT BRIEF OF AMICI CURIAE COLUMBIANA COUNTY BOARD OF COMMISSIONERS, COLUMBIANA COUNTY SOIL AND WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS, AND FRANKLIN TOWNSHIP BOARD OF TRUSTEES IN SUPPORT OF APPELLEES/CROSS-APPELLANTS**

---

Amily A. Imbrogno (0092434)  
MEYERS, ROMAN, FRIEDBERG & LEWIS  
28601 Chagrin Boulevard, Suite 600  
Cleveland, OH 44122  
(216) 831-0042  
(216) 831-0542 - Fax  
[aimbrogno@meyersroman.com](mailto:aimbrogno@meyersroman.com)  
*Counsel for Amici Curiae Columbiana  
County Board of Commissioners,  
Columbiana County Soil and Water  
Conservation District Board of Supervisors,  
and Franklin Township Board of Trustees*

Michael J. Settineri (0073369)  
Anna Sanyal (0089269)  
Emily J. Taft (0098037)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
(614) 464-5462  
(614) 719-5146 - Fax  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[aasanyal@vorys.com](mailto:aasanyal@vorys.com)  
[ejtaft@vorys.com](mailto:ejtaft@vorys.com)  
*Counsel for Appellant, Kingwood Solar I LLC*

David Yost (0056290)  
Attorney General of Ohio  
Stephen W. Funk (0058506)  
Emily Anglewicz (0083129)  
ROETZEL & ANDRESS, LPA  
222 S. Main Street, Suite 400  
Akron, Ohio 44308  
(330) 849-6602  
(330) 376-4577 - Fax  
[sfunk@ralaw.com](mailto:sfunk@ralaw.com)  
[eanglewicz@ralaw.com](mailto:eanglewicz@ralaw.com)  
*Outside Counsel for Appellee, Ohio Power  
Siting Board*

**TABLE OF CONTENTS**

INTRODUCTION .....1

INTEREST OF AMICI CURIAE.....2

STATEMENT OF THE CASE AND FACTS .....3

ARGUMENT IN SUPPORT OF POSITIONS ADVANCED  
BY APPELLEES/CROSS-APPELLANTS .....3

PROPOSITION OF LAW NO. 1 The Board’s consideration of and reliance on local  
governmental authorities’ positions on the Project to determine that the Project was not in  
the public interest, convenience and necessity did not exceed the Board’s statutory  
authority. “Public interest, convenience, and necessity” includes local governmental  
authorities’ interests.....3

PROPOSITION OF LAW NO. 2 The opinions of local governmental authorities should  
carry weight in Siting Board decisions. ....6

CONCLUSION.....8

CERTIFICATE OF SERVICE .....9

**TABLE OF AUTHORITIES**

*Bank of Toledo v. Toledo*, 1 Ohio St. 622, 623 (1853) .....7,8

*City of Norwood v. Horney*, 110 Ohio St. 3d 353, 362, 853 N.E. 2d 1115 (2006).....7,8

*In Re Champaign Wind, LLC*, 146 Ohio St.3d 489, 509, 2016-hio-1513,  
58 N.E. 3d 1142 (2016).....7

*In the Matter of the Application of Duke Energy Ohio, Inc. for  
an Increase in Electric Distribution Rates*,  
21-887-EL-AIR, Entry (Dec. 14, 2022).....5

*In the Matter of the Application of Kensington PV I, LLC for a  
Certificate of Environmental Compatibility and Public Need*,  
21-0764-EL-BGN .....2

*In the Matter of the Application of Ohio Edison Company,  
The Cleveland Electric Illuminating Company, and the  
Toledo Edison Company for Authority to Provide for a SSO*,  
14-1297-EL-SSO, Entry (March 31, 2016) .....5

*Indus. Energy Consumers of Ohio Power Co. v. PUC of Ohio*  
68 Ohio St.3d 559, 629 N.E. 2d 423, 150 P.U.R. 4<sup>th</sup> 406 (1994) .....5

*Perrysburg v. Ridgeway*, 108 Ohio St. 245, 255 (1923).....6

*State ex rel. Ross v. Guion*, 161 N.E. 2d 800 (8<sup>th</sup> Dist. 1959) .....4

\*\*\*

OAC 4906-2-12 .....5

Oh. Const. Art. X, §3 .....6

Oh. Const. Art. XVIII, §3 .....6

RC 4903.221 .....5

RC Chapter 4906.....4,5,7

RC 4906.10 .....5,8

RC 4906.10(A).....	4
RC 4906.10(A)(6).....	1

## INTRODUCTION

This matter allows this Court to address important issues relating to local governance and property rights. On December 15, 2022, the Ohio Power Siting Board denied the application of Appellant/Counter-Appellee Kingwood Solar I LLC for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility in Greene County, Ohio (the “Project”). Before doing so, the Siting Board weighed the evidence presented at an adjudicatory hearing and found that the Project would not serve the public interest, convenience, and necessity. The Siting Board considered testimony presented by Greene County Board of Commissioners and trustees from local townships in which the Project would be constructed regarding the Project’s effects on the local community. Appellant filed an application for rehearing, and the Siting Board confirmed that the Project would not serve the public interest, convenience, and necessity. This appeal followed.

Appellant raises several issues for appeal, but pertinent to this Brief are Appellant’s Propositions of Law 2, 3 and 4:

Proposition of Law 2: The Board’s consideration of and reliance on the local governmental authorities’ positions on the Project to determine that the Project is not in the public interest, convenience and necessity (R.C. 4906.10(A)(6)) exceeded the Board’s statutory authority and therefore was unlawful and unreasonable.

Proposition of Law 3: The Board’s reliance on the positions of the local governing body of Greene County and the three intervening townships to deny Kingwood’s certificate application was an impermissible delegation of the Board’s decision-making authority to the local governing body of Greene County and the three intervening townships as to the determination required by R.C. 4906.10(A)(6) and consequently the determination of whether to issue a certificate of environmental compatibility and public need was impermissible, unlawful and unreasonable.

Proposition of Law 4: The Board’s change of its interpretation for what is required to meet the “public interest, convenience, and necessity” criterion of R.C. 4906.10(A)(6) to now allow unanimous opposition by local governmental authorities within the project area to be a basis for the Board to deny a certificate without a reasonable basis for doing so is unlawful and unreasonable.

For the reasons discussed below, this Court should reject these propositions to the extent that they apply to general legal questions and not the specific facts of the case.

**INTEREST OF AMICI CURIAE**

The Columbiana County Board of Commissioners, Columbiana County Soil and Water Conservation District Board of Supervisors, and Franklin Township Board of Trustees (“Local Government Entities”) are the governing boards of political subdivisions in which an unrelated foreign entity seeks to build a large-scale commercial solar electric generation facility. That entity has applied for a Certificate of Environmental Compatibility and Public Need, the matter regarding which is pending before the Ohio Siting Board at *In the Matter of the Application of Kensington PV I, LLC for a Certificate of Environmental Compatibility and Public Need*, 21-0764-EL-BGN. That facility is grandfathered under Senate Bill 52.

The Local Government Entities have all found that the facility proposed to be built within their jurisdiction does not serve the public interest, convenience, and necessity, and have therefore intervened in Case No. 21-0764. The applicant in that case has asserted in a motion to suspend procedural schedule and stay proceeding that the outcome of the instant matter could affect case no. 21-0764-EL-BGN. While the issues raised on appeal in the instant matter require analysis as applied to the record and totality of the circumstances of the Kingwood Project specifically, Appellant’s Merit Brief could be construed to allege that the Siting Board does not have the authority to consider opinions of local government entities when deciding whether to grant or deny a certificate.

In this Brief, the Local Government Entities will not discuss the facts on the record, Appellant’s allegation that the Siting Board relied *exclusively* on the opinions of local governmental authorities when deciding to deny Appellant a certificate, nor Appellant’s claim that

that local governmental entities' opinions were unsubstantiated, as those issues are all unique to the instant matter. They will, however, explain why this Court should find that the Siting Board did not exceed its statutory authority when it relied on local governmental authorities' opinions. Moreover, this Court should find that the opinions of local governmental authorities should be weighed heavily by the Siting Board, because they, as intimately familiar with the needs of their constituents (who will be most directly affected by the Siting Board's decision) are in a better position to determine what is in the public interest, convenience, and necessity than statewide governmental entities with no ties to site locale.

### **STATEMENT OF THE CASE AND FACTS**

The Local Government Entities adopt the statement of the case and procedure-related facts set forth in the Merit Brief of Appellees/Cross-Appellants; however, they do so while maintaining the position that the instant brief focuses on a general legal question that does not depend on the underlying facts of the instant case.

### **ARGUMENT IN SUPPORT OF POSITIONS ADVANCED BY APPELLEES/CROSS APPELLANTS**

**PROPOSITION OF LAW NO. 1:** The Board's consideration of and reliance on local governmental authorities' positions on the Project to determine that the Project was not in the public interest, convenience and necessity did not exceed the Board's statutory authority. "Public interest, convenience, and necessity" includes local governmental authorities' interests.

Appellant claims that "public interest, convenience and necessity" refers to the public "at large." Though it does not describe what it believes "at large" means, it suggests that it does not

include local public interests, like those of boards of county commissioners and township trustees.<sup>1</sup> However, there exists no authority to suggest that “public interest” implicates only statewide interests at the burden of political subdivisions of the state. *State ex rel. Ross v. Guion*, 161 N.E. 2d 800 (8<sup>th</sup> Dist. 1959), cited by Appellant, is inapplicable to the instant matter because it involved the interests of just the one property owner, not to entire populations of a township and county.

Appellant also claims that the Ohio Legislature would not have needed to pass Senate Bill 52 if the Revised Code had already allowed the Siting Board to consider local governmental authorities’ positions when granting or denying certificates, and this is allegedly evidence that RC 4906.10(A) does not permit the Siting Board to do so. However, such claim ignores the testimony that propelled the Ohio Legislature to enact Senate Bill 52.

The sponsors and proponents of Senate Bill 52 recognized that local governmental authorities could *in theory* participate in Siting Board decisions under RC Chapter 4906, but that it was often difficult for them to do so in practice. When sponsoring the bill, Senators Bill Reineke and Rob McColley both testified that the siting process is long, uncertain, and costly. They also sought more transparency for their constituents.

Many of the proponents of the bill testified that the only way they have been able to address the issues relating to the siting of large solar and wind farms was to spend thousands of dollars on legal counsel and experts. Many local governmental entities, which are located in rural areas, did not have prosecutors who were familiar with Siting Board procedures or energy law at their

---

<sup>1</sup> On page 25 of its merit brief, Appellant claims that Black’s Law Dictionary states that “Public Interest” “does not mean...anything so narrow...as the interests of the particular localities, which may be affected by the matters in question.” However, the 11<sup>th</sup> and most recent edition of Black’s Law Dictionary does not include this statement in the definition of “public interest,” and simply 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.” It does not mention “particular localities.”



disposal and lacked funding to hire attorneys who do. Senate Bill 52 provided more control to local governmental authorities than the previous statutory scheme did, but that is not because RC Chapter 4906 did not allow local governmental authorities to control the process at all – it was just impractical for them to do so in most circumstances.

Anyway, RC 4903.221 and OAC 4906-2-12, both in existence prior to the enactment of Senate Bill 52, allow local governmental authorities to intervene in Siting Board proceedings, so of course RC 4906.10 permits the Siting Board to consider their opinions. How a Siting Board decision affects an intervenor, which may or may not be a local governmental authority, is relevant to the “public interest” inquiry.

Moreover, when the PUCO is tasked with approval of a stipulation and recommendation in a matter regarding an application for increase in electric distribution rates, it must consider whether the stipulation benefits the “public interest.” *Indus. Energy Consumers of Ohio Power Co. v. PUC of Ohio*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423, 150 P.U.R. 4<sup>th</sup> 406 (1994). In doing so, it does not only consider the benefits and detriments to Ohio as a whole, but will find relevant to the inquiry regarding whether an aspect of a settlement is in the “public interest” if the aspect benefits the applicant’s own customers. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a SSO*, 14-1297-EL-SSO, Entry (March 31, 2016) (PUCO found that “the Stipulations benefit the public interest by providing for shareholder funding for low-income customer assistance programs in order to aid those customers struggling to make ends meet.”); *In the Matter of Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, 21-887-

EL-AIR, Entry (Dec. 14, 2022) (PUCO found that a stipulation requiring Duke Energy to provide bill assistance to customers in the City of Cincinnati clearly benefits the public interest.)<sup>2</sup>

It was wholly reasonable and fell within the zone of permissible statutory construction for the Siting Board to consider local governmental interests when denying Appellant's certificate.

PROPOSITION OF LAW NO. 2: The opinions of local governmental authorities should carry weight in Siting Board decisions.

The State of Ohio has long recognized the importance of both local governance and private property rights. In 1912 the Eighteenth Amendment to the Ohio Constitution was adopted, granting "home rule" powers to Ohio municipalities. *Perrysburg v. Ridgeway*, 108 Ohio St. 245, 255 (1923); Oh. Const. Art. XVIII, § 3. The amendment delegated to municipalities full and complete political power in all matters of "local self-government," because "Control must be placed somewhere, and, if there is any virtue whatsoever in democracy, why should not that control be placed in the community which opens the streets, pays for their establishment, their maintenance, and best understands their needs for durability and safety?" *Perrysburg*, 108 Ohio St. 245, 255 – 256.

Similarly, Oh. Const. Art. X, § 3 allows a county, upon adoption of a charter, to exercise home rule powers vested by the constitution in municipalities. This is further evidence that Ohio recognizes that decision-making is best placed upon those who best understand the needs of those who will ultimately bear the cost of those decisions.

Ohio encompasses over 44,000 square miles and contains both urban, densely populated industrial areas and rural, sparsely populated bucolic areas, and a multitude of locales on the

---

<sup>2</sup> While the PUCO analyzes benefits to both ratepayers and the public interest when approving a settlement, these decisions cited contain examples of situations in which the PUCO found that specifically the *public interest* was served by benefitting the utility's own customers.

spectrum in between. Residents of Ohio hail from a diverse set of cultures and socioeconomic backgrounds. A policy that satisfies the interests of a twenty-five-year-old residing in Columbus may not satisfy the interests of a fifty-five-year-old residing in Columbiana County.

Members of local governmental authorities are more intimately familiar with what serves the public interest, convenience, and necessity of their constituents than members of the Siting Board, who likely have no ties to the local community. It is possible that negative public opinion or perception in and of themselves are detrimental to the local community, and the members of local governmental authorities are in the best position to gauge opinion and perception and their effects on the community.

Moreover, the siting of a large solar electricity generating project will have a greater impact on those in close proximity to the project than Ohioans living in the opposite corner of the state who may only indirectly, or not at all, reap any benefit or detriment from the existence of the project. It is important that the needs of those in close proximity be represented before the Siting Board, and members of local governmental entities will better understand how to represent those needs than a member of the Siting Board or witnesses presented by an applicant. While members of local communities now serve as ad hoc members of the Siting Board in each matter, those members will be only a small percentage of the Siting Board as a whole, and can easily be outvoted by other Siting Board members if those members are not permitted to consider the opinions of local governmental authorities.

Additionally, this Court has long held that “The right of private property being, therefore, an original right...[is] one of the primary and most sacred objects of government to secure and protect.” *Bank of Toledo v. Toledo*, 1 Ohio St. 622, 632 (1853); *City of Norwood v. Horney*, 110

Ohio St.3d 353, 362, 853 N.E.2d 1115 (2006).<sup>3</sup> Property rights will always be implicated in matters pending before the Siting Board – when it comes to the siting of an electric generation facility, *some* governmental entity will decide whether a landowner may use his, her, or its land for electric generation. The salient question then becomes *which* governmental entity should be given that power.

The Siting Board can ensure that property rights are secured and protected, as it is charged to do by this Court in *Bank of Toledo* and *Horney*, by assigning significant weight to the opinions of local governmental entities. To do so would be reasonable and fall within the zone of permissible statutory construction. The Siting Board would make decisions based on the input of those for whom participating and non-participating landowners have had a more direct impact on election or appointment. Such practice would preserve property rights more than the practice of allowing siting decisions to be made only by members of the Siting Board, who are appointed by a governor elected by the state at large and far removed from a local landowner.

### **CONCLUSION**

For the reasons stated above, the Local Government Entities respectfully urge this Court to reject Appellant’s Propositions of Law 2, 3, and 4, and hold that consideration of, and the assignment of weight to, the opinion of local governmental authority is within the zone of permissible statutory construction when deciding whether a proposed project meets the requirements of RC 4906.10.

/s/Amily A. Imbrogno

---

<sup>3</sup> In *In re Champaign Wind, LLC.*, 146 Ohio St.3d 489, 509, 2016-Ohio-1513, 58 N.E.3d 1142 (2016), the Honorable Justice Kennedy quoted *Bank of Toledo, supra*, in her dissenting opinion, and stated "The statutory scheme in RC Ch. 4906 was enacted to balance the rights of property owners against the rights of nonparticipating property owners."

Amily A. Imbrogno (0092434)  
MEYERS, ROMAN, FRIEDBERG & LEWIS  
28601 Chagrin Boulevard, Suite 600  
Cleveland, OH 44122  
(216) 831-0042  
(216) 831-0542 - Fax  
[aimbrogno@meyersroman.com](mailto:aimbrogno@meyersroman.com)

*Counsel for Amici Curiae Columbiana  
County Board of Commissioners,  
Columbiana County Soil and Water  
Conservation District Board of Supervisors,  
and Franklin Township Board of Trustees*

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2024, a copy of the foregoing Amicus Brief was served upon the following counsel of record by electronic mail:

Michael J. Settineri [mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
Anna Sanyal [aasanyal@vorys.com](mailto:aasanyal@vorys.com)  
Emily J. Taft [ejtaft@vorys.com](mailto:ejtaft@vorys.com)  
*Counsel for Appellant, Kingwood Solar I LLC*

N. Trevor Alexander [talexander@beneschlaw.com](mailto:talexander@beneschlaw.com)  
Kari D. Hehmeyer [khehmeyer@beneschlaw.com](mailto:khehmeyer@beneschlaw.com)  
*Counsel for Amicus Curiae, The Ohio Chamber of Commerce*

Stephen W. Funk [sfunk@ralaw.com](mailto:sfunk@ralaw.com)  
Emily Anglewicz [eanglewicz@ralaw.com](mailto:eanglewicz@ralaw.com)  
*Outside Counsel for Appellee, Ohio Power Siting Board*

Daniel A. Brown [dbrown@browndayton.com](mailto:dbrown@browndayton.com)  
*Counsel for Appellees/Cross-Appellants, Board of Trustees of Cedarville Township*

David Watkins [dw@planklaw.com](mailto:dw@planklaw.com)  
Kevin Dunn [kdd@planklaw.com](mailto:kdd@planklaw.com)  
*Counsel for Appellees/Cross-Appellants, Board of Trustees of Xenia Township*

Lee A. Slone [ls lone@mdllp.net](mailto:ls lone@mdllp.net)  
*Counsel for Appellees/Cross-Appellants, Board of Trustees of Miami Township*

Thaddeus M. Boggs [tboggs@fbtlaw.com](mailto:tboggs@fbtlaw.com)  
Jesse Shamp [jshamp@fbtlaw.com](mailto:jshamp@fbtlaw.com)  
*Counsel for Appellees/Cross-Appellants, Greene County Board of Commissioners*

Jack A. Van Kley [jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)  
*Counsel for Appellees/Cross-Appellants, Citizens for Greene Acres, et al., Jenifer Adams, P. Chance Baldwin, Jacob Church, Verity Digel, Jed Hanna, Krajicek Family Trust, James Joseph Krajicek, Karen Landon, Nicole Marvin, Chad Mossing, Karen Mossing, Nicholas Pitstick, Kyle Shelton, Marlin Vangness, Jean Weyandt, Gerald Weyandt, and Jerald Weyandt*

Philip Daniel Williamson [pwilliamson@taftlaw.com](mailto:pwilliamson@taftlaw.com)  
*Counsel for Ohio Senate*

Robert Dove [rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
*Counsel for International Brotherhood of Electrical Workers Local Union 82*

Dylan F. Borchers [dborchers@brickergraydon.com](mailto:dborchers@brickergraydon.com)  
Lila M. Appaya [lappaya@brickergraydon.com](mailto:lappaya@brickergraydon.com)  
*Counsel for Ohio Independent Power Producers*

/s/ Amily A. Imbrogno  
Amily A. Imbrogno (0092434)

*Counsel for Columbiana County Board of Commissioners, Columbiana County Soil and Water Conservation District Board of Supervisors, and Franklin Township Board of Trustees*