

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Nestlewood Solar I LLC for a Certificate of Environmental Compatibility and Public Need)
)
) **Case No. 18-1546-EL-BGN**
)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Nestlewood Solar I LLC (“Nestlewood” or “Applicant”), the Ohio Farm Bureau Federation, and the Staff of the Ohio Power Siting Board (“Staff”), at times collectively referred to as the “Parties,” submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (the “Board”). This Stipulation is intended by the Parties to resolve all matters pertinent to the certification and construction of the proposed Nestlewood Solar Project (“Project”).

The Applicant intends to build the Project as an 80 MW solar-powered generating facility in Brown County and Clermont County, Ohio. The Project would consist of large arrays of ground-mounted photovoltaic (“PV”) modules, commonly referred to as solar panels. The Project also includes associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a substation.

The solar panels would be attached to “tracking” metal racking. The racking would include piles driven or rotated into the ground. The solar panel arrays would be grouped in large clusters that would be fenced for public safety and equipment security, with locked gates at all entrances.

The Applicant has not yet selected the final solar panel technology to be utilized for this project, but has limited its consideration to two commonly used solar panel technologies that are substantially similar in function and outward design: crystalline or thin-film. Both solar panel

technologies are comparable, and the Applicant plans to submit the final project designs to the Board's Staff for review prior to construction.

The Applicant has not selected the specific module vendor, but intends to use a manufacturer that has the capability and experience to provide approximately 284,000 modules for this project.

The Applicant would create a collector system made up of a network of electric and communication lines that would transmit the electric power from the solar arrays to a common location, at which point the power would be delivered to the existing high-voltage transmission system.

The electricity from the solar panels is generated in direct current ("DC"). DC power from the solar panels would be delivered through electric lines, which would travel through cable trays on the racking and then to combiner boxes. Power from the combiner boxes would be transmitted to groups of components, collectively called an inverter, which would include an inverter that converts DC to alternating current ("AC"), a step-up transformer that increases the voltage to 34.5 kiloVolts ("kV"), and a cabinet containing power control electronics.

Each inverter would deliver AC power to a common substation through a system of buried electric lines and associated communication lines. The Applicant intends for each portion of the AC collector system to originate in one of the solar fields and terminate at the substation. The Applicant has committed that the collector system would be buried at least thirty-six inches below grade. The Applicant will use warning tape to mark the lines and register the underground facilities with the Ohio Utilities Protection Service.

The substation for the project would be located on a parcel of land at the corner of Bethel Maple Road and Leonard Road. The major components of the Applicant's substation would be

collection line feeders and breakers, a 34.5 kV bus, a main power transformer that steps up the voltage to 69 kV, a high-voltage breaker, metering/relaying transformers, disconnect switches, equipment enclosure containing power control electronics, and a lightning mast. The substation for the project will connect to an adjacent utility switchyard. A short 69 kV gen-tie line would connect the utility switchyard to the existing Duke South Bethel-Brown 69 kV transmission line.

The Applicant proposes to use access roads for construction, operation and maintenance of the solar project. The access roads would consist of aggregate material and/or grass. The access roads would be approximately 20 feet wide.

The project would include up to three solar meteorological stations that would be up to 15 feet tall, and fenced/gated. The meteorological stations would include pyranometers, which measure the solar resource.

II. HISTORY OF THE APPLICATION

The Applicant filed a Pre-Application Notification Letter regarding the proposed solar electric generation project on October 22, 2018. A public informational meeting regarding the proposed solar electric generating project was held in Hamersville, Ohio on November 7, 2018.

On December 14, 2018, the Applicant filed its Application and motion for waivers from the requirements to submit the manufacturers' safety manuals or similar documents with the application and to submit a description of its plan for test borings with the application.

On February 12, 2019, a letter of compliance regarding the Application was sent to the Applicant.

On March 11, 2019, the Applicant filed its Certificate of Service indicating that a copy of the complete and accepted Application was served upon the appropriate governmental officials and local libraries.

On March 13, 2019, the ALJ issued an Entry scheduling hearings in the matter, directing the Staff to file its Staff Report of Investigation, and for parties to file their issues list and testimony.

On May 16, 2019, the Ohio Farm Bureau Federation filed a motion to intervene.

On May 24, 2019, the Applicant filed a Notice of Footprint Modification.

A local public hearing was held on May 30, 2019 at 6:00 pm at Hamersville Elementary and Middle School, 1950 State Route 125, Hamersville, Ohio 45130. The adjudicatory hearing is scheduled for June 13, 2019 at 10:00 am at the offices of the PUCO.

This Stipulation results from discussions among the Parties who acknowledge that this agreement is amply supported by the record and thus is 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 proposed Nestlewood Solar Project.

III. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

- (1) The 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 of Investigation*.
- (2) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the 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 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 conferences for each stage of construction.
- (3) The Applicant 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, the Applicant 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, 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) 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 waiver or extension of time.
- (7) As the information becomes known, the Applicant shall file in this proceeding the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (8) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, 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 no less than seven days prior to the applicable construction activities. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (9) The Applicant shall not commence any construction of the facility until it has as 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. The 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.
- (10) 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 7:00 p.m. Monday through Friday; hoe ram and blasting 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. 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.

- (11) Prior to the commencement of construction, the Applicant shall prepare a Phase I cultural resources survey program for the project area in conjunction with Staff and the Ohio Historic Preservation Office (OHPO). If the resulting survey work discloses a find of cultural, archaeological, or architectural significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit a modification, or mitigation plan detailing how such site(s) will be avoided or impacts minimized. Any such mitigation effort, if needed, shall be developed in coordination with the OHPO and submitted to Staff for review and acceptance.
- (12) Prior to the commencement of construction, the Applicant shall prepare a landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. The plan shall include measures such as alternate fencing, vegetative screening, good neighbor agreements, or other measures subject to staff review. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.
- (13) At least 30 days before the preconstruction conference, the Applicant shall provide Staff with a copy of its public information program that informs affected property owners and tenants, as well as local officials, about the nature of the project; provides contact information for personnel who are familiar with the project and can respond to questions, comments, and complaints; and outlines the proposed timeline for project construction, restoration activities, and operation.
- (14) At least 30 days before the commencement of commercial operation, the Applicant shall provide Staff with a copy of an updated complaint resolution program for use during facility operation.
- (15) At least seven days prior to the commencement of construction, the Applicant shall notify, via mail, affected property owners and tenants who were provided notice of the public informational meeting and local public hearing, local officials who received a copy of the application, residences located within 1 mile of construction activities, and anyone who has submitted a request to Applicant for updates regarding the project. This notice shall include a timeline for project construction and restoration activities, and facility operation; a copy of the complaint resolution program; and contact information for personnel who are familiar with the project and can respond to questions, comments, and complaints.
- (16) At least seven days prior to the commencement of commercial operation, the Applicant shall notify via mail affected property owners and tenants who were provided notice of the public informational meeting and local public hearing, local

officials who received a copy of the application, residences located within 1 mile of the facility, and anyone who has submitted a request to Applicant for updates regarding the project. This notice shall provide information about the start of operation and any remaining restoration activities; a copy of the complaint resolution program; and contact information for personnel who are familiar with the facility and can respond to questions, comments, and complaints.

- (17) During construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the fifth year of operation. The report should include a list of all complaints received through the Applicant's complaint resolution procedure, a description of any actions taken toward a resolution of each complaint, and a status update if the complaint has yet to be resolved or addressed.
- (18) The Applicant 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 conditions or modern equivalent at the Applicant's expense. If the affected landowner agrees not to have the field tile system repaired, they may do so only if the field tile systems of adjacent landowners would be unaffected by the non-repair of the landowner's field tile system.
- (19) Within 30 days after issuance or receipt, the Applicant shall provide Staff a copy of any arrangement or resulting resolution adopted by Brown or Clermont county relating to the Payment in Lieu of Taxes (PILOT) program.
- (20) The Applicant shall use horizontal directional drilling or other boring techniques to avoid in-water work in perennial streams.
- (21) Prior to the use of horizontal directional drilling, the Applicant shall provide a frac-out contingency plan detailing monitoring, environmental specialist presence, containment measures, cleanup, and restoration.
- (22) The 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 impacts to Indiana bats and northern long-eared bats, unless coordination with the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action.
- (23) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1, unless coordination with the ODNR allow a different course of action.
- (24) The Applicant shall complete further coordination with the ODNR regarding the Kirtland's snake, including additional presence/absence surveys in identified habitat areas which would be impacted, to assure impacts are avoided.

- (25) Prior to any in-water work, the Applicant shall provide information to Staff and the ODNR indicating that no mussel impacts would occur at stream crossings. If this is not possible, then the appropriate survey(s) shall be performed in coordination with the ODNR and Staff. If mussels found in the project area cannot be avoided, a professional malacologist shall collect and relocate the mussels to suitable and similar habitat. All surveys, assessments, and relocation plans shall be completed in accordance with the Ohio Mussel Survey Protocol and provided to Staff and the ODNR for review to ensure compliance with this recommendation.
- (26) The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas as shown on the Applicant's final approved construction plan as approved by Staff. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental 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.
- (27) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies.
- (28) Prior to the preconstruction conference, the Applicant 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 project, specifying the extent of the clearing, and describing how such clearing work would be done as to minimize removal of woody vegetation. The plan shall 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 also describe the implementation and maintenance of pollinator-friendly plantings and describe any planned herbicide use. The plan shall also describe the steps to be taken to prevent establishment and/or further propagation of noxious weed identified in OAC 901:5-37 during implementation of pollinator-friendly plantings.
- (29) 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 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.

- (30) The Applicant shall provide the Board's Staff a copy of the transportation management plan and any road use agreement(s) 30 days prior to the preconstruction conference.

B. Other Terms and Conditions

(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 thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon an entry on rehearing being issued by the Board maintaining the material modification to the stipulation, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

(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 in entering into this Stipulation.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS OF LAW

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. Nestlewood Solar I LLC is licensed to do business in the State of Ohio.
2. Nestlewood Solar Project qualifies as a major utility facility as defined in R.C. 4906.01(B)(1).
3. On October 22, 2018, the Applicant filed a Pre-Application Notification Letter informing the Board of a public informational meeting in Case No. 18-1546-EL-BGN.
4. On November 1, 2018, the Applicant filed proof of publication made on October 25, 2018 in the Clermont Sun, a newspaper of general circulation in Clermont County and in the News Democrat, a newspaper of general circulation in Brown County, and of notice of the public informational meeting scheduled to be held in Case No. 18-1546-EL-BGN on November 7, 2018.
5. The Applicant held the public informational meeting in Case No. 18-1546-EL-BGN at the Hamersville Elementary and Middle School, located at 1950 State Route 125, Hamersville, OH 45130, on November 7, 2018.
6. The Applicant submitted its Application in Case No. 18-1546-EL-BGN to construct the Nestlewood Solar Project on December 14, 2018.
7. On December 14, 2018, the Applicant filed a motion for waivers of certain filing requirements in Case No. 18-1546-EL-BGN.
8. On February 12, 2019, the Board issued a letter stating that the Board's Staff had received sufficient information to begin its review of the Application.

9. On March 11, 2019, the Applicant filed correspondence indicating that the Application fees were paid.

10. On March 11, 2019, the Applicant filed a Certificate of Service indicating that copies of the Application were served upon local public officials and libraries.

11. On March 13, 2019, the ALJ issued an Entry setting forth a scheduled hearing date and directing the Staff to file a Staff Report.

12. On March 18, 2019, the ALJ issued an Entry rescheduling the evidentiary hearing to June 13, 2019.

13. On April 5, 2019, the Applicant filed a Notice indicating that the initial notice was sent on March 22, 2019 to government officials, libraries and affected property owners pursuant to Ohio Adm. Code 4906-3-09(A)(1), and was published on March 21, 2019 in the Clermont Sun, a newspaper in general circulation in Clermont County, and on March 24, 2019 in the Brown County Press, a newspaper in general circulation in Brown County, pursuant to R.C. 4906.06(C).

14. On April 18, 2019, the ALJ issued an Entry rescheduling the public hearing to May 30, 2019.

15. On May 15, 2019, the Staff Report of Investigation (“Staff Report”) was filed in Case No. 18-1546-EL-BGN.

16. On May 16, 2019, a motion to intervene was filed by the Ohio Farm Bureau Federation.

17. On May 24, 2019, the Applicant filed a Notice of Footprint Modification.

18. On May 24, 2019, the Applicant filed a Notice indicating that notice of the change in the date of the public hearing was sent on May 2, 2019 to government officials, libraries and

affected property owners, and was published on April 28, 2019 in the in the Brown County Press, a newspaper in general circulation in Brown County, and on May 2, 2019 in the Clermont Sun, a newspaper in general circulation in Clermont County.

19. On May 28, 2019, the Applicant filed a Notice indicating that the second notice was mailed on May 22, 2019 to government officials, libraries and property owners pursuant to Ohio Adm. Code 4906-03-09(A)(2). Notice was published on May 19, 2019 in the Brown County Press, a newspaper in general circulation in Brown County and on May 23, 2019 in the Clermont Sun, a newspaper in general circulation in Clermont County.

20. A local public hearing was held on April 30, 2019 at 6:00 pm at Hamersville Elementary and Middle School, 1950 State Route 125, Hamersville, Ohio 45130.

21. Because no electric transmission line or gas pipeline is being proposed in this Application, R.C. 4906.10(A)(1) is not applicable.

22. Adequate data on the Nestlewood Solar Project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).

23. Adequate data on the Nestlewood Solar Project has been provided to determine that the facilities described in the Application and supplemental filings and subject to the Conditions in this Stipulation represent the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3).

24. Adequate data on the Nestlewood Solar Project has been provided to determine that 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 Nestlewood Solar Project will serve the interests of electric system economy and reliability, and the requirements of R.C. 4906.10(A)(4) are met.

25. Adequate data on the Nestlewood Solar Project has been provided to determine that this facility will either comply with, or is not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waste, air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).

26. Adequate data on the Nestlewood Solar Project has been provided to determine that it will serve the public interest, convenience and necessity, as required by R.C. 4906.10(A)(6).

27. Adequate data on the Nestlewood Solar Project has been provided to determine what its impact will be on the viability as agriculture land of any land in the 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).

28. Adequate data on the Nestlewood Solar 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).

29. 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. Nestlewood Solar I LLC is a “person” under R.C. 4906.01(A).
2. The proposed Nestlewood Solar Project is a major utility facility as defined in R.C. 4906.01(B)(1).

3. The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the Nestlewood Solar Project under R.C. 4906.10(A)(2).

4. The record establishes that the Nestlewood Solar Project described in the Application, and subject to the conditions in this Stipulation represent 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).

5. The record establishes that the Nestlewood Solar Project 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).

6. The record establishes, as required by R.C. 4906.10(A)(5) that to the extent that it is applicable, construction of the proposed Nestlewood Solar Project will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waste, air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.

7. The record establishes that the Nestlewood Solar Project described in the Application, and subject to the conditions in this Stipulation, will serve the public interest, convenience and necessity under R.C. 4906.10(A)(6).

8. The impact of the Nestlewood Solar Project on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).

9. The record establishes that the Nestlewood Solar Project would incorporate maximum feasibility water conservation practices under R.C. 4906.10(A)(8).

10. 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 Nestlewood Solar Project.

The undersigned hereby stipulate, agree and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 12th day of June, 2019. Furthermore, the Parties expressly agree that this Joint Stipulation and Recommendation may be amended and/or supplemented in a writing executed by the Parties.

Respectfully submitted,

/s/ Thomas Lindgren per authorization - MJS

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Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mr. Michael J. Settineri on behalf of Nestlewood Solar I LLC