

## **THE OHIO POWER SITING BOARD**

**IN THE MATTER OF THE APPLICATION  
OF HILLCREST SOLAR I, LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED TO  
CONSTRUCT AN ELECTRIC GENERATION  
FACILITY IN GREEN TOWNSHIP, BROWN  
COUNTY, OHIO.**

**CASE No. 17-1152-EL-BGN**

### **OPINION, ORDER, AND CERTIFICATE**

Entered in the Journal on February 15, 2018

#### **I. SUMMARY**

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Hillcrest Solar I, LLC, the Ohio Farm Bureau Federation, and Staff and directs that a certificate be issued to Hillcrest Solar I, LLC for construction of a new 125 megawatt solar electric generation facility.

#### **II. PROCEDURAL BACKGROUND**

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-4 and 4906-2.

{¶ 4} On May 4, 2017, Hillcrest Solar I, LLC (Hillcrest or Applicant) filed a pre-application notification letter with the Board regarding its proposal to develop and construct a 125 megawatt (MW) solar electric generating facility in Brown County, Ohio. Hillcrest held a public information meeting to discuss the project with interested persons

and landowners on May 23, 2017, in Mt. Orab, Ohio, which is located approximately three miles north of the proposed facility.

{¶ 5} On June 29, 2017, Hillcrest submitted three filings to the record. First, Hillcrest filed its application with the Board for approval to construct the new 125 MW solar electric generating facility.

{¶ 6} Second, Hillcrest filed a motion seeking waivers from certain provisions of the Board's rule requirements. No objections to the motion were filed. By Entry issued August 3, 2017, the administrative law judge (ALJ) granted Hillcrest's request for waiver, with clarification, from Ohio Adm.Code 4906-4-08(A)(1)(c) and 4906-4-08(A)(5)(c), but denied as unnecessary the requested waiver from Ohio Adm.Code 4906-4-08(D)(2).

{¶ 7} Third, Hillcrest filed a motion for protective order pursuant to Ohio Adm.Code 4906-2-21. The motion is unopposed and will be addressed by the Board in the next section.

{¶ 8} By letter dated August 28, 2017, the Board notified Hillcrest that its application was sufficiently complete to permit Staff to commence its review and investigation. The letter directed the Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Hillcrest to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On September 7, 2017, Hillcrest filed a certificate of service of its accepted, complete application as required by Ohio Adm.Code 4906-3-07. On September 8, 2017, Hillcrest also filed proof that it submitted its application fee.

{¶ 10} By Entry issued September 22, 2017, the ALJ established the effective date of the application as September 18, 2017. The Entry also set forth a procedural schedule under which a local public hearing would be conducted on November 30, 2017, and an

evidentiary hearing would be held December 14, 2017. The ALJ also directed Hillcrest to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 and indicated that petitions to intervene would be accepted up to 30 days following publication of that notice or by November 3, 2017, whichever was later.

{¶ 11} On October 17, 2017, the Ohio Farm Bureau Federation (Farm Bureau) filed a motion to intervene and memorandum in support. The Farm Bureau represents that it has a real and substantial interest in this matter that is not represented by existing parties: the possible impacts of the proposed facility on its state-wide policies affecting agricultural interests at state and local levels. The Farm Bureau also represents that its involvement would contribute to the just and expeditious resolution of issues and would not prejudice an existing party or delay the proceedings. No party opposes the motion. The Board finds that the Farm Bureau's motion to intervene is reasonable and should be granted.

{¶ 12} On November 3, 2017, Hillcrest filed notice of its intent to modify the footprint of the proposed facility. Specifically, the Applicant added an approximately 6.1 acre area of an 8.45 acre parcel to the more than 2,000 acre footprint.

{¶ 13} On November 15, 2017, Staff filed its report of investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 14} The local public hearing was conducted as scheduled on November 30, 2017. The hearing was well-attended, and 15 public witnesses testified.

{¶ 15} On December 12, 2017, Hillcrest, the Farm Bureau, and Staff filed a joint stipulation and recommendation (Stipulation).

{¶ 16} On December 14, 2017, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Hillcrest presented the

testimony of Douglas C. Herling in support of the Stipulation. Staff presented the testimony of Grant Zeto in support of both the Staff Report and the Stipulation.

### III. MOTION FOR PROTECTIVE ORDER

{¶ 17} As stated above, on June 29, 2017, Hillcrest filed a motion for a protective order, to which no party has filed a response. Hillcrest moves the Board to keep portions of its application confidential and not part of the public record. Hillcrest indicates that the information it seeks to protect includes total estimated capital and intangible costs of the proposed facility and similar projects under development in the mid-Atlantic region, estimated annual operations and maintenance costs of the facility and similar projects under development in the mid-Atlantic region, and other sensitive financial data. Hillcrest also seeks to keep confidential the estimated annual and total land lease payments made by it to landowners. In support of its request, Hillcrest submits that the information has independent economic value that, if revealed, would provide its competitors and others with a competitive advantage. Hillcrest also states that it has taken reasonable efforts to maintain the secrecy of the information and that non-disclosure of the information will not thwart the purposes of R.C. Title 49. As such, Hillcrest asserts that the information meets the definition of a trade secret under R.C. 1333.61 to 1333.69.

{¶ 18} Pursuant to Ohio Adm.Code 4906-2-21(D) and upon motion, the Board "may issue any order that is necessary to protect the confidentiality of information contained in [a] document, to the extent that state or federal law prohibits release of the information, including where it is determined that both \* \* \* the information is deemed \* \* \* to constitute a trade secret under Ohio law \* \* \* and non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code." To be designated a trade secret under R.C. 1333.61, the information regarding a process, procedure, or method, business information, or financial information must both: (1) derive independent economic value from not being generally known to, or readily ascertainable by, other

persons who can obtain economic value from its disclosure or use and (2) be subject to reasonable efforts under the circumstances to maintain its secrecy. R.C. 1333.61(D). Additionally, the Supreme Court of Ohio has established a six-part test to apply when analyzing a trade secret claim. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 19} Upon review of Hillcrest's motion, and having analyzed the documents filed under seal pursuant to the above-referenced standards, the Board concludes that the information the Applicant seeks to protect falls within Ohio's definition of a trade secret. The information has independent economic value from not being generally known to the Applicant's competitors and other entities that could benefit financially from its disclosure. It is likely that Hillcrest would stand at a competitive disadvantage if the projected calculations for developing, operating, and maintaining the solar facility and similar developments or anticipated lease payments to participating landowners were shared publically. Furthermore, it appears that Hillcrest has taken reasonable precautions against the disclosure of the information, and there is no indication that protecting the information is inconsistent with the purpose of R.C. Title 49. Accordingly, the subject information is entitled to protective treatment under Ohio Adm.Code 4906-2-21(D), and the Board finds that the motion for protective order should be granted.

{¶ 20} Ohio Adm.Code 4906-2-21(F) specifies that, unless otherwise ordered, a protective order issued under the 4906-2-21(D) expires 24 month after the date of its issuance. Hillcrest does not seek a different time frame, and the Board sees no reason to impose one. Accordingly, the docketing division should maintain, under seal, the information filed confidentially in this docket for a period of 24 months. If Hillcrest wishes to extend the protective order beyond this period, it should file an appropriate motion pursuant to Ohio Adm.Code 4906-2-21(F).

#### IV. PROJECT DESCRIPTION

{¶ 21} Hillcrest seeks certification to build a 125 MW solar-powered generating facility (Solar Farm or Project) in Green Township, Brown County, Ohio. The Solar Farm would consist of large arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, and would include associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a substation. Hillcrest is proposing to begin construction in April 2018 and intends for an in-service date no later than December 2019.

#### V. CERTIFICATION CRITERIA

{¶ 22} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

## VI. SUMMARY OF EVIDENCE

{¶ 23} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate these applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

### A. *Local Public Hearing*

{¶ 24} On November 30, 2017, the local public hearing was conducted. The record includes testimony from 15 witnesses, who were essentially evenly split between supporters and detractors. Those advocating in favor of the proposed Solar Farm included a Brown County Commissioner, an employee of the Brown County Board of Commissioners who is involved in economic and community development, individuals whose land would be used for the Project, and local citizenry. Overall, these individuals

discussed the positive economic impact on the local economy, prospective job growth, and interest in clean energy. Those testifying in opposition to the Solar Farm expressed concerns about potential health issues, loss of property value, drainage, and erosion of an agrarian, rural lifestyle. Additionally, five households provided written public comments that are included in the record; these comments are generally in favor of the Solar Farm. Of noted concern to all, including those in favor of the Project, is the potential impact on the aesthetics of the local landscape.

**B. *Staff Report***

{¶ 25} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

**1. BASIS OF NEED**

{¶ 26} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Project is a proposed electric generating facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 2 at 11.)

**2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT**

{¶ 27} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of its investigation, Staff reviewed the nature of the probable impact of the Solar Farm; the following is a summary of Staff's findings.

**a. *Socioeconomic Impacts***

{¶ 28} Hillcrest seeks to construct the Project on up to 1,100 acres of privately-owned land within a larger area of approximately 2,083 acres over 30 separate properties in Brown County, Ohio, near the western edge of Highland County. In 2010, Brown



County's population was 44,846, resulting in a population density of 91.5 persons per square mile. In the same year, Ohio's general population density was 282.3 persons per square mile. Brown County is projected to experience a two percent increase in population by 2020. (Staff Ex. 2 at 12.)

{¶ 29} Of the 2,083 total acres, approximately 86 percent is presently used for agricultural purposes, ten percent contains woodlots, and three percent is used for residential purposes and open space. There are 111 residences located within 1,000 feet of the Project boundary and, according to Hillcrest, 11 non-participating residences (homes located on parcels not being leased for the Project) within 100 feet of potential solar arrays. There is one place of worship located directly adjacent to the proposed facility, but there are no population centers or major industries in the project area. Furthermore, there are no state parks, heritage areas, state forests, national wildlife refuges, national park service lands, national natural landmarks, state nature preserves, scenic byways, or state historic markers within five miles of the Project. And, due to its low profile, the Solar Farm would not be visible from the Indian Creek Wildlife Area, Grant Lake Wildlife Area, a golf course, the Buckeye Trail, or the North County National Scenic Trail, all of which are located between 2 and 5 miles from the project area. Additionally, the proposed facility would not interfere with any land use plans for the affected Ohio counties. (Staff Ex. 2 at 12-13.)

{¶ 30} Hillcrest commissioned a cultural resources records review of the area. The review revealed one cultural resource (an historic farmhouse) located approximately one mile southeast of the project area, six Ohio Archaeological Inventory sites between one and two miles of the project area, and 10 mapped cemeteries within two miles. None of these sites is expected to be directly impacted by the proposed facility. The records review also identified four previous Phase I archeological surveys within the 2-mile project study area. However, to ensure minimal impacts, Hillcrest will conduct a

systematic Phase I survey program for both archaeological and architectural resources near the Project. (Staff Ex. 2 at 13-14.)

{¶ 31} As to aesthetics, Staff initially reports that the tallest structure would be the lighting mast located within the project substation. Because the substation would be located adjacent to an existing Duke Energy substation, it would conform to the surrounding use and any incremental aesthetic impact would be minimal. Similarly, the highest elevation of the solar panels would be 15 feet above ground level; according to a Visual Resource Assessment (VRA), the panels are thus not likely to be visible from locations outside a two-mile distance from the Project's perimeter. (Staff Ex. 2 at 14.)

{¶ 32} Two other aesthetic concerns garnered more attention: viewing the panels themselves and glare. Staff conveys that the impact of viewing the solar panels is subjective and, therefore, depends on the viewer. The VRA indicates that, given the combination of the Solar Farm's low profile and surrounding vegetation, the number of locations from which the Project will be visible is limited but would be greater for viewers closer to the infrastructure. To minimize visibility, the Applicant would take steps such as fencing and minimizing light levels to those necessary for safety. Staff further recommends that Hillcrest incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and mitigating measures subject to Staff review, such as native vegetative plantings, alternate fencing, and good neighbor agreements. (Staff Ex. 2 at 14.)

{¶ 33} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light; included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include possible brief loss of vision, a safety risk to pilots, and nuisance to neighbors. Hillcrest identifies the Brown County Municipal Airport, approximately 15 miles from the project area, as the nearest public use airport and asserts that the Project would not be visible to pilots making final approaches to that

airport. The Applicant has identified two measures to minimize glare: use of solar panels with anti-glare coating and use of a tracking array system to reduce the area to which light is reflected. In consultation with Staff, the Ohio Department of Transportation Office of Aviation stated that the proposed Solar Farm would likely not implicate an airspace permit issue and that Hillcrest's glare analysis is satisfactory. (Staff Ex. 2 at 14.)

{¶ 34} Economically, Hillcrest estimates that the proposed Solar Farm would create 644 on-site construction jobs and 17 annual operational jobs. During the construction period, wages would produce \$43.3 million in impacts to the study area, which includes 15 municipalities in Brown, Highland, and Clermont counties; operations would add an annual impact of \$1 million. Hillcrest anticipates that the Project will be operational in 2018 and is expected to meet all requirements of the Payment in Lieu of Taxes (PILOT) program. The Applicant estimates that the Solar Farm will produce PILOT revenues of \$875,000 to \$1.163 million annually for Brown County. (Staff Ex. 2 at 14.)

*b. Ecological Impacts*

{¶ 35} The proposed project site is in a broad, flat area of Brown County. The Applicant does not anticipate that any possible seismic activity would pose a hazard to the facility. Ponding, frost action, seasonal wetness, low bearing capacity, and moderately slow permeability are conditions that can be limiting factors for the surrounding soil type, but should not adversely affect construction or operation of the facility. Indeed, Staff finds that the surrounding geology does not present any notable challenges to the Project. (Staff Ex. 2 at 15-16.)

{¶ 36} The Applicant noted 42 streams and six wetlands within the project area, but most of the water resource impacts would be limited to those on man-made agricultural or roadside ditches. To minimize those impacts, Hillcrest would install many of the electric collection lines using horizontal directional drilling. Hillcrest is also coordinating with the Ohio Environmental Protection Agency (Ohio EPA) and U.S. Army

Corps of Engineers to ensure that all anticipated wetland and stream impacts are properly permitted. (Staff Ex. 2 at 16.)

{¶ 37} The project area is within range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a federal threatened species. In order to avoid impacts to these bat species, Staff recommends that Hillcrest adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter. (Staff Ex. 2 at 19.)

{¶ 38} The project area is also within range of several state listed fish species and a state endangered bird commonly called the loggerhead strike. To reduce impacts on the fish species, the Ohio Division of Wildlife recommends no in-water work in perennial streams from April 15 through June 30; Staff concurs. And, as the Applicant has proposed to remove hedgerows, thickets, and fencerows—all suitable nesting habitat for the loggerhead shrike—the Ohio Department of Natural Resources (ODNR) recommends that clearing of these habitats not be done during the species' nesting season. (Staff Ex. 2 at 19.)

{¶ 39} Permanent vegetative impacts associated with the Project would be limited to the developed area: less than 1,100 acres of the 2,083 acre footprint. These permanent impacts would occur primarily within agricultural fields. The impact to forestland is estimated to be far less than the 43 acres identified by geographic information system calculations, and Hillcrest has committed to minimizing any tree clearing within the project area to the greatest extent practicable. Moreover, the Solar Farm's final design would include planting and maintenance of pollinator-friendly, native plantings in selected locations around the perimeter of the solar field. It is the intent that these features not only enhance the visual appeal of the Project, but would also enrich local wildlife habitat and benefit the local farming community. Staff recommends that Hillcrest be required to provide a vegetation management plan for review prior to the preconstruction conference. (Staff Ex. 2 at 20.)

*c. Public Services, Facilities, and Safety*

{¶ 40} The principal impact on public services would be minimal increases in traffic on routes leading to the project area, mainly during the construction phase. Facility-related traffic would be minimal during operation. Hillcrest has committed to coordinating with local officials to insure minimal impacts. In addition, Staff recommends that Hillcrest be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 2 at 20-21.)

{¶ 41} Minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to an approximate 10-month construction period. Moreover, the construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. During operation, noise impacts would be small and occur only during the day. Most sounds are not expected to be heard outside a distance of 50 to 150 feet. Furthermore, the largest operational noise impact would be from a step up transformer at the new substation, which may occasionally cause a noise level only three decibels higher than the highest normal ambient noise levels in the area for the closest residence. (Staff Ex. 2 at 21.)

{¶ 42} In sum, Staff recommends that the Board find that Hillcrest has determined the nature of the probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 21).

**3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT**

{¶ 43} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology

and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 44} The proposed Solar Farm would have an overall positive impact on the local economy due to construction spending, wages, purchases of goods and services, annual lease payments to participating local landowners, and potential PILOT revenue. Hillcrest sited and designed the Project to minimize potential impacts and has committed to taking measures to reduce those it could not avoid. For example, where possible, Hillcrest committed to installing underground electric collection cable under most streams and wetlands to minimize the adverse effects. Impacts on wildlife and habitat can be avoided or abated by following seasonal construction restrictions. Noise impacts would be primarily limited to the construction phase, would be temporary and intermittent, and would occur away from most residential structures; traffic impacts would also be temporary. Additionally, given the Solar Farm's low profile, aesthetic impacts would be most prominent to landowners immediately surrounding the Project, and will be lessened by the landscape and aesthetics plan recommended by Staff, as well as similar measures taken by Hillcrest. (Staff Ex. 2 at 22-23.)

{¶ 45} Overall, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 23).

#### 4. ELECTRIC POWER GRID

{¶ 46} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed facility will serve the interest of the electric system economy and reliability.

{¶ 47} Staff evaluated the impact of integrating the proposed facility into the existing regional electric transmission grid. As proposed, the solar electric generating facility would be capable of producing 125 MW and would interconnect to Duke Energy's Hillcrest 138 kV Substation. On June 8, 2015, Hillcrest submitted a generation interconnection request to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed a System Impact Study (SIS), the results of which were released in September 2016. Through its analysis of the bulk electric system and the SIS, PJM found no reliability problems or circuit breaker problems. (Staff Ex. 2 at 24-25.)

{¶ 48} Staff concludes that the facility would serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and reliability. Accordingly, Staff Recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 2 at 25-26.)

## **5. AIR, WATER, SOLID WASTE, AND AVIATION**

{¶ 49} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 50} Although the proposed facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Hillcrest would need to minimize construction-related dust by minimizing grading and earthmoving activities and by using water and/or dust suppressants on unpaved roads. (Staff Ex. 2 at 27.)

{¶ 51} Neither construction nor operation of the proposed Solar Farm would require significant amounts of water. Similarly, the Project would not generate any wastewater that might impact water quality. Hillcrest would, however, need to seek certain water protection permits issued by the U.S. Army Corps of Engineers and the Ohio EPA under Sections 404 and 401 of the federal Clean Water Act. The Ohio EPA would also need to approve a Storm Water Pollution Protection Plan for storm water discharge associated with construction activities. (Staff Ex. 2 at 27.)

{¶ 52} Construction activities would generate debris such as crates, nails, boxes, containers, packing materials, and damaged parts, as well as vegetative debris. All materials with reuse or salvage value will be removed for such use; all debris would be disposed of in accordance with state and federal requirements. During operation, the facility would generate small amounts of similar non-hazardous, solid waste, which would also be reused, recycled, or disposed of pursuant to state and federal requirements. No hazardous wastes will be generated by the Project, and the Applicant intends to ensure that any previously contaminated soils discovered or generated during construction would be handled according to applicable regulations. In short, Staff notes that Hillcrest's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 2 at 27-28.)

{¶ 53} No public use airports, helicopter pads, or landing strips are located within 5 miles of the Solar Farm, and there are no private use airports, helicopter pads, or landing strips within or adjacent to the project area. In a coordinated review of the Project's potential impacts on local airports, no concerns have been identified by Staff or the ODOT Office of Aviation. (Staff Ex. 2 at 28.)

{¶ 54} Based on these findings, Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the facility include the conditions specified in the Staff Report (Staff Ex. 2 at 28).



## 6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 55} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 56} The Project presents no anticipated disruption or adverse impacts to public or private water supplies. Hillcrest indicates that the project area is within the vicinity of at least one area designated as a Source Water Protection Area (SWPA), which is associated with Mt. Orab, but concludes that neither construction nor operation of the facility are restricted activities for a groundwater or surface water SWPA. Regardless, Staff recommends that Hillcrest comply with any drinking water source protection plan for any part of the facility that is located within an SWPA of the local villages or cities. (Staff Ex. 2 at 29.)

{¶ 57} For reasons of public safety, Hillcrest will limit public access to the facility by installing a security fence around each cluster of solar panels. Additionally, the Solar Farm is required to be constructed, operated, and maintained in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements. Facility personnel will be trained to operate the equipment in a safe and reliable manner, and Hillcrest will secure all pertinent state and federal permits. (Staff Ex. 2 at 29.)

{¶ 58} Hillcrest has worked with the community in developing the facility. In addition to statutory outreach, the Applicant has met individually with affected landowners and local officials. Hillcrest will provide Staff with a copy of its complaint resolution process at least 30 days before the start of construction and plans to notify affected property owners and tenants, as well as anyone who requests project updates, at least seven days before the start of construction. Finally, Hillcrest holds development rights for more than 90 percent of the project area and access rights for the remaining area. Hillcrest will carry insurance to cover liability and potential claims during the

construction, operation, and decommissioning of the proposed Solar Farm. (Staff Ex. 2 at 29-30.)

{¶ 59} In all, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 2 at 30).

## 7. AGRICULTURAL DISTRICTS

{¶ 60} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility.

{¶ 61} Staff states that no agricultural district parcels would be impacted by the construction or operation of the proposed Solar Farm. Agricultural land that has not been classified as an agricultural district in the project area may experience some construction-related activities that could lead to temporary reductions in farm productivity, but Hillcrest has discussed and approved the siting of facility components with landowners in order to minimize those impacts. Hillcrest will also take steps to address potential impacts to farmland, including repair of all drain tiles damaged during construction and restoring temporarily impacted land to its original use. (Staff Ex. 2 at 31.)

{¶ 62} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 31).

## 8. WATER CONSERVATION PRACTICE

{¶ 63} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives.

{¶ 64} Although the facility may require some water use during construction for dust reduction purposes, the Project would use virtually no water and would produce no wastewater during operation. Water used for the occasional cleaning of the solar panels to reduce inefficiency would be trucked in or acquired from one or more of the participating landowners. (Staff Ex. 2 at 32.)

{¶ 65} In all, the facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8). Staff recommends that any certificate issued by the Board include any conditions specified in the Staff Report. (Staff Ex. 2 at 32.)

## 9. RECOMMENDATIONS

{¶ 66} In addition to making various findings throughout its report, Staff recommended that 28 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 2 at 33-37). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' December 12, 2017 Stipulation (Tr. at 19). The conditions are discussed below.

## VII. STIPULATION AND CONDITIONS

{¶ 67} At the December 14, 2017 adjudicatory hearing, counsel for Hillcrest presented the Stipulation entered into by Hillcrest, the Farm Bureau, and Staff and filed to the record on December 12, 2017 (Jt. Ex. 1; Tr. at 8). Hillcrest witness Douglas Herling offered testimony in support of the Stipulation, as did Staff witness Grant Zeto. Pursuant

to the Stipulation, the parties recommend that the Board issue the certificate requested by Hillcrest, subject to 28 listed conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) The facility shall be installed at Hillcrest's proposed site as presented in the application and modified by supplemental filings.
- (2) Prior to the start of any construction activities, Hillcrest shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the Project. The Applicant shall provide a proposed conference agenda for Staff review prior to the conference.
- (3) Hillcrest shall submit one set of detailed engineering drawings of the final project design to Staff at least 30 days before the preconstruction conference. This final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data.
- (4) If any changes to the project layout are made after the submission of final engineering drawings, Hillcrest shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are subject to Staff review to ensure compliance with all

conditions of the certificate, prior to construction in those areas.

- (5) Within 60 days after the commencement of commercial operation, Hillcrest shall submit to Staff a copy of the as-built specifications for the entire facility or, upon demonstration that good cause prevents submission of the as-built specifications, request an extension of time for the filing of such specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (6) Before commencement of construction activities in any affected areas, Hillcrest shall obtain and comply with all necessary permits and authorizations. Hillcrest shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Hillcrest shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (7) If Hillcrest has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid.
- (8) As information becomes known, Hillcrest shall docket in the case record the date on which construction will begin, on which construction was completed, and on which the facility begins commercial operation.

- (9) At least 30 days before the preconstruction conference, Hillcrest shall provide Staff with a copy of its public information program that informs affected property owners and tenants of the nature of the Project, specific contact information of Applicant personnel who are familiar with the Project, the proposed timeframe for project construction, and a schedule for restoration activities.
- (10) At least 30 days before the preconstruction conference, Hillcrest shall provide Staff with a copy of the complaint resolution process to address potential public grievances resulting from facility construction and operation; the resolution process must describe how the public can contact Hillcrest and how Hillcrest would contact anyone issuing a complaint.
- (11) During the construction and operation of the Solar Farm, Hillcrest shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and December of each year for the first five years of operation. The report should include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward a resolution of each complaint, and a status update if the complaint has yet to be resolved.
- (12) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 7:00 p.m. Monday through Friday; hoe ram and blasting operations, if required, shall be limited to

the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Hillcrest shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.

- (13) Prior to the commencement of construction, Hillcrest shall prepare a Phase I cultural resources survey program for archeological work for the project area. In consultation with Staff and the Ohio Historic Preservation Office (OHPO), the survey program shall include consideration of post locations, access roads, electric collection lines, and the project substations. If the resulting work discloses a find of cultural or archeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then Hillcrest shall submit a modification or mitigation plan detailing how such site(s) would be avoided or impacts lessened. Any such mitigation effort shall be developed in consultation with the OHPO and submitted to Staff for review and acceptance.
- (14) Prior to the commencement of construction, Hillcrest shall conclude an architectural survey of the project area; Hillcrest shall also submit to Staff a work program that outlines areas to be studied, with the focus on structures that are located near the project area. If the study discloses a find of cultural

or archeological significance, or a structure that could be eligible for inclusion on the National Register of Historic Places, then Hillcrest shall submit a modification or mitigation plan for Staff's acceptance. Any such mitigation efforts shall be developed in coordination with the OHPO and submitted to Staff for review and acceptance.

- (15) Prior to the commencement of construction, Hillcrest shall prepare a landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility where an adjacent non-participating parcel contains a residence with a direct and open line of sight to the facility. The plan shall include measures such as alternate fencing, vegetative screening, good neighbor agreements, or other measures, and shall be provided to Staff for review and confirmation that it complies with this condition.
- (16) Hillcrest shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Unless otherwise agreed to by the landowner, damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent at Hillcrest's expense. If applicable, excavated topsoil shall be segregated and restored in accordance with the Applicant's lease or other arrangement with the landowner. Unless otherwise agreed to by the landowner, severely compacted soil shall be plowed or



otherwise de-compacted during construction, if necessary, to restore them to original condition.

- (17) Within a reasonable time after issuance or receipt, Hillcrest shall provide Staff a copy of any arrangement or resulting resolution adopted by any county relating to the PILOT program.
- (18) Hillcrest shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities, and construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by Hillcrest, Staff, and ODNR in coordination with the USFWS. Construction activities not adversely impacting the identified plants or animals may continue. Nothing in this condition shall preclude agencies having jurisdiction over the construction activities with respect to wildlife from exercising their legal authority over the facility consistent with law.
- (19) Unless coordination with ODNR and USFWS allows a different course of action, Hillcrest shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats and northern long-eared bats.
- (20) Unless coordination with ODNR allows a different course, construction in loggerhead shrike preferred nesting habitat types shall be avoided during the species' nesting period of April 1 through August 1.

- (21) To reduce impacts to indigenous aquatic species and their habitat, Hillcrest shall not conduct in-water work in perennial streams from April 15 through June 30.
- (22) Hillcrest shall have a qualified environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between Hillcrest and Staff and as shown on Hillcrest's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during the Project's construction.
- (23) Prior to the preconstruction conference, Hillcrest shall submit a vegetation management plan to Staff for review and confirmation that it complies with this condition. The plan would identify all areas of proposed vegetation clearing for the Solar Farm, specify the extent of the clearing, and describe how such clearing work would be done as to minimize removal of woody vegetation. The plan shall also describe how trees and shrubs along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities would be protected from damage. The plan shall additionally describe the steps to be taken to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code

901.5-37 during implementation of pollinator-friendly plantings and describe any herbicide use.

- (24) Prior to the preconstruction conference, Hillcrest shall provide a construction access plan for review. The plan would consider the location of streams, wetlands, wooded areas, and sensitive wildlife and plant species and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan would also include the measures to be used for restoring the area around all temporary access points and a description of any long term stabilization required along permanent access routes.
- (25) Hillcrest shall comply with any drinking water source protection plan for any part of the facility that is located within an SWPA of a local village or city.
- (26) Hillcrest shall comply with applicable fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (27) Hillcrest shall obtain transportation permits prior to the commencement of construction activities that require them. Hillcrest shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation, local law

enforcement, and health and safety officials. Hillcrest shall detail this coordination as part of a final traffic plan submitted to Staff before the preconstruction conference for review and confirmation that it complies with this condition.

- (28) Hillcrest shall provide the Board's Staff a copy of any road use agreement(s) and final delivery route plan 30 days before the preconstruction conference.

(Jt. Ex. 1 at 5-9.)

### VIII. CONCLUSION

{¶ 68} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of Board proceedings. *See, e.g., In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principal or practice?

{¶ 69} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In his testimony on behalf of Hillcrest, Douglas Herling stated that multiple parties in the proceeding engaged in the negotiations and that the serious bargaining efforts that took place are evident in the various filings, such as the Applicant's initial testimony, Staff's initial recommendations, and the final conditions within the Stipulation (Tr. at 12.). Mr. Herling also mentioned that the Stipulation's conditions take into account concerns raised by the parties and the local community (Tr. 13, 15). Thus, the Board finds that the first criterion is met.

{¶ 70} The Board also concludes that the second and third elements are satisfied. As a package, the Stipulation benefits ratepayers and the public interest in numerous ways. For example, Mr. Herling testified that, when completed, the Solar Farm will have the capacity to generate approximately 125 MW while generating essentially zero noise or emissions and will directly benefit the local economy through the addition of new jobs, wages, and local revenue. Moreover, the Stipulation requires Hillcrest to develop a landscape plan to minimize the aesthetic impact of the facility on adjacent non-participating residential properties, which was of great concern to local citizens. Indeed, the landscape plan will be informed by public comments and concerns of individual landowners using industry best practices. The Stipulation further requires a complaint resolution process that would include addressing complaints of post-construction visual impacts. (Tr. at 12-15.) Similarly, the Stipulation contains conditions addressing the Farm Bureau's concerns regarding the spread of noxious weeds (Tr. at 13). Finally, the Stipulation does not violate any important regulatory principle or practice (Tr. at 15).

{¶ 71} Based on the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-generating facility described in Hillcrest's application, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Hillcrest in accordance with R.C. Chapter 4906.

#### IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 72} Hillcrest is a person under R.C. 4906.01(A) and is licensed to do business in the State of Ohio.

{¶ 73} The proposed electric generation facility is a major utility facility as that term is defined in R.C. 4906.01(B).

{¶ 74} On May 4, 2017, Hillcrest filed a pre-application notification letter informing the Board of a public informational meeting for its proposed facility.

{¶ 75} On June 14, 2017, Hillcrest filed proof of its publication of the notice regarding the public informational meeting in *The News Democrat* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 76} On May 23, 2017, Hillcrest held the public informational meeting for its proposed Solar Farm.

{¶ 77} On June 29, 2017, Hillcrest filed its application for a Certificate of Environmental Compatibility and Public Need to construct the Hillcrest Solar Farm. Also on June 29, 2017, Hillcrest filed a motion for waivers of certain filing requirements and a motion for protective order.

{¶ 78} By Entry dated August 3, 2017, the ALJ granted in part and denied in part Hillcrest's motion for waivers.

{¶ 79} By letter dated August 28, 2017, the Board notified Hillcrest that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 80} On September 7, 2017, the Applicant filed a Certificate of Service indicating that copies of the application had been served upon local public officials and libraries.

{¶ 81} On September 8, 2017, Hillcrest filed proof that it had paid its application fee.

{¶ 82} On September 22, 2017, the ALJ issued a procedural Entry establishing the effective date of the application as September 18, 2017; scheduling a local public hearing for November 30, 2017, and an adjudicatory hearing for December 14, 2017; directing Staff to file a report; and setting a deadline for intervention.

{¶ 83} On September 27, 2017, the Applicant filed a Notice of Mailing stating that a copy of the "Notice of Proposed Major Utility Facility" was sent to government officials, libraries, and affected property owners pursuant to Ohio Adm.Code 4906-3-09(A)(1) on September 26, 2017.

{¶ 84} On October 17, 2017, the Farm Bureau filed a motion to intervene and memorandum in support.

{¶ 85} On November 3, 2017, the Applicant filed notice of its intent to modify the footprint of the proposed facility by adding an approximately 6.1 acre area of an 8.45 acre parcel.

{¶ 86} The Staff Report was filed on November 15, 2017.

{¶ 87} On November 17, 2017, Hillcrest file a Notice of Mailing stating that a copy of the second “Notice of Proposed Major Utility Facility” was sent to government officials, libraries, and property owners on November 16, 2017.

{¶ 88} A local public hearing was held on November 30, 2017. At the hearing, seven witnesses testified in favor of the Project, seven witnesses testified in opposition, and one witness provided neutral testimony.

{¶ 89} On December 12, 2017, Hillcrest, the Farm Bureau, and Staff filed a Stipulation resolving all issues in this proceeding.

{¶ 90} On December 14, 2017, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board’s consideration. Hillcrest presented the testimony of Douglas Herling in support of the Stipulation; Staff presented the testimony of Grant Zeto in support of both the Staff Report and the Stipulation.

{¶ 91} Adequate data on the proposed generation facility has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 92} The Stipulation satisfies the criteria established by the Board for review and consideration of such agreements.

{¶ 93} Based on the record, the Board finds that Hillcrest’s application should be approved and, pursuant to R.C. Chapter 4906, a certificate should be issued for the construction, operation, and maintenance of the electric generation facility subject to the conditions set forth in the Stipulation and this Order.



**X. ORDER**

{¶ 94} It is, therefore,

{¶ 95} ORDERED, That the Farm Bureau's motion to intervene be granted. It is, further,

{¶ 96} ORDERED, That Hillcrest's motion for a protective order be granted. It is, further,

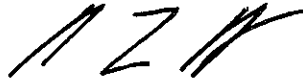
{¶ 97} ORDERED, That the docketing division maintain under seal the information that was filed under seal in this docket for a period of 24 months. It is, further,

{¶ 98} ORDERED, That the Stipulation be approved and adopted. It is, further,

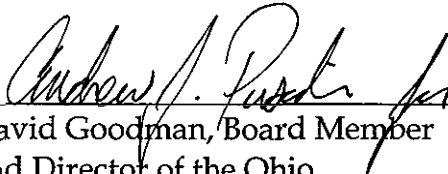
{¶ 99} ORDERED, That a certificate be issued to Hillcrest for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Stipulation and this Order. It is, further,

{¶ 100} ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties and interested persons of record.

## THE OHIO POWER SITING BOARD



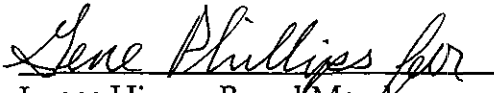
Asim Z. Haque, Chairman  
Public Utilities Commission of Ohio



David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency



James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources



Lance Himes, Board Member  
and Director of the Ohio  
Department of Health



Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency



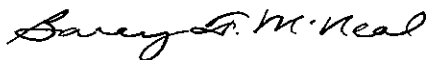
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

Board Member  
and Public Member

PAS/sc

Entered in the Journal

**FEB 15 2018**



Barcy F. McNeal  
Secretary