

**IN THE SUPREME COURT OF OHIO
CASE NO. 2025-75**

In the Matter of the Application of	)	
Fountain Point Solar Energy LLC	)	On Appeal from the
for a Certificate of Environmental	)	Ohio Power Siting Board
Compatibility and Public Need to	)	
Construct a Solar-Powered Electric	)	Case No. 21-1231-EL-BGN
Generation Facility in	)	
Logan County, Ohio	)	

**BRIEF OF *AMICUS CURIAE* THE OHIO CHAMBER OF COMMERCE IN
SUPPORT OF APPELLEE FOUNTAIN POINT SOLAR ENERGY, LLC**

Catherine Strauss (0072980)
Ally Petrillo (0096738)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, OH 43215
Tel.: (614) 462-1069
Fax: (614) 462-5135
catherine.strauss@icemiller.com
ally.petrillo@icemiller.com

*Counsel for Amicus Curiae, The Ohio
Chamber of Commerce*

Kevin Dunn (0088333)
David Watkins (0059242)
Plank Law Firm, LPA
411 East Town Street, Flr. 2
Columbus, OH 43215
Tel.: (614) 947-8600
Fax: (614) 228-1790
kdd@planklaw.com
dw@planklaw.com
*Counsel for Appellants, Citizens Against
Fountain Point, et al.*

David Yost (0056290)
Attorney General of Ohio
John H. Jones (0051913)
Section Chief
Janet Gregory (0102092)
Amy Botschner O'Brien (0074423)
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3793
Tel.: (614) 644-8599
Fax: (866) 849-3176
Janet.Gregory@OhioAGO.gov
Amy.BotschnerOBrien@OhioAGO.gov

*Counsel for Appellee Ohio Power Siting
Board and Staff of Ohio Power Siting Board*

[Additional Appearances on Following Page]

Christine M.T. Pirik (0029759)
Jonathon R. Secrest (0075445)
David A. Lockshaw, Jr. (0082403)
Matthew C. McDonnell (0090164)
Dickinson Wright PLLC
180 East Broad Street, Suite 3400
Columbus, OH 43215
Tel.: (614) 591-5461
Fax: (614) 670-6009
cpirik@dickinsonwright.com
jsecrest@dickinsonwright.com
dlockshaw@dickinsonwright.com
mmcdonnell@dickinsonwright.com

*Counsel for Appellee Fountain Point Solar
Energy, LLC*

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STATEMENT OF INTEREST

Pursuant to Rule 16.06 of the Rules of Practice of the Supreme Court of Ohio, the Ohio Chamber of Commerce (the “Ohio Chamber”) submits this brief as *Amicus Curiae* in support of Appellee Fountain Point Solar Energy, LLC (“Fountain Point”). Founded in 1893, the Ohio Chamber is Ohio’s largest and most diverse statewide business advocacy organization. It works to promote and protect the interests of its more than 8,000 business members while building a more favorable business climate in Ohio by advocating for the interests of Ohio’s business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system which fosters a business climate where enterprise and Ohioans prosper. To that end, the Ohio Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to Ohio’s business community.

This case is of great importance to the Ohio Chamber. Appellants are challenging the Ohio Power Siting Board’s (the “Board”) granting of a Certificate of Environmental Compatibility and Public Need to Fountain Point for the construction, operation, and maintenance of a 280 MW solar-powered electric generation facility in Bokescreek Township, Logan County, Ohio, subject to certain conditions imposed by the Board (the “Project”). It is undisputed that the Project will have a tremendously positive economic impact on Bokescreek Township, Logan County, and on Ohio, generally, creating both

short- and long-term jobs in the area and generating millions in local earnings and state and local taxes. In short, as the Board recognized, the Project is good for Ohio as a whole. The Court should reject Appellants' invitation to reweigh the evidence, which the Board carefully considered when making its determination, and affirm the Board's decision. Doing otherwise would inject undue uncertainty into Ohio's historically stable and predictable regulatory framework for in-state power generation facilities and send the message that Ohio is not open for business.

STATEMENT OF FACTS

The Ohio Chamber defers to and incorporates the Statement of Facts included in Fountain Point's Merit Brief.

ARGUMENT

Proposition of Law: The Board acted reasonably and lawfully when assessing public support (and opposition) for the Project, thereby properly determining that the R.C. 4906.10(A)(6) requirements were met.

Appellants challenge the Board's certification of the Project, asserting three assignments of error stemming from the Board's alleged failure to correctly determine whether the Project met the requirements of R.C. 4906.10(A)(6). For the reasons set forth below, the Ohio Chamber supports the Board's certification of the Project, and thus, aligns with the position of Appellee Fountain Point. The Ohio Chamber submits this Brief to respond specifically to Appellants' Third Proposition of Law, to highlight the importance of the Project to Bokescreek Township, Logan County, and to Ohio generally,

and to illustrate the dire consequences to the Ohio business community that would occur if the Court were to reverse the Board's certification of the Project.

I. The Board properly weighed local, regional, and statewide support for the Project.

Final orders made by the public utilities commission, or by the Board pursuant to Chapter 4906, "shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable." R.C. 4903.13; R.C. 4906.12; *see also In re Application of Harvey Solar I, L.L.C.*, 2025-Ohio-1503, ¶ 4.

This Court recently considered a similar challenge to the Board's certification of a solar facility similar to the Project, in *Harvey Solar*, 2025-Ohio-1503, and in doing so, summarized the applicable standard of review:

We may only reverse, modify, or vacate a board order when, after considering the record, we conclude that the order was unlawful or unreasonable. Challengers to a board order bear the burden of establishing that the order is unlawful or unreasonable.

"Unlawful" here refers to our review of legal questions, such as the proper interpretation of a statute or whether the board followed its own administrative rules. Our review of questions of law is *de novo*.

The "unreasonable" part of the standard of review is relevant when we examine the board's determinations under R.C. 4906.10(A), which requires the board to determine a project's compliance with broad statutory criteria. **The statute gives the board—not this court—the authority to make these determinations, and the open-textured nature of the terms at issue inherently vests a degree of discretion in the administrative agency.** We review whether the board's exercise of its statutory authority was reasonable.

For example, we examine the reasonableness of the board's decisions about whether a facility represents the minimum adverse environmental impact, or whether it will serve the "public interest, convenience, and necessity," R.C. 4906.10(A)(6), by determining whether the board's decision is within the boards of those statutory directives. In other words, we look at what the statute requires the board to do and determine whether the determinations that the board made in complying with the statute were reasonable. We may find a board decision unreasonable when the evidence clearly isn't enough to support the decision or when the decision is internally inconsistent.

In reviewing the board's determinations, **we do not reweigh the evidence or second-guess the board on questions of fact.** We will not disturb the board's factual determinations when the record contains **sufficient probative evidence** to show that the board's decision was not manifestly against the weight of the evidence and was **not so clearly unsupported by the record** as to show misapprehension, mistake or willful disregard of duty.

Harvey Solar, 2025-Ohio-1503, at ¶¶ 11-15 (emphasis added) (internal citations and quotations omitted) (cleaned up).

Here, the gist of Appellants' argument in their Proposition of Law No. 3 is that the Board "mis-weighed" and "mischaracterized" public sentiment, and thus, it acted unreasonably and unlawfully, because they claim there was "unanimous" local government opposition, and "overwhelming" public sentiment in opposition to the Project. (Appellants' Br. at 24.) Not only are Appellants wrong on the facts, they are wrong on the law.

On pages 73 through 81 of its Order, the Board meticulously examined the parties' evidence and offered a detailed rationale for why it chose to reject the same arguments Appellants assert here. Rather than focus solely on the local interest, as Appellants want

this Court to do, the Board noted that its “responsibility under R.C. 4906.10(A)(6) to determine that all approved Projects will serve the public interest, convenience, and necessity [required it to] balance projected benefits against the magnitude of potential negative impacts on the local community.” (Order p. 79) (citing *In re Oak Run Solar Project, LLC*, Case No. 22-549-EL-BGN, Opinion and Order (Mar. 21, 2024) at ¶ 217; *In re Yellow Wood Solar Energy LLC*, Case No. 20-1680-EL-BGN, Opinion and Order (June 15, 2023) at 80; see also *In re Ross County Solar LLC*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36.) In other words, the Board needs to consider not only the local public interest, but the public interest for the State of Ohio as a whole, when making its R.C. 4906.10(A)(6) determination. (Order p. 79) (citing *Waltz v. Power Siting Bd. (In re Due Energy Ohio, Inc.)*, 2021-Ohio-3301.

And that’s what the Board did here. It examined the evidence submitted, not just by local individuals and groups, but by those across the State, and determined that “[b]ased on the totality of the evidence,” the Project would serve the public interest, convenience, and necessity of the State of Ohio. (Order p. 81.) Appellants cite this Court to different evidence they claim supports their position, claiming such evidence is overwhelming, and that the Board somehow failed to perform its duty by issuing a certificate in light of their preferred evidence. But this Court’s “function on appeal is not to reweigh the evidence or second-guess the board on questions of fact.” *Harvey Solar*,

2025-Ohio-1503, at ¶ 22 (brackets omitted) (quoting *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, at ¶ 35).

Here, the Project had broad support—at the Township, County, and Statewide level. It was not unanimous, but no project ever is, and the Board doesn't require unanimous support to issue a certificate. (*See, e.g.*, Order p. 73: noting that the Board “generally approves applications if there is mixed support and opposition, provided all other requirements are met.”) The Board acknowledged in its Order that it “reviewed the public participation and note[d] that although the majority of entities, individuals, and officials submitting comments or testimony are in opposition to the Project, there were approximately 869 filings in the public comments section of the case docket (approximately 463 non-duplicated filings), expressing a number of varying viewpoints both in favor of and against the Project, such that we do not find the feedback in opposition to be one sided, as argued by [Appellants].” (*Id.* at 81.)

The Legislature entrusted the Board with the duty to make determinations under R.C. 4906.10(A)(6) and vested the Board with discretion to make that determination. *Harvey Solar*, 2025-Ohio-1503, at ¶ 13 (citing *In re Application of Firelands Wind, L.L.C.*, 2023-Ohio-2555, ¶ 15). Where there is more than sufficient evidence in the Record supporting the Board's decision, as there is here, it should not be disturbed.

II. The Project is grandfathered from R.C. 303.59 pursuant to Section 4 of Senate Bill 52.

Part of Appellants' claim that local government opposition to the Project is unopposed (for the reasons set forth in the Board's Order, at pages 72, ¶ 175, it's not) bears separate discussion. Appellants argue that on February 9, 2022, Bokescreek Township passed a resolution restricting all of Bokescreek Township from developing wind or solar projects. (*See, e.g.*, Appellants' Br. at 13.) But resolution or not, even if all local government officials opposed the Project (which again, they didn't), the Project isn't subject to a local government veto.

On June 28, 2021, the Ohio General Assembly passed Substitute Senate Bill 52 ("SB 52"), a significant revision to Ohio's power siting approval process for utility-scale solar projects. The law grants a new upfront veto to the board of county commissioners prior to a developer moving forward with the state siting process. Sub. S. B. No. 52, 134th Gen. Assemb., Section 1 (Ohio 2021); R.C. 303.57–303.62. Importantly, SB 52 grandfathered projects where developers had already invested significant time and money so as not to unfairly change the rules in the middle of the game. For solar project applications exempt from requirements under SB 52—that are effectively "grandfathered" from the new law—there is no county-level review. Sub. S. B. No. 52, 134th Gen. Assemb., Section 4–5 (Ohio 2021). The Project is one of these.

Indeed, the co-sponsor of SB 52, Ohio House of Representative Majority Floor Leader William Seitz, sent a letter that was docketed in this case, confirming that "the

Fountain Point project fits the bill to be grandfathered ... and localized opposition to a grandfathered project may not be determinative.” (Testimony of Daniel Vertucci, July 24, 2023, Applicant Ex. 21, Att. DV-2.) Thus, it is and was proper for the Board to evaluate the Project according to the standards and procedures historically undertaken by the Board when evaluating such projects. The authority to approve (or disprove) the Project remained with the Board alone. SB 52 has no application here.

III. The Project will serve the public interest, convenience, and necessity as it provides economic benefits to *all* Ohio residents.

The Chamber writes separately to support the Board’s determination that the Project serves the public interest, convenience, and necessity, not just of Bokescreek Township and Logan County, but of the State of Ohio as a whole. In general, new investment in power generating facilities can bring multiple benefits to the local communities and regions where they locate—including jobs and increased tax revenues for local governments and schools.

Indeed, it is undisputed that the Project would have a positive economic impact across the State. (Order p. 70.) In the short term, the Project would create 1,558 jobs during construction; in the long term, it would create approximately 40 jobs. (*Id.* at 71.) The Project would generate \$88.2 million in property taxes for all taxing districts, with \$16.4 million going to Logan County, and other annual tax payments totaling nearly \$2 million, \$1.12 million of which would go to the Benjamin Logan School District in Logan County. (*Id.* at 70-71.) This evidence cannot be ignored (and further supports the Board’s decision).

Additionally, new facilities support the broader growth of new and diverse industries moving to Ohio through infrastructure improvements and the increased supply of clean affordable energy, the use of which the Chamber similarly supports. As a leading advocate of economic growth for all of Ohio, the Ohio Chamber believes increased in-state electric generation will lower electric rates for all Ohioans. Lower electric rates will in turn add to Ohio's economic growth and stability. Growing and diversifying our in-state generation places downward pressure on the commodity price of electricity—and this delivers real energy savings vital to keeping our state economically competitive. The Ohio Chamber is concerned that reversal of the Board's certification of the Project would devalue the public's interest in new, renewable power generation and the benefits of increased supply.

Moreover, increased electric generation is necessary to combat the increasing risk of electric grid reliability issues. The grid is currently facing increased electricity demand and simultaneously traditional "baseload" thermal generation resources like coal plants are closing faster than new baseload generation is constructed. PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, (Feb. 24, 2023), [pjm.com/-/media/library/reports-notice/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx](https://www.pjm.com/-/media/library/reports-notice/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx) (accessed May 10, 2025), p. 1. Ohio is located within the PJM Interconnection LLC ("PJM") regional transmission organization, the largest regional transmission system in the country, in terms of customers. The gap

between these factors is being addressed in PJM's interconnection queue through construction of limited-duration resources like wind and solar. *Id.* As PJM has noted, "PJM's interconnection queue is composed primarily of intermittent and limited-duration resources. Given the operating characteristics of these resources, we need multiple megawatts of these resources to replace 1 MW of thermal generation." *Id.* To explain the problem PJM must address, a 50 MW thermal generation unit will produce 1,200 MWh in a typical day (50 MW x 24 hours) when it is operating, while a 50 MW solar facility operating at a 20% capacity factor would only produce 240 MWh in that same day as it is unable to operate at full nameplate capacity during large portions of the day. Therefore, it is critical that increased demand and retirements in PJM be addressed with more MW of limited duration resources than the MW of thermal resources which are retired. Given the rate of electric generation retirements and the projected increased electricity demand, "PJM could face decreasing reserve margins" should trends continue. *Id.* at 3.

PJM projections show that, "despite eroding reserve margins, resource adequacy would be maintained if the influx of renewables materializes at a rapid rate[.]" *Id.* at 2. If Appellants successfully reverse the Board's certification of the Project, the reserve margin—particularly on a local basis—will continue to decrease, creating the risk of local blackouts. In a December 2023 call to action, North American Electric Reliability Corporation warned that rolling blackouts are a rising threat to consumers due to solar

and wind projects not being built fast enough to replace retiring fossil fuel generation. See Peter Behr, *Grid monitor warns of blackout risks as coal plants retire*, (Dec. 14, 2023), <https://www.eenews.net/articles/grid-monitor-warns-of-blackout-risks-as-coal-plants-retire/> (accessed May 10, 2025) [<https://perma.cc/26PB-9YK2>]. Approving renewable generation projects like the Project at issue is necessary for a resilient, reliable network and serves the public interest, convenience and necessity for every Ohioan.

Lastly, the Project helps fulfill the increasingly robust corporate demand for renewable energy in the Buckeye State. Some of the country's largest employers with a renewable energy appetite are Ohio Chamber members, including manufacturers like Procter & Gamble and tech companies Amazon, Meta, Google, and Microsoft. See Johnathan Lopez, *General Motors to Reach 100 Percent Renewable Energy in the U.S. by 2025* (Sept. 30, 2021), <https://gmauthority.com/blog/2021/09/general-motors-to-reach-100-percent-renewable-energy-in-the-u-s-by-2025/> (accessed May 10, 2025). Increasingly, businesses will only locate corporate infrastructure to the state of Ohio if renewable energy is available. In 2017, Meta announced that it would build a \$750 million, 22-acre data center in New Albany, Ohio, citing the availability of renewable energy sources, including wind, solar, and hydro, as being critical to choosing the location. Emily Holbrook, *Facebook to Open Renewables-Powered Data Center in Ohio* (Aug. 16, 2017), <https://www.environmentenergyleader.com/stories/facebook-to-open-renewables-powered-data-center-in-ohio,15569> (accessed May 10, 2025). Meta has since announced

plans to expand its data center operations in New Albany, due to “the infrastructure available at the site, the community partnerships and access to renewable energy.” Mark Williams, *Facebook parent Meta to expand New Albany data center by 1 million square feet*, Columbus Dispatch (Apr. 21, 2022), <https://bit.ly/3uQurke>.

The continued ability to attract large employers to our State should be given great weight. Indeed, reversal of the Board’s certification of the Project would give the impression that Ohio is not open for business, disrupting Ohio’s stable and predictable business environment.

CONCLUSION

For these reasons, the Ohio Chamber respectfully requests that the Court affirm the Board’s Certificate of Environmental Compatibility and Public Need.

Respectfully submitted,

ICE MILLER LLP

/s/ Catherine Strauss

Catherine Strauss (0072980)

Ally Petrillo (0096738)

ICE MILLER LLP

250 West Street, Suite 700

Columbus, OH 43215

(614) 462-1069; Fax: (614) 462-5135

Catherine.Strauss@icemiller.com

Ally.Petrillo@icemiller.com

*Counsel for Amicus Curiae The Ohio
Chamber of Commerce*

Dated: May 15, 2025

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2025, a copy of this Brief of *Amicus Curiae* The Ohio Chamber of Commerce in Support of Appellee Fountain Point Solar Energy, LLC was sent via electronic mail to:

Kevin Dunn (0088333)
David Watkins (0059242)
Plank Law Firm, LPA
411 East Town Street, Flr. 2
Columbus, OH 43215
kdd@planklaw.com
dw@planklaw.com

*Counsel for Appellants, Citizens Against
Fountain Point, et al.*

Christine M.T. Pirik (0029759)
Jonathon R. Secrest (0075445)
David A. Lockshaw, Jr. (0082403)
Matthew C. McDonnell (0090164)
Dickinson Wright PLLC
180 East Broad Street, Suite 3400
Columbus, OH 43215
cpirik@dickinsonwright.com
jsecrest@dickinsonwright.com
dlockshaw@dickinsonwright.com
mmcdonnell@dickinsonwright.com

*Counsel for Appellee Fountain Point Solar
Energy, LLC*

David Yost (0056290)
Attorney General of Ohio
John H. Jones (0051913)
Section Chief
Janet Gregory (0102092)
Amy Botschner O'Brien (0074423)
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3793
Janet.Gregory@OhioAGO.gov
Amy.BotschnerOBrien@OhioAGO.gov

*Counsel for Appellee Ohio Power Siting
Board and Staff of Ohio Power Siting Board*

/s/ Catherine Strauss

Catherine Strauss (0072980)
Ally Petrillo (0096738)
ICE MILLER LLP
250 West Street, Suite 700
Columbus, OH 43215
(614) 462-1069; Fax: (614) 462-5135
Catherine.Strauss@icemiller.com

Ally.Petrillo@icemiller.com

*Counsel for Amicus Curiae The Ohio
Chamber of Commerce*