

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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

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

December 9, 2020

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**INTRODUCTION**

Building a solar farm in a rural, agricultural setting will undoubtedly change the landscape. The proposed project will remove farm land from production. “Quality of life” factors such as aesthetic views need to be ameliorated. Care will need to be taken to avoid damaging, and to promptly repair any damage, to drainage tiles that affect neighboring farms. That such factors or “impacts” accompany commercial solar farming does not make the activity unlawful or even unreasonable. Quite to the contrary, the Ohio General Assembly has declared renewable energy development to be both lawful and important to promote a diversified state energy portfolio. Local opposition, while vocal and passionate, contrasts with many farming families who welcome the economic development and tax and other benefits that this development brings to the area. There are a finite number of sites in Ohio that can support a commercial-size solar farm. The

proposed project site in Preble County is well-suited for such development, and that is why it has been selected.

To sustain legal muster, the proposed Alamo Solar Project (“Project”) need not be impact-free or without risk. Improvements and maintenance to local roads will be required and made. Aesthetics and other impacts will be addressed and minimized where possible. The passion of folks who oppose the project, while admirable, must not be allowed to cloud the task before the Board. Its adjudicatory role is to identify expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. The Board’s Staff (“Staff”) submits that the Application and the numerous conditions proposed by its Staff to address and mitigate impacts, as further modified by the Amended and Restated Joint Stipulation and Recommendation (“Amended Stipulation”)<sup>1</sup> proposed by a broad range of interested parties, adequately account for this. Staff respectfully requests that the Board adopt the proposed Amended Stipulation.

## **BACKGROUND AND PROCEDURAL HISTORY**

On December 10, 2018, Alamo Solar I, LLC<sup>2</sup> (“Alamo” or “Applicant”) filed this application to construct and operate a commercial solar farm in Preble County, Ohio.

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<sup>1</sup> As addressed in the Background and Procedural History of this brief, a subsequent Amended and Restated Joint Stipulation was filed on July 30, 2020, (and a redline version on September 29, 2020). Following the adjudicatory hearing and the parties’ respective post-hearing briefing last year, the parties engaged in a series of discussions and negotiations regarding the potential for a revised and amended stipulation based, in part, on issues that were raised during the hearing and in the post-hearing briefing.

<sup>2</sup> The Applicant is owned by Blue Planet renewable Energy, LLC, a joint venture partnership between MAP Energy, Inc. and Open Road Renewables, LLC.

Prior to filing the application, Alamo engaged in certain public outreach activities, including filing a project descriptive pre-application letter on October 22, 2018 and holding a public informational meeting on November 13, 2018.

The application purposed to construct arrays of ground-mounted photovoltaic (PV) modules, commonly referred to as solar panels, in Gasper and Washington Townships in Preble County. The project would also include associated support facilities, such as access roads, up to five meteorological stations, pyranometers, buried electrical collection lines, inverter pads, and a substation. The project would occupy up to 919 acres within a 1,002.5-acre project boundary, and is projected to generate 69.9 MW. The Staff completed its investigation and issued its Report of Investigation (“Staff Report”) on May 28, 2019. Staff Ex. 1.

On July 5, 2019, a Joint Stipulation and Recommendation (“Joint Stipulation”) was filed by a number of parties. Joint Ex. 1. The signatory parties, in addition to the Applicant, included the Staff, the Ohio Farm Bureau Federation, Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Board of Trustees of Gasper Township, the Board of Trustees of Washington Township, and the Preble County Planning Commission. The Eaton Community School District and Preble Shawnee Local School District intervened in this case, but are not signatory parties to the Stipulation. While not signatories, the school districts offered no testimony in opposition to the Stipulation, and conducted no examination of any of the witnesses offered during the hearing. The Concerned Citizens of Preble County, LLC, and individual citizens Eric & Kelly Altom, Mary Bullen, Camden Holdings, LLC, John

& Joanna Clippinger, Joseph & Linda DeLuca, Jason & Tonya Heggs, Donn & Elaine Kolb, Kenneth Kolb, James & Carla Lay, Clint & Jill Sorrell, John & Linda Wambo, John Frederick Winter and Michael & Patti Young (collectively “CCPC”), also intervened and actively participated in the case, opposing the Project.

The initial adjudicatory hearings commenced on July 17, 2019 and concluded on July 19, 2019. Testimony was elicited from seven (7) Applicant witnesses, three (3) intervenor witnesses, and eight (8) Staff witnesses as the Applicant, intervening parties (both supporting and opposing) and the Staff all received a full and fair opportunity to be heard on the merits. Post-hearing and reply briefs were filed by the parties on September 13, 2019, and September 27, 2019, respectively.

Following the adjudicatory hearing and post-hearing briefing, the parties engaged in a series of discussions and negotiations regarding the potential for a revised and amended stipulation based, in part, on issues that were raised during the hearing and in the post-hearing briefing. That effort resulted in the drafting of an Amended and Restated Joint Stipulation and Recommendation (“Amended Stipulation”). Joint Ex. 2.

On July 30, 2020, Alamo Solar, Ohio Farm Bureau Federation, Preble County Engineer, Preble Soil & Water Conservation District, Preble County Planning Commission, Preble County Commissioners, Board of Trustees of Gasper Township, Board of Trustees of Washington Township, and the Board Staff filed a Joint Motion to Reopen the Hearing Record to allow for the consideration of the amended Joint

Stipulation.<sup>3</sup> The Board had not issued a decision for this matter at the time the Joint Motion to Reopen was filed. The Amended Stipulation includes both revised and new conditions that are more protective and detailed than the conditions in the original Joint Stipulation and Recommendation.

Pursuant to Ohio Adm. Code Ohio 4906-2-31, the Administrative Law Judge reopened this proceeding.<sup>4</sup> The Amended Stipulation was filed on July 30, 2020. Supplemental testimony was filed by six (6) Applicant witnesses, and one (1) Staff witness. An adjudicatory hearing was held on the Amended Stipulation on October 26, 2020.

The Amended Stipulation incorporates a new condition (Condition 29) related to the management of potential post-construction stormwater flows and also a new condition (Condition 30) regarding certificate authority that has been recently incorporated by the Board into other certificates. The Amended Stipulation also includes revisions to a number of previously proposed conditions, including additional project setbacks, enhanced complaint procedures, incorporation of the results of cultural resources surveys, additional visual screening and lighting protections for non-participating parcel owners, additional protection for field tile drainage systems, recognition of a subsequently executed road use and maintenance agreement, and additional decommissioning requirements (Conditions 3, 10, 14, 15, 16, 25 and 28).

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<sup>3</sup> Case No. 18-1578-EL-BGN, Joint Motion to Reopen at 1 (July 30, 2020).

<sup>4</sup> Case No. 18-1578-EL-BGN, Entry (September 14, 2020).

The law requires the Board's Staff to investigate an application to assess likely impacts and to recommend conditions to the Board to mitigate or minimize impacts to the project environment. The law does not, of course, require a finding that the project be totally free of safety or other risks, or even minor annoyances to the public, as a precondition to Board approval. The Staff has proposed comprehensive recommendations for the Board's studied consideration in order to address and reduce Project impacts to reasonably acceptable levels. A number of those conditions were significantly expanded through the negotiations that resulted in the original Joint Stipulation, and further expanded in the Amended Stipulation. Staff submits that, if implemented, these conditions, as modified by the Amended Stipulation, will allow this project to satisfy the requisite statutory criteria. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

## **DISCUSSION**

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

The proposed facility has minimal environmental impacts. It will produce electricity without polluting the air and without using, much less polluting, water. This stands in stark contrast to the environmental issues posed by nuclear, coal, or even natural gas fueled electric generating units. When operational, this facility promises a negligible environmental impact and, certainly, minimum adverse environmental impact in comparison to other electricity generating methods.



Nevertheless, Staff conducted a comprehensive review scrutinizing nearly two dozen areas including: socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and speaks for itself.

Staff also recommended conditions to reasonably minimize impacts and risks. Staff believes that its recommended conditions will sufficiently mitigate any such impacts and allow the Board to find overall minimal adverse environmental impact. Through negotiations, the parties have agreed to even more stringent conditions that further minimize environmental impact. The Staff Report provides the Board with a sound, objective, evidentiary basis for determining the existence of all R.C. 4906.10 criteria, and, the Staff submits, supports Board issuance of a certificate conditioned as the Amended Stipulation has recommended.

**A. R.C. 4906.10(A)(1) – Basis of Need**

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

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

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

The Staff Report found that no residences, parks or recreational areas would be within the Project boundaries. Nor would any commercial structures, places of worship, medical facilities, schools or other institutional land uses be located near the Project area. Landscape and vegetative screening would be used to minimize visual impacts, and the panels would be installed with anti-glare coating. Prior to commencement of any construction the Applicant shall prepare a landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility and this plan shall include measures such as fencing, vegetative screening and good neighbor agreements. Joint Ex. 2 at 8-9. The lighting will be motion-activated, and designed to narrowly focus light inward. *Id.* In addition, the Applicant will maintain vegetative screening for the life of the facility and the Applicant must replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. *Id.*

Staff found no evidence that any cultural resource would be impacted. If the survey work from the Historic Resource Survey Research Design for the project dated January 14, 2020, and the Phase 1 Archeological Survey Research Design for the project dated January 16, 2020, each as approved by the Ohio Historic Preservation Office ("OHPO"), discloses a find of cultural, archaeological, or architectural significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then

the Applicant is required to submit a modification, or mitigation plan detailing how such site(s) will be avoided or impacts minimized. Joint Ex. 2 at 8.

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

While there was considerable discussion of the benefits from the Payment in Lieu of Taxes (PILOT) plan throughout the hearing, there is no evidence that any entity would experience any negative impact. The evidence of record reasonably demonstrates that individual taxing authorities would not be harmed by the PILOT plan. On cross-examination, Applicant witness Herling testified that the separate taxing authorities would "receive the disbursements (of PILOT payments) as a pro rata based on how they currently receive taxes," Tr. I at 86, and that the PILOT payments would be "far in excess of the current property taxes paid on those parcels." *Id.* at 85. Moreover, Mr. Herling further testified that, to the extent that the Applicant's understanding of the PILOT program was incorrect, the Applicant would "ensure that the disbursements go on as they exist now." *Id.* at 88.

The Applicant has committed to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration. The plan will be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors. Joint Ex. 1 at 12.

The Project will not adversely impact public or private water supplies. There are no geological features that would restrict construction of the facility. No wetlands, ponds or lakes would be affected. The only identified threatened or endangered species that might be impacted are the Indiana and northern long-eared bat. Staff has recommended and the Amended Stipulation adopted seasonal tree cutting to ameliorate any impacts to roosting habitat.

Traffic would be affected, although almost exclusively during the construction phase. While that impact may be inconvenient, there is no evidence that it would be any greater than that caused by current farming operations, or any effect at all once construction was complete. The agreed-upon conditions require the Applicant to develop a transportation plan in conjunction with the county engineer.

Finally, Staff found that operational noise would be relatively minor, and would only occur during the daytime hours. According to the Applicant's noise expert, David Hessler, sound from the substation would be "inaudible" at homes near the Project area. Tr. II at 265.

The Amended Stipulation includes two new conditions (numbers 29 and 30 at Joint Ex. 2 at 12) from the original Joint Stipulation. Condition 29 requires that if one acre or more of ground is disturbed, the Applicant must obtain a "General Permit Authorization for Storm Water Discharges Construction Associated with Construction Activities" – also referred to as a Construction General Permit - from the Ohio EPA. Applicant witness, Douglas Herling, testified that Condition 29 will help to ensure that "post construction stormwater flows are appropriately managed, and that if any post-

construction control measures are required, that they are reviewed, approved and maintained in accordance with Ohio EPA regulations, and that local agencies are aware of those measures. The same condition was approved by the Board in the Nestlewood proceeding.” Supplemental Direct Testimony of Douglas Herling, Company Ex. 14 at 11.

Condition 30 provides that 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. Joint Ex. 2 at 12. Condition 30 was added to as a result of the settlement negotiations with the parties, where it was acknowledged that the Board has previously incorporated this language into certificates. Herling Supplemental Testimony, Company Ex. 14 at 12.

In conclusion, Staff reported that it believed that the Applicant had determined the nature of the probable environmental impact and had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff’s recommended conditions as modified by the Amended Stipulation when issuing any certificate. Staff reiterates that conclusion in light of the modifications to those conditions contained in the Amended Stipulation.

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

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would

undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Those conditions have been further modified by the Amended Stipulation, even further minimizing any potential impacts.

**D. R.C. 4906.10(A)(4) – Electric Grid**

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

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

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. The Applicant will hire a licensed construction firm with knowledge and experience in dust minimization to comply with those rules. Nor will construction nor operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary permits for construction and operation sufficient to

comply with the requirements of R.C. Chapter 6111. The record reveals no dispute on these points.

Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff believes this also is not disputed. While CCPC raised "concerns" about hazardous materials associated with the solar panels, it offered no evidence that panels contain any such materials.

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

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

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

In evaluating R.C. 4906.10(A)(6), Staff considers both the impact that the Project may have on public safety, and the opportunities for public participation in the siting process.

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Fire Protection Association. It will use warning signs, fencing, and locked gates to restrict access to the

Project, and will work with local emergency responders to provide training for response to emergencies related to a solar farm. Through negotiations, Alamo agreed to an additional condition (Amended Stipulation Condition #27) to provide multiple training opportunities, on-going safety meetings, and any specialized equipment that responders may need to appropriately respond to an emergency at the Project.

Alamo held a public information meeting and provided copies of its application to all relevant local officials. Many of those, including the Preble County Commissioners, the Boards of Trustees of Gasper and Washington Townships, the Preble County Planning Commission, the Preble, Soil and Water Conservation District, and the Preble County Engineer, have been actively involved in the negotiation of and are signatory parties to the Amended Stipulation.

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

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

The Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles. This is one of the most significant issues in this case. CCPC and its members operate farms in the area adjacent to the Project boundary, and are susceptible to impacts caused by broken drainage tiles.



The Applicant will endeavor to avoid damaging drainage tiles. It will locate drainage tiles as accurately as possible prior to construction. Applicant witness Herling testified that Alamo was working with an external consultant in collaboration with the Project landowners and the Soil and Water District to help identify all of the drain tile, pattern, main or otherwise. Tr. I at 57. The Applicant will repair all tiles damaged during construction or operation of the facility. *Id.* at 59.

The problem arises when tiles are unknowingly damaged. CPCC expressed concern that damaged tiles not timely identified and repaired could have a negative impact on farming operations.

At the outset it should be noted that not all of the land in the Project and surrounding area necessarily even has drainage tile installed. While there may be some records, those records are likely incomplete. Tr. I at 117, 186. Part of the difficulty in locating drainage tiles is that much of it was installed 100 years ago or longer. Repairs have been infrequent, and only when conditions necessitated replacement.

CCPC witness Kolb testified that his greatest concern was the timeliness of repairs. Tr. III at 511. Condition 16 relates to the repair of damaged drainage tile. Staff witness Bellamy testified that much of that condition was changed during negotiations from what Staff had originally proposed, adding, “a lot of elaboration about how drain tiles are to be fixed and who has to approve the repairs to the drain tiles.” *Id.* at 510. As contained in the Amended Stipulation, Condition 16 reads:

The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning surface and subsurface field tile drainage systems and soils resulting from

the construction, operation, and/or maintenance of the facility in agricultural areas, whether such drainage systems are publicly or privately maintained. Benchmark conditions of surface and subsurface drainage systems shall be documented prior to construction, including the location of mains and grassed waterways, and efforts to contact the owners of all parcels adjacent to the project area to request drainage system information on those parcels. Such documentation shall be provided to the County Engineer. Any tile installation or repairs shall be performed in accordance with applicable provisions of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage or Water Table Control, ASTM F499-02 (2008), to the extent practicable. If uncertainty arises concerning the proper procedures for tile repair, Applicant may consult with the local Soil & Water Conservation District or a USDA Natural Resources Conservation Service representative for privately maintained tile, and shall consult with the County Engineer for tile located in a county maintenance/repair ditch, as delineated in Document A, attached hereto. Damaged field tile systems shall be promptly repaired no later than 30 days after such damage is discovered, and be returned to at least original conditions or their modern equivalent at the Applicant's expense. When repairing tiles in a county maintenance/repair ditch, the Applicant shall give reasonable notice of such repairs to the County Engineer and Staff. The County Engineer or his/her representative shall have the right to visually inspect and approve the repair work performed prior to backfill. If the County Engineer does not approve the repair work in a timely manner, Staff shall have the right to visually inspect and approve the repair work performed prior to backfill. If the opinion of the County Engineer and the opinion of Staff on approval of the repair work differ, Staff shall have the final authority to approve the repair work. As stated in the Application, the Applicant will develop a Stormwater Pollution Prevention Plan that will require the utilization of silt fences during construction and the prompt removal of construction silt from drainage ditches when necessary for continued efficient drainage. The Applicant shall provide the Soil & Water Conservation District and the County Engineer with a single point of contact with the Applicant after construction is completed to address any resource concerns.

Joint Ex. 2 at 8 (highlighted portion added to the original Joint Stipulation by the Amended Stipulation).

As comprehensive as this condition is, it obviously cannot contemplate every possible circumstance. Staff witness Bellamy clarified, for instance, Staff's understanding of the phrase "promptly repaired no later than 30 days after such damage is discovered":

Q [Mr. Van Kley]: Okay. And with respect to the term "promptly" that you just read, is there an intended time frame that would be applicable to the prompt notification?

A [Mr. Bellamy]: I can't -- I wouldn't be able to put a number on it, but the Applicant should do the repairs as quickly as feasible, you know, barring, you know, let's say, you know, there's heavy rain, you know, flooding for two weeks and they can't get in to do the repairs and maybe they don't start until the 15th day or let's say, you know, all the drain companies that are available are busy for the next, you know, two to three weeks, the repairs can't get done right away; but if the conditions will allow a repair and a repair company is available, we expect the repairs to be done as soon as possible.

Tr. III at 539-540.

On decommissioning, the Applicant will return the land to original or similar conditions. This specifically includes repairing any drainage tiles and the de-compaction of the soil. Staff Ex. 1 at 23.

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

#### **H. R.C. 4906.10(A)(8) – Water Conservation Practice**

Other than for dust control as needed, construction of the proposed facility would not require the use of significant amounts of water. Nor would facility operations require a significant use of water, and nearly no water or wastewater discharge is expected. The Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

#### **II. The Board should determine that the Amended Stipulation meets the three-part test for reasonableness.**

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

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

Staff respectfully submits that the Amended Stipulation here satisfies these reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

#### **A. Result of Serious Bargaining**

The Amended Stipulation is the product of an open process in which all intervenors were given an opportunity to participate. All parties were represented by experienced and competent counsel. While not all have participated in regulatory proceedings before the Board, all have extensive experience in regulatory matters and managing complex litigation. There were extensive negotiations<sup>5</sup> among the parties. The

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<sup>5</sup> The parties in this case are substantially the same as those in the *Angelina Solar* case pending before the Board, and involved the same counsel. *In the Matter of the Application of Angelina Solar I, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 18-1579-EL-BGN. The Stipulation in this case significantly mirrors the stipulation reached in that case. Consequently, the negotiations in this case, while not “extensive” per se, were essentially a continuation of the extensive negotiations that resulted in the *Angelina* agreement. Similarly, both cases were reopened, with further negotiations occurring along parallel paths for both cases.

original Joint Stipulation represented a comprehensive compromise of the issues raised by parties with diverse interests. After the record was closed and while awaiting a decision from the Board, settlement discussions were reopened. The Applicant provided additional information about details of the project, including agreements reached with public officials. “Serious bargaining” between the parties resulted in additional conditions being added, and greater detail and increased protections added to existing proposed conditions. All parties were invited to participate, and the signatory parties were active in crafting the amended conditions. The Amended Stipulation is undeniably a product of serious bargaining among capable, knowledgeable parties.

#### **B. Benefits the Public Interest**

Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10, along with the Board’s criteria for evaluating stipulations, as more fully described below. In addition, Applicant witness Herling testified that the Project would create 515 to 986 direct and indirect jobs during construction, and 13 jobs during the operation of the facility. Alamo Ex. 7 at 7. He also testified that the Company anticipated making payments, in addition to wages and other services, in lieu of taxes in excess of \$489,000 per annum. *Id.* Mr. Herling also testified that the Project would generate clean and quiet renewable electricity and provide on peak power. *Id.* at 18.

In addition, negotiations significantly enhanced the protections recommended by the conditions recommended by the Staff in its Report of Investigation. The Amended Stipulation improved provisions for security of the facility, minimization of visual

impacts, increased cooperation and involvement by local officials, and training and equipment for first responders. Accordingly, the Amended Stipulation benefits the public interest.

**C. Does not violate any important regulatory principle or practice**

Applicant witness Herling testified that the Project would not violate any important regulatory principle or practice. Alamo Ex. 7 at 21. Staff submits that there is no evidence of record to the contrary, and supports Mr. Herling's position.

**CONCLUSION**

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

Respectfully submitted,

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



## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 9<sup>th</sup> day of December, 2020.

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