

**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 THE DIRECT TESTIMONY  
OF TERRY FIFE**

Pursuant to Rule 4906-2-27 of the Ohio Administrative Code, Kingwood Solar I LLC (“Kingwood Solar”) respectfully moves to strike the direct testimony of Terry Fife as filed on February 28, 2022. Ms. Fife offers expert testimony regarding the history of the Kingwood Solar Project area, and historical context of the local county and townships. *See* Fife Direct Testimony at 4 lines 1-4. Ms. Fife, however, is not an independent expert witness. She is a member of Citizens For Greene Acres, Inc., a party in this proceeding. *See* Fife Direct Testimony at page 1, lines 27-28; Adams Direct Testimony at Exhibit B. Ms. Fife is also one of its directors and has contributed money to the organization. As such, Ms. Fife has a direct financial interest in the success of Citizens For Greene Acres, Inc., in this proceeding. She is not independent; rather she is biased. Allowing Ms. Fife to present biased expert testimony would result in prejudice to Kingwood Solar.

In addition, Ms. Fife speculates on the impact of the Kingwood Solar Project. On page 29 lines 18-22 through page 30 lines 1-6, Ms. Fife is asked and does opine on the Project’s impact on the historical, social and cultural character of the local area and on the value of the cultural and historic resources. This testimony, however, is simply speculation.

Evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice. Evid. R. 611. Unfair prejudice would result from admission of Ms. Fife’s biased expert testimony, which also includes speculation. Ms. Fife’s direct testimony should be

stricken in its entirety 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,

/s/ Michael J. Settineri  
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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO STRIKE  
THE DIRECT TESTIMONY OF TERRY FIFE**

Ms. Fife is testifying as an expert historian on behalf of Citizens for Greene Acres, Inc. and several individuals associated with that group. Her testimony, however, is biased because she not only is a member of Citizens for Greene Acres, Inc.,<sup>1</sup> discovery has also revealed that Ms. Fife is a director of the group and she has contributed money to it. Ms. Fife has personal and financial interests in the outcome of this proceeding. These interests are direct and substantial. Therefore, Ms. Fife is not an independent expert witness.

Additionally, Ms. Fife failed to disclose in her direct testimony the extent of her involvement with Citizens for Greene Acres, Inc. She noted that she is a member of the group, but did not disclose that she holds a position of power (one of four director positions) with the group. She also did not disclose that she has contributed money to support the group's activities. Her lack of full disclosure in her expert testimony further establish Ms. Fife's bias, as well as establishing a lack of credibility.

Ohio Rules of Evidence 403 states that exclusion of relevant evidence is *mandatory* when the probative value of relevant evidence is "substantially outweighed by the danger of unfair prejudice \* \* \*." Here, the probative value of Ms. Fife's biased testimony is outweighed by the unfair prejudice that admission of biased expert testimony that lacks credibility would cause. Not striking the biased expert testimony presents the danger that Ms. Fife's testimony will be relied upon by numerous parties and then considered by the Ohio Power Siting Board in its decision-making process. This is patently unfair to Kingwood Solar. Given that other witnesses to be called by Citizens for Greene Acres, Inc. will address the local area and local activities, any probative

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<sup>1</sup> See Adams Direct Testimony at Exhibit B and Fife Direct Testimony at page 1, lines 27-28.

value of Ms. Fife's biased testimony is outweighed by the prejudice. *See e.g.* Jennings Direct Testimony and Krajcek Direct Testimony. Other parties' witnesses will address the local area too. *See* Combs Direct Testimony, Hollister Direct Testimony, Sauer Direct Testimony, and Burns Direct Testimony.

A secondary point is that Ms. Fife's testimony contains pure speculation regarding the impact of the Kingwood Solar Project. On page 29 lines 18-22 through page 30 lines 1-6, Ms. Fife is asked and then presents her (biased) opinion on the Project's future impact on the historical, social and cultural character of the local area and on the value of the cultural and historic resources. This speculative testimony should not be permitted.

For all of the above reasons, Ms. Fife's direct testimony should be stricken in its entirety.

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 the Direct Testimony of Terry Fife electronically  
filed by Mr. Michael J. Settineri on behalf of Kingwood Solar I LLC