

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Vinton Solar )  
 Energy LLC for a Certificate of Environmental )  
 Compatibility and Public Need to Construct a Solar- ) Case No: 17-774-EL-BGN  
 Powered Electric Generation Facility in Vinton )  
 County, Ohio. )

**JOINT STIPULATION AND RECOMMENDATION**

**I. INTRODUCTION**

Vinton Solar Energy LLC (“Applicant”), the Ohio Farm Bureau Federation (“OFBF”), and the Staff of the Ohio Power Siting Board (“Staff”) submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (“Board”). Ohio Adm.Code 4906-2-24(A) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (“Parties”), and to jointly recommend that the Board approve and adopt this Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters pertinent to the certification and construction of the solar-powered electric generation facility in Vinton County, Ohio as proposed in this proceeding.

The Staff Report of Investigation was issued by the Staff on July 5, 2018 (“Staff Report”). A local public hearing was held at the Vinton Community Building, 31935 State Route 93, McArthur, Ohio on July 24, 2018, and the evidentiary hearing is to commence on August 1, 2018, at the office of the Public Utilities Commission of Ohio in Columbus, Ohio. The OFBF filed the only motion to intervene in this proceeding, which was granted by the Administrative Law Judge on June 21, 2018.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding. This Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the facility.

## **II. JOINT RECOMMENDATIONS OF THE PARTIES**

### **A. Recommended Conditions**

The proposed project area covers approximately 1,950 acres of leased land in Vinton County, Ohio in Elk Township. The facility involves the construction of a solar-powered generation facility of up to 125 megawatt ("MW") capacity. Construction of the facility is expected to begin as early as the first quarter of 2019 and operations as soon as the end of 2019.

The Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by the Applicant subject to the following conditions:

1. The facility shall be installed at the Applicant's proposed site as presented in the application and as modified and/or clarified by supplemental filing, replies to data requests, and the recommendations in the Staff Report, as presented and modified by this Stipulation.
2. The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime 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 the 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, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.

3. At least 30 days before the preconstruction conference, the Applicant shall submit to Staff one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
4. If the Applicant makes any changes to the project layout after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes will be subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.
5. Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the 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. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
6. Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
7. The certificate shall become invalid if the 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 request for waiver or an extension of time.
8. As the information becomes known, the Applicant shall docket in the case record the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
9. The Applicant shall not commence any construction of the facility until it has a signed Interconnection Service Agreement (“ISA”) or Interim ISA with PJM Interconnection, LLC (“PJM”). In addition, the Applicant shall

not operate the facility without having a signed ISA with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. The Applicant shall docket in the case record a separate letter for each Agreement stating the Agreement has been signed, or a copy of the signed Agreement(s).

10. At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff a copy of its public information program that informs affected property owners and tenants of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the complaint resolution process, the proposed timeframe for project construction, and a schedule for restoration activities. The Applicant shall give notification of planned construction to affected property owners and tenants at least seven days prior to commencement of construction.
11. During the construction and first year of operation of the project, the Applicant shall file a complaint summary report in the case record by the fifteenth day of January, April, July, and October of each year. The report should include a list of all complaints received through its complaint resolution process, a description of the actions taken to resolve each complaint, and a status update if the complaint has yet to be resolved.
12. 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, hoe ram, and blasting operations, if required, shall be limited to the hours between 9:00 a.m. to 7:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at nonparticipating sensitive receptors are permitted outside of daylight hours when necessary. The 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 potential for nighttime construction activities.
13. Prior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, if any, with Staff and the Ohio Historic Preservation Office (“OHPO”). If the resulting coordination discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion in the National Register of Historic Places, then the Applicant shall submit a modification or mitigation plan to Staff. Any such mitigation effort, if needed, shall be developed in coordination with the OHPO and submitted to Staff for review that it complies with this condition.
14. Prior to commencement of any construction, the Applicant shall prepare a landscape and lighting plan that addresses any reasonable concerns regarding the aesthetic and lighting impacts of the facility on any adjacent nonparticipating residences with a direct and open line of sight to the

facility in existence or under construction at the commencement of construction of the facility. The Applicant shall provide the plan to Staff for review and confirmation, and Staff shall review the plan within 30 days and confirm that it complies with this condition.

15. The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to surface and subsurface drainage systems, drainage related infrastructure, and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged surface or subsurface drainage systems and drainage related infrastructure shall be promptly repaired to at least original requirements, or requirements otherwise approved via a Storm Water Pollution Prevention Plan ("SWPPP"). All repairs will be made at the Applicant's expense.
16. If applicable, excavated topsoil shall be segregated and restored in accordance with the Applicant's lease agreement with the landowner. Severely compacted soils shall be plowed or otherwise de-compacted, if necessary, to restore them to original condition unless otherwise agreed to by the landowner.
17. The Applicant shall complete a full detailed geotechnical exploration and evaluation across a broad enough portion of the site to confirm that there are no issues to preclude development of the solar energy facility. The geotechnical exploration and evaluation shall include borings across the site to provide subsurface soil description and properties, static water level, and recommendations needed for the final design and construction of each pile foundation, as well as the final location of the battery storage facility. The Applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations. The Applicant shall provide copies of all geotechnical boring logs to Staff and to the Ohio Department of Natural Resources ("ODNR") Division of Geological Survey prior to construction.
18. The Applicant shall provide to Staff a copy of any arrangement or resulting resolution adopted by any county relating to the Payment in Lieu of Taxes ("PILOT") program within a reasonable time after issuance or receipt.
19. The Applicant shall contact Staff, the ODNR, and the United States Fish and Wildlife Service ("USFWS") within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the ODNR in coordination with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority consistent with law.
20. The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of any trees greater than or equal to three inches in diameter, unless coordination efforts with the ODNR and the USFWS allow a different course of action.

21. If any caves or abandoned mines may be disturbed, the Applicant shall coordinate with the USFWS to determine if fall or spring portal surveys are warranted.
22. The Applicant shall have a vegetation management plan that addresses the concerns outlined in the *Vegetation* section of the Staff Report. Prior to the preconstruction conference, the Applicant shall submit this plan to Staff for review and confirmation that it complies with this condition. The plan shall also describe the steps to be taken to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 during implementation of pollinator-friendly plantings.
23. Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, 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 county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.

**B. Exhibits**

Subject to the terms and conditions of this Stipulation, the Applicant, OFBF, and Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

1. Applicant Exhibit 1: Application filed on July 5, 2017.
2. Applicant Exhibit 2: Supplement to Application filed on August 16, 2017.
3. Applicant Exhibit 3: Second Supplement to Application filed on February 28, 2018.
4. Applicant Exhibit 4: Third Supplement to Application filed on June 18, 2018.
5. Applicant Exhibit 5: Response to First Set of Interrogatories filed on October 3, 2017.
6. Applicant Exhibit 6: Response to Second Set of Interrogatories filed on October 26, 2017.
7. Applicant Exhibit 7: Response to Third Set of Interrogatories filed on November 13, 2017.

8. Applicant Exhibit 8: Response to Fourth Set of Interrogatories filed on June 21, 2018.
9. Applicant Exhibit 9: Certificate of Service of the accepted, complete application on local public officials and libraries filed on September 8, 2017, in accordance with Ohio Adm.Code 4906-3-07(A)(1) and (2).
10. Applicant Exhibit 10: Proof of Service of the accepted, complete application on all local public officials, libraries, and each owner of property crossed and/or adjacent to the proposed facility site filed on October 4, 2017, in accordance with Ohio Adm.Code 4906-3-09(A)(1).
11. Applicant Exhibit 11: Proof of Publication of the accepted, complete application in *The Vinton County Courier* filed on October 16, 2017, in accordance with R.C. 4906.06(E).
12. Applicant Exhibit 12: Proof of Publication attesting that the Applicant published notice of the postponement of the hearings in *The Vinton County Courier* filed on December 5, 2017.
13. Applicant Exhibit 13: Proof of Service of the accepted, complete application on all local public officials, libraries, and each owner of property crossed and/or adjacent to the proposed facility site filed on June 27, 2018, in accordance with Ohio Adm.Code 4906-3-09(A)(1).
14. Applicant Exhibit 14: Proof of Publication of the accepted, complete application in *The Vinton County Courier* filed on July 11, 2018, in accordance with R.C. 4906.06(E).
15. Applicant Exhibit 15: Proof of the Second Publication of the accepted, complete application in *The Vinton County Courier* filed on July 18, 2018, in accordance with Ohio Adm.Code 4906-3-09(A)(2).
16. Applicant Exhibit 16: Prefiled Testimony of Michael R. Kaplan in support of Joint Stipulation and Recommendation.
17. Joint Exhibit 1: This "Joint Stipulation and Recommendation" signed on behalf of the Staff, OFBF, and the Applicant.
18. Staff Exhibit 1: Staff Report of Investigation issued on July 5, 2018.
19. Staff Exhibit 2: Prefiled Testimony of Jon Pawley sponsoring Staff Report of Investigation.

**C. Other Terms of the Stipulation**

1. This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially

modifies all or part of this Stipulation or imposes additional conditions or requirements upon the Parties, each party shall have the right, within 30 days of the Board's order, to file an application for rehearing with the Board. Upon the Board upholding the material modification of the Stipulation in its entry on rehearing, any party may terminate or withdraw from the Stipulation by filing a second application for rehearing with the Board within 30 days of the Board's entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Stipulation had never been executed. Prior to any party seeking rehearing or terminating and withdrawing from the Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Board or propose a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination or withdrawal by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

2. The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The Parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the Parties entering into this Stipulation.

### **III. RECOMMENDED FINDINGS**

The Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

#### **A. Recommended Findings of Fact**

1. The Applicant is an affiliate of Invenergy Solar Development North America LLC.
2. The facility qualifies as a "major utility facility" defined in R.C. 4906.01(B).
3. The Applicant formally submitted its application for a Certificate of Environmental Compatibility and Public Need on July 5, 2017.



4. On October 17, 2017, OFBF filed a petition for leave to intervene in the case, which was granted on June 21, 2018.
5. On October 4, 2017, and June 27, 2018, the Applicant filed copies of the Proofs of Service of the accepted, complete application on local public officials, libraries, and each owner of property crossed and/or adjacent to the proposed facility site, in accordance with Ohio Adm.Code 4906-3-09(A)(1).
6. On October 16, 2017, and July 11, 2018, the Applicant filed Proofs of Publication of the accepted, complete application in *The Vinton County Courier*, in accordance with R.C. 4906.06(E).
7. On December 5, 2017, the Applicant filed Proof of Publication attesting that notice of the postponement of the hearings was published in *The Vinton County Courier*.
8. On December 1, 2017, and July 18, 2018, the Applicant filed Proofs of the Second Publication of the accepted, complete application in *The Vinton County Courier*, in accordance with Ohio Adm.Code 4906-3-09(A)(2).
9. The Staff Report was filed on July 5, 2018.
10. A local public hearing was held on July 24, 2018, commencing at 6:00 p.m., at Vinton Community Building, 31935 State Route 93, McArthur, Ohio 45651, in accordance with R.C. 4906.08(C).
11. An adjudicatory hearing was held on August 1, 2018, commencing at 10:00 a.m., 11<sup>th</sup> floor, hearing room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215.
12. The basis of need, as specified under R.C. 4906.10(A)(1), is not applicable to this generating facility project.
13. Adequate data on the project has been provided to determine the nature of the probable environmental impact, as required by R.C. 4906.10(A)(2).
14. Adequate data on the project has been provided to determine that the facility described in the application represents the minimum adverse environmental impact, considering the available technology and nature and economies of the various alternatives, and other pertinent considerations, as required by R.C. 4906.10(A)(3).
15. Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility 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, that the facility will serve the interests of electric system

economy and reliability, and the requirements of R.C. 4906.10(A)(4) are met.

16. Adequate data on the project has been provided to determine that, to the extent that any of them are applicable, the solar-powered generation facility farm will comply with the requirements in the R.C regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
17. Adequate data on the project has been provided to determine that the facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
18. Adequate data on the project has been provided to determine what the facility's impact will be 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 of the proposed facility, as required by R.C. 4906.10(A)(7).
19. Adequate data on the project has been provided to determine that the facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
20. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

**B. Recommended Conclusions of Law**

1. Vinton Solar Energy LLC is a "person" under R.C. 4906.01(A).
2. The proposed facility is a major utility facility as defined in R.C. 4906.01(B)(1).
3. The application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
4. The requirement for the need for the facility under R.C. 4906.10(A)(1) is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility under R.C. 4906.10(A)(2).
6. The record establishes that the facility, if conditioned in the certificate as recommended by the Parties, 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 under R.C. 4906.10(A)(3).

7. The record establishes that the facility 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, and will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
8. The record establishes, as required by R.C. 4906.10(A)(5), that, to the extent that any of them are applicable, construction of the proposed facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the R.C.
9. The record establishes that the facility, if conditioned in the certificate as recommended by the Parties, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
10. The facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
11. The record establishes that the facility would incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).
12. Based on the record, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the facility, which includes the conditions in the Staff Report, as presented and modified by this Stipulation.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER VINTON SOLAR ENERGY LLC  
SITING BOARD**

**By: /s/ John H. Jones per CMTP**

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**THE OHIO FARM BUREAU  
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**By: /s/ Amy M. Milam per CMTP**

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Summary: Stipulation - Joint Stipulation and Recommendation electronically filed by Christine M.T. Pirik on behalf of Vinton Solar Energy LLC