

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Frasier	)	
Solar Project, LLC for a Certificate of	)	
Environmental Compatibility and Public	)	Case No. 23-796-EL-BGN
Need to Construct a Solar-Powered Electric	)	
Generation Facility in Knox County, Ohio	)	

**REPLY BRIEF OF ETHAN ROBERTSON IN FURTHER SUPPORT OF THE JOINT
STIPULATION AND RECOMMENDATION**

Dated: October 7, 2024

Matthew Eisenson (PHV-26622-2023)
SABIN CENTER FOR CLIMATE CHANGE
LAW, COLUMBIA LAW SCHOOL
435 W. 116th Street, Room 528
New York, New York 10027
Telephone: (212) 853-4938
matthew.eisenson@law.columbia.edu

Jacob Elkin (PHV-27441-2024)
SABIN CENTER FOR CLIMATE CHANGE
LAW, COLUMBIA LAW SCHOOL
435 W. 116th Street, Room 528
New York, NY 10027
Telephone: (212) 853-3718
jacob.elkin@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 Ethan Robertson

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PRELIMINARY STATEMENT

The Frasier Solar Project (the “Project”) is a well-designed project. It is compatible with the agricultural character of the region. It is better for the environment than existing land uses. And it will serve the electricity needs and economic needs of Knox County.

The opponents of this Project have failed to identify any legitimate basis for denial. It is readily apparent from their filings and testimony that their objections are based primarily on aesthetic concerns. In short, they like the way that the Project site looks in its present condition, and they believe that people like Ethan Robertson, who own the land, should not be allowed to make any changes to the way it looks. Moreover, as revealed at the adjudicatory hearing, the opposition is being bankrolled by individuals who see solar development as a threat to their own business interests in competing industries. Hearing Tr. Vol. I at 37-45 (Jared Yost).

To bolster their superficial arguments against the Project, the opponents trot out various unsubstantiated concerns about the loss of farmland and environmental impacts. As discussed in this Brief, these purported concerns are widely contradicted by the evidence in the record and should be given no weight. In addition, the opponents attempt to establish absurd new goal posts for approval and ask the Board to find unanimous opposition by local governments even when some of those local governments explicitly do not oppose the Project.

Because there is no legitimate basis for denial, and because the Application meets all of the criteria for approval, it should be approved without delay.

ARGUMENT

This Brief will focus on four points to address issues raised by the opponents. First, the Project is compatible with the agricultural character of the region. It does not pose a threat to farming or the food supply. Second, the Project is better for the environment than existing uses.

It does not pose an increased risk of stormwater runoff or harm to migratory birds. Third, the Project will contribute substantially to meeting Knox County's electricity needs, as it will generate enough electricity to power 90% of Knox County's homes. Fourth, local opposition to the project is far from unanimous. Contrary to KSD's illogical reasoning, opposition is not unanimous when some local governments are opposed and others are neutral: unanimous opposition requires explicit opposition from all local governments.

A. The Project Is Compatible with the Agricultural Character of the Region

Over the course of this proceeding, many of the Project's opponents have expressed opposition to the idea of using farmland for solar production. Importantly, as discussed in Mr. Robertson's initial brief, the Project has been designed to be compatible with agricultural uses of the land, both in the present and future. *See* Ethan Robertson Initial Br. at 8-9. The Project will incorporate ongoing agricultural activities, including by working with local farmers to bring 3,000 sheep to graze onsite; those 3,000 sheep will produce 4,800 lambs per year. *Id.* at 8; Staff Report at 18. Moreover, the Stipulation includes many conditions to protect the viability of the land for future agricultural activities, including by requiring best management practices for retaining topsoil and limiting grading (Condition #23); requiring beneficial plantings, including pollinator habitat (Condition #25); requiring that drain tile be maintained and repaired (Condition #22); and requiring that the land be returned to its original condition at the end of the life of the Project (Conditions #23 and #24).

The record makes clear that many of the individuals speaking out against the use of farmland for this Project are unaware of key details about the Project's protections for agricultural land—and uninterested in learning those details. For example, on the first night of the public hearing, one local resident named Brian Wallace rose to testify against the Project. He

urged the Siting Board to consider, as a case study, a large project on farmland in Michigan that purportedly “devastated the land.” Public Hearing Tr. Vol. I at 289 (Brian Wallace).

Importantly, however, when asked during cross-examination whether he was aware of any measures outlined in the Staff Report of Investigation (Staff Report) that would protect the farmland and topsoil at the site of this particular Project, he repeatedly stated that he did not care:

Question: So you’re not aware that the applicant has committed to restoring all the damaged drainage tiles?

Answer: **I really don’t care what they’ve decided. There’s no – there’s no proven data. I don’t care about a government report. . . .**

* * *

Question: Yeah. And are you aware of any measures that the developer here has proposed to protect soil?

Answer: **Don’t care.**

Question: Yeah. So you’re not aware that the developer is planning to separate the topsoil from the subsoil during construction –

Answer: **No, this is an agriculture county. And solar farming is not farming. Solar farming is not farming.**

Question: And you’re not aware of any recommendation to limit the amount of grading to –

Answer: **I don’t care. . . .**

Public Hearing Vol. 1 Tr. at 291-92 (Brian Wallace).

This exchange is demonstrative of the superficial nature of the opponents’ concerns about the use of farmland for solar development. Indeed, the mantra that “solar farming is not farming” is no different in substance from Preserve Knox County Ohio’s (PKCO) argument that “squandering of prime farmland is not excused by a promise to let some sheep eat the grass

between the solar panels.” PKCO Initial Br. at 29. However, PKCO’s insinuation that the sheep grazing component of this project (*i.e.*, “let[ting] some sheep eat the grass”) does not constitute a serious agricultural enterprise falls flat when one looks at the details of the agrivoltaics plan. *See id.* Indeed, this Project will involve managing a sizable herd of 3,000 sheep, which will be consuming enough nutrients to produce 4,800 lambs per year. *See Staff Report* at 18.

Finally, it is readily apparent that the opposition’s concerns about the loss of farmland are motivated more by hostility to the look of solar panels on farmland than by any concerns about how solar development might affect agricultural output. This was made particularly clear at the public hearing when Barry Lester testified that he is “[a]bsolutely” OK with the land being used solely for grazing—but opposed to the land being used for both solar and grazing:

Question: You’re against sheep grazing?

Answer: **No. No. I am against turning a cropland or a grazing field into a solar field with sheep grazing under it. That’s not agriculture. When did solar become agriculture, because you’re farming sunshine? Come on.**

Question: So you’re okay with this facility or this land to be used for sheep grazing but only sheep grazing?

Answer: **Absolutely.**

Public Hearing Tr. Vol. I at 49 (Barry Lester). Why would anyone support grazing alone but not grazing-plus-solar unless that person was hostile to solar? Likewise, PKCO’s concerns about the use of agricultural land for this Project appear to be grounded largely in concerns about how the Project will change the aesthetics of the rural landscape. *See* PKCO Initial Brief at 27 (noting that “Agriculture ‘contributes significantly to the county’s rural aesthetic” and arguing that “[t]he Project’s intrusion on the scenic rural landscape is decidedly inimical to Knox County’s goal to preserve the aesthetic qualities of the landscape”). Ultimately, however, any aesthetic concerns

about the look of solar panels on farmland do not outweigh the many public benefits of the Project—and do not justify impinging on the property rights of landowners such as Ethan Robertson.

B. The Project Is Better for the Environment than Existing Land Uses

The opponents also raise many unsubstantiated concerns about various environmental impacts. For example, PKCO raises vague concerns about stormwater runoff, dust, and migratory birds, citing, as evidence, its own members' unsubstantiated testimony about speculative impacts. See PKCO Initial Br. at 35-38 (cataloguing the ways in which “the public believes” that the Project will cause problems related to stormwater).

However, these vague and speculative concerns are contradicted by the evidence in the record, which establishes that the Project will be beneficial for the local environment. Indeed, as described in Ethan Robertson's initial brief, the Staff Report found that the Project will improve local environmental conditions by reducing the use of chemicals, such as pesticides and fertilizer, and also by reducing erosion. Staff Report at 33. While there will likely be some erosion and some dust during construction, the developer has committed to adhering to best practices for dust suppression, and there will likely be far less erosion and far less dust in the long-term, due to the reduction of annual tilling. *Id.* at 33, 40; Evidentiary Hearing Tr. Vol. III at 669 (noting that current agricultural activities cause dust for a few days every year). Reducing erosion and the usage of pesticide, fertilizer, and herbicides will also be highly beneficial for soil and water quality. *See* Direct Testimony of Ralph Downard, Company Exhibit 20, Tr. at 2; Direct Testimony of Barry Fagan, Company Exhibit 23, Tr. at 15.

The Project will further benefit the local environment by incorporating extensive pollinator habitat to support beneficial insects, as well as extensive plantings of native species to

support other wildlife around the perimeter. While PKCO raises speculative concerns about whether construction noise from the Project will disturb threatened migratory bird species, such as Sandhill Cranes, on PKCO members' properties, the record provides no evidence to corroborate this concern. *See* PKCO Initial Br. at 42-46 (raising concerns about disturbance to sandhill cranes). For example, PKCO member Stephen Schmitt testified that he is concerned about impacts to the Sandhill Cranes that frequent a wetland on his property. *See* Direct Testimony of Stephen Schmitt, PKCO Exhibit 19, Tr. at 3:6-10. However, that wetland is 3,700 feet away from the fenceline of the Project site, and PKCO submitted no evidence that cranes are affected by activities occurring at such a great distance. Evidentiary Hearing Tr. Vol. III at 675. Moreover, the cranes on Mr. Schmitt's property do not appear to be sensitive to the noise from the train tracks adjacent to the property or the two large dogs on the property. *Id.* at 639-40, 667, 673, 676. In light of the substantial record evidence of the Project's environmental benefits, the Board should not give weight to such unsubstantiated testimony of speculative environmental harms.

C. The Project Serves Knox County's Electricity Needs

The opponents attempt to minimize the benefits of the Project by setting absurd goal posts for whether the Project's electricity generation can be considered a public benefit. For example, KSD devotes two pages of its initial brief to arguing that this 120-MW Project is too small to make a dent on statewide electricity demand. *See* KSD Initial Br. at 13-14. However, even if KSD's calculations of percentages were not plagued by mathematical errors, which caused KSD to understate multiple percentages by a factor of 100,¹ the premise of KSD's

¹ In at least three places, KSD appears to have forgotten to move the decimal point two spaces to the right when converting figures from decimals to percentages. This resulted in KSD

argument that the Project needs to satisfy a large share of statewide demand would still be flawed.

The record shows that this Project will make a meaningful contribution to electricity generation in proportion to local demand. Specifically, the Project will generate enough electricity to power 90% of Knox County homes. As KSD acknowledges, the Project will generate 250,000 MWh per year, which is sufficient to power 21,000 typical homes in Ohio. KSD Initial Br. at 13. In all of Knox County there are only 23,117 total households.² Assuming that the energy use of the typical Knox County household is roughly in line with the average Ohio home, the Project will generate enough electricity to meet the needs of 90% of homes in Knox County. This is a significant public benefit, and the opponents of the Project have not convincingly argued otherwise.

D. Opposition from Two Local Governments Does Not Constitute Unanimous Local Opposition

Perhaps because the factual record provides no grounds for denial, KSD attempts a Hail Mary on the law. Specifically, KSD asks the Board to find that there is “unanimous opposition” by local governments, despite the fact that two of the local governments at issue are not, in fact, opposed to the Project. KSD Initial Br. at 7-8. Making such a finding, however, would require the Board to pretend, when assessing whether opposition is unanimous, that any local governments that have adopted a position of neutrality simply do not exist. Finding unanimous

understating percentage figures by a factor of 100. KSD also appears to have confused total housing units in Ohio (5.2 million) with total households (4.9 million). *See* United States Census Bureau, Ohio, <https://data.census.gov/profile/Ohio?g=040XX00US39> (last visited Oct. 4, 2024).

² United States Census Bureau, Knox County, Ohio, https://data.census.gov/profile/Knox_County,_Ohio?g=050XX00US39083 (last visited Oct. 4, 2024).

opposition under these circumstances would be illogical, and it would fundamentally change the meaning of the word “unanimous.”

Briefly, KSD explains that two local governments, Miller Township and the City of Mount Vernon, have issued resolutions opposing the Project, while two others, Clinton Township and Knox County, have chosen to remain neutral. *Id.* at 7-8. According to KSD, this constitutes unanimous opposition—or, in KSD’s own words: “Knox County Commissioners [sic] and Clinton Township’s abstention solidifies the unanimous opposition to the Frasier Project as all the remaining local governmental entities who took a definitive position oppose the Frasier Project.” *Id.* at 8.

This is not correct, and it does not comport with any logical or established meaning of the term “unanimous.” A unanimous jury verdict in a criminal trial requires an affirmative determination by all members of the jury that the defendant is guilty. To give another example, imagine that 12 parents in a school district are asked to provide input about whether the school district should purchase new iPads for the classroom; two parents express opposition, while the other 10 parents take no position. Would anyone conclude from those facts that the parents of the district are unanimously opposed to purchasing iPads? Of course not. Those who are neutral do not cease to exist simply by expressing neutrality. *See also* Opinion & Order, *In re Oak Run Solar*, Case No. 22-549-EL-BGN, Mar. 21, 2024, ¶ 212 (differentiating between neutrality and opposition when noting that one county commissioner “consistently voted no on the memorandum and resolution in opposition to the Project”). The Board should not adopt KSD’s illogical conception of unanimity.

CONCLUSION

The Frasier Solar Project is compatible with the agricultural character of Knox County, it

is good the local environment, it is good for the local economy, and it will help the county meet its electricity needs. Because it will serve the public interest, convenience, and necessity, and because it meets all of the other statutory criteria, it should be approved.

Dated: October 7, 2024

Respectfully submitted,

/s/ Matthew Eisenson

Matthew Eisenson (PHV-26622-2023)
SABIN CENTER FOR CLIMATE CHANGE
LAW, COLUMBIA LAW SCHOOL
435 W. 116th Street, Room 528
New York, New York 10027
Telephone: (212) 853-4938
matthew.eisenson@law.columbia.edu

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435 W. 116th Street, Room 528
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Telephone: (212) 853-3718
jacob.elkin@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 Ethan Robertson

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 7, 2024

/s/ Matthew Eisenson

Matthew Eisenson

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