

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of :  
Firelands Wind, LLC for a Certificate of :  
Environmental Compatibility and Public : Case No. 18-1607-EL-BGN  
Need to Construct a Wind-Powered :  
Electric Generation Facility in Huron and :  
Erie Counties, Ohio. :

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE OHIO POWER SITING BOARD**

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**On Behalf of the Staff of the  
Ohio Power Siting Board**

**November 20, 202**

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**I. INTRODUCTION**

The purpose of the review by the Ohio Power Siting Board is to weigh the project proposed by the applicant against the criteria established by R.C. 4096.10 (A). This includes considering whether conditions will reduce the adverse impacts of the proposed project so that the statutory criteria are met. Ultimately the Board has to determine whether the proposed project and associated conditions meet the applicable criteria. In this case, Staff recommends that the project be approved with specified conditions.

All projects impose burdens. Those burdens will be borne by some more than others. That is inherent in siting any energy infrastructure. Those in the vicinity will feel more effects than those further removed. Those affected are afforded the opportunity to be heard, and the Board should address those concerns. Neither the goal in this process nor the law requires that all negative impacts be eliminated, for that would be impossible.

Rather the Board should endeavor to reduce them. The Staff's recommended conditions set forth in the Staff Report of Investigation are comprehensive and a proper means to do this. The Board should approve the proposed wind project with the recommended conditions, as modified by the Joint Stipulation and Agreement.

#### **A. Procedural History**

On November 15, 2018, Emerson Creek held a public informational meeting at the Bronson-Norwalk Conservation League facility in Norwalk, Ohio regarding the proposed wind-powered electric generating facility. A second public informational meeting was conducted on April 3, 2019 at the Bellevue Veterans of Foreign Wars (VFW) facility in Bellevue, Ohio.

Emerson Creek filed its application for a certificate to construct the proposed project on January 31, 2019. On March 18, April 11, and July 10, 2019, Emerson Creek filed information supplementing its application. The Chairman accepted the application on April 17, 2019, as being in compliance with the requirements of Ohio Admin.Code Chapter 4906-01, *et seq.*

Under to a schedule issued by the Administrative Law Judge, a local public hearing was conducted via Webex on August 20, 2020. Numerous individuals provided testimony both supporting and opposing the application.

A Joint Stipulation and Recommendation was filed on September 11, 2020. The signatory parties included the Applicant, Board Staff, the Staff of the Ohio Department of Natural Resources, the Huron County Board of Commissioners, the Boards of Trustees of

Norwich and Richmond Township in Huron County, the City of Willard, and local residents Tom Yingling and Kevin Erf.

The adjudicatory hearing began on October 5, 2020. Testimony was provided by the applicant, intervenors, and Staff. The rebuttal phase of the hearing began on October 16. The Administrative Law Judge directed the parties to file initial briefs on November 20, 2010, and reply briefs on December 4, 2010.

This initial post-hearing brief is timely submitted on behalf of the Board's Staff.

## **B. Project Description**

The Applicant proposes to a wind farm with a total generating capacity of up to 297.7 MW in Groton and Oxford Townships in Erie County and Lyme, Sherman, Norwich, Ridgefield, and Richmond Townships in Huron County. The annual energy production is expected to be approximately 847,000 to 952,000 MW hours (MWh).

The facility, as proposed, would consist of up to 71 wind in 87 possible locations turbines in a project area of approximately 32,000 acres. As part of the Joint Stipulation and Recommendation, the Applicant agreed not to construct turbines in locations identified as T-80, T-81, T-82, and T-83. Joint Ex. 1 at 9.

The total structural maximum height would be up to 656 feet with a maximum turbine hub height of 410 feet and a maximum rotor diameter of 518 feet. The Application proposes a spread footing, or alternatively a rock anchored pile-supported, foundations. The Applicant identified five different turbine models, and has provided safety manuals for each.

A 34.5 kV underground electric collection system would be installed and buried, comprising up to 120 circuit miles. The Project also proposes construction of an operations and maintenance (O&M) facility, three meteorological towers, and approximately 36 miles of gravel access roads.

## **II. ARGUMENT**

### **A. The Law**

The governing law is straightforward. The Ohio Power Siting Board is created by statute and its powers and duties are delineated under Chapter 4906 of the Ohio Revised Code. Simply, the Board must approve applications for certificates, either as filed or with conditions, or deny the application. R.C. § 4906.03(D). Thus, the role of the Board is to evaluate and decide whether the applicant's proposal in its application, with any supplemental information, meets the statutory criteria. Again, the Board must render a decision based upon the record either granting or denying the application, as filed, or granting it upon such terms, conditions, and modifications as it deems appropriate. R.C. § 4906.10(A). R.C. 4906.10 requires that the Board must make each of the following findings to grant a certificate:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) That 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) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The Board is asked to apply its judgment and expertise to evaluate the merits of the application. It must interpret the criteria of R.C. 4906.10 in the context of current law and regulations. The sufficiency of the evidence is a matter for the Board's judgment.

Based upon the detailed information contained in the application and supplements, the Staff's interrogatories and investigation of that information, intervenor discovery, and the evidentiary record, the Staff recommends that the Board find that each criterion enumerated in R.C. 4906.10 has been met.



## **B. Staff Report of Investigation**

The Staff's Report of Investigation ("Staff Report") must be filed not less than 15 days before the date that the application is set for public hearing. R.C. § 4906.07(C); Ohio Admin. Code § 4906-5-05(D). The Staff Report in this case was filed on March 2, 2020. Staff Ex. 1. As it is required to by R.C. 4906.7(C), the Staff evaluated the application in light of the factual findings that the Board must make. Staff's analysis and comprehensive recommendations are intended to assist the Board in its deliberations. It is part, but only part, of the evidentiary record in a case. The Staff's report reflects its investigation of the application and its findings up to the date of its submittal, that being two weeks or more prior to the time both Applicant and Intervenor testimony was filed. It was not intended to represent a consensus reflecting the views of all intervenors to the case. The Report was not required, intended, or able to represent a consensus reflecting the views of the parties to the case. Rather, the Staff Report is just that – a report compiled by Staff that summarizes Staff positions, at the time of publication of the report, on topics specifically addressed in R.C. 4906.10. The Staff Report is just one piece of the record in a siting proceeding before the Board. The Board will review and weigh all evidence in the record. This would include, but not be limited to, testimony provided at the public hearing, as well as materials related to the adjudicatory hearing, such as pre-filed testimony, hearing transcripts, and exhibits.

Because Staff is required to submit its Staff Report prior to the public and adjudicatory hearings, it is conceivable that positions articulated in the Staff Report could evolve as a result of additional information presented throughout the hearing process.

While Staff is not obligated to alter its findings and recommendations based on information provided in the hearings, neither is it precluded from doing so.

Staff's findings and recommendations are not static. The Staff Report itself makes this clear when it stated that the "recommended conditions may be modified as a result of public or other input provided subsequent to issuance of this report." In other words, all parties were on notice that Staff was willing to consider modifications to its recommendations based on evidence provided after the report was published.

The Staff carefully fulfilled its statutory and Board defined role in this case. It fully evaluated the application, analyzed it in light of the statutory criteria and it developed recommendations and conditions that it believes will ameliorate project impacts. The Staff performed its role in a fair and balanced manner. The role of the Applicant is to defend its application. Finally, the role of the opposing parties is to challenge the application with their own guidance. A brief discussion of Staff's analysis and conclusions on each statutory criterion follows.

#### **1. R.C. 4906.10(A)(1) – Basis of Need**

The basis of need as specified under R.C. 4906.10(A)(1) is not applicable to this electric generating project. R.C. 4906.10(A)(1) only applies "if the facility is an electric transmission line or gas or natural gas transmission line." The proposed project is neither. Therefore, Staff recommends that the Board find that R.C. 4906.10(A)(1) is not applicable to this wind-powered electric generating facility project.

## **2. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact**

This section of the Staff Report addresses environmental and other information submitted by the Applicant and reviewed by the Staff. Based upon its review, Staff made numerous findings regarding the nature of the probable environmental impacts in its report. Staff's comprehensive findings address such varied subjects as cultural and economic impacts, threatened and endangered species, agricultural impacts, identification of sensitive land uses within proximity of the facility, and noise and aesthetic impacts. Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility. Staff further recommends that the Board find that the project complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions set forth in the Stipulation and Recommendation.

### **(a). Socioeconomic Impacts**

Staff found that the project was not expected to impact population trends or land use in either Huron or Erie County. The facility is expected to only temporarily impact access to some recreational areas, but otherwise not limit their use.

The Applicant states that the project is compatible with the regions' focus on furthering economic development, job growth, improving infrastructure and implementing sources of alternative energy. The proposed project would not interfere with the land use plans of either county.

The Applicant has executed a programmatic agreement (PA) with the Ohio Historic Preservation Office (OHPO). That agreement contains a commitment for the Applicant to mitigate impacts to whatever may be discovered during planned archeological and architectural fieldwork. Tr. Vol. V at 730.

Applicant witness Tauzer testified that the Project would create in excess of 1000 direct and indirect jobs during construction, and more than 50 full time equivalent jobs during the operation of the facility. Direct Testimony of Erica Tauzer, Company Ex. 36 at 5-6. Company witness Pedder testified that the clean energy provided by the Project will help attract business to state, such as the new Google data center, that demand access to clean energy generating sources. Company Ex. 31 at 19.

Company witness Tauzer also testified that the Company anticipated making payments, in addition to wages and other services, in lieu of taxes in the aggregate amount of \$1.8 to \$2.7 million per annum. Id. at 7. Company witness Pedder testified that, as one of if not the largest taxpayer in Huron and Erie Counties, the Project . . . will supply approximately \$50-60 million to Huron County in tax or PILOT payments and \$20-22 million to Erie County in tax or PILOT payments, while making minimal if any demands on local government services.” Company Ex. 31 at 19. Importantly, Ms. Tauzer testified that the Project would support and aid in the preservation of local farming operations. Company Ex. 36 at 8.

**(b). Ecological Impacts**

Staff included a number of ecological topics within the scope of its review, including potential impacts to wetlands and streams, proposed tree removal, and wildlife and vegetation impacts. The Applicant, through its project layout planning efforts, managed to minimize impacts to many of the ecological resources. But the proposed project is still not without potential ecological impacts.

To address these remaining potential impacts, Staff has recommended a number of conditions (specifically, conditions 16-31), compliance with which Staff believes would result in minimal impacts to ecological resources. These recommended conditions include, but are not limited to, required submittal of final detailed stream crossing plans and tree clearing plans for staff review and acceptance, having a Staff-approved environmental specialist on-site during certain construction activities, compliance with the technical assistance letter issued by the U.S. Fish and Wildlife Service (USFWS), ODNR compliant avian and bat monitoring plans and mitigation plans to rectify any significant mortality findings, and developing and implementing an Eagle Conservation Plan in coordination with USFWS. Staff Report, Staff Ex. 1 at 77-79.

Because of the magnitude of this project and the potential impacts in and around the proposed project area, the implementation of mitigation and, when possible, avoidance measures is critical to minimize impacts. Based upon Staff's analysis, and subject to the Staffs recommended conditions, as modified by the Stipulation and Recommendation, the Staff recommends a Board finding that this criterion has been met.

**(c). Public Services, Facilities, and Safety**

The project is to be designed in accordance with applicable safety regulations. Applicant has committed to operating the facility in accordance with all applicable environmental and safety regulations.

Staff found that the facility would comply with the Board's minimum setback requirements, from property lines, state and federal highways, and mapped gas pipelines. Staff Report, Staff Ex. 1 at 45-46. Applicant will obtain all necessary transportation permits, will coordinate with county engineers, ODOT, local law enforcement, and health and safety officials for any traffic control, and has committed to returning all roadways to the pre-construction condition or better. Applicant will enter into a road use agreement with the Huron and Erie County engineer offices, ODOT, and township authorities prior to construction. *Id.* at 48.

The turbines will be equipped with safety features to avoid or minimize the potential impact of blade shear and ice throw, and will notify Staff within 30 minutes of any blade shear occurrence or ice throw event causing injury to property or persons.

Studies demonstrated that the noise output of the turbines would be within Board standards. The Stipulation recommends conditions that adopt Board standards for mitigating noise and shadow flicker from the facility.

The Applicant has provided the safety manuals for the turbine models that it may select for the project, and has committed to comply with the turbine manufacture's most current safety manual. *Id.* at 53.

The project is expected to impact on communications. Staff witness Conway testified that it is Staff's understanding that the Applicant will mitigate any such impacts at its expense. Tr. Vol. V at 707-711.

### **3. R.C. 4906.10(A)(3) – Minimum Adverse Environmental Impact**

As stated in the Staff Report, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and therefore complies with R.C. 4906.10(A)(3). Staff Report, Staff Ex. 1 at 58-59.

As explained in the Staff Report, the facility was designed to minimize potential impacts. The proposed facility is consistent with regional development plans, and would not significantly impact agricultural production. The Applicant has executed a programmatic agreement (PA) with the Ohio Historic Preservation Office (OHPO). That agreement contains a commitment for the Applicant to mitigate impacts to whatever may be discovered during planned archeological and architectural fieldwork. Tr. Vol. V at 730. The Applicant has committed to using horizontal directional drilling (HDD), with a frac-out contingency plan, to install the underground electric collection cable. It has committed to coordinate with the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources on minimizing wildlife impacts. It will maintain minimum required setbacks unless appropriate waivers are obtained. Safety control technologies will be employed to minimize the potential for blade shear and ice thrown. It has committed to minimizing noise and shadow flicker effects. Staff Report, Staff Ex. 1 at 57-58.

Although the project would result in both temporary and permanent impacts, Staff concluded, based on the low potential for adverse impacts, along with Staff's recommended conditions, that there would be low potential to impact land use, cultural resources, streams, wetlands, transportation, and communications. Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact. The Board should find that this criterion has been satisfied.

#### **4. R.C. 4906.10(A)(4) – Electric Grid**

The Board must determine that the proposed electric facilities are 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 facilities would serve the interests of electric system economy and reliability.

The facility will connect to American Transmission Systems, Incorporated (ATSI) existing 345 kV Beaver-Davis Besse circuit. PJM analyzed the bulk electric system (BPS) with the facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that one reliability violation would occur during a multiple contingency condition. To mitigate this condition, PJM has indicated two baseline upgrades would be required for the facility to be fully deliverable. In addition, no potential violations were found during the short circuit analysis.

The facility would provide 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. Staff recommends a Board finding that this criterion has been met.

**5. R.C. 4906.10(A)(5) – Air, Water, and Solid Waste, and Aviation**

Staff recommends a Board finding that this criterion has been met.

**(a). Air**

Air quality permits are not required for construction and operation of the proposed facility. Staff believes that construction and operation of the facility, as described by Buckeye Wind, would satisfy fugitive dust rules adopted pursuant to Ohio Revised Code Chapter 3704, and otherwise be in compliance with air emission regulations. Staff Report, Staff Ex. 1 at 63.

**(b). Water**

Neither construction nor operation of the proposed facility would require the use of significant amounts of water, so requirements under R.C. 1501.33 and 1501.34 are not applicable to this project.

Applicant expects to receive a Section 404 Clean Water Act nationwide permit from the U.S. Army Corps of Engineers. It has designed the project to avoid wetlands and to minimize disturbance to streams and streambeds. Applicant also plans to implement a Storm Water Pollution Prevention Plan (SWPPP) in conjunction with its National Pollution Discharge Elimination System (NPDES) permits. Staff believes that construction of this facility would comply with requirements of Ohio Revised Code

Chapter 6111, and the rules and laws adopted under that chapter. Staff Report, Staff Ex. 1 at 63-64.

**(c). Solid Waste**

Staff also believes that Applicant's solid waste disposal plans would comply with solid waste disposal requirements in ORC Chapter 3734, and the rules and laws adopted under that chapter.

**(d). Aviation**

Staff discussed potential aviation impacts related to the project on pages 64-69 of the Staff Report. In addition, Staff recommended several conditions pertaining to aviation matters, including condition numbers 39-42. Staff Report, Staff Ex. 1 at 63.

Staff noted that the Federal Aviation Administration (FAA) issued Determination of No Hazard to Aviation letters for 85 proposed wind turbine locations. Applicant witness Doyle testified that

the FAA found that none of the 87 proposed turbines would exceed the threshold established for a finding of hazard. Specifically, the FAA stated that those turbines that would exceed the Category D traffic pattern for Willard airport would not constitute a hazard because 'Approach Category D aircraft do not normally use Willard Airport' and that the proposed turbines are located outside the VFR traffic pattern airspace for all categories of aircraft that normally use 8G1'(Willard Airport).

Direct Testimony of Benjamin Doyle, Company Ex. 43 at 10.

ODOT Office of Aviation (ODOT-OA) found that the location and height of all 85 wind turbine structures would exceed 499 feet above ground level and would constitute an obstruction to air navigation. Seemingly contrary to the FAA's findings, ODOT-OA found that 18 of those 85 structures would constitute an obstruction to air navigation at the Willard Airport. Consequently, Staff recommended that the Applicant coordinate with the FAA and ODOT-OA to resolve these issues, and present any resolution to the Board for review.

Following the issuance of the Staff Report, ODOT-OA submitted a modified consultation letter clarifying that its statutory authority is limited to six airport surfaces (clear zone, horizontal, conical, primary, approach, and transitional), and that it had concluded that none of the proposed turbines would impact the surfaces within the scope of its purview. Direct Testimony of Andrew Conway, Staff Ex. 5 at 4; Company Ex. 43 at 12. Consequently, the signatory parties agreed to eliminate the recommended coordination condition contained as number 39 in the Staff Report. *Id.* at 3; Tr. Vol. V at 699.

#### **6. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity**

Applicant provided information to allow the public to be informed about and to actively participate in this process. It has committed to provide notice to affected property owners and tenants prior to both construction and operation. Staff witness Butler concluded that the Applicant had satisfied the Board's requirements with respect to public notices and interaction. Direct Testimony of Matthew Butler, Staff Ex. 3.

The Board must determine that the facility will serve the public interest, convenience, and necessity. The public interest, convenience and necessity will be served by Emerson Creek's proposed project. Consistent with the Staff's analysis and recommended conditions, the Staff recommends a Board finding that this criterion is met.

**7. R.C. 4906.10(A)(7) – Agricultural Districts**

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 facility. The project would be constructed and operated mainly on agricultural land. Although approximately 84 acres of farmland would be repurposed by the facility, and approximately 20 acres permanently impacted, Staff determined that the viability of the agricultural district lands would not be compromised. Staff Report, Staff Ex. 1 at 72.

Staff recommends a Board finding that this criterion is met.

**8. R.C. 4906.10(A)(8) – Water Conservation Practice**

The proposed facility must incorporate maximum feasible water conservation practices. Because wind-powered electric generating facilities do not use water in producing electricity, Staff determined that the water consumption associated with the project does not require specific conservation efforts. Staff found that the proposed facility design would incorporate maximum feasible water conservation practices, and recommends a Board finding that this criterion is met.

### **C. Staff Conditions**

In addition to discussing each of the criteria enumerated in R. C. 4906.10, the Staff Report of Investigation contains a number of conditions recommended by the Staff. Most of these conditions were accepted by the Applicant and recommended in the Stipulation and Recommendation without modification. Two conditions (#23 and #31) were stipulated to with minor modifications. One condition (#39 relating to aviation) was deleted because, according to Staff witness Conway, it was no longer necessary. Direct Testimony of Andrew Conway, Staff Ex. 5 at 3. The Applicant agreed to three (3) additional conditions (#39, #40 and #44 as they appear in the Stipulation). These additional conditions eliminate four (4) turbine locations from consideration, include trainings for local aviation stakeholders, training and equipment for first responders, and a commitment to entering into road use maintenance agreements.

These recommended conditions, as modified, are supported by the record of evidence in this case. The Staff's overall recommendation is that if the Board finds sufficient evidence to support each statutory finding required under the statute, it should require compliance with all of the conditions recommended in the Stipulation and Recommendation to ensure that project impacts are minimized.

### **D. The Joint Stipulation and Recommendation**

Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings 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. Although not binding on the

Board, the terms of such an agreement are accorded substantial weight pursuant to Ohio Adm.Code 4906-2-24(D). The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. See, *e.g.*, *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361- EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). 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:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

Staff respectfully submits that the Joint Stipulation here satisfies these reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

### **1. Result of Serious Bargaining**

The Joint Stipulation is the product of an open process in which all intervenors were given an opportunity to participate. All parties were represented by experienced and

competent counsel. While not all have participated in regulatory proceedings before the Board, all have extensive experience in regulatory matters and managing complex litigation. The Applicant held several meetings to discuss the recommendations in the Staff Report, and to propose conditions for a settlement agreement. All parties were invited and were provided all drafts of the proposed settlement. Direct Testimony of Nate Pedder, Company Ex. 31, at 18. There were extensive negotiations among the parties and the Joint Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests. In addition to the Applicant and Staff, the Joint Stipulation was signed by the Board of Commissioners of Huron County, and the Boards of Trustees for Norwich and Richmond Townships, the City of Willard, and local residents. Joint Ex. 1. Accordingly, the Joint Stipulation is a product of serious bargaining among capable, knowledgeable parties.

## **2. Benefits the Public Interest**

Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10, along with the Board's criteria for evaluating stipulations, as more fully described below. As noted above, Applicant witness Tauzer testified that the Project would create direct and indirect jobs during construction, and more than 50 full time equivalent jobs during operation. Direct Testimony of Erica Tauzer, Company Ex. 36 at 5-6. She also testified that the Company anticipated making payments in lieu of taxes in the aggregate amount of \$1.8 to \$2.7 million per annum. *Id.* at 7. Company witness Pedder testified that the clean energy provided by the Project will help attract business to

state. Company Ex. 31 at 19. Importantly, Ms. Tauzer testified that the Project would support and aid in the preservation of local farming operations. Company Ex. 36 at 8.

In addition, negotiations significantly enhanced the protections recommended by the conditions recommended by the Staff in its Report of Investigation. The Joint Stipulation improved provisions for cooperation and involvement by local officials, including local aviation stakeholders, and training and equipment for first responders. Accordingly, the Joint Stipulation benefits the public interest.

### **3. Does not violate any important regulatory principle or practice**

Applicant witness Pedder testified that the Project would not violate any important regulatory principle or practice. Company Ex. 31 at 20. Staff submits that there is no evidence of record to the contrary, and supports Mr. Pedder's position.

## **III. CONCLUSION**

Staff has concluded that the proposed project would introduce both temporary and permanent impacts on the surrounding community. After an exhaustive investigation, the Staff has developed a number of conditions that would minimize environmental and other impacts to the project area. To the extent that those conditions were modified by the Joint Stipulation, Staff concurs in those modifications, and urges the Board to adopt them as proposed. Additionally, Emerson Creek's proposal faces close scrutiny in related permitting cases before various federal and state agencies. It is expected that, if granted, these permits would result in additional conditions and requirements upon the Applicant.



Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the criteria in R.C. 4906.10. The Staff recommends that, if a certificate is issued to applicant for this project, the Board require applicant to comply with all of the recommended conditions contained in the Joint Stipulation.

Respectfully submitted,

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**On Behalf of the Staff of the  
Ohio Power Siting Board**

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served by regular U.S. mail, postage prepaid, hand-delivered, or delivered via electronic mail, upon the following parties of record, this 20<sup>th</sup> day of November, 2020.

*/s/ Werner L. Margard*

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