

**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.

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD

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INTRODUCTION

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”), argue that this application is incomplete and fails to satisfy the necessary statutory criteria. However, the conditions contained in the Stipulation and Recommendation (“Stipulation”) clearly require that the Angelina Solar I, LLC (the “Project”) meet all of the necessary criteria set forth in Ohio Rev. Code 4906. The Board required its Staff to evaluate the possible impacts of the proposed project and determine whether reasonable steps have been taken to minimize such impacts. The Staff’s analysis and findings are explained in the Staff Report of Investigation (“Staff Report”) filed on April 15, 2019. To the extent that Staff is unable to determine that impacts will be adequately mitigated, Staff recommends conditions to be implemented in the final

planning. But the facility will not be constructed unless and until all of the conditions set forth in the Stipulation are satisfied. With a wide range of interested and knowledgeable parties, including the Applicant, the signatory parties have modified and expanded those conditions, and recommend that the Angelina Solar project be approved.

DISCUSSION

Intervenor CCPC argues in its Initial Brief filed in this case that “[t]he most troubling aspect of this case is the scarcity of information in the Application for evaluating these threats and for identifying measures to avoid or minimize these threats.”¹ The “threats” referred to are exposure to unsightly views, intrusive lighting, noise, crop and livestock destruction by wildlife, loss of wildlife, noxious and invasive weeds, flooding and wet fields, drainage tile damage and other hazards.² However, the intervenor CCPC ignores the evidentiary record in this case that addresses all of these “threats”. The record created here consists of over XXX days of hearing demonstrates how each of the issues raised by CCPC is adequately addressed or not a “threat”.

In addition to the “threats”, intervenors argue that the Application contains so little empirical evidence on the issues that the “Board cannot make an informed judgment as to whether or not the Project represents the minimum adverse impact.”³ Moreover, CCPC argues that this approach constitutes an unlawful delegation of responsibility to the Board Staff.⁴ Both of these arguments are wrong and should be rejected.

¹ CCPC Brief at 2.

² *Id.*

³ CCPC Brief at 5.

⁴ CCPC Brief at 62.

The Ohio Supreme Court in *Buckeye Wind* expressly denied CCPC's claim of unlawful delegation to Staff. In the first *Buckeye Wind* case the Court stated:

We stated in *In re Application of Am. Transm. Sys., Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶ 20-21:

R.C. Chapter 4906, the board's enabling statute, expressly allows the board to delegate many responsibilities to subordinates. * * * R.C. 4906.02(C) states, "The chairman of the public utilities commission may assign or transfer duties among the commission's staff." * * *

One responsibility, however, cannot be delegated: "the board's authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board itself." R.C. 4906.02(C).

Appellants argue that the board improperly delegated its decision making authority The issues characterized as improperly deferred, however, simply require additional submissions * * * to staff before the preconstruction conference.

In re Application of Buckeye Wind, L.L.C., 2012-Ohio-878, ¶¶13-14. Further, the Court noted that

R.C. 4906.10(A) allows a certificate to be issued *upon such conditions as the board considers appropriate*. The statutes authorize a dynamic process that does not end with the issuance of a construction certificate. The General Assembly vested the board with authority to allow its staff to monitor * * * compliance with conditions that the board has set, conditions upon which the neighbors already had the chance to be heard.

Id. at ¶16 (emphasis in original). The Court noted that "[s]imply because certain matters are left for further review and possible public comment does not mean that they have been improperly delegated to staff." *Id.* at ¶17. The Board does not improperly delegate

its responsibility or authority when it allows for the further “fleshing out of certain conditions of the certificate” by ordering post-certificate submissions to its Staff. *Id.* at ¶18.

CCPC’s entire legal argument regarding improper delegation of authority to Staff is based on the *dissenting* opinion of the *Buckeye Wind* decision.⁵ CCPC argues that the Board should instead adopt the reasoning of the dissenters in the *Buckeye Wind* case, claiming that the plans in this Angelina case go “well beyond the activities” that were acceptable in the *Buckeye Wind* case.⁶ However, the appellants in *Buckeye Wind* raised four separate propositions of law alleging improper delegation, disputing the propriety of post-certificate review of transportation routing plans, location of collection lines, a determination of blade throw potential, and the relocation of turbines. CCPC’s argument that the post-certificate submissions in this case go “well beyond” those in *Buckeye Wind* is disingenuous. The same arguments, including the alleged lack of meaning public participation, have all been raised to the Court before and were properly rejected. The Board should reject them here as well.

I. Visual Impacts

CCPC complains that the Application fails to provide the information about the Projects’ visual impacts and mitigation measures required by Ohio Adm.Code 4906-08(D)(4).⁷ This rule requires a photograph or artist’s sketch of the proposed facility and a

⁵ See CCPC Brief’s reliance on the dissent in the *Buckeye Wind* decision at 62 - 64.

⁶ CCPC Brief at 65.

⁷ CCPC Brief at 5.

description of measures that will be taken to minimize visual impacts created by the facility. The Application contains very detailed depictions of the facility.⁸ And there is an extensive plan contained in Exhibit I to the Application entitled Visual Resource Assessment. This plan is 84 pages long and goes into details regarding the existing visual character, land use setting, landscape character, visually sensitive resources among other visual issues. The assessment also provided a viewshed analysis and provides filed verification results and a visual simulation. Further, Applicant witness Robinson testified that the visibility of solar panels drops off drastically with distance.⁹ The Staff Report also discussed the assessment and recommends that “[p]lanting should be selected in consultation with the Ohio Pollinator Habitat Initiative. These features would enhance the visual appeal of the project, enrich local wildlife habitat, and benefit the local farming community.”¹⁰ Angelina provided witnesses to support these analyses at the hearing and they were subject to cross-examination by all parties to the case. The requirement complained of regarding the visual impacts of the proposed Project were well-covered by the Applicant, have been reviewed by Board Staff, and are a part of the evidentiary record. Moreover, other signatory parties to the Stipulation found the Applications and conditions in the Stipulation to be satisfactory as to the Project’s visual impacts.

CCPC complains that the Application describes mitigation efforts that *could* be undertaken to mitigate the visual impacts, rather than committing to efforts that *will* be

⁸ Application, Ex. I

⁹ Tr. II at 186.

¹⁰ Staff Ex. 1, Staff Report at 19.

undertaken.¹¹ What the rule requires is that the Application describe measures that will be taken. It is not necessary that the Applicant list the specific type of pollinator habitat¹², for example, that will be selected.

The Applicant described the measures it would take. It committed to develop a landscaping plan. That plan will include a variety of options, including those articulated that would be dependent on “specific issues” to be addressed. A fully developed plan is simply not practical until a project plan is finalized. Additionally, staff made concrete recommendations such as the landscape and lighting plan shall address aesthetic and lighting impacts where adjacent non-participating parcel contains a residence with a direct line of sight to the Project.¹³ The landscape must include opaque fencing and vegetative screening.¹⁴

CCPC states in its brief that ‘neither the Application nor the Stipulation require Angelina to completely screen the neighbors’ houses from the intrusive views of solar panels and fences.’¹⁵ The neighbors are not, at the present time, blocked from seeing one another’s’ properties and the commercial farming that occurs. Nor do the Board’s rules require a complete visual blocking of the Project. The rules require that measures be taken to minimize, not eliminate, visual impacts, and that such measures include visual, but not necessarily vegetative, screening. Both the Application and Condition 11

¹¹ CCPC Brief at 9.

¹² CCPC’s reference to Condition 18’s discussion of the implementation and maintenance of pollinator-friendly plantings as “inadequate to provide for meaningful mitigation” completely misreads the Stipulation and Recommendation. Condition 11, not 18, relates to visual impact mitigation. Condition 18 relates to vegetation management within the project area in general.

¹³ Staff Report at 34.

¹⁴ *Id.*

¹⁵ CCPC Brief at 10.

recommended by the signatory parties include fencing, for example, as a means of addressing aesthetic impacts.

Similarly, the Staff Report and Stipulation adequately condition the impacts of lighting at the facility. CCPC's complaint that the Application does not provide the actual locations of lights and is therefore statutorily inadequate demands more than the law requires¹⁶. Ohio Admin. Code 4906-4-08(D)(4)(f) requires that the Applicant describe measures to minimize any adverse visual impacts created by lighting at the facility. Condition 11 of the Stipulation requires Angelina to prepare a lighting plan to address those impacts prior to construction. Both the Application and the Staff Report note that all lights would be shielded, downward- or inward-facing and motion-activated.¹⁷

II. Noise

Noise occurring during construction is different than noise created during operations. Construction noise, understandably, will be much louder than operational noise. But CCPC argues that the pile driving that will occur during the construction violates Ohio Adm. Code 4906-4-08(A)(3).¹⁸ But CCPC ignore the fact that the Stipulation adopted a specific condition to deal with construction noise.¹⁹ Construction activities are limited to daytime hours and will not occur at night, with louder activities such as pile driving and blasting even further restricted. Staff respectfully submits that

¹⁶ CCPC Brief at 12.

¹⁷ Application at 89, Staff Report at 8.

¹⁸ CCPC Brief at 20.

¹⁹ Join Ex. 1, Stipulation at 7.

these conditions reasonable limit noise from construction, and reasonably minimizes the impacts of such noise.

CCPC also criticizes the noise from operations, and specifically those likely to be generated by the inverters. The only significant source of operational noise from the Project will be the substation and associated transformer. Company witness Hessler testified that there would be no significant change in what is audible at the adjoining residences.²⁰ CCPS's Brief focused on Mr. Hessler's report and its reliance on a study performed for the Massachusetts Clean Energy Center. Questioning focused on sound levels at a distance of 150 feet from the inverters.²¹ Mr. Hessler also testified that he "was comfortable that these units are going to be at least several hundred feet from any boundaries. There's plenty of room in the Project to put these far away from anyone."²² Mr. Hessler, an engineer with over 28 years of engineering consulting specializing in acoustical design and analysis of power generation and industrial facilities, including solar projects, stated that he had never heard of a study noting any noise concerns regarding a solar generating project, CITE. In fact, Mr. Hessler testified that out "of curiosity, I went out behind my house and it's a brand new house, brand new unit, I measured it [sound in dbas]and it's louder than several of the inverters referred to in Massachusetts study."²³ The Board should find that the Applicant has adequately evaluated sound impacts from the Project.

²⁰ Co. Ex. 14 at 3.

²¹ CCPC Brief at 17.

²² Tr. IV at 501.

²³ Tr. IV at 500.

III. Drainage Tiles

The Board's rules require that the Applicant describe mitigation procedures to be employed both to avoid or to minimize damage to field tile drainage systems, and to make timely repairs when damage occurs. CCPC posits that the procedures agreed to in the Stipulation do not comply with the requirement in the Ohio Adm.Code 4906-04-08(E)(2) for avoiding and repairing damage to field drainage tiles.²⁴ The Application, as modified by the Stipulation, specifically requires that the Applicant avoid, when possible any damage to functioning field tile drainage systems and if there is damage, the Applicant is required to promptly repair the tile to at least original condition at the expense of Angelina.²⁵

Angelina identified the steps that it is taking to identify all tile drainage systems that might be affected, both to avoid impacts and to be able to identify where damage may have occurred. In fact, Angelina will consult with the owners of agricultural land in the Project areas and other public resources to ascertain the type, size and location of all functioning drain tile in the Project areas. This effort, as state by Applicant witness Herling, will be completed prior to the start of construction for all areas that will be under construction.²⁶ In addition, this information will be mapped and locations and excepted locations of drain tile will be physically marked on the surface.²⁷ In addition, the

²⁴ CCPC Brief at 21.

²⁵ Joint Ex. 1, Stipulation at 35.

²⁶ Co. Ex. 6 at 10

²⁷ *Id.*

Applicant will engage the Preble County Engineer, the County's expert on drainage issues, when repairing existing drain tile.²⁸

The Stipulation requires the Applicant to repair all drainage tile damage resulting from the construction, operation, and/or maintenance of the facility in agricultural areas.

"Damaged field tile systems shall be promptly repaired."²⁹ The Stipulation also requires that all repairs be made promptly, and in no event later than 30 days after discovery.

Angelina witnesses Herling and Waterhouse provided testimony regarding drain tile and were subject to cross-examination. In fact, applicant witness Waterhouse, upon cross examination by CCPC counsel, state the Applicant's primary concern is to make sure that any drain tile that originates on an adjacent property and flows onto the Project property remain functional so the upstream tiles will not be affected.³⁰ Mr. Waterhouse stated that the Applicant want to know as much information as possible about the location of those tiles and intends to consult with landowners to find out what information they have.³¹ The Applicant will also draw information regarding drain tiles from the County Engineer and the Preble Soil & Water Conservation District.³²

The Applicant has adequately described the reasonable measures that it is taking to identify existing systems to avoid or minimize any impacts from construction or operations. Furthermore, the Applicant is obligated to make timely and satisfactory repairs, a commitment

²⁸ Co. Ex. 9 at 3.

²⁹ Joint Ex. 1, Stipulation at

³⁰ Tr. I at 140.

³¹ *Id.*

³² *Id.*

that may actually improve current experiences with tile damage. The Staff Report, as modified by the Stipulation, satisfies the Board's rules with respect to drainage tiles.

IV. Criminal Access

The Board's rule requires that the Applicant provide information on the safety and reliability of all equipment, including a description of measures to restrict public access to the facility.³³ Angelina has done this. The Application and the Staff Report note that the Applicant will comply with safety standards applicable to commercial solar farms set by the Occupational Safety and Health Administration and National Fire Protection Association.³⁴ In addition, the Applicant shall coordinate with local law enforcement officers as required by Condition 25 of the Stipulation.³⁵ The Project area will also be surrounded with a fence and locket gates.³⁶ The rule does not require that all measures be absolutely fool-proof, which CCPC appears to demand. It does not require that the Applicant demonstrate that it will prevent criminal access. The Applicant has demonstrated that adequate measures will be taken to restrict public access.

CCPC claims that criminals will be attracted to steal copper materials from the facility.³⁷ There is no evidence that any such activity, even were it to occur, would have an impact on anyone other than the Applicant. There is simply no basis for requiring, as CCPC requests, that the Applicant hire and train additional law enforcement personnel.³⁸

³³ Ohio Adm.Code 4906-4-08(A).

³⁴ Staff Ex. 1, Staff Report at 28.

³⁵ Joint Ex. 1, Stipulation at 10.

³⁶ Tr. I at 90.

³⁷ CCPC Brief at 34.

³⁸ *Id.* at 35

In fact, the Preble County Commissioners, the Board of Trustees of Israel Township and the Board of Trustees of Dixon Township, the entities that support these services are signatory parties to the Stipulation, and obviously satisfied no additional funding to hire a deputy to patrol the Project area is necessary.

There is no evidence that the facility would result in an increase in neighborhood crime. CCPC's assertions regarding crime are mere speculation. The record demonstrates that Angelina will provide measures including fences, locked gates, and lighting to keep the facility safe.

V. Groundwater Contamination

There is no evidence in the record that solar panels in general, or any aspect of this installation, would include any material that could contaminate soil or water. CCPC's claim that a variety of events "can release contaminants onto the ground and consequently into the ground water and into the surface water run-off,"³⁹ are without merit. It relies on the testimony of Walter Mast, who says that solar panels could release contaminants, contaminating the wells, the adjacent creek, and Hueston Woods lake.⁴⁰ Aside from the fact that Mr. Mast was not qualified as an expert in solar panels, chemistry, or environmental impacts, there is no evidence that any such "chemicals" would have any adverse impact whatsoever on soil or water. Indeed, the Preble County Soil & Water Conservation District, an intervening party, expert in this matter, whose

³⁹ *Id.* 32.

⁴⁰ CCPS Ex.5 at 10.

very mission is “to ensure water quality and soil protection now and for future generations” (<http://www.prebleswcd.org/about.html>), is a signatory party to the Stipulation, further attesting to the adequacy of the Applicant’s groundwater impact mitigation efforts.

VI. Decommissioning

CCPC is believes that the Stipulation does not adequately guarantee that enough funds will be available to decommission the solar project.⁴¹ However, CCPC does not claim that this purported lack of adequate decommissioning funds is against the law. That is because there is no legal requirement that the Applicant guarantee the provision of decommissioning funds.

However, the Applicant’s has pledged and is required to if the Stipulation is approved, submit a comprehensive decommissioning plan that estimates the full decommissioning and restoration costs that requires restoration of the project area.⁴² Applicant must submit this plan at least 60 days prior to construction. And, the decommissioning estimate shall be recalculated at least every five years by an engineer retained by the Applicant and the financial security must be adjusted to reflect any increase in the decommissioning costs.⁴³ This decommissioning term of the Stipulation is an effort to preserve the agricultural nature of this community, by restoring the land to

⁴¹ CCPS Brief at 33.

⁴² Joint Ex., Stipulation at 11.

⁴³ *Id.*

agricultural purposes at the end of the facility's useful life. CCPC's concerns regarding decommissioning are unfounded.

VII. Emergency Services

CCPC argues that the Applicant does not provide adequate provision for emergency services as required by the Ohio Adm.Code 4906-4-08(A)(1)(e). but CCPC must not have understood the negotiated Stipulation that obligates that Angelina to train local fire and EMS personnel in how to respond to emergency situations.⁴⁴ Condition 28 requires pre-construction in-service training and multiple training dates to ensure that all responders have adequate training. The Stipulation also mandates that if local fire and EMS responders lack any specialized equipment needed to appropriately respond to an emergency at the project, the Applicant shall provide such equipment.⁴⁵

VIII. Visibility at Intersections

CCPC makes an allegation that there is no way of determining whether motorists view of crossroads at intersections will be obstructed.⁴⁶ As CCPC itself noted, the Stipulation expands the project setbacks to provide that the project perimeter will be set back 25-feet from the public road right-of-way. That is one of the purposes of the setbacks. There is no evidence of record indicating that any view would be obstructed with these setbacks.⁴⁷

⁴⁴ *Id.* at 11.

⁴⁵ *Id.*

⁴⁶ CCPC Brief at 36.

⁴⁷ Indeed, a number of the Viewpoints in Exhibit I (Visual Resource Assessment) to the Application show mature corn crops much nearer the roadway than the setbacks proposed in the Stipulation. There is no reason to

IX. Noxious and Invasive Weeds

The Applicant will take adequate measures to prevent noxious and invasive weed species from spreading to neighboring farmland. This is required by the vegetative management plan that is required by Condition 18 of the Stipulation. Contrary to CCPC's assertions, the plan is intended to address vegetative management issues both during construction and during maintenance operations. The Stipulation condition significantly modifies the recommendation made in the Staff Report, with guidance from local officials and the Ohio Farm Bureau. Among other things, the stipulated condition requires that the plan describe the steps to be taken to prevent establishment and/or further propagation of noxious weeds. It also specifies that the Applicant consult with the Ohio Seed Improvement Association, to limit the spread of noxious weeds.⁴⁸

X. Wildlife

CCPC's reading of Ohio Admin. Code 4906-4-08(B)(1)(c) is inaccurate. That section requires an applicant to conduct and provide the result of a literature survey of plant and animal life within a quarter mile of the project area boundary. CCPC argues that the rule requires a literature survey of all plant and animal life.⁴⁹ CCPC bases its argument on the claim that the second sentence of the rule does not limit the survey.

However, that second sentence prescribes what is intended to be included in the survey. The Rule specifically states that the "literature survey shall include" certain

believe that the facility will cause any greater obstruction at intersections than that already posed by current farming operations. See, e.g., Viewpoint 1 -4, PP. 33 – 35, Fig. 11, 13.

⁴⁸ Joint Ex. 1, Stipulation at 9.

⁴⁹ CCPC Brief at 40.

species. Though it does not restrict the survey *solely* to these species, reason dictates against reading the requirement to require each and every plant and animal species. A requirement such as this would be overly burdensome and unnecessarily broad. This Board has never imposed such a requirement on an applicant.

Angelina conducted a survey of those species designated as endangered or threatened for the area. It requested information from the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) regarding state and federal listed threatened or endangered plant and animal species. Staff's evaluation considered additional published ecological information. The signatory parties agreed to include Condition 21 to protect those potentially threatened or endangered species of plants and animals that may be encountered during construction.⁵⁰

CCPC's concerns that the Applicant did not conduct no bird, bat, nor mammal surveys has also been addressed.⁵¹ Staff recommended, and the Stipulation includes, Condition 19 that restricts tree removal to seasonal guidelines intended to avoid impacts to bats.⁵²

CCPC also argues that the Applicant failed to provide information required by Ohio Adm. Code 4906-4-08(B)(3) to assess, avoid, and mitigate impacts on wildlife that will result in crop and livestock damage.⁵³ Applicant expert witness Rupprecht, testified

⁵⁰ Joint Ex. 1, Stipulation at 10.

⁵¹ CCPC Brief at 40.

⁵² *Id.* at 9.

⁵³ CCPC Brief at 41.

that deer in the surrounding area would increase by less than 5%, and should not have a negative effect on surrounding properties.⁵⁴

The Applicant satisfied the requirements of Ohio Admin. Code 4906-4-08(B). The Board should find that the impacts have been adequately identified and described, and that adequate measures will be taken, given the conditions contained in the Stipulation, to minimize those impacts.

XI. Surface Water Drainage

CCPC misstates the requirements of the surface water provisions of Ohio Admin. Code 4906-4-07(C). That section is concerned with water quality regulations, not the *quantification* of water that will flow off of the Project area. CCPC claims that the Application must quantify the amount of water that will flow off the Project.⁵⁵ But the Rule's three subparagraphs address preconstruction water quality and permits, water quality during construction, and water quality during operation of the facility. Quality is not the same as quantity. CCPC misinterprets the Rule.

The neighbors testified that any increase in the amount or speed of stormwater flows from the Project aggravating draining problems.⁵⁶ They complain about potentially increased flows and that flows could increase⁵⁷ without any evidence to support such claims.

⁵⁴ Co. Ex. 13 at 7.

⁵⁵ CCPC Brief at 43.

⁵⁶ CCPC Brief at 45.

⁵⁷ CCPC Brief at 45 – 50.

However, Staff found that solar facilities “are constructed and generate electricity without impacts to surface or groundwater.”⁵⁸ Staff also found that construction of “solar facilities does not generate any wastewater discharges.”⁵⁹

XII. Solid Waste Disposal

The Board Staff found that the Applicant’s solid waste disposal plans would comply with solid waste disposal requirements set forth in R.C. Chapter 3734.⁶⁰ Though CCPC complains that the application does not estimate the amount of waste that will be generated,⁶¹ Applicant did identify the kinds of waste that would be generated, and how it would appropriately be disposed.⁶²

Debris generated from construction activities will reuse or salvage what it can and all construction-related debris will be disposed of at a licensed municipal landfill.⁶³ The Ohio Environmental Protection Agency (EPA) regulates disposal of construction and demolition (C&D) debris, also under R.C. Chapter 3734. Condition 8 of the Stipulation requires the Applicant to obtain and comply with all permits or authorizations required by federal or state laws and regulations, including those of the EPA relating to C&D debris.⁶⁴

⁵⁸ Staff Ex. 1, Staff Report at 16.

⁵⁹ *Id.*

⁶⁰ Staff Ex. 1, Staff Report at 27.

⁶¹ CCPC Brief at 58.

⁶² Staff Ex. 1, Staff Report at 27.

⁶³ *Id.*

⁶⁴ Staff Ex. 1, Staff Report at 34.

XIII. Traffic

Stipulation Condition 26 requires the Applicant to enter into a road use agreement with local authorities.⁶⁵ Applicant is also obligated to obtain other necessary transportation permits and coordinate with the appropriate authority regarding any temporary road closures, land closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.⁶⁶ This coordination includes coordination with the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials.⁶⁷ This is the description of the measures that the Applicant intends to take, and satisfies the requirements of Ohio Admin. Code 4906-4-06(F)(4).

CCPC's complaint at that "[w]hile the transportation problem has been defined, the Application does not explain how the problem will be addressed."⁶⁸ As discussed above, the Applicant has specifically explained all of the coordination necessary to complete the Project while coordinating with appropriate authorities regarding road closures and restrictions. The travelling public is adequately protected.

It seems as though CCPC would require that the Applicant be prohibited from using the roads during planting and harvest seasons as CCPC demands. Farmers' access to the public roads is not the only use that must be protected. Consequently, Condition 25

⁶⁵ Staff Ex. 1, Staff Report at 37.

⁶⁶ *Id.* at 36.

⁶⁷ *Id.*

⁶⁸ CCPC Brief at 60.

requires the Applicant to develop a Transportation and Traffic Management Plan to balance these interests.

XIV. Completeness Review

CCPC alleges that the Board Staff's completeness review letter prescribed by Ohio Adm.Code 4906-3-06(A) is inadequate because Tamara Turkenton, Executive Director of the Board, signed the letter instead of the chairman of the Board.⁶⁹ Though the completeness review Rule states that the chairman shall examine the application to determine completeness, this Rule must be read in conjunction with the Ohio Revised Code's provisions regarding the organization of the Board. In accordance with Ohio law, the "chairman of the public utilities commission may assign or transfer duties among the commission's staff."⁷⁰ Clearly, Ms. Turkenton, a staff member of the Commission and assigned this duty by the chairman, lawfully made the completeness review and executed the letter. There is no evidence otherwise. CCPC also alleges that Ms. Turkenton's "signature was stamped, so she may not have even reviewed the letter or the Application."⁷¹ However, Ms. Turkenton actually signed the letter and the letter was then filed electronically in the docket. All permitted by the Rules of the Board and laws of Ohio. Neither of these arguments regarding the completeness letter were part of the record at hearing, nor raised in CCPC's issues list, and they should be rejected by the Board.

⁶⁹ CCPC Brief at 61.

⁷⁰ Ohio Rev. Code 4906.02.

⁷¹ CCPC Brief at 61.

CONCLUSION

CCPC argues that the Board's rules have not been satisfied in many circumstances; however, the record in this case demonstrates that CCPC is wrong. To the contrary, the record in this case demonstrates that the Rules and laws that CCPS complains of have in fact been followed. Moreover, reasonable provisions have been made to ensure that appropriate measures are taken to minimize the impacts of the Project. The Stipulation is supported by a broad coalition of parties, representing the interests of the public and the agricultural community. It is reasonable, lawful, and benefits the public interest, and Staff urges that it be adopted.

Respectfully submitted,

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**On behalf of the Staff of
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Reply 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 1st day of November 2019.

/s/ Jodi J. Bair

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Commission*

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