

BEFORE THE OHIO POWER SITING BOARD

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

- - -

PROCEEDINGS

before Patricia A. Schabo and David Hicks,
Administrative Law Judges, conducted via WebEx video
conference, called at 10:04 a.m. on Thursday, October
29, 2020.

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VOLUME V

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APPEARANCES:

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and Mr. Clifford W. Lauchlan
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On behalf of Angelina Solar I, LLC.

Dave Yost, Ohio Attorney General
John H. Jones, Section Chief
By Ms. Jodi J. Bair
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On behalf of the Staff of the Ohio Power
Siting Board.

Van Kley & Walker, LLC
By Mr. Jack A. Van Kley
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On behalf of the Concerned Citizens of
Preble County, LLC.

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

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

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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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Thursday Morning Session,
October 29, 2020.

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

Good morning, everyone. My name is
Patricia Schabo and with me is David Hicks. We are
the Administrative Law Judges assigned by the Board
to hear this case.

We'll begin by taking appearances,
starting with the Applicant.

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

ALJ SCHABO: And for the Concerned
Citizens of Preble County, et al.

MR. VAN KLEY: This is Jack Van Kley. I
represent the Concerned Citizens of Preble County and
their members. My law firm's name is Van Kley &

1 Walker, LLC. Our address is 132 Northwoods
2 Boulevard, Suite C-1, Columbus, Ohio 43235.

3 ALJ SCHABO: And, Ms. West, you have
4 quite a few so I'll let you identify them.

5 MS. WEST: Yes. Kathryn West on behalf
6 of the Preble County Prosecutor's Office, Martin P.
7 Votel, the Prosecuting Attorney, at 101 East Main
8 Street, Eaton, Ohio 45320, representing Israel
9 Township Trustees, Dixon Township Trustees, the
10 Preble County Planning Commission, the Preble Soil
11 and Water Conservation District, Preble County
12 Engineer, and the Preble County Commissioners. Thank
13 you.

14 ALJ SCHABO: Thank you.

15 Ohio Farm Bureau Federation.

16 MS. MILAM: Good morning, Your Honor.
17 This is Amy Milam on behalf of Ohio Farm Bureau
18 Federation, 280 North High Street, Columbus, Ohio
19 43215.

20 ALJ SCHABO: Thank you.

21 And for the Ohio Power Board -- Power
22 Siting Board Staff.

23 MS. BAIR: Thank you, Your Honor. On
24 behalf of the Ohio Power Board -- Ohio Power Siting
25 Board Staff, Jodi Bair, Assistant Attorney General,

1 30 East Broad Street, 16th Floor, Columbus, Ohio
2 43215.

3 ALJ SCHABO: Thank you.

4 Is counsel present for the Eaton
5 Community School District? He is not. I was just
6 checking that for the record, and I would just note
7 that Mr. Boggs is not present as was anticipated by
8 representations he had made during a technical test
9 session last week.

10 So today's adjudicatory hearing is taking
11 place pursuant to the parameters set forth in Entries
12 issued on September 14 and September 25, 2020, by
13 which the record in this matter was reopened for the
14 purpose of considering an Amended and Restated Joint
15 Stipulation filed on July 30, 2020.

16 Additionally, due to the COVID-19
17 emergency that remains in effect pursuant to
18 Executive Order 2020-10D, it should be "01" actually,
19 issued by the Governor of the State of Ohio, and
20 consistent with Amended Substitute House Bill 197,
21 this hearing is being held through WebEx which
22 enables the parties to participate by video
23 conference while also affording public access to the
24 hearing by telephone or video via the internet.

25 As I would during a normal in-person

1 hearing, I would note that it appears we may have two
2 members of the public present with us today. I'd
3 like to welcome you and thank you for your interest
4 in this proceeding. And I will just note that
5 members of the public can view and listen to our
6 proceeding but they are not able to speak or be
7 heard.

8 Before we get started with the first
9 witness, I would like to address some preliminary
10 issues.

11 First, if counsel or witnesses experience
12 technical difficulties, please let us know
13 immediately. You can contact our event host by the
14 WebEx chat function or by phone at (614)466-6843.

15 Second, please be aware that chats are
16 recorded and should not be considered private. Chats
17 are not part of the official record of the case and
18 should be strictly used for technical or process
19 questions only.

20 For those of you who may be watching and
21 listening as an attendee or a witness, please be
22 aware that, again, while you are able to observe the
23 hearing, your microphones will be muted until it is
24 your time to testify.

25 In many respects, this virtual hearing

1 will proceed very similarly to an in-person hearing
2 before the Board. However, due to the remote nature
3 of the hearing, there are some general ground rules
4 and reminders.

5 First, to avoid unnecessary background
6 noise, I ask that counsel keep their microphones on
7 mute unless they are speaking or need to be prepared
8 to speak quickly as in the case when raising
9 objections during cross-examination.

10 With respect to video, counsel should
11 leave their camera on at all times except during
12 breaks. If you have co-counsel, you may also turn
13 off your video if you need to step away from the
14 hearing when your co-counsel is taking the lead.
15 Just remember to turn your cameras back on and your
16 microphones back on.

17 Let's see here.

18 Always an important reminder, please be
19 mindful of the court reporter. Speak clearly and at
20 a reasonable speed so she can accurately transcribe
21 the hearing.

22 Everyone should do their best to avoid
23 speaking over each other by taking proactive steps
24 like intentionally allowing for a pause at the end of
25 questions and generally slowing down to allow for any

1 connectivity lags or objections from counsel.

2 During their testimony, witnesses should
3 have access only to the filings in this case docket
4 and the documents that have been identified as
5 potential exhibits, i.e. those documents that have
6 already been exchanged amongst the parties and shared
7 with the Bench. Witnesses should not access or seek
8 information from any other documents while
9 testifying, nor should they communicate through any
10 means with anyone privately during their testimony.

11 Just to confirm quickly that we do not
12 anticipate any confidential information being
13 testified to? I am seeing head shakes.

14 MR. SETTINERI: That is correct, Your
15 Honor, from the Company.

16 ALJ SCHABO: Okay. Excellent. So we
17 will not need a closed record or a confidential
18 session.

19 It is anticipated that this will be a
20 single-day hearing consistent with the witness
21 schedule agreed upon by the parties and the Bench.

22 We will take a lunch break, probably an
23 hour, the timing of which will be based on the flow
24 of testimony or the normal course of business.

25 Exhibits admitted into evidence for each

1 day, hopefully just today, should be e-mailed to the
2 court reporter. That e-mail address is kspencer,
3 s-p-e-n-c-e-r, @aando.com. That's a-a-n-d dot com.
4 I can e-mail that to counsel if it would be helpful.

5 Anyone have questions about these rules?
6 No? You guys are pros. Wonderful.

7 Are there any preliminary matters that
8 the parties wish to address?

9 MR. SETTINERI: Your Honor, this is Mike
10 Settineri on behalf of the Company. I'd just note
11 that the original witness order that was discussed,
12 we are going to -- we would like to have Noah
13 Waterhouse go first. My understanding is no parties
14 have cross so if we would be able to have him -- put
15 him on first, we can allow him to leave the hearing.

16 ALJ SCHABO: Yes. Yeah, we can do that.
17 Thank you.

18 All right. Speaking of which,
19 Mr. Settineri, let's proceed with our first witness.

20 MR. SETTINERI: Thank you, Your Honor.
21 At this time the Company will call Noah Waterhouse to
22 the stand, please.

23 MS. CHILCOTE: Mr. Waterhouse, you've
24 been moved to a panelist position and you've been
25 unmuted, your camera is on, and you're ready to go.

1 ALJ SCHABO: Mr. Waterhouse, if you would
2 raise your right hand for me.

3 (Witness sworn.)

4 ALJ SCHABO: I could not hear you. Could
5 you check your equipment really quick.

6 THE WITNESS: Can you hear me now?

7 ALJ SCHABO: I can. Wonderful. Let's
8 just redo that.

9 (Witness sworn.)

10 ALJ SCHABO: Thank you very much.

11 Proceed, Mr. Settineri.

12 MR. SETTINERI: Thank you, Your Honor.
13 At this time we would like to mark an exhibit,
14 Company Exhibit 25, the Supplemental Testimony of
15 Noah Waterhouse.

16 ALJ SCHABO: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 NOAH WATERHOUSE

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

22 DIRECT EXAMINATION

23 By Mr. Settineri:

24 Q. Good morning, Mr. Waterhouse.

25 A. Good morning.

1 Q. Could you please state your name and
2 business address for the record, please.

3 A. Noah Waterhouse. 10025 Valley View Road,
4 Suite 140, Eden Prairie, Minnesota.

5 Q. All right. And do you have before you
6 what's been marked as Company Exhibit 25?

7 A. I do.

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

10 A. That is my Supplemental Testimony.

11 Q. Okay. Was that prepared by you or at
12 your direction?

13 A. It was.

14 Q. Do you have any revisions to that
15 testimony today?

16 A. I do not.

17 Q. All right. And if I asked you the
18 questions in that testimony today, would your answers
19 be the same as written?

20 A. Yes.

21 MR. SETTINERI: All right. Thank you,
22 Mr. Waterhouse. Your Honors, the witness is
23 available for cross-examination.

24 ALJ SCHABO: Is there any
25 cross-examination for Mr. Waterhouse?

1 MR. VAN KLEY: No, Your Honor.

2 MS. BAIR: None from Staff.

3 ALJ SCHABO: Ms. Milam or Ms. West?

4 MS. MILAM: None, Your Honor.

5 MS. WEST: No, Your Honor.

6 ALJ SCHABO: Okay. Mr. Waterhouse, I do
7 not have any questions for you specifically.

8 I do want to go back to the marking of
9 the exhibit, Mr. Settineri. Can you help me out --

10 MR. SETTINERI: Uh-huh.

11 ALJ SCHABO: -- is this Mr. Robinson's --
12 I'm sorry, Mr. Waterhouse's Second Supplemental? Did
13 he not have a Supplemental Testimony during the first
14 round of our hearings? I have it -- shoot.

15 MR. SETTINERI: Yes, you are correct,
16 Your Honor. It should have been marked as the Second
17 Supplemental Testimony.

18 ALJ SCHABO: Okay.

19 MR. SETTINERI: He did provide
20 Supplemental Testimony in this proceeding. Oh, I'm
21 sorry, no. I will check the docket if I may.

22 Yes, that is correct, Your Honor, Second
23 Supplemental Testimony. So this should be marked as
24 the Second Supplemental Testimony of Noah Waterhouse,
25 Company Exhibit 25.

1 ALJ SCHABO: All right. Thank you.

2 With that correction, again there's no
3 cross-examination for Mr. Waterhouse. I do not have
4 any questions for Mr. Waterhouse. How would you like
5 to proceed?

6 MR. SETTINERI: I would like to go ahead
7 then at this point in time and the witness may be
8 excused, with your permission, and we would move for
9 the admission of Company Exhibit 25 into the record.

10 ALJ SCHABO: Any objections?

11 MR. VAN KLEY: No.

12 MS. BAIR: No objection from the Staff.

13 ALJ SCHABO: Hearing none, Company
14 Exhibit 25, Second Supplemental Testimony of Noah
15 Waterhouse will be admitted to the record.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 ALJ SCHABO: Mr. Waterhouse, thank you
18 for being with us today.

19 THE WITNESS: Thank you very much.

20 MR. SETTINERI: And thank you, Your
21 Honor, for catching that detail for the record. I
22 appreciate it.

23 ALJ SCHABO: You're welcome.

24 MR. SETTINERI: All right. If we may
25 proceed, Your Honor?

1 ALJ SCHABO: You may.

2 MR. SETTINERI: At this time the Company
3 will call Douglas Herling to the stand, please.

4 MS. CHILCOTE: Mr. Herling, you've been
5 moved to the panelist position and you are ready to
6 speak.

7 ALJ SCHABO: Good morning, Mr. Herling.
8 I cannot hear you. It appears you're unmuted.

9 THE WITNESS: Can you hear me now?

10 ALJ SCHABO: I can. If you can raise
11 your right hand for me.

12 (Witness sworn.)

13 ALJ SCHABO: Thank you very much.

14 Mr. Settineri.

15 MR. SETTINERI: Thank you, Your Honor.
16 At this time we would like to mark some exhibits.

17 ALJ SCHABO: All right.

18 MR. SETTINERI: We will start first with
19 Company Exhibit 22, the Second Supplemental Direct
20 Testimony of Douglas Herling.

21 ALJ SCHABO: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. SETTINERI: We will mark as Joint
24 Exhibit 2, the Amended and Restated Joint Stipulation
25 and Recommendation filed in this proceeding.

1 ALJ SCHABO: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. SETTINERI: And we would mark as
4 Company Exhibit 28, correspondence dated March 11,
5 2020, to Campbell Brandly Farms, LLC. This exhibit
6 was previously provided to all parties and the Bench.

7 ALJ SCHABO: Yes. Sorry if my paper
8 rustling is loud. Yes. So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. SETTINERI: Thank you, Your Honor.

11 - - -

12 DOUGLAS HERLING

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. Herling.

18 A. Good morning.

19 Q. Could you please state your name and
20 business address for the record, please.

21 A. Douglas Herling. 1105 Navasota Street,
22 Austin, Texas 78702.

23 Q. Okay. Do you have before you what's been
24 marked as Company Exhibit 22?

25 A. Yes, I do.

1 Q. And could you please identify that for
2 the record, please.

3 A. This is my Second Supplemental Direct
4 Testimony in this case.

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

7 A. Yes, it was.

8 Q. And do you have any revisions to that
9 testimony today?

10 A. I do.

11 Q. If you could please slowly walk through
12 those revisions for the court reporter and the
13 parties, please.

14 A. Okay. Will do.

15 In Answer 4, on page 2, line 2, "Mathew"
16 should have two t's. That would be Matthew
17 Robinson's name. "Mathew" should have two t's.

18 Page 3, Answer 6, line 13, in the third
19 word we should have an additional "e" on "oblige."

20 On page 4, Answer 9, line 20, following
21 the comma after the second word in that sentence
22 "entrances" please insert "right-of-ways/easements"
23 comma. So now the end of that sentence should read:
24 "roads, entrances, right-of-ways/easements, inverters
25 and setbacks."

Moving to page 7, Answer 14. This edit will carry onto page 8 as well but the first -- the first edit is line 22. Following where it says "That plan contains" please delete from -- please delete the following portion of the sentence: "detailed analysis of the Project area's existing conditions, the anticipated visual impact of the Project, and." That portion of the sentence is being removed from "detailed" to "and."

On page 8, line 1, please delete, following "plan," starting with "to," through the end of that line, "areas" comma. So it should now read: "landscape plan as well as visual examples of the landscaping" and then continues on.

Then the next edit is in line 3. From the start of the line, please delete the words "In short, those potential" and replace that with the word "potential."

On line 4, following "scenario," starting with the comma, please delete from the comma through line 5 on the following line through the words "intended landscaping." So to pull that together starting on line 3 through line 5, that should now read: "Potential visual impacts have been addressed by determining specific locations of concern and

1 applying an appropriate landscaping scenario."

2 On line 23, Answer 16, the last word on
3 that line -- sorry. Last word on line 23, "and"
4 should be deleted and replaced by the word "to."

5 On page 9, Answer 17, on line 4, please
6 delete "On March 11, 2020" and replace that with
7 "Starting in February 2020."

8 Same answer, line 12, please delete
9 "March 11" and add an "s" to "mailing." So it should
10 now read: "The mailings included...."

11 And on line 15, we're adding a sentence
12 following "March 19, 2020." This sentence reads: "A
13 copy of one of those letters has been marked as
14 Company Exhibit 28."

15 On page 10, Answer 19, line 7, please
16 delete the words "clarity and."

17 On page 11, Answer 22, on line 14, this
18 edit is going to remove language from line 14 to
19 line 20, beginning with "Among." "Among other items"
20 through on line 20, "local agencies are aware of
21 those measures." We're removing all of that -- all
22 the text between those two points on lines 14 through
23 20.

24 ALJ SCHABO: So just a minute. So,
25 Mr. Herling, will it then go from "Panel Arrays" to

1 those two local agencies" and then just pick up again
2 on "The same condition...."?

3 THE WITNESS: Exactly.

4 ALJ SCHABO: Thank you.

5 THE WITNESS: Thank you.

6 Those are all the changes I have. Are
7 there any questions?

8 MR. SETTINERI: Thank you, Mr. Herling.
9 As he indicated, hopefully everyone, you were all
10 able to get those revisions; if not, please say so.

11 Q. (By Mr. Settineri) Mr. Herling, do you
12 also have before you what's been marked as Joint
13 Exhibit 2?

14 A. Yes, I do.

15 Q. Okay. Could you please identify that for
16 the record.

17 A. Joint Exhibit 2 is the Amended and
18 Restated Joint Stipulation and Recommendation in this
19 case.

20 Q. Okay. And were you involved in the
21 negotiations of that Amended Stipulation?

22 A. Yes, I was.

23 Q. Okay. And could you also identify for
24 the record what's been marked as Exhibit 28, please.

25 A. Exhibit 28 is a letter to Campbell

1 Brandly Farms, LLC, March 11, 2020, regarding
2 drainage and tile mapping.

3 Q. And when did you send that letter?

4 A. The letter was originally sent in
5 February of 2020 and subsequently e-mailed to
6 Campbell Brandly Farms' counsel on March 11 -- or in
7 March of 2020.

8 Q. Okay. And the letter is dated March 11,
9 2020. Why is it dated March 11, 2020 versus
10 February 2020?

11 A. Because this is the second of two -- of
12 two identical letters. This one transmitted via
13 e-mail and prepared on March 11.

14 Q. Okay. And did you hear back from
15 Campbell Brandly Farms, LLC in regards to this
16 letter?

17 A. We did not.

18 MR. VAN KLEY: Objection. Objection,
19 Your Honor. At this point the witness is going past
20 his written prefiled testimony and is going into
21 additional testimony that was not in his written
22 testimony and, as a result of which, we are being
23 surprised by this testimony and have not had the
24 opportunity to prepare cross-examination for this
25 testimony.

1 ALJ SCHABO: Mr. Settineri, I'll let you
2 respond to that.

3 MR. SETTINERI: Thank you. Yes, Your
4 Honor. The correspondence was provided to all
5 parties in advance of this hearing and it has been --
6 his testimony has been revised to indicate that the
7 letter was marked. A copy of one of those letters
8 has been marked as Company Exhibit 28 and, for the
9 record, we're identifying the letter and also
10 indicating whether he received a response, and I
11 think that's certainly information the Board should
12 hear and I think it's certainly permissible, as in
13 many cases, to provide additional direct testimony in
14 addition to the prefiled testimony through changes or
15 revisions. And if we need to revise the testimony to
16 say exactly what we just said, we'd be glad to, but I
17 think the most efficient way is to do this. Thank
18 you.

19 MR. VAN KLEY: Well, Your Honor, the
20 witness's allegation that he never received a
21 response to the letter is totally beyond the scope of
22 the written testimony that was filed. In fact, the
23 exhibit, Company Exhibit 28, wasn't even mentioned in
24 his prefiled testimony. We have had no opportunity
25 -- I've had no opportunity to consult with my client

1 as to whether a response actually was provided and,
2 if it was not provided, why it was not provided; so
3 this is -- this is trial by ambush and it should not
4 be permitted.

5 ALJ SCHABO: Okay. So I tend to agree
6 somewhat with Mr. Van Kley. We did just insert, into
7 Mr. Herling's testimony, the identification of
8 Exhibit 28 or the reference, I'm sorry, to Exhibit
9 28. That being said, I'm going to overrule this
10 specific objection. Mr. Herling can indicate whether
11 or not he is aware of whether or not the Company
12 received a response. And if the questioning goes
13 much farther than that, I will entertain a new
14 objection from Mr. Van Kley.

15 MR. SETTINERI: To clarify, Your Honor, I
16 know we had a question and answer and so I believe
17 that question was answered.

18 ALJ SCHABO: I did not hear the answer so
19 if we could -- we'll give him one asked and answered
20 because I didn't hear the response.

21 MR. SETTINERI: Okay. So I'll just
22 re-ask the question, Your Honor; would you like me to
23 do that?

24 ALJ SCHABO: That's fine. Thank you very
25 much.

1 MR. SETTINERI: Be glad to.

2 Q. (By Mr. Settineri) Mr. Herling, in regard
3 to the letter to Campbell Brandly Farms that you'd
4 indicated letters were sent two times, to your
5 knowledge was a response received from Campbell
6 Brandly Farms?

7 A. A response was not received to my
8 knowledge.

9 Q. Thank you.

10 Mr. Herling, you also made a revision in
11 your testimony as to what was contained in the
12 preliminary layout attached to your testimony and you
13 had added the words "right-of-ways" and "easements"
14 and so, for the record, are right-of-ways and
15 easements shown on that layout map?

16 A. Yes, they are.

17 Q. And are any of those right-of-ways or
18 easements shown, agricultural or conservation
19 easements?

20 A. No, they are not.

21 Q. And, for the record, are there any
22 agricultural or conservation easements in the Project
23 Area?

24 A. No, there are not.

25 Q. Okay. If I were to ask you the questions

1 in your written testimony today, would your answers
2 be the same as you revised and clarified today on
3 direct?

4 A. Yes, they would.

5 MR. SETTINERI: Okay. Thank you,
6 Mr. Herling. Your Honors, the witness is available
7 for cross-examination.

8 ALJ SCHABO: Mr. Van Kley.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Van Kley:

12 Q. Mr. Herling, since we have Company
13 Exhibit 28 open anyway, let me ask you a question or
14 two about that document.

15 A. Sure. I'm there.

16 Q. Did you provide Campbell Brandly Farms
17 with a deadline for responding to this letter?

18 A. We did not provide -- sorry, I thought I
19 heard someone saying something.

20 We did not provide a deadline. Given the
21 concern from this -- from Campbell Brandly Farms and
22 others regarding tile, we assumed we would get a
23 response rather quickly.

24 Q. And why did you make that assumption?

25 A. Due to feedback we received via public

1 comment and otherwise.

2 Q. Uh-huh. Has anybody from Campbell
3 Brandly Farms informed you that the farm would not
4 respond to your letter which is identified as Company
5 Exhibit 28?

6 A. No.

7 Q. So, so far as you know, Campbell Brandly
8 Farms could respond in the future; isn't that
9 correct?

10 A. That's correct.

11 Q. So why -- why have you made the point of
12 testifying then that Campbell Brandly Farms has not
13 yet responded to your letter?

14 MR. SETTINERI: Object. Seeks to
15 disclose attorney-client privilege and work product,
16 and I direct the witness not to answer that question.

17 MR. VAN KLEY: Well, I'm asking for his
18 understanding as to why he is providing this
19 testimony. I'd like to --

20 MR. SETTINERI: Objection. Objection.

21 MR. VAN KLEY: I'd like to get this into
22 context because I'm confused about why this letter is
23 even relevant to this proceeding or why his statement
24 that there's no response is relevant to this
25 proceeding.

1 MR. SETTINERI: My objection stands and I
2 will also add an objection to the form of the
3 question.

4 ALJ SCHABO: The objection is sustained.

5 MR. VAN KLEY: Your Honor, is that
6 because of the form of the question or because of the
7 substance?

8 ALJ SCHABO: I would -- I would say
9 substance. I believe you're delving very close to
10 attorney-client, if not jumping straight into it, so
11 the objection is sustained.

12 Q. (By Mr. Van Kley) Mr. Herling, have you
13 started building this solar farm yet?

14 A. No, we have not.

15 Q. Have you started digging into the Project
16 Area in a manner in which you could encounter
17 drainage tiles?

18 A. I'm not sure I understand the question.
19 We haven't started construction.

20 Q. Uh-huh. Well, have you done any digging
21 in the Project Area that has the potential for
22 damaging tiles at this point?

23 A. No digging that could potentially damage
24 tile, no.

25 Q. Let's go to page 4 of your prefilled

1 testimony that has been marked as Company Exhibit 22.

2 A. I'm there.

3 Q. Let's start with your answer to Question
4 9, which asks you to describe the preliminary site
5 plan identified as Attachment DH2. Do you see that
6 answer?

7 A. I do.

8 Q. That preliminary site plan is attached to
9 your prefiled testimony identified as Company
10 Exhibit 22, correct?

11 A. Correct.

12 Q. Let's go to exhibit -- or Attachment DH2
13 of your testimony and I would like to refer you to
14 the page that's the 58th PDF page in Company
15 Exhibit 22.

16 A. Can you give me a sheet number? It
17 should be in the bottom right of the PDF.

18 Q. I don't see a sheet -- oh, yes, I do see
19 a sheet number. C311.

20 A. Okay. I'm there.

21 Q. All right. I would like to direct you to
22 the top of that sheet where there's a diagram with
23 the words "See Sheet C.308" on the top of it. Do you
24 see that?

25 A. Yes.

1 Q. And to the right of that sheet do you see
2 the words, it appears to be EX -- "EX. Structure to
3 Be Removed"?

4 A. Yes, I do see that.

5 Q. What does that stand for?

6 A. That is -- what that is indicating is
7 that those are structures that will be removed from
8 the Project Area or planned to be.

9 Q. And according to this diagram, how many
10 structures are planned to be removed?

11 A. We're showing two farm buildings, several
12 sheds, and a home. A residence.

13 Q. Let's go back to page 4 of your testimony
14 identified as Company Exhibit 22.

15 A. I'm there.

16 Q. Directing your attention to line 20, you
17 state there that the preliminary site plan includes
18 the anticipated location of inverters; is that
19 correct?

20 A. That's correct.

21 Q. Is there a potential that more than one
22 type of inverter will be used in this project?

23 A. It's -- sorry. There's the potential
24 that, when the Project is constructed, it's likely to
25 use one type of inverter, yes, but we are considering

1 two different kinds of inverters, that one or the
2 other could be used on the project.

3 Q. Which type of inverters are you currently
4 considering?

5 A. What are known as central inverters.

6 Q. All right. What's the other kind?

7 A. What are known as string inverters but I
8 would like to make a clarification that some string
9 inverters are grouped into what is essentially a
10 central inverter and operate the same way as a
11 central inverter and will be considered in this
12 design as a central inverter.

13 Q. Does the preliminary site plan note the
14 locations for string inverters?

15 A. It does not because this is a site plan
16 utilizing central inverters.

17 Q. Are the potential locations for all
18 central inverters noted on the preliminary site plan?

19 A. Yes, they are.

20 Q. For the record, what is a string
21 inverter?

22 A. A string inverter is a smaller kind of
23 inverter that handles typically a string of solar
24 modules so it's a lower capacity machine that is
25 mounted on the racking. It's smaller and quieter and

1 does not have a ground footprint.

2 Q. Mr. Herling, I'd like to direct your
3 attention to -- let me just back up a little bit.

4 MR. VAN KLEY: Your Honor, at this time
5 we would like to mark CCPC Exhibit 7, which is
6 entitled "Inspection Report, Acoustic Environmental
7 Test."

8 ALJ SCHABO: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Herling, do you have a copy of CCPC
11 Exhibit 7 in front of you?

12 A. I have one here, yes.

13 Q. And can you identify this document?

14 A. Pardon while I reach for it.

15 Yes. This is a document entitled "Sound
16 Power Kodiak 2.0 SC_UP Noise Measurement."

17 Q. This is a copy of a report that you
18 obtained; is that correct?

19 A. Yes, that we obtained -- or that I
20 obtained from the manufacturer.

21 Q. And what was the purpose for your
22 obtaining this report?

23 A. Our purpose for obtaining this report was
24 for -- I don't want to confuse terminology but for
25 producing -- we procured it for our acoustic engineer

1 to perform sound modeling.

2 Q. You obtained this report and you provided
3 a copy of it to Mr. Hessler; is that correct?

4 A. That's correct.

5 Q. Directing your attention to the second
6 page of this report. This report is dated June 25,
7 2019, correct?

8 MR. SETTINERI: Object. He hasn't laid a
9 foundation that the witness is familiar with the
10 document. The witness has identified receiving it
11 but you haven't laid a foundation that he has
12 reviewed the document.

13 ALJ SCHABO: Go ahead and lay that
14 foundation, Mr. Van Kley.

15 Q. Mr. Herling, have you seen page 2 of this
16 document before today?

17 A. I don't think I've ever done more than
18 quickly leaf through it to make sure there was
19 everything there when I received the PDF initially.

20 Q. Have you taken note of the date for this
21 document?

22 A. No, but I can see that in the title.

23 Q. Let's go to page 7 of your testimony
24 marked as Company Exhibit 12.

25 A. Okay. I'm there.

1 Q. And let's go to Answer 12 on the top of
2 that page which refers to a Phase 1 cultural
3 resources survey program. Do you see that?

4 A. Yes, I see that.

5 Q. Has that program been developed?

6 A. Yes, it has.

7 Q. Has that program been incorporated into
8 the Application in this case that is marked as
9 Company Exhibit 1?

10 MR. SETTINERI: Just object to the extent
11 it calls for a legal conclusion.

12 MR. VAN KLEY: I'm not asking for a legal
13 conclusion. I'm just asking whether this program has
14 been added to the Application.

15 MR. SETTINERI: Object to the form of the
16 question as well then. You can ask if there's been a
17 supplement filed to the Application.

18 MR. VAN KLEY: I can ask that question
19 too. We'll start there.

20 Q. (By Mr. Van Kley) Mr. Herling, has there
21 been a supplement filed to the Application in this
22 case that has contained the Phase 1 cultural
23 resources survey program mentioned in Answer 12 of
24 your testimony?

25 A. No, there has not. To my understanding

1 it was not a requirement to have that as part of our
2 Application or as a supplement.

3 Q. Uh-huh. Let's go to Answer 14 of your
4 testimony which starts on the bottom of page 7 and
5 here we have a reference to a preliminary landscape
6 plan. Do you see that?

7 A. I do.

8 Q. Has that plan been incorporated into any
9 supplemental application in this case?

10 A. No, that has not, but it was described in
11 our Application and, to my knowledge, is not required
12 to be part of our Application.

13 Q. At the time that the plan was described
14 in your Application, did the preliminary landscape
15 plan that's been completed at this point in time
16 actually exist?

17 MR. SETTINERI: Just object to the form
18 of the question in terms of at the time it was
19 described in the Application versus maybe when the
20 Application was filed.

21 MR. VAN KLEY: I'll start over.

22 ALJ SCHABO: Thank you, Mr. Van Kley.

23 Q. When was the preliminary landscape plan
24 finished?

25 A. The preliminary landscape plan was

1 finished, I don't have an exact date for you but I
2 believe in September of this year. Early October.

3 Q. Let's go to page 9 of your testimony.
4 I'd like to refer you to Answer 18 which refers to a
5 preliminary vegetation management plan.

6 A. I'm there.

7 Q. When was that plan completed?

8 A. Again, I don't have an exact date for you
9 there but that was completed -- that was completed
10 this summer, I believe in August.

11 Q. Do you know when the preparation of this
12 plan was started?

13 A. We've been working on this -- sorry, did
14 I hear someone say something?

15 We've been working on this plan through
16 the year. These plans take a lot of time. To my
17 knowledge it was not required to be part of the
18 Application in any way.

19 Q. Was the plan started after the conclusion
20 of the initial hearing held in this case?

21 A. Yes, it was, but the plan itself was
22 described in the Application and what it would
23 contain and how it would function.

24 Q. And the preliminary landscape plan that's
25 referenced in Answer 14 of your testimony, was that

1 started after the conclusion of the initial hearing
2 in this case?

3 A. Yes, that is correct. As part of the
4 continued development of the Project, it was -- it
5 was begun late last year.

6 Q. And how about the preliminary site plan,
7 was that started after the initial hearing concluded
8 in this case?

9 A. No. We have a form of conceptual design
10 that occurs very early in the process of preparing
11 the Application and this is an expanded scope of work
12 on that.

13 MR. VAN KLEY: I have no further
14 questions at this time.

15 ALJ SCHABO: Any other parties have
16 questions for Mr. Herling?

17 MS. BAIR: Staff has no questions.

18 ALJ SCHABO: Mr. Settineri, would you
19 like redirect? You're muted.

20 MR. SETTINERI: Yes, I do have some
21 questions, Your Honor. Thank you.

22 ALJ SCHABO: Are you ready to dive in or
23 would you like a minute?

24 MR. SETTINERI: If I may have -- well,
25 I'm ready to dive in. We can go ahead. Thank you.

1 ALJ SCHABO: Okay. Proceed when you're
2 ready.

3 MR. SETTINERI: Thank you, Your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Settineri:

7 Q. Mr. Herling, you had some questions, if
8 you recall, on string inverters and central
9 inverters, correct? Do you remember those questions?

10 A. I do.

11 Q. Okay. You mentioned they have different
12 capacities. What is the general capacity for a
13 string inverter?

14 A. It can vary a bit but typically on the
15 order of 100 to a couple hundred kilowatts.

16 Q. And how does that then compare to a
17 central inverter capacity?

18 A. Central inverter is usually 1 megawatt or
19 larger. It can range -- can range up to 4 or 5
20 megawatts usually.

21 Q. Okay. And just in terms of dimensions,
22 can you compare a string inverter to a central
23 inverter?

24 A. Sure. A central inverter is more the
25 size of a -- depending on the inverter, usually about

1 the size of a shipping container or half shipping
2 container. Whereas, a string inverter, those can
3 vary as well but they're mounted on racking. Without
4 being too specific, 2 by 3 feet maybe. Sometimes
5 smaller than that.

6 Q. Okay. And have you had -- do you attend
7 trade shows in the industry, Mr. Herling?

8 A. Prior to COVID, yes.

9 Q. And how long have you been involved in
10 the solar industry?

11 A. I've been involved with Open Road for
12 approximately 3 years and, prior to that, several
13 years at Pioneer Green Energy.

14 Q. Okay. And have you had an opportunity to
15 observe sound from string inverters, whether in the
16 field or at trade shows?

17 A. Yes, I have.

18 Q. Okay. And have you also had an
19 opportunity to observe sound from central inverters
20 in the field?

21 A. Yes, I have.

22 Q. Okay. Would you be able to provide just
23 a general comparison between the sound you would
24 expect from a string inverter versus a central
25 inverter based on your experience?

1 A. Sure. Based on my experience, a string
2 inverter is very quiet. Being up close to one, you
3 really can't hear very much, and from a distance,
4 nothing at all.

5 Q. Okay. For the preliminary layout that is
6 attached to your testimony, just for the record, that
7 shows locations for central inverters, correct?

8 A. That's correct.

9 Q. And is there a -- and there is -- in the
10 Condition 3 is there a setback in place for central
11 inverters?

12 A. There is. There's a 500-foot setback
13 from central inverters to a residence.

14 Q. Okay.

15 A. Minimum setback.

16 Q. Is there a setback in Condition 3 that
17 would also then apply to a string inverter?

18 A. Yes. A string -- the setback in
19 Condition 3 that would apply to a string inverter
20 would be our 150-foot setback from the Project fence
21 to any habitable residence; that would, of course,
22 apply to the string inverter as well.

23 Q. And based on your experience, where would
24 you expect a string inverter to be located in a
25 facility in regards to the fence line?

1 A. Sure. Again, they'd be mounted on the
2 racking close to themselves in almost all cases and
3 that would be typically on the interior of the
4 Project and that's usually to reduce line losses and
5 ensure that we have the shortest collection paths
6 along access roads.

7 Q. You also had some questions on attachment
8 -- the preliminary layout attached to your testimony.
9 Is that layout -- would you consider that layout a
10 part of the continued development of the Project?

11 A. I would.

12 Q. Okay. And when was that preliminary
13 layout completed?

14 A. This version here was completed
15 8/13/2020.

16 Q. Okay. And the details shown on that
17 layout, was that available prior to the last hearing
18 that was held in this matter?

19 A. Could you ask that again, Mike?

20 Q. The -- I guess let me clarify. I want to
21 clarify for the record. Why wasn't -- why weren't
22 these layout drawings prepared prior to the last
23 hearing in this record?

24 A. Sure. We were seeking to permit the
25 Project as the maximum extent of the Project. The

1 location of infrastructure relative to county
2 right-of-way -- or road right-of-ways, parcel
3 boundaries, neighboring residences, so we were taking
4 the location of all of the infrastructure into
5 account with our potential solar array area.

6 Q. Turning to what was marked as CCPC
7 Exhibit 7, please, Mr. Herling.

8 A. I'm there.

9 Q. You were asked about a date on that
10 document. You said it was in the title. Let's just,
11 for the record, clear that up. Exactly what were you
12 looking to when you said it was in the title?

13 A. Yes, to clear that up, I was looking at
14 the bottom of the front page there. The reference to
15 2019 at the end of the file name.

16 Q. You have to be more specific for the
17 record, Mr. Herling.

18 A. Sorry about that. On the bottom right of
19 the title page it says "SE4xxx-UP-910:LE2019." It
20 indicated the year but not the month.

21 Q. Okay. And when did you receive this
22 report from the manufacturer?

23 A. We received this report in July of 2020.

24 Q. Okay. And did you -- who specifically
25 received the report?

1 A. I received the report.

2 Q. And who specifically requested the report
3 from the manufacturer?

4 A. I requested it.

5 Q. Okay. And what led you to make that
6 request to the manufacturer?

7 A. We were made aware of this, of the
8 existence of this report by Mr. Hessler through
9 another case, and I -- and I reached out to the
10 manufacturer to get a copy.

11 Q. Okay. And approximately when did he make
12 you aware that this report existed?

13 A. I believe in probably late -- probably
14 June of 2020. That was -- it took a while to get it.

15 MR. SETTINERI: One moment, Your Honor,
16 please.

17 ALJ SCHABO: Yes.

18 MR. SETTINERI: Thank you, Mr. Herling.

19 Thank you, Your Honor. We have no
20 further questions for Mr. Herling.

21 ALJ SCHABO: Mr. Van Kley, do you have
22 any recross?

23 MR. VAN KLEY: Yes, Your Honor.

24 ALJ SCHABO: Please proceed.

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RECROSS-EXAMINATION

By Mr. Van Kley:

Q. Mr. Herling, while you still have CCPC Exhibit 7 open, let's talk about that for a little bit.

A. Okay. I have it here.

Q. When did you request a copy of this report from the manufacturer?

A. Late June of 2020.

Q. And when did you receive it?

A. Early July of 2020.

Q. Tell me how early.

A. July -- I believe July 2nd.

Q. Okay.

ALJ SCHABO: Let's take a quick break. We're off the record for just a moment.

(Off the record.)

(Recess taken.)

ALJ SCHABO: All right. We just took a break off the record to address COVID problems. Ms. West, representing the several -- a couple county entities and Dixon and Israel Townships, is having some WebEx issues. She dropped off video but she was able to hear and see us. She is going to continue to participate in Mr. Herling's testimony by audio only.

1 She has represented, and I will ask her to do so on
2 the record, that she has no questions for
3 Mr. Herling. Ms. West?

4 MS. WEST: You're correct, Your Honor. I
5 have no questions for Mr. Herling. Thank you.

6 ALJ SCHABO: Thank you. So we'll finish
7 up with Mr. Herling and we'll then take an early
8 lunch break and try to get Ms. West's equipment up
9 and running again.

10 So, with that, Ms. Burke, would you be so
11 kind as to read back the previous question and
12 answer.

13 (Record read.)

14 ALJ SCHABO: Mr. Van Kley.

15 MR. VAN KLEY: Yes.

16 Q. (By Mr. Van Kley) Mr. Herling, with
17 regard to the observations you made about the string
18 inverters that you saw, let me ask you a few
19 questions about that. On how many occasions have you
20 observed these string inverters at other projects?

21 A. Several occasions. I visit a lot of
22 solar projects in my work so at least -- at least six
23 projects.

24 Q. And how close to the string inverters
25 were you during those observations?

1 A. From the public right-of-way, typically I
2 would say between 30 to 50 feet if there were any on
3 the outside but typically they're located on the
4 inside of the project so it would have been a farther
5 distance than that for some.

6 Q. Did you take any sound measurements of
7 those string inverters?

8 A. No, I did not.

9 Q. Did you take any sound measurements of
10 the ambient sound during those visits?

11 A. No, I did not. Just my observations for
12 both.

13 MR. VAN KLEY: I have no more questions.

14 ALJ SCHABO: Not much there but,
15 Mr. Settineri, if you have any.

16 MR. SETTINERI: Mr. Herling -- yes, I
17 would like to ask just a couple quick questions.

18 - - -

19 FURTHER REDIRECT EXAMINATION

20 By Mr. Settineri:

21 Q. Mr. Herling, you were asked about your
22 observations of string inverters. Have you also --
23 you've attended trade shows -- let me rephrase that,
24 Your Honor.

25 Have you attended trade shows?

1 A. Yes.

2 Q. And those are trade shows related to the
3 solar industry?

4 A. Yes.

5 Q. And have you had the opportunity to
6 listen to string inverters at those trade shows?

7 A. Yes. Typically there would be inside and
8 outside booths to the trade show where they have
9 these set up and powered up so you can see them in
10 action.

11 Q. And what were your observations in
12 regards to sound from listening to string inverters
13 at trade shows?

14 MR. VAN KLEY: Objection, Your Honor.
15 This goes beyond the scope of my cross-examination.
16 He should have asked these questions in his prior
17 turn with the witness.

18 ALJ SCHABO: I'll sustain that.

19 Q. You were asked questions about string
20 inverters and your observations in the field. How do
21 those observations in the field compare to your
22 observations made at trade shows?

23 MR. VAN KLEY: Objection. This is a
24 roundabout way to get back to the same testimony that
25 he should have requested previously.

1 MR. SETTINERI: I believe it's within the
2 scope of your recross and it's just rephrased.

3 MR. VAN KLEY: It's not. I asked him
4 whether he had made any measurements of the sound
5 when he did his observations in the field and that's
6 all I asked about.

7 ALJ SCHABO: Sustained. Next question.

8 MR. SETTINERI: Sure.

9 Q. (By Mr. Settineri) Mr. Herling, you were
10 asked about the distance you were from inverters in
11 the field by Mr. Van Kley. Have you had an
12 opportunity to observe inverters, powered up, closer
13 than what you described from your field observations?

14 MR. VAN KLEY: I'm going to object again.
15 I think this is just another way to solicit the same
16 testimony he's been trying to get in that goes beyond
17 the scope of my cross-examination.

18 MR. SETTINERI: You did ask about
19 distances, how far he was, and so I'm simply --

20 ALJ SCHABO: Mr. Settineri, this is a --
21 you've -- you already got this information during
22 your first redirect.

23 MR. SETTINERI: Okay. Thank you, Your
24 Honor. Well, then at this point, I have no further
25 questions.

1 ALJ SCHABO: All right. Mr. Van Kley.

2 MR. VAN KLEY: No, nothing more from me.

3 ALJ SCHABO: Okay. Mr. Herling, thank
4 you very much. Pleasure to see you again.

5 We will take a break -- oh, I'm sorry,
6 Mr. Settineri, I stomped on your toes. I apologize.

7 MR. SETTINERI: No worries. That's
8 always my fear of missing to move in exhibits. So at
9 this time, Your Honor, we would move for the
10 admission of Company Exhibit 22, the Second
11 Supplemental Direct Testimony of Douglas Herling, and
12 I would note for the record that there are a number
13 of attachments to that testimony and those are part
14 of that Company Exhibit 22 and so move.

15 We would also move for the admission of
16 Joint Exhibit 2 into the record, the Amended and
17 Restated Joint Stipulation and Recommendation.

18 And we'd also move for the admission of
19 Company Exhibit 28 into the record, please.

20 We would also actually also like to admit
21 into the record -- no, that's it. Thank you very
22 much.

23 ALJ SCHABO: Any objections to the
24 admission of Joint Exhibit 2?

25 MR. VAN KLEY: No.

1 MS. BAIR: No.

2 MS. WEST: No.

3 ALJ SCHABO: Joint Exhibit 2 will be
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 ALJ SCHABO: Any objections to Company
7 Exhibit 22?

8 MR. VAN KLEY: No.

9 MS. BAIR: None.

10 MS. WEST: No.

11 ALJ SCHABO: Company Exhibit 22 will be
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 ALJ SCHABO: Any objections to Company
15 Exhibit 28?

16 MR. VAN KLEY: No.

17 MS. BAIR: No.

18 MS. WEST: No.

19 ALJ SCHABO: No objections, Company
20 Exhibit 28 will be admitted into the record.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 ALJ SCHABO: Mr. Van Kley, did you want
23 to take any action on CCPC Exhibit 7?

24 MR. VAN KLEY: We will defer and request
25 to admit that document until we question Mr. Hessler

1 about it.

2 ALJ SCHABO: Thank you.

3 All right. Now we will go on an early
4 lunch. It is 11:28, so why don't we reconvene at
5 12:30. All right. Thank you, everyone, for your
6 patience and we'll see you in about an hour.

7 (At 11:29 a.m. a lunch recess was taken
8 until 12:30 p.m.)

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1 Thursday Afternoon Session,
2 October 29, 2020.

3 - - -

4 ALJ HICKS: Let's go back on the record.

5 Before we proceed with the Company's next
6 witness, I just wanted to make a note. Before we
7 went to lunch, we had noted that Ms. West was having
8 some camera issues and was on just via audio only, so
9 I just wanted to note now for the record that she
10 appears to be back on, full capabilities, audio,
11 video, and hopefully should be good to go, going
12 forward.

13 So, with that, I would turn it over to
14 you, Mr. Settineri, to call your next witness.

15 MR. SETTINERI: Thank you, Your Honor.
16 At this time the Company would like to call David
17 Hessler to the stand, please.

18 ALJ HICKS: I don't see Mr. Hessler.

19 MS. CHILCOTE: I'm sorry. Give me one
20 second.

21 Mr. Hessler, you have been promoted. You
22 look like you're unmuted and you're ready to go.

23 THE WITNESS: Yes, I am.

24 ALJ HICKS: There we go. I can see you.
25 Mr. Hessler, if you can please raise your right hand.

1 (Witness sworn.)

2 ALJ HICKS: Thank you.

3 Mr. Settineri, please proceed.

4 MR. SETTINERI: Thank you, Your Honor.

5 - - -

6 DAVID HESSLER

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

9 DIRECT EXAMINATION

10 By Mr. Settineri:

11 Q. Good afternoon, Mr. Hessler.

12 A. Good afternoon.

13 Q. Could you please state your name and
14 business address for the record, please.

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

18 Q. Thank you.

19 MR. SETTINERI: And, Your Honor, at this
20 time I would like to mark an exhibit.

21 ALJ HICKS: Go ahead.

22 MR. SETTINERI: I would like to mark as
23 Company Exhibit 23, the Supplemental Testimony of
24 David Hessler.

25 ALJ HICKS: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Settineri) Mr. Hessler, do you
3 have before you what's been marked as Company Exhibit
4 23?

5 A. I do.

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

8 A. It's my Supplemental Testimony.

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

11 A. It was.

12 Q. And do you have any revisions to that
13 testimony today?

14 A. No, I don't.

15 Q. Okay. If I asked you the questions in
16 that testimony today, would your answers be the same
17 as written?

18 A. Yes.

19 MR. SETTINERI: Thank you.

20 Your Honor, the witness is available for
21 cross-examination.

22 ALJ HICKS: Thank you.

23 Mr. Van Kley.

24 MR. VAN KLEY: Yes, thank you.

25 ALJ HICKS: Cross.

1 MR. VAN KLEY: Yes.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Van Kley:

5 Q. All right. Mr. Hessler, let's start on
6 page 2 of your Supplemental Testimony marked as
7 Company Exhibit 23.

8 A. Good afternoon, Jack. I see you got your
9 halo function working again.

10 Q. Yup.

11 A. Page 2. Okay.

12 Q. Page 2. Let's look at Answer 6.

13 A. Yup.

14 Q. I'm looking at the second sentence of
15 Answer 6 which states that "the Amended Joint
16 Stipulation now includes a minimum setback of
17 '500 feet between any central inverter and any
18 residence on a non-participating parcel.'" Do you
19 see that?

20 A. I see that.

21 Q. This condition in the Stipulation does
22 not apply to string inverters, does it?

23 A. It only refers to central inverters.

24 Q. Let's go to Answer 8 on the same page of
25 your testimony.

1 A. Okay.

2 Q. And we're also going to open up another
3 exhibit which was previously marked in this hearing
4 as CCPC Exhibit 7 which is a report on Acoustic
5 Environmental Test for the SMA inverter. Do you have
6 a copy of that in front of you?

7 A. I sure do.

8 Q. Now, let's go back to your testimony on
9 page 2, Answer 8, and lines 14 and 15 refer to a
10 sound test report from the manufacturer of the SMA
11 SC4600-UP, correct?

12 A. Correct.

13 Q. And is CCPC Exhibit 7 a copy of the
14 report that you referenced in Answer 8, lines 14 and
15 15 of your testimony?

16 A. Yes, it is.

17 Q. And directing your attention to the
18 bottom of the second page, this report is dated
19 June 25, 2019, correct?

20 A. Yes, it is.

21 Q. Okay. Now, what information in this
22 report, if any, did you use to prepare your testimony
23 in Answer 8?

24 A. I used the fundamental result of this
25 test which is shown in section 4.2 of the report. As

1 we talked about the other day, these pages aren't
2 numbered but it's toward the end.

3 Q. All right. Let's give everybody a moment
4 to get to the correct page. Would -- that would be
5 the 18th page, I believe, of the PDF that contains
6 your testimony and --

7 A. It's got a graph on it as we can see
8 here.

9 Q. Yeah, that's the page I'm looking at.

10 A. Okay.

11 Q. It looks like on the PDF of your
12 testimony and its attachments, it looks like it's PDF
13 page 18 of 28 for those who are looking at a PDF copy
14 of Mr. Hessler's testimony. It is labeled on the top
15 as "4.2 Measurement at 4600 kVA, 1350 V DC U0N
16 Modulation 100% fan load"; is that correct?

17 A. Yeah, 100 percent fan load, yes.

18 Q. Uh-huh. All right. Tell me how you used
19 the information on this page of CCPC Exhibit 7 to
20 prepare your testimony in Answer 8.

21 A. Yeah, what this chart shows is the honey
22 deal information that's needed for noise modeling.
23 It's the one-third octave band sound power level
24 spectrum and so we were able to use that directly as
25 an input to the new noise model that now includes all

1 the central inverters. So they took this third
2 octave spectrum, converted it to full octaves because
3 that's what the modeling -- that's how all modeling
4 is done, not in third octaves, and then, in addition,
5 we added in the additional sound from a medium
6 voltage transformer that would be associated with
7 these inverters, with each inverter in its field
8 installation.

9 Q. Let's go to Exhibit DH -- I'm sorry,
10 Exhibit DMH-S1 in Company Exhibit 23.

11 A. Okay. And I believe that is on the
12 seventh page.

13 MR. VAN KLEY: I just -- I just noticed
14 something that I need to correct the record on. When
15 I was referring to the 18th page of 28 pages for the
16 page that we just discussed in CCPC Exhibit 7, I was
17 not referring to the PDF of Mr. Hessler's testimony.
18 I was referring to the PDF of CCPC Exhibit 7. I just
19 wanted to make sure the record wasn't muddled by that
20 misreference there.

21 Q. So let's go back then to Company
22 Exhibit 23 and we're now on the seventh page of the
23 PDF of your testimony, correct?

24 A. I believe so. I've got a hard copy here.

25 Q. Just for the record, the page number --

1 the page is labeled Plot 1, Exhibit DMH-S1; is that
2 correct?

3 A. That's correct.

4 Q. Okay. And would you just generally
5 describe the purpose of this Plot 1?

6 A. Yes. Back when we originally looked at
7 the Project and in the original Application, we
8 focused primarily on the substation because
9 information, meaningful information on the inverters
10 wasn't available at that time, and in the intervening
11 time it's become available so now we're able to model
12 specifically what's expected to happen and so this
13 plot shows the entire Project according to the
14 preliminary layout as it stands today; that includes
15 not only the substation but also all of the central
16 inverters. So this plot shows the expected sound
17 contours relative to all of the nearest participating
18 and non-participating residences and to the
19 boundaries of the leased parcels that make up the
20 Project Area.

21 ALJ HICKS: Mr. Van Kley, I believe
22 you're muted.

23 Q. The yellow lines on Plot 1 in the legend
24 are labeled as "Project Area"; is that correct?

25 A. Yeah. It's the boundary of the leased

1 parcels, yes.

2 Q. Directing your attention to the lower
3 half of Plot 1, just below Campbell Road, do you see
4 two small rectangles that are surrounded with yellow
5 lines?

6 A. Yes.

7 Q. And there's one home inside of each
8 rectangle?

9 A. Correct.

10 Q. Now, is the area inside of those two
11 rectangles part of the Project Area or not part of
12 the Project Area?

13 A. The one that's further south has a
14 participating residence inside of it so I think that
15 parcel, that rectangle there could be considered
16 participating.

17 The one further north, to the northwest
18 of that one is, I believe, a non-participating land
19 parcel within a larger parcel that's participating.

20 Q. So that rectangle is not part of the
21 Project Area, correct?

22 A. That's my understanding, yes.

23 Q. How did you obtain a copy of CCPC
24 Exhibit 7, the sound test report?

25 A. Well, with relevance to this Project, it

1 was obtained by Mr. Herling and forwarded to me.

2 Q. You had received a copy of this report
3 from another source prior to the time that
4 Mr. Herling gave you a copy of it?

5 A. Yeah, that's correct. I was made aware
6 of this report in conjunction with another project
7 where that project was going to use the particular
8 type of inverter, and I asked them to ask the
9 manufacturer if they had any sound data, and they
10 obtained this report which was used in that other
11 project. At a later time, I mentioned that this
12 report existed to the people on this project and then
13 they asked for their own copy of it and got one.

14 Q. And when did you receive a copy of the
15 report for the other project?

16 A. I think that was in late 2019. And the
17 work on that project, the modeling work didn't occur
18 until around May of 2020.

19 Q. Before you prepared your sound report
20 that is included in the original Application in the
21 Angelina case, did you have any sound test reports
22 for inverters?

23 A. No.

24 MR. SETTINERI: Just object. Object.
25 Object to the form of the question as to what

1 testimony because he's filed three sets of testimony
2 in this case. Thank you.

3 MR. VAN KLEY: I didn't say anything
4 about testimony. I asked him about whether he had
5 any reports before he submitted his sound report for
6 the original Application.

7 MR. SETTINERI: Okay. I'll just object
8 as to who he submitted it to, but thank you,
9 Mr. Van Kley.

10 ALJ HICKS: The witness can go ahead and
11 answer.

12 THE WITNESS: Okay.

13 A. No, back at the time the original study
14 was done, I was not aware of any detailed reports on
15 inverter noise. There was a study done, some years
16 ago in Massachusetts, where some measurements were
17 taken of several different types of inverters. There
18 was some information in that. I think some other
19 manufacturers had been queried at that point and had
20 come back with rather vague information that wasn't
21 particularly useful so we had no reliable basis for
22 doing any modeling of inverters at that time.

23 Q. So you had received some sound reports
24 from manufacturers of inverters at that time?

25 MR. SETTINERI: Just object.

1 Mischaracterizes the testimony.

2 MR. VAN KLEY: I think he said that he
3 had received some sound test reports or he had
4 received some sound reports but he didn't find them
5 to be useable.

6 MR. SETTINERI: I don't think he used the
7 word "report."

8 MR. VAN KLEY: Well, I'll re-ask the
9 question just to make sure we're clear here on what
10 we're asking about.

11 Q. (By Mr. Van Kley) Mr. Hessler, why don't
12 you describe to us what kind of information you
13 had --

14 A. Right.

15 Q. -- about the inverter sound from the
16 manufacturers.

17 A. Yeah. At that time it was generally a
18 one-page summation with a few near field sound
19 pressure levels expressed as the overall A-weighted
20 level without any frequency content or anything
21 really reliable in there.

22 Q. What was the sound pressure level for
23 central inverters that was expressed in those
24 reports?

25 A. Well, I don't recall the exact numbers

1 but it seems to me they were generally in the 65 to
2 80 dBA range, close to the units.

3 Q. And what is the sound pressure level
4 close to the unit that is contained in CCPC
5 Exhibit 7?

6 MR. SETTINERI: I just object to clarify
7 if you're talking sound power or sound pressure.

8 MR. VAN KLEY: Sound pressure. Thank
9 you.

10 A. In this test report there are some sound
11 pressure level measurements that were taken very,
12 very close to the surface of the unit, about
13 200 millimeters. They range from 66 up to looks like
14 the highest one is maybe 83, but the average is more
15 in the 70s, I would say.

16 Q. Where are you finding that information in
17 CCPC Exhibit 7?

18 A. Well, for example, two pages before the
19 page for the chart that we were talking about
20 earlier. What page of the PDF did you say that one
21 was, 18?

22 Q. Yes.

23 A. Okay. So I guess this would be page 16.

24 MR. SETTINERI: For the record,
25 Mr. Hessler, if you could make clear so the record is

1 clear when you identify pages, use something on the
2 document to identify the page versus the PDF, please.

3 A. This -- this page that I'm looking at, at
4 the top of it it says "Cuboid measurement surface
5 with 26 finite measurement surfaces." My only
6 grievance with this report is they didn't number the
7 pages.

8 Q. Have you seen any sound test reports for
9 string inverters?

10 A. Yes, I have.

11 Q. How many have you seen?

12 A. Only one. That was done by this same
13 company, SMA, for one of the string inverter models
14 that they produce.

15 Q. Have you performed any modeling for
16 string inverters that utilized that sound test
17 report?

18 A. No. It was put to me that the current
19 plan is to use central inverters and that's what we
20 modeled.

21 Q. What about for other solar farms, have
22 you utilized that report on string inverters to
23 perform any modeling for those other farms?

24 A. Yes, I have. That's another excellent
25 report that gives the one-third octave band sound

1 power level of those units.

2 Q. And what was the -- for how many other
3 solar farms did you perform that modeling on string
4 inverters?

5 A. Just the one. It's somewhat unusual --
6 well, at least in my experience it's somewhat unusual
7 to use string inverters; normally it's central
8 inverters.

9 Q. What was the results of your modeling in
10 that other farm for the sound from the string
11 inverters?

12 A. I don't recall the exact numbers but I
13 remember the result predicted extremely low levels at
14 all the nearest houses.

15 Q. Well, you testified earlier this week
16 that the results were about 30 dBA at other
17 residences, didn't you?

18 MR. SETTINERI: Objection. From another
19 proceeding, another case. We haven't presented any
20 deposition transcript or anything. That's testimony
21 from another case. I also object also to the form of
22 the question.

23 MR. VAN KLEY: I'm just refreshing his
24 memory.

25 ALJ HICKS: Is there any way you can

1 rephrase the question, Mr. Van Kley, to get to your
2 point?

3 Q. (By Mr. Van Kley) Mr. Hessler, isn't it
4 true that for the other solar farm you found that the
5 estimated predicted sound level at non-participating
6 neighboring residences was approximately 30 dBA for
7 those string inverters?

8 A. I think that's a fair estimate of what
9 the results were there.

10 Q. Let's go to Answer 11 on your testimony
11 that's been marked as Company Exhibit 23.

12 A. Okay.

13 Q. In Answer 11, on page 4 of Company
14 Exhibit 23, you stated the estimated distance between
15 central inverters and the nearest homes, correct?

16 A. That's correct. What I'm saying is that
17 the -- with the current layout, the nearest
18 non-participant to any central inverter is about
19 720 feet; way beyond the minimum stipulation setback.

20 Q. Uh-huh. How -- what is the distance
21 between the nearest non-participating neighbor's
22 property line and the central inverters?

23 A. At that nearest house that's 720 feet
24 away, its property line is perhaps 100 feet closer to
25 the inverter. I'm very roughly estimating.

1 Q. In that other project where you modeled
2 the sound expected to come from the string inverters,
3 what was the shortest distance between a string
4 inverter and a non-participating resident --
5 residence?

6 A. I don't have any figure for that. It was
7 a substantial distance, though, because in that
8 project the string inverters were not distributed
9 throughout the panel arrays as they sometimes are but
10 were consolidated 10 at a time into kind of a prefab
11 skid with one transformer serving all 10 units, so in
12 effect they acted as if they were central inverters
13 and were located within the panel arrays as if they
14 were central inverters.

15 Q. Let's go to Answer 12 on page 4 of
16 Company Exhibit 23. Here, in Answer 12, you discuss
17 Condition 3 of the Amended Joint Stipulation,
18 correct?

19 A. Correct.

20 Q. And according to your answer, Condition 3
21 states that "The Applicant shall promptly retrofit
22 any inverter as necessary to effectively mitigate any
23 off-site noise issue identified during operation of
24 the facility," correct?

25 A. Yes, that's correct.

1 Q. Can you tell me whether the Amended Joint
2 Stipulation states the sound level at which an
3 inverter would have to be retrofitted in order to
4 mitigate any off-site noise issue?

5 A. No, no level is discussed.

6 MR. VAN KLEY: I have no more questions
7 at this time.

8 ALJ HICKS: Thank you, Mr. Van Kley.

9 Any of the other parties have any cross
10 at this time?

11 MS. BAIR: No questions, Your Honor.

12 MS. WEST: No questions.

13 ALJ HICKS: Thank you.

14 MS. MILAM: None, Your Honor.

15 ALJ HICKS: Thank you.

16 Mr. Settineri, redirect?

17 MR. SETTINERI: Yes. Just a few
18 questions, thank you, Your Honor, if I may?

19 ALJ HICKS: Please proceed.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Settineri:

23 Q. Good afternoon again, Mr. Hessler.

24 A. Good afternoon.

25 Q. Mr. Van Kley just asked you questions

1 about your Answer 12 in your testimony, specifically
2 about off-site noise issues. How would you expect an
3 off-site noise issue to be raised?

4 A. Presumably through a complaint.

5 Q. And in your experience is that typically
6 how off-site noise issues are raised?

7 A. Yeah. Almost always, yeah.

8 Q. We had some discussion in a lot of
9 questions about string inverters, so just if you --
10 based on your experience in the industry and your
11 knowledge, how does sound from a string inverter
12 compare to sound from a central inverter?

13 A. Well, it's significantly lower in overall
14 magnitude. And in the test report that I saw, it did
15 not have any tonal content to it. It was just a
16 broadband roaming sound that was very soft, on the
17 order of the level of a normal conversation.

18 Q. Okay. And what's the significance of not
19 having, I think you said tonal tones?

20 A. Yeah. Well, tonal noises tend to be much
21 more readily perceptible and can often lead to
22 complaints; whereas, a sound level without any
23 character to it at the same level might go unnoticed.
24 So it's an adverse character that you don't want to
25 have one.

1 Q. Do you have a copy of the Joint
2 Stipulation in front of you, Joint Exhibit 2, and I
3 would like to direct your attention to Condition 3
4 when you're there.

5 A. Yeah, I got that.

6 Q. Is there a setback, in that Condition,
7 between the facility fence and any residence on a
8 non-participating parcel?

9 A. Yes, there is. There's a 150-foot
10 setback there and there's also a 25-foot setback
11 between the fence and any -- let me see here. Well,
12 let's just leave it at 150-foot setback between the
13 facility fence and any residence.

14 Q. But there are additional setbacks in that
15 paragraph; is that right?

16 A. Yes. I think the equipment has to be
17 25 feet inside the fence so effectively 175 feet, I
18 guess.

19 Q. Given that setback and based on your
20 experience, if the Project utilized string inverters,
21 would you expect the sound from the inverters to
22 create any noise issues?

23 A. No, not at all. Even if the string
24 inverter were put on the very end of the row on the
25 outside edge of the Project, at 150 or 175 feet, the

1 level would be down in the very low 30s based on the
2 SMA test report for that particular 150-kilowatt
3 string inverter that I've seen.

4 MR. SETTINERI: Thank you, Mr. Hessler.
5 No further questions at this time.

6 ALJ HICKS: Thank you, Mr. Settineri.
7 Mr. Van Kley, any recross?

8 MR. VAN KLEY: Yes.

9 ALJ HICKS: Please go ahead.

10 - - -

11 RE CROSS-EXAMINATION

12 By Mr. Van Kley:

13 Q. With respect to your statement that you
14 believed the solar equipment had to be a certain
15 number of feet inside of the fence, where did you
16 obtain that understanding?

17 A. Well, there's three different setback
18 conditions within Condition 3 and the first one
19 refers to 25 feet but I was too hasty reading it but,
20 yeah, I guess the answer is any equipment would not
21 go right up touching the fence. There's usually an
22 access road or something built around the perimeter
23 so that the arrays are sometimes well inside the
24 fence, and 25 feet is probably a reasonable estimate
25 for that.

1 Q. Are you aware of any requirements in the
2 Application that there be 25 feet of space between
3 the fence and the nearest equipment inside the fence?

4 A. No, I'm not aware of any formal
5 limitation on that. I'm just speaking from the way
6 these things are typically laid out.

7 Q. You said something about the sound level
8 of a string inverter as being equivalent to the dBA
9 of a normal conversation; do you recall that?

10 A. Yes.

11 Q. And what is the dBA level of a normal
12 conversation?

13 A. About 65 dBA typically.

14 MR. VAN KLEY: Okay. I have no more
15 questions.

16 ALJ HICKS: Thank you, Mr. Van Kley.

17 MR. SETTINERI: Your Honor, if I may?

18 ALJ HICKS: Sure.

19 MR. SETTINERI: I just have one quick
20 follow-up.

21 - - -

22 FURTHER REDIRECT EXAMINATION

23 By Mr. Settineri:

24 Q. Mr. Hessler, regarding the question on
25 the sound level for a conversation and the sound from

1 that string inverter, when you say 65 dBA -- let me
2 rephrase that. First of all, is that 65 dBA sound
3 pressure or sound power?

4 A. You're getting real good with these noise
5 issues, Mike. It's sound pressure; near field sound
6 pressure. The report that I saw showed that the near
7 field sound pressure of that string inverter was less
8 than 65 dBA.

9 Q. Okay. And do you know the distance as to
10 what that measurement -- that measurement was
11 recorded?

12 A. Well, it probably was at 1 meter or even
13 closer to it than that.

14 MR. SETTINERI: Thank you. No further
15 questions.

16 ALJ HICKS: Mr. Van Kley, anything in
17 follow-up on your end?

18 MR. VAN KLEY: Yeah.

19 - - -

20 FURTHER RE-CROSS-EXAMINATION

21 By Mr. Van Kley:

22 Q. Just to make sure the record is clear and
23 that I understand. When you measured the sound
24 levels for purposes of putting them on Plot 1
25 attached to your testimony, you came up with some

1 levels such as 40, 45, 35, et cetera. Those were in
2 dBA, right?

3 A. Correct.

4 Q. Are those the sound pressure levels?

5 A. Yes.

6 MR. VAN KLEY: Okay. Very good. Thank
7 you.

8 THE WITNESS: Okay.

9 ALJ HICKS: Mr. Settineri, I don't
10 believe there's much there.

11 MR. SETTINERI: No. The only thing I
12 would say unless the Bench would like to know the
13 difference between sound power output and sound
14 pressure levels, that's all, for the record. I would
15 leave it to the Bench to ask that question if they
16 would like to.

17 ALJ HICKS: Sorry, I got muted there. I
18 have no questions on my end on that issue. I don't
19 believe Judge Schabo does either.

20 ALJ SCHABO: No.

21 ALJ HICKS: So, with that, I would just
22 ask if there are questions from any other parties at
23 this time. I'm seeing head nods of a "no." So at
24 this time, Mr. Settineri, would you like to move any
25 of the exhibits?

1 MR. SETTINERI: Yes. At this time we
2 will move for the admission of Company Exhibit 23.
3 We will also move for the admission of CCPC Exhibit
4 7.

5 ALJ HICKS: Any objections to the
6 admission of Company Exhibit 23 from any of the
7 parties?

8 MR. VAN KLEY: No.

9 ALJ HICKS: Company Exhibit 23 will be
10 admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 ALJ HICKS: Any objections to the
13 admission of CCPC 7? Exhibit 7, excuse me.

14 MR. VAN KLEY: No.

15 ALJ HICKS: Hearing none, CCPC Exhibit 7
16 will also be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 ALJ HICKS: I don't think anyone needs a
19 break at this point. Does everyone want to continue
20 trucking along?

21 MR. VAN KLEY: I'd say let's truck along.

22 ALJ HICKS: Thank you, Mr. Hessler, for
23 your time.

24 ALJ SCHABO: Mr. Settineri, your next
25 witness.

1 MR. SETTINERI: Thank you, Your Honor.
2 At this time the Company will call Matthew Robinson
3 to the stand, please.

4 MS. CHILCOTE: Mr. Robinson, you have
5 been promoted and are now unmuted.

6 THE WITNESS: Hello.

7 ALJ SCHABO: Hello. Could you raise your
8 right hand for me.

9 (Witness sworn.)

10 ALJ SCHABO: Thank you.

11 Mr. Settineri.

12 MR. SETTINERI: Thank you, Your Honor.

13 - - -

14 MATTHEW ROBINSON

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

17 DIRECT EXAMINATION

18 By Mr. Settineri:

19 Q. Good afternoon, Mr. Robinson.

20 A. Good afternoon.

21 Q. Good to see you today.

22 MR. SETTINERI: Your Honor, at this time,
23 before we start, I'd like to mark an exhibit, Company
24 Exhibit 24, the Supplemental Testimony of Matthew
25 Robinson.

1 ALJ SCHABO: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. SETTINERI: Thank you, Your Honor.

4 Q. (By Mr. Settineri) Mr. Robinson, can you
5 please state your name and business address for the
6 record, please.

7 A. Matthew Robinson. 217 Montgomery Street,
8 Syracuse, New York.

9 Q. And do you have before you what's been
10 marked as Company Exhibit 24?

11 A. I do.

12 Q. All right. And could you please identify
13 that for the record.

14 A. That is my Supplemental Testimony.

15 Q. And was that prepared by you or at your
16 direction?

17 A. It was.

18 Q. Okay. And do you have any revisions or
19 changes to that testimony at this time?

20 A. I do not.

21 Q. Okay. If I asked you the questions in
22 that testimony today, would your answers be the same?

23 A. They would be.

24 MR. SETTINERI: Thank you, Mr. Robinson.

25 Your Honor, the witness is available for

1 cross-examination.

2 ALJ SCHABO: Mr. Van Kley.

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

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Van Kley:

7 Q. Mr. Robinson, let's start on page 2 of
8 your testimony marked as Company Exhibit 24.

9 A. I'm there.

10 Q. Let's start with your answer to Question
11 8.

12 A. Okay.

13 Q. In the first sentence of your Answer 8,
14 you state that "Providing additional setback distance
15 enhances the overall goals of the Landscape
16 Mitigation Plan." Do you see that?

17 A. Yes.

18 Q. And then in the second sentence you state
19 that "The setbacks do this by allowing for greater
20 options and flexibility when determining specific
21 vegetation material and placement within the proposed
22 modules." Do you see that?

23 A. Yes.

24 Q. Okay. Let's go to your landscaping plan
25 that is attached to your testimony.

1 A. I have it.

2 Q. And that's marked as Attachment 1,
3 correct?

4 A. Correct.

5 Q. So because Answer 8 refers to proposed
6 modules, why don't you explain, utilizing for
7 illustration your landscape plan, what do you mean by
8 planting modules.

9 A. The design approach that we take, that
10 EDR takes when performing a mitigation plan like this
11 for a solar farm, we, EDR, starts by looking at the
12 different areas of potential views from potential
13 users to that area, this could be travelers along the
14 roadways, it could be recreational users, it could be
15 residential users as well, and then from that we look
16 to try to cater the modules or the planting of
17 vegetation specific to those needs along the
18 perimeter of the project.

19 So for us, in order for us to really be
20 able to create a preliminary design, get out some
21 information to the public and provide an
22 understanding of what it will entail to do this type
23 of planting at this stage before we're doing
24 construction documents, creating these modules allows
25 us to place them around the site and understand what

1 we're looking at and where we might need to pay more
2 attention or what different modules may need to be
3 used.

4 Q. All right. So if you go to page 6 of
5 Attachment 1, you will find four modules set forth in
6 section 4.0, starting on that page, correct?

7 A. Correct.

8 Q. So let's go to the next page which is
9 page 7 of Attachment 1 and there you have a
10 description of Module 4, correct?

11 A. Correct.

12 Q. And Module 4 is intended to be used for
13 adjacent resources such as residences, correct?

14 A. Correct.

15 Q. What is the width of the distance between
16 the facility fence and the property line that is
17 necessary in order to include the plants that you
18 have provided for Module 4 in your landscaping plan?

19 A. It can vary depending on the site
20 exactly. What we've put forth is a 25-foot buffer of
21 plants and a 15-foot buffer in between the module or
22 the planting and the fence, so that would be a total
23 of 40 feet for Module 4.

24 Q. Would you go to -- I don't see a page
25 number on here but you continue in section 4 of

1 Attachment 1 to a page that is labeled "Module 4 -
2 Adjacent Resource (Residence)."

3 A. Yes.

4 Q. Okay. That appears to be page 11, right?

5 A. Yes.

6 Q. Okay. Great. All right. So is there
7 anything on this page that reveals the width of the
8 area that needs to be available in order to include
9 the plants provided by Module 4?

10 A. No, there is not on that page.

11 Q. Let's go to Answer 11 on page 3 of your
12 testimony marked as Company Exhibit 24. Tell me when
13 you find that.

14 ALJ SCHABO: I'm sorry, Mr. Van Kley, can
15 you repeat that page reference?

16 MR. VAN KLEY: Page 3, Answer 11.

17 ALJ SCHABO: Thank you.

18 A. That's why. I was looking for page 11.
19 I was like uh-oh. I am there now.

20 Q. All right. And also do you have a copy
21 in front of you of Joint Exhibit 2, the Amended
22 Stipulation?

23 A. I do as well, yes.

24 Q. All right. So go to Condition 11 of that
25 Joint Stipulation.

1 A. Yup.

2 Q. All right. If you look at line 18 in
3 Answer 11 of your testimony, you will see that
4 there's a reference there to replacing any failed
5 plantings to ensure that at least 90 percent of the
6 vegetation survives for five years, correct?

7 A. That is what it says, correct.

8 Q. Okay. And then if you go back to
9 Condition 11 on the Joint Stipulation, you will see
10 that it requires that "the Applicant shall replace
11 any failed plantings so that, after five years, at
12 least 90 percent of the vegetation has survived,"
13 correct?

14 A. Correct.

15 Q. Now, based on your Answer 11 and
16 Condition 11, what is your understanding as to
17 whether the Joint Stipulation, as amended, requires
18 any specific amount of vegetation to be maintained
19 after the facility has passed its five-year
20 anniversary?

21 A. My understanding of the way that the
22 Condition is written is that it's a two-prong
23 approach. In the beginning of the sentence, looking
24 at my testimony on line -- page 3, line 16, at the
25 end of that line it starts with "and it further

1 ensures that the Applicant will maintain the
2 vegetative screen for the life of the Project," so
3 therefore it is the understanding of me that the
4 Company will maintain the desired screening that is
5 proposed in the landscape plan for the life of the
6 Project.

7 Q. Do you see any language in Condition 11
8 that provides you with that understanding?

9 A. Yes. I believe the same language is in
10 there as well.

11 Q. Okay. Where is it in Condition 11?

12 A. About in the middle, it starts on line 13
13 down. It says "The Applicant shall maintain
14 vegetative screening for the life of the
15 facility...."

16 Q. Okay. Do you see anything in that
17 language that states that the Applicant shall
18 maintain vegetative screening for the life of the
19 facility in an amount of at least 90 percent of the
20 vegetation that was planted?

21 A. I do not for the life of the facility,
22 no. I see up to five years.

23 Q. Do you see anything in Condition 11 of
24 the Joint Stipulation that explains how the
25 90 percent figure for vegetation will be measured,

1 such as by number of plants or by amount of space
2 covered by the vegetation?

3 A. I do not see that currently in the
4 Stipulation.

5 Q. Do you see anything in the Stipulation
6 that reveals where the 90 percent surviving
7 vegetation has to be located throughout the facility?

8 A. I do not see anything specific to that in
9 there. And I can't speak for the Company but it's my
10 understanding that it would be for the whole
11 facility.

12 Q. So if -- let's say that 5 percent of the
13 vegetation dies but all of that vegetation was in
14 front of one non-participating residence, is it your
15 understanding that Condition 11 would not, or that it
16 would, require replacement of that dead vegetation?

17 A. The way I understand the Stipulation, the
18 first prong of those -- of the two-prong approach
19 does state that vegetative screening will be
20 maintained, so I do believe that that covers a
21 greater loss in a specific area.

22 Q. Do you see anything in the Stipulation
23 that specifically states that if there is a loss of
24 vegetation in front of a person's home but there is a
25 loss of less than 10 percent throughout the facility,

1 that the dead vegetation in front of that one
2 person's home would still have to be replaced?

3 A. Again, it is my understanding of this
4 writing that that first portion of it, that says
5 where the Applicant shall maintain vegetative
6 screening, that is covering that portion of it and
7 that's my understanding.

8 Q. In lines 19 through 21 on page 3 of your
9 testimony, marked as Company Exhibit 24, you discuss
10 lighting, correct?

11 A. Correct.

12 Q. And you refer back to Condition 11 of the
13 Joint Stipulation in that discussion, correct?

14 A. Correct.

15 Q. Can you tell me what the meaning of the
16 term "side shields" is as used in your testimony and
17 in Condition 11?

18 A. The term "side shields" in Condition 11
19 and in my testimony are referring to an additional
20 appendage of a light fixture that will block light
21 from trespassing and control the area of, I'm not
22 sure exactly how to say it but the area that's being
23 lit. Some certain fixtures do not require side
24 shields because they can be built in. Some fixtures
25 do require an additional piece.

1 Q. Do side shields prevent light from being
2 cast directly in front of the light?

3 A. I don't -- I'm not positive of that
4 answer. My understanding of lighting that I've
5 looked at is that a side shield could be a 360-degree
6 shield depending on the fixture again and the goal
7 for what the area you're trying to light is.

8 MR. VAN KLEY: I have no additional
9 questions.

10 ALJ SCHABO: Any questions from the other
11 parties?

12 MS. BAIR: None from Staff.

13 ALJ SCHABO: Mr. Settineri, do you have
14 any redirect?

15 MR. SETTINERI: There we go. Yes, I do,
16 Your Honor. Thank you.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. Settineri:

20 Q. Good afternoon again, Mr. Robinson.

21 A. Hello.

22 Q. If you could do me a favor, please, and
23 turn to Module 4. You were asked some questions
24 about that module.

25 A. Yup.

1 Q. And there were some questions about the
2 width of the module. There is a plant list on that
3 page, Attachment -- well, Attachment 1, page 11. Do
4 you see that plant list?

5 A. Yes.

6 Q. Do you see the mature size of the various
7 plantings?

8 A. Yes, I do.

9 Q. Okay. Will those mature sizes -- do you
10 expect those mature sizes to exist in the module when
11 fully planted?

12 A. Not to the full height and full width of
13 what these are stating. These state a very mature
14 tree that would be known as a specimen tree that had
15 a perfect life and lived an exact healthy time and
16 grew to a full extent. I expect that, because of the
17 way we are planting these more in a hedgerow and not
18 as a single specimen tree, they will grow together
19 and limit their actual width and height to kind of
20 form a clump and form a hedgerow.

21 Q. All right. And do the modules represent
22 vegetative screening?

23 A. Yes.

24 Q. Okay. And can a module provide
25 sufficient screening if certain parts of the module

1 die?

2 A. Absolutely, yes.

3 Q. And why is that?

4 A. Our modules, depending on the design or
5 which one we're using, we do include a lot of
6 overlapping material that is meant to be very minimal
7 maintenance over the years so it will clump together
8 and kind of naturally form into a healthy, living,
9 vegetative buffer. The idea is that if one plant
10 does tend to have a branch that breaks off or has
11 some type of dieback, it's overlapped and built in
12 with the rest of the system so it fills in and looks
13 very natural that way.

14 Q. You mentioned -- there were some
15 questions about the Condition language. Do you have
16 Joint Exhibit 2 in front of you?

17 A. Yes.

18 Q. Okay. I want to obviously go to
19 Condition 11, and I want to direct your attention to
20 the sentence that reads: "The Applicant shall
21 maintain vegetative screening for the life of the
22 facility and the Applicant shall replace any failed
23 plantings so that, after five years, at least 90
24 percent of the vegetation has survived." Now, you
25 identified two prongs. What was the first prong you

1 identified in the Condition?

2 A. The first prong really talks about the
3 maintaining of vegetative screening for the life of
4 the facility.

5 Q. Okay.

6 A. The way I understand that would be
7 towards the design.

8 Q. Okay. Let me ask you this: Would that
9 first prong address the issue of a module not
10 providing sufficient screening?

11 A. Yes, I believe it would.

12 Q. And why is that?

13 A. Because it's talking about the goals for
14 maintaining that vegetative screening so if that
15 vegetative screening that is placed in that area is
16 not living up to what it was stated that module would
17 do, that sentence, to me, covers that that would have
18 to be looked at and updated with additional plants
19 or, you know, remediated in some way.

20 Q. Okay. And then continuing looking at the
21 sentence, the sentence says "and the Applicant shall
22 replace any failed plantings so that, after five
23 years, at least 90 percent of the vegetation has
24 survived." Is that the second prong that you
25 referenced in your testimony in response to

1 Mr. Van Kley's question?

2 A. Yes, that's kind of the second-prong
3 approach that provides a more specific numbers-type
4 approach.

5 Q. Okay. And at what point would the
6 measurement occur as to the 90 percent?

7 A. I work with a few different ways of this.
8 I'm not sure the way the Company has decided at this
9 point to do this. My understanding is that normally
10 the installer would, over those five years, be doing
11 periodic reviews of the plantings and be replacing
12 those so that at that five-year period you have
13 90 percent of the life. They could choose to let
14 everything die that does and replace everything at
15 that five-year period but my experience is that most
16 companies do replace it throughout that five years so
17 at that five-year period you have 90 percent
18 vegetation.

19 Q. Okay. And what is -- is there a benefit
20 to having 90 percent of the vegetation survive at the
21 five-year mark?

22 A. Oh, certainly for the public. It ensures
23 that vegetation is going to be there and be healthy.
24 Really the five-year mark is a pretty conservative
25 mark in the world of landscape installing and design,

1 where we say a lot of times three to five years, once
2 that plant is installed -- I mean installed and --
3 what's the word I'm looking for, sorry -- established
4 into the area, at that three- to five-year period
5 you're not going to see a dieback or a dieoff from
6 that plant.

7 MR. SETTINERI: Okay. All right. No
8 further questions at this time. Thank you.

9 ALJ SCHABO: Mr. Van Kley, do you have
10 recross?

11 MR. VAN KLEY: No, I do not.

12 ALJ SCHABO: Okay. Mr. Settineri, would
13 you like to act on your exhibit?

14 MR. SETTINERI: I would, Your Honor.
15 Thank you. At this time we would move for the
16 admission of Company Exhibit 24, the Supplemental
17 Testimony of Matthew Robinson, which, as the
18 testimony notes, includes various attachments that
19 are part of his testimony.

20 ALJ SCHABO: Any objections?

21 MR. VAN KLEY: No.

22 ALJ SCHABO: Hearing none, Company
23 Exhibit 24, including exhibits, will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 ALJ SCHABO: Thank you, Mr. Robinson.

1 Mr. Settineri, your next witness.

2 MR. SETTINERI: Thank you, Your Honor.

3 At this time the Company would like to call Mr. Matt
4 Marquis to the stand.

5 ALJ SCHABO: All right.

6 MS. CHILCOTE: Mr. Marquis, you've been
7 promoted to a panelist and you're unmuted. Thank
8 you.

9 THE WITNESS: Great.

10 ALJ HICKS: Hello, Mr. Marquis.

11 THE WITNESS: Hello.

12 ALJ HICKS: Would you please raise your
13 right hand.

14 (Witness sworn.)

15 ALJ HICKS: Thank you.

16 Mr. Settineri, please proceed with
17 direct.

18 MR. SETTINERI: Thank you, Your Honor.

19 - - -

20 MATT MARQUIS

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

23 DIRECT EXAMINATION

24 By Mr. Settineri:

25 Q. Good afternoon, Mr. Marquis.

1 A. Good afternoon.

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

4 A. Yes. My name is Matt Marquis. I work
5 for Hull & Associates, LLC, at 6397 Emerald Parkway
6 Dublin, Ohio 43016.

7 MR. SETTINERI: And, Your Honor, at this
8 time we would like to mark an exhibit.

9 ALJ HICKS: Go ahead.

10 MR. SETTINERI: We would like to mark as
11 Company Exhibit 26, the Supplemental Direct Testimony
12 of Matt Marquis.

13 ALJ HICKS: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. SETTINERI: Thank you, Your Honor.

16 Q. (By Mr. Settineri) Mr. Marquis, do you
17 have before you what's been marked as Company Exhibit
18 26?

19 A. I do.

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

22 A. This is my Supplemental Direct Testimony.

23 Q. And was that prepared by you or at your
24 direction?

25 A. Yes.

1 Q. And do you have any revisions to that
2 testimony today, sir?

3 A. I do. I have one revision. If you go to
4 page 3. This is Answer 9 on page 3, row 10. I'd
5 like to delete the words "reviewed, approved" and
6 replace with a single word "designed." So row 10
7 will now read "required that they are designed and
8 maintained in accordance with Ohio EPA."

9 Q. Thank you, Mr. Marquis.

10 Do you have any other revisions at this
11 time to your testimony?

12 A. I do not.

13 Q. If I asked you the questions in your
14 testimony today, would your answers be the same as
15 you have revised?

16 A. Yes.

17 MR. SETTINERI: Thank you, Mr. Marquis.

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

20 ALJ HICKS: Thank you.

21 Mr. Van Kley, you can proceed with
22 cross-examination.

23 MR. VAN KLEY: Thank you, Your Honor. At
24 this time I would like to mark an exhibit of my own,
25 which we would like to mark as CCPC Exhibit 9, a

1 document that is entitled "Guidance on
2 Post-Construction Storm Water Controls for Solar
3 Panel Arrays."

4 ALJ HICKS: Okay. It is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Van Kley:

9 Q. Mr. Marquis, do you have a copy of CCPC
10 Exhibit 9 in front of you?

11 A. I do.

12 Q. Would you go to page 2 of your testimony
13 marked as Company Exhibit 26.

14 A. Okay.

15 Q. And I'd like to refer you to Answer 8
16 which provides us with a quote from Condition 30 of
17 the Amended Joint Stipulation. Do you see that?

18 A. I see that, yes.

19 Q. All right. Now, if you look about
20 two-thirds of the way down in that language, do you
21 see a reference to an Ohio EPA document entitled
22 "Guidance on Post-Construction Storm Water Controls
23 for Solar Panel Arrays" dated October 2019?

24 A. Yes. I believe it starts at the end of
25 row 21. I see that.

1 Q. Okay. And is that the document that has
2 been now marked as CCPC Exhibit 9?

3 A. It is.

4 Q. Now, looking at line 21 in Answer 8 on
5 page 2 of your testimony marked as Company Exhibit
6 26, it states there that -- on line 20 and 21, that
7 the Applicant will provide confirmation that it
8 incorporated guidance from CCPC Exhibit 9, correct?

9 MR. SETTINERI: Just object. Just object
10 to the extent you're paraphrasing just to make sure
11 it's clear in the record. Thank you.

12 A. Okay. I see, starting on line 20, where
13 it says "The Applicant will also provide confirmation
14 that it incorporated guidance from the Ohio EPA's
15 document" and then continues. I see that.

16 Q. Okay. Is it your understanding that all
17 of the contents of CCPC Exhibit 9 must be
18 incorporated?

19 A. Sorry, is that the end of your question?

20 Q. Yes.

21 A. That's not my understanding. My
22 understanding is that the Applicant will provide
23 confirmation that it incorporated guidance, not
24 necessarily all guidance written within the four
25 corners of the document. It will really depend on

1 which guidance applies.

2 Q. So is there any way for us to tell today
3 what provisions of CCPC Exhibit 9 must be
4 incorporated within the Applicant's plan?

5 A. Well, I don't like the words "must be
6 incorporated" in your question but there are
7 certainly portions of the guidance that are included
8 in the Application and -- and we could certainly walk
9 through a few of those components. Would you like
10 for me to provide an example?

11 Q. Well, if it's in the Application, I don't
12 think we need to go over what's in the Application
13 since it's already in the record.

14 Let me ask you this: Is it your
15 statement then, that unless a requirement is included
16 in the Application, then -- well, let me ask the
17 question another way.

18 Are you saying that only the portions of
19 CCPC Exhibit 9 that are already incorporated into the
20 Application are required, by Condition 30, to be
21 followed?

22 A. No, that's not my understanding. My
23 understanding -- the way I view this, this document
24 noted as CCPC Exhibit 9, is that it's essentially
25 additional tools in the toolbox for a design

1 engineer, who is preparing the final design and the
2 final design stormwater calculations, to use in the
3 course of their design. There are certainly
4 components that overlap between what's in the
5 Application and what's in the guidance and there are
6 other components of this guidance that may not apply
7 at all to this Project depending on what that final
8 design looks like.

9 Q. Let's go to the first page of CCPC
10 Exhibit 9. I would like to direct your attention to
11 the paragraph that is entitled "Background."

12 A. I see it.

13 Q. The first sentence of this paragraph
14 reads as follows: Although the area under and
15 beneath -- let me start over.

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

25 A. I see that.

1 Q. Do you agree with the statements in this
2 sentence?

3 A. I -- I agree with a portion of this
4 sentence. I think, at best, it's -- it's, I think, a
5 little poorly worded and maybe doesn't provide all of
6 the information that they're trying to get across.

7 So in the middle of the sentence where it
8 talks about "the elevated panels alter the volume,
9 velocity and discharge pattern of storm water
10 runoff," I would certainly agree with that. Rainfall
11 that's localized to a specific panel is certainly
12 going to be altered versus rainfall that would fall
13 directly, you know, through that, where that panel is
14 sitting, down to the ground surface, but that's more
15 of a localized effect. I wouldn't expect the volume,
16 velocity and discharge pattern to be altered on the
17 global project area from one single solar panel
18 component.

19 And I disagree with the conclusion at the
20 end of this sentence after the words "do require,"
21 that essentially that this document is stating that
22 post-construction stormwater management is required
23 under part III.G.2.e of the permit, and there's
24 nothing to qualify that conclusion in this sentence
25 or in this background section, you know, whether this

1 is a single panel in the center of a large field or
2 whether it's a thousand panels. It's -- I disagree
3 with that conclusion without looking at a
4 project-specific analysis.

5 Q. For the record, the reference to OHC00005
6 is a reference to Ohio EPA's General Permit for
7 stormwater associated with construction activity,
8 correct?

9 A. That's correct.

10 MR. VAN KLEY: I have no further
11 questions at this time.

12 ALJ HICKS: Thank you, Mr. Van Kley.

13 Mr. Settineri, any re -- first, I'm
14 sorry, let me back up and make sure there are no
15 other parties that have cross which I believe is the
16 case but I will doublecheck that. Okay. Seeing nods
17 of "no." Sorry I jumped the gun there,
18 Mr. Settineri. Go ahead and proceed if you have any
19 redirect.

20 MR. SETTINERI: Thank you, Your Honor.
21 Just a couple quick questions.

22 - - -

23 REDIRECT EXAMINATION

24 By Mr. Settineri:

25 Q. Mr. Marquis, you need the final project

1 engineering design in order to do pre- and post-
2 construction stormwater calculations; is --

3 A. That's correct.

4 Q. -- that right?

5 A. Sorry. That's correct.

6 Q. And then you were asked some questions
7 about the guidance document, CCPC Exhibit 9. After
8 the Background section, I want to direct your
9 attention to the next paragraph, "Post-Construction
10 Storm Water Management Options."

11 A. I see that.

12 Q. Can you describe some of the options that
13 are presented in that paragraph?

14 A. Yeah. So this second paragraph, titled
15 "Post-Construction Storm Water Management Options,"
16 talks about, again, what I referred to earlier as
17 tools in the toolbox for engineers to consider. It
18 kind of looks at two different scales.

19 So starting with the second sentence, it
20 talks about, you know, in some cases, runoff from
21 typical impervious surfaces such as roofs, roads,
22 buildings and even, you know, to some extent from the
23 solar panels can be managed through post-construction
24 practices and those post -- those common
25 post-construction practices are listed in tables 4a

1 and 4b of the Construction General Permit. And I
2 should add that those practices are structural
3 practices. They can include things like sediment
4 basins and things like that.

5 But for many facilities, as you continue
6 with the third sentence in that paragraph, for many
7 facilities the stormwater runoff from the panels can
8 be managed through, you know, management of the
9 ground surface beneath the panels and that's what we
10 see in a lot of very large-scale utility projects
11 where you can restore that soil profile, you know,
12 eliminate the compaction from construction equipment
13 during installation of the panels and you can
14 maintain, you know, the dense, healthy vegetation and
15 manage the runoff as sheet flow, then you've
16 essentially accomplished what -- or mitigated for the
17 effect of the panels, you know, that are elevated
18 over the ground surface.

19 MR. SETTINERI: Thank you, Mr. Marquis.
20 I have no further questions.

21 ALJ HICKS: Thank you, Mr. Settineri.
22 Mr. Van Kley, anything on your end after
23 that?

24 MR. VAN KLEY: No.

25 ALJ HICKS: I believe no other questions

1 from anyone else? Seeing nods of "no." Mr. Marquis,
2 thank you for your time today.

3 Mr. Settineri, would you like to move any
4 of your exhibits?

5 MR. SETTINERI: I would, Your Honor. At
6 this time we will move for the admission of Company
7 Exhibit 26, the Supplemental Direct Testimony of
8 Mr. Matt Marquis, and we'll also move for the
9 admission of CCPC Exhibit 9.

10 ALJ HICKS: Okay. Any objections to the
11 admission of Company Exhibit 26?

12 MR. VAN KLEY: No.

13 ALJ HICKS: It will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 ALJ HICKS: Any objections to CCPC
16 Exhibit 9?

17 MR. VAN KLEY: No.

18 ALJ HICKS: Exhibit -- CCPC Exhibit 9
19 will also be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 ALJ HICKS: Looking at our roster now,
22 Mr. Settineri, I believe I may say his name wrong but
23 Mr. Bonifas is listed.

24 MR. SETTINERI: I believe he is the last
25 witness today or at least I should say from the

1 Company's perspective.

2 ALJ HICKS: Correct.

3 MR. SETTINERI: And I'm ready --

4 ALJ HICKS: My understanding -- I'm
5 sorry. Go ahead.

6 MR. SETTINERI: He does have a correction
7 to his testimony so I thought we'd just put him on
8 real fast if no one has any questions.

9 ALJ HICKS: Okay. Then please proceed
10 with that.

11 MR. SETTINERI: Thank you. At this time,
12 Your Honor, we will call Mr. Mark Bonifas to the
13 stand.

14 MS. CHILCOTE: Mr. Bonifas, you have been
15 unmuted. You should be able to turn your camera on
16 and speak now.

17 ALJ HICKS: Good afternoon, Mr. Bonifas.
18 I don't think we can hear you.

19 THE WITNESS: Good afternoon.

20 ALJ HICKS: Thank you. Could you please
21 raise your right hand.

22 (Witness sworn.)

23 ALJ HICKS: Mr. Settineri, please
24 proceed.

25 MR. SETTINERI: Thank you, Your Honor.

1 At this time, Your Honor, we would like to mark as
2 Company Exhibit 27, the Second Supplemental Direct
3 Testimony of Mark Bonifas.

4 ALJ HICKS: Just to clarify, it's 27,
5 correct?

6 MR. SETTINERI: Yes, Your Honor.

7 ALJ HICKS: It is so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 MARK BONIFAS

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

13 DIRECT EXAMINATION

14 By Mr. Settineri:

15 Q. Good afternoon, Mr. Bonifas.

16 A. Good afternoon.

17 Q. Do you have before you what's been marked
18 as Company Exhibit 27?

19 A. I do.

20 Q. Okay. And just for the record, if you
21 could state your name and address, please.

22 A. Mark Bonifas. 6397 Emerald Parkway,
23 Suite 200, Dublin, Ohio 43016.

24 Q. Okay. And turning back to Company
25 Exhibit 27, your Second Supplemental Direct

1 Testimony. Could you identify that for the record,
2 please.

3 A. That is my Second Supplemental Testimony.

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

6 A. It was.

7 Q. And do you have any revisions to that
8 testimony today?

9 A. I do. On Question -- Answer 6, line 5,
10 after the comma, I want to insert the words "any
11 changes to." So that line would read: "days prior to
12 the preconstruction conference, any changes to the
13 Road Use and Maintenance Agreement...."

14 Q. Thank you, Mr. Bonifas. Do you have any
15 other revisions?

16 A. I do not.

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

20 A. They would.

21 MR. SETTINERI: Thank you, Mr. Bonifas.

22 Your Honor, the witness is available for
23 cross-examination.

24 ALJ HICKS: Thank you, Mr. Settineri.

25 Mr. Van Kley, any cross-examination?

1 You're muted, I believe.

2 MR. VAN KLEY: The answer is still no.

3 ALJ HICKS: Okay. Thank you for the
4 confirmation.

5 I believe no questions from other parties
6 for cross-examination but we'll verify that as well,
7 seeing the "no" head shaking. Based on that,
8 Mr. Settineri.

9 MR. SETTINERI: Thank you, Your Honor.
10 With no questions then, we would like to move for the
11 admission of Company Exhibit 27 into the record,
12 which also includes various attachments that are
13 identified in his testimony that we would move in
14 with that Company Exhibit 27.

15 ALJ HICKS: Okay. Any objections to the
16 admission of Company Exhibit 27?

17 MR. VAN KLEY: None.

18 ALJ HICKS: Okay. Company Exhibit 27,
19 along with the attachments therein, will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. SETTINERI: Your Honor, at this time
22 that concludes our presentation, subject to the right
23 to file rebuttal testimony to the extent necessary.

24 ALJ HICKS: Thank you, Mr. Settineri.

25 ALJ SCHABO: All right. Thank you,

1 Mr. Bonifas. Bonifas. Bonifas.

2 All right. I believe we have one witness
3 from Staff?

4 MS. BAIR: Yes, Your Honor. Staff would
5 like to call Andrew Conway to the stand.

6 ALJ SCHABO: Ooh, ooh, ooh. Wait, wait,
7 wait. Can we take a five-minute break?

8 MS. BAIR: Sure.

9 ALJ SCHABO: Okay. Let's go off the
10 record for five minutes, take a quick break, and when
11 we come back, Mr. Conway can come on board. Thank
12 you.

13 (Recess taken.)

14 ALJ SCHABO: Let's go back on the record.

15 Ms. Bair, sorry for having interrupted
16 you. Thank you for the break. You may proceed with
17 your witness.

18 MS. BAIR: Thank you. Staff calls Andrew
19 Conway as a witness.

20 ALJ SCHABO: Hi. Mr. Conway, if you'd
21 raise your right hand.

22 (Witness sworn.)

23 ALJ SCHABO: Thank you.

24 Ms. Bair.

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ANDREW CONWAY

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

DIRECT EXAMINATION

By Ms. Bair:

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

A. Andrew Conway. 180 East Broad Street,
Columbus, Ohio 43215.

Q. By whom are you employed and what is your
position?

A. I'm employed with the Public Utilities
Commission of Ohio, and I am an Engineering
Specialist.

MS. BAIR: Your Honor, I'd like to mark
as Staff Exhibit 13, the Supplemental Direct
Testimony of Andrew Conway that was filed on October
13th, 2020.

ALJ SCHABO: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. BAIR: Thank you.

Q. (By Ms. Bair) Mr. Conway, do you have
what has been marked as Staff Exhibit 13 in front of
you?

A. Yes.

1 Q. Could you please identify that document?

2 A. This is my Supplemental Direct Testimony
3 from October 13th, 2020.

4 Q. Was this testimony prepared by you or
5 under your direction?

6 A. Yes, it was.

7 Q. At this time do you have any changes,
8 corrections, or additions to make to that prefiled
9 testimony?

10 A. No.

11 Q. If I were to ask you those questions
12 today contained in the prefiled testimony, would your
13 answers be the same?

14 A. Yes, they would.

15 MS. BAIR: Thank you.

16 Your Honor, I'd like to make this witness
17 available for cross-examination.

18 ALJ SCHABO: Thank you, Ms. Bair.

19 Mr. Van Kley.

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

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Van Kley:

24 Q. Mr. Conway, could you pull out a copy of
25 the Amended Joint Stipulation that's been marked as

1 Joint Exhibit No. 2.

2 A. I have the -- I have it attached to Doug
3 Herling's testimony so I have that one.

4 Q. All right. That will work too. Let's go
5 to Condition 11.

6 A. I'm there.

7 Q. Great. I would like to ask you some
8 questions about the requirement in Condition 11 that
9 the Applicant shall replace any failed plantings so
10 that, after five years, at least 90 percent of the
11 vegetation has survived. Are you familiar with that
12 requirement?

13 A. Yes, I am.

14 Q. Did you participate in the negotiations
15 that led to Joint Exhibit 2?

16 A. Yes, I did.

17 Q. And do you have an understanding as to
18 the meaning of the terms in Joint Exhibit 2?

19 A. Yes, I do.

20 Q. Okay. So with respect to the 90 percent
21 requirement that I just asked you about, can you tell
22 me whether it is your understanding that the Joint
23 Stipulation requires that 90 -- that at least
24 90 percent of the vegetation survive throughout the
25 entire life of the facility?

1 A. The requirement is that the -- is in two
2 parts. The first is the Applicant shall maintain
3 vegetative screening for the life of the facility, so
4 that's the key part, and then the second is that the
5 Applicant shall replace any failed plantings so that,
6 after five years, at least 90 percent of the
7 vegetation has survived. So that's . . .

8 Q. All right. So going back to my question
9 then, what is your understanding with respect to the
10 percentage of vegetation that has to survive after
11 the fifth anniversary of the facility and continuing
12 to the end of the life of the facility?

13 A. It's -- after the year 5, 90 percent --
14 the plantings will be checked and 90 percent of the
15 plantings have to survive after the fifth year.

16 Q. Okay. And do 90 percent -- does the
17 condition require that 90 percent of the plantings
18 survive until the end of the facility?

19 ALJ HICKS: I think Mike Settineri has an
20 issue with his microphone. If we can just hold on
21 just for a moment.

22 MR. SETTINERI: How about now? Okay. I
23 actually had an objection two questions ago. I'm
24 going to object to a couple things. First, there's a
25 lack of foundation that this witness can speculate as

1 to how this condition will be applied. He can
2 certainly testify as to his understanding. There's
3 also been no foundation laid that the condition
4 requires 90 percent of the vegetation to survive
5 beyond five years. So lack of foundation.

6 MR. VAN KLEY: Well, with regard to the
7 last objection, that's exactly the question I'm
8 asking him to answer. I haven't made any
9 assumptions. I'm asking for an answer to the
10 question as to his understanding, so that's my
11 response to that objection.

12 With regard to laying a foundation for
13 this witness's understanding, I laid that foundation
14 by asking him whether he participated in the
15 negotiations of the Stipulation and whether he
16 believes he has an understanding as to the meaning of
17 the terms.

18 ALJ SCHABO: Well, here we run into
19 remote-hearing complications. The questions have
20 been answered. I appreciate the clarification of the
21 record, Mr. Settineri. I'm not going to strike any
22 of the answers. If there's an objection to the
23 current pending question, please raise it again and
24 I'll have Carolyn reread the question, otherwise
25 let's just proceed with the questioning. And I'll

1 keep my eye on your window to see if you start
2 talking and I can't hear you. So is there an
3 objection to a pending question?

4 MS. BAIR: Can we hear the pending
5 question? I don't recall what it is.

6 ALJ SCHABO: Carolyn, do you mind reading
7 that back, please?

8 (Record read.)

9 MR. SETTINERI: I'll just object to the
10 form of the question to the extent it's not asking
11 for his understanding.

12 ALJ SCHABO: Mr. Van Kley, would you like
13 to rephrase the question?

14 MR. VAN KLEY: Sure.

15 Q. (By Mr. Van Kley) Mr. Conway, based on
16 your knowledge concerning -- your knowledge and
17 understanding of the meaning of Condition 11, is it
18 your understanding that at least 90 percent -- is it
19 your understanding that Condition 11 requires at
20 least 90 percent of the vegetation to be maintained
21 until the end of the life of the facility?

22 A. It's -- it's my understanding that the --
23 that the Applicant shall maintain vegetative
24 screening for the life of the facility and the
25 Applicant shall replace any failed plantings so that,

1 after five years, at least 90 percent of the
2 vegetation has survived. So that's -- there's -- the
3 first part is that it shall be -- the vegetative
4 screening shall be maintained for the life of the
5 facility.

6 MR. VAN KLEY: Okay. Your Honor, he
7 still hasn't answered my question. Could we -- could
8 I ask that you direct him to answer the question.

9 MS. BAIR: Could we please -- could we
10 please have the question reread? I found it
11 confusing and long.

12 (Record read.)

13 MS. BAIR: Your Honor, I believe he
14 answered it.

15 MR. VAN KLEY: No, he absolutely has not.
16 He's been asked that question now several times and
17 he hasn't answered the question.

18 MS. BAIR: Well, he's attempted to answer
19 it. Maybe you can make the question clearer.

20 MR. VAN KLEY: I don't know how you can
21 answer -- ask the question any clearer but I'll try.

22 Q. (By Mr. Van Kley) Mr. Conway, is it your
23 understanding that Condition 11 requires at least
24 90 percent of the vegetation to be maintained for the
25 entire life of the facility?

1 A. No, that's -- the requirement is that the
2 Applicant shall maintain vegetative screening, not
3 90 percent. You're mischaracterizing it. The
4 90 percent applies -- the Applicant shall replace any
5 failed plantings so that, after five years,
6 90 percent of the plantings shall survive.

7 MR. VAN KLEY: Your Honor, could we have
8 that answer read back?

9 (Record read.)

10 Q. All right. Mr. Conway, first I thought
11 you were answering the question "no," but the last
12 sentence of your answer seems to say the opposite.
13 Are you meaning to say that 90 percent of the
14 plantings must survive between year 5 and the end of
15 the life of the facility?

16 A. No. The plantings are checked after the
17 fifth year, so they need to, at that time, at least
18 90 percent have to have survived is my understanding.

19 Q. What is your understanding as to the
20 method that has to be used to determine whether
21 90 percent of the vegetation has survived?

22 MR. SETTINERI: I'll object as there's
23 been no foundation laid that a method has been
24 established.

25 ALJ SCHABO: Carolyn, I'm sorry, could

1 you reread the question.

2 (Record read.)

3 ALJ SCHABO: Mr. Conway, you can answer
4 that question as to whether or not you have an
5 understanding as to whether there is a method.

6 A. I don't have an understanding of that
7 method -- if a method has been established.

8 Q. Let's go to Condition 30 of the Joint
9 Amended Stipulation. Or the Amended Joint
10 Stipulation, I mean.

11 A. Okay.

12 Q. Do you see, in that Condition 30, a
13 reference to an Ohio EPA guidance document entitled
14 "Guidance on Post-Construction Storm Water Controls
15 for Solar Panel Arrays"?

16 A. Yes, I do.

17 Q. All right. And if you look at the
18 sentence in which that title is provided in Condition
19 30, do you see that it says that the Applicant will
20 also provide confirmation that it incorporated
21 guidance from that document?

22 A. Yes, I see that phrase.

23 Q. What understanding do you have as to
24 whether or not this Condition requires that all
25 provisions of that guidance document be incorporated?

1 A. Give me one second. I'm going to reach
2 for that guidance, the CCPC Exhibit 9. Give me one
3 second.

4 MR. SETTINERI: I'm going to object at
5 this time to the lack of foundation that the witness
6 is familiar with the guidance and can testify as to
7 the guidance. There's been no foundation laid as to
8 his familiarity with that, as well as no foundation
9 laid that he was involved in the negotiations of
10 Condition 30.

11 ALJ SCHABO: Overruled.

12 MR. VAN KLEY: Yeah.

13 ALJ SCHABO: Just so the record is clear,
14 I'm overruling that objection because he testified
15 that he was involved in the negotiations of the Joint
16 Amended Stipulation.

17 Q. (By Mr. Van Kley) Mr. Conway, do you have
18 in front of you what's been marked as CCPC Exhibit
19 No. 9?

20 A. Yes, I do.

21 Q. And is that a copy of the guidance from
22 Ohio EPA that we've been discussing?

23 A. Yes, it is.

24 Q. Now that you have that document in front
25 of you, can you tell me your understanding as to

1 whether Condition 30 requires all of the provisions
2 of that guidance document to be incorporated as
3 stated in the sentence that we've been looking at?

4 MR. SETTINERI: Again, I'll object. Lack
5 of foundation laid that this witness has the
6 expertise to testify on that document.

7 MR. VAN KLEY: I think, in reality, we're
8 testifying about the meaning of Condition 30, not the
9 meaning of CCPC Exhibit No. 9, because I'm asking him
10 about whether the statement in Condition 30 requires
11 that all of the provisions of that guidance document
12 be incorporated. I'm asking the interpretation of
13 Condition 30, not an interpretation of CCPC Exhibit
14 No. 9.

15 MR. SETTINERI: You're asking him if it
16 incorporates all guidance and you provided him with a
17 document of the guidance so obviously you're
18 expecting him to review that document and provide an
19 interpretation of stormwater guidance that's listed
20 in that document, and you haven't laid the foundation
21 that he has the expertise or is an appropriate Staff
22 Witness to testify on that.

23 MR. VAN KLEY: Well --

24 ALJ SCHABO: The objection is overruled.

25 Mr. Conway, answer the question to the

1 best of your ability, please. If you need the
2 question reread, we can have that done.

3 THE WITNESS: Yeah, could you reread the
4 question, please.

5 (Record read.)

6 A. It's a guidance document, and I think
7 you're adding the word "all" there. We expect them
8 to incorporate guidance from it, and if there's any
9 concerns or guidance that cannot be implemented, we
10 would expect a reason why not.

11 MR. VAN KLEY: All right. I have no
12 further questions.

13 ALJ SCHABO: Any cross-examination
14 questions?

15 MR. SETTINERI: Not from the Company,
16 Your Honor.

17 ALJ SCHABO: Ms. Bair, do you have any
18 redirect?

19 MS. BAIR: I do not have any redirect. I
20 would like to move Staff Exhibit 13 into evidence.

21 ALJ SCHABO: Any objections?

22 MR. VAN KLEY: No.

23 ALJ SCHABO: Hearing none, Exhibit 13
24 will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 ALJ SCHABO: Thank you, Mr. Conway.

2 THE WITNESS: Thanks.

3 ALJ SCHABO: We are at the end of the
4 witness list. Let's go off the record for just a
5 moment.

6 (Discussion off the record.)

7 ALJ SCHABO: Let's go back on the record.

8 All right. Thank you, everyone. We have
9 concluded the presentation of witnesses. We went off
10 the record for a moment to discuss any matters that
11 needed to be raised. None were identified.

12 I would like to state for the record that
13 a briefing schedule has been agreed upon. Under that
14 briefing schedule, the initial briefs are due
15 December the 11th, 2020, with reply briefs being due
16 on January 4th, 2021. The parties have -- I don't
17 know if they've agreed but they have acknowledged
18 that the Bench anticipates that those will be
19 substitution briefs from the original round. Cutting
20 and pasting is encouraged. Please do not reference
21 "as incorporated herein" or "incorporate as
22 referenced herein."

23 And, with that, I'd like to thank
24 everybody for their time today. We are off the
25 record and adjourned.

(Thereupon, the proceedings concluded at
2:50 p.m.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is a
true and correct transcript of the proceedings taken
by me in this matter on Thursday, October 29, 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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in

Case No(s). 18-1579-EL-BGN

Summary: Transcript in the matter of the Angelina Solar I, LLC hearing held on 10/29/20 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn