

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of	:	
Angelina Solar I, LLC, for a Certificate	:	Case No. 18-1579-EL-BGN
of Environmental Compatibility and	:	
Public Need to Construct the Angelina	:	
Solar Farm.	:	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

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INTRODUCTION

The Ohio General Assembly declared renewable energy development to be lawful and important to promote a diversified state energy portfolio. Many farming families welcome the economic and tax opportunities that a renewable energy development, such as Angelina Solar I Inc., (“Project”) can bring to the local community. There are a limited number of sites in Ohio that can support a commercial-size solar farm. The Angelina Project will occupy up to 827 acres within a 934-acre area and there will only be an estimated impact to forestland of 0.07 acres being cleared. This preserves the wooded corridors of the Project area. The purpose of the Project is to produce and deliver clean, renewable electricity to Ohio Electric system and serve the needs of Ohio’s electric utility companies and their customers. Preble County is an ideal location for this solar farm.

The proposed Project is not one hundred percent impact free. Improvements and maintenance to local roads will be required and made. Landscape and lighting plans will be addressed and minimized where possible. Though there is opposition to this project, it

is the Board’s statutory job to analyze and review the expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. The conditions proposed by Board Staff to address and mitigate impacts and modified by the Stipulation and Recommendation, are supported by a broad range of interested parties. Staff respectfully requests that the Board adopt the proposed Stipulation and Recommendation.

BACKGROUND AND PROCEDURAL HISTORY

On December 3, 2018, Angelina Solar I, LLC¹ (“Angelina” or “Applicant”) filed this application to construct and operate a commercial solar farm in Preble County, Ohio. Prior to filing the application, Applicant engaged in certain public outreach activities, including filing a project descriptive pre-application letter on October 22, 2018 and holding a public informational meeting on November 15, 2018.

The application purposed to construct arrays of ground-mounted photovoltaic (PV) modules, commonly referred to as solar panels, in Israel and Dixon Townships in Preble County. The project would also include associated support facilities, such as access roads, up to four meteorological stations, pyranometers, buried electrical collection lines, inverter pads, and a substation. The project would occupy up to 827 acres within a 934-acre project boundary, and is projected to generate 80 MW. The Staff

¹ The Applicant is owned by Blue Planet Renewable Energy, LLC, a joint venture partnership between MAP Energy, Inc. and Open Road Renewables, LLC.

completed its investigation and issued its Report of Investigation (“Staff Report”) on April 15, 2019. Staff Ex. 1.

A Joint Stipulation and Recommendation was filed by a number of parties on June 14, 2019. Joint Ex. 1. The signatory parties, in addition to the Applicant, included the Board Staff. The Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Board of Trustees of Israel Township, the Preble County Planning Commission, and the Ohio Farm Bureau Federation. The Eaton Community School District intervened in this case, but is not a signatory party to the Stipulation. Though not a signatory party, the school district offered no testimony in opposition to the Stipulation. The Concerned Citizens of Preble County, LLC, and individual citizens Robert Black, Marja Brandly, Campbell Brandly Farms, LLC, Michael Irwin, Kevin and Tina Jackson, Vonderhaar Family Arc, LLC, and Vonderhaar Farms, Inc. (collectively “CCPC”), also intervened and actively participated in the case, opposing the Project but did not sign the Stipulation.

The initial adjudicatory hearings commenced on July 31, 2019 and ran through three different days and concluding on August 12, 2019. Testimony was provided by seven (7) Applicant witnesses, three (3) intervenor witnesses, and eight (8) Staff witnesses. A rebuttal hearing was held on September 10, 2019 where the Applicant presented rebuttal testimony of three (3) witnesses in support of the project. All parties received a full and fair opportunity to be heard.

In order for a project to be recommended for approval to the Board, the Board’s Staff must investigate an application and recommend conditions to the Board to mitigate

or minimize impacts to the project environment. Staff conducted its investigation and proposed comprehensive recommendations for the Board's consideration in order to address and reduce Project impacts to reasonably acceptable levels. A number of those conditions were significantly expanded through the negotiations that resulted in the Stipulation. Staff submits that these conditions, as modified by the Stipulation, will allow this project to lawfully move forward under the requisite statutory criteria. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

DISCUSSION

I. The Board should determine the Project, with conditions as recommended in the Staff Report as modified by the Stipulation and Recommendation, satisfies the criteria of R.C. 4906.10.

After a full investigation, Staff determine that the proposed facility will have minimal environmental impacts. Though the proposed project will produce electricity, it will not pollute the air and will not use water. Angelina will have a negligible environmental impact and, most definitely, have the minimum adverse environmental impact in comparison to other electricity generating methods.

Staff's review analyzed the socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies,

pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and explains Staff's recommendations related to each of the criteria.

Staff believes that its recommended conditions will adequately mitigate any impacts and allow the Board to find that the Angelina project, with the Stipulations suggested conditions, will have an overall minimal adverse environmental impact. Negotiations in this case brought about stricter conditions that further minimize environmental impact. The Staff Report provides the Board with an evidentiary basis for determining the project meets all of the R.C. 4906.10 criteria. Staff recommends that the Board issue a certificate containing the conditions in the Stipulation.

A. R.C. 4906.10(A)(1) – Basis of Need

Because the proposed facility is neither an electric transmission line nor a gas pipeline, R.C. 4906.10(A)(1) does not apply to this Project. Staff recommends that the Board find that this requirement is not applicable to this facility.

B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact

The Board must determine that nature of the probable environmental impact of the facility. Staff's evaluation, set forth in its Report of Investigation, Staff Ex. 1 at 12-21, is adopted by the Stipulation.

The Staff Report found the majority of land use to be utilized for the project is agricultural in nature and that the project footprint does not include any major population

centers or industries other than farming. Staff. Ex. 1 at 12. There are no national scenic trails, national wildlife refuges, or state wildlife management areas within five miles of the project areas. *Id.* Landscape and vegetative screening will be used to minimize visual impacts, and the panels would be installed with anti-glare coating. Prior to commencement of any construction the Applicant shall prepare a landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility and this plan shall include measures such as fencing, vegetative screening and good neighbor agreements. Joint Ex. 1 at 7.

The Project will not impact any known cultural resources within a 2-mile area, and, as provided in the Stipulation, the Applicant shall prepare a cultural resources survey for the project in conjunction with the Staff and the Ohio Historic Preservation Office. , Co. Ex. 6 at 10, Joint Ex. 1 at 7.

Staff found the Applicant's economic analysis to be reasonable. The economic impacts, in terms of jobs, earnings, and output, both locally and to the State of Ohio, were determined to be positive. Staff Ex. 1 at 15.

While considering the economics of the project, Staff and the Applicant noted that the Angelina project should generate an estimated \$560,000 annually for the Preble County taxing district, Easton Community Schools, as well as Israel and Dixon Township, based on a Payment in Lieu of Taxes (PILOT) plan in which Open Road Renewables would pay \$7000/MW annually for an 80 MW facility. Staff Ex. 1 at 15, Co. Ex. 6 at 6. This revenue will be distributed pro rata to the Preble County taxing district, Easton community Schools, as well as Israel and Dixon Townships. Staff Ex. 1 at 15.

The Applicant, prior to construction, committed to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration. Joint Ex. 1 at 11.

The Project will incorporate maximum feasibility water conservation practices. Joint Ex. 1 at 16. No ponds or lakes will be impacted by the facility during construction or operation. Staff. Ex. 1 at 17. No listed animal or plant species were identified in filed surveys, but because the project area is within the range of the state and federal endangered Indiana bat and the state and federal threatened northern long-eared bat, Angelina will adhere to seasonal cutting dates of October 1 through March 31 for removal of trees three inches or greater in diameter to avoid impacts to these bats, if they are present in the project area. Staff Ex. 1 at 18, Joint Ex. 1 at 9.

Traffic should only be affected during the construction phase. There is no evidence that the impact to traffic during construction of the facility would be any greater than that created by current farming operations, or any effect at all once construction was complete. The agreed-upon conditions require the Applicant coordinate any road access restrictions with the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. Joint Ex. 1 at 10.

Staff found that operational noise would be relatively minor, and would only occur during the daytime hours. According to the Applicant's noise expert, David Hessler, sound from the substation would be "inaudible" at homes near the Project area. Co. Ex. 14 at 4 – 5.

Finally, in addition to the conditions recommended in the Staff Report, signatory parties agreed that local fire and emergency management services provider will be trained on how to respond to emergency fire services (EMS) at the project and safety meeting will be held on ongoing bases. Additionally, the applicant agreed that if local fire and EMS lack specialized equipment needed to appropriately respond to an emergency at the project, the Applicant shall provide such equipment. Joint Ex. 1 at 11.

In conclusion, Staff's report indicated that the Angelina project's nature of the probable environmental impact had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff's recommended conditions and the Stipulation's conditions when issuing a certificate.

C. R.C. 4906.10(A)(3) – Minimum Adverse Impact

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Those conditions have been further modified by the Stipulation, even further minimizing any potential impacts.

D. R.C. 4906.10(A)(4) – Electric Grid

The Project must be consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facilities will serve the interests of electric system economy and reliability. Staff found that the Project, as conditioned, would satisfy that requirement. The record contains no evidence to the contrary, and Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4). Staff Ex. 1 at 25.

E. R.C. 4906.10(A)(5) – Air, Water, Solid Waste and Aviation

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. The Applicant will hire a licensed construction firm with knowledge and experience in dust minimization to comply with those rules. Staff Ex. 1 at 26.

Construction nor operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary permits for construction and operation sufficient to comply with the requirements of R.C. Chapter 6111. Staff Ex. 1 at 27. The record reveals no dispute on these points.

Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff Ex. 1 at 27. While CCPC raised concerns about toxic materials associated with the solar panels, it offered no evidence that panels contain any such

materials. CCPC Ex. 2 at 5. Staff believes that solid and hazardous waste disposal laws will apply, be complied with by the Applicant, and are not disputed.

There are no public use airports, helicopter pads, or landing strips within five miles of the project, and no aeronautical study regarding glare was needed for this Project. The Ohio Department of Transportation Office of Aviation identified no impacts on local airports. Staff Ex. 1 at 27.

Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(5).

G. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity

According to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Fire Protection Association. Staff Ex. 1 at 28. Angelina will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to a solar farm. *Id.* Through negotiations, Angelina agreed to an additional condition (Stipulation Condition #28) to provide multiple training opportunities, on-going safety meetings, and any specialized equipment that responders may need to appropriately respond to an emergency at the Project. Joint Ex. 1 at 11.

Angelina conducted a public information meeting and provided copies of its application to all relevant local officials. Staff Ex. 1 at 28. Those officials, including the Preble County Commissioners, the Boards of Trustees of Israel and Dixon Townships, the Preble County Planning Commission, the Preble, Soil and Water Conservation District, and the Preble County Engineer, have been actively involved in the negotiations and are signatory parties to the Stipulation and Recommendation.

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

H. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land

According to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles. Staff Ex. 1 at 30. CCPC and its members operate farms in the area that are adjacent to the Project boundary and are susceptible to possible impacts caused by broken drainage tiles. CCPC Ex. 2 at 3, CCPC Ex. 4 at 3.

CCPC witness testified that the Stipulation was inadequate because it should require Angelina to consult with all landowners whose land drains into the project area and all landowner whose land receives drainage from the project to make sure that all underground tiles and surface drainage ways are found. CCPC Ex. 3 at 2. And further that

the “upstream and downstream landowners may be aware of tiles in existence about which the Applicant and the owner of the land in the Project Area are not aware.” *Id.* And the Applicant is doing just that. In testimony provided by the Applicant, it is “consulting with the owners of agricultural land participating in the Project and other readily available public resources to ascertain, to the extent practicable, the type, size and location of all function drain tile in the Project Area.” Co. Ex. 6 at 10. Applicant witness Herling went on to say that a map will be created showing drainage tile before construction begins and the Applicant will avoid damage to drainage tile or, if Applicant becomes aware of damage, Applicant will promptly investigate the matter and use reasonable efforts to promptly repair any damage. *Id.* At 10 – 11.

Condition 16 of the Stipulation relates to the repair of damaged drainage tile. Staff witness Bellamy testified that “Functioning drain tiles are important to the continued operation of the agricultural crop fields. Staff recommends through condition 16 that the Applicant avoid drain tiles when possible and that any drain tiles that are damaged are repaired.” Staff Ex. 10 at 3. As contained in the Stipulation, Condition 16 reads:

The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning surface and subsurface field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas, whether such drainage systems are publicly or privately maintained. Benchmark conditions of surface drainage systems shall be documented prior to construction, including the location of grassed waterways. Any tile installation or repairs shall be performed in accordance with applicable provisions of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage or Water Table Control, ASTM F499-02 (2008), to the extent practicable. If uncertainty arises

concerning the proper procedures for tile repair, Applicant may consult with the local Soil & Water Conservation District or a USDA Natural Resources Conservation Service representative for privately maintained tile, and shall consult with the County Engineer for tile located in a county maintenance/repair ditch, as delineated in Document A, attached hereto. Damaged 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 modern equivalent at the Applicant's expense. When repairing tiles in a county maintenance/repair ditch, the Applicant shall give reasonable notice of such repairs to the County Engineer and Staff. The County Engineer or his/her representative shall have the right to visually inspect and approve the repair work performed prior to backfill. If the County Engineer does not approve the repair work in a timely manner, Staff shall have the right to visually inspect and approve the repair work performed prior to backfill. If the opinion of the County Engineer and the opinion of Staff on approval of the repair work differ, Staff shall have the final authority to approve the repair work. As stated in the Application, the Applicant will develop a Stormwater Pollution Prevention Plan that will require the utilization of silt fences during construction and the prompt removal of construction silt from drainage ditches when necessary for continued efficient drainage. The Applicant shall provide the Soil & Water Conservation District and the County Engineer with a single point of contact with the Applicant after construction is completed to address any resource concerns.

Joint Ex. 1 at 8.

Staff recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(7).

II. R.C. 4906.10(A)(8) – Water Conservation Practice

Construction of the facility nor operation of the facility will require the use of significant amounts of water. In fact, no water is needed for any function, and no water

or wastewater discharge is expected. Staff Ex. 1 at 31. Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

III. The Board should determine that the Stipulation meets the three-part test for reasonableness.

Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. See, *e.g.*, *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361- EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The Board must determine whether the agreement, which involved a substantial amount of time and effort by the signatory parties, is reasonable and should be adopted. The Board has used the following criteria to consider the reasonableness of a stipulation:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Result of Serious Bargaining

All intervenors were given an opportunity to participate and the Stipulation is the product of an open process. Parties were all represented by counsel and all parties to this proceeding participated in settlement discussions. Co. Supp. Ex. 7 at 2. As Angelina's witness Herling testified, "[t]here were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests." *Id.* Therefore, the Stipulation is a product of serious bargaining among capable, knowledgeable parties.

B. Benefits the Public Interest

In keeping with the public interest, this Project will generate clean and quiet renewable electricity. Co. Supp. Ex. 7 at 2. In addition, the Project will benefit the local economy through jobs created during construction, additional new jobs to support operation, and new tax revenue. *Id.* In addition, Applicant witness Herling testified that the Project would create 518 to 1,076 direct and indirect jobs during construction, and 19 to 22 jobs during the operation of the facility. Applicant Ex. 6 at 6. Applicant witness

Herling testified that Angelina anticipated making payments, in addition to wages and other services, in lieu of taxes in excess of \$560,000 per year. *Id.*

Another public benefit brought about through negotiations is that the Stipulation revised Staff's recommended condition so that setbacks will be measured from the road right-of-way rather than the edge of roadways and this change will result in larger setbacks from roadways and address any concerns about visibility at crossroads. Applicant Supp. Ex. 7 at 2 – 3. The Stipulation also contains detailed language on drainage systems, both public and private, and requires consultation with the County Engineer or Board Staff prior to repairing county maintenance/repair ditches. *Id.* This change ensures that existing drainage in the Project Area is protected. *Id.*

The Stipulation improved provisions for security of the facility, minimization of visual impacts, increased cooperation and involvement by local officials, and training and equipment for first responders. *Id.* Accordingly, the Stipulation benefits the public interest. Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10,

C. Does not violate any important regulatory principle or practice

Applicant witness Herling testified that the Project would not violate any important regulatory principle or practice. Applicant Supp. Ex. 7 at 4. Staff submits that there is no evidence of record to the contrary, and supports the Applicant's position.

CONCLUSION

Staff respectfully requests that the Board adopt the Stipulation and Recommendation. Staff further specifically requests that the Board condition any certificate issued in this case by adopting the conditions set forth in that Stipulation and Recommendation.

Respectfully submitted,

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**On behalf of the Staff of
The Ohio Power Siting Board**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 18th day of October, 2019.

/s/ Jodi J. Bair

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