

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
HARDIN SOLAR ENERGY II, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT AN ELECTRIC GENERATION
FACILITY IN HARDIN COUNTY, OHIO.**

CASE NO. 18-1360-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on May 16, 2019

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Hardin Solar Energy II, LLC, the Ohio Farm Bureau Federation, and Staff and directs that a certificate be issued to Hardin Solar Energy II, LLC for construction of a new 170 megawatt solar electric generation facility.

II. PROCEDURAL BACKGROUND

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

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-4 and 4906-2.

{¶ 4} On September 11, 2018, Hardin Solar Energy II, LLC (Hardin or Applicant) filed a pre-application notification letter with the Board regarding its proposal to develop and construct a 170 megawatt (MW) solar-powered electric generation facility in Hardin County, Ohio. Hardin held a public information meeting to discuss the project with interested persons and landowners on October 1, 2018.

{¶ 5} On October 12, 2018, Hardin filed its application with the Board for approval to construct a new 170 MW solar-powered electric generation facility in Hardin County, Ohio (Applicant Ex. 1). Hardin filed supplements to its application on November 14, 2018, and February 15, 2019 (Applicant Ex. 2; Applicant Ex. 3).

{¶ 6} Hardin also filed a motion for protective order on October 12, 2018, seeking to protect certain limited portions of its application as confidential, pursuant to Ohio Adm.Code 4906-2-21.

{¶ 7} By letter dated December 11, 2018, the Board notified Hardin that its application was sufficiently complete to permit Staff to commence its review and investigation. The letter directed the Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Hardin to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 8} On December 17, 2018, Hardin filed a certificate of service of its accepted, complete application as required by Ohio Adm.Code 4906-3-07 (Applicant Ex. 5). And, in compliance with Ohio Adm.Code 4906-3-07(C), on December 21, 2018, Hardin also filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 9} By Entry issued January 9, 2019, the administrative law judge (ALJ) established the effective date of the application as January 4, 2019. The Entry also set forth a procedural schedule under which a local public hearing would be conducted on March 14, 2019, and an evidentiary hearing would be held March 28, 2019. The ALJ also directed Hardin to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 and indicated that petitions to intervene would be accepted up to 30 days following publication of that notice or by February 15, 2019, whichever was later. Finally, the ALJ granted Hardin's unopposed motion for protective order for a period ending 24 months

from the date of a final, appealable order in this proceeding. Entry (Jan. 9, 2019) at ¶¶ 14-16.

{¶ 10} On January 11, 2019, the Ohio Farm Bureau Federation (Farm Bureau) filed a timely motion to intervene.

{¶ 11} On January 24, 2019, the Applicant filed a Notice of Mailing stating that a copy of the “Notice of Proposed Major Utility Facility” was sent to government officials, libraries, and affected property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(1) (Applicant Ex. 6). The Applicant also filed proofs of publication of the accepted, complete application in *The Ada Herald* and *The Kenton Times*, in accordance with R.C. 4906.06(E) (Applicant Ex. 7).

{¶ 12} On February 26, 2019, Staff filed its report of investigation (Staff Report or Staff Ex. 1) pursuant to R.C. 4906.07(C).

{¶ 13} On March 7, 2019, Hardin filed a Notice of Mailing stating that a copy of the second “Notice of Proposed Major Utility Facility” was sent to government officials, libraries, and property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(2) (Applicant Ex. 8).

{¶ 14} The local public hearing was conducted as scheduled on March 14, 2019. The hearing was well-attended although only two individuals elected to provide testimony.

{¶ 15} On March 18, 2019, Hardin, the Farm Bureau, and Staff filed a joint stipulation and recommendation (Stipulation or Jt. Ex. 1).

{¶ 16} On March 28, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board’s consideration. Hardin presented the testimony of Gabe Klooster in support of the Stipulation (Applicant Ex. 9). Staff presented the testimony of James O’Dell in support of the Staff Report, as well as the conditions set forth in the

Stipulation (Staff Ex. 2). The ALJ also granted Farm Bureau's motion to intervene during the evidentiary hearing (Tr. at 6).

III. PROJECT DESCRIPTION

{¶ 17} Hardin seeks certification to build a 170 MW solar-powered electric generation and battery storage facility (Solar Farm or Project) in Marion, Roundhead, and McDonald townships, Hardin County, Ohio. The Solar Farm would consist of large arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, and would include associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a substation. The Solar Farm will also include a large-scale advanced battery storage system (Applicant Ex. 1 at 9; Tr. at 15). Hardin is proposing to begin construction as early as July 2019, resulting in commercial operations as early as 2020.

IV. CERTIFICATION CRITERIA

{¶ 18} 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. 1501.33, 1501.34, and 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.

V. SUMMARY OF EVIDENCE

{¶ 19} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate these applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. *Local Public Hearing*

{¶ 20} On March 14, 2019, the local public hearing was conducted, where two individuals elected to provide testimony. Mr. Tim Striker, a Hardin County Commissioner, indicated he was personally in support of the proposed project as he believes it will be a

great opportunity for Hardin County. Mr. Charles Van Dyne provided testimony in opposition to the project, stating that the over 3,000 acres currently proposed for the project is very productive agricultural land which should continue to be used for agricultural purposes. He did not indicate that he was against the project being sited in another area, however.

B. Staff Report

{¶ 21} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 22} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Project is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 1 at 9.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 23} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of its investigation, Staff reviewed the nature of the probable impact of the Solar Farm; the following is a summary of Staff's findings.

a. Socioeconomic Impacts

{¶ 24} Hardin seeks to construct the Project on approximately 3,297 acres of leased land in Hardin County, Ohio, predominantly consisting of agricultural land. No residences are located within the confines of the fenced project boundaries and the Applicant does not plan to remove any residential structures. In fact, the nearest non-participating residence is located approximately 285 feet from the proposed facility boundary. Furthermore, there are

no parks, commercial structures, places of worship, medical facilities, or any other institutional land uses located in proximity to the project area. (Staff Ex. 1 at 10-11.) Staff agrees with Hardin's conclusion that the proposed Project would be expected to aid long-term regional development by increasing tax revenues, enhancing employment opportunities, and increasing economic contributions to the local economy. Staff further avers that the facility would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning. (Staff Ex. 1 at 11.)

{¶ 25} Hardin commissioned a cultural resources records review of the area. The review revealed three archeological resources located within the project boundaries. However, Staff indicates that the Applicant intends to avoid these resources. Additional results from the cultural resources review included a total of 61 known archeological resources located within a one-mile radius of the project and 20 resources located within the project area. Staff notes that the archeological resources located within the project area would be avoided by the facility's design. Additionally, to ensure minimal impacts, Hardin will conduct a systematic Phase I survey program for both archaeological and architectural resources near the Project. (Staff Ex. 1 at 10-11.)

{¶ 26} As to aesthetics, Staff initially reports that traffic volume on roads surrounding the project area is typically light, thus reducing the potential number of viewers. Additionally, the highest elevation of the solar panels would be 15 feet above ground level; according to the Applicant's Viewshed Analysis and Aesthetic Resources Inventory Report (VAARIR), the panels are thus not likely to be visible from locations outside a two-mile distance from the Project's perimeter. (Staff Ex. 1 at 10.)

{¶ 27} Two other aesthetic concerns garnered more attention: viewing the panels themselves and glare. Staff conveys that the impact of viewing the solar panels is subjective and, therefore, depends on the viewer. The VAARIR indicates that, given the combination of the Solar Farm's low profile and surrounding vegetation, the number of locations from which the Project will be visible is limited but would be greater for viewers closer to the

infrastructure. To minimize visibility, the Applicant would take steps such as fencing and minimizing light levels to those necessary for safety. Staff further recommends that Hardin incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and mitigating measures subject to Staff review, such as native vegetative plantings, alternate fencing, and good neighbor agreements. (Staff Ex. 1 at 10.)

{¶ 28} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light; included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include possible brief loss of vision, a safety risk to pilots, and nuisance to neighbors. Hardin identifies the Hardin County Airport, one of five nearby observation points, as the nearest public use airport and asserts that there is a low potential for temporary afterimage glare effects from the proposed solar farm on air flight paths. The Applicant has identified two measures to minimize glare: use of solar panels with anti-glare coating and use of a tracking array system to reduce the area to which light is reflected. In consultation with Staff, the Ohio Department of Transportation (ODOT) Office of Aviation stated that the proposed Solar Farm would likely not implicate an airspace permit issue and that Hardin's glare analysis is satisfactory. (Staff Ex. 1 at 11.)

{¶ 29} Economically, Hardin estimates that the proposed Solar Farm would create 153 on-site construction jobs and 17 annual operational jobs for Hardin County, with those numbers increasing to 888 and 24, respectively, for the State of Ohio. During the construction period, wages would produce \$11 million in local output for Hardin County and approximately \$87 million in local output for the State of Ohio; operations would add an annual impact of \$2 million for Hardin County and over \$3.5 million for the State of Ohio. Hardin anticipates that the Project will be operational in 2020 and is expected to meet all requirements of the Payment in Lieu of Taxes (PILOT) program. The Applicant estimates

that the Solar Farm will produce PILOT revenues of approximately \$1.2 million annually for the life of the facility. (Staff Ex. 1 at 12.)

b. Ecological Impacts

{¶ 30} The proposed project site is in a broad, flat area of Hardin County. The Applicant does not anticipate that any seismic activity would pose a hazard to the facility. The bedrock underlying Hardin County is of the principle type that may contain karst-like characteristics, including dissolution cavities, caves, and sinkholes, that can cause subsidence of the ground surface. While these characteristics can be limiting factors for the surrounding soil type, given the fact the depth of the bedrock in the project area is 50 feet or greater, these types of features are unlikely to occur. Furthermore, the Ohio Department of Natural Resources (ODNR) Division of Geological Survey has not mapped any such features presently in Hardin County. The Applicant indicates that it will implement best management practices in the design and construction of the facility to address certain conditions that can be limiting factors for the surrounding soil type, including ponding, frost action, seasonal wetness, soil blowing, high shrink-swell potential, and very slow permeability. Indeed, based on the Applicant's drilling and subsurface work conducted in November 2018, Staff finds that the surrounding geology does not present any notable challenges to the Project. (Staff Ex. 1 at 13-14.)

{¶ 31} The Applicant noted 10 streams and 14 wetlands within the project area. To minimize those impacts to surface water resources, Hardin would install many of the electric collection lines using horizontal directional drilling. Staff further recommends that the Applicant develop and implement a detailed frac-out contingency plan. Hardin is also coordinating with the Ohio Environmental Protection Agency (Ohio EPA) and U.S. Army Corps of Engineers to ensure that all anticipated wetland and stream impacts are properly permitted. (Staff Ex. 1 at 14.)

{¶ 32} The project area is within range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a federal threatened

species. In order to avoid impacts to these bat species, Staff recommends that Hardin adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter. (Staff Ex. 1 at 15-16.)

{¶ 33} The project area is also within range of two state endangered bird species, commonly known as the upland sandpiper and the northern harrier. To reduce impacts on the bird species, Staff recommends that construction in areas of these species' potential habitat be avoided during the upland sandpiper's nesting period of April 15 through July 31, and during the northern harrier's nesting period of May 15 through August 1, unless coordination with the ODNR and the United States Fish and Wildlife Service (USFWS) recommends a different course of action. And, as the Applicant has proposed to remove hedgerows, thickets, and fencerows — all suitable nesting habitat for the loggerhead shrike — the ODNR recommends that clearing of these habitats not be done during the species' nesting season. The project area is also within range of several endangered or threatened species of mussels, as well as a reptile known as the eastern massauga; however, the Applicant and Staff do not anticipate the project area to impact these species. (Staff Ex. 1 at 15-16.)

{¶ 34} The project study area included 3,494 acres, of which Staff avers 95 percent is cultivated crops. The Applicant also notes that a very limited amount of tree cover is present, thus, requiring only a small amount of tree clearing for the project. Moreover, the Solar Farm's final design would include planting and maintenance of pollinator-friendly, native plantings in selected locations around the perimeter of the solar field. It is the intent that these features not only enhance the visual appeal of the Project, but would also enrich local wildlife habitat and benefit the local farming community. Staff recommends that Hardin be required to provide a vegetation management plan for review prior to the preconstruction conference. (Staff Ex. 1 at 16-17.)

c. Public Services, Facilities, and Safety

{¶ 35} The principal impact on public services would be minimal increases in traffic on routes leading to the project area, mainly during the construction phase. Facility-related traffic would be minimal during operation. Hardin has committed to coordinating with local officials to insure minimal impacts. In addition, Staff recommends that Hardin be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 1 at 17-18.)

{¶ 36} Minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to the year of construction. Moreover, the construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. During operation, noise impacts would be small and occur most often during the day. Operation noise sources would include inverters located within a group of solar panels, the step up transformer at the new substation, and tracking motors. Furthermore, upon testing the background ambient noise levels, the Applicant maintains that no non-participating noise receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. In fact, the model showed that operational noise impacts would be approximately the same as or less than ambient noise levels. (Staff Ex. 1 at 18.)

{¶ 37} In sum, Staff recommends that the Board find that Hardin has determined the nature of the probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 19).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 38} 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.

{¶ 39} The proposed Solar Farm would have an overall positive impact on the local economy due to construction spending, wages, purchases of goods and services, annual lease payments to participating local landowners, and potential PILOT revenue. Hardin sited and designed the Project to minimize potential impacts and has committed to taking measures to reduce those it could not avoid. For example, impacts on wildlife and habitat can be avoided or abated by following seasonal construction restrictions; noise impacts would be primarily limited to the construction phase, would be temporary and intermittent, and would occur away from most residential structures; and, traffic impacts would also be temporary. Additionally, given the Solar Farm's low profile, aesthetic impacts would be most prominent to landowners immediately surrounding the Project, and will be lessened by the landscape and the aesthetics plan recommended by Staff, as well as similar measures taken by Hardin. (Staff Ex. 1 at 20-21.)

{¶ 40} Overall, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 21).

4. ELECTRIC POWER GRID

{¶ 41} 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.

{¶ 42} Staff evaluated the impact of integrating the proposed facility into the existing regional electric transmission grid. As proposed, the solar-powered electric

generation facility would be capable of producing 170 MW and would interconnect to Hardin's previously certificated 345 kV switching station that is planned to connect with AEP Ohio's East Lima-Marysville 345 kV transmission line. See *In re the Application of Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Opinion, Order, and Certificate (Feb. 15, 2018). On September 28, 2017, Hardin submitted a generation interconnection request to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed a System Impact Study (SIS), the results of which were released in February 2019. Through its analysis of the bulk electric system and the SIS, PJM found no reliability problems or circuit breaker problems. (Staff Ex. 1 at 22-23.)

{¶ 43} Staff concludes that the facility would serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 23-24.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 44} 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.

{¶ 45} Although the proposed facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Hardin would need to minimize construction-related dust and has indicated that it plans to do so by using a licensed construction firm knowledgeable about dust minimization and using water and/or dust suppressants. (Staff Ex. 1 at 25.)

{¶ 46} Neither construction nor operation of the proposed Solar Farm would require significant amounts of water. Similarly, the Project would not generate any wastewater that might impact water quality. Hardin would, however, need to seek certain water protection permits issued by the U.S. Army Corps of Engineers and the Ohio EPA under Sections 404 and 401 of the federal Clean Water Act. The Ohio EPA would also need to approve a Storm Water Pollution Protection Plan for storm water discharge associated with construction activities. (Staff Ex. 1 at 25-26.)

{¶ 47} Construction activities would generate debris such as crates, nails, boxes, containers, packing materials, and damaged parts, as well as vegetative debris. All materials with reuse or salvage value will be removed for such use; all debris would be disposed of in accordance with state and federal requirements. During operation, the facility would generate small amounts of similar non-hazardous, solid waste, which would also be reused, recycled, or disposed of pursuant to state and federal requirements. No hazardous wastes will be generated by the Project, and the Applicant intends to ensure that any previously contaminated soils discovered or generated during construction would be handled according to applicable regulations. In short, Staff notes that Hardin's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 26.)

{¶ 48} No public use airports, helicopter pads, or landing strips are located within five miles of the Solar Farm, and there are no private use airports, helicopter pads, or landing strips within or adjacent to the project area. In a coordinated review of the Project's potential impacts on local airports, no concerns have been identified by Staff or the ODOT Office of Aviation. (Staff Ex. 1 at 26.)

{¶ 49} Based on these findings, Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the facility include the conditions specified in the Staff Report (Staff Ex. 1 at 26).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 51} For reasons of public safety, Hardin will limit public access to the facility by installing a security fence around each cluster of solar panels. Additionally, the Solar Farm is required to be constructed, operated, and maintained in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements. Facility personnel will be trained to operate the equipment in a safe and reliable manner, and Hardin will secure all pertinent state and federal permits. Additionally, the Applicant also intends to develop and implement an emergency action plan and consult with all necessary local emergency responders. (Staff Ex. 1 at 27.)

{¶ 52} Hardin has worked with the community in developing the facility. In addition to statutory outreach, the Applicant has met individually with affected landowners and local officials. Hardin will provide Staff with a copy of its complaint resolution plan, as detailed in Exhibit K of its application, and commits to file the nature and resolution of all complaints received with the Board on a quarterly basis. Hardin also plans to notify affected property owners and tenants, as well as anyone who requests project updates, at least seven days before the start of construction. Finally, Hardin notes that all solar panels would be installed on property under lease or easement to the Applicant. (Staff Ex. 1 at 27-28.)

{¶ 53} In all, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 28).

7. AGRICULTURAL DISTRICTS

{¶ 54} 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.

{¶ 55} Staff states that no agricultural district parcels would be impacted by the construction or operation of the proposed Solar Farm. Agricultural land that has not been classified as an agricultural district in the project area may experience some construction-related activities that could lead to temporary reductions in farm productivity. Hardin will also take steps to address potential impacts to farmland, including repair of all drain tiles damaged during construction and restoring temporarily impacted land to its original use. (Staff Ex. 1 at 29.)

{¶ 56} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 29).

8. WATER CONSERVATION PRACTICE

{¶ 57} 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.

{¶ 58} Although the facility may require some water use during construction for dust reduction purposes, the Project would use virtually no water and would produce no wastewater during operation (Staff Ex. 1 at 30).

{¶ 59} In all, the facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8). Staff recommends that any certificate issued by the Board include any conditions specified in the Staff Report. (Staff Ex. 1 at 30.)

9. RECOMMENDATIONS

{¶ 60} In addition to making various findings throughout its report, Staff recommended that 22 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 1 at 31-34). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' March 18, 2019 Stipulation (Tr. at 10-11; Staff Ex. 2 at 2-3). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 61} At the March 28, 2019 adjudicatory hearing, counsel for Hardin presented the Stipulation entered into by Hardin, the Farm Bureau, and Staff and filed to the record on March 18, 2019 (Jt. Ex. 1; Tr. at 7). Hardin witness Gabe Klooster offered testimony in support of the Stipulation and Staff witness James O'Dell presented testimony in support of the Staff Report. Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Hardin, subject to 23 listed conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) The facility shall be installed at Hardin's proposed site as presented in the application and modified by supplemental filings.
- (2) Prior to the start of any construction activities, Hardin shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the Project. The Applicant shall provide a proposed conference agenda for Staff review prior to the conference.

- (3) Hardin shall submit one set of detailed engineering drawings of the final project design to Staff at least 30 days before the preconstruction conference. This 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. The final project layout shall be provided in hard copy and as geographically-referenced electronic data.
- (4) If any changes to the project layout are made after the submission of final engineering drawings, Hardin shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are 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, Hardin shall submit to Staff a copy of the as-built specifications for the entire facility or, upon demonstration that good cause prevents submission of the as-built specifications, request an extension of time for the filing of such specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (6) Before commencement of construction activities in any affected areas, Hardin shall obtain and comply with all necessary permits and authorizations. Hardin shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Hardin shall provide a

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

- (7) If Hardin has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid, unless the Board grants a waiver or extension of time.
- (8) As information becomes known, Hardin shall docket in the case record the date on which construction will begin, on which construction was completed, and on which the facility begins commercial operation.
- (9) Prior to construction of the facility, the Applicant will provide Staff a letter indicating it has a signed Interconnection Service Agreement (ISA), or interim ISA, and, if required, an Interconnection Construction Service Agreement, with PJM; however, Staff may require copies of the signed agreements.
- (10) At least 30 days before the preconstruction conference, Hardin shall provide Staff with 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 proposed timeframe for project construction, and a schedule for restoration activities.
- (11) During the construction and operation of the Solar Farm, Hardin shall submit to Staff a complaint summary report by the fifteenth

day of January, April, July, and October of each year. The report should include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward a resolution of 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. and 7:00 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. Hardin 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.
- (13) Prior to the commencement of construction, Hardin shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, in consultation with Staff and the Ohio Historic Preservation Office (OHPO). If the resulting work discloses a find of cultural or archeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then Hardin shall submit a modification or mitigation plan detailing how such site(s) would be avoided or impacts lessened. Any such mitigation effort shall be developed in consultation with the OHPO and submitted to Staff for review and acceptance.

- (14) Prior to the commencement of construction, Hardin shall prepare a landscape and lighting plan to address any reasonable concerns regarding the aesthetic and lighting impacts of the facility on neighboring residences in existence or under construction at the commencement of construction of the facility. The plan shall be provided to Staff for review and confirmation that it complies with this condition.
- (15) Hardin shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Unless otherwise agreed to by the landowner, damaged field tile systems shall be promptly repaired to at least original requirements at Hardin's expense. If applicable, excavated topsoil shall be segregated and restored in accordance with the Applicant's lease or other arrangement with the landowner. Unless otherwise agreed to by the landowner, severely compacted soil shall be plowed or otherwise de-compacted during construction, if necessary, to restore them to original condition.
- (16) Within a reasonable time after issuance or receipt, Hardin shall provide Staff a copy of any arrangement or resulting resolution adopted by any county relating to the PILOT program.
- (17) Hardin shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities, and 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 Hardin, Staff, and the appropriate agencies.

- (18) Unless coordination with ODNR and USFWS allows a different course of action, Hardin shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter.
- (19) Unless coordination with ODNR allows a different course, construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31.
- (20) Unless coordination with ODNR allows a different course, construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1.
- (21) Prior to the preconstruction conference, Hardin shall submit a vegetation management plan to Staff for review and confirmation that it complies with this condition. The plan would identify all areas of proposed vegetation clearing for the Solar Farm, specify the extent of the clearing, and describe how such clearing work would be done as to minimize removal of woody vegetation. The plan shall also describe how trees and shrubs along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities would be protected from damage. The plan shall additionally 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 and describe any herbicide use.

- (22) Hardin shall provide to Staff for review a frac-out contingency plan detailing monitoring, environmental specialist presence, containment measures, clean-up, and restoration prior to construction in areas where horizontal directional drilling will occur.
- (23) Hardin shall obtain transportation permits prior to the commencement of construction activities that require them. Hardin 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. Hardin shall detail this coordination as part of a final traffic plan submitted to Staff before the preconstruction conference for review and confirmation that it complies with this condition.

(JT. EX. 1 AT 2-6.)

VII. CONCLUSION

{¶ 62} 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. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. The standard of review for

considering the reasonableness of a stipulation has been discussed in a number of 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. 13, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principal or practice?

{¶ 63} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In his testimony on behalf of Hardin, Gabe Klooster stated that multiple parties in the proceeding engaged in the negotiations and that the serious bargaining efforts that took place are evident in the various filings, such as the Applicant's initial testimony, Staff's initial recommendations, and the final, agreed-upon conditions within the Stipulation (Tr. at 10-11; Applicant Ex. 9 at 4). Mr. Klooster also mentioned that the Stipulation's conditions take into account concerns raised by the parties and the local community (Applicant Ex. 9 at 4-5). Thus, the Board finds that the first criterion is met.

{¶ 64} The Board also concludes that the second and third elements are satisfied. As a package, the Stipulation benefits ratepayers and the public interest in numerous ways.

For example, Mr. Klooster testified that, when completed, the Solar Farm will have the capacity to generate approximately 170 MW while generating essentially zero noise or emissions and will directly benefit the local economy through the addition of new jobs, wages, and local revenue. Specifically, Mr. Klooster states that the project will result in over \$12.9 million of additional investment in Hardin County, and over \$91.2 million for the State of Ohio. Moreover, Mr. Klooster maintains that, as energy and environment costs rise, and technology advances, solar-powered generation provides a sustainable, long-term, competitive energy solution to both residents and businesses. (Applicant Ex. 9 at 5.) Finally, the Stipulation does not violate any important regulatory principle or practice (Applicant Ex. 9 at 5).

{¶ 65} Based on the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Hardin's application, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Hardin in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 66} Hardin is a person under R.C. 4906.01(A) and is licensed to do business in the State of Ohio.

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

{¶ 68} On September 11, 2018, Hardin filed a pre-application notification letter informing the Board of a public informational meeting for its proposed facility.

{¶ 69} On September 24, 2018, Hardin filed proof of its publication of the notice regarding the public informational meeting in *The Ada Herald* and *The Kenton Times* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 70} On October 1, 2018, Hardin held the public informational meeting for its proposed Solar Farm.

{¶ 71} On October 12, 2018, Hardin filed its application for a Certificate of Environmental Compatibility and Public Need to construct the Project. Also on October 12, 2018, Hardin filed a motion for protective order. Hardin subsequently supplemented its application on November 14, 2018, and February 15, 2019.

{¶ 72} By letter dated December 11, 2018, the Board notified Hardin that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 73} On December 17, 2018, the Applicant filed a Certificate of Service indicating that copies of the application had been served upon local public officials and libraries.

{¶ 74} On December 21, 2018, Hardin filed proof that it had paid its application fee.

{¶ 75} On January 9, 2019, the ALJ issued a procedural Entry establishing the effective date of the application as January 4, 2019; scheduling a local public hearing for March 14, 2019, and an adjudicatory hearing for March 28, 2019; directing Staff to file a report; and setting a deadline for intervention. The ALJ also granted Hardin's motion for protective order.

{¶ 76} On January 11, 2019, the Farm Bureau filed a motion to intervene and memorandum in support.

{¶ 77} On January 24, 2019, the Applicant filed a Notice of Mailing stating that a copy of the "Notice of Proposed Major Utility Facility" was sent to government officials, libraries, and affected property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(1). The Applicant also filed proofs of publication of the accepted, complete application in *The Ada Herald* and *The Kenton Times*, in accordance with R.C. 4906.06(E)

{¶ 78} The Staff Report was filed on February 26, 2019.

{¶ 79} On March 7, 2019, Hardin filed a Notice of Mailing stating that a copy of the second "Notice of Proposed Major Utility Facility" was sent to government officials, libraries, and property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(2).

{¶ 80} A local public hearing was held on March 14, 2019. At the hearing, two witnesses testified, with one being in favor of the Project and other in opposition to its general location.

{¶ 81} On March 18, 2019, Hardin, the Farm Bureau, and Staff filed a Stipulation resolving all issues in this proceeding.

{¶ 82} On March 28, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Hardin presented the testimony of Gabe Klooster in support of the Stipulation; Staff presented the testimony of James O'Dell in support of both the Staff Report and the Stipulation. The ALJ also granted Farm Bureau's motion to intervene.

{¶ 83} Adequate data on the proposed generation facility has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 84} The Stipulation satisfies the criteria established by the Board for review and consideration of such agreements.

{¶ 85} Based on the record, the Board finds that Hardin's application should be approved and, pursuant to R.C. Chapter 4906, a certificate should be issued for the construction, operation, and maintenance of the solar-powered electric generation facility subject to the conditions set forth in the Stipulation and this Order.

IX. ORDER

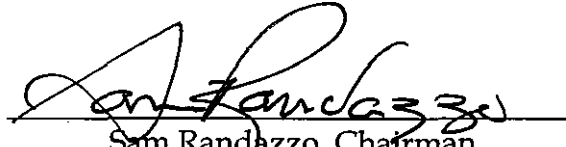
{¶ 86} It is, therefore,

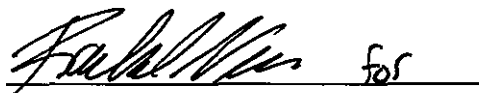
{¶ 87} ORDERED, That the Stipulation be approved and adopted. It is, further,

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

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

THE OHIO POWER SITING BOARD

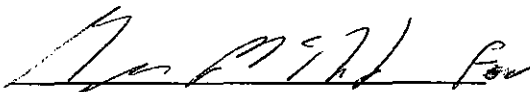

 Sam Randazzo, Chairman
 Public Utilities Commission of Ohio

 for
 Lydia Mihalik, Board Member
 and Director of the Ohio
 Development Services Agency

 for
 Mary Mertz, Board Member
 and Director of the Ohio
 Department of Natural Resources

 Amy Acton, M.D., MPH, Board
 Member and Director of the Ohio
 Department of Health

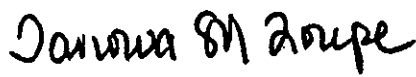
 for
 Laurie Stevenson, Board Member
 and Director of the Ohio
 Environmental Protection Agency

 for
 Dorothy Pelanda, Board Member
 and Director of the Ohio
 Department of Agriculture

 Greg Murphy, Board Member
 and Public Member

MJA/mef

Entered in the Journal
 MAY 16 2019



Tanowa Troupe
 Secretary