

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Angelina Solar I, LLC)	
for a Certificate of Environmental)	Case No. 18-1579-EL-BGN
Compatibility and Public Need)	

**MOTION TO STRIKE STATEMENT IN THE POST-HEARING BRIEF OF
CONCERNED CITIZENS OF PREBLE COUNTY, LLC AND ITS INTERVENING
MEMBERS**

Angelina Solar I, LLC (“Angelina”) moves to strike one statement in the Post-hearing Brief of Concerned Citizens of Preble County, LLC and its Intervening Members (“CCPC Brief”) that relies on information outside the record of this case. At Page 61 of the CCPC Brief, CCPC states that:

“As shown in the Board’s recent decision to defer its decision following the conclusion of the adjudicatory hearing on the application in Nestlewood Solar I LLC, Case No. 18-1546-EL-BGN, the Board must not issue a certificate without the information necessary to determine whether the proposed facility represents the minimum adverse impact.”

This statement relies on information outside in the record in this case, and should therefore be struck in its entirety, for the reasons more fully described in the memorandum in support attached hereto.

Respectfully submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369), Counsel of Record
MacDonald W. Taylor (0086959)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5462
(614) 719-5146 (fax)
mjsettineri@vorys.com
mwtaylor@vorys.com

Attorneys for Angelina Solar I, LLC

MEMORANDUM IN SUPPORT

Through this motion, Angelina seeks to strike from CCPC's initial brief information that is not part of the record in this case. Specifically, the Board should strike CCPC's statement that:

“As shown in the Board's recent decision to defer its decision following the conclusion of the adjudicatory hearing on the application in Nestlewood Solar I LLC, Case No. 18-1546-EL-BGN, the Board must not issue a certificate without the information necessary to determine whether the proposed facility represents the minimum adverse impact.”

As CCPC acknowledges in its initial brief, the Board is required to make its decision “on the record”. CCPC Brief at 61 (citing R.C. 4906.10(A)). Furthermore, the Public Utilities Commission, of which the Board is a part, routinely grants motions to strike statements in briefing that rely on information that is outside the record. R.C. 4906.02(A); *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 36-37 (Striking portions of filed briefs because they “reference information outside of the record” and portions of filed briefs “referencing documents filed in [other proceedings], as these documents were not made a part of the evidentiary proceeding in this record.”)

CCPC's reference to the Board's “recent decision” on the application of Nestlewood Solar I LLC is outside the record. The Board has neither issued a written decision in the Nestlewood Solar I LLC case nor has it issued any written order in the proceeding. Any inferential reference or speculation in the CCPC Brief to potential reasoning underlying any actions taken by the Board orally at a previous meeting inappropriately relies on information outside the record in this case. In the absence of a citation to a written decision from the Board,

CCPC's reference to something that allegedly occurred in another proceeding is akin to referencing documents filed in other proceedings. Thus, following the Commission's precedents discussed above, that statement should be struck from the CCPC Brief and not considered by the Board in this proceeding.

For the reasons above, Angelina respectfully requests that the Board grant this motion and strike CCPC's statement at issue.

Respectfully submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369) Counsel of Record
MacDonald W. Taylor (0086959)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5462
(614) 719-5146 (fax)
mjsettineri@vorys.com
mwtaylor@vorys.com
Attorneys for Angelina Solar I, LLC

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 in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 1st day of November 2019.

/s/ Michael J. Settineri _____

Jodi Bair
jodi.bair@ohioattorneygeneral.gov

Dylan Borchers
dborchers@bricker.com

Kathryn West
kwest@prebco.org

W. Joseph Scholler
jscholler@fbtlaw.com

Thaddeus Boggs
tboggs@fbtlaw.com

Chad Endsley
cendsley@ofbf.org

Leah Curtis
lcurtis@ofbf.org

Amy Milam
amilam@ofbf.org

Jack Van Kley
jvankley@vankleywalker.com

Chris Walker
cwalker@vankleywalker.com

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Summary: Motion to Strike Statement in the Post-Hearing Brief of Concerned Citizens of Preble County, LLC electronically filed by Mr. Michael J. Settineri on behalf of Angelina Solar I, LLC