

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Ross :
County Solar LLC, for a Certificate of : Case No. 20-1380-EL-BGN
Environmental Compatibility and Public :
Need to Construct the Ross County Solar :
Farm. :

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

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INTRODUCTION

This case concerns an application to construct a solar farm in a rural area of Ohio. Such development is consistent with state policy. The Ohio General Assembly has declared renewable energy development to be both lawful and important to promote a diversified state energy portfolio. There are a finite number of sites in Ohio that can support a commercial-size solar farm. The proposed project site in Ross County is well-suited for such development, and that is why it has been selected.

To sustain legal muster, the proposed Ross County Solar Project (“Project”) need not be impact-free or without risk. Improvements and maintenance to local roads will be required and made. Aesthetics and other impacts will be addressed and minimized where possible. The Board’s adjudicatory role is to identify expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. The Board’s Staff (Staff) submits that the Application and the numerous

conditions proposed by its Staff to address and mitigate impacts, as further modified by the Stipulation and Recommendation proposed by a broad range of interested parties, adequately account for this. Staff respectfully requests that the Board adopt the proposed Stipulation and Recommendation.

BACKGROUND AND PROCEDURAL HISTORY

On October 30, 2020 Ross County Solar LLC¹ (Ross County Solar or Applicant) filed this application to construct and operate a commercial solar farm in Ross County, Ohio. Prior to filing the application, Applicant engaged in certain public outreach activities, including filing a project descriptive pre-application letter on September 14, 2020 and holding a public informational meeting on September 30, 2020.

The application purposed to construct arrays of ground-mounted photovoltaic (PV) modules, commonly referred to as solar panels, in Buckskin and Paint Townships in Ross County. The project would also include associated support facilities, such as access roads, weather stations, underground and overhead electrical collection lines, inverters and transformers, and a substation. The project would occupy up to 927 acres within a 1,433-acre project boundary, and is projected to generate 120 MW. The Staff completed its investigation and issued its Report of Investigation (“Staff Report”) on March 22, 2021. Staff Ex. 1.

On May 18, 2021, a Joint Stipulation and Recommendation was filed by a number of parties. Joint Ex. 1. The signatory parties, in addition to the Applicant, included the

¹ The Applicant is owned by National Grid Renewables.

Commission Staff, the Ohio Farm Bureau Federation, and the Board of Trustees of Buckskin Township. The Board of Trustees of Paint Township intervened in this case, but is not a signatory party to the Stipulation. While not a signatory, Paint Township offered no testimony in opposition to the Stipulation.

Adjudicatory hearings commenced on June 10, 2021 and concluded on August 12, 2021. Testimony was provided by nine (9) Applicant witnesses and one (8) Staff witness.

The law requires the Board's Staff to investigate an application to assess likely impacts and to recommend conditions to the Board to mitigate or minimize impacts to the project environment. The law does not, of course, require a finding that the project be totally free of safety or other risks, or even minor annoyances to the public, as a precondition to Board approval. The Staff has proposed comprehensive recommendations for the Board's studied consideration in order to address and reduce Project impacts to reasonably acceptable levels. A number of those conditions were modified through the negotiations that resulted in the Stipulation. Staff submits that, if implemented, these conditions, as modified by the Stipulation, will allow this project to lawfully move forward under the requisite statutory criteria. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

DISCUSSION

I. The Board should determine the Project, with conditions as recommended in the Staff Report as modified by the Stipulation and Recommendation, satisfies the criteria of R.C. 4906.10.

The proposed facility has minimal environmental impacts. It will produce electricity without polluting the air and without using, much less polluting, water. This stands in stark contrast to the environmental issues posed by nuclear, coal, or even natural gas fueled electric generating units. When operational, this facility promises a negligible environmental impact and, certainly, the minimum adverse environmental impact in comparison to other electricity generating methods.

Nevertheless, Staff conducted a comprehensive review scrutinizing nearly two dozen areas including: socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and speaks for itself.

Staff also recommended conditions to reasonably minimize impacts and risks. Staff believes that its recommended conditions will sufficiently mitigate any such impacts and allow the Board to find overall minimal adverse environmental impact. Through negotiations, the parties have agreed to even more stringent conditions that further minimize environmental impact. The Staff Report provides the Board with a

sound, objective, evidentiary basis for determining the existence of all R.C. 4906.10 criteria, and, the Staff submits, supports Board issuance of a certificate conditioned as the Stipulation has recommended.

A. R.C. 4906.10(A)(1) – Basis of Need

Because the proposed facility is neither an electric transmission line nor a gas pipeline, R.C. 4906.10(A)(1) does not apply to this Project. Staff recommends that the Board find that this requirement is not applicable to this facility.

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

The Board must determine that nature of the probable environmental impact of the facility. Staff's evaluation, set forth in its Report of Investigation, Staff Ex. 1 at 12-21, is adopted by the Stipulation.

The Staff Report found that no residences, parks or recreational areas would be within the Project boundaries. Nor would any commercial structures, places of worship, medical facilities, schools or other institutional land uses be located near the Project area. Landscape and vegetative screening would be used to minimize visual impacts, and the panels would be installed with anti-glare coating. Staff found no evidence that any cultural resource would be impacted, but recommended conditions that surveys be conducted to ensure that indirect visual impacts are minimized.

Staff found the Applicant's economic analysis to be reasonable. The economic impacts, in terms of jobs, earnings, and output, both locally and to the State of Ohio, were all reasonably determined to be positive.

The Applicant has committed to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration.

The Project will not adversely impact public or private water supplies. There are no geological features that would restrict construction of the facility. No wetlands, ponds or lakes would be affected. The only identified threatened or endangered species that might be impacted are the Indiana and northern long-eared bat. Staff has recommended seasonal tree cutting to ameliorate any impacts to roosting habitat.

Traffic would be affected, although almost exclusively during the construction phase. While that impact may be inconvenient, there is no evidence that it would be any greater than that caused by current farming operations, or any effect at all once construction was complete. The agreed-upon conditions require the Applicant to develop a transportation plan in conjunction with the county engineer. Finally, Staff found that operational noise would be relatively minor, and would only occur during the daytime hours.

In conclusion, Staff reported that it believed that the Applicant had determined the nature of the probable environmental impact and had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff's recommended conditions when issuing any certificate. Staff reiterates that conclusion in light of the modifications to those conditions contained in the Stipulation.

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

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Those conditions have been further modified by the Stipulation, even further minimizing any potential impacts.

D. R.C. 4906.10(A)(4) – Electric Grid

The Project must be 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 will serve the interests of electric system economy and reliability. Staff found that the Project, as conditioned, would satisfy that requirement. The record contains no evidence to the contrary, and Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4).

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

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. The Applicant will hire a licensed construction firm with knowledge and experience in dust minimization to comply with those rules. Nor will construction nor

operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary permits for construction and operation sufficient to comply with the requirements of R.C. Chapter 6111. The record reveals no dispute on these points.

Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff believes this also is not disputed. While CCPC raised "concerns" about hazardous materials associated with the solar panels, it offered no evidence that panels contain any such materials.

There are no public use airports, helicopter pads, or landing strips within five miles of the project, and no aeronautical study regarding glare was needed for this Project. The Ohio Department of Transportation Office of Aviation identified no impacts on local airports.

Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(5).

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

In evaluating R.C. 4906.10(A)(6), Staff considers both the impact that the Project may have on public safety, and the opportunities for public participation in the siting process.

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Fire Protection

Association. It will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to a solar farm.

The Applicant hosted a public informational meeting for this project and maintains a project website. The Applicant has drafted a complaint resolution plan to handle complaints during the construction and operation of the facility. The Applicant has committed to notify affected property owners and tenants about the project and the complaint resolution plan prior to the start of construction and again prior to the start of operation.

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

G. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land

The Board must determine the facility’s impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles.

Condition 17 of the Joint Stipulation requires the Applicant to avoid damaging drainage tiles and to promptly repair any tiles that are inadvertently damaged. It will locate drainage tiles as accurately as possible prior to construction. Applicant witness Christensen testified that “any main drain tiles 16 damaged during construction will be

identified, documented, and repaired.” Supplemental Testimony of August Christensen at 1.

On decommissioning, the Applicant will return the land to original or similar conditions. This specifically includes repairing any drainage tiles and the de-compaction of the soil.

Staff recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(7).

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

Other than for dust control as needed, construction of the proposed facility would not require the use of significant amounts of water. Nor would facility operations require a significant use of water, and nearly no water or wastewater discharge is expected. The Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

II. The Board should determine that the Stipulation meets the three-part test for reasonableness.

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, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are

accorded substantial weight. 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 Stipulation here satisfies these reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Result of Serious Bargaining

The 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. There were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests. Accordingly, the Stipulation is a product of serious bargaining among capable, knowledgeable parties.

B. Benefits the Public Interest

Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10, as more fully described below. In addition, Applicant witness Risse testified that the Project would create 199 jobs during construction, and 5 jobs during the operation of the facility. Applicant Ex. 14 at 7. He also testified that the Company anticipated making payments, in addition to wages and other services, in lieu of taxes in excess of \$1,080,000 per annum. *Id.* at 8. Mr. Risse also testified that the Project will generate clean and quiet renewable electricity and will provide “on peak” power during the high demand period of mid-day and late afternoon. Applicant Ex. 15 at 6.

C. Does not violate any important regulatory principle or practice

Applicant witness Risse testified that the Project would not violate any important regulatory principle or practice. Applicant Ex.15 at 8. Staff submits that there is no evidence of record to the contrary, and supports Mr. Risse’s position.

CONCLUSION

Based upon the foregoing, the Staff respectfully requests that the Board adopt the Stipulation and Recommendation. Staff further specifically requests that the Board condition any certificate issued in this case by adopting the conditions set forth in that Stipulation and Recommendation.

Respectfully submitted,

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CERTIFICATE 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 via electronic mail upon the following parties of record, this 27th day of August, 2021.

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