

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of	:	
Scioto Farms Solar Project, LLC for a	:	Case No. 21-868-EL-BGN
Certificate of Environmental	:	
Compatibility and Public Need.	:	

**INITIAL BRIEF
SUBMITTED ON BEHALF OF THE OHIO POWER SITING BOARD**

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I. INTRODUCTION

The subject Scioto Farms Project, as stipulated, should be denied for failure to meet the criteria to benefit public interest, as outlined in R.C. 4906.10 (A)(10). If the Ohio Power Siting Board (OPSB) does not deny the Stipulation based on R.C. 4906.10 (A)(10), the stipulation should be modified to include the conditions recommended in the Staff Report, as modified by Staff Testimony.

II. BACKGROUND

A. Senate Bill 52

The passage of Ohio Senate Bill 52 provides new opportunities for county commissioners and township trustees to participate in the siting of solar projects in their community.¹ The Scioto Farms Solar Project is partially impacted by the new legislation; it is grandfathered under S.B. 52 except for the ad hoc board member provision. County commissioners may choose one commissioner, or a designee, to serve as an ad hoc board

¹ Staff Report at p. 43.

member.² In addition, township trustees may choose one trustee, or a designee, to serve as their ad hoc board member representative.³ Local government boards must designate ad hoc members within 30 days of notice of application completion.⁴

The Board of Pickaway County Commissioners appointed Commissioner Jay Wippel, and the Board of Trustees of Wayne Township appointed Chris Mullins, as the ad hoc board members for this project.⁵

B. Public Comments

As of the filing date of the Staff Report, 49 document records were filed in the public comments of the case record. Each document record may include one or more public comments.⁶ Public comments include:

- A resolution from the Pickaway County Board of Commissioners expressing the County's opposition to the project.⁷
- A memorandum from the Pickaway County Emergency Management Agency Director to the Pickaway County Board of Commissioners sharing concerns regarding the development of solar projects in the county.⁸
- A letter from the Pickaway County Parks District expressing concerns with potential impacts to waterfowl migration, the historic Ohio-Erie Canal, and road traffic and wildlife crossings.⁹
- Letters from local residents in opposition to and in support of the project.¹⁰

² *Id.* at 43

³ *Id.* at 44.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Commenters opposed to the proposed project expressed concerns about issues including impacts to agricultural land use, farmland preservation, and agricultural production and livestock; fire hazard; impacts to wildlife; impacts to drinking water; erosion and flooding; runoff and drainage; construction traffic, noise, and dust; operational noise; property values; cultural resources; decommissioning; public health; aesthetics; recreation; and fencing.¹¹ Those supportive of the project emphasized the benefits of additional tax revenue for local government and schools, economic investment in the community, job creation, and renewable energy.¹²

C. Case History

On May 10, 2022, Staff filed its Staff Report recommending denial of the application and, in the event that the OPSB approved the application, recommending conditions to be adopted by the OPSB.

On February 23, 2023, a stipulation was filed including the Applicant Scioto Farms Solar Project, LLC (“Scioto Farms” or “Applicant”), the Ohio Farm Bureau Federation (“OFBF”), Ohio Partners for Affordable Energy (“OPAE”), and the International Brotherhood of Electrical Workers, Local Union 575 (“IBEW”). As a part of the stipulation, some of Staff’s recommended conditions were adopted in full and/or in part.

¹¹ *Id.*

¹² *Id.*

On March 1 & 2 of 2023, the evidentiary hearing was held. Briefs were order to be filed no later than April 13, 2023 and then extended to April 20,2023. Staff filed this brief with the OPSB on April 20, 2023.

III. ARGUMENT

A. Standard of Review

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 criteria listed in R.C. 4906.10 (A). The criteria relevant to Staff’s recommendation for denial of the application is found in R.C. 4906.10 (A)(6), which states, “that the facility will serve the public interest, convenience, and necessity.”

The ultimate issue for the OPSB’s consideration when presented a stipulation is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the OPSB has followed its long-standing test comprised of the three following prongs: 1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? 2) Does the settlement, as a package, benefit customers and the public interest? and 3) Does the settlement package violate any important regulatory principle or practice? *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126.

Accordingly, R.C. 4906.10 (A)(6) is determinative as to whether the stipulation meets prongs 2 and 3 of the aforementioned test.

B. This OPSB should deny the application because the project does not serve the public interest.

With respect to R.C. 4906.10(A)(6), Staff finds that the project will not serve the public interest, convenience and necessity.¹³ Public interest, convenience and necessity should be examined with respect to many considerations.¹⁴ Simultaneously, 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, considering local government perspective.¹⁵

Staff notes that there is general opposition to the project from the local citizens and local governmental bodies.¹⁶ A resolution in opposition to the project was filed, in the public comments, on behalf of the Pickaway County Board of Commissioners.¹⁷ In addition, the Pickaway County director of Emergency Management filed, in the public comments, a letter detailing the negative effects to the environment and human health the project would have on the community.¹⁸ In addition, Wayne Township has intervened in this proceeding and filed a notice that the township opposes the project.¹⁹ These entities have the responsibility for preserving the health, safety, and welfare within their respective communities, and their documented opposition to the project is especially compelling.²⁰ While some local opposition is common in many siting projects,

¹³ *Id.*, See also Thomas J. Crawford Prefiled Direct Testimony at Q&A 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 45.

¹⁹ *Id.*

²⁰ *Id.*

considering the above opposition filed in the docket and expressed at the local public meetings, Staff believes that any benefits to the local community are outweighed by this public opposition and, therefore, the project would not serve the public interest, convenience, and necessity.²¹

C. If the OPSB approves the application, the OPSB should adopt the Staff's recommended conditions, as modified by Staff testimony.

If the Board determines the Applicant has met the requirements specified in R.C. 4906.10(A)(6) subject to modification, Staff recommends that any certificate issued by the Board for the proposed facility include the conditions specified in the section of the *Staff Report of Investigation* entitled Recommended Conditions of Certificate, as modified by Staff testimony.

Staff's investigation included reviewing the application, conducting a site visit to the proposed facility location, acquiring additional information from the Applicant, the public, county commissioners and township trustees, obtaining input from State agencies that comprise the Board, and other relevant state and federal agencies, followed by the preparation of the Staff Report which represents Staff's analysis, conclusions, and recommendations.²² The reasoning behind the conditions recommended by Staff are as follows:

- Conditions 19 and 20 are needed to ensure the integrity of the Electrical Interconnection.²³

²¹ *Id.*

²² Thomas J. Crawford Prefiled Direct Testimony at Q&A 8.

²³ *Id.* at Q&A 10-11.

- Conditions (1), (2), (3), (6), (13), (14), (15), (17), and (18) regard the installation, construction, commencement of operation, changes in the facility layout, validation of certificate, filing of beginning and completion of construction, and permitting.²⁴
- Conditions 30, 31, 32, 33, 34, 35, 36, and 37 of the Staff Report are needed to ensure the minimization of potential adverse impacts to surface water resources, wildlife, and vegetation.²⁵
- Conditions 10, as modified by the testimony of Andrew Conway²⁶, should enable the land to return to agricultural crop production, consistent with the goal set forth in the application on pg. 85²⁷, and minimize erosion and drainage issues.²⁸ Further, the modified condition, along with the Applicant's commitment to limited grading, allow for the Applicant's grading and construction activities to progress in a well-planned manner.²⁹
- Condition 26 outlines the elements that Staff expects to see in a decommissioning plan.³⁰ These elements would assure the Board that the facility will be properly decommissioned at the end of its useful life and

²⁴ *Id.* at Q&A 12.

²⁵ Allison Renick Prefiled Direct Testimony at Q&A 8-9.

²⁶ Andrew Conway's Prefiled Testimony at Q&A 10.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at Q&A 11.

that there will be sufficient funds available just prior to commencement of construction to perform that decommissioning work.³¹

- Condition 27, as modified by Andrew Conway's testimony³², based on Staff's conference with Ohio Department of Health, assures the Board that the solar panels that are not recycled will be properly disposed or landfilled.³³
- Conditions 23 and 24 are needed to ensure the minimization of potential adverse impacts due to project construction and operational noise.³⁴
- Condition 39 is no longer necessary.³⁵ Condition 39 was needed to ensure that cultural resource surveys were completed and any sites were avoided that were recommended by the Applicant's cultural resource consultant or OHPO to be eligible for listing in the National Register of Historic Places.³⁶ The Applicant has complied with and completed the requirements of condition 39.³⁷
- Condition 16 ensures the Applicant shall coordinate with the proper regulatory authority concerning project activity that affects transportation

³¹

Id.

³²

Id. at Q&A 12.

³³

Id.

³⁴

Mark Bellamy Prefiled Testimony at Q&A 8.

³⁵

Id. at Q&A 9.

³⁶

Id. at Q&A 8.

³⁷

Id. at Q&A 9.

infrastructure.³⁸ It also requires the Applicant to supply Power Siting Staff with a transportation management plan prior to construction.³⁹

- Condition 25 outlines the requirements the Applicant must meet to mitigate disruption of agricultural field drain tile systems.⁴⁰
- Condition 21 is needed to ensure the minimization of potential adverse impacts on the existing viewshed and nearby sensitive visual resources.⁴¹
- Condition 22 is in response to community concerns about the aesthetics of the project. It requires a fence that fits better in a rural environment and allows for the passage of small wildlife.⁴²
- Conditions 4, 5, 7, 8, 9, 28, and 29 address geological, geotechnical, domestic use water supply wells, and floodplain concerns.⁴³
- Conditions 11, 12, and 38, which require the submittal of various construction-related permits and plans before the preconstruction conference are necessary to ensure that all necessary plans and permits are obtained by the Applicant and available for review by interested persons (including Staff) before the preconstruction conference begins.

³⁸ Eric Morrison Prefiled Testimony at Q&A 7.

³⁹ *Id.*

⁴⁰ *Id.* at 8.

⁴¹ James O'Dell Prefiled Testimony at Q&A 6.

⁴² *Id.*

⁴³ *See* Staff Report, Conditions 4, 5, 7, 8, 9, 28 and 29.

IV. CONCLUSION

The OPSB should deny the application, as modified by the Stipulation, for failure to meet the public interest criteria found in R.C. 4906.10(A)(6) and, thereby, failing to meet two prongs of the reasonableness test for stipulations reviewed by the OPSB.

If the Board determines the Applicant has met the requirements specified in R.C. 4906.10(A)(6) subject to modification, Staff recommends that any certificate issued by the Board for the proposed facility include the conditions specified in the section of the *Staff Report of Investigation* entitled Recommended Conditions of Certificate, as modified by Staff testimony. For the matter at hand, this would require the OPSB to modify the conditions listed in the Stipulation.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Initial 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 20th day of April 2023.

/s/ Robert A. Eubanks

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