

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
WILLOWBROOK SOLAR I, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT AN ELECTRIC GENERATION
FACILITY IN HIGHLAND AND BROWN
COUNTIES, OHIO.

CASE NO. 18-1024-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on April 4, 2019

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Willowbrook Solar I, LLC, the Ohio Farm Bureau Federation, and Staff and directs that a certificate be issued to Willowbrook Solar I, LLC for construction of a new 150 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 June 22, 2018, Willowbrook Solar I, LLC (Willowbrook or Applicant) filed a pre-application notification letter with the Board regarding its proposal to develop and construct a 150 megawatt (MW) solar-powered electric generating facility in Concord and White Oak townships in Highland County and Eagle Township in Brown County, Ohio (hereafter, the Project or Solar Farm). Willowbrook held a public informational meeting to

discuss the project with interested persons and landowners on July 9, 2018, in Hillsboro, Ohio.

{¶ 5} On September 17, 2018, Willowbrook submitted two filings to the record. First, Willowbrook filed its application with the Board for approval to construct the new 150 MW solar-powered electric generating facility.

{¶ 6} Second, Willowbrook filed a motion seeking waivers from certain provisions of the Board's rule requirements. No objections to the motion were filed. By Entry issued October 4, 2018, the administrative law judge (ALJ) granted Willowbrook's request for waiver, with clarification, from Ohio Adm.Code 4906-4-08(A)(1)(c) (manufacturers' safety manual documents and recommended setbacks), 4906-4-08(A)(5)(c) (geological test boring plans), and Ohio Adm.Code 4906-4-08(D)(2-4) (study area). Regarding Applicant's request for a waiver of its plan for test borings including appropriate closure plans as outlined in Ohio Adm.Code 4906-4-08(A)95)(c), the ALJ clarified that Willowbrook must provide such plans for test borings at least 30 days prior to the commencement of the field work and after the Project's layout has been finalized so that Staff has sufficient time to review the information prior to the commencement of field work.

{¶ 7} By letter dated November 16, 2018, the Board notified Willowbrook 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 Willowbrook to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 8} On November 27, 2018, Willowbrook filed a certificate of service of its accepted, complete application as required by Ohio Adm.Code 4906-3-07 as well as proof that it submitted its application fee.

{¶ 9} By Entry issued November 29, 2018, the ALJ established the effective date of the application as November 29, 2018. The Entry also set forth a procedural schedule under which a local public hearing would be conducted on February 19, 2019, and an evidentiary hearing would be held on February 28, 2019. The ALJ also directed Willowbrook 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 January 14, 2019, whichever was later.

{¶ 10} On January 11, 2019, the Ohio Farm Bureau Federation (Farm Bureau) filed a motion to intervene and memorandum in support. No party opposed the Farm Bureau's motion.

{¶ 11} Two property owners in the vicinity of the project, James and Jeanine Powell and Timothy Brinker filed petitions seeking intervention on January 11, 2019 and January 15, 2019, respectively. Applicant filed a memorandum contra Mr. Brinker's petition to intervene as being late-filed.

{¶ 12} By ALJ Entry issued February 12, 2019, the petitions to intervene filed by the Farm Bureau, James and Jeanine Powell, and Timothy Brinker were granted. Prior to the adjudicatory hearing in this matter, James and Jeanine Powell and Timothy Brinker filed notices of withdrawal as a party to this proceeding.

{¶ 13} On February 4, 2019, 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 February 19, 2019. The hearing was well-attended, and 17 public witnesses testified.

{¶ 15} On February 27, 2019, Willowbrook, the Farm Bureau, and Staff filed a joint stipulation and recommendation (Stipulation).

{¶ 16} On February 28, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Willowbrook 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. PROJECT DESCRIPTION

{¶ 17} Willowbrook seeks certification to build a 150 MW solar-powered electric generating facility in Highland and Brown counties, Ohio. The Project 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, up to six meteorological stations, buried electrical collection lines, inverter pads, and a substation. The Project would occupy up to 1,726 acres within a 2,034 acre project area. Willowbrook is proposing to begin construction during the fourth quarter of 2019 and intends for an in-service date by the first quarter 2021.

IV. CERTIFICATION CRITERIA

{¶ 18} 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.

V. SUMMARY OF EVIDENCE

{¶ 19} 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*

{¶ 20} On February 19, 2019, the local public hearing was conducted. The record includes testimony from 17 witnesses, 13 in favor and 4 opposed. Those advocating in favor of the proposed Solar Farm included the Treasurer of the Bright Local School District, individuals whose land would be used for the Project, and local citizenry. Overall, these individuals discussed the positive economic impact on the local economy, the increases in tax revenues for the Bright Local School District, 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.

B. *Staff Report*

{¶ 21} 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

{¶ 22} 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

{¶ 23} 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

{¶ 24} Willowbrook seeks to construct the Project on up to 1,726 acres of privately-owned land within a larger area of approximately 2,034 acres over 30 separate properties in Brown and Highland counties, Ohio. In 2010, Brown County's population was 44,846, resulting in a population density of 91.5 persons per square mile. Similarly, the population of Highland County was 44,589 and the population density was 78.8 persons per square mile. These numbers decreased slightly (one to two percent) from 2010 to 2017 estimates. In the same year, Ohio's general population density was 282.3 persons per square mile. (Staff Ex. 2 at 12.)

{¶ 25} Of the land acreage for the Project, the majority is presently used for agricultural production, however, none of this land is listed as agricultural district land. Small segments of the Project area are utilized as rural residential or contain woodlots, roads, and open fields. There are 61 residences located within 1,500 feet of the Project boundary and, according to Willowbrook, 16 non-participating residences (homes located on parcels not being leased for the Project) within 250 feet of potential solar arrays and 4 residential structures within 250 feet of an associated facility for the Project (access road, laydown yard, or substation). There are no national inventory rivers, national scenic trails, national wildlife refuges, or state wildlife management areas within five miles of the Project. There are lakes and streams within five miles of the Project used for recreational purposes but these resources would not be impacted by the Project. (Staff Ex. 2 at 12-13.)

{¶ 26} Willowbrook commissioned a cultural resources records review of the area. The review revealed no National Register of Historic Places nor National Historic Landmarks within two miles of the Project area. Two Ohio Historic Inventory structures were identified within two miles of the Project area. The Applicant also identified 10 Ohio Archaeological Inventory sites located between 1.5 and 2 miles from the Solar Farm, and 19 mapped cemeteries between 0.1 and 2 miles from the Project area. None of these sites is expected to be directly impacted by the proposed facility. There are numerous earthworks depicted in Brown and Highland counties, none of which should be impacted by the Solar Farm. The records review identified four previous Phase I archeological surveys within the 2-mile project study area. However, to ensure minimal impacts, Willowbrook will conduct a limited archaeological survey for those portions of the Project where substantial ground disturbance is proposed. (Staff Ex. 2 at 13-14.)

{¶ 27} As to aesthetics, Staff initially reports that the tallest structure, estimated to be a maximum of 70 feet in height, would be the lighting mast located within the project substation. 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.)

{¶ 28} The VRA further notes that the Solar Farm's visibility and visual impact will be minimal at distances beyond a half mile. To minimize visibility, the Applicant would take steps such as fencing and minimizing light levels to those necessary for safety. Staff further recommends that Willowbrook 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, opaque fencing, and good neighbor agreements. (Staff Ex. 2 at 14.)

{¶ 29} Economically, Willowbrook estimates that the proposed Solar Farm would create 768 temporary on-site construction jobs and 20 long-term operational jobs for Brown and Highland counties. During the construction period, wages would produce \$41 million in impacts to the study area, and \$54 to \$107 million in earnings for the State of Ohio. Operationally, the Solar Farm would produce annual earnings of \$975,000 for Brown and Highland counties and \$1.2 to \$1.5 million in annual earnings for the State of Ohio. The Applicant estimates that the Solar Farm will produce Payment in Lieu of Taxes (PILOT) revenues of \$1.05 million annually for Brown and Highland counties based upon PILOT payments of \$7,000/MW. (Staff Ex. 2 at 15.)

b. Ecological Impacts

{¶ 30} The proposed project site is in a broad, flat area of Brown and Highland counties. The Project would disturb a minimal amount of ground surface and would not impact groundwater wells during construction or operation. The Applicant does not anticipate that any possible seismic activity would pose a hazard to the facility. There are no underground mines or current oil and gas operations occurring in the project area. Karst features appear in the eastern and southeastern part of Highland County along the eastern border of the project area however the Applicant will employ design and construction methods to avoid or minimize the effects of karst features revealed through further site-specific investigation. Staff opines that the surrounding geology does not present any notable challenges to the Project. (Staff Ex. 2 at 16-17.)

{¶ 31} Installation of collection lines would include both open-cut and horizontal directional drill (HDD) methods. Open cut installation would impact three separate streams in seven crossing locations while HDD would be utilized in 13 additional collection line stream crossings. The Applicant has a detailed frac-out contingency plan to address inadvertent return of drilling lubricant to the surface. Willowbrook noted that all other facility components would be installed in upland areas and would not impact streams and wetlands. Only one small area of riparian tree clearing is proposed and is associated with

the installation of an access road and collection line. No wetland impacts are proposed nor are facility components to be installed within a 100-year floodplain. Willowbrook is coordinating with the Ohio Environmental Protection Agency (Ohio EPA) and U.S. Army Corps of Engineers to ensure that all anticipated stream impacts are properly permitted. (Staff Ex. 2 at 17-18.)

{¶ 32} 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 Willowbrook 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.)

{¶ 33} The Project area is also within range of two state listed fish species commonly referred to as the bigeye shiner and the Sloan's crayfish. To reduce impacts on the Sloan's crayfish, the Ohio Department of Natural Resources (ODNR) recommends in-stream portions of the project be conducted during base flow periods or periods slightly above normal flow. If the Applicant encounters isolated pools potentially confining the Sloan's crayfish, the ODNR recommends that any impacted pools be cleared via the sweep seine technique and that captured Sloan's crayfish be relocated upstream and outside the Project area. Regarding the bigeye shiner, Staff recommends no in-water work in perennial streams from April 15 through June 30 to minimize impacts to this aquatic species unless coordination with ODNR allows for a different course of action. (Staff Ex. 2 at 19.)

{¶ 34} Permanent vegetative impacts associated with the Project would be limited to the developed area: less than 1,726 acres of the 2,034 acre footprint. These permanent impacts would occur primarily within agricultural fields. The impact to forestland is estimated to be far less than the 16.4 acres proposed by the Applicant as Staff has recommended leaving narrow areas of woodlot-connecting trees and shrubs which would reduce total tree clearing by approximately 8.5 acres. 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 Willowbrook 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

{¶ 35} 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. Willowbrook has committed to coordinating with local officials to insure minimal impacts. In addition, Staff recommends that Willowbrook be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 2 at 21.)

{¶ 36} 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 12-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. Operational noise sources include inverters located within a group of solar panels, the step-up transformer at the new substation, and tracking motors. Noise impacts to non-participating receptors was modeled and showed that operational noise impacts would be no greater than the daytime ambient noise level plus 5 dBA. (Staff Ex. 2 at 21.)

{¶ 37} In sum, Staff recommends that the Board find that Willowbrook 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 22).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 38} 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.

{¶ 39} 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. Willowbrook 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, Willowbrook committed to installing underground electric collection cable crossings primarily under streams 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 Willowbrook. (Staff Ex. 2 at 23-24.)

{¶ 40} 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 24).

4. ELECTRIC POWER GRID

{¶ 41} 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.

{¶ 42} 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 150 MW and would interconnect to AEP Ohio's Wildcat 138 kV Substation. Willowbrook submitted a generation interconnection request to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administrating the generation queue for the regional transmission system in Ohio. PJM completed a System Impact Study (SIS), the results of which were released in March 2018. Through its analysis of the bulk electric system and the SIS, PJM found that there would be reliability problems under a double-contingency outage of the Meldahl-Spurlock and the Spurlock-Stuart 345 kV lines that may cause the Wildcat-Hillsboro 138 kV line to be unable to operate above its emergency rating. PJM will require a sag study to determine the operating limits of the line. Depending on the results of the sag study, the Applicant may be required to finance the reconductoring of the Wildcat-Hillsboro 138 kV line. (Staff Ex. 2 at 25-26.)

{¶ 43} 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 27.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 44} 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.

{¶ 45} Although the proposed facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Willowbrook would need to minimize construction-related dust by using water and/or dust suppressants on unpaved roads. (Staff Ex. 2 at 28.)

{¶ 46} 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. Willowbrook 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 28.)

{¶ 47} 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 non-hazardous, solid waste, which would also be reused, recycled, or disposed of pursuant to state and federal requirements. In short, Staff notes that Willowbrook's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 2 at 29.)

{¶ 48} No public use airports, helicopter pads, or landing strips are located within 5 miles of the Solar Farm, however, there is one private use airport just north of the Project.

The Applicant is in discussions with the owner and does not anticipate any adverse impacts. (Staff Ex. 2 at 29.)

{¶ 49} Staff contacted the ODOT Office of Aviation to coordinate review of potential impacts of the facility on local airports and no such concerns have been identified. 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 29-30.)

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 51} For reasons of public safety, Willowbrook will use warning signs, fencing, and locked gates to restrict access to the Solar Farm. 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 Willowbrook will secure all pertinent state and federal permits. (Staff Ex. 2 at 31.)

{¶ 52} Willowbrook 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. Willowbrook 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, Willowbrook holds development rights for more than 90 percent of the Project area and access rights for the remaining area. Willowbrook will carry insurance to cover liability and potential claims during the construction, operation, and decommissioning of the proposed Solar Farm. (Staff Ex. 2 at 31-32.)

{¶ 53} 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 32).

7. AGRICULTURAL DISTRICTS

{¶ 54} 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.

{¶ 55} Staff states that no agricultural district parcels would be impacted by the construction or operation of the proposed Solar Farm. Construction of the facility would result in the loss of 1,231.6 acres of cultivated lands and 368.5 acres of pasture. However, the repurposed land can be restored for agricultural use when the Project is decommissioned. Willowbrook will also take steps to address any 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 33.)

{¶ 56} 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 33).

8. WATER CONSERVATION PRACTICE

{¶ 57} 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.

{¶ 58} 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 (Staff Ex. 2 at 34).

{¶ 59} 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 34.)

9. RECOMMENDATIONS

{¶ 60} 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 35-39). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' February 27, 2019 Stipulation (Tr. at 13-15). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 61} At the February 28, 2019 adjudicatory hearing, counsel for Willowbrook presented the Stipulation entered into by Willowbrook, the Farm Bureau, and Staff and filed to the record on February 27, 2019 (Jt. Ex. 1; Tr. at 11). Willowbrook 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 Willowbrook, 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 Willowbrook's proposed site as presented in the application and modified by supplemental filings.

- (2) Prior to the start of any construction activities, Willowbrook 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) Willowbrook 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, Willowbrook 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, Willowbrook 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) If Willowbrook 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.
- (7) As information becomes known, Willowbrook 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.
- (8) Before commencement of construction activities in any affected areas, Willowbrook shall obtain and comply with all necessary permits and authorizations. Willowbrook shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Willowbrook shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (9) Prior to the commencement of construction, Willowbrook shall prepare a Phase I cultural resources survey program for the Project area in consultation with Staff and the Ohio Historic Preservation Office (OHPO). If the resulting work discloses a find of cultural, archeological, or architectural significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then Willowbrook 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.

- (10) 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. Willowbrook 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.
- (11) Prior to the commencement of construction, Willowbrook 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 line of sight to the project area. The plan shall include measures such as opaque 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.
- (12) At least 30 days before the preconstruction conference, Willowbrook 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.

- (13) At least 30 days before the preconstruction conference, Willowbrook 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 Willowbrook and how Willowbrook would contact anyone issuing a complaint.
- (14) During the construction and operation of the Solar Farm, Willowbrook 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.
- (15) Willowbrook 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 Willowbrook's expense.

- (16) Within 30 days after issuance or receipt, Willowbrook shall provide Staff a copy of any arrangement or resulting resolution adopted by any county relating to the PILOT program.
- (17) Prior to construction, Willowbrook shall install orange snow fence or other easily identifiable materials around wetlands and streams adjacent to proposed project infrastructure in order to avoid accidental impacts from construction vehicles.
- (18) Prior to the preconstruction conference, Willowbrook 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 also describe the implementation and maintenance of pollinator-friendly plantings and describe any planned herbicide use. 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.
- (19) In-stream construction in perennial streams shall be conducted during base flow or slightly above normal flow to allow the Sloan's crayfish to relocate out of the area as in-water work begins. If isolated pools potentially confining the Sloan's

crayfish are encountered, any impacted pools shall be cleared of the Sloan's crayfish using a sweep seine technique and any captured Sloan's crayfish shall be relocated upstream and outside the project area.

- (20) To reduce impacts to indigenous aquatic species and their habitat, Willowbrook shall not conduct in-water work in perennial streams from April 15 through June 30.
- (21) Unless coordination with ODNR and United States Fish and Wildlife Service (USFWS) allows a different course of action, Willowbrook 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.
- (22) Willowbrook shall have an environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between Willowbrook and Staff, and as shown on Willowbrook'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) Willowbrook 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 Willowbrook, Staff, and the appropriate agencies.

- (24) Prior to the preconstruction conference, Willowbrook 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) Willowbrook shall to the extent practicable minimize the clearing of wooded areas, including scrub/shrub areas, which would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.
- (26) Willowbrook shall obtain transportation permits prior to the commencement of construction activities that require them. Willowbrook shall coordinate with the appropriate authority regarding any temporary 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. Willowbrook 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.

- (27) Willowbrook shall provide Staff a copy of any road use agreement(s) and final delivery route plan 30 days before the preconstruction conference.
- (28) Willowbrook shall not commence construction of the facility until it has a signed Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ICSA) with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. Willowbrook shall provide a letter stating that the agreement has been signed or a copy of the signed ISA and ICSA to the Staff.

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

VII. CONCLUSION

{¶ 62} 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?

{¶ 63} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In his testimony on behalf of Willowbrook, 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 16.). Thus, the Board finds that the first criterion is met.

{¶ 64} 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 the Solar Farm is a major infrastructure and capital investment project that, when completed, will have the capacity to generate approximately 150 MW while generating essentially zero noise or emissions. Furthermore, the Project will directly benefit the local economy through the addition of new jobs, wages, and local revenue. Moreover, the Stipulation requires Willowbrook to take steps to meet certain requirements during the construction and operation of the Project to minimize any impact of the Solar Farm. The Stipulation further requires a complaint resolution process that

would include addressing complaints of post-construction visual impacts. (Tr. at 16-17.) Finally, the Stipulation does not violate any important regulatory principle or practice (Tr. at 17).

{¶ 65} 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 electric facility described in Willowbrook'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 Willowbrook in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

{¶ 68} On June 22, 2018, Willowbrook filed a pre-application notification letter informing the Board of a public informational meeting for its proposed facility.

{¶ 69} On July 23, 2018, Willowbrook filed proof of its publication of the notice regarding the public informational meeting in the *Highland County Press*, the *Brown County Press*, and the *Brown County News Democrat* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 70} On July 9, 2018, Willowbrook held the public informational meeting for its proposed Solar Farm.

{¶ 71} On September 17, 2018, Willowbrook filed its application for a Certificate of Environmental Compatibility and Public Need to construct the Willowbrook Solar Farm.

Also on September 17, 2018, Willowbrook filed a motion for waivers of certain filing requirements.

{¶ 72} By Entry dated October 4, 2018, the ALJ granted Willowbrook's motion for waivers.

{¶ 73} By letter dated November 16, 2018, the Board notified Willowbrook that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 74} On November 27, 2018, Willowbrook filed proof that it had paid its application fee.

{¶ 75} On November 28, 2018, the Applicant filed a Certificate of Service indicating that copies of the application had been served upon local public officials and libraries.

{¶ 76} On November 29, 2018, the ALJ issued a procedural Entry establishing the effective date of the application as November 29, 2018; scheduling a local public hearing for February 19, 2019, and an adjudicatory hearing for February 28, 2019; directing Staff to file a report; and setting a deadline for intervention.

{¶ 77} On December 26, 2018, the Applicant filed a notice indicating that the notice was sent to government officials, libraries, and affected property owners pursuant to Ohio Adm.Code 4906-3-09(A)(1) on December 13, 2018.

{¶ 78} On January 11, 2019, the Farm Bureau filed a motion to intervene and memorandum in support.

{¶ 79} The Staff Report was filed on February 4, 2019.

{¶ 80} On February 13, 2019, Willowbrook file a notice indicating that a copy of the second "Notice of Proposed Major Utility Facility" was sent to government officials, libraries, and property owners on February 4, 2019.

{¶ 81} A local public hearing was held on February 19, 2019. At the hearing, 13 witnesses testified in favor of the Project and 4 witnesses testified in opposition to the Project.

{¶ 82} On February 27, 2019, Willowbrook, the Farm Bureau, and Staff filed a Stipulation resolving all issues in this proceeding.

{¶ 83} On February 28, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Willowbrook 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.

{¶ 84} 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.

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

{¶ 86} Based on the record, the Board finds that Willowbrook'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 solar-powered electric generation facility subject to the conditions set forth in the Stipulation and this Order.

IX. ORDER

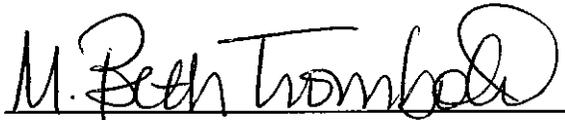
{¶ 87} It is, therefore,

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

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

{¶ 90} 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



M. Beth Trombold, Chair
Public Utilities Commission of Ohio



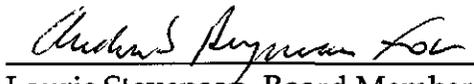
Lydia Mihalik, Board Member
and Director of the Ohio
Development Services Agency



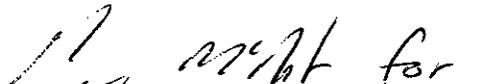
Mary Mertz, Board Member
and Director of the Ohio
Department of Natural Resources



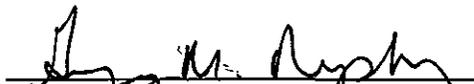
Amy Acton, M.D., MPH, Board Member
and Director of the Ohio
Department of Health



Laurie Stevenson, Board Member
and Director of the Ohio
Environmental Protection Agency



Dorothy Pelanda, Board Member
and Director of the Ohio
Department of Agriculture

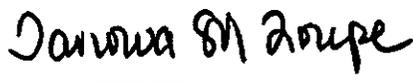


Greg Murphy, Board Member
and Public Member

JRJ/hac

Entered in the Journal

~~APR 04 2019~~



Tanowa Troupe
Secretary