

BEFORE THE OHIO POWER SITING BOARD

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|-------------------------------------------|---|-------------------------|
| In the Matter of the Application of | : | |
| Fountain Point Solar Energy LLC for a | : | Case No. 21-1231-EL-BGN |
| Certification of Environmental | : | |
| Compatibility and Public Need to | : | |
| Construct a Solar-Powered Electric | : | |
| Generation Facility in Logan County, Ohio | : | |
| | : | |

**MOTION TO STRIKE
PORTIONS OF THE DIRECT TESTIMONY OF
DANIEL VERTUCCI**

Pursuant to Ohio Adm.Code 4906-2-27, the Logan County Board of Commissioners (“Logan County”) respectfully moves to strike the following portions of the direct testimony of Mr. Daniel Vertucci as filed on July 24, 2023:

- Pg. 15 / lines 9 – 11, 18 – 19, 25 – 26, and 29 – 31;
- Pg. 16 / lines 1, and 13 – 14;
- Pg. 17 / lines 17 – 18, and 31; and
- Pg. 18 / lines 1, and 16 – 20.

These passages are hearsay testimony for which no exception applies, and they should be stricken pursuant to the Rules of Evidence and under common evidentiary practices at the Ohio Power Siting Board. Further details and explanation are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Lee A. Slone
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MEMORANDUM IN SUPPORT

Mr. Vertucci's direct, written testimony contains hearsay in the form of alleged statements by Logan County Commissioners, and possibly others, offered as evidence to prove the truth of the matters asserted. These alleged statements are inherently unreliable and should be stricken from the evidentiary record of this case.

'Hearsay' is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Evid. Rule 801(C). A hearsay "statement" is defined by Evid. R. 801(A) as (1) an oral or written assertion or (2) non-verbal conduct of a person, if it is intended by him as an assertion. Hearsay is generally prohibited unless it falls within a specific exception to the hearsay rule. Evid. Rule 802. "The purpose of the rule against hearsay is to keep unreliable evidence, particularly evidence that is not subject to cross-examination, away from the jury or trier of fact." *State v. May*, 2011-Ohio-6637, 970 N.E.2d 1029, ¶ 38 (7th Dist.). Although not strictly bound by the Ohio Rules of Evidence, the Commission "seeks to maintain consistency with the Ohio Rules of Evidence to the extent practicable." *In re the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12 426-EL-SSO, et al., Opinion and Order (Sept. 4, 2013) at 17.

Here, Mr. Vertucci's testimony includes the following inadmissible hearsay evidence – third-party statements offered for their truth, and where no exception to the hearsay prohibition applies:

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9 Commissioner Benedetti followed up, ultimately asking us to draft them a letter
10 of support for this Project, and expressing their interest in seeing solar
11 development investments in Logan County.

18 Commissioners Benedetti and Antram reiterated their interest in signing letters
19 of support broadly for solar development within Logan County.

25 Commission indicated they would like to begin payment in lieu of tax
26 ("PILOT") negotiations after the upcoming PIM.

29 Commissioner Benedetti told me after the PIM that he thought it went well and
30 expressed that he felt the overall sentiment of the meeting was positive, with
31 his personal assessment from the evening being that more folks were supportive

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1 than not.

13 ***, including their unfounded
14 claim that they were not previously aware of the Project size or location.

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17 *** In fact, the Commissioners communicated
18 displeasure with the Applicant trying to improve the Project.

31 The Commission indicated that they would prefer to negotiate specifics related

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1 to the PILOT agreement after the local public hearing.

16 Commissioner Antram expressed concerns over how he felt that bully tactics
17 had played into opposition to the Project, and indicated he wanted more
18 information regarding what specifically could be done within the stipulation to
19 address potential uncertainties that may remain with regards to the final Project
20 design.

In accordance with the foregoing, Logan County respectfully requests the Board or ALJ strike from the evidentiary record those portions of Mr. Daniel Vertucci's direct testimony, as reprinted above, and preclude the testimony from being presented at the hearing in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. Additionally, the undersigned certifies that a copy of the foregoing is also being served upon the following via electronic mail on the date of filing:

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Case No(s). 21-1231-EL-BGN

Summary: Motion to Strike Portions of the Direct Testimony of Daniel Vertucci
electronically filed by Mr. Lee A. Slone on behalf of Logan County Board of
Commissioners.