

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Kingwood :
Solar I LLC for a :
Certificate of : Case No. 21-117-EL-BGN
Environmental :
Compatibility and Public :
Need. :

- - -

PROCEEDINGS

before Mr. Michael Williams and Mr. David Hicks,
Administrative Law Judges, at the Ohio Power Siting
Board, via Webex, called at 9:03 a.m. on Friday,
March 11, 2022.

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VOLUME V

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On behalf of the Staff of the OPSB.

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1 Friday Morning Session,

2 March 11, 2022.

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

6 Starting again this morning in Case No.
7 12-117-EL-BGN, Kingwood Solar I LLC, I am going to
8 just run down the list here so we can get -- know who
9 is on for each party to the case. Just, again, name,
10 quick appearance, starting with the Applicant.

11 MR. SETTINERI: Yes, good morning, your
12 Honors. For Kingwood Solar I LLC, Michael Settineri,
13 Jonathan Stock, Anna Sanyal, and the Nathaniel Morse
14 appearing today. Thank you.

15 ALJ HICKS: Thank you.

16 On behalf of Board Staff.

17 MS. BAIR: Thank you, your Honor. On
18 behalf of Board Staff, Jodi Bair, Vern Margard, AND
19 Shaun Lyons, Assistant Attorneys General.

20 ALJ HICKS: Thank you.

21 Ohio Farm Bureau Federation.

22 MS. MILAM: Good morning, your Honors.
23 Amy Milam on behalf of Ohio Farm Bureau Federation.

24 ALJ HICKS: Thank you.

25 Board of Trustees of Cedarville Township.

1 MR. BROWN: Good morning, your Honor.
2 Daniel Brown for Cedarville Township.

3 ALJ HICKS: Thank you.
4 Board of Trustees of Xenia Township.

5 MR. DUNN: Good morning. Kevin Dunn and
6 David Watkins for Xenia Township.

7 ALJ HICKS: Thank you. Board of Trustees
8 of Miami Township.

9 MR. SLONE: Yes. Lee Slone, Dinsmore &
10 Shohl, for Miami Township Board of Trustees.

11 ALJ HICKS: Thank you.
12 In Progress.

13 MR. HART: Good morning, your Honors.
14 John Hart for In Progress LLC.

15 ALJ HICKS: Thank you.
16 Tecumseh Land Preservation Association.

17 MR. SWANEY: Thank you, your Honor.
18 Charles Swaney on behalf of Tecumseh Land
19 Preservation Association.

20 ALJ HICKS: Thank you.
21 And Citizens for Greene Acres and the
22 associated Intervenors.

23 MR. VAN KLEY: Good morning. This is
24 Jack Van Kley of Van Kley & Walker.

25 ALJ HICKS: And on behalf of the Greene

1 County Board of Commissioners.

2 MR. SHAMP: This is Jesse Shamp on behalf
3 of the Board Commissioners.

4 ALJ HICKS: Thank you. It looks like we
5 have a full house ready to go, and I will turn it
6 over to Judge Williams.

7 ALJ WILLIAMS: Thank you, Judge Hicks.

8 Welcome back, Mr. Rand.

9 THE WITNESS: Good morning.

10 ALJ WILLIAMS: Thank you for rejoining us
11 today. You presented yesterday. There were
12 substantial revisions to your testimony and, as a
13 result, we decided to bring you back today. That way
14 all the parties would have an opportunity to review
15 the revisions and make effective use of your time
16 relative to cross-examination.

17 I will remind you you remain under oath
18 from your appearance yesterday. I am going to invite
19 your attorney to ask the credentialing questions
20 relative to the fact that your testimony would remain
21 true and accurate and the like, and then Attorney
22 Settineri will clarify at least one set of revisions
23 from yesterday before we commence his cross.

24 Mr. Van Kley.

25 MR. VAN KLEY: Thank you, your Honor.

ROBERT RAND

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

DIRECT EXAMINATION (Continued)

By Mr. Van Kley:

Q. Good morning, Mr. Rand.

A. Good morning, Mr. Van Kley.

Q. Before I ask you about your testimony and whether it's accurate or not, can you just briefly in a sentence or two explain why you made the corrections yesterday.

A. The corrections had to be made because of revisions to the site layout which I was working with when I submitted my direct testimony. After I submitted my direct testimony, I received a document called -- which I am calling the Odom supplemental which had substantial changes in layout to the proposed facility. And so I had to review those and make some minor changes to numbers and wording related to my conclusions about what I now presume to be the layout going forward.

Q. Okay. Now, if I asked you the questions in your testimony today and with the corrections you've made, would your answers be the same as they are written in your testimony?

1 A. Yes.

2 MR. VAN KLEY: All right. At this time,
3 your Honor, Mr. Rand is ready for cross-examination.

4 ALJ WILLIAMS: Thank you, Mr. Van Kley.

5 Mr. Settineri, I understand you want to
6 clarify at least one of the revisions from yesterday
7 as part of your cross, sir?

8 MR. SETTINERI: Yes, your Honor. Just
9 to -- since we are -- we and the Farm Bureau have
10 signed the stip, should the other parties confirm
11 they have no cross before I go?

12 ALJ WILLIAMS: That's a fair question.
13 That's how we've been doing things. That would be
14 fantastic.

15 So we will begin with Miami Township.

16 MR. SLONE: No cross. Thank you, your
17 Honor.

18 ALJ WILLIAMS: Thank you.

19 Next we have Greene County.

20 MR. SHAMP: No cross-examination.

21 ALJ WILLIAMS: Xenia Township.

22 MR. DUNN: No cross-examination.

23 ALJ WILLIAMS: Cedarville Township.

24 MR. BROWN: No cross, your Honor.

25 ALJ WILLIAMS: Thank you. In Progress.

1 MR. HART: Your Honor, we have no cross.

2 ALJ WILLIAMS: Tecumseh.

3 MR. SWANEY: No cross, your Honor.

4 ALJ WILLIAMS: Farm Bureau.

5 MS. MILAM: None, your Honor. Thank you.

6 ALJ WILLIAMS: Okay. Mr. Settineri,
7 Staff will go after you.

8 MR. SETTINERI: Thank you, your Honor.
9 Good morning, Mr. Rand.

10 THE WITNESS: Good morning.

11 MR. SETTINERI: Just one thing I wanted
12 to clarify from yesterday were your revisions on page
13 11 of your testimony.

14 THE WITNESS: All right.

15 MR. SETTINERI: If you could walk through
16 those revisions again, I would appreciate that,
17 please.

18 THE WITNESS: Okay. I had a revision on
19 page 11, line 17. I needed to replace the sentence
20 "Predicted noise levels and comparisons to the site
21 L90 sound levels are provided in EXHIBIT K Table 1
22 and Figures 1 and 2" with the following sentence,
23 "Predicted noise levels for the 50 homes listed in
24 the Odom supplemental showed 44 homes with predicted
25 noise levels 34 dBA and up, that is 50 dBA and higher

1 over the average background L90 of 29 dBA."

2 MR. SETTINERI: Can I interrupt? I'm
3 sorry to interrupt you there.

4 THE WITNESS: Yes.

5 MR. SETTINERI: So I followed you to that
6 point, "and higher over the," and then I lost after
7 "the."

8 THE WITNESS: "Average background L90."

9 MR. SETTINERI: Okay. Continue, please.

10 THE WITNESS: "Of 29 dBA, and 14 homes
11 with predicted noise levels 39 dBA and up, that is 10
12 dBA and higher over the average background L90 of 29
13 dBA, consistent with widespread complaints."

14 MR. SETTINERI: And going back, you said
15 that last one, "higher over the average L90," was it
16 "background of 29 dBA"? Yeah.

17 THE WITNESS: It should read "that is 10
18 dBA and higher over the average background L90 of 29
19 dBA."

20 MR. SETTINERI: Okay. And if I may, I am
21 going to just read that entire sentence just to do a
22 double double-check. And so line 17, page 11, of
23 your direct testimony, the sentence that starts with
24 "Predicted noise levels" should now read "Predicted
25 noise levels for the 50 homes listed in the Odom

1 supplemental showed 44 homes with predicted noise
2 levels 34 dBA and up, that is 5 dBA and higher over
3 the average background L90 of 29 dBA, and 14 homes
4 with predicted noise levels of 39 dBA and up
5 comma" --

6 THE WITNESS: There's no "of" there.
7 It -- there could be an "of" there. That doesn't
8 change the meaning.

9 MR. SETTINERI: All right. "Predicted
10 noise levels 39 dBA and up, that is 10 dBA and higher
11 over the average background LE -- L90 of 29 dBA,
12 consistent with widespread complaints."

13 THE WITNESS: I think you have it.

14 MR. SETTINERI: Okay. And then
15 everything else would be stricken in your original
16 sentence. All right. Thank you.

17 I think that was the only revision you
18 had on that page; is that right?

19 THE WITNESS: No, that's not correct. I
20 had a revision on page 11, line 19. Please correct
21 the phrase "some 39 to 42 dBA," please replace that
22 with "approximately 40 dBA."

23 MR. SETTINERI: Okay. And so that
24 sentence at 19 would read "This review found that
25 predicted noise levels would be approximately 40 dBA

1 at 500 feet depending on the number of inverters
2 nearby the home."

3 THE WITNESS: That's correct.

4 MR. SETTINERI: Okay. Any other
5 revisions on that page?

6 THE WITNESS: No other revisions on that
7 page.

8 MR. SETTINERI: All right. Thank you for
9 clarifying.

10 All right. Your Honor, may I proceed?

11 ALJ WILLIAMS: Please.

12 MR. SETTINERI: Okay.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Settineri:

16 Q. And again, good morning, Mr. Rand. I
17 know we met before. My name is Mike Settineri and
18 representing Kingwood Solar I LLC. Your only
19 experience, sir, analyzing noise from a utility-scale
20 solar facility is from your visit to the Hardin Solar
21 project in 2021, correct?

22 A. That's correct.

23 Q. And you've not taken noise measurements
24 at smaller solar arrays, correct?

25 A. That's correct.

1 Q. You've never used software to conduct
2 noise modeling for a utility-scale solar facility,
3 correct?

4 A. That's -- that's correct. That's
5 correct.

6 Q. Okay.

7 A. I'm hesitating because I've used software
8 to evaluate the noise levels versus distance for the
9 Kingwood project, so I've reviewed those using
10 software to look at levels versus distance, and it is
11 a form of modeling.

12 MR. SETTINERI: Okay. And, your Honor, I
13 would just move to strike everything after the word
14 "correct."

15 ALJ WILLIAMS: I will let him explain
16 this answer.

17 Mr. Rand, if you could be succinct in
18 your response to counsel's -- the questions being
19 proposed by counsel on cross, that will avoid you
20 providing longer answers that are met with motions to
21 strike and then striking the testimony and then
22 having to go over that again on redirect. So try to
23 respond to the questions succinctly. Thank you.

24 Please proceed, Mr. Settineri.

25 Q. (By Mr. Settineri) Mr. Rand, you've not

1 been retained to work on any other solar project than
2 the Kingwood Solar project, correct?

3 A. That's correct.

4 Q. And you've not conducted any research on
5 the sound power output for inverters for
6 utility-scale facilities, correct?

7 A. That's correct.

8 Q. And turning to page 3 of your direct
9 testimony, I just want to look at your answer there,
10 page 3, answer 12, and tell me when you're there.

11 A. I'm there.

12 Q. All right. The question says "What
13 studies have you conducted in order to prepare your
14 testimony?" Do you see that?

15 A. Yes, I do.

16 Q. Okay. And the studies that you've
17 conducted to prepare your testimony would be the two
18 measurements of operational sound from the Hardin I
19 Solar project and one measurement of pile driving for
20 Hardin II Solar project, correct?

21 A. That's correct.

22 Q. Okay. And that's summarized in Exhibit L
23 to your testimony, correct?

24 A. That's correct.

25 Q. Okay. Do you consider your measurements

1 at Hardin Solar I and Hardin Solar II to be a study?

2 A. Yes, I do.

3 Q. Okay. There are different manufacturers
4 of inverters, correct?

5 A. That's my understanding, yes.

6 Q. Okay. But specific -- and specific to
7 the Acentech report attached to the application as
8 Appendix K, you have no reason to challenge the
9 Acentech sound power data used in that report,
10 correct?

11 A. That's correct.

12 Q. Okay. Now, other than the information
13 that is in Section 5.1 and 5.2 of your report
14 attached as Exhibit L to your direct testimony,
15 you've not done any investigation into the sound
16 power output of tracker motors, correct?

17 A. That's correct.

18 Q. Okay. And the information in Section 5
19 point -- strike that question, please.

20 The information in Section 5.2 of your
21 report at Exhibit L references two technical reports,
22 correct?

23 A. If you would be so kind, I would like to
24 open my report so I can follow along with you.

25 Q. You are more than welcome to, sir. If

1 you can turn to Exhibit L of your direct testimony.

2 A. Okay. I have got that open.

3 Q. If you could turn to Section 5.2, page 8
4 of 9 of the paper copy.

5 A. Okay.

6 Q. In Section 5.2 you reference two
7 technical reports, a South Branch Solar Project Noise
8 Evaluation and Gravel Pit Solar and there is no -- a
9 VHB report. Do you see that?

10 A. Yes, I do.

11 Q. Okay. And those consist of noise studies
12 for two solar projects, correct?

13 A. That's my understanding, yes.

14 Q. And those were available on the internet,
15 correct?

16 A. Correct.

17 Q. Okay. For this year, 2022, how many
18 projects approximately for clients have you worked
19 on?

20 A. Two.

21 Q. Okay. And for 2021, how many projects
22 for clients have you worked on, or did you work on?

23 A. About a dozen.

24 Q. Okay. If you could turn to page 12 of
25 your direct testimony, so we are going to flip back,

1 lines 4 to 11, actually honing in on line 10, there
 2 is a sentence there that states "These capital E
 3 Engineering methods support post-operational
 4 evaluations of tonal audibility, but can be difficult
 5 to factor into pre-construction planning." Do you
 6 see that?

7 A. I do.

8 Q. Now, the word Engineering is capitalized.
 9 Why is that capitalized?

10 A. It's capitalized in the standards.

11 Q. Okay. All right. And so "the
 12 Engineering methods" there refer back to the
 13 standards that you've highlighted in -- between lines
 14 4 and 10; is that correct?

15 A. That's correct.

16 Q. And those are -- are those measurement
 17 standards, Mr. Rand?

18 A. Those are tonal evaluation standards.

19 Q. All right. And so going back to line 10
 20 to 11, you note that those -- I will paraphrase, the
 21 tonal evaluation standards, those support
 22 post-operational evaluations of tonal availability,
 23 but you would agree it's difficult to factor a pre --
 24 those accurate -- pre -- those tonal evaluation --
 25 evaluations into pre-construction planning; is that

1 correct?

2 A. That's correct.

3 Q. Okay. To achieve tonal audibility for
4 the Kingwood Solar project, you recommend a 1-mile
5 setback; is that correct?

6 A. That's correct.

7 Q. Okay. And that would be at lines 20 to
8 21 of your testimony at page 12, correct?

9 A. That's correct.

10 Q. Okay. And is that setback from a
11 property line?

12 A. That's correct.

13 Q. And then what -- from the property line,
14 where would that next -- what would that go back to
15 specifically?

16 A. I don't understand your question.

17 Q. Okay. It's a setback from -- for
18 example, is it a setback from a project fence line to
19 a non-participating residence property line, or is it
20 from an inverter to a non-participating property
21 line? So when you say a 1-mile setback, where is the
22 starting point and the ending point for that setback?

23 A. It would be from the nearest inverter to
24 the property line.

25 Q. Thank you. So as an alternative to a

1 setback, you believe operational -- strike that.

2 Rather than using a setback, you believe
3 tonal audibility can be mitigated through the use of
4 noise barriers or noise enclosures, correct?

5 A. That's correct.

6 Q. Okay. And as a more general statement,
7 operational noise from the Kingwood Solar project,
8 you believe, can be mitigated through the use of
9 noise barriers or noise enclosures, correct?

10 A. That's correct.

11 Q. Okay. If you could turn to page 13 of
12 your direct testimony, lines 11 to 12, please. Tell
13 me when you're there.

14 A. I'm there.

15 Q. Page 13, lines 11 to 12, you say "To be
16 consistent with zoning and for respect of rural
17 residential property use for outdoor amenity, noise
18 criteria should be at the property line, not at the
19 house"; is that correct?

20 A. That's correct.

21 Q. Okay. And what zoning are you
22 referencing in that sentence?

23 A. It would be general principles of zoning.

24 Q. Okay. Are you aware that Xenia Township
25 has a noise standard for residential land of 55 dBA

1 at night?

2 A. Yes, I am.

3 Q. Let me ask you this, do you believe that
4 if someone using their yard for outdoor amenity
5 purposes -- strike that.

6 If someone is using their yard for
7 outdoor amenity purposes and a farmer is plowing a
8 nearby field, do you believe that the farmer should
9 stop plowing that field while the resident is using
10 the yard for outdoor amenities?

11 A. No, I don't.

12 Q. All right. And if a neighbor is having a
13 cookout in their backyard in late afternoon and the
14 neighbor next door's property line is 50 yards away,
15 should that neighbor who's 50 yards away not mow
16 their lawn during that cookout?

17 A. Can you rephrase the question, please?

18 Q. Sure. Do you believe that if someone is
19 using their yard for an outdoor amenity that a
20 neighbor should stop mowing their lawn if they were
21 mowing at that time?

22 A. No, I do not.

23 Q. Okay. So more specifically, for example,
24 if I was having a cookout at my house in my backyard
25 and my neighbor is less than 50 yards from my house,

1 that neighbor should be allowed to mow their lawn
2 during my cookout, correct?

3 A. No, that's not correct.

4 Q. Okay. Well, let me try it again. Just
5 strike that. We'll just move on.

6 Now, you're aware that the World Health
7 Organization "2009 Night Noise Guidelines for Europe"
8 utilize a L night, outside for their -- for its
9 "Night Noise Guidelines for Europe"?

10 A. Yes.

11 Q. And that is an A-weighted long-term sound
12 level determined over all of the night periods of a
13 year in which the night is eight hours; is that
14 correct?

15 A. That's correct.

16 Q. Okay. So that would be a form of an Leq,
17 correct?

18 A. That -- that's correct.

19 Q. Okay. And the L night, outside as used
20 in the WHO "2009 Night Noise Guidelines for Europe,"
21 that would be measured at the exterior of the house;
22 is that correct?

23 A. That's correct.

24 Q. Okay. And the W -- the World Health
25 Organization's "2009 Night Noise Guidelines for

1 Europe" do not utilize an L90 for the WHO's
2 recommended night noise guidelines, correct?

3 A. That's correct.

4 Q. Okay. Turn to page 13, answer 16, line
5 17. So page 13 of your direct testimony, answer 16,
6 line 17.

7 A. Okay.

8 Q. Okay. Thank you. You state there "I
9 conducted trained listening and acquired noise
10 measurements for inverters, tracking motors, and
11 construction noise from pile driving." What is
12 "trained listening"?

13 A. It's the ability to detect and discern
14 different types of sound acquired over many years of
15 experience.

16 Q. And when you are engaged in trained
17 listening, how does that differ from the experience
18 of someone who's not trained, is not a trained
19 listener and is simply engaged in normal daily
20 activities?

21 A. There could be many differences.

22 Q. What are -- please name -- what are those
23 differences?

24 A. Someone who is not listening purposely as
25 part of their job might not detect certain sounds.

1 They might not even notice they're there.

2 Q. Okay.

3 A. They might not be able to tell what
4 direction they are coming from or what equipment is
5 producing them.

6 Q. Page 14, line 14, of your direct
7 testimony, if you could turn to that, please, page
8 14, line 14.

9 A. Yes.

10 Q. Okay. You -- so you took measurements at
11 the Hardin Solar facility; is that correct? Right?

12 A. That's correct.

13 Q. All right. And you took measurements
14 really at two locations; is that correct?

15 A. I took locations at three, ML1, ML2, and
16 ML3.

17 Q. Were ML1 and ML3 at the same location?

18 A. No. They were across the street from
19 each other.

20 Q. And -- all right. And when you took --
21 referring to your ML1 and back to your testimony at
22 line 14, you note that -- you state there "The ML1
23 location was chosen to observe and measure inverter
24 noise at the western edge of the Hardin I footprint
25 and with a clear view to an inverter to the south."

1 Did I read that correctly?

2 A. That's correct.

3 Q. Okay. And you used range binoculars to
4 determine the distance of that inverter; is that
5 right?

6 A. That's correct.

7 Q. Okay. Now, you weren't able to determine
8 how many inverters were contributing to the sound
9 pressure you recorded at that location; is that
10 correct?

11 A. That's correct.

12 Q. Okay. And you don't know the exact --
13 you know, the exact location of the one inverter you
14 used your binoculars on but, you don't know the
15 location of any other inverters.

16 A. That's correct.

17 Q. Okay. And now in your -- if you could
18 turn back to Exhibit L, Mr. Rand, in your direct
19 testimony.

20 A. Okay.

21 Q. In your report. Yeah, let's look at
22 Figure 1 while we're here.

23 A. Okay.

24 Q. Okay. So Figure 1 shows a pin ML2 at the
25 bottom of the green box, correct?

1 A. Correct.

2 Q. If I go to the north, I see two pins
3 close to each other, ML1 and ML3, correct?

4 A. That's correct.

5 Q. Okay. So now, your drawing shows arrays
6 to the north, to the west of the green box, to the
7 east, south, but let me ask you this, where did you
8 get the background drawing for this figure?

9 A. The -- there are two -- two -- two
10 sources, one for the Hardin I and one for the Hardin
11 II.

12 Q. Let me ask you this, did you create this
13 entire figure yourself?

14 A. I overlaid those sources scaling them
15 into Google Earth.

16 Q. And so just because I don't understand
17 how to do that, so you took a Google Earth picture,
18 we'll say, right? Let me back up.

19 How did you go about creating this
20 document so we just understand?

21 A. There are figures in the Hardin I and
22 Hardin II documents which I made copies of and then
23 scaled them into Google Earth Pro.

24 Q. How do you scale something into Google
25 Earth Pro?

1 A. By setting transparency to roughly
2 halfway and aligning roads, fields, and other
3 landmarks.

4 Q. Okay. All right. Do you know the date
5 of the documents that you used to scale this in?

6 A. I don't recall.

7 Q. Okay. And those were preliminary layouts
8 that you used though, correct?

9 A. I believe so, yes.

10 Q. And those would have been from the
11 applications for those projects; is that right?

12 A. That's correct.

13 Q. All right. Did you review the final
14 engineering drawings for either project?

15 A. I did not.

16 Q. Now, when you were at the facility,
17 specifically let's focus on ML1, did you confirm
18 where all of the arrays were installed?

19 A. I did not.

20 Q. Okay. Were arrays in the field to the
21 north of ML3?

22 A. Yes.

23 Q. Was that area under construction then as
24 well?

25 A. No. That area was built.

1 Q. What about then to the south of ML3?

2 A. Could you rephrase your question?

3 Q. Sure. Let me help you. So what does the
4 green box represent on your drawing here?

5 A. That represents the footprint of Hardin
6 I.

7 Q. Okay. Now, has Hardin I been constructed
8 yet?

9 A. Yes.

10 Q. Okay. So when you went to ML1 -- and
11 that would be looking south from ML1, correct?

12 A. That's correct.

13 Q. All right. So you're saying the green
14 area was fully constructed and had arrays in it; is
15 that right?

16 A. That's correct.

17 Q. Did you go around the project area to
18 ascertain that that was correct?

19 A. I did.

20 Q. Okay. Now, looking to the north from
21 ML3, okay, I see a field with orange and yellow lines
22 throughout and gray, correct?

23 A. Correct.

24 Q. All right. Was that area constructed as
25 well when you visited the site?

1 A. Yes. However, the shape that I saw was
2 not exactly this shape that I see here.

3 Q. Okay. Now, in your Figure 1 description
4 below the picture it says "Orange and red marks for
5 Hardin II facility in construction." What does that
6 mean?

7 A. Those referred to those horizontal lines
8 that are going across in the sections above and below
9 Hardin I.

10 Q. Now, would those be -- would that be a
11 layout of panels and inverters?

12 A. That's my understanding, yes.

13 Q. Okay. So anywhere on Figure 1 where I
14 have yellow or call it orange lines, I guess, with
15 red dots in them, those would all be areas that would
16 be under construction, correct?

17 A. That -- that's what I observed. If you
18 look at that letter A, that was an example of an area
19 under construction.

20 Q. And where is the letter A? Oh, there it
21 is. By ML2, correct?

22 A. Correct.

23 Q. Did you -- going over to the yellow pin
24 by LOC4, did you check to see if it was under
25 construction?

1 A. I did not.

2 Q. Okay. And then going back to north of
3 ML3, then everything in that area would have been
4 under construction, correct?

5 A. That's not correct.

6 Q. All right. What part of that area was --
7 let me ask you this, was there any part of the area
8 north of ML3 that was operational when you visited
9 that site?

10 A. Yes. The area directly to the north of
11 ML3 was fully constructed.

12 Q. Okay.

13 A. As to its operational status during the
14 survey, I couldn't say. However, the panels did tilt
15 when I took the measurement at ML3.

16 Q. And what do you mean by tilt?

17 A. In other words, they were tilting from
18 east to west.

19 Q. Okay. Now, continuing on from that
20 drawing, please, on page 3 of 9, you note that the
21 inverters appear to be TMEIC Solar Ware Ninja
22 (skid-mounted) and the panel racking appears to be
23 Nextracker Horizon Single Axis Tracker (slew-g geared).
24 Do you see that?

25 A. I do.

1 Q. How did you determine that the inverters
2 appear to be TMEIC Solar Ware Ninja inverters?

3 A. By visual inspection.

4 Q. And what -- were you -- how did you --
5 what was your visual inspection that you did?

6 A. I blew up my photograph and looked at the
7 outline of the inverters and then compared it to
8 other inverters on the market.

9 Q. Okay. Did you look at all inverters on
10 the market?

11 A. I couldn't say.

12 Q. Okay. So -- and then turning to the
13 tracking -- racking, how did you determine that
14 appears to be a Nextracker Horizon Single Axis
15 Tracker?

16 A. I reviewed the project documents.

17 Q. And what project document did you review?

18 A. I have a list of them in my testimony.

19 Q. Okay. Let's -- and could you show me
20 where that is just to help me, please?

21 A. Let's see, on page 5, line 13, OPSB
22 project documents for the Hardin Solar Energy, LLC.
23 And as I'm thinking about this question, I'm not sure
24 I know exactly where it was that I found that
25 determination, but it was during the process of

1 reviewing documents for these projects.

2 Q. Okay. Would -- would you have maybe
3 discerned that information from the Hardin Solar II
4 docket?

5 A. That's possible.

6 Q. Okay.

7 A. I can't be sure.

8 Q. All right. Okay. Could you -- what is
9 Exhibit J to your testimony, please? Let's turn to
10 Exhibit J. Let me know when you're there. Are you
11 there, sir?

12 A. I am getting there, thank you.

13 Q. Okay. Take your time.

14 A. There we go. This is a document produced
15 by Invenergy for Hardin Solar III.

16 Q. Okay. What was this document from?

17 A. I found it on the internet.

18 Q. Okay. Let's -- while we are at it, let's
19 just go to the very first page. Do you see the
20 heading "Hardin Solar III Energy Center Virtual
21 Public Information Meeting, January 5, 2021"?

22 A. Yes.

23 Q. Okay. And so would you understand this
24 was from the Hardin III public information meeting
25 for the project?

1 A. Yes.

2 Q. Okay. Are you aware that a public
3 information meeting is held prior to the filing of an
4 application for a project?

5 A. Yes.

6 Q. Okay. And it's possible that any kind of
7 layout or project specifics could change between the
8 public information meeting and the application being
9 filed, correct?

10 A. Correct.

11 Q. Okay. Now, in your testimony at line
12 14 -- sorry, page 14, line 11, there's a sentence "I
13 referred also to EXHIBIT J for an understanding of
14 the Hardin Solar build-out." Do you see that?

15 A. Yes, I do.

16 Q. Okay. So what part of this document did
17 you use to inform your understanding of the Hardin
18 Solar build-out?

19 A. If you look at page -- let's see. The
20 pages aren't numbered. There is a map, project map.
21 If you go down through the document, there's a page
22 that says "project map" in the -- and then there is a
23 page after that that shows the map of the Solar III
24 build-out.

25 Q. Okay. Now, Hardin Solar III is a

1 different project than Hardin Solar I, correct?

2 A. That's my understanding.

3 Q. And Hardin Solar III is a different
4 project from Hardin Solar II, correct?

5 A. Yes, that's correct.

6 Q. Okay. So this map would have nothing to
7 do with Hardin Solar I or Hardin Solar II, correct?

8 A. No, that's not correct.

9 Q. And why isn't that correct?

10 A. In my review of the Hardin facility, I
11 wanted to understand how the solar build-out was
12 being conducted, so I referred to -- found this to
13 get a better understanding of it.

14 Q. But let me ask you what does this drawing
15 have to do with the Hardin Solar I project and Hardin
16 Solar II project?

17 A. For me it -- I looked at Hardin Solar as
18 a -- as a progression of solar build-outs.

19 Q. Did you utilize the layout shown in the
20 preliminary information -- I should say the project
21 map for the public information meeting for Hardin
22 Solar II? Did you use that in preparing Exhibit L of
23 your report attached to your direct testimony?

24 A. We -- looking at Hardin Solar III?

25 Q. Correct.

1 A. And you asked about Hardin Solar II?

2 Q. That's correct.

3 A. I don't understand your question. Could
4 you repeat that?

5 Q. Sure. Did you use the information on
6 this map to prepare Exhibit L that's attached to your
7 direct testimony?

8 A. I used it as visual advisement when I was
9 preparing the figure.

10 Q. And what would -- what part of that
11 visual of this figure would inform your visual
12 advisement?

13 A. Just the general location of fields,
14 roads, and where the III build-out was.

15 Q. And why would the Hardin Solar III
16 build-out, why would that have anything to do with
17 your measurements at Hardin Solar I and II?

18 A. Well, I was looking at the Hardin Solar
19 I. I was confused because -- initially because
20 the -- the layout of Hardin Solar I did not include
21 panels north of ML1 and ML3. In investigating where
22 panels arrived from, I found a document discussing a
23 transfer of either area, assets, land, however you
24 might put it, from Solar II to Solar I which, as best
25 I could tell, involved that area north of ML1. That

1 question prompted me to look at ML3 to see if ML3 was
2 also involved in any transfer or visual transfer or
3 any other types of relationship between the projects.

4 Q. And the answer to your -- I guess I say
5 your question though is isn't it true that there has
6 been no transfer related to Hardin Solar III,
7 correct?

8 A. Correct.

9 Q. And -- okay. All right. Okay. If you
10 turn to page 18 of your testimony, please. Let's go
11 back there.

12 A. Okay.

13 Q. All right. Line 7 there is a sentence
14 that states "I understand the Hardin Solar inverter
15 units are rated at 4 MVA which are similar in rating
16 and likely sound output to the proposed 3.6 megawatt
17 Sungrow," and I will skip the model name, "inverters
18 for the Kingwood Solar facility," correct? And I
19 didn't read that perfectly but that's the gist of it.

20 A. Correct.

21 Q. Okay. So how did you determine the
22 Hardin Solar inverter units are rated at 4 MVA?

23 A. My review of the -- let's see, if we go
24 to my Exhibit L. The TMEIC Solar Ware Ninja,
25 assuming that they are that model, are rated at 4

1 MVA.

2 Q. And that's in Exhibit L, I believe you
3 said?

4 A. Yes.

5 Q. And where is -- Exhibit L, what are you
6 referring to there? Are you referring to your bullet
7 points?

8 A. That's correct.

9 Q. All right. Now, the bullet point I am
10 looking at, just to be clear, is page 3 of 9. It
11 states "Facility inverters appear to be the TMEIC
12 Solar Ware Ninja." Is that what you are referring
13 to?

14 A. That's correct.

15 Q. Okay. So just to be clear for the
16 record, there's nothing in your report that says that
17 the TMEIC Solar Ware Ninja is rated for, I think you
18 said, 4 MVA, correct?

19 A. That's correct.

20 Q. Okay. If we could look at -- let's see
21 here, do you have a copy --

22 MR. SETTINERI: And, your Honor, I would
23 like to mark an exhibit when I find it here.

24 Kingwood Exhibit 55, please, your Honor. At this
25 time I would like to mark as Kingwood Exhibit 5 a

1 spec sheet for the Solar Ware Ninja.

2 MR. VAN KLEY: 55, right, instead of 5?

3 MR. SETTINERI: Kingwood Exhibit 55, yep.

4 ALJ WILLIAMS: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Settineri) Do you have that
7 exhibit open in front of you or with you, Mr. Rand?

8 A. Is that the one that was sent last night?

9 Q. It was sent just this morning.

10 A. Let me see if I can find it.

11 MR. VAN KLEY: It's in the link, Rob,
12 that I sent you this morning.

13 ALJ WILLIAMS: Let's go off the record
14 while we find the exhibit.

15 (Discussion off the record.)

16 ALJ WILLIAMS: Back on the record,
17 please.

18 Q. (By Mr. Settineri) All right. Do you
19 have that before you, what's been marked as Kingwood
20 Exhibit 55?

21 A. I do.

22 Q. Would you agree with me that's a spec
23 sheet for the Solar Ware Ninja?

24 A. Yes.

25 Q. Turn to the second page. Do you see the

1 rated power? At the top line there was some rated
2 power, two rows of rated power?

3 A. Yes.

4 Q. Okay. Do you see that the range --
5 I'll -- ranges, and I'll do both rows, ranges from
6 730 kil -- kW to 920 kW?

7 A. Yes, I see that.

8 Q. And that would be kilowatts, correct?

9 A. That's correct.

10 Q. And that can be converted to kVA,
11 correct?

12 A. Yes, it can.

13 Q. Okay. And typically the kVA is going to
14 be very similar to the kilowatt rating, correct?

15 A. Yes, pretty close.

16 Q. Okay. Let's turn then to the application
17 itself. If you could turn -- actually just go to
18 the -- yeah, Appendix J of the application. And just
19 tell me when you're there.

20 A. I got an Appendix J. It says
21 "Representative Equipment Standards"?

22 Q. Yes. If you could turn in that figure,
23 and I have the paper copy, but you'll see an TMEIC
24 Solar Ware Samurai Series inverter?

25 ALJ WILLIAMS: PDF page 12 of 24.

1 MR. SETTINERI: Thank you, your Honor.

2 A. Okay. I have got that.

3 Q. And that's a spec sheet for the Solar
4 Ware Samurai, correct?

5 A. That's correct.

6 Q. Yeah. And that's a TMEIC model, correct,
7 or series?

8 A. That's correct.

9 Q. Okay. And do you see there the rated
10 power for the various models ranges from
11 2,500 kilowatts to 30 -- 3,360 kilowatts and also
12 ranges then 2,500 kVA to 3,360 kVA, correct?

13 A. That's correct.

14 Q. All right. So then just turning the
15 page -- or next spec sheet would be a Sungrow model?
16 And that's I have 3 -- SG3425 model number. Do you
17 see that?

18 A. I do.

19 Q. All right. And if you turn to the second
20 page of that spec sheet, do you see the AC output
21 power rating of 3,425 kVA up to 3,600 kVA?

22 A. Yes.

23 Q. Okay. So after going through this
24 material, you would agree with me that the inverters
25 that you -- at the Hardin Solar project that you

1 believe are the TMEIC Solar Ware Ninja have much
2 lower rated power, correct?

3 A. I would agree the numbers that I have
4 just looked at it's lower power.

5 Q. Okay. All right. So for the Hardin
6 Solar project, you would agree that that project is
7 using much smaller inverters than the Kingwood Solar
8 project, correct, in terms of rated power?

9 A. If those are the ones that they are
10 using, they would have lower power.

11 Q. Okay. And that's -- the model -- the
12 spec sheet we looked at, that's the model you believe
13 based on your analysis is what's being used there,
14 correct?

15 A. That's correct.

16 Q. Okay. Then just to be clear for the
17 record, going back to line -- page 18, line 7, okay,
18 having looked at the information, your understanding
19 now is that the Hardin Solar inverter units are rated
20 at less than a thousand kVA and -- and much less than
21 the Sungrow inverters, correct?

22 A. Based on the information I just saw,
23 that's correct.

24 Q. Okay. And for this same facility has the
25 same nameplate capacity, let's say 100 megawatts,

1 right? If I was to use a smaller rated inverter
2 versus a higher rated inverter, that would mean that
3 I would need more of the smaller rated inverters for
4 the project, correct?

5 A. That's correct.

6 Q. Okay. Construction was ongoing when you
7 took your measurement at location ML1, correct?

8 A. That's correct.

9 Q. It's not standard practice in acoustics
10 to take operational sound measurements of a source
11 with construction noise ongoing in the background,
12 correct?

13 A. That's not correct.

14 Q. Okay. Let me ask this question, you are
15 aware that wind turbine manufacturers conduct tests
16 to determine the frequencies for sound power output?

17 A. I don't understand your question.

18 Q. Well, let me ask you this, assume that
19 you and I are -- have a company that makes wind
20 turbines and we want to come up with a sound power
21 output profile that we can provide to developers.
22 How would -- how would we do that in our -- with our
23 wind turbines?

24 A. Typically use an international
25 standardized C61 400-11 to conduct a test of the

1 sound power.

2 Q. Okay. And would you be taking
3 measurements --

4 A. Yes.

5 Q. -- during the test? Okay. All right.
6 And would -- if we were doing that test at our
7 company in my hypothetical, would we conduct those
8 measurements if construction noise was ongoing in the
9 background?

10 A. No.

11 Q. Okay. And why not?

12 A. Because it could contaminate the noise
13 levels.

14 Q. Okay. At page 16, line 1, you say that
15 the "Distant inverter fans (tonal) from Hardin I were
16 faintly audible to the north." Do you see that?

17 A. Yes.

18 Q. What do you mean by faintly audible?

19 A. I could just detect them when I had my
20 head turned to the north.

21 Q. Okay. And let me ask you, when you were
22 doing that, was that through trained listening?

23 A. That's right.

24 Q. Okay. And at page 4 of that same page,
25 you use -- yeah. Let's see, line 4 -- bear with me.

1 Let me strike that and find the right reference here.

2 And while I am looking for that, on page
3 17, line 2, you say that "Hardin II pile-driving and
4 grading construction noise 8,000 to 9,000 feet south
5 was audible." What do you mean by audible there?

6 A. I could hear it.

7 Q. Okay. And was -- did you also -- was
8 that something that you would attribute to trained
9 listening?

10 A. I think the average person could hear it.

11 Q. Thank you for clarifying. And I'm trying
12 to find a reference here in your testimony as to
13 highly audible, but I will just ask the question,
14 what does "highly audible" mean to you?

15 A. Highly audible means that the noise is
16 prominent.

17 Q. Okay. So if something is faintly
18 audible, do you believe that would lead to a
19 complaint?

20 A. Not generally, no.

21 Q. Okay. All right. Do you consider an L90
22 plus 5 exceedance to be audible, faintly audible, or
23 highly audible?

24 A. That's somewhere in the range of audible
25 to highly audible.

1 Q. Okay. Page 18, line 14.

2 A. Okay.

3 Q. And before I jump there, I want to just
4 ask one other question that just jumped into my head
5 here, I believe you've -- you use in your testimony a
6 project average nighttime ambient background of 28
7 dBA; is that correct?

8 A. That's not correct.

9 Q. And what is the average background L90
10 that you use in your testimony?

11 A. 29 dBA.

12 Q. Okay. And so if I add 5 to that, that
13 takes me to 34 dBA, right?

14 A. That's correct.

15 Q. Okay. And you would believe that a 34
16 dBA sound level would be audible to highly audible?

17 A. That's correct.

18 Q. Okay. Now going back to page 18, please.

19 A. Okay.

20 Q. There's a reference in -- I'll just read
21 the sentence -- well, it's a long sentence, so I'll
22 skip it. Line 15, there's a phrase -- you say "but
23 from survey experience." And take a second to read
24 the whole sentence if that helps you.

25 A. Okay.

1 Q. What is the survey experience you are
2 referencing there?

3 A. I've been working in acoustics and noise
4 measurement since 1980.

5 Q. Now, you've not reviewed a final layout
6 for the Kingwood Solar project yet, correct?

7 A. That's correct. I've reviewed the Odom
8 supplemental.

9 Q. Okay. When you say "Odom supplemental,"
10 to be clear though -- well, let me ask you this, I
11 notice you mentioned Odom supplemental in your direct
12 testimony. What do you mean when you refer to the
13 "Odom supplemental"?

14 A. That's a document produced by Acentech
15 reviewing the changes to the site layout which I
16 received a couple days ago.

17 Q. So just to be clear for the record,
18 because I have to say when you say "Odom
19 supplemental," I thought you were referring to the
20 Odom supplemental testimony. Let's go to page 11.

21 MR. VAN KLEY: Of what?

22 MR. SETTINERI: Page 11 of his direct
23 testimony.

24 Q. (By Mr. Settineri) And looking at your
25 revisions there specifically, Mr. Rand.

1 A. Okay.

2 Q. And so your revision said "Predicted
3 noise levels for the 50 homes listed in the Odom
4 supplemental," what were you referring to there when
5 you said "Odom supplemental"?

6 A. This is supplemental testimony of Alex
7 Odom.

8 Q. Okay. And for the record I believe that
9 would be Kingwood Exhibit 11. And can you tell me
10 specifically then while we're there what exactly were
11 you referring to -- when you say "50 homes listed in
12 the Odom supplemental," what part of the Odom
13 supplemental testimony were you referring to?

14 A. Attachment B.

15 Q. Okay. And then if you could turn to page
16 25 of your direct testimony and tell me when you're
17 there.

18 A. Okay.

19 Q. You had revisions there too, so the
20 sentence now reads, last full paragraph, "The
21 estimated noise levels at 50 homes in the Odom
22 supplemental." What are you referring to there when
23 you say Odom supplemental?

24 A. The Attachment B in that exhibit.

25 Q. All right. When I asked you about the

1 final layout for the Kingwood Solar project, just to
2 repeat, you haven't reviewed a final layout for the
3 project, correct?

4 A. That's correct.

5 Q. All right. But you're saying that you
6 did review a document -- so you mentioned, I believe,
7 when Mr. Van Kley presented you on direct that you
8 had reviewed a layout drawing that had been provided
9 to you; is that right?

10 A. I've reviewed the initial Exhibit --
11 Appendix K, I think it is, of the application and
12 then reviewed this Odom supplemental testimony.

13 Q. Okay. But I believe you testified
14 earlier that you had received a layout that had been
15 changed; is that right?

16 A. I'm referring to the -- this Odom
17 supplemental.

18 Q. Okay. Is there a layout attached to
19 that?

20 A. There are two attachments -- well, I
21 guess there are two figures called Attachment A --

22 Q. Okay.

23 A. -- which shows -- yes.

24 Q. I'm sorry to interrupt. Go ahead. All
25 right. So these -- these are sound contour maps,

1 right?

2 A. That's correct.

3 Q. Okay. And you are saying that based
4 on -- this is the layout that you looked at?

5 A. That's correct.

6 Q. Okay. Did you receive any other layout
7 drawings since you submitted your direct testimony in
8 this proceeding?

9 A. I may have.

10 Q. Can you -- do you know which drawings --
11 what drawings those were?

12 A. I would have to look through the
13 documents to see if I can -- I thought I had received
14 something that showed where solar -- solar panels
15 were but this was my primary reference.

16 Q. Okay. That's fine. For testimony today
17 obviously you are limited to what's in front of you
18 which is your testimony, okay, and any exhibits.
19 Turn to page 20 of your testimony, please. And I
20 will direct you to line 16 -- or actually, let's see
21 here, well, line 16 through 21. You discuss the
22 locations from Acentech's noise report; is that
23 correct?

24 A. That's correct.

25 Q. All right. And you say that, line 19, "I

1 visited the actual meter locations, as described by
 2 neighbors, at these points, which appear consistent
 3 with the facility noise study, and approximate
 4 distance to the center of the nearest road shown
 5 (determined by measurement in Google Earth)." How
 6 did you determine -- what -- who -- what neighbors
 7 did you have discussions with?

8 A. I met with Joe Krajicek, sorry, I am
 9 probably pronouncing that wrong, and Nicole Marvin.

10 Q. Okay. And were those in person
 11 discussions?

12 A. Yes.

13 Q. Okay. And how did they assist you?

14 A. Joe toured the site with me to show me
 15 the locations.

16 Q. Okay. And did Joe have pictures of the
 17 actual sound equipment that Acentech used?

18 A. No, he did not.

19 Q. Okay. So -- all right. And then did you
 20 do any -- so Joe Krajicek pointed out to you where he
 21 believed the locations 1, 2, and 3 were, correct?

22 A. That's correct.

23 Q. Okay. What else did you do then to
 24 ascertain the meter locations?

25 A. I took pictures of the -- of the

1 locations and then looked at the locations and
2 confirmed their approximate location in Google Earth.

3 Q. And you said you confirmed their
4 approximate locations in Google Earth to what?

5 A. By visual inspection.

6 Q. Your visual inspection.

7 A. That's right.

8 Q. Okay. So you're -- sitting here today
9 you are not certain of these exact locations of the
10 Acentech meter location, correct?

11 A. I'm certain in their report, I believe,
12 they reported them.

13 Q. But in regards to your visual
14 inspections, you're not certain as to exactly where
15 those meters were placed, correct?

16 A. That's correct.

17 MR. VAN KLEY: Objection.

18 ALJ WILLIAMS: Mr. Van Kley.

19 MR. SETTINERI: Your Honor -- I
20 believe -- sorry. I believe the witness answered the
21 question, your Honor.

22 MR. VAN KLEY: Yeah. And, Rob, if you
23 could slow down just a little bit.

24 ALJ WILLIAMS: We'll overrule the
25 objection. Please continue.

1 MR. SETTINERI: Ms. Gibson, did you get
2 that answer?

3 COURT REPORTER: Yes.

4 Q. Turn to page 24. At page 24 you're --
5 question 26 is "Have you reviewed the noise standard
6 proposed by Kingwood Solar for its project," right?

7 A. That's correct.

8 Q. And -- okay. And you say yes. And you
9 refer to page 3, Appendix K. I guess what is the
10 noise standard proposed for the Kingwood Solar
11 project?

12 A. My understanding they are using a
13 differential of 5 dBA over an average Leq.

14 Q. Do you understand the difference between
15 the design goal and a standard?

16 A. I do.

17 Q. Okay. What's the difference?

18 A. The standard is usually bona fide in law,
19 but sometimes the word is used interchangeably.

20 Q. And are you aware for wind turbines for
21 facilities greater than 50 megawatts in Ohio that the
22 noise standard is an average date and time, ambient,
23 Leq plus 5 dBA?

24 A. Yes.

25 Q. Okay. Now, sound power output can change

1 between inverter manufacturers and model, correct?

2 A. That's correct.

3 Q. Okay. So -- so in regards to inverters,
4 and specifically for the inverters that -- for the
5 Kingwood Solar project, you agree that mitigation can
6 be installed to minimize the risk of noise
7 complaints, correct?

8 A. That's correct.

9 Q. And so, for example, noise barrier walls
10 can provide roughly 7 to 12 dB noise reduction in
11 sound levels for inverters, correct?

12 A. That's correct.

13 Q. And acoustical enclosures can reduce
14 noise by up to 27 dBA, correct?

15 A. That's correct.

16 Q. Okay. And are -- what is an acous --
17 acoustical enclosure to you?

18 A. It's typically --

19 Q. Let me strike that. Let me just -- I'm
20 sorry to interrupt you but let me just -- what is an
21 acoustical enclosure exam -- that would -- could
22 reduce noise by up to 27 dBA?

23 A. Acoustical enclosure can be thought of as
24 buildings. Many people know what a Butler building
25 is. And they can provide much more than 27 dB of

1 noise control.

2 Q. Are there different types of acoustical
3 enclosures?

4 A. Yes.

5 Q. And, I'm curious, can -- I will say it in
6 my own words, can something like a felt be used
7 inside an enclosure or something like that to
8 mitigate noise? And I will say from an inverter, to
9 the extent you know.

10 A. Typically enclosures controlling
11 industrial noise equipment would be lined
12 acoustically.

13 Q. Okay. And how would -- in your
14 experience what would that consist of when you would
15 line something -- line an enclosure?

16 A. From my experience it would be a
17 fire-rated material, sometimes a leaded vinyl, or
18 kind of a quilt material.

19 Q. And again, curious, how would that be --
20 generally how would you attach that kind of lining?
21 I know you may have different, you know, types of
22 materials you are attaching it to but how would you
23 attach something like that?

24 A. With fasteners.

25 Q. And when you say "fasteners," is that a

1 screw? What would that be?

2 A. It depends.

3 Q. All right. It's commonly done though,
4 correct?

5 A. I don't understand your question.

6 Q. So using linings to reduce sound from
7 industrial noise sources is -- that's a common
8 mitigation practice; is that correct?

9 A. That's correct.

10 Q. Okay. Are you aware that Kingwood Solar
11 will have a complaint resolution procedure in place
12 for the project?

13 A. No, I'm not.

14 Q. Okay. Do you think it would be
15 beneficial for Kingwood Solar to have a complaint
16 resolution procedure so that local residents can
17 submit any complaint about the project including
18 complaints about operational noise levels?

19 A. I can't answer that with a yes or no.

20 Q. Do you believe it's beneficial for
21 Kingwood Solar to have a mechanism to collect
22 complaints from local residents about operational
23 noise if that occurs?

24 A. Yes, I do.

25 Q. Okay. Now, mitigation of inverters can

1 be done prior to construction or after construction,
2 correct?

3 A. That's correct.

4 Q. Okay. And if mitigation of an inverter
5 related to an operational sound issue is done after
6 construction, that would allow for the mitigation to
7 be applied in a manner to specifically address the
8 issue, correct?

9 A. That's correct.

10 Q. Now, you have not done any mitigation for
11 inverters for solar farms, correct?

12 A. That's correct.

13 Q. Am -- I am correct that over the course
14 of your career you have performed many mitigation
15 analyses, I assume?

16 A. That's correct.

17 Q. Okay. Turning to the Odom -- now, I
18 don't know if you have it, but hopefully you do, the
19 Odom supplemental, as you call it, which is Alex
20 Odom's supplemental testimony, I believe it was
21 previously marked as Kingwood Exhibit 11, do you have
22 a copy of that with you?

23 A. Yes.

24 Q. If you could go to Attachment B, and when
25 you are there, just let me know.

1 A. Okay.

2 Q. Look at the receptors -- let's look at
3 NP47, NP48, and NP49. Do you see those receptors?

4 A. Yes.

5 Q. Okay. And if I look at the column under
6 "revised layout," "project-only sound level,"
7 "Nighttime," NP49 is at 44 dBA, NP48 is at 42 dBA,
8 and NP47 is at 41 dBA. Do you see that?

9 A. Yes.

10 Q. All right. Are these three receptors
11 near the projects collect -- substation?

12 A. I can't answer that with the materials in
13 front of me.

14 Q. Okay. Let's turn -- well, so let's just
15 give you a point of reference and maybe you already
16 have it. If you could go -- well, let's see, let's
17 go to Acentech's noise report. I think that might
18 help us. There it is. Yeah. If you can turn --
19 it's page 9 in the paper copy on 14. There is a
20 Figure 5 in that document. And this is Appendix K to
21 the project application marked as Kingwood Exhibit 1.

22 A. Okay. Appendix K, what portion of it?

23 Q. It's Figure 5.

24 A. Figure 5.

25 Q. Page 9 of 14.

1 A. Okay.

2 Q. All right. So there -- let's just for
3 point of reference, we see this is a "Figure 5:
4 Non-participating Residences," you can see NP47,
5 NP49, and NP48. And they are all to the northeast by
6 like a blue dot. Do you see that?

7 A. Yes.

8 Q. Okay. If you could then turn to -- there
9 is at the very end of the report, I believe it's the
10 last page, make sure here, is there a layout drawing
11 site plan at the very end of that? Very last page
12 actually -- well, yeah, it should be the last page.

13 A. I'm sorry. Did you ask a question?

14 Q. Yes. There's a site plan that's -- it
15 should be the last page. At least on the paper copy
16 it is. Do you see that? It's Appendix K.

17 A. Yes. Okay. I found it.

18 Q. Okay. Do you see the notation for the
19 project substation and switchyard on this drawing?

20 A. Go in here. Yes, I see it.

21 Q. Okay. And so going back to receptors
22 NP47, NP48, and NP49, you would agree those receptors
23 are near the project substation and switchyard.

24 A. Back to those. Yes.

25 Q. Okay. Now going back to that site plan,

1 does it refresh your memory that you may have
2 received an updated site plan after you filed your
3 direct testimony?

4 A. No, it doesn't.

5 Q. Does not, okay. Are you aware a Joint
6 Stipulation has been filed in this proceeding that
7 recommends proposed conditions for a certificate if
8 the Board issues a certificate?

9 A. Yes, I am.

10 Q. Going back to Mr. Odom's supplemental
11 testimony, Attachment B, and if you look at the
12 revised layout project-only sound level, that
13 project-only sound level would be calculated based
14 only on the model that would have been -- that was
15 purchased by Acentech, correct?

16 A. That's my understanding, yes.

17 Q. Okay. So ignoring NP47, 48, and 49 as
18 receptors, you would agree with me that every other
19 receptor with the exception of NP26 at 41 dBA is at
20 40 dBA or less, correct?

21 A. Yes, that's correct.

22 Q. And you're familiar again with the
23 Word -- World Health Organization "Night Noise
24 Guidelines for Europe"?

25 A. Yes, I am.

1 Q. Okay. And one of those guidelines is a
2 recommendation -- the recommendation -- well, strike
3 that.

4 One of the guidelines is that a 40 dB L
5 night, outside is equivalent to the lowest observed
6 adverse level -- effect level for night noise,
7 correct?

8 A. That's correct.

9 Q. Okay. Let me ask this, can a non-trained
10 listener distinguish between 41 and 40 dBA?

11 A. They may be able to but generally not.

12 Q. Yeah. And then that's a 1 dBA. So for
13 the average person, do you have an opinion as to what
14 point an average person could discern an increase in
15 dBA?

16 A. I would say the rule of thumb is that
17 most people can discern a significant change in noise
18 level at about a 3 dB difference.

19 MR. SETTINERI: Your Honor, I'm almost
20 done, I believe. But if we could take like a
21 5-minute break and I can check my notes and come back
22 and hopefully wrap up.

23 ALJ WILLIAMS: Let's go ahead and take 5.
24 We will come back at 10:35.

25 We are off the record.

1 (Recess taken.)

2 ALJ WILLIAMS: Okay. We took 5 for
3 Mr. Settineri to confirm the status of his cross.

4 Further cross, Mr. Settineri?

5 MR. SETTINERI: Thank you, your Honor.
6 At this time, no. I have no further cross.

7 ALJ WILLIAMS: Thank you, sir. On behalf
8 of the Staff.

9 MS. BAIR: No cross. Thank you, your
10 Honor.

11 ALJ WILLIAMS: Mr. Van Kley, did you need
12 some time to compose whether to redirect?

13 MR. VAN KLEY: Yes, your Honor. That
14 would be appreciated.

15 ALJ WILLIAMS: Same 5 minutes. Come back
16 at 10:40?

17 MR. VAN KLEY: Okay.

18 ALJ WILLIAMS: We are off the record.

19 (Recess taken.)

20 ALJ WILLIAMS: Let's go back on.

21 Mr. Van Kley, any redirect?

22 MR. VAN KLEY: Yes, your Honor.

23 ALJ WILLIAMS: Please proceed.

24 MR. VAN KLEY: Thank you.

25 - - -

REDIRECT EXAMINATION

By Mr. Van Kley:

Q. Mr. Rand, I am going to take my redirect questions in the same general order as Mr. Settineri asked you the cross-examination questions. So let's start with some questions about your experience. At the beginning of your cross, Mr. Settineri asked you about the nature of your prior experience with solar facilities. And let me ask you some questions to follow up those points.

With regard to the work that you've done in the Kingwood Solar case concerning the proposed solar facility, what, if anything, in your experience qualifies you to perform the work you did in this case?

A. I am having trouble hearing. Something is wrong with the connection. I don't know if you can hear me.

ALJ WILLIAMS: We hear you fine, and I heard Mr. Van Kley fine. Can you hear me, sir?

We are off the record.

(Discussion off the record.)

ALJ WILLIAMS: We'll go back on the record.

Mr. Van Kley, please continue.

1 Q. (By Mr. Van Kley) All right. Mr. Rand, I
2 will reask my question, although I don't know if I
3 can do it as beautifully the second time as I did the
4 first time, but we will give it a try. Mr. Rand, I
5 am going to follow the outline of Mr. Settineri's
6 cross-examination in asking you follow-up questions
7 to explain your answers to his cross-examination.

8 At the beginning of Mr. Settineri's
9 cross-examination, he asked you some questions about
10 your experience with solar facilities in the past.
11 And my question to you is what, if anything, in your
12 experience over the number of years that you have
13 been involved in acoustics qualifies you to render
14 the opinions pertaining to the Kingwood Solar
15 facility that you have provided us in this
16 proceeding?

17 A. I've worked as a noise control consultant
18 for -- since 1980 and including noise impact
19 assessment and abatement for transformer yards and
20 transformer -- large station transformers which are
21 very similar to the transformers. Perhaps the size
22 may be slightly different; in many cases they are
23 much larger than the transformers being used in this
24 facility. Using the same methods that I've described
25 including enclosure and -- and barrier wall designs

1 to reduce tonal emissions at the nearest neighboring
2 properties.

3 Q. Okay. Now, are there particular acoustic
4 standards that you employed for evaluating noise
5 issues that pertain to noises from all different
6 types of facilities?

7 A. In terms of working as a noise
8 consultant, I design to prevent complaints. This is
9 my training and experience at Stone & Webster
10 Corporation in Boston and so designing to prevent
11 complaints means limiting the increase of a new noise
12 source and paying attention to tonal noise sources to
13 make sure that they are not excessive. Many cases we
14 would mitigate tonal noise sources completely.

15 Q. Okay. Are you familiar with the ANSI
16 Standards?

17 A. Yes, I am.

18 Q. Okay. What are those?

19 A. Those are a set of voluntary consensus
20 standards developed by professionals from many
21 industries working together to provide common
22 guidelines and methods for assessing -- in the case
23 of acoustics, assessing measurement and evaluation of
24 sound.

25 Q. And do those ANSI Standards apply to all

1 different types of sound sources or just one or more?

2 A. They apply to all different types of
3 sources.

4 Q. And did you utilize the procedures in the
5 ANSI Standards for your work in this case?

6 A. I did generally follow the ANSI Standards
7 during the measurements and during the -- the
8 evaluations of the -- of the site design. I will say
9 that my design approach is more conservative
10 generally than ANSI Standards, and in some cases my
11 methods predate the current wordings and methods in
12 the ANSI Standards because I started doing this in
13 1980.

14 Q. What do you mean when you say that in
15 some instances your approach is more conservative?

16 A. There are some -- some portions of ANSI
17 Standards which utilize the Leq for evaluating
18 impacts. However, my direct and extensive experience
19 with industry noise, preventing impacts has been
20 successful employing the use of the change over the
21 background L90. This was the standard procedure at
22 Stone & Webster when I joined.

23 Q. Does that mean that utilizing the L90 for
24 your work is not generally accepted in the acoustic
25 community?

1 A. Not at all. In fact, it's outlined in
2 ANSI Standard S12.100 for assessing for the
3 background noise in the community and using that for
4 assessing impacts of different types of noise
5 sources.

6 Q. And why in those cases is the L90 used as
7 the background -- as the method for computing
8 background noise?

9 A. It's generally recognized that people
10 associate their quality of place to the background
11 sound levels, not the momentary or intermittent sound
12 levels.

13 Q. And why is that the case?

14 A. Because that's the nature of the
15 environment.

16 Q. Okay. So if the standards set for the
17 operational noise of a facility is based on the Leq
18 instead of on the L90, what, if any, effect does that
19 have on the effect that -- effectiveness of the noise
20 standard?

21 A. Basing a standard or a criterion for
22 siting development on the -- an Leq can be misleading
23 by misrepresenting the background with which people
24 associate their quality of place and amenity. A
25 noise level can be too high, as I outline in my

1 testimony, when it is contaminated by momentary and
2 intermittent traffic noise.

3 Q. Okay. So in laymen's language, what
4 is -- what do you mean when you say it's contaminated
5 by the noise?

6 A. The -- in the case of the Kingwood, the
7 noise levels represented by the Leq are skewed upward
8 by momentary traffic due to the traffic counts in
9 that area. I am seeing counts associated with
10 perhaps on average one car a minute during the day.
11 If two cars go by, that might mean a couple of
12 minutes when there aren't any cars on the road.
13 People associate the background. That's what they
14 hear when the cars are not going by. The noise from
15 traffic is not associated to amenity in my
16 experience. People prefer not to have traffic near
17 their house. The noise levels that are skewed upward
18 by traffic that's intermittent don't represent the
19 background that people associate to their amenity.

20 Q. So if the noise standard for operation of
21 a facility is based on 5 dBA above the average Leq,
22 what does that mean with respect to how noticeable
23 inverter sound will be during times when cars are not
24 passing by?

25 A. It would have the result of those being

1 more noticeable because the Leq is several decibels
2 above the background L90.

3 Q. Okay. So if -- if inverter noise is
4 heard between the times that cars pass by, can you
5 tell me whether that -- that means that the inverter
6 noise would be higher than 5 dBA above the ambient
7 noise being heard by the receiver if the standard is
8 based on Leq above 5 and the inverter noise is that
9 high?

10 A. It would be above -- 5 dB above the L90.
11 The table in the Odom supplemental provides the
12 current levels -- current to my understanding of the
13 site design which I also understand is not final.

14 Q. Yeah.

15 A. And those levels are well above 5 dB over
16 the L90.

17 Q. Okay. So putting aside for a second what
18 the L90 is, if a -- if a person is hearing -- or
19 if -- if inverter noise is at a level of Leq plus 5
20 at a time when there are no intermittent noises
21 higher than that, for example, cars passing by, would
22 the inverter noise exceed 5 dBA above the actual
23 ambient sound at that time?

24 A. Yes, it would.

25 Q. So going out of order here just briefly

1 because it pertains to the same topic, if you can go
2 back to the Odom supplemental testimony that you had
3 in front of you earlier, I would like to go back to
4 Attachment B of that supplemental testimony.

5 A. Okay.

6 Q. All right. So looking at Attachment B of
7 Mr. Odom's supplemental testimony, can you provide me
8 with your observations concerning how levels of the
9 nature predicted by Acentech's modeling would likely
10 to effect -- to effect the public given that these
11 levels are being compared to the Leq of the ambient
12 surroundings, the ambient Leq?

13 A. Comparing these levels to the Leq
14 suggests that there won't be much of a change.
15 However, since people associate their background and
16 our successful experience over many projects
17 designing with L90 as the reference or criterion,
18 these levels are many decibels above the background
19 L90 of 29 dBA average at night. And we would expect
20 complaints to emerge in the mid 30s and up, and
21 widespread complaints would be associated with levels
22 of 10 dB and higher above the background L90. And
23 that would be a 39 dB and up and there are some 14
24 homes with levels 39 dB and up in this listing of
25 Appendix B.

1 Q. Have you conducted any sound modeling
2 yourself?

3 A. Yes, I have.

4 Q. Can you give me kind of a general
5 description of how much modeling you've done on
6 sound?

7 A. Scores of projects utilizing different
8 levels of software from Mainframe to Excel.

9 Q. And are you accustomed to also reviewing
10 sound models performed by other persons?

11 A. Yes, I am.

12 Q. And how common is that in your practice?

13 A. It's very common. A number of my
14 projects involve review of other project submittals.

15 Q. Let's go to your written direct testimony
16 that is marked as Citizens Exhibit 12.

17 A. Okay.

18 Q. And go to answer 12.

19 A. Okay.

20 Q. All right. You were asked what studies
21 you had conducted in order to prepare your testimony,
22 and I believe that you included in your answer your
23 visit to the Hardin facility and the Kingwood
24 facility. Did you do other work to prepare for your
25 testimony?

1 A. I reviewed a number of documents to get
2 an understanding of the Hardin facility design and
3 layout.

4 Q. Did you do any review of anything related
5 to the Kingwood Solar proposed project?

6 A. I reviewed the application Appendix K and
7 then most recently the -- what I am calling the Odom
8 supplemental.

9 Q. And did you review the modeling
10 information in those records?

11 A. Yes, I did.

12 Q. You were asked some questions about the
13 sound output of tracker motors. What kind of
14 information did you use with regard to tracker motors
15 for your testimony and what was the purpose of that
16 use?

17 A. I looked at two bits of information about
18 tracker motor sound levels and compared them to the
19 levels that I discerned during my measurement at ML3.

20 Q. And what was -- what was your reason for
21 doing that?

22 A. I wanted to get a better solid ground
23 under the sound levels that I measured and get a
24 sense of the sound levels that are typical for the
25 tracker motors.

1 Q. Now, did you take measurements of the
2 noises at the Hardin facility?

3 A. Yes.

4 Q. Okay. And did your review of tracker
5 motor information have any -- make any change -- let
6 me start over.

7 As a result of your review of tracker
8 motor information, did you make any changes in the
9 measurements of the noise that you actually heard and
10 measured at the Hardin facility?

11 MR. SETTINERI: Your Honor, at this time
12 I am going to object. This is outside the scope of
13 my cross. I asked him about the models and referred
14 him to his Exhibit L to look at the models and what
15 informed his selection. I don't believe -- we didn't
16 speak about mod -- or measurements of trackers.

17 ALJ WILLIAMS: Mr. Van Kley.

18 MR. VAN KLEY: Yeah. That's -- that's
19 a -- well, let's put it this way, the reason
20 Mr. Settineri was asking those questions is because
21 he wants to -- to attempt to cast doubt on the
22 measurements of the noise at the Hardin facility.
23 And my intent here is to show that -- that the -- the
24 model tracker information that -- that he reviewed,
25 regardless of what model he used, did not actually

1 affect the results of the noise measurements at
2 Hardin.

3 MR. SETTINERI: Your Honor, if I may
4 briefly.

5 ALJ WILLIAMS: Briefly.

6 MR. SETTINERI: My cross did not cover
7 the results of his measurements.

8 ALJ WILLIAMS: The objection is
9 overruled. There was substantial cross-examination
10 relative to the testing he performed at Hardin to
11 include drawing in some other standards of other
12 inverters and other machinery that might be
13 associated with these types of farms, so we will
14 allow some latitude relative to redirect.

15 Q. (By Mr. Van Kley) Mr. Rand, do you
16 remember the question?

17 A. Could you repeat it?

18 MR. VAN KLEY: Can we ask the court
19 reporter to repeat that, please.

20 ALJ WILLIAMS: Karen, please.

21 (Record read.)

22 A. Thank you. I did not.

23 Q. Now, going back to the portion -- there
24 was an appendix in the application that contained
25 some information about models for various types of

1 components for a solar project. Do you recall
2 answering questions about those -- about that
3 appendix?

4 A. Well, we have had a number of questions.

5 Q. All right. Do you recall the appendix
6 that I am talking about?

7 A. If you can point me to it, that would be
8 helpful.

9 Q. Okay. Let's go there. Appendix J of the
10 application which is labeled or entitled
11 "Representative Equipment Standards."

12 A. Okay. Let me get that open. Just taking
13 a minute to find it again.

14 Okay. I've got it.

15 Q. All right. All right. What is your
16 understanding -- let me ask another question first.
17 Did you see anything in the application for Kingwood
18 Solar that identified the specific tracker motor
19 model that would be used for that project?

20 A. I don't recall seeing one.

21 Q. All right. Now, does -- what's your
22 understanding about what Appendix J is with respect
23 to the models of equipment that are contained in
24 here?

25 A. My understanding of this appendix it said

1 it's a list of typical equipment that might be used
2 for the different types of uses such as panels and
3 inverters.

4 Q. Uh-huh. Did you see anything in the
5 application that requires Kingwood to use the models
6 that are in Appendix J?

7 A. I did not.

8 Q. And with respect to the inverter models
9 that you testified may be present at the Kingwood
10 project, you were asked to compare the data from that
11 model to the data for the inverter models provided in
12 Appendix J. Do you recall that?

13 A. Yes.

14 Q. Does the -- do the differences that you
15 testified about between the inverter models in
16 Appendix J and the inverter model at Hardin affect
17 the accuracy of your opinions in this case?

18 A. No.

19 Q. Okay. Why not?

20 A. Because the sound output from the
21 facilities, the total of all the equipment,
22 individual inverters may have a different sound
23 level, but once you get away from an individual
24 inverter, there are other inverters that are
25 contributing to it. And the total sound power of the

1 facility is radiating outward to the neighborhood.
 2 When I look at the Odom supplemental, I have no
 3 objection to the way that they have modeled the sound
 4 levels that they predict.

5 Q. Okay. Is it your understanding that the
 6 sound model in the Odom report was based on the sound
 7 from the representative inverter models in Appendix
 8 J?

9 A. That would be my best understanding. I'm
 10 not seeing a specific model listed in the Odom
 11 supplemental.

12 Q. Does the difference -- oh, go ahead.

13 A. However, Mr. Odom does state that the
 14 quantity of inverters remains, distribution
 15 transformers and substation transformers remains
 16 unchanged from the initial analysis, so they moved
 17 them around.

18 Q. What do you mean by the statement that it
 19 was moved around?

20 A. The locations of the inverter and
 21 distribution transformers have changed apparently to
 22 respond to minimum setback from the project's
 23 inverter stations of at least 500 feet from
 24 non-participating residences.

25 Q. Okay. So if the model of inverter

1 ultimately chosen by Kingwood Solar uses a larger
2 inverter motor than is used by the inverters at
3 Hardin Solar, does that affect your testimony about
4 the predicted levels of noise from the Kingwood Solar
5 project?

6 A. It does not.

7 Q. Why not?

8 A. I agree with the modeling system that
9 they used which is -- I am accepting without
10 objection the locations that they have stated in the
11 supplemental, and the sound levels produced by the
12 model I have no objection to. They're listed in the
13 Appendix B with projected or predicted sound levels
14 at the 50 receivers, and I have no problem with that
15 modeling procedure. This is standard acoustical
16 practice.

17 The quantity location and power rating of
18 the inverters at Hardin are not critical, do not
19 change my opinion about the modeling and results used
20 by Acentech for the original Appendix K and the Odom
21 supplemental. When I made measurements at Hardin --
22 I am getting low bandwidth.

23 ALJ WILLIAMS: We still hear you. Do you
24 hear us?

25 THE WITNESS: Okay. I lost Jack Van

1 Kley, and I think he's back. Can you hear me okay?

2 ALJ WILLIAMS: We can.

3 A. All right. I was starting to say the
4 quantity location and power rating of the inverters
5 at Hardin don't affect my opinion about the modeling
6 at Kingwood for two reasons. The modeling is
7 professionally done, and I was some 800 feet or so
8 away from the nearest inverter at Hardin which means
9 that I was getting an aggregate output, noise output,
10 from a number of inverters.

11 This would be similar to me standing on a
12 40 dBA line in the model of Kingwood and seeing that
13 there's noise coming from many inverters. The
14 Kingwood noise power is concentrated more in my
15 opinion because of the differential in sizes, and the
16 output may be roughly analogous over distance in
17 terms of the -- what is received at -- when you get
18 out a certain distance.

19 Q. Do larger inverter motors generally
20 produce more noise than smaller inverter motors?

21 MR. SETTINERI: I just object as to form
22 of question as to inverter motors. No foundation
23 laid. No foundation what an inverter motor is.

24 ALJ WILLIAMS: I will overrule the
25 objection. He can answer if he understands the

1 question.

2 MR. VAN KLEY: Yeah, I will rephrase,
3 your Honor. I should have used the word tracker in
4 front of motors.

5 Q. (By Mr. Van Kley) Can you tell me whether
6 larger inverter tracker -- I'm sorry. I don't mean
7 to use that. I'm goofing up the question big time
8 here, Rob.

9 Okay. Let's start over. Can you tell me
10 in -- whether the size of the inverter or its
11 equipment produces a different level of noise than
12 smaller inverters or components?

13 A. Generally speaking I would associate
14 higher sound output to a higher power rating.
15 Different models could achieve different power --
16 sound power outputs depending on their design. But
17 in general a larger -- a higher power rating or MVA
18 rating is going to be associated with a higher sound
19 output.

20 Q. And are the inverter models provided as
21 representative equipment in Appendix J larger models
22 than those at Hardin?

23 A. It appears so.

24 Q. And with respect to inverters, did you
25 see anything in the application for Kingwood Solar

1 that required Kingwood Solar to select a specific
2 inverter model?

3 A. I did not.

4 Q. Let's talk briefly about mitigation for
5 noise from inverters. You were asked some questions
6 about whether noise from inverters could be mitigated
7 after construction of the project. Can you tell me
8 whether there are disadvantages or maybe even
9 advantages to installing mitigation on inverters
10 after construction of the project instead of
11 incorporating them into the original construction of
12 the project?

13 A. Generally speaking it is advantageous to
14 build noise control into the project design or what I
15 refer to in my testimony as design build. It can be
16 much more costly to install noise controls later, and
17 it may even be prohibitive or unachievable due to
18 conflicts with other engineering components. So I
19 always recommend noise control during the design
20 build.

21 Q. What do you mean when you say that the --
22 the post-construction mitigation of inverters could
23 interfere with other elements of the project's
24 design?

25 A. There may be other equipment in where the

1 noise control needs to be placed which renders it
2 impossible to install the equipment without either
3 relocating or removing equipment and adjusting the
4 system components for that. That involves extra
5 design and engineering time. Should not be
6 encountered when noise control is incorporated in the
7 design build.

8 There may be elements such as underground
9 wiring or piping runs. There may be geophysical
10 civil considerations about foundation preparation for
11 the two major types of noise controls that I outline,
12 the barrier wall systems or enclosed buildings, that
13 are best addressed during the design build and -- and
14 not after the project is built.

15 Q. Are there any -- are there any
16 disadvantages to a process in which one waits for
17 noise complaints before doing mitigation?

18 A. One -- aside from the disadvantages I've
19 already listed, the -- the generating complaints is
20 not a good design practice. It's -- in my experience
21 working with companies it can be litigious. I've
22 worked with companies who have been shut down by
23 court order because they didn't design in proper
24 noise control during the design build.

25 So the disadvantages can be significant.

1 Cooperating income can be disrupted. Good will can
2 be destroyed with the community. And it's generally
3 a very poor business practice.

4 Q. In a project of the size proposed for
5 Kingwood Solar if all of the inverters had to be
6 subjected to mitigation after construction is
7 completed, do you have an estimate how long it would
8 take to complete such a mitigation?

9 MR. SETTINERI: I would object, just lack
10 of foundation that he has the construction knowledge
11 for utility-scale solar projects to be able to
12 provide an answer to that question. You need to lay
13 a foundation.

14 ALJ WILLIAMS: Mr. Van Kley, can you lay
15 a foundation, please?

16 MR. VAN KLEY: Sure.

17 Q. (By Mr. Van Kley) Mr. Rand, do you have
18 the experience necessary to answer the question that
19 I just posed?

20 A. I worked with a lot of construction
21 supervision, and I could answer in general terms.

22 Q. Okay. And what gives you -- what
23 experience do you have that gives you the
24 qualifications to answer the question?

25 A. I've performed what's called a clerk of

1 the works position for various noise oversights, of
2 project noise oversights, which involves supervising,
3 reviewing day-to-day construction processes and
4 ensuring that things proceed on time.

5 Q. And do you have any prior experience with
6 mitigation for facilities that use mitigation --
7 mitigation measures that would be the same mitigation
8 measures appropriate for a solar facility?

9 A. Yes, I do.

10 Q. And what's the nature of that experience?

11 A. Well, that includes barrier walls for
12 transformers and full enclosures for gas compressor
13 stations in quiet rural areas.

14 Q. Okay. So given that experience, can you
15 provide me with an estimate of how much time it would
16 take to design and construct mitigation measures for
17 a solar facility of the size proposed by Kingwood
18 Solar after construction is completed?

19 MR. SETTINERI: Again, object, lack of
20 foundation. He has laid a foundation for the
21 transformer, your Honor. He has laid no foundation
22 that this witness has the experience to opine as to
23 inverters, solar panel a -- that are in a solar panel
24 array. It's much -- it's apples to oranges, your
25 Honor, and so there has to be a foundation laid that

1 he has the knowledge and experience to be able to
2 address that type of arrangement just like a power
3 plant or anything else. Thank you, your Honor.

4 ALJ WILLIAMS: You're welcome. Your
5 objection is overruled. Based on his testimony that
6 he has experience in regard of barrier walls, as well
7 as enclosures, I will let him answer the question,
8 explain. You can further pursue this relative to
9 recross.

10 Q. Go ahead, Mr. Rand.

11 A. The amount of work required is related to
12 the coordination with civil, electrical, and systems
13 engineers who are working on the project. Typically
14 this is handled -- certainly in the last 20 to I am
15 going to say 30 years now, typically this is handled
16 through working with an external consultancy firm
17 such as my firm or Acentech or other firms, and
18 they're contracted to assist with the design of the
19 noise mitigation.

20 In some cases companies will work
21 directly with the noise control manufacturers such as
22 Kinetics, IAC, who have their own in-house design
23 engineering staff. They generally do not provide
24 design consultation on foundations or the
25 coordination needed to build and install the

1 foundations. That's usually handled by the
2 engineering firm. I don't have an estimate on the
3 amount of time that would take.

4 Q. And that's for the design part of the
5 mitigation?

6 A. Well, the -- the noise portion of the
7 design mitigation is -- would be generally measured
8 in man weeks or less.

9 Q. Okay. Let me make sure that I'm
10 understanding what you are saying. Are you saying
11 that you cannot predict how long it would take to
12 install mitigation measures on the inverters at
13 Kingwood Solar?

14 A. That's correct.

15 Q. Okay. You were asked about tonal
16 qualities of noise. Specifically you were asked
17 whether it would be hard to factor tonal noise into
18 the pre-construction design of a solar facility. Do
19 you recall that discussion?

20 A. Yes, I do.

21 Q. Okay. Would you explain whether or not
22 that means that -- that proper mitigation controls
23 cannot be utilized in the construction of a solar
24 facility?

25 A. I'm sorry. Can you repeat that?

1 Q. Yeah. Can you tell me whether tonal
2 noise can be addressed in the design of a solar
3 facility prior to construction?

4 A. Yes, I can.

5 Q. Okay. And how would that be done?

6 A. In my professional experience we would
7 obtain data on the equipment that would be used in
8 the facility to determine its frequencies and their
9 intensities and then design noise control accordingly
10 to reduce those noise levels to non-objectionable
11 levels or to inaudibility or to achieve
12 non-degradation depending on the needs of the
13 project.

14 Q. Would you go to page 13 of your direct
15 testimony marked as Citizens Exhibit 12, please.

16 A. Okay.

17 Q. And go to lines 11 and 12.

18 A. Okay.

19 Q. And you were asked some questions about
20 this -- this sentence on these lines. And just to
21 make the transcript understandable, the sentence on
22 those lines states "To be consistent with zoning and
23 for respect of rural residential property use for
24 outdoor amenity, noise criteria should be at the
25 property line, not at the house." Do you see that?

1 A. Yes, I do.

2 Q. Okay. And you were asked a series of
3 questions about that sentence which I would like to
4 address. First of all, what's -- what's the
5 importance, if any, concerning the testimony you
6 provided in lines 12 -- 11 and 12 of page 13?

7 MR. SETTINERI: Just object, outside the
8 scope of my direct. I only asked him about the
9 zoning.

10 MR. VAN KLEY: You asked him a bunch of
11 questions about plowing and cooking.

12 ALJ WILLIAMS: I will allow the question.

13 MR. VAN KLEY: Setting the foundation for
14 those questions.

15 ALJ WILLIAMS: We will allow the
16 question. You can answer.

17 A. I think I had a little skip in the
18 internet connection. Could you give me your question
19 again, Mr. Van Kley?

20 Q. Yes. With respect to your written direct
21 testimony on lines 11 and 12 of -- on page 13 of your
22 testimony, can you tell us the importance of any --
23 about the testimony you gave on those lines on page
24 13?

25 A. Again, I think I am not getting the whole

1 question. The portions of something.

2 Q. Okay. Let me try again. Are you looking
3 at lines 11 and 12 on page 13 of your testimony?

4 A. Yes, I am.

5 Q. Okay. What, if any, is the importance of
6 that testimony?

7 A. The importance of that testimony is that
8 it boils down to the right of someone to swing their
9 fists ends at somebody's nose. The proper --
10 property line is considered the appropriate dividing
11 line between property uses.

12 Q. And why is that?

13 A. It relates to the ownership of the
14 property.

15 Q. And back -- with regard to that answer,
16 are you factoring into account the uses people make
17 of their yards?

18 A. Yes, I am.

19 Q. Okay. So with respect to Mr. Settineri's
20 questions about plowing, for example, where you were
21 asked whether a farmer should stop plowing while a
22 residence -- while a resident used the resident's
23 yard for outdoor amenities. Are there any
24 differences between that situation and a situation in
25 which a solar project produces noise that can be

1 heard in the yard?

2 A. Yes, there are.

3 Q. And what are those differences?

4 A. The plowing is infrequent. It happens on
5 a temporary basis, perhaps a few times a year at the
6 most. The application has noise sources which are
7 modeled to run around the clock day and night.

8 Q. And with respect to the questions you
9 were asked about somebody mowing during a neighbor's
10 cookout, do the same principles apply there?

11 A. Yes, they do.

12 Q. Let's talk a little bit about the World
13 Health Organization report that you were asked about,
14 the 2009 WHO guidelines. Do you have in front of you
15 what has been previously marked as Citizens
16 Exhibit 18?

17 MR. VAN KLEY: And for those of you who
18 are online, I distributed that several days ago for
19 possible use in Mr. Odom's testimony.

20 MR. SETTINERI: Let me ask, that was
21 marked but not admitted, correct?

22 MR. VAN KLEY: That's correct.

23 MR. SETTINERI: Okay. So how -- your
24 Honor, I would object to the use of that exhibit for
25 this witness.

1 MR. VAN KLEY: I don't know how you could
2 object when you asked the witness a whole bunch of
3 questions about this document. You should have
4 presented the document yourself to ask those
5 questions, but at least we can have Mr. Rand look at
6 it to respond to your questions.

7 MR. SETTINERI: Your Honor, before you
8 rule on your objection, may I, first of all, get a
9 reference for that document? And then I need to find
10 that document first so I can see what it is.

11 ALJ WILLIAMS: Let's go off the record.

12 (Discussion off the record.)

13 ALJ WILLIAMS: All right. We are back on
14 the record.

15 We were off the record for just a minute
16 while everybody located Citizens Exhibit 18 which was
17 distributed by Citizens' counsel on Monday evening.
18 We've located the document. Mr. Settineri, I
19 understand, has an objection regarding some
20 discussion regarding that document at this stage. I
21 will entertain that.

22 MR. SETTINERI: Yes, your Honor. This
23 document has never been marked in this proceeding or
24 admitted. It is not part of the record. Again, it's
25 not been marked. I asked questions about the World

1 Health Organization Night Noise Guidelines in my
2 direct. I did not mark a document as to that and did
3 not produce a document, so for counsel now to present
4 and mark the document to give to the witness to
5 review, that should have been done on direct
6 examination. The recross should be limited to the
7 documents in my exhibits I have marked and crossed
8 the witness on.

9 ALJ WILLIAMS: Your objection is
10 overruled. Mr. Van Kley circulated this exhibit in
11 accordance with the direction he had prehearing, came
12 out Monday night. You asked questions directly
13 relative to the WHO Night Noise Guidelines process or
14 procedure which included what those -- what those
15 guidelines are. So as the document has been
16 presubmitted and the questions have been raised
17 relative to the guidelines, I will allow some
18 questions relative to the document, although,
19 Mr. Van Kley, let's go ahead and officially mark that
20 as part of the transcript. So Citizens Exhibit 18 is
21 the WHO Night Noise Guidelines; is that correct?

22 MR. VAN KLEY: That's correct, your
23 Honor.

24 ALJ WILLIAMS: It is so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 ALJ WILLIAMS: Please proceed.

2 MR. SETTINERI: Your Honor, just for the
3 record, I just want to note for the record although
4 this document was e-mailed in advance of possible
5 exhibits, it was never formally marked in the hearing
6 and this is the first time this document is being
7 presented at hearing today.

8 That's all. Thank you.

9 ALJ WILLIAMS: So noted. Please proceed.

10 Q. (By Mr. Van Kley) All right. Mr. Rand,
11 do you have what's been marked as Citizens Exhibit 18
12 in front of you?

13 A. I believe I do. WHO 2009.

14 Q. Is that the document you are looking at,
15 "Night Noise Guidelines for Europe"?

16 A. Yes.

17 Q. And is that the document that was the
18 subject of the questions Mr. Settineri asked you in
19 his cross-examination this morning?

20 A. I believe so.

21 Q. You were asked some questions about a 40
22 decibel level. Do you recall those questions?

23 A. Yes.

24 Q. Can you tell me whether Citizens
25 Exhibit 18 contains the statement that Mr. Settineri

1 was asking you about concerning the 40 dB level?

2 A. If you can give me the statement, I can
3 confirm.

4 Q. Would you go to the executive summary
5 page XVI. That would be PDF page 18.

6 A. I have that.

7 Q. Okay. Do you see at the bottom paragraph
8 on that page the first sentence?

9 A. Yes, I do.

10 Q. Is that the 40 dB level that you
11 discussed with Mr. Settineri?

12 A. Yes, it is.

13 Q. Okay. And can you tell me what that
14 represents?

15 A. It represents the lowest observed adverse
16 effect level for night noise.

17 Q. And what does that mean?

18 A. It's a category of noise impact based on
19 a year's average noise level.

20 Q. And what's meant by the term lowest
21 observed adverse effect level?

22 A. From 40 decibels and up adverse health
23 effects are observed among the exposed population,
24 and it's described in Table 3 of this document.

25 Q. Let's go to Table 3. Can you point out

1 where that is contained in the document?

2 A. That's on page PDF page 19 of 184,
3 executive summary page, XVII.

4 Q. All right. This is Table 3 on executive
5 summary page XVII, correct?

6 A. Correct.

7 Q. Okay. So do you see on the left side
8 column of that table a number of decibel levels?

9 A. Yes, I do.

10 Q. And the description in the second column
11 of Table 3 is labeled "Health effects observed in the
12 population"?

13 A. That's correct.

14 Q. And looking at the health effects
15 observed for the decibel level of between 30 and 40,
16 could you see that the first sentence of the second
17 column states "A number of effects on sleep are
18 observed from this range; body movements, awakening,
19 self-reported sleep disturbance, arousals"?

20 A. Yes, I do.

21 Q. Okay. Now, let me ask you whether
22 there's -- whether this information in the WHO report
23 has any effect on your testimony in the Kingwood
24 Solar case concerning the level of noise that will
25 produce complaints. Are we comparing apples to

1 apples here or apples to oranges?

2 A. The WHO document is looking at health
3 impacts. The design criteria that I presented is
4 designing to prevent complaints. There would
5 certainly be some crossover if someone's sleep was
6 disturbed or they couldn't get a good night's sleep
7 in terms of the potential for complaints.

8 Q. And with regard to the complaints that
9 you're discussing in your testimony, are those
10 complaints about outdoor noise or indoor noise or
11 both or neither?

12 A. Both.

13 Q. The noise levels that you predicted in
14 your testimony, are those noise levels that are
15 predicted for outside of the neighbors' homes or
16 inside or both?

17 MR. SETTINERI: Just object,
18 mischaracterizes testimony. I do not believe he
19 predicted any sounds outside the houses.

20 ALJ WILLIAMS: I'll sustain. Please
21 rephrase, Mr. Van Kley.

22 MR. VAN KLEY: Yeah.

23 Q. (By Mr. Van Kley) Mr. Rand, with regard
24 to the modeled sound levels contained in the Odom
25 supplemental as that term -- as you've used that

1 term, are those modeled sound levels predictions of
2 noise inside the house and outside the house,
3 neither, or both?

4 A. The predictions are outside.

5 Q. So the person's yard is located within
6 the area in which Mr. Odom modeled those noise
7 levels, would those noise levels pertain to people's
8 yards?

9 A. That's correct.

10 Q. You were asked some questions about what
11 a person not trained in listening to noise could do
12 or could not do. With respect to the sounds you
13 heard from the Hardin Solar facility, were you
14 hearing sounds that could be detected by a person not
15 trained in the recognition of sounds?

16 A. Yes.

17 Q. How do you know that?

18 A. I know that from years of experience and
19 the noises that I heard at Hardin are easily detected
20 by the average person.

21 Q. And at what distance from the closest
22 inverter were you hearing those noises at Hardin?

23 A. Let me get to my report to -- I was at
24 790 feet from the nearest inverter.

25 Q. And what was the noise level at that

1 point?

2 A. The noise level was approximately 40 dBA,
3 40 to 41 was my estimate.

4 Q. All right. And can you describe what
5 that noise sounded like to you.

6 A. Yes. It sounded like bees or swarms of
7 bees. Tonal noise roughly 644 Hertz and harmonic
8 multiples.

9 Q. And in your experience is that the type
10 of noise that will affect the person's use of his or
11 her yard?

12 A. I would expect the average person to be
13 looking for the swarms of bees if they heard it, even
14 if they had heard it and said, oh, that's the
15 inverters, my professional experience working with
16 communities says that this would not be adaptable.
17 You have to check it every time they heard it and
18 double-check. No one wants to be caught by surprise
19 by a swarm of bees.

20 Q. Would the -- in your experience is that a
21 type of noise that will affect the enjoyment of a
22 person's yard?

23 A. I believe it would.

24 Q. Why would it?

25 A. Because it would be an unwanted sound.

1 Q. Would it be an annoying sound?

2 A. Yes, it could be an annoying sound. The
3 tonal assessment that I performed on the tones at
4 Hardin were not ever -- that assessment was not
5 adversely affected by the construction noise
6 occurring at the same time because the tonal noise
7 was prominent and the tonal -- the tones, excuse me,
8 highly prominent. And the tones were sufficiently
9 loud to be associated with tonal penalties, and tonal
10 penalties are typically assigned when tones are
11 excessive.

12 Q. What's a tonal penalty?

13 A. A typical tonal penalty in a regulation
14 would be 5 decibels.

15 Q. And what's the purpose of the tonal
16 penalty?

17 A. The tonal penalty is used to adjust the
18 measured level to account for the intrusive nature
19 and annoyance of the tones.

20 Q. Okay. And when you were talking in your
21 last two answers about the tonal qualities that you
22 observed at Hardin Solar, were you referring to the
23 inverter noise?

24 A. Yes.

25 Q. Would you go to page 14, line 12, of your

1 testimony in Citizens Exhibit 12.

2 A. Yes.

3 Q. All right. You were asked some questions
4 about different noise sources -- well, let me
5 rephrase.

6 You were asked some questions about
7 whether many inverters were contributing to the sound
8 levels at Hardin Solar, and I have a follow-up on
9 that. And I believe you said that there were. Does
10 that answer affect your opinions in this case?

11 A. No.

12 Q. Why not?

13 A. It does not affect my opinion of the
14 model sound levels for Kingwood because I accept and
15 agree with the methods used by Acentech to project
16 predicted noise levels away from the noise sources
17 that they list in their -- that they use for their
18 model.

19 Q. All right. Now let's go back to Exhibit
20 L of your testimony in Citizens Exhibit 12.

21 A. Okay.

22 Q. And go to Figure 1.

23 A. Okay.

24 Q. Figure 1 is on page 2 of that exhibit,
25 correct?

1 A. That's correct.

2 Q. What is the purpose of Figure 1?

3 A. The purpose of Figure 1 was to show the
4 area in which I took measurements and where those
5 measurements were taken and the relationship of those
6 measurement locations to existing equipment in that
7 area to the best that I was able to ascertain for the
8 report.

9 Q. Now, when you visited the Hardin Solar
10 site, did you drive around to look at the locations
11 of the solar equipment whose sounds you were
12 measuring?

13 A. I drove around and stayed on public
14 roads. The solar facility, the Hardin I, was fenced
15 off, and so I -- I didn't go in. I stayed on the
16 side of the road to make my measurements.

17 Q. All right. So with respect to the
18 accuracy of your measurements, did it matter to you
19 whether you knew the locations of every solar array
20 in the Hardin facility?

21 A. No, it did not.

22 Q. Why not?

23 A. The noise level was clearly coming from a
24 number of different sources, and I judged the
25 distance to the nearest source by observation using

1 the Bushnell binoculars. I attempted to find
2 as-built -- as-built drawings of the Hardin I and was
3 unable to find them. So I simply used the green
4 footprint that you see on Figure 1 to show the area
5 that was leased for the project.

6 Q. So were you actually looking at the
7 sources of the noise at Hardin Solar that you were
8 measuring?

9 A. Yes, I was.

10 Q. Let's go to Exhibit J of Kingwood
11 Exhibit 12 which is your testimony.

12 A. J. Okay.

13 Q. What was the purpose for your including
14 Exhibit J in your testimony?

15 A. My understanding was to furnish documents
16 that I had looked at during my review.

17 Q. Was -- go ahead.

18 A. And this -- this document I found while
19 attempting to understand the build-out of the Hardin
20 facility which appeared to be -- there was a Hardin
21 I, then there was a Hardin II, and then there was a
22 Hardin III. And so I looked at the Hardin III to
23 understand its relationship to where I took
24 measurements at the Hardin facility.

25 Q. Did any of the information in Exhibit --

1 Exhibit J of your testimony have any effect on the
2 results of your measurements of the noise from the
3 Hardin facility?

4 A. No, it did not.

5 Q. Why didn't it?

6 A. Regardless of whether Hardin III had been
7 built out or not, at the time of my measurements, the
8 distances are so significant, so large that the noise
9 would not have an appreciable effect at the locations
10 where I measured.

11 Q. You were asked a question about the
12 contamination of noise levels in a study or studies
13 that you performed on turbine models. Do you recall
14 that?

15 A. I recall such a question.

16 Q. All right. What kind of studies were you
17 discussing in your answers to those questions?

18 A. I was responding to a question about how
19 to test wind turbine noise levels. It was a general
20 question to my understanding.

21 Q. Okay. During the time that you measured
22 noise from the Hardin Solar facility, was there
23 construction going on in the area?

24 A. Yes, there was.

25 Q. Okay. Was that construction from

1 another -- being done in another phase of Hardin
2 Solar?

3 A. That's my understanding and belief.

4 Q. Yeah.

5 A. Yes.

6 Q. Does your answer to Mr. Settineri's
7 question about how you conducted noise measurements
8 for turbines have any effect on the accuracy of the
9 measurements you took from the operation of Hardin
10 Solar?

11 A. The question about wind turbine noise
12 measurements doesn't directly apply to the
13 measurements I made at Hardin.

14 Q. Why not?

15 A. I didn't use the wind turbine measurement
16 standard because these are not wind turbines. The
17 measurements that I made for the inverters were
18 dominated by tonal noise which during analysis the
19 tonal noise was not contaminated by the construction
20 noise because of the different character of the two
21 noise sources.

22 The tonal energy stands way above the
23 background noise during the measurement. For the
24 measurement of the construction noise, it was the
25 noise I was measuring so there was no contamination

1 because that's what I was measuring. For the
2 measurement of the racking noise, the construction
3 noise presented difficulty as I described in my
4 exhibit to ascertain a good reusable noise level and
5 comparison of those noise levels with a -- two other
6 racking motor datasets that I located found that I
7 did not need to change my opinion about the likely
8 noise levels at the distance that I measured to the
9 nearest racking motor. So in this way the
10 construction noise did not materially affect my
11 analysis at those three locations.

12 Q. Could you tell the difference in the
13 construction noise and the inverter noise?

14 A. Yes.

15 Q. And when you measured the inverter noise,
16 did you -- did your measurement of the inverter noise
17 in your report contain the volume of just the
18 inverter noise?

19 A. Let me get to my report. Okay. In my
20 Exhibit L, page 5 of 9.

21 Q. What PDF page of your testimony are you
22 on?

23 A. 406 of 422.

24 Q. Okay. Give us just a moment to get
25 there.

1 Okay. Please proceed.

2 A. At the top of my report page 5 of 9, you
3 have two figures, Figure 6 and Figure 7. These
4 figures are showing the tonality assessment at ML1.
5 And if you look, you can see six peaks which are
6 marked with little green dots. Those green dots are
7 produced by the tonality assessment software, the ISO
8 1996-2. They identify the presence of a prominent
9 tone in this case. The most prominent tone was
10 identified at 1,200 and roughly 1,289 Hertz, in that
11 range, 1,290 Hertz.

12 Those tones stand well above the
13 background which you can see is kind of an irregular
14 curved mound of levels which proceeds left to right
15 in that spectrum. My professional assessment of the
16 measurement both by listening and reviewing the
17 recording and the analysis that those tones were
18 produced by these particular inverters.

19 Q. And how do you know that?

20 A. I know that from professional experience
21 and listening and review of the analysis done by the
22 software, the width of those tones is significant.
23 It comes -- I don't know if you can see it exactly,
24 but each green dot is on top of two or three bins of
25 energy and frequencies. The tones that I was hearing

1 were not -- were spread a little bit as if the
2 equipment generating the tones such as fans was
3 running at slightly different frequencies from many
4 inverters. And that's consistent with this analysis.

5 The tones that stand out like little
6 buildings are wide. If you have a transformer, that
7 peak that would be identified by the green tone would
8 tend to be one bin wide so this is consistent with
9 several or perhaps even dozens of inverter fans or
10 fan sets all running at slightly different
11 frequencies contributing to these stacks of energy in
12 each frequency peak. This is pretty technical stuff
13 but this -- we work with this all the time.

14 Q. How do you know that the tones you are
15 describing were -- weren't the product of the
16 construction activities?

17 A. Construction equipment tends to change
18 frequency as it runs. Engines will speed up and slow
19 down. The loading of an engine to drive a piece of
20 equipment such as a ramhoe may rise and drop during
21 its use.

22 These tones were fixed. They did not
23 change character at all. It's as if you were
24 listening to someone playing a single note on a
25 piano. It does not change. Or a violinist playing a

1 single note continuously. It does not change.
 2 Whereas, construction equipment tends to rev up and
 3 down and those are audible differences that are
 4 easily detectable.

5 Q. You were asked several times by counsel
 6 for Kingwood about whether or not you have reviewed a
 7 final layout for the Kingwood Solar project, and you
 8 said no. Why -- why haven't you reviewed a final
 9 layout for the Kingwood Solar project?

10 A. I'm not aware that a layout has been
 11 designated as final.

12 Q. So did you look through the application
 13 to see if you could find a final layout?

14 A. I looked through the application, and I
 15 looked at the acoustic documents which was my primary
 16 area of interest. I don't recall seeing the word
 17 final.

18 Q. Okay. You were asked some questions
 19 about the locations of Acentech's measurement
 20 stations in the project area so let me follow-up on
 21 those questions. What did you personally do other
 22 than checking with Mr. Krajicek to confirm that you
 23 were personally looking at the locations of
 24 Acentech's measurement stations?

25 A. I did review after I visited the site to

1 look at the locations listed in Acentech's document
2 and I compared those to locations provided to me by
3 the neighbors and they were approximately consistent.

4 Q. Can you tell me how much variation, if
5 any, there were between what the neighbors told you
6 and what you saw on Acentech's map?

7 A. I didn't find a significant amount of
8 variation.

9 Q. Okay. What was the purpose for your
10 identification of the locations where the
11 measurements were taken by Acentech?

12 A. This is standard practice when visiting a
13 site to look at where location -- where measurements
14 were taken.

15 Q. Why is that?

16 A. By doing so, I can understand the
17 environment in that area, how close are measurements
18 to roads, and that informs an evaluation of any
19 criteria that may be developed using noise levels
20 measured at the locations.

21 Q. So was your intent to evaluate the types
22 of noises that would typically be experienced at
23 those measurement locations?

24 A. Well, when you measure next to a road, it
25 does not represent the noise levels that occur in

1 someone's backyard.

2 Q. Why is that?

3 A. Backyards are typically further away from
4 the road, and noise from intermittent traffic drops
5 away with distance. So the noise level that's
6 reported from an average Leq at a -- next to the road
7 doesn't represent the background or even the ambient
8 Leq at -- at the backyards of people's homes. So
9 it's not -- it's not representative or conservative
10 in general.

11 Q. Other -- yeah. Other than the difference
12 in distances between the road and a person's
13 backyard, are there any other factors that affect the
14 sound levels from the road in somebody's backyard?

15 A. That's the major consideration.

16 Q. Okay. If -- if somebody is involved in
17 recreational or relaxing in their backyard behind
18 their house and the house is located between the
19 backyard and the road, will that have any effect on
20 levels from -- the sound levels from the road
21 reaching the backyard?

22 MR. SETTINERI: I am just going to object
23 at this time. I did not -- this is again outside the
24 scope of my direct. I did not ask about the
25 measurements that were done in terms of background

1 measurements. I asked about the locations, so we
2 have gone down a whole line of different direct
3 testimony here.

4 ALJ WILLIAMS: Mr. Van Kley, we have been
5 going on this quite a while. Can you please close
6 this up?

7 MR. VAN KLEY: Yeah, your Honor. If I --
8 I am almost finished with my redirect.

9 ALJ WILLIAMS: I will allow this
10 question.

11 MR. VAN KLEY: Okay. Thank you, your
12 Honor.

13 Q. (By Mr. Van Kley) Mr. Rand, do you
14 remember the question?

15 A. I don't.

16 Q. Okay. My question is whether having a
17 house in between the backyard and road reduces the
18 amount of noise heard from the road.

19 A. It -- certainly, yes, and that's -- it's
20 very typical for people to have back decks, rear
21 decks on their house, play areas, and use the
22 backyard of their home for enjoyment of the outdoor
23 amenity because the noise levels will be lower there
24 compared to the front of the house. The house can
25 act as a noise buffer and reduce traffic noise

1 levels, even intermittent ones, out to the back.

2 MR. VAN KLEY: Okay. Your Honor, I have
3 no more questions at this time.

4 ALJ WILLIAMS: Thank you, Mr. Van Kley.
5 Mr. Settineri, how much time would you
6 like to regroup?

7 MR. SETTINERI: I don't need any time,
8 your Honor.

9 ALJ WILLIAMS: All right. We will
10 proceed with recross then.

11 MR. SETTINERI: Thank you.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Settineri:

15 Q. First thing, Mr. Rand, I want to turn to
16 what's been, I believe, marked as Citizens
17 Exhibit 18. And for the record I would like to just
18 make sure we read completely some items that
19 Mr. Van Kley read with you. So do you have that
20 document in front of you?

21 A. Which one is that?

22 Q. This would be the WHO "Night Noise
23 Guidelines for Europe."

24 A. Yes, I have.

25 Q. Yes. So let's turn to the table he asked

1 you some questions about. I think it's XVII,
2 executive summary. Do you see that?

3 A. Yes.

4 Q. Okay. So this -- so for the record I am
5 going to read here, so to the right "Table 3" title
6 "Effects of different levels of night noise on the
7 population's health." Did I read that correctly?

8 A. That's correct.

9 Q. Okay. And then looking at the column
10 headings, first column to the -- is titled "Average
11 night noise level over a year" underneath that "L
12 night, outside." Did I read that correctly?

13 A. That's correct.

14 Q. And then next column to the right the
15 heading is "Health effects observed in the
16 population." Did I read that correct?

17 A. Yes, that's correct.

18 Q. Okay. Then in the second row of that
19 column states "30 to 40 dB." Did I read that
20 correct?

21 A. Yes, that's correct.

22 Q. Okay. And then the next column to the
23 right of that reads "A number of effects on sleep are
24 observed from this range: Body movements, awakening,
25 self-reported sleep disturbance, arousals. The

1 intensity of the effect depends on the nature of the
2 source and the number of events. Vulnerable groups
3 (for example children, the chronically ill and the
4 elderly) are more susceptible. However, even in the
5 worst cases the effects seem modest. L night,
6 outside of 40 dBA is equivalent to the lowest
7 observed adverse effect level (LOAEL) for night
8 noise." Did I read that correctly?

9 A. Yes, that's correct.

10 Q. And for the record I dictated as well
11 commas and periods. Going to the bottom of that
12 page, there is a paragraph that's the last full
13 paragraph of the bottom of this page that reads
14 "Based on the exposure-effects relationship
15 summarized in Table 3, the night noise guideline
16 values are recommended for the protection of public
17 health from night noise as below," and then we have a
18 Table 4; is that -- did -- backing up, did I read
19 that paragraph -- or sentence correctly?

20 A. Yes, that's correct.

21 Q. Okay. And then below that is Table 4 and
22 Table 4 has a heading "Recommended night noise
23 guidelines for Europe." Did I read that correctly?

24 A. Yes, that's correct.

25 Q. Okay. And in that Table 4 of the first

1 row states "Night noise guideline (NNG)," and it says
2 "L night, outside = 40 dBA." Did I read that
3 correctly?

4 A. No, that's not correct.

5 Q. Okay. What did I not read correctly
6 there?

7 A. I heard you say "40 dBA."

8 Q. Oh, and so let me read it again. That
9 row should read "Night noise guideline (NNG) L night,
10 outside = 40 dB." Did I read that directly?

11 A. Yes, that's correct.

12 Q. Okay. The next row below it "Interim
13 target (IT) L night, outside = 55 dB." Did I read
14 that correctly?

15 A. Yes, that's correct.

16 Q. Okay. Now, is it your understanding that
17 the L night, outside is a -- under that measurement I
18 will say standard but is that -- is an eight hours
19 through the night usually from 10:00 p.m. to 7:00
20 a.m.?

21 A. At the L night, outside is defined from
22 11:00 to 7:00.

23 Q. All right. And that's for under -- and
24 so specifically that would apply to this -- to the
25 WHO Night Noise Guidelines as used in this document,

1 correct?

2 A. That's correct.

3 Q. Okay. You can put that aside, please.

4 Mr. Van Kley asked you some questions, I believe in
5 your answer you made reference to a traffic study.

6 Based on your analysis, did you estimate the cars
7 would be passing on a basis of approximately a minute
8 to 2 minute a day?

9 A. No, that's not correct.

10 Q. Okay. What did you say? I took a
11 different note so what's your approximation on the
12 frequency of cars passing? And are you looking at
13 your testimony?

14 A. Yes.

15 Q. Okay. And is that in your testimony?

16 A. Looking at the exhibit, this would be in
17 my testimony page about 417 of 422.

18 Q. Do you have an exhibit for me --
19 reference, please? I will try to find it as well.

20 ALJ WILLIAMS: It's in Exhibit M.

21 MR. SETTINERI: Thank you, your Honor.

22 ALJ WILLIAMS: You're welcome.

23 A. On page 417 of 422, it should be a
24 Figure 2.

25 Q. Yes. Okay.

1 A. Okay. These are traffic counts for 2020
2 for the roads in the area.

3 Q. Okay. But in response to one of the
4 questions from Mr. Van Kley, you had made a comment
5 about the number of cars that you believe would be
6 passing on a minute basis. Do you recall that
7 answer?

8 A. I do. The -- there are a couple of
9 traffic monitors in the site area which -- whose
10 numbers are lower than the number of minutes in a
11 day. There are 1440 minutes in a day. And the
12 traffic counts that they are showing are slightly
13 south of the project 1249 and somewhat in the
14 vicinity of the project 855. These are lower numbers
15 than 1440.

16 So in general terms, if the traffic were
17 flowing perfectly, evenly, there might be on the
18 order of a car a minute or vehicle a minute. And if
19 cars came by by twos, then there might be a period of
20 a couple of minutes when there aren't any cars. So
21 it's just looking at the numbers and saying, well,
22 how much traffic is there going to be on a
23 minute-to-minute basis? It doesn't look like there's
24 going to be very much.

25 Q. Okay. Thank you for clarifying that for

1 the record especially. You agree that the L90
2 measurement is a measurement of the quietest 10
3 percent of the time?

4 A. Yes, that's correct.

5 Q. Okay. And so the other 90 percent of the
6 time would be -- would consist of background sound
7 levels that exceeded the highest -- the L90
8 measurement, correct?

9 A. That's correct.

10 Q. Okay. Now, when people utilize their
11 backyards, that can consist of mowing a lawn, kids
12 playing, people talking, correct?

13 A. Correct.

14 Q. So, for instance, if someone is having a
15 cookout on their back deck, you would expect, and
16 probably in your experience, that people will be
17 talking, correct?

18 A. That's correct.

19 Q. Okay. And also the ambient background
20 can be affected -- levels can be affected by wind; is
21 that correct?

22 A. Yes, that's correct.

23 Q. And rain as well, correct?

24 A. Yes, that's correct.

25 Q. Birds chirping?

1 A. That's correct.

2 Q. Livestock as well, correct?

3 A. That's correct.

4 Q. If you have chickens on your property,
5 that could also affect the background levels,
6 correct?

7 A. No, that's not correct.

8 Q. And why not?

9 A. I think I may have misunderstood your
10 question when you said does that affect the
11 background levels. Chickens tend to be intermittent
12 which would not contribute to the background and that
13 would apply for other sounds like birds, intermittent
14 comelings, so those are temporary sounds.

15 Q. In your answer though you are saying the
16 background is the L90, correct?

17 A. Yes, that's correct.

18 Q. Okay. But the background as it exists at
19 that moment when someone is mowing their lawn, the
20 actual background sound, I guess the actual sound
21 being experienced is going to include that mowing,
22 that lawnmower, correct?

23 A. For that -- for whatever period of time
24 the measurement is.

25 Q. Okay. And so, for instance, when

1 people -- if someone is on a back deck with friends
2 having a barbecue and people are talking, the sound
3 levels that would be reported at that moment would
4 include the people talking, correct?

5 A. The sound levels would include the people
6 talking but would not contribute to the L90.

7 Q. That's if you were measuring an L90 at
8 that point, right?

9 A. That's correct.

10 Q. Okay. So in terms of what a person will
11 experience when they are in their backyard as to
12 sound depends on what's happening in the backyard at
13 that moment, correct?

14 A. That's correct.

15 Q. Now, are you aware for the Acentech study
16 what time frame Acentech utilized for the nighttime
17 L90?

18 A. I believe it's in their report. I don't
19 recall off the top of my head.

20 Q. Okay. Well, let's -- and you are
21 correct. Let's turn to Appendix K from the
22 application. Company -- sorry, Kingwood Exhibit 1,
23 Appendix K. And if you turn to paper copy page 3 of
24 14, it's going to be Table 2.

25 A. It will take me a minute.

1 MR. SETTINERI: And while we do that,
2 Mr. Van Kley, if you could T up, I would maybe be
3 directing to Kingwood Exhibit 2 as well which is the
4 collection of the responses to Staff Data Requests.

5 A. Okay. I have Appendix K.

6 Q. Go to Table 2. It's page 3 of 14 of the
7 report.

8 A. Okay.

9 Q. All right. And so now, let's see here,
10 you will see there "Table 2: Project-Only Sound
11 Level Guidelines (dBA)" and nighttime is 10:00 p.m.
12 to 7:00 a.m. Do you see that?

13 A. Yes, I do.

14 Q. Okay. Does that refresh your memory that
15 they -- that Acentech used a nighttime level of 10:00
16 p.m. to 7:00 a.m.?

17 A. That's correct.

18 Q. Okay. Now, during that time period,
19 would you expect that most people would be inside
20 their residences during that time period?

21 A. I could. Some people might be outside.
22 It depends on the time of year and what people do
23 with their property.

24 Q. Okay.

25 A. I didn't make any assumptions about that.

1 Q. On average though you would expect most
2 people to be inside their home from 10:00 a.m. to
3 7:00 a.m. at night?

4 A. I would agree with that.

5 Q. And then for the daytime it's the rest
6 the time that Acentech used, 7:00 a.m. to 10:00 p.m.,
7 correct?

8 A. That's right.

9 Q. Now, do you know you took an average L90
10 of 29 dBA in your testimony, right?

11 A. That's correct.

12 Q. Okay. That was an average of the
13 nighttime L90 measurement from the noise monitoring
14 stations, correct?

15 A. Yes, that's correct.

16 Q. Okay. And how -- where did you get the
17 data for that measurement?

18 A. It was furnished by Acentech.

19 Q. Do you know exactly what document that
20 would be?

21 A. I don't recall.

22 Q. Okay. Do you know what the average L90
23 daytime would be?

24 MR. VAN KLEY: Your Honor, I think I've
25 been kind of patient here, but these questions are

1 well beyond my redirect, so I would object on that
2 basis.

3 ALJ WILLIAMS: Mr. Settineri.

4 MR. SETTINERI: Yes, your Honor. He
5 asked a lot of questions about backyards and the
6 impact on the backyards for people, and I am laying a
7 foundation to make a very strong point, your Honor.

8 ALJ WILLIAMS: We have allowed quite a
9 bit of latitude relative to asking questions
10 regarding people's recreational personal uses of
11 their yards, so I'll continue to allow the questions.

12 Q. (By Mr. Settineri) And I will just repeat
13 the question, Mr. Rand. Do you know what the L90 --
14 average L90 is for the daytime for the Kingwood Solar
15 project?

16 A. I don't recall.

17 MR. SETTINERI: Okay. I would like to
18 direct Mr. Rand's attention to Kingwood Exhibit 2. I
19 don't know if he has a copy of that.

20 MR. VAN KLEY: I e-mailed it to him.

21 ALJ WILLIAMS: Mr. Settineri --

22 MR. VAN KLEY: It might have taken a
23 while to get there.

24 ALJ WILLIAMS: Mr. Settineri, does the
25 witness need to review for -- is it a relatively

1 quick question?

2 MR. SETTINERI: It's a quick question.

3 ALJ WILLIAMS: We will go off the record
4 while Mr. Rand finds the document.

5 (Discussion off the record.)

6 ALJ WILLIAMS: We are going to go back on
7 record.

8 We were off the record for about 15
9 minutes. We took a personal comfort break, and then
10 it was an effort to circulate Kingwood Exhibit 2 to
11 Mr. Rand. Ultimately it appears as though the file
12 that was being distributed was a bit cumbersome for
13 the technology at issue. The parties have agreed
14 that Mr. Settineri will circulate the first five
15 pages of that as an excerpt for purposes of
16 officially distributing that. That has been sent via
17 e-mail and Mr. Rand has that.

18 So, Mr. Settineri, please continue.

19 MR. SETTINERI: Yeah. Thank you, your
20 Honor.

21 Q. (By Mr. Settineri) And, Mr. Rand, if you
22 could turn to page 4 and 5 of. Is that document --
23 and particularly I want you to look at the table with
24 the L90 measurements.

25 A. Okay. All right.

1 Q. Okay. So starting with nighttime, the
2 L90, that would be the data that you used to develop
3 the average; is that correct?

4 A. That's correct.

5 Q. Okay. That, subject to check, comes out
6 to be 29.333 average L90 if I add up all three and
7 divide by 31; is that right?

8 A. Round to the nearest decibel.

9 Q. And then if I go to daytime L90, if I
10 were to do the same thing there, you would have 33
11 plus 33 divided by 3, that would give you a daytime
12 L90 of 34 dBA, correct?

13 A. Correct.

14 Q. Okay. And there were a lot of questions,
15 a lot of answers about complaints from the Kingwood
16 Solar project, especially in people's yards and the
17 property lines. So for you when you are looking at
18 the possibility of a complaint during the day which
19 would be from 7:00 a.m. to 10:00 p.m., I would be
20 looking at the L90 for the daytime, correct?

21 A. That's correct.

22 Q. And then under your methodology I would
23 apply 5, correct?

24 A. That's correct, as an upper limit.

25 Q. And so I think we previously established

1 the average L90 daytime would be 34 plus 5, takes me
2 to 39, correct?

3 A. That's correct.

4 Q. Okay. And then nighttime, again, same
5 thing, it would be 29 plus 5, and it would be 34 for
6 the nighttime and that would be from 10:00 p.m. to
7 7:00 a.m., correct?

8 A. That's correct.

9 Q. Okay. So now I want to go back to
10 Mr. Odom's supplemental testimony, Kingwood
11 Exhibit 11, Attachment B. Tell me when you are
12 there.

13 A. Just a minute. Okay.

14 Q. Okay. So this is Attachment B is the
15 project-only sound level from the modeling, correct?

16 A. That's my understanding, yes.

17 Q. So if I go to the revised layout
18 comment -- layout column, starting with the daytime
19 at the very top, NP1, as I go down that column, the
20 first incident of exceeding 39 dBA is at NP23. Do
21 you see that?

22 A. Yes, I do.

23 Q. Okay. That would be an exceedance of the
24 average ambient -- let me see. That would be the
25 exceedance of the L90 plus 5 during the daytime which

1 would be 39 plus 1 so that would be exceedance of
2 dBA, correct?

3 A. That's correct.

4 Q. Okay. Continuing then, the next
5 exceedance would be at NP26 and that's 41 dBA
6 modeled, correct?

7 A. Yes.

8 Q. And so now we have a 2 dBA exceedance of
9 the L90 plus 5 for the daytime. And then continuing
10 on, you would agree with me that the next -- there
11 are three more and the last three actually would be
12 NP47 at 41 dBA, NP48 at 42 dBA, and NP49 at 44 dBA,
13 correct?

14 A. That's correct.

15 Q. Okay. And the largest exceedance between
16 the L90 daytime plus 5 would be at NP49 which would
17 be exceedance of 3 dBA, correct?

18 A. Sorry. I have lost track of your
19 numbers. Could you just say that question again? I
20 wasn't sure.

21 Q. No. I would be glad to. So just to
22 refresh, the average L90 daytime was 39 dBA and that
23 was an L90, correct? Oh, I'm sorry. Strike that. I
24 have that wrong.

25 The average -- the L90 average for

1 Acentech's chart was 34 dBA, correct?

2 A. That's correct.

3 Q. Okay. Then we add 5 to get to the 39 dB
4 level. And so looking at NP49, that 44 dBA would be
5 a 3 dBA exceedance of the daytime L90 plus 5
6 standard, correct?

7 A. Yeah. I might be getting a little
8 hypoglycemic here. I am having trouble keeping track
9 of these numbers. 34 plus 5 is 39. And 39 to 44 is
10 5 dB.

11 Q. My bad. You are correct. It is an
12 exceedance of 5 dB, right? Okay. So during the
13 daytime, the majority of receptors, the vast
14 majority, in fact, all receptors but 5 would satisfy
15 the daytime L90 plus 5, correct?

16 A. That's correct.

17 Q. Okay. And if I look at NP23 and NP26,
18 you would agree that the 40 and 41 are close enough
19 to 39 that you would not expect someone to complain
20 about that differential.

21 A. I would disagree.

22 Q. Okay. And if -- let's assume for NP23
23 and NP26 and 47, 48, 49, if someone did complain,
24 that would be an opportunity to provide mitigation
25 potentially depending on the nature of the complaint,

1 correct?

2 A. I don't understand the question.

3 Q. Okay. Well, let me back up. For an
4 exceedance at -- so let me go to NP23. It exceeds
5 the L90 plus 5 by 1 dBA. Why do you disagree that a
6 person would be able to distinguish -- let me strike
7 that. Let me start over.

8 Do you believe that a person, NP23,
9 hearing 40 dBA would be able to tell the difference
10 if standing at NP22 and hearing 39 dB?

11 A. Absolutely, because it's tonal noise.

12 Q. Okay. All right. That would be a 1 dB
13 difference.

14 A. Yeah. They would have no trouble. It's
15 tonal.

16 Q. Okay. And you recall earlier testifying
17 that a 1 dB typically no one would be able to
18 discern?

19 A. You were referring to dBA.

20 Q. Okay. And so here these are -- these
21 numbers are in dBA, correct?

22 A. They are in dBA, but the inverters are
23 tonal.

24 Q. Well, again, so you're saying there will
25 be a tonal sound if there is a 1 -- and are you

1 saying there will be a 1 dBA increase in tonal sound?

2 A. I'm sorry. I don't follow your question.

3 Q. Let me try it another way here because
4 I'm confused. So NP22 at 39 which is meeting the
5 standard, you don't believe that that person will be
6 impacted by any tonal sound from inverters, correct?

7 A. That's not correct.

8 Q. Okay. So you -- you're saying now that
9 that 39 L90 plus 5, that that alone could -- if
10 someone hears that sound at L90 plus 5, that they
11 could be impacted by that sound; is that what you are
12 saying?

13 A. Yes, I could hear a tonal noise at 39
14 dBA, yes, absolutely.

15 Q. And you think that would lead to
16 complaints?

17 A. It depends because the numbers that
18 the -- that were acquired by Acentech were limited
19 and may be lower on a particular day so that could
20 lead to complaints.

21 Q. And what numbers of Acentech are you
22 referring to?

23 A. The L90s.

24 Q. And you previously testified you had
25 no -- you have no issue with L -- you have no issue

1 with Acentech's L90 numbers, correct?

2 A. I have no issue with their modeling of
3 the projected sound levels.

4 Q. Okay.

5 A. I had an issue with them using Leq plus 5
6 to establish a criterion for the project.

7 Q. All right. But they also recorded L90
8 data, correct?

9 A. Yes, that's correct.

10 Q. And you don't have an issue with that L90
11 data, correct?

12 A. I have no issue with the way that they
13 acquired the data. I would say that the length of
14 time and the way that the data described every single
15 day that could occur during the year, I cannot -- I
16 could not say that, for example, an average L90 would
17 be 34 every day of the year. For example, the day
18 location 3 it was 33. So it wouldn't -- it would be
19 at least a decibel lower at location 3 or location 2.

20 Q. Well, you would agree with me that the
21 duration of a L90 data collection can affect the L90,
22 correct?

23 A. Indeed it can.

24 Q. Okay. All right. And you used -- you
25 used Acentech L90 data to form a basis for your

1 opinion -- your testimony, correct?

2 A. That's correct.

3 Q. Okay. So in terms of applying your L90
4 plus 5 standard, we need to distinguish between
5 daytime and nighttime, correct?

6 A. Not for my purposes of evaluating the
7 site impact.

8 Q. Okay. In terms of the audibility or
9 non-participating residents near the area, you would
10 look at the daytime L90 plus 5 for daytime hours, and
11 you would look at the nighttime L90 plus 5 for
12 nighttime hours, correct?

13 A. Not in this case.

14 Q. Why not?

15 A. Because the facility is projected to run
16 around the clock and it was projected to run at full
17 power at night so the design criteria has to be for
18 night.

19 Q. That's a design criteria, correct?

20 A. Yes.

21 Q. But in terms of complaint, you've
22 testified on redirect, discussed complaints, all
23 right? A complaint is not a design criteria,
24 correct?

25 A. That's correct.

1 Q. Okay. And a complaint is derived from
2 the sound pressure that a person experiences,
3 correct?

4 A. No, that's not correct.

5 Q. Okay. Let me ask you this, is the L90
6 plus 5 a measure of when sound can become audible to
7 somebody?

8 A. No.

9 Q. Okay. All right. You used the L90 plus
10 5 as a measure of whether complaints will occur from
11 this project, correct? Right?

12 A. Correct.

13 Q. Okay. And in terms of whether a
14 complaint will occur from the project during the
15 daytime, you would look to what the L90 daytime plus
16 5 value would be, correct?

17 A. I would look at it at the time of the
18 complaint, yes.

19 Q. Okay. Sound attenuates when it passes
20 through the walls of a house, correct?

21 A. That's correct in most cases. Sometimes
22 it increases.

23 Q. And would it increase when you have low
24 frequency noise?

25 A. It could, yes.

1 Q. All right. So, for example, you were
2 involved in a wind farm study of low frequency noise
3 up in Wisconsin a few years ago, correct?

4 A. That's correct.

5 Q. Okay. If you have -- for a utility-scale
6 solar farm, just assume for me you have 100 inverters
7 across the project area and you have a receptor. The
8 operational sound that would be experienced at that
9 receptor you believe should -- would include a
10 contribution from all the inverters, correct?

11 A. Yes, that's correct.

12 Q. Okay. But the contribution from an
13 inverter could be negligible depending on the
14 distance from that receptor, correct?

15 A. Correct.

16 Q. It just depends how close it is, correct?

17 A. That's correct.

18 Q. Okay. On recross you were asked a
19 question about Appendix J, and I may have misheard
20 you, but just to be clear, did you say that the
21 information in Appendix J allowed you to determine
22 that the inverters for Kingwood Solar would be larger
23 in size?

24 A. I don't recall the specific question.

25 Q. Okay. Do you believe there is any

1 information in Appendix J as to the inverters as to
2 whether they would be louder than the inverters
3 utilized at the Hardin Solar project?

4 A. I am looking at Appendix J. Hold on. If
5 the inverters are at Hardin are in the range of 1
6 MVA, then the inverters listed in Appendix J are
7 larger.

8 Q. Okay. Well, when you said "larger," I
9 got confused on your recross. I just didn't know if
10 you said larger or louder. Do you know whether the
11 inverters that are listed in Appendix J to the
12 application are louder, will be louder than the ones
13 that you measured at Hardin Solar?

14 A. I would expect them to be louder because
15 of size differences, but I don't have specific
16 information on them.

17 Q. Okay. So for a utility-scale solar farm,
18 an inverter is not placed in a building, correct?

19 A. I don't have specific information on that
20 from facility to facility. It may be that some are
21 enclosed and some are not.

22 Q. For the Hardin Solar facility, were the
23 inverters -- was the inverter that you saw in a
24 building?

25 A. No, they weren't.

1 Q. Okay. And in terms of how to mitigate an
2 inverter and whether to do it prior to construction
3 or post-construction depending on complaints, that
4 can be evaluated during the design build process
5 which would include final engineering of the project,
6 correct?

7 A. I'm sorry. Can you repeat the question?

8 Q. Sure.

9 MR. SETTINERI: Court reporter, I'm
10 sorry, Ms. Gibson. If you could just read that back,
11 that would be appreciated.

12 (Record read.)

13 A. I don't understand the question.

14 Q. Okay. Let me help you. Sitting here
15 today, you know, you and I are not designing the
16 Kingwood Solar project, correct?

17 A. Correct.

18 Q. Okay. And at some point it will go
19 through what you call a design build process, what I
20 call the final engineering process, correct?

21 A. If it's permitted and it goes ahead,
22 correct.

23 Q. Okay. And you would expect that there
24 will be engineers involved in terms of evaluating the
25 design for the project at that point, correct?

1 A. Correct.

2 Q. Okay. And would it -- would -- in terms
3 of making a decision of whether to implement
4 mitigation or not on any operational sound source,
5 the best time to make that decision is during the
6 engineering process, correct?

7 A. That's correct, with the exception that
8 some of those decisions are made prior to permit.

9 Q. And that -- in regards to that last
10 comment, that would be depending on the permit
11 condition, correct?

12 A. That's correct.

13 Q. Okay. You've never designed a solar
14 facility, correct?

15 A. That's correct.

16 Q. Okay. You've never -- have you ever been
17 inside the fence of a utility-scale solar facility?

18 A. I have not.

19 Q. Okay. Now, are you -- Hardin Solar had
20 no formal complaints submitted to the Ohio Power
21 Siting Board for that project as of June 2021,
22 correct?

23 MR. VAN KLEY: Objection, your Honor. At
24 this point not only is Mr. Settineri straying from my
25 redirect, but now he's asking for hearsay

1 information.

2 ALJ WILLIAMS: Mr. Settineri.

3 MR. SETTINERI: Yes, your Honor.

4 Mr. Van Kley asked him about his measurements at the
5 Hardin Solar site, all right? And he's continued to
6 apply that to his opinions here in this case where he
7 believes there are complaints and I simply asked him
8 and I don't think I asked for a hearsay. I asked him
9 if he knew.

10 ALJ WILLIAMS: I will allow --

11 MR. VAN KLEY: Yeah. There is no
12 foundation.

13 ALJ WILLIAMS: I will allow a little
14 latitude. The question can stand.

15 A. I'm sorry. Could you repeat the
16 question?

17 Q. Sure. You evaluated the docket for the
18 Hardin Solar project. And when I say "docket," the
19 Ohio Power Siting Board docket, correct?

20 A. That's correct.

21 Q. All right. Do you recall reviewing a
22 document that provided a summary of complaints to the
23 Ohio Power Siting Board for the Hardin Solar project?

24 A. Do you have a date for that?

25 Q. That would be approximately June of 2021.

1 A. Just a second.

2 MR. SETTINERI: And let's go ahead then
3 and make life easy. Let's just mark Kingwood
4 Exhibit 29, please, for the record and that is a
5 filing in both the Hardin Solar I and Hardin Solar II
6 dockets.

7 Q. And you should have a copy of that,
8 Mr. Rand. That would have been sent probably the
9 other day to you.

10 A. Yes, I do.

11 Q. Okay. Do you have that in front of you?

12 A. Yes.

13 MR. SETTINERI: Okay. And, your Honor, I
14 just want to make sure, do you have a copy of that as
15 well? I want to make sure I am not going too fast.

16 ALJ WILLIAMS: I do.

17 Q. Okay. Great. Are you familiar with this
18 document, Mr. Rand?

19 A. I've read the document.

20 Q. Okay. And this document is a report from
21 Hardin Solar Energy LLC and Hardin Solar II LLC for
22 the Power Siting Board noting that both projects have
23 not received any complaints pursuant to the
24 Applicant's complaint resolution plans regarding the
25 facilities and this is dated as of June 11, 2021. Do

1 you see that?

2 MR. VAN KLEY: Objection, your Honor. I
3 think we are getting into some pretty far afield
4 hearsay. And the hearsay are the statements from
5 Hardin -- Hardin Solar which has an obvious
6 self-interest in portraying its facility the best
7 that can -- the best light it can and Mr. Settineri
8 is attempting to -- to utilize Hardin Solar's
9 statements to prove that there were no complaints
10 about noise at that facility.

11 ALJ WILLIAMS: I am going to sustain the
12 objection. We allowed testimony regarding Hardin
13 relative to the sound measurements that were taken.
14 We allowed the exhibit regarding the public
15 information session relative to the context for the
16 site visit and where he set up his sound installation
17 or his sound procedures.

18 But drawing in complaints/no complaints
19 relative to the operation of a facility is beyond the
20 scope of what's been asked and it's beyond the scope
21 of this hearing and it is hearsay so I am not going
22 to allow any more questions relative to whether there
23 have been formal complaints with regard to the Hardin
24 project.

25 MR. SETTINERI: Your Honor, if I may.

1 ALJ WILLIAMS: Please.

2 MR. SETTINERI: I would note in his
3 testimony at page 5, line 11, he notes he reviewed
4 OPSB project documents for the Hardin Solar docket.
5 He's also recognized that he is familiar with this
6 document. He's also using the measurements from
7 Hardin Solar to form his opinion as to that there
8 will be compliance from another project. I think it
9 is relevant that the project he is measuring shows no
10 complaints, so I would ask you to reconsider your
11 ruling. And stop there.

12 ALJ WILLIAMS: I appreciate that. The
13 ruling is not further considered. It remains in
14 place.

15 MR. SETTINERI: Thank you, your Honor.

16 Q. (By Mr. Settineri) You -- one of the
17 responses to Mr. Van Kley about your measurements and
18 Hardin Solar, you indicated you applied a tonal
19 penalty. Do you recall that?

20 A. No, I do not.

21 Q. Okay. Well, okay. Did you apply a tonal
22 penalty to your measurements that you took at Hardin
23 Solar?

24 A. No, I did not.

25 Q. Okay. When would you apply a tonal

1 penalty?

2 A. During a regulatory process.

3 Q. What's a regulatory process?

4 A. A review of compliance with standards.

5 Q. Okay. Now, when you were present taking
6 your inverter measurement at Hardin Solar, there was
7 pile driving going on, correct?

8 A. That's correct.

9 Q. Okay. Now, and I believe you indicated
10 that the tonal noise was dominating the environment
11 and was analogous to a swarm of bees; is that
12 correct?

13 A. That's correct.

14 Q. Okay. And in terms of whether a sound
15 dominates the environment, that's a professional
16 judgment by a -- an acoustic investigator makes,
17 correct?

18 A. That's correct.

19 Q. And for that you use your listening ears
20 to do that, correct?

21 A. That's correct. And I look at during the
22 analysis. It can bear out during the analysis as
23 well.

24 Q. Okay. Now, when you were taking your
25 inverter measurements, construction equipment was

1 operating in the area, correct?

2 A. That's correct.

3 Q. Okay. You don't -- you are not aware of
4 what type of construction equipment was operating in
5 the area, correct?

6 A. That's correct.

7 Q. Okay. And you don't know if there were
8 any portable generators operating in the construction
9 area, correct?

10 A. That's correct.

11 Q. And portable generators produce tonal
12 sound as well, correct?

13 A. That's correct.

14 MR. SETTINERI: Thank you. I have no
15 further questions, your Honor. Thank you.

16 ALJ WILLIAMS: Thank you, Mr. Settineri.

17 Mr. Rand, I want to thank you for your
18 time and testimony today. I know we kept you quite a
19 while. I appreciate your perseverance. You are
20 excused, sir.

21 THE WITNESS: Thank you.

22 ALJ WILLIAMS: We will take up the
23 exhibits.

24 MR. VAN KLEY: Yes, your Honor. We would
25 move into admission Citizens Exhibit 12.

1 ALJ WILLIAMS: Any objection?

2 MR. SETTINERI: I am just trying to get
3 organized here. Is that the direct testimony, your
4 Honor?

5 ALJ WILLIAMS: It is.

6 MR. SETTINERI: Okay. Your Honor, the
7 one -- I would -- the only objection I have to that
8 admission is I probably renew my motion to strike
9 Exhibit J from the document. On cross-examination
10 Mr. Rand indicated that the only part of that
11 document he may have reviewed was a map in that
12 document. Further conversation -- cross-examination
13 showed that he did not use that map at all. It's for
14 a separate project.

15 And he also in redirect indicated that he
16 simply put it there because he finished that -- it
17 was one of the documents furnished that he looked at
18 during his review. So I don't see this document
19 being relevant. It's for a completely different
20 project, completely different company, and again, so
21 I would -- I am fine with leaving the rest of the
22 document subject to all the other motions to strike
23 that were granted and the revisions and the deletion
24 of Exhibit K, I believe, by Mr. Rand, but I don't
25 think J should go in the record, your Honor, and I

1 move to not allow that in the record.

2 ALJ WILLIAMS: Tell you what we are going
3 to do, we are going to bring in Exhibit J. We are
4 going to excerpt everything but the map so the
5 caption page Exhibit J will come in and there is a
6 cover page that -- I'm scrolling.

7 MR. SETTINERI: And, your Honor --

8 ALJ WILLIAMS: It indicates project map,
9 and the next page is the actual map which the witness
10 did describe that he referenced in regard to his
11 overall familiarity with the site in general, so I am
12 going to let that stay in. Mr. Settineri.

13 MR. VAN KLEY: Your Honor, could we have
14 a PDF number for that map?

15 ALJ WILLIAMS: You can. So the map is --
16 the map cover page is 372 of 422, and the actual map
17 is 373 of 422.

18 Mr. Settineri.

19 MR. VAN KLEY: Are we leaving two pages
20 in then or one?

21 ALJ WILLIAMS: We are actually leaving in
22 three. We are leaving the document that says Exhibit
23 J which is the cover page to that exhibit and then
24 the project map cover page and then the actual map.

25 MR. VAN KLEY: Okay.

1 MR. SETTINERI: Your Honor, if I may --
2 I'm sorry, Mr. Van Kley. Go ahead.

3 MR. VAN KLEY: Yeah. And I have no
4 objection to this request. I just wanted to make
5 sure I get the right pages here. Do you want us to
6 resubmit the testimony without?

7 ALJ WILLIAMS: No. We've taken the tack
8 on the record. Once the parties know what can and
9 cannot be included in briefing, there is nothing to
10 refile.

11 MR. VAN KLEY: Okay, great.

12 MR. SETTINERI: Your Honor, if I may.

13 ALJ WILLIAMS: Mr. Settineri.

14 MR. SETTINERI: And I understand what you
15 are saying there. I just want to go back in the
16 testimony quickly and look at the references just to
17 see how that document was referred to. I want to
18 make sure there is no confusion between the testimony
19 and actual exhibit that is left over. And if you
20 give me just probably 30 seconds, I can do that, or I
21 can just come back after lunch. It doesn't matter.

22 ALJ WILLIAMS: We will go off the record
23 and let you finish this argument.

24 (Discussion off the record.)

25 ALJ WILLIAMS: Back on the record.

1 Mr. Settineri.

2 MR. SETTINERI: Yes, your Honor. I
3 just -- I believe your ruling was you would leave in
4 the project map drawing and the map itself and I
5 think the rest of the record is clear enough on the
6 cross that we know what that document is so thank
7 you.

8 ALJ WILLIAMS: Okay. So that ruling we
9 made as I have just given it.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 ALJ WILLIAMS: Other exhibits for
12 consideration?

13 MR. SETTINERI: If you can give me a
14 second. I do. I would move for the admission of
15 Kingwood Exhibit 55.

16 ALJ WILLIAMS: Any objection?

17 MR. VAN KLEY: Let me just take a look at
18 that for a moment, see what it is. No, I don't have
19 an objection.

20 ALJ WILLIAMS: 55 comes in.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 ALJ WILLIAMS: Nothing else on the
23 exhibit side?

24 MR. SETTINERI: No, your Honor. Thank
25 you.

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1 ALJ WILLIAMS: Hearing none, we will go
2 off the record.

3 (Thereupon, at 1:22 p.m., a lunch recess
4 was taken.)

5 - - -

1 Friday Afternoon Session,
2 March 11, 2022.

3 - - -

4 ALJ WILLIAMS: We are back on the record.
5 Mr. Settineri, I will invite you to call
6 your next witness.

7 MR. SETTINERI: Thank you, your Honor.
8 This is a continuation of a subpoena that was issued
9 to the Greene County Board of Commissioners. And I
10 believe that in addition to Mr. Huddleson, who
11 previously -- I guess testified yesterday, I believe
12 it's Vicki Abel will be appearing, and I would call
13 her to the stand.

14 ALJ WILLIAMS: Good afternoon, Ms. Abel.

15 MS. ABEL: Hi.

16 ALJ WILLIAMS: Can you hear and see me
17 okay?

18 MS. ABEL: Yes.

19 ALJ WILLIAMS: Would you raise your right
20 hand.

21 (Witness sworn.)

22 ALJ WILLIAMS: Okay. Please proceed,
23 Mr. Settineri.

24 MR. SETTINERI: Okay. All right.

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VICKI ABEL

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

CROSS-EXAMINATION

By Mr. Settineri:

Q. Good morning, Ms. Abel. My name is Mike
Settineri. I represent Kingwood Solar I LLC and with
the Vorys law firm.

To start first by asking you to state and
spell your name for the record, please.

A. Vicki Abel, A-B-E-L.

Q. Okay. And how do you spell your first
name?

A. V-I-C-K-I.

ALJ WILLIAMS: Okay. Ms. Abel, you are
real faint. I don't know if it's possible to get
closer to the microphone.

THE WITNESS: Okay.

ALJ WILLIAMS: Much better. Thank you.

MR. SETTINERI: And, your Honor, with
permission I would like to treat the -- this witness
as if on cross.

ALJ WILLIAMS: That's granted.

MR. SETTINERI: Okay. Thank you.

Q. (By Mr. Settineri) Ms. Abel, since we are

1 virtual toady, typically we are in a hearing room, I
2 could see you in person, I would like to know is
3 anyone in with you today in the room in which you are
4 testifying?

5 A. No. Not in this room, no.

6 Q. Okay. Thank you. And what is your job
7 title, Ms. Abel?

8 A. I am the Executive Assistant to the
9 County Administrator.

10 Q. Okay. And how long have you been in that
11 role?

12 A. I have been with the County since 2000 --
13 probably since '07.

14 Q. Okay. And who do you report to?

15 A. Brandon Huddleson.

16 Q. Okay. And do you have interactions with
17 the County Commissioners as well?

18 A. I do because they are in our office.
19 Sometimes I am the backup for the Clerk who has a lot
20 more dealings with the Commissioners; but, you know,
21 I do see them when they come in the office.

22 Q. And when you said "Clerk," what do you
23 mean by Clerk?

24 A. We have a Clerk who she does meetings.
25 She prepares everything for the Commissioner

1 meetings.

2 Q. Okay. In terms of incoming phone calls,
3 would those go to the clerk as well as you?

4 A. It would depend. We have, you know,
5 three different numbers that they could come in on
6 for as far as the administrative staff. So it -- her
7 number is not listed as much as maybe mine or the --
8 the lady who sits up front at the receptionist.

9 Q. Okay. And as an Executive Assistant, do
10 you provide any support to the County Commissioners?
11 And so, for example, phone calls, messages, preparing
12 documents?

13 A. I don't really prepare documents. If
14 somebody calls my line and is looking for a
15 Commissioner, I could take -- I could take a call,
16 yes.

17 Q. Okay. Did you -- now, did you -- are you
18 aware that Mr. Huddleson testified in this proceeding
19 yesterday?

20 A. Yes.

21 Q. Okay. Did you watch that testimony
22 yesterday?

23 A. No.

24 Q. Okay. So you're here pursuant to a
25 subpoena that was issued not to you personally but to

1 the Greene County Board of Commissioners regarding
2 certain topics. One of those topics is we've asked
3 to speak to the person -- any person, be it any
4 Greene County Board of Commissioners staff member or
5 any representative or employee of Greene County, who
6 spoke or communicated with, to, or from any
7 representative or employee of the Public Utilities
8 Commission of Ohio and/or of the Ohio Power Siting
9 Board between October 1, 2021, and October 29, 2021.
10 And so I will just read that for you so you are aware
11 that was the -- part of the subpoena that we sent out
12 and other topics as well.

13 Are you aware of what the Power Siting
14 Board is?

15 A. Honestly, no, no. I've not been involved
16 with that.

17 Q. Okay. Well, let me ask this, so have you
18 had any communications with any representative from
19 the Ohio Power Siting Board?

20 A. Well, I did have a representative from
21 them call. It was, you know, back in -- back in
22 October, yes.

23 Q. Okay. And so that was one phone call,
24 right?

25 A. Yes.

1 Q. Okay. And was that the first time that
2 you had received a call from a representative from
3 the Power Siting Board?

4 A. Yes.

5 Q. Okay. And for the record, I'll note that
6 the Ohio Power Siting Board is actually a division of
7 the Public Utilities Commission of Ohio and that's
8 why I am going to ask the next question. Did you
9 have any communications from anyone that identified
10 themselves as a representative or employee of the
11 Public Utilities Commission of Ohio, otherwise known
12 as the PUCO?

13 A. Yes. I received a phone call, yes.

14 Q. Okay. But the phone call you received
15 was someone from the Power Siting Board, correct?

16 A. Yes -- I'm sorry, yes.

17 Q. You actually answered the question
18 properly because it is a division of the PUCO. All
19 right. So you had one phone call. So any other
20 phone calls in 2021 from anyone from the Power Siting
21 Board?

22 A. No, sir.

23 ALJ WILLIAMS: I'm not catching the audio
24 of that, Ms. Abel. I want to make sure Ms. Gibson is
25 getting it.

1 THE WITNESS: No, I did not.

2 ALJ WILLIAMS: Okay. Thank you.

3 Q. (By Mr. Settineri) All right. And so in
4 October, you received a call from someone from the
5 Power Siting Board, correct?

6 A. That's correct.

7 Q. Okay. Was it a man or woman?

8 A. A woman.

9 Q. Okay. And did that -- do you know, did
10 that call -- did you receive that call on October 27?

11 A. That I do not recall.

12 Q. Okay. And I do have -- well, it could
13 have been October 27 or October 28, 2021, correct?

14 A. That's correct.

15 Q. One of those two days. Okay. And in
16 terms -- this call came in before the County
17 Commissioners meeting on October 28, correct?

18 A. Yes. As I recall, yes.

19 Q. Okay. And so let me ask, the -- you
20 probably don't recall, but I will ask you, do you
21 know what number this call came in on? I think you
22 mentioned you had multiple numbers.

23 A. Yeah. I have no idea.

24 Q. Okay. And so it's not as if you have a
25 phone with three Commissioners and Mr. Huddleson's

1 name in light -- it lights up and you pick up and
2 answer. It wouldn't be like that.

3 A. We do have lines for, you know,
4 different -- different people in the office, but I
5 don't recall whose line that would have come in on.

6 Q. Okay. Is there a separate line, a
7 general line it could have come in on as well?

8 A. I pick up -- I can pick up any call that
9 comes into this office.

10 Q. Okay. All right. So you received a call
11 October 27 or October 28. And did the -- this person
12 identify herself as a Staff member of the Ohio Power
13 Siting Board?

14 A. I don't recall exactly how she said it,
15 but I knew she was from the Ohio Power Siting Board.

16 Q. Okay. And did -- okay. And did she give
17 you her name?

18 A. I'm sure she did, but I do not recall.

19 Q. Okay. And did she give you her job title
20 by chance?

21 A. I don't believe so.

22 Q. Okay. And did she ask you whether the
23 Board of Commissioners would be taking a position on
24 the King -- on the Kingwood Solar proceeding?

25 A. I believe she asked if we had -- yes, if

1 we had a position, yes.

2 Q. Okay. And your understanding of that
3 call would be a position on the Kingwood Solar
4 project, correct?

5 A. That's correct.

6 Q. Okay. Did she -- and what did you tell
7 her, if you recall, when she asked that question?

8 A. I recall I put her on hold, and as my
9 general practice, I spoke to my supervisor and said
10 that there was a lady that was looking for that
11 information.

12 Q. Okay. And who was your supervisor?

13 A. Brandon Huddleson.

14 Q. Okay. And then after you told
15 Mr. Huddleson that, what happened next?

16 A. I got back on the line with her and
17 advised her that we had a resolution on our upcoming
18 Board meeting, that they would take a vote on that.

19 Q. Okay. And when you informed
20 Mr. Huddleson about the call and the question, do you
21 recall what he said to you?

22 MR. SHAMP: Your Honor, I am going to
23 object on that, your Honor, as hearsay.

24 Mr. Huddleson will be up next week. I believe he
25 could be asked that question.

1 ALJ WILLIAMS: The testimony is salient
2 to the issues of the subpoena. Mr. Huddleson has
3 already testified relative to this issue, so I am
4 going to allow the question.

5 MR. SHAMP: Thank you, your Honor.

6 A. Could you repeat that question, please?

7 Q. Yeah. When you informed Mr. Huddleson of
8 the call and the question from the caller, do you
9 recall, did he give you a response?

10 A. He is the one that -- you know, I don't
11 remember word for word, but he was the one to direct
12 me, to let them know that that resolution would be on
13 our next Commission meeting.

14 Q. Okay. Did he give you any other
15 direction at that time?

16 A. No. I don't believe so.

17 Q. Okay. And then what did you do after he
18 gave you the direction that it would be on the next
19 meeting?

20 A. I got back on the line with the lady from
21 the Ohio Power Siting Board, and I relayed that to
22 her.

23 Q. Okay. Okay. And then what happened in
24 regards to the call?

25 I couldn't quite hear. I'm sorry.

1 A. I'm sorry. I hung up. That was -- that
2 was the discussion.

3 Q. All right. Okay.

4 A. I believe, you know, her response was
5 okay, thank you, and that was the end of the call.

6 Q. Okay. Have you had any other -- any
7 communications or -- let me ask it a different way.
8 Have you received any call from any member of the
9 Ohio Power Siting Board Staff since that day?

10 A. No, I have not.

11 Q. After that call, did you discuss that
12 call with anyone else at Greene County?

13 A. I don't recall.

14 Q. And so October 27, 2020 -- and/or -- I
15 should say strike.

16 October 27 or October 28, 2021, you had a
17 phone call. You gave the caller a response. And
18 after -- as of -- starting with October 29, when is
19 the first time that this call was revisited for you?

20 A. Yesterday.

21 Q. Okay.

22 A. After Brandon had testified, he asked if
23 anyone could remember talking to someone from the
24 Ohio Power Siting Board.

25 Q. Okay. And would this have been before he

1 testified -- let me back up.

2 So to make sure we are clear,
3 Mr. Huddleson was deposed in his office on March 3.
4 Do you recall that? Last week.

5 A. Yes. I mean, he's had his door closed
6 for several -- several days this week so.

7 Q. Okay. And so just -- so I can tell you
8 he was deposed last week. After he was deposed --
9 let me ask it a different way. When did he come to
10 you -- when did he go and ask did anyone have any
11 calls?

12 A. I believe it was Wednesday of this week.

13 Q. Okay. Thank you for clearing that up.

14 MR. SETTINERI: Your Honor, if I may just
15 have a short 5-minute break, could even be 3 minutes,
16 and go off the record and go off camera just to talk
17 to co-counsel.

18 ALJ WILLIAMS: Okay. We will come back
19 at 2:33.

20 Off the record, Karen. Thanks.

21 (Recess taken.)

22 ALJ WILLIAMS: Any more questions,
23 Mr. Settineri?

24 Q. (By Mr. Settineri) Just a few, Ms. Abel.
25 When you gave your response to the Staff member from

1 the Ohio Power Siting Board on that October 27 or
2 October 28 call, did you give her any indication of
3 whether -- of the nature of the resolution?

4 A. I don't recall whether I -- what I told
5 her, you know, the extent of the resolution was.
6 That I cannot remember.

7 Q. All right. And do you remember whether
8 you would have told -- did Mr. Huddleson direct you
9 to tell the caller that the resolution would be in
10 opposition to the project?

11 A. Again, if he did, I don't remember -- I
12 would have conveyed that to her if -- but I do not
13 remember whether I said it was opposing or not.

14 Q. Okay. So sitting here today what you do
15 remember is that you told the caller that the
16 resolution was on the Board's agenda for the
17 October 28, 2021, meeting, correct?

18 A. Correct.

19 Q. Okay. And nothing else about the
20 conversation as to what you told her.

21 A. Yeah, not that I can recall.

22 MR. SETTINERI: Okay. Ms. Abel, thank
23 you for your time today and I will let you get back
24 to your duties, which I'm sure you have a very busy
25 day.

ALJ WILLIAMS: Ms. Abel, hold on a minute. We just have a little bit of a procedural process to go through here. I am going to offer other parties the opportunity to ask you questions beginning with Citizens for Greene Acres.

Mr. Van Kley, you're muted. Okay. We will take that as no.

Miami Township.

MR. SLONE: No, your Honor. Thank you.

ALJ WILLIAMS: Xenia Township.

MR. DUNN: No questions.

ALJ WILLIAMS: Cedarville Township.

MR. BROWN: No questions, your Honor.

ALJ WILLIAMS: In Progress.

MR. HART: Nothing further, your Honor.

ALJ WILLIAMS: Tecumseh.

MR. SWANEY: No questions, your Honor.

Thank you.

ALJ WILLIAMS: Farm Bureau.

MS. MILAM: No questions, your Honor.

ALJ WILLIAMS: Staff.

MR. MARGARD: No questions. Thank you, your Honor.

ALJ WILLIAMS: Does Greene County have any questions of the witness?

1 MR. SHAMP: No, your Honor.

2 ALJ WILLIAMS: Ms. Abel, now you are
3 excused. Thank you for your testimony this
4 afternoon. Have a great day.

5 THE WITNESS: Thanks. You too.

6 ALJ WILLIAMS: Okay. I believe our next
7 witness is on behalf of Citizens for Greene Acres. I
8 believe that's -- Mr. Van Kley, I will let you call
9 the witness.

10 MR. VAN KLEY: Yes, your Honor. We call
11 Mary Clay.

12 ALJ WILLIAMS: Before we promote Ms. Mary
13 Clay, if it's not too late, I want to go ahead and
14 rule on the motions to strike -- motions to strike
15 which I will do now.

16 MR. SETTINERI: And, your Honor, if you
17 could give me one minute, I need to do a paperwork
18 swap.

19 ALJ WILLIAMS: Okay. We can go off the
20 record while you do that.

21 (Discussion off the record.)

22 ALJ WILLIAMS: We can go back on the
23 record.

24 We took just a minute for reorganizing
25 between witnesses, and we are on the cusp of my

1 ruling on a motion to strike regarding the testimony
2 of Ms. Mary McClinton Clay. The motion to strike was
3 filed last Friday, March 4, and Citizens for Greene
4 Acres filed a memorandum in opposition to several
5 motions to strike on March 8.

6 At this time the ALJs have determined in
7 regard to addressing these according to the
8 individual bullets, and it appears there's six of
9 them in regard to the motion to strike. The first
10 bullet addresses testimony at page 7, lines 2 to 4.
11 The motion to strike is based on an account that the
12 testimony is speculative. The witness provides
13 testimony critiquing the real estate appraisal
14 opinion or report that was provided by another party
15 in the case.

16 And the request to strike this as
17 speculative is denied. The Administrative Law Judges
18 find that a critique of real estate appraisal reports
19 is certainly the subject for cross-examination, but
20 if one expert has a dispute or concerns with how that
21 other expert has framed their opinion, that's
22 certainly ripe for that expert to declare.

23 Continuing to the second bullet point on
24 page 7, lines 4 to 5, we're talking about the same --
25 same essential testimony there and so that will also

1 remain as part of the testimony as filed. It will be
2 subject to cross-examination by the witness.

3 The second bullet also goes to page 25,
4 line 13, where there's discussion and a list of
5 exhibits that includes discussion as to USPAP which
6 is a real estate appraisal technique and so that will
7 also remain as part of the record, and the testimony
8 will not be stricken.

9 Third bullet point goes to Exhibit F.
10 Again, there is a request to strike testimony within
11 Exhibit F at page 1., the second and third
12 paragraphs. Exhibit F is captioned "North Star Solar
13 PV Case Study--Sale-Resales Analysis," and the
14 witness purportedly relied upon and made this
15 testimony -- a part of her testimony, and the
16 objection is that somehow this testimony is
17 speculative.

18 Again, the Administrative Law Judges find
19 that the testimony stands for itself while subject to
20 cross-examination. The Attorney Examiner finds that
21 the information does appear on its face to have some
22 probative value in regard to the consideration of the
23 case.

24 The next bullet is bullet 4 which there
25 is a request to strike a portion of Exhibit G, page

1 7, the last paragraph. We note Exhibit G has a
 2 couple of pictures or depictions after the end of the
 3 text. But at page 7 the request is to strike
 4 language within that appendix that begins "Among the
 5 neighboring property owners' concerns" and continues
 6 to describe concerns relative to a hurricane event,
 7 Hurricane Dorrian, in 2019 and the wind consequences
 8 of that event and some purported damage that occurred
 9 as a result of that event. The request to strike is
 10 based on a hearsay objection.

11 The Attorney Examiner agrees with the
 12 request to strike that portion of this exhibit.
 13 The -- we would note that the information in there
 14 appears to be highly prejudicial. There are
 15 certainly questions relative to what type of solar
 16 facility is at issue, what type of equipment is at
 17 issue, how it's constructed, how it was operated.
 18 And, moreover, it's also describing a hurricane event
 19 as opposed to a tornadic event which would be more in
 20 line with what's in consideration of this case.

21 As a result, the Administrative Hearing
 22 Officer finds the information is hearsay and that its
 23 potential for prejudice far outweighs any probative
 24 value it might have been. Accordingly that part of
 25 the testimony -- or that part of the exhibit is

1 stricken.

2 Next we have a request in the fifth
3 bullet to strike page 25, lines 1 through 4, that
4 response to answer 13 references an exhibit, Exhibit
5 H, in which the witness purports to relate some real
6 estate appraisal consequences as associated with
7 environmental damage studies. In reviewing Exhibit
8 H, it's noteworthy there are numerous environmental
9 damage concerns that are referenced to include
10 groundwater contamination, animal loaders, leaking
11 underground storage tanks, cell tower and high
12 voltage transmission lines, particle emissions,
13 proximity to the regional airport, and drainage and
14 erosion.

15 The Attorney Examiner finds that the
16 report is not relevant -- or not materially relevant
17 to what's at issue in this case. The types of
18 environmental damage that are the subject of the
19 report obviously don't appear to have any great
20 bearing on the solar case at issue, and we feel it
21 would be highly prejudicial and would taint the
22 record. Accordingly page 25, lines 1 through 4, in
23 answer to 13, as well as Exhibit H are stricken from
24 the record.

25 Finally, there is a request in the last

bullet point to strike page 25, lines 5 through 7,
which discusses issues of landscaping around solar
projects in regard to property value impacts.

The Attorney Examiner finds that that
portion of the testimony including Exhibit I should
remain as part of the record in this case.

Landscaping impact of solar projects in regard to
property valuation and mitigation is certainly a
central part of this case. And the Attorney Examiner
finds that the reference to the exhibit as well as
the testimony that ensues from the exhibit is
certainly relevant and can be effectively considered
pursuant to cross-examination that would occur in
this case.

So that includes the entirety of the
request for motions to strike. If there is anything
that needs clarification, I will entertain that at
this time. Mr. Settineri?

MR. SETTINERI: Nothing to clarify, your
Honor. Appreciate the precision.

ALJ WILLIAMS: Thank you.

Mr. Van Kley?

MR. VAN KLEY: None from me, your Honor.
Thank you.

ALJ WILLIAMS: Okay. Please promote

1 Ms. Clay then.

2 MR. SCHMIDT: Ms. Clay, you've been
3 promoted. If you can enable your audio and video.

4 ALJ WILLIAMS: Good afternoon, Ms. Clay.

5 MS. CLAY: Hi. Hello.

6 ALJ WILLIAMS: Can you hear and see us?

7 THE WITNESS: Yes.

8 ALJ WILLIAMS: Fantastic. Would you
9 raise your right hand.

10 (Witness sworn.)

11 ALJ WILLIAMS: Okay. Please proceed.

12 - - -

13 MARY McCLINTON CLAY

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

16 DIRECT EXAMINATION

17 By Mr. Van Kley:

18 Q. Good afternoon, Ms. Clay.

19 A. Hello.

20 Q. Do you have a copy of your written direct
21 testimony in front of you that has been marked as
22 Citizens Exhibit 3 that contains my answers -- my
23 questions and your answers?

24 A. Yes, I do.

25 Q. Did you or someone under your supervision

1 prepare this testimony?

2 A. I did.

3 Q. Do you have any corrections that you
4 would like to make to this testimony?

5 A. Yes. On page 2, line 12, that should
6 read "and an access break," singular break.

7 On page 10, line 7, the first word on
8 line 7, that should be "a party to the hearing."

9 Q. All right. So you've struck "part of,"
10 and you've replaced it with "party to"?

11 A. "Party to."

12 MR. SETTINERI: And, Mr. Van Kley, what
13 was that page reference and edit again?

14 MR. VAN KLEY: Page 10, line 7.

15 MR. SETTINERI: All right. Mr. Van Kley,
16 the edit to the extent you have it?

17 MR. VAN KLEY: On line 7, replace "part
18 of" with "party to."

19 MR. SETTINERI: I am a little dense. Did
20 you say "page 11"?

21 MR. VAN KLEY: Page 10.

22 MR. SETTINERI: Page 10. There we go.
23 Thank you, sir.

24 MR. VAN KLEY: You're welcome.

25 Q. (By Mr. Van Kley) Ms. Clay, what's your

1 next correction?

2 A. Page 16, line 2, "northeast" should say
3 "northwest."

4 Q. All right. Proceed.

5 A. Page 25, line 1, should say "Question 31"
6 and not "32."

7 The next one is Exhibit I.

8 Q. Could you just give us a moment to find
9 Exhibit I, please.

10 Okay. Where in Exhibit I would you like
11 to make a correction?

12 A. On the second row -- page 1, second row,
13 illuminate "with 1 feet of barbed wire."

14 And on -- also in Exhibit I, the first
15 page, on line No. 6, replace "realized" with
16 "reanalyzed."

17 Q. Okay. Do you have any other corrections?

18 A. No. That's all.

19 Q. All right. Very good. Now, Ms. Clay, if
20 I asked you the questions in your testimony today
21 with the corrections you've made, would your answers
22 be the same as are written in your testimony?

23 A. Yes, sir.

24 MR. VAN KLEY: At this time, your Honor,
25 the witness is ready for cross-examination.

1 ALJ WILLIAMS: Thank you, Mr. Van Kley.
2 We'll begin with Miami Township.
3 MR. SLONE: No cross for Miami Township.
4 Thank you.
5 ALJ WILLIAMS: Greene County.
6 MR. SHAMP: No cross, your Honor.
7 ALJ WILLIAMS: Xenia Township.
8 MR. DUNN: No cross, your Honor.
9 ALJ WILLIAMS: Cedarville Township.
10 MR. BROWN: No cross, your Honor.
11 ALJ WILLIAMS: In Progress.
12 MR. HART: No cross, your Honor.
13 ALJ WILLIAMS: Tecumseh Land Trust.
14 MR. SWANEY: No cross, your Honor.
15 ALJ WILLIAMS: Farm Bureau.
16 MS. MILAM: No questions, your Honor.
17 ALJ WILLIAMS: And Staff.
18 MS. BAIR: No questions, your Honor.
19 ALJ WILLIAMS: Thank you.
20 Mr. Settineri.
21 MR. SETTINERI: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Settineri:

25 Q. Good afternoon, Ms. Clay. It's good to

1 see you again.

2 A. Hello.

3 Q. Hope you are doing well.

4 A. Fine, thank you.

5 Q. Good. Again, I represent Kingwood Solar
6 I LLC and want to ask you some questions. I am just
7 going to start where you left off on Exhibit I in
8 your direct testimony, please. And tell me when
9 you're there.

10 A. Yes.

11 Q. Okay. On the second paragraph you say
12 "In addition to my studies of McBride Place Solar,
13 Grandy Solar, and Pleinmont Solar (Spotsylvania), in
14 Exhibit G, I real -- realized three of Richard
15 Kirkland solar project matched pairs analysis. These
16 include Mulberry Solar, Simon Solar, and Candance
17 Solar." The question for you is Mulberry Solar and
18 Simon Solar, and Candance Solar, are those all
19 utility-scale solar projects that were proposed to be
20 developed in Kentucky?

21 A. No.

22 Q. Okay. I see I should have looked
23 further. We have Tennessee, Georgia, and others.
24 Okay. And so there you took Mr. Kirkland's analysis
25 for those properties and using the data came up with

1 your own analysis; is that right?

2 A. That's right.

3 Q. Okay. And the -- all three of those --
4 the analysis for all three, there was no landscaping
5 as we think of it in the analysis, but rather it was
6 based on tree stands, correct?

7 A. Let's see, it was -- do you know -- when
8 I measured them -- I can't -- let's see. You know,
9 I'm not sure if there were or there was not new
10 plantings around the -- around the solar farm. When
11 I meas -- what I measured was -- was the distance in
12 terms of woodland, you know, whatever was between the
13 solar farm and -- and the edge of the property. And
14 there could have been additional perimeter
15 landscaping. I just don't recall.

16 Q. Thank you. Ms. Clay, working backwards,
17 on the Candance Solar project that's on page 2 of
18 that exhibit in Princeton, North Carolina, that --
19 that situation involved a -- as I see here, a
20 250-foot depth of dense woodland between the dwelling
21 and the solar -- near solar panel, correct?

22 A. Yes.

23 Q. Okay. And then going back up to page --
24 the next one would be -- let's see here. Simon
25 Solar, that also involved a 100-foot mature tree

1 stand between the property line and the solar farm,
2 right? And that was as to the small agriculture
3 tract in your analysis, correct?

4 A. Yes.

5 Q. Okay. And which -- what was the -- the
6 small agricultural tract in that analysis, was that a
7 control sale property?

8 A. For Kirkland?

9 Q. For Simon Solar.

10 A. Is your question was it a control sale
11 for Kirkland?

12 Q. Yeah. Let me try it a different way and
13 let me just see here. So Simon Solar on page 1 is a
14 30 megawatt in a rural area in Social Circle,
15 Georgia, correct?

16 A. Correct.

17 Q. Now, for all three of these projects, you
18 never went out to those sites, correct?

19 A. No.

20 Q. You just utilized the data from Richard
21 Kirkland's appraisal analysis, correct?

22 A. Correct.

23 Q. Okay. And you say here in the second
24 line, "This paired sales analysis considers the
25 effect of the solar plant on a 36.86 acre tract

1 adjoining the solar plant to the south," right?

2 A. Okay. Wait. Where are you reading?

3 Q. Yeah.

4 A. Oh, I see it, the first paragraph.

5 Q. Yeah.

6 A. The first sentence of that paragraph
7 beginning with "Simon Solar."

8 Q. That's right. And then the second
9 sentence says "This paired sales analysis considers
10 the effect of the solar plant on a 36.86 acre tract
11 adjoining the solar plant to the south," correct?

12 A. Correct.

13 Q. Okay. Now, were there any woodlands
14 between that tract and the solar plant?

15 A. Yes.

16 Q. Okay. And then going to Mulberry Solar,
17 that's a 16 megawatt plant in Selmer, Tennessee, and
18 that was the sales data included two similar-sized
19 sales, a 1.7-acre tract adjoining the solar farm and
20 two 1.67 acres sold for \$20,000 that did not adjoin
21 the solar farm. Now, there on that 1.7-acre tract,
22 was there a wood lot between that tract and the solar
23 farm, do you know?

24 A. Yes. There was a -- a minimal tree
25 stand.

1 Q. Okay. And then for your -- for your --
2 and let me ask you, for that 1.7-acre tract, what
3 would you describe that as? Is that your control
4 sale?

5 A. Yes.

6 Q. Okay. And then you have two other sales,
7 two 1.67-acre tracts sold for \$28,000. How would you
8 describe those? Are those also control sales?

9 A. No. Those were -- those were test sales
10 because they didn't adjoin.

11 Q. Okay. And did those two tracts also have
12 a -- either a small woodlot or large woodlot between
13 the tracts and the solar farm?

14 A. I don't recall whether they did or not.
15 They were -- they, of course, didn't adjoin the solar
16 farm.

17 Q. All right. Okay. We can put that aside,
18 please. And so I am just going to run through some
19 questions. Next, you've received an MAI designation,
20 correct?

21 A. Correct.

22 Q. All right. And that designation means
23 that you are qualified not only for residential
24 appraisals but also for commercial appraisals,
25 correct?

1 A. Correct.

2 Q. And at page 2, answer 5 of your
3 testimony, you list your experience with before and
4 after appraisals, correct? Do you see that, and I
5 guess I will just say correct? Am I right?

6 A. Page 2, what line?

7 Q. Yeah. I will direct you to page 2,
8 answer 5 of your testimony.

9 A. Uh-huh.

10 Q. Okay? That paragraph there lists your
11 experience with before and after appraisals; is that
12 correct?

13 A. Correct.

14 Q. Okay. And before and after appraisals
15 are also known as damage studies, correct?

16 A. Correct.

17 Q. And --

18 A. Well, not -- I mean, they -- typically
19 there's some -- some difference. Yeah, I would say,
20 yes, they could be construed to be damage.

21 Q. Okay. And --

22 A. You may measure something else, you know,
23 other than damage. It doesn't nec -- I don't think
24 necessarily has to be damage. It depends on whatever
25 you are trying to extract an adjustment for.

1 Typically with regard to highway takings, there is
2 usually damage, but it doesn't necessarily have to be
3 damage.

4 Q. Okay. What is an excess property
5 appraisal?

6 A. An access or excess?

7 Q. Excess.

8 A. Excess, an excess property appraisal is
9 when you are appraising land that the highway
10 department has acquired by a condemnation process and
11 it doesn't have -- it cannot stand on its own as a
12 self-contained lot. It only has contributing value
13 to the adjoining lot.

14 ALJ WILLIAMS: Mr. Margard, your
15 microphone isn't muted. If you could mute, please.

16 MR. MARGARD: Oh, I'm so sorry. Thank
17 you.

18 Q. (By Mr. Settineri) And then what is an
19 access break study?

20 A. An access break is -- occurs when someone
21 is a -- when someone who has property on a controlled
22 access road, that does not have access that wants and
23 is eligible for access. And in order to get that
24 access, they have to pay the highway department for
25 it, and the measure of the value of the access break

1 is before and after evaluation appraising the
2 property before or without the access and after with
3 the access, and the difference between those two is
4 the contributing value of the access.

5 Q. And just jumping back to the excess
6 property appraisals, you've done two of those
7 appraisals for the state of Kentucky in your career,
8 correct?

9 A. That's correct.

10 Q. All right. And that would be referenced
11 at page 2 of your testimony, line 11, you say "In the
12 last three years, I have appraised" two -- that's my
13 word, "I have appraised excess property owned by the
14 Commonwealth," and I won't read the rest of that
15 sentence but those -- in the last three years, did
16 you do two access property appraisals for the state
17 of Kentucky?

18 A. They were done for the individuals who
19 wanted to acquire them from the state of Kentucky.

20 Q. Thank you for clarifying. All right. I
21 am going to just have you turn to your CV which is
22 Exhibit A to your testimony. Just a quick question
23 there and it's a question for you on the second page.
24 Let me know when you are there.

25 A. I'm there. I'm sorry.

1 Q. Okay. You reference under the
2 "Additional Damage Studies," I see the -- you have an
3 industrial solar -- sorry, industrial-scale solar
4 farms, and it's titled "A Summary of Solar Energy
5 Power Systems Damage Studies as of May 25, 2021"? Do
6 you see that?

7 A. Yes.

8 Q. Okay. Now, that's not a damage study,
9 correct?

10 A. That was -- that was a summary of the
11 existing body of -- of work as of that date that
12 included literature search and -- and a report of
13 other damage studies other appraisers had done, and
14 it also included damage studies that I had done.

15 Q. Okay. And that report, that was related
16 to the utility-scale solar, correct?

17 A. Correct.

18 Q. Okay. And you were hired to do that
19 study for the Clark Coalition in western Kentucky,
20 correct?

21 A. Correct.

22 Q. And the Clark Coalition is a group of
23 citizens opposed to a 5,000-acre solar farm, correct?

24 A. Correct.

25 Q. Okay. And you may have answered this in

1 part, but the study that you did for the Clark
2 Coalition consisted of doing a literature search
3 including studies that had been done that addressed
4 the issue of proximity to solar farms, and you
5 included your analysis of the North Star Solar Farm,
6 McBride Place Solar Farm in North Carolina, and the
7 Sunshine Farm study, correct?

8 A. Correct.

9 Q. Now, the three -- all three of those
10 studies are attached to your testimony; is that
11 correct?

12 A. Correct.

13 Q. And since you did that report in May of
14 2021, you've added -- done another study as well,
15 correct?

16 A. Yes.

17 Q. And is that the Spotsylvania Solar study
18 that's included in your Exhibit G?

19 A. Yes.

20 Q. Okay. Thanks. Now, you have not been to
21 the Kingwood Solar project area; is that correct?

22 A. That's not correct. I went on this past
23 Saturday.

24 Q. And -- all right. You've not been to the
25 North Star project area, correct?

1 A. Correct.

2 Q. For the four studies that are included in
3 Exhibit G of your testimony, that's the McBride Place
4 Solar study, Spotsylvania study, Sunshine Farm study,
5 the North Star study, here is the question for you,
6 for all four studies you didn't investigate whether
7 any detrimental condition existed other than the
8 viewshed, correct?

9 A. That's correct.

10 Q. All right. And for the solar farms that
11 were the subject of all four studies, for the four
12 studies, you are not aware of any detrimental
13 conditions existing other than the viewshed, correct?

14 A. That's -- that's correct at the time I
15 did the studies.

16 Q. Okay. And you didn't visit the area of
17 any of those four solar farms that were the subject
18 of your four studies, correct?

19 A. That's correct.

20 Q. Okay. You would agree with me that
21 relying solely on appraisal values for a damages
22 study is not an appropriate appraisal method?

23 A. I'm sorry. Would you say that again?

24 Q. Sure. Do you agree with me that relying
25 solely on appraisal values for a damages study is not

1 an appropriate appraisal method? And let me --

2 A. I didn't rely on appraisal values. I
3 relied on sale prices.

4 Q. Okay. And let me reframe the question.
5 You would agree with me that relying on an assessor
6 appraiser -- appraisal values for a damages study and
7 relying solely on using assessment appraiser --
8 assessment values, it is not an appropriate solar
9 damage study, correct?

10 A. Relying on assessed valuations?

11 Q. Correct.

12 A. Correct. It's not an appropriate.

13 Q. Okay. I want to turn back to Exhibit G,
14 and I just want to look through the McBride Place
15 Solar study that's on page 1. You reference there in
16 that study, third paragraph, "A time adjustment
17 derived from the Zillow Home Value Index for North
18 Carolina Single Family Market from 2014 to 2021."
19 What is the purpose of a time adjustment?

20 A. Well, if one sale occurred prior to
21 another, to bring those two sales up to equivalency,
22 one makes a time adjustment.

23 Q. All right. And so that came from Zillow
24 Home Value -- I guess that came from Zillow, right?

25 A. Yes.

1 Q. Okay. Are there other indexes other than
2 the Zillow Home Index?

3 A. Yes.

4 Q. Do you know which -- which other indexes
5 are available?

6 A. Well, there is a Case-Shiller Index,
7 Moody's Analytics, Freddie Mac, and the Federal
8 Housing Finance Agency.

9 Q. Okay. How do you decide which index to
10 use?

11 A. I used -- I used the one that was
12 available to me at the time. I was interested in
13 something that was apropos of the area so that's the
14 one that I used.

15 Q. All right. So you used the Zillow Home
16 Value in this study because it was easily accessible,
17 correct?

18 A. Yes.

19 Q. Okay. On that one I have a question
20 there, so one, two, three, four paragraphs down,
21 there's a sentence that says, let me see here, "It is
22 notable that a fourth sale, though not a sale-resale,
23 was negative 16.81 percent below its assessment at
24 the time of sale." Do you see that?

25 A. I'm sorry. What -- we are on page 4?

1 Q. No, page 1, McBride Place Solar. I'm
2 counting one, two, three, four paragraphs down.
3 There is a sentence that says "notable that a fourth
4 sale, though not a sale-resale, was negative
5 16.81 percent below its assessment at the time of
6 sale." Do you see that?

7 A. Yes.

8 Q. Okay. So now that one, that fourth sale,
9 that was information -- well, I guess what is the
10 assessment you are referencing there, let me ask that
11 question, when you say "below the assessment"?

12 A. Well, this situation was the property --
13 there was a sale that sold for \$530,000. And it did
14 not -- it did not have -- well, it was just a sale.
15 I didn't have two sales. I didn't have two
16 back-to-back sales for this situation. I did have
17 two -- a back-to-back sales for the first three. I
18 relied on the first three because they were
19 sale-resales.

20 I mentioned the fourth sale relative to
21 its assessment not to rely upon it as an indication
22 of value but as additional information which
23 supported the indicated value for the other three
24 sales.

25 Q. And let me ask you, you said indicated

1 the value of the other three sales, now --

2 A. No, no, it supported. It supported the
3 indicated value. I used it only for support.

4 Q. Okay.

5 A. I did not rely on it as a sale-resale
6 indicator of diminution of value.

7 Q. Yeah. And so your three paired sales are
8 one, two, and three in the chart that's in the next
9 page, right?

10 A. Correct.

11 Q. And if I go across, you see you had a
12 negative 15.65 percent change, a negative 15.51
13 percent for the second, and then the third sale
14 negative 16.44 percent, and then the last one, the
15 fourth one, is a negative 16.81 percent. But what
16 that is, that's a comparison between the appraised
17 value and the sale that actually occurred, right?

18 And so I just want to understand that
19 when you say you were not relying on that
20 information, and I assume the information you are
21 relying on is the negative 16.18 percent. What you
22 are saying is that supports your findings above on
23 the negative 15, negative 15, negative 16 percent.

24 A. Yes. That's correct.

25 Q. Okay. And then on the two dollars that I

1 see on the No. 4, there is a \$530,000 figure and a
2 \$637,100 figure, which one is the appraiser's
3 assessment value?

4 A. The 637.1.

5 Q. Okay. And then the 530,000 was an actual
6 sale?

7 A. Yes.

8 Q. Okay. Thank you. If you can turn to the
9 Spotsylvania study, I had a question for you there.
10 Tell me when you're there. Specifically I have a
11 question on your chart, and it's the chart titled
12 "Fawn Lake Lot Sales Spotsylvania Solar."

13 A. Yes.

14 Q. Just on your chart for comments at the
15 very bottom on the last row, far right-hand column,
16 "Comments," it says "Adjoins Solar Farm, S.Side," I
17 think it's a dash or "SV." What does that mean?

18 A. It's on the south side of Southview
19 Court.

20 Q. Okay. And let's just turn to the next
21 page. This is actually a good example here. The
22 next page is a map, and it looks like a map of a
23 subdivision and there's some numbers that have been
24 placed on certain lots. Do you see that?

25 A. Yes.

1 Q. Okay. And so the numbers on this lot
2 match up with the numbers on your chart, correct?

3 A. Correct.

4 Q. Okay. And so for No. 5, 11700 Southview
5 Court, that's shown there, it's a corner lot but
6 there is no house on it here, right?

7 A. Correct.

8 Q. Okay. And then No. 3 is also -- it's on
9 a cul-de-sac, right?

10 A. Right.

11 Q. Okay. Now let me see, did you -- in
12 terms of a paired sales analysis, No. -- you -- No. 3
13 was your control sale, right?

14 A. Well, sale number -- yes, yes, No. 3 was
15 my control sale.

16 Q. And it was a control sale because you
17 believe that was sold prior to the solar farm being
18 announced.

19 A. Correct.

20 Q. Okay. And do you know from this just
21 roughly where the solar farm was to be located in
22 reference to this subdivision?

23 A. Directly south of lots -- or sales 5 and
24 3.

25 Q. Okay. Okay. And then in terms of No. 5,

1 you would compare sale 3 to 5 because they are very
2 similar, both wooded lots that would back up to the
3 solar farm; is that right?

4 A. Correct.

5 Q. Okay. Now, let me ask you this, No. 3 is
6 in the cul-de-sac. No. 5 is a corner lot. Would
7 that factor into your appraisal at all?

8 A. No, not -- not for -- not for this
9 particular location.

10 Q. And why not?

11 A. Well, because it's -- with respect to
12 commercial lots, it makes a difference. With respect
13 to residential lots, it -- it doesn't necessarily.

14 Q. All right. So in your experience is
15 there a preference for a cul-de-sac lot versus a
16 corner lot?

17 A. Well, I think sometimes cul-de-sac lots
18 are more private. They are not on a through road.

19 Q. Okay. So that would be more preferable
20 to be on a cul-de-sac lot?

21 A. Well, not -- not necessarily, just as
22 opposed to, you know, a corner lot. There --
23 there -- there's just not that much difference.

24 Q. Okay. All right. And then does -- the
25 McBride study you did in summer of 2021, right? I'm

1 sorry. I'm in Spotsylvania. The Spotsylvania Solar
2 study you did in 2021, summer, correct?

3 A. Yes.

4 Q. Okay. Going back to page 3, line 13, of
5 your direct testimony, let's go back there. Let me
6 know when you are there.

7 A. Page 3, did you say?

8 Q. Yes, page 3, line 13. I wanted to ask
9 you about the Kentucky Siting Board solar cases.

10 A. Uh-huh.

11 Q. So starting at line 11, you say "In
12 addition, I have reviewed five 'property value impact
13 studies' submitted by developers for solar farms in
14 applications to the Kentucky Siting Board for
15 installing solar facilities." Do you see that?

16 A. Yes.

17 Q. Okay. Now, those five projects would be
18 the Horseshoe Solar project, the McCracken Solar
19 project, the Meade County Solar project, the AEUG
20 Madison Solar project, and the Seabreeze Solar
21 project, correct?

22 A. Correct.

23 Q. Okay. And Kentucky has a law that
24 requires the Kentucky Siting Board to consider
25 property values prior to approving the construction

1 and operation of a large solar facility, correct?

2 A. Correct.

3 Q. Okay. And the Kentucky Siting Board
4 hires a consultant to help it review applications for
5 solar farms, correct?

6 A. Correct.

7 Q. And do you know, the Board does that for
8 all types of generation facilities, doesn't it?

9 A. That's my understanding.

10 Q. Okay. And in all the five projects that
11 we listed -- let me ask in the five projects we
12 discussed where you reviewed the property, five
13 property value impact studies, and it's five
14 projects, five studies, you were hired by the Board's
15 consultant which was Wells Engineering, correct?

16 A. Correct.

17 Q. All right. And you were paid by Wells
18 Engineering, correct?

19 A. Correct.

20 Q. Okay. And all five of those cases Wells
21 Engineering provided a report to the Kentucky Siting
22 Board evaluating the impacts to property values,
23 correct?

24 A. Correct.

25 Q. Okay. And Wells Engineering did not

1 adopt your recommendations in any of those five case,
2 correct?

3 A. No.

4 Q. Okay. And in all five cases the Kentucky
5 Siting Board found that the solar facility will more
6 than likely not have an adverse impact on nearby
7 property values, correct?

8 A. Correct.

9 Q. Okay. So fair to say that the Board did
10 not agree with your conclusions and your reports for
11 those five projects, correct?

12 A. Well, they -- they basically, you know,
13 disregarded all my analyses. And the only ones
14 that -- the only one that they discussed was the
15 North Star Solar Farm analysis. And they
16 misrepresented that one because they criticized --
17 criticized it because of the inclusion of the
18 developer sales. Well, I specifically excluded those
19 from my analysis. So, you know, that was -- you
20 know, that was misleading.

21 Q. Okay.

22 A. And they basically came to the conclusion
23 that the fact that there was mitigating landscaping
24 in effect resulted in -- in solar facilities being
25 the scenic equivalent of the landscaping, and so they

1 concluded that there was no damage generally on -- on
2 that basis.

3 But they -- they basically disregarded
4 all of -- all of my analyses except -- except for
5 citing the North Star one which was a
6 misrepresentation of -- of the analysis.

7 Q. Yeah. Let me ask you, you believe that
8 utility scale solar farms are unsightly when placed
9 in agricultural environments; is that correct?

10 A. I -- it -- it depends on -- on the area.
11 It depends on the market. It depends on the
12 comprehensive plan. It depends on various reasons.
13 I mean, I don't -- I don't agree with that as a
14 blanket statement.

15 Q. Okay. Going back to Seabreeze Solar
16 project, the developers' consultant on that project
17 was CohnReznick; is that right?

18 A. Yes, that's correct.

19 Q. All right. Now, at the bottom of page 3
20 of your testimony, you note that you testified before
21 two planning commissions, one in Clark Township and
22 one in Hardin County.

23 A. Right.

24 Q. Okay. Was that testimony under oath?

25 A. Hardin -- Hardin County was.

1 Q. And what about Clark County?

2 A. No, I don't recall about Clark County.

3 Q. Were you subject to any questioning in
4 those meetings as part of your testimony?

5 A. Yes.

6 Q. On page 4, answer 10, let's turn there,
7 now, you list a number of cases in answer 10. Sorry.
8 Yeah, page 4, answer 10. Now, none of those cases
9 involved solar projects, correct?

10 A. That's correct.

11 Q. Now, let's go to page 5, turn there.
12 There is a question 12, "Are you familiar with the
13 impact of commercial-scale solar projects on property
14 values in the area surrounding such a project?" And
15 your answer is "Yes." Do you see that?

16 A. Yes.

17 Q. Okay. And the basis for your answer is
18 that based on the four studies attached in Exhibit G
19 of your testimony?

20 A. Wait a minute. I'm sorry. Was that
21 question 12?

22 Q. Question and answer 12.

23 A. And your response to my question was?

24 Q. Well, what I wanted to know is, you know,
25 the question is saying "Are you familiar with the

1 impact of commercial solar -- scale solar projects on
2 property values in the area surrounding such a solar
3 project," and you say "Yes." And so my -- what I
4 would like to know is the reason you say yes, is that
5 because you have done the four studies that are
6 attached in Exhibit G to your testimony?

7 A. Yes.

8 Q. Okay. At page 8 of your testimony, you
9 reference a study from the University of Rhode
10 Island, correct?

11 A. Yes.

12 Q. Okay. Let's go ahead and mark that as an
13 exhibit so we can discuss it.

14 MR. SETTINERI: Your Honor, at this time
15 I would like to mark -- we are going to pull up
16 Kingwood Exhibit 47 titled "Property Value Impacts of
17 Commercial-Scale Solar Energy in Massachusetts and
18 Rhode Island."

19 ALJ WILLIAMS: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. SETTINERI: Thank you, your Honor.

22 Q. (By Mr. Settineri) Let me know when you
23 have that up or with you.

24 A. Yes. Yes, I have it.

25 Q. Okay. Great. Can you identify what has

1 been marked as Kingwood Exhibit 37?

2 ALJ WILLIAMS: 47, sir.

3 MR. SETTINERI: 47, thank you. Good
4 ears.

5 A. This?

6 Q. Okay. Great. That's a copy of the Rhode
7 Island study you reference in your testimony,
8 correct?

9 A. Correct.

10 Q. Okay. Now, you've never spoken to the
11 authors of this study; is that correct?

12 A. No.

13 Q. Okay. If you could turn to page 5. And
14 while you are turning there, this -- this study was
15 done related to consideration of the impact on
16 property values from solar projects; is that right?

17 A. Yes.

18 Q. Okay. If you turn to page 5, I am going
19 to read a sentence for you. It's the second full
20 sentence. It starts in the middle of line 3, "The
21 results suggest that the overall negative effects of
22 solar arrays on nearby property values are driven by
23 farm and forest sites and non-rural areas (non-rural
24 is most akin to suburban, as there are very few solar
25 sites in urban areas)," and then it continuing on

1 "Solar developments on landfills and industrial areas
2 or in rural areas have smaller and statistically
3 insignificant effects on prices." Did I read that
4 correctly?

5 A. Yes.

6 Q. Okay. All right. So going -- for the
7 University of Rhode Island study, you are aware that
8 the study defined rural as a population density of
9 850 people per square mile or fewer; is that correct?

10 A. Well, not -- it's not quite correct. The
11 study defines rural area as a town with less than 850
12 people.

13 Q. And why don't I just read this into the
14 record, okay? "We define an indicator available" --
15 I'm sorry. Let me back up for the record. Let's
16 turn to page 10, Miss Clay. And if you look at page
17 10, there is a sentence in the last full paragraph,
18 right in the middle. It starts "We define an
19 indicator." Are you there?

20 A. Yes.

21 Q. Okay. "We design an indicator variable
22 Rural, which equals one if the town has a population
23 density of 850 people per square mile or fewer." Did
24 I read that correctly?

25 A. Yes.

1 Q. Okay. Now, you don't know the population
2 density in Greene County, do you?

3 A. No.

4 Q. And you don't know the population --

5 A. I'm sorry, Greene?

6 Q. Greene County.

7 A. Greene County, oh. I -- I don't -- I
8 don't recall.

9 Q. Okay. You believe -- let's see here, we
10 got that one. Turning to page 11, line 8, of your
11 testimony. Page 11, line 8, there you're discussing
12 a test sale property and I think you are discussing
13 some items from the CohnReznick report, but
14 specifically at line 8 and starting on line 7, you
15 say, "For example, the test sale property near Solar
16 Farm No. 4 (Lapeer) was located in B-2 zoning that
17 allowed high density business and says (commercial)
18 uses." Do you see that sentence?

19 A. Yes.

20 Q. Okay. And do you -- are you aware that
21 the zone -- you are aware of where the solar facility
22 is located in Lapeer, correct?

23 A. Correct.

24 Q. In fact, there are two that are very near
25 each other, correct?

1 A. Correct.

2 Q. And the zoning designation where those
3 facilities are located, that designation is a B-2*
4 designation; is that correct?

5 A. That's correct.

6 MR. SETTINERI: Okay. So, in fact, your
7 Honor, if we could just mark Kingwood Exhibit 48,
8 please.

9 ALJ WILLIAMS: Which is?

10 MR. SETTINERI: That is a -- a document,
11 a zoning chart, your Honor, for Lapeer, Michigan.

12 ALJ WILLIAMS: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Settineri) Do you have that
15 Lapeer zoning chart that's been marked as Kingwood
16 Exhibit 48 with you, Ms. Clay?

17 A. Yes.

18 Q. And looking at that, you are familiar
19 with this document, correct?

20 A. Yes.

21 Q. Okay. And so again, the solar facility
22 there for B-2* zoning designation; is that right?

23 A. Yes.

24 Q. And you see the -- the zoning district
25 table at the very bottom, it says "B-2* conditional

1 CC," right, and it looks like there is a date
2 perhaps, December 7, 2015. Do you know what the B-2*
3 conditional stands for?

4 A. Yes. The B-2 means that at such time
5 that the solar farm ceases to be, it will revert back
6 to the zoning at the time it was rezoned to D-2.

7 Q. Right. And this is something that you
8 have learned since we took your deposition last week,
9 correct?

10 A. Oh, yes.

11 Q. Okay. Let's go to page 3 of your
12 testimony, line 9. And there -- line 9 there is a
13 sentence that says "The appraisal theory and
14 methodology for studying the effects of solar farms
15 on proximate property values are the same--with the
16 only difference being the detrimental condition." Do
17 you see that?

18 A. Yes.

19 Q. Okay. And is the primary detrimental
20 condition for consideration of a study of the effects
21 of a solar farm on proximate property values is the
22 primary detrimental condition that consideration of
23 the viewshed?

24 A. That's the primary one.

25 Q. Okay. Erosion can be another; is that

1 correct?

2 A. Yes.

3 Q. And contamination can be another,
4 correct?

5 A. Yes, if it exists --

6 Q. Okay. And --

7 A. -- at the time.

8 Q. Contamination could be, you believe, from
9 GenX, G-E-N-X, which is Teflon film over the panels;
10 is that correct?

11 A. Yes.

12 Q. And another contamination could be zinc
13 from -- that you believe would come from the -- the
14 panels' galvanized steel supports and that's because
15 zinc can kill microbes; is that correct?

16 A. Yes.

17 Q. Okay. Now, you agree that just because
18 an MAI appraiser is paid for its services by their
19 client, that does not result in bias on the
20 appraiser's recommendations, correct?

21 A. That's correct.

22 Q. Okay. And you are being paid to appear
23 here today, correct?

24 A. Correct.

25 Q. Okay. Are you familiar with good

1 neighbor agreements?

2 A. Yes.

3 Q. What's your understanding of a good
4 neighbor agreement?

5 A. A good neighbor agreement is offered by
6 the solar developer to prevent the -- according to
7 the document to prevent them from objecting to -- to
8 the solar farm in any hearings or legislative
9 functions, and they also give up the right to sue the
10 developer in case of any future damage.

11 Q. Okay. And that's your general
12 understanding of what a good neighbor agreement is?

13 A. For a price they -- they pay them --

14 Q. Okay.

15 A. -- to -- to not object to the project.

16 Q. Okay. Are you aware whether Kingwood
17 Solar has offered good neighbor agreements to nearby
18 neighbors?

19 A. I -- I understand -- I've seen a document
20 that -- that they offered adjoining -- adjoining
21 owners to enter into a good neighbor agreement.

22 Q. Okay.

23 A. Whether they -- I don't know specifically
24 if -- if any individuals have entered into such an
25 agreement.

1 Q. Okay. So if Kingwood Solar had made
2 offers for good neighbor agreements to surrounding
3 property owners, that would not factor into your
4 review of whether this project will impact property
5 values, correct?

6 A. I mean, I would base -- base any decision
7 regarding diminution in value on -- on sales
8 information. However, there -- the interesting thing
9 about the one in Greene County is that the offer was
10 on a sliding scale based on proximity to the solar
11 farm. So the closer you were to the solar farm, the
12 bigger the compensation was in the agreements which
13 kind of mirrors the spectrum of damage. The closer
14 you are the higher the damage.

15 Q. Okay. So you are saying you would factor
16 that into your analysis here.

17 A. No, I wouldn't. I said it's -- it's --
18 if I view it as -- as an indication of -- of damage
19 in that when you compare the fact that their
20 appraisers have concluded that there is no damage,
21 then, you know, why are they making these offers? It
22 just -- it appears to be a tacit admission of
23 potential damage, but I would not use it in --
24 because there -- there's no indication of, you know,
25 whatever percentage diminution there is. But I -- I

1 would -- I would regard it as -- as an indication
2 that -- that there could possibly be damage or there
3 wouldn't be any sense in having them.

4 Q. Okay. So that would assist you in
5 forming your opinion in this case, correct?

6 A. No. I would -- I would base any -- any
7 decision on -- on the empirical data that I would
8 find from the market.

9 Q. Okay. And you believe that -- do you
10 believe that Kingwood Solar can determine what it
11 will pay people for good neighbor agreements on
12 its -- that is Kingwood Solar's decision to make
13 those payments as it sees fit?

14 A. Yeah. They can -- they can do anything
15 they want to do.

16 MR. SETTINERI: Okay. Let's -- one
17 minute, your Honor.

18 ALJ WILLIAMS: We will go off record.

19 (Discussion off the record.)

20 ALJ WILLIAMS: Back on the record,
21 please.

22 MR. SETTINERI: Thank you. One moment,
23 your Honor, if I can confer with counsel briefly.

24 ALJ WILLIAMS: Back off the record.

25 (Discussion off the record.)

1 ALJ WILLIAMS: Back on the record.

2 MR. SETTINERI: All right. Thank you,
3 your Honor. At this time we would like to mark
4 Kingwood Exhibit 50. It is correspondence from Mary
5 McClinton Clay dated September 3, 2021, to Senator
6 Paul Hornback.

7 Q. (By Mr. Settineri) Ms. Clay, let me know
8 when you have that exhibit in front of you.

9 ALJ WILLIAMS: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 A. I have it.

12 Q. Great. All right. Are you -- can you
13 identify what's been marked as Kingwood Exhibit 50?

14 A. I'm sorry. Could I do what?

15 Q. Can you identify what's been marked as
16 Kingwood Exhibit 50, please?

17 A. You mean? Yeah, just what it is. Yes.

18 Q. Okay. Is this a letter you wrote to
19 Senator Paul Hornback?

20 A. Yes.

21 Q. Okay. And why did you write this letter?

22 A. Well, I wrote this letter because Clark
23 Coalition, who I had done my report for, asked me to
24 send it to the Legislative Research Committee.

25 Q. Okay. And in the letter, if I look at

1 the letter, you provided a summary chart of examples
2 of diminution in property values as a result of
3 proximity to utility-scale solar farms; is that
4 right?

5 A. I'm sorry. Say that sentence again.

6 Q. Sure. You attached a summary chart to
7 this letter of examples of diminution in property
8 value as a result of proximity to utility-scale solar
9 farms; is that right?

10 A. Yes.

11 Q. Okay. All right. And, in addition, if I
12 turn the page to the second page, starting at the
13 second full paragraph, you note that solar developers
14 use neighbor agreements to limit local opposition to
15 their solar farms. Do you see that sentence?

16 A. Oh, I don't have that. I don't have that
17 page. I just have --

18 Q. Is it only one page? It should be a
19 whole letter unless I printed it wrong.

20 A. Yeah. I have -- let's see, I have the
21 first page. Oh, I'm sorry. It is -- I'm sorry.
22 Excuse me. It's only two pages of charts, right?

23 Q. Well, hold on. Let's make sure we have
24 the right one. Bear with me.

25 ALJ WILLIAMS: Miss Clay, it's a two-page

1 letter, two pages of charts, and then your CV.

2 MR. SETTINERI: Oh, good. Thank you,
3 your Honor.

4 THE WITNESS: Yeah.

5 MR. SETTINERI: Thank you, your Honor.

6 Q. (By Mr. Settineri) All right. So look at
7 the second page of your letter. All right. And you
8 will see there in the letter again the paragraph that
9 reads "Solar developers" -- or the sentence that
10 reads "Solar developers use 'Neighbor Agreements' to
11 limit local opposition to their solar farms." Do you
12 see that?

13 A. Yeah. I'm sorry. I was on the chart,
14 not the second page of the letter. Excuse me.

15 Q. That's all right.

16 A. Yes, yes, yes.

17 Q. And then you list some examples. You
18 have Western Mustang Solar agreement, Lighthouse BP
19 neighbor agreement, the Posey Solar, LLC, agreement
20 as well. Do you see that?

21 A. Yes.

22 Q. Okay. And you have a paragraph that
23 reads "These payments are significant because the
24 developers' own appraisers have determined that solar
25 farms will have no adverse impact on adjacent

1 property values. However, the payments can only be
2 interpreted as a tacit admission of value
3 impairment"; is that correct?

4 A. Correct.

5 Q. And then if I turn to the table, next
6 page, "Summary of Indicated Value Decline," do you
7 see that?

8 A. Yes.

9 Q. And you list a number of -- a couple
10 studies. And if I keep going to the second page, you
11 list other -- again, I think your studies, your four
12 studies, the North Star, McBride Place, Sunshine
13 Farms, Spotsylvania, and then you also include the
14 three good neighbor agreements, right?

15 A. Yes.

16 Q. Okay. And that's included in a table
17 that's listed as "Summary of Indicated Value
18 Decline," right?

19 A. Uh-huh, yes.

20 Q. Okay. And the Western Mustang neighbor
21 agreement row, it states "Monetary offer of 17,000 to
22 adjacent property owners to quell opposition to the
23 proposed solar facility," correct?

24 A. Correct.

25 Q. And then Posey Solar it notes that a

1 "Monitary offer equal to 10 percent of appraised
2 value for neighbors within 300 feet of the solar
3 field, plus an annual \$1,000 payment (\$35,000 for
4 project life)." Do you that?

5 A. Yes.

6 MR. SETTINERI: Okay. One moment, your
7 Honor. If I could -- I think, your Honor, I'm
8 done -- almost done, but I do need -- if I could take
9 just a brief 5-minute break off record, off video to
10 confer and go through my notes, that would be great.

11 ALJ WILLIAMS: Okay. We will go off
12 record until 4:01.

13 MR. SETTINERI: Thank you, your Honor.

14 (Recess taken.)

15 ALJ WILLIAMS: Back on the record.

16 MR. SETTINERI: Are we back on the
17 record, your Honor?

18 ALJ WILLIAMS: Yes, Mr. Settineri.

19 MR. SETTINERI: Thank you. I have no
20 further questions for Ms. Clay. Thank you.

21 ALJ WILLIAMS: Thank you.

22 Mr. Van Kley, do you need time on
23 redirect?

24 MR. VAN KLEY: I am ready to go, your
25 Honor.

1 ALJ WILLIAMS: Please proceed.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Van Kley:

5 Q. All right. Ms. Clay, I am going to ask
6 you just a few questions that will generally follow
7 the same sequence as the questions by Mr. Settineri.
8 So why don't we start with the Exhibit I of your
9 direct testimony that has been marked as Citizens
10 Exhibit 3.

11 And just as a reminder for the record,
12 this is your paper or your testimony, I guess, part
13 of your testimony on landscaping and utility-scale
14 solar projects. Have you found Exhibit I to your
15 testimony?

16 A. Yes, sir.

17 Q. Now, for purposes of your testimony --
18 I'm sorry. For purposes of your analysis in Exhibit
19 I, does it matter whether the trees located between
20 the solar facility and the test sale property is
21 composed of trees that existed prior to the solar
22 farm's construction or whether those trees were
23 planted after the solar farm construction occurred?

24 A. No, it doesn't make any difference.

25 Q. Why not?

1 A. Because it's the depth of the trees
2 regardless of when they were planted.

3 Q. Okay. And then with regard to Mulberry
4 Solar on page 1 of Exhibit I, you answered a question
5 by saying that there is a minimum -- or minimal tree
6 stand. Do you recall that?

7 A. Yes.

8 Q. And what do you mean by a minimal -- or
9 what did you mean by the -- your reference to a
10 minimal tree stand?

11 A. Well, minimal tree stand would be it was
12 just a few trees. The depth of the trees were --
13 were not such that I could readily measure it.

14 Q. Uh-huh.

15 A. Just -- it was just a few trees.

16 Q. And by just a few trees, do you mean a
17 few trees deep or a few trees wide?

18 A. Well, in terms of length and -- and
19 width, it was just a cluster of -- you know, a narrow
20 cluster of trees.

21 Q. Okay. Now, your discussion about Exhibit
22 G, you were asked whether the viewshed is the only
23 detrimental condition that you considered. Do you
24 recall that question and answer?

25 A. I'm sorry, Mr. Van Kley. Could you say

1 that again, please?

2 Q. Yeah. In connection with your discussion
3 with Mr. Settineri about Exhibit G, you stated
4 that -- that the viewshed was the only detrimental
5 condition that you consider. Do you recall that?

6 A. Yes.

7 Q. Okay. Now, when you do your paired sales
8 analyses, do you just look at the numbers for the
9 test sales and the control sales and compare them or
10 do you -- and is that the only basis on which you
11 determine whether there's an effect on property
12 values from the facility that's been evaluated, or do
13 you also add other considerations such as viewshed to
14 that analysis?

15 A. What -- what was the first part of that
16 sentence that you asked me? In addition to the
17 viewshed what?

18 Q. Yeah. Let me ask you the question again
19 because it wasn't very well worded. When you do a
20 paired sales analysis and you determine that there is
21 an effect from a specific condition such as the
22 existence of an adjacent solar farm on property
23 values, do you base that conclusion just on the
24 numbers, just on the dollars for the sales, or do you
25 add other analyses to that, to that con -- come to

1 that conclusion?

2 A. Well, I let the sales tell me what's
3 happening. I -- I find sales that are -- that adjoin
4 the solar farm or whatever detrimental condition I'm
5 looking at. And -- and then I go to an area that has
6 an identical situation with respect to the kinds of
7 houses, the age, so forth, and so on. Everything has
8 to be comparable except for the detrimental condition
9 that I'm trying to estimate.

10 And so I let -- I let the sales, you
11 know, tell me what -- what the -- what the impact is
12 dollarwise relative to the detrimental condition. I
13 mean, I don't -- I don't add anything to it other
14 than what -- what the sales indicate, if that's what
15 you mean.

16 Q. Yes, that is exactly what I was asking.
17 Now, you stated that -- scratch that.

18 All right. You were asked some questions
19 about time adjustment in your paired sales analyses,
20 and you stated that at least in one particular
21 instance you used Zillow to provide the fact for time
22 adjustment; is that right?

23 A. Yes.

24 Q. Do you consider Zillow to be an accurate
25 source of that information?

1 A. It appeared accurate. When I did North
2 Branch, I used the -- the statistician at the
3 multiple listing, did -- did two specific analyses,
4 one specifically for the county, one specifically for
5 North Branch. So I tried to get -- I tried to pick
6 the source that I know has the most accurate local
7 information. I would rather get a local source than,
8 you know, a national source.

9 Q. And why is that?

10 A. I think, you know, more accurate.

11 Q. So do you use Zillow for your time
12 adjustment factor every time you need a time
13 adjustment factor or do you --

14 A. That's the first time I've used them.

15 Q. All right. So with respect to the
16 studies that you have performed that constituted --
17 constitutes the basis for your opinions in this case,
18 how many of those studies did you use Zillow?

19 A. Just -- just that one. I try not to have
20 to use a time adjustment. I try to get the sales
21 close enough so that -- so that a time adjustment is
22 not necessary. The more adjustments you have the
23 less reliable your indication is.

24 Q. All right. You were asked some questions
25 about your work for Wells Engineering, and I have a

1 few follow-up questions there. Are you aware of any
2 information about Wells Engineering that you believe
3 provides any perspective on why Wells Engineering did
4 not accept your conclusion --

5 A. Well.

6 Q. -- conclusions?

7 A. Apparently -- well, they are an
8 engineering company, and apparently their emphasis is
9 on electrical engineering as opposed to structural
10 engineering or, you know, other forms of civil
11 engineering.

12 Q. Yeah. Do you have any information about
13 whether Wells Engineering does work for the energy
14 sector?

15 A. Well, I -- because their emphasis is on
16 electrical engineering, I would presume that that's,
17 you know, the -- one of their primary clients.

18 MR. SETTINERI: Your Honor, I would move
19 to strike that answer as pure speculation.

20 ALJ WILLIAMS: The motion is granted.
21 That part of her testimony will be stricken. The
22 answer she just gave will be stricken.

23 Q. (By Mr. Van Kley) You were asked some
24 questions about the Rhode Island study which has been
25 marked as Exhibit 27. Would you go back to

1 Exhibit 27, please.

2 A. I'm sorry, page 27?

3 Q. Exhibit 47, I'm sorry.

4 A. Oh, I'm sorry. Which letter exhibit is
5 that?

6 Q. It would not be in your testimony. It
7 was the Kingwood Exhibit 47.

8 A. Oh, I'm sorry.

9 Q. Entitled "Property Value Impacts of
10 Commercial-Scale Solar Energy in Massachusetts and
11 Rhode Island."

12 A. Oh, I'm sorry. Excuse me. Okay. I'm
13 with you.

14 Q. Right. You were asked some questions
15 about the meaning of rural, meaning of the term rural
16 as used in that document. I have some follow-up
17 questions on that.

18 A. Okay.

19 Q. Okay. So let's go back to page 10. Let
20 me know when you are there.

21 A. I'm sorry.

22 Q. Okay. You were asked about a sentence or
23 two in the second to the last paragraph on that page
24 where we have a sentence stating "We define an
25 indicator variable Rural, which equals one if the

1 town has a population density of 850 people per
2 square mile or fewer." Do you recall that?

3 A. Yes.

4 Q. Okay. And then the next sentence says
5 "We chose this cutoff because 850 is the average
6 population density of MA, which forms the bulk of the
7 observations in our dataset, and, at this cutoff,
8 almost a third of the properties and 60 percent of
9 the solar installations are classified as rural,
10 which we believe are reasonable proportions." Do you
11 see that?

12 A. Yes.

13 Q. Okay. Now, how, if at all, does this
14 definition of rural pertain to the area in Greene
15 County, Ohio, where the Kingwood Solar facility is
16 proposed to be located?

17 A. Well, I don't see that it has much
18 relationship. This study was confined to
19 Massachusetts and Rhode Island, and by the author's
20 admission Massachusetts and Rhode Island are the
21 second and third most densely populated states in the
22 country. So this definition of rural is not
23 consistent with the concept of rural and area of the
24 subject proposed solar farm.

25 Q. I believe you were directed to another

1 sentence in this document that stated something along
2 the lines of -- something along the lines of solar --
3 the existence of solar facilities in rural areas not
4 having a great effect on -- on property values, and I
5 am trying to find that. Do you recall where -- where
6 that statement occurred in this document? I thought
7 I had written it down but apparently not.

8 A. I -- sorry.

9 ALJ WILLIAMS: Let's go off the record.

10 (Discussion off the record.)

11 ALJ WILLIAMS: Back on the record.

12 Q. (By Mr. Van Kley) All right. Ms. Clay,
13 directing your attention to page 5 of Kingwood
14 Exhibit 47, I would like you to take a look at the
15 sentence that starts on the fifth line of the text on
16 that page. Do you see a sentence -- yeah, do you see
17 a sentence there that says "Solar developments on
18 landfills and industrial areas or in rural areas have
19 smaller and statistically insignificant effects on
20 prices"?

21 A. Correct. I see it.

22 Q. With regard to the conclusions in that
23 sentence pertaining to rural areas, do you believe
24 that this statement should change your opinion about
25 whether Kingwood Solar Farm would have an effect on

1 property values in Greene County, Ohio?

2 A. No, because this goes back to -- this
3 refers to the rural -- rural areas in this study and
4 which are defined by the sentence that we just talked
5 about which the rural area was defined as a town with
6 a population of 850 people per square mile. And
7 so -- so this -- this sentence doesn't apply to the
8 area you are dealing in.

9 And another thing about this sentence,
10 it -- it equates landfills and industrial areas to
11 rural areas which doesn't -- which is not a
12 reasonable assumption unless -- unless the area
13 that -- that this particular subject is -- is dealing
14 with, you know, has that equivalency and just because
15 one study has -- has a certain result doesn't mean
16 that it can be used wholesalely to another area
17 because all markets are different. Locations are
18 different. They're different expectations so -- so
19 this study is applicable only to an area comparable
20 to -- to what the study is dealing with.

21 Q. And how is that not applicable to Greene
22 County, Ohio, where the project area is?

23 A. Well, again, it's -- it's based on data
24 from the second and third most populous states in the
25 country. So inherent in that fact so -- I should say

1 so all of the results are -- are inherent in the --
 2 what's the word I am looking for? So -- so the
 3 results of the study are inherent in the environment
 4 in which the study reflects.

5 Q. Okay. Let's go back to your direct
 6 testimony, page 5. Almost done. Tell me when you
 7 are on page 5 of your testimony.

8 A. I'm there.

9 Q. All right. And with respect to your
 10 answer to question 14 which asks about whether you
 11 have any concerns with the project, with the solar
 12 project for which Kingwood Solar has requested a
 13 certificate in this case, and then your answer is,
 14 "Yes. It will likely reduce property values of
 15 surrounding properties based on the existing
 16 evidence." Do you see that question and answer?

17 A. Yes.

18 Q. Okay. Now, is this opinion that you have
 19 rendered in answer 14 based at all on your
 20 observation about any good neighbor agreements that
 21 have been proposed for Kingwood Solar?

22 A. Well, I think I was basing that -- that
 23 reply on -- mostly on my -- on the studies that I had
 24 documented depreciation -- or, I mean, diminution.

25 Q. Yeah. Well, would the existence of good

1 neighbor agreements proposed by Kingwood Solar have
2 any effect on that opinion in answer 14?

3 A. No. I would -- I would base -- I would
4 base that -- that decision on -- on the empirical
5 data. However, you know, I -- it's an indication.

6 Q. All right. So are you saying that
7 your -- your opinion in answer 14 is based on
8 compared sales analyses?

9 A. Yes, specifically the -- the four that I
10 have done.

11 MR. VAN KLEY: Okay. Very good.

12 Your Honor, I have no more questions.

13 ALJ WILLIAMS: Thank you, Mr. Van Kley.

14 Mr. Settineri, do you need time?

15 MR. SETTINERI: No, I don't. Thank you,
16 your Honor.

17 ALJ WILLIAMS: Any recross?

18 MR. SETTINERI: Thanks.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Settineri:

22 Q. Ms. Clay, Mr. Van Kley was just asking
23 you questions about question and answer 14 -- which
24 question and answer was that? 14.

25 MR. VAN KLEY: 14.

1 MR. SETTINERI: Thank you, Mr. Van Kley.

2 Q. And I believe in terms of the good
3 neighbor agreements you said -- you believe that
4 represents a tacit admission by the developer that
5 those are -- there are property value impacts; is
6 that correct?

7 A. Well, yes, because in light of the fact
8 that their own appraisers say there is no value
9 decline.

10 Q. So is that basically where there's smoke
11 there's fire?

12 A. Well, I don't know that I would
13 necessarily, you know, say that. But one -- I think
14 the question is if -- if there is no damage, why the
15 necessity to even have these things?

16 Q. So in your view, if there is a good
17 neighbor -- if there is a good neighbor agreement,
18 that is an indicator that there may be property value
19 impacts to the negative, correct?

20 A. They're -- they're compensating the
21 property owners based on the degree to -- or based
22 on, you know, proximity. And so if -- if proximity
23 wasn't an issue, then why are they paying it? And
24 why are they -- you know, why -- why are the payments
25 based on, you know, based on how close they are to

1 the solar farm?

2 Q. So is the answer to my question a yes?
3 And let me repeat the question to you to be fair. Do
4 you believe that if a good neighbor agreement exists
5 for a solar farm, that may be an indicator of
6 property value impacts?

7 A. I think it's a potential -- it's a
8 potential indication.

9 Q. Okay. You -- Mr. Van Kley asked you some
10 questions about what you consider when you are doing
11 an appraisal and specifically the detrimental
12 conditions, but in your answer you made a phrase -- a
13 comment about everything has to be comparable. Do
14 you remember -- and do you remember that answer by
15 chance?

16 A. Yes, as -- as comparable as possible.

17 Q. And when you say "comparable as
18 possible," is that in relation to the paired sales
19 that you are using?

20 A. Yes.

21 Q. Okay. And then turning to Exhibit I --
22 well, let -- I believe you were asked some questions
23 about Exhibit G and one of the sales in there. Do
24 you update any of your studies or recent sales?

25 A. When -- when I have -- well, I tried to,

1 depends on, you know, when -- what -- what the
2 circumstances are and if I have time. I mean, I try
3 to get it -- I haven't frankly had the time to update
4 these things that's on my list of things to do but.

5 Q. Okay. Have you updated them since you
6 first created the four studies that are in Exhibit G?

7 A. In the process of -- of updating the
8 Spotsylvania study.

9 Q. Okay. On the Exhibit I, the Mulberry
10 Solar project, Mr. Van Kley asked you some questions
11 about the -- I think it's even in your table there,
12 minimal tree stand that's related to the Mulberry
13 Solar lot, \$14,000 lot. And how did you -- what did
14 you use to view the site since you didn't go to the
15 site?

16 A. Oh, I used Google Earth.

17 Q. Okay. And I assume you zoomed in on
18 Google Earth into that area?

19 A. Yes.

20 Q. And you weren't able to do an exact
21 measurement of that tree stand for the Mulberry Solar
22 facility, right?

23 A. Right.

24 MR. SETTINERI: Okay. I may -- if we can
25 stay on the record or we can go off the record, your

1 Honor, I just want to consult with counsel briefly.

2 ALJ WILLIAMS: Off record, stay on
3 record, please.

4 (Discussion off the record.)

5 ALJ WILLIAMS: Back on the record.

6 MR. SETTINERI: Thank you, your Honor,
7 and Ms. Clay. We have no further questions.

8 ALJ WILLIAMS: Thank you, Ms. Clay.
9 Thank you for your time and testimony today. Have a
10 a great weekend. Be safe. Thank you.

11 THE WITNESS: Thank you.

12 ALJ WILLIAMS: All right. I will take up
13 the exhibits.

14 MR. VAN KLEY: Yes, your Honor. We move
15 Citizens Exhibit No. 3.

16 ALJ WILLIAMS: Any objection? It is
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MR. SETTINERI: Your Honor, I wasn't
20 quick enough. I held my hand. I just wanted to
21 think about one thing only and that's it. No
22 objection, your Honor.

23 ALJ WILLIAMS: Okay. That's good. I
24 already put the check on there in pen.

25 Any exhibits from Applicant?

1 MR. SETTINERI: Yes. We would --
2 Applicant would move for the admission of Kingwood
3 Exhibit 50, please.

4 ALJ WILLIAMS: Any objection?

5 MR. VAN KLEY: Let me just take a look at
6 it. I'm okay with that one.

7 ALJ WILLIAMS: That's admitted as well.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 ALJ WILLIAMS: Okay. Let's go off the
10 record.

11 (Discussion off the record.)

12 ALJ HICKS: I will hand it off to
13 Ms. Sanyal.

14 EXAMINER SANDOR: Well, I think
15 Mr. Van Kley --

16 ALJ HICKS: Oh, I'm sorry.

17 MS. SANYAL: -- may have to do the
18 preliminaries.

19 ALJ HICKS: To be continued.

20 MS. SANYAL: I mean, if you would like me
21 to, I would love it.

22 ALJ HICKS: I am just skipping ahead a
23 few steps. I will instead hand it to Mr. Van Kley.

24 MR. VAN KLEY: All right. Our next
25 witness will be Angie Hanna.

1 ALJ HICKS: I can see you. Hopefully you
2 can hear me.

3 THE WITNESS: I hear you. Happy Friday,
4 everyone.

5 ALJ HICKS: Same to you. Can you raise
6 your right hand, please.

7 (Witness sworn.)

8 ALJ HICKS: Thank you.

9 Go ahead, Mr. Van Kley.

10 MR. VAN KLEY: All right. Thank you.

11 - - -

12 ANGIE HANNA

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

15 DIRECT EXAMINATION

16 By Mr. Van Kley:

17 Q. Would you state your name for the record
18 and spell your first name and your last name, please.

19 A. Okay. My name is Angie Hanna, A-N-G-I-E
20 H-A-N-N-A.

21 Q. Do you have in front of you a copy of
22 your written direct testimony that has been marked as
23 Citizens Exhibit 6?

24 A. I do.

25 Q. Did you or someone under your supervision

1 prepare this testimony?

2 A. Yes.

3 Q. Do you have any corrections to make to
4 this testimony?

5 A. I do have some corrections.

6 Q. All right. Would you lead us through
7 those corrections starting with the identification of
8 the page and then the line numbers for the first
9 correction.

10 A. Okay. And first one is page 20, line 15.

11 Q. Okay. I think you might be -- yeah.

12 Ms. Hanna, we are not looking for corrections to your
13 deposition.

14 A. Okay.

15 Q. Yeah. It's your direct testimony,
16 uh-huh.

17 A. So then I have no corrections.

18 Q. Okay. Great. All right. If I asked you
19 the questions in your testimony today, would your
20 answers be the same as are written in your testimony?

21 A. Yes.

22 MR. VAN KLEY: Okay. At this time, your
23 Honor, Ms. Hanna is ready for cross-examination.

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

25 Go down the list here. Start with Miami

1 Township.

2 MR. SLONE: No cross for this witness.

3 Thank you.

4 ALJ HICKS: Greene County Board of
5 Commissioners.

6 MR. SHAMP: No cross, your Honor.

7 ALJ HICKS: Xenia Township.

8 MR. DUNN: No cross, your Honor.

9 ALJ HICKS: Cedarville Township.

10 MR. BROWN: No cross, your Honor.

11 ALJ HICKS: In Progress. I think I know
12 the answer, but you are muted, Mr. Hart.

13 MR. HART: No cross, your Honor. Thank
14 you.

15 ALJ HICKS: Thank you.

16 Tecumseh.

17 MR. SWANEY: No cross, your Honor. Thank
18 you.

19 ALJ HICKS: Now I will turn it over to
20 Ms. Sanyal.

21 MS. SANYAL: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Sanyal:

25 Q. Good afternoon, Ms. Hanna. Thank you for

1 patiently waiting your turn.

2 A. Yes.

3 Q. Happy Friday to you too.

4 A. Thank you.

5 Q. So I will try to keep this brief. You
6 heard about the Kingwood Solar project in 2017 or
7 2018, correct?

8 A. Correct.

9 Q. Okay. And you're a member of Citizens
10 for Greene Acres, correct?

11 A. I am.

12 Q. Okay. And you've been a member of
13 Citizens for Greene Acres since 2019, correct?

14 A. Correct.

15 Q. And you oppose the project, correct?

16 A. Correct.

17 Q. And as long as the project is proposed in
18 Greene County, you will oppose the project, correct?

19 A. Correct.

20 Q. And other members of Citizens for Greene
21 Acres are also opposed to the project?

22 A. Yes, they are.

23 Q. Okay. You live at 3251 Wilberforce
24 Clifton Road in Cedarville, Ohio, correct?

25 A. Correct.

1 Q. Okay. And in July of 2021, you purchased
2 a rental property located adjacent to your property?

3 A. Correct.

4 Q. Okay. And the address of the rental
5 property is 3265 Wilberforce Clifton Road, correct?

6 A. That's right.

7 Q. Okay. And to clarify, you purchased that
8 rental property after you knew about the Kingwood
9 Solar project, correct?

10 A. We did.

11 Q. Ms. Hanna, I think we had a deposition
12 last week. It's been -- it feels like a long time,
13 but I think it was last week.

14 A. Yes.

15 Q. And you mentioned that you purchased the
16 rental property because you needed driveway access to
17 Wilberforce Clifton Road, correct?

18 A. That is correct.

19 Q. Okay. And then do you remember that
20 during that deposition I showed you a copy of an
21 easement?

22 A. Yes.

23 Q. And after the deposition, have you looked
24 at that easement again or conducted any additional
25 research?

1 A. Yes, I have looked at the easement. I
2 looked at the easement map that was provided. I did
3 talk with my husband Jed about it. We did talk with
4 our private lawyer about it too. And upon further
5 review, it is -- it is as I suspected. It is
6 100 feet -- 115 feet southwest of 3251's current
7 access. It's a nonfunctional easement. It goes
8 through wooded area. There's no laneway. And we
9 wish to make the current lane -- lane access we have
10 for 3251, we want to have that surveyed off and
11 officially belong to 3251 is our goal.

12 Q. Okay. Thank you for that clarification.

13 A. Uh-huh. Thank you.

14 Q. And then just a few more questions. Have
15 you reviewed the application in this proceeding?

16 A. Yes, I have.

17 Q. Okay. And specifically in that
18 application, have you reviewed that landscape plan?

19 A. I have looked through it.

20 Q. Okay. And would you agree with me that
21 Kingwood Solar has proposed screening around your
22 property?

23 A. Yes, they have proposed light screening.

24 Q. Okay. And have you reviewed the Joint
25 Stipulation filed in this proceeding?

1 A. Yes, I have looked at it.

2 Q. Okay. And would you agree that in that
3 Joint Stipulation Kingwood has committed to increase
4 setbacks?

5 A. They did state that, although I believe
6 that is preliminary and subject to change.

7 Q. Okay. And then would you also agree that
8 the Applicant has committed to landscape screening
9 also in the Joint Stipulation?

10 A. Yes, they did, and I -- it was still to
11 light screening --

12 Q. Okay.

13 A. -- around my property.

14 Q. And do you agree that preserving
15 agricultural farmland is in the public interest?

16 A. Yes, I do.

17 MS. SANYAL: Your Honor, may I just have
18 one moment to confer with co-counsel? I will stay on
19 video.

20 ALJ HICKS: Sure. Go off the record.

21 (Discussion off the record.)

22 ALJ HICKS: We will go back on the
23 record.

24 MS. SANYAL: Your Honor, I do not have
25 any more questions for Ms. Hanna.

1 ALJ HICKS: Thank you, Ms. Sanyal.

2 Any cross from Board Staff?

3 MS. BAIR: No cross from Board Staff.

4 Thank you.

5 ALJ HICKS: Thank you.

6 Mr. Van Kley, any redirect?

7 MR. VAN KLEY: Just one or two, your
8 Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Van Kley:

12 Q. Ms. Hanna, if -- if you and your husband
13 knew about the Kingwood Solar project being proposed
14 for the area before you purchased the rental
15 property, why did you purchase that property?

16 A. We purchased that property because our
17 lane access -- our current lane access runs and
18 belongs to the property of 3265, and we wanted to
19 have ownership of our lane access in case we needed
20 to here in the future sell our home at 3251 and 3265.

21 Q. Sure. And why are you planning ahead for
22 a possible sale of those properties?

23 A. Yes. Should the -- should Kingwood Solar
24 project be approved and come in, we no longer wish to
25 live here, and we would want to try to sell our home,

1 if that would even be possible.

2 MR. VAN KLEY: Okay. Very good. I have
3 nothing further, your Honor.

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

5 Ms. Sanyal, any recross?

6 MS. SANYAL: No, your Honor.

7 ALJ HICKS: Okay. Ms. Hanna, we thank
8 you for hanging in on a Friday afternoon.

9 THE WITNESS: Okay. Thank you. You guys
10 have a great weekend.

11 ALJ HICKS: Have a great weekend.

12 THE WITNESS: You too.

13 ALJ HICKS: We can take up the exhibit.

14 MR. VAN KLEY: Yes. We would move the
15 admission of Citizens Exhibit 6.

16 ALJ HICKS: Any objections to the
17 admission of Citizens Exhibit 6?

18 Hearing none, it is admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 ALJ HICKS: All right. Now we've got
21 some momentum. Mr. Van Kley.

22 MR. VAN KLEY: All right. Next, we'll
23 call Nicholas Pitstick.

24 MR. SCHMIDT: Mr. Pitstick, you have been
25 promoted. If you can enable your audio and video.

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1 ALJ HICKS: There we go.

2 MR. PITSTICK: Can you hear me?

3 ALJ HICKS: I can see and hear you. If
4 you can just raise your right hand.

5 (Witness sworn.)

6 ALJ HICKS: Okay. All right. Thank you.
7 Please go ahead, Mr. Van Kley.

8 MR. VAN KLEY: All right.

9 - - -

10 NICHOLAS PITSTICK

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

13 DIRECT EXAMINATION

14 By Mr. Van Kley:

15 Q. Would you state your first and last name
16 for the record and spell both.

17 A. Nicholas Pitstick, N-I-C-H-O-L-A-S
18 P-I-T-S-T-I-C-K.

19 Q. Do you have in front of you a copy of
20 your written direct testimony that has been marked as
21 Citizens Exhibit 11?

22 A. Yes.

23 Q. Did you or someone under your supervision
24 prepare this testimony?

25 A. Yes.

1 Q. Do you have any corrections to make to
2 this testimony?

3 A. No, I do not.

4 Q. If I asked you the questions in your
5 testimony today, would your answers be the same as
6 are written in your testimony?

7 A. Yes.

8 MR. VAN KLEY: Okay. At this time, your
9 Honor, Mr. Pitstick is ready for cross-examination.

10 ALJ HICKS: Thank you, Mr. Van Kley.
11 We will go first to Miami Township.

12 MR. SLONE: No cross. Thank you.

13 ALJ HICKS: Greene County Board of
14 Commissioners.

15 MR. SHAMP: No cross, your Honor.

16 ALJ HICKS: Xenia Township.

17 MR. WATKINS: No cross, your Honor.

18 ALJ HICKS: Cedarville Township.

19 MR. BROWN: No cross, your Honor.

20 ALJ HICKS: In Progress.

21 MR. HART: No cross, your Honor.

22 ALJ HICKS: Thank you.

23 Tecumseh.

24 MR. SWANEY: No cross, your Honor. Thank
25 you.

1 ALJ HICKS: Ohio Farm Bureau Federation.

2 MS. MILAM: No cross, your Honor. Thank
3 you.

4 ALJ HICKS: I will turn it over to the
5 Applicant. I am not sure who's handling this one.

6 MR. MORSE: I am taking this one, your
7 Honor.

8 ALJ HICKS: Okay.

9 MR. MORSE: We have got a few questions.

10 ALJ HICKS: I will hand it over to
11 Mr. Morse.

12 MR. MORSE: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Morse:

16 Q. Good afternoon, Mr. Pitstick.

17 A. Good afternoon.

18 Q. You are a member of Citizens for Greene
19 Acres, correct?

20 A. Correct.

21 Q. And your wife is also a member of
22 Citizens for Greene Acres?

23 A. Yes.

24 Q. And you've been a member of Citizens for
25 Greene Acres since January of 2021; is that correct?

1 A. Yes.

2 Q. Okay. All right. Mr. Pitstick, you
3 visited the Hillcrest Solar facility; is that
4 correct?

5 A. I did.

6 Q. Okay. Are you aware who the developer
7 for the Hillcrest Solar facility is?

8 A. No, sir, I'm not.

9 Q. Okay. Do you have any reason to believe
10 that Kingwood Solar is the developer for the
11 Hillcrest Solar facility?

12 A. No.

13 Q. Do you have any reason to believe that a
14 different affiliate of Vesper is a developer for the
15 Hillcrest Solar facility?

16 A. No, not to my knowledge.

17 Q. And, Mr. Pitstick, when you visited the
18 Hillcrest Solar facility, were portions of the
19 facility still under construction?

20 A. Yes.

21 Q. And isn't it true that when you visited
22 the Hillcrest Solar facility, you never got out of
23 your car?

24 A. That is true.

25 Q. And isn't it true that when you visited

1 the Hillcrest Solar facility and stayed in your car,
2 you were never closer than 20 feet -- 25 feet away
3 from the project fence line?

4 A. I believe that was in my deposition, yes.

5 Q. And you don't consider yourself to be an
6 expert at identifying grass or weeds, do you?

7 A. I do not.

8 Q. Okay. And, Mr. Pitstick, have you
9 reviewed the application that's been filed in this
10 proceeding?

11 A. Briefly.

12 Q. Okay. Are you aware that in the
13 application the Applicant included proposed
14 screening?

15 A. I saw what was proposed at the June
16 meeting at the Greene County Fairgrounds.

17 Q. Okay. But you haven't reviewed that
18 screening, the plan for screening, that's been filed
19 in this case in detail, have you?

20 A. I have not.

21 Q. Okay. And have you reviewed the Joint
22 Stipulation and Recommendation as to the certificate
23 conditions which was filed in this proceeding?

24 A. I have not.

25 MR. MORSE: If you will give me just a

1 moment to confer with co-counsel.

2 THE WITNESS: Okay.

3 ALJ HICKS: Sure. We will go off the
4 record.

5 (Discussion off the record.)

6 ALJ HICKS: We will go back on the record
7 now.

8 MR. MORSE: Okay. I didn't mean to make
9 the same mistake Ms. Sanyal made. We have no further
10 questions, your Honor.

11 ALJ HICKS: Thank you.

12 Any cross from Board Staff?

13 MS. BAIR: No, none, your Honor. Thank
14 you.

15 ALJ HICKS: Thank you.

16 Mr. Van Kley, any redirect?

17 MR. VAN KLEY: Yes, your Honor.

18 ALJ HICKS: Please go ahead.

19 MR. VAN KLEY: All right.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Van Kley:

23 Q. With respect to how far away you were
24 from Hillcrest when you observed the Hillcrest
25 facility from your car, was the car stopped when you

1 made those observations?

2 A. Yes, it was.

3 Q. Were you looking out the window at the
4 Hillcrest facility?

5 A. Yes. Both me and my wife were.

6 Q. And how -- did you make more than one
7 stop to look at the facility?

8 A. Yes. To the best of my knowledge, we
9 stopped half a dozen times.

10 Q. Did you get a good view of the Hillcrest
11 facility along the fence line?

12 A. We did. We saw both the finished panels
13 and the panels that were -- or the area that was
14 under construction.

15 Q. Did you get a good look at the vegetation
16 along the fence of the Hillcrest facility?

17 A. Yeah. We were -- we were concerned with
18 the -- with the screening so we -- we -- we viewed
19 the fence at the finished area, and they had some
20 small taxus-type bushes planted every 25 to 35 feet
21 maybe two or three at a time. And then in between
22 that was where I saw the what I was contend was
23 foxtail and tall grasses and marestalk weeds.

24 Q. Do you have any -- any experience in your
25 background that would enable you to identify those

1 weeds?

2 A. Yes. I grew up on a farm until I
3 probably moved out when I was 20 years old. We
4 bailed hay for our dairy herd. We grew timothy and
5 then we also raised row crops, soybeans and corn,
6 which we eradicated those other weeds such as foxtail
7 and marestail and noxious weeds.

8 Q. And you were as close as 25 feet from the
9 fence where you saw those weeds?

10 A. Yes; yes, sir.

11 MR. VAN KLEY: All right. I have no more
12 questions, your Honor.

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

14 Mr. Morse, anything on recross?

15 MR. MORSE: No further questions, your
16 Honor. Thank you.

17 ALJ HICKS: Okay. Thank you. Thank you
18 for your time, Mr. Pitstick. Have a nice weekend.

19 THE WITNESS: You too. Thank you.

20 ALJ HICKS: Mr. Van Kley.

21 MR. VAN KLEY: Sorry. I would move for
22 the admission of Citizens Exhibit 11.

23 ALJ HICKS: Any objection to the
24 admission of Citizens Exhibit 11?

25 Hearing none, it is admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 ALJ HICKS: So let's go off the record
3 for just a second.

4 (Discussion off the record.)

5 ALJ HICKS: Let's go ahead and go back on
6 the record.

7 Mr. Van Kley.

8 MR. VAN KLEY: Yes. We call James Joseph
9 Krajicek.

10 MR. SCHMIDT: Mr. Krajicek, you have been
11 promoted. If you can enable your audio and video.

12 MR. KRAJICEK: Am I on?

13 ALJ WILLIAMS: Your kitchen is.

14 MR. KRAJICEK: My kitchen.

15 ALJ HICKS: You might need to reverse a
16 camera maybe.

17 MR. VAN KLEY: I think that's Terry
18 Fife's kitchen, isn't it, Joe?

19 MR. KRAJICEK: No. I am here at my
20 house.

21 MR. VAN KLEY: Oh, you are. Okay. All
22 right.

23 MR. MARGARD: You can put in a kitchen
24 sink joke.

25 ALJ HICKS: There I can see you.

1 MR. KRAJICEK: Thank you.

2 ALJ HICKS: I can hear you as well, so
3 we're good. Could you please raise your right hand.

4 (Witness sworn.)

5 ALJ HICKS: Okay. Please go ahead,
6 Mr. Van Kley.

7 MR. VAN KLEY: All right.

8 - - -

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

12 DIRECT EXAMINATION

13 By Mr. Van Kley:

14 Q. Would you state your full name and spell
15 your last name, please.

16 A. James J. Krajicek, K-R-A-J-I-C-E-K.

17 Q. Do you have in front of you a copy of
18 your written direct testimony that has been marked as
19 Citizens Exhibit 8?

20 A. Yes, sir, I do.

21 Q. Did you or someone under your supervision
22 prepare this testimony?

23 A. Yes.

24 Q. Do you have any corrections to make to
25 this testimony?

1 A. One slight one. On page 7, line 13, I
2 would like to take out "2016 and."

3 Q. Do you have any other corrections to
4 make?

5 A. No, sir.

6 Q. All right. If I asked you the questions
7 in your testimony today, would your answers be the
8 same as are written in your testimony?

9 A. Yes, they would.

10 MR. VAN KLEY: Okay. At this time, your
11 Honor, Mr. Krajicek is ready for cross-examination.

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

13 We will go first to Miami Township.

14 MR. SLONE: No questions. Thank you.

15 ALJ HICKS: Greene County Board of
16 Commissioners.

17 MR. SHAMP: No questions, your Honor.

18 ALJ HICKS: Xenia Township.

19 MR. WATSON: No questions, your Honor.

20 ALJ HICKS: Cedarville Township.

21 MR. BROWN: No questions, your Honor.

22 ALJ HICKS: In Progress.

23 MR. HART: No questions, your Honor.

24 Thank you.

25 ALJ HICKS: Tecumseh.

1 MR. SWANEY: No questions, your Honor.

2 Thank you.

3 ALJ HICKS: Ohio Farm Bureau Federation.

4 MS. MILAM: No questions, your Honor.

5 ALJ HICKS: Okay. Then I will turn it
6 over to the Applicant and Mr. Stock.

7 MR. STOCK: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Stock:

11 Q. Mr. Krajicek, would you please state your
12 full name and address for the record.

13 A. James J. Krajicek, 2369 Tarbox-Cemetery
14 Road, Cedarville, Ohio 45314.

15 Q. Mr. Krajicek, your primary occupation is
16 farming, correct?

17 A. Primary, yes.

18 Q. You own 10 different properties in Greene
19 County; is that correct?

20 A. Yes. I believe that's what we came up
21 with the other day.

22 Q. You own those properties through a trust,
23 correct?

24 A. Correct.

25 Q. And what is the name of that trust?

1 A. Krajicek Farms, Family Farms.

2 Q. You and your wife are the beneficiaries
3 of that trust; is that correct?

4 A. Correct.

5 Q. And you and your wife are also the
6 trustees of that trust; is that correct?

7 A. Correct.

8 Q. Your wife is a Trustee of Cedarville
9 Township, correct?

10 A. Yes, sir. Yes, correct.

11 Q. And your wife's held that position since
12 2016?

13 A. Actually -- well, she became a Trustee in
14 a long process. She was voted in in 2012 as the
15 Fiscal Officer for the Township. Then she got
16 reelected for that a second term in '16. And how she
17 became a Trustee was one of the Trustees that was
18 presently sitting on as a Trustee resigned halfway
19 through his term and she became a Trustee, Appointed
20 Trustee, on May 31, 2019.

21 ALJ HICKS: Can we stop for just -- I
22 don't know, a part -- did you get all that, Karen?
23 The beginning of the answer got garbled for me.

24 COURT REPORTER: I believe I did.

25 ALJ HICKS: Okay. It might just be the

1 Commission internet. Sorry, Mr. Stock.

2 THE WITNESS: It's snowing here. My
3 connection is not the greatest.

4 ALJ HICKS: Understood. I wanted to make
5 sure our court reporter got it.

6 THE WITNESS: Okay.

7 Q. (By Mr. Stock) Mr. Krajicek, was your
8 wife ever elected to the Trustee position?

9 A. She was. When she finished serving out
10 that filled term, she was reelected into that
11 position.

12 Q. Do you recall what year that was?

13 A. Let's see, it would be 2000 -- I believe
14 it was '21, 2021.

15 Q. Mr. Krajicek, I take it you are familiar
16 with the Kingwood Solar project?

17 A. I am.

18 Q. Was the Kingwood Solar project an issue
19 in your wife's election for Trustee?

20 A. Not at all.

21 Q. Did your wife take a position on the
22 Kingwood Solar project?

23 A. We all take positions but, no. She's
24 remained as neutral as possible.

25 Q. So she doesn't have a view on the

1 Kingwood Solar project?

2 A. Not through her -- through us. Whether
3 she has a position as a Trustee, that's another case.

4 Q. Do you know if she has expressed an
5 opinion as a Trustee on it?

6 A. I know that the Trustees have passed a
7 resolution opposing the project.

8 Q. Mr. Krajicek, you mentioned earlier you
9 own 10 properties in Greene County. Of the 10
10 properties that you own, you've identified in your
11 testimony 2 of those properties as being adjacent to
12 the Kingwood Solar project site; is that correct?

13 A. Yes, it is correct.

14 Q. Your house is not located on one of the
15 adjacent properties, is it?

16 A. Not my personal residence, no.

17 Q. And your house is located at the address
18 you identified earlier, 2069 Tarbox-Cemetery Road,
19 correct?

20 A. Correct.

21 Q. And the distance from your house to the
22 proposed Kingwood Solar project is at least a mile
23 and a half, correct?

24 A. Mile -- between a mile, mile and a half.

25 Q. Mr. Krajicek, you are not able to see the

1 location of the proposed Kingwood project from your
2 house, are you?

3 A. No, not my personal house, no.

4 Q. Mr. Krajicek, I take it you are familiar
5 with Citizens for Greene Acres?

6 A. Absolutely.

7 Q. You are the Vice President of Citizens
8 for Greene Acres?

9 A. Yes, sir.

10 Q. You are also one of the four Directors of
11 Citizens for Greene Acres?

12 A. Yes, sir.

13 Q. And you're also a Founder of Citizens for
14 Greene Acres?

15 A. I was a participant of that and proud of
16 it.

17 Q. Do you understand that Citizens for
18 Greene Acres has intervened in this case?

19 A. Absolutely.

20 Q. And are you also an Intervenor in this
21 case?

22 A. I would say I am, yes.

23 Q. Is your trust also an Intervenor?

24 A. I would say I'm not at -- I have no clue
25 if that would be the case or not. That -- the trust

1 is me, so I am assuming that if that's what you are
2 meaning.

3 Q. Mr. Krajicek, you've been aware of the
4 Kingwood Solar project since 2016; is that correct?

5 A. When I changed my date on my direct
6 testimony, I looked back at some of the things that I
7 had in my phone and stuff, and I realized it was
8 actually 20 -- early 2017. I originally said late
9 '16, early '17, but it was more of the 20 -- early
10 2017.

11 Q. Okay.

12 A. We have had -- we had people come to
13 drill gas, multiple people soliciting to do things
14 here in our area, and that's probably what I was
15 confused with.

16 Q. All right. Just to -- just to clear it
17 up, Mr. Krajicek, you've been aware of the Kingwood
18 Solar project since early 2017; is that correct?

19 A. Early 2017.

20 Q. You became aware of the Kingwood Solar
21 project when you were contacted by a Kingwood Solar
22 representative?

23 A. Yes.

24 Q. And you've had discussions about the
25 project with representatives of Kingwood Solar since

1 2017?

2 A. I have had several conversations.

3 Q. Through those communications you
4 understood that Kingwood Solar wanted to lease one of
5 your properties, correct?

6 A. Correct.

7 Q. And you decided not to lease any property
8 to Kingwood Solar; is that correct?

9 A. That's correct.

10 Q. After 2017, Kingwood Solar continued to
11 communicate with you regarding the project; is that
12 right?

13 A. They communicated with me, and I
14 communicated with them.

15 Q. You received letters from Kingwood Solar?

16 A. Yes.

17 Q. And you also spoke with Kingwood Solar
18 representatives after 2017?

19 A. Yes.

20 Q. The last time you spoke with someone from
21 Kingwood Solar about the project was in 2021,
22 correct?

23 A. Yes.

24 Q. And, Mr. Krajicek, you oppose the
25 Kingwood Solar project, correct?

1 A. Definitely do.

2 Q. And you've been opposed to the Kingwood
3 Solar project since the beginning of 2017?

4 A. I have.

5 Q. I would like to go back to your testimony
6 in which you identified two properties being adjacent
7 to the proposed Kingwood Solar project. Can you
8 identify the street address or approximate location
9 of the two properties you identified in your
10 testimony as being adjacent to the proposed project
11 site?

12 A. The one would be a 47-acre property on
13 Larkins Road which would be in what we consider the
14 eastern quadrant of the project area. And the other
15 property is a 6-1/2-acre property that I purchased
16 the last few years on Bradfute Road which when we
17 bought was not part of what we -- I had realized had
18 been represented -- represented as the original
19 footprint of the project.

20 Q. The property on Larkins Road is a 47-acre
21 property, correct?

22 A. It is.

23 Q. And you use the Larkin Road property
24 entirely for farming?

25 A. Yes, uh-huh.

1 Q. There is no house on the Larkins Road
2 property, correct?

3 A. I have a potential house. I already have
4 electric ran there and a well drilled there. It was
5 purchased in case one of my grandchildren wanted to
6 build there when they reached that point in their
7 life.

8 Q. Just so I understand, what do you mean by
9 potential house?

10 A. It has a woods on it so there's the lane
11 that goes back to the woods and that was one of the
12 reasons we had bought the place is because I don't
13 like taking tillable acres out for anything, homes,
14 if at all possible. I understand that it has to be
15 done on certain occasions, but I believe that if
16 there is an opportunity to build on non-tillable
17 acres, I will take that.

18 Q. So are you describing as a homesite, that
19 could -- could have a house built on it; is that what
20 you are saying?

21 A. I'm saying there's -- part of the
22 property has that potential to have a house on it.
23 And though 46 acres are -- actually be about 44 acres
24 of it would remain the tillable acres that are there.

25 Q. But there's no house currently on the

1 property, is there?

2 A. There is no house currently there.

3 Q. And no one currently lives there?

4 A. No one currently lives there.

5 Q. The other property you described as being
6 adjacent to the proposed Kingwood Solar project is on
7 Bradfute Road, correct?

8 A. Correct.

9 Q. And the property on Bradfute Road is the
10 6.5-acre property?

11 A. Correct.

12 Q. There are vacant structures on the
13 Bradfute Road property; is that correct?

14 A. That's correct.

15 Q. And no one currently lives on the
16 Bradfute Road property?

17 A. No, sir.

18 Q. And no one has lived on the Bradfute Road
19 property during the time you have owned it?

20 A. Not during the time that I have owned it,
21 no.

22 Q. You acquired the property on Bradfute
23 Road in 2019, correct?

24 A. Correct.

25 Q. At the time you bought the property on

1 Bradfute Road, you understood Kingwood Solar still
2 planned to go ahead with the proposed solar project?

3 A. Yes. And again, the proposed project
4 after communicating those several conversations I
5 mentioned to you with the project managers and with
6 the leaseholders that had been recorded at the
7 courthouse and conversations I had with all the
8 farmers in the area that were signing it, it was
9 evident that they were going to -- they were trying
10 anyway to stay along Clifton Road and had no
11 indication that they were going to go -- put an
12 underground easement in because they -- the original
13 goal was unobtainable.

14 Q. No one from Kingwood Solar ever told you
15 the project had been abandoned, did they?

16 A. No one ever said the project had been
17 abandoned, but they did -- it was -- you know, they
18 were finding it difficult to make headway at a
19 certain point.

20 MR. STOCK: Your Honor, if you could give
21 me a minute just to confer with my other counsel.

22 ALJ HICKS: Sure. We will go off the
23 record.

24 (Discussion off the record.)

25 MR. STOCK: No further questions.

1 ALJ HICKS: Any cross from Board Staff?

2 MS. BAIR: No cross. Thank you.

3 ALJ HICKS: All right. Mr. Van Kley, any
4 redirect?

5 MR. VAN KLEY: Yes, I do.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Van Kley:

9 Q. Mr. Krajicek, would you go back to your
10 testimony that's been marked as Citizens Exhibit 8.

11 A. I have A, B, C, D. What one did you
12 want?

13 Q. Exhibit 8, in other words, I want to look
14 at your first page of your direct testimony.

15 A. Oh, okay.

16 Q. All right. Do you see the name of your
17 trust in the title of that document?

18 A. Yes, Krajicek Family Trust.

19 Q. All right. And does that indicate that
20 the trust is an Intervenor in this case?

21 A. Yes.

22 Q. Okay. Then with respect -- let's also go
23 then to answer 29 in your testimony which is on page
24 6. You were asked -- yeah, you were asked some
25 questions about whether anybody lives in -- on your

1 property on Bradfute. Directing your attention to
2 answer 29, is that the Bradfute property that you are
3 describing when you answered that question?

4 A. Yes, that is.

5 Q. All right. And what is there right now?

6 A. There is an 1809 historical home. There
7 is a unique gainery there that handled grain back in
8 the day in the early '50s and '60s that was built.
9 We put down a post and beam barn, dismantled it for
10 repairs and restoration. And we have it in storage
11 ready to put back there after we -- you know, we find
12 out whether this project will be successful or not.

13 Q. All right. And you answered some
14 questions about why you purchased this property when
15 you knew that Kingwood Solar was planning or at least
16 was attempting at that time to put in a solar
17 facility. And you indicated in one of your answers
18 that the indications that you got were that the
19 project was planned for the Clifton Road area.

20 MR. STOCK: I am going to object. I
21 don't think I asked him why he decided to do that.
22 He may have filled in an answer, but I didn't ask
23 that.

24 MR. VAN KLEY: All right. I will
25 rephrase the question.

1 Q. (By Mr. Van Kley) In one of your answers
2 to Mr. Stock's questions, you indicated that based on
3 conversations you had with the solar developer and
4 some farmers in the area, you thought that the
5 project would be planned only for the area in the --
6 along Clifton Road. Do you recall that testimony?

7 A. Yeah, I do.

8 Q. Uh-huh. Where is that Clifton Road area
9 in relation to your Bradfute property?

10 A. It would be at least a mile and a half to
11 2 miles.

12 Q. All right. And at the time that -- I'm
13 sorry.

14 A. It would be north -- it would be north of
15 that particular property about 2 miles.

16 Q. All right. At the time that you
17 purchased the Bradfute property, did you have any
18 indications from anybody or anything of any plans by
19 Kingwood Solar to place part of its project near the
20 Bradfute property that you purchased?

21 A. No, not at all. We actually started
22 looking at the property in 20 -- May of 2019, and we
23 finally signed the contract around June 28, 2019.
24 There was some problems with the deeds of the -- of
25 the estate moving forward. So before that could get

1 cleared -- or while that was getting cleared up, it
2 took all the way up until I believe it was December
3 that we closed on the property in 2019, but in that
4 whole time frame, the previous owners had given me
5 permission to go on the farm or the acreage there
6 that used to be part of that farm and start cleanup.
7 We had an agreement that way.

8 And through that cleanup time, there was
9 months of me being there and cleaning and I'm a --
10 I'm 65 years old. I have lived here my whole life
11 and I know everyone and everyone knows me. And the
12 neighbors of the project would stop and see the
13 progress, and we would talk. Everyone was aware that
14 I had purchased the property.

15 And one of those individuals that I had
16 spoken with was one of the leaseholders right
17 directly across the road, Jeff Grafton. Jeff Grafton
18 heard me say that what we had aspirations to do on
19 this particular property and never mentioned once
20 that he was in communication with Vesper Energy to
21 sign a lease with them. And come to find out his
22 lease had been recorded 6-24 of '20 which translates
23 to me, you know, 15 months later finding out about it
24 and, you know, what actually was going on and he was
25 a participant.

1 MR. VAN KLEY: I have no more questions,
2 your Honor.

3 ALJ HICKS: Thank you, Mr. Van Kley.
4 Mr. Stock, any recross?

5 MR. STOCK: One minute, your Honor.

6 ALJ HICKS: Sure. We will go off the
7 record.

8 (Discussion off the record.)

9 ALJ HICKS: Okay. Let's go ahead and go
10 back on the record.

11 Go ahead, Mr. Stock.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Stock:

15 Q. Mr. Krajicek, do you know if Kingwood
16 still plans to have panels in the Grafton property
17 you referred to?

18 A. In -- in their 3D presentation they are
19 in there. And I know that they have designated the
20 easement through the Fife Farm into the -- into the
21 Grafton Farm, the Collins Farm, the Boss Farm, Tommy
22 Barclays, and comes back out over on Larkins Road to
23 make their connection to the east and the west. So,
24 yeah, I know several things that through
25 communicating with some of the farmers and some of

1 the landowners around there that -- what's going on.

2 Q. Have you looked at the most updated
3 layout for the project?

4 A. Which one would that be?

5 Q. Have you looked at the landscaping plan
6 attached to the Joint Stipulation and Recommendations
7 to the certificate conditions that were filed, Joint
8 Exhibit 1?

9 A. If it was -- no. I probably -- well, I
10 know I did not look at that thoroughly because
11 really -- no one ever mentioned -- no one has really
12 contacted me about screening or anything or giving me
13 a good neighbor agreement even though I own two
14 properties which I could never understand if they
15 wanted to be a good neighbor with everyone why no one
16 ever contacted me and I reached out several times to
17 talk to people about the project and I would not get
18 any response.

19 Q. Mr. Krajicek, you referenced a barn that
20 you took down on the 6.5-acre property; is that
21 correct?

22 A. That is correct.

23 Q. And you took that barn down in February
24 of 2020; is that right?

25 A. I took that barn down in -- hold on just

1 a second.

2 Q. Are you referring to a document to
3 refresh your recollection?

4 A. Yeah. I am looking at my test -- my
5 statement or testimony to make sure if there was some
6 dates in there. But, yeah, it was -- it was
7 approximately in February of 2020 is when they came
8 to dismantle it.

9 MR. STOCK: All right. Thank you,
10 Mr. Krajicek. No further questions.

11 ALJ HICKS: Thank you, Mr. Stock.

12 Mr. Krajicek, thank you for hanging in
13 through the day.

14 THE WITNESS: Well, I appreciate you guys
15 willing to wait for a while.

16 ALJ HICKS: Yep.

17 THE WITNESS: Glad to have it over.

18 ALJ HICKS: Have a nice weekend.

19 THE WITNESS: You too.

20 ALJ HICKS: Mr. Van Kley.

21 MR. VAN KLEY: Yeah. We will move into
22 admission Citizens Exhibit 11. I'm sorry. I have
23 the wrong number here. It would be Citizens
24 Exhibit 8.

25 ALJ HICKS: Yes. That's what I have.

1 Any objections to the admission of citizens
2 Exhibit 8?

3 MR. STOCK: No, your Honor.

4 ALJ HICKS: Okay. Hearing none, Citizens
5 Exhibit 8 is admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 ALJ HICKS: I think we can go ahead and
8 go off the record.

9 ALJ WILLIAMS: Mr. Hicks, I have one more
10 thing on the record before we let Karen go for the
11 weekend.

12 ALJ HICKS: Sorry. I tried to get you
13 all out of here. Blame Judge Williams.

14 ALJ WILLIAMS: As for the rest of the day
15 as well.

16 ALJ HICKS: You need us to go on the
17 record?

18 ALJ WILLIAMS: Are we off? Let's go on,
19 please, Karen. We are on? Thank you.

20 Just to clear up an issue, Attorney
21 Swaney had e-mailed the court reporter seeking some
22 guidance regarding numbering of potential exhibits
23 and that was -- the court reporter had directed
24 Mr. Swaney to contact the Bench, and he has. So I
25 just wanted to make everybody aware of the

1 communication and then make Mr. Swaney aware of the
2 Bench's treatment of this issue.

3 It's easiest to do on the record as
4 opposed to having a bunch of reply also over the
5 weekend. So Mr. Swaney's e-mail to me from 3:38 this
6 afternoon was "Your Honor, sorry to bother you but we
7 are uncertain as to whether we need to refile the
8 Michele Burns' testimony filed 2-28 and/or our
9 exhibits in support of her testimony filed 3-9. We
10 misnumbered the seven exhibits as 1 through 7,
11 failing to take into account that her testimony
12 itself should be Exhibit No. 1. Maybe I can correct
13 that misidentification issue at the beginning or end
14 of her testimony? Thanks for any guidance you can
15 provide here."

16 So obviously the nature of the outreach
17 was benign and well intentioned, so I just wanted to
18 get on the record, one, that there was communication
19 with one party ex parte and also to clarify for
20 Mr. Swaney you don't need to refile what's been
21 filed. If the exhibits are allowed to be considered,
22 we can take care of numbering them when the witness
23 testifies. That's certainly not to be interpreted as
24 any indication from the Bench that the exhibits filed
25 late will be considered when the witness testifies.

1 So hopefully that adds some clarity for
2 all the counsel. And for you, Mr. Wagner,
3 anything -- I'm sorry. Yeah, Mr. Swaney, anything I
4 can address for you on the record with regards to
5 that issue?

6 MR. SWANEY: Thank you very much, your
7 Honor. Sorry for the -- sorry for the
8 miscommunication directly to you.

9 ALJ WILLIAMS: No. I understood it was
10 very benign in its intention but there was some
11 complexity of the ruling. I wanted to make sure
12 everybody was on the same page.

13 MR. SWANEY: Thank you.

14 ALJ WILLIAMS: And with that, Ms. Gibson,
15 have a great weekend.

16 (Discussion off the record.)

17 (Thereupon, at 5:38 p.m., the hearing was
18 adjourned.)

19 - - -

1202

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, March 11, 2022,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7247)

- - -

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Case No(s). 21-0117-EL-BGN

Summary: Transcript in the matter of the Kingwood Solar I LLC hearing held on
03/11/22 - Volume V electronically filed by Mr. Ken Spencer on behalf of Armstrong
& Okey, Inc. and Gibson, Karen Sue Mrs.