

FILE

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of
Kingwood Solar I LLC, for a
Certificate of Environmental Compatibility
and Public Need to Construct a Solar
Electric Generation Facility in
Greene County, Ohio

Case No. 2023-0513

On appeal from the Ohio Power
Siting Board Case No. 21-0117-
EL-BGN

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NOTICE OF CROSS-APPEAL
OF THE GREENE COUNTY BOARD OF COMMISSIONERS

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Now comes the Greene County Board of Commissioners (“the Commissioners” or “the County”), through undersigned counsel, to provide notice of cross-appeal of the Opinion and Order issued December 15, 2022 by the Power Siting Board in Case No. 21-0117-EL-BGN (“the Order”) on the grounds set forth herein. This notice of cross-appeal pursuant to Sections 4903.11, 4903.13, and 4906.12 of the Ohio Revised Code, and S.Ct.Prac.R. 10.03, follows the Commissioners’ timely application for rehearing of the Order, which was denied by operation of law under Section 4903.10, and the notice of appeal to the Ohio Supreme Court filed by Kingwood Solar LLC on April 17, 2023.

The Commissioners support the outcome of the Order rejecting the stipulation and denying the application. The Commissioners file this notice of cross-appeal, however, to preserve argument for additional or alternative grounds for this Court to affirm the Board’s Order denying Kingwood Solar LLC’s application for Certificate of Environmental Compatibility and Public Need for its Kingwood Solar project in Greene County (“the Project”).

The following represent the specific grounds on which the Commissioners cross-appeal:

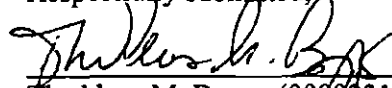
Assignment of Error 1: To the extent that the findings and conclusions in the Commissioners’ resolutions relative to the Perspectives 2020 land use plan amendments and associated testimony in opposition to this project application were not expressly adopted, the Ohio Power Siting Board acted unlawfully and unreasonably by failing to expressly adopt those findings and conclusions as additional reasons that the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6). (Greene County Commissioners Application for Rehearing, pages 1 and 4).

Assignment of Error 2: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to identify the Project’s threat to neighbors’ property values as a reason why the Project would not serve the public interest, convenience, or necessity under R.C. 4906.10(A)(6). (Greene County Board of Commissioners Application for Rehearing, pages 1 and 5).

Assignment of Error 3: The Ohio Power Siting Board acted unlawfully and unreasonably by failing to find that the Project's proven negative economic impacts are an additional reason why the Project does not serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6), and by failing to find that Kingwood's failure to evaluate the Project's other potential negative economic impacts as required by OAC 4906-4-06(E)(4) and R.C. 4906.10(A)(6) are additional reasons for denying the certificate. (Greene County Board of Commissioners Application for Rehearing, pages 2 and 5).

Pursuant to this notice of cross-appeal, the Commissioners respectfully request that the Board's Order be affirmed, either on the original grounds or on those set forth in this notice of cross-appeal, and that the Commissioners be designated as appellees/cross-appellants in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the counsel for the parties below have been served by electronic mail pursuant to S.Ct.Prac.R. 3.11(B)(2) and S.Ct.Prac.R. 3.11(C)(1), on this 27th day of April, 2023:

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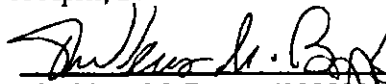
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CERTIFICATE OF FILING

I hereby certify that the foregoing notice of cross-appeal has been filed with the docketing division of the Public Utilities Commission and Power Siting Board pursuant to S.Ct.Prac.R. 3.11(D)(2), R.C. 4903.13, R.C. 4906.12, and Ohio Admin. Code 4901-1-02(A), 4901-1-36, and 4906-2-02, and 4906-2-33 on this 27th day of April, 2023.



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THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
KINGWOOD SOLAR I LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.**

CASE NO. 21-117-EL-BGN

OPINION AND ORDER

Entered in the Journal on December 15, 2022

I. SUMMARY

{¶ 1} The Ohio Power Siting Board (1) rejects the stipulation and recommendation between Kingwood Solar I LLC and the Ohio Farm Bureau Federation and (2) denies the application of Kingwood Solar I LLC for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility in Greene County, Ohio.

II. INTRODUCTION

{¶ 2} In this Opinion and Order, the Ohio Power Siting Board (Board) denies the application of Kingwood Solar I LLC (Kingwood or Applicant) to construct, maintain, and operate the proposed solar-powered electric generation facility. Specifically, the Board concludes that Kingwood does not satisfy R.C. 4906.10(A)(6), which requires that, in order to receive Board certification, a project must serve the public interest, convenience, and necessity.

III. PROCEDURAL BACKGROUND

{¶ 3} All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 4} Kingwood is a person defined in R.C. 4906.01.

{¶ 5} On March 11, 2021, Kingwood filed a pre-application notification letter with the Board regarding its proposed solar-powered electric generation facility in Cedarville,

Miami, and Xenia townships, Greene County, Ohio with up to 175 megawatts (MW) of electric generating capacity (Project or Facility).

{¶ 6} On March 30, 2021, Applicant held both an internet-based and a telephonic public informational meeting for the Project. On March 30, 2021, Kingwood filed proof of its compliance with Ohio Adm.Code 4906-3-03(B), requiring that notice of the public informational meeting be sent to each property owner and affected tenant and be published in a newspaper of general circulation in the project area.

{¶ 7} On April 16, 2021, Kingwood filed (1) an application with the Board for a certificate of environmental compatibility and public need to construct and operate the Facility, and (2) a motion for protective order and memorandum in support.

{¶ 8} Between April 27, 2021 and August 5, 2021, notices of intervention or motions to intervene were filed separately by Cedarville Township Board of Trustees (Cedarville Township), Xenia Township Board of Trustees (Xenia Township), Miami Township Board of Trustees (Miami Township), In Progress LLC (In Progress), Tecumseh Land Preservation Association (Tecumseh), Citizens for Greene Acres (CGA), Greene County Board of Commissioners (Greene County), and Ohio Farm Bureau Federation (OFBF). No memoranda contra were filed in opposition to the intervention requests.

{¶ 9} On August 26, 2021, the administrative law judge (ALJ) granted intervention to Cedarville Township, Xenia Township, Miami Township, In Progress, Tecumseh, CGA, Greene County, and OFBF.

{¶ 10} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair 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 June 15, 2021, the Board's Executive Director (1) notified Kingwood that its application was compliant and provided sufficient information to permit Staff to commence its review and

investigation, (2) directed Kingwood to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board, and (3) instructed Kingwood to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 11} On June 21, 2021, Kingwood filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. Applicant also filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 12} On June 28, 2021, Kingwood filed notice of its intent to hold an in-person public information meeting on June 29, 2021, which was intended to supplement the remote public information meetings that were conducted on March 30, 2021.

{¶ 13} By Entry issued August 26, 2021, the ALJ (1) established the effective date of the application as August 26, 2021, (2) set a procedural schedule, including scheduling a local public hearing for November 15, 2021, and setting an adjudicatory hearing to begin on December 13, 2021, (3) directed Kingwood to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-09 indicating that petitions to intervene would be accepted by the Board up to 30 days following service of the notice or by October 8, 2021, whichever was later, and (4) provided deadlines for all parties to file testimony, as well as for the filing of any stipulation.

{¶ 14} On September 8, 2021, Applicant filed proof of publication of its accepted, complete application in the *Yellow Springs News*, the *Xenia Gazette*, and the *Fairborn Daily Herald*.

{¶ 15} On September 27, 2021, Applicant filed a motion for a protective order regarding its archaeological study, which was being provided to Staff in response to a data request on May 17, 2021.

{¶ 16} On October 29, 2021, Staff filed its Report of Investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 17} On November 3, 2021, Applicant filed proof of second public notice and publication of second public notice of its accepted, complete application.

{¶ 18} On November 10, 2021, the ALJ (1) granted Applicant's motion for protective order from September 27, 2021, and (2) converted the evidentiary hearing to a remote format in response to the continuing COVID-19 pandemic.

{¶ 19} The local public hearing was conducted as scheduled on November 15, 2021.

{¶ 20} On November 22, 2021, Applicant and OFBF filed a joint motion to continue procedural deadlines and to convert the evidentiary hearing to a status conference in order to allow for the parties to present the ALJ with a settlement status update.

{¶ 21} On November 24, 2021, the ALJ granted the motion to continue the procedural deadlines and convert the evidentiary hearing to a status conference.

{¶ 22} On December 13, 2021, the ALJ called and continued the evidentiary hearing. Further, the parties updated the ALJ regarding the status of settlement negotiations among the parties.

{¶ 23} On December 22, 2021, the ALJ (1) ordered that the evidentiary hearing reconvene, virtually, on March 7, 2022, and (2) established a revised procedural schedule.

{¶ 24} On February 9, 2022, Applicant filed a motion for protective order regarding an addendum to its archaeological study, which was being provided to Staff in supplemental response to a data request on May 17, 2021. Applicant's motion was not opposed.

{¶ 25} On February 15, 2022, Applicant and OFBF filed a joint motion to continue deadlines, including the evidentiary hearing on March 7, 2022, based on the potential for ongoing settlement negotiations in the case. Joint movants represented that Staff and In Progress did not oppose the motion.

{¶ 26} On February 16, 2022, intervenors Xenia Township, Miami Township, Cedarville Township, and CGA filed a memorandum in opposition to the joint motion to continue deadlines, in which the opponents described that their negative view of the Project is such that extending the time for settlement negotiations is unreasonable.

{¶ 27} On February 17, 2022, the ALJ denied the joint motion for continuance and ordered that the hearing proceed as scheduled on March 7, 2022.

{¶ 28} On March 4, 2022, a joint stipulation (Stipulation) was filed by Kingwood and OFBF (Jt. Ex. 1).

{¶ 29} The adjudicatory hearing commenced as scheduled on March 7, 2022, and concluded at the close of rebuttal witness testimony on April 26, 2022. During the hearing, 12 witnesses testified on behalf of Applicant¹, 13 witnesses testified on behalf of intervenor CGA, 11 witnesses testified on behalf of Staff, 5 witnesses testified on behalf of Greene County and the three intervenor townships, and 1 witness testified on behalf of Tecumseh.

{¶ 30} On June 13, 2022, Kingwood, Staff, Xenia Township, Miami Township, Cedarville Township, Greene County, CGA, and In Progress timely filed initial post-hearing briefs.

{¶ 31} On July 22, 2022, Kingwood, Staff, CGA, and Greene County timely filed post-hearing reply briefs. Additionally, Miami Township, Xenia Township, and Cedarville Township filed a timely joint reply brief.

{¶ 32} On August 15, 2022, Kingwood filed a motion to strike portions of the initial post-hearing briefs filed by CGA and Cedarville Township claiming that the briefs relied on information that was outside of the record of the case. On August 26 and August 29, 2022, CGA and Cedarville Township filed responses to Kingwood's motion to strike, respectively.

¹ Kingwood also presented witness Nicole Marvin, a CGA member, as on cross examination pursuant to a subpoena (Tr. IV at 865).

On September 6, 2022, Kingwood filed a reply to the response to strike filed by Cedarville Township.

{¶ 33} On August 26, 2022, Kingwood filed notice of additional authority, which was the decision of the Supreme Court of Ohio in *In re Application of Icebreaker Windpower, Inc.*, Slip Opinion No. 2022-Ohio-2742 (Aug. 10, 2022).

IV. PROJECT DESCRIPTION

{¶ 34} Kingwood intends to construct a 175 MW solar-powered electric generating facility in Cedarville, Miami, and Xenia townships in Greene County. The Project will consist of large arrays of photovoltaic modules (solar panels), totaling approximately 410,000, which will be ground-mounted on a tracking rack system. The Project will occupy approximately 1,200 acres of private land secured by Kingwood through agreements with landowners. The Project will include associated facilities such as 11.3 miles of new access roads, an operations and maintenance building, underground and aboveground electric collection lines, a 20-foot-tall weather station, inverters and transformers, a collection substation, and a 138 kilovolt (kV) gen-tie electric transmission line. The Project will be secured by perimeter fencing which will be seven-feet tall and accessed through gated entrances. Applicant will ensure that solar modules are setback a minimum of (1) 250 feet from adjacent non-participating property lines, and (2) 500 feet from the Project's inverter stations to adjacent non-participating property lines. (Staff Ex. 1 at 6-8; Jt. Ex. 1 at 1-4.)

{¶ 35} If approved, construction was anticipated to begin in the second quarter of 2022 and be completed by the fourth quarter of 2023. According to Applicant, delays could impact project financing. (Staff Ex. 1 at 8.)

V. CERTIFICATE CRITERIA

{¶ 36} 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) 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) 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) 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) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

VI. SUMMARY OF LOCAL PUBLIC HEARING TESTIMONY, PUBLIC COMMENTS, AND STAFF REPORT

A. *Public Participation/Public Input*

{¶ 37} Before reviewing the evidence presented at the adjudicatory hearing regarding the statutory certification criteria, the Board will address the testimony provided during the local public hearing and the public comments filed to the record.

{¶ 38} During the nearly six-and-one-half-hour local public hearing that was held on November 15, 2021, opposition testimony (76 percent) outweighed support testimony (24 percent), with 51 of the 68 witnesses expressing opposition to the Project and 16 supporting it.²

{¶ 39} Those in favor of the Project argued generally regarding (1) the importance of landowner rights and autonomy over their land (Pub. Tr. at 27-28, 37, 181, 191, 202, 204), (2) the diversification of income that Project participation will bring local farmers (Pub. Tr. at 20-21, 26-27, 31-32, 93-94, 181, 204), (3) the benefits of solar energy as a renewable, clean energy source (Pub. Tr. at 172-173, 175-176, 180, 189, 199), and (4) the economic benefits to the community, such as revenue going to local schools and government entities and employment opportunities created by the Project (Pub. Tr. at 38, 106, 149-150). A number of supporters expressed the opinion that the Project will provide environmental benefits as well, as it will preserve the land from more permanent development and allow it to be returned to agricultural uses following decommissioning. Further, some witnesses pointed out that less chemical usage at the Project site and the planting of pollinator friendly vegetation could also improve the land and mitigate any negative side effects. (Pub. Tr. 32, 172, 173, 175-177, 190-191, 196-197, 235-236.) Participating landowners providing testimony stressed that the income they would derive from leasing land to the Project will ensure that their land can be maintained and passed on to future generations. Without this

² In one circumstance, the Board was unable to determine the witness' position as to the Project.

diversification, witnesses felt that they would likely need to sell their land rather than pass it on to descendants. (Pub. Tr. at 38-39, 197, 202, 204.)

[¶ 40] The overarching issue from Project opponents was a concern that the Project is incompatible with local land use plans and would unalterably change the rural nature of the community (Pub. Tr. at 74-75, 140-141, 146, 161, 166, 183, 206-207, 239, 251, 265, 273-274). Related to this concern, numerous community members disagree with the Project's plan to remove large tracts of land used in agriculture and worry about the implications that such development could have on food supplies (Pub. Tr. at 49-50, 70, 78, 98, 103, 121, 138, 140-141, 144, 166, 207, 222, 233, 245-246). Most opposing witnesses also expressed much concern with negative aesthetics and noise impacts that they anticipate will result from the Project (Pub. Tr. at 41-42, 74-75, 80, 86, 109, 114, 119, 125-126, 155, 219, 230, 260-261). With respect to noise pollution and the potential destruction of natural views, several witnesses were particularly worried about these effects on local state parks and recreational areas, such as Glen Helen Nature Preserve, John Bryan State Park, and others. These witnesses felt that the additional noise and destruction of viewshed would deter people from visiting these popular outdoor recreational areas. (Pub. Tr. at 51-52, 55-56, 58-61, 64-67, 77-78, 112, 194, 257, 260-261, 272.) Witnesses also worried about the negative impact that the Project, and a change to the environment, would have on local wildlife such as deer, bats, foxes, and numerous wild birds (Pub. Tr. at 41-42, 96-97, 122, 202, 252, 257, 275). With respect to altering the local environment, some witnesses also highlighted the historically significant nature of much of the project area, with sites tied to the Underground Railroad and Native Americans prevalent in the area (Pub. Tr. at 75, 121-122, 261).

[¶ 41] Opponents of the Project also spoke about the potential for chemicals and other toxins to be released into the surrounding area. In particular, witnesses voiced concern that released chemicals could contaminate local waterways such as the Little Miami River, along with wells and drinking water sources used by local residents. (Pub. Tr. at 50, 54-55, 96-97, 109, 129-130, 154-155, 162, 168, 210-211, 243, 252, 273.) According to many of these witnesses, the weather of the region could exacerbate these potential issues, as severe

weather and tornadoes are common in the area (Pub. Tr. at 55, 84-85, 101-103, 109, 114, 122, 168-169). Numerous witnesses also voiced concern that released chemicals and other side effects from construction at the Project site, along with exposure to electromagnetic fields during operation, could create public health issues for nearby residents (Pub. Tr. at 97, 110, 122, 168-169, 190, 191, 252).

{¶ 42} Opponents of the Project also expressed distrust of the Project developer and skepticism about the Project's alleged benefits. Multiple witnesses argued that Vesper has acted unethically in its dealings or attempted to intimidate landowners into supporting the Project (Pub Tr. at 16, 91, 108, 246, 278, 282). Some witnesses asserted that the proposed Project, and the division between participating and non-participating residents, was creating tremendous strife in a previously tightknit community (Pub. Tr. at 17, 127, 143-144). Opponents responded to property rights arguments made by supporters of the Project by countering that a landowner's property rights are not unlimited (Pub. Tr. at 254-255, 274). Witnesses were also unconvinced about the alleged benefits that the Project would bring to the community, questioning the amount of money that would flow to local schools and governments and the number of jobs that would be created. Some of these witnesses argued that not only were the alleged benefits below the level claimed by Kingwood, but that the Project would harm local agricultural-related businesses. (Pub Tr. at 97-98, 137-138, 160, 170, 211, 219, 242, 247, 256, 269-270, 274-275.) Witnesses also expressed concern about a decrease in property values following construction and operation of the proposed Project (Pub. Tr. at 96-97, 154, 160-161, 219-220, 252, 283, 284). Finally, with respect to the end of the useful life of the Project, multiple witnesses remained skeptical that proper decommissioning will occur and that the land can truly be restored to agricultural use (Pub. Tr. at 42-43, 49, 96, 135, 155, 168, 240, 261-262).

{¶ 43} In addition to testimony provided at the local public hearing, there have been 222 filings in the public comments of the case docket as of November 15, 2022.³ Within these filings, the arguments for and against the Project generally mirror the statements made at the local public hearing. Further, the filings reflect that opposition to the Project exceeds support for it at a ratio of approximately 63 percent to 37 percent. Though we note that the public comment ratios are skewed by the single-issue (local construction employment) mass filing on behalf of IBEW on September 20, 2021. Absent that filing, the Project's opposition-to-support ratio is 78 percent to 22 percent, which is generally consistent with the ratio of those who testified at the local public hearing.

B. Staff Report

{¶ 44} 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 Staff Report, filed on October 29, 2021, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 45} 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. In its review of the application under R.C. 4906.10(A)(1), Staff notes that the Project is a proposed electric generation facility, not a transmission line or gas pipeline. Accordingly, Staff recommends that the Board find that this consideration is inapplicable. (Staff Ex. 1 at 10.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 46} 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

³ We note that the actual positions of the commenters are closer to 400 in number as (1) 76 comments that were filed as one on September 20, 2021, by individuals on behalf of the International Brotherhood of Electrical Workers (IBEW) Local 182 were included in the case docket as one comment, and (2) the 97 individuals who signed opposition (and the 5 who signed support) rosters at the local public hearing were also included as singular comments when filed on the case docket on March 3, 2022.

reviewed the nature of the probable impact of the solar Facility and the following is a summary of Staff's findings:

a. Community Impacts

[¶ 47] Staff's review of community impacts from the Project focused on land use, regional planning, recreation, aesthetics, cultural resources, economic impacts, glare, decommissioning, safety concerns regarding wind velocity, road and bridge impacts, and noise concerns. While Staff cited to concerns as to the Project's regional planning compliance and aesthetics, Staff did not find that these concerns warrant denying the application. Moreover, Staff highlighted the significant economic impacts including job creation, local employment earnings, and annual revenue to the state and Greene County taxing districts during the construction and operation of the Facility. (Staff Ex. 1 at 11-20.)

b. Geology

[¶ 48] Staff's review of geologic impacts from the Project focused on soil types, oil and gas mining, seismic activity, and construction geotechnical and engineering analyses. Staff highlighted significant aspects of the Project including (1) Applicant worked with the Ohio Department of Natural Resources (ODNR) in compliance with Staff's request to procure an engineering constructability report (ECR) in response to concerns of latent oil and gas wells that could be negatively impacted by the Project, (2) the Project is in an area of low-risk for seismic hazard, (3) Applicant intends to implement a soils management plan to account for potentially encountering soil that has been contaminated by historic oil and gas activity, and (4) Applicant's geotechnical soil analysis, subject to ongoing testing, supports that the Project can be safely constructed and operated. (Staff Ex. 1 at 20-23.)

c. Ecological Impacts

[¶ 49] Staff's review of the ecological impacts from the Project focused on public and private water supplies, surface waters, threatened and endangered species, and vegetation. Relative to water supplies, Staff recommends installation distancing from potable water wells, and that spill prevention and response measures be implemented with

respect to source water protection areas. Relative to surface water issues, Staff recommends that Kingwood construct and operate the Project in accordance with permitting requirements of the United States Army Corps of Engineers (USACE) and the Ohio Environmental Protection Agency (OEPA). Relative to threatened and endangered species, Staff notes that, in assessing potential Project impacts, Kingwood (1) consulted with the United States Fish and Wildlife Service (USFWS) and the ODNR, (2) conducted field assessments, and (3) conducted literature reviews. Based on Kingwood's analysis, Staff recommends that the Project be subject to seasonal tree cutting, and that Kingwood be required to interact with Staff, USFWS, and the ODNR if listed plant and animal species are unexpectedly encountered during the Project's construction. Relative to vegetation, Staff concludes that the Project, subject to Kingwood's pollinator-friendly habitat installation plan, would be expected to reduce the environmental impact as compared to the current agricultural plant production. In summary, Staff determines that Applicant has (1) committed to construction and operation planning, in coordination with the OEPA, such that there is a low risk of any adverse impact to (a) public and private drinking water supplies and (b) surface water management, and (2) committed to management practices in consultation with ODNR, OEPA, and the USFWS to sufficiently evaluate potential impacts to (a) threatened and endangered species and (b) vegetation. (Staff Ex. 1 at 24-29.)

{¶ 50} Based on its review of the community, geology, and ecological considerations, Staff recommends that the Board find that Applicant has determined the nature of the probable environmental impact of the Project and, therefore, the Project complies with the requirements of R.C. 4906.10(A)(2) provided that any certificate issued by the Board includes the conditions set forth in the Staff Report (Staff Ex. 1 at 30).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 51} 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.

{¶ 52} As a part of its investigation, Staff reviewed minimum adverse impact considerations with respect to existing land use, as well as cultural, recreational, and wildlife resources. Staff noted that the Project reasonably (1) aligns with cultural resources, (2) benefits the state and local economies, (3) avoids impacts to (a) oil and gas and (b) public and private drinking water supplies, (4) limits impacts to (a) surface waters, (b) threatened and endangered species, and (c) vegetation, (5) limits noise impacts, (6) addresses transportation and road maintenance concerns, (6) reduces visual impacts upon non-participating landowner through the required use of landscape and lighting plans, and (7) mitigates farmland impacts through drain tile repair and decommissioning planning. (Staff Ex. 1 at 31-33.)

{¶ 53} Based on its review of the Project's expected impact to (1) existing land use and (2) cultural, recreational, and wildlife resources, Staff recommends that the Board find that the Project 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 includes the conditions set forth in the Staff Report (Staff Ex. 1 at 33).

4. ELECTRIC POWER GRID

{¶ 54} 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.

{¶ 55} As a part of its investigation of the Project, Staff reviewed electric power grid considerations with respect to planning by (1) the North American Electric Reliability Corporation (NERC), and (2) PJM Interconnection (PJM). Staff noted that Applicant has

obtained PJM review as to (1) a Feasibility Study Report and (2) a System Impact Study Report. Based on PJM's review, the Project is not expected to cause deliverability concerns that cannot be mitigated by Applicant through system upgrades or operational limitations. (Staff Ex. 1 at 34-36.)

{¶ 56} Based on these determinations, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report (Staff Ex. 1 at 36).

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 57} 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. As part of its investigation of the Project, Staff reviewed the Project's impacts to air quality, water quality, solid waste, and aviation. Staff concluded that, outside to minimal dust impacts during construction, the Project is not expected to cause any air quality impacts. Similarly, Staff reviewed the Project's water quality impacts and determined that the Project was subject to USACE and OEPA guidance, including the requirement of complying with a stormwater pollution prevention plan, such that the Project would comply with state water quality regulations. Relative to solid waste considerations, Staff notes that the Project is expected to primarily generate only construction-related solid waste, and that Applicant has committed to solid waste recycling and disposal plans that conform with state regulations. Further, relative to aviation considerations, Staff reviewed potential aviation impacts from the Project in coordination with the Ohio Department of Transportation Office of Aviation (ODOT), and concluded that there are no expected impacts to local aviation. (Staff Ex. 1 at 37-39.)

{¶ 58} 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 include the conditions specified in the Staff Report (Staff Ex. 1 at 39).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 59} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the Facility will serve the public interest, convenience, and necessity. In assessing the Project's compliance with this determination, Staff reviewed the application in terms of the Project's safety, electromagnetic fields (EMF), public interaction and participation, and public comments. (Staff Ex. 1 at 40-44.)

{¶ 60} Relative to safety and EMF considerations, Staff describes that the Project would be (1) constructed using reliable equipment that is certified by recognized standards entities, (2) subject to specific fencing, gate, signage, and setback requirements that are, as applicable, (a) compliant with recommendations of ODOT, (b) conforming with the National Electric Safety Code, and (c) consistent with fencing that the Board has approved as to other solar projects. Further, Staff describes that Kingwood intends to develop a plan for responding to emergencies that might arise from the Facility. Further, Staff describes that the Project does not create EMF concerns because (1) the proposed gen-tie transmission line is not within 100 feet of an occupied residence, and (2) the transmission facilities would be designed and installed according to NESC requirements. (Staff Ex. 1 at 41.)

{¶ 61} Relative to public interaction and participation, Staff describes that Kingwood (1) acted to educate the public about the Project by hosting virtual and in-person informational meetings to address issues such as financial benefits, visibility concerns, property value impacts, stormwater quality, and wildlife concerns, (2) commissioned a property value impact study, which concluded that adverse impacts from the Project are not anticipated, (3) prepared a preliminary complaint resolution program, (4) committed to notify affected local residents prior to the start of the Project's construction and operation, and (5) committed to providing Staff with quarterly complaint summary reports. In spite of these commitments, Staff describes that eight parties filed to intervene in the case, including Cedarville Township, Xenia Township, Miami Township, Greene County, and CGA. Further, (1) the Miami Township and Cedarville Township notices of intervention

describe concerns as to the Project's adverse impact on roads, properties, and citizens, and (2) Greene County filed a unanimous resolution on the public docket on October 29, 2021, in which the county stated its opposition to the Project. Staff further described that the public comments in the case included an email from the Village of Clifton expressing opposition to the Project and correspondence from CGA describing concerns as to the public information meeting and the application's completeness. Staff also summarized opposition comments from the public docket, which expressed concerns as to decommissioning, as well as impacts to agricultural land use, wildlife and the environment, drinking and groundwater, property values, public health, aesthetics and viewshed, fencing and vegetative screening, noise, glare, roads, siting, and setbacks. (Staff Ex. 1 at 41-44.)

{¶ 62} In consideration of the public interaction and participation surrounding the Project, Staff concludes that it does not serve the public interest, convenience, and necessity due to the general opposition from local citizens and government bodies. Staff emphasizes that the interests of the impacted local governmental bodies were especially compelling given the responsibility those entities bear for preserving the health, safety, and welfare of their citizenry. Accordingly, Staff concludes that the Project will create negative local community impacts that outweigh its benefits. (Staff Ex. 1 at 44.)

7. AGRICULTURAL DISTRICTS

{¶ 63} 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.

{¶ 64} Staff's review of the Project describes that it would remove approximately 1,027 acres of agricultural land, including 205 acres of agricultural district land, from service during its operational lifespan. Further, the Project will temporarily disturb existing soil and may result in drain tile damage. Though Staff describes that drain tile and soil impacts are temporary and will be restored to their original use by Applicant. (Staff Ex. 1 at 45.)

{¶ 65} 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, complies with the requirements specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 45).

8. WATER CONSERVATION PRACTICE

{¶ 66} 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.

{¶ 67} Construction of the proposed Facility would not require the use of significant amounts of water. Water may be utilized for dust suppression and control on open soil surfaces such as construction access roads, as needed. Similarly, operation of the proposed Facility will not require the use of significant amounts of water. Applicant states that the only expected water usage would relate to the potential for cleaning the panels up to two times per year depending on weather conditions and dust control. If cleaning is needed, Applicant estimates approximately 282,875 gallons of water may be used annually. (Staff Ex. 1 at 46.)

{¶ 68} Staff recommends that the Board find that the proposed Facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 46.)

9. RECOMMENDATIONS

{¶ 69} As noted above, Staff recommends a finding that the Project be determined not to be in the public interest, convenience, and necessity. Though should the Board not accept that recommendation, Staff recommends that various conditions set forth in the Staff

Report be made part of any certificate issued by the Board for the proposed Facility. (Staff Ex. 1 at 47-53.) Many of the recommended conditions found in the Staff Report, some with modifications, are adopted in the Stipulation. The Stipulation and conditions are discussed below in this Order.

VII. ADJUDICATORY HEARING

{¶ 70} At the evidentiary hearing, Kingwood presented testimony from its sponsoring witness, Dylan Stickney, and 12 expert witnesses who testified in support of the Stipulation as to environmental and viewshed impacts, property valuation, noise impacts, toxicity, geology, groundwater impacts, landscaping mitigation measures, transportation, public opinion polling, financial analyses, and architectural and cultural resources impacts (App. Ex. 6, 7, 8, 10-19, 101-109).

{¶ 71} Staff initially presented ten witnesses who testified in support of their conclusions as described in the Staff Report. Further, as described below, Staff witness Julie Graham-Price testified pursuant to Kingwood's subpoena as to Staff's communications with local government entities as to their positions regarding the Project in relation to the issuance of the Staff Report. (Staff Ex. 2-11.)

{¶ 72} CGA presented testimony from four experts regarding economic impacts, property values, farmland impacts, cultural and historic resources, viewshed and setback concerns, noise impacts, and ecological impacts (CGA Ex. 3, 5, 9, 12). Further, CGA presented testimony from several lay witnesses as to the community's perception of the Project, including its expected impacts upon farming and neighboring residents in the Project area (CGA Ex. 1, 2, 4-10, 11). Tecumseh also presented testimony regarding the Project's impact upon farmland production (Tecumseh Ex. 1).

{¶ 73} Additionally, each of the four government entities presented testimony from an elected official as to the basis and manner for determining the formal governmental opposition to the Project (Xenia Ex. 1; Miami Ex. 3; Cedarville Ex. 1; Greene County Ex. 1,

2). Further, Miami Township presented an expert landscape architect to address the Project's adverse impacts on soils, vegetation, surface water, and regional planning (Miami Ex. 1).

VIII. STIPULATION AND CONDITIONS

{¶ 74} At the adjudicatory hearing, Kingwood presented the Stipulation entered into by Kingwood and OFBF (Signatory Parties), in which Signatory Parties agree only that, should the Board issue a certificate for the Project, the certificate should be subject to the 39 conditions contained in the Stipulation (Jt. Ex. 1 at 1; Tr. I at 237).

{¶ 75} The following is a summary of the 39 conditions agreed to by the Signatory Parties and is not intended to replace or supersede the actual Stipulation:

- (1) Applicant shall install the Facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report, as modified by this Stipulation.
- (2) Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, Applicant shall provide a proposed conference

agenda for Staff review and shall file a copy of the agenda on the case docket. Prior to the conference, Applicant shall also provide notice of the meeting to Greene County, Cedarville Township, Xenia Township, and Miami Township, the Greene County Engineer, In Progress, and the Greene County Soil & Water Conservation District should representatives wish to attend the conference for informational purposes. Applicant may conduct separate preconstruction conferences for each stage of construction.

- (3) Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the as-built specifications of the entire Facility. If Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. Applicant 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 the preconstruction conference, Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design for that phase of construction and mapping in the form of PDF, which Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering

drawings to confirm that the final design is in conformance with the certificate. The final design shall incorporate minimum setback from the Project's fence line of at least 250 feet from non-participating residences as of the application filing date, and a minimum setback from the Project's inverter stations of at least 500 feet from non-participating residences as of the application filing date. 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 siting detailed in the application. The detailed engineering drawings of the final Project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio, who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final Project design to Staff.

- (5) At least 30 days prior to each preconstruction conference, Applicant shall submit to Staff, for review and acceptance, the final geotechnical engineering report. This shall include a summary statement addressing the geologic and soil suitability.
- (6) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, an Unanticipated Discovery Plan. This shall include detailed

plans for remediation of any oil and gas wells within the Project area.

- (7) If any changes are made to the Facility layout after the submission of final engineering drawings, Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are subject to Staff review for compliance with all conditions of the certificate, prior to construction in those areas.
- (8) Should karst features be identified during additional geotechnical exploration or during construction, Applicant shall avoid construction in these areas when possible. If mitigation measures are used in lieu of avoidance, Applicant's consideration of adequate mitigation measures shall include potential hydrogeological impact.
- (9) The certificate shall become invalid if Applicant has not commenced a continuous course of construction of the proposed Facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (10) As the information becomes known, Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the Facility begins commercial operation.
- (11) Prior to the commencement of construction activities in areas that require permits or authorization by federal or state laws and regulations, Applicant shall obtain and comply with such

permits or authorizations. Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff no less than seven days prior to the applicable construction activities and shall file such permits or authorizations on the public docket. Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference(s).

- (12) Subject to the application of R.C. 4906.13(B), the certificate authority provided in this case shall not exempt the Facility 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.
- (13) The Facility shall be operated in such a way as to assure that no more than 175 megawatts would be injected into the Bulk Power System at any time.
- (14) Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely with PJM. Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed

Interconnection Service Agreement and Interconnection Construction Service Agreement.

- (15) Prior to commencement of construction, Applicant shall submit to Staff its design for the perimeter fence for confirmation that the design complies with this condition. Project perimeter fencing shall be designed to be both small-wildlife permeable and aesthetically fitting for a rural location, taking into account applicable codes and NERC requirements. To the extent modifications can be made to a code compliant fence, Applicant shall install a fence that: has the lowest height possible; has frequent openings in the bottom rows in the fence not more than 500 feet apart and that must be at least nine inches wide and seven inches high to allow the passage of mammalian predators and other wildlife species. This condition shall not apply to substation fencing.
- (16) Prior to commencement of construction, Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area at any time of the year. The plan shall also address potential aesthetic impacts to nearby communities, the traveling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings. The plan shall also 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. Subject to any project area reductions, vegetative screening shall at a minimum consist of screening in the locations shown on the attached screening plan using the identified levels of screening from the Landscape Plan attached to Applicant's application in this proceeding. Applicant shall maintain vegetative screening for the life of the Facility and Applicant shall substitute and/or replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Applicant shall maintain all fencing along the perimeter of the Project in good repair for the term of the Project and shall promptly repair any damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the Facility, such as being downward-facing and/or fitted with side shields. Applicant shall provide the plan to Staff and file it on the public docket for review and confirmation that it complies with this condition.

- (17) Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state and/or federal listed threatened or endangered species are encountered within the construction limits of disturbance during site 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 Applicant, Staff, and the appropriate agencies.

- (18) If Applicant encounters a new listed plant or animal species or suitable habitat of these species prior to construction, Applicant shall identify avoidance areas or alternatively explain appropriate mitigation measures for these species to accommodate construction activities. This information will be included in the final engineering drawings and associated mapping, as required in Condition 4. Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction. Coordination with the ODNR and USFWS may also allow a different course of action.
- (19) Applicant shall incorporate post construction stormwater management under OHC00005 (Part III.G.2.e, pp.19-27) in accordance with the OEPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays (dated October 2019). Following the completion of the final Project engineering design, Applicant shall perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required, based on requirements contained in OEPA's Construction General Permit. The calculations along with a copy of any stormwater submittals made to the OEPA shall be submitted to the Greene County Department of Building Regulation and the Greene County Soil & Water Conservation District. If post-construction stormwater best management practices are

required, Applicant will submit construction drawings detailing any stormwater control measures to the Greene County Department of Building Regulation and the Greene County Soil & Water Conservation District, as applicable, no less than seven days prior to the applicable construction activities.

- (20) Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas, to be mutually agreed upon by Applicant and Staff. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff, and may include, but are not limited to, wetlands, streams, and locations of threatened or endangered species habitat. The specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. The environmental specialist mutually agreed upon by Staff and Applicant shall be authorized to report any issues simultaneously to Staff and Applicant. To allow time for Applicant and Staff to respond to any reported issues, the environmental specialist shall have the authority to stop construction activities in or near the impacted sensitive area(s) for up to 48 hours if the construction activities are creating unforeseen environmental impacts into sensitive areas identified on the map.
- (21) Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid potential impacts to Indiana bats,

northern long-eared bats, little brown bats, and tricolored bats, unless coordination with ODNR and USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.

- (22) Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-30-01 during implementation of any pollinator-friendly plantings, as well as during construction, operation, and decommissioning. This would be achieved through appropriate seed selection, and annual vegetative surveys consistent with the vegetative management plan included in the application. If noxious weeds are found to be present, Applicant shall remove and treat them with herbicide as necessary, and shall follow all applicable state laws regarding noxious weeds. Applicant shall also remove and treat with herbicide as necessary any noxious weeds upon notice from a board of township trustees that noxious weeds exist on the Project property. Prior to commencement of construction, Applicant shall consult with the Greene County Soil & Water Conservation District regarding seed mixes for the Project and shall provide the tags on such seed mixes to the Greene County Soil & Water Conservation District.
- (23) Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce potential impacts to indigenous aquatic species and their habitat,

unless coordination efforts with ODNR allows a different course of action. If coordination with ODNR allows in-water work in perennial streams between April 15 and June 30, Applicant shall file proof of such coordination on the docket prior to conducting such work.

- (24) Applicant shall obtain transportation permits prior to the commencement of construction activities that require them. Applicant shall coordinate with the appropriate regulatory 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, the Greene County Engineer, ODOT, local law enforcement, and health and safety officials. Applicant 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 and then file the plan in the public docket. This final transportation management plan shall address the methodology for monitoring all local, county, and township roads used for construction traffic during construction to ensure these roads remain safe for local traffic. Any damaged local public roads, culverts, and bridges would be repaired promptly to their previously or better condition by Applicant under the guidance of the appropriate regulatory authority. Any temporary improvement would be removed unless the

appropriate regulatory authority requests that it remain in place.

- (25) At least 30 days prior to the preconstruction conference, Applicant shall provide the status (i.e., avoidance, mitigation measures, or capping) of each water well within the Project area. Applicant shall indicate to Staff whether the nearest solar components to each uncapped well within the Project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7. Applicant shall relocate the solar equipment at least 50 feet from each active water well. Applicant may demonstrate the well is for nonpotable use and relocate solar equipment at least 10 feet from that nonpotable use water well, or seal and abandon the water well.
- (26) At least 30 days prior to the preconstruction conference, Applicant shall submit its emergency response plan to Staff for review and acceptance. That plan shall include a provision(s) to keep the Village of Yellow Springs (e.g., city administrator or water department) and the Camp Clifton Day Camp informed of the status of any spills, significant panel damage, and repair/clean-up/decommission schedule.
- (27) At least 30 days prior to the preconstruction conference, Applicant shall demonstrate that the substation equipment are outside of the inner management protection zone(s) for the Camp Clifton Day Camp source water protection area.
- (28) At least 30 days prior to the preconstruction conference, Applicant shall demonstrate that its solar panels to be

installed at the solar facility, including over the outer management zones of the Village of Yellow Springs and Camp Clifton Day Camp, do not exhibit the characteristics of toxicity through analysis with the USEPA's toxicity characteristics leachate procedure test.

- (29) At least 30 days prior to the start of construction, Applicant shall file a copy of the final complaint resolution plan for the construction and operation of the Project on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of the Facility operations, Applicant shall notify via mail affected property owners and tenants who were provide notice of the public information meeting; attendees of the public informational meeting who requested updates regarding the Project; and any other person who requests updates regarding the Project; all residents, airports, schools, and libraries located within one mile of the Project area; parties to this case; and county commissioners, township trustees, and emergency responders. These notices shall provide information about the Project, including contact information and a copy of the complaint resolution program. The start of construction notice shall include a timeframe for construction and restoration activities. The start of Facility operations notice shall include a timeline for the start of operations. Applicant shall file a copy of these notices on the public docket, including written confirmation that Applicant has complied with all preconstruction-related conditions of the certificate. During construction and operation of the Facility, Applicant

shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operations. The report shall include a list of all complaints received through Applicant's complaint resolution program, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved. Applicant shall file a copy of these complaint summaries on the public docket.

- (30) 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 the 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., Applicant 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. Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming

construction activities including the potential for nighttime construction.

- (31) If the inverters or substation transformer chosen for the Project has a higher sound power output than the models used in the noise model, Applicant shall submit, 30 days prior to construction, the results from an updated noise model for the Project using the expected sound power output from the models chosen for the Project, to show that sound levels will not exceed the average daytime ambient level in dBA for the nearest sound monitoring location for the Project Noise Evaluation attached to the application as Exhibit K plus five dBA at any nonparticipating sensitive receptor. If transformer manufacture data is not available, the model will be updated with sound emission data following the NEMA TR1 standard. If inverter manufacturer data is not available, a similar inverter model will be used to update the sound propagation model prior to construction. Once constructed, sound level measurements will be made in close proximity to the inverter to determine the sound power level of the installed inverter. If the sound power level of the installed inverter is 2 dBA or more over the sound power level used in the updated preconstruction model, then the sound propagation model will be updated to ensure project-wide compliance with the applicable sound level limit. If the sound power level is determined to be less than 2 dBA above the corresponding level used in the updated preconstruction model, then the project will be deemed in-compliance. If the equipment chosen for the Project are at the same (or lower)

sound power output as the models used in the noise model, no further action is needed for compliance with this condition.

- (32) Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and compaction to soils resulting from the construction, operation, and/or maintenance of the Facility in agricultural areas. For the purposes of the condition in this Stipulation, "field tile drainage systems" or "drainage system" includes both mains and laterals within the Facility footprint. Damaged field tile systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at Applicant's expense to ensure proper drainage. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only (i) if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system and (ii) the damaged field tile does not route directly to or from an adjacent panel. In accordance with Applicant's complaint resolution plan, Applicant shall consult with any landowner that submits a complaint to Applicant related to drainage issues on the landowner's property.
- (33) If a main drain tile is impacted due to the construction of the Facility, the damaged field tile drainage system shall be promptly repaired and/or rerouted no later than 10 days after such damage is discovered, pending weather and contractor availability, and returned to at least original condition or their modern equivalent. If a main drain tile is found to be

impacted during the operation, and/or maintenance of the Facility, the damaged filed tile drainage system shall be promptly repaired and/or rerouted no later than 45 days after such damage is discovered, pending weather and contractor availability, and returned to at least original conditions or their modern equivalent at Applicant's expense. Any tile installation or repairs shall be performed in accordance with the applicable provision of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage of Water Table Control, ASTM F499-02 (2008), to the extent practicable.

- (34) Applicant shall ensure that parcels adjacent to the Project area are protected from unwanted drainage problems due to construction and operation of the Project. Applicant shall ensure this by (1) conducting a search of the Project as necessary to locate drain tiles between the Project area properties and adjacent parcels; (2) consulting with owners of all parcels adjacent to the properties making up the Project as to locations of drain tiles on those parcels, (3) consulting with the Greene County Soil & Water Conservation District and the Greene County Engineer to determine the location of any tile located in a county maintenance ditch; and (4) subsequently documenting benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance ditches. During the time Applicant is conducting any field searches for drain tile or conducting construction work that could affect field tile drainage systems

within the Project area and for up to twelve months after completing construction, Applicant will allow a District inspector to help determine, inspect, and, as necessary, require Applicant's contractor to cause repairs to be made to necessary project field tile drainage systems that have been damaged.

- (35) At least 30 days prior to the preconstruction conference, Applicant 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 assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Board is the obligee; (b) a timeline of up to one year for removal of the equipment after the Project permanently ceases commercial operations; (c) a provision to monitor the site for at least one year to ensure successful revegetation and rehabilitation subject to landowner permission to access the site; (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; (h) and a provision

stating that the bond shall be recalculated every five years by an engineer retained by Applicant.

- (36) At the time of solar panel end of life disposal, retired panels that will not be recycled and that are marked for disposal shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of material into soils and groundwater.
- (37) At least 30 days prior to the preconstruction conference, Applicant shall demonstrate that it has implemented a setback of at least 50 feet from the solar Facility fence line to the public roads edge of right-of-way. Specific to OH-72 and Clifton Road on the eastern portion of the Project, Applicant shall implement a setback of 300 feet from the edge of the public road right-of-way. Specific to Clifton Road on the western portion of the Project, Applicant shall implement a setback of 200 feet from the edge of the public road right-of-way.
- (38) Applicant shall provide an emergency response plan to Staff prior to construction of the Project that includes a provision to provide annual training to the Xenia Township, Cedarville Township, Miami Township, and Greene County emergency response services in addition to providing those agencies with emergency contacts for the Project during construction and operation. Applicant shall develop the plan in coordination with the emergency response service agencies for the townships. Such annual training shall include training on addressing personal injury incidents and fires. The annual

training shall commence prior to the start of operation and continue until the Project is decommissioned. Emergency contact information shall be posted at the primary entrance to the Project.

- (39) Applicant shall provide a summary report to Staff within 60 days of the occurrence of any material damage to the Facility resulting from high wind events and shall file a copy of the report in the case docket. The report shall describe Applicant's plan for repairing the damage and the timeline for the repairs. In the event any portion of the Facility is rendered inoperable by the damage and Applicant elects not to repair the damage, that portion of the Facility shall be decommissioned following Applicant's decommissioning plan.

(Jt. Ex. 1 at 3-11.)

IX. PROCEDURAL ISSUES

A. *Interlocutory Appeal/Subpoena Denial*

[¶ 76] On May 2, 2022, following the conclusion of the adjudicatory hearing, Kingwood filed an interlocutory appeal of the ALJ's denial of its renewed motion to compel the appearance of the Board's Executive Director, Theresa White, to testify as a witness in the case. Kingwood described that it first sought to compel Ms. White's hearing testimony pursuant to a motion for subpoena filed on February 25, 2022. While that motion sought testimony from the witness regarding several issues, Kingwood ultimately focused its assertion on its claim that Ms. White's testimony was necessary as to communications between Staff and representatives from Greene County regarding the county's position as to the Project. (*See*, Motion for Subpoenas (Feb. 25, 2022); Interlocutory Appeal (May 2, 2022); App. Br. at 99-101.) In response to Staff's memorandum contra on March 4, 2022,

Kingwood requested in its reply filing on March 8, 2022, that the ALJ defer ruling on Kingwood's motion until after Staff's ten witnesses testified in the case.⁴ After the presentation of Staff's scheduled witnesses, the ALJ determined that (1) Kingwood was entitled to compel the testimony of additional Staff witness Juliana Graham-Price in order to explore the nature of communications between Ms. Graham-Price and the affected local government entities surrounding the Project, and (2) Kingwood was not entitled to compel the testimony of Executive Director White in the case. (Tr. VII at 1912-1913.)

{¶ 77} On April 25, 2022, Ms. Graham-Price testified in the case. The salient facts of her testimony were that (1) her position at the time of her actions in this case was "Community Liaison," which involved interacting with local government officials regarding the Board's process for considering renewable energy certification applications, (2) at the direction of Executive Director White, Ms. Graham-Price contacted the Greene County Commissioners and the three local township trustees on October 21 and October 28, 2021, to determine their respective positions regarding the Project, and (3) following these communications, Ms. Graham-Price informed Executive Director White on October 28, 2022, that Greene County, Cedarville Township, and Xenia Township⁵ expressed their opposition to the Project. Further, Ms. Graham-Price related that (1) Greene County intended to adopt a resolution opposing the Project, (2) Cedarville Township explained the apparent intention of the three townships to adopt a joint resolution opposing the Project, and (3) Xenia Township was opposed to the Project, but would not be able to deliver a resolution declaring such ahead of Staff's stated deadline of October 29, 2021. (Tr. VIII at 1928-1945.)

{¶ 78} Following Ms. Graham-Price's testimony, Kingwood renewed its motion to compel Executive Director White's testimony claiming that the testimony is critical to the Board's consideration of the case. The ALJ denied Kingwood's renewed motion for

⁴ In spite of the ALJ ruling that granted Kingwood's reply request, Kingwood later claims that the ALJ "inexplicably held the ruling in abeyance" (App. Br. at 100).

⁵ Ms. Graham-Price indicated that she left a message with a Miami Township representative on October 28, 2021, but that she did not receive any return communication from the township prior to the issuance of the Staff Report on October 29, 2021.

subpoena finding that Ms. Graham-Price's testimony as to her investigative actions in the case was clear such that further testimony was unwarranted. (Tr. VIII at 1962-1963.)

{¶ 79} With respect to Kingwood's arguments in favor of compelling the testimony of Executive Director White, the Board finds that Kingwood's subpoena request is unwarranted and should be denied. In reaching this conclusion, we note that the record is clear as to Staff's investigation of the positions of local government entities that are impacted by the Project, which is certainly a relevant consideration in terms of whether the Project will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6). We reject Kingwood's claims that the timing of Staff's inquiry or the manner in which its findings were incorporated into the Staff Report create the need to compel further testimony in the case. Instead, the collective testimony of Ms. Graham-Price, Mr. Zeto, and the remaining Staff witnesses make clear that (1) the Staff Report was the collective work of Staff "as a whole," and (2) there is no indication from any witness as to disagreement with its contents, including the recommendation that the Project did not serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). Further, we find no impropriety as to the nature and timing of Staff's communications with the local government entities in the manner described by Ms. Graham-Price and others. In preparing the Staff Report, Staff should ascertain the position of local government entities that are impacted by a project in order to determine whether a project complies with the public interest, convenience, and necessity. Further, just as Staff and Applicant communicate directly as to exchanging information relevant to the consideration of a pending project throughout Staff's analysis of an application, we find no impropriety as to similar communications occurring between Staff and local government entities ahead of the preparation of the Staff Report. Accordingly, we find no error in the ALJ determination to deny Applicant's subpoena request with respect to compelling testimony from Executive Director White at the evidentiary hearing. As a result, we deny Kingwood's interlocutory appeal regarding this determination.

B. *Kingwood's Motion to Strike*

{¶ 80} On August 15, 2022, Kingwood filed a motion to strike (1) two statements from Cedarville Township's initial brief, and (2) one statement from CGA's initial brief. As to each request, Kingwood claims that the proffering party seeks to argue from documents that have not been admitted as evidence in the case.

{¶ 81} In response to Kingwood's motion, CGA consents to Kingwood's request to strike the information at issue, which related to an excerpt from a Xenia Township Zoning Resolution. Accordingly, the Board grants Kingwood's request as to the CGA briefing reference at issue.

{¶ 82} Relative to the Cedarville Township briefing references, Kingwood seeks to strike the township's statistical statements about the percentages of public comments that were made in the case docket and at the local public hearing. Kingwood claims that the township does not support these statements through evidence that has been admitted in the case, and that the evidence at issue was expressly stricken by the ALJ during the course of the evidentiary hearing based on hearsay considerations. Cedarville Township rebuts the motion to strike by claiming that the information was compiled directly from the public comments in the case docket and local public hearing such that it is entitled to evidentiary consideration.

{¶ 83} As to the Cedarville Township briefing references at issue, the Board finds that they are also stricken from record consideration as they are not supported by record evidence in the case. Consistent with the ALJ's ruling during the hearing, the information referenced as Ex. B in Cedarville's initial brief is barred because it contains hearsay. Further, the printout of public comments from the case docket, which is referenced as Ex. A in Cedarville's initial brief is also stricken, as it is not evidence in the case.

{¶ 84} While the Board grants Kingwood's motion to strike Cedarville Township's exhibit references, we stress that this ruling does not impact our consideration of (1) the

public comments in the case, and (2) the testimony from the local public hearing. As described herein, the Board finds that both the public comments and the local public hearing testimony are significant in terms of assessing whether the Project complies with the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). Accordingly, the Board has evaluated both of these areas of public input in deciding the case. Though we stress that our consideration is limited to the sworn testimony from the local public hearing and the general public perception about the Project as gleaned from the public comments, as we have independently determined, and not the exhibits referenced by Cedarville Township in its briefing.

C. *Motion for Protective Order*

{¶ 85} As described above, on February 9, 2022, Applicant filed a motion for protective order regarding an addendum to its archaeological study, which was being provided to Staff in supplemental response to a data request on May 17, 2021. Applicant's motion was not opposed.

{¶ 86} Consistent with Ohio Adm.Code 4906-2-21, the Board has reviewed the information that Applicant seeks to protect and finds that the motion is reasonable and should be granted. As a result, the Addendum Phase 1 Archaeological Investigation Report that Kingwood filed under seal on February 9, 2022, shall be kept confidential and not subject to public disclosure.

X. *CONSIDERATION OF CERTIFICATE CRITERIA*

{¶ 87} Consistent with R.C. 4906.10(A), the Board has reviewed the record and made determinations regarding each of the statutory criterion.

{¶ 88} The Board notes that opposition to Kingwood's application focuses generally on whether the Project complies with R.C. 4906.10(A)(2), R.C. 4906.10(A)(3), and R.C. 4906.10(A)(6). As the opposition arguments reference overlapping criteria, the Board's analysis of party positions is reflected under the criterion deemed most applicable to a

party's argument. To the extent a party's argument is discussed under one criterion but not all, the Board has nevertheless given the argument full and careful consideration.

A. R.C. 4906.10(A)(1): Basis of Need for Electric, Gas, or Natural Gas Transmission Lines

{¶ 89} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the facility is a gas pipeline or an electric transmission line.

{¶ 90} Staff concluded that R.C. 4906.10(A)(1) is not applicable to this proceeding, given that the Facility is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 10). Moreover, no party raised any concern as to this issue. Accordingly, the Board finds that R.C. 4906.10(A)(1) is not applicable in this proceeding.

B. R.C. 4906.10(A)(2); Nature of the Probable Environmental Impact, and R.C. 4906.10(A)(3); Minimum Adverse Environmental Impact

{¶ 91} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed Facility. Further, R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent conditions. As arguments of the parties generally address these considerations in an overlapping manner, the Board will consider these arguments collectively.

{¶ 92} Kingwood argues both that (1) the Board has adequate evidence to determine the nature of the probable environmental impact, and (2) the environmental impacts from the Project are, if conditioned in the certificate as recommended in the Stipulation, minimally adverse when considering the state of available technology and the nature and economics of the various alternatives (App. Br. at 49-85).

{¶ 93} In terms of socioeconomic impacts, Kingwood asserts that the Project's impact to land use, cultural resources, and visual resources will be minimal. Moreover,

Kingwood emphasizes that the Project's limited viewshed impacts are successfully mitigated by Kingwood's commitments to enhanced landscaping and vegetative screening. (App. Br. at 50-59.)

{¶ 94} In terms of ecological impacts, Kingwood asserts that the Project's impact to surface waters, threatened and endangered species, other wildlife, vegetation, and soil and water will be minimal (App. Br. at 60-70).

{¶ 95} Further, in terms of public services, facilities, and safety impacts, Kingwood asserts that the Project's impacts on traffic, noise, EMF, decommissioning liabilities, and drainage and surface water management will be minimal (App. Br. at 70-85).

{¶ 96} As described above, Staff's review of the application found that (1) Kingwood adequately assessed the Project's impact in compliance with R.C. 4906.10(A)(2), and (2) the environmental impacts from the Project are, subject to Staff's recommended certificate conditions, minimally adverse when considering the state of available technology and the nature and economies of the various alternatives in compliance with R.C. 4906.10(A)(3) (Staff Ex. 1 at 30, 33).

{¶ 97} In opposing the Project, CGA argues that Kingwood fails to adequately assess and mitigate the Project's adverse environmental impact with respect to the viewshed, wildlife and plants, water conservation, noise, surface water management, and pollution (CGA Br. at 22-44). Further, citing to concerns that often overlapped CGA's, (1) an elected official from each of the four government entities testified as to the bases for determining the formal governmental opposition to the Project, and (2) Miami Township presented expert testimony regarding the Project's environmental impacts, including upon soils, noxious weeds, and surface water management (Xenia Ex. 1; Miami Ex. 1, 3; Cedarville Ex. 1; Greene County Ex. 1, 2).

1. VIEWSHED ANALYSIS

{¶ 98} CGA's viewshed arguments focus on four main points; (1) the application is deficient in terms of its depiction of the Project's impact on neighboring properties, (2) the Project's irregular shape causes it to adversely impact excessive property owners, (3) the rolling terrain of the properties in and around the Project area prohibit construction that will not unreasonably impact the viewshed, and (4) Kingwood's plan for mitigating visual impacts is deficient. In terms of the application, CGA notes that 50 nonparticipating residences are within 250 feet of the Project, and an additional 95 nonparticipating residences are within 1,500 feet of the Project. Further, CGA stresses that all 145 of these residences will have clear views of the Project despite Kingwood's vegetation screening plans. According to CGA, in spite of these substantial impacts, Kingwood's application fails to provide photographic simulations or pictorial sketches that are needed to assess these impacts, as required by Ohio Adm.Code 4906-4-08(D)(4)(e). CGA also claims that the Project's visual impact is magnified by the fact that the Project boundary is nearly nine miles long, which CGA attributes, in part, to its irregular shape. Further, CGA claims that elevation changes surrounding the Project exacerbate visual impacts due to nonparticipating residences having viewshed disturbances that are not reasonably mitigated by vegetative screening plans. CGA also claims that the Project's vegetative screening plans, as modified in the Stipulation, fail to reasonably protect nonparticipating residences, many of which are uniquely impacted by the Project. (CGA Br. at 22-38.)

{¶ 99} In rebutting CGA's viewshed claims, Kingwood stresses that the Project is prudently sited on agricultural land, is subject to reasonable protective setbacks, and does not create unreasonable viewshed impacts because of the vegetative screening that will be implemented. Kingwood notes that the Board has approved several other solar projects on farmland and that agricultural land is the most common for siting such projects across the country. (App. Reply Br. at 32-33.) With respect to setbacks, Kingwood points out that minimum setbacks for the Project have expanded since the filing of the application such that the minimum distance that can occur between panels and a nonparticipating residence is

now 270 feet, which is (a) longer than the setback limits in recent cases where the Board has issued certificates, and (b) longer than Staff's setback recommendations. Moreover, Kingwood notes that the Project's design has been modified to increase the rights-of-way along OH-72 and Clifton Road in order to reduce its visibility on routes that are used most commonly by tourists who visit the area's attractions. (App. Reply Br. at 51-54.) Further, Kingwood argues that any viewshed impacts are mitigated through existing and supplemental vegetative screening, emphasizing that the Project will add more than 47,000 linear feet of vegetative screening (App. Ex. 18; Joint Ex. 1 at 5).

{¶ 100} In addition to its fact arguments, Kingwood argues that CGA is estopped from contesting the quality of its viewshed evidence because such arguments were required to be asserted as objections to Staff's determination that Kingwood's application was complete (App. Reply Br. at 8-11). Further, Kingwood asserts that its viewshed evidence complies with Ohio Adm.Code 4906-4-08(D)(4)(e) in that the seven viewpoints depicted in its visual impact analysis report are representative of the Project's impacts in a manner that allows the Board to determine this issue (App. Reply Br. at 57-59; App. Ex. 1, Appx. Q at 25-30).

2. WILDLIFE, PLANT, AND WATER CONSERVATION ANALYSIS

{¶ 101} CGA's wildlife, plant, and water conservation analysis focus on claims that Kingwood (1) failed to conduct appropriate literature and field surveys of the plant and animal species in the Project area, as required by Ohio Adm.Code 4906-4-08(B), and (2) failed to provide water conservation measures for the Project, as required by Ohio Adm.Code 4906-4-07(C)(3). With respect to the plant and wildlife analysis claims, CGA argues that Kingwood failed to conduct both (1) literature searches beyond confirming state-listed threatened and endangered species, which resulted in field studies that were deficient in terms of potential impacts to other plant and wildlife, and (2) field studies that were broad enough in terms of both the area of the Project and the potential impacts across various seasons. In addition, CGA claims that Kingwood's field studies were deficient in that they failed to describe wildlife that area citizens described as being present in the area. With

respect to water conservation, CGA alleges that Kingwood failed to adequately describe the Project's anticipated water usage, including whether such usage could be potentially damaging to the needs of local citizens, who utilize up to 473 water wells that are drilled within one mile of the Project area. (CGA Br. at 38-44.)

{¶ 102} Miami Township joined in CGA's arguments based on the testimony of Eric Sauer, a registered landscape architect, who testified as to concerns regarding the Project's impacts on soil compaction and erosion, noxious weeds, and surface water management. According to Mr. Sauer, the Project's expected impacts in these areas are not minimal in terms of the diminished soil performance, loss of stormwater control, and increased erosion and noxious weed proliferation. (Miami Ex. 1.)

{¶ 103} In rebutting the CGA and Miami Township claims, Kingwood focuses on (1) the quality of its environmental impact studies, particularly with respect to other solar projects the Board has certificated, (2) the Project's design, which was developed in a manner that is ecologically favorable, and (3) claims that the Project will not materially impact local water supplies or quality. Relative to the environmental impact studies, Kingwood describes that the studies in support of the Project are (1) consistent with those relied upon by the Board in evaluating similar solar projects, and (2) reasonably focused on threatened and endangered species, as supported by the USFWS and ODNR. Kingwood maintains that the Project's design purposefully mitigates environmental impacts because it (1) is sited largely on active agricultural fields, which are lower quality habitat that do not support diverse species and are abundant in the area of the Project, and (2) avoids impacts to wetlands and streams. Further, Kingwood describes agreement with Staff's conclusion that the Project will decrease the environmental impact from the current land usage due to the inclusion of permanent pollinator-friendly plantings and increased vegetative screenings. (App. Br. at 60-69; App. Reply Br. at 64-67.)

3. NOISE, SURFACE WATER, AND POLLUTION ANALYSIS

{¶ 104} CGA claims that Kingwood's noise analysis in support of the application is flawed because the baseline measuring data inflated background sound by unreasonably focusing on public roads instead of residential properties. As a result, CGA argues that the Project should not be certificated unless Kingwood is required to install inverter enclosures, which are available at an added Project cost of 15 percent. (CGA Br. at 59-60.) CGA further argues that Kingwood fails to properly quantify expectations about the Project's impact on surface water drainage and water pollution in violation of Ohio Adm.Code 4906-4-07(C). CGA claims that drainage issues impacting the Project are especially important because the area is prone to flooding. As such, CGA asserts that hydrology studies of the Project's impact on overflow waterways and drainage tiles is needed in order to understand impacts and mitigate damage to neighboring properties. Further, CGA makes similar arguments in terms of the Project's potentially causing runoff water quality disturbances. (CGA Br. at 60-65.)

{¶ 105} Kingwood counters CGA's arguments based on (1) the results of its acoustic testing, (2) the results of its surface water consultant, and (3) the requirement that the Project must comply with discharge and erosion control as regulated by the OEPA in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Relative to the noise, Kingwood argues that the analysis of CGA's noise expert, Robert Rand, is fatally flawed because he did not conduct a thorough study and his comparative sound measurements from a project at Hardin Solar were unreliable. Further, Kingwood claims that should the Project result in noise above the Board's customary tolerance measure of Leq plus 5, the exceedance would merely subject the Project to mitigation measures such as a noise barriers or exhaust controls. (App. Reply Br. at 69-76.) Relative to surface water management, Kingwood claims that the Project (1) will not materially impact surface grades, (2) is subject to impact measures that are jointly regulated by Greene County authorities, (3) is compliant with the OEPA's stormwater management guidance, and (4) will reasonably avoid and properly restore any drain tiles in the area. (App. Reply Br. at 76-

78.) Relative to water pollution concerns, Kingwood describes that the Project, due to its minimal surface disturbance and use of restorative ground cover, is not expected to materially discharge water into neighboring waterbodies. Further, Kingwood claims that its application, as supplemented, is compliant with statutory requirements that are intended to protect local water quality because the Project is not expected to discharge surface waters other than as to stormwater runoff. (App. Reply Br. at 78-79.)

4. BOARD CONCLUSION

{¶ 106} Upon review of the record, the Board finds that (1) the Facility's probable environmental impacts have been properly evaluated and determined, and (2) the Facility, subject to the conditions described in the Stipulation, represents the minimum adverse environmental impact. R.C. 4906.10(A)(2) and (A)(3).

{¶ 107} As discussed in the Staff Report, after its thorough investigation into the community, geological, and ecological impacts of the Project, Staff concluded that the Project meets the requirements in R.C. 4906.10(A)(2) and (A)(3) (Staff Ex. 1 at 30, 33). Staff's recommendation is supported by Kingwood's evidence regarding the Project's limited impacts to (1) land use, cultural resources, and viewshed, (2) surface waters, threatened and endangered species, other wildlife, vegetation, and soil and water, and (3) traffic, noise, EMF, decommissioning liabilities, and surface water management.

{¶ 108} Consistent with Staff's evaluation, the Board finds that the record in this case demonstrates that Kingwood has determined the Facility's probable environmental impact. In reaching this conclusion, we emphasize that the Project is not expected to cause any significant environmental impacts and that such impacts are mitigated through Kingwood's construction and operation plans, as modified by the Stipulation conditions. The Board is satisfied with the studies that Kingwood provided as to the Project's impacts to surface waters, soil and water resources, and vegetation and wildlife in the Project area. In general, we agree with Kingwood's claim that siting the Project on agricultural land aids in minimizing its ecological impacts because these areas (1) do not require substantial grading

alterations, and (2) are able to support groundcover that mitigates surface water impacts. (App. Ex. 8 at 6-7,10; Staff Ex. 1 at 29.) Further, we emphasize that the Project is subject to postconstruction monitoring in conjunction with Greene County regulators and the OEPA, and that Kingwood has committed to protecting existing drainage infrastructure, such that adverse drainage impacts are not expected. Moreover, we accept Kingwood's studies as to the wildlife and vegetation impacts, which are based on consultations with the USFWS and ODNR, as supplemented by Kingwood's field surveys. As Kingwood argues, such studies are common as to similar projects in which the Board has issued certificates and consistent with the rules that apply to the Board's consideration of the Project. Further, as the Project is expected to use water resources only for the limited purpose of cleaning the solar panels up to twice per year, we reject arguments that such water usage is inadequately calculated or not in line with maximum feasible water conservation practices. (App. Ex. 1 at 45.)

{¶ 109} Additionally, we find that the Project's operational noise impacts have been reasonably determined and that, should any unanticipated noise concerns arise from the Project, they will be mitigated through post-construction measures. As Kingwood notes, the Board has, when evaluating solar project noise tolerances, routinely accepted the Leq plus 5 standard that Kingwood proposes. Accordingly, we accept Kingwood's proposal to limit the Project's noise impacts within these tolerances. Further, we accept Kingwood's evidence as to the ability to economically implement operational noise controls such as barrier walls or acoustic enclosures in the unlikely event that noise impacts exceed preconstruction estimates. (App. Ex. 102 at 2; App. Ex. 10 at 6.)

{¶ 110} Further, we find that the Project's viewshed studies are reasonable and describe reasonable mitigation measures as to impacts to nonparticipating residents. We note that the Project is not expected to visually impact local recreation areas, as confirmed by (1) Kingwood's primary consultant and architectural historian, and (2) CGA's visual impact witness, Susan Jennings. The Project will, however, impact the viewsheds of nonparticipating residents. In spite of these impacts, we conclude that the viewshed considerations do not preclude the Project, as Kingwood's use of enhanced vegetative

screening and setback distancing reasonably mitigates the visual impacts in line with similar projects for which we have issued certificates. (App. Reply Br. at 59-62.)

{¶ 111} Finally, CGA's contention that the Board cannot determine that the Project represents the minimum adverse environmental impact because a number of plans submitted with the application are labeled "preliminary" is also without merit. (CGA Br. at 4, 5, 47.) The Board agrees with Kingwood's contention that the Stipulation obligates Applicant to construct the Facility "as described in the application" and that failing to honor commitments or studies included with the application will be a violation of the terms of the Stipulation (Jt. Ex. 1 at 3, Condition 1). Further, the ability of the Board to condition certificates upon the submission and approval of final plans or studies has been affirmed by the Ohio Supreme Court (*In re Application of Buckeye Wind, L.L.C.*, 2012-Ohio-878, ¶¶ 13-14, 16).

{¶ 112} In summary, the Board finds that the record establishes that (1) the nature of the probable environmental impact from construction, operation, and maintenance of the Project has been established by Applicant, as required under R.C. 4906.10(A)(2), and (2) the environmental impacts from the Project are, subject to the certificate conditions recommended in the Stipulation, minimally adverse when considering the state of available technology and the nature and economies of the various alternatives.

C. R.C. 4906.10(A)(4): Consistency with Regional Plans

{¶ 113} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such 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 such facility will serve the interests of electric system economy and reliability.

{¶ 114} NERC is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators,

and users of the BPS. As an owner, operator, and/or user of the BPS, Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM. PJM is the regional transmission organization charged with planning for upgrades and administering the generation queue for the regional transmission system in Ohio. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area must submit an interconnection application for review by PJM. (Staff Ex. 1 at 34-36.)

{¶ 115} PJM analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that no new system reinforcements would be needed due to the addition of Applicant's Project and that no overloading or network impacts on earlier projects in the PJM Queue would result from the addition of the proposed Facility. Additionally, PJM determined that upgrades to mitigate any future operational restrictions are not required for the Facility to be operational and are at the discretion of Applicant. The short circuit analysis identified no circuit breaker problems resulting from the proposed generation addition. (Staff Ex. 1 at 35-36.)

{¶ 116} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the Facility 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), provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 36.)

{¶ 117} Kingwood echoes Staff's recommendation, submitting that the Facility is consistent with plans for expansion of the regional power system and will serve the interests of the electric system economy and reliability. Kingwood further points out that the results of PJM's reports together with Applicant's own transmission analysis shows that the Facility

can be constructed and operated without causing any reliability violations during single or multiple contingences and that no potential violations were found during the short circuit analysis. Kingwood also submits that the record reflects that the Facility will provide additional grid reliability by providing “on peak” power during the high demand period of mid-day and late afternoon. Further, Kingwood believes that the Facility will help meet general electricity demand in the region, particularly with the planned retirements of existing coal-fired generating assets in Ohio and the PJM network. (App. Br. at 90 citing App. Ex. 1, Appx. C; App. Ex. 6 at 4; App. Ex. 107 at 8.)

{¶ 118} The evidence provided by Staff and Kingwood regarding this criterion is compelling and unrefuted. The Board therefore finds that the Project will serve the interest of electric system economy and reliability and is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems in accordance with R.C. 4906.10(A)(4).

D. R.C. 4906.10(A)(5): Air, Water, Solid Waste, and Aviation

{¶ 119} Pursuant to R.C. 4906.10(A)(5), the Facility must comply with Ohio law regarding air and water pollution control, solid and hazardous wastes, and air navigation.

1. AIR

{¶ 120} Kingwood states that solar facilities generate electricity without releasing pollutants into the atmosphere; therefore, state and federal air pollution permits are not required for the Project. Kingwood contends that the Project will not produce any air pollution, with the exception of controllable dust emissions during construction. Kingwood contrasts this with traditional electric generation methods such as combusting coal and natural gas, which emit air pollutants. Kingwood asserts that the Project will provide electricity to the surrounding region without exacerbating ozone issues created by pollution. Over time, according to Kingwood, a transition to clean energy sources such as solar facilities like the Project, could help all of Ohio attain and maintain air quality standards. (App. Br. at 32, 91.)

{¶ 121} Staff's analysis aligns with that of Kingwood. According to Staff, air quality permits are not required for construction or operation of the proposed Facility because the Facility will not use fuel and will not emit any air pollution. Fugitive dust rules, adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed Facility. Applicant expects the amount of dust to be low because little topsoil will be moved and there will be minimal grading and earth work activities. Applicant would control temporary and localized fugitive dust by using best management practices such as using water to wet soil and/or dust suppressants on unpaved roads as needed to minimize dust. This method of dust control is typically used to comply with fugitive dust rules. The Project would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 37.)

{¶ 122} Based on the record in this case, the Board finds that both the construction and operation of the Project, subject to the conditions set forth in the Stipulation, will comply with the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted thereunder.

2. WATER

{¶ 123} Kingwood submits that the Project will use relatively little water, particularly in comparison with conventional methods of electric generation. As discussed above, Kingwood states that the Project will generate no point-source wastewater and will observe federal and Ohio law to properly manage stormwater flows. Further, Kingwood has committed to adhere to the OEPA's Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays. Kingwood states that the Project's post-construction stormwater controls will be designed and constructed in coordination with the Greene County Soil & Water Conservation District. (App. Br. at 67-69; Jt. Ex. 1 at 6, Condition 19.)

{¶ 124} Staff agrees that Kingwood will mitigate potential water quality impacts associated with aquatic discharges by obtaining an NPDES construction storm water general permit from the OEPA. Staff also notes that the OEPA has developed guidance on

post-construction storm water controls for solar panel arrays and recommends that Kingwood construct the Facility in such a manner that incorporates the OEPA guidance. Staff agrees with Kingwood's assessment that the Project will not require significant amounts of water. (Staff Ex. 1 at 37-38.)

{¶ 125} Upon review of the record, the Board finds that the Project will comply with Ohio law regarding water pollution control. As noted by Applicant, potential water quality impacts are unlikely and, to the extent they occur, will be mitigated through compliance with applicable required permits. The Board further notes that there is no record evidence submitted to dispute this conclusion.

3. SOLID WASTE

{¶ 126} Kingwood submits that the Project is not expected to generate any hazardous waste. Further, Applicant states that the limited amounts of solid waste generated during construction and operation will be reused, recycled, or disposed of in accordance with applicable law. Further, at the end of a solar panel's useful life, Kingwood has committed to send any retired panel material that is not recycled to an engineered landfill with various barriers or another appropriate disposal location at the time of decommissioning. (App. Br. at 92; App. Ex. 1 at 45-46; Jt. Ex. 1 at 11.)

{¶ 127} Staff agrees with Kingwood's description of the solid waste that might be generated at the Facility. Staff approves of Kingwood's solid waste disposal plans and states that the plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 38.)

{¶ 128} Based upon a review of the record in this case, the Board finds that Kingwood has properly demonstrated that the Project will comply with R.C. Chapter 3734 and all rules and standards adopted thereunder. The application provides estimates of the amount of solid waste to be generated and a description of Kingwood's plans to manage and dispose of such waste. The Board, therefore, agrees with Kingwood and Staff that plans

outlined by Kingwood are reasonable and finds that the Project complies with the statutory criterion.

4. AVIATION

{¶ 129} Regarding compliance with the requirements of R.C. 4561.32, Kingwood states that there are no public use airports or public use helicopter pads within two miles of the Project area. Further, Kingwood stresses that there are no private use landing strips or property used for aviation within or adjacent to the Project area. (App. Ex. 1 at 48; App. Br. at 94-95.)

{¶ 130} Staff's investigation revealed that the tallest above ground structure would be a 70-foot-tall lightning mast at the collector substation, which is below the height requirement from the FAA, pursuant to 14 C.F.R. Part 77.9(a), for filing a Form 7460-1. Staff contacted the ODOT, in accordance with R.C. 4906.10(A)(5), to coordinate a review of potential impacts of the Project on local airports. No concerns were identified by ODOT. Staff, therefore, recommends that the Board find that the Project complies with the requirements of R.C. 4906.10(A)(5) with respect to aviation. (Staff Ex. 1 at 38-39.)

{¶ 131} Based on our review of the record, we find that Kingwood has proven that the Project will not unreasonably impair aviation.

{¶ 132} In summary, the Board finds that the Project will comply with R.C. Chapters 3704, 3734, and 6111, as well as rules and standards adopted under those chapters and under R.C. 4561.32. Accordingly, the certification criteria found in R.C. 4906.10(A)(5) have been met.

E. R.C. 4906.10(A)(6): Public Interest, Convenience, and Necessity

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

{¶ 134} Kingwood asserts that the Facility, if conditioned in the certificate as recommended in the Stipulation, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6) (App. Br. at 21-32, 96-99).

{¶ 135} In arguing that the Project serves the public interest, convenience, and necessity, Kingwood emphasizes that it: benefits the local and state economies in terms of job creation, tax payments, and PILOT; benefits schools via increased funding; preserves agricultural land by avoiding alternative development and increasing landowner incomes; reduces fossil fuel dependency; and increases renewable energy availability in satisfaction of the needs of the state's current and prospective business investors. (App. Br. at 21-32.)

{¶ 136} Kingwood's evidence supports that the Project will create 444 Ohio jobs during the 16-month construction period, and 15 permanent jobs over the life of the Project. The overall economic activity in the state from the construction of the Project is expected to be \$112 million, and the annual net increase in economic activity from the Project is expected to be \$6.75 million. Increased taxes and PILOT from the Project's economic impact, much of which will be dedicated to local government and schools, are estimated at \$2 million per year over the Project's 35-year life expectancy. Further, Kingwood indicates that it expects to pay (1) approximately \$1.1 million in annual lease payments, which is estimated as an increase of \$800,000 from the annual income of the leased properties as used in their current agricultural operations, (2) approximately \$750,000 in annual "good neighbor" agreement payments, and (3) \$225,000 in annual payments to community benefit funds in each of the three townships that are impacted by the Project. (App. Br. at 21-32.)

{¶ 137} In addition to the Project's direct economic benefits, Kingwood argues that the Project addresses social needs in terms of (1) fostering the replacement of fossil-fuel energy reliance, which is an issue of heightened importance to the state as it pursues economic development from businesses that value renewable energy choices in their investment decision-making, and (2) preserving acreage from permanent non-agricultural usage in order to prevent urban sprawl (App. Br. at 32-34).

{¶ 138} Kingwood also asserts that local opposition to the Project is overstated and not attributable to any quantifiable impacts. Kingwood stresses that its actions to address local concerns about the Project included (1) meeting with local political leadership and citizens about the Project since 2017, including hosting five public meetings since October 2020, (2) offering \$822,500 in “good neighbor” benefits to nonparticipating landowners, (3) engaging with the local community as to any complaints that arise from the construction and operation of the Project. Further, Kingwood claims that the local opposition to the Project is overstated, citing to (1) a local public opinion poll it commissioned, and (2) Kingwood’s claims that the local government resolutions opposing the Project are unreasonably vague. (App. Br. at 21-36.) Specific to the poll, Kingwood claims that it demonstrates that county-wide support for the Project is at 63 percent. (App. Br. at 3, 42-44.) Additionally, Kingwood argues that unfounded opinions about a project’s impact that are expressed by members in the community are not sufficient to determine that a project is against the public interest. [App. Br. at 18 citing *In re Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021); *In re Alamo Solar I, LLC*, Case No. 18-1578-EL-BGN, Opinion, Order, and Certificate (June 24, 2021).]

{¶ 139} As indicated above, Staff recommends that the Board find that the proposed Facility does not serve the public interest, convenience, and necessity. In reaching its recommendation, Staff cites to the local opposition to the Project, especially as demonstrated by Greene County and the three townships affected by the Project. At the time the Staff Report was issued, Staff’s measure of local government opposition was communicated via (1) a Greene County resolution in opposition to the Project dated October 28, 2021, and (2) calls between a Staff representative and local officials at the three affected townships. Following the issuance of the Staff report, additional local government opposition included (1) the adoption of Project opposition resolutions by all three affected townships, (2) active participation in opposition to the Project by all four government entities in the evidentiary hearing. (Staff. Ex. 1 at 40-44.)

{¶ 140} In addition to the unanimous opposition by the four local government entities, CGA joined in arguing that the Project fails to comply with R.C. 4906.10(A)(6). CGA argues that the unique characteristics of the area that lead to the high level of public opposition include (1) the higher density of nonparticipating residences within 500 feet of the Project, (2) the large number and unique characteristics of the wildlife, parks, and recreation areas in the region, and (3) the unique cultural and historic areas in the region. Further, CGA joins the remaining Project opponents in critiquing Kingwood's polling data because the poll was conducted (1) without any regard to emphasizing the local, rather than countywide, Project impacts, and (2) in such a manner that opposition was unlikely given that questions were aimed generally at (a) individual landowner rights, (b) benefits from increasing school funding, and (c) benefits to encouraging employment and business development. CGA and others claim that the polling approach renders the poll inadequate as to the positions of residents in proximity to the Project who are most impacted by it. (CGA Br. at 22-24, 55; CGA Reply Br. at 4-5.)

{¶ 141} Citing the Board's decision in *In re the Application of Republic Wind*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021), the Project's opponents collectively assert that the determination of public interest, convenience, and necessity must be examined through a broad lens that balances a project's expected benefits against the magnitude of potential negative impacts on the local community. The Project's opponents further submit that the Project impairs numerous cultural resources.

{¶ 142} As we have reinforced in recent decisions, the determination of public interest, convenience, and necessity must be examined through a broad lens and in consideration of impacts, local and otherwise, from the Project. *In re Birch Solar 1, LLC*, Case No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022) at ¶68; *In re Republic Wind*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶91; *In re American Transmission Systems, Inc.*, Case No. 19-1871, Opinion, Order and Certificate (May 19, 2022) at ¶79. As we recently affirmed in *Birch Solar*, the Board acknowledges that there are numerous public benefits as to all proposed solar facilities, including (1) the public's interest

in energy generation that ensures continued utility services and the prosperity of the state of Ohio, (2) economic benefits relative to increased employment, tax revenues, and PILOT, (3) air quality and climate impact improvements relative to transitioning from fossil fuels to renewable energy resources, (4) protecting landowner rights, and (5) preserving agricultural land use. Juxtaposed against these benefits is the need to fully consider the impact on individuals who are most directly affected by a proposed project, primarily residents living near the project. Assessing these sometimes-competing interests is required in order to determine whether a project satisfies the requirement of R.C. 4906.10(A)(6). *Birch Solar* at ¶68.

[¶ 143] As in *Birch Solar*, the primary concern surrounding the Project results from the uniform public opposition expressed by the local government entities whose constituents are impacted by the Project.⁶ As described above, all four government entities with physical contacts to the Project acted to oppose its certification. Moreover, there has been active opposition in this case from each of the four local government entities that participated in the evidentiary hearing.

[¶ 144] Based on our review of the record, the Board finds that the proposed Facility, subject to the conditions specified in the Stipulation, does not comply with the requirements specified in R.C. 4906.10(A)(6). In reaching this decision, we recognize that the need to determine whether the Facility will serve the public interest, convenience, and necessity should be examined broadly. For example, this factor should consider the public's interest in a power siting project 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

⁶ The Board again acknowledges that this case is not impacted by SB 52, which subjects solar projects that are filed after October 11, 2021 to increased county-level and township-level review and participation in the Board's certification process. Still, as in *Birch Solar*, the Board stresses its continuing obligation to determine a project's compliance with the public interest, convenience, and necessity. R.C. 4906.10(A)(6). Accordingly, the Board must consider, independent of SB 52, the manner and degree of opposition of the local governments impacted by the Project as it relates to whether the Project is in the public interest, convenience, and necessity.

process that allows for local citizen input and consideration of local government opinions that reflect the citizenry that is impacted by the Project. 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. See *Birch Solar; In re Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36.

{¶ 145} As in *Birch Solar*, we conclude that the unanimous opposition of every local government entity that borders the Project is controlling as to whether the Project is in the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). In reaching this conclusion, our focus goes beyond merely counting local government resolutions to determine whether a certificate is warranted. Instead, we focus on the vigor and rationale of the local government opposition, which clearly serves as an indicator of this Project's lack of public support.

{¶ 146} Greene County began its opposition to the Project soon after learning of it in November of 2020. Initially, Greene County hosted a town hall to solicit local public opinion, which was, generally, that the Project was inconsistent with the area. Following the town hall, the county prepared proposed amendments to its land use plan, Perspectives 2020, to address plans for managing new development in the area. After conducting two public hearings on the proposed Perspectives 2020 amendments, Greene County adopted the amendments on August 26, 2021. Specific to the Project, the Perspectives 2020 amendments referenced concerns as to (1) its proximity to "a relatively densely, and growing, populated area" and (2) the fact that its five-mile viewshed would include "several other State and local cultural, historic, scenic, and recreational resources, including Clifton Gorge Dedicated Nature Preserve, Clifton Mill, Clifton River Road Reserve, John Bryan State Park, and numerous trails, with potential near-foreground visibility from Clifton Gorge Dedicated Nature Preserve, and John Bryan State Park." Based on these concerns, Greene County determined that the Project could be an economic detriment to tourism.

Thereafter, Greene County enacted another opposition resolution specific to the Project on October 29, 2021.⁷ (Greene County Ex. 1 at 1-4.)

{¶ 147} Greene County's opposition was echoed by all three townships that are impacted by the Project. Miami Township adopted its resolution in opposition to the Project on November 15, 2021, citing to (1) land-use concerns, and (2) the Project's impact on three natural areas; Clifton Gorge State Nature Reserve, John Bryan State Park, and Glen Helen Nature Preserve. (Miami Ex. 3.) Cedarville Township adopted its resolution in opposition to the Project on December 9, 2021, citing to concerns including, but not limited to (1) land-use considerations, (2) agricultural impacts, (3) property value concerns, (4) issues of project sprawl and impacts to higher density housing, and (5) the opposition comments offered on the case docket and during the local public hearing (Cedarville Ex. 1). Xenia Township adopted its resolution in opposition to the Project on December 16, 2021, citing to concerns including, but not limited to (1) land-use considerations, (2) property value concerns, (3) impacts to the agricultural character of the area, (4) tourism impacts, and (5) wildlife impacts (Xenia Ex. 1).

{¶ 148} In addition to the unanimous opposition of all four local governments impacted by the Project, we find that the public comments in the case docket and expressed at the local public hearing refute Kingwood's contention that the Project is in the public interest, convenience, and necessity. Absent the public support from the IBEW union, public comments at the local public hearing and in the case docket reflect opposition to the Project at a ratio of approximately three to one.⁸ Further, we reject Kingwood's claim that its polling reflects widespread support for the Project. Initially, we note that the poll was conducted with a county-wide focus instead of measuring the responses of those more

⁷ We note that the rationale for the October 2021 resolution is consistent with that cited in the resolution that amended the Perspectives 2020 plan, which refutes Kingwood's claims that the resolution was prepared in response to an improper Staff request for formal opposition to the Project.

⁸ We do not discount the importance of the IBEW comments. But as they are generally single-issue focused and supportive of the temporal job creation from the Project, we see benefit to considering the ratio of support/opposition comments absent the IBEW block for purposes of gauging the local perception of the Project.

directly impacted by the Project (the local township residents). In support of our conclusion, we note that 73 percent of those polled knew little or nothing about the Project before participating in the poll, which is inconsistent with the attention that the Project has received at the local, township level. Additionally, we find that the polling questions were skewed in favor of the Project by focusing questions on areas of obvious public support such as (1) local communities and schools, (2) farmland preservation, (3) clean energy, (4) landowner rights, and (5) freedom from government interference. Based on the manner in which the poll questions were posed, we find that the poll serves no value as a measure of the public opinion of those most directly impacted by the Project.

{¶ 149} With respect to R.C. 4906.10(A)(6), the Board finds that the Project does not serve the public interest, convenience, and necessity. Consistent with our prior decisions, we acknowledge the general public benefits of solar facilities, which include (1) the public's interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio, (2) economic benefits relative to increased employment, tax revenues, and PILOT, (3) air quality and climate impact improvements from transitioning toward renewable energy and away from fossil fuels, (4) protecting landowner rights, and (5) preserving long-term agricultural land use. And again, we note that these Project benefits must be considered with respect to the impact of the Project on individuals who are most directly affected by the Project, primarily those who live near it.

{¶ 150} The primary concern surrounding the Project, as it was in *Birch Solar*, is the uniform public opposition expressed by the local government entities whose constituents are impacted by the Project. As in *Birch Solar*, the Project is opposed by all four government entities with physical contact to it. Moreover, unlike in *Birch Solar*, the government entities supplemented the adoption of their individual opposition resolutions by actively participating in the evidentiary hearing. And the government entities were joined in opposing the Project throughout the evidentiary hearing by private parties, including CGA and its 92 members, In Progress, and Tecumseh.

{¶ 151} Additionally, the Board notes the overwhelming number of public comments filed in the case, which largely disfavor the Project. Consistent with our analysis in *Birch Solar*, we again find that these comments reinforce, rather than contradict, the conclusions of the government bodies that were formally considered at the local level, as well as those who testified at the local public hearing. Further, while we recognize that the public comments fall short of being admitted evidence in the case, we nonetheless affirm that they add value to the Board's consideration of the local perception of the Project. As described above, the public comments filed in the case certainly reinforce the outcomes of the local government opposition resolutions, which reinforces the level of community opposition to the Project.

{¶ 152} Based on the unanimous opposition to the Project by the government entities whose constituents are impacted by the Project, the Board finds that the Project fails to serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

F. R.C. 4906.10(A)(7): Agricultural Districts

{¶ 153} Pursuant to R.C. 4906.10(A)(7), the Board must determine the Facility's impact on agricultural viability of any land in an existing agricultural district within the project area of the proposed Facility.

{¶ 154} Kingwood contends that the presence of the solar Facility will help preserve agricultural land and support future generations of families having the option to return the land to agricultural use following decommissioning of the Project. Kingwood acknowledges that 205 acres of agricultural land will be impacted during the Facility's operation but avers that the impacts to this acreage will be temporary, because after decommissioning the land will be returned to substantially preconstruction condition. (App. Br. at 95.)

{¶ 155} Staff points out the commitments made by Kingwood to address potential impacts to farmlands, including repairing drainage tiles damaged during construction and

restoring temporarily impacted land to its original use. Further, Staff highlights that excavated topsoil will be used to establish vegetative cover for the Project and that, upon decommissioning, disturbed areas will be restored to agricultural use. Staff, therefore, recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions in the Stipulation, with the requirements of R.C. 4906.10(A)(7). (Staff Ex. 1 at 45.)

[¶ 156] Based on the record, the Board concludes that the Project satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable provisions of the Stipulation and consistent with this Order.

G. R.C. 4906.10(A)(8): Water Conservation Practice

[¶ 157] Pursuant to R.C. 4906.10(A)(8), the proposed Facility must incorporate maximum feasible water conservation practices, considering available technology and the nature of and economics of the various alternatives.

[¶ 158] Signatory Parties state that the record establishes that the Facility will incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).

[¶ 159] Kingwood states that the Stipulation and record in this proceeding support the finding and determination that the Facility incorporates the maximum feasible water conservation practices under the statute. In support of its position, Kingwood submits that the Project will use (1) only limited amounts of water for dust suppression during its construction, and (2) minimal amounts of water when panels are cleaned, up to twice per year. (App. Br. at 95.)

[¶ 160] Staff notes that in the event that cleaning is needed, Applicant estimates that a single instance of 282,000 gallons of water would be used, and that Applicant intends to obtain the water from local subsurface resources, truck in water, or both. Staff recommends that the Board find that the Project would incorporate maximum feasible water conservation practices and, therefore, complies with this criterion. (Staff Ex. 1 at 42.)

{¶ 161} As summarized in the context of the discussion of R.C. 4906.10(A)(2) and (A)(3) above, CGA contends that Kingwood failed to address how the proposed Facility incorporated maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives (CGA Br. at 43-44).

{¶ 162} Upon a review of the record, the Board finds that the Facility incorporates the maximum feasible water conservation practices, and, therefore, satisfies the requirements of R.C. 4906.10(A)(8), provided that the certificate issued incorporates the applicable provisions of the Stipulation. In making this determination, the Board recognizes the representation that construction and operation of the Facility will not require the use of significant amounts of water and that nearly no water or wastewater discharge is expected.

XI. CONSIDERATION OF STIPULATION

{¶ 163} 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 may afford 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 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?

{¶ 164} In support of the Stipulation, Kingwood presented the testimony of witness Mr. Stickney who testified as to the three-part test applicable to the Board's consideration of this case. Mr. Stickney testified that the Stipulation is the product of serious bargaining among capable parties stressing that (1) in response to settlement discussions with intervenors in the case who did not ultimately join in the Stipulation, the Project was modified in terms of its layout, screening, and stipulation criteria such that negotiations were meaningful and impactful and (2) all parties were represented by counsel and invited to an all-party negotiation on February 17, 2022, where Stipulation conditions were negotiated. Mr. Stickney details that the results of the negotiations are measurable in terms of (1) the proposed amendment of 22 of the conditions recommended by Staff in the Staff Report, (2) the addition of four new conditions, and (3) the deletion of two conditions that have either been completed or are incorporated into other conditions within the Stipulation. (App. Ex. 7 at 2, 16-18; App. Br. at 96-97.)

{¶ 165} In its reply brief, while maintaining its opposition to certificating the Project, Staff offers an alternative recommendation that, should the Project receive a certificate, the conditions in the certificate should be the conditions proffered in the Staff Report, as enhanced by the Stipulation (Staff Reply Br. at 21-26).

{¶ 166} Further, CGA argues that the Stipulation is unworthy of the Board's consideration because (1) only OFBF joined Applicant in the Stipulation, leaving Staff and seven other parties in opposition to it, and (2) even OFBF's joinder in the Stipulation is as to the recommended inclusion of the 39 conditions included within the Stipulation, rather than whether the Project should receive a certificate (CGA Br. at 2-3).

{¶ 167} Upon review, the Board finds that the Stipulation does not meet the criteria used by the Board to evaluate and adopt a Stipulation. Specifically, the Board's conclusion that the Project does not comply with R.C. 4906.10(A)(6) results in the conclusion that the Stipulation criteria are not fully satisfied.

{¶ 168} Initially, the Board concludes that the record evidence refutes a finding that the Stipulation meets the first part of the three-part test. While acknowledging Applicant's efforts at including the parties in settlement dialog as to seeking approval of the application and incorporating revisions to its conditions, the fact is that the Stipulation fails to describe agreement of any of the parties as to the core issue in this case - whether the Board should issue a certificate for the Project. Thus, while the Stipulation is technically a partial agreement of two parties in this case, we cannot conclude that it is the "product" of serious bargaining. As the Stipulation does not describe agreement of any parties as to the core issue in the case, we find that it is not the product of serious bargaining among capable, knowledgeable parties.

{¶ 169} Additionally, consistent with our decision in *Birch Solar*, we also find that the second and third criteria of the three-part test are not satisfied. As described above, our determination that the Project fails to comply with the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6) necessitates findings that (1) the Stipulation, as a package, is not beneficial to the public interest, and (2) adoption of the Stipulation would violate an important regulatory principle or practice.

{¶ 170} As the Stipulation does not comply with any parts of the three-part test, the Board denies Kingwood's application for a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the solar-powered electric generation facility.

XII. CONCLUSION

{¶ 171} Accordingly, based on the record in this proceeding, the Board concludes that the required elements of R.C. Chapter 4906 for the construction, operation, and maintenance of the solar-powered electric generation facility described in Kingwood's application are not satisfied. The Board thus rejects the Stipulation filed in this case and hereby denies a certificate to Kingwood in accordance with R.C. Chapter 4906.

XIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 172} Kingwood is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

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

{¶ 174} 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.

{¶ 175} 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).

{¶ 176} The record establishes that the Facility, subject to the conditions set forth in the Stipulation, 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).

{¶ 177} 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).

{¶ 178} The record establishes that the Facility, subject to the conditions set forth in the Stipulation, 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).

{¶ 179} The record fails to establish that the Facility, subject to the conditions set forth in the Stipulation, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 180} 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).

{¶ 181} The record establishes that the Facility will not require significant amounts of water, will produce nearly no water or wastewater discharge, and incorporates maximum feasible water conservation practices. Accordingly, the Facility meets the requirements of R.C. 4906.10(A)(8).

{¶ 182} The evidence supports a finding that the criteria in R.C. 4906.10(A) for the construction, operation, and maintenance of the Facility as proposed by Applicant are not satisfied.

{¶ 183} Based on the record, the Board finds that Kingwood's application for a certificate, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the electric generation Facility is denied consistent with this Opinion and Order.

XIV. ORDER

{¶ 184} It is, therefore,

{¶ 185} ORDERED, That the interlocutory appeal filed by Kingwood on May 2, 2022, be denied as set forth above in Paragraph 79. It is, further,

{¶ 186} ORDERED, That the motion to strike filed by Kingwood on August 15, 2022, be granted as set forth in Paragraphs 81 and 83. It is, further,

{¶ 187} ORDERED, That the motion for protective order filed by Kingwood on February 9, 2022, is granted as described in Paragraph 86. It is, further,

{¶ 188} ORDERED, That the Stipulation filed on March 4, 2022, be denied. It is, further,

{¶ 189} ORDERED, That Kingwood's application for a certificate for the construction, operation, and maintenance of the solar-powered electric generation Facility be denied. It is, further,

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Markee Osborne, Designee for Lydia Mihalik, Director
Ohio Department of Development

Damian Sikora, 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

Gregory Slone
Public Member

MLW/DMH/dmh

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Case No(s). 21-0117-EL-BGN

Summary: Opinion & Order rejecting the stipulation and recommendation between Kingwood Solar I LLC and the Ohio Farm Bureau Federation and denying the application of Kingwood Solar I LLC for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility in Greene County, Ohio. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board