

**BEFORE THE OHIO POWER SITING BOARD**

**In the Matter of the Application of  
Angelina Solar I, LLC  
for a Certificate of Environmental  
Compatibility and Public Need**

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**Case No. 18-1579-EL-BGN**

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**INITIAL POST-HEARING BRIEF OF ANGELINA SOLAR I, LLC**

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### INITIAL POST-HEARING BRIEF OF ANGELINA SOLAR I, LLC

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#### I. INTRODUCTION

Angelina Solar I, LLC (“Angelina”) requests that the Board issue a certificate of environmental compatibility and public need (“Certificate”) to Angelina, including the conditions recommended in the Amended and Restated Joint Stipulation and Recommendation (“Amended Joint Stipulation”), for the Angelina Solar Project. The Angelina Solar Project is a proposed solar-powered electric generation facility with a capacity of 80 megawatts (“Project”). (Company Ex. 1 at 1). The Project will be located on approximately 827 acres of private land in Preble County, Ohio (“Project Area”). (Company Ex. 1 at 2). Angelina has provided ample evidence satisfying each of the applicable eight subsections of R.C. 4906.10 as well as the Board’s three prong test for stipulations. Having met the Board’s test as well as the statutory requirements, Angelina respectfully requests that the Board issue the requested Certificate.

In addition to satisfying the Board’s requirements for issuance of the Certificate, the Project also enjoys strong support from the Ohio Power Siting Board Staff (“Staff”), numerous local authorities, and the Ohio Farm Bureau Federation; the Project will provide numerous benefits to the local community; and, Angelina is committed to implementing conditions that either alleviate and/or mitigate each of the “concerns” raised by the Concerned Citizens of Preble County, LLC (“CCPC”) regarding the Project.

Staff has recommended that the Board grant the Certificate subject to certain conditions, (Staff Ex. 1 at 33), and testified that it fully supports the Amended Joint Stipulation. (Staff Ex. 13 at 1). In addition to Staff's support, the Project is supported by the Preble County Commissioners, Preble County Engineer, Preble Soil & Water Conservation District, Board of Trustees of Dixon Township, the Preble County Planning Commission, and the Ohio Farm Bureau Federation, all of whom, along with Staff, signed the Amended Joint Stipulation recommending approval of the Project. (Joint Ex. 2 at 20).

The Project will also bring numerous benefits to the community including increased emission-free power, greater revenues to local government, and significant job creation. The addition of emission-free power will assist in the attainment of air quality goals in southwestern Ohio. (Company Ex. 1 at 41-42). Further, the Board of County Commissioners of Preble County recently passed a resolution that will require Angelina to make annual payments totaling \$9,000 per megawatt to local government amounting to at least \$720,000 per annum. (Company Ex. 22 at 14; Id. at Attachment DH6). This revenue will be approximately 11 times greater than the amount of property taxes currently being paid on the parcels forming the Project Area. (TR at 129-130).

In addition to this direct financial benefit, the Project will create approximately 518 to 1,076 direct and indirect construction-related jobs with corresponding payrolls of \$25.4 million to \$55.6 million. (Company Ex. 1 at 31; Id. at Exhibit C). Following construction, during the operation phase of the Project, the Project will create approximately 19 to 22 direct and indirect jobs with corresponding annual payrolls of approximately \$630,000 to \$1 million. (Id.) In sum, the Project is expected to generate new economic output of approximately \$161.7 million during construction and \$1.5 million annually from operation. (Company Ex. 1 at 32).

Despite the support of Staff and local authorities and the clear benefits to the local community, the CCPC, consisting of a small number of residents and private entities, oppose the Project. CCPC has voiced numerous concerns in its testimony to the Board. (CCPC Ex. 2 at 4-6). These include alleged concerns over visibility, vegetation management and maintenance, construction noise, road use disruptions, wildlife, property devaluation, light locations, repair of drain tile, adequacy of setbacks, financial viability of decommissioning, among others. (Id.) As an initial matter, these concerns are not expert opinions nor conclusions. CCPC choose not to put on a single expert witness. Rather, they are merely unsupported concerns about imagined impacts that have no evidentiary value. (TR at 343-345). Nevertheless, Angelina has provided evidence and adopted numerous conditions that address each of CCPC's concerns. By way of example, the record establishes the following:

- Based on a conservative Visual Resource Assessment ("VRA"), the solar panels and substation will only be potentially visible from 16.79% and 9.7% of the VRA's 5-mile visual study area, respectively, (Company Ex. 12 at 4);
- The Amended Joint Stipulation commits Angelina to establish visual screening for adjacent non-participating landowners and maintain that screening for the life of the Project, (Joint Ex. 2 at 8);
- Local traffic, including agricultural vehicles, will continue to be able to use local roads during construction and operation. (Company Ex. 10 at 3-4).
- Construction noise from the Project at any given location will be short in duration. (Company Ex. 1 at 57).
- The Project's operational noise at all non-participating residences would either be under or very close to 35 dBA, which "is so low in absolute terms that it is generally considered inconsequential." (Company Ex. 23 at 3).
- The area surrounding the Project Area will not see an influx of wildlife that has been excluded from the Project Area. (Company Ex. 13 at 7).
- Any electromagnetic fields that are generated by the Project will not affect the use of electrical devices. (Company Ex. 1 at 66; Company Ex. 19 at 2).



- Drain tile will be mapped and assessed prior to construction, and Angelina is committed to taking prompt action to repair damaged drain tile. (Joint Ex. 2 at 8-9).
- Adequate drainage in the Project Area and surrounding properties will be maintained and new Ohio Environmental Protection Agency (EPA) Guidance on stormwater control will be accounted for in any required stormwater management efforts. (Company Ex. 8 at 4; Joint Ex. 2 at 12).
- There is no risk of soil or water contamination from the Project. (Company Ex. 6 at 16-17).
- The Project will not burden emergency services in the area. (TR at 124).
- The Project will be decommissioned at the end of its useful life, can be returned to agricultural use, and Angelina will post financial security to ensure financing for the decommissioning effort. (Company Ex. 1 at 39; Joint Ex. 2 at 11-12).

Given the evidence addressing each of CCPC's concerns, it appears that CCPC's true purpose is to keep the Project out of Preble County, regardless of the conditions Angelina accepts and whether the Project causes any actual impact. Indeed CCPC's witness, Rachel Vonderhaar admitted that she "oppose[s] putting solar panels on agricultural land," yet would "not oppose the Project Area being used for a large residential development." (TR at 390). In other words, CCPC is simply opposed to a solar project, but would have no problem with a development with far greater, extensive impacts. Thus, despite Angelina's genuine efforts to address all of CCPC's concerns, it appears that no condition or modification will satisfy CCPC. It is determined to oppose the Project and ignore the many benefits it will bring to Preble County, the surrounding region, and the State of Ohio.

In sum, and as set forth more fully below, Angelina has met its burden of proof as to the statutory criteria under R.C. 4906.10(A), and the Amended Joint Stipulation satisfies the Board's three-pronged test. First, it is the product of serious bargaining among capable parties. (Company Ex. 22 at 12). Second, the Amended Joint Stipulation does not violate any important

regulatory principle or practice. (Company Ex. 22 at 15). Finally, and most importantly, the Amended Joint Stipulation is in the public interest, providing substantial benefits to the public in the form of jobs and direct and indirect economic benefits. In addition, it includes a number of conditions to ensure that the impact of the Project on the public is minimized, including conditions regarding setbacks, hours of construction, the maintenance and repair of drain tile, vegetation and noxious weeds, traffic and road maintenance, training and equipping local emergency services, and decommissioning. (Joint Ex. 2 at 6-12). The record establishes that the Amended Joint Stipulation should be approved without modification and a Certificate issued to Angelina for the Project.

## **II. SUMMARY OF THE PROCEEDING**

On December 3, 2018, Angelina filed its Application (Company Ex. 1). Subsequent to the filing of the Application, the following entities intervened in this proceeding: the Preble County Commissioners, the Preble County Engineer, the Preble Soil & Water Conservation District, the Board of Trustees of Dixon Township, the Board of Trustees of Israel Township, the Preble County Planning Commission, the Eaton Community School District, the Ohio Farm Bureau Federation, and the CCPC.

On July 31, August 1, 12, and September 10, 2019, the Board held its initial hearing in this matter. On July 29, 2020, Angelina, along with Staff, Ohio Farm Bureau Federation, Preble County Engineer, Preble Soil & Water Conservation District, Preble County Planning Commission, Preble County Commissioners, and the Board of Trustees of Dixon Township moved to re-open the hearing record to provide additional testimony regarding the Amended Joint Stipulation, also filed on July 29, 2020. These moving parties sought to reopen the record following 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 initial hearing and in the post-hearing briefing. That effort resulted in the Amended Joint Stipulation, which includes both new and revised conditions. The Amended Joint Stipulation incorporated a new condition (Condition 30) related to the management of potential post-construction stormwater flows and also a new condition (Condition 31) regarding certificate authority that has been recently incorporated by the Board into other certificates. (Joint Ex. 2 at 12).

The Amended Joint Stipulation also revised ten previously proposed conditions, including conditions addressing setbacks, cultural resources, visual screening and lighting, complaint resolution, drainage and drain tile, road maintenance, and decommissioning (Conditions 1, 3, 9, 11, 13, 16, 18, 20, 26 and 29). These new and revised conditions reflect the negotiations between the parties to this matter, the ongoing development of the Project, as well as additional commitments being made by Angelina.

The Board subsequently granted the motion, allowed the filing of the Amended Joint Stipulation. The second hearing in this matter occurred on October 29, 2020.

### **III. PROPOSED FACILITY**

Angelina intends to build the Project as an 80 MW solar-powered generating facility in Preble County, Ohio. (Company Ex. 1 at 1, 2). The Project would consist of large arrays of ground-mounted photovoltaic (“PV”) modules, commonly referred to as solar panels. The Project also includes associated support facilities, such as access roads, meteorological stations, buried electrical collection lines, inverter pads, and a substation. The Project would occupy up to 827 acres within a 934-acre project boundary. (Id. at 1).

The solar panels would be attached to metal racking. The racking would include piles driven or rotated into the ground. The solar panel arrays would be grouped in large clusters,

fenced for public safety and equipment security, with locked gates at all entrances. (Company Ex. 1 at 7-8). The Project will use either crystalline or thin-film solar panels and either fixed-tilt or single-axis tracking racking, which would accommodate either type of panel. (Id. at 8). Angelina has not selected the solar panel vendor, but intends to use a manufacturer that has the capability and experience to provide approximately 213,333 to 320,000 solar panels for the Project. (Id.)

Angelina will install an underground collector system made up of a network of electric and communication lines that would transmit the electric power from the solar arrays to a central location. (Company Ex. 1 at 9). Angelina proposes to install up to 10.6 miles of buried cable. (Id. at Exhibit G at Table 7-1). Installation of the cable would require an approximately 20-foot wide temporary work area along its entire length. The electricity from the solar panels would be generated in direct current (“DC”). DC power from the solar panels would be collected in circuits, which would be routed through cable trays, then to combiner boxes. Power from the combiner boxes would be transmitted to groups of components, collectively called inverters, each of which would include a DC-to-alternating current (“AC”) inverter, a step-up transformer that would increase the voltage to 34.5 kV, and a cabinet containing power control electronics. (Company Ex. 1 at 9). Each inverter would deliver AC power to a common substation through a system of buried electric lines and associated communication lines. (Id.)

The Project substation would occupy up to three acres of land approximately 700 feet east of the proposed point of interconnection. The major components of the Project’s substation would be collection line feeders and breakers, a 34.5 kV bus, a main power transformer to step up the voltage to 138 kV, a high-voltage breaker, metering/relaying transformers, disconnect

switches, an equipment enclosure containing power control electronics, and a lightning mast that would be up to approximately 70 feet in height. (Company Ex. 1 at 9).

#### **IV. STANDARD OF REVIEW**

##### **A. Statutory Criteria**

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 gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) That 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) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The evidentiary record in this matter supports a Board finding that the criteria under Section 4906.10, Revised Code are either not applicable or are satisfied.

## **B. Stipulation Criteria**

Ohio Adm. Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations. Although not binding on the Board, pursuant to Ohio Adm. Code 4906-2-24(D), stipulations are to be accorded substantial weight. The standard of review for considering the reasonableness of stipulations has been discussed in a number of prior Board proceedings. *See, e.g., 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 stipulation, 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 package violate any important regulatory principle or practice?
- (3) Does the settlement, as a package, benefit ratepayers and the public interest?

The evidentiary record in this matter supports a Board finding that this three-prong test has been satisfied.

## **V. ARGUMENT**

The record in this proceeding supports the Board finding and determining that all eight of the statutory criteria under R.C. 4906.10(A) have been met. Angelina's witnesses are experienced and knowledgeable, and have decades of collective experience working in their respective fields. The record includes their testimony, and provides adequate evidence for the

Board to find that the Project will have a minimal environmental impact; that the Project will serve the interests of electric system economy and reliability; that the Project will comply with air pollution, solid and hazardous waste, water pollution, aeronautics, and water consumption statutes; that the Project will serve the public interest; that the Project will have a minimal impact on the viability of agricultural district land; and that the Project will incorporate maximum feasible water conservation practices. The record also includes adequate evidence for the Board to find that the Amended Joint Stipulation satisfies the Board's three-pronged test, that the Amended Joint Stipulation (1) is the product of serious bargaining among capable parties; (2) does not violate any important regulatory principle or practice; and (3) is in the public interest.

**A. Angelina's Witnesses are Experienced and Knowledgeable about Solar Projects**

In support of its Application and the Amended Joint Stipulation, and to address the "concerns" of the CCPC, Angelina has presented eight expert witnesses, each with significant experience working with renewable generation and solar facilities in particular, who provided testimony over five days of hearing addressing certain subject areas. In contrast, the CCPC has failed to offer even a single expert witness. Given the experience, expertise, and knowledge demonstrated by Angelina's expert witnesses, the Board should be fully confident in relying on their testimony in determining that the Project meets the required criteria.

A summary chart setting forth the witnesses, their titles, places of employment, the topic areas of their testimony, and references to their pre-filed and hearing testimony is set forth in the chart below followed by a brief summary of their relevant experience.

<b>NAME</b>	<b>COMPANY</b>	<b>TOPICS</b>	<b>TESTIMONY REFERENCES</b>
Doug Herling, VP of Development	Open Road Renewables, LLC	All aspects of the Project's development	<ul style="list-style-type: none"> <li>• Company Ex. 6 – Direct Testimony</li> <li>• Company Ex. 19 – Rebuttal Testimony</li> <li>• Company Ex. 22 – Direct Suppl. Testimony</li> <li>• Transcript: 12-135, 487-496, and 548-579</li> </ul>
Noah Waterhouse, Director of Solar / Professional Engineer	EVS, Inc.	Drainage and drain tile	<ul style="list-style-type: none"> <li>• Company Ex. 8 – Direct Testimony</li> <li>• Company Ex. 9 – Direct Suppl. Testimony</li> <li>• Company Ex. 25 – Second Suppl. Testimony</li> <li>• Transcript: 137-157</li> </ul>
Mark Bonifas, Civil Engineering Practice Leader / Professional Engineer	Hull & Associates, Inc.	Traffic management, decommissioning and vegetation management	<ul style="list-style-type: none"> <li>• Company Ex. 10 – Direct Testimony</li> <li>• Company Ex. 11 – Direct Suppl. Testimony</li> <li>• Company Ex. 27 – Second Suppl. Testimony</li> <li>• Transcript: 159-169</li> </ul>
David Hessler, Vice President / Professional Engineer	Hessler Associates, Inc.	Noise impacts	<ul style="list-style-type: none"> <li>• Company Ex. 14 – Direct Testimony</li> <li>• Company Ex. 20 – Rebuttal Testimony</li> <li>• Company Ex. 23 – Suppl. Direct Testimony</li> <li>• Transcript: 236-272, 497-505, and 583-607</li> </ul>
Ryan Rupprecht, Senior Project Manager / Practice Lead for the Renewable Energy Group in the Midwest region	Cardno, Inc.	Environmental impacts	<ul style="list-style-type: none"> <li>• Company Ex. 13 – Direct Testimony</li> <li>• Transcript: 209-235</li> </ul>



NAME	COMPANY	TOPICS	TESTIMONY REFERENCES
Andrew Lines, Principal	CohnReznick LLP	Property valuation	<ul style="list-style-type: none"> <li>• Company Ex. 15 – Direct Testimony</li> <li>• Transcript: 273-282</li> </ul>
Matthew Robinson, Visualization Project Manager	Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C.	Visual impacts and mitigation	<ul style="list-style-type: none"> <li>• Company Ex. 12 – Direct Testimony</li> <li>• Company Ex. 16 – Suppl. Direct Testimony</li> <li>• Company Ex. 24 – Second Suppl. Direct Testimony</li> <li>• Transcript: 178-208 and 608-623</li> </ul>
Matthew Marquis, Project Engineer / Professional Engineer and Certified Floodplain Manager	Hull & Associates, Inc.	Stormwater management	<ul style="list-style-type: none"> <li>• Company Ex. 21 – Direct Testimony</li> <li>• Company Ex. 26 – Suppl. Direct Testimony</li> <li>• Transcript: 502-528 and 624-635</li> </ul>

***1. Doug Herling – Vice President of Development and Project Manager***

Doug Herling has specific experience in the development of several large-scale solar projects. (Company Ex. 6 at 2). His role in such solar developments has been wide ranging and includes identifying prospective projects; acquiring land rights; developing relationships with officials, regulators, and communities; developing project budgets; and managing environmental studies, the permitting process, and third party consultants. (Company Ex. 6 at 1). Mr. Herling also served a number of years in a volunteer emergency management services (“EMS”) organization, including responsibility for operations. (TR at 126). Open Road Renewables, LLC, Mr. Herling’s employer, has institutional knowledge regarding the operation of solar farms. (Company Ex. 6 at 1; TR at 44). In addition, Mr. Herling has spent time working in the local community to understand and try to address concerns. (TR at 44).

***2. Noah Waterhouse – Professional Engineer – Drainage and Drain Tile***

Noah Waterhouse has extensive experience evaluating drain and runoff and drain tile issues at more than 50 solar projects. (Company Ex. 8 at 1-2). His experience in Ohio includes acting as the engineer of record for the 20-megawatt Bowling Green solar project, which had an extensive drain tile network, as well as working on another 100 plus-megawatt project. (TR at 153).

***3. Mark Bonifas – Professional Engineer – Transportation, Decommissioning***

Mark Bonifas is a Professional Engineer, has been practicing as an engineering consultant for over 30 years, and has been performing civil engineering services on renewable energy projects for over 10 years, including experience in the construction of solar projects. (Company Ex. 10 at 2; TR at 163).

***4. David Hessler – Professional Engineer – Acoustics***

David Hessler has nearly 30 years' experience specializing in acoustical design and analysis of power generation and industrial facilities of all kinds, including solar energy projects. (Company Ex. 12 at 1). Mr. Hessler has been the principal acoustical designer and/or test engineer on hundreds of power station projects all over the world, roughly 70 wind energy projects and, more recently, a number of large-scale solar projects, including several in the State of Ohio. (Id. at 1-2).

***5. Ryan Rupprecht – Senior Project Manager – Environmental***

Ryan Rupprecht is responsible for developing, managing and performing consulting work involving environmental permitting, terrestrial and aquatic ecological resource studies, wetland and stream delineations, and surface water quality assessments, and oversees technical experts in biology/ecology, wetland sciences, cultural resources, and rare, threatened and endangered

(“RTE”) species habitat assessments. (Company Ex. 13 at 1). He has over 15 years of professional environmental experience with specific expertise in, among other areas, water resources, fisheries, habitat and wildlife valuation/identification, and soil/sediment evaluation. (Id. at 2). In addition, Mr. Rupprecht worked with a Cardno team during field surveys and to develop information in the Application and in his testimony. (TR at 218, 222; Company Ex. 13 at 7).

***6. Andrew Lines – Certified Real Estate Appraiser – Property Valuation***

Andrew Lines oversees a staff of 30 appraisers and valuation experts in all types of real estate. (Company Ex. 15 at 1). He has testified before numerous governmental bodies regarding proposed new developments, including solar power installations, addressed community concerns regarding those proposed developments, and has completed valuation impact studies on solar farms as well as other large scale utility projects including landfills, big box retail developments, and electric power transmission lines. (Id. at 2).

***7. Matthew Robinson – Visualization Project Manager – Visual Impacts***

Matthew Robinson is responsible for the oversight of all technical analyses associated with visual impact assessments conducted by EDR. This includes identification of visually sensitive resources, field evaluation and documentation, visibility analyses, development of detailed and accurate visual simulations, determination of impacts, mitigation conceptual design and report production. (Company Ex. 12 at 1). Mr. Robinson has previously overseen visual assessments, visual screening, and landscaping design for a number of solar projects, including Mohawk Solar in New York State and the Battle Creek 1 Solar Project, Ryegate GLC Solar, and Otter Creek I & II Solar Projects in Vermont. (Id. at 1-2).

**8. Matt Marquis – Professional Engineer – Surface Drainage**

Matt Marquis’s project experience includes a wide range of hydrologic and hydraulic (“H&H”) analyses, surface water management and erosion and sediment control design. (Company Ex. 21 at 2). In his role as a project engineer at Hull & Associates, Inc., Mr. Marquis serves as the H&H lead on many large and small engineering design projects and flood studies for public and private clients covering dams, landfills, ash ponds, site development and redevelopment, and site remediation, among others. (Id.)

**B. The Project is not an Electric Transmission Line or Gas Pipeline, and therefore the Board is not required to determine the basis for need (4906.10(A)(1))**

The Project is an electric generation facility, not an electric transmission line or gas pipeline. (Company Ex. 1 at 1). Therefore, this statutory criterion is inapplicable.

**C. The Board has Adequate Evidence to Determine the Nature of the Probable Environmental Impact of the Project and to Determine that the Project Represents the Minimum Adverse Environmental Impact (4906.10(A)(2) and 4906.10(A)(3))**

Staff considered the Project’s socioeconomic impacts, ecological impacts, construction impacts and operational impacts as “environmental impacts” in the Staff Report of Investigation. (Staff Ex. 1 at 12-23.) After summarizing the impacts, Staff recommended to the Board that it make a finding of determination as to the nature of the probable environmental impact and that the Project will have a minimum adverse environmental impact, subject to Staff’s recommended conditions. The record supports these same findings under the conditions recommended in the Amended Joint Stipulation.

***1. The Board has Adequate Evidence to Find and Determine that the Socioeconomic Impacts are Minimal***

***a. The Board has Adequate Evidence to Find that the Project's Impacts on Land Use will be Minimal***

The Project will be located on previously disturbed land that has been mostly cleared for agriculture and is extremely level. (Company Ex. 6 at 3-4). Existing features in the Project Area include two electric transmission lines, public roads, single family homes and farm buildings, and the point of interconnection substation. The Project Area itself does not include any population centers, major industries or notable landmarks. (Id. at 4) Angelina anticipates relocating only one residence and associated farm structures to accommodate the Project, and potentially a limited number of other farm-related structures in poor condition. (Company Ex. 1 at 78). As Mr. Herling testified, the predominant industry in the Project Area is agriculture. (Company Ex. 6 at 3-4). The Project Area is rural, and is largely characterized by large-sized farms with a few pockets of trees. (Id. at 3). Population density in the townships composing the Project Area is 27 people/sq.mi. (Company Ex. 1, Exhibit C at 10).

The Project is not expected to have any significant adverse effect on regional development, including housing, commercial and industrial development, schools, transportation system development, or other public services and facilities. (Company Ex. 1 at 81). Rather, the Project advances the goals espoused in Preble County's 2011 Comprehensive Economic Development Strategy and Land Use Plan. (Id.) Specifically, the Project allows farms to diversify income, preserves land for future generations, increases township and county tax revenues, and creates temporary and permanent jobs in the County. (Id. at 80-81).

Not only will the Project promote Preble County's current land-use goals, the Project will not cause any long-term impacts that would preclude the land's use for farming after the useful life of the Project. (Company Ex. 7 at 4).

Because of the limited impact on land resulting from the Project and the fact that the Project Area can be returned to its current use at the end of the Project's useful life, the Board has adequate evidence to find that the Project will have a minimal impact on land use.

b. The Board has Adequate Evidence to Find that the Project's Impacts on Cultural Resources will be Minimal

The Project will have minimal impact on cultural and historic resources. Angelina engaged EDR to identify registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within two miles of the Project Area. (Company Ex. 6 at 9). EDR determined that no such resources occur within the Project Area itself. (Id. at 10; Company Ex. 1 at 84). EDR's Cultural Resources Records Review submitted with Angelina's Application found that "[b]ecause all of the landmarks are distant from the Project Area...there would be no direct effects from the construction or operation of the Project on any of the landmarks. ("Company Ex. 1 at 84; Company Ex. 1, Ex. H at 13).

Subsequent to the hearing on the original Joint Stipulation, Angelina prepared work plans for the historic resource survey and Phase I archeological survey required under Condition 9 in the original Joint Stipulation. On February 19, 2020, the Ohio Historic Preservation Office ("OHPO") issued correspondence to Angelina approving its proposed work plans for the cultural resource survey program. (Company Ex. 22 at 7). Angelina will perform this survey work prior to finalizing the Project layout, and if it identifies cultural resources eligible for inclusion on the National Register of Historic Places, then the Amended Joint Stipulation commits Angelina to present a modification or mitigation plan detailing how such sites will be avoided or impacts

minimized. (Joint Ex. 2 at 7). The Board has approved similar conditions for mitigation of cultural resources in other solar projects. *In re: Willowbrook Solar I, LLC*, Case No. 18-1024-El-BGN, Opinion, Order, and Certificate, filed April 4, 2019, at ¶ 26.

Given Angelina's initial analysis and conclusion that no cultural resources exist within the Project Area, OHPO's approval of the plan for completing the field survey work, and Angelina's commitment in the Amended Joint Stipulation to mitigate any potentially impacted cultural sites that may be identified, the Board has adequate evidence to find that the Project will have a minimal impact on cultural resources in the Project Area and surrounding area.

c. The Board has Adequate Evidence to Find that the Project's Impacts on Visual Resources will be Minimal

To assess the Project's impact on visual resources, Angelina performed a Visual Resource Assessment ("VRA") of the Project Area. (Company Ex. 12 at 2). The VRA, which took into account topography and vegetation demonstrated that solar panels would be potentially visible from only 16.79% of the 5-mile visual study area, the proposed substation would be potentially visible from only 9.7% of the study area, that at distances beyond 0.5 miles any view of the Project would be minimal, and that at distances of 2.5 miles or more, the Project would generally not be visible at all. (Company Ex. 12 at 4, 7). Notably, the results of the VRA are not generally dependent on deciduous trees having foliage because hedgerows that are thicker than one tree trunk will provide some screening. (TR at 188). Mr. Robinson testified specifically that, beyond 0.5 miles, "discernible equipment starts to go away and you can't tell what it is; you can't see individual components anymore." (TR at 206). Further, the Project will not be visible from the two communities in the general vicinity of the Project Area, Fairhaven and College Corner. (TR at 204-205).

In sum, the VRA demonstrates the Project will have minimal visual impact. This is significant because, as Mr. Robinson testified, the VRA is a conservative analysis of visibility. (TR at 182). In addition, Mr. Robinson clarified that the use of the term “visible”, in context of the VRA, and particularly with respect to visibility outside of 2.5 miles, “it's not individual Project equipment that you can discern or see with your naked eye, but you may be able to make out some type of line against the background or something like that; but being able to tell it's a solar Project from that far away or discern any type of Project equipment is very difficult.” (TR at 203).

Despite the limited visibility of the Project, the Amended Joint Stipulation commits Angelina to implement visual mitigation measures to minimize any potential impact, especially with respect to non-participating adjacent properties. (Joint Ex. 2 at 8). Visual mitigation measures will include development of a landscape plan that includes use of vegetative buffers to screen the Project Area for owners of non-participating parcels. (Id. Company Ex. 24 at 4). This landscape plan, which must be approved by an Ohio-licensed landscape architect, will also be included as part of the final design for the Project and will be submitted to Staff prior to the start of construction. (Joint Ex. 2 at 8). To that end, Angelina has already prepared a preliminary landscape plan showing how the vegetative screening and required setbacks will be incorporated into the final plan. (Company Ex. 24 at 5 and Attachment 1).

The Amended Joint Stipulation requires setbacks from the Project Area that are more than adequate to allow for robust visual screening for non-participating adjacent property owners. (Joint Ex. 2 at 6; Company Ex. 24 at 1). As Mr. Robinson has testified, the setback distances allow for “greater options and flexibility...[and] provide[] more room for vegetation to grow and become an established part of the existing landscape...providing a more natural



appearance that blends the Project into the background.” (Company Ex. 24 at 2). Use of native shrubs and plantings will serve to soften the overall visual effect of the Project and help better integrate the Project into the surrounding landscape. (Company Ex. 24, Attachment 1 at 2).

Further, the Amended Joint Stipulation requires Angelina to not only provide the vegetative screening, but maintain that screening for the entire life of the Project. (Joint Ex. 2 at 9; Company Ex. 24 at 4). In addition, failed plantings will be replaced so that after 5 years at least 90 percent of the vegetation has survived in order to “further ensure that the visual impact remains mitigated and does not degenerate over time.” (Joint Ex. 2 at 9; Company Ex. 24 at 4).

Based on the results of the VRA, as well as Angelina’s commitment to mitigation of visual impact, the Board has sufficient evidence to find that the Project will have minimal impact on visual resources.

## ***2. Ecological Impacts***

Angelina identified the ecological impacts of the Project in its Application and through direct testimony at the evidentiary hearings. Ecological impacts may be broadly divided into five categories: surface waters, threatened and endangered species, other wildlife, vegetation and noxious and invasive weeds, and soil and water impacts. Angelina’s Application, the Staff Report of Investigation and the testimony in this proceeding provide sufficient evidence to allow for a finding that the Project will have a minimal ecological impact. The Project is proposed to be primarily built on land that has already been disturbed seasonally/annually for agriculture. And as Mr. Rupprecht testified, Angelina has designed the Project to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species where possible. (Company Ex. 13 at 8).

a. The Board has Adequate Evidence to Find that the Project's Impacts on Surface Waters will be Minimal

The Project will have a minimal impact on surface waters. There are 1.19 acres of wetland located within the Project Area, but there will be no wetland impacts resulting from the Project. (Company Ex. 13 at 5). A total of six non-wetland waterbodies are located in the Project Area. There will be no impacts to these waterbodies, due in part to the use of mitigation measures, such as horizontal directional drilling. (Id. at 5-6).

The Board has adequate evidence to find that the Project's impact on surface waters will be minimal.

b. The Board has Adequate Evidence to Find that the Project's Impacts on Threatened and Endangered Species will be Minimal

The Project will have an insignificant impact on any RTE species. The Project Area and the surrounding area within a ¼-mile buffer are not expected to provide habitat for any listed or other RTE species, as testified by Mr. Rupprecht. (Company Ex. 11 at 4). During Cardno's November 2017, April 2018, and October 2018 field surveys, no RTE species were identified. (Id.; TR at 209-210). While no species were identified, the historic ranges of the endangered and/or threatened Indiana bat, northern long-eared bat, Sloan's crayfish, and eastern massasauga rattlesnake include the Project Area. (Staff Ex. 1 at 18).

As testified by Mr. Rupprecht, "the Project has no proposed tree clearing that would affect [Indiana bat] habitat." (TR at 215). This is because the Project will only involve clearing 0.07 acres of trees, which "will not represent a change in the habitat for bats." (Id.) However, to avoid any possible adverse impact to the Indiana bat or northern long-eared bat, and in compliance with Amended Joint Stipulation Condition 19, Angelina will "adhere to seasonal cutting dates ... unless coordination with ... ODNR and USFWS allows a different course of

action.” (Joint Ex. 2 at 10). No impact to either the Sloan’s crayfish or eastern massasauga rattlesnake is anticipated from the Project due to the absence of impact to surface waters and wetlands. (Staff Ex. 1 at 18).

Based on the RTE evaluations performed for the Project, the Board has adequate evidence to find that the Project’s impact on RTE species will be minimal.

c. The Board has Adequate Evidence to Find that the Project’s Impacts on Other Wildlife will be Minimal

In addition to avoiding impact to RTE species, Angelina also evaluated what impact the Project would have on other wildlife in the area. Angelina’s consultant Cardno “found that the Project would not significantly impact wildlife or wildlife habitat.” (Company Ex. 13 at 6). The Project has been designed to locate the majority of infrastructure on active agricultural land, which only provides habitat for a limited number of wildlife species. (Id.)

Mr. Rupprecht testified that on a landscape scale, there is abundant availability of similar agricultural fields within the Project Area and surrounding area that can be used as similar habitat. (Company Ex. 13 at 6). In addition, the Project Area and ¼-mile buffer are not known to provide significant habitat for sensitive bird species. (Id.) The few birds and mammals that may forage within these fields would likely avoid these areas that are being disturbed by construction of the Project. (Id.). Due to this lack of adequate habitat in the immediate vicinity of the Project Area, it is likely many birds and wildlife will opt for higher quality habitat nearby for roosting, foraging and breeding. (Company Ex. 13 at 4).

Mr. Rupprecht also led a multi-person Cardno team, including wildlife biologists and statisticians, that determined that deer in the area surrounding the Project Area would increase by less than 5%, or 0.01 deer per acre, as a result of construction of the Project, and assuming that all deer are excluded from the Project Area. (Company Ex. 13 at 2, 7; TR at 218, 222).

In arriving at that conclusion, Cardno conducted a detailed study. Cardno first determined that sufficient information on deer population was available to perform such an analysis because deer are a resource managed by the Ohio Department of Natural Resources. (TR at 218). Having determined that, Cardno next identified a study area of two miles, because the home range of deer ranges from ½ mile to two miles, based on Cardno’s research. (TR at 219, 234-235).

Inside the two mile study area, Cardno used the federal National Land Cover Database to identify the various land uses within the study area, including the Project Area. (Id. at 219) After identifying the land uses in the study area, Cardno assigned each land use a “habitat utilization factor,” which is a measure of how intensely a deer actually uses a particular land use type. (Id.) Cardno developed the habitat utilization factors for this study based on its own research and using its experience on other energy projects, including projects in Ohio, North Carolina, and Virginia. (TR at 219, 222).

Compiling and synthesizing data from the National Land Cover Database, the U.S. Department of Agriculture, and ODNR, Cardno determined there are approximately 15 deer per square mile in Preble County. (TR at 220-221). Cardno then conducted the following analysis:

take the number of deer that you believe are in that [2]-mile radius and then you determine how many deer are inside the actual buildable area. Then you take out that buildable area, which is 827 acres of agricultural land, and then redistribute those deer within the [2-mile radius]...and [ask]...what is that increase or change from the Project Area no longer being [available] for forage [?]

(TR at 222-223). Cardno concluded that “[i]n this particular case, we got a result of less than 5 percent,” or “less than 0.01 deer per acre.” (Id.; Company Ex. 13 at 7). Significantly, the displacement that would be caused by the Project would be no different from the displacement deer currently experience during the annual tilling and harvesting

of the agricultural fields composing the Project Area. (TR at 226-227). Mr. Rupprecht further testified that while Cardno based its analysis on deer population, other wildlife, including coyotes, would likely make the same adjustments as deer to the construction of the Project, and thus the conclusion could be applied to other terrestrial species. (TR at 231). In short, **“the change in use resulting from the construction of the Project will not displace wildlife to surrounding properties in numbers that would cause a negative impact.”** (Company Ex. 13 at 7) (emphasis added).

The Board has adequate evidence to find that the Project’s impact on non-RTE wildlife will be minimal.

- d. The Board has Adequate Evidence to Find that the Project’s Impacts on Vegetation will be Minimal and that the Project will not contribute to Noxious and Invasive Weeds

The Project’s impact on vegetation will be minimal. Construction of the Project will require, at most, tree clearing approximately 0.07 acres or approximately 0.008% of the 827 acres making up the Project Area. (Company Ex. 1 at Exhibit G at 3-1; Staff Ex. 1 at 18). Indeed, the vast majority of the trees in the Project Area, especially the woodlots, will remain undisturbed by the construction of the Project. (Company Ex. 1 at 73). In addition, during construction the majority of the Project Area will not require excavation of soils because the Project Area is already relatively level. (Company Ex. 1 at 46). In sum, the Project will have minimal impact on the existing vegetation.

Angelina is also committed to adding vegetation to the Project area. (Company Ex. 1 at 75-76; Joint Ex. 2 at 8). As Mr. Herling testified, Angelina will provide “planting of pollinator habitat along fences to soften and obscure the view, and robust screening with native shrubs or low growing trees in certain situations,” and will plant “vegetative screening to enhance the view

from a non-participating residences.” (Company Ex. 6 at 11; Company Ex. 22 at 7). Further, the Amended Joint Stipulation commits Angelina to providing vegetative screening and replacing failed plantings. (Joint Ex. 2 at 8). The commitments of the Application and Amended Joint Stipulation can also be evidenced in the preliminary landscape mitigation plan and the vegetation management plan, both of which must be submitted to Staff for approval when complete. (Company Ex. 24 at Attachment 1; Company Ex. 27 at Attachment 1; Joint Ex. 2 at 8-9).

With respect to noxious weeds, Angelina, like others near the Project Area, also will be bound by Ohio law requiring the removal or destruction of noxious weeds upon notice. R.C. 5579.05. Angelina is committed to the control of noxious weeds, primarily through mechanical means (as opposed to the widespread use of commercially-available herbicides). (Company Ex. 6 at 8; Company Ex. 1 at 75). Further, the Amended Joint Stipulation commits Angelina to the extent practicable to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association, and to “describe the steps to be taken to prevent establishment and/or further propagation of noxious weed identified in OAC 901:5-37.” (Joint Ex. 2 at 10, Condition 18). As shown in the draft vegetation management plan (which must be submitted to the Staff for review approval pursuant to Condition 18 of the Amended Joint Stipulation) Angelina will monitor the Project Area post-construction for the presence of any noxious weeds, as identified in OAC 901:5-37, and herbicide application will only occur when necessary and will be discontinued at least one year prior to decommissioning to ensure the breakdown of residual herbicides prior to return to agricultural use. (Id.; Company Ex. 1 at 75; Company Ex. 27, Attachment 1 at Section 4.3).

Based on the foregoing, the Board has adequate evidence to find that the Project will have a minimal impact on vegetation and will not contribute to noxious or invasive weeds.

e. The Board has Adequate Evidence to Find that the Project's Impacts on Soil and Water will be Minimal

There is no risk of either soil or water contamination from the panels to be used for the Project. The panels are composed primarily of readily recyclable materials such as glass, aluminum, and copper. (Company Ex. 6 at 16). Suppliers of solar panels that will be used for the Project have demonstrated that their products pass U.S. EPA's "Toxicity Characteristic Leaching Procedure" qualifying them as routine "solid" waste that can be disposed of in standard landfills. (Id.; TR at 16). This includes Ohio-made solar panels based on cadmium telluride chemistry. (Company Ex. 6 at 16).<sup>1</sup> Further, as Mr. Herling testified, even if a solar panel is damaged, nothing liquid or gaseous can leak out of it. (Company Ex. 6 at 16). If a panel at the Project is damaged, Angelina will quickly be aware of the issue due to the constant monitoring provided by a supervisory control and data acquisition ("SCADA") system that will be used at the Project. (Id. at 47). Panels will also be periodically inspected by on-site staff. (TR at 54-55). Based on the benign nature of the panels, the Board has adequate evidence to find that the Project will have a minimal impact on soil and water.

3. ***Public Services, Facilities, and Safety***

a. The Board has Adequate Evidence to Find that the Project's Impacts on Traffic will be Minimal

Once operational, the Project will not significantly contribute to traffic on local roads. (Company Ex. 1 at 76). State and local roads in the vicinity of the Project Area will experience increased traffic during Project construction due to the delivery of materials and equipment. (Company Ex. 1 at 36). As noted by Mr. Bonifas in his testimony, only a very small percentage of the loads to be brought to the Project Area will be overweight or oversized loads, which are

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<sup>1</sup> While solar panels may be disposed of in standard landfills, Angelina's application commits it to attempting to recycle those panels. (Company Ex. 1 at 39).

those that exceed measurements established by the Ohio Department of Transportation (“ODOT”), and will require a special permit. (TR at 162, 165). A preliminary route evaluation study was performed for the Project by Hull & Associates. (Company Ex. 1 at 36). Interstate 70 and U.S. Route 127 are expected to be the primary roads to access the Project Area vicinity. (Company Ex. 1 at Exhibit D at 7). Local roadways are generally in good condition, (Company Ex. 1 at 36). Angelina also committed to working with local officials to repair any damage to roads resulting from construction. (Id.)

To that end, on December 9, 2019 Angelina entered into a Road Use and Maintenance Agreement for Solar Projects and Infrastructure (“RUMA”) with Preble County local authorities including the Board of County Commissioners and the Trustees of Israel and Dixon Townships. (Company Ex. 27 at Attachment 2). The RUMA requires Angelina to work with the Preble County Engineer to repair, at Angelina’s expense, all portions of the impacted roads that may be damaged by Angelina’s activity to a level consistent with the condition of such roads at the commencement of Angelina’s use. (Id.) As added security to ensure that there is funding for any necessary repairs, the RUMA also requires Angelina to deliver a bond in an acceptable form prior to beginning any on-site construction work on the Project (i.e. before construction equipment may make use of the local roadways). (Id. at ¶ 10). Mr. Bonifas testified that road use and maintenance agreements “such as the one entered into in this matter...are a common practice for large construction projects, and in my experience effective at minimizing damage to local roads and ensuring repairs are made in a timely manner.” (Company Ex. 27 at 4).

Further, Angelina will also work with the Preble County Engineer, the Trustees for the relevant townships, and ODOT to ensure that any impacts to road surface conditions and traffic flow are accounted for and rectified. (Company Ex. 1 at 36). Where possible, deliveries on



single lane roads to the Project will be limited despite low traffic volumes in and around the Project Area. (Id.)

Summarizing the Project's impact on traffic, Mr. Bonifas testified that:

“[b]ased on the results of the Route Evaluation Study and my experience, I would not expect the construction or operation of the Project to have a negative effect on the travelling public. I would also not expect the construction or operation of the Project to have a negative effect on the condition of the local roadways that could not be maintained during construction or restored post-construction.”

(Company Ex. 10 at 4).

In addition to the completed Route Evaluation Study, Angelina will implement a traffic management plan, as required by Amended Joint Stipulation Conditions 25 and 26. (Joint Ex. at 10-11). Mr. Bonifas went on to note that any delays on the road resulting from construction equipment “would typically be a very short duration. It’s just the time to move the truck down the road.” (Id. at 167-168).

Based on the record, the Board has adequate evidence to find that the Project's impact on traffic will be minimal

b. The Board has Adequate Evidence to Find that Construction Noise associated with the Project will have a Minimal Impact

Mr. Hessler, in his Noise Report, concluded that, in contrast to other forms of power generation, sound emissions during construction of the Project are expected to be dramatically lower in magnitude and duration. (Company Ex. 2 at Noise Report at 15). The Project will not involve extensive excavation or other earth-moving work or construction of significant concrete foundations. (Company Ex. 1 at 57). Although numerous piles will be driven, they likely will be only to a depth of less than ten (10) feet and the activity will be relatively brief at any particular location. (Id.) Table 6.0.1 of the Noise Report provides representative sound levels from construction equipment at 50 feet, which may be conservatively interpreted as the site

property boundary. (Id.) In general, the Noise Report concluded that construction-related noise would be modest and intermittent, and would result in only minimal, unavoidable impacts. (Id.)

Despite the minimal potential construction noise, Angelina is committed to, and the Amended Joint Stipulation requires, mitigating any such noise by limiting the hours of construction, maintaining vehicles in proper working condition, and working with the local community to advise residents of those periods when sustained construction activity is expected to take place in relatively close proximity to their homes. (Company Ex. 1 at 59; Joint Ex. 2 at 7, Condition 10).

Given the short duration of construction and the limitations on the time for construction activities (including pile driving), the Board has more than adequate evidence to find that the Project's construction noise will have a minimal impact.

c. The Board has Adequate Evidence to Find that Operational Noise associated with the Project will have a Minimal Impact

The record establishes that the only sources of the Project's operational noise—solar panel inverters and the Project's substation and associated transformer—will have minimal, if any, impact. As an initial matter, Mr. Hessler—who has nearly 30 years of acoustics experience, including working on numerous solar projects—has “never heard of any complaints of a solar project. I can't even think of any papers or anything, anybody even talking about solar projects at acoustics conferences.” (TR at 265).

With respect to the substation and transformer, Mr. Hessler specifically concluded that “no significant adverse reaction is expected from the proposed substation at any of the nearest [non-participating] residences.” (Company Ex. 1 at Exhibit E (“Noise Report”) at 15).

Modeling performed by Mr. Hessler concluded that, at the nearest non-participating residences to the substation location, modeled noise levels from the substation would be “comparable to or

below the existing environmental sound level, which means in qualitative terms that **there will be no, or no significant, change in what is audible at the houses.**” (Company Ex. 14 at 3) (emphasis added).

Mr. Hessler’s conclusion was based on modeling that utilized a very conservative sound measure. Mr. Hessler compared projected noise emissions from the transformer with the daytime L90 (near minimum) sound level in the area, which he determined via field survey to be 31 dBA. (Noise Report at 2 and 6). The L90 baseline of 31 dBA was determined by averaging “the quietest (not necessarily consecutive) 1 minute of each 10 minute interval making it a conservative measure of the near-minimum background sound level.” (Noise Report at 4). Thus, the L90 level is necessarily lower than the overall average background sound level in the area—a measure known as the Leq level. (Noise Report at 5). Considering both these measures, Mr. Hessler explained that “the L90 measure “constitutes a very conservative, or ‘worst case’ design basis, and the Leq, or average level...represents a more ‘typical’ or more commonly observed level.” (Company Ex. 20 at 5).

While the daytime L90 was determined to be 31 dBA, Mr. Hessler’s projections of transformer sound to the nearest non-participating residences was determined to be 28 and 26 dBA, respectively. (Company Ex. 20 at 5). In other words, with respect to the transformer, “[b]ecause the project sound levels are either below or do not significantly exceed the background no adverse impact would be anticipated.” (Id.; Noise Report at 15).

The same is true of the sound from the Project’s central inverters. As Mr. Hessler testified, sound from inverters “is only perceptible at short distances and it is highly unlikely to be significant or problematic at any residences, which would all generally be hundreds of feet from any given inverter,” (Company Ex. 14 at 4); and, noise from inverters is “not at all” a

legitimate concern. (Company Ex. 20 at 2). Following this testimony, Angelina entered into the Amended Joint Stipulation in which it committed to expansive setbacks regarding inverters—a minimum of 500 feet between any central inverter and any residence on a non-participating parcel—and prepared a preliminary layout of the Project based on this restrictive setback. (Joint Ex. 2 at 6; Company Ex. 22 at Attachment DH2).

Mr. Hessler then confirmed his original conclusion that inverter noise is not a legitimate concern for any nearby non-participating residences. Mr. Hessler modeled the sound contours of the solar panel inverters using the Project’s preliminary layout, which incorporates the new restrictive setbacks, coupled with a recently obtained noise data report provided by the manufacturer of a common inverter model, the SMA SC4600-UP. (Company Ex. 23 at 2). Regarding the noise data report, Mr. Hessler testified that it provided “the honey deal [sic. ‘ideal’] information that’s needed for noise modeling.” (TR at 588). Mr. Hessler’s model established that “the sound contours from the Project during normal operation on a sunny day projected out to an extremely quiet sound level of 35 dBA,” and that “all non-participating residences are either close to or, in the vast majority of cases, outside the 35 dBA contour.” (Company Ex. 23 at 3). For context, 35 dBA is “considered inconsequential even in rural environments where the background sound level is essentially negligible.” (Id.) Finally, although Mr. Hessler utilized the preliminary layout for the sound model, he made clear that “[w]ith an inverter setback of 500 feet...their exact location is immaterial from a noise impact perspective.” (Company Ex. 23 at 4).

Although highly unlikely given the extremely quiet operation of inverters, in the event of a noise complaint regarding an inverter “options exist to mitigate inverter sound emissions should any problem arise.” (Noise Report at 15). Indeed, Mr. Hessler testified that “sound

emissions from these units...can be easily mitigate on a retrofit basis in the unlikely event that any sort of noise issue should arise,” and include acoustical hoods and damping sheets.

(Company Ex. at 3-4). Further, the Amended Joint Stipulation expressly commits Angelina to “promptly retrofit any inverter as necessary to effectively mitigate any off-site noise issue identified during operation of the facility.” (Joint Ex. 2 at 6).

In sum, operational noise will not be an issue for the Project and it has been adequately evaluated for the Board to consider. As Mr. Hessler ultimately concluded, “I would not expect the operational sound emissions from the Project in general to have any negative impact on the surrounding community.” (Company Ex. 14 at 5). Mr. Hessler’s testimony, as well as the remainder of the record, supports the Board finding that there will be minimal impact from operational noise from the Project.

d. The Board has Adequate Evidence to Find that the Project’s Electromagnetic Fields will be Minimal

Any electromagnetic field (“EMF”) generated by the Project will dissipate rapidly within short distances and will not impact signals or electronic devices. Mr. Herling provided uncontroverted testimony that the project will not impact telephone, radio, other signals, or electronic devices because the Project “will generate only very weak electromagnetic fields...and only during the day. PV arrays generate EMF in the same extremely low frequency [] range as electrical appliances and wiring found in most homes and buildings.” (Company Ex. 19 at 2). Here, the Amended Joint Stipulation commits Angelina to setbacks of at least 500 feet between any inverter and any residence located on a non-participating parcel. (Joint Ex. 2 at 6). Accordingly, the Board may find that EMF from the Project will have no impact on the area surrounding the Project Area.

e. The Board has Adequate Evidence to Find that the Project will be Appropriately Decommissioned

Given the modest impact of construction of the Project, it will be relatively easy to decommission. (Company Ex. 1 at 37). The Application makes clear that the Project Area will be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by the land owner. (Company Ex. 1 at 39). Restoration will include a return to the same or functionally similar preconstruction drainage patterns, including farm drainage tiles, decompaction of soil, and seeding with an appropriate, low-growing vegetative cover, such as clover, to stabilize soil, enhance soil structure, and increase soil fertility. (Id.) Angelina is committed to segregating and recycling those materials that can be recycled during decommissioning. (Id.; Company Ex. 6 at 13).

Because the life of the Project is estimated to be approximately forty years, two requirements of the Amended Joint Stipulation will ensure that the costs to accomplish the decommissioning plan will be available. First, the decommissioning costs are to be re-estimated at least every five years, and can only be adjusted upward. (Joint Ex. 2 at 12). Second, Angelina is required, if necessary, to provide financial security in the form of a performance bond with the Board named as obligee, and which will be adjusted to reflect any increases in the net decommissioning costs. (Id. at 11-12) This is significant because it means that, prior to beginning construction, Angelina has committed to post the necessary financial security to ensure the availability of funds to pay for the net decommissioning costs at the end of the Project's life. As testified by Mr. Bonifas, Condition 29 of the Amended Joint Stipulation "ensures that an effective plan can be put into place for the appropriate decommissioning of the Project so that the Project Area can be returned to another use after the end of the Project's

useful life.” (Company Ex. 11 at 3). The Board had adequate evidence to find that the Project will be decommissioned, and the decommissioning will have minimal impact.

f. The Board has Adequate Evidence to Find that the Project’s Impacts on Drainage, Runoff, and Drain Tile will be Minimal

i. *Drainage and Runoff*

The record evidence establishes that the Project’s environmental impact on drainage and runoff will be minimal, if any. As an initial matter, Angelina’s preliminary investigation concluded that “the soils in the Project Area...is suitable for...drainage for the Project, and there are no soil-related inadequacies to remedy in connection with the Project.” (Company Ex. 1 at 63). Further, Mr. Waterhouse—a licensed professional engineer with extensive experience evaluating drainage, runoff, and drain tile issues at more than 50 solar projects, (see *supra* at Section V.A.2)—concluded that: “**The Project should not have an impact on drainage, nor should it result in an increase in runoff.**” (Company Ex. 8 at 4). Indeed, far from having a negative impact, Mr. Waterhouse’s expert opinion is that “when compared to a fallow field, I would expect the Project to have **superior drainage and runoff characteristics**, due to the year-round vegetation maintained in and around the Project Area” and that “a typical project of this nature will ultimately see **a reduction of runoff, not an increase**, based on that change in land use.” (Company Ex. 8 at 4; TR at 150) (emphasis added).

Mr. Waterhouse’s expert conclusion is confirmed by Mr. Marquis, a professional engineer with experience in hydrology and hydraulics, who testified that “the proposed changes to land use in this project in my experience, in my opinion, do not - **would not result in an increase in runoff.**” (TR at 525) (emphasis added). Mr. Marquis further testified that “runoff from the panels can be managed through...management of the ground surface beneath the panels and that’s what we see in a lot of very large-scale utility projects.” (TR 634). The expert

testimony of Messrs. Waterhouse and Marquis was also corroborated by CCPC witness, Ms. Vonderhaar, who agreed that “[g]rass or any kind of plant can slow down surface water runoff.” (TR at 373).

Mr. Marquis also testified specifically to refute the concern of CCPC Witness Walter Mast that construction of the Project could result in flooding in certain areas. (CCPC Ex. 5 at 3). In response to this concern, Mr. Marquis testified that “the project area only contributes 0.2% of the entire watershed area to the Village of Fairhaven and Mr. Mast’s property,” which, in practical terms, “means that there is **no increase in flood risk by the project** to both Mr. Mast’s property and the Village of Fairhaven.” (Company Ex. 21 at 5; TR at 507) (emphasis added). During the initial hearing, Mr. Marquis elaborated on why the Project poses no increase in flood risk:

The watershed in a hydrologic study is characterized by a lot of different factors. One being the size of the drainage area, which in this case is not changing. The Project Area is within a drainage area. That drainage area is not getting bigger or smaller as a result of the Project being constructed. Another is the shape of the watershed, which, again, is not changing. They're not changing drainage divides or appreciably changing the size or shape of the watershed. Another being the soils, the site soils, which can have an influence on infiltration which is part of how water interacts with the earth and, again, the soils are not changing. **The land cover is really the only thing that's changing of all of those characteristics here, and the land cover is, again, being converted from farmland and cropland use to vegetation which would actually result, in most cases, in a reduction of runoff if not the same amount of runoff.** So for those reasons and especially the fact that we're only talking about .2 percent of the entire watershed that there's actually a land use change, with all of the other parameters the same, it doesn't seem reasonable to assume there would be any increase in runoff.

(TR at 522-523) (emphasis added).

Despite the minimal impact, Angelina is also committed to satisfying a General Permit Authorization for Storm Water Discharges Associated with Construction Activity (“Construction General Permit”) issued by Ohio EPA and will perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required per the Construction General Permit. (Joint Ex. 2 at 12). Further, if any such practices are required,



Angelina is committed to incorporate guidance from the Ohio EPA titled, “Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.” (Id.) In short, although no negative impact on runoff or drainage is anticipated, Angelina has committed to mitigate any such impacts per the Construction General Permit and Ohio EPA guidance. For these reasons, the Board should find that the Project’s impacts on drainage and runoff will be minimal.

*ii. Drain Tile*

Angelina is also committed to avoiding damage to drain tile in the Project Area, where possible, and if any tile in the Project Area is damaged, to repairing it promptly no later than 30 days after such damage is discovered. (Company Ex. 1 at 92; Joint Ex. 2 at 9). In order to ensure the impact to drain tile is minimized, Angelina is engaged with Mr. Waterhouse in an effort to identify all drain tile in the Project Area to ensure it has the best understanding it can of where drain tile is located prior to beginning construction. (TR at 139). Mr. Waterhouse testified that efforts to map out the drain tile taken to date include: 1) working with the Preble County Engineer and the Preble Soil & Water Conservation District to obtain maps of any drain tile in the Project Area, 2) discussing with landowners in the Project Area to identify drain tile locations, and 3) conducting an on-site review to identify drain tile indicators visually. (Company Ex. 8 at 6).

In addition, Mr. Herling testified that “[s]tarting in February 2020 [Angelina] conducted a targeted mailing campaign...[seeking] information from adjoining landowners regarding drain tile or other drainage infrastructure on their property.” (Company Ex. 22 at 9; Joint Ex. 2 at 9). An example of a letter that was sent as part of this effort can be found at Company Ex. 28. The purpose of this effort is to identify all drain tile information “that exists within the community” to ensure it is “considered in the mapping and assessment efforts,” which, in turn, will aid

Angelina in its commitment to “avoid, where possible...any damage to functioning...field tile.” (Company Ex. 14 at 8-9; Joint Ex. 2 at 9).

To further ensure an understanding of how drainage operates in the Project Area, the Amended Joint Stipulation also requires Angelina to establish benchmark drainage conditions, pre-construction. (Joint Ex. 2 at 9; Company Ex. 25 at 2).

In the event damage to drain tile in the Project Area cannot be avoided, Angelina is committed, both in the Application as well as Condition 16 in the Amended Joint Stipulation, to avoid damage to drain tile in the Project Area, whether main or lateral, where possible, and if any tile in the Project Area is in fact damaged, to repair it promptly no later than 30 days after such damage is discovered and be returned to at least original conditions or their modern equivalent at [Angelina’s] expense. (Company Ex. 1 at 91-92; Joint Ex. 2 at 9, Condition 16). Importantly, CCPC Witness Rachael Vonderhaar testified that issues currently exist in at least one field in the Project Area. (TR at 385). She agreed that if drainage is improved within the Project Area, including repair of the existing issue, it would benefit the community. (Id. at 389).

As Ms. Vonderhaar acknowledged, “promptly” is synonymous with “as soon as the opportunity exists” and that she considered the outside deadline of 30 days established in Condition 16 in the original stipulation—a requirement also found in the Amended Joint Stipulation—to be reasonable. (TR at 380). This 30-day deadline is more than reasonable considering that current repair practices on the farms in the surrounding area can take much longer. For example, when asked whether or not repair work is done on a drainage issue when crops are in-field, Ms. Vonderhaar testified that some repairs to drain tile on the farms in the vicinity of the Project Area may be delayed during the growing season and the landowner’s personal choice. (TR. at 377). She further explained that there are a number of circumstances

that go into how quickly a damaged drain tile is repaired, including the time of year as well as prioritizing repairs in the farm operation. (TR at 379).

Regarding the logistics of repairing drain tile between rows of solar panels, there is sufficient room between the solar panel rows for larger equipment to repair or replace drain tile, potentially including “mini-excavators.” (TR at 375 (Ms. Vonderhaar testifying that a mini backhoe/excavator 4 to 5 feet in width, or even a hand shovel, could be used to repair drain tile); *see also* Company Ex. 1, Exhibit G at 1-5 (noting that there is 12-16 feet of space between rows of solar panels).)

Although Angelina has robust safeguards in place to ensure the prompt repair of any damaged drain tile, such damage is highly unlikely. Mr. Waterhouse testified that in his experience gained from working on over 50 solar projects, **he has not encountered a single issue of tile breakage or drainage resulting from construction at a solar farm.** (TR at 154-156). In fact, in the sole instance where he was called to investigate ponding at a project, he determined that the ponding issue was an offsite issue unrelated to the drain tile within that project area. (TR at 156).

Given Angelina’s efforts to fully identify the Project Area’s drain tile in order to minimize potential impacts, and its commitment to promptly repair any damage to that drain tile, the Board has adequate evidence to determine that the impact of the Project on drain tile will be minimal.

**D. The Board has Adequate Evidence to Determine that the Project is Consistent with Regional Plans for Expansion of the Electric Power Grid and will serve the Interests of Electric System Economy and Reliability (4906.10(A)(4))**

PJM Interconnection LLC (“PJM”) analyzed the bulk electric system, with the Project modeled as if it were interconnected to the bulk power system, for compliance with North

American Reliability Corporation reliability standards and PJM reliability criteria. The PJM system studies indicated that no reliability violations would occur during single and multiple contingencies. (Staff Ex. 1 at 25). In addition, no potential violations were found during the short circuit analysis. (Id.) Therefore, the Project is consistent with regional plans for expansion of the regional power system, and will serve the interests of electric system economy and reliability.

**E. The Board has Adequate Evidence to Determine that the Project will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. (4906.10(A)(5))**

The Project will comply with Chapters 3704 (air pollution control), 3734 (solid and hazardous waste control), and 6111 (water pollution control) of the Revised Code, and all rules and standards adopted under those chapters. The Project will also comply with R.C. Chapter Section 4561.32 (aeronautics), and R.C. 1501.33 and R.C. 1501.34 (water consumption), to the extent that they are applicable. A discussion of each of these areas follows.

***1. The Project will Comply with R.C. Chapter 3704 and all rules and standards adopted thereunder***

Small amounts of fugitive dust will be generated during construction and, therefore, the fugitive dust rules set forth in Chapter 3704, Revised Code, may be applicable. Angelina will use best management practices to minimize emissions. Those practices will include (1) retention of licensed construction firms that are knowledgeable about the importance of minimizing dust creation during construction activities; (2) maintenance of construction vehicles in proper working condition; and (3) use of water and/or dust suppressant on unpaved roads as needed to reduce dust creation. (Company Ex. 1 at 43).

Because the Project will generate electricity without releasing pollutants into the atmosphere, air-related regulations are not triggered during operation. The Project does not require any air permits. (Id. at 42).

Staff concluded that both construction and operation of the Project, as described and as subject to the conditions set forth by the Staff, will be in compliance with air emission regulations in Chapter 3704, Revised Code, and the rules and laws adopted thereunder. (Staff Ex. 1 at 27).

Accordingly, the Board may find that the Project will comply with the requirements of Chapter 3704, Revised Code and the regulations adopted under that chapter.

**2.     *The Project will Comply with R.C. Chapter 3734 and all rules and standards adopted thereunder***

The Project Area is relatively free of debris and solid waste already. (Company Ex. 1 at 48). During construction, some solid waste will be generated, but it will be minimal. (Id. at 49). Primarily, this may include package-related materials, such as crates, nails, boxes, containers, and packing materials, damaged or otherwise unusable parts or materials, and occasional litter and miscellaneous debris generated by workers. (Id.) Waste that cannot be re-used or recycled will be disposed of in a municipal landfill. (Company Ex. 1 at 49).

During operation, only exceedingly small amounts of waste will be generated, which will be of the same general nature as the waste generated during construction. (Company Ex. 1 at 50). No licenses or permits will be required for waste generation, storage, treatment, transportation and disposal. (Id. at 50). The Staff concluded that, with Angelina's planned measures, all solid waste generated will comply with solid waste disposal requirements in R.C. Chapter 3734, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 27).

Based on the record, the Board may conclude that the Project will comply with all solid waste disposal requirements.

***3. The Project will Comply with R.C. Chapter 6111 and all rules and standards adopted thereunder***

Construction and operation of the Project will require virtually no water. (Company Ex. 1 at 47-48). Although it will cover a relatively large area, construction will involve only limited activities requiring the management of storm-water related pollutants. (Id. at 46). Construction will necessitate little earth-moving and grading because the Project Area is relatively level. (Id.) Construction will include only the occasional clearing of trees, and the Project's design will avoid the need to clear large blocks of active wildlife habitat. (Id.) Construction also will necessitate little excavation, which will be limited primarily to the creation of road beds and efficient trenching for collection lines. (Company Ex. 1 at 46). Nevertheless, as noted above, the Project will satisfy the General Construction Permit, which was promulgated under the National Pollutant Discharge Elimination System ("NPDES") including the development and implementation of a Stormwater Pollution Prevention Plan ("SWPPP") for erosion control and the management of stormwater. (Id. at 45-46).

As testified by Mr. Rupprecht, **there will be no impacts resulting from the Project on the 1.19 acres of wetlands or the six other waterbodies located within the Project Area.** (Company Ex. 13 at 5-6).

With the permit measures and mitigation efforts planned by Angelina, the Staff concluded that construction and operation of the Project will comply with the requirements of Chapter 6111, and the rules and laws adopted under this chapter. (Staff Ex. 1 at 27).

Given these facts, the Board may conclude that with the above measures, construction and operation of the Project will comply with the requirements in Chapter 6111, Revised Code, and the rules adopted under that chapter.

***4. The Project will Comply with R.C. 1501.33 and 1501.34 and all rules and standards adopted thereunder, to the extent they are applicable***

R.C. 1501.33 and R.C. 1501.34 impose permitting requirements on facilities that will result in a new or increased consumptive use of more than two million gallons per day. R.C. 1501.33(A). Because the Project has near zero water consumption requirements, no such permit will be required. The Project will comply with these statutory sections, to the extent they are applicable.

***5. The Project will Comply with R.C. 4561.32 and all rules and standards adopted thereunder***

The highest point of the Project will be a single lightning mast located at the Project substation, which will be up to approximately 70 feet in height. (Company Ex. 1 at 82). The solar panels themselves will be no more than 15 feet above ground level. (Id.) There are no public use airports, helicopter pads, or landing strips within five (5) miles of the Project Area. (Id. at 51). The closest airport, Norris Field, is located approximately 2.5 miles from the Project Area. (Company Ex. 1 at 52). The closest public use airport is the Richmond Indiana Municipal Airport, approximately 6.5 miles away from the Project Area. (Id. at 53). Because the Project Area is well outside the vicinity of Richmond Indiana Municipal Airport, an aeronautical study regarding glare is not warranted (14 CFR 77.17(a)(2)). (Staff Ex. 1 at 27).

In addition, Mr. Robinson testified that glare from the Project is not a concern. (Company Ex. 12 at 6-7). In fact, the potential for reflectivity or glare from solar panels is

generally lower than the glare and reflectance generated by common surfaces in the surrounding environment, including, grasslands, water and glass. (Id. at 7).

The evidence demonstrates that Section 4906.10(A)(5), Revised Code, has been met.

**F. The Board has Adequate Evidence to Determine that the Project will Serve the Public Interest, Convenience and Necessity (4906.10(A)(6))**

As addressed above, the Board has adequate evidence to determine that the Project will have minimal environmental impacts. In addition, the Board has adequate evidence to find that the Project is in the public interest and will not have a negative impact on the local community. The Board has adequate evidence to determine that the Project will have no effect on property values in the local area around the Project and that the Project will have no negative impact on emergency services, and will not result in an increase in crime.

***1. Public Interaction***

Angelina has involved the public in the development of the Project. Angelina has met with a variety of public officials, including township and county officials, and attended and participated in public meetings, beginning in early 2017, as testified by Mr. Herling. (TR at 38-39). Angelina also reached out to area landowners to gauge interest in participating in the Project or to attempt to understand any concerns related to the Project, beginning in late 2016 and continuing through 2018. (Id. at 40). As a part of the Ohio Power Siting Board process, Angelina held a public information meeting in November 2018 (Company Ex. 1 at 22). Angelina also made public notice mailings and newspaper publications regarding the Project (Company Ex. 4; Company Ex. 5). These efforts support a finding that the Project is in the public interest.



## **2. *Property Values***

Angelina commissioned Andrew Lines of CohnReznick LLP to evaluate the potential impact of the Project on property values in the area surrounding the Project. (Company Ex. 15 at 2-3). Mr. Lines is a designated Member of the Appraisal Institute with over 16 years of real estate appraisal experience. (Id. at 1). He is also a Certified General Real Estate Appraiser with active licenses in 9 states. (Id. at 1-2). CohnReznick conducted an in-depth study of other large-scale solar farms to determine what impact, if any, the Project may have on the value of surrounding properties. (Company Ex. 15 at 3). Mr. Lines testified that the study included an evaluation of the effects of one project larger than the Project, as well as two others of similar capacity (TR at 277).

As testified by Mr. Lines, the study determined that “no consistent and measurable negative impact had occurred to adjacent property that could be attributed to proximity to the adjacent, commercial-scale, solar energy use, with regard to unit sale prices or other influential market indicators such as marketing time.” (Company Ex. 15 at 6). These results have been corroborated by a study of a Minnesota project performed by a local county assessor using a different methodology from that used by Mr. Lines. (Company Ex. 15 at 7). Mr. Lines ultimately concluded in his testimony that “I would not expect the Project to be the cause of a decrease in property values in the project area.” (Id.)

Mr. Lines’s expert testimony and the study his firm conducted provide the Board with sufficiently information to find that the Project will not have an impact on local property values.

## **3. *Safety and Emergency Services***

The fields hosting solar arrays for the Project will be enclosed with fencing and locked gates. (Company Ex. 1 at 8). Mr. Herling also testified to the safety measures that would be in place at the Project. For example, periodic security checks will be conducted. (TR at 93). In

addition, all personnel working at the Project “whether it’s operations or maintenance, is trained to report anything they see that’s unusual; so whether it’s their distinct task to be doing security for the Project, or they’re driving by and something is amiss, then they -- then that’s reported.” (Id. at 92). The Project could use nighttime security checks or other methods to ensure security at night. (Id.)

Angelina intends to develop an emergency response plan for local officials and emergency personnel. (Company Ex. 1 at 55). The Amended Joint Stipulation also commits Angelina to provide initial, pre-construction training to the local fire and EMS service providers as well as providing ongoing safety meetings, and any specialized equipment needed by local fire and EMS service providers. (Joint Ex. 2 at 11, Condition 28). These safety meetings will be held on an ongoing basis. (TR at 123). The initial training would be “situational training specific to solar energy facilities [and] will include in such training any emergency procedures which may be specific to the solar array model used for the project.” (Joint Ex. 2 at 11, Condition 28). Moving forward, safety meetings will be held on an ongoing basis. (Id.) As testified by Mr. Herling (a former EMT), “from my experience...safety meetings would be adequate as the way – in the way I’ve described them as kind of a refresher.” (TR at 123-124).

The Project will not be introducing any new types of risks to the local community that it does not already face through the presence of farming operations, and may in fact reduce them. The Project Area is located in an area in which the predominant industry is agriculture. (Company Ex. 6 at 3-4). As testified by Ms. Vonderhaar, farmers already store hazardous substances such as diesel, gasoline, pesticides, and herbicides on their farms and that grass fires, as well as serious injuries can occur during farming. (TR at 371, 380-381). Finally, there is no evidence in the record, beyond mere conjecture or the “concerns” of CCPC, that the Project will

somehow lead to an increase in crime in the Project Area. (CCPC Ex. 2 at 6). Ms. Vonderhaar testified that significant amounts of equipment are already stored in barns and outbuildings in the area surrounding the Project Area, but raised no concern about crime occurring at farming operations. Additionally, Mr. Herling testified that he's not aware of copper theft involving a solar project. (TR at 95).

The Board has adequate evidence in the record to determine that the Project will not have a negative impact on emergency services in the local area and no impact on crime, and thus will serve the public interest.

**G. The Board has Adequate Evidence to Determine the Project's Impact on the Viability of Agricultural District Land (4906.10(A)(7))**

There will be no impact from the Project on agricultural district land, because **there is no agricultural district land in the Project Area.** (Company Ex. 1 at 91).

In addition, after the conclusion of the Project's useful life, the Project will be decommissioned and will be restored to potential use as an agricultural area. The Project will have only modest impacts to the Project Area. (Company Ex. 6 at 14). Specifically, the solar panels and racking will be installed on simple posts driven or rotated into the ground, likely to a depth of less than ten feet. (Company Ex. 1 at 37). Inverters and pyranometers will be installed on gravel pads, or on prefabricated foundations, which can be lifted out of place. (Id.) The Project's substation will be installed on poured concrete, but will not cover a large area. (Id.) Roads will be constructed of aggregate material or covered in grass, not paved, and participating land owners may choose to retain roads for their own use following decommissioning. (Company Ex. 1 at 37-38). There will not be any long-term impacts from the Project that would preclude its use for farming after the useful life of the Project. (Company Ex. 1 at 91).

Furthermore, the Project Area will be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by the land owner. (Company Ex. 1 at 39). Mr. Herling testified as to the decommissioning process, stating that restoration will include a return to the same or functionally similar preconstruction drainage patterns, including farm drainage tiles, decompaction of soil, and seeding with an appropriate, low-growing vegetative cover, such as clover, to stabilize soil, enhance soil structure, and increase soil fertility. (Company Ex. 6 at 15-16). The restoration process outlined in Mr. Herling's testimony is also reflected in the draft decommissioning plan prepared by Hull & Associates. (Company Ex. 27, Attachment 3).

Finally, the Amended Joint Stipulation requires not only that the Project be decommissioned, but that the Project avoid damage to drain tile in the Project Area where possible, and repair tile that is damaged. (Joint Ex. 2 at 8-9, Condition 16).

Given the information in the Application and witness testimony, the Board may find, as Staff did, that the impact of the Project on the viability of existing agricultural land in agricultural districts has been determined, and is minimal.

**H. The Board has Adequate Evidence to Determine that the Project Incorporates Maximum Feasible Water Conservation Practices (4906.10(A)(8))**

During operation, the Project may use, if any, only an extremely small volume of water for occasional cleaning of solar panels. (Company Ex. 1 at 11). No wastewater discharge is expected from the Project, and there will be no impacts to water quality due to construction or operation of the Project. (Company Ex. 1 at 45). Because of the minimal water demands for the Project, the Project incorporates maximum feasible water conservation practices.

**I. The Board has Adequate Evidence to Determine that the Amended Joint Stipulation Meets the Board’s Criteria for Approval**

The Amended Joint Stipulation satisfies the Board’s three-pronged test. The Amended Joint Stipulation (1) is the product of serious bargaining among capable parties; (2) does not violate any important regulatory principle or practice; and (3) is in the public interest.

***1. The Amended Joint Stipulation is the Product of Serious Bargaining Among Capable, Knowledgeable Parties***

The original Joint Stipulation, filed on June 14, 2019, was the product of negotiations held with all parties to this proceeding, all of whom were represented by counsel. (Company Ex. 7 at 2). Evincing the serious nature of the bargaining that led to the original Joint Stipulation, the signatories all agreed to modify some of the conditions recommended by Staff and to add new conditions that were not present in the Staff Report. (Company Ex. 7 at 2; *compare* Staff Ex. 1 at 33-37 to Joint Ex. 1 at 6-11).

In the nearly 12 months following the filing of the original Joint Stipulation, plans for the Project, called for by that original document, continued to be developed and revised. Angelina engaged all parties in order to negotiate and finalize the Amended Joint Stipulation, which all the signatories acknowledge “presents both revised and new conditions that are more protective than the conditions in the original stipulation submitted on the record.” (Joint Motion to Reopen Hearing Record, Filed July 29, 2020 at 3). In short, like the original, the Amended Joint Stipulation is also a product of serious bargaining. All parties had the opportunity to participate, all parties were represented by counsel, and the changes made to the Amended Joint Stipulation reflect input by all signatories. (Company Ex. 22 at 12).

**2.      *The Amended Joint Stipulation does not Violate any Important Regulatory Principle or Practice***

As detailed above, the Project as described in the Application, Staff Report, and testimony, meets the criteria for issuance of a Certificate under R.C. 4906.10. Thus, the Amended Joint Stipulation, in recommending conditions on the Project, furthers the regulatory principles and practices of the Ohio Power Siting Board. As testified by Mr. Herling, the Amended Joint Stipulation does not violate any important regulatory principle or practice. (Angelina Ex. 22 at 15). Indeed, the Amended Joint Stipulation represents a significant achievement given that it was executed by Staff, the Ohio Farm Bureau Federation, the Preble County Commissioners, the Preble County Engineer, the Preble County Soil & Water Conservation District as well as the Board of Trustees of Dixon Township. (Joint Ex. 2 at 20)

**3.      *The Amended Joint Stipulation is in the Public Interest***

The Amended Joint Stipulation was a product of extensive negotiation among parties to this proceeding. Recommended conditions in the Amended Joint Stipulation require the Project to take steps and meet certain requirements during the construction and operation of the Project to minimize impacts of the Project. Thus, the Amended Joint Stipulation is in the public interest.

**a.      The Amended Joint Stipulation is in the Public Interest because it would Approve a Project with Many Public Benefits**

The Amended Joint Stipulation is in the public interest because, through it, a facility with substantial benefits would be constructed. These benefits include the generation of emission-free power, which will assist in the attainment of air quality goals in southwestern Ohio. (Company Ex. 1 at 41-42). The Project will also make payments to local government, including Preble County, Dixon and Israel Townships, and the local school district, far in excess of the property taxes currently being paid on the parcels forming the Project Area. (TR at 57). In general,

payments to local government from the Project will be a minimum of \$720,000 per year. (Company Ex. 22 at 14; Id. at Attachment DH6).

The Project will also create approximately 518 to 1,076 direct and indirect construction-related jobs with corresponding payroll of \$25.4 million to \$55.6 million. (Company Ex. 1 at 31; Id. at Exhibit C). For the operation phase of the Project, depending on the percentage of locally sourced content for maintenance activities, the Project will create approximately 19 to 22 direct and indirect jobs with corresponding annual payroll of approximately \$630,000 to \$1 million. (Id.) The Project is expected to generate new economic output of approximately \$161.7 million during construction and \$1.5 million annually from operation. (Company Ex. 1 at 32)

b. The Amended Joint Stipulation is in the Public Interest because it Increases Setback Distances from Public Rights-of-way (Condition 3)

The Application made clear that the Project Area would contain certain setbacks. (Company Ex. 1 at 54). Several of these setbacks were measured to the “edge of any public road.” (Id.) The original Joint Stipulation extended these setbacks so that they would measure to the “edge of the right-of-way rather than the edge of the roadway.” (Joint Ex. 1 at 6). The Joint Amended Stipulation preserves this change, but also expands other setbacks as well. Thus, where the Application calls for a 10-foot setback between the perimeter fence and the property line of any non-participating parcel, the Joint Amended Stipulation extends this to a minimum of 25 feet. (*Compare* Company Ex. 1 at 54 *with* Joint Ex. 2 at 6). Where the Application called for a 100-foot setback between any above-ground equipment and any non-participating residence, the Joint Amended Stipulation requires a *150-foot setback* between the *facility fence* and any non-participating residence. (Id.). Finally, the Joint Amended Stipulation requires an additional, new setback of 500 feet between any central inverter and any non-participating residence. (Joint Ex. 2 at 6). These setback distances have numerous benefits.

First, the larger setbacks from roadways and will address any concerns raised about visibility at crossroads, to the extent that this is a legitimate concern. (Company Ex. 7 at 3). Ms. Vonderhaar testified that, currently, corn is grown up to edge of the road right-of-way and that “corn at full height can sometimes block intersections.” (TR at 373). Ms. Vonderhaar also testified that, with respect to certain intersections near the Project Area “[i]t’s just hard to see ... crop or no crop.” (Id. at 406). Thus, the Project as planned would have no impact on the current motorist visibility in the area, which can be affected by the presence of crops, and which may already be impaired by the current design of the intersections.

Second, the Amended Joint Stipulation’s greater setbacks benefit the vegetative screening of the Project Area. As testified by Mr. Robinson, these revised setbacks “will allow for greater screening of the Project from residences.” (Company Ex. 24 at 1). “The increased space which will further allow the proposed modules to achieve the goals set forth in the Landscape Mitigation Plan.” (Id. at 2).

Third, the 500-foot inverter setback ensures that any potential sound from central inverters is effectively mitigated. Mr. Hessler, Angelina’s sound consultant, modelled the sound from the central inverters using the Project’s preliminary layout, which incorporated the more restrictive 500 foot setback. (Company Ex. 23 at 2). Mr. Hessler’s conclusion was that “all non-participating residences are either close to, or in the vast majority of cases, outside the 35dBA contour,” which he explained “is generally considered inconsequential even in rural environments.” (Id. at 2-3).

c. The Amended Joint Stipulation is in the Public Interest because it Limits the Hours of Construction Activities (Condition 10)

In his testimony, Mr. Hessler stated that “[c]onstruction noise in general would be brief in duration and would only occur during the daytime.” (Company Ex. 14 at 4). Condition 10 of the



Amended Joint Stipulation—which was unchanged from the original stipulation—reinforces this by limiting the hours of construction. (Joint Ex. 2 at 7). These limits are in the public interest because they prevent any noise-producing construction from occurring after daylight hours, when it may be more noticeable to nearby receptors.

- d. The Amended Joint Stipulation is in the Public Interest because it requires the Preparation of a Landscape and Lighting Plan and Maintenance of Fencing in Good Repair (Condition 11)

In accordance with Staff’s recommendations, the Amended Joint Stipulation requires Angelina to develop a landscape and lighting plan to address aesthetic and lighting impacts of the Project on non-participating adjoining parcels containing a residence. (Compare Staff Ex. 1 at 34, Condition 11 with Joint Ex. 2 at 7). Condition 11 in the Amended Joint Stipulation, however, goes considerably further than Staff’s recommendation. First, it requires that the landscape and lighting plan be developed in consultation with a landscape architect licensed by the Ohio Landscape Architects Board, ensuring the plan is developed by an individual who is professionally certified. (Joint Ex. 2 at 7). Second, although the Staff recommendation suggested, but did not require vegetative screening, the Amended Joint Stipulation makes clear that unless alternative mitigation is agreed upon with the owner of an adjacent non-participating parcel, then “the plan shall provide for the planting of vegetative screening,” and commits Angelina to ensure that at least 90% of the plantings have survived after five years, and further commits Angelina to maintain the vegetative screening for the entire life of the Project. (Id. at 8)

The Amended Joint Stipulation also goes further than Staff’s recommendations in that although Staff requested a lighting plan, the Amended Joint Stipulation mandates that any lights “shall be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and or fitted with side shields.” (Compare Staff Ex. 1 at 34, Condition 11 with Joint Ex. 2 at 8).

As discussed above, these measures will soften the visual impact of the Project, and, as testified by Mr. Robinson, will improve Angelina's "ability to effectively screen and mitigate the Project's visual impact." (Company Ex. 24 at 3).

The Amended Joint Stipulation also includes a requirement to submit a plan describing methods of fence repair and also a requirement to maintain perimeter fencing for the Project. (Joint Ex. 2 at 8, Condition 11). This requirement will help to ensure the security of the Project, as well as minimizing any negative visual impact that may be created by a damaged fence. (Company Ex. 7 at 3).

- e. The Amended Joint Stipulation is in the Public Interest because it requires Angelina to Avoid and Minimize Damage to, and Repair Drain Tile in the Project Area (Condition 16)

The Amended Joint Stipulation also includes detailed language on drainage systems (both publicly and privately maintained) and requires consultation with the County Engineer or Staff prior to repairing county maintenance/repair ditches (Joint Ex. 2 at 8-9, Condition 16). Specifically, Condition 16 requires that Angelina "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." (Id.) Through that condition, Angelina commits that "[d]amaged field tile systems shall be promptly repaired no later than 30 days after such damage is discovered, and be returned to at least original conditions or their modern equivalent at the Applicant's expense." (Id.) Further, Angelina is committed to working with adjoining landowners to secure all available information regarding the Project Area's drainage systems in order to effectively minimize any potential damage. (Id.; Company Ex. 25 at 2). Angelina has already begun this process by instituting a targeted mailing campaign designed to reach out to owners of agricultural land adjacent to or

near the Project Area. (Company Ex. 22 at 9). As Mr. Waterhouse testified, the condition “continues to benefit the public interest by ensuring the protection of drain tile and existing drainage in the Project Area.” (Company Ex. 25 at 2).

- f. The Amended Joint Stipulation is in the Public Interest because it Requires Angelina to Develop a Vegetation Management Plan, Minimize, to the Extent Practicable, the Clearing of Wooded Areas, and Take Steps to Avoid the Propagation of Noxious Weeds (Conditions 18 and 24)

Construction of the Project will involve only a minimal amount of tree clearing, conservatively estimated to be 0.07 acres. (Company Ex. 1 at Exhibit G at 3-1; Staff Ex. 1 at 18). Even beyond this minimal amount of tree clearing, the Amended Joint Stipulation commits Angelina to “minimize, to the extent practicable, the clearing of wooded areas....” (Joint Ex. 2 at 10, Condition 24). As testified by Mr. Herling, the specific area identified for potential clearing is “[t]he .07 acres ... for a collection line in the southern wooded area along the edge of the gap about two-thirds of the way west in the most southern woodlot.” (TR at 82).

The Amended Joint Stipulation also requires that Angelina develop a plan that includes “the steps to be taken to prevent establishment and/or further propagation of noxious weed identified in OAC 901:5-37 during implementation of pollinator-friendly plantings.” (Joint Ex. 2 at 9, Condition 18). And, in fact, Angelina has already prepared a draft Vegetation Management Plan that does exactly that. (Company Ex. 27, Attachment 1 at 8). Finally, the Amended Joint Stipulation requires Angelina, to the extent practicable, to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association. (Joint Ex. 2 at 9, Condition 18). Conditions 18 and 24 are in the public interest.

- g. The Amended Joint Stipulation is in the Public Interest because it Requires Angelina to Develop a Traffic Management Plan and enter into a Road Use Maintenance Agreement with Local Authorities (Conditions 25 and 26)

The Amended Joint Stipulation requires that Angelina provide Staff with a transportation management plan and any change to the RUMA entered into between Angelina and the Preble County Board of County Commissioners, the Preble County Engineer, Israel Township and Dixon Township 30 days prior to the preconstruction conference. (Joint Ex. 2 at 11, Condition 26). The original Joint Stipulation required Angelina to enter into a road use agreement that provides for a (a) preconstruction survey of road conditions; (b) post-construction survey of the road conditions; (c) an objective standard of repair that obligates Angelina to restore the road to equal or better condition than they were prior construction; and (d) a timetable for posting of financial bond. Condition 26 now reflects the current reality that Angelina has already entered into the required RUMA, which includes provisions meeting each of the prior requirements. (Company Ex. 27, Attachment 2 at ¶ 10 and Appendix A).

As testified by Mr. Bonifas, the Amended Joint Stipulation ensures that the Project will not have a negative impact on local roads after Project construction and decommissioning. (Company Ex. 11 at 2). Mr. Bonifas further testified that “[r]oad use and maintenance agreements, such as the one entered into in this matter...are a common practice for large construction projects, and in [his] experience are effective at minimizing damage to local roads and ensuring repairs are made in a timely manner.” (Company Ex. 27 at 4). Mr. Bonifas ultimately concluded that Condition 25 of the Amended Joint Stipulation is in the public interest. (Id. at 5).

- h. The Amended Joint Stipulation is in the Public Interest because it requires Angelina to Train Local EMS and Fire Organizations and Provide Specialized Equipment (Condition 28)

The Amended Joint Stipulation adds Condition 28 (as did the Original Joint Stipulation) to the conditions recommended by Staff. (Joint Ex. 1 at 11; Angelina Ex. 7 at 3). Condition 28 obligates Angelina to provide opportunities for training to local first responders, as well as any specialized equipment, if needed. (Company Ex. 7 at 3-4). As Mr. Herling testified, offering this training and equipment will help to ensure that local fire and EMS service providers are familiar with the Project and are able to effectively respond to any emergency at the Project. (Id. at 4). Angelina is also committed, under Condition 28, to hold safety meetings with fire and EMS service providers on an on-going basis. The addition of Condition 28 will assist local fire and EMS service providers in being prepared to respond to any emergency at the Project. (Id.) Mr. Herling's testimony is especially credible on this subject because of his years of volunteer EMS experience. (TR at 126).

- i. The Amended Joint Stipulation is in the Public Interest because it requires Angelina to Implement a Decommissioning Plan, including Financial Assurance Requirements (Condition 29)

Angelina had already committed in its Application to put a decommissioning plan in place. (Company Ex. 1 at 38-40). But the Amended Joint Stipulation expressly requires the creation and implementation of a decommissioning plan, including financial assurance requirements. (Joint Ex. 2 at 11, Condition 29). As Mr. Herling testified, this will ensure the Project does not become an inconvenience to the surrounding community at the end of its useful life, and will allow the Project Area to be converted to another use, including potentially returned to agricultural production. (Company Ex. 7 at 4). As described in Mr. Bonifas' testimony, the inclusion of a decommissioning plan condition "ensures that an effective plan can be put into place for the appropriate decommissioning of the Project so that the Project Area can be returned

to another use after the end of the Project’s useful life” and will benefit the public interest. (Company Ex. 11 at 3).

Condition 29 also requires Angelina to post financial security in the form of a performance bond with the Board as obligee in order to ensure there are funds available to pay for the net decommissioning costs. (Joint Ex. 2 at 11, Condition 29). Condition 29 accounts for the expected life of the Project by requiring the net decommissioning costs to be recalculated every five years, with the bond increased accordingly. As Mr. Bonifas testified, this will “ensure that the Board has greater oversight and control over the decommissioning plan and that the plan will be adequately and appropriately funded. (Company Ex. 19 at 5).

- j. The Amended Joint Stipulation is in the Public Interest because it Requires Angelina to Obtain an Ohio EPA Construction General Permit and Determine Whether Post-Construction Stormwater Best Management Practices are Required (Condition 30)

The Amended Joint Stipulation includes a new Condition, Condition 30, that requires Angelina to obtain a General Construction Permit if one or more acres of ground are disturbed. (Joint Ex. 2 at 12, Condition 30). This new condition serves the public interest because the General Construction Permit will require Angelina to perform pre- and post-construction stormwater calculations to determine if any post-construction best management practices are required. (Id.) In addition, Angelina will submit those calculations, along with a copy of any stormwater submittals made to the Ohio EPA, to the Preble County Office of Land Use Management and the Preble Soil & Water Conservation District. (Joint Ex. 2 at 12, Condition 29). As Mr. Marquis testified, this condition “will help to ensure that post-construction stormwater flows are appropriately managed,” and, if post-construction measures are required, this condition ensures they will be designed in accordance with Ohio EPA regulations. (Company Ex. 26 at 3).

- k. The Amended Joint Stipulation is in the Public Interest because its Signatories are the Elected Officials and Appointed Bodies that Represent the Public in the Project Area

While CCPC seeks to stop the Project, CCPC's local public representatives have recognized the benefits to the public, and, in recognition of those benefits, are signatories to the Amended Joint Stipulation. (Joint Ex. 2 at 20). The public entities that have signed the Amended Joint Stipulation are:

- (1) The Preble County Commissioners;
- (2) The Preble County Engineer;
- (3) The Preble Soil & Water Conservation District;
- (4) The Board of Trustees of Dixon Township; and
- (5) The Preble County Planning Commission.

(Id.) Their support and signing of the Amended Joint Stipulation are indicative of the balancing of interests in the negotiations about the Project. The Amended Joint Stipulation is in the public interest, and being the result of extensive negotiations and not violating any regulatory principle or policy, should be approved.

## **VI. CONCLUSION**

The Project is supported by five separate local government entities. It is supported by the Ohio Farm Bureau Federation. It is supported by Staff. It is supported by the hundreds of pages of information that Angelina introduced into the record through the Application and associated exhibits, and the testimony of expert witnesses with years of experience in their respective fields. All of which supports a finding by the Board that Angelina has provided evidence satisfying each of the criteria set forth in Section 4906.10(A), Revised Code, and that the Amended Joint Stipulation meets the Board's three-prong test. Angelina's application for a Certificate should be

granted subject to the recommended conditions contained in the Amended Joint Stipulation,  
without modification.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 11th day of December 2020.

/s/ Michael J. Settineri

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**Case No(s). 18-1579-EL-BGN**

Summary: Brief Initial Post-Hearing Brief electronically filed by Mr. Michael J. Settineri on behalf of Angelina Solar I, LLC