

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :  
Application of :  
Alamo Solar I, LLC : Case No. 18-1578-EL-BGN  
for a Certificate of :  
Environmental Compatibility :  
and Public Need. :

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PROCEEDINGS

before Jay S. Agranoff and Lauren L. Augostini,  
Administrative Law Judges, conducted via WebEx video  
conference, called at 10:00 a.m. on Monday, October  
26, 2020.

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VOLUME IV

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APPEARANCES:

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Ms. Gretchen L. Petrucci,  
and Mr. Clifford W. Lauchlan  
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On behalf of Alamo Solar I, LLC.

Dave Yost, Ohio Attorney General  
John H. Jones, Section Chief  
By Mr. Werner L. Margard,  
Senior Assistant Attorney General,  
Public Utilities Section  
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On behalf of the Staff of the Ohio Power  
Siting Board.

Van Kley & Walker, LLC  
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Columbus, Ohio 43235

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

Preble County Prosecutor's Office  
By Ms. Kathryn M. West  
Assistant Prosecuting Attorney  
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Eaton, Ohio 45320

On behalf of the Preble County Engineer,  
Preble County Soil and Water Conservation  
District, Board of Trustees of Gasper  
Township, Board of Trustees of Washington  
Township, Preble County Planning  
Commission, and Preble County  
Commissioners.

1 APPEARANCES: (Continued)

2 Ohio Farm Bureau Federation  
3 By Ms. Amy M. Milam  
4 280 North High Street, 6th Floor  
5 Columbus, Ohio 43215

6 On behalf of the Ohio Farm Bureau  
7 Federation.

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Monday Morning Session,  
October 26, 2020.

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ALJ AGRANOFF: The Ohio Power Siting Board has set for hearing at this time and place, Case No. 18-1578-EL-BGN which is captioned In the Matter of the Application of Alamo Solar I, LLC for a Certificate of Environmental Compatibility and Public Need.

Good morning, everybody. My name is Jay Agranoff and with me is Lauren Augostini. We are the Administrative Law Judges assigned by the Board to hear this case.

At this time we'll take the appearances of the parties. On behalf of the Applicant.

MR. SETTINERI: Good morning, Your Honors. On behalf of the Applicant, Alamo Solar I, LLC, Michael Settineri, Gretchen Petrucci, and Clifford Lauchlan with the law firm of Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio 43215.

ALJ AGRANOFF: Thank you.

On behalf of the Concerned Citizens.

MR. VAN KLEY: This is Jack Van Kley on behalf of the Concerned Citizens. My law firm name

1 is Van Kley & Walker, LLC. Address, 132 Northwoods  
2 Boulevard, Suite C-1, Columbus, Ohio 43235.

3 ALJ AGRANOFF: Thank you.

4 On behalf of the Ohio Farm Bureau.

5 MS. MILAM: Good morning, Your Honor.

6 This is Amy Milam on behalf of Ohio Farm Bureau  
7 Federation, 280 North High Street, Columbus, Ohio  
8 43215.

9 ALJ AGRANOFF: Thank you.

10 On behalf of Gasper and Washington  
11 Townships.

12 MS. WEST: This is Kathryn West, Preble  
13 County Prosecutor's Office, 101 East Main Street,  
14 Eaton, Ohio 45320.

15 ALJ AGRANOFF: Thank you.

16 And then also on behalf of the Preble  
17 County Engineer, Preble County Soil and Water  
18 Conservation District, and Preble County Planning  
19 Commission.

20 MS. WEST: And also Preble County  
21 Commissioners. I would be Kathryn West, again with  
22 the Preble County Prosecutor's Office, 101 East Main  
23 Street, Eaton, Ohio 45320.

24 ALJ AGRANOFF: Thank you.

25 On behalf of the Eaton Community School

1 District and Preble Shawnee Local School District.

2 Let the record reflect that at this point  
3 in time counsel is not participating in this  
4 morning's proceeding.

5 On behalf of the Board Staff.

6 MR. MARGARD: Thank you, Your Honor. On  
7 behalf of the Staff of the Ohio Power Siting Board,  
8 Dave Yost, Ohio Attorney General, John Jones, Section  
9 Chief, Public Utilities Section, by Assistant  
10 Attorney General Werner L. Margard, 30 East Broad  
11 Street, 16th Floor, Columbus, Ohio.

12 ALJ AGRANOFF: Thank you.

13 I would point out that this adjudicatory  
14 hearing is taking place pursuant to parameters set  
15 forth in the Entries of September 14th and  
16 September 24th, 2020, pursuant to which the record in  
17 this case was reopened for the purpose of considering  
18 the Amended Joint Stipulation filed on July 30th,  
19 2020.

20 Due to the COVID-19 emergency that  
21 remains in effect pursuant to Executive Order  
22 2020-01D, which was issued by the Governor of the  
23 State of Ohio, and consistent with Amended Substitute  
24 House Bill 197, this hearing is being held through  
25 WebEx which enables parties to participate by video



1 conference while also affording the public access to  
2 the hearing by telephone or video via the internet.

3 Before we get started with the first  
4 witness, I'd like to address some preliminary issues.

5 First, if counsel or witnesses experience  
6 any technical difficulties during this hearing,  
7 please immediately let us know. You can contact the  
8 event host via the Webex chat function or by  
9 telephone at (614)466-6843. Please be advised that  
10 chats are recorded and should not be considered  
11 private. Chats are also not part of the official  
12 record of this case and should be strictly used for  
13 technical or process questions only.

14 For those of you watching and listening  
15 as an attendee or a witness to this matter, while you  
16 may observe the hearing, your microphones will be  
17 muted until it is your time to testify.

18 Let's talk a little bit about how the  
19 hearing is going to be conducted today. In many  
20 respects, this virtual hearing will proceed in much  
21 the same way as an in-person hearing occurs before  
22 the Board. However, due to the remote nature of the  
23 hearing, here are some general ground rules and  
24 reminders.

25 First, to avoid unnecessary background

1 noise, I would ask that counsel keep their  
2 microphones on mute unless they are speaking or to be  
3 prepared to speak quickly as in the case when raising  
4 objections during cross-examination of a witness.

5 With respect to your video, counsel  
6 should leave their cameras on at all times except  
7 during breaks. You can also turn your video off if  
8 you need to step away from the hearing when your  
9 co-counsel is taking the lead. Just remember to turn  
10 your camera back on when you return.

11 Witnesses will need to turn their cameras  
12 on and their microphones on when it is their turn to  
13 begin testifying.

14 Please be mindful of the court reporter.  
15 This is very important. You should speak clearly and  
16 at a reasonable speed so that the court reporter can  
17 accurately transcribe the hearing.

18 As a reminder, everyone should do their  
19 best to avoid speaking over each other by taking  
20 proactive steps like intentionally allowing for a  
21 pause at the end of questions to witnesses and  
22 generally slowing down in order to allow for  
23 connectivity lags and objections from counsel.

24 During their testimony, witnesses will  
25 have access only to their filings in this case docket

1 as well as other documents that have been identified  
2 as potential exhibits that have already been  
3 exchanged amongst the parties and shared with the  
4 Bench. Witnesses should not access or seek other  
5 information in documents while testifying, nor should  
6 they communicate through any means with anyone  
7 privately during their testimony.

8 Now we've had discussions previously  
9 amongst the parties in this case and it appears as  
10 though there are no confidential documents that are  
11 going to be utilized this morning so it does not  
12 appear that we will need a closed record for any  
13 point in time during today's proceedings.

14 I would point out that this is going to  
15 be a one-day hearing and will be held consistent with  
16 the witness schedule that was agreed upon by the  
17 parties and the Bench previously. We will be taking  
18 a one-hour lunch break. The actual lunch break will  
19 be based on when we determine it's a good breaking  
20 point and how the flow of testimony is taking place.

21 The exhibits that are admitted through  
22 today's proceeding should be e-mailed by tomorrow to  
23 the court reporter. The e-mail address for the court  
24 reporter is kspencer@aando.com.

25 We talked previously about a briefing

1 schedule for this particular matter and it was  
2 determined that initial briefs were going to be filed  
3 on Wednesday, December 9th, with reply briefs being  
4 filed on Wednesday, December 23rd.

5 MR. SETTINERI: Your Honor, could you  
6 repeat the court reporter's --

7 ALJ AGRANOFF: Sure.

8 MR. SETTINERI: -- e-mail, please.

9 ALJ AGRANOFF: The letter k and then  
10 spencer@aando.com.

11 Does anybody have any questions before we  
12 call the first witness? If not, based on a  
13 conversation that we had a little bit earlier today,  
14 it was decided that we'd go a little bit out of order  
15 and call Mr. Waterhouse first and then go forward  
16 from there.

17 MR. SETTINERI: That is correct, Your  
18 Honor. Thank you very much. So at this time, on  
19 behalf of Alamo Solar, we will call Noah Waterhouse  
20 to the stand.

21 ALJ AGRANOFF: And, Kelli, if you could  
22 please promote Mr. Waterhouse to a panelist.

23 MS. KING: Mr. Waterhouse, you've been  
24 promoted and we can see you and presumably hear you.  
25 We see your microphone is on.

1 THE WITNESS: Okay.

2 MS. KING: Okay. Thank you.

3 ALJ AGRANOFF: Good morning,  
4 Mr. Waterhouse.

5 THE WITNESS: Good morning.

6 ALJ AGRANOFF: If you could please raise  
7 your right hand.

8 (Witness sworn.)

9 ALJ AGRANOFF: Mr. Settineri.

10 MR. SETTINERI: Thank you, Your Honor.

11 - - -

12 NOAH WATERHOUSE

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

15 DIRECT EXAMINATION

16 By Mr. Settineri:

17 Q. Good morning, Mr. Waterhouse.

18 A. Good morning.

19 MR. SETTINERI: At this time, Your Honor,  
20 we would like to mark as Company Exhibit 17, the  
21 Supplemental Testimony of Noah Waterhouse.

22 ALJ AGRANOFF: It shall be so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. SETTINERI: Thank you.

25 Q. (By Mr. Settineri) Mr. Noah house --

1 Mr. Waterhouse, do you have before you what's been  
2 marked as Company Exhibit 17?

3 A. I do.

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

6 A. Yeah. That's my Supplemental Testimony.

7 Q. Okay. And was that prepared by you or at  
8 your direction?

9 A. Yes, it was.

10 Q. Okay. And do you have any revisions to  
11 your testimony at this time today?

12 A. No.

13 Q. And if I asked you the questions today in  
14 that testimony, would your answers be the same as  
15 written?

16 A. Yes.

17 MR. SETTINERI: Thank you.

18 Your Honor, at this time the witness is  
19 available for cross-examination.

20 ALJ AGRANOFF: Thank you.

21 Do any counsel -- I'll first turn to  
22 Mr. Van Kley. Mr. Van Kley, do you have any specific  
23 cross-examination questions of the witness?

24 MR. VAN KLEY: We have no questions for  
25 the witness at this time.

1 ALJ AGRANOFF: Thank you.

2 Do any of the other counsel have any  
3 clarifying questions of the witness at this time?

4 Okay. If not, then I will make it worth  
5 your while for signing on this morning and ask you a  
6 couple of questions if you don't mind.

7 THE WITNESS: I don't.

8 - - -

9 EXAMINATION

10 By ALJ Agranoff:

11 Q. Specifically my questions pertain to the  
12 fact that, if I understand correctly, your testimony  
13 is specifically related to Condition 16 of the  
14 Amended Joint Stipulation?

15 A. Correct.

16 Q. Okay. And with respect to Condition 16,  
17 the intent is to establish a baseline or a benchmark  
18 of the existing surface and subsurface drainage  
19 system conditions?

20 A. That's correct.

21 Q. And with respect to that particular  
22 benchmark analysis, how far within the Project Area  
23 will that analysis extend?

24 A. The entirety of the Project Area.

25 Q. So with respect to any tile repairs that

1 may be required, you would be doing a comparison  
2 between the preexisting baseline benchmark and then  
3 the post-construction?

4 A. That's correct.

5 Q. And again, you would do a complete  
6 comparison of the entire Project Area --

7 A. Yes.

8 Q. -- from pre and post?

9 A. Yes, that's correct.

10 Q. Okay. And with respect to the timeline  
11 for which you would be engaging in that analysis, how  
12 far post-construction could a repair potentially be  
13 required subsequent to the completion of  
14 construction?

15 A. That's a little bit of a difficult  
16 question. I guess I would expect the -- I would  
17 expect the symptoms of a potential problem, that  
18 would indicate that a repair is necessary, to occur  
19 within -- within one year when an entire typical  
20 course of seasons has occurred.

21 Q. So if I understand correctly, you're  
22 indicating then that any applicability of the  
23 required repair language in Condition 16, that if a  
24 repair was required post one year from the completion  
25 of construction, that Condition 16 would not be



1 applicable?

2 MR. SETTINERI: Your Honor, at this time  
3 I'm -- I'm going to do a polite objection. If you  
4 can point to the exact language just to make sure we  
5 have a very clear record.

6 ALJ AGRANOFF: Well --

7 MR. SETTINERI: And if I may also, when  
8 you say "you," I assume you're only referring to  
9 Mr. Waterhouse's company, EVS, versus the Company?

10 ALJ AGRANOFF: Well, what I'm trying to  
11 ascertain is the requirement of the repair that would  
12 be the Company's obligation, the Applicant's  
13 obligation, as to how this condition would be  
14 actually applied within the specified time frames  
15 that were intended by this particular language, so.

16 MR. SETTINERI: Thank you, Your Honor. I  
17 guess what I'm trying to make sure for the record  
18 that we just, if we're going to ask him questions  
19 about the language in the condition, it would be  
20 helpful to point to a specific sentence just to help  
21 orient the witness and make sure we have a clear  
22 record.

23 ALJ AGRANOFF: Yes. Understood.

24 Q. (By ALJ Agranoff) Well, the language, if  
25 you look, I believe the first reference I see to a

1 repair obligation would be one, two, three, four,  
2 five, six, about the 20th line down, about five words  
3 in from the end, "When repairing tiles...." And  
4 there's also a reference a few lines up above that,  
5 "Any tile installation or repairs shall be performed  
6 in accordance with...."

7 A. Okay. And what was the question again?

8 Q. I'm just trying to ascertain what the  
9 expected time parameters are as to when this  
10 obligation for tile repair would no longer be in  
11 effect.

12 A. I guess I'm not sure that I have an  
13 answer to that question. My, you know, my testimony  
14 is intended to determine a course of action, you  
15 know, a likelihood of tile being damaged and what the  
16 appropriate measures are, to, you know, first try to  
17 avoid it and then establish what the repair or  
18 mitigation methods are going to be, but in terms of a  
19 timeline of how long an obligation exists, I don't  
20 know that that's something I have the ability to  
21 answer.

22 ALJ AGRANOFF: Okay. Based on my  
23 questioning, does counsel for the other parties have  
24 any clarifying questions?

25 MR. VAN KLEY: None for us.

1 MR. SETTINERI: No, Your Honor, not from  
2 the Company. Thank you.

3 ALJ AGRANOFF: Okay. Thank you,  
4 Mr. Waterhouse.

5 THE WITNESS: Thank you.

6 ALJ AGRANOFF: Appreciate your time.

7 MR. SETTINERI: Thank you, Your Honor.  
8 At this time the Company would move for the admission  
9 of Company Exhibit 17, the Supplemental Testimony of  
10 Noah Waterhouse.

11 ALJ AGRANOFF: Any objection?

12 Hearing none, Company Exhibit 17 shall be  
13 admitted as part of the record at this time.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 ALJ AGRANOFF: And I believe we will now  
16 return to our previously-agreed-upon schedule and my  
17 notes reflect that Mr. Herling would be the next  
18 witness.

19 MR. SETTINERI: Thank you, Your Honor.  
20 At this time the Company would like to call  
21 Mr. Douglas Herling to the stand, please.

22 MS. KING: Mr. Herling, you've been  
23 promoted to panelist. If you wouldn't mind turning  
24 on your -- actually, you just did, and we can hear  
25 you. Thank you.

1 ALJ AGRANOFF: I'm looking for  
2 Mr. Herling. There he is. Now I see. Good morning.

3 THE WITNESS: Good morning.

4 ALJ AGRANOFF: Please raise your right  
5 hand.

6 (Witness sworn.)

7 ALJ AGRANOFF: Mr. Settineri.

8 MR. SETTINERI: Thank you, Your Honor.  
9 At this time we would like to mark for the record,  
10 Company Exhibit 14, the Supplemental Direct Testimony  
11 of Douglas Herling.

12 ALJ AGRANOFF: It shall be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. SETTINERI: And also at this time we  
15 would like to mark as Joint Exhibit 2, the Amended  
16 and Restated Joint Stipulation and Recommendation  
17 previously filed in this proceeding.

18 ALJ AGRANOFF: It shall be so marked as  
19 well.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 - - -

22 DOUGLAS HERLING

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

25 DIRECT EXAMINATION

1 By Mr. Settineri:

2 Q. Good morning, Mr. Herling.

3 A. Good morning.

4 Q. Do you have before you what's been marked  
5 as Company Exhibit 14?

6 A. Yes, I do.

7 Q. Okay. And could you please identify that  
8 for the record, please.

9 A. That is my Supplemental Direct Testimony.

10 Q. Okay. And was that prepared by you or at  
11 your direction?

12 A. It was.

13 Q. And do you have any revisions to that  
14 testimony today, sir?

15 A. Yes, I do.

16 Q. If you could slowly walk us through those  
17 revisions, please.

18 THE COURT REPORTER: This is the court  
19 reporter. I'm sorry to interrupt. Mr. Herling, you  
20 are quite softer than everybody else. Could I ask  
21 you to maybe pull your microphone closer to your face  
22 or speak louder. Your volume is quite softer than  
23 everybody else.

24 THE WITNESS: Sure.

25 THE COURT REPORTER: Thank you.

1           A.    On page 2, line 1.  Second word "Mathew."  
2   Need to add a "t" so it reads M-a-t-t-h-e-w.

3                   Page 3, line 13.  The third word should  
4   have an additional "e."  "Obligee."

5                   On page 4, line 20.  Following the comma  
6   after "entrances" you're adding "right-of-ways/  
7   easements" comma.  That line should now read:  
8   "roads, entrances, right-of-ways/easements, inverters  
9   and setbacks."

10                  Page 6, line 1, fourth word.  Please  
11   strike "Angelina" and insert "Alamo."

12                  Page 8.  There are a few changes to  
13   Answer 15.  I'll walk through those and then I'll  
14   read it back to you to make sure you have it.

15                  On line 9, the sentence that begins "That  
16   plan contains."  Following "contains" we're going to  
17   delete "detailed."  Continuing on to line 10, we will  
18   delete all of line 10 from "analysis" all the way to  
19   "and."

20                  On line 11, it will still read "the  
21   proposed landscape plan."  Following "plan" we'll  
22   delete, on line 11, from "to" to "the."

23                  On line 12, we'll delete "affected areas"  
24   comma.

25                  On line 13, we will delete starting with

1 the third word "In short, those potential" and  
2 replace that with -- replace that with "potential."

3 On line 14, we are striking the comma at  
4 the end of the line after "scenario" and continuing  
5 on to line 15 we're deleting from "detailed" all the  
6 way through "landscaping" leaving the period at the  
7 end of the line.

8 So I'll read that back for you.

9 The preliminary landscape plan has been  
10 completed and has -- and has been submitted as an  
11 attachment to the supplemental testimony of Matthew  
12 Robinson. That plan contains the proposed landscape  
13 plan as well as visual examples of the landscaping  
14 that will be included as part of the landscape plan.  
15 Potential visual impacts have been addressed by  
16 determining specific locations of concern and  
17 applying an appropriate landscaping scenario.  
18 Lighting for the Project is included in the  
19 preliminary site layout attached to my testimony as  
20 DH2.

21 MR. VAN KLEY: Could we have that read  
22 one more time, please.

23 MR. SETTINERI: Could we have the court  
24 reporter read that back, please. That would be the  
25 best way that way we can check.

1 (Record read.)

2 Q. Mr. Herling, why don't you read that  
3 answer again. I think that will help everybody.  
4 There were a few areas there so let's go ahead and  
5 read it one more time, Mr. Herling.

6 A. I'll try to enunciate.

7 "The preliminary landscape plan has been  
8 completed and has been submitted as an attachment to  
9 the supplemental testimony of Matthew Robinson. That  
10 plan contains the proposed landscape plan as well as  
11 visual examples of the landscaping that will be  
12 included as part of the landscape plan. Potential  
13 visual impacts have been addressed by determining  
14 specific locations of concern and applying an  
15 appropriate landscaping scenario. Lighting for the  
16 Project is included in the preliminary site layout  
17 attached to my testimony as Attachment DH2."

18 MR. SETTINERI: And for the court  
19 reporter, may he proceed with his other revisions to  
20 the extent he has any?

21 THE COURT REPORTER: Yes. Thank you.

22 Q. Go ahead, Mr. Herling.

23 A. Continuing on page 9, line 2. We are  
24 replacing the last word "and" with "to." That should  
25 read on line 2: "Specifically, it will assist the



1 Applicant's survey efforts to" --

2 ALJ AGRANOFF: Did you say --

3 MR. SETTINERI: If I may interrupt, can  
4 we go off the record, please?

5 ALJ AGRANOFF: Certainly.

6 (Discussion off the record.)

7 ALJ AGRANOFF: Mr. Herling, you had  
8 indicated that the modification that you were talking  
9 about was on line 2. I think isn't it on line 1 of  
10 your testimony?

11 THE WITNESS: Let me make sure.

12 ALJ AGRANOFF: "Specifically, it will  
13 assist the Applicant's survey efforts...."

14 THE WITNESS: Sorry. My redline version  
15 might have had just a slightly different line for you  
16 there. My apologies.

17 ALJ AGRANOFF: That's okay.

18 THE WITNESS: Correct. On line 1 on  
19 page 9, we're replacing the word "and" with "to" at  
20 the end of that line.

21 MR. SETTINERI: Mr. Herling, I'm going to  
22 interrupt. As you go through, I think you're going  
23 to have the same issue on others, so you're going to  
24 want to compare the redline to what you have now.

25 THE WITNESS: Okay.

1 MR. SETTINERI: Thank you.

2 THE WITNESS: I'm doing that now.

3 On Answer 17, the first line --

4 ALJ AUGOSTINI: Are we on the record?

5 THE COURT REPORTER: Yes.

6 ALJ AGRANOFF: Yes, yes.

7 THE WITNESS: Okay. On line 5 in Answer  
8 17, please strike "On March 11, 2020" and replace  
9 that with "Starting in February 2020."

10 Okay. On line 13, please strike  
11 "March 11" and please add an "s" to the following  
12 word "mailing" making it "mailings." It should read:  
13 "The mailings included certain CCPC members...."

14 And then on line 14, following "In  
15 addition," please replace "Angelina" with "Alamo."

16 Okay. On page 10, line 8, please strike  
17 "clarity and" so now that first line should read:  
18 "Yes. Condition 20 was revised in order to bring  
19 greater oversight to...."

20 Moving over to page 11, line 13. Please  
21 change "Condition 30" to "Condition 29."

22 Moving down to line 15. Beginning with  
23 "Among" we're going to strike from "Among" all the  
24 way down to line 21 ending in "measures." So I can  
25 read what that should now say if you'd like?

1 ALJ AGRANOFF: Please do so.

2 THE WITNESS: "Finally, Condition 29  
3 requires the Applicant to provide confirmation that  
4 it incorporated guidance from Ohio EPA's 'Guidance on  
5 Post-Construction Storm Water Controls for Solar  
6 Panel Arrays' to those two local agencies. The same  
7 condition was approved by the Board in the Nestlewood  
8 proceeding." Everything prior to that first sentence  
9 I read obviously remains but we're removing portions  
10 of line 15 down to line 21.

11 Okay. I have just one or two more  
12 changes so please bear with me.

13 Okay. Moving to page 15, line 19, please  
14 change "Q25" to "Q.27." On line 21, change "A.25" to  
15 "A.27."

16 Lastly, on page 16, similar changes. On  
17 line 1, change "Q.27" to "Q.28." On line -- on line  
18 3, change "Q.27" to "A.28." On line 5, change "Q.28"  
19 to "Q.29." On line 6, change "A.28" to "A.29."

20 MR. SETTINERI: At this point did any of  
21 the other counsel have any clarification or questions  
22 in terms of if they missed any of the changes?

23 MR. VAN KLEY: No.

24 Q. (By Mr. Settineri) Mr. Herling, thank you  
25 for carefully walking us through those revisions. Do

1 you have any other revisions to your testimony at  
2 this time?

3 A. I do not.

4 Q. Mr. Herling, one clarification. You  
5 noted that the Attachment DH2 shows right-of-ways and  
6 easements. For the record, are any of the easements,  
7 shown in Attachment DH2 on those drawings,  
8 agricultural or conservation easements?

9 A. No, they're not.

10 Q. And are there any agricultural or  
11 conservation easements in the Project Area?

12 A. No, there are not.

13 Q. Okay. And I don't -- and so let me just  
14 ask this question: If I asked you the questions in  
15 your testimony, would your answers, as revised today  
16 and clarified, be the same?

17 A. They would.

18 Q. Okay. And I don't know if I did this yet  
19 but I'll do it again if I didn't. Can you please  
20 identify what's been marked as Joint Exhibit 2 for  
21 the record, please?

22 A. Joint Exhibit 2 is the Amended and  
23 Restated Joint Stipulation and Recommendation in this  
24 case.

25 Q. Okay. Were you involved in the

1 negotiation and drafting of that Amended and Restated  
2 Joint Stipulation and Recommendation?

3 A. Yes, I was.

4 MR. SETTINERI: Thank you. All right.  
5 Thank you, Mr. Herling.

6 Your Honors, the witness is available for  
7 cross-examination.

8 ALJ AGRANOFF: Thank you, Mr. Settineri.  
9 Mr. Van Kley.

10 ALJ AUGOSTINI: Jack, you're on mute.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Van Kley:

14 Q. Mr. Herling, let's start on page 4 of  
15 your testimony.

16 A. I'm there.

17 Q. And let's go to lines 7 and 8 which  
18 states that there will be a 25-foot setback from the  
19 facility fence to any non-participating property line  
20 or road right-of-way. Do you see that?

21 A. Yes, I do.

22 Q. Okay. Now, that's the same setback as is  
23 already contained in the Application, correct; you're  
24 not making a change here?

25 A. This is in addition to a setback that's

1 in the Application which was, I should check that but  
2 I believe 40 feet from the road edge to the -- to  
3 aboveground equipment but let me confirm that for  
4 you.

5 MR. SETTINERI: Mr. Herling --  
6 Mr. Herling.

7 THE WITNESS: Yes.

8 MR. SETTINERI: Before you reach for any  
9 other exhibits there, let me notify the Bench.  
10 Mr. Herling does have available a copy of the  
11 Application. Mr. Van Kley, would you like him to  
12 look at that?

13 MR. VAN KLEY: Yes, that would be -- that  
14 would be good. Thank you.

15 MR. SETTINERI: You're welcome.

16 THE WITNESS: Apologies for reaching.

17 ALJ AGRANOFF: And this is the  
18 Application that was previously marked and admitted  
19 as an exhibit in this proceeding?

20 MR. SETTINERI: It is. He is referencing  
21 Company Exhibit 1.

22 Mr. Van Kley, if you like, I can provide  
23 the witness with a page reference.

24 MR. VAN KLEY: That would be great.  
25 Thank you, Mike.

1 MR. SETTINERI: Mr. Herling, if you look  
2 at page -- I believe setbacks are discussed at  
3 page 54 of the Application, Company Exhibit 1.

4 THE WITNESS: Thank you.

5 A. Correct, that is in the Application we  
6 include a 25-foot setback from the perimeter fence  
7 and the edge of any public road but you'll note here  
8 this is a different -- this is from the right-of-way,  
9 not the edge of the public road, so this is an update  
10 to that figure.

11 Q. Okay. And explain again what the  
12 difference is between the setback that is in the  
13 Application and the setback that you have in Answer 8  
14 to your Supplemental Testimony?

15 A. The setback -- the setback in the  
16 Application is 25 feet from the perimeter fence to  
17 the edge of any public road. In the -- in the -- in  
18 my testimony it's a 25-foot setback from the facility  
19 fence to the road right-of-way which is a -- which  
20 is -- extends beyond the edge of the public road.

21 Q. Let's continue to discuss Answer 8 of  
22 your testimony that is marked as Company Exhibit 14  
23 and let's go to line 11 of Answer 8 where you refer  
24 to "any central inverter." My first question with  
25 regard to the central inverter is to tell me whether

1     there are other inverters, besides central inverters,  
2     that may be constructed in this Project?

3             A.     We anticipate -- sorry. I heard someone  
4     saying something.

5             We anticipate that this Project will use  
6     central inverters. There's -- there's the potential  
7     that a string inverter could be used; that's not  
8     completely ruled out.

9             Q.     How many string inverters could be used?

10            A.     I -- I don't have that figure. It's not  
11     a -- it's not a -- yeah, I don't have that figure.

12            ALJ AGRANOFF: What's the difference  
13     between a central versus a string inverter?

14            THE WITNESS: A central inverter is  
15     larger in size, can typically handle several  
16     megawatts of direct current electricity and they're  
17     located centrally within the Project Area and those  
18     are -- whereas a string inverter, while also located  
19     fairly centrally, typically only handles what we  
20     refer to as one string of panels. They're a nominal  
21     rating for how many -- it's typically in kilowatts  
22     and they're usually mounted on an actual row of  
23     panels so there's not a ground footprint which is why  
24     it's not -- it's not calculated here because there's  
25     no additional disturbance from a string inverter. So



1 it's more of a -- it's more of a small, a small box  
2 that might actually be on the row of solar panels.

3 Q. Now, you have a preliminary design plan  
4 attached to your testimony; is that correct?

5 A. That is correct.

6 Q. Does that preliminary plan provide  
7 locations for string inverters?

8 A. No. That plan contemplates central  
9 inverters because that is the likely route this  
10 Project will be going.

11 Q. Do you have in front of you what has been  
12 marked as Company Exhibit 15, the Supplemental  
13 Testimony of David Hessler?

14 MR. SETTINERI: We have not marked that  
15 testimony at this time.

16 MR. VAN KLEY: Well, I know, but you've  
17 labeled it that way and so I'm referring to it --

18 MR. SETTINERI: Right.

19 MR. VAN KLEY: -- so the witness can  
20 identify it.

21 MR. SETTINERI: Well, we haven't marked  
22 it. It's testimony -- prefilled written testimony  
23 that's been filed in the docket for another witness  
24 so before you direct the witness's attention to  
25 something that you have not marked, I think you

1 should lay a foundation for it because it's another  
2 witness's prefiled written direct testimony and it  
3 has not been marked and that witness has not yet  
4 appeared.

5 MR. VAN KLEY: Yeah. All right. Let's  
6 see if we can do it perhaps a simpler way that may  
7 rely on Mr. Herling's recollections, and if he can't  
8 recall the answers to the questions, then we'll have  
9 to go the route of setting the basis for  
10 Mr. Hessler's testimony.

11 Q. (By Mr. Van Kley) Mr. Herling, are you  
12 aware that Mr. Hessler, for purposes of his  
13 Supplemental Testimony, has reviewed a sound test  
14 report from the manufacturer of an inverter model  
15 known as the SMA SC4600-UP?

16 MR. SETTINERI: I'll object to the form  
17 of the question. It could be asked a different way  
18 so you don't have to reference his testimony. I'll  
19 repeat, Mr. Hessler has not testified yet. His  
20 Supplemental Testimony is not in the record, it's not  
21 been presented, so to ask a witness questions about  
22 someone's supplemental testimony that hasn't occurred  
23 yet is improper.

24 MR. VAN KLEY: Well, it's occurred, it's  
25 been filed, so he obviously has looked at a document

1 that's been filed.

2 MR. SETTINERI: If you want to ask  
3 questions about the SMA report generally, try it that  
4 way. That's what I would suggest. But my objection  
5 stands. Your Honor, I'll leave it to you.

6 MR. VAN KLEY: I'll reword it and see if  
7 that works. Hopefully we won't continue to split  
8 hairs here.

9 ALJ AGRANOFF: Please proceed,  
10 Mr. Van Kley.

11 MR. VAN KLEY: Yeah.

12 Q. (By Mr. Van Kley) Mr. Herling, are you  
13 aware of a sound test report from the manufacturer of  
14 the inverter model SMA SC4600-UP?

15 A. Yes, I am.

16 Q. Okay. Do you know whether it was  
17 Mr. Hessler that obtained that report or whether it  
18 was somebody else?

19 A. We -- we obtained that. We obtained that  
20 report.

21 Q. By "we" you mean Alamo Solar?

22 A. Correct.

23 Q. Okay. How did Alamo Solar obtain that  
24 report?

25 A. We requested that report from the

1 manufacturer.

2 Q. Do you have in front of you what I have  
3 tentatively marked as CCPC Exhibit 7, the inverter  
4 sound test report?

5 MR. SETTINERI: Mr. Herling,  
6 Mr. Van Kley's exhibits are in brown envelopes.

7 THE WITNESS: Got it. I was just leafing  
8 through. Yes, I do have that in front of me.

9 MR. VAN KLEY: Okay. Your Honors, at  
10 this time I would like to mark this document as CCPC  
11 Exhibit 7.

12 ALJ AGRANOFF: It shall be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. VAN KLEY: It is entitled "Inspection  
15 Report, Acoustic Environmental Test."

16 Q. (By Mr. Van Kley) Mr. Herling, is this a  
17 copy of the sound test report for the SMA SC4600-UP?

18 A. I have not reviewed this report in detail  
19 but that is what it says on it.

20 Q. Do you recall when Alamo Solar obtained a  
21 copy of the sound test report for the SMA SC4600-UP?

22 A. I believe we acquired it earlier this  
23 year.

24 Q. Do you recall approximately when this  
25 year you obtained that report?

1 A. No, I don't know exactly.

2 Q. Did Alamo Solar request sound test  
3 reports from manufacturers for other inverter models?

4 A. Yes, we did.

5 Q. And did Alamo Solar receive any such  
6 reports?

7 A. No, we did not. None -- none -- none  
8 that were publicly-available reports that they could  
9 give us at that time.

10 Q. Just to make sure I'm understanding your  
11 answer, are you saying they did not give you any  
12 reports?

13 A. No. The only reports that we could find  
14 were publicly available and they were not suitable  
15 for the analysis.

16 Q. Why were they not suitable for the  
17 analysis?

18 A. I'm not an acoustic engineer; I couldn't  
19 tell you.

20 Q. Did Alamo Solar give copies of the other  
21 reports to Mr. Hessler?

22 A. Yes, we did.

23 Q. How many reports, other than the report  
24 for the SMA SC4600, did you provide to him?

25 MR. SETTINERI: I'm going to object at

1 this time to the use of the word "report"  
 2 generically. Specifically, CCPC Exhibit 7 is a sound  
 3 power output study. I just want to make sure when we  
 4 talk reports, we're clear about what type of report.

5 Q. Mr. Hessler, let's start -- let's  
 6 backtrack a little bit then.

7 ALJ AGRANOFF: Actually, Mr. Van Kley, I  
 8 believe -- these questions you're directing to  
 9 Mr. Herling, correct?

10 MR. VAN KLEY: Yes.

11 ALJ AGRANOFF: Okay. You're saying  
 12 "Mr. Hessler" so I just want to --

13 MR. VAN KLEY: Okay. I thought I was  
 14 asking him what he provided to Mr. Hessler but maybe  
 15 I interposed the two names in my question.

16 ALJ AGRANOFF: It's okay.

17 MR. VAN KLEY: I want to make sure I  
 18 don't do that. They both start with "H-e" so it's an  
 19 easy mistake to make, I guess.

20 Q. (By Mr. Van Kley) Mr. Herling, let's back  
 21 up a little bit just to make sure that we clearly  
 22 understand what you were able to find. I believe you  
 23 indicated that you had received some reports that you  
 24 deemed were not appropriate for the analysis that you  
 25 wanted to have performed; is that -- is that an

1 accurate statement of what you said?

2 A. No. That's paraphrasing what I said.  
3 That's not accurate.

4 Q. Okay. Would you give me an accurate  
5 rendition of what you said?

6 A. That I'm not an acoustic engineer but  
7 was -- but that we were -- it was indicated that  
8 those reports weren't suitable for the analysis.

9 Q. Okay. Would you describe those reports,  
10 please?

11 A. I really don't have much to describe for  
12 you. I -- not being an engineer, I couldn't tell you  
13 exactly what they contained.

14 Q. Uh-huh. Okay. So how many reports were  
15 there?

16 A. Maybe one or two others.

17 Q. Uh-huh. And from whom did you obtain  
18 those reports?

19 A. I don't recall.

20 Q. Did you -- did Alamo Solar receive them  
21 from manufacturers of inverters?

22 A. Yes.

23 Q. And did Alamo Solar provide this one or  
24 two other reports to Mr. Hessler?

25 A. Yes.

1 Q. And who was it that made the  
2 determination that the information in those reports  
3 could not be used?

4 A. Mr. Hessler did.

5 Q. Did either of those reports or both of  
6 them contain any sound power measurements for  
7 inverters?

8 A. I can't be sure.

9 Q. Let's go to page 7 of your Supplemental  
10 Testimony that has been marked as Company Exhibit 14.

11 A. I'm there.

12 Q. All right. Let's go to Answer 13 on that  
13 page which refers to a Phase I cultural resources  
14 survey program.

15 A. I see that.

16 Q. Has that program now been completed?

17 A. The survey work plan or program has been  
18 completed, yes.

19 Q. What, if anything, remains to be done in  
20 order to survey cultural resources?

21 A. Nothing else. SHPO -- OHPO has provided  
22 their concurrence that -- that that work plan is --  
23 is sufficient.

24 ALJ AGRANOFF: Just so the record is  
25 clear, Mr. Herling, you used the acronym OHPO. If



1 you could define that for us?

2 THE WITNESS: The Ohio Historic  
3 Preservation Office.

4 ALJ AGRANOFF: Thank you.

5 Q. (By Mr. Van Kley) So at this point then  
6 in the future -- let me start over.

7 So in the future, pursuant to Alamo  
8 Solar's agreement with the OHPO, Alamo Solar would be  
9 required to implement the program?

10 A. I wouldn't -- I wouldn't call it an  
11 agreement but they agreed or they -- they concurred  
12 that our work plan met their requirements following  
13 their -- following their input in a meeting with them  
14 and, yes, that it's ready to be implemented.

15 Q. And generally speaking, what is -- what  
16 is entailed in the implementation of that program?

17 A. The program is broken into two parts: An  
18 architectural survey or historical survey, and a  
19 Phase I archeology survey.

20 Q. And what needs to be done for those  
21 surveys?

22 A. I'm not a historian or an archeologist  
23 but for the architectural survey that is a field  
24 survey and photo log typically informed by the --  
25 informed by other studies such as the VRA, and then

1 archeology requires extensive site work as well.

2 Q. I'm sorry, were you finished?

3 A. Yeah.

4 Q. What does VRA stand for?

5 A. Visual Resource Assessment.

6 Q. Let's go to page 8 of your testimony  
7 marked as Company Exhibit 14.

8 A. I'm there.

9 Q. Okay. We're going to go to Answer 15.  
10 On line 8 of that answer, you refer to the  
11 preliminary landscape plan, correct?

12 A. Correct.

13 Q. Now, this preliminary landscape plan is  
14 not contained in the Application, correct?

15 A. In Company Exhibit 1?

16 Q. Correct.

17 A. Yeah, that's correct.

18 Q. Let's go to page 9 of your testimony  
19 marked as Company Exhibit 14.

20 A. Okay. I'm there.

21 Q. Answer 18 refers to the preliminary  
22 vegetation management plan, and that preliminary  
23 vegetation management plan is not included in the  
24 Application marked as Company Exhibit 1, correct?

25 A. No, no, it is not. I don't believe it

1 was required to be.

2 MR. VAN KLEY: I have no further  
3 questions at this time.

4 ALJ AGRANOFF: Thank you.

5 Any clarifying questions from other  
6 counsel?

7 If not, I do have a couple of questions,  
8 Mr. Herling.

9 THE WITNESS: Certainly, Your Honor.

10 ALJ AGRANOFF: If you just give me a  
11 moment, please.

12 MR. SETTINERI: Your Honor, if I may just  
13 from a procedural standpoint, I will have a couple  
14 redirect questions for Mr. Herling so I didn't know  
15 if you wanted to ask your questions after all cross  
16 was done or if you wanted to do it now?

17 ALJ AGRANOFF: Why don't I just do it now  
18 and that way you can also include, as part of your  
19 redirect, whatever other additional questions I ask.

20 - - -

21 EXAMINATION

22 By ALJ Agranoff:

23 Q. The one clarifying question I have is, is  
24 it the intent of Alamo to operate the Project as well  
25 as construct it?

1           A.    Alamo Solar will be operating the  
2 Project, yes.

3           Q.    Okay.  Thank you.

4                   And does the facility fence that you  
5 reference in your answer to Question 14, it's on  
6 line 23, does the facility fence go around the entire  
7 perimeter of the Project Area?

8           A.    Yes.  You can see a preliminary --  
9 preliminary locations of that fence in the  
10 preliminary site plan attached to my testimony.  
11 Typically the fence will go around the different  
12 solar fields around the perimeter, but, yeah, the  
13 entire project is fenced.

14          Q.    Okay.

15          A.    Of course adhering to the setbacks we've  
16 agreed to.

17          Q.    And on page 15 of your testimony -- let  
18 me know when you're there.

19          A.    I'm there.

20          Q.    Okay.  Line 3.  There's a discussion  
21 about the PILOT, the payment in lieu of taxes  
22 program?

23          A.    Yes, correct.

24          Q.    And I was just curious if you know, will  
25 those monies be paid, according to your testimony,

1 monies will be paid to the Preble County Treasurer?

2 A. That's my understanding and then the  
3 payments are distributed based on where the Project  
4 is physically located.

5 Q. Okay.

6 A. Different taxing jurisdictions in that  
7 location.

8 Q. Okay. So then any school districts, for  
9 example, you're saying would receive some pro rata  
10 portion of those monies?

11 A. Yeah, based on the millage rate. So for  
12 Alamo, that's the Preble Shawnee and Eaton School  
13 Districts, obviously the county, the townships where  
14 the Project is located. We have a joint vocational  
15 school district, library.

16 Q. And the allocation you say is determined  
17 for those individual entities via what type of  
18 formula?

19 A. The mill rate. Pro rata on the mill  
20 rate. That's for the \$7,000 per megawatt portion.  
21 The \$2,000 per megawatt portion goes to the County  
22 General Fund.

23 ALJ AGRANOFF: Okay. Thank you.

24 Mr. Settineri, redirect?

25 MR. SETTINERI: Thank you, Your Honor.

1 Just a few questions.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Settineri:

5 Q. Mr. Herling, you were asked about the SMA  
6 Sound Power Noise Measurement Report marked as CCPC  
7 Exhibit 7. How did you become aware of that report?

8 A. Mr. Hessler made us aware of that report,  
9 that it was in another case and had become recently  
10 available so we -- that's how we found out about it.

11 Q. Okay. And who requested it from the  
12 manufacturer?

13 A. I did.

14 Q. And did you receive a copy of that report  
15 from the manufacturer?

16 A. Yes, I did.

17 Q. Okay. And just for the record, the  
18 report you received, is that the document that's been  
19 identified as CCPC Exhibit 7?

20 A. Yes, it is.

21 Q. Okay. You have experience in the solar  
22 industry, correct?

23 A. Yes, I do.

24 Q. And how long have you been involved with  
25 the solar industry?

1           A.     With Open Road for the last three years,  
2     and then previously at Pioneer Green Energy for  
3     several years.

4           Q.     Okay. And so earlier I think you  
5     testified you were not an acoustics engineer, but in  
6     regards to the questions on inverters are you able to  
7     provide a comparison on noise from a string inverter  
8     to the central inverters?

9           A.     Sure. It's a much, much smaller, quieter  
10    machine which is why it can be very flexibly located;  
11    and given that it can be placed, you know, pretty  
12    much anywhere along a string of panels, you have a  
13    lot of options of where to put it. But, yeah, I'd  
14    characterize it as a markedly different machine.

15          Q.     Would you compare a string inverter as  
16    being much quieter -- how would you compare a string  
17    inverter's noise level compared to a central  
18    inverter's noise level?

19          MR. VAN KLEY: I'm going to object at  
20    this point because there's been no foundation laid  
21    for the witness's knowledge for answering this  
22    question.

23          MR. SETTINERI: Well, we've established  
24    he has experience in the industry and that should  
25    suffice to allow him to provide a general industry

1 perspective on the difference between string  
2 inverters and central inverters which I think is an  
3 important part for the record here.

4 MR. VAN KLEY: Not if he hasn't observed  
5 the noise personally from those inverters.

6 ALJ AGRANOFF: Mr. Settineri, why don't  
7 you see whether you can break the question down a  
8 little.

9 MR. SETTINERI: Okay. Yeah.

10 Q. (By Mr. Settineri) Mr. Herling, your  
11 knowledge regarding the sound level of string  
12 inverters, where does that come from?

13 A. I've visited numerous solar projects in  
14 my career, both in Ohio and Texas, whether they be  
15 rooftop, in a field, anywhere, and often smaller  
16 projects will have string inverters so I've  
17 definitely been close to those before.

18 Q. Okay. And have you been also close to  
19 central inverters that are in operation?

20 A. Yes. Well, to the extent you can be  
21 close. They're usually located very -- toward the  
22 center of projects so it's hard to really get  
23 terribly close to them.

24 Q. Okay. In regards to your experience with  
25 observing string inverters, can you describe any



1 sound that you heard from them at that time?

2 A. There's no noticeable sound to me above  
3 the ambient background noise that I was hearing.

4 Q. And were any of these string inverters  
5 that you observed in rural areas?

6 A. Yes. I believe on the Piqua project.  
7 Yeah, they're -- on projects I visited they have been  
8 in rural areas, you know, quiet, either residential  
9 or rural, very quiet areas.

10 Q. Yeah. And is the size of the inverter  
11 driven by the kilowatt rating?

12 A. Yes, typically.

13 Q. And central inverters, what is just  
14 generally, approximately, a central inverter, what  
15 range of megawatt rating would that have to the  
16 extent you can?

17 A. Yeah, typically from around a megawatt to  
18 some of them now, you know, could be up to 4 to even  
19 5 megawatts.

20 Q. Okay. And what would be maybe a typical  
21 range for a string inverter?

22 A. A hundred kilowatts maybe. Some can be  
23 less, some can be a little more. But when it's  
24 referring to megawatts, that would be 2 megawatts  
25 would be 2,000 kilowatts, so it's an order of

1 magnitude greater in size.

2 MR. SETTINERI: Okay. Thank you.

3 All right. No further questions. Thank  
4 you, Mr. Herling. Thank you, Your Honor.

5 ALJ AGRANOFF: Thank you.

6 Any recross?

7 MR. VAN KLEY: Yes, Your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Van Kley:

11 Q. When you observed the string inverters at  
12 those other projects, how close to the string  
13 inverters were you located?

14 A. I've -- I've been no more than 50 feet  
15 from a string inverter before and other times much  
16 farther. It just depends how they're oriented  
17 relative to the fence.

18 Q. So what's the range of distances from the  
19 string inverters that you have been during the times  
20 that you just referenced in your answers to  
21 Mr. Settineri's questions?

22 A. So -- oh. Sorry, I thought I heard  
23 someone saying something. Could you please repeat  
24 the question?

25 Q. Yes.

1 MR. VAN KLEY: Your Honor, could we have  
2 the court reporter read the question?

3 ALJ AGRANOFF: Certainly.

4 (Record read.)

5 A. Yeah, like I said, about 50 feet maybe,  
6 and then I guess there's no high end to that amount.

7 Q. Well, how many -- how many projects  
8 did -- how many projects with string inverters have  
9 you been close to?

10 A. I can't say for sure but, you know,  
11 probably -- probably close to a dozen.

12 Q. Uh-huh. And how many of those projects  
13 were you located within 50 feet of the string  
14 inverter?

15 A. I can't say for sure. Several. Just you  
16 drive up as close as you can. I didn't have a tape  
17 measure but it was pretty close.

18 Q. So you drove up to those locations in a  
19 vehicle?

20 A. Yeah. Get out of the car, stand in the  
21 public right-of-way. Or at trade shows even, you're  
22 a lot closer than that when they're operating.

23 Q. Did you take any sound measurements from  
24 those string inverters?

25 A. No.

1 Q. Did you take any sound measurements from  
2 the ambient -- from the ambient noise levels during  
3 times when those string inverters were not operating?

4 A. No. Just my observations.

5 Q. Have you obtained any sound test reports  
6 for string inverters?

7 A. No, I have not.

8 Q. Has Alamo Solar obtained any such  
9 reports?

10 A. No. We've been designing this as a  
11 project with central inverters.

12 Q. Has Alamo Solar requested any sound test  
13 reports for string inverters?

14 A. No.

15 MR. VAN KLEY: I don't have any more  
16 questions.

17 ALJ AGRANOFF: Thank you.

18 I did have one last clarifying question.

19 - - -

20 FURTHER EXAMINATION

21 By ALJ Agranoff:

22 Q. Mr. Herling, I think you referenced a  
23 Piqua project?

24 A. I might have misspoke. I was trying to  
25 think of the name of a project in western Ohio but I

1 think I misspoke of which project it was.

2 Q. Might you now recall or --

3 A. I'm not sure. There's several that I've  
4 visited and I can't recall exactly which one it was.

5 ALJ AGRANOFF: Okay. Anything further  
6 from counsel?

7 MR. VAN KLEY: No.

8 ALJ AGRANOFF: Thank you, Mr. Herling.

9 THE WITNESS: Thank you.

10 ALJ AGRANOFF: Mr. Settineri.

11 MR. SETTINERI: Thank you, Your Honor. I  
12 assume no further questions from any further counsel,  
13 I will go ahead and move some exhibits into the  
14 record.

15 ALJ AGRANOFF: Please do.

16 MR. SETTINERI: Thank you. At this time,  
17 Your Honor, we would move for the admission of  
18 Company Exhibit 14, the Supplemental Testimony of  
19 Douglas Herling, along with Joint Exhibit 2, the  
20 Amended and Restated Joint Stipulation and  
21 Recommendation. I would note in addition, in  
22 admitting this testimony of Mr. Herling, he has  
23 identified various exhibits in his testimony, those  
24 are attached to his testimony, Company Exhibit 14,  
25 and all of those attachments to his testimony would

1 be subject to that motion, Your Honor.

2 ALJ AGRANOFF: Any objection?

3 MR. VAN KLEY: No.

4 ALJ AGRANOFF: There being none,  
5 Exhibit 14 and I believe you made also a motion then  
6 for Joint Exhibit 2; is that correct?

7 MR. SETTINERI: That's correct, Your  
8 Honor.

9 ALJ AGRANOFF: And Joint Exhibit 2 shall  
10 be admitted as part of the record at this time.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 ALJ AGRANOFF: And why don't we take a  
13 10-minute break.

14 MR. VAN KLEY: Your Honor, I'd like to  
15 move admission of one of my exhibits.

16 ALJ AGRANOFF: Oh. I'm sorry.

17 MR. VAN KLEY: We would move the  
18 admission of CCPC Exhibit 7.

19 ALJ AGRANOFF: Any objection?

20 MR. SETTINERI: Your Honor, I would  
21 object to admitting it at this time. This was --  
22 Mr. Herling was able to provide testimony as to the  
23 receipt and delivery and how the document was  
24 obtained. He did not testify to the contents. It is  
25 obviously appropriate for Mr. Hessler and so I would

1 ask to defer the admission of this exhibit pending  
2 the testimony of Mr. Hessler.

3 ALJ AGRANOFF: Mr. Van Kley.

4 MR. VAN KLEY: Yeah, yeah. Mr. Herling  
5 clearly authenticated CCPC Exhibit 7. He identified  
6 it as the report that he personally obtained from the  
7 manufacturer. We had some discussion with  
8 Mr. Herling about it, about how he obtained it and so  
9 forth, so I think it's ready for admission.

10 MR. SETTINERI: Your Honor, I would say  
11 it's not relevant to that point. The testimony was  
12 in regards to how he obtained it. Nowhere was there  
13 an examination of the contents. The examination of  
14 the contents is appropriately subject and proper for  
15 Mr. Hessler. And again, it can simply be moved to be  
16 admitted at that time but to move it through Mr. --  
17 to try to get it into the record through Mr. Herling,  
18 when none of the contents were discussed or explored,  
19 we think is not proper.

20 ALJ AGRANOFF: Anything else,  
21 Mr. Van Kley?

22 MR. VAN KLEY: One moment, Your Honor.

23 I have nothing further to add at this  
24 time, Your Honor.

25 ALJ AGRANOFF: At this point we'll defer

1 ruling on the admissibility of CCPC Exhibit 7 until  
2 after Mr. Hessler has had an opportunity to testify.  
3 And with that, we'll take a 10-minute break and come  
4 back -- why don't we just say come back at 11:35.

5 (Recess taken.)

6 ALJ AUGOSTINI: Let's go on the record.  
7 In accordance with our previously-agreed-upon witness  
8 schedule, Mr. Settineri, I believe that Mr. Hessler  
9 is up next.

10 MR. SETTINERI: There we go. Yes,  
11 Mr. Hessler. At this time the Company would call  
12 David Hessler to the stand, please.

13 ALJ AUGOSTINI: Thank you.

14 MS. KING: You've been promoted to a  
15 panelist. You can just unmute yourself and turn on  
16 your video.

17 THE WITNESS: There we go.

18 ALJ AUGOSTINI: Good morning,  
19 Mr. Hessler.

20 THE WITNESS: Good morning.

21 ALJ AUGOSTINI: Can you please raise your  
22 right hand.

23 (Witness sworn.)

24 ALJ AUGOSTINI: Please proceed.

25 MR. SETTINERI: Thank you, Your Honor.



1                                 - - -

2                                 DAVID HESSLER

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

5                                 DIRECT EXAMINATION

6       By Mr. Settineri:

7                 Q.     Good morning, Mr. Hessler.

8                 A.     Good morning.

9                 Q.     Could you state your name and business  
10       address for the record, please.

11                A.     Yeah. My name is David Hessler of  
12       Hessler Associates, and my business address is 5096  
13       North Silver Cloud Drive in Saint George, Utah.

14                Q.     Thank you.

15                MR. SETTINERI: And, Your Honors, at this  
16       time we would like to mark as Company Exhibit 15, the  
17       Supplemental Testimony of David Hessler.

18                ALJ AUGOSTINI: So marked.

19                (EXHIBIT MARKED FOR IDENTIFICATION.)

20                MR. SETTINERI: Thank you, Your Honor.

21                Q.     Mr. Hessler, do you have before you  
22       what's been marked as Company Exhibit 15?

23                A.     Yes, I do.

24                Q.     And could you identify that for the  
25       record, please?

1           A.    It's my Supplemental Testimony.

2           Q.    Was that prepared by you or at your  
3 direction?

4           A.    Yes, it was.

5           Q.    Okay. And do you have any revisions to  
6 that testimony today?

7           A.    No, I don't.

8           Q.    Okay. And if I asked you the questions  
9 in that testimony today, would your answers be the  
10 same as written?

11          A.    Yes, they would.

12               MR. SETTINERI: Thank you, Mr. Hessler.

13               At this time, Your Honor, the witness is  
14 available for cross-examination.

15               ALJ AUGOSTINI: Mr. Van Kley, do you have  
16 any cross?

17               MR. VAN KLEY: Yes, Your Honor, I do.

18                               - - -

19                               CROSS-EXAMINATION

20 By Mr. Van Kley:

21           Q.    Mr. Hessler, let's go to page 2 of your  
22 testimony marked as Company Exhibit 15.

23           A.    Okay.

24           Q.    All right. I'm looking at lines 1  
25 through 3 on page 2 of your testimony, which refer to

1 a minimum setback of 500 feet between any central  
2 inverter and any residence on a non-participating  
3 parcel. Do you see that?

4 A. Yes, I do.

5 Q. Okay. To your knowledge, has any minimum  
6 setback been provided by the Amended Joint  
7 Stipulation between any string inverter and any  
8 residence on a non-participating parcel?

9 A. No. String inverters are not mentioned  
10 in the new stipulations.

11 Q. Have you modeled the noise output from  
12 string inverters for the purpose of the Alamo Solar  
13 Project?

14 A. Not for Alamo, but I have received sound  
15 test data and done modeling for string inverters on  
16 another project.

17 Q. Is that other project located in Ohio?

18 A. No.

19 Q. Let's go to Answer 8 on page 2 of your  
20 testimony.

21 A. Okay.

22 Q. Looking at lines 12 and 13, you refer to  
23 a sound test report from the manufacturer of a common  
24 inverter model, the SMA SC4600-UP, correct?

25 A. Correct.

1 Q. And I assume from your testimony that you  
2 reviewed that report?

3 A. Yes, I certainly did.

4 Q. And you utilized that report for purposes  
5 of your Supplemental Testimony marked as Company  
6 Exhibit 15?

7 A. That's correct.

8 Q. All right. Let's go to a copy of that  
9 report which has been marked as CCPC Exhibit 7, and  
10 please tell me when you have that document in front  
11 of you.

12 A. Yes, I've got it.

13 Q. And is CCPC Exhibit 7 a copy of the sound  
14 test report you referenced on lines 12 and 13 on  
15 page 2 of your testimony?

16 A. Yes, it is.

17 Q. Looking at page 28 of that report which  
18 would be the second page of the PDF --

19 A. Yeah, every page is marked page 28 in  
20 here.

21 Q. Yeah. I -- I can't pull anything over  
22 you, can I?

23 So looking at the second PDF page on --  
24 in Exhibit CCPC 7, the date of this report is  
25 June 25, 2019, correct? I'm looking at the bottom of

1 the page.

2 A. Well, is this the page that starts with  
3 Section 1, it says "Overview of Results"?

4 Q. No.

5 A. Oh, okay.

6 Q. It's the second page of the PDF and the  
7 top states "Revision History."

8 A. Oh, okay. I see. Okay. Yes, that's  
9 right.

10 Q. Okay. Now, when did you receive a copy  
11 of this report?

12 A. I believe it was around July of this  
13 year.

14 Q. And from whom did you receive a copy of  
15 this report?

16 A. From Doug Herling with the Project.

17 Q. Did you listen to Mr. Herling's testimony  
18 today?

19 A. Yes, I did.

20 Q. Did you hear Mr. Herling testify that you  
21 informed Alamo Solar about the existence of the  
22 report that's been identified as CCPC Exhibit 7?

23 A. Right, yeah. I was working on another  
24 project where they were going to use this inverter  
25 model, and I asked them to query the manufacturer to

1 see if there's any noise data on that inverter, and  
 2 they did and got this report back. This was on  
 3 another project previous to July. And I was  
 4 extremely impressed with the report. You couldn't  
 5 ask for a more thorough and detailed analysis. It  
 6 exceeded my expectations. So I mentioned it to Alamo  
 7 that this report was out there and then they obtained  
 8 it directly themselves.

9 Q. So you already had a copy of this report  
 10 in your possession before you informed Alamo about  
 11 its existence?

12 A. Yes.

13 Q. So then Alamo obtained its own copy of  
 14 the report from the manufacturer after you informed  
 15 them of the report's existence.

16 A. That's correct, yes.

17 Q. And when did you come into possession of  
 18 this report for purposes of working on the other  
 19 project?

20 A. I think that was around November of '19.

21 Q. November of 2019, you mean?

22 A. Yeah.

23 Q. Okay. In the process of working on  
 24 either this project, that is the Alamo Project, or  
 25 any other solar project, have you become aware of

1 sound test reports for other inverter models?

2 A. On every project that I work on, I ask  
3 the developer to try to get sound data from the  
4 manufacturers and they do their best and -- and Doug  
5 requested a number of -- requested information from a  
6 number of manufacturers for this project, and the  
7 trouble was that most of them come back with very  
8 vague and not very useful information. Really not  
9 enough information to reliably model anything. They  
10 don't have the frequency content or they really  
11 aren't done in any kind of rigorous way.

12 The exception is this manufacturer, SMA,  
13 who is -- it's a German company and they're extremely  
14 thorough and they're just head and shoulders above  
15 all the rest of them in terms of actually producing  
16 reports. The other companies don't even have  
17 reports; they just have anecdotal evidence of what it  
18 sounds like.

19 Q. Have you modeled the sound from central  
20 inverters for projects other than Alamo?

21 A. Yes, I have.

22 Q. How many such projects have you modeled  
23 the central inverters?

24 A. Two or three other ones.

25 Q. And for those other two or three

1 projects, what reports, what sound test reports, if  
2 any, did you utilize for that purpose?

3 A. Well, for one of them, I went to an  
4 operating site and measured what that inverter model  
5 was actually doing and then used my own measurements  
6 as model input.

7 On another project, they used string  
8 inverters manufactured by SMA and they have -- they  
9 were able to obtain a very similar test report for  
10 those string inverters where they were very  
11 thoroughly measured. On that project, the inverters  
12 were grouped together with 10 string inverters on a  
13 skid with one transformer so they really kind of made  
14 central inverters out of a number of small string  
15 inverters for that project.

16 Q. And did you use a sound test report in  
17 order to model that project?

18 A. Yes, I did, yeah.

19 Q. And did you -- well, let me start over.

20 But you haven't utilized that sound test  
21 report in order to model noise from string inverters  
22 for the Alamo Project.

23 A. No. Today was the first day I've even  
24 heard string inverters mentioned. But I would add  
25 that string inverters are just a small electrical box



1 that's mounted on the panel racks, and the report  
2 that I obtained from SMA for I think it was a  
3 150-kilowatt unit said that the sound pressure level  
4 at 1 meter away was less than 65 dBA which is less  
5 than the level of a conversation, a normal  
6 conversation. They're very, very quiet. And that  
7 test report showed that the frequency content didn't  
8 have any tones or whines in it at all.

9 Q. Did you model in that case -- in that  
10 case did you model the sound from the string  
11 inverters at any other distances?

12 A. Yeah. I used the sound power that was in  
13 the report from SMA for each string inverter and then  
14 we put that into a model, similar to the one that was  
15 done for Alamo here, to model that project in its  
16 entirety.

17 Q. And what were the results that were  
18 modeled in that project for the string inverters by  
19 distance?

20 A. Well, I don't have the exact sound levels  
21 as a function of distance but, as I recall, the  
22 predicted sound level at any houses there was really  
23 low, in the 30 dBA, something like that.

24 Q. And how far were those residences from  
25 the locations of the string inverters?

1           A.    I -- I don't have all the plots and  
2 things for that project here with me.

3           Q.    Going back to CCPC Exhibit 7, can you  
4 tell me what information in this document you  
5 utilized in order to model the sound levels from the  
6 central inverters in the Alamo Project?

7           A.    Well, there's a graph. Of course it's on  
8 page 28 but it's in section 4.2 of the report towards  
9 the end. There's a plot that shows the measured  
10 one-third octave band sound power level.

11          Q.    Give us a moment to find that page.  
12 Would that be the 18th page of the PDF?

13          A.    I don't know. I have a hard copy here.

14          Q.    Okay.

15          A.    None of the pages are numbered. It's  
16 section 4.2.

17          Q.    All right. Is that the section that is  
18 entitled "Measurement at 4600 kVA, 1350 V DC U0N  
19 modulation 100% fan load"?

20          A.    Yes, that's the page.

21          Q.    All right. And would you tell me how you  
22 utilized the information on this page in order to  
23 conduct your model?

24          A.    Yeah. Well, this is the ideal  
25 information that's required for modeling, the

1 detailed sound power level spectrum. As I mentioned  
2 before, this is what you're looking for from all  
3 manufacturers and most of them don't even know what  
4 you're talking about but this is exactly what you  
5 need.

6 This was used directly to model each  
7 central inverter for Alamo and was converted to full  
8 octave bands because all modeling is done in octave  
9 bands other than this fine resolution, a third octave  
10 band, and that also this test was done on the  
11 inverter itself.

12 Now, in the field, each inverter has an  
13 accompanying medium voltage transformer, small  
14 transformer, so in our model we added in the  
15 additional sound from a medium voltage transformer,  
16 combined the two into a source and then placed them  
17 throughout the site where shown in the current site  
18 plan.

19 (Off the record.)

20 ALJ AUGOSTINI: So, Carolyn, why don't  
21 you read where you left off.

22 (Record read.)

23 ALJ AUGOSTINI: I'm assuming -- I don't  
24 want to assume incorrectly, that was the end of your  
25 answer?

1 THE WITNESS: I think that was the end of  
2 my answer as I recall.

3 ALJ AUGOSTINI: Thank you.

4 MR. VAN KLEY: Okay. Well, let's move  
5 forward then.

6 Q. (By Mr. Van Kley) So if I'm understanding  
7 your testimony, in order for you to model the  
8 predicted sound levels for a central inverter, you  
9 need to know the sound power levels such as those  
10 that we see in section 4.2 of CCPC Exhibit 7?

11 A. That's correct, yes.

12 Q. Now, earlier in your testimony you stated  
13 that there are reports issued by -- issued for other  
14 inverter models that contain information about sound.  
15 Do you recall that testimony?

16 A. Yes.

17 Q. Are you aware of the existence of any  
18 sound test reports for inverter models, other than  
19 CCPC Exhibit 7 and other than the SMA report for the  
20 string inverters that you referenced, that contain  
21 any information about the sound power levels for any  
22 other inverter model?

23 MR. SETTINERI: And I apologize,  
24 Mr. Van Kley, I'll have to object just because it's a  
25 compound question in terms of asking about central

1 and string inverters in the same question.

2 MR. VAN KLEY: I'll rephrase.

3 ALJ AUGOSTINI: Thank you.

4 Q. (By Mr. Van Kley) So, Mr. Hessler, let's  
5 just break this down. We have here CCPC Exhibit 7,  
6 and you also mentioned that you had a sound test  
7 report for SMA string inverters, correct?

8 A. That's correct.

9 Q. Okay. Other than those two sound test  
10 reports, are you aware of any sound test reports for  
11 inverters that contain sound power level information?

12 A. To my knowledge, I know of no other  
13 useable test reports or acoustical performance  
14 information on any other model of inverter that is  
15 sufficient to do any kind of reliable modeling.

16 Q. Okay. Going back to my question, do you  
17 know of any such reports that contain sound power  
18 levels for inverter models other than those --

19 A. As I recall -- as I recall what they  
20 normally provide is the near field sound pressure  
21 level which would need to be converted into a power  
22 level based on the physical size of the unit but  
23 normally the only thing that's reported are sound  
24 pressure level measurements taken near the unit,  
25 without any frequency content, I might add.

1           Q.    Is that information adequate in order to  
2           make any prediction about the sound levels coming  
3           from those models?

4           A.    I don't think that's sufficient to do any  
5           meaningful modeling.

6           Q.    You may need to help me with the  
7           terminology here but we'll take a stab at it, at my  
8           question.  Is there information in CCPC Exhibit 7  
9           that tells you what the expected sound of this  
10          inverter unit would be at the unit itself?

11          A.    Do you mean the sound pressure level,  
12          what you would actually measure with a meter?

13          Q.    Yes.

14          A.    Yes.  I believe on the preceding two  
15          pages.  We were talking about section 4.2, just  
16          before that there's a couple of pages that have  
17          screenshots of the instrument that shows, I believe,  
18          the sound pressure level over the surfaces of the  
19          unit.  I don't know if you can see those graphics.  I  
20          wish they had page numbers on here but the one I'm  
21          looking at is like a blue cross with little squares  
22          with numbers in them.  Do you see that?

23          Q.    Yes.

24          A.    Okay.

25          Q.    And that page, the first line on that

1 page, below the two words at the top which say "Test  
2 Documentation" and then you have a line that reads  
3 "Cuboid measurement surface with 26 finite  
4 measurement surfaces of 1, 25m x 1, 1m."

5 A. Right.

6 Q. We'll just use that reference to identify  
7 this page then.

8 A. Okay. Yeah, so what that screenshot says  
9 is "Schallintensitat." That means noise intensity in  
10 German. And I believe these levels are the sound  
11 pressure levels at discrete points scanning over one  
12 of the sides of the unit, so in this case the levels  
13 range from let's say 67 to 76 dBA, it looks like.

14 Q. All right. With respect to the other  
15 reports that you have seen about sound from other  
16 inverter models, do those reports or do any of those  
17 reports contain sound pressure levels measured with a  
18 meter at the inverter?

19 A. Yes. That's usually the only information  
20 that's provided. It will be a single sound pressure  
21 level close to the unit.

22 Q. And do any of those other reports show  
23 that the inverter model subject to those reports have  
24 a higher -- have a sound pressure level measured at  
25 the inverter that is higher than the levels you see

1 on this page we've been looking at for CCPC  
2 Exhibit 7?

3 MR. SETTINERI: I'll just object to the  
4 question as being ambiguous as we've been talking  
5 about string and central inverters.

6 MR. VAN KLEY: I'm talking about any  
7 inverters, whether it's string or central. There's  
8 nothing ambiguous about that question.

9 A. My recollection is that the levels in  
10 those reports were comparable to the levels we're  
11 seeing here. I didn't pay a lot of attention to them  
12 because it was too vague, there wasn't any frequency  
13 content. I looked at it for 30 seconds and put it  
14 down, so I don't remember the numbers exactly.

15 Q. Yeah. Do you remember whether any of the  
16 numbers for those other inverters were higher than  
17 the numbers you see on the page in CCPC Exhibit 7  
18 we've been looking at?

19 MR. SETTINERI: Object. Ambiguous as to  
20 what pages and what numbers we're looking at.

21 MR. VAN KLEY: I think that's pretty darn  
22 clear. It's the one we're looking at.

23 MR. SETTINERI: There's a range of  
24 frequencies. There's multiple numbers in this  
25 document.



1 MR. VAN KLEY: All of our questions have  
2 been about the page that is labeled at the top with  
3 the words "Cuboid measurement surface with 26 finite  
4 measurement surfaces." That's the page we're on and  
5 that's the page I'm asking the question about. I  
6 think it's very clear. So let me re-ask the question  
7 now that we're all focused on that page.

8 Q. (By Mr. Van Kley) Mr. Hessler --

9 A. Well, it sounds just like your last  
10 question but, no, as I recall, I think the other  
11 values for the other models were comparable to what  
12 we're looking at here.

13 Q. Yeah. And my question is whether you can  
14 recall any of those other numbers from the other  
15 reports being higher than the numbers we're looking  
16 at here.

17 A. I don't remember what those other numbers  
18 were but they were in this same ballpark.

19 Q. Let's go to page 4 of your testimony  
20 marked as Company Exhibit 15.

21 A. Okay.

22 Q. And I'm focused on Answer 11 of your  
23 testimony on that page.

24 A. All right.

25 Q. The first sentence in that answer, after

1 the word "No," states that "The nearest  
2 non-participating residence as things currently stand  
3 is approximately 600 feet from an inverter while the  
4 next nearest homes are generally more than 675 feet  
5 away." Do you see that sentence?

6 A. Yes.

7 Q. Can you tell me how close the nearest  
8 non-participant's property line will be from a  
9 central inverter in the Alamo Project?

10 A. Not exactly; however, if we go to the  
11 sound contour plot that's at the end of this  
12 testimony.

13 Q. Okay. Just give us a moment to find  
14 that.

15 A. All right.

16 ALJ AUGOSTINI: Mr. Hessler, you  
17 previously identified that as Exhibit DMH-S1 in your  
18 testimony?

19 THE WITNESS: Yeah, that's correct.  
20 Yeah, thank you.

21 ALJ AUGOSTINI: And that's the last page  
22 of your testimony.

23 THE WITNESS: That's correct.

24 ALJ AUGOSTINI: Okay. Thank you.

25 MR. VAN KLEY: All right.

1           Q.     (By Mr. Van Kley) Mr. Hessler, you can  
2 continue with your answer.

3           A.     Okay. The nearest non-participating  
4 house is the one that's in the extreme north end of  
5 the Project where there's one inverter by itself  
6 there and the house is to the east-northeast of the  
7 inverter location. That house is -- the house itself  
8 is 600 feet. The property line, you can see, is not  
9 that different from the house itself in that case, so  
10 only slightly less than 600 feet.

11          Q.     Are there any other central inverters  
12 located closer than 600 feet from a non-participant's  
13 property line?

14          A.     Yeah, I would have to say yes.

15          Q.     Can you point out where on Exhibit DMH-S1  
16 we can find this property line?

17          A.     Well, if we just go down from that single  
18 unit in the north end of the site, there's a group of  
19 panels below that with four inverters distributed  
20 through that panel area. The inverter that's on the  
21 west side of that group is, it looks like,  
22 significantly closer than 600 feet from the property  
23 line there where the -- you can see the contour line  
24 labeled 35 there, it looks like the sound level at  
25 that particular property line would be about 40 dBA,

1 and I think that's about the highest one out of the  
2 whole site.

3 ALJ AUGOSTINI: Mr. Hessler, if you can  
4 point to the property if you have a hard copy in  
5 front of you, just so that we're all clear. I'm  
6 more of a visual person myself, so.

7 THE WITNESS: Here we go.

8 ALJ AUGOSTINI: Thank you.

9 THE WITNESS: I don't know -- I'm talking  
10 about this area right here. I don't know if you can  
11 see that. I can't see it in my little thumbnail  
12 here.

13 ALJ AUGOSTINI: I can see it.

14 THE WITNESS: Okay.

15 ALJ AUGOSTINI: Thank you.

16 THE WITNESS: All right.

17 Q. (By Mr. Van Kley) Did you model the sound  
18 levels expected to occur at the property lines of  
19 non-participating landowners for the inverters?

20 A. Well, this graphic shows the sound levels  
21 from the Project with respect to all of the Project  
22 parcel boundaries, so yes.

23 Q. Let's look at Answer 12 of your testimony  
24 on page 4 of Company Exhibit 15. After the word  
25 "Yes," your answer to Question 12 states that

1 "Condition 3 has also been revised to state that 'The  
2 Applicant shall promptly retrofit any inverter as  
3 necessary to effectively mitigate any off-site noise  
4 issue identified during operation of the facility."  
5 Do you see that?

6 A. I sure do.

7 Q. Can you tell me what the sound level  
8 would have to be in order to trigger the retrofitting  
9 of the inverter as stated in this Condition 3?

10 MR. SETTINERI: I'll just object to the  
11 form of the question as it implies he has the  
12 authority to dictate how that condition should be  
13 applied.

14 ALJ AUGOSTINI: Mr. Hessler, if you know  
15 the answer, you may answer; if not --

16 THE WITNESS: No, I really don't know the  
17 answer to that.

18 ALJ AUGOSTINI: Thank you.

19 Q. (By Mr. Van Kley) Are you aware of  
20 anything in the Amended Stipulation, that has been  
21 marked as Joint Exhibit 2, that identifies the sound  
22 level at which an inverter would have to be  
23 retrofitted as required in Condition 3?

24 A. No, there's no specific level mentioned.

25 Q. Let's go to Answer 14. We'll first start

1 with Question 14 which states that -- or which asks  
2 that "Given the results of your modeling, is there  
3 flexibility to make changes in the preliminary layout  
4 as a result of final project engineering and avoid  
5 adverse noise impacts at non-participating  
6 residences?" Do you see that question?

7 A. Yes.

8 Q. And when you answered this question, was  
9 it your understanding that this preliminary layout is  
10 subject to change in the future?

11 A. Yes.

12 MR. VAN KLEY: I have no more questions  
13 at this time.

14 ALJ AUGOSTINI: Do any other parties have  
15 cross for Mr. Hessler? Okay. Hearing none, I will  
16 defer to you, Mr. Settineri, for redirect.

17 MR. SETTINERI: Yeah, just a couple  
18 questions, Your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Settineri:

22 Q. Mr. Hessler, you were asked some  
23 questions about sound levels at the nearest  
24 non-participating property boundaries. For  
25 reference, what is the Leq, average Leq background

1 sound for daytime level for the Project Area?

2 A. It was 39 dBA during the day.

3 Q. Okay. And for nightttime, what was the  
4 Leq average ambient?

5 A. I didn't calculate it because the  
6 inverters don't even operate at night so it's not  
7 really relevant.

8 Q. So in regard to the average ambient Leq,  
9 that is very close to what you noted would be the  
10 nearest sound contour level at a non-participating  
11 property boundary, correct?

12 MR. VAN KLEY: Objection, leading.

13 MR. SETTINERI: That's fine. I'll  
14 rephrase.

15 Q. In regards to a sound level of 40 dBA,  
16 the Leq ambient, how does the Leq ambient background  
17 of 39 dBA compare?

18 A. They're almost the same value. The  
19 background level is almost equivalent to the Project  
20 level at that property line which means that the  
21 Project would be hardly audible if audible at all.

22 MR. SETTINERI: All right. No further  
23 questions, Your Honors. Thank you.

24 ALJ AUGOSTINI: Mr. Van Kley, do you have  
25 recross?

1 MR. VAN KLEY: Yes.

2 ALJ AUGOSTINI: Please proceed.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Van Kley:

6 Q. What was the range of sound measurements  
7 found during the background sound study for the  
8 Project Area?

9 A. It did vary with time. I don't remember  
10 the bounds, the lower and the higher levels, though.

11 Q. That would be in your sound report in the  
12 Application for this project?

13 A. That's right. It's a squiggly line and I  
14 don't remember what the lows were or the highs.

15 MR. VAN KLEY: Uh-huh. Okay. I have  
16 nothing further.

17 ALJ AUGOSTINI: I have a couple questions  
18 for you, Mr. Hessler.

19 - - -

20 EXAMINATION

21 By ALJ Augostini:

22 Q. If you could turn to page 3 of your  
23 testimony and I'll direct you to Answer 10.

24 A. Okay.

25 Q. And this is where you're describing the



1 peaks and tones.

2 A. Right.

3 Q. In your opinion are those tones, that  
4 appear during the sound intensity test, are those  
5 inaudible, is that your conclusion?

6 A. Well, I'm concluding they're inaudible at  
7 the distances we're talking about here to the nearest  
8 houses which is 500, 600 feet -- well, 600 feet right  
9 now. In the test report those measurements were  
10 taken inches away from the unit and they are tones at  
11 that point but they don't stay tones hundreds of  
12 meters -- hundreds of feet away. They flatten out,  
13 disappear, and diminish in magnitude to the point  
14 where they're not significant anymore.

15 Q. Okay. My next question. Page 4 of your  
16 testimony.

17 A. Yeah.

18 Q. Answer 12. And I think I know the answer  
19 to this but do you know, and if you know, please  
20 answer, who identifies any type of off-site noise  
21 issues?

22 A. It seems to me that it would be the  
23 result of a complaint but I don't know if there's any  
24 official person that's in charge of it.

25 ALJ AUGOSTINI: Okay. Thank you. That's

1 all I have for Mr. Hessler. Thank you for your time.

2 MR. VAN KLEY: Your Honor, I do have a  
3 follow-up question to your question.

4 ALJ AUGOSTINI: Okay. Please proceed.

5 - - -

6 FURTHER RE-CROSS-EXAMINATION

7 By Mr. Van Kley:

8 Q. Mr. Hessler, just for clarification of  
9 the record, can you define "tone" as you use that  
10 term in Answer 10 of your testimony?

11 MR. SETTINERI: Objection. Objection. I  
12 don't believe, Your Honor, you asked any questions  
13 about Question 10.

14 MR. VAN KLEY: We had some testimony  
15 about tones. I think she asked about Question 10.

16 MR. SETTINERI: I stand corrected. I  
17 stand corrected. Go ahead.

18 A. A prominent discrete tone is typically  
19 defined as a particular one-third octave band level  
20 that exceeds the average of the neighboring bands by  
21 more than a certain number of decibels and it's  
22 frequency dependent. But in this case, when we're  
23 looking at the sound power of the inverter, which was  
24 measured a few inches away, the 3150 hertz and the  
25 6300 hertz bands were 11 dB above the neighboring

1 bands and, in that region of the frequency spectrum,  
2 a prominent tone would be said to exist if the  
3 exceedance was 5 or more. So these are very  
4 prominent in the near field but that doesn't  
5 translate to what you hear hundreds of feet away.  
6 That's a very important distinction.

7 Q. What's the difference between sound that  
8 has such a tone and sound that does not have such a  
9 tone?

10 A. Well, from a qualitative perspective, if  
11 you were standing right next to this inverter, you  
12 would hear these two tones in the higher frequencies  
13 very clearly, but 600 feet away you wouldn't hear  
14 them.

15 Q. Yeah, I'm not sure that you understood my  
16 question. Just to make sure that everybody  
17 understands what a tone is, I'm asking you to explain  
18 how the listener would perceive a noise with tones  
19 any differently than the listener would discern a  
20 noise without tones.

21 A. Yeah. Well, tones give the sound an  
22 identifiable character as opposed to a sound that's  
23 broadband or doesn't have any tones, it would just  
24 sound kind of bland, but when there are tones in  
25 there, it's much more noticeable. You don't want

1 tones at any sensitive receptor.

2 MR. VAN KLEY: Okay. I think that  
3 answers my questions. Thank you.

4 ALJ AUGOSTINI: Mr. Hessler, I just have  
5 one more follow-up question and then we'll let you  
6 off the hook.

7 THE WITNESS: Okay.

8 - - -

9 FURTHER EXAMINATION

10 By ALJ Augostini:

11 Q. If you turn to your Exhibit DMH-S1 and  
12 just for purposes of clarification, those purple --  
13 on the legend it says they're residences, the purple  
14 boxes. Is that also the property line of the  
15 residence or is it just the residence?

16 A. It's the actual house. Yeah, the actual  
17 house. The yellow lines are the boundaries of the  
18 parcels on which the Project is being sited.

19 THE WITNESS: You're muted again.

20 ALJ AUGOSTINI: This is my first time  
21 doing a remote hearing. Thank you.

22 Mr. Settineri, would you like to move for  
23 the admission of Company Exhibit 15?

24 MR. SETTINERI: Yes, Your Honor. At this  
25 time we'll move for the admission of Company Exhibit

1 15, along with the attachment to that testimony. We  
2 would also move for the admission of CCPC Exhibit 7,  
3 Your Honor, as well.

4 ALJ AUGOSTINI: Are there any objections?

5 MR. VAN KLEY: No.

6 ALJ AUGOSTINI: Okay. Hearing none, CCPC  
7 Exhibit 7 and Company Exhibit 15 are so moved into  
8 the record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 ALJ AUGOSTINI: I think now would be a  
11 good time to break for lunch, so why don't we take an  
12 hour break and meet back at 1:35 if that's okay with  
13 everyone and then we'll start with Mr. Robinson.

14 (At 12:35 p.m. a lunch recess was taken  
15 until 1:35 p.m.)

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1 Monday Afternoon Session,  
2 October 26, 2020.

3 - - -

4 ALJ AUGOSTINI: It looks like we are at  
5 1:35. Thank you, everyone, for being on time.

6 Carolyn, are you ready?

7 THE COURT REPORTER: Yes.

8 ALJ AUGOSTINI: So I believe we left off  
9 with Mr. Robinson. With that, Mr. Settineri, I will  
10 defer to you.

11 MR. SETTINERI: There we go. All right.

12 Good afternoon, Your Honors. At this  
13 time the Company will call Mr. Matthew Robinson to  
14 the stand, please.

15 MS. KING: Mr. Robinson, you've been  
16 transferred to a panelist position. We can see you  
17 and I presume hear you because I don't see you have  
18 your mute on.

19 THE WITNESS: Hello?

20 MS. KING: Yup, we can hear you fine.

21 ALJ AUGOSTINI: Mr. Robinson, will you  
22 please raise your right hand.

23 (Witness sworn.)

24 ALJ AUGOSTINI: Please proceed.

25 MR. SETTINERI: Thank you, Your Honor.

1 At this time, Your Honor, we would like to mark as  
2 Company Exhibit 16, the Supplemental Testimony of  
3 Matthew Robinson.

4 ALJ AUGOSTINI: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. SETTINERI: Thank you, Your Honor.

7 - - -

8 MATTHEW ROBINSON

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

11 DIRECT EXAMINATION

12 By Mr. Settineri:

13 Q. Good afternoon, Mr. Robinson.

14 A. Good afternoon.

15 Q. Can you please state your name and  
16 business address for the record, please.

17 A. My name is Matthew Robinson. I work at  
18 Environmental Design & Research; 217 Montgomery  
19 Street, Syracuse, New York.

20 Q. Okay. And do you have before you what's  
21 been marked as Company Exhibit 16?

22 A. I do.

23 Q. And can you please identify that for the  
24 record, please.

25 A. That is my Supplemental Testimony.

1           Q.    And was that prepared by you or at your  
2 direction?

3           A.    Yes, it was.

4           Q.    And do you have any revisions to that  
5 testimony at this time today?

6           A.    I do not.

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

9           A.    Yes, they would.

10           MR. SETTINERI: All right. Thank you,  
11 Mr. Robinson. Your Honors, the witness is available  
12 for cross-examination.

13           ALJ AUGOSTINI: Mr. Van Kley, please  
14 proceed.

15           MR. VAN KLEY: Thank you, Your Honor.

16                                 - - -

17                                 CROSS-EXAMINATION

18 By Mr. Van Kley:

19           Q.    Mr. Robinson, please go to page 2 of your  
20 testimony marked as Company Exhibit 16.

21           A.    I'm there.

22           Q.    Start with Answer 8 on that page.

23           A.    Yup.

24           Q.    At the beginning of that answer you state  
25 that "Providing additional setback distance enhances



1 the overall goals of the Landscape Mitigation Plan."  
 2 And then you say that "The setbacks do this by  
 3 allowing for greater options and flexibility when  
 4 determining specific vegetation material and  
 5 placement within the proposed modules." And then, of  
 6 course, you have a preliminary landscape plan  
 7 attached to your testimony as Attachment 1, correct?

8 A. Correct.

9 Q. And your preliminary landscape plan  
 10 provides a preliminary design for plants that could  
 11 be planted in order to screen or partially screen  
 12 views of the solar panels from nearby residences,  
 13 correct?

14 A. It includes residences and also more than  
 15 that as well, but the focus is on non-participating  
 16 adjacent residences.

17 Q. Okay. Now, how much -- how much space  
 18 in -- let me start over.

19 How much space do you need between the  
 20 solar field's fence and the nearest non-participating  
 21 landowner's property line in order to plant the  
 22 plants according to the design in your preliminary  
 23 landscape design?

24 A. That distance does vary depending on the  
 25 module proposed. The modules that have more

1 vegetation and provide a larger amount of screening  
2 require an additional distance than the modules that  
3 are only pollinator habitat.

4 Q. Okay. So let's go to Module 4 in your  
5 preliminary report then which would be in section 4  
6 and let's see if we can get a PDF page number for  
7 that.

8 A. Let me get a PDF page number.

9 MR. VAN KLEY: All right. It looks like  
10 if you're -- if you're using a PDF of Mr. Robinson's  
11 testimony, you will find Module 4 on the 19th page of  
12 the PDF.

13 Q. And the title on the top of that page is  
14 "Module 4 - Adjacent House Hedgerow," correct?

15 A. Correct.

16 Q. And would you explain the situation in  
17 which the preliminary landscape plan envisions that  
18 Module 4 would be employed?

19 A. So that Module 4, as it states, is for an  
20 adjacent residence which would be a non-participating  
21 adjacent resident. It's designed that way to have  
22 stationary viewers and provide the highest amount of  
23 screening.

24 Q. Okay. And how much space do you need  
25 between the solar facility fence and the property

1 line of the solar facility in order to plant the  
2 plants that are included in Module 4?

3 A. That space does vary as the module shows,  
4 but we are looking at around 25 feet.

5 Q. Okay. Would you point out to me where  
6 the plan shows that the distance would vary?

7 A. It actually -- I'm realizing it shows it  
8 on Modules 1, 2, and 3 have the plan separate. This  
9 module, because it has an additional amount of trees,  
10 it took up space so we were using the plan that was  
11 set out for Module 3 as they require the same  
12 spacing.

13 Q. Did --

14 A. If we went back a page, we can see the  
15 individual plan for Module 3 and that shows --

16 ALJ AUGOSTINI: Mr. Robinson, would you  
17 mind going back where you said if you look at Module  
18 3. You cut out a little bit there.

19 THE WITNESS: Sure.

20 ALJ AUGOSTINI: And maybe Carolyn can  
21 read off where she last got your testimony.

22 (Record read.)

23 A. So that individual plan on Module 3 shows  
24 a 15-foot distance from the fence line to where the  
25 module would start and then a 25-foot, plus or minus,

1 space for that module.

2 Q. So going back to Module 4 then, how much  
3 space do you need to include the plants that you have  
4 listed in your Module 4 Plant List?

5 A. What we are currently showing is that of  
6 40 feet.

7 Q. Okay. Well, for the Sugar Maple in the  
8 Module 4 Plant List, you have the width is 40 to  
9 50 feet, correct?

10 A. That is correct.

11 Q. And for the Bur Oak further down in that  
12 list, you have the width as 60 to 80 feet, correct?

13 A. That is correct.

14 Q. So if you were -- if your buffer zone is  
15 only 25 feet, then you would not be able to fit some  
16 of those plants in that buffer zone, right?

17 A. No, that's not exactly what that means.  
18 Those mature sizes are based off of a specimen tree  
19 that would have nothing else around it and it would  
20 be allowed to grow to its full mature size. That  
21 would take longer than the life proposed for this  
22 project currently and, as we know, trees that we see  
23 in hedgerows and that are established in different  
24 areas do not often grow to their full maximum  
25 potential and can be trimmed in different ways over

1 the years to make sure that they do fit within that  
 2 space. We're providing enough space for that tree to  
 3 become very healthy and grow to a very thick,  
 4 established condition. We do not expect that in the  
 5 life of the Project that tree will get to that full,  
 6 mature size.

7 Q. Would you go to Answer 11 on page 3 of  
 8 your testimony.

9 A. Yup.

10 Q. And then also would you pull out Joint  
 11 Exhibit 2 which is the Amended and Restated Joint  
 12 Stipulation and Recommendation.

13 A. I have it.

14 Q. All right. So looking back at Answer 11  
 15 on page 3 of your testimony, I'd like you to go to  
 16 line 17 and 18, where it is stated that the Applicant  
 17 will replace any failed plantings to ensure at least  
 18 90 percent of the vegetation survives for five years.  
 19 Do you see that?

20 A. I do see that.

21 Q. And here you are discussing proposed  
 22 Condition 15 of the Joint Stipulation, correct?

23 A. Correct.

24 Q. Now, I need you to interpret this for me  
 25 and specifically the question I have is, does this

1 mean that there's no requirement in the Stipulation  
2 to replace any of the vegetation after five years?

3 A. I am not able to answer that question.

4 Q. Were you the person that came up with the  
5 90 percent figure for replacing the vegetation?

6 MR. SETTINERI: I'll just object to the  
7 extent it calls for confidential settlement  
8 discussions but, with that, Mr. Robinson, you can  
9 answer.

10 A. No, that is not my number.

11 Q. Uh-huh. Do you know why 90 percent was  
12 the figure that was chosen?

13 A. I am not exactly sure. That is a very  
14 common figure that I've seen before from different  
15 municipalities and different regulations. It did not  
16 raise any flags with me or bring up any concerns that  
17 I had so I did not dig further into exactly where it  
18 came from.

19 Q. In Answer 11 in your testimony, the last  
20 sentence discusses perimeter lighting, correct?

21 A. Correct.

22 Q. Let's go back to Condition 15 of the  
23 Joint Stipulation marked as Joint Exhibit No. 2 and  
24 we'll take a look at the second-to-the-last sentence  
25 in that condition which reads as follows: "Lights

1 shall be motion-activated and designed to narrowly  
2 focus light inward toward the facility, such as being  
3 downward-facing and/or fitted with side shields." Do  
4 you see that sentence?

5 A. I do.

6 Q. I have a question about the last part of  
7 that sentence which refers to fitting with side  
8 shields. Can you explain what a side shield is?

9 A. I can explain from my landscape  
10 architecture background and the way that I have dealt  
11 with lighting before. There may be a term in the  
12 industry that I am not quite aware of that explains  
13 it slightly better but those side shields are making  
14 it so you don't have light trespass above a certain  
15 angle from the ground towards the sky. So they're  
16 controlling the light trespass up towards the sky.

17 Q. So is the shield located on the top of  
18 the light then or on the sides of the light or the  
19 bottom of the light?

20 A. That depends on the fixture that is  
21 chosen and how it is designed.

22 Q. With the -- if a -- if side shields are  
23 employed on the light, can the light still be pointed  
24 at somebody else's property?

25 A. I am not -- again, I'm not an electrical

1 engineer. If somebody made a really bad mistake  
2 hooking it up, I guess they could hook it up upside  
3 down somehow but that would not make any sense and  
4 that would be quickly remedied so, in reality, no.  
5 As long as everything is installed correctly, then  
6 that is not a possibility.

7 Q. How are side shields different than --  
8 let me start over.

9 How do the side shields have any  
10 different result than facing the lights downward?

11 A. That, again, all depends on the fixture  
12 that's chosen.

13 Q. Going back to the 90 percent figure for  
14 vegetation. How is that 90 percent going to be  
15 calculated?

16 A. There are different types of measurements  
17 that are done based off of the health of the  
18 plantings that are out there. So if we have one  
19 plant that happened to die throughout the modules, we  
20 would look at a specific range of that module and  
21 take a percentage of how many of those plants have  
22 died and be able to extend that further out and  
23 create a percentage of the overall landscape.

24 If there happens to be some type of  
25 incident where the module itself in an area has lost



1 multiple plants so it's not one species that's gone  
2 from here and there, it's a chunk that's gone, then  
3 that would be evaluated separately based off of the  
4 amount of area that is -- that that screen is  
5 expected to provide.

6 Q. So let's just say that you have  
7 15 percent of -- let me just back up a little bit  
8 here.

9 So is the 90 percent based on the number  
10 of plants that have survived or the amount of space  
11 in which plants still survive or some other metric?

12 A. It's kind of a mix of both of those and  
13 that's what I was trying to explain with depending on  
14 which module and what is the effect that's happened.

15 When you're looking at a Module 2, which  
16 is designed to be along a roadside and you have  
17 clumps of vegetation that are spaced out 35, 40,  
18 50 feet, calculating a percentage of what that is  
19 screening and the health of those plants is just  
20 going to be very different than when we're  
21 calculating it for Module 4 that is meant to be  
22 screening a single viewer, stationary by a house.

23 I -- I wish there was a better way to  
24 explain that but it's the way the modules are set up  
25 that creating these percentages are giving us an idea

1 as to our goals and that's what we're striving for,  
2 but exactly how they're calculated between modules is  
3 a little different.

4 Q. Uh-huh. Do you interpret Condition 15 to  
5 require the 90 percent figure to be calculated  
6 separately for each of the modules?

7 A. Again, that would depend on what type of  
8 dieback or what type of incident we're looking at as  
9 to what the health of those modules looks like and  
10 that's where I was saying again, it's a little hard  
11 to do it as a whole based off of the way that those  
12 modules are set up and the spacing that is between  
13 them, so a lot of it is you're looking at the goals  
14 of that module and is it creating 90 percent, you  
15 know, is the vegetation creating 90 percent of that  
16 goal in some way so there's 90 percent left and  
17 you're getting the goal of that vegetation. It's  
18 just very different between the modules as to how  
19 that would be calculated.

20 Q. So let's just take an example for Module  
21 4 which is designed to protect non-participating  
22 neighboring residences from a view of the facility,  
23 and so what would happen if 5 percent of the  
24 vegetation in Module 4 dies but all 5 percent of it  
25 was located near one person's house; would that

1 5 percent then from that module not be required to be  
2 replaced?

3 A. No. We would be replacing it or the --  
4 the Stipulation says that we would be replacing that  
5 or it would be replaced.

6 Q. Okay.

7 A. And that's why -- you know, I understand  
8 your question completely and that's why it's not  
9 based off of the entire -- 90 percent is kind of  
10 based off the view that the person has, so we're  
11 taking -- if it's a roadway and we have a stretch of  
12 roadway that has a certain module, that is a view  
13 that would be considered.

14 Each individual property that is adjacent  
15 and non-participating, we would not consider those to  
16 be a hundred percent the same. So if one person lost  
17 10 percent of their plants, it is -- the Company's  
18 goal is not to sit there and say they don't get  
19 anything back because we're still screening over here  
20 to the left and to the right.

21 So that -- that 90 percent is trying to  
22 create a goal for us to shoot for, with the  
23 understanding that the design and the methodology of  
24 the module is what is really trying to be held with  
25 that 90 percent, not as much exactly just "one plant

1 is alive and one plant is dead" analysis.

2 Q. Can you point me -- point me to any  
3 language in Condition 15 that requires what you just  
4 said to be done?

5 A. I am not sure. I'm not sure it's said  
6 that way exactly but that was my understanding.

7 Q. Is your preliminary landscape mitigation  
8 plan included in the Application in this case that  
9 was marked as Company Exhibit 1?

10 A. I'm just not sure if the wording is  
11 correct. I mean, it wasn't included in the original  
12 Application. It's included as part of the  
13 supplemental.

14 Q. As part of your Supplemental Testimony  
15 you mean?

16 A. Yes, I believe that's correct.

17 MR. VAN KLEY: I have no further  
18 questions at this time.

19 ALJ AUGOSTINI: Thank you.

20 Do any other parties have cross? Hearing  
21 none, I'll pass it off to Mr. Settineri for redirect.

22 MR. SETTINERI: Thank you, Your Honor.

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REDIRECT EXAMINATION

By Mr. Settineri:

Q. Mr. Robinson, just one question. You used the phrase "we" in your testimony. When you refer to "we," who are you referring to?

A. Sorry. When I was saying "we," I realized that and I tried to correct myself. When I was saying "we," I was meaning EDR, my company, and that's where I tried to change and not use "we" and talk about the petitioner or the Company, ORR, instead. So when I said "we," I was talking about EDR.

MR. SETTINERI: Okay.

ALJ AUGOSTINI: Is there any recross?

MR. VAN KLEY: No.

MR. SETTINERI: Your Honor, I hadn't really finished yet.

ALJ AUGOSTINI: Oh.

MR. SETTINERI: I'm sorry.

ALJ AUGOSTINI: Okay. Thank you.

MR. SETTINERI: All right. Thank you, Your Honor. No further questions.

ALJ AUGOSTINI: Thank you.

Any recross?

MR. VAN KLEY: Still no recross.

1 ALJ AUGOSTINI: Thank you.

2 - - -

3 EXAMINATION

4 By ALJ Augostini:

5 Q. Mr. Robinson, I have one question for  
6 you. If you turn to page 3 of your testimony, Answer  
7 11.

8 A. Yup.

9 Q. And the last sentence that starts with  
10 "In addition" on line 18.

11 A. Yup.

12 Q. Do you know who determines when a  
13 lighting impact occurs that you described in that  
14 sentence?

15 A. I do not know who is actually in charge  
16 of that.

17 ALJ AUGOSTINI: Okay. Thank you. That's  
18 all I have for you.

19 THE WITNESS: Thank you.

20 ALJ AUGOSTINI: With that, Mr. Settineri,  
21 would you like to move for Company Exhibit 16 into  
22 the record?

23 MR. SETTINERI: Yes, Your Honor. At this  
24 time we'll move for the admission of Company Exhibit  
25 16 into the record, including Attachment 1 to that

1 testimony. Thank you.

2 ALJ AUGOSTINI: Is there any objection?

3 MR. VAN KLEY: No objection.

4 ALJ AUGOSTINI: All right. Hearing none,  
5 Company Exhibit 16 will be admitted into the record.  
6 Thank you.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. SETTINERI: Thank you.

9 ALJ AGRANOFF: Mr. Settineri, are you  
10 ready at this time to call your next witness?

11 MR. SETTINERI: Yes, sir, Your Honor. At  
12 this time we will call Mr. Matt Marquis to the stand,  
13 please.

14 MS. KING: Mr. Marquis, you've been  
15 promoted to a panelist. If you want to go ahead and  
16 turn your camera on. I see you and you are unmuted.  
17 Great.

18 THE WITNESS: Can you hear me?

19 MS. KING: Yes, I can hear you. Thanks.

20 THE WITNESS: Great.

21 ALJ AGRANOFF: I'm looking for  
22 Mr. Marquis. There you are. Please raise your right  
23 hand.

24 (Witness sworn.)

25 ALJ AGRANOFF: Mr. Settineri.

1 MR. SETTINERI: Thank you, Your Honor.

2 - - -

3 MATTHEW MARQUIS

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

6 DIRECT EXAMINATION

7 By Mr. Settineri:

8 Q. Good afternoon, Mr. Marquis.

9 A. Good afternoon.

10 MR. SETTINERI: Your Honor, at this time  
11 we'd like to mark as an exhibit, Company Exhibit 18.

12 ALJ AGRANOFF: It shall be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. SETTINERI: Thank you.

15 Q. Mr. Marquis, could you please state your  
16 name and address for the record, please.

17 A. Sure. My name is Matt Marquis. I work  
18 for Hull & Associates. Business address, 6397  
19 Emerald Parkway, Suite 200, Dublin, Ohio 43016.

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

22 A. I do.

23 Q. And could you identify that for the  
24 record, please.

25 A. It's my Direct Testimony.



1           Q.    All right.  Was that prepared by you or  
2   at your direction?

3           A.    Yes, it was.

4           Q.    All right.  And do you have any revisions  
5   to that testimony today, sir?

6           A.    I do.  I just have one revision.

7           Q.    If you could slowly read that for the  
8   court reporter, please.

9           A.    Sure.  If you go to page 5 of my  
10   testimony.  This is in Answer 10, on page 5, line 7,  
11   I would like to remove the words "reviewed, approved"  
12   and replace with a single word "designed."  So that  
13   line will now read "required that they are designed  
14   and maintained in accordance with Ohio EPA."

15          Q.    All right.  Do you have any other  
16   revisions, Mr. Marquis?

17          A.    I do not.

18          Q.    And if I asked you the questions in your  
19   testimony, would your answers, as revised today, be  
20   the same?

21          A.    Yes.

22                MR. SETTINERI:  Okay.  Thank you.

23                Your Honors, the witness is available for  
24   cross-examination.

25                ALJ AGRANOFF:  Mr. Van Kley.

1 MR. VAN KLEY: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Van Kley:

5 Q. Let's go to page 4 of your testimony  
6 which is identified as Company Exhibit 18. And let's  
7 also go to Joint Exhibit 2 which is the Amended and  
8 Restated Joint Stipulation and Recommendation. Let  
9 me know when you have that in front of you,  
10 Mr. Marquis.

11 MR. SETTINERI: Mr. Marquis may not have  
12 a copy in front of him. If need be, we can take one  
13 to him.

14 MR. VAN KLEY: Yes, please do that.

15 MR. SETTINERI: He has the -- I believe  
16 he has what you previously requested was a redline of  
17 the Stipulation, Mr. Van Kley.

18 MR. VAN KLEY: That would work too.

19 MR. SETTINERI: One minute.

20 Q. (By Mr. Van Kley) Mr. Marquis, when you  
21 have access to the redline of Joint Exhibit 2, go to  
22 Condition 29.

23 A. Okay. I'm there.

24 Q. All right. Looking at Condition 29, I'd  
25 like to refer you to language that is towards the

1 center of that condition and go to the sentence that  
2 discusses the Ohio EPA guidance document entitled  
3 "Guidance on Post-Construction Storm Water Controls  
4 for Solar Panel Arrays."

5 A. I see that.

6 Q. Okay. Now, the first part of that  
7 sentence states that the Applicant will provide  
8 confirmation that it incorporated this guidance,  
9 correct?

10 A. Correct.

11 Q. And do you know what's meant by the  
12 requirement to incorporate the guidance?

13 A. It's my understanding that the  
14 calculations will be provided to the Preble County  
15 Office of Land Use Management and the Preble Soil and  
16 Water Conservation District.

17 Q. And what calculations are you referring  
18 to?

19 A. These are calculations related to  
20 coverage under the Ohio Construction General Permit.  
21 Coverage under that permit requires that for the  
22 design of the site that calculations are performed  
23 for existing and post-construction conditions related  
24 to stormwater management at the site.

25 MR. VAN KLEY: I would like to mark my

1 next exhibit as CCPC Exhibit 9, which is entitled  
2 "Guidance on Post-Construction Storm Water Controls  
3 for Solar Panel Arrays."

4 ALJ AGRANOFF: It shall be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Van Kley) Mr. Marquis, do you  
7 have that exhibit in front of you?

8 A. Yes, I do.

9 Q. Is this the document to which Condition  
10 29 refers in the sentence that you and I have been  
11 discussing?

12 A. Yes.

13 Q. Is it your understanding that the  
14 Applicant is required by Condition 29 to perform  
15 everything that CCPC Exhibit 9 provides?

16 A. No. CCPC Exhibit 9 provides additional  
17 tools in the tool belt for the engineer of record to  
18 use for the final design of the site and stormwater  
19 management.

20 Q. So what is your understanding as to what,  
21 in CCPC Exhibit 9, the Applicant is required to  
22 implement?

23 A. That will depend on the final design of  
24 the site. So the engineering company that does the  
25 final design will take not only the Construction

1 General Permit requirements to heart as they do their  
2 stormwater design but will also consider guidance  
3 included on this document, you know, page 2 has  
4 multiple design considerations as well as the  
5 information on page 1 of that exhibit and those, you  
6 know, pieces of information will be taken into  
7 consideration during that design process. However,  
8 just like anything else, it doesn't necessarily apply  
9 to every part of the site and every possible  
10 condition or every type of solar panel array  
11 installation.

12 Q. Would you go to page 1 of CCPC  
13 Exhibit No. 9 and look at the first paragraph on that  
14 page under the heading "Background."

15 A. Yes.

16 Q. The first sentence of that paragraph  
17 reads as follows: "Although the area under and  
18 between ground-mounted solar panel arrays may be  
19 covered in vegetation (normally considered pervious),  
20 the elevated panels alter the volume, velocity and  
21 discharge pattern of storm water runoff and  
22 associated pollutants and therefore require  
23 post-construction storm water management under  
24 OHC00005 (Part III.G.2.e, pages 19 to 27)." Do you  
25 see that sentence?

1           A.     I do.

2           Q.     Okay.  Do you have any disagreement with  
3 the information in that sentence?

4           A.     I disagree with the conclusion of that  
5 sentence after -- after the words "do require."  I  
6 agree that the elevated panels alter the volume,  
7 velocity, and discharge pattern, much like other  
8 types of impervious surfaces you would install on a  
9 large site like this such as gravel roads, rooftops,  
10 stuff like that.  However, the vegetation coverage  
11 beneath the panels in many cases is more than  
12 adequate to mitigate for --

13                   (Off the record.)

14                   (Record read.)

15           THE WITNESS:  Would you like me to  
16 continue the answer then from that previous question?

17           ALJ AUGOSTINI:  Yes, please.

18           THE WITNESS:  Okay.  So to finish that  
19 thought, the vegetation beneath the panels is more  
20 than adequate for the management of stormwater.

21           MR. VAN KLEY:  Okay.  I had another  
22 question after that which the witness answered.  I  
23 can re-ask it or I can just withdraw it.  Based on  
24 the answer that I got, it probably doesn't matter  
25 anyway.  Does the Bench have a preference?

1 MR. SETTINERI: Let me interrupt if I may  
2 just quickly. If the answer is not in the transcript  
3 then there was no question and answer.

4 MR. VAN KLEY: That's the thing.

5 MR. SETTINERI: I would say yes,  
6 definitely ask the question and let's make sure you  
7 get all your questions asked and answered.

8 MR. VAN KLEY: Yeah, I'm not going to ask  
9 the question. That concludes my questioning then.

10 ALJ AGRANOFF: Any other clarifying  
11 questions from counsel?

12 MR. SETTINERI: Are you asking if I have  
13 redirect or -- sorry.

14 ALJ AGRANOFF: I was going to get to you  
15 in a second.

16 Now, Mr. Settineri.

17 MR. SETTINERI: Okay. Thank you, Your  
18 Honor. No, at this time we do not have any redirect  
19 questions.

20 ALJ AGRANOFF: Okay. Thank you.

21 - - -

22 EXAMINATION

23 By ALJ Agranoff:

24 Q. I just had one clarifying question on  
25 page 5 of your testimony. Let me know when you're

1 there.

2 A. Yup, I'm there.

3 Q. If you could just give me a little  
4 context as to the standard post-construction  
5 practices that you reference.

6 A. Can you be more specific? What do you  
7 mean by post-construction practices I reference?

8 Q. If you take a look at page 5.

9 A. Yup.

10 Q. Do you see the reference?

11 A. Are you talking about line 6 in Answer  
12 10?

13 MR. SETTINERI: Your Honor, if I may. At  
14 the very top of page 5 there's a reference that  
15 "stormwater at a project can be managed through the  
16 standard post-construction practices in the General  
17 Permit" and there's also a reference. Is that the  
18 one you're referring to, Your Honor?

19 ALJ AGRANOFF: Yes.

20 MR. SETTINERI: Okay. Thank you.

21 A. Yeah, so for a large -- for a large  
22 construction site, a large civil construction site  
23 like this one and other similar projects, standard  
24 post-construction practices, as listed in the Ohio  
25 Construction General Permit, can -- can be used to



1 manage post-construction stormwater for a project.  
 2 Those are determined, like which practices to use and  
 3 their applicability is determined during the final  
 4 design of the project. There's a number of practices  
 5 available and those are listed in the Construction  
 6 General Permit.

7 Q. And who makes that determination as to  
 8 which ones are applicable?

9 A. That's determined by the design engineer  
 10 when they consider the existing conditions compared  
 11 to the post-construction conditions of the site.

12 ALJ AGRANOFF: Okay. Thank you.

13 Based on my clarifying question, does  
 14 anybody have any follow-up?

15 MR. VAN KLEY: No.

16 ALJ AGRANOFF: Okay. Thank you,  
 17 Mr. Marquis.

18 THE WITNESS: Thank you.

19 ALJ AGRANOFF: Mr. Settineri.

20 MR. SETTINERI: Thank you, Your Honor.

21 At this time the Company would move for the admission  
 22 of Company Exhibit 18, the Direct Testimony of  
 23 Mr. Matt Marquis.

24 ALJ AGRANOFF: Okay.

25 MR. SETTINERI: We would also --

1 ALJ AGRANOFF: Go ahead.

2 MR. SETTINERI: -- move for admission of  
3 CCPC Exhibit 9, "Guidance on Post-Construction Storm  
4 Water Controls for Solar Panel Arrays."

5 ALJ AGRANOFF: Any objection to the  
6 admission of either exhibit?

7 MR. VAN KLEY: No objection.

8 ALJ AGRANOFF: There being none, the  
9 aforementioned exhibits shall be admitted as part of  
10 the record at this time.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 ALJ AUGOSTINI: I think, according to our  
13 schedule, Mr. Bonifas is up next.

14 MR. SETTINERI: Yes, Your Honor. And  
15 before I call Mr. Bonifas to the stand and I'd be  
16 more than glad to, he is available as you know, I  
17 didn't know if anyone has any cross-examination or  
18 questions for Mr. Bonifas. If not, then I would just  
19 simply ask that we stipulate to the admission of his  
20 testimony but, before we go through that process, I  
21 just wanted to ask the Bench if you had a preference.

22 ALJ AUGOSTINI: I don't have any  
23 questions for Mr. Bonifas. I don't think that the  
24 other parties do. Speak up if you do. I believe we  
25 can all waive cross at this point. All right. So --

1 MR. SETTINERI: Before we -- whoops,  
2 sorry.

3 ALJ AUGOSTINI: Go ahead.

4 MR. SETTINERI: I am unmuted, good.  
5 I just wanted to confirm, Mr. Van Kley,  
6 that is correct?

7 MR. VAN KLEY: That is correct.

8 MR. SETTINERI: Okay. Thank you,  
9 Mr. Van Kley.

10 Your Honors, at this time we would like  
11 to mark as Company Exhibit 19, the Supplemental  
12 Direct Testimony of Mark J. Bonifas.

13 ALJ AUGOSTINI: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. SETTINERI: And attached to that  
16 testimony as well are various attachments that are  
17 referenced in his testimony as well and that is  
18 included in Company Exhibit 19. Based on my  
19 understanding of the agreement of the parties here,  
20 that we would move for the admission of Company  
21 Exhibit 19 into the record based on the stipulation  
22 of the parties.

23 ALJ AUGOSTINI: Are there any objections?

24 MR. VAN KLEY: No.

25 ALJ AUGOSTINI: All right. Hearing none,

1 we will admit Company Exhibit 19 with the attached  
2 exhibits into the record and, Mr. Bonifas, you are  
3 excused. Thank you.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 ALJ AUGOSTINI: Which leads us to our  
6 last witness, Mr. Conway.

7 MR. SETTINERI: Your Honor, if I may,  
8 this is Mr. Settineri. I just want to conclude our  
9 presentation but also reserve the right for rebuttal.  
10 Although, I understand we do have a Staff witness, I  
11 just want to reserve that right for rebuttal  
12 regardless.

13 ALJ AUGOSTINI: Noted. Thank you.

14 MR. SETTINERI: Thank you.

15 MR. MARGARD: Your Honor, Staff would  
16 then be prepared to call Mr. Andrew Conway.

17 MS. KING: Mr. Conway, you've been  
18 promoted to a panelist. If you wouldn't mind  
19 unmuting yourself and turning on your camera.

20 ALJ AUGOSTINI: Good afternoon,  
21 Mr. Conway.

22 THE WITNESS: Hi. Can you see me? Can  
23 you hear me?

24 ALJ AUGOSTINI: Yeah, I can see you and  
25 hear you. Please raise your right hand.

1 (Witness sworn.)

2 ALJ AUGOSTINI: Thank you. Please  
3 proceed.

4 MR. MARGARD: Thank you, Your Honor.  
5 Before proceeding, I would ask that the Supplemental  
6 Direct Testimony of Andrew Conway, filed in this  
7 matter on October 9, 2020, be marked for purposes of  
8 identification as Staff Exhibit 10.

9 ALJ AUGOSTINI: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. MARGARD: Thank you.

12 - - -

13 ANDREW CONWAY

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

16 DIRECT EXAMINATION

17 By Mr. Margard:

18 Q. State your name and business address,  
19 please.

20 A. Andrew Conway. 180 East Broad Street,  
21 Columbus, Ohio.

22 Q. And by whom are you employed and in what  
23 capacity, please?

24 A. I'm an Engineering Specialist with the  
25 Public Utilities Commission of Ohio.

1           Q.    Mr. Conway, do you have before you what's  
2   been marked as Staff Exhibit No. 10?

3           A.    Yes, I do.

4           Q.    And was that prepared by you or at your  
5   direction?

6           A.    Yes, it was.

7           Q.    And have you reviewed this document prior  
8   to taking the stand today?

9           A.    Yes.

10          Q.    And as a result of your review, do you  
11   have any changes, corrections of any kind to make to  
12   this document?

13          A.    No.

14          Q.    And if I were to ask you the questions  
15   contained in this document, would your responses be  
16   the same?

17          A.    Yes, they would.

18          Q.    And in your opinion are those responses  
19   reasonable and true?

20          A.    Yes, they are.

21               MR. MARGARD:  Thank you, Your Honors.  I  
22   respectfully move for admission of Staff Exhibit 10,  
23   subject to cross-examination, and I tender Mr. Conway  
24   for that purpose.

25               ALJ AUGOSTINI:  All right.  Jack, do you

1 have cross?

2 MR. VAN KLEY: I do.

3 ALJ AUGOSTINI: Please proceed.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Van Kley:

7 Q. Mr. Conway, I would like to ask you some  
8 questions about the Amended and Restated Joint  
9 Stipulation and Recommendation that is the subject of  
10 this supplemental hearing. It would be easiest if  
11 you could go to the copy of that Stipulation that's  
12 redlined and is attached to Mr. Herling's testimony.  
13 So if you have that, let me know when you have it in  
14 front of you.

15 A. I do have that.

16 Q. Okay. Great. Let's start at the  
17 beginning with a question or two about page 6 of that  
18 Stipulation and Recommendation which would be  
19 Recommended Condition 1.

20 A. Okay.

21 Q. All right. Looking at Recommended  
22 Condition 1, I have a question about the scope of the  
23 term "supplemental filings" that is in the third line  
24 of that recommended condition, and that question is  
25 whether it is your understanding that the

1 supplemental filings, that are referred to here,  
2 include Supplemental Testimony that has been filed  
3 and admitted into evidence in this case other than  
4 the Joint Amended and Restated Stipulation itself?

5 A. I think it can.

6 Q. All right. So let's take, as an example,  
7 Mr. Herling's testimony that you have in front of  
8 you. Is it your understanding that Mr. Herling's  
9 testimony in this case, other than the attached Joint  
10 Stipulation, is a supplemental filing as envisioned  
11 by Recommended Condition No. 1?

12 A. Yes. Typically the Application is  
13 supplemented and that's specifically marked on the --  
14 in the docket and, yes, this -- I think this would be  
15 a supplemental filing that would clarify the record.

16 Q. So elaborating on your answer then, is it  
17 your understanding that if there's a statement in  
18 Mr. Herling's Supplemental Testimony, that this  
19 statement will be that the Applicant will be required  
20 to comply with whatever that statement in the  
21 Supplemental Testimony states as the Project is being  
22 designed and built?

23 MR. SETTINERI: I'll just object at this  
24 time, Your Honor, to this line of questioning.  
25 There's been no foundation laid that Mr. Conway can



1 speak on behalf of the Staff in terms of making any  
2 authoritative decision as to what constitutes part of  
3 an Application, what does not. As well, what this  
4 testimony is laying is that any statement at a  
5 hearing becomes part of an Application. So I'm going  
6 to object to this line of questioning because it is  
7 creating a very cluttered and confusing record.

8 MR. VAN KLEY: Well, the whole idea  
9 behind these questions is to find out what is  
10 being -- what is required and what's not being  
11 required, and the way it stands right now with the  
12 reference to supplemental filings in Recommended  
13 Condition 1, that -- that issue indeed is cloudy and  
14 needs to be clarified, and if anybody can clarify it  
15 among the witnesses, I think it's Mr. Conway that can  
16 clarify it.

17 ALJ AUGOSTINI: Carolyn, do you mind  
18 reading the question back, please.

19 (Record read.)

20 ALJ AUGOSTINI: Mr. Conway, you may  
21 answer the question to the context of your  
22 understanding.

23 A. Typically what is meant by "supplemental  
24 filings" is the Applicant will file a supplement to  
25 the Application and so mark it as a supplement to the

1 Application.

2 Q. Okay. So let's make sure we have this  
3 clear then because the answer you just gave me  
4 appears to contradict the previous answers and I just  
5 want to make sure we all understand what your  
6 understanding is.

7 Based on the answer you just gave me, the  
8 Supplemental Testimony by Mr. Herling and others  
9 would not be a supplemental filing as contemplated by  
10 Condition 1 of the Joint Stipulation; is that  
11 correct?

12 A. That is correct.

13 Q. Okay. Great. Thank you.

14 Okay. Let's go to Condition 15 of the  
15 Amended and Restated Joint Stipulation. Tell me when  
16 you found it.

17 A. I'm looking at 15.

18 Q. Okay, great. Did you hear Mr. Robinson's  
19 testimony earlier today?

20 A. Yes. Parts of it, yes.

21 Q. Okay. Did you hear his testimony about  
22 what he understood the meaning of the 90 percent of  
23 vegetation survival to be?

24 A. Yes, I heard him talk about 90 percent  
25 but I don't recall what his answer was.

1 Q. All right.

2 A. I remember he -- I remember he didn't --  
3 go ahead.

4 Q. Let me ask you a few questions about this  
5 topic then. What is your understanding as to how the  
6 90 percent of surviving vegetation will be  
7 calculated?

8 A. I think the language speaks for itself.  
9 I don't have anything more to add to the condition.

10 Q. Uh-huh. So is it your understanding then  
11 that 90 percent of the plants must survive or that  
12 90 percent of the area in the area that was planted  
13 must survive or is it calculated in some other way?

14 A. I think it's written that the Applicant  
15 shall maintain vegetative screening for the life of  
16 the facility and the Applicant shall replace any  
17 failed plantings so that, after five years, at least  
18 90 percent of the vegetation has survived, so.

19 Q. Okay. So you've read the language of the  
20 condition but you haven't answered my question as to  
21 how that 90 percent is going to be calculated; so how  
22 will it be calculated?

23 MR. SETTINERI: And I'll just object as  
24 to Mr. Van Kley had previously mentioned that it was  
25 in Mr. Conway's opinion so I'm just going to make an

1 objection to the extent this answer calls for  
2 something beyond Mr. Conway's opinion.

3 ALJ AUGOSTINI: Mr. Conway, if you know  
4 the answer, you may answer to the extent your  
5 experience and involvement relates to Mr. Van Kley's  
6 question.

7 A. I don't know how it would be implemented.

8 ALJ AUGOSTINI: Thank you.

9 Q. What is your understanding as to whether  
10 there is any requirement in Condition 15 that any of  
11 the vegetation has to survive after five years?

12 A. The Applicant has to maintain the  
13 vegetative screening, it seems, for the life of the  
14 facility as mentioned in this condition, so that  
15 seems to be the time frame.

16 Q. Can you point me to the language that  
17 you're referring to?

18 A. The 13th line down on Condition 15. It  
19 states "The Applicant shall maintain vegetative  
20 screening for the life of the facility and the  
21 Applicant shall replace any failed plantings so that,  
22 after five years, at least 90 percent of the  
23 vegetation has survived."

24 Q. Do you recall what the life of the  
25 facility is?

1           A.     Yes.   Hold on.   I'm looking at the Staff  
2   Report here.

3                   MR. SETTINERI:   I'll just object to the  
4   extent it calls for speculation, but in terms of the  
5   estimated life of the facility that would be a  
6   different line of questioning.

7           A.     The estimate is, if it's properly  
8   operated and maintained, could be up to 40 years.

9                   ALJ AUGOSTINI:   Would you mind,  
10   Mr. Conway, citing exactly to where you're looking at  
11   in the Staff Report?

12                   THE WITNESS:   Under the "Decommissioning"  
13   heading on page 15 of the Staff Report.

14                   ALJ AUGOSTINI:   Thank you.

15           Q.     (By Mr. Van Kley) So in the event that  
16   the facility continues to operate for 40 years,  
17   what's your understanding as to whether or not  
18   90 percent of the vegetation must be maintained under  
19   this condition between years 5 and 40?

20           A.     Well, I'm not speaking for the Board but  
21   my interpretation is Condition 15, as written, they  
22   shall maintain the vegetative screening for the life  
23   of the facility and replace any failed plantings so  
24   that, after five years, at least 90 percent of the  
25   vegetation has survived.

1           Q.    So what's your understanding as to  
2 whether this Condition requires 90 percent of the  
3 vegetation to survive between year 5 and year 40?

4           A.    The Applicant shall maintain it for that  
5 time period.

6           Q.    Well, it's clear from the sentence that  
7 the Applicant has to maintain 90 percent of the  
8 vegetation at least up to five years of operation,  
9 right?

10           MR. SETTINERI: I'll just object.  
11 Mischaracterizing the Stipulation language.

12           MR. VAN KLEY: I'm asking him whether  
13 that's how it's interpreted. I'm trying to figure  
14 out what it actually says.

15           MR. SETTINERI: What you stated, though,  
16 isn't how it reads. When you paraphrased the  
17 Stipulation, you said something that was improper,  
18 very incorrect. That's all I'm objecting to.

19           ALJ AUGOSTINI: Mr. Van Kley, why don't  
20 you ask your question a different way.

21           Q.    (By Mr. Van Kley) All right. Let's try  
22 it this way. Let's assume that this facility has an  
23 actual life of 40 years. During what period of that  
24 40 years does this Stipulation, Condition 15, require  
25 90 percent of the vegetation to survive?

1           A.     The Condition would be applicable for the  
2     life of the facility; so 40-year life, 40 years.

3           Q.     Okay. So 90 percent of the vegetation  
4     has to be maintained for 40 years; is that correct?

5           MR. MARGARD: I'll object. I think that  
6     mischaracterizes his testimony.

7           MR. VAN KLEY: Well, that's what I  
8     thought he meant by his testimony. I'm asking him to  
9     either confirm or deny.

10          THE WITNESS: Should I wait for a ruling  
11     or do I need to answer?

12          ALJ AUGOSTINI: Why don't we take -- take  
13     a quick break. I see the point you're trying to  
14     make, Mr. Van Kley, but I want to confer with  
15     Mr. Agranoff first. Let's reconvene at 3:00. Just a  
16     couple-minute break. Thank you.

17                 (Recess taken.)

18          ALJ AUGOSTINI: Mr. Conway, are you  
19     ready?

20          THE WITNESS: Yes.

21          ALJ AUGOSTINI: Do you mind turning your  
22     camera on.

23          THE WITNESS: Is it on?

24          ALJ AUGOSTINI: Now it is.

25          So, Mr. Conway, at year 40, how does

1 Condition 15 apply with respect to vegetation?

2 THE WITNESS: The Applicant shall  
3 maintain vegetative screening at year 40, and I  
4 believe it should be 90 percent of the original  
5 vegetation has survived.

6 ALJ AUGOSTINI: Okay. Thank you.

7 Q. (By Mr. Van Kley) Redirecting your  
8 attention back to Condition 15 of the Amended and  
9 Restated Joint Stipulation. Let's take a look at the  
10 second-to-the-last sentence of that condition which  
11 is a new sentence dealing with lights. Do you see  
12 that?

13 A. Yes, I do.

14 Q. Can you tell me whether, based on your  
15 understanding, the fitting of lights with side  
16 shields will prevent the lights from shining towards  
17 a neighbor's house?

18 MR. SETTINERI: Object. Lack of  
19 foundation to his experience with lighting.

20 MR. VAN KLEY: I just asked him whether  
21 he knows.

22 MR. SETTINERI: No foundation laid.  
23 Objection stands.

24 MR. VAN KLEY: Let me set a foundation.

25 Q. (By Mr. Van Kley) Mr. Conway, you were



1 involved in the discussions about this Joint  
2 Stipulation; is that correct?

3 A. Yes.

4 Q. And you are testifying in your written  
5 Direct Testimony that the Staff supports this Joint  
6 Stipulation?

7 A. Yes.

8 Q. So on behalf of the Staff, you are  
9 testifying about the amendments to the Joint  
10 Stipulation, correct?

11 A. I'm testifying that Staff supports the  
12 Amended Stipulation in total with all of the  
13 conditions. We support it -- we support it in total.

14 Q. Well, would you testify that the Staff  
15 supports the amendments to the Joint Stipulation  
16 without knowing what some of those amendments  
17 actually mean?

18 A. We support the amendments as the whole.  
19 If that makes sense.

20 Q. Well, do you know what the meaning of the  
21 term "side shields" as stated in the  
22 second-to-the-last sentence of Condition 15 means?

23 MR. MARGARD: You mean does he personally  
24 know as opposed to does the Staff know?

25 MR. VAN KLEY: Yeah.

1 MR. MARGARD: Yeah.

2 A. My understanding, side shields are  
3 shields around the side of a light so it's something  
4 that blocks or directs a light.

5 Q. So based on your understanding of the  
6 meaning of the term, can you tell me whether or not  
7 putting side shields on a light will prevent it from  
8 shining onto a neighbor -- a neighboring property?

9 A. That's my understanding of what it's  
10 supposed to do. It's supposed to, in this sentence,  
11 it's supposed to direct it away from  
12 non-participating folks and narrowly focus the light.

13 MR. VAN KLEY: I don't have any more  
14 questions.

15 ALJ AUGOSTINI: Do any of the other  
16 parties have cross for Mr. Conway?

17 MR. SETTINERI: I do, Your Honor.

18 ALJ AUGOSTINI: Please proceed.

19 MR. SETTINERI: Thank you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Settineri:

23 Q. Mr. Conway, good afternoon.

24 A. Hello.

25 Q. You were asked some questions about

1 Condition 15 and specifically from the Bench about  
2 the 90 percent failed plantings. I paraphrased  
3 there.

4 The first question I have for you, I want  
5 to review the language with you. If we look at  
6 Condition 15, the sentence that starts "The Applicant  
7 shall maintain vegetative screening for the life of  
8 the facility." Do you see that language?

9 A. Yes, I do.

10 Q. So is your opinion, based on the way that  
11 language reads, that the Applicant will maintain  
12 vegetative screening for the life of the facility  
13 however long that life will be; is that correct?

14 A. That's my understanding, yes.

15 Q. Okay. And let's keep reading. Then we  
16 have the word "and." "The Applicant shall maintain  
17 vegetative screening for the life" -- sorry -- "and  
18 the Applicant shall replace any failed plantings so  
19 that, after five years, at least 90 percent of the  
20 vegetation has survived."

21 Now, to the extent you can say, would it  
22 be your expectation that vegetation that has been  
23 planted would be established after five years?

24 A. Some can take longer.

25 Q. Okay. And as to that condition language,

1 "after five years," you would measure that from the  
2 commencement of the Project's life, correct?

3 A. Correct.

4 Q. So if we read that language as written,  
5 "the Applicant shall replace any failed plantings so  
6 that, after five years, at least 90 percent of the  
7 vegetation has survived"; you would agree with me  
8 with that, correct?

9 A. Yes.

10 Q. So the measurement here, the period is --  
11 the measurement point is five years after the  
12 facility life commences and we look at whether we  
13 have to ensure that 90 percent of the vegetation has  
14 survived at that point, correct?

15 A. Correct. The fifth year is when you  
16 would check it --

17 Q. Okay.

18 A. -- or after five years.

19 Q. Correct. And then thereafter, the way  
20 the condition is written, there is no every-five-year  
21 check, correct?

22 A. That's correct.

23 Q. Okay. And so, I know earlier I believe  
24 you had given an answer that you thought 90 percent  
25 of the vegetation must survive throughout the life of

1 the facility, but having reviewed this condition now  
2 closer with me, would you agree then that the  
3 commitment in the Stipulation, as written, is that  
4 after five years, after the five-year point after the  
5 facility starts -- starts its project life, that  
6 90 percent of the vegetation must survive at that  
7 point in time, correct?

8 A. Yes.

9 MR. SETTINERI: Okay. All right. No  
10 further questions. Thank you, Mr. Conway. Thank  
11 you, Your Honor.

12 ALJ AUGOSTINI: Any cross from any other  
13 parties?

14 Mr. Margard, any redirect?

15 MR. MARGARD: No, thank you, Your Honor.

16 ALJ AUGOSTINI: All right. I do not have  
17 any questions for you, Mr. Conway. I don't know if  
18 Mr. Agranoff does.

19 - - -

20 EXAMINATION

21 By ALJ Agranoff:

22 Q. The only question I would have,  
23 Mr. Conway, would be with respect to the Amended  
24 Stipulation, would that have required or did it  
25 require another Staff Report relative to Staff's

1 analysis?

2 MR. MARGARD: Your Honor, are you asking  
3 if it requires it by terms of the Board's rules?

4 ALJ AGRANOFF: No, no. Whether or not  
5 Staff believes that it needed to amend its Staff  
6 Report.

7 MR. MARGARD: Thank you.

8 A. No, I think we're -- we support the  
9 Amended and Restated Stipulation; I think that  
10 addresses the issues from the Staff Report.

11 ALJ AGRANOFF: Okay. Thank you.

12 ALJ AUGOSTINI: Thank you. It looks like  
13 Mike Settineri might have reached his bandwidth and  
14 same with --

15 MR. SETTINERI: Can you hear me, Your  
16 Honor?

17 ALJ AUGOSTINI: I can hear you.

18 MR. SETTINERI: Thank you. I just want  
19 to make sure the court reporter got Mr. Conway's last  
20 answer.

21 THE COURT REPORTER: I did. I can read  
22 what I have. Would you like me to read it?

23 ALJ AUGOSTINI: Yes, please. Thank you.

24 (Record read.)

25 MR. SETTINERI: If you can hear me,

1 hopefully you can, we are actually at our office so  
2 we shouldn't have an issue but we are. Hopefully I'm  
3 back on now.

4 ALJ AUGOSTINI: You're back on.

5 MR. SETTINERI: Can you hear me okay,  
6 Lauren?

7 ALJ AUGOSTINI: Yes. Thank you. Do you  
8 need Carolyn to reread Mr. Conway's answer?

9 MR. SETTINERI: As long as she -- no. As  
10 long as she's comfortable she got the answer, that's  
11 all that matters to me.

12 ALJ AUGOSTINI: Thank you.

13 Mr. Margard, would you like to move for  
14 admission of Staff Exhibit 10?

15 MR. MARGARD: I would renew my motion.  
16 Thank you, Your Honor.

17 ALJ AUGOSTINI: Are there any objections?

18 Okay. Hearing none, Staff Exhibit 10  
19 will be admitted into the record.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 ALJ AUGOSTINI: Does that conclude  
22 Staff's case?

23 MR. MARGARD: It does. Thank you.

24 ALJ AUGOSTINI: I think that wraps up all  
25 of our witnesses for today. I know Jay had mentioned

1 the briefing schedule which still stands as initial  
2 briefs due on December 9th and reply briefs due on  
3 December 23rd. Are there any other issues that need  
4 to be discussed before this case is closed for the  
5 record?

6 MR. SETTINERI: Your Honor, if I may, I  
7 may have written it down wrong earlier. Was it  
8 December 22nd or December 23rd for replies?

9 ALJ AUGOSTINI: December 23rd for  
10 replies.

11 MR. SETTINERI: Okay. Thank you.

12 ALJ AUGOSTINI: Are there any other  
13 issues that need to be addressed?

14 ALJ AGRANOFF: Yes. If I could just get  
15 a clarification with respect to two exhibits. I know  
16 at one time there had been discussion about Applicant  
17 Exhibit 20.

18 MR. SETTINERI: Yes, Your Honor. This is  
19 Mr. Settineri. We had premarked that exhibit but it  
20 was not used today in the testimony.

21 ALJ AGRANOFF: Okay. Thank you.

22 And with respect to Concerned Citizens  
23 Exhibit 8?

24 MR. VAN KLEY: We did not use that  
25 exhibit, Your Honor, and do not intend to offer it.



1                   ALJ AGRANOFF:   Okay.  I just wanted to  
2   make sure that the scorecard was up-to-date and  
3   accurate.

4                   MR. VAN KLEY:   Yup.

5                   ALJ AUGOSTINI:  Thank you.  All right.  
6   Anything else?

7                   MR. SETTINERI:  No, Your Honors.  Thank  
8   you very much.

9                   ALJ AUGOSTINI:  Well, thank you,  
10  everyone, for your patience and your time.  And thank  
11  you to our house, Kelli -- host, Kelli, for getting  
12  all of our witnesses on board.  Very much appreciated  
13  during these crazy times and, with that, this case is  
14  closed of record.  Thank you, everyone.

15                   (Thereupon, the proceedings concluded at  
16  3:17 p.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 Monday, October 26, 2020, and carefully compared with my original stenographic notes.

---

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 in the matter of the Alamo Solar I, LLC hearing held on 10/26/20 -  
Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and  
Burke, Carolyn