

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF JULIET ENERGY PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1760-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on November 18, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Juliet Energy Project, LLC for the construction, operation, and maintenance of a 101-megawatt solar-powered electric generation facility in Weston and Milton townships, Wood County, Ohio, subject to the conditions set forth in the stipulation and consistent with this Opinion, Order, and Certificate.

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} Juliet Energy Project, LLC (Juliet or Applicant) is a person as defined in R.C. 4906.01.

{¶ 4} 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. 4906.04, as well as Ohio Adm.Code Chapters 4906-2 through 4906-4.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies were required to implement procedures consistent with recommendations from the Ohio

Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19.

{¶ 6} On December 4, 2020, Juliet filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) to allow for the public information meeting to be held virtually.

{¶ 7} On December 15, 2020, the administrative law judge (ALJ) granted Juliet's motion to conduct the virtual public information meeting.

{¶ 8} On December 23, 2020, Juliet filed a pre-application notification letter with the Board. In the letter, Juliet explained that for its proposed 101 megawatt (MW) solar-powered electric generation facility in Wood County, Ohio (Facility), construction is estimated to begin in the second quarter of 2022 and to be completed within 12 months.

{¶ 9} On January 6, 2021, Juliet filed a letter with the Board stating that it complied with Ohio Adm.Code 4906-3-03(B)(2) in sending the required notification to each property owner and affected tenant within the project area.

{¶ 10} On January 20, 2021, Juliet held a virtual/telephonic public information meeting to discuss the proposed Facility with interested persons and landowners. Juliet filed its proof of publication regarding the public information meeting with the Board on January 12, 2021.

{¶ 11} On March 12, 2021, and as supplemented on May 5 and May 6, 2021, and as amended on August 10, 2021, Juliet filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Facility. In conjunction with its Application, Applicant filed a motion for protective order to keep portions of its Application confidential. On March 16, 2021, Board Staff (Staff) filed a letter stating that it does not oppose Applicant's motion for a protective order. On March 26, 2021, the ALJ issued any Entry granting the motion for protective order.

{¶ 12} On March 29, 2021, Juliet filed a motion for waiver from Ohio Adm.Code 4906-4-08(D)(2)-(4) regarding impacts on landmarks, recreation and scenic areas, and the visual impact of the Facility. On April 13, 2021, Staff filed a letter stating that it does not oppose Applicant's motion for waiver. On May 5, 2021, the ALJ issued any Entry granting Applicant's motion for waiver.

{¶ 13} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated May 11, 2021, the Board notified Juliet that its Application is compliant and provided sufficient information to permit Staff to commence its review and investigation.¹ Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's May 11, 2021 letter directed 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 Juliet to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 14} On May 28, 2021, Juliet filed a certificate of service of its accepted and complete Application as required by Ohio Adm.Code 4906-3-07. In further compliance with that rule, on June 1, 2021, Juliet filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 15} On July 7, 2021, the ALJ issued an Entry establishing the procedural schedule for this case. Specifically, the Entry stated that the effective date of the Application is July 7, 2021, the local public hearing will be held on September 8, 2021, and the adjudicatory hearing will be held on September 22, 2021. The ALJ further directed Juliet to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-09 indicating

¹ Staff filed two completeness letters on May 11, 2021, both of which appear identical and the result of an inadvertent double filing.

that petitions to intervene would be accepted by the Board up to 30 days following service of the notice or by August 20, 2021, whichever was later. The Entry also provided deadlines for all parties to file testimony, as well as for the filing of any stipulation.

{¶ 16} On July 27, 2021, Juliet filed proof of publication of a description of the accepted, complete Application, published on July 22, 2021 in the *Sentinel-Tribune*, in accordance with R.C. 4906.06(C). The published notice also contained information regarding the scheduled hearing dates.

{¶ 17} On August 10, 2021, Juliet filed an application for amendment to its Application informing the Board that Juliet became a wholly owned subsidiary of BP Solar SHP, LLC. Despite the change in ownership, Juliet noted that no other substantive changes were being made to the Facility development team or to the Application. On August 11, 2021, Juliet filed a certificate of service of the amendment to its accepted and complete Application as required by Ohio Adm.Code 4906-3-07.

{¶ 18} On August 18, 2021, the Ohio Farm Bureau Federation (OFBF) timely filed a motion to intervene in the proceeding. No memoranda contra were filed. The motion was granted on September 15, 2021.

{¶ 19} On August 24, 2021, Staff filed its report of investigation (Staff Report).

{¶ 20} On August 31, 2021, Applicant filed proof of publication of the second public notice in the *Sentinel-Tribune* on August 26, 2021, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). As did the initial notice, the second public notice included information regarding the date, time, and process to participate in the public hearing, as well as the date and time of the adjudicatory hearing.

{¶ 21} On September 8, 2021, the ALJ conducted the public hearing in person at the Simpson Banquet Room in Bowling Green, Ohio. Ten people provided testimony during the public hearing.

{¶ 22} On September 21, 2021, Juliet, OFBF, and Staff filed a joint stipulation and recommendation (Stipulation) through which the parties intend to resolve all matters pertinent to the certification and construction of the proposed Facility. In support of the Stipulation, Juliet filed the direct expert testimony of Cliff Scher on September 13, 2021, as supplemented on September 21, 2021. Additionally, Staff filed the testimony of Grant Zeto on September 17, 2021.

{¶ 23} On September 22, 2021, the adjudicatory hearing was held as scheduled. On behalf of Juliet, Mr. Scher presented his direct and supplemental testimony in support of the Application (Applicant Exs. 8 and 9), the Stipulation (Joint Ex. 1), and several exhibits identified in the Stipulation (Applicant Exs. 1 - 7). On behalf of Staff, Mr. Zeto sponsored the Staff Report and presented his direct testimony (Staff Exs. 1 and 2).

III. PROJECT DESCRIPTION

{¶ 24} Juliet seeks certification to build a 101 MW solar-powered electric generation Facility in Weston and Milton townships and the Village of Weston in Wood County, Ohio. The Facility would consist of large arrays of photovoltaic panels, commonly referred to as solar panels, which will be ground-mounted on a tracking system. The Facility would include associated support facilities, such as access roads, a collection substation, an operations and maintenance building, and laydown areas for construction staging. Juliet is proposing to begin construction in the second quarter of 2022, which would last approximately 12 months.

IV. CERTIFICATION CRITERIA

{¶ 25} 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) 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 R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- 6) That 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) That 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

{¶ 26} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate 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

{¶ 27} On September 8, 2021, the local public hearing was conducted in person at the Simpson Banquet Room in Bowling Green, Ohio, where ten witnesses elected to provide testimony. Five individuals, Brian Dicken, Jerid Donley, Paul Chamberlin, Jeremy Schroeder, and Robert Desmond, testified in a personal or representative capacity indicating that they support the proposed Facility, noting employment opportunities the Facility would provide, the economic boost the Facility would provide to businesses in the area, and the tax payments that would support the school district and local government. (Pub. Tr. at 6-14; 30-37.)

{¶ 28} Five individuals testified in opposition to the proposed Facility. Alina Haas, Bradley Haas, Steve Espen, Norm Heineman, and Eugene Naherny testified with concerns about property values, the viability of solar power in Ohio, the consequences related to a failed solar farm facility within a community, damage to drainage tiles, the loss of agricultural fields, aesthetics, and other viewshed impacts. (Pub. Tr. at 14-30; 37-40.)

{¶ 29} In addition to the testimony provided at the public hearing, the Board received four written comments regarding the proposed Facility, with three comments opposing the Facility and one comment in support. These public comments, including some provided by individuals who testified at the public hearing, concern property values, the Applicant's willingness to be a good neighbor in the community, the loss of agricultural fields, aesthetics, and other viewshed impacts.

B. Staff Report

{¶ 30} 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

{¶ 31} 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 Facility is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 1 at 9.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 32} 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 and following is a summary of Staff's findings:

a. *Socioeconomic Impacts*

{¶ 33} Staff notes that the predominant land use within the project area is agricultural, with some residential parcels within the project area and some commercial and institutional uses within one mile of the project area. Of the 585 acres to be converted to solar farm use, 523.4 acres of agricultural land and 61.1 acres of vacant residential land would be impacted. Impacts caused by construction would be temporary and contained to participating landowners' properties. The following structures would be removed from participating landowners' properties: three barns, nine silos, four sheds, one livestock house, two equipment buildings, one garage, one house foundation, some farm equipment, and above ground storage tanks. Staff notes that construction and operation of the Facility would not physically impact any recreational areas. Staff does not anticipate significant overall impacts to commercial, industrial, residential, recreational, and institutional land uses. Further, Staff does not anticipate the Facility will conflict with nearby county land use plans. Staff also asserts that the Facility is consistent with agricultural industry support since the Facility would provide supplemental income to farmers, and the land could be returned to agricultural production upon decommissioning. (Staff Ex. 1 at 10-11.)

{¶ 34} As to aesthetics, Staff reports that traffic volume on roads surrounding the project area is typically light, and the project area is primarily surrounded by agricultural land, thus reducing the potential number of viewers. Additionally, the highest elevation of the solar panels would be 15 feet above ground level. According to the Applicant's visual resources report, the panels are not likely to be visible from locations beyond a 1.5-mile distance from the Facility's perimeter. Included with its visual impact analysis, the Applicant included a mitigation plan that proposed to install various planting modules along the Facility fence line to soften viewshed impacts and to blend the Facility into existing vegetation. The mitigation plan also calls for planting numerous, varying plant species to mitigate the viewshed impacts of sensitive receptors. Staff recommends that Juliet incorporate a landscape and lighting 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 that Juliet consult with a certified professional landscape architect. Staff further recommends that aesthetic impact mitigation measures include native vegetative plantings, alternate fencing, good neighbor agreements, and other methods in consultation with affected landowners and subject to Staff review. Staff also notes its concern about the aesthetic impacts related to the Facility's proposed perimeter fencing, a six-foot tall chain-link fence with one foot of barbed wire on top. According to Staff, this type of fencing has garnered many negative public comments and concerns from adjacent residents; consequently, Staff recommends Applicant install less aesthetically intrusive fencing that is more suitable to agricultural land use and that is wildlife friendly, such as deer fences or wood fences. (Staff Ex. 1 at 11-12.)

{¶ 35} Juliet commissioned a cultural resources records review of the area. Applicant's consultant engaged in a literature review and a field survey. Applicant's consultant identified 24 new archaeological sites. Of those sites, two were deemed to be eligible for the National Register of Historic Places (NRHP). According to Staff, the Applicant committed to avoid the two sites which will be memorialized in a memorandum of understanding detailing such sites. The Applicant's historical survey identified 289

previously undocumented architectural/historical resources. Of those identified, 23 of the resources were deemed to be eligible for the NRHP. In a letter, the Ohio Historic Preservation Office (OHPO) agreed with the Applicant that these sites would be eligible for the NRHP; however, OHPO noted that the views from these resources would be limited to non-existent, concluding that the Facility would have no effect on historical resources. Staff determines that, based on the research and field work performed by the Applicant and confirmed by the OHPO, minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 12-13.)

{¶ 36} Staff asserts that, economically, Juliet would be responsible for the ownership, construction, and operation of the proposed Facility except for the proposed upgrades to the Weston 69 kilovolt (kV) substation. According to Staff, the Applicant obtained the necessary landowner agreements for the Facility and that all other components of the Facility would be located entirely on privately-owned land. Voluntary lease agreements between the Applicant and private landowners would accommodate the Facility. Staff also confirms that the estimated capital costs for Juliet are not substantially different from the average capital costs for utility-scale solar farm projects. Staff also states that Juliet's estimated operation and maintenance costs were consistent with the average of those incurred by the average utility scale solar operation facility. And, according to Staff, the Applicant's characterization of its estimated costs of delay appears reasonable. (Staff Ex. 1 at 13-14.)

{¶ 37} Juliet estimates that the proposed Facility would create 618 construction-related jobs and 13 long-term operational jobs for the state of Ohio. During the construction period, wages would produce \$74.6 million in local output for the state of Ohio; operations would add an annual impact of \$1.7 million for the state of Ohio. Based upon a Payment in Lieu of Taxes (PILOT) plan, the Applicant estimates that the Facility will produce PILOT revenues between approximately \$707,000 and \$909,000 annually for the Wood County taxing districts. (Staff Ex. 1 at 14.)

{¶ 38} According to Staff, as opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. The potential impacts from solar panel glare include a possible brief loss of vision, afterimage, a safety risk to pilots, and a perceived nuisance to neighbors. The Applicant's consultant conducted a glint and glare analysis to identify any potential impacts along roads, railroads, nearby residents, to pilots, and to area airports. The analysis found that the proposed Facility would not impact airplane pilots landing at regional airports. The analysis also showed that glare from the Facility is not predicted to impact drivers of vehicles on roadways that are adjacent to the proposed Facility nor for nearby neighbors. Staff concurs with Applicant's analysis and notes that aesthetic impact measures, such as vegetative screening, may further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 14-15.)

{¶ 39} As explained by Staff, Juliet estimates that the Facility can operate for 30 years or more. Applicant has prepared a decommissioning plan according to which it will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land or to another economical land use desired by the landowner. Juliet states that, prior to the start of decommissioning the Facility, it will obtain all applicable federal, state, and local permits. Applicant will remove any below ground structures to a depth of at least three feet below grade and will remove all solar components constructed above ground with few exceptions. Juliet will prepare the site for component removal, including strengthening access roads, where needed, and installing temporary fencing and other best-practice measures to protect sensitive environmental resources. The solar arrays would then be de-energized, and Juliet would dismantle panels, racking, inverters, and transformers. Juliet would then remove access and internal roads and grade the site unless a landowner requests to retain the road. Lastly, Juliet would restore land to its pre-construction condition, to the extent practicable. Juliet anticipates that most Facility components would be removed within three to six months, although monitoring and site restoration may extend beyond that period. Juliet states that it will provide for financial

security to ensure that funds are available for decommissioning/land-restoration. Staff notes that, prior to construction, Applicant would retain an independent and registered professional engineer to calculate the net decommissioning costs for the Facility and that such costs would be recalculated every five years over the life of the Facility. Applicant calculates that the total decommissioning costs may range from approximately \$5.8 million to \$9.99 million. Juliet also commits to using solar panels that comply with the United States Environmental Protection Agency's (U.S. EPA) toxicity characteristics leachate procedure test and meet U.S. EPA's definition of non-hazardous waste. Juliet also surmises that, in the event of insolvency, bond funds would be in place to remove the Facility. Staff recommends that the updated total decommissioning cost estimate without regard to salvage value and updated decommissioning plan be filed at least 30 days prior to the preconstruction conference, with such plan including (a) a provision that the decommissioning financial assistance mechanism includes a performance bond where the Applicant is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee; (b) a timeline of up to one year for removal of the equipment; (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation; (d) a provision where the performance bond is posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and the reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; and, (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by the Applicant. (Staff Ex. 1 at 15-17.)

{¶ 40} Staff explains that Juliet stated the proposed Facility would be designed and installed to withstand typical high-wind occurrences. Staff found that the components of the proposed Facility are generally not susceptible to damage from high winds except for those of tornado-force strength. (Staff Ex. 1 at 17.)

{¶ 41} According to Staff, Juliet stated that there will be increases in traffic on routes leading to the project area, most of these increases occurring during the construction phase. Facility-related traffic would be minimal during operation and limited to routine maintenance. If required, Juliet would enter into a road use maintenance agreement with Wood County. (Staff Ex. 1 at 17-18.)

{¶ 42} Staff avers that minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to the 12 months of construction. 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 minimal and occur most often during the day. Operation noises would include inverters, the transformer at the substation, and tracking motors. According to Staff, the step-up transformer at the new substation and the inverters may operate at night, but the noise impact would be relatively minor. Juliet's noise level study showed that operation noise impacts would be less than ambient noise levels, and no nonparticipating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five decibels (dBA). The Facility, therefore, is expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 18.)

b. Site Geology

{¶ 43} Staff asserts that the proposed project site includes several Wisconsinan-age glacial features. Glacial drift throughout the majority of the project area ranges from approximately 50 to 70 feet in thickness. According to Staff, carbonate bedrock, which is known for the formation of karst geology features does exist within the project area; however, the glacial drift thickness over the bedrock exceeds the 20 feet or less typically associated with areas featuring karst formations. Staff notes that the nearest documented sinkhole is over 20 miles to the east of the project area. Ohio Department of Natural Resources' (ODNR) records indicate there are no existing oil and gas wells in the project footprint. One historical well is located within one mile of the project area, but records show

that it has been plugged and abandoned. ODNr records indicate that no documented seismic activity has occurred within several miles of the project area, and no structural geological features such as faults are known to exist within several miles of the project area. Also, with the soil types present within the project area, low to moderate risk of shrink-swell potential exists. A Geotechnical Report was created by the Applicant, which included a variety of tests to the subsurface conditions within the project area. Staff concludes that there appears to be no soil or geology related conditions that would suggest the project area is incompatible with construction and operation of the proposed Facility. Staff recommends that the final detailed engineering drawings of the final Facility design shall account for geological features and shall include the identity of the registered professional engineer or engineer firm licensed to practice engineering in the state of Ohio who reviewed and approved the designs. Staff also recommends that the Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. (Staff Ex. 1 at 19-22.)

c. Ecological Impacts

{¶ 44} According to Staff, Juliet identified five water wells within the project area but not within the project fence line, with the landowners indicating that four of the water well are abandoned and one is active. According Staff, Applicant asserts that the fence line would be at least 10 feet from the edge of any active well and that it would avoid any identified wells by marking them with flagging construction. Staff conferred with the ODH, who regulates private water wells, and ODH indicated that solar components should comply with applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-07. Staff recommends that, at least 30 days prior to the preconstruction conference, the Applicant provide the status of each water well within the project area and verify that the four abandoned wells have been properly decommissioned. Further, the Applicant must indicate to Staff whether the nearest solar components to each water well within the project area meets or exceeds the requirements under Ohio Adm.Code 3701-28-07 and denote the wells on construction drawings. Regarding the known active well and any active water

wells subsequently discovered, the Applicant must relocate the solar equipment at least 50 feet from that water well, demonstrate that the well is for non-potable use, and relocate solar equipment at least 10 feet from that well or seal and abandon the water well. Also, Staff notes that there are no public drinking water source protection areas located within the project area. (Staff Ex. 1 at 22-23.)

{¶ 45} Juliet has committed to implement a Stormwater Pollution Prevention Plan (SWPPP), a Spill Prevention Control and Countermeasure (SPCC) plan, and, if required, a horizontal directional drilling (HDD) inadvertent return control plan during construction to minimize and prevent potential discharges to surface waters in the project area and surrounding area (Staff Ex. 1 at 23).

{¶ 46} The Applicant delineated no wetlands within the project area. The Applicant noted one stream and five ditches within the project area. According to Staff, the installation of collection lines would require crossing four waterbodies within the project area for a total of five crossings. The Applicant states that it will utilize HDD techniques to cross three waterbodies, two of the waterbodies being intermittent ditches and the third being a perennial ditch classified as a limited water resource. Applicant has included a frac-out contingency plan as part of the application to be implemented at all HDD stream crossings. Staff also notes that two waterbodies, one an intermittent ditch and the other a perennial ditch, would be temporarily impacted via open cut method, up to approximately 20 feet. Each cut would be co-located with access road culverts, and Staff noted that access road culvert crossings would total 91 linear feet of temporary impact and 60 linear feet of permanent impact. Applicant has committed to design the crossings to allow adequate flow, and all crossings would be approved by the Wood County Soil & Water Conservation District prior to construction. Staff recommends the Applicant adhere to the ODNR and United States Fish and Wildlife Service (USFWS) recommendation of no in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat, unless further coordination with the ODNR reflects a different course of action. (Staff Ex. 1 at 23.)

{¶ 47} The Applicant would obtain a National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio Environmental Protection Agency (Ohio EPA) prior to the start of construction. According to Staff, direct impacts, including the proposed installation of access road culvert crossings, would be covered under the U.S. Army Corps of Engineers (USACE) Nationwide Permit Program. Staff also recommends that the Applicant implement Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays during Facility construction and operation. Also, the project would not cross any portion of a 100-year floodplain. (Staff Ex. 1 at 23-24.)

{¶ 48} Staff asserts that the project area is within range of the Indiana bat, a state and federal endangered species; the northern long-eared bat, which is listed as a state and federal threatened species; the little brown bat, which is listed as a state endangered species; and the tricolored bat, which is listed as a state endangered species. The project would not impact any bat hibernacula. In order to avoid impacts to these bat species, Staff recommends that Juliet adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the USFWS recommends a different course of action. (Staff Ex. 1 at 24-26.)

{¶ 49} According to Staff, the project area is also within range of several other endangered or threatened species of birds, mammals, mussels, fish, and reptiles; however, Staff determined that there is a lack of adequate high-quality habitat in the immediate project area for the listed species that have a range within the project area. Consequently, impacts to these species would be minimal. (Staff Ex. 1 at 24-26).

{¶ 50} In the project area, Staff notes that most of the land is agricultural lands, and the remaining acreage consists of forestland, as well as developed open space and developed, low intensity land. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. Staff notes that Juliet has developed a vegetation management plan that incorporates pollinator-friendly habitat in consultation with the

recommendations of the Ohio Pollinator Habitat Initiative. This habitat would enhance the visual appeal of the proposed Facility, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. The vegetation would be incorporated under and between the panels and in the open areas of the Facility. The Facility is expected to represent a reduced environmental impact as compared to the current agricultural use due to the reduction of frequent tilling leading to erosion and sedimentation and reduced fertilizer and pesticide application. To further assure that these benefits are realized, the Applicant has committed to take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 during implementation of any pollinator-friendly plantings. (Staff Ex. 1 at 26.)

{¶ 51} In sum, Staff recommends that the Board find that Juliet 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. 1 at 27).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 52} 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.

{¶ 53} Staff states that the proposed Facility would have an overall positive impact on the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues, and PILOT revenue. To the extent that impacts to the project and surrounding areas were identified, Staff believes that the Facility is unlikely to pose a significant adverse impact. For example, 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; and, traffic impacts would also be temporary. Given the low profile of the Facility and existing vegetation in the area, visual impacts would be most prominent to landowners in the immediate vicinity of the Facility, with such effects being mitigated by the landscape and lighting plan proposed by Staff, and the recommendations from Staff regarding perimeter fencing would reduce overall aesthetic concerns and provide wildlife friendly access for small animals. Juliet has committed to executing a memorandum of understanding with the OHPO to avoid certain identified cultural resources sites, which would minimize adverse impacts to cultural resources in the area. Additionally, Juliet has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use upon decommissioning. (Staff Ex. 1 at 28-29.)

{¶ 54} 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. 1 at 30).

4. ELECTRIC POWER GRID

{¶ 55} 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.

{¶ 56} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generation Facility would be capable of producing 101 MW and would interconnect from the Facility substation to a gen-tie connection to the existing American Transmission Systems Inc.'s Weston 69 kV substation. (Staff Ex. 1 at 31.)

{¶ 57} According to Staff, Juliet is subject to compliance with various North American Electric Reliability Corporation reliability standards. The Applicant submitted two generation interconnection requests for the proposed Facility to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM has completed the feasibility and system impact studies. Through its analysis, PJM found that Queue ID AF1-064, when modeled with a 2023 summer peak case, may result in one transmission line overload on the delivery of the energy portion. PJM found that Queue ID AF2-126, when modeled with a 2023 summer peak case, would result in one transmission overload. PJM's analysis showed that certain upgrades would alleviate the overloads. According to Staff, Applicant noted that the network upgrades are likely to be within an acceptable range for a solar power project of this size. PJM's analysis of possible overloading where the proposed Facility may affect earlier generation or transmission projects in the PJM queue revealed two transmission lines that may overload for Queue ID AF1-064 and two lines that may overload for Queue ID AF2-126. PJM's analysis revealed no other reliability impacts or circuit breaker problems. (Staff Ex. 1 at 31-33.)

{¶ 58} Staff concludes that the Facility would be consistent with plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems 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. 1 at 33.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 59} 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.

{¶ 60} Although the proposed Facility will not require any air quality permits, Staff states fugitive dust rules may be applicable to its construction. Accordingly, Juliet would need to control and localize fugitive dust by using best management practices, such as using water to wet soil to minimize dust during periods of high heat. (Staff Ex. 1 at 34.)

{¶ 61} Staff states that access roads would require stream crossings, which would be covered under the USACE Nationwide Permit Program and would be sufficiently minimal that preconstruction authorization from the USACE would not be required. Staff further states that Juliet would mitigate potential water quality impacts associated with aquatic discharges by obtaining NPDES construction storm water general permit from the Ohio EPA as part of its submission of a SWPPP for stormwater discharge related to construction activities. If necessary, Juliet will seek environmental permits. Also, Applicant committed to developing an SPCC plan to manage the storage and mitigate the unlikely release of hazardous substances. Staff concludes that, with these measures, construction and operation of the Facility would comply with requirements of R.C. Chapter 6111, et seq. (Staff Ex. 1 at 34-35.)

{¶ 62} As explained by Staff, the amount of solid waste generated is estimated to be approximately 38,000 cubic yards. Juliet stated that all construction-related debris will be disposed of at an authorized solid waste disposal facility. During operation, the Facility could generate small amounts of similar solid waste, which would be disposed of in accordance with federal, state, and local requirements. Staff recommends that retired solar panels marked for disposal be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater. Staff states that Juliet's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 35.)

{¶ 63} Staff notes that the height of the tallest structure, the gen-tie, would be approximately 100 feet tall. Also, the tallest structure within the substation would be the lightning mast, measuring at approximately 60 feet tall. Both structures are under the height

requirement in the Federal Aviation Administration's (FAA) regulations. According to the Applicant, there are no public use airports within five miles of the project area. The Applicant identified one privately owned private use airfield located approximately four miles northeast of the project area. Staff confirmed through the FAA that the airport is closed indefinitely. Staff confirmed through the FAA that the closest public-use airports are the Deshler Municipal Landing Strip and Wood County airports, which are between eight and nine miles from the proposed Facility. In a coordinated review of the proposed Facility's potential impacts on local airports, no concerns have been identified by Staff or the Ohio Department of Transportation's (ODOT) Office of Aviation. (Staff Ex. 1 at 35-36.)

{¶ 64} 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. 1 at 36).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 66} Public interest, convenience, and necessity should be examined through a broad lens. For example, this factor should consider the public's interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. As discussed below, the parties assert that the application,

as modified by the Stipulation and supported by record evidence, benefits the public in multiple ways.

{¶ 67} Staff asserts that, for reasons of public safety, the Applicant would use reliable and certified equipment compliant with applicable standards and that components are inspected regularly for safe and reliable operation. Juliet will use warning signs, fencing, and gates to restrict access to the potential hazards within the project area and implement setbacks between certain equipment and the public. The Applicant stated that it intends to restrict public access to the Facility by enclosing the project area with seven-foot fencing. Staff recommends that, as described earlier, except for the substation's perimeter fencing, the solar panel perimeter fence type should be both wildlife permeable and aesthetically fitting for a rural location. Further, the Applicant also intends to develop and implement an emergency action plan and consult with potentially affected emergency response personnel. (Staff Ex. 1 at 37.)

{¶ 68} Juliet has worked with the community by way of hosting virtual and telephonic public informational meetings. In these public informational meetings, attendees were provided the opportunity to listen to a virtual presentation about the project, ask questions, and provide comments to the Applicant, some of which covered potential noise from the Facility, decommissioning, visual screening, and participation in the Board process. Staff notes that Juliet has already developed a draft complaint resolution plan to handle complaints during the construction and operation of the Facility. Staff recommends that a final version of this plan be filed in the case docket no later than 30 days prior to the start of construction. Juliet has committed to notify affected property owners and tenants about the Facility no later than seven days prior to the start of construction, as well as at least seven days prior to the start of Facility operations. Staff notes that it recommends expanding the distribution of these notices, as outlined in one of Staff's conditions. Staff recommends that Juliet submit to Staff a quarterly complaint summary report during construction and the first five years of operation of the Facility. (Staff Ex. 1 at 37-38.)

{¶ 69} 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. 1 at 38).

7. AGRICULTURAL DISTRICTS

{¶ 70} 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.

{¶ 71} Staff states that approximately 523 acres of agricultural land would be disturbed by the proposed Facility, all of which are agricultural district land. Also, construction of the Facility will result in the removal of nine silos, three barns, four sheds, two equipment buildings, one garage, and a one livestock house. The Applicant states the repurposed land could be restored for agricultural use when the Facility is decommissioned. Juliet has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged by construction of the Facility and restoring temporarily impacted land to its original use. Juliet has also committed to returning the affected land to original or similar conditions, as well as committed to restore, de-compact, and seed topsoil upon decommissioning. (Staff Ex. 1 at 39.)

{¶ 72} 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. 1 at 39).

8. WATER CONSERVATION PRACTICE

{¶ 73} 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.

{¶ 74} Staff states that the Facility may require some water use during construction for dust suppression and control. Operation of the proposed Facility would not require the use of significant amounts of water, with some usage for occasional cleaning of panels. The operations and maintenance building would have wastewater discharge comparable to a small office building. The Applicant anticipates obtaining water through a new onsite water well. (Staff Ex. 1 at 40.)

{¶ 75} In all, Staff believes that the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 1 at 40).

9. RECOMMENDATIONS

{¶ 76} In addition to making various findings throughout its report, Staff recommended that 30 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 41-46). The recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' September 21, 2021 Stipulation, with only minor revisions. (Joint Ex. 1; Applicant Ex. 9 at 1; Tr. at 9, 14-15.) The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 77} At the adjudicatory hearing, Juliet presented the Stipulation executed by Applicant, OFBF, and Staff (Joint Ex. 1). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Applicant, subject to 30 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) Juliet 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.
- 2) Juliet shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, Juliet, and representatives of the primary contractor and all subcontractors for the project shall attend. The attendees shall discuss the measures to be taken by Juliet and contractors to ensure compliance with all conditions of the certificate and the procedures for on-site investigations by Staff during construction. Prior to the conference, Juliet shall provide a proposed conference agenda for Staff review and file a copy of the agenda on the case docket.
- 3) Within 60 days after the commencement of commercial operation, Juliet shall submit to Staff a copy of the as-built specifications for the entire Facility. If Juliet 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. Additionally, Juliet shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- 4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, Juliet shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Facility design and mapping. 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. The detailed engineering drawings of the final Facility design shall account for geological features and include the identity of the engineers who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final Facility design to Staff.

- 5) At least 30 days prior to the preconstruction conference, Juliet shall provide to Staff, for review and acceptance, the final geotechnical engineering report.
- 6) The certificate shall become invalid if Juliet 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.
- 7) As the information becomes known, Juliet 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.
- 8) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, Juliet shall obtain and comply with such permits or authorizations. Further, Juliet shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by Juliet and file such permits or authorizations on the public docket. Lastly, Juliet shall provide a schedule of construction activities

and acquisition of corresponding permits for each activity at the preconstruction conference.

- 9) The certificate authority provided in this case shall not exempt Juliet from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- 10) At least 30 days prior to the start of construction, Juliet shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of Facility operations, Juliet 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 Facility. These notices shall provide information about the Facility, including contact information and a copy of the complaint resolution plan. Juliet must file copies of these notices on the public docket. The start of construction notice shall include written confirmation that Juliet has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of Facility operations notice shall include written confirmation that Juliet has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. Juliet shall file a copy of these notices on the public docket. During the construction and operation of the Facility, Juliet shall file on the public docket a complaint summary report by the fifteenth day of April, July, October, and January of each

year through the first five years of operation. The report shall include a list of all complaints received through Juliet's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved.

- 11) Juliet shall submit its emergency response plan to Staff for review and acceptance and file it on the public docket at least 30 days before the preconstruction conference. Such plan shall include provisions to keep affected source water protection area designees informed of the status of any spills, significant panel damage, and repair/clean-up schedule.
- 12) The Facility shall be operated in such a way as to assure that no more than 101 MW would at any time be injected into the Bulk Power System.
- 13) Juliet shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ICSA) with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating Facility into the regional transmission system reliably and safely. Additionally, Juliet shall docket in the case record a letter stating that the agreement has been signed or a copy of the executed ISA and ICSA.
- 14) Prior to the commencement of construction, Juliet shall submit to Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location. This condition shall not apply to substation fencing.
- 15) Prior to commencement of construction, Juliet 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. The plan shall also address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures, such as shrub plantings or enhanced pollinator plantings. Additionally, 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. Juliet shall maintain vegetative screening for the life of the Facility and shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Juliet shall maintain all fencing along the perimeter of the Facility in good repair for the term of the Facility 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. Juliet shall provide the plan to Staff for review and file it on the public docket and confirmation that it complies with this condition.

- 16) 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 6:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. and after 6:00 p.m., or until dusk when sunset occurs after 6:00 p.m., if the noise impact at non-participating receptors is not greater than daytime ambient

Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m. and after 6:00 p.m., or until dusk when sunset occurs after 6:00 p.m., Juliet shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram 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. Juliet 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.

- 17) If the inverters or substation transformer chosen for the Facility have a higher sound power output than the models used in the noise model, Juliet shall show that sound levels will not exceed the daytime ambient level plus five dBA at any nonparticipating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed on a sunny day in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level plus five dBA, additional noise mitigation will be required. Juliet will be in compliance with this condition if the test shows the operational noise level is less than project area ambient Leq level plus five dBA. Juliet shall file a report on the public docket that shows either noise data from the inverter or transformer manufacturer complies with this condition or the operational test results comply with this condition.

- 18) Juliet 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 a modern equivalent at Juliet's expense. However, if the affected landowner agrees to not have the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system.
- 19) Juliet shall ensure that benchmark conditions of surface and subsurface drainage systems are documented prior to construction. Juliet will make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and the county to request drainage system information over those parcels. Also, Juliet must consult with the county engineer for tile located in a county maintenance/repair ditch.
- 20) Juliet shall give reasonable notice to the county engineer and Staff when repairing tiles in a county maintenance/ditch. The county engineer or the engineer's representative shall have the right to visually inspect and approve the repair work performed prior to backfill. If the county engineer does not approve the repair work in a timely manner, Staff shall have the right to visually inspect and approve the repair work performed prior to backfill. If the opinion of the county engineer and the opinion of Staff on approval of the repair work differ, Staff shall have the final authority to approve the repair work.
- 21) Juliet 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 listed bat species, unless coordination with the ODNR and USFWS allows a different course of action. If these agencies allow tree clearing between April 1 and September 30, Juliet shall docket proof of completed coordination on the case docket prior to clearing trees.

- 22) Juliet 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 Juliet, Staff, and the appropriate agencies.
- 23) If Juliet encounters any new listed plant or animal species or suitable habitat of these species prior to construction, Juliet shall include the location in the final engineering drawings and associated mapping, as required in condition four. Juliet shall avoid impacts to these species and explain how impacts would be avoided during construction.
- 24) Juliet shall construct the Facility in a manner that incorporates post construction stormwater management in accordance with the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- 25) Juliet shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat, unless coordination with the ODNR reflects a different course of action. If the ODNR allows in-water work in perennial streams between April 15 through June 30, Juliet shall docket proof of such coordination on the case docket prior to conducting such work.

- 26) Juliet 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, as well as during construction, operation, and decommissioning. Such steps would be achieved through appropriate seed selection and annual vegetative surveys. If noxious weeds are present, Applicant shall remove and treat them with herbicide if necessary.
- 27) Prior to commencement of construction activities that require transportation permits, Juliet shall obtain all such permits. Juliet shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, 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, any affected railroads, the county engineer, the ODOT, local law enforcement, and health and safety officials. Juliet shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition. Juliet shall update the traffic plan with any transportation permits received after the preconstruction conference.
- 28) At least 30 days prior to the preconstruction conference, the Applicant shall provide the status of each water well within the project area. Juliet must indicate to Staff whether the nearest solar components to each uncapped water well within the project area meets or exceeds the requirements under Ohio Adm.Code 3701-28-07 and denote the wells on construction drawings. Juliet must relocate the solar equipment at least 50 feet from that water well, demonstrate that the well is for non-potable use and relocate solar equipment at least ten feet from that well, or seal

and abandon the water well. Juliet shall also verify that any abandoned wells within the project area have been properly decommissioned.

- 29) At least 30 days prior to the preconstruction conference, Juliet shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket that includes: (a) a provision that the decommissioning financial assistance mechanism includes a performance bond where the Applicant is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee; (b) a timeline of up to one year for removal of the equipment; (c) a provision to monitor a site for at least one additional year to ensure successful revegetation and rehabilitation; (d) a provision where the performance bond is posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; and, (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by the Applicant.
- 30) When solar panels reach end of life disposal, retired solar panels marked for disposal shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater. Nothing in this condition shall prevent Juliet from recycling panels as possible and appropriate.

(Joint Ex. 1 at 2-8.)

VII. CONSIDERATION OF THE STIPULATION

{¶ 78} 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. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous 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. 30, 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?

{¶ 79} Upon review, the Board finds that the Stipulation is reasonable as judged by this three-part test and should be approved. Initially, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The parties agree that the Stipulation is a product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process (Joint Ex. 1 at 1-2). Juliet witness Cliff Scher testified

that all parties participated in negotiations, and the agreement is the product of serious bargaining among capable knowledgeable parties, as well as testified that the Stipulation does not necessarily reflect the position that either one of the parties would have taken if these issues had been fully litigated (Applicant Ex. 9 at 1). The Board further notes that OFBF and Staff have extensive experience in Board matters and that all parties involved were represented by counsel with similar significant experience.

{¶ 80} The Board also concludes that the second prong of the test is satisfied. The record evidence supports the conclusion that the Stipulation, as a package, benefits ratepayers and the public interest. In his testimony, Mr. Scher represents that the Facility will garner positive economic impact on the local economy through job creation, as well as an annual service PILOT plan. Specifically, Mr. Scher states that the PILOT plan would generate between \$707,000 and \$909,000 for the local community annually. Mr. Scher also states that the proposed Facility would aid regional development by increasing local tax revenues. The proposed Facility would provide supplemental income to farmers, and the land can be returned to agricultural production after decommissioning. Further, Mr. Scher notes that Juliet engaged local leaders, such as the Mayor of Weston, Jeremy Schroeder, and the President of the Weston Village Council, Shad Kendall, who expressed support for the Facility. (Applicant Ex. 8 at 6.) Mr. Schroeder testified at the local public hearing stating that he supports the project because of the economic benefits it will produce for the local community (Pub. Tr. at 30-34). Mr. Scher further testified that Juliet engaged in voluntary community engagement, such as by collaborating with a group of neighbors, the Weston Area Solar Farm Task Force. As a result of the discussions between Juliet and this group, Juliet committed to increasing solar panel setback distances and committed to installing enhanced vegetative screening to mitigate impacts to adjacent non-participating residences. Mr. Scher also testified that these commitments help address some of the concerns raised during the local public hearing. (Applicant Ex. 8 at 6; 10-13.) Furthermore, Mr. Scher testifies that the Facility, as contemplated by the Application and modified by the

Stipulation, will represent the minimum adverse environmental impact for both construction and operation (Applicant Ex. 8 at 7; Applicant Ex. 9 at 1-2).

{¶ 81} Finally, the Board finds that the record supports the conclusion that the Stipulation observes and promotes regulatory practices and principles. Consistent with our recent findings in similar cases, the evidence demonstrates that the Application, as modified by the Stipulation, satisfies each of the necessary statutory components enumerated in R.C. 4906.10(A) (Staff Ex. 1 at 9-40; Joint Ex. 1 at 2-9; Applicant Ex. 8 at 7). The record is devoid of any evidence to contradict this conclusion. As such, we find the third facet of our analysis has been met.

{¶ 82} In conclusion, and based on the record in this proceeding, the Board finds that all relevant required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation Facility described in Juliet's Application, as supplemented and amended, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. The Board clarifies that all required information submitted to Staff in support of the conditions addressed in the Stipulation should be filed on the docket of this case. Based on the record in this case, the Board thus approves and adopts the Stipulation and hereby issues a certificate to Juliet in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 83} Juliet is a person under R.C. 4906.01(A).

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

{¶ 85} On December 23, 2020, Juliet filed a pre-application notification letter informing the Board of its proposed 101 MW solar-powered electric generation facility in Wood County, Ohio.

{¶ 86} On January 6, 2021, Juliet filed its confirmation of notification to property owners and affected tenants of the date and format of the public informational meeting in accordance with Ohio Adm.Code 4906-3-03.

{¶ 87} Applicant held a virtual public informational meeting regarding the proposed Facility on January 20, 2021.

{¶ 88} On March 12, 2021, Juliet filed its Application for a certificate of environmental compatibility and public need to construct the Facility. Applicant also filed a motion for protective order to keep portions of its Application confidential. On March 26, 2021, the ALJ issued an Entry granting the motion for protective order. Juliet supplemented its application on May 5 and 6, 2021, and amended its Application on August 10, 2021.

{¶ 89} On March 29, 2021, Juliet filed a motion for waiver from certain Board rules. On May 5, 2021, the ALJ issued an Entry granting Applicant's motion for waiver.

{¶ 90} By letter dated May 11, 2021, the Board notified Juliet that its Application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 91} On May 28, 2021, Juliet filed proof of service of its accepted and complete Application upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 92} On June 1, 2021, Juliet filed proof that the application fee had been paid pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 93} On July 7, 2021, the ALJ issued an Entry establishing the effective date of the Application as July 7, 2021, and adopted a procedural schedule, which included the date of the local public hearing and the adjudicatory hearing.

{¶ 94} On July 27, 2021, Juliet filed proof of initial publication, in the *Sentinel-Tribune*, of a public notice regarding the date and time of the scheduled hearings, including the process to participate in the public hearing.

{¶ 95} On August 18, 2021, OFBF filed a motion to intervene. On September 15, 2021, the ALJ issued an Entry granting the motion.

{¶ 96} The Staff Report was filed on August 24, 2021.

{¶ 97} On August 31, 2021, Applicant filed proof publication of the second public notice in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). The second public notice was published in the *Sentinel-Tribune* on August 26, 2021.

{¶ 98} The public hearing was held on September 8, 2021, at the Simpson Banquet Room in Bowling Green, Ohio.

{¶ 99} On September 21, 2021, Juliet, OFBF, and Staff filed a Stipulation resolving all issues in the case.

{¶ 100} On September 22, 2021, the adjudicatory hearing was conducted at the Board's offices.

{¶ 101} Sufficient information regarding 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 evidence to enable the Board to make an informed decision.

{¶ 102} The record establishes that the Facility is not an electric transmission line or gas pipeline and, therefore, R.C. 4906.10(A)(1) is not applicable.

{¶ 103} The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility, consistent with R.C. 4906.10(A)(2).

{¶ 104} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).

{¶ 105} The record establishes that the Facility, an electric generation 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 consistent with R.C. 4906.10(A)(4).

{¶ 106} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will comply with R.C. Chapters 3704, 3734, and 6111; R.C. 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

{¶ 107} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 108} The record establishes the impact of the Facility on agricultural lands and agricultural district land consistent with the requirements of R.C. 4906.10(A)(7).

{¶ 109} The record establishes that the Facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives. Accordingly, the Facility meets the requirements of R.C. 4906.10(A)(8).

{¶ 110} The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the Facility as proposed by Juliet, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

{¶ 111} Based on the record, the Board should issue a certificate of environmental compatibility and public need to Juliet, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the solar-powered electric generation Facility subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

IX. ORDER

{¶ 112} It is, therefore,

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

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

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Bruce T. Vanderhoff, M.D., Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

MJS/kck

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in

Case No(s). 20-1760-EL-BGN

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Juliet Energy Project, LLC for the construction, operation, and maintenance of a 101-megawatt solar-powered electric generation facility in Weston and Milton townships, Wood County, Ohio, subject to the conditions set forth in the stipulation and consistent with this Opinion, Order, and Certificate. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board