

**BEFORE  
THE OHIO POWER SITING BOARD**

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

**MOTION TO STRIKE**  
**PORTIONS OF THE DIRECT TESTIMONY OF JEFF EWRY**

Pursuant to Rule 4906-2-27 of the Ohio Administrative Code, Kingwood Solar I LLC (“Kingwood Solar”) respectfully moves to strike portions of the direct testimony of Jeff Ewry as filed on February 25 and revised on March 1, 2022. They fall into the following categories:

- Lines 58-101, 109-110, 120-121 and Exhibits D and E: This testimony and the identified exhibits discuss the purported impact of other solar projects on property values and then the impact of the Kingwood Solar Project on property values. This portion of the testimony is outside the scope of Mr. Ewry’s knowledge and expertise. It also contains speculation.
- Exhibit C and Line 52: This exhibit duplicates comments already received by the Ohio Power Siting Board and on the docket (in a transcript and individual comments). It also contains hearsay – addresses and “notes” about the commenters.

These portions of Mr. Ewry’s testimony are not reliable or permissible under 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 JEFF EWRY**

Portions of Mr. Ewry's testimony are not reliable or permissible under the Rules of Evidence and under common practices at the Ohio Power Siting Board. They should be stricken as detailed below.

**A. Testimony and exhibits related to property values and studies should not be admitted.**

Mr. Ewry's direct testimony reflects that he is a Trustee of Cedarville Township, Ohio, and he has filed testimony in this proceeding on behalf of the Board of Trustees of Cedarville Township. His direct testimony also reflects that he is a software engineer. Nowhere in his testimony is there any evidence that he (or the Board of Trustees) is an expert or has specialized knowledge of the impact of solar facilities on property values. Nowhere in his testimony is there any evidence that he (or the Board of Trustees) has any expertise in preparing property value studies or analyzing such studies. Despite this lack of expertise or specialized knowledge, Mr. Ewry:

- Testifies about and ascribes merit to certain groups of preparers of studies addressing solar facilities' impact on property values. (Lines 60-63, 65-68)
- Opines about the ability of residents to conduct property value impact studies. (Lines 63-65)
- Summarizes two property value impact studies in other jurisdictions, compares them with the Kingwood Solar Project, and opines on Kingwood Solar's evaluation of one of the studies. (Lines 69-101, 109-110)
- Presents the two specific studies conducted by other entities to convince the Board that they are indicative of what the impact would be on property values around the Kingwood Solar Project. (Exhibits D and E) He identified no affiliation with the preparers and no involvement in the preparation of those studies.

- Expresses the Board of Trustees’ opinion of the impact of the Project on property values. (Lines 120-121)

The testimony does not establish that Mr. Ewry is an expert or has specialized knowledge or experience in order to present property value testimony or the two studies. Ohio Rules of Evidence 702. In addition, it is not reasonable for the testimony to include speculative statements (i.e., what studies residents can conduct). The Administrative Law Judge should strike testimony beginning with Question 8 through line 101, all of lines 109-110, line 120 (starting with “the Board”), line 121, and Exhibits D and E.

**B. Compilation of public comments is duplicative evidence and contains inadmissible hearsay.**

The Cedarville Trustees<sup>1</sup> gathered and compiled a list of the comments made by the public – pulling information from the transcript of the November 15, 2021 local hearing and from letters filed on the docket by the public. Mr. Ewry noted on lines 41-42 that “when those searches were inconclusive, we asked residents in the area if they knew where certain commenters resided. They also added notes about certain commenters. The compilation was attached as Exhibit C to Mr. Ewry’s testimony.

The compilation should be stricken from Mr. Ewry’s testimony for two reasons based on Mr. Ewry’s description on lines 38-51. First, the compilation duplicates what is already on the Ohio Power Siting Board’s public comment docket for this proceeding. For that reason alone, it is unnecessary. Second, the compilation contains hearsay – address information based on what unknown third parties told the Cedarville Trustees and “notes” about certain commenters. The compilation is offered for the truth regarding the identity of the individuals, where they reside, and

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<sup>1</sup> Mr. Ewry’s testimony on line 38 says “we” created the spreadsheet that is Exhibit C to his testimony. Kingwood Solar interprets that to be the Cedarville Trustees for purposes of this motion.

the added notes which include speculation. The hearsay is unreliable and not admissible.<sup>2</sup> Ohio Rules of Evidence 802. Since the hearsay in the exhibit is not readily identifiable and excisable, contains speculation and is duplicative, the Administrative Law Judge should strike Exhibit C in its entirety, along with the sentence on line 52 referencing the exhibit.

For all of the foregoing reasons, the Administrative Law Judge should strike portions of Mr. Ewry's direct testimony as detailed in this motion.

Respectfully submitted,

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<sup>2</sup> 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.

## **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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**3/4/2022 3:18:58 PM**

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**Case No(s). 21-0117-EL-BGN**

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