

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Kingwood Solar I LLC for a Certificate)	
of Environmental Compatibility and)	Case No. 21-0117-EL-BGN
Public Need)	

**MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY
OF MARY McCLINTON CLAY**

Pursuant to Rule 4906-2-27 of the Ohio Administrative Code, Kingwood Solar I LLC (“Kingwood Solar”) respectfully moves to strike the portions of the direct testimony of Mary McClinton Clay as filed on February 28, 2022:

- Page 7 lines 2-4: This testimony is speculation.
- Page 7 lines 4-5 and page 25, line 13: The testimony inaccurately describes the referenced exhibit.
- Exhibit. F page 1 second and third paragraphs: These contain speculation.
- Exhibit. G page 7 last paragraph: This is hearsay and beyond the scope of the witness’ testimony.
- Page 25 lines 1-4, 18 and Exhibit H: Changes in property values due to the scenarios presented in the exhibit are irrelevant to the installation of a solar facility that is proposed in this proceeding. Admission of the testimony and exhibit will be prejudicial and unreasonably taint the record.
- Page 25 lines 5-7 and Exhibit I: The “study” presented in the exhibit does not answer the testimony questions posed and therefore is irrelevant.

These portions of Ms. Clay’s testimony are not reliable, permissible or relevant and therefore should be stricken pursuant to the Rules of Evidence and under common evidentiary

practices at the Ohio Power Siting Board. Further details and explanation are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE
MOTION TO STRIKE
PORTIONS OF THE DIRECT TESTIMONY OF MARY McCLINTON CLAY**

Portions of Ms. Clay's direct testimony are not reliable, permissible or relevant. Pursuant to the Rules of Evidence and under common practices at the Ohio Power Siting Board, they should be stricken. Kingwood Solar respectfully requests that the following be stricken.

A. Speculation is not reliable testimony.

On Page 7 lines 2-4, Ms. Clay speculates by making a presumption about the reason why the CohnReznick appraisal report is referred to as a consulting report. Ms. Clay presented nothing else and thus, this testimony is little more than a guess. It is legally unreliable and therefore lines 2 and 3 ("presumably report conforms") should be stricken.

On page 1 in the second and third paragraphs of Exhibit F, Ms. Clay describes the reasons why property owners in the case study sold their properties. She claims that it was "as a result of pressure from property owners who abutted at least three sides of the SEGPS" and that the resulting sale value "does not meet the definition of market value, primarily because it was negotiated under duress." There is nothing further included in her case study. These statements are speculation and both above-quoted portions of Exhibit F should be stricken.

B. Hearsay is not admissible testimony.

On page 7, last paragraph of Exhibit F, Ms. Clay's case study, which she presents as part of her testimony, describes third parties' concerns and statements regarding property damage from severe weather. It is offered for the truth and as "an example." She then relies on those concerns and statements to opine on the solar developer and the weather. This is classis hearsay evidence

– third party statements offered for the truth. No recognized exception applies. Hearsay evidence has been precluded in the past. For example, hearsay was stricken in the following Ohio Power Siting Board proceedings: *In the Matter of the Application of Firelands Wind, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Huron and Erie Counties, Ohio*, Case No. 18-1607-EL-BGN, Hearing Transcript Vol. VII at 916-917; and *In the Matter of the Application of Champaign Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Champaign County, Ohio*, Case No. 12-160-EL-BGN, Hearing Transcript Vol. V at 1110-1113. Just last month, in another administrative hearing involving Administrative Law Judge Williams, hearsay was stricken. *In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, Case Nos. 20-1651-EL-AIR et al., Hearing Transcript Vol. III at 439-441 and 535-539.

In addition, the entire paragraph is well beyond the scope of Ms. Clay’s testimony—she is being presented as an expert appraiser (see page 3 lines 2-4) and not to testify about the effect of severe weather in North Carolina or to extrapolate statements and weather events in North Carolina for application in Ohio. As a result, the hearsay and “outside the scope” statements should be stricken.

C. Irrelevant testimony and exhibits should not be presented.

On page 25 lines 1-4, 18 and in Exhibit H, Ms. Clay testifies that she considered, as part of her evaluation of the property value impact of installing solar facilities, the results of completely unrelated events in Kentucky where “environmental damage” occurred from:

- Tannery contamination
- Animal odors
- Underground gasoline tank leaks
- Cell towers

- High voltage transmission lines
- Fugitive particulate emissions
- Airport proximity
- Drainage ditch construction

Changes in property values due to the above situations are irrelevant to the pending solar proposal. Importantly, Ms. Clay does not profess that they relevant. These studies cannot be considered as even analogous or similar. Including Exhibit H would amount to comparing property value impacts under scenarios that are apples and oranges. Admission of the testimony and exhibit is prejudicial and unreasonably taints the record. As a result, page 25 lines 1-4, 18 and Exhibit H should be stricken.

Similarly, on page 25 lines 5-7 and in Exhibit I, Ms. Clay testifies that she answers the question of whether landscaping mitigates property “damage.” The “study” presented in Exhibit I does not stand up to what it is purported to be – an analysis whether landscaping mitigates property damage. Examples in the analysis (page 4 and 6) reflect that the only difference in the sales compared were the addition of the solar farm – not the impact of using landscaping. The study includes no information on scenarios where landscaping was added. The exhibit does not answer the question posed. Both the question and answer should be stricken.

D. Misleading testimony should not be permitted.

On page 7 lines 4-5 and page 25 line 13, Ms. Clay’s testimony inaccurately describes the referenced Exhibit C. The testimony reflects that Exhibit C “discusses a lack of conformity” with professional standards. However, Exhibit C does not contain that discussion – it lists several standards that Ms. Clay says apply. This is misleading and therefore the testimony and corresponding Exhibit C should be stricken.

Ms. Clay's testimony contains speculative statements, inadmissible statements, irrelevant material, and misleading statements and materials. The above-noted parts of her direct testimony should be stricken.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 4th day of March 2021 upon the persons listed below.

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Summary: Motion Motion to Strike Portions of the Direct Testimony of Mary
McClinton Clay electronically filed by Mr. Michael J. Settineri on behalf of Kingwood
Solar I LLC