

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Atlanta Farms Solar )  
Project, LLC for a Certificate of Environmental )  
Compatibility and Public Need to Construct a Solar- ) Case No: 19-1880-EL-BGN  
Powered Electric Generation Facility in Pickaway )  
County, Ohio. )

**JOINT STIPULATION AND RECOMMENDATION**

**I. INTRODUCTION**

Atlanta Farms Solar Project, LLC (“Applicant”), the Ohio Farm Bureau Federation (“OFBF”), and the Ohio Power Siting Board (“Board”) Staff (“Staff”) (jointly referred to herein as “Signatory Parties”) submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Board. Ohio Adm.Code 4906-2-24(A) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below, and to jointly recommend that the Board approve and adopt this Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters pertinent to the certification and construction of the solar-powered electric generation facility in Pickaway County, Ohio as proposed in this proceeding.

OFBF filed a motion to intervene in this proceeding, which was granted by the Administrative Law Judges (“ALJs”) on October 19, 2020. The Report of Investigation was issued by the Staff on October 7, 2020 (“Staff Report”). The local public hearing was held October 22, 2020. The evidentiary hearing will commence on November 4, 2020.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a

cooperative process to resolve all of the issues in this proceeding. This Stipulation represents the culmination of these discussions, and the Signatory Parties acknowledge that this agreement is amply supported by the record and, thus, entitled to careful consideration by the Board. Accordingly, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the facility.

## **II. JOINT RECOMMENDATIONS OF THE SIGNATORY PARTIES**

### **A. Recommended Conditions**

The proposed facility is located in Pickaway County, Ohio and its total generating capacity will not exceed 199.6 megawatts (“MWs”). Construction of the facility is expected to begin as early as third quarter of 2021.

The Signatory Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by the Applicant subject to the following conditions:

1. The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.
2. The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction conferences for each stage of construction.
3. Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications.

The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

4. The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate, unless the Board grants a waiver or extension of time.
5. As the information becomes known, the Applicant shall file in this proceeding the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
6. Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
7. At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application.
8. All final geotechnical study results shall be submitted on the docket. The detailed engineering drawings of the final project design shall account for wind loads and geological features (including but not limited to karst topography) and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs.
9. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county

commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices will provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice must also contain a timeline for construction and restoration activities, and the start of facility operations must also contain a timeline for the start of operations. The Applicant shall also file a copy of these notices on the public docket. During the construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January 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.

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. or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. 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. The Applicant 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 commencement of construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and also include a plan describing the methods to be used for fence repair. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along

the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.

12. The Applicant 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. Damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent at the Applicant's expense. The affected landowner may agree to not having the damaged field tile system repaired only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system.
13. At least 30 days prior to construction, the Applicant shall submit an updated noise study, using noise data from the inverter chosen for the project. The updated noise study shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor.
14. The Applicant 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, unless coordination with the Ohio Department of Natural Resources ("ODNR") and the U.S. Fish and Wildlife Service ("USFWS") allows a different course of action.
15. Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31. Mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with the ODNR allows a different course of action.
16. The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas may include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. 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 project construction. The environmental specialist shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas which would be impacted during

construction with information on when the environmental specialist would be present.

17. The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies.
18. Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant 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. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.
19. The Applicant shall provide the Board's Staff a copy of the transportation management plan and any road use agreement(s) upon receipt or 30 days prior to the preconstruction conference.
20. The facility shall be operated in such a way as to assure that no more than 199.6 megawatts would at any time be injected into the Bulk Power System.
21. The Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm. Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings.

## **B. Exhibits**

Subject to the terms and conditions of this Stipulation, the Applicant, OFBF, and Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding:

1. Applicant Exhibit 1: Application filed on January 31, 2020.
2. Applicant Exhibit 2: Supplement to Application filed on March 3, 2020.
3. Applicant Exhibit 3: Application Figures 08-7 and 08-8 filed March 17, 2020.

4. Applicant Exhibit 4: Response to First Data Request filed on March 27, 2020.
5. Applicant Exhibit 5: Response to Second Data Request filed on April 27, 2020.
6. Applicant Exhibit 6: Response to Third Data Request filed on May 15, 2020.
7. Applicant Exhibit 7: Supplemental Response to Third Data Request filed on June 16, 2020.
8. Applicant Exhibit 8: Second Supplemental Response to Third Data Request filed on June 23, 2020.
9. Applicant Exhibit 9: Third Supplemental Response to Third Data Request filed on July 6, 2020.
10. Applicant Exhibit 10: Response to Fourth Data Request filed on August 31, 2020.
11. Applicant Exhibit 11: Supplemental Response to Fourth Data Request filed on September 15, 2020.
12. Applicant Exhibit 12: Response to Fifth Data Request filed on September 18, 2020.
13. Applicant Exhibit 13: Response to Sixth Data Request filed on September 25, 2020.
14. Applicant Exhibit 14: Certificate of Service of the November 4, 2019 Public Information Meeting, notice on property owners and entities filed on October 23, 2019, in accordance with Ohio Adm.Code 4906-3-03.
15. Applicant Exhibit 15: Proof of Publication of November 4, 2019 Public Information Meeting in the *Circleville Herald* filed on October 28, 2019, in accordance with Ohio Adm.Code 4906-3-03.
16. Applicant Exhibit 16: Certificate of Service of the accepted, complete application on local public officials and libraries filed on July 14, 2019, in accordance with Ohio Adm.Code 4906-3-07.
17. Applicant Exhibit 17: Proof of Service and Proof of Publication in the *Circleville Herald* of the procedural schedule, in accordance with the ALJ's August 31, and September 3, 2020 Entries, filed on September 18, 2020.

18. Applicant Exhibit 18: Proof of Second Service and Proof of Second Publication in the *Circleville Herald* of the procedural schedule, in accordance with the ALJ's August 31, and September 3, 2020 Entries, filed on October 19, 2020.
19. Joint Exhibit 1: The October 29, 2020, Stipulation signed on behalf of the Applicant, OFBF, and Staff.

**C. Other Terms of the Stipulation**

1. This Stipulation is expressly conditioned upon its adoption by the Board without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation constitutes a "material modification" thereof. If the Board rejects or materially modifies all of any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within 30 days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdraw"). No Signatory Party shall file a Notice of Withdraw without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for the Board's review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford the Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after hearing if necessary.
2. The Signatory Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that this Stipulation carries no factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.



### **III. RECOMMENDED FINDINGS**

The Signatory Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

#### **A. Recommended Findings of Fact**

1. The Applicant is a wholly-owned subsidiary of Savion, LLC, and is licensed to do business in the state of Ohio.
2. The facility qualifies as a major utility facility as defined in R.C. 4906.01(B)(1).
3. On October 18, 2019, the Applicant filed a preapplication notification letter informing the Board of a public information meeting in this proceeding. Notice of the public information meeting was served on property owners and published in the *Circleville Herald*. The public information meeting was held, as scheduled, on November 4, 2019.
4. The Applicant formally submitted its application for a Certificate of Environmental Compatibility and Public Need on January 31, 2020, as supplemented on March 3, 2020, an updated on March 17, 2020.
5. The OFBF was granted intervention on October 19, 2020.
6. On April 30, 2020, the ALJ extended the completeness review by the Staff. On July 7, 2020, the Staff filed a letter stating that it had received sufficient information to begin its review of the Application as supplemented.
7. On July 16, 2020, the Applicant filed notice that the Application fee had been submitted.
8. On July 14, September 18, and October 19, 2020, the Applicant filed certificates of service indicating that copies of the Application were served on local public officials and libraries.
9. On August 31, 2020, as clarified on September 3, 2020, the ALJ established the procedural schedule and scheduled the local public and evidentiary hearings for October 22 and November 4, 2020, respectively.
10. On September 18 and October 19, 2020, the Applicant filed proof that the first and second notices of the procedural schedule were served and published in the *Circleville Herald*.

11. The Staff Report was filed on October 7, 2020.
12. The public hearing was held on October 22, 2020.
13. On October 29, 2020, the Applicant, OFBF, and Staff filed the Stipulation.
14. The adjudicatory hearing commenced on November 4, 2020.
15. The basis of need, as specified under R.C. 4906.10(A)(1), is not applicable to this generating facility project.
16. Adequate data on the project has been provided to determine the nature of the probable environmental impact, as required by R.C. 4906.10(A)(2).
17. Adequate data on the project has been provided to determine that the facility described in the application represents the minimum adverse environmental impact, considering the available technology and nature and economies of the various alternatives, and other pertinent considerations, as required by R.C. 4906.10(A)(3).
18. Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability, and the requirements of R.C. 4906.10(A)(4) are met.
19. Adequate data on the project has been provided to determine that, to the extent that any of them are applicable, the solar-powered generation facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
20. Adequate data on the project has been provided to determine that the facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
21. Adequate data on the project has been provided to determine what the facility's impact will be 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 of the proposed facility, as required by R.C. 4906.10(A)(7).

22. Adequate data on the project has been provided to determine that the facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
23. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

**B. Recommended Conclusions of Law**

1. The Applicant is a "person" under R.C. 4906.01(A).
2. The proposed facility is a major utility facility as defined in R.C. 4906.01(B)(1).
3. The application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
4. The requirement for the need for the facility under R.C. 4906.10(A)(1) is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility under R.C. 4906.10(A)(2).
6. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, 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 under R.C. 4906.10(A)(3).
7. The record establishes that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
8. The record establishes, as required by R.C. 4906.10(A)(5), that, to the extent that any of them are applicable, construction of the proposed facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the R.C.
9. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).

10. The facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
11. The record establishes that the facility would incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).
12. Based on the record, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the facility, which includes the conditions in the Staff Report, as presented and modified by this Stipulation.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER SITING BOARD**

**By:** /s/ Thomas Lindgren per email 10/28/20 CMTP

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**in**

**Case No(s). 19-1880-EL-BGN**

Summary: Stipulation - Joint Stipulation and Recommendation electronically filed by Christine M.T. Pirik on behalf of Atlanta Farms Solar Project, LLC