

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of :
Angelina Solar I, LLC : Case No. 18-1579-EL-BGN
for a Certificate of :
Environmental :
Compatibility and Public :
Need. :

- - -

PROCEEDINGS

before Patricia A. Schabo, Administrative Law Judge,
at the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-A, Columbus, Ohio, called at
10:00 a.m. on Monday, August 12, 2019.

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VOLUME III

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On behalf of the Staff of the Ohio Power
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On behalf of the Concerned Citizens of
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On behalf of the Ohio Farm Bureau
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On behalf of the Preble County
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On behalf of the Preble County Engineer,
Preble County Planning Commission, Preble
County Soil and Water Conservation
District, the Board of Trustees of Israel
Township, and the Board of Trustees of
Dixon Township, and the Preble County
Commissioners.

- - -

1	INDEX		
2	- - -		
3	WITNESS	PAGE	
4	Rachael Vonderhaar		
	Direct Examination by Mr. Van Kley	333	
5	Voir Dire by Mr. Settineri	339	
	Cross-Examination by Mr. Settineri	353	
6	Redirect Examination by Mr. Van Kley	396	
	Recross-Examination by Mr. Settineri	414	
7	Further Redirect Examination by Mr. Van Kley	419	
8	Marja Brandly		
	Direct Examination by Mr. Van Kley	422	
9	Cross-Examination by Mr. Taylor	423	
	Redirect Examination by Mr. Van Kley	426	
10	Recross-Examination by Mr. Taylor	428	
11	Walter Mast		
	Direct Examination by Mr. Van Kley	430	
12	Cross-Examination by Mr. Settineri	448	
	Redirect Examination by Mr. Van Kley	470	
13	- - -		
14	STAFF EXHIBITS	IDENTIFIED ADMITTED	
15	1 Staff Report of Investigation	II-284	333
16	- - -		
17	CCPC EXHIBIT	IDENTIFIED ADMITTED	
18	2 Direct Testimony of Rachael Vonderhaar	334	421
19	3 Supplemental Direct Testimony of Rachael Vonderhaar	334	421
20	4 Direct Testimony of Marja Brandly	422	429
21	5 Direct Testimony of Walter Mast	431	478
22	6 Supplemental Direct Testimony of Walter Mast	431	478
23	- - -		
24			
25			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX (Continued)

- - -

COMPANY EXHIBIT		IDENTIFIED ADMITTED	
17	Ohio Secretary of State Documents Regarding Concerned Citizens of Preble County, LLC	360	421
18	The Register-Herald Article	463	478

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1 Monday Morning Session,
2 August 12, 2019.

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4 ALJ SCHABO: Let's go on the record.
5 The Ohio Power Siting Board has assigned
6 for hearing at this time and place Case No.
7 18-1579-EL-BGN being in the Matter of the Angelina
8 Solar I, LLC, for a Certificate of Environmental
9 Compatibility and Public Need.

10 My name is Patricia Schabo, and I am the
11 Administrative Law Judge assigned by the Board to
12 hear this case. This is day three and we've had an
13 intervening week so let's go ahead and start with
14 appearances.

15 MS. BAIR: Thank you, your Honor. On
16 behalf of the Staff of the Ohio Power Siting Board,
17 Dave Yost, Attorney General, Jodi Bair, Assistant
18 Attorney General, 30 East Broad Street, Columbus,
19 Ohio 43215.

20 MR. SETTINERI: Good morning, your Honor.
21 On behalf Angelina Solar I, LLC, Mike Settineri and
22 MacDonald Taylor for the law firm Vorys, Sater,
23 Seymour and Pease, 52 East Gay Street, Columbus Ohio
24 43215.

25 MR. VAN KLEY: Good morning. I'm Jack

1 Van Kley. I represent the Concerned Citizens of
2 Preble County and their citizens, their members. My
3 address is Van Kley & Walker, 132 Northwoods
4 Boulevard, Suite C-1, Columbus, Ohio.

5 MS. WEST: Yes, your Honor. Katie West
6 representing the Preble County Prosecutor's Office --
7 for the Preble County Prosecutor's Office,
8 representing the Preble County Planning Commission,
9 Preble Soil and Water Conservation District, Preble
10 County Engineer, the Dixon Township Trustees, and the
11 Israel Township Trustees, co-counsel for the Preble
12 County Commissioners, address 101 East Main Street,
13 Eaton, Ohio 45320.

14 MR. BORCHERS: Good morning, your Honor.
15 On behalf of the Preble County Commissioners, Dylan
16 Borchers, the law firm of Bricker & Eckler, 100 South
17 Third Street, Columbus, Ohio 43215.

18 ALJ SCHABO: Thank you. Ms. Bair, I
19 believe you had an issue you wanted to address.

20 MS. BAIR: Yes, thank you, your Honor. I
21 would like to move the Staff Report of Investigation
22 marked as Staff Exhibit 1 into the record.

23 ALJ SCHABO: Are there any objections?

24 Hearing none, Staff Exhibit 1 will be
25 admitted.

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(EXHIBIT ADMITTED INTO EVIDENCE.)

ALJ SCHABO: Mr. Van Kley, I believe your case is up for presentation today.

MR. VAN KLEY: Yes, thank you, your Honor. Our first witness will be Rachael Vonderhaar.

ALJ SCHABO: Good morning.

MS. VONDERHAAR: Good morning.

ALJ SCHABO: Raise your right hand.

(Witness sworn.)

ALJ SCHABO: Thank you. You can sit and just state your name for the record, please.

THE WITNESS: Rachael Vonderhaar.

ALJ SCHABO: Mr. Van Kley.

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RACHAEL VONDERHAAR
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Van Kley:

Q. Ms. Vonderhaar, what is your address?

A. 4636 State Route 725 West, Camden, Ohio 45311-9610.

MR. VAN KLEY: All right. At this time, your Honor, we would like to mark two exhibits and copies of the exhibits are on the bench there for you

1 and the copies for the witness are on the front.
2 We've already handed out copies to other counsel.

3 ALJ SCHABO: Okay.

4 MR. VAN KLEY: The first exhibit we would
5 like to mark is CCPC Exhibit 2 which is the direct
6 testimony of Rachael Vonderhaar. And then the next
7 exhibit we would like to mark is CCPC Exhibit No. 3
8 which is the supplemental direct testimony of Rachael
9 Vonderhaar.

10 ALJ SCHABO: The exhibits will be so
11 marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 Q. (By Mr. Van Kley) Ms. Vonderhaar, could
14 you identify Exhibit No. 2.

15 A. Exhibit 2 is my direct testimony to the
16 Power Siting Board.

17 Q. Okay. And could you identify CCPC
18 Exhibit No. 3.

19 A. Exhibit 3 is my supplemental direct
20 testimony.

21 Q. Were Exhibits 2 and 3 prepared by you or
22 under your direction?

23 A. Yes.

24 Q. Do you have any corrections to CCPC
25 Exhibit No. 2?

1 A. I do. Line 25, that should read "299 of
2 which is tillable" and that change is due to we have
3 our homesite where our son lives is 19 acres, a
4 homesite that is right at the corner of 725 and
5 Fairhaven College Corner Road that makes up 26 acres,
6 and then the rest is wooded.

7 Q. Okay. Do you have any other changes to
8 CCPC Exhibit No. 2?

9 A. I do. Page 3, line 20, I wanted to add
10 "except the Johnsons' home" --

11 Q. Where are you adding that now?

12 A. Page 3, line 20.

13 Q. Yes.

14 A. Where it discusses the map that we put
15 forward with the homes of the members of the group.

16 Q. Yes. Are you adding the new language at
17 the end of that sentence which currently ends in the
18 word "parcel period"?

19 A. Yes.

20 Q. Okay. And what words are you going to
21 add there?

22 A. "Except that the Johnsons' home is not
23 marked on the map" as far as the map we submitted.

24 Q. Okay. And do you have any other changes
25 to CCPC Exhibit No. 2?

1 A. I do. And that is on page 12 striking
2 question 28 with its answer.

3 Q. Okay. And why are you striking that
4 question and answer?

5 A. Because the law reverted back on the
6 language for PILOT when the budget bill was passed in
7 July so the PILOT -- the PILOT breakdowns go back to
8 what traditionally the percentages were with property
9 tax breakdowns.

10 Q. Okay. And then directing your attention
11 back to CCPC Exhibit 3, do you have any changes or
12 corrections to that exhibit?

13 ALJ SCHABO: I am so sorry to interrupt
14 your flow, but I want to make sure, the entirety then
15 of question 28 and answer 28 is being taken out?

16 MR. VAN KLEY: Yes.

17 ALJ SCHABO: Okay. Thank you. And,
18 again, sorry for interrupting you.

19 MR. VAN KLEY: That's okay.

20 Q. (By Mr. Van Kley) Directing your
21 attention to CCPC Exhibit No. 3, do you have any
22 corrections or changes to that exhibit?

23 A. I do not.

24 MR. SETTINERI: Can I, if I may, just so
25 I understand the deletion of the answer, just to be

1 clear, was that page 12, lines 9 through 18 and
2 that's CCP Exhibit 2?

3 MR. VAN KLEY: Yes. Page 12, lines 9
4 through 18, are struck.

5 MR. SETTINERI: And I will just ask the
6 question now, will -- as well what -- page 6, lines
7 10 through 14. Again, that's page 6, lines 10
8 through 14.

9 MR. VAN KLEY: Yes.

10 Q. (By Mr. Van Kley) Ms. Vonderhaar, would
11 you go to page 6 of CCPC Exhibit No. 2 and tell me
12 whether you would like to delete lines 10 through 14.

13 A. Yes, I would.

14 Q. Okay.

15 MR. SETTINERI: One last question, I may
16 have missed it, the reference, Jack, to the name that
17 was added to CCP Exhibit 2, did I hear that properly,
18 the name was Johnson?

19 MR. VAN KLEY: Jackson -- or Johnson.

20 A. It's Johnson. So on the solar array map
21 it is -- that is put forward by Open Roads, it is
22 underneath the array. The Johnson family has made it
23 clear to me they should not be in the array and they
24 want to make sure it was noted that it made our map
25 and it wasn't on our map as far as the Citizens

1 group. We didn't get them marked.

2 MR. SETTINERI: Your Honor, to protect
3 the record I will have to move to strike the entirety
4 of that answer. It was based on hearsay and
5 unsolicited.

6 ALJ SCHABO: Yeah. I mean, you can
7 explain that in response to questions but not when we
8 are striking testimony, so we will strike that.

9 Q. (By Mr. Van Kley) All right. With regard
10 to CCPC Exhibits 2 and 3, if you were to be asked the
11 same questions today that you were asked at the time
12 you wrote and prepared this testimony, would your
13 answers be the same today?

14 A. Yes.

15 MR. VAN KLEY: At this time, your Honor,
16 the witness is ready for cross-examination.

17 ALJ SCHABO: Thank you, Mr. Van Kley.

18 Mr. Settineri, would you like to begin?

19 MR. SETTINERI: Yes, I would like to,
20 thank you, your Honor. First thing I would like to
21 do is some brief voir dire because we do have a
22 pending motion to strike. Some of that motion is no
23 longer relevant given the withdrawal of certain
24 pieces of the testimony, but if I may conduct a brief
25 voir dire, please.

1 ALJ SCHABO: Yes.

2 - - -

3 VOIR DIRE

4 By Mr. Settineri:

5 Q. Good morning, Ms. Vonderhaar.

6 A. Good morning.

7 Q. You have no formal training in biology,
8 correct?

9 A. Correct.

10 Q. And you have no formal training in
11 criminology, correct?

12 A. Correct.

13 Q. You have no formal training in
14 environmental science, correct?

15 A. Correct.

16 Q. And you attended college for one year but
17 have no degree post high school, correct?

18 A. No degree.

19 Q. And you are not testifying as an expert
20 in this case, correct?

21 A. Correct.

22 Q. You have not taken any classes on tax
23 law, correct?

24 A. Correct.

25 Q. You have never worked in the solar

1 industry, correct?

2 A. Correct.

3 Q. You don't know whether EMF will impact
4 the GPS on the farm equipment, correct?

5 A. Well, in the past week I've reached out
6 to an expert who has explained to me that it will,
7 Dr. Fulton at Ohio State, so he has gone over what
8 the impact will be to our farming operation. It's
9 new information to me but -- but that's where I have
10 gained my knowledge from in the last week.

11 Q. Okay.

12 MR. SETTINERI: Your Honor, I would move
13 to strike that answer in its entirety given that it
14 was based entirely on hearsay.

15 ALJ SCHABO: Your voir dire isn't
16 evidence, so we will let it stand.

17 MR. SETTINERI: Thank you.

18 Q. (By Mr. Settineri) As of -- you recall
19 being deposed, correct --

20 A. Correct.

21 Q. -- previously? And you recall being
22 deposed in June of this year, correct?

23 A. Yes.

24 Q. And you recall as of the date of that
25 deposition, you did not know whether EMF will impact

1 the GPS on your farm equipment, correct?

2 A. My understanding it would. I just didn't
3 understand how, so I tracked down an expert to answer
4 my questions.

5 Q. Okay. You are not an expert on whether
6 EMF will affect cellphone reception, correct?

7 A. No.

8 Q. And you don't know what components of the
9 solar panels will emit EMF, correct?

10 A. So it was explained to me that any energy
11 project puts off electromagnetic forces and the
12 larger it is the stronger the force is and that it
13 should be a simple equation that should be able to be
14 put forward to us to let us know what the radial
15 impact would be.

16 As far as in our area, we are able to use
17 our precision agriculture equipment to farm and it
18 requires a minimum of a 3G signal and we barely get
19 that now along with the radio frequencies of 400 to
20 450 megawatts -- megahertz to 900 megahertz and so
21 that there would be impact to those signals with the
22 EMF is what Dr. Fulton at Ohio State explained to me.

23 And then as technology upgrades, we will
24 be forced to those upgrades in our equipment and have
25 to have a strong enough signal to match the upgrade

1 of the technology as it takes place.

2 Q. Going back to my question, you don't know
3 what components of the solar panel emit EMF, correct?

4 A. Correct.

5 MR. SETTINERI: Thank you. Now, that
6 concludes my voir dire, your Honor.

7 ALJ SCHABO: Thank you, Mr. Settineri.

8 MR. SETTINERI: Go back to my pending
9 motion to strike, if I may.

10 ALJ SCHABO: You may.

11 MR. SETTINERI: As you -- as we have
12 previously filed, we would move to strike certain
13 portions of Ms. Vonderhaar's testimony starting with
14 CP -- CCP Exhibit 2. First motion to strike would be
15 at answer 13, page 5, lines 13 to 17. If you look at
16 this statement, it is clearly presenting a conclusion
17 that "The application fails to adequately evaluate
18 and protect against adverse effects of
19 electromagnetic fields from the solar equipment."

20 Ms. Vonderhaar though on -- we saw on voir dire could
21 not identify what parts of the solar panels, if any,
22 emit EMF. She also is clear she is not qualified to
23 opine on EMF, and she stated also she is not an
24 expert. Therefore, that this language here should be
25 stricken.

1 I would also note regardless that the
2 very -- page 4 top at line 2 states "We are concerned
3 about a number of issues, including the following."
4 Regardless that it says "we are concerned," this
5 testimony contains a clear conclusion that could be
6 used on brief. And so to protect the record, because
7 it is a conclusion, it should be stricken because she
8 is not qualified to give that opinion.

9 ALJ SCHABO: Mr. Van Kley.

10 MR. VAN KLEY: Yes, your Honor. As
11 counsel has just admitted, the preface of answer 13
12 is that the Concerned Citizens are concerned about a
13 number of issues that include the issue in sub-answer
14 m about EMFs, so it's not offered as an expert
15 opinion. It's simply offered as -- as a concern by
16 the Citizens concerning the project and its effects
17 on them.

18 MR. SETTINERI: Your Honor, if I may.

19 ALJ SCHABO: You may.

20 MR. SETTINERI: I would just note that
21 that answer at line 13 says "protect against adverse
22 effects of electromagnetic fields." It clearly
23 assumes a foundation there are adverse effects of
24 electromagnetic fields in the equipment. So, again,
25 it is a conclusion, regardless of the preface to the

1 question. These are issues; for example, if you look
2 at the top of page 5 part h there is a statement that
3 "The Project will displace deer and other wildlife."
4 That's more than -- that's a statement and
5 conclusion, not a concern.

6 MR. VAN KLEY: Well, if you read the
7 preface together with the -- with m, that's not what
8 it's saying. It says we are -- basically it says we
9 are concerned that the application fails to
10 adequately evaluate and protect against EMFs. It's
11 just expressed as a concern and the -- the Board can
12 admit it for limited purposes -- for the limited
13 purpose of simply expressing the Concerned Citizens'
14 concern rather than admitting it for its value as an
15 expert opinion and if -- if the ruling is based on --
16 on that grounds, then it's admissible for that
17 limited purpose.

18 MR. SETTINERI: Your Honor, if I may, the
19 key phrase at the line 2, page 4 is "We are concerned
20 about a number of issues." What are the issues? The
21 issues are presented. So the issues in here is
22 clearly a conclusion so that's why it should be
23 stricken. She is just not qualified. If they wanted
24 to put an expert on, they could have got an expert,
25 and they didn't.

1 ALJ SCHABO: Is your concern that it's
2 stated in a -- as an observational conclusion?

3 MR. SETTINERI: It's stated as a
4 conclusion, that is correct. Yes, that is very much
5 my concern.

6 ALJ SCHABO: Okay. But the Rules of
7 Evidence allow a layperson to express their own
8 observational conclusions.

9 MR. SETTINERI: But she's made no
10 observational conclusion here.

11 ALJ SCHABO: It is an illustrious --
12 motion to strike is denied. I think it's an
13 illustrative list of the worries of the Concerned
14 Citizens. It may be stated in a conclusory fashion,
15 but I don't think it's stated as an expert
16 conclusion. You know, to the degree briefing would
17 set that out as a legal conclusion, the Commission
18 can recognize that error and treat it as such. But I
19 won't strike that portion of the testimony.

20 MR. SETTINERI: Your Honor, excuse me,
21 moving on the second part that same answer we have a
22 similar concern at page 6, lines 6 to 7, where,
23 again, we have testimony that presents a conclusion
24 with no foundation. It states "The application does
25 not evaluate and protect against increased

1 temperatures resulting from the Project's solar
 2 panels." So, again, we are assuming a foundation
 3 that there will be increased temperatures resulting
 4 from the project panels. She's not qualified to make
 5 that foundational observation by any means. And,
 6 again, it's more than a concern. It's a concern
 7 about an issue that's being presented as there will
 8 be increased temperatures resulting from the
 9 project's solar panels with no foundation. She's not
 10 familiar. She doesn't have the expertise. That
 11 sentence should be stricken.

12 ALJ SCHABO: Mr. Van Kley.

13 MR. VAN KLEY: Our response to this part
 14 of the motion to strike is the same as our response
 15 to the last part of the motion to strike.

16 ALJ SCHABO: I think based on the same
 17 reasons, that this motion to strike will also be
 18 denied. Again, I'll just caution all parties not to
 19 use this in your brief as some kind of legal
 20 conclusion that the Board is somehow obligated to
 21 accept, but it certainly stays in as one of the
 22 concerns of the intervenor.

23 MR. SETTINERI: Moving on, your Honor, we
 24 would withdraw the part of our motion to strike that
 25 was previously -- as to the testimony on the PILOT

1 that was withdrawn.

2 ALJ SCHABO: Okay.

3 MR. SETTINERI: The last motion to strike
4 I have here, and that was listed in our brief, I am
5 going to modify it slightly, your Honor.

6 ALJ SCHABO: Okay.

7 MR. SETTINERI: If we turn to -- this
8 will be the supplemental testimony CCP Exhibit 3.
9 There we would withdraw our motion to strike the
10 answer 7 up until the -- close to the end of line 5,
11 page 5, but we would continue our motion to strike
12 the sentence that begins at the end of line 5
13 continuing to the -- through line 8 and that sentence
14 starts with "Fourth," in its entirety reads "Fourth,
15 because the county lacks the funding necessary to
16 hire the deputies necessary to patrol the Project
17 Area, the Applicant should be required to provide the
18 county with the funding necessary to hire a deputy
19 for that purpose."

20 Specifically as to that answer, your
21 Honor, there has been no foundation the county lacks
22 the funding necessary. Nowhere in the testimony does
23 she mention that, and she also doesn't mention
24 anywhere in the testimony about having experiences
25 with the EMS. So, therefore, it would be based on

1 speculation and should be stricken.

2 ALJ SCHABO: Mr. Van Kley.

3 MR. VAN KLEY: Yes, your Honor. I think
4 it's telling that counsel did not do any voir dire on
5 Ms. Vonderhaar with respect to this portion of the
6 answer on page 5 of the supplemental testimony
7 because she does have the background necessary to
8 testify about the subject matter of the testimony
9 that is sought to be struck.

10 She's a member of a local community.
11 She's very much involved in a local community. She
12 is familiar with emergency services in the local
13 community. And she -- she has the information that
14 provides her with the background necessary to make
15 the statement that is the subject of this motion to
16 strike.

17 The fact that counsel did not ask her any
18 questions in an attempt to show that she had no
19 background is -- is pretty revealing because counsel
20 took Ms. Vonderhaar's deposition concerning this
21 exhibit and, as a result, knows that she has the
22 requisite information, background to issue this
23 testimony.

24 MR. SETTINERI: Your Honor, No. 1, I
25 strongly disagree with that last representation about

1 what I know and don't know. Counsel is not
2 testifying. It was the obligation for the witness to
3 have that background in that testimony. It is a
4 speculative statement. There is -- nowhere in the
5 testimony mentions that she has any knowledge of the
6 funding and what's necessary. Therefore, the burden
7 was on them. They didn't do it. It should be
8 stricken.

9 ALJ SCHABO: You're moving to strike the
10 entirety of the sentence.

11 MR. SETTINERI: Just that -- yes.

12 ALJ SCHABO: What if the clause bracketed
13 by commas is stricken but the statement that "Fourth,
14 the Applicant should be required to provide the
15 county with funding necessary to hire a deputy
16 period" was to remain?

17 MR. SETTINERI: I'm fine with that.

18 ALJ SCHABO: Mr. Van Kley?

19 MR. VAN KLEY: Your Honor, that certainly
20 is a worthy compromise, but Ms. Vonderhaar does know
21 that the county lacks the funding necessary to hire
22 the deputies necessary to patrol the project area.
23 That is a fact that is extremely well known in that
24 community because it is already true that the
25 deputy -- that if you make an emergency call in the

1 area around the project area, it takes a really long
2 time to respond. Ms. Vonderhaar knows that from her
3 personal experience; and, therefore, she is qualified
4 to -- to make -- make the statement in the first half
5 of that sentence as counsel well knows because she
6 made the same statement in her deposition last week.

7 MR. SETTINERI: I disagree.

8 ALJ SCHABO: Ms. Vonderhaar, do you work
9 for the county?

10 THE WITNESS: I do not.

11 ALJ SCHABO: Are you familiar with the
12 treasurer's books and balances?

13 THE WITNESS: As far as recently, the
14 Commissioners had denied the funding to be available
15 to hire additional officers. We currently have two
16 on the road at any one time.

17 ALJ SCHABO: And they -- they denied the
18 funding in what context?

19 THE WITNESS: For picking up an
20 additional officer earlier this summer. So for us
21 incidents where there is traffic incidents that
22 are -- for us specifically we had an incident where
23 we waited 45 minutes for someone to show up to direct
24 traffic while we were helping someone whose tire came
25 off their truck. That is what they are referencing

1 from the deposition. And with that we were on a
2 state route at the base of a hill, people coming
3 south could not see us, the gal was from Michigan
4 with two children in the truck and a horse trailer,
5 and I called in on the non -- nonemergency number
6 waiting for assistance to help with traffic. 45
7 minutes passed, still didn't have assistance. My
8 husband is laying in the road working on the truck.

9 I called his college roommate who is the
10 park ranger over Hueston Woods and other parks. He
11 gets me a park ranger to come and direct traffic for
12 us. And at that point the park officer shows up and
13 he can't believe what he is seeing and that there has
14 not been an officer out to help us to this point and
15 he starts yelling into his radio for assistance to
16 help direct traffic.

17 So that's just one incident. I can give
18 you more.

19 MR. BORCHERS: Your Honor, if I may, just
20 for consideration of this motion, the Commissioners
21 did agree to hire two new deputies in the last couple
22 of weeks so that, in our mind, is a pertinent fact
23 for you when you are considering this motion.

24 MR. VAN KLEY: Well, that's not evidence
25 at all so.

1 ALJ SCHABO: Well, neither is our
2 arguments on objections so.

3 MR. BORCHERS: It's in the context of
4 considering this motion, not for evidentiary.

5 ALJ SCHABO: Thank you.

6 MR. VAN KLEY: It has nothing to do with
7 the motion.

8 ALJ SCHABO: So I am going to offer my
9 compromise once more, and then I am going give my
10 ruling.

11 MR. SETTINERI: Compromise is fine.

12 ALJ SCHABO: Do you take the compromise,
13 Mr. Van Kley, or would you like my specific ruling?

14 MR. VAN KLEY: I would like your specific
15 ruling, your Honor.

16 ALJ SCHABO: Okay. I will strike the
17 clause "necessary to patrol the area" -- I'm sorry,
18 "necessary to patrol the Project Area" and "for that
19 purpose." So the sentence now reads "Fourth, because
20 the county lacks the funding necessary to hire the
21 deputies, the Applicant should be required to provide
22 the county with the funding necessary to hire a
23 deputy." There has been no foundation that deputies
24 are needed to patrol the project area.

25 MR. VAN KLEY: Okay. Thank you.

1 ALJ SCHABO: You're welcome.

2 Mr. Settineri, was that the end of your
3 motions to strike?

4 MR. SETTINERI: That's the motions to
5 strike, your Honor. Thank you very much.

6 ALJ SCHABO: So we are ready to begin
7 cross-examination?

8 MR. SETTINERI: Yes, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Settineri:

12 Q. Starting my cross-examination,
13 Ms. Vonderhaar, you are aware that representatives of
14 the county are present in this room today, correct?

15 A. I am.

16 Q. And are you aware that the county has
17 represented today that funding has been approved to
18 hire two new additional deputies for the area?

19 MR. VAN KLEY: Objection, your Honor.
20 There is no factual foundation for the premise of
21 this question. Just because there is a statement
22 made in voir dire as a representation of counsel
23 doesn't make it a fact that can be presumed in a
24 question asked of this witness. There has been no
25 testimony with respect to this so-called fact.

1 If -- if the local governments had wished
2 to get that fact into evidence, they should have
3 presented a witness to that effect. And they have
4 not done so, so we would object to the premise, that
5 this question is lacking foundation.

6 ALJ SCHABO: I have to agree with that.
7 I'll sustain that objection.

8 Q. (By Mr. Settineri) You're concerned about
9 funding of deputies, correct?

10 A. Yes.

11 Q. All right. Are you aware that -- do you
12 know whether the county has approved funding for two
13 additional deputies?

14 A. So I am now -- from the beginning of the
15 summer, it was a no and there was a battle within the
16 Commission. So apparently within recent time they
17 have accomplished that. Not any different than the
18 PILOT changing at the Statehouse in the last two
19 weeks.

20 Q. And the funding of two additional
21 deputies would definitely be a benefit to the county,
22 correct?

23 A. Well, we will see. We were short staffed
24 before. I don't know that this gets us to where we
25 need to be.

1 Q. Thank you. So you have no formal
2 training in biology, correct?

3 A. No.

4 Q. And you have no formal training in
5 criminology, correct?

6 A. Correct.

7 Q. And you have no formal training in
8 environmental science, correct?

9 A. Correct.

10 Q. You attended college for one year but
11 have no degree post high school, correct?

12 A. Yes.

13 Q. You are not testifying as an expert in
14 this case, correct?

15 A. Correct.

16 Q. Never worked in the solar industry,
17 correct?

18 A. Correct.

19 Q. If you could turn to page A3 of your
20 direct testimony -- answer A3 which is CCP Exhibit 2,
21 please.

22 A. I'm sorry. You said page 3?

23 Q. I'm sorry, answer 3 --

24 A. Answer 3.

25 Q. -- in the direct testimony. There you

1 are -- so you are offering testimony on behalf of the
2 Concerned Citizens of Preble County, LLC, Robert
3 Black, Margo Brandly, Campbell Brandly Farms, LLC,
4 Michael Irwin, Kevin and Tina Jackson, the Vonderhaar
5 Family ARC, LLC, and Vonderhaar Farms Inc., correct?

6 A. Marja Brandly.

7 Q. Marja.

8 A. But correct.

9 Q. And prior to filing your direct testimony
10 in CCP Exhibit 2, you did not review your testimony
11 with Robert Black, Marja Brandly, Campbell Brandly
12 Farms, Michael Irwin, Kevin and Tina Jackson,
13 correct?

14 A. Correct.

15 Q. And turning to CCP Exhibit 3, line 22,
16 it's listed at Q2 but that would, I assume, be answer
17 2, there it states you are offering testimony on
18 behalf of the Concerned Citizens of Preble County,
19 LLC, Robert Black, Marja Brandly, Campbell Brandly,
20 Campbell Brandly Farms, Michael Irwin, Kevin and Tina
21 Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar
22 Farms Inc.; is that correct?

23 A. Correct.

24 Q. And prior to filing this testimony, you
25 had not reviewed your testimony with Robert Black,

1 Marja Brandly, Campbell Brandly Farms, LLC, Michael
2 Irwin, Kevin and Tina Jackson, correct?

3 A. Correct.

4 Q. You reside approximately 2 miles from the
5 project area; is that correct?

6 A. Correct.

7 Q. At page A7 of CCP Exhibit 2 -- I should
8 say, sorry, page 2 of CCP Exhibit 2, answer 7 you
9 note there are 67 members that I guess -- strike
10 that.

11 The question at line 12 is "How many
12 people and companies are members of the Concerned
13 Citizens," and you note "67 members."

14 A. Yes.

15 Q. Okay. How many companies are members of
16 the Concerned Citizens?

17 A. I don't have an exact number off the top
18 of my head.

19 Q. Okay. And of the 67 members, some reside
20 near the Alamo project, correct?

21 A. Correct.

22 Q. Now, Concerned Citizens of Preble County,
23 LLC, is a for profit entity, correct?

24 A. Correct.

25 Q. And do you know what an LLC is?

1 A. A limited liability corporation.

2 Q. And do you have -- so, for instance,
3 Vonderhaar Family ARC, LLC, is that a limited
4 liability corporation?

5 A. Yes.

6 Q. Okay. And who owns Vonderhaar Family
7 ARC, LLC?

8 A. I do.

9 Q. And do you have an operating agreement
10 for your LLC?

11 A. I do.

12 Q. And did you sign the operating agreement?

13 A. Yes.

14 Q. Okay. Does Concerned Citizens of Preble
15 County, LLC, have an operating agreement?

16 A. Yes, it does.

17 Q. And who signed that operating agreement?

18 A. The six trustees that organized it.

19 Q. Okay. And if I asked you who owns
20 Concerned Citizens of Preble County, LLC, what would
21 your answer be?

22 A. The members.

23 Q. And who -- and -- so did all of the 67
24 members sign the operating agreement?

25 A. All of the 67 members agreed to the

1 organization of it but there weren't 67 at the time.
2 The six trustees set the entity up, and then members
3 were added to it.

4 Q. When you say members were added to it,
5 how were they added to it?

6 A. We believe that anyone that feels
7 impacted has the right to participate, and membership
8 is what you can afford.

9 Q. Do they sign the operating agreement when
10 they join the LLC?

11 A. They do not. By paying their membership
12 money, they become a member of the LLC.

13 Q. So they don't own the LLC.

14 A. Our membership is set up that we all do,
15 and the officers are the ones who operate it.

16 Q. Can you own an LLC without signing the
17 operating agreement to your knowledge?

18 MR. VAN KLEY: Objection, calls for a
19 legal conclusion.

20 ALJ SCHABO: Answer to your knowledge.

21 A. I would consult with my attorney and
22 that's who I consulted with to set up the LLC.

23 MR. SETTINERI: Your Honor, we may -- we
24 would like to mark an exhibit for the record Company
25 Exhibit 17. May I approach, your Honor?

1 ALJ SCHABO: You may.

2 MR. SETTINERI: Your Honor, at this time
3 I would like to mark as Company Exhibit 17 a State of
4 Ohio certificate for Concerned Citizens of Preble
5 County, LLC.

6 ALJ SCHABO: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Settineri) Ms. Vonderhaar, would
9 you agree with me these are the articles of
10 organization for Concerned Citizens of Preble County,
11 LLC?

12 A. Yes.

13 Q. Okay. And if you turn to page 2 of the
14 document, do you see the box checked No. 1 Articles
15 of Organization for Domestic For-Profit Limited
16 Liability Company?

17 A. Yes.

18 Q. You can set that aside, please. Okay.
19 At page 3 of CCP Exhibit 2, answer 7 -- answer 11,
20 I'm sorry, you list certain members of Concerned
21 Citizens that live on properties adjacent to the
22 project area, correct?

23 A. Yes.

24 Q. Am I correct that those members reside in
25 the aggregate five houses adjacent to the project

1 area?

2 A. Yes. And the Johnson family should be
3 included in that list.

4 Q. Okay. And so then that list would
5 consist of Ms. Brandly and Mr. Irwin's house.

6 A. Yes.

7 Q. Ms. Ridenour's house.

8 A. Yes.

9 Q. Earl and Shane Strang's house.

10 A. Stang.

11 Q. Stang, thank you. Steven Wyatt and
12 Stephanie Longworth's house.

13 A. Yes.

14 Q. And the house your son Adam Vonderhaar
15 currently lives in that is owned by Vonderhaar Family
16 ARC, LLC, correct?

17 A. Yes.

18 Q. And you mentioned also that the Johnsons'
19 have a house adjacent to the project area, correct?

20 A. Yes. They are right in the center.

21 Q. As to the house your son lives in, that's
22 set back from the road, correct?

23 A. A little bit.

24 Q. And approximately 500 feet or so?

25 A. Probably.

1 Q. And the project area would be on the
2 other side of the road from the house, correct?

3 A. Correct. The view from the house will be
4 all solar panels.

5 MR. SETTINERI: I just move to strike
6 that extraneous part of the answer, your Honor. The
7 question was answered before the witness expanded on
8 her answer about the view. I didn't ask about the
9 view.

10 ALJ SCHABO: Sustained.

11 Q. (By Mr. Settineri) Now, Steven Wyatt and
12 Stephanie Longworth's house is currently surrounded
13 on three sides by active agriculture, correct?

14 A. Yes.

15 Q. Okay. Earl and Sharon Stang's house is
16 bordered by State Route 177 and active agriculture,
17 correct?

18 A. It is across the road from the array,
19 yes.

20 Q. The answer to my question is "yes."

21 A. Yes.

22 Q. Thank you. And the northern most end of
23 the project area would be across the street from the
24 Stang's house, correct?

25 A. Yes.

1 Q. And Ms. Ridenour's house would be across
2 Fairhaven College Road from the proposed project
3 area, correct?

4 A. Correct. Right now, next to our
5 schoolhouse, our property wraps her on the northeast
6 and south and then the array is on her west.

7 Q. Okay. So her house is adjacent to active
8 agriculture as well, correct?

9 A. Yes.

10 Q. You consider your farming operation a
11 business, correct?

12 A. Correct.

13 Q. Your business uses combines and tractors
14 during the day and at night in the fields, correct?

15 A. As long as we're planting or harvesting
16 it.

17 Q. Do you spread manure in any of the
18 fields?

19 A. Just at the home farm.

20 Q. Your business operates a grain dryer,
21 correct?

22 A. Correct.

23 Q. And that dryer may run at least two
24 months of the year both at day and night, correct?

25 A. Possibly could. Didn't run at all last

1 year.

2 Q. And your farming operations create noise
3 both during the day and night, correct?

4 A. In the center of the 200 plus acres, yes.

5 Q. You can hear trains in the project area,
6 correct?

7 A. We can. That's how far sound travels.
8 The trains are approximately 4 miles away.

9 Q. In fact, you can hear the train from
10 Camden over what else is taking place in your area so
11 there is not the necessity to mitigate sound for
12 farming operations, correct?

13 A. The train you can hear when it's a still
14 night. It's not something we hear continuously when
15 it passes through.

16 Q. Ms. Vonderhaar, do you remember being
17 deposed last Friday?

18 A. Yes.

19 Q. And you were under oath at that
20 deposition, correct?

21 A. Yes.

22 MR. SETTINERI: Your Honor, if I may
23 approach the witness, I would like to present a
24 deposition transcript to her.

25 ALJ SCHABO: You may.

1 Q. (By Mr. Settineri) Ms. Vonderhaar, I have
2 presented you with a copy of your deposition
3 transcript from last Friday. If you could, please
4 turn to page 34. And that would be of the actual
5 deposition transcript because I have four pages per
6 page.

7 A. Okay.

8 Q. If you look at line 13 of the deposition
9 transcript.

10 A. Okay.

11 Q. You see the question line 13, "I am not
12 asking about the sound. Just in general from your
13 farming operation, do you mitigate sound? Do you
14 take actions to mitigate sound from your farming
15 operations?

16 "Answer: There's no need to because we
17 are not emitting this type of sound. We can hear the
18 train from Camden over what else is taking place in
19 our area so there's not the necessity to mitigate
20 sound." Did I read that correctly?

21 A. So I believe -- this is my first time to
22 see it since Friday, but it sounds familiar. And for
23 me as far as us as a family farm and where our grain
24 dryer is located and the sound that's out in the
25 area, for us our dryer is located in the center of

1 our -- our home farm. And you leave our property;
2 you don't hear it. But at our home farm, you can
3 hear the train at the same time, so I guess the
4 equipment is not as loud if I still hear the train
5 and I hear the equipment at the same time.

6 MR. SETTINERI: Your Honor, I move to
7 strike that answer. I simply asked if I read the
8 question correct -- and answer correctly. It can be
9 addressed on redirect, if you would like.

10 ALJ SCHABO: Yeah. Sorry. Was that a
11 motion to strike?

12 MR. SETTINERI: Yes, that was a motion to
13 strike.

14 ALJ SCHABO: Motion is granted. Try your
15 best to stick to answering the question that is
16 actually asked.

17 THE WITNESS: Okay.

18 ALJ SCHABO: And if there is additional
19 information that your attorney would like to elicit
20 from you, he will have that opportunity after
21 Mr. Settineri is done with his cross-examination.

22 THE WITNESS: Okay.

23 ALJ SCHABO: Thank you.

24 Q. (By Mr. Settineri) Ms. Vonderhaar,
25 farmers in the area use fencepost pounders, correct?

1 A. Yes. Some do who install fence.

2 Q. And that's used -- in fact, fencepost
3 pounders are used to generally install wood posts in
4 your area, correct?

5 A. Yes.

6 Q. All right. And when you use a fence
7 pounder to drive a wood post, you are going to hear
8 the sound for quite a distance, correct?

9 A. I don't know the distance. I just know
10 when I am standing next to it and we are pounding it.

11 Q. So the answer to my question is
12 "correct"?

13 MR. VAN KLEY: I am going to object to
14 the --

15 ALJ SCHABO: Would you like the question
16 reread to you?

17 THE WITNESS: Is he asking me how far you
18 can hear that sound?

19 ALJ SCHABO: No.

20 MR. SETTINERI: I will just pull the
21 deposition. That's fine. We can reread it to her.

22 ALJ SCHABO: Let's reread the question.

23 (Record read.)

24 A. Sure.

25 Q. Just a month and a half ago, you hand

1 pounded in some metal fence posts, correct?

2 A. Correct.

3 Q. That is quite loud too, correct?

4 A. While I was installing them, yes, it was
5 quite loud.

6 Q. Now, you remember being deposed in June.
7 We've established that. As of that time, you did not
8 have any concerns about noise from the actual
9 operation of the solar project, correct?

10 A. No. We had concerns from the beginning
11 related to the noise from the project. And so with
12 the application itself and then listening to
13 Mr. Hessler's expert testimony, the sound of the
14 posts being put in by either the pounding or the
15 screwing is concerning to us either way. Both of
16 them are 84 decibels, just one is impulsive and one
17 is broadband, so I think we have general concern
18 about -- sound has always been our concern.

19 MR. SETTINERI: Your Honor, if I may
20 approach the witness, I would like to review a
21 deposition transcript. I have another deposition
22 transcript.

23 ALJ SCHABO: Is it her deposition
24 transcript?

25 MR. SETTINERI: Yes.

1 ALJ SCHABO: You may.

2 MR. SETTINERI: Yes, it is hers.

3 THE WITNESS: Deposed twice.

4 ALJ SCHABO: Okay.

5 Q. (By Mr. Settineri) So, Ms. Vonderhaar, do
6 you recall being deposed twice in this case, correct?

7 A. Yes, I remember the hours.

8 Q. The first deposition was on June 11,
9 correct, of this year?

10 A. Sounds right.

11 Q. Okay. And you were under oath at that
12 deposition, correct?

13 A. Yes.

14 Q. Okay. And so I've handed you your
15 deposition transcript. Do you have that before you?

16 A. I do.

17 Q. If you could turn to page 106 of that and
18 tell me when you are there, please. In fact, we will
19 start at page 105, line 22. Are you there?

20 A. So page 106, line 22?

21 Q. I'm sorry, 105.

22 A. 105.

23 Q. Just look at that. Do you see the
24 question line 22 "Do you have any concerns with noise
25 from the actual operation of the solar project?

1 "Answer: From what I've researched I
2 don't know that there necessarily would be. I think
3 of it -- I think if it was windmills, I might have a
4 different concern.

5 "Question: So your concerns with noise
6 are really limited to the construction piece of it?

7 Answer: Yes."

8 Did I read that correctly?

9 A. You did read that correctly, and I've had
10 additional time since then and listened to your
11 expert present.

12 Q. And has that changed your opinion?

13 A. It has definitely made my opinion much
14 more concerned about the noise.

15 Q. Both construction and operations.

16 A. Yes.

17 Q. You have no training in acoustics though,
18 right?

19 A. I do not, but listening to your expert
20 explain and then comparing it to sounds and decibels,
21 I now realize what that impact will be.

22 Q. Okay.

23 MR. SETTINERI: Your Honor, I would just
24 move to strike everything "but" and forward.

25 MR. VAN KLEY: I think her answer, all of

1 it, was directly responsive to his question, your
2 Honor.

3 ALJ SCHABO: Motion denied.

4 MR. SETTINERI: Okay.

5 Q. (By Mr. Settineri) In your farming
6 operations, you store gasoline on site, correct?

7 A. Correct.

8 Q. You also store diesel on site, correct?

9 A. Correct.

10 Q. And you store pesticides and herbicides,
11 correct?

12 A. For the minimum holding days, correct.

13 Q. As a farmer, you would expect other
14 farmers in the area to also store diesel, gasoline,
15 pesticides, and herbicides on their farm, correct?

16 A. I can't say what other farmers do.

17 Q. In your general experience would you
18 expect farmers to store diesel, gasoline, pesticides,
19 and herbicides on their farms?

20 A. It depends on what they're equipped to
21 store.

22 Q. Is it normal for a farmer to have diesel
23 tanks and gasoline tanks on site?

24 A. Some, some may.

25 Q. Okay. Let's turn to your CCP Exhibit 2.

1 If you could turn to page 9, answer 21. Are you
2 there?

3 A. Yes.

4 Q. So I will paraphrase but you indicate
5 that the intersection in that answer of State Route
6 177 and Tony Lynbrook Road is a busy intersection and
7 especially dangerous. 177 has a 55 mile an hour
8 speed limit. Do you consider State Route 177 to be a
9 heavily traveled road in the county?

10 A. One, I would like to say it's Toney
11 Lybrook Road. I missed that spelling in there. Two,
12 it is 55 mile an hour. You mainly have grain haulers
13 that are going up and down there and then the traffic
14 if there's -- if there's traffic of type, it's
15 between Richmond and Hamilton. So that intersection
16 specifically as I was looking at the pictures that
17 had been uploaded by Open Road to the application,
18 the most dangerous part of that intersection is when
19 you are going straight across 177 to cross, if you
20 were headed east and it's the point in that field and
21 being able to see the traffic that's coming from the
22 south that's headed north.

23 Q. Going back to my initial question though,
24 do you consider State Route 177 to be a heavily
25 traveled road?

1 A. Not as heavily traveled as I would say
2 725 is but, I mean, that's opinion so.

3 Q. Okay. Now, some farmers in the area
4 plant corn right up to the edge of the road
5 right-of-way, correct?

6 A. Up to the perimeter of the ditch of the
7 easement, yes.

8 Q. Okay. And corn at full height can
9 sometimes block intersections as well, correct?

10 A. For a, what, two-month period if someone
11 plants up into that area.

12 Q. You are aware that solar panels are
13 installed on houses and schools throughout Ohio,
14 correct?

15 A. I am aware that some are installed.

16 Q. Now, regarding the -- strike that.
17 Grass or any kind of plant can slow down
18 surface water runoff, correct?

19 A. Correct.

20 Q. Turning to page 11 of your testimony, and
21 this is CCP Exhibit 2, answer 26, at lines 17 to 18,
22 you state "replacing tiles requires a considerable
23 amount of effort using heavy tile installation
24 equipment that takes considerable space." Do you see
25 that?

1 A. Yes, I do.

2 Q. Now, you use -- you have used a Gold
3 Digger plow pulled behind a tractor to replace tile,
4 correct?

5 A. Yes.

6 Q. That's the tiling plow that is part 19 of
7 your answer, correct?

8 A. Yes.

9 Q. And that plow is an attachment to the
10 back of the tractor, correct?

11 A. Correct.

12 Q. Okay. And the attachment itself is not
13 that long; it may extend 2 to 3 feet behind the
14 tractor?

15 A. No. The width of it is that. The
16 distance of it is 24 feet. And so then the tile plow
17 itself when you do its wheelbase is 12 foot wide.

18 Q. So let me ask you this, so that
19 dimension, 24 foot long by 12 foot wide, is that both
20 the tractor and the plow?

21 A. No. That's -- that's the plow. Sorry.
22 I am comparing it to something else in my mind right
23 now.

24 Q. Take your time.

25 A. Yeah, I think that might have been the

1 two together.

2 Q. Now, you know what a mini excavator is,
3 correct?

4 A. I do.

5 Q. And that can be used to replace tile,
6 correct?

7 A. Yes.

8 Q. And if I was to describe a mini excavator
9 for someone who has never seen one, is it a fair
10 description to say it's like a mini backhoe?

11 A. That's fair to say.

12 Q. Okay. And a mini excavator can be 4 to 5
13 foot in width, correct?

14 A. Correct.

15 Q. And shovels can be used to replace tiles
16 in the field, correct?

17 A. Correct.

18 Q. Now, you are familiar with Ohio Utilities
19 Protection Service, correct?

20 A. Yes.

21 Q. Okay. And prior to doing any kind of
22 tile work in your field, you call the Ohio Utilities
23 Protection Service, correct?

24 A. Correct.

25 Q. And the acronym we all use for Ohio

1 Utilities Protection Service is OUPS, O-U-P-S,
2 correct?

3 A. Correct.

4 Q. And by calling OUPS, that they could
5 avoid an incident like hitting an underground gas
6 line, correct?

7 A. Correct.

8 Q. And anyone digging must contact OUPS at
9 least 48 hours, excluding weekends and legal
10 holidays, prior to beginning work, correct?

11 A. Correct.

12 Q. And failure to contact OUPS could result
13 in fines or penalties for your business?

14 A. Or death for the individual.

15 Q. Right. Now, you detect drainage issues
16 generally by finding sinkholes, blowholes, or you may
17 find ponding in the field, correct?

18 A. Correct.

19 Q. For all of us here can you just -- what
20 is a sinkhole?

21 A. So a sinkhole is just essentially where
22 it's sucking in, so the dirt goes down in, and it's
23 creating another pathway. A blowhole it is backed
24 up. It is pushing the dirt up and out depending upon
25 what's going on with the tile as to which one you are

1 going to get.

2 Q. Now, if a crop is planted and a drainage
3 issue arises after planting, you may not go over the
4 crop to make the repair, correct?

5 A. We have gone over crop depending upon how
6 bad the situation is. It's all about the choice of
7 the landowner.

8 Q. And so you may go over a crop, for
9 example, if the hole was enough to be a concern for
10 the equipment going into harvest, correct?

11 A. Correct.

12 Q. And that's exercised, for example, where
13 the hole is big enough the track could potentially --
14 the wheel could go into the hole, create a serious
15 incident.

16 A. Correct. Or if you think it's going to
17 end up being an impact to a larger part of the crop.
18 Protect the crop as best you can.

19 Q. Now, some of your neighbors don't go over
20 the crop to repair tile, correct?

21 A. It's all personal choice.

22 Q. And depending upon which crop they have
23 in the field, some will put wheat in for the winter
24 so they can tile through the summer, correct?

25 A. That is a common practice and then that

1 gives you the summer for the tiling purpose.

2 Q. Okay. And --

3 A. Generally that's done when you are going
4 to install a system. It gives you the full field.

5 Q. And some will clear a field harvest in
6 September-October, start tilling and start the week
7 after Thanksgiving as soon as all the crop is off and
8 then tile until the ground is so frozen that they
9 can't tile, correct?

10 A. Well, nobody is going to till the field
11 before -- after they harvest in order to tile but.

12 Q. Let me rephrase the question then.
13 Some -- rather than going over a crop some will clear
14 a field after harvest and then make repairs that need
15 to be done after Thanksgiving after harvest.

16 A. That's common.

17 Q. Now, you recently had a drainage issue
18 with one of the drainage mains on a property you
19 farm, correct?

20 A. Correct.

21 Q. That issue ended up -- it actually ended
22 up being a plugged tile on an adjacent landowner's
23 property, correct?

24 A. Correct.

25 Q. That may have been caused by silt and an

1 animal actually got in the tile and died, correct?

2 A. Right.

3 Q. And you discovered the issue in early
4 March of this year, and the tile was repaired at the
5 end of March, correct?

6 A. Correct.

7 Q. The timing of the tile repair can depend
8 on the circumstances, correct?

9 A. Correct.

10 Q. And that can -- that can include the time
11 of year, correct?

12 A. Correct.

13 Q. And tile repair can be as short as 3 or 4
14 feet depending on the situation, correct?

15 A. Correct.

16 Q. And do you schedule drainage repairs
17 depending upon the greatest risk which creates the
18 order for the repairs in your farm operation,
19 correct?

20 A. Correct.

21 Q. If you could turn -- I think up there
22 next to you should be what was previously marked as
23 Joint Exhibit 1. That is the Stipulation in this
24 matter. When you have that, just let me know,
25 please. Do you have that before you?

1 A. I do.

2 Q. Turn to condition 16 of the Stipulation,
3 please. Tell me when you're there.

4 A. I'm there.

5 Q. Okay. You will see a phrase down the
6 page, unfortunately we don't have line numbers on
7 this, but you will see a sentence that starts
8 "Damaged field tile systems shall be promptly
9 repaired no longer than 30 days after such damage is
10 discovered, and be returned to at least original
11 conditions or their modern equivalent at the
12 Applicant's expense." Do you see that?

13 A. I do.

14 Q. Okay. Now, the phrase "promptly
15 repaired" to you means as soon as the opportunity
16 exists, correct?

17 A. It does.

18 Q. Okay. And you consider a deadline -- an
19 outside deadline of 30 days to be reasonable,
20 correct?

21 A. I do.

22 Q. Okay. Now, as a general matter, grass
23 fires can occur on farms, correct?

24 A. Fires can occur at a lot of places, but
25 yes.

1 Q. And serious injuries can occur during
2 farming operations, correct?

3 A. Correct.

4 Q. And that could include injuries from
5 electrocution depending what's going on at the
6 farming operations at the time, correct?

7 A. Correct.

8 Q. Farming operations involve a lot of
9 equipment stored in barns and outbuildings, correct?

10 A. Correct.

11 Q. Farmers -- you are aware that some
12 farmers maintain crop insurance, correct?

13 A. Correct.

14 Q. Is that a general practice within farming
15 operations?

16 A. I would think so.

17 Q. And you have -- your farming operation
18 has farm insurance, correct?

19 A. Yes.

20 Q. You submitted a claim this year for crop
21 insurance after you elected to not plant a crop on a
22 field because of excessive rain, correct?

23 A. After excessive rain prevented us from
24 planting a crop, we did.

25 Q. And that claim was approved.

1 A. It was.

2 Q. Now, is that field near Hueston Woods
3 State Park?

4 A. Where our preventive planting claim was?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. And there is an existing main
8 coming off that field that goes into the Hueston
9 Woods State Park, correct?

10 A. Correct.

11 Q. And you believe that main, which is an
12 existing perforated poly tile main, is plugged with
13 roots in the adjoining Hueston Woods State Park,
14 correct?

15 A. Correct.

16 Q. And you intend to install a new main that
17 would go pretty deep into the state park, correct?

18 A. Our hope is that the landowner and the
19 state park come to some sort of agreement on what's
20 going to take place related to that main.

21 Q. Okay. And if that main is installed,
22 that would result in additional water flow into the
23 state park watershed, correct?

24 A. You mean it would accept the water that's
25 passing through the neighboring property as required

1 by law?

2 Q. I am saying it would increase the water
3 flow -- let me strike that. Let me ask this --

4 A. You mean it will take it back to the
5 water flow it was originally when there was a main in
6 place that was working.

7 Q. Let me ask it this way, currently when
8 the new main is installed, you will see an increase
9 in water being discharged into the state park area,
10 correct? Because currently water is not flowing
11 there because the main is plugged, correct?

12 A. So it will take it back to its original
13 water flow, yes.

14 Q. Now, let's turn to your CCP Exhibit 3,
15 your supplemental testimony, page 4, please. Are you
16 there?

17 A. Page 4 of supplemental.

18 Q. Supplemental testimony.

19 A. Okay.

20 ALJ SCHABO: Lines 7 to 9.

21 A. Okay.

22 Q. There you state at line 7 "Seventh, the
23 Stipulation fails to account for the reality that
24 some of the tiles in the Project Area may have
25 reached or are close to reaching their life

1 expectancy and need to be replaced completely." Do
2 you see that?

3 A. I do.

4 Q. All right. Now, when you use the word
5 "some" in the phrase "some of the tiles," you don't
6 know what some represents in terms of a measurement,
7 correct?

8 A. Correct. We know the tile exists because
9 the land was tiled in order to drain it so that
10 people could farm it and then that brings us back to
11 the age of the tile that's in there and what needs to
12 happen with that tile.

13 Q. Okay. You don't know the extent of how
14 much clay tile and new tile is installed in the
15 project areas as of today, correct?

16 A. Correct. That's the point.

17 Q. Okay. But you are aware of some fields
18 in the project area that have systematically tiled
19 recently, correct?

20 A. Correct.

21 Q. Okay. And you would expect that a field
22 that has been systematically tiled to have good
23 records on the installed tile location, correct?

24 A. I would agree with that.

25 Q. Now, you are also aware there are

1 existing drainage issues in some of the fields, at
2 least one field in the project area, correct?

3 A. Correct.

4 Q. And, in fact, on the Chapin Farm there is
5 a big hole and a ditch that was historically a county
6 ditch, correct?

7 A. Correct.

8 Q. So you would agree -- so if drainage is
9 improved within the project area, that would benefit
10 the community, correct?

11 A. I would agree with that statement with
12 best management practices used. I am concerned with
13 the language that is inside the whole paperwork that
14 is in the website about the swales and the movement
15 of surface water during construction and prior to
16 grass being seeded and which way those -- water is
17 going to be directed and what that plan looks like
18 because surface water is going to be more damaging to
19 the crop that's adjacent on a quicker flooding basis
20 and so what way exactly is that water going to be
21 directed.

22 MR. SETTINERI: Your Honor, I just move
23 to strike everything about "I am concerned." She
24 answered the question and went into an area that was
25 not related to the question at all.

1 MR. VAN KLEY: Your Honor, I disagree.

2 MR. SETTINERI: It was about drainage,
3 not surface water runoff.

4 MR. VAN KLEY: I disagree completely.
5 She needed to qualify her answer to make sure it was
6 accurate in response to his question.

7 ALJ SCHABO: Can you read the question
8 back, please.

9 (Record read.)

10 ALJ SCHABO: I will grant your motion.
11 It's something you can pull out on redirect, Mr. Van
12 Kley.

13 MR. SETTINERI: And could I have the
14 answer read up until the testimony was stricken.

15 (Record read.)

16 Q. (By Mr. Settineri) Ms. Vonderhaar, I
17 would like to direct you to the deposition transcript
18 that I handed you previously. It's been previously
19 handed out. As you noted before, you recall being
20 deposed last Friday, so you are going to be looking
21 at the deposition transcript for August 9, 2019.

22 A. Okay.

23 Q. And if you have it in front of you, turn
24 to page 79. Are you there?

25 A. Almost. Okay.

1 Q. Turning your attention this -- question
2 starting at line 14, answer ending at line 17
3 "Question: There's -- you would agree with me,
4 wouldn't you, that if drainage is improved within the
5 project area, that would benefit the community?

6 "Answer: It would."

7 Did I read that correctly?

8 A. But there's no plan put forward that
9 tells me that it improved the drainage of the
10 community. That is what the concern is.

11 MR. SETTINERI: Your Honor, I just move
12 to strike the answer as nonresponsive. I simply
13 asked if I read the question correctly.

14 MR. VAN KLEY: No. I guess, your Honor,
15 I would object to even citing this testimony. It
16 has -- it's a different topic.

17 ALJ SCHABO: Can you redirect me to where
18 we are?

19 MR. SETTINERI: Yeah. Page 79 of the
20 deposition transcript, lines 14 to 17; and, your
21 Honor, that is the deposition dated August 9, 2019.

22 ALJ SCHABO: Okay.

23 MR. SETTINERI: And it's page 79,
24 question 14, answer ending at line 17. The answer
25 "It would."

1 ALJ SCHABO: Okay. Mr. Van Kley, you
2 disagreed?

3 MR. VAN KLEY: Yeah. It's not the same
4 question as the question he is trying to impeach the
5 answer for. The question that he asked was
6 whether -- whether improving -- or whether fixing a
7 drainage tile that's currently broken on the project
8 area would improve drainage in the area. And the
9 question and answer that he's reading on page 79 of
10 the transcript simply asks whether as a general
11 matter if drainage is improved in a project area,
12 that would benefit the community. They are not the
13 same.

14 MR. SETTINERI: I can represent, Mr. Van
15 Kley, that I believe I did basically ask essentially
16 the same question from the same deposition.

17 MR. VAN KLEY: I'm sorry. I didn't hear.

18 MR. SETTINERI: I believe I can represent
19 to you I asked the same question from the deposition.
20 All I am asking is if I read that correctly.

21 MR. VAN KLEY: Again, your Honor, it's
22 improper impeachment. It's a different top --
23 different answer, different question.

24 ALJ SCHABO: It was the same question.
25 Your motion to strike is granted.

1 Do your best to stick to answering the
2 question asked. Your attorney can take care of the
3 rest.

4 Q. (By Mr. Settineri) So, Ms. Vonderhaar, I
5 am going to repeat the question I asked you, again at
6 page 79 of the deposition transcript, where you were
7 under sworn oath, line 14, "Question: There's -- you
8 would agree with me, wouldn't you, that if drainage
9 is improved within the project area, that it would
10 benefit the community," and your answer at the
11 deposition in line 17 was "It would," correct?

12 A. Yes.

13 Q. And if there was -- for example, if the
14 hole in the Chapin farm was fixed and that main
15 repaired, that would benefit the community as well,
16 wouldn't it?

17 A. Yes.

18 Q. Your expectation here in this case is
19 that the Ohio Power Siting Board should not rule on
20 the application in this case until it has the final
21 engineering drawings for the project and that all
22 plans have been submitted for review by the Board,
23 correct?

24 A. And the opportunity for public comment,
25 then yes.

1 Q. Now, as a general matter, you oppose the
2 project as presented, correct?

3 A. Correct.

4 Q. And you also -- you oppose putting solar
5 panels on agricultural land, correct?

6 A. On -- large scale arrays, yes.

7 Q. But you would not oppose the project area
8 in this case for being used for a large residential
9 development, correct?

10 A. That's not an option in our community.
11 Our land use management plan wouldn't allow it.

12 Q. I am going to go back to my question, you
13 would not oppose the project area being used for a
14 large residential development, correct?

15 A. I believe I said that in my deposition at
16 one point. I'm from Butler County, and I would not
17 have that issue.

18 Q. You have not conducted any economic
19 studies on the impact of the project on the
20 community, correct?

21 A. Correct.

22 Q. Now, one of your concerns about this
23 project is if the project is built, that agricultural
24 land in the project area would not be available for
25 sale to young farmers, new farmers, or any existing

1 farmers in the area, correct?

2 A. Not just the area. The state of Ohio at
3 a time where there's a House Bill that was moving
4 through for the purpose of encouraging agricultural
5 land to transfer within agriculture and people
6 retiring out to then offer a benefit if they sell to
7 a young and beginning farmer, it just seems like a
8 counterview for the state of Ohio to be encouraging
9 or pushing one side of it and then taking land out on
10 the other side of it.

11 Q. Going back to my question though, again,
12 one of your concerns about this project is that if
13 it's built, that agricultural land in the project
14 would not be available for sale to young farmers, new
15 farmers, or any existing farmers in the area,
16 correct?

17 A. Correct. Once that land is removed it
18 doesn't come back.

19 Q. And you are an existing farmer in that
20 area, correct?

21 A. I am.

22 Q. And the land in the project area is
23 adjacent to the land your farming business owns and
24 land that your farming business rents, correct?

25 A. Correct.

1 Q. Now, you don't consult with your adjacent
2 landowners for every tile repair you make, correct?

3 A. For those that impact them, we do.

4 Q. Well, so my answer -- let me ask the
5 question again. You don't consult with your adjacent
6 landowners for every tile repair you do is your
7 answer --

8 A. Correct.

9 Q. -- correct? And whether you consult with
10 adjacent landowners depends on the type of repair,
11 correct?

12 A. Correct.

13 MR. SETTINERI: Your Honor, if I may take
14 a quick 5-minute break, water break as well, that
15 would be great.

16 ALJ SCHABO: Yeah. Let's go off the
17 record for approximately 5 minutes.

18 (Recess taken.)

19 ALJ SCHABO: Let's go back on the record.
20 Mr. Settineri.

21 MR. SETTINERI: Thank you, your Honor.

22 Q. (By Mr. Settineri) Ms. Vonderhaar, we've
23 previously -- you testified previously here today
24 that I believe you have some concerns about
25 operational noise, correct?

1 A. Correct.

2 Q. Now, you reside -- you reside well over 2
3 miles from the project area, correct?

4 A. Correct.

5 Q. So specifically as to your house, would
6 you have any concerns to operational noise on the
7 project?

8 A. I do, just how sound travels and the
9 conversation -- well, listening to Mr. Hessler speak
10 has created some concern for me but not just where I
11 live but then also my son and then the homesite that
12 we have located on the property that's adjacent. So
13 according to the land use management plan, for our
14 county generally it's 40 acres or more without
15 special zoning permission to build a home, so it's
16 pretty special to have that additional homesite that
17 we do on our property that's adjacent to the project
18 area.

19 Q. That's where your son currently resides,
20 correct?

21 A. Our son resides but we also have an
22 additional homesite.

23 Q. And the homesite has no home currently on
24 it, correct?

25 A. Correctly -- correct.

1 Q. I have to ask what specific concern do
2 you have with operational noise?

3 A. So after Mr. Hessler spoke and he talked
4 about the sound emitted from a single inverter and
5 then 40 inverters would be inside the project area
6 along with the string inverters and then what sound
7 level that that's going to take our background sound
8 to in the community, I have some concerns related to
9 it.

10 And then as he presented that, when he
11 did his study, he located his mic over next to
12 Mr. Giffin's house which is across from the
13 substation that had been updated and so that's
14 already creating a -- what I would say is a raising
15 the value of the background sound that wasn't really
16 present for the rest of the community to begin with
17 with that microphone being located closer to the
18 substation. So with that I am curious now what is
19 considered the new acceptable sound by Open Road
20 standard to the community going forward.

21 Q. Are you also curious as to what would be
22 the acceptable sound level generally in a community?

23 A. Well, with that forest our community is
24 relatively quiet and so to have to place the mic
25 there specifically and that direction to get that

1 sound impact is more of the concern we have as a
2 community because it's not really representational of
3 the whole area if you have to stick the mics closer
4 to the substation to get the background sound level
5 going forward.

6 Q. Is it your expectation that the
7 background level in the community, whether it's an
8 LEQ level or L90 level should remain as is?

9 A. It's part of why we've chosen to live
10 where we do. I just happen to have a daughter who is
11 more sensitive to background noise than others, and
12 so it sticks out for us related to what background
13 sound is. And -- and my understanding working with a
14 speech pathologist over the years related to her, so
15 background sound is something I am more aware of than
16 most just because of going through that situation.

17 MR. SETTINERI: Thank you, Ms.
18 Vonderhaar.

19 No further questions, your Honor.

20 ALJ SCHABO: Thank you, Mr. Settineri.
21 Mr. Van Kley?

22 MR. VAN KLEY: Were there any other
23 people who wanted to cross?

24 MS. WEST: No, your Honor.

25 ALJ SCHABO: I'm sorry.

1 MS. BAIR: No, your Honor.

2 ALJ SCHABO: I am forgetting everybody
3 again.

4 Mr. Van Kley.

5 MR. VAN KLEY: Thank you, your Honor.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Van Kley:

9 Q. Ms. Vonderhaar, let's just take our
10 redirect questions in basically the same order as we
11 heard the cross-examination questions. So I am going
12 to start off with a question or two concerning
13 emergency services in the area. The first question
14 is with regard to your statement that you are now
15 aware that two deputies will be hired. What was the
16 basis of that understanding?

17 A. Do you mean the -- it's been put forward
18 by Assistant Prosecutor Katie West today that two
19 will be hired in the future. As far as what that
20 start date is, I do not know the start date.

21 Q. Okay. So other than the statement of one
22 of the attorneys in this -- this proceeding, do you
23 have any independent information that additional
24 deputies will be hired?

25 A. It's been the ongoing battle of our

1 commissioners for the summer, so I appreciate to have
2 learned that here today that two will be hired and
3 look forward to that for our community.

4 Q. Well, the question was do you have any
5 independent knowledge other than the statements made
6 by an attorney today that two deputies will actually
7 be hired?

8 A. I do not.

9 Q. Okay. You were asked about the
10 organization of the Concerned Citizens of Preble
11 County and the membership of the county so let me ask
12 you a few questions about that topic. With regard to
13 your expressions of your -- with regard to your
14 testimony about the concerns of the Concerned
15 Citizens of Preble County and Robert Black, Marja
16 Brandly, Campbell Brandly Farms, Michael Irwin, Kevin
17 and Tina Jackson, Vonderhaar Family ARC, and
18 Vonderhaar Farms, what's the source of your
19 information concerning what their concerns are?

20 A. So we held a series of meetings
21 through -- as soon as we could form with the short
22 notice that we had to put the citizens group together
23 I guess should be where we start where we were
24 playing catch up to begin with. And so with that
25 locating an attorney to work with and then getting

1 our group set up legally so that we could move
2 forward, we then held a series of meetings where we
3 narrowed down what our concerns are.

4 At that point we had already hired Jack,
5 and Jack gave us homework to think about and figure
6 out what our priorities are. And so as a group, we
7 spent several meetings having that discussion about
8 what are our priorities, what are we concerned about.
9 And reigning in that number of people over those
10 meetings to come up with that list was a little bit
11 of work, but I appreciate the input and -- and really
12 good group of people to work with, and I have to say
13 it's been the one blessing that's come out of this
14 situation is the group that has come together.

15 Q. You were asked some questions about
16 locations of the homes of the Concerned Citizens who
17 are named as intervenors in this proceeding so let me
18 ask you a question or two about that topic. With
19 regard to your son's home --

20 A. Yes.

21 Q. -- where is that located? And if you
22 want to, you can -- you can point to its location on
23 Exhibit A of CCPC Exhibit 2.

24 A. So he is right here.

25 Q. All right. You are going to have to

1 identify the location.

2 A. So on Fairhaven College Corner Road and
3 he is directly across the road from the solar array
4 which would be the property of Bormins, Givens, and
5 Jacksons that's in the solar array.

6 Q. Is the location of the home he is located
7 in marked on Exhibit A?

8 A. Yes.

9 Q. And okay. And how is it?

10 A. As Adam Vonderhaar.

11 Q. With an arrow to the location where the
12 home is?

13 A. Yes.

14 Q. All right. And you are familiar with
15 that home?

16 A. Yes, I am.

17 Q. How are you familiar with that home?

18 A. So it's a 200 year old house that is
19 located on a setback driveway there, and when you
20 look at the project area, it is the furthest house
21 that sets back from the adjacent homes just to give
22 you an idea of distance. With that the home, like I
23 said, is 200 years old, 200 plus, and the second
24 President Harrison actually stayed there while he
25 courted his wife Caroline Scott, the daughter of the

1 president of Miami University at that time.

2 And so with that you go next to Shara
3 Ridenour's house. And so just to give you a history
4 of that property, Shara's house is the next one to
5 the north, and it is the original home that the
6 school teacher lived in for the Swamp College
7 Schoolhouse that still stands on our property just on
8 the north side of Shara's house. They are right next
9 to each other. So then you go further north --

10 Q. Okay. Before you go there, going back to
11 the questions that I was asking you about, the home
12 that Adam is living in --

13 A. Yes.

14 Q. -- what's your relationship with regard
15 to the ownership of that house?

16 A. I own the house.

17 Q. Okay. And have you also been inside the
18 house?

19 A. Yes.

20 Q. Okay. Have you been to -- how many
21 floors are in that house?

22 A. It's a two story farmhouse.

23 Q. Okay. Have you been to the second floor
24 of that house?

25 A. Yes.

1 Q. Okay. Have you looked out from the
2 second floor of that house to the project -- the area
3 where the project area is?

4 MR. SETTINERI: Your Honor, at this time
5 I would just object. This is way outside the scope
6 of my cross. I asked about the setback distance to
7 the house. I did not get into a description of the
8 view she had or anything else from the house. I have
9 been patient, but at this point we are outside the
10 scope of my cross.

11 MR. VAN KLEY: Well, not really.
12 Obviously he is asking about the setback in order to
13 argue later or try to argue later that you can't see
14 the project area from -- from this house and the
15 other houses owned by the Concerned Citizens in the
16 area, so it's directly related to the question that
17 he asked.

18 MR. SETTINERI: At least I have a brief
19 writer for me now.

20 ALJ SCHABO: A little bit of latitude and
21 with the line of questioning as long as we reign it
22 in.

23 So you may answer the question.

24 A. So from the family room of the house has
25 the full view of the driveway which then goes

1 straight over to direct view of the solar array and
2 that's on the first floor. On the second floor, the
3 west bedroom has a full view of the solar array. So
4 currently from the second bedroom you can see all the
5 way over to the substation in Indiana across the
6 line.

7 Q. Okay. Moving on to a different topic
8 then, let's talk a little bit about noise issues.
9 You were asked some questions about equipment that
10 you use in your farming operations. So let's start
11 with the grain dryer. You were asked about whether
12 you have a grain dryer on the property that -- the
13 land that you farm. How would you compare the
14 potential noise impacts from the grain dryer as you
15 operate it to the potential noise from the
16 construction or operation of the solar project?

17 MR. SETTINERI: Object. There is no
18 foundation made that she is aware of the level of
19 noise from the construction of the solar project
20 versus the level of the grain dryer.

21 ALJ SCHABO: Can you rephrase your
22 question, Mr. Van Kley?

23 MR. VAN KLEY: Yeah, sure.

24 Q. Let's just break this down a little bit.
25 What's the duration of the period in which you

1 operate the grain dryer?

2 A. Maybe October, November, if that.

3 Q. Okay. And does it operate continuously
4 during those months or so?

5 A. Depends on the season.

6 Q. Okay. And what's the -- what's the --
7 how far away can you hear the grain dryer when it's
8 operating?

9 A. As far as you can't hear it off of our
10 property, if that's what you are asking.

11 Q. All right. Does the operation of the
12 grain dryer involve any pounding noises?

13 A. No.

14 Q. What about the operation of your farm
15 equipment for harvesting or planting? Does that --
16 does that involve any pounding noises?

17 A. No. As far as you are talking about the
18 tractors and the combine specifically?

19 Q. Yes.

20 A. Okay. Then no.

21 Q. Okay. With regard to pounding in
22 fenceposts, what kind of fenceposts -- what's the
23 makeup of those fenceposts that you ordinarily
24 install?

25 A. So we have used a pounder for wood posts

1 before as far as a Danuser attachment to a skid
2 loader. But we -- that's been several years ago.
3 Mostly we are using just a metal -- they call it a
4 pounder, but it's basically cylinder with two handles
5 on it, and then you're hand pounding metal posts into
6 the ground with it.

7 Q. Okay. So how often does your farming
8 operation pound metal posts into the ground?

9 A. Not very often. Once you've built your
10 fence, you're not generally building it again.

11 Q. So within -- within let's say the last
12 five years, on how many instances have you pounded
13 metal posts into the ground for fences?

14 A. Probably three.

15 Q. Okay. And what was the duration of the
16 time that you pounded those fenceposts into the
17 ground?

18 A. A day, a temporary fence.

19 Q. Temporary --

20 A. A day each time, it was just temporary
21 fence.

22 Q. Okay. And with regard to wooden -- to
23 the other fences, were those made out of wood, the
24 fenceposts?

25 A. Yes.

1 Q. And how many instances over the last five
2 years have you installed wooden posts?

3 A. Zero.

4 Q. Zero?

5 A. Zero.

6 Q. Okay. Now, how does the sound level of
7 your farm equipment such as grain dryers and plows
8 and planters and other equipment compare to the sound
9 level of the train in Camden as heard from your land?

10 MR. SETTINERI: I would just object to
11 the phrase -- use of the term sound level. It hasn't
12 been established she knows what the sound level is of
13 the grain dryer or the train. It's a measurement.

14 MR. VAN KLEY: I am just asking her
15 observations with how loud it was whether one was
16 louder than the other.

17 ALJ SCHABO: You can answer.

18 A. I would say generally -- well, usually
19 when we can hear the train, it's usually more towards
20 summer when there's -- or spring when there is no
21 crop or after there's crop. So, yeah, I don't -- I
22 don't know that -- I guess maybe the grain dryer is
23 louder.

24 Q. All right. Let me ask you about
25 intersections. You were asked a question about corn

1 being grown at intersections. Let me ask you this,
2 have there been any problems that you personally
3 noticed resulting from corn near intersections?

4 A. Have there been accidents related to corn
5 at intersections is the question?

6 Q. Well, not exactly. Let me rephrase the
7 question. Has -- have there been any instances in
8 which corn grown near intersections have caused you
9 difficulty in seeing traffic coming from another
10 direction?

11 A. So -- well, by the project array there is
12 really just two points that there doesn't even have
13 to be corn. It's just hard to see. And so that has
14 to do with the intersection of Toney Lybrook and 177.
15 And if you are coming from the west and you are
16 headed east, it is just hard to see crop or no crop
17 when you're making either the turn or the straight
18 ahead.

19 And then when you are at Fairhaven
20 College Corner Road and State Route 725, if you are
21 headed south on Fairhaven College Corner Road towards
22 College Corner, and you are either going to go across
23 the road or turn out to go east, it is hard to see to
24 the right crop or no crop. It's just difficult
25 intersections.

1 Q. All right. You were asked a question
2 about whether solar panels are installed on schools.
3 Based on your personal observations what have been
4 the relative number of panels that you've seen
5 installed on schools compared to the number of panels
6 that are planned for the Angelina project?

7 A. So I have personally not seen solar
8 panels on schools, so I can't really say one way or
9 the other. I was -- that was a statement made by
10 Mr. Settineri. And so with that I personally have
11 not seen solar panels on schools, but I have not been
12 on their rooftops either so.

13 Q. Okay. Let's talk about tiles for
14 draining fields. You personally have experience with
15 drain tile repair/replacement?

16 A. Yes.

17 Q. Okay. And what's the -- what experience
18 do you personally have?

19 A. I drive the tractor that pulls the tile
20 plow and install the tile.

21 Q. Okay. And do -- whose equipment do you
22 use for that purpose?

23 A. Our equipment.

24 Q. Okay. And how large is that equipment?

25 A. So it's a John Deere 8530 pulling the

1 Gold Digger tile plow behind it. It is quite
2 sizable. Sometimes if it's a wetter area, we will
3 attach a 9410 John Deere in front of it with
4 four-wheel drive for additional pulling power to go
5 through an area.

6 Q. Okay. And what are the widths of each of
7 those pieces of equipment?

8 A. I would have to go back and look at my
9 testimony off the top of my head, but they are quite
10 sizable, and it allows us to efficiently install tile
11 even through the toughest of areas.

12 Q. Now, how does the size of your equipment
13 compare to the equipment that Mr. Settineri referred
14 to as the mini excavator?

15 A. So you could put tile in with a mini
16 excavator, and even a shovel was done historically
17 40, 50 years ago. As technology has improved,
18 thankfully we have a much quicker and more precise
19 way of doing that. And so when we are installing, we
20 are using RTK real-time connection off of the Corp.'s
21 network which is a combination of cell signal and
22 radio technology to then not only read our GPS
23 location but the topography that goes with it to make
24 sure that we're installing precisely where we want to
25 be which is then off of the map that we design

1 through our ag leader software which I have designed
2 the maps myself before to make sure we are putting in
3 good runs.

4 So with that that is part of my concern
5 related to the project area is the lack of water
6 management plan to be put forth. So in agriculture
7 water is a huge concern for us, and with that seeing
8 the plan ahead of time would definitely alleviate
9 heartburn as we have the discussions related to water
10 management and the use of swales for guiding water as
11 part of that conversation.

12 Q. Okay. So with regard to the relative
13 sizes of the -- of the equipment that you use versus
14 the mini excavator, how would you describe the
15 relative size?

16 A. So essentially my husband digs the
17 back -- with a backhoe a start hole that I drop the
18 plow into. So the backhoe alone that opens the
19 ground where the tile plow starts is probably four
20 times the size of the mini excavator, and with that
21 then I drop the boot down into the hole. It opens
22 and closes the ground as we go. And I can install a
23 full run of tile, a full a thousand feet at a time.
24 It takes me minutes.

25 Q. Okay. Do you have any concerns about

1 the -- the speed with which hand digging or a mini
2 excavator could be used to repair tile lines?

3 A. So with that I do have some concerns,
4 especially when we are talking about situations where
5 we might need a problem fixed quickly but the way --
6 I don't know what you do with an obstacle course like
7 the solar array compared with tile and how that's
8 going to impact the farmers around it and that is
9 part of the concern about wanting to see a tile plan
10 and how that will be managed going forward.

11 Q. You were asked about the repair of a tile
12 on your farm in March. Was that March of this year?

13 A. Yes.

14 Q. Okay. Was there a crop on the -- on the
15 field at that time where --

16 A. No.

17 Q. -- the tile was repaired?

18 A. No.

19 Q. Now, have you had experience with
20 farmland flooding due to tile issues?

21 A. Yes.

22 Q. Okay. Can you tell me what happens to a
23 crop if a tile is not functioning correctly and
24 it's -- it's not -- it's not fixed?

25 A. So a crop generally does not withstand

1 sitting in water 24 to 48 hours. It suffocates it,
2 or if it is still a seed, it's going to completely
3 rot it. It's not going to grow at all. You do have
4 viable plants, suffocation of the roots or
5 suffocation of the plant all together is a concern.

6 Q. Okay. Now, when you state that you
7 believe that -- and I would quote Mr. Settineri,
8 "outside deadline" of 30 days to be reasonable, what
9 did you mean by that statement?

10 A. So we're pretty reasonable neighbors in
11 our community. As far as when it comes to water and
12 tile issues and working those conversations out
13 between neighbors and understanding what a threat or
14 an impact situation is and how quickly something
15 needs to be fixed and the benefit of -- of living
16 next door to each other gives us the chance to have
17 those conversations. When we are talking about
18 dealing with an entity that is not going to own or
19 operate the project, the certificate is the
20 accountability that we have to look to for addressing
21 the situation related to water concerns. It creates
22 more of an issue for us in the community about how we
23 get those problems solved when we don't know who
24 those people will be that we need to contact in the
25 future.

1 Q. Okay. So with regard to your agreement
2 with Mr. Settineri that an outside deadline of 30
3 days is reasonable, what did you mean by that?

4 A. It depends on the issue. So there are
5 some issues where you can look at it and say, yeah,
6 we are having a weather -- weather issues, and we
7 understand it might take a little longer to get
8 something fixed. And but if the relationship is not
9 in place to have those conversations to talk about
10 what the issue is to begin with and how quickly it
11 needs to be fixed or what the impact is to it, then
12 it just creates more issues going forward.

13 So, one, identifying what the problem is,
14 who is going to identify what that problem is, and
15 then who is going to have the discussion about when
16 it's getting fixed and how it's getting fixed and
17 what the impact is when we are talking about all
18 possibilities because we don't know who is going to
19 own or operate it, who is going to be responsible for
20 the issues, and who we contact to have those
21 conversations, and who is the one that's out there
22 monitoring what those problems are as they become --
23 come to light.

24 Q. Was your agreement with that statement
25 meant to imply that it is always okay to take as much

1 as 30 days to fix a tile?

2 A. My agreement to the statement was we are
3 reasonable people, and if it's something that doesn't
4 need to be fixed immediately, up to 30 days is not
5 something we will loss sleep over if it's not
6 directly impacting the crop that's present at that
7 point.

8 Q. Okay. You were asked some questions
9 about crop insurance. First of all, what expenses,
10 if any, are covered by crop insurance?

11 A. Crop insurance barely covers your inputs
12 to carry you on to the next year.

13 Q. What do you mean by your inputs?

14 A. So your seed, your fertilizer, any type
15 of tools you've used to prepare the ground for
16 farming.

17 Q. Now, does crop insurance cover flooding
18 damage from broken tiles?

19 A. No.

20 Q. You were asked about a tile that's broken
21 on the Chapin farm. Do you have any concerns about
22 that broken -- about that tile if Angelina fixes the
23 tile?

24 A. It would be nice to have it fixed but
25 there's no plan that says that it's going to get

1 fixed or how it's going to get fixed. And so, I
2 mean, depends on what the definition of fixed is. I
3 guess would be -- it would be nice for it to be fixed
4 to the standard of what the community thinks it
5 should be in good practices.

6 MR. VAN KLEY: I have no further
7 questions.

8 ALJ SCHABO: Mr. Settineri, do you have
9 recross?

10 MR. SETTINERI: Yes, thank you, your
11 Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Settineri:

15 Q. Ms. Vonderhaar, how do you know that
16 flood insurance doesn't cover flooding from damaged
17 tiles in the field?

18 A. Because the crop insurance -- flooding
19 insurance or crop insurance?

20 Q. Crop insurance does not cover flooding
21 caused by damaged field tile?

22 A. So crop insurance covers our risk related
23 to weather events.

24 Q. Are you aware of whether you can have
25 different levels of coverage under crop insurance?

1 A. Yes.

2 Q. If you could turn in the application to
3 Figure 11. You were asked some questions about your
4 son's house. Let's take a look at Figure 11 of the
5 application. It's an 11 by 17 sheet, please.

6 A. And which?

7 Q. Sorry. It's going to be sheet 1 of 2.

8 A. Here at the beginning?

9 Q. Yes, towards the front of the book. Just
10 let me know when you are there.

11 ALJ SCHABO: Mr. Settineri, is there any
12 way you can approach the witness?

13 MR. SETTINERI: I would be glad to, your
14 Honor.

15 A. It says 1 of 2.

16 ALJ SCHABO: Confirm she is where you
17 would like her to be.

18 Q. Figure 11.

19 A. Did you say Figure 11?

20 Q. Yeah. Yeah. I am looking at Figure 11.

21 A. This one?

22 Q. Sheet 2. Sheet 2. Do you have that?

23 Sheet 2 of 2, Figure 11 in front of you,

24 Ms. Vonderhaar?

25 A. Yes.

1 Q. Now, you mentioned that your son lives in
2 a house near the project area and there was some
3 questions about that and you discussed how that --
4 being set back from the road, et cetera. If I look
5 at sheet 2 of 2, is that house located on that sheet?

6 A. Yes.

7 Q. Okay. And am I -- it's going to be hard
8 to identify it, but I guess I will just ask you the
9 question generally, am I correct that that house that
10 your son lives in has active agricultural land
11 between the house and the road?

12 A. On the sides of the driveway.

13 Q. Correct. And then across -- the driveway
14 goes to the road, and across the road would be the
15 project area, correct?

16 A. Correct.

17 Q. Okay. You can put that to the side.
18 Regarding -- there was some questions about the tile
19 plow.

20 A. Okay.

21 Q. Now, am I correct that you use your tile
22 plow with the tractor to install long runs of tile?

23 A. Yes.

24 Q. Okay. And if you were going to make a
25 small repair of 3 to 4 feet, what equipment would you

1 use?

2 A. We would use a backhoe.

3 Q. And that would be -- could you use a mini
4 excavator?

5 A. You could.

6 Q. Your backhoe, is it a mini excavator?

7 A. No.

8 Q. Okay. It's a full size backhoe?

9 A. Yes.

10 Q. Okay. Have you generally ever used a
11 shovel to dig up and repair tile?

12 A. As we get close to the tile, yes, but not
13 from the tile.

14 Q. Ms. Vonderhaar, you also expressed some
15 concerns -- there was some questions about not having
16 a contact for the company regarding drainage repairs,
17 things of that nature, issues, correct?

18 A. Correct.

19 Q. If you could turn to page 33 of the
20 application for me. You reviewed the application in
21 this case, correct?

22 A. I have.

23 Q. Okay. Would you have then reviewed also
24 the last -- starting with the last paragraph of 33
25 carrying over to the section right above insurance on

1 page 34 of the application which is Company
2 Exhibit 1?

3 A. Sorry. What was your question?

4 Q. Sure. So you reviewed the application;
5 we established that, correct, previously?

6 A. Yes.

7 Q. So looking at -- I will turn your
8 attention to page 34, the paragraph right above the
9 heading "Insurance."

10 A. Okay.

11 Q. All right. Do you see that?

12 A. Uh-huh.

13 Q. Do you see the sentence that notes
14 "Applicant will also require that information be
15 posted to provide the public with contact information
16 to submit complaints, concerns, or comments regarding
17 operation and that a prompt response be made to any
18 for which a response either is requested or clearly
19 implied." Do you see that sentence?

20 A. I do.

21 Q. Now, is that address -- would that give
22 you a point of contact for any drainage issues that
23 arise if that was --

24 A. No.

25 Q. -- followed through on?

1 A. No. That says that the Company will do
2 something in the future but it does not have the plan
3 put together to give certainty as to what is going to
4 take place.

5 Q. Okay. So, for instance, you would want
6 that contact information provided today prior to the
7 application being approved, correct?

8 A. Correct.

9 MR. SETTINERI: I do not have any further
10 questions, your Honor.

11 ALJ SCHABO: Mr. Van Kley, do you have
12 any?

13 MR. VAN KLEY: Just one or two.

14 - - -

15 FURTHER REDIRECT EXAMINATION

16 By Mr. Van Kley:

17 Q. You were asked about whether there is a
18 corn crop or whether there is a crop between or
19 agricultural land between the house where your son
20 lives and the project area. My question to you is
21 what's the -- what's the tallest crop that is grown
22 on that land?

23 A. That would be corn.

24 Q. Okay. How tall does corn get?

25 A. Depends on the hybrid that you are

1 raising or the genetics of the corn. So you could
2 have a real range depending upon anywhere from a
3 sweet corn-type product which would be shorter and be
4 probably more of like 6 feet tall while all the way
5 up to probably a good 7 foot.

6 Q. If you -- if you're on the second floor
7 of your son's house, can you see over the top of the
8 corn?

9 A. Oh, yeah. You can see all the way to
10 Indiana --

11 Q. Okay.

12 A. -- at this point.

13 MR. VAN KLEY: No further questions.

14 MR. SETTINERI: No questions.

15 ALJ SCHABO: Thank you, Ms. Vonderhaar.
16 You may step down. Thank you.

17 THE WITNESS: Do you need those documents
18 put back in any way?

19 ALJ SCHABO: Just leave them right there.

20 MR. VAN KLEY: We would call Marja
21 Brandly.

22 ALJ SCHABO: Do you want to address your
23 exhibits?

24 MR. VAN KLEY: Oh, yes. We would move
25 for the admission of CCPC Exhibits 2 and 3.

1 ALJ SCHABO: Any objection?

2 Hearing none, they will be admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 ALJ SCHABO: Mr. Settineri.

5 MR. SETTINERI: Yes, your Honor.

6 Angelina Solar would move for the admission of
7 Company Exhibit 17.

8 ALJ SCHABO: Is there any objection?

9 MR. VAN KLEY: No objection.

10 ALJ SCHABO: All right. Company
11 Exhibit 17 will also be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 ALJ SCHABO: And now we will welcome
14 Ms. Brandly to the stand.

15 MR. SETTINERI: Off the record, your
16 Honor.

17 (Discussion off the record.)

18 (Witness sworn.)

19 ALJ SCHABO: State your name for the
20 record.

21 THE WITNESS: Marja Brandly.

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MARJA BRANDLY

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Van Kley:

Q. Ms. Brandly, would you tell us both of
your addresses where you live.

A. My legal address is 2274 Vienna Parkway,
Dayton, Ohio 45459. My farm property that pertains
to this project is located at 6812 Fairhaven College
Corner Road, Camden, Ohio 45311.

MR. VAN KLEY: Your Honor, at this point
we would like to mark our next exhibit which will be
marked as CCPC Exhibit No. 4 which is the direct
testimony of Marja Brandly.

ALJ SCHABO: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Van Kley) Ms. Brandly, do you
have Exhibit 4 in front of you?

A. Yes.

Q. Okay. Can you identify that.

A. It is my direct testimony.

Q. Okay. Do you have any corrections to
make to that testimony?

A. Question 1, A1, I previously made the

1 correction College Corner, Ohio, should read Camden,
2 Ohio 45311.

3 Q. Do you have any other corrections?

4 A. No.

5 Q. Okay. Was this testimony prepared by you
6 or under your supervision?

7 A. Yes.

8 Q. If you were to be asked the same
9 questions today, would your answers be the same?

10 A. Yes.

11 MR. VAN KLEY: Okay. At this time, your
12 Honor, the witness is ready for cross-examination.

13 ALJ SCHABO: So I don't forget later,
14 does anybody else have cross-examination?

15 MS. WEST: No, your Honor.

16 MS. BAIR: No, your Honor.

17 ALJ SCHABO: All right. Mr. Taylor.

18 MR. TAYLOR: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Taylor:

22 Q. Ms. Brandly, you used your 2274 Vienna
23 Parkway address in Dayton as the mailing address for
24 your federal tax return, correct?

25 A. That is correct.

1 Q. And you consider your 2274 Vienna Parkway
2 to be your primary address?

3 A. I consider it to be my legal residence.

4 Q. And, Ms. Brandly, you were -- you gave a
5 deposition in this case; is that correct?

6 A. Yes.

7 Q. And you were under oath at that
8 deposition?

9 A. Yes.

10 MR. TAYLOR: Your Honor, may I approach
11 the witness?

12 ALJ SCHABO: You may.

13 Q. And, Ms. Brandly, could you please turn
14 to page 61 I just handed you. Excuse me. It's
15 actually the last line on page 60 so that will be
16 line 25, page 60. The question is asked there
17 "Question: What address do you use for your personal
18 federal tax return?

19 "Answer: 2274 Vienna Parkway, Dayton.

20 "Question: Okay. That's the Dayton
21 address then?

22 "Answer: Yes.

23 Finally "Question: Do you consider that
24 your primary residence?

25 "Answer yes."

1 Did I read that correctly?

2 A. Yes.

3 Q. Okay. Ms. Brandly, you can put that
4 aside for a moment. And, Ms. Brandly, your other
5 address which is the 6812 Fairhaven College Corner
6 Road, that's located over a quarter mile from the
7 closest area in which the solar panels might be
8 constructed; is that correct?

9 A. Excuse me. Did you say one quarter mile?

10 Q. I did.

11 A. It is located approximately -- one
12 quarter mile would entail going south on Fairhaven
13 College Corner Road and then west. I haven't
14 measured that distance precisely but that's a good
15 approximation.

16 Q. So it is over one quarter mile to the
17 closest area the panel is to be constructed as the
18 crow flies?

19 A. As the crow flies.

20 Q. Thank you. And, Ms. Brandly, assuming
21 Angelina Solar were to be constructed on the property
22 where it's proposed, you would not oppose the project
23 if the landowners on the project area would allow
24 Angelina Solar to pour about 2 feet of concrete so
25 they wouldn't have to dig down and damage aquifers;

1 is that correct?

2 A. It is my opinion that that would not
3 damage the field tiles that pile driving posts might.
4 Whether or not that would be environmentally sound or
5 not is not for me to say.

6 MR. TAYLOR: Okay. Ms. Brandly, no
7 further questions.

8 Your Honor, no further questions for this
9 witness.

10 ALJ SCHABO: Mr. Van Kley?

11 MR. VAN KLEY: Yes.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Van Kley:

15 Q. Ms. Brandly, do you spend any of your
16 time at the property located near the project area?

17 A. I spend most of my time at the property
18 located near the project area.

19 Q. Do you stay there overnight?

20 A. Yes.

21 Q. Can you see the project area from that
22 house?

23 A. Yes.

24 Q. You were asked about whether putting in
25 concrete would address your concern about the

1 project, would it address all of your concerns about
2 the project?

3 A. No.

4 Q. What -- what other concerns do you have
5 that would not be addressed by putting in concrete?

6 A. Could you -- so that I understand the
7 last part of your question, could you repeat that
8 question?

9 Q. Yeah. Sure. What other concerns do you
10 have which would not be satisfactorily addressed by
11 putting in concrete?

12 A. The environmental impact of having a
13 major power facility in the midst of an agricultural
14 community that relies on groundwater and soil to grow
15 our food, that would be one concern.

16 The second would be the noise because it
17 would still be a noisy installation pounding all day
18 long.

19 The third would be the live -- not
20 livestock but rather wildlife. This is definitely
21 going to cause the farmers in the area crop damage
22 from compacting all of the wildlife in the area
23 causing them to migrate off of the property where the
24 project is being installed and onto our farm where
25 they already consume a great deal of our corn in the

1 summertime.

2 I'm also concerned about the crime that
3 this project will attract as we have previously
4 stated and as everyone knows. We only have two
5 deputy sheriffs to control 400 square miles of a
6 large rural county. The opioid addicts have already
7 set fire to and burglarized one of my properties.
8 They continue to do so. Padlocks and chain link
9 fence are meaningless to them. So I'm concerned that
10 with all the copper wiring and all that this project
11 will be bringing into the neighborhood will create an
12 attractive nuisance and bring more crime into our
13 neighborhood.

14 MR. VAN KLEY: All right. Thank you very
15 much. No further questions, your Honor.

16 ALJ SCHABO: Recross?

17 MR. TAYLOR: We have a couple of
18 questions, your Honor.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Taylor:

22 Q. Ms. Brandly, do you prepare your own
23 taxes?

24 A. No.

25 Q. Who prepares them for you?

1 A. Kirsch CPA Group in Oxford, Ohio.

2 Q. And, Ms. Brandly, do you tell your tax
3 preparer that you spend the majority of your time at
4 the Preble County home?

5 A. Yes.

6 Q. Okay. And you use the Dayton mailing
7 address for your federal tax return.

8 A. Yes.

9 MR. TAYLOR: No further questions, your
10 Honor.

11 ALJ SCHABO: Thank you. Ms. Brandly, you
12 may step down. Thank you.

13 Let's go off the record for a moment.

14 (Discussion off the record.)

15 ALJ SCHABO: Let's go back on the record.
16 Mr. Van Kley.

17 MR. VAN KLEY: I would like to move the
18 introduction of CCPC Exhibit No. 4.

19 ALJ SCHABO: Any objection? Hearing
20 none, it will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 ALJ SCHABO: We will now take a break
23 until 1:30 for lunch. Thank you very much.

24 (Thereupon, at 12:34 p.m., a lunch recess
25 was taken.)

1 Monday Afternoon Session,
2 August 12, 2019.

3 - - -

4 ALJ SCHABO: Mr. Van Kley.

5 MR. VAN KLEY: Thank you, your Honor. We
6 would call Walter Mast as our next witness.

7 ALJ SCHABO: Good afternoon.

8 (Witness sworn.)

9 ALJ SCHABO: Thank you very much. Have a
10 seat and please state your name for the record.

11 THE WITNESS: My name is Walter Mast.

12 ALJ SCHABO: And if you could spell it
13 for the record too, just your last name, please.

14 THE WITNESS: M-A-S-T.

15 ALJ SCHABO: Thank you.

16 - - -

17 WALTER MAST

18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Van Kley:

22 Q. And what's your address, Mr. Mast?

23 A. 7919 State Route 177, Camden, Ohio 45311.

24 MR. VAN KLEY: At this time, your Honor,
25 we would like to mark our next two exhibits. The

1 first of those exhibits will be CCPC Exhibit No. 5
2 which is the direct testimony of Walter Mast, and the
3 next exhibit will be CCPC Exhibit No. 6 which is the
4 supplemental direct testimony of Walter Mast.

5 ALJ SCHABO: Those exhibits will be so
6 marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Van Kley) Mr. Mast, do you have
9 CCPC Exhibit No. 5 in front of you?

10 A. Yes, I do.

11 Q. Would you identify that.

12 A. Yes. It's my direct testimony.

13 Q. And do you have CCPC -- Exhibit No. 6 in
14 front of you?

15 A. Yes, I do.

16 Q. And what is that?

17 A. Supplemental direct testimony.

18 Q. Is it yours?

19 A. Yes.

20 Q. All right. Do you have any changes to
21 either one of these documents?

22 A. On the direct testimony on page 12, line
23 6.

24 Q. Okay. This is on CCPC Exhibit 5?

25 A. Exhibit 5, page 12.

1 Q. What page number?

2 A. Page 12.

3 Q. Okay.

4 A. Line 6 should be "delapidated." My spell
5 correct put the wrong word in so. Can't trust
6 computers.

7 Q. All right. Is that all of your
8 corrections?

9 A. Yes.

10 Q. Were Exhibits -- CCPC Exhibits 5 and 6
11 prepared by you or under your direction?

12 A. Yes.

13 Q. If you were to answer the questions in
14 these exhibits today, would your answers be the same?

15 A. Yes.

16 MR. VAN KLEY: At this time, your Honor,
17 the witness is ready for cross-examination.

18 ALJ SCHABO: Thank you.

19 Ms. Bair?

20 MS. BAIR: I have no questions.

21 ALJ SCHABO: Ms. West?

22 MS. WEST: No, your Honor.

23 ALJ SCHABO: Mr. Settineri?

24 MR. SETTINERI: Yes, your Honor, and one
25 thing I would like to do at this time, I do have a

1 motion to strike parts of the testimony. I recognize
2 you had previously asked for motions to be filed
3 prior to the hearing. I would ask for your
4 permission to put forth the motion to strike certain
5 pieces of this testimony based on hearsay and
6 speculation, so I will leave that to your discretion.

7 ALJ SCHABO: Yeah. Go ahead. Proceed.

8 MR. SETTINERI: Thank you, your Honor.
9 So the motion to strike is based on hearsay, and I am
10 going to identify certain portions of this testimony
11 I believe are based on hearsay and inadmissible. I
12 will start with page 4.

13 THE WITNESS: On the direct testimony?

14 MR. SETTINERI: You don't have to say
15 anything. You can, if you want, but I am talking
16 to -- I'm sorry. I am talking to everyone here. No
17 questions for you, Mr. Mast. Page 4 of the direct
18 testimony, lines 8 to 9, your Honor, the sentence "I
19 have read diaries stating flood waters were 10 feet
20 and 20 feet above the floor on separate occasions."
21 I would move that is hearsay being offered based on
22 written documents written by other folks that are
23 asserting the level of flooding that occurred in that
24 building. It's hearsay.

25 The next hearsay, and I will just go

1 through all of them, would be page 10, lines 22 to
2 23. And, again, I'm sorry, this is for CCPC Exhibit
3 5.

4 ALJ SCHABO: Page 10?

5 MR. SETTINERI: Yes. The next one is
6 page 10, lines 21 to 23. You will see a sentence
7 "The sheriff called several weeks ago to share his
8 discussion with the county prosecutor and the
9 difficulty of finding laws in unincorporated villages
10 to help address some of our issues." I would move to
11 strike the phrase "and the difficulty of finding laws
12 in unincorporated villages to help address some of
13 our issues" as clearly based on the discussion that
14 this is being represented occurred between the
15 sheriff and the prosecutor and it's hearsay.

16 The last one, let's see, yeah, last would
17 be page 13, lines 1 through 14. There is a sentence
18 that states "Even when the treasurer requests the
19 prosecutor address these properties, it takes a major
20 effort by the prosecutor's office to force the
21 properties to a sheriff's sale. The legal paperwork
22 is daunting and extremely time consuming." Prior to
23 that beginning of line 1 "I also spoke with the
24 prosecutor and others in the prosecutor's office."
25 The -- from the remainder of line 1 through where the

1 phrase "time consuming" clearly relates to the
2 discussions and information from the prosecutor and
3 others in the prosecutor's office, so I would assert
4 that is hearsay and inadmissible.

5 ALJ SCHABO: Those are your three?

6 MR. SETTINERI: Those are my three
7 hearsays.

8 ALJ SCHABO: Okay. Mr. Van Kley.

9 MR. VAN KLEY: Yes, your Honor.

10 ALJ SCHABO: Take your time.

11 MR. VAN KLEY: Starting on page 4 with
12 respect to the sentence that is subject to the motion
13 to strike, I believe that those diaries would fall
14 within the hearsay exception for historic records.

15 With regard to page 10, my understanding
16 is that the motion to strike is just for that second
17 half of that sentence, is that correct, starting with
18 the words "and the difficulty"?

19 MR. SETTINERI: Through the word
20 "issues," correct.

21 MR. VAN KLEY: Okay. I -- I would concur
22 that that's hearsay. However, hearsay is admissible
23 in administrative hearings, and they are -- they are
24 admissible for -- for -- and they are given whatever
25 weight the testimony based on the hearsay is entitled

1 to. So I don't agree that simply because it's
2 hearsay it's -- it should be struck. And the same
3 thing would apply to the motion to strike the two
4 sentences on page 13 -- well, actually I don't agree
5 on 13 that's hearsay. I don't think that those two
6 sentences subject to the motion to strike are
7 necessarily based solely on the conversation with the
8 prosecutor. It doesn't indicate that they are.

9 And I think it's common knowledge that
10 it -- that legal paperwork for forcing properties to
11 sheriff's sale is extremely time consuming and
12 daunting. I think that's common knowledge. It would
13 fit within his knowledge.

14 ALJ SCHABO: Mr. Settineri.

15 MR. SETTINERI: I would disagree as the
16 diaries being historical records, and then the rest
17 is hearsay. It should be stricken. I don't see a
18 reason to allow it in the record, especially on this
19 issue that's being raised seems to be a central issue
20 for Mr. Mast and others so.

21 Nothing more from me, your Honor.

22 ALJ SCHABO: Let's go -- let's go off the
23 record for just a minute so I can read the
24 surrounding testimony.

25 (Discussion off the record.)

1 ALJ SCHABO: We can go back on the
2 record.

3 Mr. Mast, what is this -- what -- the
4 diaries that are referenced in the first motion, are
5 those family recordings?

6 THE WITNESS: Yes. These are recordings
7 of the person who owned the house or family owned the
8 house for 99 years.

9 ALJ SCHABO: Of your family.

10 THE WITNESS: Not my family. But the
11 people that owned it let me see the diaries. And 10
12 inches and 20 inches, not 10 feet and 20 feet.

13 MR. SETTINERI: Thank you for clarifying
14 that. I saw it in writing.

15 ALJ SCHABO: As a practice, I have to say
16 that I -- hearsay is not broadly just admissible in
17 administrative proceedings. We are still informed by
18 the Rules of Evidence. That said I am going to deny
19 the motion to strike with regard to the diary
20 sentence. I will grant the motion to strike with
21 regard to the sentence on page 10. So that will now
22 read "The sheriff called several weeks ago to share
23 his discussion with the county prosecutor."

24 THE WITNESS: Your Honor?

25 ALJ SCHABO: Hold on just a second, sir.

1 And I will grant the motion on page 13 as well. And
2 I will ask for the sake of not having a dangling
3 record if you would like to extend that through "And
4 for what, a dollar."

5 MR. SETTINERI: Correct, your Honor. I
6 would clean it up.

7 ALJ SCHABO: Let's go off the record for
8 just a moment.

9 (Discussion off the record.)

10 ALJ SCHABO: Let's go back on the record.

11 Mr. Settineri, did you have any other
12 motions to strike?

13 MR. SETTINERI: I do, your Honor. This
14 motion is based on certain portions of his testimony
15 that are based on speculation and conjecture.

16 I would like to start first lines 3
17 through 6 of page 7 starting with "The criminals are
18 opportunists" through the end of that sentence at
19 line 6. I would also move to strike in that same
20 paragraph "However, experience suggests the petty
21 theft and property damage incidents totaling less
22 than \$5,000 and the suspicious event data are
23 drastically underreported, perhaps by a factor of up
24 to 10."

25 And as to that specific sentence, there

1 is no foundation laid for that as well.

2 MR. VAN KLEY: Where is that?

3 ALJ SCHABO: Where are you?

4 MR. SETTINERI: I'm sorry, page 6, line
5 22 through page 7, line 1, through the word "10."
6 "However, experience suggests" through "factor of up
7 to 10." And then the first line -- first sentence I
8 referenced -- sentences page 7, lines 3, "The
9 criminals are opportunists" all the way through the
10 end of that paragraph at the end of line 6 with the
11 word "etc."

12 Continuing on at page 8, line 5, there is
13 a phrase "She finally had enough and moved to
14 Camden." I would move to strike "finally had enough"
15 from that sentence.

16 Turning to page 9, line 12, the word
17 "quickly" I would move to strike. I would also move
18 to strike in line 13 carrying into 14 the phrase
19 "into undistinguishable forms of recycling" -- or
20 "for recycling" as well as "If there is something
21 that can be recycled inside and an opportunity
22 presents itself, ever so briefly, things will come up
23 missing."

24 ALJ SCHABO: And that's based on what?

25 MR. SETTINERI: Speculation, conjecture,

1 no foundation laid he has been present during a
2 crime, and I am certain he wouldn't be there so.

3 Continuing on line -- page 10, line 23,
4 the sentence saying "The criminal element knows this,
5 so it seems they seek the sanctuary of small,
6 isolated, unincorporated villages in the heart of
7 farm country in which to reside."

8 Move to strike that as speculative, no
9 basis.

10 And that's it, your Honor.

11 ALJ SCHABO: That's it for speculation,
12 conjecture, or that's the conclusion of your motions?

13 MR. SETTINERI: That's the end, yes.

14 ALJ SCHABO: Okay. What order would you
15 like to address?

16 MR. VAN KLEY: I think start from the
17 beginning and work our way through.

18 ALJ SCHABO: Okay. I'll follow you.

19 MR. VAN KLEY: Okay. I think we start on
20 page 6 with the sentence at the bottom of that page
21 going up to the next page. And then we also have
22 part of the motion to strike on the next page, 7,
23 starting with "The criminals are opportunists" going
24 through the end of that paragraph on line 6. I will
25 address those together.

1 ALJ SCHABO: Okay.

2 MR. VAN KLEY: There's been ample
3 foundation set forth in the witness's testimony
4 concerning his experience with criminal activities
5 stemming from his leadership of the neighbor watch
6 and his comprehensive involvement with it as well as
7 his regular communications with law enforcement in
8 the community as part of those responsibilities as
9 well as his personal experience with some of the
10 crime that has occurred in that community.

11 It's a small community. Fairhaven is a
12 small community. When somebody is a victim of crime,
13 the rest of the community knows about it, and he's
14 well familiar with the crime in that area. So I
15 don't think there is anything speculative about any
16 of the testimony that is subject to the motion to
17 strike on pages 6 and 7.

18 If anything, much of it is common
19 knowledge. For example, we all know that criminals
20 are opportunists that seek out the most vul -- well,
21 including the age and other folks who -- who are
22 categorized there. With regard to the stats in the
23 sentence that starts on the bottom of page 6 and goes
24 up to page 7, those are based on the witness's
25 familiarity with the crime stats for that area as

1 stated at the beginning of that sentence where it
2 says that his experience suggests that this is the
3 case. So that's all based on his personal knowledge
4 concerning crime statistics that he has reviewed in
5 his capacity as the head of the neighborhood watch in
6 that community.

7 ALJ SCHABO: Do you want to continue to
8 go through, or do you want to give Mr. Settineri the
9 ability?

10 MR. VAN KLEY: We might as well handle
11 them one at a time.

12 MR. SETTINERI: That's fine. The
13 specific testimony specific to the township, it's not
14 a general statement about crime. It's very specific,
15 and we are -- the bound here is the testimony is what
16 is in the document. It is not what a lawyer may
17 think of what the person will say on the stand or
18 what the person may know. We are looking what -- how
19 the testimony is written, and this testimony without
20 foundation says experience suggests blah, blah, blah,
21 totaling less than 5,000.

22 As well, it gives a specific statement
23 that "The criminals are opportunists," but
24 speculating as to exactly what this group is within
25 the township. Because it is specific that's why I

1 see it as speculative and as well, regarding the
2 experience piece, that's without foundation.

3 So that's where I stand.

4 MR. VAN KLEY: Well, if it's descriptive
5 of what's happening in the neighborhood, then it's
6 even more within his purview as the head of the
7 neighborhood watch because he -- he knows what crimes
8 are being committed in that area. He has the stats
9 necessary to establish this information as well as
10 the experience as the head of neighborhood watch to
11 know that what he is saying in these sentences is
12 accurate with respect to that community.

13 ALJ SCHABO: Mr. Settineri, I see -- I
14 see where -- where you are coming from. All the
15 same, I am going to deny that motion to strike for
16 both of those sentences. So the testimony from the
17 bottom of page 6 to the top of page 7 and the last
18 two full sentences and so lines 3 through 6 will
19 remain in the record.

20 Which takes us to --

21 MR. VAN KLEY: Page 8, I believe.

22 ALJ SCHABO: Yes. Page 8.

23 MR. VAN KLEY: In line 5, Applicant seeks
24 to strike the words "finally had enough" and I think
25 that this is -- information is based on -- on the

1 witness's familiarity and interaction with the -- the
2 woman who is referenced in this sentence, so I
3 believe that that is competent testimony and that
4 should remain.

5 ALJ SCHABO: Mr. Settineri.

6 MR. SETTINERI: Yes, your Honor. That's
7 pure speculation. There is nothing in this document,
8 I believe, that talks -- gives any foundation of his
9 interactions with this person whatsoever. So it's
10 speculation. She is not here to say why she moved to
11 Camden. That's why it should be stricken.

12 ALJ SCHABO: But it's also his
13 observation of the situation, so I am going to let it
14 stand.

15 MR. SETTINERI: Okay.

16 ALJ SCHABO: The motion will be denied.

17 MR. VAN KLEY: The next part of the
18 motion concerns language on page 9 with regard to the
19 request that the word "quickly" in line 12 be struck.
20 The first part of that sentence says "Bolt cutters
21 quickly dispatch with locks and fencing," and the
22 Applicant wants to strike the word "quickly." I
23 think that the fact that burglars can quickly cut
24 through locks and fencing is within the witness's
25 experience as the head of neighborhood watch, and I

1 also think that it's general knowledge that you can
2 cut through locks and fencing quickly with bolt
3 cutters. I don't think that's any surprise to
4 anybody.

5 MR. SETTINERI: It would be to me.

6 ALJ SCHABO: And the sentence regarding
7 "recycled inside and an opportunity presents itself."

8 MR. VAN KLEY: Those again, your Honor,
9 are well within the witness's experience as the head
10 of neighborhood watch. As the head of neighborhood
11 watch, he is responsible for -- for knowing how
12 criminals work and in this case burglars work and to
13 know about the recycling activities that they engage
14 in because those recycling activities inform the
15 crimes that are being committed. So I don't think
16 this is at all speculative. I think it's well within
17 his knowledge about the crime in the community.

18 ALJ SCHABO: Mr. Settineri.

19 MR. SETTINERI: Yes, your Honor. The
20 question is what means criminals in the township, and
21 I will paraphrase, use to gain access. Unless he is
22 there watching he does not know how long a criminal
23 or someone doing that to steal something, how quickly
24 that person will dispatch with locks and fencing so
25 clearly speculation. As well, cutting torches are

1 utilized to cut some items. And then it's pure
2 speculation that he would know -- he would be able to
3 say they are cut into undistinguishable forms for
4 recycling. And, again, unless he is there observing
5 it, unless he is going to find the parts in
6 recycling, that's pure speculation on his part. We
7 are fine with leaving "the bolt cutters" and
8 "dispatch with locks and fencing" but anything that's
9 speculative here we would like to see stricken.

10 ALJ SCHABO: Well, I am going to deny
11 that motion.

12 MR. VAN KLEY: The next portion of the
13 motion to strike concerns language at the bottom of
14 page 10 and the top of page 11. And, again, this is
15 information within the witness's experience as the
16 head of neighborhood watch and his constant
17 interaction with events dealing with crimes in this
18 particular -- in this situation involving this
19 isolated, unincorporated village of Fairhaven. So,
20 again, this is within his knowledge.

21 MR. SETTINERI: Your Honor, if I may.

22 ALJ SCHABO: You may.

23 MR. SETTINERI: It relates to the -- back
24 to the sentence that was previously stricken as
25 hearsay. And so then he is obviously then

1 speculating that the criminal element knows the
2 difficulty of finding laws, so they seek the
3 sanctuary. So it's pure speculation, and it's based
4 on the prior testimony that was stricken. So he is
5 speculating as to what the criminal element knows and
6 thinks, and he can't do that. Moreover, that
7 speculation is based on hearsay that was stricken.

8 ALJ SCHABO: I'll grant this motion. So
9 the sentence at the bottom, sentence starting on line
10 23, page 10, with "The criminal element" will be
11 stricken. So that the first remaining sentence on
12 page 11 will be "The sheriff and the sheriff's
13 department."

14 MR. SETTINERI: For the record, your
15 Honor, it was CCPC Exhibit 5 that we were discussing.

16 ALJ SCHABO: Thank you for that
17 clarification. So with the motions to strike taken
18 care of --

19 MR. SETTINERI: No more motions to
20 strike.

21 ALJ SCHABO: -- your cross-examination.

22 MR. SETTINERI: Yes, thank you, your
23 Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Settineri:

Q. Good afternoon, Mr. Mast.

A. Good afternoon.

Q. How are you today, sir?

A. Fine. Thank you.

Q. Good. Now, at page 3 of your direct testimony which is CCPC Exhibit 5.

A. Uh-huh.

Q. Page 3, yes, answer 10, you state, yes, you are a member of the Concerned Citizens of Preble County, LLC, correct?

A. Yes, uh-huh.

Q. How did you become a member of the Concerned Citizens of Preble County, LLC?

A. The first meeting we had and I signed up.

Q. How did you sign up?

A. There was a sign-up sheet.

Q. Okay. And did you sign anything else?

A. No.

Q. Did you -- have you made any -- did you pay any money to sign up?

A. Yes.

Q. How much money did you pay, sir?

A. I don't remember how much it was.

1 Q. Okay. Do you know what an LLC is? What
2 does LLC stand for?

3 A. Limited liability corporation.

4 Q. You didn't sign an operating agreement
5 for the LLC, correct?

6 A. No, I did not.

7 Q. Okay. Now, in answer 3 of CCP Exhibit 5,
8 answer 3, on page 1, you are offering testimony --
9 are you there?

10 A. I am on page 1.

11 Q. Page 1, answer 3, line 27.

12 A. 27, okay.

13 Q. It notes there, and I will paraphrase --
14 I am paraphrasing, you are offering testimony on
15 behalf of the Concerned Citizens of Preble County,
16 Robert Black, Marja Brandly, Campbell Brandly Farms,
17 LLC, Michael Irwin, Kevin and Tina Jackson,
18 Vonderhaar Family ARC, LLC, and Vonderhaar Farms
19 Inc., correct?

20 A. Correct.

21 Q. Okay. And prior to filing your
22 testimony, you did not review that testimony with
23 Robert Black, Marja Brandly, Campbell Brandly Farms,
24 LLC, Michael Irwin, Kevin and Tina Jackson,
25 Vonderhaar Family ARC, LLC, and Vonderhaar Farms

1 Inc., correct?

2 A. I attended a meeting and reviewed the
3 safety issues, and then I had the neighborhood watch.
4 I sent my testimony, my direct testimony to the
5 neighborhood watch group which includes a number of
6 these people.

7 Q. Does it include all of those people?

8 A. That I don't know.

9 Q. And with that same group of people that I
10 went through, did you also review your supplemental
11 testimony with them prior to filing it?

12 A. Not all of them. I did with some of
13 them.

14 Q. Now, you don't have any experience
15 constructing a solar farm, correct?

16 A. I have built a solar panel, and I was the
17 first experimental still in Ohio, ES-1, and to make
18 ethanol so I have constructed them and I know how
19 they -- and I had trained on them. So as far as the
20 farm, you know, large farm, 100 acres, I have not
21 done that.

22 Q. And -- and we will say a large solar
23 farm, we will call that utility scale.

24 A. Correct.

25 Q. You never designed a utility-scale solar

1 farm, correct?

2 A. That is correct.

3 Q. In fact, you've never designed a solar
4 farm, correct, other than your one panel that you put
5 in your backyard?

6 A. I worked on a design for Procter & Gamble
7 when I worked there to look at installing solar
8 energy on a warehouse to keep the warehouse at a
9 certain temperature in the wintertime, and so we did
10 some design work on that and basically feasibility
11 studies.

12 Q. Okay. On the economic feasibility.

13 A. Feasibility studies and initial one --
14 initial work.

15 Q. That project did not go forward, correct?

16 A. Exactly like this project, had to have
17 federal funding before it would be final, and it
18 wasn't viable then.

19 Q. You have never been near a utility-scale
20 solar farm, correct?

21 A. No, I have not.

22 Q. And you are not familiar with any solar
23 farms, correct?

24 A. Correct.

25 Q. And you don't know what material is in a

1 solar panel, correct?

2 A. I know that there are some materials,
3 some chemicals in it according to your literature and
4 some of -- most can be recycled in landfills which
5 implies others cannot be recycled in landfills.
6 That's the data that your -- information your panels
7 provided me so that's all -- that's what I have.

8 MR. SETTINERI: Your Honor, at this time
9 if I may approach the witness?

10 ALJ SCHABO: You may.

11 Q. Mr. Mast, do you recall being deposed by
12 me last Friday?

13 A. Yes.

14 Q. And you were under oath during that
15 deposition, correct?

16 A. That's correct.

17 Q. I am going to hand out a copy of your
18 deposition transcript, sir. Do you have your
19 deposition transcript in front of you?

20 A. Yes.

21 Q. Okay. If you could please turn to page
22 41 of your transcript, please. I am going to direct
23 your attention on page 41. When you are there --

24 A. Yes.

25 Q. -- line 13 through line 15, you will see

1 a question "But sitting here today, can you tell me
2 what would be in a solar panel?"

3 Your answer was "No," correct?

4 A. Other than what I just shared, your data.

5 Q. Repeat my question. Let me ask it this
6 way, in last Friday's deposition, I asked you a
7 question "But sitting here today, can you tell me
8 what would be in a solar panel," and your answer was
9 "No." Did I read that correctly?

10 MR. VAN KLEY: Your Honor, I am going to
11 object because counsel is reading only a selective
12 part of the testimony on pages 41 and 42 that
13 provides a misleading conclusion if only part of it
14 is read that is not warranted by the entire context,
15 especially if you would go down to page 41, line 23,
16 through page 42, line 2.

17 So I would ask that if counsel is going
18 to read from the deposition, that he read -- read the
19 entire context for the questions so that the
20 witness's answer can be judged by what he actually
21 said rather than by part of what he actually said.

22 MR. SETTINERI: Your Honor, that's
23 certainly a topic he can address in redirect. I am
24 simply looking at what the witness testified to in
25 his deposition, and I would like to finish that

1 question and answer simply to acknowledge for the
2 record that there was a question, and he gave an
3 answer.

4 MR. VAN KLEY: Well, we are looking at
5 exactly what he said in his deposition, but counsel
6 is only reading part of it in order to provide a
7 misleading viewpoint as to what Mr. Mast actually
8 testified about.

9 MR. SETTINERI: And I strongly disagree
10 with his characterization as misleading.

11 ALJ SCHABO: Whether or not he is being
12 properly impeached is a really good question for the
13 Commission to consider. So, Mr. Settineri, I believe
14 he answered your question but if you would --

15 MR. SETTINERI: I just want to simplify
16 it and close it out, your Honor.

17 Q. (By Mr. Settineri) Mr. Mast, at line 13,
18 you will see "Question: But sitting here today, can
19 you tell me what would be in a solar panel?"

20 15, "Answer: No."

21 Did I read that correctly, sir?

22 MR. VAN KLEY: Again, I would object,
23 your Honor, on the same grounds.

24 ALJ SCHABO: I note your objection, and I
25 repeat that whether or not this is proper impeachment

1 is a decision for the Commission to make. But, right
2 now, I think he can answer a question of is that what
3 is read there. Go ahead and answer.

4 A. Okay. On line 11, I said I cannot --
5 "you tell" -- line 10, "you tell me the panel, and I
6 can go do some research" and tell you what's in the
7 panel. But they didn't tell me the panel so sitting
8 here today, I don't know what panel they are planning
9 to use. And, therefore, I cannot tell them what's in
10 the material. In the context of what he asked me, I
11 need to know the panel before I can answer the
12 question. I mean, come with the panel.

13 ALJ SCHABO: That's his answer,
14 Mr. Settineri.

15 MR. SETTINERI: Thank you, your Honor.

16 Q. (By Mr. Settineri) You don't know what
17 the spacing will be between the panel rows for the
18 project, correct?

19 A. That's correct.

20 Q. Solar panels are used on top of houses in
21 Ohio, correct?

22 A. Correct.

23 Q. And solar panels are also present in
24 schools in Ohio, correct?

25 A. Correct.

1 Q. You don't know whether there will be
2 vegetation planted within the project area after its
3 built, correct?

4 A. That's correct.

5 Q. A field that has vegetation on it will
6 have less runoff than the same field without
7 vegetation, correct?

8 A. Depends on the time of year.

9 Q. So --

10 A. Wintertime it doesn't make much
11 difference.

12 Q. And that's because the ground is frozen.

13 A. Ground is frozen, yeah.

14 Q. If it's not frozen and has vegetation,
15 what would be --

16 A. It would tend to absorb the material;
17 but, again, it depends. Bare ground absorbs a lot of
18 water too; so, I mean, it's really -- I am not sure
19 it makes that much difference between the two.

20 Q. Okay. Your house is located
21 approximately 1-1/2 miles from the nearest -- what
22 you think may be the nearest solar panel location,
23 correct?

24 A. Correct.

25 Q. And you made that determination by

1 looking at the application, correct?

2 A. Yes.

3 Q. Did you review the application in this
4 proceeding?

5 A. I saw the map that they passed out at
6 the -- the meeting, the first meeting back in Preble
7 County.

8 Q. Okay.

9 A. And I know based on that. I drove the
10 distance and marked the odometer, came up 1.5 miles.

11 Q. Did you review any other parts of the
12 application in this case?

13 A. I've seen bits and pieces of anything. I
14 have never seen the entire documentation for the
15 project.

16 Q. All right.

17 A. I can tell you what ones I have seen and
18 which ones I haven't.

19 Q. When you say bits and pieces, were they
20 solely maps that you reviewed?

21 A. Whatever you passed out at the Eaton
22 meeting, I read that information.

23 Q. Okay. But in regard to the application
24 that was filed in this case, you only reviewed a map
25 for the application to your understanding, correct?

1 A. I read through the testimony. I read
2 through the testimony that was provided on both
3 sides.

4 Q. Okay. All right.

5 A. But I am not sure if that's the total. I
6 have no idea how much information is out there.

7 Q. Let me direct your attention to the
8 notebook next to you that's Company Exhibit 1. Are
9 you familiar with that document that's in that
10 notebook?

11 A. No, no, I have not.

12 Q. You have not reviewed it.

13 A. I didn't have access to it.

14 Q. Do you have computer and internet at your
15 house?

16 A. Yes -- well, no, I don't, not internet.

17 Q. Do you go to the library?

18 A. Yes.

19 Q. Your house is approximately 10,000 square
20 foot, correct?

21 A. Correct.

22 Q. And it's located right next to a road,
23 correct?

24 A. Correct.

25 Q. A picture of your house is in the back of

1 your testimony, correct?

2 A. Yes.

3 Q. Okay. The last time you had anything
4 stolen from your property was seven or eight years
5 ago and that was outdoor lawn furniture, correct?

6 A. Correct. I also had my truck keyed a
7 couple months ago.

8 Q. Okay. And where was your truck located
9 at the time?

10 A. At my property.

11 Q. Okay. You recently went on a 10-day
12 vacation, and nothing was stolen from your property,
13 correct?

14 A. Correct.

15 Q. Now, you have no proof that there is a
16 drug lord residing in Fairhaven, correct?

17 A. I just talked to a convicted felon
18 yesterday for an hour, and he offered to sell me some
19 manhole covers. If I needed some manhole covers, he
20 had some but, you know, he -- I see the police
21 reports and there are drugs at the one -- drug
22 arrests two months ago at the one house at the other
23 end of town. And two doors down from me two years
24 ago a young man died of drug overdose. The other end
25 of town two years ago a young woman died of a drug

1 overdose. And in the back alley a person died of a
2 drug overdose, took him to the hospital.

3 MR. SETTINERI: Your Honor, I move to
4 strike the entirety of the answer. That can
5 certainly be explored on redirect but it was
6 unresponsive to the question I asked which was you
7 have no proof there is a drug lord residing in
8 Fairhaven.

9 ALJ SCHABO: If you are not going to
10 object on redirect that it's outside the scope of
11 your cross, I am happy to leave it to redirect, so
12 you kind of just opened your door there.

13 MR. SETTINERI: I did. I will withdraw
14 that motion.

15 ALJ SCHABO: Okay.

16 Q. (By Mr. Settineri) Mr. Mast, you have no
17 proof there is a drug lord residing in Fairhaven,
18 correct?

19 A. There are deaths in the area. There are
20 drug arrests. And the Butler County Sheriff, Preble
21 County Sheriff knows drugs are coming into town. I
22 don't know what you would call a drug lord, somebody
23 that brings drugs in and redistributes in the area.
24 It was a well known location for drugs in
25 southwestern Ohio.

1 Q. Are you aware that the County
2 Commissioners approved funding for two new positions
3 in the sheriff's office?

4 A. Yes.

5 Q. Were you aware of that before this
6 hearing today?

7 A. Yes.

8 Q. Thank you.

9 A. And I --

10 Q. Are you happy with that?

11 A. The issue is that one of them is going to
12 be a corrections officer, and the other one is going
13 to be, I am sure, to cover overtime. When I was
14 talking to the deputy chief sheriff and the
15 prosecutor to help get some additional people on the
16 streets, the prosecutor said he could get -- perhaps
17 direct some drug money to the sheriff's department
18 and the chief deputy said that he wasn't even sure
19 with people working so much overtime he could even
20 get any volunteers to sign up for the overtime.

21 So my suspicion is the second person is
22 going to be to just help cover the overtime because
23 the chief deputy and the sheriff are out on patrols
24 at times and extremely shortly staffed so.

25 MR. SETTINERI: Your Honor --

1 Q. Are you done?

2 A. Yeah. I was just trying to explain why I
3 know.

4 MR. SETTINERI: Your Honor, I move to
5 strike starting with "When I was talking to." It's
6 all based on hearsay at that point.

7 MR. VAN KLEY: Well, his question called
8 for hearsay. He asked the witness -- basically asked
9 the witness to testify as to what the witness heard
10 about the two positions. So counsel opened the door
11 in that regard.

12 MR. SETTINERI: That door was never
13 opened.

14 MR. VAN KLEY: The only way he could have
15 known any information about it is through hearsay.

16 ALJ SCHABO: Could you just reread the
17 original question where he asked if he is aware.

18 (Record read.)

19 ALJ SCHABO: Motion to strike overruled.
20 Denied. Thank you.

21 Q. (By Mr. Settineri) Mr. Mast, are you
22 familiar with The Register-Herald?

23 A. Yes.

24 Q. Do you subscribe to The Register-Herald?

25 A. No, I do not.

1 Q. Is that a local newspaper?

2 A. Yes.

3 MR. SETTINERI: Your Honor, may I
4 approach?

5 ALJ SCHABO: You may.

6 MR. SETTINERI: I would like to mark as
7 Company Exhibit 18.

8 ALJ SCHABO: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. VAN KLEY: Your Honor, while he is
11 doing that, what was the ruling on the last
12 objection?

13 ALJ SCHABO: It was overruled.

14 MR. SETTINERI: May I approach, your
15 Honor?

16 ALJ SCHABO: You may.

17 Q. (By Mr. Settineri) Mr. Mast, I have
18 handed you what has been marked as Company
19 Exhibit 18. You are familiar with The
20 Register-Herald, correct?

21 A. Yes.

22 Q. This is an article online from The
23 Register-Herald marked as Company Exhibit 18. I
24 would like to direct your attention to the back page.
25 I will wait until you are ready. You'll see a

1 paragraph that says "Before voting, Day did want to
2 be clear this would be an annual increase for Preble
3 County to increase services and protection. While
4 they are decreasing overtime, they will not be saving
5 money-it will still be an increase." Do you see
6 that?

7 A. Yes, yes.

8 Q. Overall, you see the addition of a new
9 position as a benefit to the community, correct?

10 A. Yes.

11 Q. And you see the addition of a new
12 corrections officer as a benefit to the community,
13 correct?

14 A. Yes.

15 Q. And for you this would be a positive step
16 forward to addressing some of the issues that you are
17 experiencing in Israel Township per your testimony,
18 correct?

19 A. No.

20 Q. You don't think it would be a good first
21 step?

22 A. This is -- I support what the sheriff is
23 doing. He is trying to get somebody in the
24 corrections area to help out inside the building. It
25 is not going to put anybody else in the field, and

1 the overtime is going to be reduced and that also is
2 not going to put anyone else in the field.

3 Q. That's your opinion, correct?

4 A. Well, that's what the paper said. I
5 read -- I read the paper and that's what they said
6 they were going to do.

7 Q. You also see though that in the third
8 paragraph that starts "These new positions," you also
9 see that these --

10 A. Wait. Where are you?

11 Q. Back page, back page. There do you see
12 the sentence that says "These new positions will come
13 at a cost of approximately \$200,000. This cost
14 includes salaries, benefits, and a patrol car. This
15 is not the annual cost, as the deputy's car is
16 included and is a one time cost," correct?

17 A. Right, uh-huh.

18 Q. So, now, how many patrol cars will there
19 be then for the sheriffs? Do you know?

20 A. No.

21 Q. Okay. Logical to assume that the new
22 officer would be in the new patrol car?

23 A. That would be hearsay. I have no idea.

24 Q. Okay.

25 A. Could be one overaged being replaced.

1 Q. All right. You can put that aside,
2 Mr. Mast. Now, there are only a few individuals in
3 Fairhaven that you believe are causing almost all the
4 trouble, correct?

5 A. Well, they -- some number of people in
6 Fairhaven but they bring a lot of people from the
7 outside.

8 Q. Okay. So, in fact, at your page 10 at
9 line 14, starting at line 13 to 15, you state that
10 "All the farmers and village residents in the
11 township" --

12 A. I'm sorry. Where are you at now?

13 Q. Sure. CCPC Exhibit 5.

14 A. Okay.

15 Q. Lines 13 to 15.

16 A. On page 1?

17 Q. Sorry, CCPC Exhibit 5, page 10, lines 13
18 to 15.

19 A. Okay.

20 Q. Answer 20. You state "All the farmers
21 and village residents in the township are honest,
22 hard-working individuals; except for a few
23 individuals in Fairhaven who are causing almost all
24 of the trouble."

25 A. That's correct. And that's what I said.

1 They bring other people in so.

2 Q. You have no plans as of today to move out
3 of Fairhaven, correct?

4 A. No. It's my home.

5 Q. Now, you've had flooding issues at your
6 property for years, correct?

7 A. Oh, I have had -- while I have owned it,
8 it has never flooded but it has come within a half
9 inch of coming in the building, but it is close.
10 This year three times it came close to the building
11 and flooded across the street as well.

12 Q. And you believe that 150 acres of the 934
13 acre overall project area will drain into Four Mile
14 Creek, correct?

15 A. Correct.

16 Q. And that 150 acres drains into Four Mile
17 Creek as of today, correct?

18 A. Correct. That's -- 150 acres is the
19 number Doug gave me, so I have -- other than that I
20 don't know how -- I haven't verified the number
21 myself.

22 Q. And Four Mile Creek is the creek that
23 runs by your property, correct?

24 A. Correct.

25 Q. Now, you have not conducted any drainage

1 calculations for the project, correct?

2 A. Correct.

3 Q. And you have not conducted any studies on
4 the impact of the project on flooding at your
5 property, correct?

6 A. Correct.

7 Q. Do you carry flood insurance on your
8 property?

9 A. No, I do not.

10 Q. Now, you don't oppose solar as a source
11 for energy as a general proposition, correct?

12 A. No, no.

13 Q. And you agree that every project has
14 risk, correct?

15 A. Correct, uh-huh.

16 Q. And as to the Angelina project, you would
17 like somebody to review the project risk and, if
18 necessary, mitigate the risk, correct?

19 A. Yes. What I would like to have is an
20 unbiased third-party opinion come in and assess all
21 the risk and then look at the plans that you have and
22 make sure that all the risks are adequately reviewed,
23 whether it be a third-party independent resource
24 pulling together the risk assessment and then
25 comparing that with what it is, and if the plans

1 aren't acceptable, sufficient, why then do what you
2 have to do to make them to comply.

3 Q. And that independent third party could be
4 the Ohio Power Siting Board, correct?

5 A. I would go for an outside mutually
6 selected group and that would not be a group I would
7 select. I mean, for -- I worked at Procter & Gamble.
8 When we went to the Food and Drug Administration, we
9 didn't have another part of our company provide an
10 unbiased third party. It was a completely
11 independent company, and they would provide whatever
12 they saw the data to be and it was presented to the
13 FDA and the FDA then has a group approved by the FDA
14 and so as we as the Concerned Citizens would like to
15 be a part of that selection of that group.

16 MR. SETTINERI: If I could have just a
17 moment, your Honor.

18 ALJ SCHABO: You may.

19 MR. SETTINERI: Thank you. All right.
20 Your Honor, at this time I have no further questions
21 of Mr. Mast. Thank you.

22 ALJ SCHABO: Thank you, Mr. Settineri.

23 Mr. Van Kley.

24 MR. VAN KLEY: Yes, thank you.

25 - - -

REDIRECT EXAMINATION

By Mr. Van Kley:

Q. Mr. Mast, let's first talk about your process for writing your testimony with respect to the questions that you were asked by counsel for the Applicant.

Let's start first with your process for collecting information about the issues. You indicated that you've attended meetings of the Concerned Citizens of Preble County in your responses to Mr. Settineri's questions. During those meetings, did you obtain information from that group as to the issues that concerned them?

A. Yes.

Q. Okay. And did you use that information that you collected during those meetings with the group in order to identify the issues you would address in your testimony?

A. Yes, I did.

Q. Now, if you did not review the entire application, how did you obtain the information you needed for writing your testimony?

A. I attended the meeting in Preble County and heard some of the issues there. I also just from the neighborhood watch standpoint and knowing the

1 what -- from the safety standpoint all the criminal
2 issues I was -- knowing that anyone coming in like
3 that would increase the potential risk for crime in
4 the area, so it was pretty logical to -- to include
5 crime and then flood waters as well and putting all
6 those panels in is going to increase the amount of --
7 is going to reduce the amount of water that can be
8 absorbed by the soil.

9 And so it's logical I'm living right next
10 to the flooded creek, and having a Master's degree in
11 engineering it's pretty easy to see that we're at
12 risk for flooding as well, and the whole site
13 clearance thing, the whole site clearance, and Katie
14 West has been helping us for years trying to get some
15 of these buildings site cleared. And a facility like
16 this there is no clear plan how to get the -- you
17 know, the building returned to farmland after its
18 use.

19 I am concerned with that and then some
20 chemicals in the documents indicate there could be
21 some groundwater contamination. And our well waters,
22 water for my well is 100 feet from the creek and the
23 whole Village of Fairhaven is, you know -- runs out
24 of water sometimes, some portions. People have their
25 wells and fields right next to their homes, right

1 next to this solar field, then chemicals get in the
2 water, it will be directly into that.

3 So my engineering background, my
4 neighborhood watch, and Marja and Rachael are members
5 of the neighborhood watch group, so we have been
6 working together for a long period of time, so we
7 know what the issues are in our community.

8 Q. Okay.

9 A. There probably is -- from the
10 neighborhood watch standpoint, there is -- you know,
11 that just shows that to have a neighborhood watch
12 group takes a lot of effort and a lot of people's
13 commitment. And it implies or indicates that we have
14 a serious crime here, serious problem, and we are
15 looking to do our best to try to find that. And so
16 we have come together as a community to try to work
17 together and address all those problems. So that's
18 why we are able to know pretty well where the people
19 are at. I have access to internet that I do send --
20 every month I send neighborhood watch information to
21 our group and keep them abreast of what's going on
22 so.

23 Q. How long have you lived in the area?

24 A. I bought the property 22 years ago, and I
25 have been there since 2004.

1 Q. Has that provided you with familiarity
2 with the project area?

3 A. Yes, uh-huh.

4 Q. With regard to your testimony about
5 flooding, where did you obtain that information
6 without reading the -- without reading the entire
7 application?

8 MR. SETTINERI: Object,
9 mischaracterizing. Without reading the entire
10 application, the witness testified he had not read
11 the application at all.

12 MR. VAN KLEY: No. He said he had read
13 parts of it.

14 MR. SETTINERI: Read a map and he later
15 said he didn't read it.

16 MR. VAN KLEY: No.

17 ALJ SCHABO: Thank you for the
18 clarification. He can answer the question.

19 A. I did not see this entire book, but I did
20 read all the documents that you provided. I read the
21 testimony that was provided by the folks, and so I
22 have some understanding of where the project is going
23 and the number of acres. I have driven the land, so
24 I know what -- the way the land slopes. I know where
25 the water drains. And so I have a very clear

1 understanding. And having an engineering background
2 with piping, plumping, surface water runoff, farmer
3 almost all my life, you know, I have a lot of
4 experience in water and living next to the creek.
5 Next to the creek for 22 years, I know probably as
6 well as anybody what that creek -- how it responds to
7 floods and rains, it floods.

8 If there is really heavy rain, the water
9 is on top of us immediately. This property is about
10 a mile and a half away, and the creek runs about 4
11 miles an hour. When it's reading plus or minus, in
12 15 minutes the water will be on top of us. And it
13 doesn't -- it doesn't flow into the ground if there
14 is a really heavy rain. Some does. If there is a
15 deluge, water hits the creek, immediately the creek
16 rises very, very quickly and within an hour.

17 And then other times it's a long steady
18 rain, over seven days, five, seven days, and then the
19 tile helps out to get the water away, but the tile is
20 mostly helpful to get the water -- that soil dry so
21 when it does rain, it absorbs the water but, you
22 know, when it -- when we get a deluge of water, it is
23 on top of us in no time.

24 The time I was trapped in my home there
25 was a heavy rain and I was watching the creek and the

1 first water came over the road and blocked me from my
2 access. The reason it came over the road is because
3 the culvert coming across -- under 177, the creek
4 backed it up, and so it didn't have total flow. And
5 it was -- over the years the state highways keep
6 being raised in elevation and acts as a dam.

7 So -- so I know how the creek responds,
8 and I know what the impact is on the community. It
9 floods the whole town. It's not just my property.

10 Q. Did you review any documentation, any
11 written documentation concerning information that
12 informed your testimony about flooding in the project
13 area?

14 A. I use -- Einstein used thought
15 experiments on -- rather than actual experiments, so
16 I use thought experiments. You see, you can measure
17 that, so I use thought experiments. And what happens
18 if you have a panel in the field, it's not going to
19 get saturated below the panel. And if -- depending
20 which way the wind is coming, it's going to directly
21 block. And we are counting on the soil underneath it
22 to absorb as much water as possible.

23 So I did a lot of that type of analysis,
24 and it's the winds -- if the collections are pointing
25 toward the sun, the rain eventually comes from the

1 south, a good part of the area is going to be
2 blocked.

3 Q. Did you review any flood plan maps?

4 A. Yes, uh-huh. I have those.

5 Q. With regard to your vacation that you
6 just returned from, did you take any precautions
7 before you left to safeguard your property from
8 criminals?

9 A. Yes. I have security cameras, a number
10 of security cameras. I have alarm sirens. I had
11 people coming over every day to feed my animals. I
12 had the neighbors watching, and we watch each other's
13 property every day. I go through town, and when
14 people are working, I observe what's going on in
15 town. And anything strange I report it, and they do
16 likewise for me.

17 Q. Now, you were asked about chemicals in
18 panels, in solar panels. And I want to make sure
19 that your answer in that regard was clear. What
20 information would you need to know in order to
21 identify what, if any, chemicals are contained in the
22 solar panel?

23 A. That's where the unbiased third-party
24 expert would be needed. You know, I am not an expert
25 in that area and what I like to have there's -- you

1 know, during all those testimonies there has been a
2 number of safety and health issues brought up and
3 it's hard to sort fact from fiction and that's why
4 it's important to get a third-party unbiased group to
5 look at all the data that's out there and figure out
6 what is fact and fiction and make an assessment based
7 on that.

8 So I am not -- I am not -- you know, I am
9 not qualified to do that and that's why we need
10 third-party unbiased experts to do that, and they
11 need to know -- and if it -- I understand at this
12 point in time it is probably not going to identify
13 the exact panel, but two or three of them looking at
14 using, evaluate all three of them, and what's going
15 to be installed here may be different than what goes
16 in schools and so forth. So what's -- what's out
17 there now, the technology changes, and so we just
18 need to know what is going to be -- what panel is
19 going to be used, or which ones, and have the risk
20 assessment based on that.

21 MR. VAN KLEY: Okay. I have no further
22 questions.

23 ALJ SCHABO: Do you have any recross?

24 MR. SETTINERI: No, no recross, your
25 Honor.

1 ALJ SCHABO: Thank you, Mr. Mast. You
2 may step down.

3 THE WITNESS: Thank you, your Honor.

4 MR. VAN KLEY: Your Honor, what was the
5 exhibit number for the newspaper article?

6 ALJ SCHABO: That was Company Exhibit 18,
7 Mr. Van Kley.

8 MR. VAN KLEY: Yes. We would move into
9 evidence CCPC Exhibit 5, CCPC Exhibit 6, and Company
10 Exhibit 18.

11 ALJ SCHABO: Any objections?

12 MR. SETTINERI: No. Sorry. What was --
13 did you say Company Exhibit 18?

14 MR. VAN KLEY: Yes, your newspaper
15 article.

16 MR. SETTINERI: That's fine with me. I
17 support that one.

18 ALJ SCHABO: All right.

19 Hearing no objections, CCPC 5 and 6 and
20 Company 18 will be admitted into the record.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 ALJ SCHABO: Does that conclude your case
23 in chief?

24 MR. VAN KLEY: Yes, it does.

25 ALJ SCHABO: All right. Let's go off the

1 record for just a moment.

2 (Discussion off the record.)

3 ALJ SCHABO: Let's go back on the record.

4 We just had a brief discussion off the
5 record about the timing of rebuttal testimony.

6 Rebuttal testimony will be due to be filed on or
7 before August 23, and we will look at September 9 and
8 10 as our preferred dates to get back together to
9 take that rebuttal testimony, but an entry will be
10 forthcoming for that final date.

11 With that we are adjourned. Thank you.

12 (Thereupon, at 2:49 p.m., the hearing was
13 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Monday, August 12,
2019, and carefully compared with my original
stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6793)

- - -



This foregoing document was electronically filed with the Public Utilities

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8/26/2019 9:49:30 AM

in

Case No(s). 18-1579-EL-BGN

Summary: Transcript Volume III - In the Matter of the Application of Angelina Solar I, LLC for a Certificate of Environmental Compatibility and Public Need, hearing held on August 12th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.