

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
10:02 a.m. on Tuesday, September 10, 2019.

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VOLUME IV

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4 and Mr. MacDonald W. Taylor
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6 Columbus, Ohio 43215

7 On behalf of Angelina Solar I, LLC.

8 Dave Yost, Ohio Attorney General
9 John H. Jones, Section Chief
10 By Ms. Jodi J. Bair
11 Senior Assistant Attorney General,
12 Public Utilities Section
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14 Columbus, Ohio 43215

15 On behalf of the Staff of the Ohio Power
16 Siting Board.

17 Van Kley & Walker, LLC
18 By Mr. Jack A. Van Kley
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20 Columbus, Ohio 43235

21 On behalf of the Concerned Citizens of
22 Preble County, LLC.

23 Ohio Farm Bureau Federation
24 By Ms. Amy M. Milam
25 280 North High Street, 6th Floor
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On behalf of the Ohio Farm Bureau
Federation.

Bricker & Eckler, LLP
By Mr. Dylan F. Borchers
100 South Third Street
Columbus, Ohio 43215

On behalf of the Preble County
Commissioners.

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APPEARANCES: (Continued)

Preble County Prosecutor's Office
By Mr. Martin Patrick Votel
Prosecuting Attorney,
and Ms. Kathryn M. West
Assistant Prosecuting Attorney
101 East Main Street
Eaton, Ohio 45320

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.

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1 - "Study of Acoustic and EMF Levels from Solar Photovoltaic Projects"	II-247	496

- - -

1 Tuesday Morning Session,
2 September 10, 2019.

3 - - -

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

10 My name is Patricia Schabo and I'm the
11 Administrative Law Judge assigned by the Board to
12 hear this case. We're here on Day 4, I believe, to
13 take some rebuttal, so let's begin by taking
14 appearances. You can start.

15 MR. SETTINERI: Thank you, Your Honor.
16 On behalf of Angelina Solar I, LLC, Mike Settineri
17 and MacDonald Taylor with the law firm of Vorys,
18 Sater, Seymour and Pease, 52 East Gay Street,
19 Columbus, Ohio 43215.

20 ALJ SCHABO: Thank you.

21 Ms. Bair.

22 MS. BAIR: Thank you, Your Honor. On
23 behalf of the Staff of the Power Siting Board, Dave
24 Yost, Attorney General, Jodi Bair, Assistant Attorney
25 General, 30 East Broad Street, Columbus, Ohio 43215.

1 ALJ SCHABO: Mr. Van Kley.

2 MR. VAN KLEY: Jack Van Kley representing
3 the Concerned Citizens of Preble County and its
4 members.

5 MS. MILAM: Good morning, Your Honor.
6 Amy Milam on behalf of the Ohio Farm Bureau
7 Federation, 280 North High Street, Columbus, Ohio
8 43215.

9 MS. WEST: The Office of Martin P. Votel,
10 Preble County Prosecutor, I'm Kathryn M. West, 101
11 East Main Street, Eaton, Ohio 45320, on behalf of the
12 Preble County Engineer, Preble County Planning
13 Commission, Preble County Soil and Water Conservation
14 District, Israel Township Trustees, Dixon Township
15 Trustees, and co-counsel for Preble County
16 Commissioners.

17 MR. BORCHERS: Good morning. On behalf
18 of the Preble County Commissioners, Dylan Borchers
19 with the law firm of Bricker & Eckler, 100 South
20 Third Street, Columbus, Ohio 43215.

21 ALJ SCHABO: All right. Thank you,
22 everyone.

23 I don't believe we have any
24 preliminaries, so let's go ahead and start with your
25 first witness, please.

1 MR. SETTINERI: Thank you, Your Honor.
2 The Company would call, on rebuttal, Mr. Douglas
3 Herling to the stand.

4 ALJ SCHABO: Good morning.

5 THE WITNESS: Good morning.

6 ALJ SCHABO: Would you do me a favor and
7 just press the "on" button on your microphone. I
8 checked them all this morning, so we should be good.

9 (Witness sworn.)

10 ALJ SCHABO: Thank you. Have a seat.

11 MR. SETTINERI: Your Honor, at this time,
12 we would like to mark as Company Exhibit 19, the
13 Rebuttal Testimony of Douglas Herling.

14 ALJ SCHABO: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. SETTINERI: Copies have been provided
17 to the Bench, the court reporter, and the witness as
18 well. Let me make sure I put one up there.

19 - - -

20 DIRECT EXAMINATION

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

23 DOUGLAS HERLING

24 By Mr. Settineri:

25 Q. Good morning, Mr. Herling.

1 A. Good morning.

2 Q. Can you please state your name and
3 business address for the record, please.

4 A. My name is Douglas Herling. My address
5 is 1105 Navasota Street, Austin, Texas 78702.

6 Q. And on whose behalf are you testifying
7 today, sir?

8 A. On behalf of the Applicant.

9 Q. And do you have before you what's been
10 marked as Company Exhibit 19?

11 A. Yes, I do.

12 Q. And can you identify that for the record,
13 please?

14 A. Company Exhibit 19 is my rebuttal
15 testimony in this case.

16 Q. Was that prepared by you or at your
17 direction?

18 A. Yes, it was.

19 Q. All right. And do you have any changes
20 to that testimony at this time?

21 A. I do have a few edits.

22 Q. Please proceed.

23 A. On the first page, on line 13, Answer 4,
24 following CCPC Exhibit 2 and before the period, we
25 are inserting "and her Supplemental Testimony marked

1 as CCPC Exhibit 3."

2 On line 15, Answer 5, following the words
3 "in her testimony" we are inserting "marked as CCPC
4 Exhibit 2 (Answer 13 and Answer 17)."

5 Q. And does the rest of that sentence then
6 remain as written?

7 A. Yes. Yes, it does.

8 And then on page 2, line 14, before the
9 word "There", the sentence will now read "The study
10 also found that there were...."

11 Q. And then the rest of the sentence after
12 "were" remains the same, correct?

13 A. That's correct.

14 Q. Do you have any other changes to your
15 testimony at this time?

16 A. I do not.

17 Q. If I asked you the questions in your
18 testimony today, would your answers be the same as
19 written and as you have revised today?

20 A. Yes, they would.

21 MR. SETTINERI: Your witness -- Your
22 Honor, the witness is available for
23 cross-examination.

24 ALJ SCHABO: Thank you.

25 Ms. Bair, did you have any cross?

1 MS. BAIR: No questions.

2 ALJ SCHABO: Anybody on this side of the
3 room?

4 Mr. Van Kley?

5 MR. VAN KLEY: Yes, Your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Van Kley:

9 Q. Mr. Herling, I'd like to direct your
10 attention to the sentence in Answer 6 on page 2 of
11 your testimony that you just amended, and I'll just
12 read the entire sentence to you for context, which
13 states: "The study also found that there were
14 significant magnetic fields at locations a few feet
15 from inverters, in the range of 150 to 500 mG, but at
16 a distance of 150 feet from the inverters, the fields
17 dropped back to very low levels of .5 mG or less, and
18 in any many cases to background levels." Do you see
19 that sentence?

20 A. Yes, I do.

21 Q. First of all, what does "mG" stand for?

22 A. "mG" stands for milliGauss.

23 Q. How do you spell that?

24 A. M-i-l-l-i-G-a-u-s-s.

25 Q. And what is a milliGauss?

1 A. MilliGauss is a measurement for the
2 magnetic field portion of an electromagnetic field.

3 Q. Now, there's nothing in the Application
4 or in the Stipulation that requires the inverters to
5 be at least 150 feet away from the Project Area
6 property line, correct?

7 A. Could you say that one more time, please?

8 Q. Yes.

9 There's nothing in the Application or in
10 the Stipulation that requires the inverters to be
11 located at least 150 feet away from the Project
12 Area's property lines, correct?

13 A. There's nothing tying it to that specific
14 number, but we do have reference to not causing any
15 material adverse conditions.

16 Q. Now, earlier in this proceeding you were
17 asked, in connection with questions about the noise
18 from the inverters, whether your Company would agree
19 to a condition that required the inverters to be
20 located at least 150 feet away from the property
21 lines. Do you recall that testimony?

22 A. I don't have that testimony in front of
23 me, but it sounds -- it sounds familiar, but I can't
24 say for sure that's exactly what was said.

25 Q. Well, do you remember saying that you

1 couldn't make that commitment on behalf of the
2 Company because you would have to consult with other
3 people in your company in order to be able to make
4 that commitment?

5 A. I do recall that, and that was also a
6 heavily-negotiated stipulation.

7 Q. Well, since you gave that testimony
8 previously in this proceeding, have you discussed
9 this issue with other people in your company in order
10 to decide whether the Company would agree to a
11 condition requiring the inverters to be located at
12 least 150 feet away from the property line?

13 MR. SETTINERI: I object just to the
14 extent it's outside the rebuttal testimony, now into
15 noise. It has nothing to do with EMF. I object also
16 to the extent it seeks to disclose attorney-client
17 work product as well as attorney-client privilege.

18 MR. VAN KLEY: A couple of responses,
19 Your Honor.

20 First of all, I'm asking this question
21 because his rebuttal testimony states that the EMFs
22 will drop off to .5 mG or less, 150 feet away from
23 the inverters, so my question is directly relevant to
24 this issue concerning whether or not, with respect to
25 EMFs, they would agree to that setback.

1 Secondly, I'm asking him whether he's had
 2 any conversations with members of his -- other people
 3 in his company, not with counsel, with regard to
 4 whether or not they're ready to make a commitment to
 5 site these inverters at least 150 feet away from the
 6 boundaries.

7 MR. SETTINERI: Your Honor, if I may?
 8 Discussions within the Company about ongoing
 9 litigation are certainly protected. If he would like
 10 to simply ask a question, would the Company be
 11 willing to do blank, that is a fine question to ask
 12 and he can answer it, but to ask about what
 13 conversations the Company has had within it about an
 14 ongoing case is completely off limits.

15 MR. VAN KLEY: It's not off limits to
 16 talk -- to ask questions about discussions about
 17 litigation with other non-attorneys in his company.
 18 That is not privileged.

19 ALJ SCHABO: I would like to hear the
 20 question back.

21 (Record read.)

22 ALJ SCHABO: You can answer that
 23 question.

24 THE WITNESS: Okay.

25 With regard to EMF, there is no reason

1 that 150 feet is a magic number. The .5 milliGauss
2 figure is very low and the 150 to 500 milliGauss
3 numbers are also well below accepted international
4 limits. So there's really no significance to that
5 figure except to illustrate that the field strength
6 diminishes rapidly over distance, but even adjacent
7 to the inverter it's already very low.

8 ALJ SCHABO: Your Honor, I would move to
9 strike that answer as not being responsive to the
10 question. He was asked to say whether or not he's
11 had any discussions with other people in his company
12 about whether they would commit to siting the --
13 commit to a condition siting the inverters at least
14 150 feet away from the property line. He did not
15 answer that question.

16 MR. SETTINERI: I simply repeat my
17 objection that it seeks attorney-client information
18 and conversations in anticipation of litigation or
19 during litigation as well, so.

20 ALJ SCHABO: I'll overrule the objection,
21 I'll deny the motion to strike, and I'll instruct you
22 to answer the question that was asked.

23 THE WITNESS: We have not had any
24 conversations with regard to EMF and its effect at
25 that distance, no.

1 Q. (By Mr. Van Kley) All right. As you sit
 2 here today, can you make a commitment, on behalf of
 3 the Company, that the inverters -- that you would be
 4 agreeable to a condition in the Certificate that
 5 would require you to site the inverters at least
 6 150 feet away from the property line?

7 A. We would not, because with regard to EMF
 8 there is no reason to do so.

9 MR. VAN KLEY: I have no further
 10 questions.

11 ALJ SCHABO: Any -- everybody already
 12 declined cross, so any redirect?

13 MR. SETTINERI: No redirect, Your Honor.
 14 Thank you.

15 ALJ SCHABO: All right. Thank you,
 16 Mr. Herling.

17 THE WITNESS: Thank you.

18 MR. SETTINERI: Your Honor, at this time,
 19 we would move for the admission of Company Exhibit 19
 20 as well as CCPC Exhibit 1 into the record, which has
 21 been previously marked, which I can provide the Bench
 22 with a copy.

23 ALJ SCHABO: Company Exhibit No. 19, any
 24 objections to its admission?

25 Seeing none, Company Exhibit 19 will be

1 admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 ALJ SCHABO: Okay. The Company has also
 4 moved to have CCPC Exhibit 1, which is the "Study of
 5 Acoustic and EMF Levels from Solar Photovoltaic
 6 Projects," previously marked as I think I said CCPC
 7 1, into the record. Are there any objections?
 8 Seeing none, CCPC 1 will also be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 ALJ SCHABO: Mr. Herling, you may step
 11 down.

12 Mr. Settineri or Mr. MacDonald (sic),
 13 your next witness.

14 MR. SETTINERI: Thank you, Your Honor.
 15 At this time, the Company would call Mr. David
 16 Hessler to the stand on rebuttal.

17 ALJ SCHABO: Good morning, Mr. Hessler.

18 THE WITNESS: Good morning.

19 (Witness sworn.)

20 ALJ SCHABO: Thank you. You may have a
 21 seat.

22 MR. SETTINERI: Your Honor, at this time
 23 we would like to mark as Company Exhibit 20, the
 24 Rebuttal Testimony of David Hessler.

25 ALJ SCHABO: So marked.

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(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

DAVID HESSLER

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

DIRECT EXAMINATION

By Mr. Settineri:

Q. Good morning, Mr. Hessler.

A. Good morning.

MR. SETTINERI: Copies of Company Exhibit 20 have been provided to the Bench and the court reporter.

Q. Mr. Hessler, do you have a copy in front of you of what's been marked as Company Exhibit 20?

A. I do.

Q. And can you please identify that for the record?

A. This is my rebuttal testimony.

Q. And before I get too far ahead of myself, can you please state your name and business address for the record, please.

A. Yes. My name is David Hessler and my office address is 5096 North Silver Cloud Drive in Saint George, Utah 84770.

Q. And regarding Company Exhibit 20, your

1 rebuttal testimony, was that prepared by you or at
2 your direction?

3 A. Yes, it was.

4 Q. And do you have any changes or revisions
5 to your testimony today?

6 A. No, I don't.

7 Q. And if I asked you the questions in your
8 testimony today, would your answers be the same?

9 A. Yes, they would.

10 MR. SETTINERI: Your Honor, the witness
11 is available for cross-examination.

12 ALJ SCHABO: Mr. Borchers, Ms. West,
13 Ms. Milam? Ms. Bair?

14 MS. BAIR: No questions.

15 ALJ SCHABO: Mr. Van Kley.

16 MR. VAN KLEY: Yes, Your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Van Kley:

20 Q. Mr. Hessler, go to page 2 of your
21 testimony, please, Answer 6.

22 A. Okay.

23 Q. Directing your attention to the second
24 sentence of answering -- of Answer 6, I see that it
25 states as follows: "DC/AC inverters are simply

1 electrical cabinets sitting near the middle of the
2 panel arrays typically hundreds of feet from anyone's
3 residence or from the boundaries of non-participating
4 properties." Did I read that correctly?

5 A. That's correct.

6 Q. All right. So in the case of Angelina
7 Solar, to your knowledge is there anything in the
8 Application or the Stipulation that requires the
9 inverters to be located hundreds of feet from
10 anybody's residence or the boundaries of
11 nonparticipating properties?

12 A. There's no specific stipulation or
13 requirement, no.

14 Q. Now, going further down into your
15 Answer 6, I'd like to direct your attention to the
16 sixth line where you refer to "qualitative terms,"
17 and I'm going to ask you what that means in just a
18 second, but first let me read the sentence in which
19 that term appears which states: "In their standard
20 configuration some ventilation fan noise, roughly
21 comparable in qualitative terms to the sound of a
22 domestic air conditioning condenser unit, is present
23 near the unit but this sound dies out quickly with
24 distance and will most likely be inaudible, or at
25 worst only faintly perceptible, at any given site

1 boundary." Do you see that sentence?

2 A. I see it.

3 Q. So when you refer -- when you use the
4 words "qualitative terms," what do you mean?

5 A. I was just trying to give an example of
6 something that people were familiar with that they
7 could picture one of these converters -- or inverters
8 might be like. In general, the sound emissions from
9 inverters, as given in that Massachusetts study, are
10 comparable to a domestic air conditioner unit.

11 Out of curiosity, I went out behind my
12 house and it's a brand new house, brand new unit, I
13 measured it and it's louder than several of the
14 inverters referred to in the Massachusetts study. So
15 it's -- it's an example of -- so you could picture
16 what it might be like.

17 Q. Well, when you use the term
18 "qualitative," you're not talking about volume, are
19 you?

20 A. I'm talking about it sounds like.

21 Q. It's like the tone?

22 A. Yeah. It's just fan noise.

23 Q. Uh-huh, okay.

24 At the end of that sentence you say that
25 it "will most likely be inaudible, or at worst only

1 faintly perceptible, at any given site boundary."

2 A. Uh-huh.

3 Q. Now, does that mean, for example, if the
4 site boundary is only 10 feet away from the inverter,
5 you won't be able to hear it?

6 A. No. I've talked to the Company about the
7 site plan and I'm comfortable that these units are
8 all going to be at least several hundred feet from
9 any boundaries. There's plenty of room in the
10 Project to put these far away from anyone. And at
11 this point, because of all the attention that's been
12 focused on it, I'm certain that they're going to be
13 placed in the most optimal locations, the maximum
14 distance from anyone.

15 Q. When you had these conversations -- well,
16 first of all, who did you have the conversations
17 with?

18 A. With Mr. Herling.

19 Q. Did Mr. Herling tell you whether or not
20 the Company would agree to a condition that required
21 the inverters to be at least hundreds of feet away
22 from the boundary?

23 A. There was no discussion of any particular
24 agreement or stipulation, but the Project Area is
25 definitely large enough that large buffer distances

1 can be accommodated.

2 Q. Let's look further down in the Answer.
3 Let's start with line 17 where you have a new
4 sentence starting with the word "Irrespective" and
5 that sentence reads as follows: "Irrespective of the
6 specific inverter model eventually selected for the
7 project, it is important to understand that the sound
8 emissions from these units are not fixed and largely
9 unavoidable, but rather can be easily mitigated on a
10 retrofit basis in the unlikely event that any sort of
11 noise issue should arise." Did I read that
12 correctly?

13 A. Yes, you did.

14 Q. Okay. And then in the next sentence you
15 provide some examples of mitigation measures that
16 could be taken, correct?

17 A. Correct.

18 Q. Now, those mitigation measures include
19 "an acoustical hood or small silencer and any
20 electrical hum radiated from the cabinet could be
21 abated in a matter of minutes with peel and stick
22 damping sheet," right?

23 A. Right.

24 Q. Is there any reason why any or all of
25 these mitigation measures couldn't be installed at

1 the time that the inverters are installed?

2 A. I don't see any reason to put this in
3 ahead of time. This is only in the highly unlikely
4 event that there are any kind of disturbance off the
5 Project property.

6 Q. Well, my question was whether or not you
7 could install these measures during the initial
8 installation of the inverters.

9 MR. SETTINERI: I object. He did answer
10 the question. This is a different question than he
11 asked him.

12 MR. VAN KLEY: No. I asked him this
13 question, whether he could, and he told me why he
14 would not want to.

15 MR. SETTINERI: If we could at least have
16 the question reread, that would be helpful.

17 ALJ SCHABO: If you could reread the
18 question, please.

19 (Record read.)

20 ALJ SCHABO: Go ahead and answer that,
21 please.

22 THE WITNESS: This could be applied
23 during the initial installation, sure.

24 Q. (By Mr. Van Kley) Let's go to Answer 11
25 on page 5 of your testimony. I'd like to direct your

1 attention to the sentence that starts on line 6,
2 which reads as follows: "At the time of the survey
3 no transformers were present in the AEP substation,
4 which appeared to be a switching station, nor were
5 there any audible sound emissions from it at the
6 monitoring location." Did I read that correctly?

7 A. Yes.

8 Q. Okay. What does this sentence mean?

9 A. The concern was that we put this monitor
10 on adjacent property to the existing AEP substation,
11 and the concern was that noise from that substation
12 would elevate the results of the background survey,
13 but the College Station substation doesn't have any
14 noise generating components in it or at least it
15 didn't at the time of the survey. You could see that
16 some work was going on and perhaps they were going to
17 add equipment, but at the time the measurements were
18 taken, there was nothing generating any noise there.

19 Q. And how do you know that?

20 A. Because nothing was audible and you can
21 see that there aren't any transformers in that
22 substation.

23 MR. VAN KLEY: All right. I have no
24 further questions.

25 ALJ SCHABO: Mr. Settineri.

1 MR. SETTINERI: Thank you, Your Honor.

2 No redirect.

3 ALJ SCHABO: Mr. Hessler, you may step
4 down. Thank you.

5 MR. SETTINERI: Your Honor, at this time,
6 the Company would move for the admission of
7 Exhibit 20 into the record, please.

8 ALJ SCHABO: Any objections?

9 Hearing none, Company Exhibit 20 will be
10 admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 ALJ SCHABO: Your next witness,
13 gentlemen.

14 MR. SETTINERI: Thank you, Your Honor.
15 At this time, the Company would call Matt Marquis on
16 rebuttal.

17 ALJ SCHABO: Good morning.

18 (Witness sworn.)

19 ALJ SCHABO: Thank you. Please have a
20 seat.

21 THE WITNESS: Thank you.

22 MR. SETTINERI: Your Honor, at this time,
23 the Company would like to mark as Company Exhibit 21,
24 the rebuttal testimony of Matt Marquis.

25 ALJ SCHABO: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. SETTINERI: We've provided copies to
3 the Bench and the court reporter as well.

4 - - -

5 MATT MARQUIS

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

8 DIRECT EXAMINATION

9 By Mr. Settineri:

10 Q. Good morning, Mr. Marquis.

11 A. Good morning.

12 Q. Can you please state your name and
13 business address for the record, please.

14 A. Yeah. My name is Matt Marquis. My
15 business address is 6397 Emerald Parkway, Dublin,
16 Ohio 43016.

17 Q. And do you have before you what's been
18 marked as Company Exhibit 21?

19 A. I do.

20 Q. And can you identify that for the record,
21 please?

22 A. That is my rebuttal testimony in this
23 case.

24 Q. Was that prepared by you or at your
25 direction?

1 A. Yes.

2 Q. And do you have any changes to that
3 testimony today?

4 A. Yes, I do. I don't have the changes
5 marked.

6 MR. SETTINERI: If I may approach the
7 witness, Your Honor?

8 ALJ SCHABO: You may.

9 A. Yes. In Answer 5, line 14, after
10 "Mr. Mast's testimony" I'd like to add "(CCPC
11 Exhibit 5A.11, and CCPC Exhibit 6A.5)."

12 Q. And would the rest of that sentence,
13 starting with "regarding," remain the same then?

14 A. Yes.

15 Q. And do you have any other changes to your
16 testimony?

17 A. I do. In Answer 9, on line 10, after
18 "affected by the project area," I'd like to change
19 the word "suggests" to "means." The rest of that
20 sentence stays the same.

21 Q. Do you have any other changes to your
22 testimony at this time, Mr. Marquis?

23 A. I do not.

24 Q. And if I asked you the questions in your
25 testimony today, would your answers be the same today

1 as you have revised?

2 A. Yes.

3 MR. SETTINERI: Thank you.

4 Your Honor, the witness is available for
5 cross-examination.

6 ALJ SCHABO: Mr. Borchers, Ms. West,
7 Ms. Milam, Ms. Bair?

8 Mr. Van Kley?

9 MR. VAN KLEY: Yes, Your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Van Kley:

13 Q. Would you go to Answer 8 of your
14 testimony on page 4.

15 A. Yes.

16 Q. I'd like to direct your attention to the
17 sentence starting on line 11, which states: "The Four
18 Mile Creek watershed covers 38.3 square miles (sqmi),
19 of which 1.0 sqmi (or 2.6 percent of the watershed)
20 is part of the project area." Do you see that
21 sentence?

22 A. Yes.

23 Q. All right. So does this sentence mean
24 that 1 square mile of the Project Area drains into
25 the Four Mile Creek watershed?

1 A. Yes, that is correct.

2 Q. And does all of that drainage go into
3 Four Mile Creek?

4 A. Yes.

5 Q. And does it go into Four Mile Creek prior
6 to the location at which Four Mile Creek flows
7 through the Village of Fairhaven?

8 A. Repeat that question.

9 Q. Does all of this drainage go into Four
10 Mile Creek prior to the location at which Four Mile
11 Creek flows through the Village of Fairhaven?

12 A. You're referring to the drainage from the
13 Project Area?

14 Q. Yes.

15 A. No. Only .08 square miles or .2 percent
16 of the watershed, to a point just south of Mr. Mast's
17 property, actually contributes to Four Mile Creek.

18 Q. I guess I'm not understanding your
19 answer. Maybe it would help to back up a little bit
20 here.

21 Four Mile Creek flows past Mr. Mast's
22 property, correct?

23 A. Yes, it does.

24 Q. Is the Project Area upstream or
25 downstream of Mr. Mast's property?

1 A. It is west of Mr. Mast's property. A
2 portion of the Project Area is upstream or
3 contributes to the watershed that's upstream of
4 Mr. Mast's property, and a portion of the Project
5 Area contributes to the watershed south -- the
6 portion of the Four Mile Creek watershed that's south
7 of Mr. Mast's property.

8 Q. How much acreage from the Project Area
9 drains into Four Mile Creek upstream of Mr. Mast's
10 property?

11 A. I don't know the conversion of square
12 miles to acreage off the top of my head.

13 Q. Well, how many square miles, then, drains
14 into Four Mile Creek upstream of Mr. Mast's property?

15 A. .08 square miles.

16 Q. What is the total square-mile area that
17 drains into Four Mile Creek from the Project Area?

18 A. Into the Four Mile Creek watershed or
19 Four Mile Creek is 1.0 square miles.

20 Q. I see throughout this answer you talk
21 about, for example, on line 15, .08 square miles, and
22 then on line 19, .04 square miles, and then line 22,
23 .06 square miles; where do those three areas drain
24 into?

25 A. Sure, let me explain. So Acton Lake is

1 downstream of the Village of Fairhaven and Mr. Mast's
2 property. It's a few miles downstream down Four Mile
3 Creek. There are three what are called HUC-12
4 watersheds, I describe those earlier in my testimony,
5 that all contribute and collect downstream of the
6 Four Mile Creek watershed just prior to entry to
7 Acton Lake.

8 So the Four Mile Creek watershed, if you
9 consider like a point of interest, meaning you were
10 standing on Four Mile Creek looking upstream, that
11 watershed is 38.3 square miles.

12 The Project Area falls within three
13 separate watersheds. So a portion of the Project
14 Area enters a watershed that doesn't meet up with
15 Four Mile Creek until it enters Acton Lake, another
16 portion of the Project Area enters a separate
17 watershed that again doesn't rejoin the other two
18 watersheds until just prior to Acton Lake, and then
19 the Four Mile Creek watershed has a portion of the
20 Project Area as well.

21 So what I was trying to do here was to
22 kind of lay out what portion of the Project Area is
23 actually affecting the Four Mile Creek watershed
24 versus these other watersheds that don't really come
25 into play until much further downstream of the Four

1 Mile Creek watershed.

2 Q. Do you know how many acres of land are
3 contained in the Project Area?

4 A. I can add up the square miles that I list
5 in my testimony. I don't know the conversion to
6 acres.

7 Q. Does all of the land, inside of the
8 Project Area, drain into Four Mile Creek or these
9 other streams that you listed in Answer 8?

10 A. Yes.

11 MR. SETTINERI: I'll lay an objection;
12 compound question.

13 ALJ SCHABO: It's already answered. You
14 can divide it up on redirect.

15 MR. SETTINERI: Yeah.

16 Q. Have you done any studies to determine
17 how much water from the Project Area is going to
18 drain into Four Mile Creek after the solar project
19 has been built?

20 A. No.

21 Q. Has your consulting firm been retained in
22 order to deal with surface water issues during or
23 after construction of the Project?

24 A. No. I'm here to testify in rebuttal to
25 Mr. Mast's testimony.

1 Q. Well, Hull & Associates contributed a
2 report for the Application in this case, didn't it?

3 A. Yes.

4 Q. And that was marked as Exhibit F to the
5 Application if you recall?

6 A. Yes, I believe that's right.

7 Q. Okay. And were you involved in preparing
8 that report?

9 A. I was not.

10 Q. But that -- yeah, okay.

11 Have you been involved with surface water
12 issues pertaining to construction or operation of
13 solar facilities?

14 A. I personally have not. My expertise in
15 hydrology and hydraulics translates to many
16 industries, including solar projects, but Hull &
17 Associates does have experience working on solar
18 projects and construction of a lot of different types
19 of renewable energy projects.

20 Q. So you've had experience with surface
21 water issues on other types of project.

22 A. Yes.

23 Q. Okay. Have you been involved in any
24 projects in which you have advised companies with
25 respect to surface water issues in constructing

1 facilities?

2 A. Yes.

3 Q. Okay. In those cases is it typical that
4 you would prepare a study of some sort in order to
5 evaluate the amount of surface water that would
6 result from the construction activities?

7 A. No, it is not typical. It depends on the
8 circumstances or why they're asking for a study to be
9 performed. Typically studies that are done, flood
10 studies, are local to the project area and don't
11 typically look downstream or upstream of the area,
12 the project area in question.

13 Q. So in a project in which you would advise
14 a company on the construction of a facility, would
15 you typically perform a hydrology study to determine
16 the amount of surface water that would flow from the
17 project area for such a project?

18 MR. SETTINERI: I just object. There's
19 no foundation laid that he actually, in his capacity
20 at Hull, advises on the design of construction of
21 facilities.

22 MR. VAN KLEY: That wasn't the question.
23 The question is whether it would be typical to do a
24 hydrology study in order to determine how much water
25 is going to flow from the project area. I'm not

1 asking about the design of the project.

2 ALJ SCHABO: You can answer that
3 question.

4 MR. SETTINERI: I like that question.

5 ALJ SCHABO: You can answer that
6 question.

7 THE WITNESS: Okay. I think, from a
8 regulatory standpoint, what we would be looking at
9 would be hydrology in terms of surface water runoff
10 during construction. That's first and foremost.

11 So, during construction, they will have a
12 construction general permit, through the Ohio EPA,
13 where they have to manage surface water runoff as the
14 ground is impacted by construction equipment,
15 installation of the solar panels and stuff like that.

16 Post-construction, there are plenty of
17 best-management practices that are typically
18 implemented; the best being vegetation.

19 In this case, I know the Application is
20 proposing to convert the farm and crop fields to, I
21 can't remember the exact terminology, but vegetation,
22 grasses post-construction, and grass is a great
23 best-management practice for managing erosion and
24 sediment runoff and managing stormwater runoff from a
25 project site.

1 So that would be essentially the capacity
2 that I would advise a company on performing an H&H
3 analysis and, again, it would be local to the Project
4 Area. We wouldn't be looking downstream as much as
5 how are we managing water that does land within the
6 watershed of the Project Area and that would -- and
7 how to, I guess, intercept it and reduce the
8 likelihood that you have an increase in runoff from
9 the Project site.

10 Q. And in the process of doing this
11 evaluation, would you determine the amount of surface
12 water flow that would come from the Project Area?

13 A. I'm sorry, say that again.

14 Q. Yeah.

15 In the process of doing the evaluation
16 you've just described in your last answer, would you
17 determine or quantify the amount of surface water
18 that is coming from the Project Area in order to do
19 that evaluation?

20 MR. SETTINERI: Your Honor, at this time
21 I'll just object. No. 1, it mischaracterizes the
22 testimony. No. 2, I've been patient, we are now well
23 outside the scope of rebuttal testimony. The
24 rebuttal testimony related to watersheds and the
25 flooding issues. We are now into evaluations of the

1 Project itself and surface water evaluations
2 regarding what should have happened or should happen
3 with the Project in the Application, so we're well
4 outside the scope of rebuttal testimony.

5 MR. VAN KLEY: Your Honor, Answer 8,
6 which covers almost an entire page, talks about the
7 amount of flow coming from the Project Area, and my
8 question deals with the amount of flow coming from
9 the Project Area and when is it going to be
10 determined.

11 MR. SETTINERI: No, that's --

12 ALJ SCHABO: Can you repeat the question
13 for me?

14 (Record read.)

15 ALJ SCHABO: Give me a moment, please.

16 You can answer the question but, Mr. Van
17 Kley, it's not quite as -- I wouldn't read his answer
18 quite as broadly as you do, so try to keep it
19 contained. Thank you.

20 THE WITNESS: Yes, a hydrologic study
21 does establish things like peak runoff or estimate
22 peak volume of flow through a watershed.

23 Q. (By Mr. Van Kley) Moving on to Answer 9
24 on page 5 of your testimony, I'd like to direct your
25 attention to the sentence that starts on line 4 which

1 reads partially as follows: "The Village along Four
2 Mile Creek and the entirety of Mr. Mast's property
3 falls within a FEMA designated 100-year floodplain
4 with a base flood elevation and floodway
5 established...." Do you see that?

6 A. Yes.

7 Q. FEMA stands for what?

8 A. Federal Emergency Management Agency.

9 Q. And what's the purpose of the floodplain
10 designations made by FEMA?

11 A. So, in this case, FEMA performs or FEMA's
12 sub-consultants perform flood studies along major
13 rivers throughout Ohio, throughout the United States,
14 to establish 100-year floodplain boundaries, and
15 these are to essentially protect people from building
16 homes and businesses within the limits of what could
17 be the limits of inundation from a 100-year
18 floodplain to prevent the risk of property damage or
19 loss of life in the event of a 100-year event.

20 So the significance here in terms of the
21 established floodway and base flood elevation means
22 that a detailed study has already been performed by a
23 reputable engineering firm and approved by FEMA.

24 Q. And that evaluation concluded that
25 Mr. Mast's property is located in the 100-year

1 floodplain, right?

2 A. Yes.

3 Q. And that would indicate that it's already
4 prone to flooding from time to time?

5 A. Yes.

6 Q. And if there's more water coming from the
7 Project Area as the result of the solar facility
8 being constructed there, than is currently coming off
9 the Project Area into Four Mile Creek, then that
10 would increase the volume of water flowing through
11 Mr. Mast's property, correct?

12 A. I disagree with the premise of that
13 question because I haven't stated that there is going
14 to be more runoff from the Project Area or that more
15 runoff is being contributed to the watershed at
16 Mr. Mast's property.

17 Q. Well, you haven't answered my question.
18 My question asks you to assume that that would be the
19 case. If that's the case, then isn't it true that
20 there would be more water flowing through Mr. Mast's
21 property?

22 MR. SETTINERI: I object to the form of
23 the question. What is being assumed here is very
24 vague.

25 ALJ SCHABO: Are you trying to set up a

1 hypothetical, Mr. Van Kley?

2 MR. VAN KLEY: Exactly, Your Honor.

3 ALJ SCHABO: Okay. So could you set it
4 up a little bit better for me, please?

5 MR. VAN KLEY: Sure.

6 Q. (By Mr. Van Kley) I would like you to
7 assume, as a hypothetical, that the presence of the
8 solar facility increases the amount of surface water
9 flow into Four Mile Creek.

10 A. Okay.

11 Q. If that is the case, then isn't it true
12 that there will be more water flowing through
13 Mr. Mast's property?

14 A. In that hypothetical situation you have
15 more water in Four Mile Creek, it's a possibility but
16 it's not -- it's not a certainty. It depends on the
17 location of the rainfall, the duration of the
18 rainfall, it depends on a lot of different things,
19 whether or not there would actually be an effect.

20 Additionally, the location of the Project
21 Area is off to the west of Mr. Mast's property to the
22 west of Four Mile Creek. By the time any runoff in
23 your hypothetical situation, assuming there was an
24 increase in runoff, by the time that would reach Four
25 Mile Creek, it's had time to attenuate.

1 So the significance of the -- in your
 2 hypothetical situation the significance of additional
 3 runoff at the Project Area is not the same as the
 4 runoff that would actually be entering Four Mile
 5 Creek by the time it got there.

6 Q. In the previous sentence of Answer 9,
 7 which starts on line 3, you state as follows: "As
 8 previously stated, the project area only contributes
 9 0.2 percent of the entire watershed area to the
 10 Village of Fairhaven and Mr. Mast's property." Do
 11 you see that sentence?

12 A. Yes.

13 Q. What's the quantity of water that flows
 14 off of the Project, the Project Area's watershed, to
 15 the Village of Fairhaven and Mr. Mast's property as
 16 stated to be .0 -- .0 -- 0.2 percent of the watershed
 17 area?

18 MR. SETTINERI: I'll object to the form
 19 of the question.

20 MR. VAN KLEY: Well, I'll re-ask it. It
 21 wasn't very good.

22 Q. With respect to the 0.2 percent of the
 23 watershed area --

24 A. Yes.

25 Q. -- that flows through Fairhaven and

1 Mr. Mast's property --

2 A. Yes.

3 Q. -- how much water does that represent
4 that goes into that creek?

5 A. I don't believe it represents -- are you
6 asking how much more water than the existing
7 conditions it would represent, or are you just asking
8 blankly how much runoff comes off of the Project Area
9 property?

10 Q. Both of those are excellent questions.
11 We can start with the first one. How much currently,
12 from that area, goes into the creek, how much water?

13 A. I don't know the answer to that question.

14 Q. Do you know how much, if any, increase
15 there will be from that area into the creek?

16 A. No, I don't believe there will be an
17 increase from the Project Area into Four Mile Creek.

18 Q. You don't believe. Have you done any
19 calculations to that effect?

20 A. No, but I can tell you why I don't
21 believe there would be an increase. The watershed in
22 a hydrologic study is characterized by a lot of
23 different factors. One being the size of the
24 drainage area, which in this case is not changing.
25 The Project Area is within a drainage area. That

1 drainage area is not getting bigger or smaller as a
2 result of the Project being constructed.

3 Another is the shape of the watershed,
4 which, again, is not changing. They're not changing
5 drainage divides or appreciably changing the size or
6 shape of the watershed.

7 Another being the soils, the site soils,
8 which can have an influence on infiltration which is
9 part of how water interacts with the earth and,
10 again, the soils are not changing.

11 The land cover is really the only thing
12 that's changing of all of those characteristics here,
13 and the land cover is, again, being converted from
14 farmland and cropland use to vegetation which would
15 actually result, in most cases, in a reduction of
16 runoff if not the same amount of runoff.

17 So for those reasons and especially the
18 fact that we're only talking about .2 percent of the
19 entire watershed that there's actually a land use
20 change, with all of the other parameters the same, it
21 doesn't seem reasonable to assume there would be any
22 increase in runoff.

23 Q. Are you aware there are going to be
24 access roads built in the Project Area?

25 A. I am, yes.

1 Q. Is that a land use change?

2 A. It is. The same as changing from crop or
3 farmland to vegetation, yes.

4 Q. Okay. So there will be some land use
5 change in the Project Area, right?

6 A. Yes. I already stated that, yeah.

7 Q. Okay. And access roads used by
8 construction traffic tend to compact?

9 A. They do.

10 Q. Okay. Compaction can increase the amount
11 of surface water flow?

12 A. Yes, it can, and, in fact, we've -- we
13 recently had a very large wind turbine project but we
14 have a lot of access roads built to service the wind
15 turbines and for construction and we've worked
16 closely with the Ohio EPA on how those haul routes
17 and access roads are being handled as far as runoff
18 from the site and, for the most part, those roads are
19 limited in size and number on the site. It's not
20 typically a high enough amount of a conversion to a
21 compacted gravel surface to warrant any sort of an
22 increase in runoff.

23 Q. Have you done any calculations to
24 determine how much of the Project Area in this
25 project will be converted into roads?

1 A. I have not.

2 Q. So you've done no calculations to
3 determine how much flow is going to come from those
4 roads?

5 A. I have not done calculations on how much
6 flow would come off of those roads.

7 Q. And you've done no calculations to
8 determine how much flow will come from the solar
9 facility after it's built, correct?

10 A. I've not done calculations. Based on my
11 experience in watershed models, doing hydrologic
12 studies of watersheds that range in size from 1 acre
13 to 60 square miles, and after reviewing the
14 Application, the proposed changes to land use in this
15 project in my experience, in my opinion, do not --
16 would not result in an increase in runoff.

17 Q. But in those past projects you just
18 referred to, that doesn't include any solar
19 facilities.

20 A. One flood study did include a solar
21 facility, yes.

22 Q. And what facility was that?

23 MR. SETTINERI: I'll just object to the
24 extent the witness is able to disclose that, given
25 any confidentiality agreements on that project. I

1 just caution the witness to that extent whether he is
2 comfortable, but if he does not know whether he can
3 disclose that, then I would say that's simply not
4 relevant to his rebuttal testimony.

5 ALJ SCHABO: With that caution, you can
6 answer the question.

7 A. I don't know if I can disclose the name
8 of the company that's building the solar field, but
9 it is in Ohio so it's somewhat relevant.

10 However, that flood study did not have to
11 do with downstream flooding or impacts from runoff
12 from the project area for that project. It was
13 simply logistical for their purposes to establish
14 routes for maintenance and haul roads and height of
15 equipment, for example, on a given parcel for various
16 recurrence events, 100-year, 25-year events, stuff
17 like that.

18 Actually, the owner had just happened to
19 drive through the project area and noticed a few
20 "High Water" signs, so they asked us to take a look
21 at that so they could establish, like I said, access
22 routes and try to understand, you know, the direction
23 of water through the project area.

24 MR. VAN KLEY: Okay. No further
25 questions.

1 ALJ SCHABO: Any redirect?

2 MR. SETTINERI: Your Honor, if I may take
3 a brief moment with the witness, please?

4 ALJ SCHABO: Absolutely.

5 MR. SETTINERI: Thank you.

6 ALJ SCHABO: Let's go off the record for
7 five minutes.

8 (Off the record.)

9 ALJ SCHABO: Any redirect?

10 MR. SETTINERI: Yes, yes, Your Honor.
11 Thank you.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Settineri:

15 Q. Mr. Marquis, Mr. Van Kley asked you a
16 question about, and I'll paraphrase, essentially
17 whether the Project drains into Four Mile Creek or
18 the other watersheds, and I believe you answered yes,
19 and I objected it was a compound question. For the
20 record, I guess I'll say where does the Project Area
21 or to what does the Project Area drain to?

22 A. The Project Area drains into three
23 watersheds that all collect downstream of the Four
24 Mile Creek watershed near Acton Lake.

25 MR. SETTINERI: Thank you.

1 No further questions, Your Honor.

2 ALJ SCHABO: It doesn't really open it up
3 to anything, but --

4 MR. VAN KLEY: Well, I have a ton now,
5 Your Honor.

6 (Laughter all around.)

7 MR. VAN KLEY: No, nothing further.

8 ALJ SCHABO: Okay. Thank you,
9 Mr. Marquis. You can step down.

10 THE WITNESS: Thanks.

11 MR. SETTINERI: Your Honor, at this time,
12 we would move for the admission of Company Exhibit
13 21, the Rebuttal Testimony of Matt Marquis, into the
14 record.

15 ALJ SCHABO: Any objections?

16 Seeing none, it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MR. SETTINERI: At this time, Your Honor,
19 that concludes our rebuttal testimony in this
20 proceeding.

21 ALJ SCHABO: Okay. Let's go off the
22 record for a minute.

23 (Discussion off the record.)

24 ALJ SCHABO: We're back on the record.

25 Off the record, we had a brief discussion

1 regarding the anticipated briefing schedule. Looking
2 at October the 18th for initial briefs, with reply
3 briefs being due on November 1st. Am I correct in
4 that?

5 MR. SETTINERI: Correct, Your Honor.

6 MR. VAN KLEY: Yes.

7 ALJ SCHABO: All right. With that, I
8 believe we're adjourned. Thank you very much.

9 (Thereupon, the proceedings concluded at
10 11:13 a.m.)

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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 Tuesday, September 10, 2019, and carefully compared with my original stenographic notes.

Carolyn M. Burke

Carolyn M. Burke, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires July 17, 2023.

- - -



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Summary: Transcript Volume IV - In the Matter of the Application of Angelina Solar I, LLC for a Certificate of Environmental Compatibility and Public Need, hearing held on September 10th, 2019 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn