

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
YELLOWBUD SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.**

CASE NO. 20-972-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on February 18, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Yellowbud Solar, 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} Yellowbud Solar, LLC (Yellowbud 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 June 5, 2020, and supplemented on June 11, 2020, Yellowbud filed a pre-application notification letter with the Board regarding a proposed 274 megawatt (MW) solar-powered electric generation facility (Facility) in Ross and Pickaway counties. Thereafter, on June 22, 2020, Yellowbud held a public information meeting to discuss the

proposed Facility with interested persons and landowners¹; Applicant filed its proof of publication regarding the public information meeting with the Board on June 19, 2020.

{¶ 6} On July 21 and July 22, 2020, and supplemented on August 28, 2020, Yellowbud filed its application with the Board for a certificate of environmental compatibility and public need to construct a solar-powered electric generation facility. In conjunction with its application, Applicant filed a motion for protective order to keep portions of its application confidential.

{¶ 7} 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. By letter dated September 21, 2020, the Board notified Yellowbud that its application, as supplemented, was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's September 21, 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 Yellowbud to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 8} On September 22, 2020, Yellowbud 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.

{¶ 9} By Entry issued October 7, 2020, the administrative law judge (ALJ) established the effective date of the application as October 7, 2020, and issued a procedural schedule. Due to the continued state of emergency, the ALJ indicated that the public and

¹ The public information meeting was conducted virtually due to the ongoing state of emergency in Ohio associated with COVID-19.

evidentiary hearings would both be held using remote access technology (specifically, Webex) that facilitates participation by telephone and/or live video on the internet.

{¶ 10} On October 27, 2020, Yellowbud filed a proof of service regarding the accepted, complete application being sent to government officials, libraries, and affected property owners, 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 *Chillicothe Gazette* on October 6, 2020, and in the *Circleville Herald* on October 15, 2020, in accordance with R.C. 4906.06(C).

{¶ 11} On November 13, 2020, Ohio Farm Bureau Federation (OFBF) filed a motion to intervene which was granted by Entry issued December 30, 2020.

{¶ 12} On November 30, 2020, the Staff Report was filed.

{¶ 13} On December 7, 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 evidentiary hearing, including proof of notice of the public hearing and evidentiary hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 14} A public hearing in this matter was held through Webex on December 15, 2020.

{¶ 15} On January 6, 2021, Yellowbud, OFBF, and Staff filed a Joint Stipulation and Recommendation (Stipulation) purporting to resolve all of the issues in the case.

{¶ 16} On January 12, 2021, the evidentiary hearing was held as scheduled. Yellowbud presented the testimony of William Risse, Ryan Rupprecht, Mark Bonifas, August Christensen, Eddie Duncan, Matthew Robinson, Matt Marquis, and Andrew Lines in support of the Stipulation. In addition, the parties stipulated to the admission of the pre-filed testimonies of Staff witnesses Mark Bellamy and Robert Holderbaum.

III. PROJECT DESCRIPTION

{¶ 17} Yellowbud seeks certification to build a 274 MW solar-powered electric generation facility in Deerfield and Union townships, Ross County and Deercreek and Wayne townships, Pickaway 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, inverters, transformers, and a substation. Yellowbud is proposing to begin construction as early as second quarter 2021, resulting in commercial operations in 2022.

IV. CERTIFICATION CRITERIA

{¶ 18} 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

{¶ 19} 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*

{¶ 20} On December 15, 2020, the local public hearing was conducted through Webex, where three of the four registered witnesses elected to provide testimony. All three individuals testified in support of the proposed Facility. Dan Shirey, Christopher Spangler, and Leo Poupart, who testified in a personal capacity and/or 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, it proposes to create jobs, and it will incur minimal environmental impacts (Pub. Tr. at 12-18).

{¶ 21} In addition to the testimony provided at the public hearing, three public comments regarding the proposed Facility have been received by the Board. All three comments express opposition to the proposed Facility.

B. Staff Report

{¶ 22} 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

{¶ 23} 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. 1 at 11.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 24} 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

{¶ 25} Staff notes that the predominant land use within the project area is agricultural, which is the only land use directly impacted by the Facility's construction. Though the Applicant intends to remove one barn structure, Staff does not anticipate significant overall impacts to commercial, industrial, residential, recreational, and

institutional 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 multiple recreational areas located within ten 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. 1 at 10.)

{¶ 26} Yellowbud commissioned a cultural resources records review of the area. The Applicant's architectural survey identified 56 properties over 50 years of age, with 10 of these properties being National Register of Historic Places (NRHP) eligible properties. Nine of these properties are expected to experience an adverse impact from the Facility. To avoid and/or mitigate the Facility's adverse impacts to architectural structures, the Applicant and the Ohio Historic Preservation Office (OHPO) entered into a memorandum of agreement to address the impacts. The review identified 22 archaeological sites and 8 cemeteries located within 1 mile of the project area. After conferring with OHPO, the Applicant agreed to expand the buffer around the Minear-Shanton Cemetery. The Applicant also committed to avoid two affected archaeological sites that are eligible for listing in the NRHP. Staff concurs that, as long as the Applicant complies with the memorandum of understanding and OHPO's final recommendations, the Facility is not expected to have any adverse impact to historic properties. (Staff Ex. 1 at 11-12.)

{¶ 27} 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 2-mile

distance from the Facility's perimeter, though the Applicant did identify 16 adjacent non-participating residences that would be expected to have a direct line of sight view of the Facility boundary. Included with its visual impact analysis, the Applicant included a mitigation plan that proposed to install various planting modules along the Facility fence line to soften viewshed impacts and to blend the Facility into existing vegetation. The mitigation plan also calls for planting numerous, varying plant species to mitigate the viewshed impacts of sensitive receptors. Staff recommends that Yellowbud 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. 1 at 10-11.)

{¶ 28} 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 detected along State Routes 104 and 138. 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. No glare from the Facility is predicted to impact the Ross County or the Pickaway County Memorial 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. 1 at 11; 13.)

{¶ 29} Economically, Yellowbud 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 Yellowbud are not substantially different from the average capital costs for utility-scale solar farm projects and that the estimated capital costs are not substantially different from the reported average cost of Geronimo Energy, LLC's similar facilities.² Staff also confirmed that Yellowbud's estimated operation and maintenance costs were below those incurred by the average utility-scale solar operation facility. Yellowbud 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 Yellowbud to procure necessary project components, thereby pushing back the Facility's in-service date. According to Staff, these estimated costs appeared reasonable. (Staff Ex. 1 at 12-13.)

{¶ 30} Yellowbud estimates that the proposed Facility would create 657 on-site construction jobs and 29 annual operational jobs for the state of Ohio. During the construction period, wages would produce \$63.9 million in local output for the state of Ohio; operations would add an annual impact of \$4.0 million for the state of Ohio. Yellowbud 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 \$2.5 million annually for Pickaway and Ross counties' taxing districts for the life of the Facility. (Staff Ex. 1 at 12-13.)

{¶ 31} Yellowbud expects to operate the Facility for 30 years or more. Yellowbud prepared a decommissioning plan according to which Yellowbud will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land. Yellowbud estimates a total decommissioning cost of \$23,054,643. During the approximate 12 to 18-month long decommissioning process, Yellowbud would remove all above-ground solar components with a few exceptions, including leaving in place any electrical lines that

² Yellowbud is a wholly-owned subsidiary of Geronimo Energy, LLC.

are at least 48 inches below-grade and will not impact the restored use. Yellowbud would leave in place access roads, the switchyard, interconnection facilities, other similar utility facilities not owned by Yellowbud, and, at landowner request, driveways on private property. Further, Yellowbud would restore the land to its original topography to allow for resumption of agricultural use. The Applicant would 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. Yellowbud 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 every five years thereafter for the life of the project. Yellowbud commits to posting a decommissioning bond in the amount of the net decommissioning costs. (Staff Ex. 1 at 14-15.)

b. Ecological Impacts

{¶ 32} The proposed project site is in a region characterized by lowland terrain surrounded by relative uplands. Glacial drift is between 37 and 192 feet thick throughout most of the study area, with the thinnest portions in the northwest area of the project area and deeper portions near Yellowbud Creek, Deer Creek, and the Scioto River in the remainder of the project area. The uppermost bedrock in the project area is Ohio and Olentangy Shales Undivided. Due to the significant glacial drift, the bedrock is not exposed at the surface within the project area. Staff reports that the risk of shrink-swell potential is low considering the specific soil types in this area. 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. (Staff Ex. 1 at 15-16.)

{¶ 33} The Ohio Department of Natural Resources (ODNR) has recorded several small earthquakes near the site, with the closest events ranging in magnitude of 1.9 to 3.1

over the past 100 years. ODNR does not have record of any mining operations within the proposed project area, noting that a sand and gravel quarry operated by The Melvin Stone Company, LLC is the nearest active mining operation, which is located approximately four miles north of the proposed project area. Also, ODNR has record of three oil and gas wells within one mile of the project area, and ODNR records show that these wells are listed as final restoration. There are three permitted wells which are listed as not drilled with an expired permit. (Staff Ex. 1 at 16-17.)

{¶ 34} ODNR has recorded 98 water wells drilled within 1 mile of the study area, with an average depth of 70.2 feet. The most common aquifer listed is sand and gravel. The Applicant noted that there are two streams, one perennial stream and one intermittent stream, located within the project area. Installation of collection line may result in stream crossings, though construction will not impact the streams since they are located on the outer edges of the project area. The Applicant also delineated 60 wetlands within the project area and noted 1 Category 3 wetland, 28 Category 2 wetlands, and 31 Category 1 wetlands within the project area. The Applicant states that no Category 3 wetlands would be impacted by the project. According to the preliminary Facility layout, less than 0.06 acres of wetland would be impacted during construction and less than 0.02 acres of wetland would be permanently impacted during operation. The Applicant further states that boundaries of streams and wetlands within and immediately adjacent to the construction limits of disturbance would be surrounded by silt/exclusionary fencing to demarcate avoidance areas. Yellowbud 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 recommends that the Applicant apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to project construction and operation. (Staff Ex. 1 at 18.)

{¶ 35} Staff reports that there are up to nine water wells within the project area. The Applicant does not anticipate adverse impacts to the two nearest water wells due to coordination with landowners to identify specific well locations, potential use of avoidance

and mitigation measures, and/or the use of capping. The Applicant states that construction equipment would be significantly set back from wells located near residences, and the Applicant indicated that wells would be decommissioned, cut, and capped prior to any anticipated impact. Staff recommends that, at least 30 days prior to the preconstruction conference, the Applicant provide the status of each well and recommends that the Applicant indicate whether it has complied with applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-07. No drinking water source protection areas are located within the project area. 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. 1 at 15.)

{¶ 36} 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 federal threatened species and state endangered species. In order to avoid impacts to these bat species, Staff recommends that Yellowbud 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. 1 at 18-20.)

{¶ 37} 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 (Staff Ex. 1 at 19-20).

{¶ 38} Of the 1,982 acres within the project area, Staff notes that 1,869 acres are agricultural lands and the remaining acreage consists of either wetlands or forestland. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. Staff notes that less than 11.2 acres of forestland will be impacted and would be limited to narrow tree lines between fields. The Applicant has developed a vegetation

management plan within which it committed to incorporate a pollinator-friendly habitat with the recommendations of the Ohio Pollinator Habitat Initiative. 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 this project would be expected to represent a reduced environmental impact when compared to the current agricultural land use. Staff recommends that the Applicant take steps to prevent establishment and/or further propagation of noxious weeds listed in Ohio Adm.Code 901:5-37 during any pollinator-friendly plantings. (Staff Ex. 1 at 20-21.)

c. Public Services, Facilities, and Safety

{¶ 39} According to Staff, Yellowbud stated that there will be minimal increases in traffic on routes leading to the project area, with most of these increases occurring during the construction phase. Facility-related traffic would be minimal during operation. Yellowbud has committed to coordinating with local officials to ensure minimal impacts. In addition, Staff recommends that Yellowbud be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 1 at 21-22.)

{¶ 40} Minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to the 18 to 24-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. The model showed that operational noise impacts would be approximately the same as or less than ambient noise levels. However, Staff notes that one of the four noise monitoring locations was not representative of a significant amount of the project area. Consequently,

Staff recommends that data from only three of the four noise monitoring locations used by the Applicant be used to determine the project area daytime ambient noise level. Using data from all four receptors, the Applicant determined that the project area's daytime ambient noise level is 43.4 dBA with a noise limit of 48.4 dBA. Excluding the receptor at issue, Staff notes that the daytime ambient noise level would be 40.3 dBA with a noise limit of 45.3 dBA. Nonetheless, the operational sound level found that all non-participating receptors are modeled to receive less than both Applicant's and Staff's recommended daytime noise limits. (Staff Ex. 1 at 22-23.)

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

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 42} 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.

{¶ 43} Staff reports that it concurs with the OHPO that, assuming compliance with the aforementioned memorandum of agreement³ between the OHPO and Yellowbud, the project as presented in the application and data request responses is not expected to have an adverse impact to historic properties. Staff notes that 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

³ An executed copy of this agreement was admitted into the record as Company Exhibit 6 and filed in the docket on January 21, 2021 (Tr. at 21).

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 Yellowbud having not identified the precise final layout of the Facility, Yellowbud 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 Yellowbud. Additionally, Yellowbud 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. 1 at 24-26.)

{¶ 44} Overall, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 26).

4. ELECTRIC POWER GRID

{¶ 45} 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.

{¶ 46} 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 274 MW and would interconnect to a newly proposed 138 kV point of interconnection switchyard that would be owned and operated by American Electric Power (AEP), and the proposed switchyard would loop in AEP's existing Biers Run-Circleville 138 kV transmission line.

{¶ 47} Yellowbud submitted three generation interconnection requests, the combined energy output of which totals 274 MW, to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed the feasibility study and a System Impact Study (SIS), the results of which were released in December 2019. Through its analysis of the bulk electric system and the SIS, PJM found that, when using a 2021 summer peak power flow model, reliability violations occurred under a multiple contingency event on AEP's Harrison-Zuber 138 kV transmission line. The analysis showed that network upgrades would alleviate the overloads. The Applicant would pay for these upgrades. PJM's analysis of the delivery of energy through the system also identified overloads on AEP's Harrison-Obetz 138 kV and AEP's Harrison-Zuber 138 kV transmission lines under certain contingencies, though the upgrades to mitigate any of these future events are discretionary and not required for the Facility to be operational. PJM's analysis revealed no other reliability problems or circuit breaker problems. (Staff Ex. 1 at 27-29.)

{¶ 48} 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. 1 at 29.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 49} 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.

{¶ 50} Although the proposed Facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Yellowbud 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. 1 at 30.)

{¶ 51} 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, Yellowbud 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, as well as seek an Ohio Isolated Wetland Permit. (Staff Ex. 1 at 30.)

{¶ 52} To construct the proposed Facility, Yellowbud would need to remove one barn. 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 Yellowbud's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 30-31.)

{¶ 53} Staff notes that the height of the tallest structures, collection substation support structures, would not exceed 65 feet, which are under the height requirement in the FAA's regulations. The closest public-use airports are the Pickaway County Memorial

Airport and Ross County Airport, which are between three to five miles from the proposed Facility's operation and maintenance building. The Applicant contacted both airports, who indicated no concern about the Facility, and an FAA analysis determined that no hazard to air navigation existed within its study area. 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 Office of Aviation. (Staff Ex. 1 at 31.)

{¶ 54} Based on these findings, Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 31).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 56} For reasons of public safety, Yellowbud will limit public access to the proposed Facility by enclosing it with a seven-foot tall chain-link fence. Yellowbud intends to use warning signs, fencing, and gates to restrict access to potential hazards within the project area, and Yellowbud 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. Further, the Applicant also intends to develop and implement an emergency action plan and consult with all necessary local emergency responders. (Staff Ex. 1 at 32.)

{¶ 57} Yellowbud has worked with the community in developing the Facility by way of public meetings and notice required by statute. Yellowbud has developed a

complaint resolution plan to handle complaints during construction and operation of the Facility. Yellowbud 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. 1 at 32-33.)

{¶ 58} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 33).

7. AGRICULTURAL DISTRICTS

{¶ 59} 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.

{¶ 60} Staff states that eight agricultural district parcels would be impacted by the construction of the proposed Facility. Staff notes that 883 acres of agricultural district land and 1,383 acres of agricultural lands would be impacted during construction and operation of the Facility; however, Yellowbud would repurpose the land so it can be restored to agricultural use when Yellowbud decommissions the Facility. Yellowbud 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. Yellowbud's 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. 1 at 34.)

{¶ 61} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 34).

8. WATER CONSERVATION PRACTICE

{¶ 62} 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.

{¶ 63} 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. 1 at 35).

{¶ 64} In all, the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 1 at 35).

9. RECOMMENDATIONS

{¶ 65} In addition to making various findings throughout its report, Staff recommended that 23 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 37-41). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' January 6, 2021 Stipulation (Staff Ex. 3 at 2-3; Joint Ex. 1). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 66} At the evidentiary hearing, Yellowbud presented the Stipulation entered into by Yellowbud, OFBF, and Staff (Joint Ex. 1). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Yellowbud, subject to 24

conditions. For Yellowbud, William Risse⁴, Ryan Rupprecht, Mark Bonifas, August Christensen, Eddie Duncan, Matthew Robinson, Matt Marquis, and Andrew Lines all testified in support of the Stipulation. For Staff, Mark Bellamy and Robert Holderbaum submitted testimony in support. 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 Yellowbud's proposed site as presented in the application and modified by supplemental filings.
- (2) Prior to the start of any construction activities, Yellowbud 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.
- (3) Within 60 days after the commencement of commercial operation, Yellowbud shall submit to Staff a copy of the as-built specifications for the entire facility.
- (4) If Yellowbud 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.
- (5) As information becomes known, Yellowbud shall docket in the case record the date on which construction will begin, on

⁴ Applicant witness Risse also offered testimony explaining that there are no agricultural or other conservation easements within the Facility parcels (Applicant Ex. 7 at 12).

which construction was completed, and on which the facility begins commercial operation.

- (6) Before commencement of construction activities in any affected areas, Yellowbud shall obtain and comply with all necessary permits and authorizations. Yellowbud shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (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.
- (8) Yellowbud 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.
- (9) If any changes to the project layout are made after the submission of final engineering drawings, Yellowbud shall provide all such changes to Staff.
- (10) At least seven days before the start of construction and seven days before the start of facility operations, Yellowbud 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. Yellowbud 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.

- (11) Yellowbud shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection.
- (12) Yellowbud shall operate the facility in such a way as to assure that no more than 274 MW would at any time be injected into the bulk power system.
- (13) Prior to the commencement of construction, Yellowbud 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. The plan shall provide for the planting of vegetative screening designed to enhance the view from the residence and to be in harmony with existing vegetation and viewshed in the area.

Yellowbud 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. Yellowbud shall maintain all fencing along the perimeter of the project in good repair for the term of the project.

- (14) 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 operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Yellowbud 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.
- (15) Yellowbud shall avoid, where possible, 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 Yellowbud's expense.
- (16) At least 30 days prior to construction, Yellowbud shall submit an updated noise study.
- (17) Unless coordination with ODNR and USFWS allows a different course of action, Yellowbud 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.

- (18) Yellowbud shall have an environmental specialist on site during construction activities that may affect sensitive areas, to be mutually agreed upon by the Applicant and Staff.
- (19) Yellowbud 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.
- (20) Yellowbud shall incorporate post construction stormwater management as applicable and incorporate applicable guidance from the Ohio EPA.
- (21) Yellowbud 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.
- (22) Yellowbud shall obtain transportation permits prior to the commencement of construction activities that require them. Yellowbud 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.

- (23) Yellowbud shall develop a final transportation management plan which shall include any county-required road use maintenance agreements prior to the start of construction.
- (24) At least 30 days prior to the preconstruction conference, Yellowbud shall provide the status of each water well. Yellowbud shall indicate to Staff whether the nearest solar components to each uncapped well within the project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7.

(Joint Ex. 1 at 5-9.)

VII. CONSIDERATION OF STIPULATION

{¶ 67} 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?

{¶ 68} Upon review, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Initially, the Board acknowledges that all parties were represented by counsel that regularly appear before the Board. Applicant witness Mr. Risse, a permitting specialist for National Grid Renewables, testified that all parties were involved in the discussions regarding the development of the Stipulation and that all parties were represented by capable counsel (Applicant Ex. 7 at 24). Further, Mr. Risse's testimony acknowledges that the Stipulation takes into account concerns raised by the local community (Applicant Ex. 7 at 20-22.)

{¶ 69} The Board also concludes that the second criteria of the test is satisfied. The record evidence supports a finding that the Stipulation, as a package, benefits ratepayers and the public interest in various ways. Mr. Risse testified to the positive economic impact that the project will offer. During construction, the project is expected to create 453 on-site jobs, and, thereafter, 11 full time jobs. Additionally, through either tax payments or PILOT payments, local counties, townships, and school districts are expected to share approximately \$2,466,000 annually over the lifespan of the project. (Applicant Ex. 7 at 8.) Further, testimony indicated that the visual impacts of the project and any associated noise impacts will be minimal and that the project is not expected to negatively impact local property values (Applicant Ex. 12 at 9-10; Applicant Ex. 8 at 8; and Applicant Ex. 11 at 6-7).

{¶ 70} Finally, the Board determines that the third element is satisfied as the settlement does not violate any important regulatory principles or practices. In doing so, the Board specifically finds that the application satisfies each of the required components of R.C. 4906.10(A), relying on the Staff Report, the testimony submitted in this case, and the conditions described in the Stipulation (Staff Ex. 1 at 9-35 and Joint Ex. 1 at 5-9).

Accordingly, based on the record in this proceeding, the Board concludes that all of the required elements of 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 Stipulation and consistent with this Opinion, Order, and Certificate. The Board thus approves and adopts the Stipulation and hereby issues a certificate to Yellowbud in accordance with R.C. Chapter 4906.

VIII. MOTION FOR PROTECTIVE ORDER

{¶ 71} As a final matter, on July 21 and August 28, 2020, Yellowbud filed motions for protective order to maintain as confidential portions of its application and application supplement which it filed under seal.

{¶ 72} 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.

{¶ 73} Yellowbud indicates that the information it seeks to protect from public disclosure is found on pages 29-31 of the application, equipment model information contained in Exhibit B to the application⁵, and a portion of page 10-12 of Exhibit K,

⁵ At hearing, counsel for Yellowbud withdrew its request for protective treatment of Exhibit B, the equipment model information (Tr. at 9). Therefore, as directed below, Exhibit B will be released to the public docket ten days after the issuance of this Order.

consisting of the report assessing the socioeconomic impact of the project. This information includes total estimated capital and intangible costs, present worth of the capital costs, the estimated annual staffing and operations and maintenance cost of the project for the first two years of the commercial operation, and present worth of the operations and maintenance cost. Yellowbud also requests protective treatment of all disclosures set forth in Exhibit U, which is the Phase I Archaeological Reconnaissance Report (Archaeological Report).⁶

{¶ 74} With regard to the Archaeological Report, Yellowbud requests protective treatment to protect archaeological sites/finds, to deter unauthorized field investigations, and to protect the resources and locational information in the report and the updated report. The Applicant asserts that the Archaeological Report is traditionally submitted after a certificate is granted, though it is submitting the report as part of its application in this instance. The Applicant notes that several federal laws seek to protect and limit harm to archaeological resources on federal land and American Indian sacred sites and that other state laws and guidelines restrict public disclosure of archaeological site information for similar reasons. Yellowbud claims that all of 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, Yellowbud states that the information contained in the application and exhibits is not generally disclosed. Yellowbud asserts that public release of this information would risk harm to archaeological sites and would provide competitors with an unfair advantage. For these reasons, Yellowbud believes it has satisfied the criteria in Ohio Adm.Code 4906-2-21(D), the Uniform Trade Secrets Act, and the six-factor test

⁶ On August 28, 2020, the Applicant filed a second motion for protective order, which requests protective treatment of the updated Phase I Archaeological Reconnaissance Report found in Exhibit U and included in the first supplement to the application filed on the same date. This second motion for protective order largely reiterates the protective treatment arguments proffered in Applicant's July 21, 2020 motion.

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).

{¶ 75} Yellowbud 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. Yellowbud 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.

{¶ 76} 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 29-31 of the application, the financial data contained on page 10-12 of the report assessing the socioeconomic impact of the project in Exhibit K, and initial and updated Archaeological Report in Exhibit U 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).

{¶ 77} 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.

{¶ 78} 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.

{¶ 79} Furthermore, considering the Applicant’s withdrawal of its request for protective treatment of Exhibit B, the Commission’s docketing division should move Exhibit B to the public record ten days from the issuance of this Order.

IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 80} Yellowbud is a person under R.C. 4906.01(A).

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

{¶ 82} On June 5, 2020, Yellowbud filed a pre-application notification letter informing the Board of a scheduled public informational meeting for its proposed facility.

{¶ 83} On June 19, 2020, Yellowbud filed its confirmation of notification to property owners and affected tenants of the date of the public informational meeting as well as proof of its publication of the notice regarding the public informational meetings in accordance with Ohio Adm.Code 4906-3-03.

{¶ 84} Yellowbud held the public informational meetings regarding the proposed Facility on June 22, 2020.

{¶ 85} On July 21 and July 22, 2020, Yellowbud filed its application for a certificate of environmental compatibility and public need to construct the proposed solar-powered

electric generation facility. Yellowbud also filed a motion for protective order of certain information to be included in its application. Yellowbud supplemented its application on August 28, 2020.

{¶ 86} By letter dated September 21, 2020, the Board notified Yellowbud that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 87} On September 22, 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).

{¶ 88} On October 7, 2020, the ALJ issued an Entry establishing the effective date of the application as October 7, 2020, and adopting a procedural schedule, including the date of the local public hearing and the evidentiary hearing.

{¶ 89} On October 27, 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 evidentiary hearing, including proof of notice of the public hearing and evidentiary hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(1).

{¶ 90} On November 13, 2020, OFBF filed a motion to intervene which was granted by Entry issued December 30, 2020.

{¶ 91} The Staff Report was filed on November 30, 2020.

{¶ 92} On December 7, 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).

{¶ 93} The public hearing was held on December 15, 2020, via remote access technology.

{¶ 94} On January 6, 2021, Yellowbud, Staff, and OFBF filed a Stipulation resolving all the issues in the case.

{¶ 95} On January 12, 2021, the evidentiary hearing was conducted, via remote access technology, where the Stipulation was presented for the Board's consideration.

{¶ 96} Sufficient information regarding 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 evidence to enable the Board to make an informed decision.

{¶ 97} 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.

{¶ 98} 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).

{¶ 99} 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).

{¶ 100} 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).

{¶ 101} 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; R.C. 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

{¶ 102} 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).

{¶ 103} 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 agricultural or other conservation easements associated with the Facility parcels.

{¶ 104} 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).

{¶ 105} 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 Yellowbud, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

{¶ 106} Based on the record, the Board should issue a certificate of environmental compatibility and public need to Yellowbud, 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

{¶ 107} It is, therefore,

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

{¶ 109} ORDERED, That a certificate be issued to Yellowbud 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,

{¶ 110} ORDERED, That the motions for protective order filed by Yellowbud be granted in accordance with paragraphs 76-79. It is, further,

{¶ 111} ORDERED, That the Board's docketing division maintain, under seal, the financial information contained on pages 29-31 of the application, the financial data contained on page 10-12 of the report assessing the socioeconomic impact of the project found in Exhibit K, and both the initial version of the Phase I Archaeological Reconnaissance Report and updated version of the report in Exhibit U. It is, further,

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

{¶ 113} ORDERED, That this protective order shall be effective for a period of 24 months, until February 18, 2023. It is, further,

{¶ 114} ORDERED, That the Board's docketing division move Exhibit B to the public docket ten days after the issuance of this Order. It is, further,

{¶ 115} 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

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Case No(s). 20-0972-EL-BGN

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Yellowbud Solar, 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. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board