

## **THE OHIO POWER SITING BOARD**

**IN THE MATTER OF THE APPLICATION OF  
NESTLEWOOD SOLAR I LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED TO  
CONSTRUCT AN ELECTRIC GENERATING  
FACILITY IN BROWN AND CLERMONT  
COUNTIES, OHIO.**

**CASE NO. 18-1546-EL-BGN**

### **OPINION, ORDER, AND CERTIFICATE**

Entered in the Journal April 16, 2020

#### **I. SUMMARY**

{¶ 1} The Ohio Power Siting Board approves and adopts the Stipulation, including the supplement to the Stipulation filed on February 4, 2020, between Nestlewood Solar I LLC, the Ohio Farm Bureau Federation, and Staff, and directs that a certificate be issued to Nestlewood Solar I LLC for construction, operation, and maintenance of a new 80 megawatt solar-powered electric generation facility.

#### **II. PROCEDURAL BACKGROUND**

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

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

{¶ 4} On October 22, 2018, Nestlewood Solar I LLC (Nestlewood or Applicant) filed a pre-application notification letter with the Board regarding its proposal to develop and construct an 80 megawatt (MW) solar-powered electric generation facility in Brown and Clermont counties, Ohio (the Project). Nestlewood held a public informational meeting regarding the proposed Project in Hamersville, Ohio on November 7, 2018.

{¶ 5} On December 14, 2018, Nestlewood filed its application and a motion for waiver from the requirement to submit the manufacturers' safety manuals or similar documents with the application and the requirement to submit a description of its plan for test borings with the application. In the motion, Nestlewood requested that the Board grant a waiver from Ohio Adm.Code 4906-4-08(A)(1)(c) and allow the Applicant to provide manufacturers' safety manuals or similar documents and any manufacturer recommended setbacks to the Board's Staff as part of the final construction plans for the Project as opposed to being a part of the application. Nestlewood also requested a waiver from Ohio Adm.Code 4906-4-08(A)(5)(c) to allow the Applicant to submit a description of its plan for test borings, including appropriate closure plans, to the Board's Staff no less than 30 days prior to the commencement of the field work and after the Project's layout was finalized. Nestlewood explained the nature of the Project, a solar farm, and timing of panel model selection warrant these waivers. Nestlewood stated that it will not select the final panel model until after final engineering of the Project is complete. Nestlewood noted that there are minimal safety concerns with this approach because, except for access roads, Project components will be either securely fenced or buried, and are unlikely to be exposed to the general public. Nestlewood noted that the Board has granted similar waivers to other solar projects in the past. *In re Hillcrest Solar I, LLC*, Case No. 17-1152-El-BGN, Entry (Aug. 3, 2017); *In re Willowbrook Solar I, LLC*, Case No. 18-1024-EL-BGN, Entry (Oct. 4, 2018). Upon review, the Board finds Nestlewood's request reasonable and finds that waivers of Ohio Adm.Code 4906-4-08(A)(1)(c) and 4906-4-08(A)(5)(c) should be granted.

{¶ 6} By letter dated February 12, 2019, the Board notified Nestlewood that its application was sufficiently complete to permit Staff to commence its review and investigation. The letter directed the Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Nestlewood to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 7} On March 11, 2019, Nestlewood filed a certificate of service of its accepted, complete application as required by Ohio Adm.Code 4906-3-07. Further, in compliance with Ohio Adm.Code 4906-3-07(C), Nestlewood also filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 8} By Entry issued March 13, 2019, the administrative law judge (ALJ) established the effective date of the application as March 11, 2019 and set a procedural schedule. Ultimately, due to scheduling issues, the ALJ rescheduled the local public hearing for May 30, 2019 and the adjudicatory hearing for June 13, 2019. The ALJ also directed Nestlewood to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 and indicated that petitions to intervene would be accepted by the Board up to May 17, 2019.

{¶ 9} On May 15, 2019, Staff filed its report of investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 10} On May 16, 2019, the Ohio Farm Bureau Federation (Farm Bureau) filed a timely motion to intervene.

{¶ 11} On May 24, 2019, Nestlewood filed a notice of footprint modification to allow for a change in the location of an easement for the Project. The notice sought to shift the easement corridor from a northwest-southeast route to a southwest-northeast route.

{¶ 12} The ALJ presided over the local public hearing on May 30, 2019. The hearing was well-attended. Two individuals presented questions for Nestlewood and three individuals elected to provide testimony.

{¶ 13} On June 12, 2019, Nestlewood, the Farm Bureau, and Staff filed a joint stipulation and recommendation (Stipulation or Jt. Ex. 1).

{¶ 14} On June 13, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Nestlewood presented the

testimony of Joseph Jordan and Lynn Gresock in support of the Stipulation (Co. Ex. 7, 8). Staff presented the testimony of Derek F. Collins in support of the Staff Report, as well as the conditions set forth in the Stipulation (Staff Ex. 1, Jt. Ex. 1).

{¶ 15} On August 23, 2019, Nestlewood, Farm Bureau, and Staff filed a joint motion to reopen the hearing record to allow additional testimony regarding the notice of footprint modification submitted on May 24, 2019. In the motion, the parties stated that Nestlewood provided testimony regarding the modification during the June 13, 2019 evidentiary hearing. The parties noted that Nestlewood collected additional information regarding the modification which the parties would like to include in the record for the Board's consideration. The parties also requested an expedited ruling on this motion pursuant to Ohio Adm.Code 4906-2-27(C).

{¶ 16} By Entry dated August 26, 2019, the ALJ scheduled a hearing for August 30, 2019, for the parties to provide additional information regarding the May 24, 2019 modification.

{¶ 17} On August 30, 2019, the ALJ presided over the hearing. Staff presented the testimony of Grant Zeto in support of Condition 1 set forth in the Stipulation, as well as supplemental information presented in support of that condition concerning the Kirtland snake and that the area for an additional collection line contains no wetlands or streams.

{¶ 18} On February 4, 2020, Nestlewood and the Farm Bureau (joint movants) filed a joint motion to reopen the hearing record and requested an expedited ruling pursuant to Ohio Adm.Code 4906-2-27(C). The joint movants explained that Nestlewood intended to provide testimony from witnesses to further inform the Board regarding certain aspects of the application and information in the record in this matter. The joint movants stated that Staff does not oppose the motion. Additionally, the joint movants indicated that they executed, along with Staff, a supplement to the Stipulation, previously filed on June 12, 2019. This supplemental Stipulation was filed on February 4, 2020.

{¶ 19} By Entry issued February 5, 2020, due to the joint movants' motion, the ALJ scheduled a hearing for February 26, 2020, to take additional testimony. Additionally, the ALJ directed Nestlewood to file additional testimony by February 10, 2020 and directed the Farm Bureau and Staff to do the same, if needed, by February 24, 2020.

{¶ 20} On February 26, 2020, the ALJ presided over the third evidentiary hearing in this proceeding. Nestlewood presented the testimony of witnesses John Soininen, Tricia Pellerin, Andrew English, Matt Marquis, Mark Bonifas, and supplemental testimony from Mr. Jodran and Ms. Gresock (Co. Exs. 11, 16 – 20, 22). Nestlewood also presented the supplement to the Stipulation (Jt. Ex. 2).

### III. PROJECT DESCRIPTION

{¶ 21} Nestlewood seeks certification to build an 80 MW solar-powered electric generating facility in Clermont and Brown counties. The Project would consist of an extensive array of ground-mounted photovoltaic (PV) modules, known as solar panels. The Project also would include associated support facilities, access roads, 34.5 kilovolt (kV) electrical collector cables, up to three meteorological stations, substations, a utility-owned switchyard, and a 69 kV electric generation tie line encompassing 464 acres within a 610 acre project area. The Project is intended to generate electricity and interconnect with the regional transmission grid to supply the region with power. Construction of the facility is expected to commence during January 2020. (Applicant Ex. 1, June 13 Tr. at 15-16.)

### IV. CERTIFICATION CRITERIA

{¶ 22} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;

- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

## V. SUMMARY OF EVIDENCE

{¶ 23} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate these applications. Any evidence not

specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

**A. *Local Public Hearing***

{¶ 24} On May 30, 2019, the local public hearing was conducted, where two individuals posed questions of the Applicant and three individuals elected to provide testimony. Mr. Ralph Herbolt testified in support of the Project, stating that solar energy is a cleaner technology than coal and it is safer than fracking and other technologies (May 30 Tr. at 9). Mr. Aaron Havens testified in opposition of the Project, stating that he and his neighbors have presented questions and concerns regarding landscaping, construction, watershed, and other environmental issues, but have yet to receive any answers (May 30 Tr. at 19). Finally, Mr. John McCanus, administrator for the Clermont Soil and Water Conservation District, provided testimony recommending that the site adhere to the water management and sediment control regulations for Clermont County, as well as Ohio EPA's construction general permit (May 30 Tr. at 17).

**B. *Staff Report***

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

**1. BASIS OF NEED**

{¶ 26} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. The facility in question is neither an electric transmission line nor a gas pipeline. Thus, Staff recommends that the Board find that the basis of need as specified under R.C. 4906.10(A)(1) is not applicable to this facility. (Staff Ex. 1 at 11.)

## 2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

### *a. Socioeconomic Impacts*

{¶ 28} The Project location falls within Lewis and Clark townships of Brown County, and Tate and Franklin townships of Clermont County, approximately 610 acres of land. The majority of this land is presently used for agricultural production, but the existing structures on the land include two abandoned residences, two barns, and one garage. These structures will be demolished and removed prior to construction of the facility. The proposed solar farm will not interfere with surrounding agricultural land use and the development of the Project could preserve land for future viable farming operations. Further, after the life span of the Project comes to an end and the panels and posts are removed, the majority of the land could be returned to farming or developed for other uses. (Staff Ex. 1 at 12.)

{¶ 29} Of the higher populated areas in the vicinity of the Project, the village of Hamersville is the closest at two miles to the east of the Project. Within one mile of the Project area, 80 percent of the acreage is presently used for agriculture while 19 percent is residential. Within 250 feet of the Project area, Nestlewood indicates that there are 71 structures, 28 of which are residential. The nearest non-participating residence is approximately 54 feet from the Project. Due to the proximity of these residential structures, Staff recommends that Nestlewood limit the hours of construction and have a complaint resolution plan in place to address potential construction- and operational-related concerns from nearby residents. Staff further recommends that Nestlewood screen the facility from adjacent residences with a view of the facility by providing an opaque perimeter fence, as well as adding vegetative landscaping where feasible. (Staff Ex. 1 at 12.)



{¶ 30} Within ten miles of the Project area, there are one state park, one nature preserve, two wildlife areas, four golf courses, and 14 public parks. Liming Park in Brown County is the closest park to the Project area at 1.8 miles east of the Project. Due to distance, existing structures, and vegetation, Staff finds that there would likely be minimal impact, if any, to recreational areas as a result of construction and operation of this facility. (Staff Ex. 1 at 12.)

{¶ 31} Nestlewood commissioned a cultural resources records review of the area. The review found no archeological resources located within the Project boundaries. Additional results from the cultural resources review included 19 sites, properties, or buildings listed in the National Register of Historic Places (NRHP), with the closest being a residential structure approximately 2.5 miles southwest of the Project area. Within 10 miles of the study area, 299 Ohio Historic Inventory (OHI) structures or buildings were identified, but none of which were located in the Project area. The closest OHI structure was identified approximately 0.6 miles to the east of the Project. The results also identified 351 Ohio Archaeological Inventory (OAI) recorded sites within 10 miles of the study area, with the nearest site being located approximately 0.4 miles to the south of the Project area. (Staff Ex. 1 at 13.)

{¶ 32} Although the cultural resources consultant stated that there were no anticipated direct physical impacts to the recorded cultural resources as a result of the Project, survey efforts so far have focused on existing known cultural resources, which still leaves potential for indirect visual effects to properties and structures that have not been identified. To verify that the site does not contain unknown cultural resources, Staff recommends that Nestlewood perform a Phase I cultural resource survey for areas of significant ground disturbance within the Project area. The survey should be conducted in coordination with the Ohio Historic Preservation Office (OHPO) and Staff. (Staff Ex. 1 at 13.)

{¶ 33} As to aesthetics, Nestlewood conducted a Visual Impact Assessment, which utilized a panel component height at a maximum of 14 feet, a lightning mast at a maximum height of 70 feet, and a 5-mile radius. Nestlewood determined that the highest level of visual impact would be within one mile of the Project where there is no existing natural vegetative screening. Nestlewood states that it intends to keep as much existing vegetation that surrounds the Project as possible. Due to the potential impacts on non-participating residences surrounding the facility, Staff recommends that Nestlewood incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area. (Staff Ex.1 at 13-14.)

{¶ 34} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include possible brief loss of vision, a safety risk to pilots, and a perceived nuisance to neighbors. While Nestlewood states that the Project will have a low reflectivity, the Applicant may use an anti-glare coating and a tracking array system to reduce the potential for glare. Staff also notes that aesthetic impact mitigation measures, which includes vegetation plantings, would also further reduce potential impacts if they were part of a landscape and lighting plan. (Staff Ex.1 at 15.)

{¶ 35} Economically, Nestlewood states that their total estimated capital and intangible costs are expected to be \$1,375/kilowatt (kW), and operations and maintenance costs for the Project are expected to be approximately \$730,000, or \$9/kW annually for the first two years of operation. Additionally, Nestlewood estimates the loss in revenue as a result of delays is expected to be greater than \$550,000 per month. Staff verified these assertions made by Nestlewood and determined that they were reasonable. (Staff Report at 14.) Further, Nestlewood estimates that the Project would create 314 new temporary construction jobs and five long-term operational jobs for the State of Ohio. During the construction period, wages are projected to produce \$36.1 million in local output for the

State of Ohio and operations are projected to add an annual impact of \$500,000 for the State of Ohio. Further, Nestlewood estimates that the Project will create local earnings of \$18.5 million during construction and \$300,000 in annual earnings during facility operations for the State of Ohio. Nestlewood anticipates that the Project will generate an estimated \$560,000 annually in tax revenue for Brown and Clermont counties derived from lease payments and local tax revenue or payments in lieu of taxes (PILOT). (Staff Ex.1 at 15.)

{¶ 36} In terms of decommissioning, Nestlewood holds land rights to, and expects to operate, the solar farm for up to 40 years. Nestlewood states that it will prepare a comprehensive decommissioning plan that would specify the responsible parties, outline a nine-month or less decommissioning schedule, outline projected decommissioning/restoration costs, require restoration of the Project area, and require proper disposal of all Project components. Nestlewood further stated that it will provide for financial security to ensure that funds are available for decommissioning and land restoration and that, prior to construction, it will retain an independent and registered professional engineer to calculate the net decommissioning costs for the solar farm as outlined in the plan. Cost estimates will be recalculated every five years over the life of the Project. (Staff Ex.1 at 15-16.)

*b. Ecological Impacts*

{¶ 37} According to Nestlewood, there are no anticipated significant adverse impacts to public or private water supplies as a result of the solar energy facility because such facilities are constructed and generate electricity without impacts to surface or groundwater. Surrounding residences within the Project area reside in rural sections of Clermont and Brown counties and obtain their water from a municipal water authority. While the project is located within the Clermont Public Water System Source Water Protection Area (SWPA), the proposed Project does not represent an activity that is a restricted use within the SWPA. Further, the operation of a solar facility does not generate wastewater discharges, and Nestlewood also would not impact any private groundwater

wells because the construction in the Project area would not extend beyond ten feet below the surface. (Staff Ex. 1 at 16.)

{¶ 38} The bedrock underlying the proposed Project area is a hard fossiliferous limestone and soft calcareous gray shale, and deposits of glacial till cover the bedrock. The till material is made of a very compact mix of sand, gravel, and boulders and has a very high content of lime. The proposed Project site is a broad, flat lying area with a depth to bedrock ranging from 20 inches to over 40 feet, which can be a limiting factor to home construction, road building, installation of septic systems, construction of ponds, and other exaction activities. (Staff Ex. 1 at 16.)

{¶ 39} Of the two counties that the Project area resides in, both have limited history of seismic activity. In 1957, an earthquake with a magnitude of 2.9 on the Richter Scale occurred in southeast Brown County, marked just off the bank of the Ohio River. A second earthquake occurred in Franklin Township on March 3, 2019, with a magnitude of 2.5. Clermont County has recorded three seismic events, all occurring in the 1800s approximately 10 miles northeast of the Project area. All three seismic events had magnitudes between 2.5 and 2.9. Nestlewood indicates that it will perform additional site-specific drilling and subsurface work and provide Staff with a report of their findings. Staff finds that the geology within the Project area does not present conditions that would limit or negatively impact the design, construction, and future operation of this facility. (Staff Ex. 1 at 16-17.)

{¶ 40} Nestlewood noted five streams and ten wetlands within the Project area. To minimize those impacts to surface water resources, Nestlewood would install many of the electric collection lines using horizontal directional drilling. Staff further recommends that the Applicant develop and implement a detailed frac-out contingency plan. For any wooded wetlands, Nestlewood has committed to maintain a minimum 15-foot clearing buffer surrounding those areas. Further, Nestlewood would outline in its stormwater pollution prevention plan (SWPPP) how surface waters would be further protected from

indirect construction storm-water impacts using erosion and sedimentation controls. Any direct impacts would be covered under the U.S. Army Corps of Engineers (USACE) Nationwide Permit Program. (Staff Ex. 1 at 18.)

{¶ 41} The Project area is within range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a state and federal threatened species. In order to avoid impacts to these bat species, Staff recommends that Nestlewood adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination efforts with the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action. (Staff Ex. 1 at 20-21.)

{¶ 42} The Project area is also within range of the Kirtland's snake, a state threatened species. Nestlewood had an ODNR-approved herpetologist complete a habitat review, which identified two locations of potentially suitable Kirtland's snake habitats within the Project area and recommended a more detailed presence/absence survey be conducted, unless these potential habitat areas would be avoided. Since a collection line is proposed within one of these areas, Staff recommends that Nestlewood complete further coordination with the ODNR, including that the additional presence/absence survey be conducted during the appropriate season.<sup>1</sup> (Staff Ex.1 at 21.)

{¶ 43} Further, the Project area is also within range of several endangered or threatened species of mussels; however, the Applicant and Staff do not anticipate the Project area to impact these species. If Nestlewood determines that impacts would occur and could not be avoided, then the ODNR recommends a professional malacologist collect and relocate the mussels to suitable and similar habitat upstream of the Project site. (Staff Ex. 1 at 21.)

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<sup>1</sup> This recommendation was modified by the additional testimony presented at the August 30, 2019 hearing.

{¶ 44} Within the Project area, there are four different vegetative communities covering a total of 464.4 acres: forest land, scrub shrub, developed, and agricultural lands. Impacts would primarily occur within agricultural lands, and Staff recommends that Nestlewood provide a vegetation management plan for review prior to the preconstruction conference. The plan would identify all areas of proposed vegetation clearing for the Project, specify the extent of the clearing, and describe how such clearing work would be done to minimize removal of woody vegetation. Staff also recommends the plan include the implementation and maintenance of native pollinator-friendly plantings in selected locations and incorporate plantings of legumes and wildflowers in areas between the solar panels. Plantings should be selected in consultation with the Ohio Pollinator Habitat Initiative. (Staff Ex. 1 at 21-22.)

*c. Public Services, Facilities, and Safety*

{¶ 45} The principal impact on public services would be minimal increases in traffic on routes leading to the Project area, mainly during the construction phase. Nestlewood foresees only modest impacts to roads, bridges, and traffic in the local Project area. Nestlewood has committed to coordinating with local officials to ensure safe and efficient maintenance of existing traffic patterns and usages. Further, Nestlewood has provided a preliminary Transportation Management Plan to address any damage to public roads and bridges and agreed to remedies to resolve and/or repair those damages promptly to their former condition. (Staff Ex.1at 22.)

{¶ 46} Noise impacts from construction activities include site clearing, installation of mechanical and electrical equipment, and commissioning and testing of equipment. Many of the construction activities would generate significant noise levels during the ten months of construction; however, the adverse impact of construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. Nestlewood would use mitigation practices such as maintaining engines and mufflers in good operating order, limiting construction activities to daylight hours, and establishing a complaint resolution process. Once construction is

complete, operational noise impacts for the solar generation facility would be relatively minor and occur only during the day. Operational noise sources include inverters, the step up transformer at the new substation, and tracking motors. Furthermore, after conducting an ambient noise level study, results showed that operational noise impacts would be approximately the same as or less than ambient noise levels. No non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five decibels above average. Therefore, the Project is expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 22-23.)

{¶ 47} In sum, Staff recommends that the Board find that Nestlewood has determined the nature of the probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 23).

### **3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT**

{¶ 48} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 49} The proposed solar farm would have an overall positive impact on the local economy due to construction spending, wages, purchases of goods and services, annual lease payments to participating local landowners, and potential PILOT revenue. Nestlewood sited and designed the Project to minimize potential impacts and has committed to taking measures to reduce those it could not avoid. For example, impacts on wildlife and habitat can be avoided or abated by following seasonal construction restrictions and noise impacts would be primarily limited to the construction phase, would be temporary and intermittent, and would occur away from most residential structures. Although during the construction period local, state, and county roads would experience a

temporary increase in truck traffic to the site, a final delivery route plan and road use agreement would be developed through discussions with local officials. Additionally, given the solar farm's low profile, aesthetic impacts would be most prominent to landowners immediately surrounding the Project, and will be lessened by the landscape and the aesthetics plan recommended by Staff, as well as similar measures taken by Nestlewood. Finally, Nestlewood intends to submit a plan to decommission the solar facility, which would include costs to properly dispose of the Project components, plans to restore the land to original conditions, and financial instruments to fund the decommissioning. (Staff Ex. 1 at 24-25.)

{¶ 50} Overall, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 25).

#### **4. ELECTRIC POWER GRID**

{¶ 51} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed facility will serve the interest of the electric system economy and reliability.

{¶ 52} Staff evaluated the impact of integrating the proposed facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generation facility would be capable of producing 80 MW and would interconnect to Duke Energy's (Duke) South Bethel-Brown 69 kV line via a new 69 kV switching substation configured as a three breaker ring bus. On February 28, 2017, Nestlewood submitted a generation interconnection request of 70 MW to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM



completed a System Impact Study (SIS), the results of which were released in March 2017. On September 29, 2017, Nestlewood requested an incremental increase of 10 MW, and the SIS was released by PJM in January 2018. (Staff Ex. 1 at 26.) PJM analyzed the proposed facility interconnected to the bulk power system and the January 2018 SIS did not reveal any reliability problems, network impacts, energy delivery impacts, or circuit breaker problems. Duke performed load flow analysis using a 2021 summer peak model. Their study revealed that an in-line switch near the Brown substation would overload to 102.7 percent during certain contingencies. Duke would replace the switch with a higher capacity switch and a new mounting structure near the Brown substation.

{¶ 53} Staff concludes that the facility would serve the public interest, convenience, and necessity because it would provide additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex.1 at 26-28.)

## **5. AIR, WATER, SOLID WASTE, AND AVIATION**

{¶ 54} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 55} Although the proposed facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Nestlewood would need to minimize construction-related dust and has indicated that it plans to do so by using stabilization measures including water and/or dust suppressant such as calcium carbonate, and temporary paving or gravel surfacing. These methods of dust control are typically used to comply with fugitive dust rules. Additionally, this Project would not require any

stationary sources of air emission and would not require air pollution control equipment. (Staff Ex.1 at 29.)

{¶ 56} Neither construction nor operation of the proposed solar farm would require significant amounts of water. Similarly, the Project would not generate any wastewater that might impact water quality. Still, Nestlewood anticipates obtaining certain environmental permits to mitigate potential water quality impacts associated with aquatic discharge, such as obtaining National Pollution Discharge Elimination System (NPDES) Construction Storm Water General Permits, and pursuing the USACE section 404 or Nationwide Permit program for stream crossings and wetland impacts. Further, Nestlewood does not anticipate that it would need to implement a Spill Prevention, Control, and Countermeasure Plan, which Staff agrees would not be necessary. (Staff Ex. 1 29.)

{¶ 57} Construction activities would generate debris such as crates, nails, boxes, containers, packing materials, and damaged parts, as well as vegetative debris. All materials with reuse or salvage value will be removed for such use and all construction-related debris would be disposed of in accordance with state and federal requirements. During operation, the facility would generate small amounts of similar non-hazardous, solid waste, which would also be reused, recycled, or disposed of pursuant to state and federal requirements. In short, Staff notes that Nestlewood's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 30.)

{¶ 58} No public use airports, helicopter pads, or landing strips are located within five miles of the solar farm, and there are no private use airports, helicopter pads, or landing strips within or adjacent to the Project area. In a coordinated review of the Project's potential impacts on local airports, no concerns have been identified by Staff or the ODOT Office of Aviation. (Staff Ex. 1 at 30.)

{¶ 59} Based on these findings, Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided

that any certificate issued for the facility include the conditions specified in the Staff Report (Staff Ex. 1 at 30).

**6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY**

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

{¶ 61} For reasons of public safety, Nestlewood will restrict public access to the potential hazards within the solar facility by use of warning signs, fencing, and locked gates. Additionally, the solar farm is required to be constructed, operated, and maintained in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements. Facility personnel will be trained to operate the equipment in a safe and reliable manner, and Nestlewood will secure all pertinent state and federal permits. Additionally, Nestlewood also intends to develop and implement an emergency action plan and consult with all necessary local emergency responders. (Staff Ex. 1 at 31.)

{¶ 62} Nestlewood hosted a public informational meeting and served copies of the complete application pursuant to applicable statutes and regulations. Nestlewood plans to notify affected property owners and tenants, as well as anyone who requests Project updates, at least seven days before the start of construction. Staff recommends that individuals who Nestlewood served with a copy of the application also receive such notice. During construction, Nestlewood is committed to implementing its complaint resolution plan, as detailed in Appendix D of its application, and proposes to update and continue to implement the complaint resolution program during facility operation. As of the date of the filing of the Staff Report no notices or petitions to intervene had been filed but the Board had received public comments from three individuals and a petition signed by 30 individuals regarding the Project. (Staff Ex.1 at 31-32.)

{¶ 63} In all, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity and, therefore, complies with the

enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 31-32).

## **7. AGRICULTURAL DISTRICTS**

{¶ 64} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility.

{¶ 65} Staff states that there are approximately 2.25 acres of agricultural district land within the Project area as designated by Clermont and Brown counties that would be impacted by the construction of the facility. Of that agricultural district land, Nestlewood proposes to temporarily disturb 0.6 acres for the purpose of installing the collector system for the Project. Construction of the facility would result in the loss of 464 acres of agricultural land; however, the repurposed land could be restored for agricultural use once the Project is decommissioned. While construction and operation would disturb the existing soil and could lead to broken drainage tiles, Nestlewood has committed to take steps in order to address such potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Nestlewood also states that, in order to avoid impacts to drain tiles, it will work with the landowner and research public records in an attempt to locate drain tiles as accurately as possible. (Staff Ex. 1 at 33.)

{¶ 66} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex.1 at 33).

## **8. WATER CONSERVATION PRACTICE**

{¶ 67} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the

nature and economics of the various alternatives.

{¶ 68} Although the facility may require some water use during construction for dust reduction purposes, the Project would use virtually no water and would produce no wastewater during operation (Staff Ex.1 at 34).

{¶ 69} In all, the facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8). Staff recommends that any certificate issued by the Board include any conditions specified in the Staff Report. (Staff Ex.1 at 34.)

## 9. RECOMMENDATIONS

{¶ 70} In addition to making various findings throughout its report, Staff recommended that 30 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex.1 at 35-39). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' June 12, 2019 Stipulation (Jt. Ex.1). The conditions are discussed below.

## VI. STIPULATION AND CONDITIONS

{¶ 71} At the June 13, 2019 adjudicatory hearing, counsel for Nestlewood presented the Stipulation entered into by Nestlewood, the Farm Bureau, and Staff and filed to the record on June 12, 2019. Nestlewood witness Joseph Jordan offered testimony in support of the Stipulation. Mr. Jordan testified that he was present at the public hearing on May 30, 2019, at Hamersville, Ohio. He stated that approximately 30 to 35 people attended that hearing and five people voiced concerns and questions. Out of these five, John McManus represented the Clermont Soil & Water Conservation District. Mr. Jordan testified that he had spoken to Mr. McManus in-depth prior to the public hearing. Mr. Jordan further noted that following the hearing, Nestlewood spoke with the remaining four members of the public to talk through their questions and concerns. Mr. Jordan stated that he has also reached out to these individuals after the hearing to maintain contact throughout the process. Mr. Jordan expressed that he intended to engage with members of the public as

the Project moves forward and designs are finalized for landscaping and storm water drainage. (Tr. I at 11-12.) Nestlewood witness Lynn Gresock also provided testimony in support of the Application (Tr. I at 17-19).

{¶ 72} Next, Staff witness Derek F. Collins presented testimony in support of the Staff Report and the Stipulation (Tr. I at 19-22). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Nestlewood, subject to 30 listed conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) The facility shall be installed at Nestlewood's proposed site as presented in the application and modified by supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (2) Prior to the start of any construction activities, Nestlewood shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the Project. The conference shall include a presentation of the measures to be taken by Nestlewood to ensure compliance with all certificate conditions and discussion of the procedures for on-site investigations by Staff during construction. The Applicant shall provide a proposed conference agenda for Staff review prior to the conference. Nestlewood may conduct separate preconstruction conferences for each stage of construction.
- (3) Nestlewood shall submit one set of detailed engineering drawings of the final Project design to Staff at least 30 days before the preconstruction conference. This final design shall include all conditions of the certificate and references at the

locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate. The final Project layout shall be provided in hard copy and as geographically-referenced electronic data.

- (4) If any changes to the Project layout are made after the submission of final engineering drawings, Nestlewood shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.
- (5) Within 60 days after the commencement of commercial operation, Nestlewood shall submit to Staff a copy of the as-built specifications for the entire facility or, upon demonstration that good cause prevents submission of the as-built specifications, request an extension of time for the filing of such specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (6) If Nestlewood has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid, unless the Board grants a waiver or extension of time.
- (7) As information becomes known, Nestlewood shall file in this proceeding the date on which construction will begin, on which construction was completed, and on which the facility begins commercial operation.

- (8) Before commencement of construction activities in any affected areas, Nestlewood shall obtain and comply with all necessary permits and authorizations. Nestlewood shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Nestlewood shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (9) Prior to construction of the facility, the Applicant will docket in the case record a letter indicating it has an executed Interconnection Service Agreement (ISA) and an Interconnection Construction Service Agreement, with PJM.
- (10) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 7:00 p.m. Monday through Friday; hoe ram and blasting operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Nestlewood shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (11) Prior to the commencement of construction, Nestlewood shall prepare a Phase I cultural resources survey program for the Project area in consultation with Staff and the OHPO. If the



resulting work discloses a find of cultural or archeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then Nestlewood shall submit a modification or mitigation plan detailing how such site(s) would be avoided or impacts lessened. Any such mitigation effort shall be developed in consultation with the OHPO and submitted to Staff for review and acceptance.

- (12) Prior to the commencement of construction, Nestlewood shall prepare a landscape and lighting plan to address the aesthetic and lighting impacts of the facility on adjacent non-participating parcels that contain a residence with a direct line of sight to the Project. The plan shall include measures such as alternative fencing, vegetative screening, good neighbor agreements, or others subject to Staff review. The plan shall be provided to Staff for review and confirmation that it complies with this condition.
- (13) At least 30 days before the preconstruction conference, Nestlewood shall provide Staff with a copy of its public information program that informs affected property owners and tenants about the nature of the Project; provides specific contact information of Applicant personnel who are familiar with the Project and can respond to questions, comments, and complaints; and outline the proposed timeframe for Project construction, restoration activities, and operation.
- (14) At least 30 days prior to commencement of commercial operation, Nestlewood shall provide Staff with a copy of an updated complaint resolution program for use during facility operation.

- (15) At least seven days prior to the commencement of construction, Nestlewood shall notify, via mail, affected property owners and tenants who were provided notice of the public informational meeting and local public hearing, local officials who received a copy of the application, residences located within 1 mile of construction activities, and anyone who has requested updates regarding the Project. The notice shall include a timeline for the Project and restoration activities, a copy of the complaint resolution program, and contact information for personnel who are familiar with the Project and can respond to questions, comments, and complaints.
- (16) At least seven days prior to the commencement of commercial operation, Nestlewood shall notify, via mail, affected property owners and tenants who were provided notice of the public informational meeting and local public hearing, local officials who received a copy of the application, residences located within 1 mile of construction activities, and anyone who has requested updates regarding the Project. The notice shall provide information about the start of operation and remaining restoration activities, a copy of the complaint resolution program, and contact information for personnel who are familiar with the Project and can respond to questions, comments, and complaints.
- (17) During the construction and operation of the facility, Nestlewood shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the fifth year of operation. The report should include a list of all complaints received through the Applicant's

complaint resolution procedure, a description of the actions taken toward a resolution of each complaint, and a status update if the complaint has yet to be resolved or addressed.

- (18) Nestlewood shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent at Nestlewood's expense. If the affected landowner agrees to not having the field tile system repaired, they may do so only if the field tile systems of adjacent landowners are unaffected by the non-repair of the landowner's field tile system.
- (19) Within 30 days after issuance or receipt, Nestlewood shall provide Staff a copy of any arrangement or resulting resolution adopted by Brown or Clermont County relating to the PILOT program.
- (20) Nestlewood shall use horizontal directional drilling or other boring techniques to avoid in-water work in perennial streams.
- (21) Prior to the use of directional drilling, Nestlewood shall provide a frac-out contingency plan detailing monitoring, environmental specialist presence, containment measures, clean-up, and restoration.
- (22) Unless coordination with the ODNR and the USFWS allows a different course of action, Nestlewood shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of

trees three inches or greater in diameter to avoid Indiana bats and northern long-eared bats.

- (23) Unless coordination with the ODNR allows a different course, construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1.
- (24) Nestlewood shall complete further coordination with the ODNR regarding the Kirtland's snake, including additional presence/absence surveys in identified habitat areas which would be impacted, to assure impacts are avoided.
- (25) Prior to in-water work, Nestlewood shall provide information to Staff and the ODNR indicating that no mussel impacts would occur at stream crossings. If this is not possible, then the appropriate surveys shall be performed in coordination with the ODNR and Staff. If mussels cannot be avoided, a professional malacologist shall collect and relocate the mussels to a suitable habitat. All surveys, assessments, and relocation plans shall be completed in accordance with the Ohio Mussel Survey Protocol and provided to Staff and the ODNR.
- (26) Nestlewood shall have an environmental specialist on site during construction activities that may affect sensitive areas as shown on Nestlewood's construction plan as approved by Staff. Sensitive areas include areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The specialist shall be familiar with water quality protection issues and

potential threatened or endangered species of plants and animals that may be encountered.

- (27) Nestlewood shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately stopped until an appropriate course of action has been agreed upon by Nestlewood, Staff, and the appropriate agencies.
- (28) Prior to the preconstruction conference, Nestlewood shall submit a vegetation management plan to Staff for review and confirmation that it complies with this condition. The plan would identify all areas of proposed vegetation clearing for the Project, specify the extent of the clearing, and describe how such clearing work would be done as to minimize removal of woody vegetation. The plan shall also describe how trees and shrubs along access routes, at construction staging areas, during maintenance operations, and in proximity to any other Project facilities would be protected from damage. The plan shall also describe the implementation and maintenance of pollinator-friendly plantings and describe any planned herbicide use. The plan shall also describe the steps to be taken to prevent establishment and/or further propagation of noxious weed identified in Ohio Adm.Code 901:5-37 during implementation of pollinator-friendly plantings.
- (29) Nestlewood shall obtain transportation permits prior to the commencement of construction activities that require them.

Nestlewood shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. Nestlewood shall detail this coordination as part of a final traffic plan submitted to Staff before the preconstruction conference for review and confirmation that it complies with this condition.

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

(Jt. Ex. 1 at 4-9.)

{¶ 73} As noted above, Nestlewood, the Farm Bureau, and Staff presented additional testimony on August 30, 2019, in support of Condition 1 in the Stipulation. Staff witness Grant Zeto testified that based upon additional analysis conducted by Nestlewood, the May 24, 2019 footprint modification to the Project does not contain habitat for the Kirtland's snake, a state threatened species (August 30 Tr. at 32; Co. Ex. 9 at 5). Mr. Zeto also testified that the area for the additional collection line, which comprises 1.9 acres located along Bethel Maple Road in Tate Township, does not contain any wetlands or streams (Tr. II at 33; Co. Ex. 10 at 1).

## **VII. FEBRUARY 26, 2020 ADJUDICATORY HEARING**

{¶ 74} As noted above, Nestlewood also presented further additional testimony on February 26, 2020. Nestlewood's first witness, Mr. Jordan, testified to provide explanation and detail regarding certain aspects of the Project, including (1) complaint resolution, (2) the

vegetation management plan, (3) glare, (4) public outreach, (5) engineering design, and (6) addressing concerns raised by Ms. M. Kate Powers, a non-participating property owner, who filed a public comment on February 25, 2020. Mr. Jordan testified he was previously the project manager and is currently continuing to assist the development of the Project. Mr. Jordan indicated that a thorough complaint resolution program will be in effect during Project construction, which was included in the original Application as Appendix D. An updated plan was submitted by the Company as Company exhibit 12. Further, Mr. Jordan indicated that the plan will be provided to Staff in advance of construction pursuant to Condition 14 of the Stipulation and quarterly complaint summaries will be provided to Staff pursuant to Condition 17. (Co. Ex. 11 at 1-2; Tr. III at 64-65.)

{¶ 75} Next, Mr. Jordan testified that, pursuant to Condition 28, Nestlewood will be submitting a vegetation management plan to Staff for review. According to Mr. Jordan, the Application already has many aspects of the vegetation management plan, such as how much tree-clearing on the leased property is required to construct the Project. Mr. Jordan clarified that any tree clearing will be limited to areas along the various woodland edges to create a broader layout and minimize panel shading and confirmed avoidance of clearing in wooded wetland areas. Portions of the Project area which will be temporarily impacted by construction activities, will be revegetated with compatible species as soon as possible following construction completion. Mr. Jordan further noted that the vegetation plan will be refined in close coordination with the selected builder after engineering design is complete. Further the plan will describe the steps taken to prevent establishment and propagation of noxious weed identified in Ohio Adm.Code 901:5-37 during implementation of pollinator-friendly plantings. (Co. Ex. 11 at 3-5.)

{¶ 76} Mr. Jordan also clarified that impacts to agricultural land will be minimal. Farming can continue outside the fenced Project area and when the Project is decommissioned in the future, the Project area can be returned to agricultural use. Further, the Project only takes a very small percentage of acreage out of agricultural production. Mr. Jordan estimates that this Project would occupy only 0.3 percent of Clermont County

cropland and slightly over 0.2 percent of Brown County cropland. With regard to field tile drainage systems used in this agricultural area, Mr. Jordan stated that Nestlewood, pursuant to Condition 18, will determine subsurface drainage tiles through consultation with the landowner and review of public records and restore any drain tile damaged as a result of construction to its original condition. Mr. Jordan also indicated that any damage to roads as a result of Project construction would be covered by Nestlewood. (Co. Ex. 11 at 13-15; Tr. III at 65.)

{¶ 77} Turning to glare from the solar panels, Mr. Jordan testified that photovoltaic (PV) solar technology absorbs light from the sun rather than reflecting it and glare off the PV solar panels is not anticipated to have a material impact on visibility. Mr. Jordan also noted that there is no need for an aeronautical study with respect to Nestlewood because the Project is not located near a federally obligated airport.<sup>2</sup> Further, FAA's screening tool was used to confirm that no FAA filing is required. (Co. Ex. 11 at 5-6.)

{¶ 78} With regard to the extent of public outreach for the Project, Mr. Jordan testified that the Company has been engaged in speaking with members of the general public regarding the development of the Project. At the public information hearing on November 7, 2018, Mr. Jordan stated he spoke with a number of area residents, made himself available to property owners by handing out business cards, and encouraging them to contact him about any questions related to the Project. Mr. Jordan subsequently reached out to some members of public; however, none have responded to his additional outreach. Moreover, Mr. Jordan testified that following the public hearing on May 30, 2019, he spoke to four other people who presented questions and concerns during the hearing and reached out to them to maintain contact throughout the process. Mr. Jordan indicates that as Nestlewood continues its landscape design and stormwater calculations process, it intends

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<sup>2</sup> A federally obligated airport is an airport that accepts federal funds to buy land or the conveyance of federal property for airport purposes.



to keep all Project neighbors informed regarding the Project design. (Co. Ex. 11 at 7, Tr. III at 64.)

{¶ 79} Mr. Jordan noted that the Company has continued to collaborate with the Clermont Soil & Water Conservation District to ensure appropriate post-construction storm water control measures are maintained. Mr. Jordan stated that John McManus was one of the five public witnesses who spoke at the May 30, 2019 public hearing and assisted Nestlewood with the development of an additional Stipulation condition, Condition 31. Mr. Jordan indicates that Mr. McManus is also satisfied with this condition, as written. Condition 31 states:

- (31) If one acre or more of ground is disturbed, the Applicant shall obtain from Ohio EPA a “General Permit Authorization for Storm Water Discharges Construction Associated with Construction Activities” (also known as a Construction General Permit). Following the completion of final project engineering design, the Applicant shall perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required, based on requirements contained in Ohio EPA’s Construction General Permit. The calculations along with a copy of any stormwater submittals made to the Ohio EPA shall be submitted to the Clermont County Building Inspection Department and Brown County Soil & Water Conservation District. The Applicant will also provide confirmation that it incorporated guidance from the Ohio EPA’s document “Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays” dated October 2019 to the Clermont County Building Inspection Department and Brown County Soil & Water Conservation District. If post construction storm water best management practices are required, the

Applicant will submit construction drawings detailing any stormwater control measures to the Clermont County Building Inspection Department and the Brown County Soil & Water Conservation District, as applicable, no less than seven days prior to the applicable construction activities.

(Co. Ex. 11 at 7-8; Jt. Ex. 2 at 1.)

{¶ 80} Mr. Jordan provided an update with regard to the Project schedule, indicating that when Nestlewood receives a certificate from the Board, it will take about a year to finalize the design engineering and financing. After that occurs, construction would begin and continue for about 10 months. Mr. Jordan explained why the engineering design was not complete when Nestlewood submitted the Application. According to Mr. Jordan, production of the final project design, which is a complex and expensive undertaking, only occurs once certain key authorizations have been obtained. In Ohio, Mr. Jordan stated, the issuance of the Project certificate would be such an authorization. Given the Board's lengthy application process and the need to identify specific panel technology closer to construction, it is not practical to absorb the significant cost and time for final engineering and detailed construction drawings prior to or during the Board's review process for a proposed project. Mr. Jordan also noted that this approach of finalizing project design after the issuance of a certificate is consistent with other, similar projects approved by the Board and also complies with Ohio Adm.Code 4906-4-03(C)(1)(g). Additionally, Mr. Jordan also indicated that certain plans related to the Project and required by the Joint Stipulation, such as the vegetation management plan, landscape and lighting plan, Phase I cultural resources survey plan, final construction drawings, and final transportation management plan, are dependent on the final engineering design of the Project being complete. While Nestlewood has submitted a vegetation management plan as Company Exhibit 12, this plan will be refined upon the selection of a final design. Similarly, the Company also cannot obtain all necessary permits before project design is complete. Mr. Jordan directs the Board's attention to

Condition 8 in the Stipulation, which obligates Nestlewood to obtain all relevant permits prior to commencing construction. (Co. Ex. 11 at 9-13; Tr. III at 57.)

{¶ 81} Finally, turning to Ms. Powers' concerns, Mr. Jordan provided testimony regarding various issues, including screening and emergency response training. Mr. Jordan noted that Ms. Powers lives next door to the Project. Out of the three available landscape screening options, light, medium, and tall, Ms. Powers's property boundary line would receive medium screening, comprised of shrubs and trees. Mr. Jordan indicated that when determining which screening type is appropriate, Nestlewood will take into consideration aspects such as the distance of the particular property from the Project and whether the screening would shade the solar panels. Screening options will be communicated to property owners by the Company via telephone calls and letters. Next, Mr. Jordan clarified that the Project is about a 10-minute drive from two fire stations and the Company has started developing an emergency response plan. Mr. Jordan indicated that the plan would be updated every year, and additional trainings with local first responders would be scheduled, if needed. Mr. Jordan also testified that the Project does not in any way hamper emergency responders from carrying out their duties (Co. Ex. 11 at 8; Co. Ex. 14; Tr. III at 55-56, 57-58, 62-63, 66.)

{¶ 82} Next, Nestlewood presented the testimony of John Soininen, who testified regarding Condition 31. Mr. Soininen indicated that he has been the development manager for the Project since the beginning of 2020. Mr. Soininen presented Company Exhibit 22, an email between himself and Mr. McManus from the Clermont Soil & Water Conservation District indicating that the final language of Condition 31 is acceptable to the Clermont Soil & Water Conservation District.<sup>3</sup> Mr. Soininen also testified that Mr. McManus provided input regarding the condition, which was incorporated. (Co. Ex. 22; Tr. III at 69-71.)

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<sup>3</sup> On March 2, 2020, a letter signed by Mr. McManus and docketed in the public comments for this case confirmed that Condition 31 was acceptable to the Clermont Soil & Water Conservation District.

{¶ 83} Ms. Lynn Gresock, who had previously testified on June 13, 2019, testified again regarding (1) the anticipated absence of impact on cultural resources; (2) lack of impact to the Kirtland's snake; (3) the role of the environmental specialist; and (4) a lack of impact to animal and plants. First, Ms. Gresock testified that as part of the Application process, Tetra Tech, Inc. (Tetra Tech) conducted a cultural resources records review for a 10-mile radius surrounding the Project area, which yielded no identified cultural resources. Pursuant to Condition 11 to the Stipulation, after the final design for the Project is selected and prior to commencement of construction, Nestlewood will prepare a Phase I cultural resources survey program for the Project area where the soil will be significantly disturbed as a result of construction activities such as constructing trenches and installing underground utilities. This Phase I survey will be prepared in conjunction with Staff and the OHPO. Ms. Gresock explained that the program is a process to determine the presence or absence of archaeological resources within the Project area. Ms. Gresock anticipates no impacts because no cultural resources were identified through the cultural resources records review. (Co. Ex. 16 at 1-3; Tr. at 79-81.)

{¶ 84} Turning to the Kirtland's snake, Ms. Gresock explained that the Project area is not a suitable Kirtland's snake habitat. As part of the Application process, Ms. Gresock noted that Nestlewood had engaged Doug Wynn, an ODNR-approved herpetologist, to complete a habitat review of the Project area. This review is attached as Appendix H to the Application. According to Ms. Gresock, Mr. Wynn's review identified two limited locations within the Project area which had the potential for snake habitat, and he recommended a more detailed survey if those areas could not be avoided. Mr. Wynn also conducted an additional survey within the additional collection line corridor, which is part of the Project footprint modification, and confirmed that this area was not a suitable Kirtland's snake habitat. Ms. Gresock testified that Nestlewood is committing to avoid impacts to all potential habitat areas identified by Mr. Wynn, thereby eliminating any need to conduct a further surveys. Ms. Gresock also noted that Nestlewood intends to work closely with ODNR, pursuant to Condition 24, to avoid any impacts to the Kirtland's snake. Finally, Ms.

Gresock indicated that no impacts are anticipated to state or federal endangered or threatened species. Ms. Gresock stated that the Project will adhere to seasonal tree clearing limitations, pursuant to Stipulation Condition 22 and will avoid construction in the northern harrier preferred nesting habitat during the species nesting period, as required by Stipulation Condition 23. Finally, Ms. Gresock testified that Nestlewood will comply with Stipulation Condition 27 and contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. (Co. Ex. 16 at 3-5.)

{¶ 85} Next, Ms. Gresock clarified the role of the environmental specialist, whom the Company must retain pursuant to Condition 26 of the Stipulation. According to Ms. Gresock, Condition 26 is a common condition in other certificates issued by the Board. Ms. Gresock explained that the on-site environmental specialist is usually hired by the Applicant or the construction contractor, to monitor construction activities and ensure that they are conducted in compliance with the certificate issued by the Board, including the vegetation management plan. As such, Ms. Gresock stated the environmental specialist is not intended to be an independent arbiter, but is rather a resource for maintaining compliance with all applicable rules and regulations. (Co. Ex. 16 at 4.)

{¶ 86} Tricia Pellerin testified regarding the results of the acoustic assessment performed for the Project by Tetra Tech, which was included as Appendix F to the Application. Ms. Pellerin testified that because the Project sound levels are either below or do not significantly exceed the background sound levels, no adverse impact is anticipated. Further, while there is a change of 3 dBA in ambient levels for non-participating landowners, this is considered barely perceivable. Ms. Pellerin testified that a certain amount of unavoidable noise will be generated during Project construction, which will occur over a brief, 10-month period. Because of the temporary nature of the construction noise, no adverse or long-term effects are expected. Further, Ms. Pellerin indicated that Stipulation Condition 10 limits the hours of general construction and more strictly limits the

hours of noise producing construction activities including impact pile driving. (Co. Ex. 17 at 5-6.)

{¶ 87} Andrew English testified specifically about the minimization of the Project's visual impact on non-participating property owners using vegetative screening. Because the Project will be visible from certain properties near the Project area, Nestlewood conducted a visual impact assessment to evaluate the visual impact of the Project, which it attached as Appendix J to the Application. Mr. English explained that retaining the majority of the wooded areas within the Project area is expected to provide natural screening for the majority of the Project. In addition, screening methods will be implemented for non-participating residences in close proximity to the Project, as identified in Stipulation Condition 12. Mr. English identified the three landscaping scenarios which he has developed for implementation along the Project fence line. According to Mr. English, the Tall screening option would only be utilized in specific locations along the northern boundary of the Project, to prevent shading of the solar panels. This option incorporates a mixture of shorter and taller species to create greater vegetative fill along the Project boundary. In contrast, the Medium (slightly taller and shorter mixed deciduous and evergreen plantings) and Light (variety of lower growing evergreen species) screening scenarios could be applied in select locations at any point along the Project boundary. Mr. English stated that each of the three landscaping plans would provide a meaningful visual buffer between a viewer and the Project. However, he also explained the goal of visual screening or mitigation is not to prevent the Project from being seen entirely; rather the goal is to soften the appearance of the Project so it blends more effectively into the background. (Co. Ex. 18 at 1-5; Tr. III at 87-88; Co. Ex. 14.)

{¶ 88} Matt Marquis testified regarding the Project impact on stormwater flows during and after construction of the Project, as well as the process and permitting requirements for the management of stormwater. Mr. Marquis did not expect significant changes in stormwater flows, both during and after construction, because construction of the Project does not require significant amounts of ground disturbance. However, in

compliance with the Ohio Water Pollution Control Act, Mr. Marquis indicated that Nestlewood would be obtaining a General Permit Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollutant Discharge Elimination System (General Permit), thereby allowing it to discharge stormwater from the Project site to waters of the state. The General Permit would be obtained pursuant to Condition 31, which was added as a supplement to the Stipulation, soon after the final design for the Project is selected. (Co. Ex. 20 at 3-5.)

{¶ 89} Mr. Marquis explained that construction projects disturbing one or more acres of land, or that disturb less than one acre but are part of a larger plan of development, need to apply for this General Permit. According to Mr. Marquis, stormwater management under the General Permit will manage both the quality and quantity of runoff. Managing the quality of runoff will be accomplished through erosion and sediment controls to reduce the likelihood that sediment-laden water might discharge from the construction site. Managing the quantity of runoff will be accomplished through diversion of run-on surface water away from disturbed areas and protecting channels and drainageways from the potential for run-off from disturbed areas causing erosion through concentrated flows. Mr. Marquis testified that under Condition 31, Nestlewood, after completion of the final project engineering design, must perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required under the General Permit. Nestlewood must also submit its calculations to the Clermont County Building Inspection Department and Brown County Soil & Water Conservation District. Mr. Marquis also clarified that while Mr. McManus, who assisted the Company in drafting Condition 31, works for the Clermont Soil & Water Conservation District, the permitting application, stormwater calculations, and related information must be submitted to the Clermont County Building Inspection Department per Clermont County's internal process. Consequently, Condition 31 was drafted accordingly. (Co. Ex. 20 at 3-8; Tr. III at 90-91.)

{¶ 90} Finally, Mark Bonifas testified about the potential traffic and road impacts resulting from the Project and the decommissioning plan for the Project. Based on his

experience, Mr. Bonifas expects the Project, both during construction and operation, to have limited effect on roads, bridges, and traffic in the local community. Further, Mr. Bonifas noted that during operation and maintenance of the facility, there will be very little increase in traffic as solar electric generating facilities are normally unmanned. Mr. Bonifas also pointed to Stipulation Condition 29, which requires Nestlewood to obtain all required transportation permits prior to construction and coordination with applicable county and state agencies regarding any temporary road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the Project. Mr. Bonifas believes this coordination will ensure that any traffic or road impacts resulting from the Project will be minimized. (Co. Ex. 19 at 2-3.)

{¶ 91} Regarding decommissioning the Project, Mr. Bonifas noted that the Application outlines, at pages 33-37, the plan for decommissioning, which includes financial security to be in place per landowner agreements, preparation steps for decommissioning, equipment removal, access road removal, and site reclamation steps. In general, decommissioning will involve the removal of all system components and the restoration of the Project site to conditions similar to pre-construction. Financial security for the decommissioning of the Project in the form of cash, parental guarantee, letter of credit, or performance bond will be put into place. The amount of financial security required will be determined by an independent professional engineer who will ascertain Project decommissioning costs as well as the anticipated salvage value associated with the Project's components. The difference between these two estimates will be the required financial security amount. Mr. Bonifas stated that the decommissioning plan is acceptable because it will ensure appropriate decommissioning of the Project so that the area can be returned to another use after the end of the Project's useful life. (Co. Ex. 19 at 4-6.)

### VIII. CONCLUSION

{¶ 92} As an initial matter, the Board grants the Farm Bureau's May 16, 2019 motion to intervene in this proceeding pursuant to Ohio Adm.Code 4906-2-12(B). The Farm Bureau has demonstrated that it represents the agricultural interests, as related to effective solar



energy development, of families in Brown and Clermont counties and that its involvement will not unduly delay the proceedings or unjustly prejudice an existing party.

{¶ 93} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of Board proceedings. *See, e.g., In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

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

{¶ 94} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In his testimony on behalf of Nestlewood, Mr. Jordan stated that both he and the signatory parties were involved in the negotiations of the stipulation, and that the original conditions listed in the Staff Report

were revised to reflect the conditions proposed by Mr. Jordan during negotiations, confirming that the Joint Stipulation, and supplemental Condition 31, were a product of serious bargaining among capable and knowledgeable parties. (Tr. I at 12-14; Co. Ex. 11 at 15.) Mr. Jordan also mentioned that the Stipulation's conditions take into account concerns raised by the parties and the local community and demonstrate that Nestlewood will continue working with the public as the Project progresses (Tr. I at 11-12; Jt. Ex. 1 at 36-38). Thus, the Board finds that the first criterion is met.

{¶ 95} The Board also concludes that the second and third elements are satisfied. As a package, the Stipulation benefits ratepayers and the public interest in numerous ways. For example, Mr. Jordan testified that the Project is a major capital investment that will generate clean and quiet renewable electricity and will provide on-peak power during high demand periods. Mr. Jordan also mentioned that the Project will benefit the local economy through additional jobs, economic growth, and increased tax revenue. (Tr. I at 14-15; Co. Ex. 11 at 16.) Finally, the Stipulation does not violate any important regulatory principle or practice (Tr. I at 15; Co. Ex. 11 at 16).

{¶ 96} Additionally, the Board finds that the Applicant has addressed concerns related to solar projects and identified by the community during the public hearing on May 30, 2019. Nestlewood has sufficiently demonstrated that it is not economically feasible to submit a final project design to the Board prior to receiving a certificate. Further, several other components of the Project, including the vegetation management plan, landscape and lighting plan, Phase I cultural resources survey plan, final construction drawings, final transportation management plan, and permitting, are dependent on the final project design. We find that the Joint Stipulation, specifically Conditions 3, 4, 5, 8, 11, 12, 28, and 29 ensure that the final project design and related plans are timely submitted to Staff for review and appropriate permits are obtained. Further, Nestlewood has already submitted a robust vegetation management plan, which will be further refined once the project design is complete. (Co. Ex. 11 at 3-5, 9-13; Jt. Ex. 1 at 4, 5, 6, 8.)

{¶ 97} Further, the evidence reflects that the Company maintains clear lines of communications with appropriate local and state government officials, including Brown and Clermont counties and the Ohio EPA, to ensure that stormwater is adequately addressed during construction and operation of the Project. The record reflects that Nestlewood reached out to Mr. McManus at the Clermont Soil & Water Conservation District to draft Condition 31 to ensure best practices regarding stormwater management are followed. The Company will also be obtaining an Ohio EPA General Permit. (Co. Ex. 11 at 7-8; Co. Ex. 20 at 3-8; Co. Ex. 22; Jt. Ex. 2 at 1; Tr. II at 69-71.)

{¶ 98} Nestlewood has also taken adequate steps to keep the public, including neighboring property owners, informed about the Project. Mr. Jordan testified that he has made himself available to property owners both during the public informational meeting and the public hearing by speaking to concerned property owners and handing out his business card for further communication purposes (Co. Ex. 11 at 7; Tr. III at 64). A complaint resolution program, pursuant to Condition 14, has been created and will be in force for both the construction and operation of the Project (Co. Ex. 11 at 2-3; Co. Ex. 12; Tr. III at 49; Jt. Ex. 1 at 6). Further, the Company will be communicating Tall, Medium, and Light vegetative screening options for neighboring property owners via phone calls and letters (Co. Ex. 18 at 1-5; Co. Ex. 14; Tr. III at 64, 87-88).

{¶ 99} Moreover, the May 24, 2019 footprint modification does not endanger the Kirtland's snake, any additional wetland areas, or any state or federally endangered species. The Kirtland's snake inhabits wet meadows and seeps. However, additional analysis from Nestlewood indicates that the survey site does not exhibit any suitable Kirtland's snake habitats. Furthermore, the south end of the site was closely mowed, and the north end of the site was heavily disturbed. Similarly, the additional Project area is heavily mowed and does not contain any wetlands (Co. Ex. 9 at 3, 5; Co. Ex. 10 at 1; Co. Ex. 16 at 3-5). Additionally, Condition 24 directs Nestlewood to work with ODNR to avoid impacts to the Kirtland's snake (Jt. Ex. 1 at 7). Moreover, per Ms. Gresock's testimony, there are no anticipated impacts to other state or federal endangered or threatened species (Co. Ex. 16 at

3-5) Co. Ex. 18 at 1-5; Tr. III at 87-88; Co. Ex. 14). Consequently, after having reviewed the supplemental information related to Condition 1 of the Stipulation, and the supplemental testimony provided by Nestlewood on February 26, 2020, we find that there are no additional impacts to the Project area based on the additional analysis conducted by the Company.

{¶ 100} Additionally, we find that Nestlewood has provided adequate information regarding various other concerns, including solar panel glare, impact on farm drain tile and roads, project decommissioning, and the role of the environmental specialist. Since the Project will be utilizing solar panels that absorb light, there appear to be no issues with glare (Co. Ex. 11 at 5-6). The Company will promptly restore damaged drain tile pursuant to Condition 18 and will also cover any costs if roads are damaged during construction of the Project (Co. Ex. 11 at 14-15; Tr. III at 65). Nestlewood has detailed its plan to decommission the Project in Application pages 33 through 37 and through additional testimony provided by Mark Bonifas (Co. Ex. 19 at 4-6). Review of the information indicates that the Company will remove all system components and restore the site to its original agricultural use at the end of the useful life of the Project. Finally, Condition 26 requires the Company to retain an environmental specialist. Once retained the specialist will monitor construction activities and ensure that they are conducted in compliance with the certificate issued by the Board, including the vegetation management plan, and all applicable rules and regulations. (Co. Ex. 16 at 4; Jt. Ex. 1 at 8.)

{¶ 101} Finally, we modify the Stipulation by adding one, additional condition:

- (32) The certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.

{¶ 102} As such, based on the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Nestlewood's application, subject to the conditions set forth in the Stipulation and this Order. As Nestlewood satisfies each of the conditions outlined above, it shall timely file, in this docket, documentation sufficient to demonstrate such compliance and Staff shall promptly file a letter setting forth its position regarding compliance with each such condition. Accordingly, based upon the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Nestlewood in accordance with R.C. Chapter 4906.

#### IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

{¶ 105} On October 22, 2018, the Applicant filed a Pre-Application Notification Letter informing the Board of a public informational meeting in Case No. 18-1546-EL-BGN.

{¶ 106} On November 1, 2018, the Applicant filed proof of publication made on October 25, 2018, in the *Clermont Sun*, a newspaper of general circulation in Clermont County, and in the *News Democrat*, a newspaper of general circulation in Brown County, and of notice of the public informational meeting scheduled to be held in Case No. 18-1546-EL-BGN on November 7, 2018.

{¶ 107} The Applicant held the public informational meeting for the Project on November 7, 2018.

{¶ 108} On December 14, 2018, Nestlewood filed its application for a Certificate of Environmental Compatibility and Public Need to construct the Project.

{¶ 109} On February 12, 2019, the Board issued a letter stating that the Board's Staff had received sufficient information to begin its review of the Application.

{¶ 110} On March 11, 2019, Nestlewood filed correspondence indicating that the Application fees were paid. Also, on March 11, 2019, Nestlewood filed a Certificate of Service indicating that copies of the Application were served upon local public officials and libraries.

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

{¶ 112} On March 18, 2019, the ALJ issued an Entry rescheduling the evidentiary hearing to June 13, 2019.

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

{¶ 114} On April 18, 2019, the ALJ issued an Entry rescheduling the public hearing to May 30, 2019.

{¶ 115} On May 15, 2019, the Staff Report of Investigation ("Staff Report") was filed.

{¶ 116} On May 16, 2019, a motion to intervene was filed by the Farm Bureau.

{¶ 117} On May 24, 2019, the Applicant filed a notice of footprint modification and a notice indicating that notice of the change in the date of the public hearing was sent on May 2, 2019.

{¶ 118} On May 28, 2019, the Applicant filed a Notice indicating that the second notice was mailed on May 22, 2019.

{¶ 119} A local public hearing was held on May 30, 2019. At the hearing, five individuals elected to provide testimony, voice concerns, or ask questions.

{¶ 120} On June 12, 2019, Nestlewood, the Farm Bureau, and Staff filed a Stipulation resolving all issues in this proceeding.

{¶ 121} On June 13, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Nestlewood presented the testimony of Joseph Jordan in support of the Stipulation; Staff presented the testimony of Derek F. Collins in support of both the Staff Report and the Stipulation.

{¶ 122} On August 30, 2019, the parties presented additional testimony regarding the May 24, 2019 footprint modification.

{¶ 123} On February 26, 2020, the parties presented additional testimony regarding the Project and presented supplemental Condition 31 to the Stipulation.

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

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

{¶ 126} Based on the record, the Board finds that Nestlewood's application should be approved and, pursuant to R.C. Chapter 4906, a certificate should be issued for the

construction, operation, and maintenance of the solar-powered electric generation facility subject to the conditions set forth in the Stipulation, the supplement to the Stipulation, and this Order.

## **X. ORDER**

{¶ 127} It is, therefore,

{¶ 128} ORDERED, That the Farm Bureau's May 16, 2019 motion to intervene be granted. It is, further,

{¶ 129} ORDERED, That Nestlewood's December 14, 2018 motion for waivers of Ohio Adm.Code 4906-4-08(A)(1)(c) and 4906-4-08(A)(5)(c) be granted. It is, further,

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

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



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

BOARD MEMBERS:

*Approving:*

Sam Randazzo, Chairman  
Public Utilities Commission of Ohio

Rachel Near, Designee for Lydia Mihalik, Director  
Ohio Development Services Agency

Mary Mertz, Director  
Ohio Department of Natural Resources

Gene Phillips, Designee for Amy Acton, M.D., MPH, Director  
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director  
Ohio Environmental Protection Agency

George McNab, Designee for Dorothy Pelanda, Director  
Ohio Department of Agriculture

Greg Murphy, Public Member

AS/mef

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**Case No(s). 18-1546-EL-BGN**

Summary: Opinion & Order approving and adopting the Stipulation, including the supplement to the Stipulation filed on February 4, 2020, between Nestlewood Solar I LLC, the Ohio Farm Bureau Federation, and Staff, and directs that a certificate be issued to Nestlewood Solar I LLC for construction, operation, and maintenance of a new 80 megawatt solar-powered electric generation facility electronically filed by Heather A Chilcote on behalf of The Ohio Power Siting Board