

**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. 21-117-EL-BGN</b>
<b>of Environmental Compatibility and</b>	)	
<b>Public Need</b>	)	

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**KINGWOOD SOLAR I LLC’S REPLY TO THE BOARD OF TRUSTEES OF  
CEDARVILLE TOWNSHIP’S RESPONSE TO KINGWOOD SOLAR’S MOTION TO  
STRIKE**

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**I. Introduction**

On August 15, 2022, Kingwood Solar I LLC (“Kingwood”) filed a motion to strike, among other things, two statements from the Board of Trustees of Cedarville Township’s (“Cedarville Township”) initial brief. Kingwood sought to exclude these statements because they contain statistics which are not supported by any evidence in the record. In its response, Cedarville Township asks the Ohio Power Siting Board (“Board”) to impermissibly rely on a spreadsheet the administrative law judge (“ALJ”) already struck during the hearing. As explained further below, the Board should not belatedly allow information in this record after it has already been determined inadmissible by the ALJ. Consequently, for the reasons articulated below, the Board should grant Kingwood’s motion to strike and also strike Exhibits A (a printout of the public comments on the case docket) and B (a newer version of the spreadsheet previously struck down by the ALJ during the hearing) attached to Cedarville Township’s response.

**II. Argument**

As Kingwood explained in its initial motion to strike, the statements Cedarville Township seeks to retain in its brief are not supported by any evidence in the record, and consequently should be struck. Cedarville Township’s statements appear on page 12 in its initial brief:

i) Of the 36 persons residing in Cedarville Township who provided public comments, 33 opposed the project (92%), only 3 supported it, and all 3 supporters are participating landowners who have leased their properties to Kingwood Solar.

ii) Of the 101 persons residing in Cedarville, Miami and Xenia Townships combined who provided public comments, 87 opposed the Project (86%), 13 supported it, one was neutral, and 8 of the 13 supporters were participating landowners.

These figures are clearly taken from documents not in the evidentiary record.

In its reply, Cedarville Township argues that the statistics in the above statements are directly supported by the public comments filed in this proceeding. However, the public comments in this proceeding were not admitted into the record and cannot be relied upon by Cedarville Township. Moreover, the only document that reviewed public comments from which the above statistics could be calculated was a spreadsheet attached as Exhibit C to Cedarville Township Trustee Jeff Ewry's testimony. The ALJ struck this document as inadmissible hearsay during the hearing. (Tr. Vol. VI at 1495.) Consequently, Cedarville Township's first argument is not credible.

Next, Cedarville Township improperly asks the Board to rely on Exhibit B, attached to its response to Kingwood's motion to strike, claiming that the new spreadsheet, which is outside the record, is verifiable. Exhibit B is simply a repackaged version of Exhibit C from Mr. Ewry's testimony, which was struck during the hearing from the record. This new version of the spreadsheet suffers from the same reliability concerns as the original spreadsheet because it contains the same inadmissible hearsay as original Exhibit C. Cedarville Township implores the Board to rely on Exhibit B (updated Exhibit C) to allow the statements Kingwood seeks to strike because the information in Exhibit B is "obtained from reliable public records available to the Board." (Cedarville Reply at 4.) However, the Board cannot rely on information in a spreadsheet

that relies on public comments not in the record and that is essentially a replica of a spreadsheet the ALJ struck down due to “hearsay and reliability concerns.” (Tr. Vol. VI at 1495.)

Finally, the Board should not engage in an independent verification of the statements at issue, as requested by Cedarville Township. Cedarville Township would like the Board and Board Staff to take Exhibits A and B attached its reply and independently verify the statistical information. (Cedarville Reply at 4.) Exhibit A is not in the record, and was printed on August 26, 2022, which is well after the record closed in this matter. A version of Exhibit B was already excluded by the ALJ during the hearing. In fact, Cedarville Township does not deny the source of the statistics at issue is Exhibit C and that the ALJ has already struck it down. (Cedarville Reply at 3.) It would be highly improper for the Board or Board Staff to now engage in an “independent analysis” to verify the accuracy of the statistics presented by Cedarville Township with these two documents which are outside the record. Consequently, including striking Exhibits A and B attached to Cedarville Township’s response, the Board should strike the statements in the township’s initial brief to ensure facts outside the record are not inadvertently admitted now.

Cedarville Township’s inappropriate attempt to revive a document already struck down as inadmissible hearsay for inclusion into the record after the record has closed and been submitted to the Board should not be entertained. *See, e.g., R.C. 4906.12; In re the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order, March 31, 2016, at 33-37 (striking portions of filed briefs because they referenced documents not part of the evidentiary proceeding). The Board’s role is to consider the record before it to determine whether Kingwood should receive a certificate to construct its project. Therefore, Kingwood’s motion to

strike should be granted and Exhibits A and B attached to Cedarville Township's response should also be struck.

### **III. Conclusion**

For the reasons above, Kingwood renews its request for the Board to strike the two statements in Cedarville Township's initial brief as they rely on facts outside the record. Kingwood also respectfully requests Exhibits A and B to Cedarville Township's response be struck as these documents are also outside of the record.

Respectfully submitted,

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Summary: Reply Reply to the Board of Trustees of Cedarville Township's Response to Kingwood Solar's Motion to Strike electronically filed by Ms. Anna Sanyal on behalf of Kingwood Solar I LLC