

**BEFORE THE  
OHIO POWER SITING BOARD**

In the Matter of the Application of )	
Firelands Winds, LLC for a Certificate of )	Case No. 18-1607-EL-BGN
Environmental Compatibility and Public )	
Need to Construct a Wind-Powered Electric )	
Generation Facility in Huron and Erie )	
Counties, Ohio )	

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**MEMORANDUM CONTRA LOCAL RESIDENTS’  
MOTION TO STRIKE PORTION OF TOM YINGLING’S TESTIMONY**

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Pursuant to Ohio Adm. Code 4906-2-27(B)(1), intervenors Tom Yingling and Kevin Erf respectfully file this memorandum contra the Local Residents’ Motion to Strike Portion of Tom Yingling’s Testimony, and request that the Board deny the motion.

The Local Residents move to strike a portion<sup>1</sup> of Mr. Yingling’s testimony on the grounds that it expresses expert opinions on “climate change and its purported effects, and Mr. Yingling has no expertise to express these opinions.” The testimony does not offer expert opinions. Mr. Yingling simply draws on his many decades of experience as a farmer in Bellevue to observe changes in the weather and on his land. *See, e.g., State v. Plott*, 80 N.E.3d 1108, 1128 (Ohio Ct. Appeal 2017) (witness did not offer expert opinion where he “was simply offering an opinion based on his nineteen years of experience as a police officer”); *see also State v. Jones*, 137 N.E.3d 661, 677 (Ohio Ct. Appeal 2019) (lay witness may testify as to opinions that are “(1) rationally based on the perception of the witness, and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue”) (quoting Evid. R. 701).

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<sup>1</sup> The motion seeks to strike testimony beginning on Line 26 of page 3 and ending on page 4, but does not specify the last line of the testimony at issue.

The climate change impacts that Mr. Yingling has observed -- such as temperature extremes, altered rainfall patterns, and the presence of new insects and plants -- are not merely “purported,” but rather, are well documented.<sup>2</sup> The connection between climate change and such impacts has been recognized by federal and state administrative agencies, and need not be established through expert testimony.<sup>3</sup>

Respectfully submitted,

/s/ Hillary Aidun  
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<sup>2</sup> See, e.g., *Fourth National Climate Assessment*, U.S. Global Change Research Program, Washington, DC, USA (2018) at 393 (“Climate change has the potential to adversely impact agricultural productivity . . . through alterations of rainfall patterns, more frequent occurrences of climate extremes (including high temperatures or drought), and altered patterns of pest pressure.”); U.S. EPA, *What Climate Change Means for Ohio* (Aug. 2016) (due to climate change, “the state will have more extremely hot days, which may harm . . . corn harvests in rural areas” and “summer droughts are likely to be more severe”); U.S. Dep’t of Ag., *Climate Solutions*, <https://www.usda.gov/topics/climate-solutions> (visited Oct. 9, 2020) (“The changing climate presents real threats to U.S. agricultural production” and “[h]igher temperatures mean increases in invasive species and costs for weed and pest control.”); Ohio Dep’t of Natural Resources, Ohio’s Statewide Forest Resource Assessment (2010) (“OSFRA”) at 61 (climate change may lead to expansion of non-native invasive plants and increased insect outbreaks); State of Ohio Enhanced Hazard Mitigation Plan (Feb. 2019) (“SOEHMP”) at 2-207 (“Climate change will bring more rain and snow, higher average temperatures and flooding to the Great Lakes region”); see also *id.* at 2-220 (“The fact that climate change is occurring is not disputed.”).

<sup>3</sup> See *supra* note 2; see also *Darr v. Livingston*, 85 N.E.3d 1260, 1265 (Ohio Ct. App. 2017) (a fact may be judicially noticed if it is “capable of accurate and ready determination by resort of sources whose accuracy cannot reasonably be questioned,” including “government documents available from reliable sources on the internet”).

## CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below this 10th day of October, 2020.

/s/ Hillary Aidun

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Summary: Memorandum Contra Local Residents' Motion to Strike electronically filed by Ms. Hillary W. Aidun on behalf of Erf, Kevin Mr. and Yingling, Tom Mr.