

# **THE OHIO POWER SITING BOARD**

**IN THE MATTER OF THE APPLICATION OF  
MADISON FIELDS SOLAR PROJECT, LLC  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED TO  
CONSTRUCT A SOLAR-POWERED  
ELECTRIC GENERATION FACILITY IN  
MADISON COUNTY, OHIO.**

**CASE NO. 19-1881-EL-BGN**

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

Entered in the Journal on January 21, 2021

### **I. SUMMARY**

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Madison Fields Solar Project, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

### **II. PROCEDURAL BACKGROUND**

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

{¶ 3} Madison Fields Solar Project, LLC (Madison Fields or Applicant) is a person as defined in R.C. 4906.01.

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

{¶ 5} On October 18, 2019, Madison Fields filed a pre-application notification letter with the Board regarding a proposed 200 megawatt (MW) solar-powered electric generation facility in Madison County, Ohio.

{¶ 6} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 7} On November 5, 2019, November 6, 2019, and June 16, 2020,<sup>1</sup> Madison Fields held public information meetings to discuss the proposed project with interested persons and landowners and filed its affidavits of publication with the Board on October 28, 2019, and June 11, 2020. By letters filed October 23, 2019, and June 11, 2020, Madison Fields notified the Board that the Applicant had notified property owners and affected tenants of the respective public information meetings.

{¶ 8} On June 19, 2020, Applicant filed correspondence indicating that an insert included with the notice sent to property owners and tenants containing the access information to the third public information meeting, as filed with the Board on June 11, 2020, contained an inaccurate phone number due to a printing error. Madison Fields noted that it learned of the issue only two hours prior to the public information meeting and worked with the inadvertent recipient to coordinate with callers interested in participating in the public information session. Moreover, Madison Fields stated that individuals would be given additional opportunities to contact Applicant with questions, via social media platforms, email, and/or phone calls.

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<sup>1</sup> The public information meeting held on June 16, 2020 was conducted virtually due to the ongoing state of emergency in Ohio.

{¶ 9} By Entry issued June 23, 2020, the administrative law judge (ALJ) instructed Madison Fields to conduct a fourth public information meeting following concerns regarding inaccurate call-in information publicized for the public information meeting conducted on June 16, 2020.

{¶ 10} Thereafter, Madison Fields filed its third pre-application letter on June 24, 2020, notifying the Board that a fourth public information meeting would be held on July 15, 2020. In additional correspondence filed on June 24, 2020, Madison Fields stated that the Applicant had notified property owners and affected tenants of the fourth public information meeting.

{¶ 11} The fourth public information meeting was held, as scheduled, on July 15, 2020.<sup>2</sup> Madison Fields filed its affidavit of publication with the Board on July 20, 2020.

{¶ 12} On July 17, 2020, Madison Fields filed its application with the Board for a certificate of environmental compatibility and public need to construct a 180-MW solar-powered electric generation facility in Pike Township, Madison County, Ohio. Madison Fields filed supplemental information to its application on July 23, 2020, and August 3, 2020.

{¶ 13} Also, on July 17, 2020, Applicant filed a motion for protective order to keep portions of its application confidential. Staff did not file a response to the motion.

{¶ 14} Pursuant to Ohio Adm.Code 4906-3-06, the Chairman of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 15} By letter dated September 15, 2020, the Board notified Madison Fields that its application, as supplemented, was compliant and provided sufficient information to

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<sup>2</sup> The public information meeting held on July 15, 2020, was also conducted virtually due to the ongoing state of emergency in Ohio.

permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's September 15, 2020 letter directed Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Madison Fields to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 16} On September 17, 2020, Madison Fields filed both a certificate of service of its accepted and complete application and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 17} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the ALJ shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. Under R.C. 4906.07(A), the public hearing must be held not less than 60 nor more than 90 days after the effective date.

{¶ 18} By Entry issued September 28, 2020, the effective date of the application was established as September 28, 2020, and a procedural schedule for this case was adopted such that the Staff Report of its Investigation (Staff Report) was due on or before November 18, 2020; the parties were directed to file their list of issues for which they wished to pursue cross examination by December 14, 2020; all expert and factual testimony to be offered by Madison Fields was due by December 7, 2020; all expert and factual testimony to be offered by intervenors and Staff was due by December 11, 2020; any stipulation entered into by the parties filed by December 15, 2020; the public hearing scheduled for December 3, 2020; and the adjudicatory hearing scheduled to commence on December 17, 2020. Due to the continued state of emergency, and given the passage of Am. Sub. H.B. 197, the ALJ indicated that the public and adjudicatory hearings would both be held using remote access

technology (specifically, Webex) that facilitates participation by telephone and/or live video on the internet.

{¶ 19} On October 19, 2020, Madison Fields filed a proof of service regarding the accepted, complete application being sent to government officials, libraries, and affected property owners on October 2, 2020, pursuant to Ohio Adm.Code 4906-3-09(A)(1). The Applicant also filed proof of publication of the accepted, complete application being published in the *Madison Messenger* on October 11, 2020, in accordance with R.C. 4906.06(C).

{¶ 20} On November 18, 2020, the Staff Report was filed.

{¶ 21} On November 18, 2020, Ohio Farm Bureau Federation (OFBF) filed a motion to intervene which was granted by Entry issued December 7, 2020.

{¶ 22} On November 25, 2020, Applicant filed proof of service and second publication regarding the date, time, and process to participate in the public hearing and to access the adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 23} In accordance with the September 28, 2020 Entry, which required individuals interested in testifying at the virtual public hearing to register by 12:00 p.m. on December 2, 2020, a witness registration list was filed in the docket showing 14 individuals registered to testify at the public hearing.

{¶ 24} A public hearing in this matter was held through Webex on December 3, 2020.

{¶ 25} On December 7, 2020, Madison Fields filed a motion for a brief extension of its testimony due date and a request for an expedited ruling. Madison Fields requested an extension to facilitate settlement discussions between the parties.

{¶ 26} By Entry issued December 7, 2020, the ALJ granted Madison Fields' motion, directing Applicant to file its expert and factual testimony on or before December 9, 2020, and advising that the remaining procedural deadlines established in the September 28, 2020 Entry would remain the same.

{¶ 27} On December 9, 2020, Madison Fields, OFBF, and Staff filed a Joint Stipulation and Recommendation (Stipulation).

{¶ 28} On the same date, Madison Fields filed the direct testimony of Lauren Devine, in support of the Stipulation. Staff also filed the direct testimony of Matt Butler.

{¶ 29} On December 17, 2020, the adjudicatory hearing was held as scheduled through Webex where the following exhibits were admitted into the record:

<b>Exhibit</b>	<b>Date filed</b>	<b>Description</b>
Applicant Ex. 1	July 17, 2020	Application
Applicant Ex. 2	August 3, 2020	Supplement to Application
Applicant Ex. 3	July 23, 2020	Update to Application Exhibit W
Applicant Ex. 4	September 28, 2020	Response to First Data Request
Applicant Ex. 5	October 2, 2020	Response to Second Data Request
Applicant Ex. 6	October 23, 2020	Response to Third Data Request
Applicant Ex. 7	November 4, 2020	Response to Fourth Data Request

<b>Exhibit</b>	<b>Date filed</b>	<b>Description</b>
Applicant Ex. 8	November 13, 2020	Supplemental Response to Fourth Data Request
Applicant Ex. 9	October 23, 2019	Certificate of Service of the First and Second Public Information Meetings
Applicant Ex. 10	October 28, 2019	Proof of Publication of First and Second Public Information Meetings
Applicant Ex. 11	June 11, 2020	Certificate of Service of Third Public Information Meeting
Applicant Ex. 12	June 11, 2020	Proof of Publication of Third Public Information Meeting
Applicant Ex. 13	June 24, 2020	Certificate of Service of Fourth Public Information Meeting
Applicant Ex. 14	July 20, 2020	Proof of Publication of Fourth Public Information Meeting
Applicant Ex. 15	September 17, 2020	Certificate of Service of the accepted, complete

<b>Exhibit</b>	<b>Date filed</b>	<b>Description</b>
		application on local public officials and libraries
Applicant Ex. 16	October 19, 2020	Proof of publication and service regarding the accepted, complete application
Applicant Ex. 17	November 25, 2020	Proof of Second Service and Proof of Second Publication
Applicant Ex. 18	December 9, 2020	Direct Testimony of Lauren Devine
Joint Ex. 1	December 9, 2020	Stipulation
Staff Ex. 1	December 9, 2020	Direct Testimony of Matt Butler
Staff Ex. 2	November 18, 2020	Staff Report

### **III. PROJECT DESCRIPTION**

{¶ 30} Madison Fields seeks certification to build a 180-MW solar-powered electric generation facility (Facility) in Pike Township, Madison County, Ohio. The Facility would consist of large arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, and would include associated support facilities, such as access roads, meteorological stations, buried and overhead electrical collection lines, inverter pads, transformers, and a substation. Madison Fields is proposing to begin construction as early as the end of 2021, resulting in commercial operations in 2022.



#### IV. CERTIFICATION CRITERIA

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

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

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

## V. SUMMARY OF EVIDENCE

{¶ 32} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

### A. *Local Public Hearing*

{¶ 33} On December 3, 2020, the local public hearing was conducted through Webex, where 13 of the 14 registered witnesses elected to provide testimony. Ten individuals testified in support of the proposed Facility, 2 individuals expressed opposition, and one individual requested that the Applicant consider specific environmental management practices at the Facility. Taylor Christian, Cathy Cowan Becker, Errol Gattis, Tim Strawn, Patrick Hook, Ed Moore, Aaron Boerger, Shannon Engle, Travis Askew, and John Hill, who varied between testifying in a personal capacity and/or in a representative capacity on behalf of a company or organization, indicated that they supported the proposed Facility for reasons such as it offers financial benefits to the community and local farmers, it proposes to create jobs, and it will incur minimal environmental impacts that result in positive health effects (Pub. Tr. at 12-18, 25-52, 58-60). Mr. Steve Taylor testified in opposition of the proposed Facility, primarily expressing concern regarding the proposed Facility's potential negative impact on flooding in the project area, claiming that the area and his residence already suffer from flooding, that the application insufficiently addresses this potential problem, and that Applicant employees and local officials have failed to properly address these concerns (Pub. Tr. at 19-25; Steve Taylor Ex. 1-3). Ms. Toni Young also testified in opposition of the proposed Facility, expressing concerns regarding multiple

issues, including but not limited to the health risks associated with conducting the siting process during the coronavirus and her belief that virtual outreach is an inadequate method through which to garner public participation in the siting process. Ms. Young also expressed concern regarding environmental effects the Facility could have on water, wildlife, agriculture, and land in the area. (Pub. Tr. at 53-58.) Mr. Sasson provided testimony on behalf of the Darby Creek Association (DCA) and requested that the Applicant follow the recommendations referenced in his testimony and in the exhibits filed in association with his testimony regarding stormwater management and groundwater recharge, native plant species establishment and management, and invasive species management (Tr. at 13-18; Anthony Sasson Exhibits). Applicant witness Lauren Devine testified that the Applicant has previously spoken with Mr. Sasson and DCA members and noted that a majority of Mr. Sasson's concerns would be addressed during the final design of the Facility and that the Applicant looks forward to working with the DCA to achieve best practices regarding the above concerns at the Facility (Applicant Ex. 18 at 6-7).

{¶ 34} In addition to the testimony provided at the public hearing, 16 public comments regarding the proposed Facility have been received by the Board. The majority of these public comments, including some provided by individuals who testified at the public hearing, express opposition to the proposed Facility, while the remaining filed comments either supported the proposed Facility or did not express support or opposition. Of note, a public comment filed on December 9, 2020, indicated that the Applicant served the accepted, complete application on Fairfield Local School District instead of the correct school district, Fairbanks Local School District. The Board notes that Applicant Exhibit 15, the certificate of service of the accepted, complete application on local public officials and libraries filed on September 17, 2020, indicates that the Applicant served the application on Fairfield Local School District (Applicant Ex. 15). We further note that Fairbanks Local School District is the school district within which the Facility is actually located, not Fairfield Local School District. However, as Applicant witness Lauren Devine correctly pointed out during cross-examination, Board rules, and specifically Ohio Adm.Code 4906-3-07, do not

require service of the accepted, complete application on a school district within which a solar farm project is located (Tr. at 15-16). Moreover, according to Ms. Devine, the oversight and misaddress of the courtesy copy did not inhibit the Applicant's communication with Fairbanks Local School District because Applicant representatives met with the Superintendent of the Fairbanks Local School District to discuss project details, and, according to Ms. Devine, all communication with the school district has been positive (Tr. at 16). Therefore, the Board concludes that no Board rules regarding service of the accepted, complete application were violated as a result of the above circumstances.

**B. Staff Report**

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

**1. BASIS OF NEED**

{¶ 36} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Facility is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 2 at 11.)

**2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT**

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

**a. Socioeconomic Impacts**

{¶ 38} Staff notes that 99 percent of the land used within the project area is agricultural, with less than 1 percent of the land consisting of scrub-shrub, forest, residential and developed, and old field. Staff does not anticipate significant impacts to commercial,

industrial, residential, recreational, and institutional land uses. Additionally, Staff anticipates minimal disruption to agricultural and residential land uses. The agricultural industry supports the project since it would provide supplemental income to farmers and since the land will be returned to agricultural production upon decommissioning. Aside from temporary disruptions due to project construction, farming activities may proceed with only minor adjustments. Staff also does not anticipate adverse impacts to any recreational areas, including the 41 recreational areas located within 10 miles of the project area. In terms of regional planning, the proposed Facility is not expected to interfere with local governmental plans and is expected to aid in long-term regional development by increasing tax revenues, enhancing employment opportunities, and increasing economic contributions to the local economy. (Staff Ex. 2 at 12-13.)

{¶ 39} Madison Fields commissioned a cultural resources records review of the area. The Applicant's architectural survey identified 13 new and 1 previously recorded resource over 50 years of age, though views to the Facility from any National Register of Historic Places (NRHP) listed or NRHP-eligible properties most likely would be limited or non-existent. The review identified 27 new unrecorded archaeological sites within the survey area, though none were determined eligible for NRHP. The Ohio Historic Preservation Office (OHPO) advised that no further archaeological surveys were needed, and Staff concurs with this recommendation. Staff notes that the provided cultural resource surveys were based on the current Facility footprint, so, in the event the Applicant identifies a need to locate any Facility components outside of the proposed Facility footprint, the Applicant will need to file an amendment with the Board, which includes a Phase I archaeological report and OHPO concurrence for the additional area studied within the project area. (Staff Ex. 2 at 13.)

{¶ 40} As to aesthetics, Staff reports that traffic volume on roads surrounding the project area is typically light and the project area is primarily surrounded by agricultural land, thus reducing the potential number of viewers. Additionally, the highest elevation of the solar panels would be 15 feet above ground level. According to the Applicant's visual

resources report, the panels are not likely to be visible from locations outside a two-mile distance from the Facility's perimeter, though the Applicant did identify eight adjacent non-participating residences that would be expected to have a direct line of sight view of the Facility boundary. Staff recommends that Madison Fields incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and recommends that aesthetic impact mitigation measures include native vegetative plantings, alternate fencing, good neighbor agreements, and other methods in consultation with affected landowners and subject to Staff review. (Staff Ex. 2 at 13-14.)

{¶ 41} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include a possible brief loss of vision, afterimage, a safety risk to pilots, and a perceived nuisance to neighbors. According to its glint and glare analysis, the Applicant predicts that there will be no glare impact to cars or large trucks using the roadways or impact to adjacent residents. The Applicant found that the proposed Facility would be compliant with the Federal Aviation Administration's (FAA) interim policy for FAA review of Solar Energy System Projects on Federally Obligated Airports. Further, the Applicant indicated that it would use anti-glare coating on the solar panels to reduce glare. Staff concurs with Applicant's analysis and notes that aesthetic impact measures, such as vegetative screening may further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 2 at 14-16.)

{¶ 42} Economically, Madison Fields owns all of the landowner agreements within the proposed project area, and Staff notes that these agreements will not alter the ownership status of properties within the project area. Staff notes that cost comparisons between the proposed Facility and other comparable facilities must be included in the application. Staff confirmed that the estimated capital costs for Madison Fields are not substantially different from the average capital costs for thin-film utility scale solar farm projects and that the

estimated capital costs are not substantially different from the reported average cost of Savion, LLC's similar facilities.<sup>3</sup> Staff also confirmed that Madison Fields' estimated operation and maintenance costs were below those incurred by the average utility scale solar operation facility using tracking systems. Madison Fields also provided estimates of the cost of delays in permitting and construction of the proposed Facility, an example of such delay being an inability of Madison Fields to procure necessary project components, thereby pushing back the Facility's in-service date. According to Staff, these estimated costs appeared reasonable. (Staff Ex. 2 at 14-15.)

{¶ 43} Madison Fields estimates that the proposed Facility would create 1,364 on-site construction jobs and 82 annual operational jobs for the state of Ohio. During the construction period, wages would produce \$92.4 million in local output for the state of Ohio; operations would add an annual impact of \$3.3 million for the state of Ohio. Madison Fields anticipates that the Facility will be operational in 2022 and is expected to meet all requirements of the Payment in Lieu of Taxes (PILOT) program. The Applicant estimates that the Facility will produce PILOT revenues of approximately \$1.62 million annually for Madison County taxing districts for the life of the Facility. (Staff Ex. 2 at 14-15.)

{¶ 44} Madison Fields expects to operate the Facility for 30 years or more. Madison Fields prepared a decommissioning plan according to which Madison Fields will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land. Madison Fields estimates a total decommissioning cost of \$7,115,326. During the approximate 12-month long decommissioning process, Madison Fields would remove all above-ground solar components, as well as any structures up to 36 inches below-grade. Madison Fields would leave in place access roads, the switchyard, interconnection facilities, other similar utility facilities not owned by Madison Fields, and, at landowner request, driveways on private property. Further, Madison Fields would restore the land to its original topography to allow for resumption of agricultural use. The Applicant would

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<sup>3</sup> Madison Fields is a wholly-owned subsidiary of Savion, LLC.

repurpose, salvage, recycle, or haul all solar components offsite to a licensed solid waste disposal facility and would use any resold or salvaged components to offset the decommissioning cost. Madison Fields states that it would obtain all necessary permits and required approvals prior to the start of decommissioning. The Applicant also will provide for financial security to ensure that funds are available for decommissioning/land restoration and will recalculate the cost estimates of doing so in the tenth year of operation and then every five years thereafter for the life of the project. Madison Fields commits to posting a decommissioning bond in the amount of the net decommissioning costs, if these costs exceed the salvage and resale value of solar components. (Staff Ex. 2 at 16-17.)

*b. Ecological Impacts*

{¶ 45} The proposed project site is in a region where terrain is flat to undulating. Glacial drift is between 16 and 165 feet thick throughout most of the study area, with the thinnest portions in the northeast area of the project area and the deepest drift found in the west and south portions of the project area. The uppermost bedrock in the project area is Salina Undifferentiated dolomite. Underneath this bedrock is Silurian-aged Tymochtee Dolomite. Due to the significant glacial drift, the bedrock is not exposed at the surface within the project area. There are no known karst features in the project area. Staff reports that the risk of shrink-swell potential is moderate considering the specific soil types in this area. Limiting factors for the specific soil types include potential for ponding and other issues associated with poor drainage. The Ohio Department of Natural Resources (ODNR) has recorded several small earthquakes near the site, with the closest events ranging in magnitude of 2.0 to 3.8 over the past 150 years. ODNR does not have record of any mining operations within one mile of the proposed project area, noting that the #1336 Mechanicsburg Pit operated by Shelly Materials, Inc. is the nearest active mining operation, which is located approximately seven miles from the western boundary of the proposed project area. Also, ODNR has record of no oil and gas wells within one mile of the project area, and ODNR records show that the nearest well is 1.4 miles north of the proposed project but is listed as dry. (Staff Ex. 2 at 17-19.)



{¶ 46} ODNR has recorded 88 water wells drilled within 1 mile of the study area, with an average depth of 217.4 feet. The most common aquifer listed is limestone. Staff recommends that the final detailed engineering drawings of the final project design shall account for geological features and shall include the identity of the registered professional engineer or engineer firm licensed to practice engineering in the state of Ohio who reviewed and approved the designs. The Applicant noted that there are no streams or ponds located within the project area. The Applicant also noted two Category 2 wetlands within the project area, though the Applicant states that no wetlands would be impacted by the project. Applicant has developed a frac-out contingency plan to use when conducting horizontal directional drilling (HDD), though, at the time of the application, the Applicant indicated it does not anticipate using HDD. Staff has reviewed this plan and finds it acceptable. Madison Fields is also coordinating with the Ohio Environmental Protection Agency (Ohio EPA) and U.S. Army Corps of Engineers to ensure that all anticipated wetland and stream impacts are properly permitted. (Staff Ex. 2 at 19-20.)

{¶ 47} Staff reports that there are 2 water wells within the project area and 83 water wells within 1 mile of the project area. The Applicant does not anticipate adverse impacts to the two nearest water wells due to the depth of these wells and the distance between the wells and the nearest proposed solar component. Staff reports that the Madison County Health Department indicated that the nearest solar components are farther than the minimum isolation distance outlined in Ohio Adm.Code 3701-28-7 between potential contamination sources and private water wells. One Source Water Protection Area is located within one mile of the project area for the Rosedale Bible College. Staff consulted with Rosedale Bible College, which does not have an endorsed source water protection plan, and found that the proposed solar farm and components are outside the outer protection zone for the groundwater wells used at the college. Applicant and Staff do not expect that construction of the Facility will affect groundwater at the college. Furthermore, the Applicant indicates that it will implement a Stormwater Pollution Prevention Plan (SWPPP) and a spill prevention, control, and countermeasure plan during construction to minimize

and prevent potential discharges to surface waters in the project area and surrounding area. (Staff Ex. 2 at 17.)

{¶ 48} The project area is within range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a state and federal threatened species. In order to avoid impacts to these bat species, Staff recommends that Madison Fields adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the United States Fish and Wildlife Service (USFWS) recommends a different course of action. (Staff Ex. 2 at 20-22.)

{¶ 49} The project area is also within range of three state endangered bird species, the upland sandpiper, the northern harrier, and the king rail. The Applicant has designed the project to avoid the areas of suitable habitat for these species, so no impacts to these species are anticipated. The project area is also within range of several endangered or threatened species of invertebrates and fish; however, the Applicant and Staff do not anticipate the project area to impact these species, and impacts to other listed species will be avoided since no in-water works are planned for the project. The Applicant also notes that construction will require 4.3 acres of tree clearing. Consequently, Staff recommends that the Applicant leave narrow areas of woodlot-connecting trees and shrubs intact unless the clearing would be a small area needed for installation of collection lines or access roads, as these corridors would retain some functionality due to the small size of gaps in habitat. (Staff Ex. 2 at 21-22.)

{¶ 50} Of the 1,932 acres within the project area, Staff notes that 1,917.7 acres are agricultural lands and the remaining acreage consists of either old fields, forestland, wetlands, or scrub shrub. According to Staff, permanent vegetative impacts associated with the project will be less than the above-listed acreage since Madison Fields will not develop the entire area of the project, so permanent vegetative impacts will occur primarily within agricultural lands. Moreover, Staff recommends that the proposed Facility's final design

include planting and maintenance of pollinator-friendly, native plantings in selected locations around the perimeter of the solar field and incorporate plantings of legumes and wildflowers in areas between solar panels. It is the intent that these features not only enhance the visual appeal of the proposed Facility but would also enrich local wildlife habitat and benefit the local farming community. Staff notes that Madison Fields plans to implement permanent vegetative cover under the solar array and within the project perimeter fence line. (Staff Ex. 2 at 22-23.)

*c. Public Services, Facilities, and Safety*

{¶ 51} According to Staff, Madison Fields stated that there will be minimal increases in traffic on routes leading to the project area, most of these increases occurring during the construction phase. Facility-related traffic would be minimal during operation. Madison Fields has committed to coordinating with local officials to ensure minimal impacts. In addition, Staff recommends that Madison Fields be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 2 at 23-24.)

{¶ 52} Minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to the 12 to 15-month construction period. Moreover, the construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. During operation, noise impacts would be minimal and occur most often during the day. Operation noise sources would include inverters located within a group of solar panels, the step-up transformer at the new substation, and tracking motors. Furthermore, upon testing the background ambient noise levels, the Applicant maintains that no non-participating noise receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. In fact, the model showed that operational noise impacts would be approximately the same as or less than ambient noise levels. (Staff Ex. 2 at 24.)

{¶ 53} In sum, Staff recommends that the Board find that Madison Fields has determined the nature of the probable environmental impact for the proposed Facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 24).

### 3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

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

{¶ 55} Staff reports that it concurs with the OHPO that the project as presented in the application and data request responses is not expected to have any adverse effect to historic properties, though the Applicant will file an amendment with the Board if the Applicant identifies that it needs to locate any part of the Facility outside of the proposed footprint, with such amendment including a Phase I archaeological report and OHPO concurrence for the additional area studied. The proposed Facility would have an overall positive impact on the local economy due to construction spending, wages, purchases of goods and services, annual lease payments to participating local landowners, and potential PILOT revenue. Despite Madison Fields having not identified the precise final layout of the Facility, Madison Fields sited and designed the proposed Facility to minimize potential impacts and has committed to taking measures to reduce those impacts it could not avoid. For example, impacts on wildlife and habitat can be avoided or abated by following seasonal construction restrictions; noise impacts would be primarily limited to the construction phase, would be temporary and intermittent, and would occur away from most residential structures; and, traffic impacts would also be temporary. Given the Facility's low profile, aesthetic impacts would be most prominent to landowners immediately surrounding the Facility and will be lessened by the landscape and lighting plan recommended by Staff, as

well as by similar measures taken by Madison Fields. Additionally, Madison Fields has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction, as well as restoring land for agricultural use as a part of decommissioning the Facility. (Staff Ex. 2 at 25-27.)

{¶ 56} Overall, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 27).

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

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

{¶ 58} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generation Facility would be capable of producing 180 MW and would interconnect to a newly proposed 138 kV three ring bus point of interconnection switchyard that would be owned by FirstEnergy, and the proposed switchyard would loop in FirstEnergy's existing East Springfield-Tangy 138 kV transmission line. On March 26, 2018, Madison Fields submitted a generation interconnection request to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed a Feasibility Study and System Impact Study (SIS), the results of which were released in July 2018 and February 2019, respectively. According to Staff, Madison Fields indicated that once the Facility Study is completed by PJM, the Applicant plans to sign the Interconnection Service Agreement (ISA) and Construction Interconnection Service

Agreements (CISA). Through its analysis of the bulk electric system and the SIS, PJM found no reliability problems or circuit breaker problems. (Staff Ex. 2 at 28-29.)

{¶ 59} Staff concludes that the Facility would be consistent with plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 2 at 29.)

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

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

{¶ 61} Although the proposed Facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Madison Fields would need to minimize construction-related dust and has indicated that it plans to do so by using best management practices, such as using water to wet soil to minimize dust. (Staff Ex. 2 at 30.)

{¶ 62} Neither construction nor operation of the proposed Facility would require significant amounts of water. The Ohio EPA would need to approve a SWPPP for storm water discharge associated with construction activities. If necessary, Madison Fields will seek certain water protection permits issued by the U.S. Army Corps of Engineers and the Ohio EPA under Sections 404 and 401 of the federal Clean Water Act. (Staff Ex. 2 at 30.)

{¶ 63} To construct the proposed Facility, Madison Fields would need to remove some woody vegetation debris. Debris from construction activities would consist of such items as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. All debris would be disposed of in accordance with state and federal

requirements. During operation, the Facility would generate small amounts of similar non-hazardous, solid waste, which would also be reused, recycled, or disposed of pursuant to state and federal requirements. In short, Staff notes that Madison Fields' solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 2 at 30-31.)

{¶ 64} Staff notes that the height of the tallest structures, 110-foot-tall gen-tie line poles, are under the height requirement in the FAA's regulations. No public use airports, helicopter pads, or landing strips are located within five miles of the proposed Facility. The closest private airport is the Darby Airport in Milford Center, which is approximately five miles from the project. The closest public-use airport is the Madison County Airport, which is over nine miles from the proposed Facility's operation and maintenance building. In a coordinated review of the proposed Facility's potential impacts on local airports, no concerns have been identified by Staff or the Ohio Department of Transportation's (ODOT) Office of Aviation. (Staff Ex. 2 at 31.)

{¶ 65} Based on these findings, Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the Facility include the conditions specified in the Staff Report (Staff Ex. 2 at 31).

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

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

{¶ 67} For reasons of public safety, Madison Fields will limit public access to the proposed Facility during construction with a plastic mesh fence and by installing a security fence around the project area during operation. Madison Fields intends to use warning signs, fencing, and gates to restrict access to potential hazards within the project area, and Madison Fields will implement setbacks between certain equipment and the public.

Additionally, the Facility is required to be constructed, operated, and maintained in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements. A licensed professional engineer will design and certify the Facility's electrical system, and the Applicant intends to regularly inspect system components for safe and reliable operation. Madison Fields will provide training to local fire departments and other emergency responders for response to emergencies related to a solar farm. Further, the Applicant also intends to develop and implement an emergency action plan and consult with all necessary local emergency responders. (Staff Ex. 2 at 32.)

{¶ 68} Madison Fields has worked with the community in developing the facility, including by way of meetings and notice required by statute. Madison Fields has developed a complaint resolution plan to handle complaints during construction and operation of the Facility. Madison Fields also plans to notify affected property owners and tenants at least seven days before the start of construction. Staff recommends that the Applicant also notify affected property owners and tenants seven days prior to Facility operation and recommends that the Applicant submit to Staff a quarterly complaint summary report during the construction and the first five years of operation. (Staff Ex. 2 at 32-33.)

{¶ 69} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 2 at 33).

## **7. AGRICULTURAL DISTRICTS**

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

{¶ 71} Staff states that two agricultural district parcels would be impacted by the construction of the proposed Facility. Staff notes that 154 acres of agricultural district land



and 1,000 acres of agricultural lands would be impacted during construction and operation of the Facility; however, Madison Fields would repurpose the land so it can be restored to agricultural use when Madison Fields decommissions the Facility. Madison Fields will also take steps to address potential impacts to farmland, including repair of all drainage tiles damaged during construction and during the operational life of the project, as well as restoring temporarily impacted land to its original use. Madison Fields' decommissioning plan for the proposed Facility calls for returning affected land to original or similar conditions, and the plan includes the de-compaction of soil and the repair of any damaged drainage tiles. (Staff Ex. 2 at 34.)

{¶ 72} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 2 at 34).

#### **8. WATER CONSERVATION PRACTICE**

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

{¶ 74} Although the project may require some water use during construction for dust reduction purposes, the Facility would use virtually no water and would produce nearly no wastewater during operation (Staff Ex. 2 at 35).

{¶ 75} In all, the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 2 at 35).

#### **9. RECOMMENDATIONS**

{¶ 76} In addition to making various findings throughout its report, Staff recommended that 19 conditions be made part of any certificate issued by the Board for the

proposed Facility (Staff Ex. 2 at 37-40). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' December 9, 2020 Stipulation (Staff Ex. 1 at 2-3; Joint Ex. 1). The conditions are discussed below.

## VI. STIPULATION AND CONDITIONS

{¶ 77} As previously noted, the Stipulation entered into by Madison Fields, OFBE, and Staff was filed in the docket on December 9, 2020, and admitted into the record at the adjudicatory hearing (Joint Ex. 1; Tr. at 12, 21). Madison Fields witness Lauren Devine offered testimony in support of the Stipulation<sup>4</sup> and Staff witness Matthew Butler presented testimony in support of the Staff Report. Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Madison Fields, subject to 20 listed conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) The facility shall be installed at Madison Fields' proposed site as presented in the application and modified by supplemental filings (Joint Ex. 1 at 2).
- (2) Prior to the start of any construction activities, Madison Fields shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Facility. The Applicant shall provide a proposed conference agenda for Staff review prior to the conference. (Joint Ex. 1 at 2.)
- (3) Within 60 days after the commencement of commercial operation, Madison Fields shall submit to Staff a copy of the as-

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<sup>4</sup> Applicant witness Devine also offered testimony explaining that there are no Ohio Department of Agriculture or other conservation easements associated with the Facility parcels (Applicant Ex. 18 at 10).

built specifications for the entire facility or, upon demonstration that good cause prevents submission of the as-built specifications, request an extension of time for the filing of such specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data. (Joint Ex. 1 at 2-3.)

- (4) If Madison Fields has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid, unless the Board grants a waiver or extension of time (Joint Ex. 1 at 3).
- (5) As information becomes known, Madison Fields shall docket in the case record the date on which construction will begin, on which construction was completed, and on which the facility begins commercial operation (Joint Ex. 1 at 3).
- (6) Before commencement of construction activities in any affected areas, Madison Fields shall obtain and comply with all necessary permits and authorizations. Madison Fields shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Madison Fields shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference. (Joint Ex. 1 at 3.)
- (7) The certificate authority shall not exempt the facility from any other applicable local, state, or federal rules or regulations nor be used to affect the discretion of any other local, state, or federal

permitting or licensing authority in the areas subject to their supervision and control (Joint Ex. 1 at 3).

- (8) Madison Fields shall submit one set of detailed engineering drawings and mapping of the final project design to Staff at least 30 days before the preconstruction conference. The final project design and mapping shall be provided in the form of a PDF, which Madison Fields shall file in the case docket, and as geographically-referenced electronic data based on final engineering drawings to confirm that the final design conforms with the certificate. All final geotechnical study results shall be submitted on the docket. The detailed engineering drawings of the final project design shall account for wind loads and geological features and include the identities of the Ohio-licensed engineers, who reviewed and approved the designs. (Joint Ex. 1 at 3.)
- (9) At least seven days before the start of construction and seven days before the start of facility operations, Madison Fields shall notify via mail affected property owners and tenants, individuals who were provided notice of the public information meeting, residences located within one mile of the project area, anyone who requested updates regarding the project, parties to the case, certain government officials, emergency responders, and certain other entities. These notices must provide information about the project, including contact information and a copy of the complaint resolution plan. The pre-construction notices shall include written confirmation that the Applicant has complied with all pre-construction-related conditions of the certificate, a timeframe for project construction, and a schedule

for restoration activities. The pre-operation notice shall include written confirmation that the Applicant has complied with all construction-related conditions of the certificate and must contain a timeline for the start of operation. Madison Fields shall file a copy of these notices in the case docket. Madison Fields shall submit to Staff a complaint summary report by the fifteenth of April, July, October, and January of each year for the first five years of operation, which must include a list of all complaints received through the complaint resolution process, a description of actions taken towards resolution, and a status update if yet to be resolved. (Joint Ex. 1 at 4.)

- (10) Prior to the construction of the facility, the Applicant shall execute an ISA and a CISA with PJM, and the Applicant shall file in this case docket a letter stating that these agreements have been signed or file a copy of the executed ISA and CISA (Joint Ex. 1 at 4).
- (11) Madison Fields shall operate the facility in such a way as to assure that no more than 180 MW would at any time be injected into the bulk power system (Joint Ex. 1 at 4).
- (12) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between the hours of 9:00 a.m. and 7:00 p.m., or until dusk after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. Hoe ram and blasting operations, if required, shall be limited to the hours between 10:00 a.m. and

4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Madison Fields shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction. (Joint Ex. 1 at 4-5.)

- (13) Prior to the commencement of construction, Madison Fields, in consultation with a landscape architect licensed by the Ohio Landscape Architects Board, shall prepare a landscape and lighting plan to address the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. The plan should also describe the methods to be employed for fence repair. The plan shall include measures such as fencing, vegetative screening, or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the architect to enhance the view from the residence and to be in harmony with existing vegetation and viewshed in the area. Madison Fields shall maintain vegetative screening for the life of the facility and shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Madison Fields shall maintain all fencing along the perimeter of the project in good repair for the term of the project. Lights shall be motion-

activated and designed to narrowly focus light inward toward the facility. The plan shall be provided to Staff for review and confirmation that it complies with this condition. (Joint Ex. 1 at 5.)

- (14) Madison Fields shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or the modern equivalent at Madison Fields' expense. The affected landowner may decline repair of the damaged field tile system only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the affected landowner's field tile system. (Joint Ex. 1 at 5.)
- (15) At least 30 days prior to construction, Madison Fields shall submit an updated noise study, using noise data from the inverter chosen for the project. The updated noise study shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor. (Joint Ex. 1 at 5.)
- (16) Unless coordination with ODNR and USFWS allows a different course of action, Madison Fields shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats and northern long-eared bats (Joint Ex. 1 at 5-6).
- (17) Madison Fields shall contact Staff, ODNR, and the USFWS within 24 hours if state or federal listed species are encountered

during construction activities, and construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by Madison Fields, Staff, and the appropriate agencies (Joint Ex. 1 at 6).

- (18) Prior to using HDD, Madison Fields shall inform Staff of all HDD plans and abide by the frac-out contingency plan filed with the application detailing monitoring, environmental specialist presence, containment measures, clean-up, and restoration (Joint Ex. at 6).
- (19) Madison Fields shall obtain transportation permits prior to the commencement of construction activities that require them. Madison Fields shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, ODOT, local law enforcement, and health and safety officials. Madison Fields shall detail this coordination as part of a final traffic plan submitted to Staff before the preconstruction conference for review and confirmation that it complies with this condition. (Joint Ex. 1 at 6.)
- (20) Madison Fields shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings (Joint Ex. 1 at 6).



## VII. CONSIDERATION OF STIPULATION

{¶ 78} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. See, e.g. *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

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

{¶ 79} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Ms. Devine, a Senior Permitting and Environmental Manager for Savion, LLC, testified that all parties were involved in the discussions regarding the development of the Stipulation. Further, the witness declared that counsel for all parties were invited to all settlement negotiations, and representatives of the parties involved in deliberations were knowledgeable about the issues addressed in the Stipulation. Further, the testimony of Ms. Devine acknowledges the Stipulation takes

into account concerns raised by the parties and the local community. (Applicant Ex. 18 at 4-7, 10.)

{¶ 80} The Board also concludes that the second and third criteria of the test are satisfied. The record evidence supports a finding that the Stipulation, as a package, benefits ratepayers and the public interest in various ways. As Applicant witness Devine offered, the Stipulation ensures that the Facility represents the minimum adverse environmental impact during construction and operation, considering the state of available technology, and the nature and economics of various available alternatives, as well as other pertinent considerations. Accordingly, Ms. Devine states that the construction and operation of the Facility provides benefit to the public interest. The witness declared that the solar facility will help meet Ohio's demand for in-state carbon free energy resources. Further, Ms. Devine avers that the electricity will be generated by the solar facility using virtually no fuels or water and with effectively zero air emissions and waste. The Facility also fills the need for a more diverse national energy portfolio increasing the percentage of energy generated using renewable resources. Applicant witness Devine also noted the positive financial impacts of the Facility for the community. Ms. Devine testified that the public interest is served by the positive economic impact the Facility will have on the state and local economy as a result of construction spending, jobs, and an annual PILOT service payment. The Facility is estimated to create 596 jobs in the state of Ohio, with 453 in Madison County during construction. In addition, the Facility is expected to create three to four jobs during operation of the Facility. The PILOT of \$1.62 million will benefit local governments and school districts. Ms. Devine testified that, to her knowledge, the Stipulation did not violate any important regulatory principle or practice. Further, the Board notes that Staff recommends that, based on its investigation, the Board approve the application for the Facility, subject to the 20 conditions set forth in the Stipulation. (Joint Ex. 1 at 2-6; Applicant Ex. 18 at 8-11; Staff Ex. 1 at 3.)

{¶ 81} Based on the record in this proceeding, the Board concludes that all of the required elements in accordance with R.C. Chapter 4906 are satisfied for the construction,

operation, and maintenance of the solar-powered electric generation facility described in Applicant's application, as amended and supplemented, subject to the conditions set forth in the Staff Report and consistent with this Opinion, Order, and Certificate. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Madison Fields in accordance with R.C. Chapter 4906.

### **VIII. MOTION FOR PROTECTIVE ORDER**

{¶ 82} As a final matter, on July 17, 2020, Madison Fields filed a motion for protective order to maintain as confidential portions of its application which it filed under seal.

{¶ 83} Pursuant to Ohio Adm.Code 4906-2-21(A)(7), the Board may issue a protective order so that information qualifying as a trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated manner. R.C. 1333.61(D) defines trade secret as "information \* \* \* that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Further, the Board notes that any order issued under Ohio Adm.Code 4906-2-21 should minimize the amount of information protected from public disclosure.

{¶ 84} Madison Fields indicates that the information it seeks to protect from public disclosure is found on pages 26-28 of the application and a portion of page 4-1 of Exhibit G, consisting of the report assessing the socioeconomic impact of the project. This information includes estimated capital and intangible costs, operation and maintenance costs, and costs associated with delays during construction. Madison Fields also requests protective treatment of the certificate and policy numbers listed in the project's Certificate of Liability Insurance, found in Exhibit I.

{¶ 85} Madison Fields claims that the information that it seeks to keep confidential meets the Supreme Court of Ohio’s six-factor test to identify trade secret information. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 2000-Ohio-207, 732 N.E.2d 373. In support of its motion, Madison Fields states that the information contained in the application and exhibits is not available outside the company and cannot be found in the public domain. Moreover, the information is closely held within the Company and is only disclosed to those employees who “need to know.” Madison Fields asserts that if the information were made available to the public, competitors would benefit from the time and money expended by Madison Fields. Others wishing to compete with the Applicant would build similar projects with the benefit of the Applicant’s methodologies without undertaking the effort and expense incurred by the Applicant. Also, public disclosure would convey an unfair advantage to competitors. For these reasons, Madison Fields believes it has satisfied the criteria in Ohio Adm.Code 4906-2-21(D), the Uniform Trade Secrets Act, and the six-factor test adopted by the Supreme Court of Ohio in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 86} Madison Fields urges the Board to find that the information it seeks to protect is “trade secret” material and, in accordance with Ohio law, must be protected from public disclosure. Madison Fields points out that the Board or the ALJ has the authority under Ohio Adm.Code 4906-2-21(D) to issue an order to protect the confidentiality of trade secrets to the extent that state or federal law prohibits release of the information and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 87} The Board has examined the information filed under seal as well as the assertions set forth in the Applicant’s memorandum in support of a protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D) as well as the six-factor test set forth by the Supreme Court of Ohio in *The Plain Dealer* at 524-525, the Board finds that the motion should be granted. Specifically, the Board finds that the

financial data on pages 26-28 of the application, the financial data contained on page 4-1 of the report assessing the socioeconomic impact of the project in Exhibit G, and the certificate and policy numbers listed in Exhibit I should be afforded protective treatment consistent with Ohio Adm. Code 4906-2-21(D). The Board notes that affording this information protective treatment is consistent with the Board's past precedent regarding similar types of information. See *In re the Application of Harrison Power Transmission, LLC*, Case No. 17-2084-EL-BTX, Opinion, Order, and Certificate (Nov. 15, 2018); *In re the Application of Hardin Solar Energy II, LLC*, Case No. 18-1360-EL-BGN, Entry (Jan. 9, 2019); *In re the Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry (Feb. 25, 2020).

{¶ 88} Ohio Adm.Code 4906-2-21(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” Therefore, the information protected by this order shall remain under seal for a period ending 24 months from the date of this Order.

{¶ 89} Ohio Adm.Code 4906-2-21(F) also requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board's docketing division may release the information without prior notice to the Applicant.

## IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 90} Madison Fields is a person under R.C. 4906.01(A).

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

{¶ 92} On October 18, 2019, Madison Fields filed a pre-application notification letter informing the Board of two public informational meetings for its proposed facility.

{¶ 93} On October 23, 2019, Madison Fields filed its confirmation of notification to property owners and affected tenants of the date of the two public informational meetings.

{¶ 94} On October 28, 2019, Madison Fields filed proof of its publication of the notice regarding the public informational meetings in the *Madison Messenger* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 95} Madison Fields held the public informational meetings regarding the proposed Facility on November 5, 2019, and November 6, 2019.

{¶ 96} On May 29, 2020, Madison Fields filed a second pre-application notification letter informing the Board of a third public informational meeting for its proposed facility.

{¶ 97} On June 11, 2020, Madison Fields filed its confirmation of notification to property owners and affected tenants of the date of the third public informational meeting, as well as proof of its publication of the notice regarding the public informational meeting in the *Madison Messenger* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 98} Madison Fields held the third public informational meeting regarding the proposed Facility on June 16, 2020.

{¶ 99} In correspondence filed on June 19, 2020, Applicant notified the Board that an insert containing the telephone access information for the third public information meeting was inaccurate.

{¶ 100} By Entry issued June 23, 2020, the ALJ instructed Madison Fields to conduct a fourth public information meeting.

{¶ 101} On June 24, 2020, Madison Fields filed a third pre-application notification letter informing the Board of the fourth public informational meeting for its proposed facility.

{¶ 102} On that same date, Madison Fields filed its confirmation of notification to property owners and affected tenants of the date of the fourth public informational meeting.

{¶ 103} On July 20, 2020, Madison Fields filed proof of its publication of the notice regarding the public informational meeting in the *Madison Messenger* in accordance with Ohio Adm.Code 4906-3-03.

{¶ 104} Madison Fields held the fourth public informational meeting regarding the proposed Facility on July 15, 2020.

{¶ 105} On July 17, 2020, Madison Fields filed its application for a certificate of environmental compatibility and public need to construct the proposed solar-powered electric generation facility. Madison Fields also filed a motion for protective order of certain information to be included in its application.

{¶ 106} Madison Fields supplemented its application on July 23, 2020, and August 3, 2020.

{¶ 107} By letter dated September 15, 2020, the Board notified Madison Fields that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 108} On September 17, 2020, the Applicant filed both a Certificate of Service indicating that copies of the application had been served upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B), as well a notice that the application fee had been submitted to the Board pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 109} On September 28, 2020, the ALJ issued an Entry establishing the effective date of the application as September 28, 2020, and adopting a procedural schedule for this case such that the Staff report of its investigation was due on or before November 18, 2020; the parties were directed to file a list of issues for which they wished to pursue cross examination by December 14, 2020; all expert and factual testimony to be offered by

Madison Fields was due by December 7, 2020; all expert and factual testimony to be offered by intervenors and Staff was due by December 11, 2020; any stipulation entered into by the parties filed by December 15, 2020; the public hearing scheduled for December 3, 2020; and the adjudicatory hearing scheduled to commence on December 17, 2020.

{¶ 110} On October 19, 2020, Applicant filed proof of service and initial publication regarding the date, time, and process to participate in the public hearing and to access the adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(1).

{¶ 111} The Staff Report was filed on November 18, 2020.

{¶ 112} On November 18, 2020, OFBF filed a motion to intervene which was granted by Entry issued December 7, 2020.

{¶ 113} On November 25, 2020, Applicant filed proof of service and second publication regarding the date, time, and process to participate in the public hearing and to access the adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 114} The public hearing was held on December 3, 2020 via remote access technology.

{¶ 115} On December 7, 2020, Madison Fields filed a motion for a brief extension of the due date for Applicant testimony to allow the parties time to engage in settlement negotiations. Madison also requested an expedited ruling on the motion. By Entry issued December 7, 2020, Madison Fields' motion for an extension was granted.

{¶ 116} On December 9, 2020, Madison Fields, Staff, and OFBF filed a Stipulation resolving all the issues in the case.



{¶ 117} On December 17, 2020, the evidentiary hearing was conducted, via remote access technology, where the Stipulation was presented for the Board's consideration. Madison Fields presented the testimony of Lauren Devine in support of the Stipulation, and Staff presented the testimony of Matt Butler in support of the Staff Report and the Stipulation.

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

{¶ 119} The record establishes that the Facility is not an electric transmission line or gas pipeline and, therefore, R.C. 4906.10(A)(1) is not applicable.

{¶ 120} The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility, consistent with R.C. 4906.10(A)(2).

{¶ 121} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).

{¶ 122} The record establishes that the Facility, an electric generation 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 consistent with R.C. 4906.10(A)(4).

{¶ 123} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will comply with R.C. Chapters 3704, 3734, and 6111; 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

{¶ 124} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 125} The record establishes the impact of the Facility on agricultural lands and agricultural district land consistent with the requirements of R.C. 4906.10(A)(7) and, further, establishes that there are no Ohio Department of Agriculture or other conservation easements associated with the Facility parcels.

{¶ 126} The record establishes that the Facility will not require significant amounts of water, nearly no water or wastewater discharge, and incorporates maximum feasible water conservation practices. Accordingly, the Facility meets the requirements of R.C. 4906.10(A)(8).

{¶ 127} The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the Facility as proposed by Madison Fields, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

{¶ 128} Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the solar-powered electric generation facility subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

## **X. ORDER**

{¶ 129} It is, therefore,

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

{¶ 131} ORDERED, That a certificate be issued to Madison Fields for the construction, operation, and maintenance of the solar-powered electric generation facility

subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. It is, further,

{¶ 132} ORDERED, That motion for protective order filed by Madison Fields be granted. It is, further,

{¶ 133} ORDERED, That the Board's docketing division maintain, under seal, the financial information contained on pages 26-28 of the application, the financial data contained on page 4-1 of the report assessing the socioeconomic impact of the project found in Exhibit G, and the certificate and policy numbers listed in Exhibit I. It is, further,

{¶ 134} ORDERED, That the Board's docketing division maintain as confidential all information and documents afforded protective treatment by this Order. It is, further,

{¶ 135} ORDERED, That this protective order shall be effective for a period of 24 months, until January 21, 2023. It is, further,

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

BOARD MEMBERS:

*Approving:*

M. Beth Trombold, Acting Chair  
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director  
Ohio Development Services Agency

Brittney Colvin, Designee for Mary Mertz, Director  
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Stephanie McCloud, Director  
Ohio Department of Health

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

Sarah Huffman, Designee for Dorothy Pelanda, Director  
Ohio Department of Agriculture

Greg Murphy, Public Member

MJA/MJS/kck

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**in**

**Case No(s). 19-1881-EL-BGN**

Summary: Opinion & Order issuing a certificate to Madison Fields Solar subject to the conditions set forth in the stipulation and consistent with this Opinion, Order and Certificate. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board