

**BEFORE  
THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Kingwood Solar I LLC for a Certificate</b>	)	
<b>of Environmental Compatibility and</b>	)	<b>Case No. 21-0117-EL-BGN</b>
<b>Public Need</b>	)	

**MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY  
OF ROBERT W. RAND**

Pursuant to Rule 4906-2-27 of the Ohio Administrative Code, Kingwood Solar I LLC (“Kingwood Solar”) respectfully moves to strike the portions of the direct testimony of Robert Rand as filed on February 28, 2022:

- Exhibits B-D and references to them on Page 22, line 18 and Page 30 lines 7-10: These portions of Mr. Rand’s testimony are irrelevant because they are not documents that formed part of any of the opinions in his testimony. His review of these documents does not make them relevant or admissible.
- Page 17 lines 2-3, 14-16; page 19 lines 5, 8; page 27 lines 15-18; Exhibit L page 7 (paragraph 5, last sentence) and page 9 (paragraph 6, fifth sentence): Testimony regarding the time at which a different company conducted construction activities is irrelevant to the proposal in this proceeding and is prejudicial to Kingwood Solar.
- Page 14, Line 11, Exhibit J: Materials from an unrelated solar project’s public information meeting are irrelevant to this proceeding. The reference at page 14, line 11 to Exhibit J and Exhibit J should be stricken.
- Page 6 lines 14-23 and Exhibit H: A summary of evidence stated in a dissenting court opinion is hearsay as used by Mr. Rand in his testimony, and that summary is not binding in this proceeding. It also is not a learned treatise for the purposes of his testimony.

These portions of Mr. Rand’s testimony are not relevant or reliable, and therefore should be stricken pursuant to the Rules of Evidence and under common evidentiary practices at the Ohio

Power Siting Board. Further details and explanation are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO STRIKE  
PORTIONS OF THE DIRECT TESTIMONY OF ROBERT W. RAND**

Portions of Mr. Rand’s direct testimony are not relevant or reliable. Pursuant to the Rules of Evidence and under common practices at the Ohio Power Siting Board, they should be stricken. Kingwood Solar respectfully requests that the following be stricken.

**A. Irrelevant testimony and exhibits should not be presented.**

Mr. Rand included a number of documents and statements that are not relevant to the testimony he provides or to this proceeding. They fall into three categories. First is a group of documents (Exhibits B-D) that Mr. Rand reviewed as part of preparing his testimony but they were not discussed and did not form a basis for the opinions in his testimony. The fact that Mr. Rand opted to review these documents does not make them relevant or admissible. Those four exhibits therefore are irrelevant to his testimony and should not be admitted as part of his testimony. To allow otherwise, not only results in irrelevant evidence in the record, but encourages “document dumps” and needlessly large records in cases that are already voluminous. Exhibits B-D, along with the brief references to them on Page 22, line 18 and Page 30 lines 7-10 should be stricken from his direct testimony.

The second group relate to statements in the testimony and exhibits regarding the time at which a different company conducted construction activities at its project site. That information is not only irrelevant to the proposal in this proceeding and it is prejudicial to ascribe anything about that construction to Kingwood Solar. They are unrelated projects and entities. Therefore, the testimony and statements regarding such should be stricken as follows:

- Page 17 lines 2-3: delete “Construction was still underway after sunset when I left at 7 pm.”
- Page 17 lines 13-16: delete “arriving at 5:25 pm just after sunset” and “after sunset” on those lines.

- Page 19 lines 5, 8: delete “after sunset” on those lines.
- Page 27 lines 15-18: delete “However, it was observed at the Hardin facility (EXHIBIT L Sections 5 and 6) that construction noise including pile driving continued after sunset.” and “My experience at Hardin Solar is that pile driving continued after sunset into dark.”
- Exhibit L page 7 (paragraph 5): delete “Construction was still underway after sunset when I left at 7 pm.”
- Exhibit L page 9 (paragraph 6): delete “arriving at 5:25 pm just after sunset” and “after sunset” on the following two lines.

The third group of irrelevant materials is Exhibit J. This exhibit contains materials from an unrelated solar project’s public information meeting. They are irrelevant to this proceeding. Like the first group above, Mr. Rand referred to the materials (*see* Direct Testimony at page 14, line 11). They did not form a basis for his opinions and they should not be included with this testimony. In addition, the reference to Exhibit J at page 14, line 11 should be stricken.

**B. A summary of the record in a dissenting opinion from a wind farm case is hearsay as used by Mr. Rand in his testimony, is not binding on the Board and is not a learned treatise.**

On page 6 lines 14-23, Mr. Rand quotes from one paragraph of a dissenting opinion in an Ohio Supreme Court decision from 2016 as the source for “statements” from two acoustical experts which he then claims establish that the acoustic measure for background noise should be the L90 measurement. He then attached the entire decision as Exhibit H. Mr. Rand offers both his written testimony at page 6, lines 14-23 and Exhibit H to prove the truth of the matter asserted. This is hearsay to which there is no exception, even for an expert witness. The decision is not a learned treatise and cannot be admitted into evidence. It also is not binding on this Board as to the establishment of any facts in this proceeding. Mr. Rand’s testimony on page 6 lines 14-23 (ending at “Mr. James”) and Exhibit H should be stricken.

In closing, Mr. Rand's direct testimony contains irrelevant statements and exhibits that should be stricken. In addition, the testimony quotes non-binding evidence in an unrelated court case and includes a copy of the decision inappropriately. Those parts of Mr. Rand's direct testimony should also be stricken as detailed above.

Respectfully submitted,

/s/ Michael J. Settineri

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**CERTIFICATE OF SERVICE**

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 4th day of March 2021 upon the persons listed below.

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Summary: Motion Motion to Strike Portions of the Direct Testimony of Robert W.  
Rand electronically filed by Mr. Michael J. Settineri on behalf of Kingwood Solar I  
LLC