

**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)

**REPLY BRIEF OF DR. JOHN BOECKL IN FURTHER SUPPORT OF THE JOINT
STIPULATION AND RECOMMENDATION**

Dated: July 31, 2023

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PRELIMINARY STATEMENT

This post-hearing reply brief is filed on behalf of intervenor Dr. John Boeckl, a resident of Monroe Township, in further support of the Joint Stipulation and Recommendation (“Stipulation”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the Oak Run Solar Project (“the Project”). As described in Dr. Boeckl’s Initial Brief, the evidence on record shows that the Project offers immense economic and environmental benefits to Madison County and the State of Ohio, with comparatively minimal adverse impacts. Further, the Applicant’s commitment to include at least 2,000 acres of agricultural production at the site, and to contract with local farmers to continue farming that land, helps to ensure that the Project will be in harmony with the local farming-based economy. As Madison County Commissioner Mark Forrest testified, this agrivoltaic Project will provide an opportunity to train and galvanize a new generation of farmers in a new way of farming. The initial briefs of other parties—including the Applicant, Staff of the Ohio Power Siting Board (“Staff”), Ohio Partners for Affordable Energy (OPAE), the Ohio Environmental Council (OEC), and the International Brotherhood of Electrical Workers Local 683 (IBEW)—describe many other bases for support.

While the Boards of Trustees of Deercreek, Monroe, and Somerford Townships (the “Townships”) have asserted various objections to the Project, they have failed to identify any legitimate, evidence-based argument to deny the Certificate. There are at least three major problems with the Townships’ arguments against the Project. First, many of the Townships’ purported concerns—especially those related to water usage, water quality, and impacts on agricultural land—are not substantiated by evidence. Second, the Townships’ analysis of economic impacts is misleading: it omits major construction benefits and tax benefits and unreasonably assumes that there will be zero agricultural production at the site. Third, in assessing the Project’s environmental impact, the Townships fail to recognize the Project’s

climate-related benefits and other significant environmental benefits. Ultimately, however, argumentation is secondary to evidence—and, here, the manifest weight of the evidence makes clear that the Application, subject to the conditions of the Stipulation, satisfies all of the Ohio Power Siting Board’s (“Board”) criteria for approval.

ARGUMENT

I. The Townships’ Concerns Are Unsubstantiated and Mutually Contradictory

The Townships profess to have many concerns about the Project. They articulate these concerns in their initial brief, their testimony, and their resolutions against the Project. But expressing a concern is not the same as substantiating a concern. Here, many of the Townships’ purported concerns are unsubstantiated, and at least two of their purported concerns are mutually inconsistent.

A. The Townships’ Concerns Are Not Supported by Evidence

Many of the Townships’ purported concerns are unsubstantiated. For example, the Townships specifically identified impacts to “groundwater levels,” “water quality,” and “agricultural land” as three of their “primary concerns.” Townships’ Initial Br. at 11. None of these concerns are supported by evidence.

1. Groundwater levels

In their brief, the Townships express the concern that “if the Project uses groundwater to clean its solar panels, this usage may lower the levels of groundwater used in the wells of neighboring residents.” *Id.* at 12. The only evidence offered in support of this concern is the testimony of the Township Trustees. *Id.* However, the Township Trustees’ testimony offers no elaboration: rather, each of the three Trustees simply states the same concern verbatim in their pre-filed testimony. *see* Frey Tr. at 4:3-5 (stating that “if the Project uses groundwater to clean its

solar panels, this usage may lower the levels of the groundwater used in the wells of neighboring residents”); Sparks Tr. at 4:9-11 (verbatim); Turvy Tr. at 4:21-23 (verbatim).

There is no basis for this concern. It is a generic hypothetical that has nothing to do with the Project’s actual design. As the record shows, the Townships adopted resolutions against the Project two months before the Application was submitted, and then—more importantly—never bothered to read the Application to see if it addressed any of their concerns.¹

Indeed, those who did read the Application found no reason for concern about groundwater levels or water usage generally. In the March 27 Staff Report of Investigation (“Staff Report”), Staff specifically considered whether the Project would use groundwater to clean panels and found no cause for concern:

The Applicant stated that [the] area’s precipitation should sufficiently clean the panels and no panel washing is anticipated. However, if it were necessary to clean certain solar modules, the Applicant anticipates that only targeted arrays would receive cleaning and not a significant onsite water use at any one time. The Applicant anticipates that water would be obtained from one of the existing onsite wells or from an offsite source where no more than one liter per module would be used.

Staff Report at 50. With respect to overall water usage, Staff found that the Project “would not require the use of significant amounts of water,” either at the construction phase or operations phase. *Id.*

¹ Two of the three Trustees never read the Application. *See* Tr. Vol. III. at 371:14-16 (Q: “Did you review the Application after it was submitted?” Sparks: “No.”); 386:12-14 (Q: “Have you reviewed the Application in this case, the full application?” Frey: “No.”). The other testified that, although he reviewed certain maps that were included with the Application, he never reviewed the Application to see if it addressed any of his concerns. *Id.* at 346:16-24; 348:16-19 (Q: “[Y]ou didn’t then review the Application that was submitted two months after [the resolution] to see if it had addressed those concerns?” Turvy: “No.”).

2. *Water quality*

The Townships' purported concerns about impacts to water quality are equally unsubstantiated. The Townships' brief describes how grading during construction *may* result in erosion, which *may* result in stormwater runoff, which *may* bring soil-laden stormwater into bodies of water. *See* Townships' Initial Br. at 33. However, the Townships offer no evidence to support their concerns that grading from *this* Project will impair water quality.

The Townships' evidence is extremely thin. First, the Townships rely on their Trustees' experience of having purportedly "witnessed" three other solar projects. *Id.* at 11. However, the Trustees' testimony provides almost no detail about what they witnessed, beyond the fact that one Trustee saw "construction activities" at one project site, *see* Sparks Tr. at 2:11-12, while a second Trustee saw earthmoving equipment that graded some land at the same project site, *see* Turvy Tr. at 5:18-19. *See also* Tr. Vol. III at 364:7-13 (vaguely referencing a discussion at a Townships Association meeting about impacts at other projects). More importantly, the Townships do not explain how the activities the Trustees witnessed at the other project site affected water quality at that other site, much less how similar activities would affect water quality at the site of this Project. Second, the Townships also rely on their own resolutions opposing the Project. *See* Townships' Initial Br. at 11. However, those resolutions simply express unsubstantiated concerns. For example, the Monroe Township resolution states, without evidence, that "[d]rainage will be damaged, which will have a far-reaching effect on residential septic systems, wells, and potential pollution of long-established drainage ditches and waterways." *See* Turvy Tr., Attachment A, Monroe Township Resolution.

The evidence on record shows that these concerns lack foundation and that the Project does not pose a threat to water quality. On the specific question of drainage, Madison County Commissioner Mark Forrest testified that drainage has not, in fact, been a problem at the other

solar projects in the county. *See* Tr. Vol. I at 25:3-10 (explaining that he asked the county engineer if there were any issues with drainage, and the engineer responded that “there is nothing we can’t control and take care of with the policies we have in place”). On the issue of water quality in general, Staff found no cause for concern. Upon reviewing the Applicant’s actual plans for protecting groundwater and surface water, *see* Staff Report at 26-29, Staff concluded that “[i]t appears unlikely that the proposed solar facility, BESS [battery energy storage system], and transmission lines construction or operation would adversely impact public or private drinking water supplies,” *id.* at 35. Staff further noted that “[t]he Applicant designed the project such that there would be no disturbance of or impacts to the wetlands and streams within the project area during both the construction and operation of the project.” *Id.* at 13. Nonetheless, to minimize impacts, Staff recommended various conditions, which the Applicant agreed to in the Stipulation. For example, Staff recommended, and the Stipulation now requires: (i) that a “Staff-approved environmental specialist” who is “familiar with water quality protection issues” be on site during any construction activities that may affect sensitive areas, such as wetlands and streams; and (ii) that the environmental specialist “shall have authority to stop construction” if necessary. *See id.* Condition 30; Joint Stipulation Condition 30; *see also* Moser Suppl. Testimony, Attachment SM-1, Agricultural Economic Impacts in Oak Run Solar Project (“Agricultural Economic Impacts”) at 27 (noting that the Project will include extensive cover cropping, which will reduce runoff and avoid water quality impacts).

Finally, and perhaps most importantly, the Project poses a lower risk of water quality impacts than the likely alternatives. Having reviewed the evidence submitted at the evidentiary hearing, Staff argued in its brief that:

The proposed facility has minimal environmental impacts [and] will produce electricity without polluting the air and without using, much

less polluting, the water. This stands in stark contrast to the environmental issues posed by nuclear, coal, or even natural gas fueled electric generating units. When operational, this facility promises a negligible environmental impact and, certainly, minimum adverse environmental impact in comparison to other electricity generating methods.

Staff's Initial Br. at 8; *see also* Boeckl Tr. at 4:1-19 (discussing the relatively minimal water-related impacts of solar energy compared to fossil fuels or the large-scale dairy farm that was previously proposed at the Project site).

3. *Agricultural land*

The Townships' concerns about the Project's impacts on the future productivity of agricultural land are equally unsubstantiated. The Townships claim, without evidence, that "[f]armland used for solar energy production will never again be as productive as it is now." Townships' Initial Br. at 18. By way of evidence, they cite, once again, a township resolution against the project. *Id.* (citing Deercreek Township Resolution at Turvey Tr., Ex. A ("Deercreek Township Resolution")). The resolution states, in conclusory fashion, that "[a]creage converted for this type of energy production, even if reclaimed to the standard that is in the current requirements, cannot be 'returned to its preconstruction state' and will never be as productive as it is now." Deercreek Township Resolution.

The evidence on record shows that these concerns are misplaced and that any impacts on soil productivity will affect a small percentage of the Project area. As the Townships acknowledge in their brief, the Applicant intends to grade approximately 500 acres or 8.2% of the Project area, and the Stipulation prohibits grading more than 20% of agricultural land in the Project area. Townships' Initial Br. at 33. The Applicant's target is realistic. At the Madison Fields Solar Project, the same developer was able to limit grading to less than 10% of the Project area. Tr. Vol. I at 122:14-124 (testimony of Jared Luebe).

Moreover, Commissioner Forrest testified that, having visited other project sites and observed the extent to which topsoil is being moved, he has “no concerns” about loss of productivity, except in the places where substations and roadways are being built. Tr. Vol. I at 25:21-25 to 26:1-6. Here, substations and roads will account for only 2.5-3% of the Project area. Tr. Vol. I at 101:6-13 (testimony of Michael Ivy).

B. The Townships’ Concerns about Deer Impacts Are Mutually Contradictory

In at least one instance, the Townships’ purported concerns are mutually contradictory. Specifically, the Townships appear to be concerned that the Project will simultaneously bring too many—and also too few—deer into local residents’ yards. They claim, on the one hand, to be “concerned that the Project’s fences will keep deer out of this large Project Area and increase the number of deer eating in the neighbors’ crops, gardens, and yards.” Townships’ Initial Br. at 13. They claim, on the other hand, to be concerned that the Project will deprive local residents of the “excitement of seeing deer coming into the yard.” *Id.* at 25. The Townships appear to be willing to make any argument to stop the Project, even if those arguments contradict one another.

II. The Townships Ignore Major Economic Benefits and Unreasonably Exclude Agrivoltaics from Their Economic Analysis

The Project offers immense economic benefits to Madison County and the State of Ohio. *See* Boeckl’s Initial Br. at 9-13. The Townships attempt to obscure those benefits by omitting certain types of benefits and by unreasonably assuming, for purposes of economic projections, that no agricultural production will occur at the Project site, contrary to the Applicant’s express commitment. *See* Townships’ Br. at 18-19. The Townships also fail to consider the wider-reaching economic impact of the Project, including that it will help to (1) establish Ohio as a leader in the industry and (2) train the workforce necessary to attract other economically significant projects in the future.

Briefly, the Application includes projections for at least seven types of economic benefits: (1) construction-related jobs; (2) construction-related earnings; (3) construction-related economic output; (4) operations-related jobs; (5) operations-related earnings; (6) operations-related economic output; and (7) tax revenues. Application, Ex. I, Economic Impact and Land Use Analysis, at 25-30. The Applicant supplemented this analysis in May 2023 with a study about the benefits of incorporating agricultural activities at the Project site (*i.e.*, agrivoltaics). *See* Moser Suppl. Testimony, Attachment SM-1, Agricultural Economic Impacts in Oak Run Solar Project (“Agricultural Economic Impacts”). These two submissions, the Application and the follow-up study on Agricultural Economic Impacts, make clear that the economic benefits of the Project, especially when agrivoltaics are taken into account, are extremely compelling.

The Townships unreasonably ignore all of the Project’s construction-related benefits (#1, #2, and #3 above) and tax benefits (#7 above), as well as other benefits that overwhelmingly favor approval of the Project. The Townships also unreasonably assume in their economic analysis that the Project will include zero agricultural production. *See* Townships’ Initial Br. at 18-19.

A. The Townships Ignore Major Economic Benefits of the Project

The Townships’ brief dismisses construction-related benefits as “temporary” and does not address tax benefits at all; in fact, the brief does not even contain the word “tax.” *See* Townships’ Initial Br. at 18. These and other benefits that the Townships ignore, however, are significant.

The scale of the construction-related benefits is immense, even if the duration of the construction period is limited. During the construction period, which is expected to last 12-18 months, the project will create 3,033 jobs statewide, including 1,487 jobs in Madison County. Application, Ex. I, Economic Impact and Land Use Analysis, at 25. These jobs will generate \$209 million in statewide earnings, including \$83 million in earnings in Madison County. Application,

Ex. I, Economic Impact and Land Use Analysis, at 27. For context, \$83 million of earnings is a very large number for Madison County. According to the Census, the total payroll of employer establishments was less than \$800 million countywide in 2021.² These construction-related earnings will stimulate \$421 million of economic output statewide, including \$151 million in Madison County. Application, Ex. I, Economic Impact and Land Use Analysis, at 28.

The Project’s anticipated tax revenues are also extremely compelling—and much needed. As Madison County Commissioner Mark Forrest testified, the incremental tax revenue from this Project is needed for bridges and roads, *see* Tr. Vol. I at 16:19-25; likewise, the emergency medical services (EMS) in Somerford Township were “in financial crisis and borrowing money” earlier this year, *see* Tr. Vol. III at 378:4-17. The Project would be a boon to local budgets, providing between \$7.2 million and \$8.24 million per year in new tax revenues to the Madison County Taxing District, or between \$252 million and \$288 million over the 35-year life of the project. *See* Moser Tr. at 10-14.

Moreover, the Project would simultaneously increase tax revenues while saving money by avoiding subsidy payments. As the Agricultural Economic Impacts study found, the Project “will pay an established rate that is higher than Current Agricultural Use Value (CAUV) or regular property taxes.” Agricultural Economic Impacts at 27. In addition, while “agriculture on the current farm is subsidized[,] agricultural activities on the Oak Run Solar Project will not be subsidized, conserving governmental funds.” *Id.* For example:

The H2Ohio Water Fund is a statewide effort to improve water quality and reduce algal blooms through incentivizing farms to use cover crops on their fields. In 2021, the program received its second appropriation of \$168 million, which it uses to fund outreach and

² U.S. Census Bureau, *QuickFacts: Madison County, Ohio*, <https://www.census.gov/quickfacts/fact/table/madisoncountyohio/PST045222> (last visited July 14, 2023).

adoption of cover-cropping. The Oak Run Solar Project will employ cover crops as part of its operating model and will not take money from the H2Ohio Water Fund.

Id. In other words, the Project will employ cover cropping to protect the water supply, an activity that is normally subsidized, but will do so for free.

Finally, the Townships' brief also ignores other important benefits of the Project. In particular, the Townships fail to recognize that the Project offers a critical opportunity to (1) distinguish Ohio as a leader in the renewable energy industry and (2) build the highly skilled workforce that the State will need to attract other economically important projects in the near future. *See* Boeckl Tr. at 5:4-7; Parker Tr. at 5:4-15.

B. The Townships Unreasonably Assume that the Project Will Include Zero Agricultural Production

On pages 18 to 19 of their brief, the Townships further attempt to minimize the Project's benefits by assuming, for purposes of economic projections, that the Project will include zero agricultural activities. Specifically, they present calculations purporting to show that the Project, once operational, will create only slightly more jobs than existing agricultural activities, while generating less economic output. Townships' Br. at 18-19. These calculations assume, without basis, that the Project will include zero agricultural production. *Id.* However, this is not a reasonable assumption: the Applicant has committed on record to include at least 2,000 acres of agrivoltaics in the Project. *See* Moser Tr. at 14:10-13 (confirming that the Applicant "stands by the commitments set out in the MOU presented to the County Commissioners" and "will abide by those commitments as part of its Certificate conditions").

In fact, the Applicant submitted a detailed analysis of the Project's economic benefits under two different agrivoltaics scenarios and found that each of these scenarios offers significant advantages compared to the status quo. The analysis shows 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.³ 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.⁴ At the county level, the Project's operations will also create far more jobs under either of the two agrivoltaics scenarios than existing activities⁵ and significantly higher economic output with 4,000 acres of crops and 3,000 sheep than existing activities.⁶

³ Statewide, with 2,000 acres of crops and 1,000 sheep, the Project's operations will create approximately 104 jobs (63 jobs from solar and 40.6 from agriculture), compared to 50 jobs from existing activities; the Project's operations will also generate \$12,085,779 of economic output (\$8,367,838 from solar and \$3,717,941 from agriculture), compared to \$8,942,000 from existing activities. *See Agricultural Economic Impacts at 23, 29; Application, Ex. I, Economic Impact and Land Use Analysis, at 25, 28.*

⁴ Statewide, with 4,000 acres of crops and 3,000 sheep, the Project's operations will create approximately 143 jobs (63 jobs from solar and 80.2 from agriculture), compared to 50 jobs from existing activities; the Project's operations will also generate \$15,581,790 of economic output (\$8,367,838 from solar and \$7,213,952 from agriculture), compared to \$8,942,000 from existing activities. *See Agricultural Economic Impacts at 24, 29; Application, Ex. I, Economic Impact and Land Use Analysis, at 25, 28.*

⁵ County-wide, with 4,000 acres of crops and 3,000 sheep, the Project's operations will create approximately 82 jobs (35 jobs from solar and 47.3 jobs from agriculture), compared to 30 jobs from existing activities; with 2,000 acres of crops and 1,000 sheep, the Project's operations will create approximately 59 jobs (35 jobs from solar and 24.9 jobs from agriculture), compared to 30 jobs from existing activities. *See Agricultural Economic Impacts at 23, 24, 29; Application, Ex. I, Economic Impact and Land Use Analysis, at 25.*

⁶ County-wide, with 4,000 acres of crops and 3,000 sheep, the Project's operations will generate \$8,176,710 of economic output (\$3,073,093 from solar and \$5,103,617 from agriculture), compared to \$6,275,000 from existing activities; with 2,000 acres of crops and 1,000 sheep, the Project's operations will generate \$5,703,538 of economic output (\$3,073,093 from solar and \$2,630,445 from agriculture), compared to \$6,275,000 from existing activities. *See Agricultural Economic Impacts at 23, 24, 29; Application, Ex. I, Economic Impact and Land Use Analysis, at 28.*

III. The Townships Fail to Consider the Project's Climate-related Benefits and Other Environmental Benefits

Finally, the Project has many environmental benefits, including climate-related benefits, that weigh in favor of approval. The Townships' brief ignores these benefits. As Dr. Reutter testified, climate change is already causing significant harm in Ohio. Revised Reutter Tr. at 10-13. One way that climate change is already harming Ohio is by impairing water quality, an issue that the Townships, as previously discussed, have identified as one of their "primary concerns." *Id.*; Townships' Initial Br. at 11. As Dr. Reutter explained, climate change is causing harmful algal blooms that are making the water too toxic to drink or to bathe in. *Id.* at 11:12-18. There are two ways that climate change is driving these impacts. First, climate change is increasing average water temperature, which is promoting the growth of toxic blue-green algae. *Id.* at 11:18-19. Second, climate change is increasing the frequency and severity of storms, which are causing excessive runoff of nutrient-rich manure and fertilizer from agricultural fields. *Id.* at 11:19-22. These nutrients are further stimulating the growth of toxic algae. *Id.* Approving the project would mitigate these climate-related impacts by displacing the fossil fuel power plants that are contributing to climate change. *Id.* at 12-13.

The Project offers other environmental benefits, too. As Dr. Reutter testified, allowing the Project to move forward will help to displace coal, which "means we will need less cooling water[,] and less fish and aquatic invertebrates will be killed at cooling water intakes." *Id.* at 12:21-23. Likewise, by displacing coal and other fossil fuels, the Project "will also have a positive impact on human health [and] the air we breathe" by reducing emissions of sulfur dioxide and particulates. *Id.* at 12:23 to 13:1-3. As Dr. Reutter further testified, although construction of the Project, like any project, will inevitably have some environmental impacts, the construction-related impacts of solar farms are modest compared to fossil-fuel plants. *Id.* at

15:18-21. Once operational, however, there will be “minimal noise and air pollution.” *Id.* at 15:23.

Staff reached the same conclusion, explaining that the Project will “produce electricity without polluting the air and without using, much less polluting the water,” which “stands in stark contrast to the environmental issues posed by nuclear coal, or even natural gas.” Staff’s Initial Br. at 8-9. These environmental benefits are significant and strongly support the issuance of a Certificate.

CONCLUSION

The Project will deliver significant economic and environmental benefits to the community, with comparatively minimal adverse impacts. Moreover, the Project will incorporate agricultural production at a very large scale, which will mitigate any impacts to the local farming-based economy. The Townships’ concerns about the Project are unsubstantiated, and their analysis of its economic and environmental impacts is incomplete and misleading. Ultimately, the Application satisfies all of the Board’s criteria for approval, and the Board should issue a Certificate.

Dated: July 31, 2023

Respectfully submitted,

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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: July 31, 2023

/s/ Matthew Eisenson

Matthew Eisenson

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