BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Alamo Solar I, LLC for a Certificate of Environmental Compatibility and Public Need	**)** **)** **)** **)**	**Case No. 18-1578-EL-BGN**

POST-HEARING REPLY BRIEF OF ALAMO SOLAR I, LLC TO POST-HEARING BRIEF OF CONCERNED CITIZENS OF PREBLE COUNTY, LLC AND ITS INTERVENING MEMBERS

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I. INTRODUCTION

The Board should grant a certificate to the Alamo Solar I, LLC ("Alamo") Solar Project (the "Project") because Alamo has provided the Board with sufficient evidence to find and determine that the Project meets every applicable requirement of R.C. 4906.10(A). Nothing in the Post-Hearing Brief ("CCPC Brief") of Concerned Citizens of Preble County, LLC and its intervening members (collectively, "CCPC"), compels a different conclusion.

Rather than evaluate whether the statutory criteria for a certificate issuance have been satisfied, CCPC advances views on the contents of certificate applications, including the submittal of various studies and plans that CCPC believes should have been included in Alamo's application. That viewpoint is at odds with the Board's rules and the Board's prior decisions, as well as decisions from the Supreme Court of Ohio on that exact point. CCPC's viewpoint also is at odds with the fact that the Project (as is every project the Board reviews) is a proposed project and final engineering design is not yet complete. (Alamo Ex. 1 at 15-16; TR at 166).

CCPC's viewpoint is also nonsensical. CCPC would have the Board only approve projects for which all final engineering design and design studies are complete, every planting in vegetative screening identified, scripts for emergency service training meetings drafted, and

every inch of drain tile located, among other highly detailed and specific construction, design, and engineering requirements.

CCPC also implies that the Board should not approve any project that would result in an impact or change to the surroundings, no matter how minute. But as stated by Staff in its Post-Hearing Brief, "[t]he law does not, of course, require a finding that the project be totally free of safety or other risks, or even minor annoyances to the public, as a precondition to Board approval." (Staff Post-Hearing Brief at 4).

Like its viewpoint, CCPC's arguments in its Brief are flawed. The CCPC Brief advances a parade of alleged deficiencies with the Application (Alamo Ex. 1) in particular and the Board's regulatory requirements for the same, and with the Project in general, but does not seriously address the statutory criteria governing the Board's decision whether to grant a certificate. CCPC devotes **only seven lines** in its 56-page brief to a conclusory argument that the Project does not meet the requirements of R.C. 4906.10(A)(3) and R.C. 4906.10(A)(6). (CCPC Brief at 55-56). Instead, CCPC devotes the vast majority of its brief arguing about alleged deficiencies in Alamo's Application. In so doing, CCPC misinterprets the law, and ignores the Board's already-made determination that the Application "has been found to comply with Chapters 4906-01, *et seq.*, of the Ohio Administrative Code (OAC)."[1]

Notwithstanding the fact that the Application does comply with OAC Chapter 4906-4, the Board's rules on the contents of an application have no relevance on the Board's decision to issue a certificate. The Board is required to render a decision to grant a certificate "**upon the record**," not solely upon the application. R.C. 4906.10(A)(emphasis added).

[1] February 8, 2019 Letter of Compliance from the Board to Alamo, available here: https://dis.puc.state.oh.us/TiffToPDf/A1001001A19B08A90252J02430.pdf

CCPC not only fails to address the Board's statutory criteria, but also did not address the Board's three-prong test for stipulations in its brief. Instead, CCPC claims that because the recommended conditions allow for the submission of some plans following the issuance of the certificate, the Board has unlawfully delegated its authority to Staff. (CCPC Brief at 51-55). The Board and the Supreme Court of Ohio, however, have consistently recognized the Board's authority to make such delegations.

In sum, none of the arguments made by CCPC justify the denial of a Certificate to Alamo or the modification of any of the conditions of the Joint Stipulation. Given the record in this proceeding, the Joint Stipulation should be approved without modification and a Certificate of Environmental Compatibility and Public Need issued to Alamo for the Project.

II. ARGUMENT

A. The Issue Before the Board is Whether the Record, as a Whole, Provides Sufficient Evidence to Find and Determine Each Applicable Element of R.C. 4906.10

"In granting a certificate for the construction, operation, and maintenance of a major utility facility, the board must determine eight specific points." *In re Application of Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, at ¶ 27 (citing R.C. 4906.10(A)). Whether, "the application complied with OAC Chapter 4906-4" as presented by CCPC is **not** one of the eight criteria.

Ignoring the text of R.C. 4906.10(A), CCPC claims that the Board cannot grant a certificate if an application does not include information required by the Board's application rules. CCPC cites to one case to support its claim, arguing that "[a] government agency cannot grant an approval based on an application that does not contain the information required by law,"

citing to *Anderson v. Vandalia*, 159 Ohio App.3d 508 (2nd App. 2005). (CCPC Brief at 5). That case is inapposite.

Specifically, CCPC overstates the holding of *Anderson*, and ignores the clearly distinguishable facts and law of that case. In *Anderson*, the Court was presented with a conditional use application that, per city ordinance, was required to contain certain elements. *Anderson* at ¶¶ 30-33. The Court noted no provision for potential waiver of the application requirements. A separate subsection of the city ordinances laid out general criteria for approval of a conditional use application. *Id.* at ¶ 34. Among these criteria was a requirement that the Board of Zoning Appeals ("BZA") make a recommendation to City Council "based upon the "application as presented." *Id.*

The Court in *Anderson* held that:

> "the application for a conditional use permit submitted … to the BZA did not comply with the Code. We further conclude that the BZA did not comply with the Code, because it made recommendations based upon an incomplete application, and it did not prepare written findings of fact. Therefore, we conclude that the decision to recommend the grant of the conditional use was contrary to the Code, and the decision of the Council to permit the use, which cannot be presumed to have been made independently of, and without regard to, the BZA's recommendation, is therefore invalid."

Id. at ¶ 39.

Anderson is distinguishable for three reasons. First, there is no express requirement for the Board to make a decision "based on the application," either by law or regulation. Second, the Board can waive any requirement of OAC Chapter 4906-4 not required by statute, an ability apparently not allowed by the BZA in *Anderson*. Third, the application content requirements and criteria for the decision in *Anderson* were both parts of the same city ordinance. Here, the criteria for the decision are statutory and the application content requirements cited by CCPC are regulatory. If the scope of the regulation conflicts with a provision of the statute, the statute

prevails. *Midland-Ross Corp. v. Bd. of Rev.*, 10th Dist. Franklin No. 79AP-83, 1979 Ohio App. LEXIS 10773, at *14 (July 26, 1979).

Supreme Court further establishes why the Board only considers the R.C. 4906.10 statutory criteria. When evaluating whether a certificate was properly granted to a project, the Supreme Court of Ohio has looked to the statutory factors under R.C. 4906.10(A), rather than compliance with regulation. *See In re Application of Champaign Wind, L.L.C.*, 2016-Ohio-1513, 146 Ohio St. 3d 489, 58 N.E.3d 1142. In *Champaign Wind*, the court conducted a thorough evaluation of the **statutory** criteria of R.C. 4906.10(A) that were at issue. Specifically, the Court acknowledged that setbacks from wind turbines were subject to **regulatory** requirements under then-OAC Chapter 4906-17. *Champaign Wind* at ¶28, FN 1. But the Court then went on to evaluate the propriety of the setbacks established in the Champaign Wind certificate against the statutory criteria in R.C. 4906.10(A), notwithstanding the existence of the regulatory requirement. *Id.* at ¶33. As even the dissent in *Champaign Wind* acknowledged, "**Chapter 4906 of the Revised Code provides the mandatory criteria for issuance of a certificate**." *Champaign Wind* at ¶76 (Kennedy Dissent) (emphasis added).

Thus, even in the face of an explicit regulatory requirement, the Court evaluated a Board decision whether to grant a certificate based on compliance with R.C. 4906.10(A).

B. <u>The Board has Already Determined that the Application Complies with Regulatory Requirements</u>

Importantly, **the Board has already determined that Alamo's Application met the requirements of OAC Chapter 4906-4** and the statutory application content requirements of R.C. 4906.06. OAC 4906-3-06(A) requires that:

> "upon receipt of a standard certificate application for [a] major utility facility … the chairman shall examine the certificate application to determine compliance

with Chapters 4906-1 to 4906-7 of the Administrative Code. Within sixty days following receipt, the chairman shall either:

(1) **Accept the standard certificate application as complete and complying with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-7 of the Administrative Code**, and notify the applicant to serve and file a certificate of service for the accepted, complete application.

(2) Reject the standard certificate application as incomplete, setting forth specific grounds on which the rejection is based. The chairman shall mail a copy of the completeness decision to the applicant."

(Emphasis added).

The Board accepted the Alamo Application as complete on February 8, 2019. (Footnote 1, *supra*). Alamo then served copies of the Application as required by rule, and filed the required certificate of service. (Alamo Ex. 4).

Having accepted the Application as complete once already, the Board should disregard CCPC's arguments to the contrary, and instead conclude that sufficient evidence has been provided for the Board to find and determine that all of the requirements of R.C. 4906.10(A) have either been met or are inapplicable. Even if the Board revisits its earlier determination (which it should not), it should again find that the Application contains all of the information identified by OAC Chapter 4906-4, for the reasons detailed below.[2]

C. Alamo has Complied with all Statutory and Regulatory Requirements for the Issuance of a Certificate

Although not relevant at this stage of the proceeding, Alamo's Application met the regulatory requirements of OAC Chapter 4906-4. More importantly, taking the record as a whole, as it should, the Board has sufficient evidence to find and determine that the Project

[2] With the exception of those regulatory requirements for which Alamo sought and has already been granted a waiver. *See* Entry, April 3, 2019, at ¶¶ 15, 32.

meets all applicable criteria of R.C. 4906.10(A), including CCPC's areas of concern. The application and record include information establishing that:

- Local traffic, including agricultural vehicles, will continue to be able to use local roads during construction and operation. (Alamo Ex. 9 at 4).
- The area surrounding the Project Area will not see an influx of wildlife that has been excluded from the Project Area. (Alamo Ex. 11 at 7).
- Any electromagnetic fields that are generated by the Project will not cause impact to the use of electrical devices. (Alamo Ex. 1 at 66).
- Construction noise from the Project at any given location will be short in duration.
- Operational noise will be minimal, below the level approved by the Board in other certificate proceedings, and, if necessary, can be successfully mitigated to avoid any impact to area residents. (Alamo Ex. 1 at 57, 59).
- Adequate drainage in the Project Area and surrounding properties will be maintained. (Alamo Ex. 8 at 5-6).
- There is no risk of soil or water contamination from the Project. (Alamo Ex. 7 at 17).
- The Project will not represent a burden on emergency services in the area, nor will the Project result in an increase in crime. (TR at 158-160, 164).
- The Project will be decommissioned at the end of its useful life, and the Project Area may be returned to agricultural use at that time. (Alamo Ex. 7 at 20; Alamo Ex. 9 at 5).

1. The Board has Adequate Evidence to Find and Determine that the Project's Impacts on Visual Resources and Motorist Visibility will be Minimal (CCPC Brief Section II.A, Section II.B, and Section II.J)

a. The Project will have a Minimal Impact on Visual Resources and Adequately Describes Mitigation Measures

The CCPC Brief claims, without citation, that the Project would "impose a serious blight on the scenic views in Preble County." (CCPC Brief at 6). There is simply no evidence in the record to support this conclusory assertion. In fact, there is no evidence that views of the Project, to the extent they exist, are at all objectionable. At best, CCPC can offer a "concern", with no evidentiary value, that the "panels … will spoil the visual and aesthetic enjoyment…." (CCPC Ex. 2 at 4; TR at 460) This speculative concern is not evidence, and cannot be relied on by the Board. *See* In *re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture].")

As a part of its evaluation of the Project, Alamo commissioned a visual resources assessment ("VRA"). (Alamo Ex. 13 at 1-2). The VRA determined, through a viewshed analysis, that the Project will potentially be visible from 73.4% of the area within a half mile of the Project. (Alamo Ex. 1 at Exhibit I at 22). In the context of the viewshed analysis, potentially visible does not mean the entire project is visible from a particular area, but could mean that "one panel through a tree that the LiDAR has picked up in a hedgerow so there's an opening in the hedgerow and this one resource could see one panel." (TR at 386-387). This viewshed analysis measurement of potential visibility is based on a panel height of 14 feet. (*Id.* at 361). This limited visibility (before any mitigation has been put into place) does not constitute a "scenic blight."

Pages 6-7 of the CCPC Brief attempt to undermine the validity of Alamo's viewshed analysis by conflating the precise percentages of potential visibility in the viewshed analysis (based on a 14-foot panel height), with the visual simulation results, which depict 8-foot tall solar panels. (TR at 349). Importantly, as Mr. Robinson testified (and the CCPC Brief ignores), if the visual simulations depicted a panel height of 14 feet, his conclusions in the VRA **would not change**. (TR at 388) (emphasis added).

The VRA concluded, with respect to the viewshed analysis, that:

> "The overall visual effect of the Project is adverse only when largely unscreened and viewed in the immediate foreground (i.e., where the Project occurs in an open field directly adjacent to a public road). However, none of these unscreened foreground views are available from identified [visually sensitive resources] within the study area, and the affected roadways are very lightly used. **Therefore, the proposed Project does not have an undue adverse effect on aesthetic resources or a significant number of viewers within the study area.**"

(Alamo Ex. 1 at Exhibit I at 36) (emphasis added).

CCPC's argument that the Application is deficient because by using 8-foot tall solar panels in the visual simulations, it does not accurately portray the Project, is a non-sequitur. (CCPC Brief at 5, 7, citing OAC 4906-4-08(D)(4)(e)). The Application clearly states that the high end of the panels, regardless of the racking technology used, will be "8 to 14 feet above ground surface." (Alamo Ex. 1 at 7-8). In addition, an 8-foot panel height is a "typical" height, as testified by Mr. Robinson (TR at 353). The visual simulations in the VRA thus portray the Project as described in the Application accurately. By CCPC's logic, visual simulations included in the Application would not meet rule requirements if they displayed panels at a maximum height of 10 feet, 10.5 feet, 11 feet, 14 feet, or any other height between 8 and 14 feet, because those simulations would also "fail" to accurately depict the full range of possible panel heights for the Project.

Additionally, CCPC claims that the Application is deficient because it did not specifically describe the visual mitigation to be implemented. (CCPC Brief at 7). CCPC also claims, without citation to the record, that "most or all neighbors would want the solar equipment to be completely screened from their homes by vegetation." (CCPC Brief at 8). This unsupported claim is belied by Mr. Robinson's experienced testimony:

> "The use of an opaque "green wall" approach is generally not desirable or effective, **because it tends to contrast with the existing visual character of the surrounding area and actually draws viewer attention because it looks out of place.** Instead, the goal is to soften the appearance of the project so that it blends more effectively into the background."

(Alamo Ex. 13 at 9) (emphasis added).

The Application and associated exhibits provide sufficient detail on the mitigation to be performed both to meet regulatory requirements and to provide sufficient evidence for the Board to find and determine that there will be minimal visual impact. (Alamo Ex. 1 at Exhibit I at 39-41). Specific to mitigation through screening, the Application includes the following description of the screening to be implemented:

- "A landscape plan showing potential mitigation areas and design will be part of the final Project.

- The Applicant is considering including as a component of the landscape plan, pollinator-friendly grasses and wildflowers along selected roadsides and other fence lines to soften the appearance of the Project and better integrate the Project into the landscape (see example simulations included in Figure 13). The Applicant anticipates using a mix of native pollinator wildflowers and grasses that will be selected based on their aesthetic and environmental properties, and their ability to grow in the conditions of the Project Area. Examples of the types of seed mixes that are being considered include the Eastern Great Lakes Native Pollinator Mix and the Wet Soil Native Seed Mixes, or similar. These plantings will be installed in the setback space between the Project perimeter fence and the edge of roadside rights-of-way. These plantings would grow to an average height of 4-6 feet (in the summer). As shown in Figure 13, the introduction of the pollinator species would soften the horizontal lines created by the security fence and reduce the visual contrast resulting from the Project.

- The Applicant is considering as part of the landscape plan the installation of native shrubs and trees in selected sensitive areas, such as along fence lines adjacent to residences. Use of native shrubs and trees will not necessarily result in plantings that completely screen views of the Project, but instead would serve to soften the overall visual effect of the Project and help to better integrate the Project into the surrounding landscape. Plantings would be selected based on aesthetic properties, to match or complement the existing vegetation at a given location.

- No evergreen hedges are proposed as part of visual mitigation for the Project. Installation of evergreens and planted hedges would not be in keeping with the existing rural agricultural character of the Project Area, which is defined by open farm fields backed by occasional deciduous hedgerows or woodlots.

- No earthworks or berms are proposed as part of visual mitigation for the Project. Because of the flat topography of the Project Area, only minimal grading or earthwork is anticipated. The introduction of earthen berms (or other earthworks) would result in new visual elements that are not in keeping with the existing landscape and would not be appropriate."

(Alamo Ex. 1 at Exhibit I at 40-41).

Finally, Alamo is committed to include mitigation, through a landscape plan to be included as part of the final design of the Project, to address situations such as "a unique viewer location in close proximity to the equipment, such as a home immediately adjacent to the Project and that is directly oriented toward a broad and unobstructed view of it." (Alamo Ex. 1 at 90). The Joint Stipulation at Condition 15 also requires Alamo to

> "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 and also include a plan describing the methods to be used for fence repair. **The plan shall include measures such as fencing, vegetative screening or good neighbor agreements**."
>
> (Joint Ex. 1 at 8, Condition 15) (emphasis added)

Based on the results of the VRA and Mr. Robinson's testimony, as well as the mitigation required by the Application and the Joint Stipulation, the Board has adequate evidence to find and determine that the Project will have a minimal visual impact.

b. The Project will have a Minimal Impact on Lighting

CCPC also takes issue with the alleged lack of detail regarding lighting in the Application. (CCPC Brief at 10-11). CCPC makes no argument that lighting from the Project somehow does not meet an applicable statutory standard in R.C. 4906.10. Instead, CCPC relies solely on an alleged deficiency in not describing measures to limit impact due to lighting. (CCPC Brief at 10, citing OAC 4906-4-08(D)(4)(f)). In making its argument, CCPC ignores the VRA which was included as an attachment to the Application. Specifically, the VRA states that:

- "Other than the substation, and a few other select locations, no facilities within the Project will require night lighting, which will minimize light pollution/nighttime visual impacts.
- The proposed substation will incorporate motion sensors for the security lighting, which will minimize the amount of time that the lights are on and avoid significant off-site lighting impacts.
- All security and work-related lights will be shielded, downward facing fixtures design to minimize light pollution and/or off-site lighting impacts."

(Alamo Ex. 1 at Exhibit I at 39).

These commitments clearly meet the relevant regulatory requirements to describe and evaluate lighting impact, and provide the Board with sufficient evidence to find that the Project will have a minimal impact on lighting in the area surrounding the Project Area.

c. The Project's Impact on Motorists' Visibility is Minimal

CCPC claims, without a scintilla of actual evidence, that the "Board has no way of determining whether the solar project will obstruct motorists' views." (CCPC Brief at 30). However, as specifically stated by Mr. Robinson in uncontroverted testimony, "**the setback distances in the Application … would provide adequate distance for motorist visibility at road intersections at the edges of the Project Area**, [and] additional setback distance [as provided in Joint Stipulation Condition 3] will serve to further improve motorist visibility at

those intersections, while maintaining effective screening." (Alamo Ex. 13 at 10) (emphasis added).

Thus, the Board has sufficient evidence to find and determine that the Project's impact on motorists' visibility is minimal.

2. The Board has Adequate Evidence to Find and Determine that the Project's Noise Impacts will be Minimal (CCPC Brief Section II.C and Section II.D)

a. Operational Noise will not be an Issue for the Project and Sufficient Evidence has been Provided to the Board for it to Find and Determine that Operational Noise will be Minimal

To support its Application, Alamo presented the testimony of David Hessler. Mr. Hessler has nearly 30 years' experience working in the acoustical design and analysis of power generation and industrial facilities of all kinds, including solar energy projects. (Alamo Ex. 10 at 1). Importantly as to this project (and solar generally), Mr. Hessler concluded in his written direct testimony that "I would not expect the operational sound emissions from the Project in general to have any negative impact on the surrounding community." (*Id.* at 5). Mr. Hessler's statement is supported by ample evidence in the Application and the remainder of the record.

CCPC attempts to make inverter noise an issue in this proceeding, even though it presented no testimony on operational noise. While CCPC expresses no concerns about noise from the substation, the panels themselves, or any other elements of the Project, CCPC selectively quotes from Mr. Hessler's testimony at hearing to give the impression that there is no information in the record (or Application) about inverter noise. (CCPC Brief at 14, citing Mr. Hessler's statement that a study performed for the Massachusetts Clean Energy Center cited by Mr. Hessler in his Noise Report (the "Massachusetts Study") "tells you nothing about inverter noise really.")

As an initial point, CCPC misconstrues Mr. Hessler's statement, which was related to whether the Massachusetts Study provides the sound level produced by the inverter (called the sound power output). (TR. at 261-262). Mr. Hessler also pointed out to CCPC at hearing that while the Massachusetts Study does not report the noise **generated** by an inverter, it does present noise measurements at 150 feet distance from an inverter. Those measurements would include both background noise and any inverter noise or other noise source that is measurable at the 150 foot distance (if any). (TR at 261-262).

In addition to misconstruing Mr. Hessler's testimony, CCPC also ignores Mr. Hessler's Noise Report in the Application which addressed information about inverter noise:

> Generally speaking, these [inverters] emit sound levels on the order of 60 to 70 dBA at 10 ft. due mostly to the cooling fans and, at this very close-in distance, the sound can be characterized as a hum sometimes with overlying ringing tones in the high frequencies. Since high frequency sound diminishes rapidly with distance the ringing aspect of the sound, if present, dies out very quickly and the sound at any significant distance consists of bland, broadband fan noise, if it is audible at all.

(Alamo Ex. 2 at Noise Report at 12). His report is consistent with his testimony on a series of measurements he personally took of inverter noise at a project in New York State where he found that inverter noise was "barely audible" and "disappears" as you walk away. (TR at 249-250). Mr. Hessler noted that for that measurement, at 100 feet, all he was measuring was background noise. (*Id.*)

Not only will the Project have no nighttime noise (aside from the Project substation), but, using the information from the Massachusetts Study, daytime noise from the inverters will be well below the Board's previous accepted noise standards. In the Massachusetts Study, noise from inverters approached background levels at 150 feet from the inverter pad. (TR at 256; Alamo Ex. 2 at Noise Report at 13). Background noise levels ranged from 41.6 dBA to 50 dBA

at the three separate solar sites evaluated in the Massachusetts Study. (TR at 257). In Mr. Hessler's testimony at hearing regarding the Massachusetts Study, he testified that, for one of the three sites, sound 150 feet perpendicular from an inverter measured 41.8 dBA, which is a total sound level, including any background sound that may have been occurring. (*Id.* at 261-262). **Using this information, Mr. Hessler testified that the sound resulting from that specific inverter in the study at a distance of 150 feet would have to be less than 41.8 dBA.** (*Id.* at 262).

Comparing that specific example (a maximum of 41.8 dBA noise level 150 feet from an inverter based on the information in the Massachusetts Study information) allows for a comparison to limits the Board has found acceptable in other cases at the exterior of residences. (*See, e.g., In re Champaign Wind*, Case No. 12-0160-EL-BGN, Opinion, Order and Certificate, May 28, 2013 at page 88 (allowing a sound level of 5 dBA over a nighttime Leq of 39 dBA); *In re Blue Creek*, Case No. 11-3644-EL-BGA, Order on Certificate Amendment, November 28, 2011 at page 5 (allowing a sound level of 5 dBA over a nighttime Leq of 43.6 dBA)). Thus, even if the measurements from the Massachusetts Study inverters (which had high frequency whines, unlike the inverter Mr. Hessler personally measured – TR 259) accurately reflect sound from the Project's inverters, the levels 150 feet from the inverters will be well below limits found acceptable by the Board.

Inverter siting can also minimize any concern about operational noise. If noise from inverters could conceivably be an issue, the Application committed to site "the inverters within the solar fields to ensure they do not cause material, adverse impacts to any sensitive, off-site receptors." (Alamo Ex. 1 at 58). As Mr. Herling testified,

> "when we're talking about siting these inverters, **it's key that they are in the center of the Project**, both for the purpose of avoiding any impacts to neighbors,

> but also electrically it's significantly important to us to have that in the center of an array to efficiently gather the energy from the surrounding solar panels before sending it back to the substation."

(TR at 101) (emphasis added). Mr. Herling went on to specifically say that he anticipated that no inverters "will be located within 150 feet of a residence." (*Id.* at 103).

Mitigation can also be easily implemented if somehow an operational noise issue develops. For example, Mr. Hessler, in his Noise Report attached as Exhibit E to the Application noted that "… if [an inverter] were to unexpectedly generate complaints, options, such as cabinet damping and ventilation silencers, would be available to retroactively mitigate noise from these devices and resolve any issue." (Alamo Ex. 1 at Ex. E, Noise Report at 13).

Accordingly, given the evidence in the record, the Board has more than adequate evidence to find and determine that noise from the Project's inverters will have a minimal impact.

b. <u>Construction Noise will not be an Issue for the Project and Sufficient Evidence has been Provided to the Board for it to Find and Determine that Construction Noise will be Minimal</u>

CCPC argues that Alamo should be required to "devise more effective mitigation measures to address … noise." (CCPC Brief at 18). Alamo is already committed to adequate mitigation measures that will result in the Project having a minimal impact on noise during construction. Alamo will mitigate construction noise by employing best management practices, including limiting the hours of construction, maintaining vehicles in proper working condition, and working with the local community to advise residents of those periods when sustained construction activity is expected to take place in relatively close proximity to their homes. (Alamo Ex. 1 at 59). In addition to the mitigation of construction noise described above, the Joint Stipulation requires that:

> 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,[3] 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.

(Joint Ex. 1 at 7, Condition 13) (emphasis added).

This condition is common for other projects that have been recently granted certificates by the Board, both for renewable and fossil fuel-fired generation facilities. *See e.g. In re Hecate Energy Highland, LLC*, Case No. 18-1334-EL-BGN, Opinion, Order and Certificate, May 16, 2019 at 18; *In re Harrison Power LLC*, Case No. 17-1189-EL-BGN, Opinion, Order and Certificate, June 21, 2018 at 33.

CCPC also argues that Alamo has provided "no information in the Application supports [Mr. Hessler's prediction that posts are installed in a particular area in a week or two]". (CCPC Brief at 17). Despite CCPC's arguments to the contrary, construction or pile driving in any particular area will in fact be brief in duration. (TR at 97). In fact, Mr. Herling estimated in his testimony that driving a post into the ground would only take a "matter of minutes". (*Id.*)

CCPC also misinterprets information in the Application and the associated exhibits, arguing that "186,400 and 279,600 posts" will be required, based on CCPC's erroneous interpretation that one post will be required for each of the 186,400 to 279,600 solar panels to be installed. (CCPC Brief at 17-18).[4] This is incorrect. Throughout the entirety of the Project Area, approximately 40,731 posts will be used. (Alamo Ex. 1 at Exhibit G at 7-4). As Mr.

[3] Alamo does not currently have any plans to use blasting in the Project. (TR at 138).

[4] In making its argument, CCPC misconstrues the purposes of the images in Alamo Ex. 1 at Exhibit I, Figure 2, Sheet 1. These are not intended to convey the proportion of posts to panels but other aspects of a common configuration of panels and racking, such as width, height, angle, and rotation.

Herling testified, post spacing is unrelated to the solar panels themselves, but dictated by the racking to which the solar panels are attached. (TR at 42-43). Mr. Herling went on to testify that posts are generally spaced approximately 50 feet from one another. (*Id.* at 42).

Given the short duration of construction and the limitations in Condition 13 of the Stipulation on the hours of construction activities (including pile driving), the Board has adequate evidence to find that the Project's construction noise will have a minimal impact.

3. The Board has Adequate Evidence to Find and Determine that the Project's Impacts on Drain Tile, Surface Water Drainage, and Water Quality will be Minimal (CCPC Brief Section II.E, Section II.N, and Section II.O)

a. The Board has Adequate Evidence to Find and Determine that Required Drain Tile Repairs will be made Promptly

CCPC attempts to manufacture an issue regarding drain tile, alleging that because the Application uses the phrase "commercially reasonable," that the Application and the Project are deficient. (CCPC Brief at 19). As described in Mr. Herling's testimony, he is not aware of any scenario in which repairing or replacing tile would not be commercially reasonable. (TR at 118). There is no dollar amount that would make a repair commercially reasonable. (*Id.* at 119). In addition, the Joint Stipulation requires that "[d]amaged field tile systems shall be promptly repaired no later than 30 days after such damage is discovered, and be returned to at least original conditions or their modem equivalent at the Applicant's expense." (Joint Ex. 1 at 8, Condition 16). There is no "commercially reasonable" qualifier on this obligation. (*Id.*)

CCPC also takes issue with the timing of repairs to drain tile, despite the fact that the Joint Stipulation requires that repairs be done promptly. (Joint Ex. 1 at 8, Condition 16). As evidence, CCPC relies on the interpretation of CCPC witness Donn Kolb. (CCPC Brief at 19). Mr. Kolb, as Alamo acknowledged in its Initial Post-Hearing Brief, has experience with drain tile near the Project Area. (CCPC Ex. 3 at 1; TR at 501-502). But Mr. Kolb is not a party, nor a

representative of a party, to the Joint Stipulation. (Joint Ex. 1 at 18-19). His opinion regarding the interpretation of a term in the Joint Stipulation should thus be afforded little weight. In addition, Mr. Kolb's own testimony at hearing revealed that drain tile repairs in the area around the Project Area, even to tile running between properties, can be completed months after a problem is discovered. (TR at 498-499).

In contrast, Staff is a party to the Joint Stipulation and is the entity responsible for condition compliance. (Joint Ex. 1 at 18-19). Testimony from Staff witness Mark Bellamy, cited in the CCPC Brief, indicates that the requirement to repair tile "promptly" in the Joint Stipulation is synonymous with as quickly as feasible or as soon as possible. (TR at 539-540). It does not mean that Alamo, in all instances, can wait 30 days to repair tile and still have that repair be considered prompt. (*Id.* at 550).

Given the commitments in the Application as well as the Joint Stipulation, the Board has adequate evidence to find and determine that the overall impact to drain tile will be minimal.

b. <u>The Board has Adequate Evidence to Find and Determine that Drain Tile in the Project Area will be Identified and Avoided to the Extent Practicable</u>

As described in Mr. Waterhouse's testimony, Alamo is engaged in a process to identify all drain tile in the Project Area. (TR at 57, 185-186). Mr. Waterhouse testified regarding the progress of this process. Specifically, efforts undertaken to date include: 1) working with the Preble County Engineer and the Preble Soil & Water Conservation District to obtain maps of any drain tile in the Project Area; 2) discussions with landowners in the Project Area to identify drain tile locations; and 3) conducting an on-site review to identify drain tile indicators visually. Prior to construction, additional analysis of data gathered will be reviewed and an action plan determined for each property in the Project Area. (Alamo Ex. 8 at 6).

CCPC claims that these efforts are insufficient, and would also impose on Alamo a never-ending and far-reaching obligation to consult with "all landowners (whether or not they are adjacent to the Project Area) whose land drains into the Project Area and all landowners whose land receives drainage from the Project Area to make sure all underground tiles and surface drainage ways are found." (CCPC Brief at 21). This is simply unnecessary and potentially unworkable. As Mr. Waterhouse testified,

> "It should be possible to identify drain tile in the Project Area using the methods described [above]. If advance identification is not possible, it should be possible, during construction, to identify damaged drain tile and repair it at that time. Damaged drain tile generally can be identified by the presence of water flowing out of the ground in an unexpected location. Excavating the area and following the source of the flowing water will lead to any broken pipe. The construction period for the Project should be long enough for an ample number of rain events to reveal any locations in which tile was damaged but not immediately discovered and repaired."

(Alamo Ex. 8 at 4).

In addition, Mr. Herling testified that Alamo is planning on engaging in consultation with adjoining landowners, to ensure that "the tile the tile is functioning properly between the Project and neighboring landowners …." (TR at 145). However, a mandate to consult landowners is not workable and may actually slow the process of tile identification or repairs, for example, if a neighboring landowner is unwilling or unavailable for consultation on the issue or repair.

The efforts that Alamo is engaged in should provide it with sufficient information to avoid or minimize to the maximum extent practicable damage to drain tile. The Board has adequate evidence to find and determine that the overall impact to drain tile will be minimal.

c. The Board has Adequate Evidence to Find and Determine that the Project's Impacts on Surface Water Drainage will be Minimal

As testified by Mr. Waterhouse,

> "**The Project should not have an impact on drainage, nor should it result in an increase in runoff from the Project Area.** Although the solar panels and some of the ancillary equipment are impervious, the large gaps between panel arrays to prevent shading and other open areas, combined with the vegetation surrounding and beneath each panel, means that drainage and runoff characteristics should not be dissimilar from a farmed field with crops growing on it. **In my experience, the construction and operation of similar projects to the Project has not led to drainage issues, or an increase in runoff.** In fact, when compared to a fallow field, I would expect the Project to have superior drainage and runoff characteristics, due to the year-round vegetation maintained in and around the Project Area."

(Alamo Ex. 8 at 5) (emphasis added).

In addition, in response to cross-examination questions from counsel for CCPC at hearing, Mr. Waterhouse testified that, although modeling of runoff has yet to be performed for the Project,

> "taking cultivated farmland and converting most of it to vegetation which reduces the amount of runoff, and then understanding that the typical project conditions that would increase the amount of runoff are also what we expect on a typical project. And we generally see those two opposing forces, the vegetation that we're planting in conjunction with the solar facility we're building, **in this typical type of project condition, our modeled results always show a reduction in runoff**."

(TR at 203-204) (emphasis added).

CCPC quotes from Alamo's Route Evaluation Study to make it appear as though Mr. Waterhouse cannot be correct because significant grading will occur. (CCPC Brief at 38, citing Alamo Ex. 1 at Exhibit D at 2). CCPC omits a key introductory phrase from the text of the Route Evaluation Study: "**[c]onstruction equipment such as** excavators, bull dozers, and wheel tractor-scrapers will be transported to the site …." (Alamo Ex. 1 at Exhibit D at 2) (emphasis

added). This omission makes it appear as though all of this equipment will be used in the Project Area, instead of a mere indication of the general types of equipment that **may** be used.

CCPC not only misrepresents the statement in the Route Evaluation Study to make it appear more authoritative, but then goes on to make the unsupported, and uncited, statement that "[s]ince these machines are used to move dirt, their planned use appears to contradict Alamo's representation that little or no grading will occur." (CCPC Brief at 38). Actual evidence in the record in this case, including testimony from Mr. Herling, shows that "almost no grading" would occur. (TR at 62).

CCPC also attempts to use a generic statement in Exhibit F to the Application in an attempt to show that "Alamo will alter the Project Area's Terrain to more quickly and thoroughly drain the land." (CCPC Brief at 39). The passage cited by CCPC gives no indication that water will drain more quickly and thoroughly. In addition, Exhibit F, relied on by CCPC, concludes that "**it does not appear that the construction of the proposed solar array will have a significant impact on the local geology and/or hydrogeology of the Project Area**." (Alamo Ex. 1 at Exhibit F at 7) (emphasis added).

Given the unrebutted evidence supplied by Mr. Waterhouse in his written direct testimony as well as at hearing, combined with the information in the Application, the Board has sufficient evidence to find and determine the Project will have a minimal effect on surface water.

d. <u>The Board has Adequate Evidence to Find and Determine that the Project's Impacts on Water Quality will be Minimal</u>

Contrary to CCPC's unsupported claims, given the limited nature of the construction activities associated with the Project, and the fact that "no discharges [to water bodies and receiving streams] are expected to occur", the Board has adequate evidence to find that impacts on water quality will be minimal (if any). (Alamo Ex. 1 at 46). In addition, even if compliance

with the rule was still at issue, CCPC misreads the rule requirements, and, in any case, the Application is fully compliant with the rules. Alamo is required only to "provide **available data**" for completion of the construction stormwater permit application. (OAC 4906-4-07(C)(1)(e)). Thus, if no data is currently available, none need be provided. As described above, there will be no changes in flow patterns and erosion. (Alamo Ex. 1 at 46). The Application does not contain the map identified in OAC 4906-4-07(C)(2)(a) because "[n]o water monitoring and gauging stations are proposed to be utilized for construction." (Alamo Ex. 1 at 46).

As Mr. Waterhouse's extensive testimony describes, Alamo will implement a stormwater pollution prevention plan ("SWPPP") as part of its Ohio EPA construction stormwater permit. (TR at 205-206). A SWPPP is also required by the Joint Stipulation. (Joint Ex. 1 at 8, Condition 16). The SWPPP will include information "recognizing what the typical sources of sedimentation would be and then a description of what we're going to do to mitigate that. There's some calculations involved; there are some plan sheets involved showing locations of our BMPs, Best Management Practices …." (*Id.* at 207-208).

Given Alamo's commitment to develop and implement a SWPPP regardless of the fact that no discharges to water bodies and receiving streams are expected to occur, the Board has sufficient evidence to find and determine that there will be minimal impact to water quality.

4. The Board has Adequate Evidence to Find and Determine the Project's Impacts on Crime and Emergency Services will be Minimal (CCPC Brief Section II.F and Section II.I)

Having no actual evidence in the record to support its claims regarding crime and public safety issues, CCPC resorts to inaccurate and inflammatory statements. As examples, CCPC claims that "the Application contains little provision for security to prevent criminals from stealing wire and other recyclable components at the Facility. This makes the Facility an easy

target that could attract criminals to the community where they might also harm Concerned Citizens." (CCPC Brief at 24). CCPC later in its brief reiterates the unsupported and uncited claim that "the Application fails to provide for protection against criminals who will be attracted to steal the Facility's recyclable materials." (CCPC Brief at 28).

There is simply no evidence in the record that criminals will be attracted to the community, much less that "they" might harm the Concerned Citizens. There is also no evidence that criminals will be "stealing wire and other recyclable components" or that the Project is an "easy target". CCPC's argument is inappropriate because it is based purely on conjecture and speculation. *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture].")

Contrary to CCPC's speculation, the Board has adequate evidence in the record to determine that the Project will not have a negative impact on emergency services in the local area and no impact on crime, and thus will serve the public interest. In compliance with OAC 4906-4-08(A), the Application describes the safety measures to be taken by the Project, as CCPC acknowledges. (CCPC Brief at 24-25). The fields hosting solar arrays for the Project will be enclosed with fencing and locked gates. (Alamo Ex. 1 at 7). Mr. Herling also testified to the safety measures that would be in place at the Project. For example, personnel will be at the Project every day. (TR at 54). In addition, the Project also may be monitored remotely via motion-activated security cameras. (TR at 127-128). Personnel visiting the Project, for any reason, will be checking gates and fences for security. (*Id.*) Finally, and most tellingly, Mr. Herling testified that the County Sheriff has not indicated any issues "out of the norm" near the Project Area. (TR at 164).

All of these measures provide the Board with sufficient evidence to find and determine that there will be no impact on crime, and thus the Project will serve the public interest.

With respect to other emergency services, Alamo intends to develop an emergency response plan for local officials and emergency personnel. (Alamo Ex. 1 at 55). The Joint Stipulation also commits Alamo to provide training, ongoing safety meetings, and any specialized equipment to local fire and EMS service providers. (Joint Ex. 1 at 10, Condition 27). These safety meetings **will be held on an ongoing basis**, and, as testified by Mr. Herling (a former EMT), it "is common for EMS … to walk through your emergency management plan, your response plan." (TR at 158).

CCPC takes issue with the on-going safety meetings, claiming this is not adequate training, relying largely on the testimony of CCPC witness Joanna Clippinger regarding turnover in the local emergency services providers. (CCPC Brief at 29). Ms. Clippinger's testimony regarding emergency services is not expert testimony, and she has never worked as an EMT or in a fire department. (TR at 452-453, 471).

In contrast, as Mr. Herling testified:

> "**having served a number of years in volunteer EMS myself**, there's certainly turnover. But in any organization like that, you have people who are in charge of training, who are constantly training each other, getting outside folks to continue that training. **So you're not losing everyone wholesale every couple of years. There's a lot of institutional knowledge that's passed down over time**."

(TR at 159-160) (emphasis added).

Both the initial training as well as the ongoing safety meetings will contribute to emergency responders' preparedness to respond to any issue at the Project. The Board has sufficient evidence to find and determine that the Project will not have a negative impact on emergency services in the local area.

5. The Board has Adequate Evidence to Find and Determine the Project's Impacts on Groundwater will be Minimal (CCPC Brief Section II.G)

CCPC claims that contaminants may somehow be "released from the solar panels by natural disasters or human destruction." (CCPC Brief at 26). A close read of the CCPC Brief reveals that CCPC has no evidence to support its claims, instead relying on "concerns," which lead to "requests" for changes to the Project. (CCPC Brief at 26-27). There is no evidence in the record that the Project actually poses any danger to groundwater or soil. There is only evidence that the Project does **not** pose any danger.

The panels are composed primarily of readily recyclable materials such as glass, aluminum, and copper. (Alamo Ex. 7 at 17). While there are some chemicals used in the panel manufacturing process, suppliers of solar panels that will be used for the Project have demonstrated that their products pass U.S. EPA's "Toxicity Characteristic Leaching Procedure" qualifying them as routine "solid" waste. (*Id.*; TR at 129-130).

Additionally, as testified by Mr. Herling, if a solar panel is damaged, there is nothing liquid or gaseous that can leak out of it. (TR at 46-47). Mr. Herling provided testimony regarding solar panels at a solar farm in California that was struck by a tornado. (*Id.* at 48). Those panels were damaged, but soil testing confirmed that no leak of any material had occurred. (*Id.*) Mr. Herling also testified that if a panel at the Project is damaged, Alamo will quickly be aware of the issue due to the constant monitoring provided by a supervisory control and data acquisition ("SCADA") system that will be used at the Project. (*Id.* at 47.) Panels will also be periodically inspected by on-site staff. (TR at 54-55).

Finally, Ms. Clippinger alleges that the mapping submitted by Alamo does not identify her water well, and CCPC argues that this alleged omission from the Application constitutes a rule violation. (CCPC Brief at 27). Notably, Ms. Clippinger does not identify where her water

well is, nor how it could possibly be affected by the Project. Even if rule compliance were still at issue (which it is not), there is no evidence to find that Alamo has violated any rule requiring the identification of water wells that "may be directly affected." OAC 4906-4-08(A)(4)(c). Moreover, the evidence in the record establishes that the Project will have no impact on groundwater.

Based on the benign nature of the panels, the Board has adequate evidence to find that the Project will have a minimal impact on soil and water.

6. The Board has Adequate Evidence to Find and Determine that Decommissioning Funding will be Available (CCPC Brief Section II.H)

Similar to CCPC's "concerns" regarding contamination, the only evidence that CCPC has regarding decommissioning is a "belief" that adequate funds will not be available to decommission the Project. (CCPC Brief at 27-28). At best, CCPC raises the highly speculative concern that because Alamo is allowed to select the means of financial security, the selected "security mechanism … may fail." (CCPC Brief at 27). There is no actual evidence in the record to support this conclusory statement, and the Board cannot rely on it in making its decision. *See In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture].")

In contrast, Alamo is required to post financial security, e.g. a decommissioning bond, to ensure that funds are available to pay for the net decommissioning costs. Alamo will retain an independent and registered professional engineer to calculate the net decommissioning costs, which shall be incorporated into the plan and reflected in the financial security. This net decommissioning estimate shall be recalculated at least every five years by an engineer retained

by Alamo and the financial security adjusted to reflect any increase in the net decommissioning costs. (Joint Ex. 1 at Condition 28; Alamo Ex. 1 at 39-40).

In addition, Alamo will prepare a decommissioning plan in compliance with Joint Stipulation Condition 28. (Joint Ex. 1 at 11). The decommissioning plan will outline a schedule of fewer than 12 months, which is the timeline CCPC requests. (CCPC Brief at 28). The decommissioning plan will specify responsible parties, require restoration of the Project Area, and require proper disposition of all project components. (Joint Ex. 1 at 11, Condition 28; Alamo Ex. 1 at 38).

The decommissioning plan also will require that the Project Area be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by the land owner. (Alamo Ex. 1 at 39). Restoration will include a return to the same or functionally similar preconstruction drainage patterns, including farm drainage tiles, decompaction of soil, and seeding with an appropriate, low-growing vegetative cover, such as clover, to stabilize soil, enhance soil structure, and increase soil fertility. (*Id.*)

As testified by Mr. Bonifas, Condition 28 of the Joint Stipulation "ensures that an effective plan can be put into place for the appropriate decommissioning of the Project so that the Project Area can be returned to another use after the end of the Project's useful life." (Alamo Ex. 9 at 5).

The Board had adequate evidence to find that the Project will be decommissioned, that financial security will be in place, and the decommissioning will have minimal impact.

7. The Board has Adequate Evidence to Find and Determine the Project will not Contribute to Noxious Weeds (CCPC Brief Section II.K)

CCPC argues that Alamo's application does not contain mitigation procedures to prevent damage to agricultural land. (CCPC Brief at 30). In so doing, CCPC attempts to shoehorn noxious weed control requirements into a general regulatory obligation to provide a "description of mitigation procedures to be utilized … to reduce impacts to agricultural land." (*Id.*, citing OAC 4906-4-08(E)(1)(c)). Alamo has in fact provided that description, and, in so doing, has provided the Board with adequate evidence to find and determine that the Project will not contribute to noxious weeds.

Alamo is committed to the control of noxious weeds, primarily through mechanical means (as opposed to the widespread use of commercially-available herbicides). (Alamo Ex. 7 at 9; Alamo Ex. 1 at 76; TR at 106). In addition, Alamo, like others near the Project Area, will be bound by Ohio law requiring the removal or destruction of noxious weeds upon notice. R.C. 5579.05.

In addition, the Joint Stipulation requires that

> The [vegetation management 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. The Applicant shall consult with the Ohio Seed Improvement Association prior to purchase of seed stock regarding the names of reputable vendors of seed stock and shall purchase seed stock used on this project from such recommended sources to the extent practicable and to the extent seed stock is available from such vendor(s).

(Joint Ex. 1 at 9, Condition 18).

According to Mr. Herling, even if Alamo is unable to purchase seed stock from such a vendor, it will still seek a source of seed that would not have noxious or invasive weed species. (TR at 151).

Based on the Project's commitments regarding the control of noxious weeds, the Board has adequate evidence to find that the Project will not contribute to noxious or invasive weeds.

8. The Board has Adequate Evidence to Find and Determine the Project's Effects on Wildlife will be Minimal (CCPC Brief Section II.L)

CCPC asserts that Alamo failed to appropriately conduct literature and field surveys of species in the Project Area, and that Alamo did not provide data to show that no harm to wildlife will occur. (CCPC Brief at 32, 34). CCPC is incorrect. In accordance with the Board's rules, Alamo conducted a literature survey as well as field surveys of animal species in the Project Area. (Alamo Ex. 1 at Exhibit G at 4-5 to 4-6). The Ecological Assessment conducted by Cardno includes information regarding rare, threatened, and endangered species, as acknowledged by CCPC. (CCPC Brief at 32). Despite CCPC's claims to the contrary, the Ecological Assessment also includes a discussion of other species:

> Common game species in southwestern Ohio include cottontail rabbit, northern bobwhite (quail), Canadian geese, gray and fox squirrels, mallard and other ducks, mourning doves, ringnecked pheasants, ruffed grouse, white-tailed deer, and wild turkey.[5] Other than the agricultural crops and livestock in the area, no commercially valuable species are anticipated to be present in the Project Area.

(Alamo Ex. 1 at Exhibit G at 4-5) (footnote in original).

The field studies conducted by Cardno included "[h]abitat observations and sensitive species assessment." (Alamo Ex. 1 at Exhibit G at 1-1). The Ecological Assessment specifically notes that "[w]ildlife observations during the field surveys were limited to common species in agricultural areas, including white tailed deer (Odocoileus virginianus) and gray squirrels (Sciurus carolinensis)." (*Id.* at Exhibit G at 6-2). The report goes on to state that:

> "Visual reconnaissance surveys … did not observe any [rare, threatened, or endangered, or "RTE"] species. The modification of the majority of available

[5]http://www.dnr.state.oh.us/Home/wild_resourcessubhomepage/ResearchandSurveys/WildlifePopulationStatusLanding

> habitat has likely degraded the quality and limited potential RTE habitat. … **During the field surveys, Cardno staff observed minimal wildlife use in the Project Area and observed no RTE species due to the Project Area being relatively low quality and highly disturbed.**"

(*Id.*) (emphasis added).

Despite the lack of RTE species observations, as Mr. Rupprecht indicated in his testimony, "Alamo Solar has prioritized avoidance measures for sensitive habitats [and] significant impacts to these habitats are not anticipated." (Alamo Ex. 11 at 4).

CCPC also raises concerns regarding bat populations in the Project Area. (CCPC Brief at 34).[6] To avoid any adverse impact to the Indiana bat, and in compliance with Joint Stipulation Condition 19, Alamo will "adhere to seasonal cutting dates … unless coordination with … ODNR and [U.S. Fish and Wildlife Service ("USFWS")] allows a different course of action." (Joint Ex. 1 at 9). In compliance with this condition, Alamo intends to continue to coordinate with USFWS to confirm that impacts to the Indiana bat are avoided.

Based on the literature review and field surveys described in the Application, as well as Alamo's commitments in the Joint Stipulation, the Board has adequate evidence to find that the Project's impact on RTE species and other wildlife will be minimal.

9. The Board has Adequate Evidence to Find and Determine that the Project's Effects on Nearby Crops and Livestock will be Minimal (CCPC Brief Section II.M)

CCPC argues that Alamo failed to evaluate the Project's impacts on wildlife and nearby crops and livestock, but in doing so totally ignores large segments of the testimony of Alamo witness Ryan Rupprecht, as well as sections of the Application discussing the lack of impact on

[6] Despite CCPC's claims, Alamo did not misrepresent USFWS findings included in the Application. Mr. Rupprecht **clarified** that the USFWS correspondence indicated that due to the project type, size, and location, no adverse effects were anticipated to species other than the Indiana bat, **including** the northern long-eared bat. (Alamo Ex. 1 at Exhibit G at Appendix B; TR at 310-311).

wildlife. Further, in contrast to CCPC's demands, post-construction monitoring of wildlife impact (which is not necessarily required by OAC 4906-4-08(B)(3)(c)) is not required for the Project, **because there will be a minimal impact on wildlife**.

Specifically, the Application states that:

> "**The Project would not significantly impact wildlife or wildlife habitat.** Information on the existing wildlife in the Project Area was obtained from a variety of sources, including observations during site surveys, and publicly available data from Federal and State agencies. Wildlife within the Project Area could potentially utilize the site habitat for foraging, migratory stopover, breeding, and/or shelter. Based on the current land use, species present in the Project vicinity are primarily associated with agricultural fields, pasture grasslands, isolated wooded lots, and wetland areas. Typical wildlife species observed during the field delineations included evidence of white-tailed deer and common woodland and grassland songbirds. Typical construction-related impacts to wildlife include incidental injury and mortality of juvenile and/or slow moving animals (e.g., salamanders, turtles, etc.) due to construction activity and vehicular movement; construction-related silt and sedimentation impacts on aquatic organisms; habitat disturbance/loss associated with clearing and earthmoving activities; and displacement of wildlife due to increased noise and human activities. However, **the Project has been sited to avoid and/or minimize such impacts. The Project has been designed locate the majority of infrastructure within active agricultural land, which only provides habitat for a limited number of wildlife species. The few birds and mammals that may forage within these fields should be able to vacate areas that are being disturbed by construction. On a landscape scale, there is abundant availability of similar agricultural fields within the Project Area and beyond.**"

(Alamo Ex. 1 at Exhibit G at 7-5 to 7-6) (emphasis added).

In addition, Mr. Rupprecht testified, both in written direct testimony and at hearing, that the Project will have minimal if any impact with respect to the exclusion of wildlife from the Project Area. CCPC evidently has no meaningful response to Mr. Rupprecht's testimony in which he describes how a Cardno team determined that deer in the area surrounding the Project Area would increase by less than 5%, or 0.01 deer per acre, as a result of construction of the Project, and assuming that all deer are excluded from the Project Area. (Alamo Ex. 11 at 2, 7).

Mr. Rupprecht testified that Cardno derived that figure by using:

> "ODNR data, because they have data for deer population for hunting management, so we compiled their information for Preble County. Using what's called a HUF factor, which is Habitat Utilization Factors, we determined the use of the different land uses within the Project Area and the deer use and, therefore, what the displacement would be when that habitat is no longer available to the deer … It's taking basically the estimated population of deer per acre or per square mile, depending on how you want to look at it, again applying a HUF factor to the available land use with and without the fence line in existence, and then what that change would be after the fence line exists."

(TR at 297-298).

Mr. Rupprecht further testified that even though Cardno used deer population as the basis for its less than 5% estimate, other wildlife would likely have the same reaction as deer to the construction of the Project, and thus the conclusion could be applied to other terrestrial species. (TR at 311). Thus, because the Project Area is composed of low quality wildlife habitat, the actual increase in wildlife that is displaced into the surrounding area will be minimal, despite the fact that the Project Area is largely surrounded by similar habitat.

CCPC relies on Ms. Clippinger's testimony to attempt to argue that the displacement of wildlife will be harmful to local citizens. (CCPC Brief at 35-36). Nothing in Ms. Clippinger's testimony, or in the remainder of the record, actually support CCPC's arguments. Ms. Clippinger testifies both that that "**[i]f** the coyotes' range is reduced by the fences, they are more likely to congregate near our farm and attack our calves" and "[t]he reduction of space for deer to occupy will pack them closer together, making the spread of disease easier among them. Lepto and Tuberculosis are two diseases common in deer that also infects cattle." (CCPC Ex. 2 at 9) (emphasis added). Ms. Clippinger makes a series of leaps and assumptions in her testimony that are either unsupported or flatly contradicted by the record in this case. Ms. Clippinger's speculative testimony cannot be relied on by the Board. *See In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-0693-GE-CSS, Entry on Rehearing, February 23, 2012 at ¶40 ("The

Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture].")

There is no evidence that coyote's range will be meaningfully reduced, based on the evaluation performed by Cardno described above. There is no evidence that coyotes will actually congregate near a farm, or that they will attack any animal (or calves) more frequently as a result of the Project. There is no actual evidence that deer will be "packed" closer together, much less that being in closer proximity will make the spread of disease easier. Finally, there is no evidence, either in Ms. Clippinger's testimony or otherwise, that the increased deer density (if it were to occur) would lead to increased infection in cattle. Simply stating that deer and cattle have diseases in common does not lend itself to this leap in logic.

Overall, as Mr. Rupprecht summarized in his testimony,

> "The Alamo Solar Project will have limited environmental impacts. The Project is proposed to be primarily built on land that has already been disturbed seasonally/annually for agriculture. The Project's most significant impact will come from the conversion of land used for agriculture to land used for the solar panel arrays. Alamo Solar has designed the Project to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species where possible."

(Alamo Ex. 11 at 8).

Based on the information in the Application, as well as other evidence, including Mr. Rupprecht's testimony, the Board has sufficient evidence to find and determine that the Project's effects on crops and livestock will be minimal.

10. The Board has Adequate Evidence to Find and Determine that the Project will Comply with Ohio's Solid Waste Requirements at R.C. Chapter 3734 (CCPC Brief Section II.P)

CCPC argues that Alamo failed to estimate the amount of "debris and solid waste" generated by the Project, and did not describe what would be done with "demolition waste". (CCPC Brief at 45). As an initial matter, R.C. 4906.10(A)(5) requires an applicant comply with

R.C. Chapter 3734, which is Ohio's solid waste statute. The Board's rule, cited by CCPC, refers to compliance with Ohio's **solid waste regulations**. (CCPC Brief at 45, citing OAC 4906-4-07(D)). Demolition debris, like that resulting from the demolition of a house, is not regulated as solid waste under R.C. Chapter 3734, nor under any solid waste regulations. Demolition debris is regulated under a completely different chapter of the Ohio Revised Code, Chapter 3714. R.C. 3714.01 expansively defines construction and demolition debris to mean "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways." Alamo is not required to show compliance with R.C. Chapter 3714 for the Board to issue a certificate. This alone is fatal to CCPC's argument.

However, even if Alamo was required to provide the Board with sufficient evidence to show compliance with R.C. Chapter 3714, it did so. Mr. Herling, recognizing that demolition waste is not solid waste, testified that any waste from demolition of a building would "be disposed of in a typical fashion that you dispose of that kind of waste and debris …." (TR at 162).

In addition, Alamo did estimate the amount of solid waste that would be generated, and provided evidence that the Project will comply with R.C. Chapter 3734. During construction, some solid waste will be generated, but it will be minimal. (*Id.* at 49). Primarily, this may include package-related materials, such as crates, nails, boxes, containers, and packing materials, damaged or otherwise unusable parts or materials, and occasional litter and miscellaneous debris generated by workers. (*Id.*) This waste, to the extent it does not meet the definition of construction and demolition debris, is regulated under R.C. Chapter 3734. Solid waste that cannot be re-used or recycled will be disposed of in a municipal landfill. (Alamo Ex. 1 at 49).

During operation, only exceedingly small amounts of waste will be generated, which will be of the same general nature as the waste generated during construction. (Alamo Ex. 1 at 50). No licenses or permits will be required for waste generation, storage, treatment, transportation and disposal. (*Id.* at 50-51).

Based on the record, the Board may disregard CCPC's arguments and conclude that the Project will comply with all solid waste disposal requirements.

11. The Board has Adequate Evidence to Find and Determine that the Project will have a Minimal Impact on Roads and Bridges and Traffic Near the Project Area (CCPC Brief Sections II.Q and II.R)

a. CCPC's Arguments Regarding the Project's Impacts on Roads and Bridges are Simply Wrong

Not only is CCPC's argument that Project did not comply with OAC 4906-4-06(F)(3) by not describing measures that will be taken to improve inadequate roads to the condition prior to the Project irrelevant to the Board's determination under R.C. 4906.10, it's also simply wrong. (CCPC Brief at 46).

The Application clearly describes measures that will be taken to improve adequate roads and repair roads and bridges, if necessary. The Route Evaluation Study attached to the Application as Exhibit D has an entire section devoted to mitigation measures. (Alamo Ex. 1 at Exhibit D at 10-11). In addition, Alamo is committed to work with local officials to repair any damage to roads resulting from construction. (Alamo Ex. 1 at 36). Alamo will also work with the Preble County Engineer, the Trustees for the impacted townships, and ODOT to ensure that any impacts to road surface conditions and traffic flow are accounted for and rectified. (*Id.*). Where possible, deliveries on single lane roads to the Project will be limited despite low traffic volumes in and around the Project Area. (*Id.*)

Finally, the Joint Stipulation entered into in this case with the Preble County Engineer, among other parties, requires Alamo to:

> "enter into a road use agreement with the appropriate local authorities prior to construction and subject to Staff review and confirmation that it complies with this condition. **The road use agreement shall contain provisions for the following:** (a) a preconstruction survey of the conditions of the roads; (b) a post-construction survey of the condition of the roads; **(c) an objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction;** and (d) a timetable for posting of a construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges for construction and for the posting of a decommissioning bond prior to the use or transport of heavy equipment on public roads or bridges for decommissioning."

(Joint Ex. 1 at 10, Condition 25) (emphasis added).

Based on the record, the Board has adequate evidence to find that the Project's impact on roads and bridges will be minimal.

b. <u>CCPC's Arguments Regarding the Project's Impacts on Traffic are Unfounded and Contradicted by Evidence in the Record</u>

CCPC asserts, without citation to any specific statement or evidence, that "Alamo realizes that its use of public roads for construction traffic will be a problem for the local farmers." (CCPC Brief at 48). CCPC goes on to argue that because a circumstance may occur in which construction traffic and farming traffic are unable to pass each other, oversize construction equipment should not be allowed on roads during the (undefined) "planting and harvest seasons." (CCPC Brief at 49). Alamo disagrees that its use of **public roads** for construction will be a problem for farmers. Alamo will implement a traffic management plan, as required by Joint Stipulation Conditions 24 and 25. (Joint Ex. 1 at 10). As Mr. Bonifas testified:

> "The traffic management plan would determine the routes that can be used by the contractor that's building the Project, and that would be shared with all of the local folks, assuming all the local authorities, the County Engineer, ODOT. Oversized loads would typically have an escort vehicle and probably in many cases where there's opportunity to encounter farming equipment, either in the spring during planting or at harvest times, those roads would be flagged. So if

> they knew they were bringing a delivery down the road, they would have a flagger to indicate you got to wait until the tractor gets by and then take the load down the road. That's just an example of a multitude of ways that you could use to manage traffic."

(TR at 224-225).

Mr. Bonifas went on to note that, for the other traffic plans that he has designed for solar projects "the contractors are typically very accommodating for the local landowners and the public that are using the roads on a regular basis." (*Id.* at 225).

Further, as acknowledged by CCPC witness Joanna Clippinger, agricultural traffic does not have priority over other traffic on a road. (TR at 475). In fact, in all the years that Ms. Clippinger has been farming her property in Preble County (on a farm that has been in her family for over 110 years), she has not had an issue with a blockage of the road because of equipment going against each other. (TR at 477). Implementation of the traffic management plan will prevent traffic problems from occurring.

The Board has sufficient evidence to find that the Project's impact on traffic will be minimal.

D. The Board Can Appropriately Delegate its Authority to Staff for the Post-Certificate Issuance Approval of Certain Plans

It is well-established in Ohio law that the Board can delegate responsibility for the fleshing out of certain certificate conditions to Staff. Yet CCPC devotes approximately two pages in its brief to a recitation of a dissent from a Supreme Court of Ohio case, to claim that the Board should not approve of the Joint Stipulation, because it allows "12 major plans" to be submitted to Staff following the issuance of the Certificate. (CCPC Brief at 51-55, citing dissenting opinion *In re Application of Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878). In so doing, CCPC repeats arguments made and rejected by the Board and the Supreme Court of Ohio in previous renewable generation cases.

1. Supreme Court and Board Precedent Allows for the Submission of Plans Post-Certificate Issuance

As the Court concluded in *Buckeye Wind*, "the board did not improperly delegate its responsibility to grant or deny a provisional certificate when it allowed for further fleshing out of certain conditions of the certificate." *Buckeye Wind* at ¶ 18. Specifically, in the *Buckeye Wind* certificate, conditions in the certificate required the applicant to submit to the Board's staff at various times after the issuance of the certificate:

- A final equipment delivery route and transportation routing plan
- One set of detailed drawings for the proposed project so that the staff can confirm that the final project design is in compliance with the terms of the certificate
- A stream crossing plan
- A detailed frac-out contingency plan
- A final electric collection system plan
- A tree clearing plan
- A final access plan
- A fire protection and medical emergency plan
- An avian and bat mortality survey plan
- A Phase I cultural resources survey program
- An architectural survey work program
- A screening plan for one specific property
- A determination of the probable hydrologic consequences of the decommissioning and reclamation operations
- A study identifying any Prime Farmlands
- Engineering techniques proposed to be used in decommissioning and reclamation and a description of the major equipment

In re Buckeye Wind, Case No. 08-0666-EL-BGN, Opinion, Order and Certificate, March 22, 2010, at 82-96.

These post-certificate plans and information to be submitted go well beyond the mere "white or gray screws" decisions that CCPC implies the *Buckeye Wind* decision was limited to (CCPC at 53). In addition, in all certificates issued to date to solar projects in Ohio, the Board has consistently allowed for the submission of a multitude of plans and information after the issuance of the certificate, as detailed in the table on the following page:

Post-Certificate[7] Plan or Submission[8]	Alamo Solar I, LLC (based on conditions in Joint Stipulation)[9]	Willowbrook Solar I, LLC, Case No. 18-1024-EL-BGN	Hecate Energy Highland, LLC, Case No. 18-1334-EL-BGN	Hardin Solar Energy LLC and Hardin Solar Energy II LLC, Case Nos. 17-0773-EL-BGN and 18-1360-EL-BGN	Hillcrest Solar I, LLC, Case No. 17-1152-EL-BGN	Vinton Solar Energy LLC, Case No. 17-0774-EL-BGN
Engineering Drawings of Final Project Design	X (Condition 3)	X	X	X	X	X
Public Information Program	X (Condition 9)	X	X	X	X	X
Complaint Resolution Process	X (Condition 10)	X	X	X	X	X
Phase I Cultural Resources Survey Program	X (Condition 14)	X	X		X	
Landscape and Lighting Plan	X (Condition 15)	X	X	X	X	X
Vegetation Management Plan	X (Condition 18)	X	X	X	X	X
Construction Access Plan	X (Condition 22)	X	X		X	
Traffic Management Plan	X (Conditions 24 and 25)	X	X	X	X	X
Decommissioning Plan	X (Condition 28)					
Frac-out Contingency Plan				X		
Architectural Survey Work Plan					X	

[7] Certificates issued to other solar projects: *In re Willowbrook Solar I*, LLC, Case No. 18-1024-EL-BGN, Opinion, Order and Certificate, April 4, 2019. *In re Hecate Energy Highland, LLC*, Case No. 18-1334-EL-BGN, Opinion, Order and Certificate, May 16, 2019. *In re Hardin Solar Energy LLC*, Case No. 17-0773-EL-BGN, Opinion, Order and Certificate, February 15, 2018. *In re Hardin Solar Energy II LLC*, Case No. 18-1360-EL-BGN, Opinion, Order and Certificate, May 16, 2019. *In re Hillcrest Solar I, LLC*, Case No. 17-1152-EL-BGN, Opinion, Order and Certificate, February 15, 2018. *In re Vinton Solar Energy LLC*, Case No. 17-0774-EL-BGN, Opinion, Order and Certificate, September 20, 2018.

[8] An 'X' denotes that the certificate allows a submission is to be made post-certificate issuance.

[9] As noted above, CCPC asserts that the Joint Stipulation allows twelve plans to be submitted post-certificate issuance. It's unclear to Alamo how CCPC arrived at that number, and CCPC does not specifically identify the twelve plans.

Finally, the plans to be submitted by Alamo following the issuance of the Certificate are still subject to review by Staff. Many of the conditions (9, 10, 14, 18, 24, and 28) expressly require Staff to either "review and approve" or "confirm that [the plan] complies" with the relevant condition. (Joint Ex. 1 at 7-11).

Because the plans that are proposed to be submitted to Staff post-certificate issuance in this case are no different from plans allowed to be submitted post-issuance in other Board decisions, and as affirmed by the Supreme Court of Ohio, CCPC has no basis for arguing against the appropriateness of post-certificate submittals.

2. CCPC's Procedural Due Process Rights Have Not Been Harmed

In making its argument that it has been deprived of its procedural due process rights, CCPC replicates arguments made by the citizen-intervenors, Union Neighbors United ("UNU"), in the *Buckeye Wind* case. (*Compare* CCPC Brief at 54 to Argument on Tenth Proposition of Law, Appellant's Merit Brief, pp. 46-48).[10] Just as the Court in *Buckeye Wind* rejected UNU's argument, so should the Board reject CCPC's argument here.

The cases cited by CCPC (and UNU) are simply not applicable and reveal a misunderstanding of the process that the General Assembly has approved for cases before the Board. CCPC cites *Mathews v. Eldridge* (1976), 424 U.S. 319 along with other cases for the proposition that administrative proceedings must comport with due process. (CCPC Brief at 54). As an initial point, the holdings in these cases are not controlling on the matter at bar because all found no due process violation. *Mathews v. Eldrige,* supra at 349; *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App. 3d 680, 692-693; and *Egbert v. Ohio Department of Agriculture*

[10] Available here: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=676280.pdf

(2008), 2008-Ohio-5309; ¶ 39. CCPC also cites to *Seitz v. All Creatures Animal Hosp.* (Nov. 15, 1985), Ashtabula App. No. 1192, LEXIS 9306.

However, the *Seitz* case involved the conduct of a hearing referee who considered post-hearing statements as evidence made against the applicant's interest without notice or knowledge of the appellant and without any opportunity to confront or cross-examine the witnesses who made the statements against her. (*Id.* at *2). In contrast, Alamo has provided the Board with sufficient evidence to make the required determinations under R.C. 4906.10(A) and pursuant to its statutory authority, impose terms and conditions in the Certificate.

The fact that Alamo will submit information to the Board and/or its Staff as a condition of a future certificate does not rise to the level of a governmental decision warranting the protections of due-process. *Mathews v. Eldrige,* supra at 332 ("[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.") Moreover, unlike the circumstances in the *Seitz* case, the Board has already held an evidentiary hearing and will issue its decision on the statutory criteria under R.C. 4906.10(A). Alamo's submission of information, as required by the Joint Stipulation, is intended to ensure compliance with the future certificate. This is not the equivalent of a governmental decision entitling CCPC to the right of an evidentiary hearing.

In making its due process argument, CCPC ignores the process set up by the General Assembly and certain statutory principles that the Board must follow. First, R.C. 4906.04 provides, in part, that "[n]o person shall commence to construct a major utility facility in this State without first having obtained a certificate for the facility." Because an applicant cannot construct a facility without a certificate, this means that the Board must evaluate proposed

projects, not those already built. As the Board's Staff recognized in its initial brief, the Board must evaluate the criteria set forth in R.C. 4906.10 with respect to the estimated impacts of such proposed projects and may impose any terms and conditions it believes necessary.

Second, applying the three part test in *Mathews* demonstrates the constitutional adequacy of the Board's administrative proceeding. The "private interest at stake" was already considered by the Board in the evidentiary hearing at which CCPC (and other intervenors) had the opportunity to cross-examine Staff and Alamo witnesses. The post-certificate information is designed to protect that private interest by making sure that the Applicant has complied with the conditions that will be imposed. With respect to the risk of erroneous deprivation of that interest and the probable value of additional procedural safeguards, there is no risk of an erroneous deprivation.

With respect to the government's interest, requiring an evidentiary hearing on information submitted in compliance with the Certificate Conditions would impose significant fiscal and administrative burdens on the Board and its Staff far outweigh any countervailing benefits. It should also be noted that CCPC is fully entitled to follow the formal complaint process already provided in R.C. 4906.97 and 4906.98 and OAC Chapter 4906-7 if any complaint is not resolved by the informal complaint process recommended in the Joint Stipulation. (Joint Ex. 1 at 7, Condition 10).

Finally, CCPC has participated fully in these proceedings. It has presented its own testimony and witnesses, and has cross-examined Alamo and Staff witnesses. It has had full opportunity to raise its concerns regarding the Project's impacts. CCPC has received all of the process that it is due. CCPC has no basis for claiming that conditions calling for information submittals post issuance of a certificate rise to the level of a due process violation.

3. CCPC can submit a Complaint to Alamo and/or the Board if any Issues Arise Post-certificate Issuance

CCPC attempts to make an issue of the fact that pre-construction meetings are not open to the public, and that Staff's post-certificate decision-making will be in "secrecy". (CCPC Brief at 54). The public, however, has no role to play at a pre-construction meeting. As Staff witness James O'Dell testified:

> "The purpose of … preconstruction conferences is to make sure that the Applicant is aware of their responsibilities in the Board Order, obviously, and for the ability of Staff to communicate with the Applicant those responsibilities. … The intent is for the Applicant and the Staff to communicate and for the Applicant to understand clearly the Board's expectations."

(TR at 421).

Thus, public participation in the pre-construction conference is not necessary to achieve the goals of the meeting.

Moreover, Staff and not CCPC is obligated to continue to review the Project and many plans submitted post-certificate issuance to ensure that the Project is in compliance with the conditions of the certificate. (Joint Ex. 1 at 7-11, Conditions 9, 10, 14, 18, 24, and 28; TR at 422 (testimony from Staff witness James O'Dell describing the Board accepting a plan that complies with a condition). The pre-construction conference is just another step in that process.

If any member of the public has a concern with any activity occurring under the Project's certificate, it will be able to use the complaint resolution process required under the Joint Stipulation. (Joint Ex. 1 at 7, Condition 10). If that does not resolve the concern, a member of the public can submit a complaint to the Board. What the public member cannot do is assume the Board's and its Staff's role in ensuring certificate compliance.

III. CONCLUSION

CCPC makes no serious effort to argue that the Project does not meet the applicable statutory standards under R.C. 4906.10(A). Instead, CCPC devotes the vast majority of its brief to making a red herring arguments that the Application submitted by Alamo does not meet all relevant regulatory requirements for an application and that the Board cannot delegate its authority to Staff to allow for the post certificate issuance submittal of certain plans. CCPC is wrong on both counts.

The Application, as previously determined by the Board, meets the requirements of OAC Chapter 4906-4 and, taking the record as a whole, the Board has been provided sufficient evidence to make all of the findings required by R.C. 4906.10(A). Ohio law also clearly establishes that the Board can delegate responsibility for compliance with certificate conditions to Staff. Given the record in this proceeding, Alamo's application for a Certificate should be granted subject to the recommended conditions contained in the Joint Stipulation, without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 27th day of September 2019.

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Summary: Reply Brief of Alamo Solar I, LLC electronically filed by Mr. Michael J. Settineri on behalf of Alamo Solar I, LLC