

**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 LANNY BOES 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 Lanny Boes, filed on May 25, 2022 in this docket. The Applicant also seeks an order *in limine* prohibiting testimony regarding the Travis Bohn-Mr. Boes’ testimony at the hearing in this matter. The reasons supporting the motion to strike and *in limine* are set forth in the attached memorandum.

Respectfully submitted on behalf of
SOUTH BRANCH SOLAR, LLC



Dylan F. Borchers
Sommer L. Sheely
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: dborchers@bricker.com
ssheely@bricker.com

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Environmental Compatibility and Public) Case No. 21-0669-EL-BGN
Need for a Solar Facility Located in Hancock)
County, Ohio.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Intervenor Travis Bohn filed “Direct Testimony of Lanny Boes” on May 25, 2022, prior to the hearing scheduled on June 1, 2022 (hereafter “Lanny Boes Testimony”). Lanny Boes is not being offered as an expert witness.

Applicant requests that the Ohio Power Siting Board (“Board”) prohibit Mr. Boes from testifying at the hearing as to matters outside of his personal experience and knowledge. The Applicant further requests that the Administrative Law Judge strike the testimony as duplicative and cumulative to evidence from the witness that is already in the record.

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. Testimony of Lanny Boes Should Be Stricken From the Record and Prohibited at the Hearing

As to the essential purpose of her testimony, Mr. Boes 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. Boes’ 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. Boes’ qualifications to testify as an expert on these subject matters are nowhere disclosed in the written discovery. Her 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. Boes' testimony on these subject matters must be stricken. Accordingly, the Board should strike that testimony as impermissible lay opinion testimony.

Further, Mr. Boes testified at the Local Public Hearing held on April 27, 2022 on the same topics now offered in her pre-filed testimony. Accordingly, Applicant further requests that the testimony be stricken as duplicative and cumulative evidence. OAC 4906-02-09(B)(8)(c). (Transcript, filed May 5, 2022, at page. 37, et seq.)

III. CONCLUSION

For the reasons set forth above, the Applicant respectfully requests that the Board strike portions of Mr. Boes' pre-filed testimony.

The Applicant also requests that the Administrative Law Judge issue an order *in limine* precluding Mr. Boes from testifying as to those portions of her testimony.

The Applicant further requests that the Administrative Law Judge strike the testimony as duplicative and cumulative to evidence from the witness that is already in the record.

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
SOUTH BRANCH SOLAR, LLC



Dylan F. Borchers
Sommer L. Sheely
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: dborchers@bricker.com
ssheely@bricker.com

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.



Sommer L. Sheely

cendsley@ofbf.org

lcurtis@ofbf.org

amilam@ofbf.org

shaun.lyons@ohioago.gov

thomas.lindgren@ohioago.gov

tony.core@squirepb.com

bohnt398@gmail.com

Noid98@aol.com

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application)

Of South Branch LLC, for a)

Certificate of Environmental) Case No. 21-0669-EL-BGN

Compatibility and Public Need)

To Construct a Solar-Powered)

Electric Generation Facility in)

Hancock County, Ohio)

DIRECT TESTIMONY OF

LANNY BOES

19694 Township Road 218

Fostoria, Ohio 44830

On behalf of

Travis Bohn — Intervenor

May 25, 2022

Q-1. Please state your name and address and years of farming.

A-1. My name is Lanny Boes. I am an Adjacent landowner and witness residing at 19694 Township Road 218, Fostoria, Ohio, which sits in Hancock County and Washington Township. I've been a farmer for 56 years.

Q-2. What is soil health?

Q-2. A soil health is very important to plant health because healthy soil produces healthy plants because everything plants need comes from the soil except sunlight and air. Soil is full of small living organisms. Some are called microrisa which have a sim-bionic relationship with the plants. Whereby they provide nutrients for the plants in exchange for simple sugar, sometimes you can see them, they look like fine white mold. Soil health is most often a direct result of organic matter. So the higher level of organic matter in the soil the more microorganisms it can support, the more water it can hold and the less dense it will be creating a better environment for root growth. Organic matter can be increased by growing plants that produce more roots and caring for them by having proper fertility and drainage so their soil doesn't become waterlogged. This is very important to anyone trying to make a living producing crops because it is estimated that the first 95% of production goes to pay for expenses, leaving the last little bit to live on and that is why the solar farms will most likely not be farmed for a very long time because the soil will not be healthy enough to produce a profitable crop, no one wants to work to lose money doing it. The native pollinator plants to be grown on the solar farms will not increase organic matter or fertility, just the opposite. The solar advocate likes to say it will be good for the soil to rest if that were true. Why do we need lawn fertilizer?

Q-3. What is decommissioning?

A-3, When it comes time to decommission the solar project, it is stated that the area is to be ripped at least 18 inches deep unless there are tile. After many years of experience, I have never known of someone operating a bulldozer that could tell where tile are and in this area they are parallel systems placed 40 to 50 feet apart most are at least 24 inches deep I know because I installed most of them during my 43 year farm drainage contracting career, but some older ones are not as deep but still working. So if the tile gets damaged, it won't matter to the solar company because their responsibility is over and if it is like the pipeline company they do the ripping when they feel like it, not when the soil is dry and friable so instead of improving soil structure it will be destroyed for many years.

Q-4. What is VOR?

A-4. Almost everyday several airplanes fly directly over the proposed South Branch Solar site at pattern altitude which is 1,000 feet for Fostoria Airport, they are flown by students from Bowling Green State University flight school. ~~They are on VOR alpha which is a very high frequency Omnidirectional Range that pilots use to follow when they can't see landmarks on the ground, these young students are learning how to fly in clouds or fog and this particular VOR alpha is the approach to the Fostoria Airport six miles away. The radio interference or the glare could be a problem.~~

Q-13. Any further comments?

A-13. Yes. We are a great, loving, caring community and the Leeward solar company is just the opposite of our community. They lie, are greedy and don't really care about us the people who will have to live next to those obtrusive panels. They will cause us more grief by their lies and upset us even more by constantly seeing those ugly panels for 30 plus years in God's green countryside. Therefore, they are not the kind of people we want in our community or as neighbors. They are like thorns in our side. We do not want them here at all. Please don't saddle us in our dying years with that despicable company. Thank you.

O-14. Does this conclude your direct testimony?

A-14. Yes it does. However, I reserve the right to offer supplemental testimony if necessary.

Respectfully submitted,

Lanny Boes

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

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5/31/2022 3:45:29 PM

in

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

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