

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **South**)
Branch Solar, LLC for a Certificate of)
Environmental Compatibility and Public Need) Case No. 21-0669-EL-BGN
for a Solar Facility Located in Hancock)
County, Ohio.)

**MOTION OF SOUTH BRANCH, LLC
TO STRIKE DIRECT TESTIMONY OF DAVID TONG AND *IN LIMINE*
TO EXCLUDE RELATED HEARING TESTIMONY**

Pursuant to Ohio Administrative Code (“OAC”) 4906-2-27, Applicant South Branch, LLC (“Applicant”) moves to strike portions of the pre-filed direct testimony of David Tong filed on May 25, 2022 in this docket. The Applicant also seeks an order *in limine* prohibiting testimony regarding Mr. Tong’s testimony at the evidentiary hearing in this matter. The reasons supporting the motion to strike and motion *in limine* are set forth in the attached memorandum.

Respectfully submitted on behalf of
SOUTH BRANCH SOLAR, LLC



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Intervenor Travis Bohn filed direct testimony of David Tong on May 25, 2022, prior to the evidentiary hearing scheduled to begin on June 1, 2022. Mr. Tong is not being offered as an expert witness, but nonetheless offers testimony far outside the proper scope of lay testimony.

Applicant requests that the Ohio Power Siting Board (“Board”) prohibit Mr. Tong from testifying at the hearing as to matters outside of his personal experience and knowledge.

II. LAW AND ARGUMENT

A. The Standard for Expert Opinion Testimony

The Board is empowered by statute to establish its own rules of procedure to govern its administrative proceedings. R.C. 4901.13. Pursuant to that authority, the Board has promulgated OAC Rule 4906-2-09(B)(7), which requires expert and factual testimony to be pre-filed with the Board, in writing, and served upon all parties and Staff according to a schedule to be set by the Administrative Law Judge.

Notwithstanding, it is well established that “the Commission seeks to maintain consistency with the Ohio Rules of Evidence to the extent practicable.” *In re Dayton Power & Light Co.*, Case No. 12-0426-EL-SSO, *et al.* Opinion and Order, at 8 (Sept. 4, 2013) citing *Greater Cleveland*

Welfare Rights Org. v. Pub. Util. Comm., 2 Ohio St.3d 62, 68, 442 N.E.2d 1288 (1982). Those rules provide that a lay witness' opinions or inferences must be: 1) rationally based on the witnesses' perception; and 2) helpful to a clear understanding of the witnesses' testimony or determination of a fact issue. Evid. R. 701.

Expert testimony would similarly contain the opinions of an individual qualified as an expert, in response to questions. *In the Matter of Columbia MHC East LLC*, Case No. 01-2567-WS-ACE, Entry, at 2 (Nov. 17, 2003). An expert's opinion must be based on some reliable scientific, technical, or specialized information. Evid. R. 702.

B. Portions of the Testimony Should Be Stricken From the Record and Prohibited at the Hearing.

As to the essential purpose of his testimony, Mr. Tong failed to satisfy the standard set forth in Evid. R. 702 for expert witnesses.

The pre-filed testimony goes far outside the scope of Mr. Tong's perception. Instead, the testimony opines on a number of topics, based on nothing beyond conjecture and unsupported conclusions. The problematic testimony and the portion to be stricken are indicated in the attached Exhibit.

Mr. Tong's qualifications to testify as an expert on these subject matters are nowhere disclosed in the written discovery. His pre-filed testimony contains none of the indicia of expert testimony.

Having no qualifications to opine on this subject matter, to which clearly only an expert can and should testify, Mr. Tong's testimony on these subject matters must be stricken. Accordingly, the Board should strike that testimony as impermissible lay opinion testimony.

Further, Mr. Tong testified at the public hearing held on April 27, 2022. His testimony here should thus be stricken for the alternative reason that it is duplicative and cumulative of evidence already in the record. OAC 4906-02-09(B)(8)(c).

III. CONCLUSION

For the reasons set forth above, the Applicant respectfully requests that the Board strike portions of Mr. Tongs' pre-filed testimony. The Applicant also requests that the Administrative Law Judge issue an order *in limine* precluding Mr. Tong from testifying. The Applicant seeks this entry now so that an order *in limine* may provide guidance and clarity to the parties.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Strike was served upon the parties of record listed below this 31st day of May 2022 via electronic mail.



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BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application
Of South Branch LLC, for a
Certificate of Environmental
Compatibility and Public Need
To Construct a Solar-Powered
Electric Generation Facility in
Hancock County, Ohio

Case No. 21-0669-EL-BGN

DIRECT TESTIMONY OF

David Tong

On behalf of

Travis Bohn — Intervenor

May 24, 2022

My name is David L. Tong, I reside at 2210 Township Rd. 254, Arcadia, Ohio 44804, and am an adjacent land owner.

1. How long have you been farming? All my life, I have always been involved with farming. Upon graduation from Arcadia High School in 1974, I fully took over the farming operation in 1976 & grew it from there.
2. How are you familiar with the Gano Farm? I helped my dad farm this parcel from 1963 to 1976. In 1976, I farmed it myself. Mr. Trout passed away & the farm was auctioned.
3. What is the location of the Gano parcel to your property? The Gano Farm is located to the east end of my 77.7 acre parcel. It covers a quarter mile along our entire boundary.
4. Do you have experience in tiling farms? Yes, I worked for Lanny Boes when I was 18 & 19 years old. I ran his Buckeye ditching machine & helped make tile connections. As a farmer I continue to tile my farms & fix any of the broken ones & take care of any drainage problems.
5. Can you explain the 4 main tiles & their locations? We have an 8 inch that exits the back of our parcel & follows the low ground on the Gano parcel & that is connected into the 24 inch main tile. You also have the main from the home, owned by Kara Johnson, which sits on the northeast corner of the parcel. There is a 10 inch main that was also discovered when replacing the 24 inch main tile. My wife had a map of this field & it was explained at the hearing in Findlay, on April 27. This map was submitted that evening to the Honorable Judge See & Honorable Judge Williams. ~~Main tiles can never be interfered with or the laterals coming to them. This will result in water never draining & water backing up on all existing properties that drain through this parcel.~~
6. What is the significance of the 24 inch main? This main is the outlet for 527 acres that comes from 28 different sections of land. This is fully explained in the document that was submitted by Tyler Koenig, who works for the Hancock Soil & Water District. This farm is the lowest point of this area, water runs downhill, just like tile it all done by gravity. John E. Fox is also our beginning of the South Branch of the Portage River. This is a raging river when all this water gets to here even with a 2 inch rain.

- ~~7. Will the chemicals from the panel go directly into John E. Fox ditch? Most definitely, with deer jumping the fence, harming the panels & hail in our area, it's just a matter of time. This field is tapered to the 24 inch tile because it's the lowest point. Both end of the field will funnel straight to the ditch. All these panels with be nothing but runoff.~~
8. How many adjoining properties are connected to this 37.7 acres parcel? David & Mary Tong parcel to the west side, Lanny & Mary Jo Boes are to the west & east side. The Good parcel to the south side, Kara Johnson, the home owner that sits on northeast parcel lot.
9. How many woods are surrounding this property? There are three, one on the west ,20 acres & stretches an approx. 700 feet span, second one on the south, Goods, approx. 5 to 6 acres that stretches the entire end of the field & third one on the east, Boes, 3 acres, stretches approx. 660 feet.
10. Will this land be shaded most of the time? Yes, I will only have full sun at high noon then it's shaded at different times all day. It will spend the good share of its day shaded & we have mostly overcast skies here because of the Lake affects. Common sense needs to be called upon now.
11. Will this farm be limited in its use for solar collection? ~~Yes, with required setbacks according to our township, being this is commercial development, it will required more than 60 feet from each property border, which is 4. The home will be its own set back of at least 160 feet. You also have setbacks for all main tiles, which is 25 feet on each side of the tile, which will be 50 feet in total. The 24 inch will require more because of its size. The 24 inch cannot be driven over with large cement trucks or other large equipment. You cannot bore under this tile either, because that will create a belly & water will not be able to flow & therefore you are backing up 527 acres of water heading this direction. With all these setbacks for bordering properties, tiles & home, the woods issue & abandoned well, this is a farm will never be a valuable producer. Why would we destroy this parcel?~~
12. Is there an abandoned well on this land? Yes, about 150 feet in from the Good woods. We farmed around it for years. This will also require a large setback. You would now have to be concerned about ground and water contaminants because of disturbing the area & all these chemicals being poured on the ground. We have the old hand pump that was once on that water well.

13. How were you able to gather all this information of the acres coming into this property & about all the main tiles? We were sent all of these documents from Jim Gano, from Colorado, to assist him in the payment for the replacement of the 24 inch tile. He had everything done at the Hancock Soil & Water Conservation District. They figured up the acres & Jim was requesting that each person submit their cost of the replacement back to him. He decided to pay this upfront rather than petitioning this replacement.
14. Did you submit all these documents from Hancock SWCD to the OPSB? Yes
15. Will using pile drivers damage tile? ~~Absolutely, you have no idea where tile would be located. They would be crushed & no one would know until sections of land backs up & flooding happens & you notice your land is no longer draining.~~
16. What is the best way to locate all these tiles in all these fields? Tiles are difficult to locate even when you work in this business. I have myself probed for hours to locate where one should be. ~~It will take a team of professionals' months or perhaps a year or more to actually map what is under these farm fields. This is not an easy task. Underground tile can be televised. Available today is GPS, Ground Penetrating Radar to determine the existence of each tile. You can do 1,000 to 1250 foot runs at a time. This should be required by all solar companies from the start of the project & ran again at the conclusion of each project. Flags should then be placed in the fields so nothing is damaged. One broken tile will be a cascading effect for every property owner involved with this project. This will be your environmental situation without any question.~~
17. How are you familiar with the 101.2 acre Cunningham parcel? This section of land will border me on the south side. It will stretch for a half mile long.
18. What do you know about the drainage on this field? My father had issues with this field for years. He had a portion of his 77.7 acres of land, approximately 15 acres, heading for the low ground on the Cunningham side. The field was constantly under water, once it started ponding it would lay for weeks. At one time it flowed under the road & crossed into the woods to the west of the parcel which is now owned by the Moyer family.

In 1989, my father, William Tong spent a considerable amount of money to redirect the water to the John E. Fox ditch. It was our attempt to solve our water issue.

19. Why is this 101.2 acres of Cunningham's going to be an issue for you now?
Rex added the yellow standpipe to this field a number of years ago. He had the ongoing problem that we dealt with for years, this field could not drain properly. Water would stand for weeks. This end of his parcel next to me is a true example of why this low ground should never be considered for solar industry.
20. Why would you install an 8 inch standpipe? They would typically drain 80 acres for land. Being this is an extreme water situation this is being used to drain approximately 15 acres rapidly. This land drops about 6 feet heading towards us. The water fills in about a 10 to 15 acre strip of land that extends back to the Good woods & then to the standpipe along the road. This had to be put in deep because the field is high in the center & drops to the north & south.
21. What would happen if this standpipe was restricted or built around? Think about this as the city's catch basin, the entire street backs up. This would flood onto me & roll back onto the Gano parcel. See the example of the Hancock SWCD for the water shed map.
22. What do you know about the Charles Good Ditch? It is on a maintenance program. It would require large setbacks, probably at least 100 feet, to dip it out & level the spoils.
23. Are they planning a substation at your end of the 101.2 acre field? Yes
24. What are your concerns? Noise, lights, stray electricity in standing water and noxious weeds.
25. Why do you think there would be standing water? ~~If any development is done at this end of the field. Water will be restricted. Nothing can be constructed on the end where the standpipe is located. We will be looking at an environmental situation. Say for an example, on 220 acres of land, if panels were 4 ft. x 8 ft., you are looking at approximately 300,000 panels with 20 miles of access road. If you had this size of development in any other situation, you would be required to have a storm water management system, and you would be required to have retaining ponds for holding excess water. This will have to be required here. We are at the edge of the~~

~~Black Swamp. As is stated earlier, this will be a challenge for the environment in the Washington Township area.~~

26. What do you mean about lights? Any lights shining on my soybean field will never mature & I will have damaged crops. Soybeans have to be dark all night. ~~The distance the light shines & casts a light across any farmer's field the soybeans will stay green & not produce an empty pod or total mush.~~ I am very familiar with this problem because we farm at the edge of the village for years in Bloomdale. They have since removed the light because of its damaging affect. We still have a smaller field in the Village of Bloomdale & the problem continues there. All substations or solar industry projects should be dark at night, they don't belong next to any farmer's field. These solar industry acres should be required to have no lights next to any farmers' fields.
27. What do you mean about noise? We have yet to find in the OPSB the actual decibel number. Our home & our sons, Craig & Michael, their home is circled in red, which is 45 plus decimals. We have visited Hardin County & no one should be living by a solar industry, let alone a substation. The sound of the invertors is endless. We live less than a mile from the village, the sound will make it to the Arcadia Village. ~~Their own map shows the village will be included, with wind direction, heaviness of air this will only intensify.~~ These maps are deceiving at best. It's interesting how they try and keep the sound away from the school.
28. What do you mean by noxious weeds? We are now all aware of what these fields actually look like today. My wife & I seen thistles blowing, Giant Ragweed & Mare stale in full seed in Hardin County. We are dealing with Water hemp in our area now, I can only imagine what we would be facing. ~~This will require mowing all summer & into fall. Planting trees to camouflage their unsightly industry will only add to our environmental problem. These trees or bushes will grow roots into our tiles & water back up begins again. When the trees grow tall enough they will shade out farmers' crops & that will affect the yield of the growing crops.~~ Cunningham's field is to the south, it will shade my field for a half mile & cause my crops to suffer. No trees or shrubs should ever be planted along a farmers' field.

29. What do you know about the eagle pictures? I was the one who called my wife, Mary, to get the pictures that she was able to take them. She had the pictures at the hearing on April 27th, they were also notarized. Her letter goes on to explain how we have had Eagles for quite some time. These pictures are our first time of learning they have 3 Eaglets.
30. Do you see other birds in your area? Yes, we have a group of barn swallows that come to our old barn every year. They fly in from either Mexico or South America in April & leave in September. They will fly over this proposed solar industry everyday collecting insects. They have their young in the old barn. We also have wild turkeys in our woods, woodpeckers, finches, humming birds, bats in our old barn, so many birds, too many to count.
31. Do you have a large deer population? Yes, we see them every day. They use the Gano farm every day for crossing & to drink water from the John E. Fox ditch. They cross the road into our woods. ~~Any fencing would prohibit their natural pattern of crossing. This will greatly affect all our wildlife, they exist in all these fields. They would now be forced to make paths through my parcel.~~
32. Does the high voltage lines effect you now? Yes, when we are in the fields we have poor communication with our cellphones & my GPS on the sprayer. We also have had equipment near them & gotten shocked trying to get back inside of the vehicle or working on equipment. There is definitely stray voltage here already & this could be in standing water in our future. We are looking at a potential safety hazard. We are expecting our first grandchild in July. He will be living in this area & hopefully farming this field someday.
33. Do you feel your property rights have been tested? Absolutely, no one asks to live by any solar industry or a substation, ask any realtor that question. The property owners themselves could have had this around their homes in which they live in today. They could change this plan today & switch this low ground field with flooding issues & move this field around their homes along with the substation. We would have greatly appreciated that. I don't blame them though, they truly don't want it around them either. Where did my property rights go?

34. Why do you think we had zoning established in our area? It was done in the 1960s to keep strictly agricultural land safe & to be always used in the production of food for livestock or human consumption. We are required to have only one house per 40 acres of land. ~~This was done in order to keep our community rural & people could maintain a country setting & not turn into a developed housing district.~~ We can't do anything without getting approval of any building or major changes to our parcels. Yet solar can come in in secret deals & destroy all our property values. We need to be reverent about this farm land, Ohio is losing it at an alarming rate to wind & solar industry. We need to take a pause. We are facing a shortage in the food supply & Ohio is assisting in this current problem.

35. Has this proposed solar project changed any plans for you? Yes, we have spent \$ 6,000.00 to pay for plans to build a new home on the land where our two boys are living currently. We have since told the designers to not submit the plans for bids because of this looming solar decision. Everyone that is aware of our plan all have the same response, "oh yes, I wouldn't want to build by that either. You are paying all the money on something that will fall in value because of what is bordering it." The home that sets on the Gano parcel has been for sale & ~~won't sell once people learn of the proposed solar industry.~~

36. What is your opinion of land rights? I too could have chosen to enrich myself & so could so many of my neighbors, but we thought of our neighbors & the reverence for the land. The community appreciates our effort to stop the extra piece of land that we could have enriched ourselves over, because they wanted us as a crossing farm. We must show reverence for this precious land, we have this land on loan from a very short season of our life.

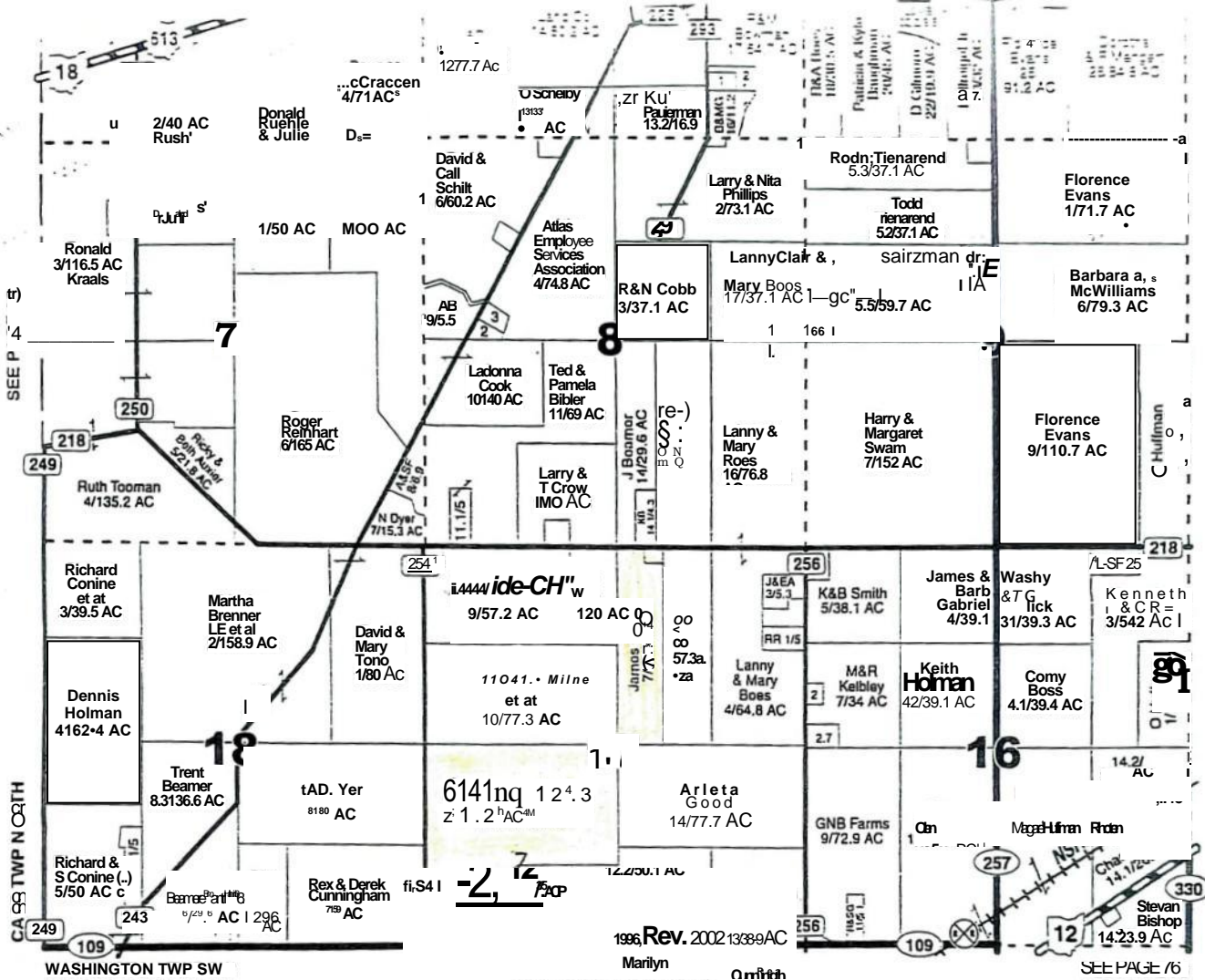


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Case No(s). 21-0669-EL-BGN

Summary: Testimony Witness Testimony electronically filed by Mr. Travis Bohn on
behalf of Bohn, Travis David Mr.

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Case No(s). 21-0669-EL-BGN

Summary: Motion of South Branch, LLC To Strike Direct Testimony of David Tong
and In Limine To Exclude Related Hearing Testimony electronically filed by Teresa
Orahoad on behalf of Sommer Sheely