

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
HECATE ENERGY HIGHLAND 4, LLC FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.**

CASE NO. 20-1288-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on March 18, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Hecate Energy Highland 4, LLC for the construction, operation, and maintenance of a 65 MW solar-powered electric generation facility subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate as modified.

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} Hecate Energy Highland 4, LLC (Hecate or Applicant) is a person as defined in R.C. 4906.01. Hecate Energy Highland 2, LLC (Hecate 2) 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} Pursuant to R.C. 4906.01, a major utility facility includes an electric generating plant designed for, or capable of operation, at a capacity of at least 50 megawatts.

{¶ 6} On August 7, 2020, Hecate filed a pre-application notification letter with the Board regarding a proposed 100 megawatt (MW) solar-powered electric generation facility (Facility) in Highland County. Thereafter, on August 24, 2020, Hecate held a public information meeting to discuss the proposed Facility with interested persons and landowners. Hecate filed its proof of publication regarding the public information meeting with the Board on August 27, 2020.

{¶ 7} On September 2, 2020, Hecate filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate New Market Solar, which was described as a combined project of New Market Solar I and New Market Solar II. Hecate indicated that its application related to two separate and distinct facilities, with New Market Solar I expected to generate 65 MW of solar-powered electricity, and New Market Solar II expected to generate 35 MW of solar-powered electricity. Hecate advised that, given the separateness of the two facilities, it believed that New Market Solar II was non-jurisdictional. Accordingly, Hecate requested that the Board certificate the project either as (1) two separate facilities with two separate certificates, or (2) two separate facilities with a certificate for New Market Solar I and confirmation that New Market Solar II is non-jurisdictional.

{¶ 8} Hecate supplemented its application on October 15, October 20, October 23, November 10, and December 1, 2020. Pursuant to the supplement on December 1, 2020, Hecate requested that the Board (1) issue a certificate for the combined 100 MW facility, and (2) immediately bifurcate the certificate into two certificates to allow for the separate construction and operation New Market I and New Market II.

{¶ 9} On September 2, 2020, simultaneous with its application, Hecate filed a motion for protective order to keep portions of its application confidential and not part of the public record.

{¶ 10} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, 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 November 2, 2020, the Board notified Hecate 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 November 2, 2020 letter directed Hecate 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 Hecate to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 11} On November 2, 2020, Hecate simultaneously filed 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.

{¶ 12} By Entry issued November 18, 2020, the administrative law judge (ALJ) (1) granted Hecate's motion for protective order, (2) established the effective date of the application as November 16, 2020, and (3) issued a procedural schedule. Due to the continued state of emergency, 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.

{¶ 13} On December 14, 2020, Hecate filed a proof of service regarding the accepted, complete application being sent to government officials, libraries, and affected property owners on December 1, 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 *Hillsboro Times-Gazette* on December 11, 2020, the *Highland County Press* on December 12, 2020, and the *Brown County Press* on December 13, 2020, in accordance with R.C. 4906.06(C).

{¶ 14} On December 21, 2020, Ohio Farm Bureau Federation (OFBF) filed a motion to intervene, which was granted by Entry issued January 21, 2021.

{¶ 15} On January 4, 2021, Staff filed its Report of Investigation (Staff Report).

{¶ 16} On January 13, 2021, Hecate filed its 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).

{¶ 17} On January 19, 2021, the virtual public hearing was held as scheduled.

{¶ 18} On January 22, 2021, Hecate filed direct testimony of Patti Shorr and Emily Kosmalski. Also on January 22, 2021, Staff filed direct testimony of Robert Holderbaum. On January 25, 2021, Hecate filed supplemental direct testimony of Patti Shorr.

{¶ 19} Also on January 22, 2021, Hecate, OFBF, and Staff filed a Joint Stipulation and Recommendation (Stipulation). A Supplemental Joint Stipulation and Recommendation was filed by Hecate, OFBF, and Staff on January 25, 2021 (Supplemental Stipulation) (Collectively, “Combined Stipulations”). In the Supplemental Stipulation, the parties seek modification of the terms of the Stipulation should the Board decide to grant, and then immediately bifurcate, the certificate.

{¶ 20} On January 25, 2021, the adjudicatory hearing was held as scheduled through Webex where the following exhibits were admitted into the record:

Exhibit	Date filed	Description
Applicant Ex. 1	July 16, 2020	Motion for Waiver
Applicant Ex. 2	August 7, 2020	Pre-application notification letter
Applicant Ex. 3	August 27, 2020	Proof of notice of public information meeting

Exhibit	Date filed	Description
Applicant Ex. 4	September 2, 2020	Application with Figures 1-17 and Exhibits A-L
Applicant Ex. 5	September 2, 2020	Motion for Protective Order
Applicant Ex. 6	September 2, 2020	Motion for waiver
Applicant Ex. 7	October 15, 2020	Supplement to application: cultural resource report
Applicant Ex. 8	October 20, 2020	Reply to OPSB Staff memorandum contra
Applicant Ex. 9	October 20, 2020	Supplement to application: landmark maps
Applicant Ex. 10	October 20, 2020	Supplement to application: preliminary geotechnical report
Applicant Ex. 11	October 23, 2020	Supplement to application: endangered species surveys
Applicant Ex. 12	November 2, 2020	Notice of proof of payment of application fee
Applicant Ex. 13	November 2, 2020	Proof of service of accepted,

Exhibit	Date filed	Description
		completed application
Applicant Ex. 14	November 2, 2020	Proof of compliance with Ohio Adm.Code 4906-3-07(A)-(B)
Applicant Ex. 15	November 10, 2020	Supplement to Application: SHPO concurrence
Applicant Ex. 16	November 10, 2020	Response to OPSB's first data request
Applicant Ex. 17	December 1, 2020	Supplement to application: bifurcation request
Applicant Ex. 18	December 14, 2020	Proof of initial public notice
Applicant Ex. 19	December 21, 2020	Response to OPSB's second data request
Applicant Ex. 20	January 13, 2021	Proof of second public notice
Applicant Ex. 21	January 22, 2021	Direct testimony of Patti Shorr
Applicant Ex. 22	January 22, 2021	Direct testimony of Emily Kosmalski
Applicant Ex. 23	January 25, 2021	Unredacted portions of application (confidential)

Exhibit	Date filed	Description
Applicant Ex. 24	January 25, 2021	Supplemental direct testimony of Patti Shorr
Staff Ex. 1	January 22, 2021	Prefiled testimony of Robert Holderbaum
Staff Ex. 2	January 4, 2021	Staff Report
Joint Ex. 1	January 22, 2021	Joint Stipulation and Recommendation
Joint Ex. 2	January 25, 2021	Supplemental Joint Stipulation and Recommendation

III. PROJECT DESCRIPTION

{¶ 21} Hecate seeks certification to build a 100 MW solar-powered electric generation facility in Clay and Whiteoak townships, Highland County, Ohio. The Facility would be made up of two separate and distinct facilities: New Market Solar I, a 65 MW facility to be operated by Hecate; and New Market Solar II, a 35 MW facility to be operated by Hecate 2. Both facilities will 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 electrical collection lines, inverter pads, and a project substation that will feed into a newly constructed Dayton Power & Light substation known as the Clay Substation. Hecate seeks to certify the project in one of two ways: (1) as two separate facilities with two separate certificates; or (2) as two separate facilities with a certificate for New Market Solar I and confirmation that New Market Solar II is non-jurisdictional. Hecate is proposing to begin construction in early 2021, resulting in commercial operations in the fourth quarter of 2021.

IV. BOARD JURISDICTION

{¶ 22} Pursuant to R.C. 4906.03(D), the Board shall adjudicate an application for a certificate for the construction, operation, and maintenance of a major utility facility.

{¶ 23} Pursuant to R.C. 4906.01(B), a major utility facility is defined as, among other criteria, an electric generating plant that is designed for, or capable of, operation at a capacity of 50 megawatts or more.

V. CERTIFICATION CRITERIA

{¶ 24} 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.

VI. SUMMARY OF EVIDENCE

{¶ 25} 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*

{¶ 26} On January 19, 2021, the local public hearing was conducted through Webex, where 11 of the 15 registered witnesses elected to provide testimony. Eight individuals testified in support of the proposed Facility, and three individuals expressed opposition. Daniel Shirey, Doug Carraher, Michael Forrester, Jeff Rowley, Jim Bailey, Charles Carraher, Angie Wright, and Elizabeth Burkard 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 13, 38-60). Mr. Dale Davidson testified in opposition of the proposed Facility, expressing concerns regarding (1) the loss of fertile farmland, (2) long-term effects on the land following the Project's lifespan, (3) the temporary nature of the bulk

of the jobs created by the Project, and (4) the aesthetic changes of the area resulting from construction of the Project (Pub. Tr. at 16-28). Ms. Mary Davidson also testified in opposition of the proposed Facility and expressed concerns regarding (1) the project's use of fertile farmland, (2) the reusability and/or recyclability of the solar equipment once it is decommissioned, and (3) the proposed Facility's financial impact on the community (Pub. Tr. at 29-32). Along similar lines, Ms. Karla Bolser testified in opposition of the proposed Facility; primarily expressing concern regarding (1) the proposed Facility's potential impact on the residential property owners and dwellings located in and around the Project area, and (2) the economic ramifications of the Project and the means of notification provided by Hecate (Pub. Tr. at 33-37).

{¶ 27} In addition to the testimony provided at the public hearing, two public comments regarding the proposed Facility have been received by the Board. Ms. Jane Harf filed a comment on behalf of Green Energy Ohio, supporting the project for its contribution to reducing carbon emissions in Ohio. Mr. Gregg Jess filed a comment in opposition to the Project, primarily citing to issues in California concerning the need for coal and gas back-up for renewable energy projects and concern that such projects will ultimately not accomplish their stated goals of reducing Ohio's carbon footprint or saving money.

B. Staff Report

{¶ 28} 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

{¶ 29} 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 9.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 30} 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

{¶ 31} In terms of regional planning, Staff notes that Highland County has adopted a comprehensive land use plan, which emphasizes subdivision regulations, supports agricultural economy, and plans for preservation of valuable agricultural land. Staff does not anticipate interference with commercial, industrial, residential, recreational, and institutional land uses. Additionally, Staff anticipates minimal disruption to agricultural and residential land uses. Staff also notes that the land can be returned to agricultural production or subsequently developed for other uses 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 four recreational areas located within two miles of the project area. In terms of land use, Staff states that the vast majority of the 1,114 acres of the Project area is presently used for agricultural production, of which 800 acres would be utilized for solar panels and access roads. Slightly over 300 acres of agricultural land and woodlots would not be developed. Staff notes that there are 50 structures within 1,000 feet of the facility components. Further, Staff states that there are no National Scenic Trails, National Wildlife Refuges, or State Wildlife Management Areas located within five miles of the project area. (Staff Ex. 2 at 10-11.)

{¶ 32} Hecate commissioned a cultural resources records review of the area. The Applicant's architectural survey was split into two areas: New Market I and New Market II. The study identified 12 archaeological sites or isolated finds in New Market I, and five 5 in New Market II. None of these archeological sites or isolated finds were determined to be

eligible for the National Register of Historic Places (NRHP). Further, the survey identified 16 new and 20 previously recorded resources over 50 years of age in the New Market I area; two of these were determined to be potentially eligible for the NRHP. Two additional resources were identified in the New Market II survey area as potentially eligible for the NRHP. Ultimately, the Ohio Historic Preservation Office advised that (1) no further archaeological surveys were needed, and (2) the project would not have adverse impacts on cultural resources. Staff concurs with this recommendation. (Staff Ex. 2 at 11.)

{¶ 33} 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. (Staff Ex. 2 at 11-12.) Applicant identified potential measures to mitigate potential residential viewshed impacts, including using good neighbor agreements or non-participating landowner agreements pursuant to which landscaping may be used to minimize viewshed impact. Staff recommends that Hecate incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area 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 12.)

{¶ 34} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include 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 in the New Market I area, glare along the South Hollowtown Road and West New Market Road. Hecate also found

that for the New Market II area, glare is predicted along Stringtown Road and Edwards Road. The Applicant found that the proposed Facility would not impact area airports, because the closest airport is over 12 miles away. Applicant indicated that it would (1) implement a landscape mitigation plan, and (2) 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 also recommends Applicant incorporate additional screening along Stringtown, Edwards, South Hollowtown, and West New Market Roads to provide suitable concealment of the project site and mitigate any predicted glare along those roads. (Staff Ex. 2 at 13-14.)

{¶ 35} Economically, Hecate owns 100 percent of the development rights within the proposed project area. Staff states that Hecate will be responsible for the construction, operation, and maintenance of the proposed project. 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 Hecate are not substantially different from the average capital costs of similar scale solar farm projects and that estimated capital costs are not substantially different from the reported average costs of Hecate Energy's similar facilities. Staff also confirmed that Hecate's estimated operation and maintenance costs were not substantially different from those incurred by the average utility scale solar operation facilities. Hecate 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 Hecate 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 12-13.)

{¶ 36} Hecate estimates that the proposed Facility would create 134 construction-related jobs and eight annual operational jobs for the state of Ohio. During the construction period, wages would produce \$8.4 million in local output for the state of Ohio; operations would add an annual impact of \$400,000 for the state of Ohio. Hecate anticipates that the

Facility will be operational in 2021 and is expected to output \$175 million for the state of Ohio throughout its lifespan. Hecate expects the Project to meet all requirements of the Payment in Lieu of Taxes (PILOT) program. The Applicant estimates that the Facility will produce PILOT revenues for Highland County taxing districts of approximately \$700,000 - 900,000 annually for the life of the facility. (Staff Ex. 2 at 12-13.)

{¶ 37} Hecate expects to operate the Facility for 30 years or more. Hecate prepared a decommissioning plan according to which Hecate will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land. Hecate estimates a total decommissioning cost of \$2,722,527 for the New Market I area, and \$1,465,976 for the New Market II area, though these estimates do not include the salvage or resale value of the solar equipment. During the approximate nine-month long decommissioning process, Hecate would remove all above-ground solar components, but the underground collection systems would be buried more than three feet below ground and would be left in place. Hecate indicates that it is considering panels that have been tested by the manufacturer to comply with the U.S. Environmental Protection Agency's toxicity characteristics leachate procedure test and meet its definition of non-hazardous waste. Staff states that many solar panel manufacturers have recycling network programs or are developing programs to accept panels back into their facility to recycle or reuse. Further, Hecate 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. Hecate states that it would obtain all necessary permits and required approvals prior to the start of decommissioning. Hecate 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. Hecate commits to posting a decommissioning bond in the amount of the net decommissioning costs. (Staff Ex. 2 at 14-15.)

b. Ecological Impacts

{¶ 38} Staff estimates that there are fewer than 10 private water wells within the project area as indicated by the Ohio Department of Natural Resources (ODNR) water wells online map. ODNR's records indicate that there are 12 water wells drilled within one mile of the project area of New Market I. ODNR's records indicate that there are six water wells within one mile of the project area for New Market II. Hecate does not anticipate adverse impacts to the nearest wells because it will purchase all onsite residences and no longer use the wells. There are no drinking water source protection areas within the project area. Hecate will implement a Stormwater Pollution Prevention Plan (SWPPP) and a Spill Prevention Control and Countermeasure plan (SPCC) during construction to minimize and prevent potential discharges to surface waters. The Applicant noted 20 streams, including 11 ephemeral streams, and 9 intermittent streams. Eleven ponds are located within the project area. The Applicant also noted 28 wetlands within the project area, though Applicant states no wetlands would be impacted by the project. The Applicant and Staff do not anticipate significant adverse impacts to public or private water supplies. Hecate is also coordinating with the Ohio Environmental Protection Agency (Ohio EPA) to ensure that all anticipated wetland and stream impacts are properly permitted. (Staff Ex. 2 at 15-16.)

{¶ 39} The project area is within range of the Indiana bat, a state and federal endangered species, the northern long-eared bat, which is listed as a state endangered species and a federal threatened species, the Little brown bat, which is listed as a state endangered species, and the Tricolored bat, which is listed as a state endangered species. In order to avoid impacts to these bat species, Staff recommends that Hecate 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 16-18.)

{¶ 40} The project area is also within range of two state endangered bird species, the Loggerhead shrike, and the King rail. Additionally, within the project area are the

ranges of the Timber rattlesnake, and the Bigeye shiner. The Applicant and Staff do not anticipate the project area to impact these species. (Staff Ex. 2 at 17-18.)

{¶ 41} Staff notes that of the 1,114 acres within the project area, 1,070 acres are agricultural lands and the remaining acreage consists of developed land or forestland. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. Hecate has developed a vegetation management plan in which it committed to incorporate pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative. 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. 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 Hecate plans to implement permanent vegetative cover under the solar array and within the project perimeter fence line. (Staff Ex. 2 at 18.)

c. Public Services, Facilities, and Safety

{¶ 42} Staff notes that Hecate will install small meteorological stations within the project area to monitor weather conditions. Staff found that components of the proposed facility are generally not susceptible to damage from high winds except for tornado-force winds. The applicant will minimize potential damage from high wind velocities during the detailed engineering phase by proper structural design of the project support equipment. (Staff Ex. 2 at 18-19.)

{¶ 43} According to Staff, Hecate stated that there will be 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. Hecate has committed to coordinating with local officials to ensure minimal impacts. In addition, Staff recommends that Hecate be required to develop a final transportation management plan, including a road use agreement. (Staff Ex. 2 at 19.)

{¶ 44} 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-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. Therefore, the model showed that operational noise impacts from the Project are expected to have a minimal adverse noise impact to the adjacent community. (Staff Ex. 2 at 19-20.)

{¶ 45} In sum, Staff recommends that the Board find that Hecate 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 20).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 46} 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.

{¶ 47} Staff notes that Hecate's initial site selection focused on four primary criteria: availability of solar resources, transmission proximity, topography, and landowner and community interest. During the public information meeting held for the Project, Hecate solicited comments and questions from attendees. These comments covered a range including economic impact for the local community, employment opportunities, increased traffic, potential impacts to property value, concerns regarding flooding and damage to

drainage tile systems, viewshed impacts, and environmental concerns, such as loss of farmland. Hecate states that, to the extent possible, comments from local officials and the public have been incorporated into the proposed construction and design of the Project. (Staff Ex. 2 at 21.)

{¶ 48} 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 having not identified the precise final layout of the Facility, Hecate sited and designed the proposed Facility to minimize potential impacts and has committed to taking measures to reduce those impacts it cannot 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 aesthetics plan recommended by Staff, as well as by similar measures taken by Hecate. Additionally, Applicant 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 21-22.)

{¶ 49} 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 22.)

4. ELECTRIC POWER GRID

{¶ 50} 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.

{¶ 51} 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 100 MW and would interconnect from the Project substation to a newly proposed substation called the Clay Substation. The Clay Substation would be constructed, owned, and operated by Dayton Power & Light Company (DP&L), tapping into DP&L's existing Stuart-Clinton 345 kilovolt (kV) transmission line. The Clay Substation was approved on February 4, 2020, and construction had not yet started as of the time of the Staff Report. Hecate 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. Hecate requested an energy injection of 400 MW, of which 152 MW could be available in the PJM capacity market. PJM completed a System Impact Study (SIS), the results of which were released in October 2018, a Facilities Study in November 2018, and a scope change in December 2020, to address the impact on the American Electric Power Adkins-Beatty 345 kV transmission line (Adkins substation) in light of the retirement of the Stuart and Killen generating units on September 30, 2018. Through its analysis of the bulk electric system and the SIS, PJM found that, when using a 2020 summer peak power flow model, there were no delivery constraints to the project. Further, PJM studied the delivery of the project's energy portion, concluding that upgrades to the network would allow for the delivery of energy without operational restrictions; however, upgrades to mitigate any future operational restrictions are not required for the facility to be operational and are at the discretion of the Applicant. PJM's analysis revealed no other reliability problems or circuit breaker problems. (Staff Ex. 2 at 24-25.)

{¶ 52} Staff concludes that the Facility would serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission

grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 2 at 26.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 53} 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.

{¶ 54} Although the proposed facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Hecate would need to minimize construction-related dust and has indicated that it plans to do so by using best management practices (BMP), such as using water to wet soil to minimize dust. (Staff Ex. 2 at 27.)

{¶ 55} Staff states that Hecate would mitigate potential water quality impacts associated with aquatic discharges by obtaining National Pollutant Discharge Elimination System construction storm water general permits from the Ohio EPA with submittal of a SWPPP to direct the implementation of construction related storm water BMP. Hecate states that horizontal directional drilling (HDD) is not intended or anticipated and that a frac-out contingency plan is not applicable. Staff recommends a conditional requirement that should HDD be necessary, a frac-out contingency plan must be docketed seven days before HDD is used. Hecate will develop an SPCC to mitigate the unlikely release of hazardous substances. Staff states that with these measures, construction and operation of the Facility would comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 2 at 27.)

{¶ 56} Debris from construction activities would consist of such items as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. The amount of refuse generated during construction would be approximately 31,000 cubic yards. 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 Hecate's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 2 at 27.)

{¶ 57} Staff notes that the height of the tallest structure, a single lighting mast at the Project substation, would not exceed a height of 75 feet. That height is 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 public-use airports are the Brown County Airport (GEO) and Highland County Airport (HOC) which are between 12 and 14 miles from the proposed solar farm project substation. 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 28.)

{¶ 58} 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 28).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 60} For reasons of public safety, Hecate will limit public access to the proposed Facility during construction with a chain-link mesh fence and by installing a security fence

around the project area during operation. Hecate intends to use warning signs, fencing, and locked gates to restrict access to potential hazards within the project area, and Hecate 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. The Applicant intends to regularly inspect system components for safe and reliable operation. Hecate 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 and response plan and consult with all necessary local emergency responders. (Staff Ex. 2 at 28.)

{¶ 61} Hecate has worked with the community in developing the Facility, including by way of meetings and notice required by statute. Hecate has developed a complaint resolution plan to handle complaints during construction and operation of the Facility. Hecate 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 28.)

{¶ 62} 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 28-29.)

7. AGRICULTURAL DISTRICTS

{¶ 63} 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.

{¶ 64} Staff states that no agricultural district parcels would be impacted by the construction of the proposed Facility. Staff notes that 800 acres of agricultural land, none of which is classified as agricultural district land, would be impacted during construction and operation of the Facility; however, Hecate would repurpose the land so it can be restored to agricultural use when Hecate decommissions the Facility. Hecate 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. Hecate'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. 2 at 31.)

{¶ 65} 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 31).

8. WATER CONSERVATION PRACTICE

{¶ 66} 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.

{¶ 67} 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 32).

{¶ 68} In all, the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 2 at 32).

9. RECOMMENDATIONS

{¶ 69} 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. 2 at 33-37). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' January 22, 2021 Stipulation (Joint Ex. 1). The conditions are discussed below.

VII. STIPULATION AND CONDITIONS

{¶ 70} As previously noted, the Stipulation entered into by Hecate, OFBF, and Staff was filed in the docket on January 22, 2021 and admitted into the record at the adjudicatory hearing. (Joint Ex. 1; Tr. at 20, 31.) Hecate witness Patti Shorr offered testimony in support of the Combined Stipulations and Staff witness Robert Holderbaum presented testimony in support of the Staff Report. Pursuant to the Combined Stipulations, the parties recommend that the Board issue the certificate requested by Hecate, subject to 23 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 Combined Stipulations.¹ The parties stipulate that:

- (1) The Facility shall be installed at Hecate's 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, Hecate 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

¹ Pursuant to the Supplemental Stipulation, the parties seek to modify Stipulation Conditions 1, 10, and 12, in response to the certificate bifurcation request. As indicated below, the Board declines to adopt the recommendations from the Supplemental Stipulation and summarizes the parties' agreement solely with regard to the Stipulation.

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, Hecate shall submit to Staff a copy of the as-built specifications for the entire facility or, upon demonstration that good cause prevents submission of the as-built specifications, request an extension of time for the filing of such specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data. (Joint Ex. 1 at 2.)
- (4) If Hecate 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 2).
- (5) As information becomes known, Hecate 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 2).
- (6) Before commencement of construction activities in any affected areas, Hecate shall obtain and comply with all necessary permits and authorizations. Hecate shall provide copies of such permits and authorizations to Staff within seven days prior to the applicable construction activities. Hecate shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference. (Joint Ex. 1 at 2.)

- (7) To the extent permitted by R.C. 4906.13(B), the Certificate authority provided in this case shall not exempt the facility from any other applicable laws, rules, or regulations, nor shall it affect the exercise of discretion of any other local, state, or federal permitting or licensing authority (Joint Ex. 1 at 3).
- (8) Hecate 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 Hecate 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. (Joint Ex. 1 at 3.)
- (9) At least seven days before the start of construction and seven days before the start of facility operations, Hecate 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 a timeframe for project construction and a schedule for restoration activities. The pre-operation notice must contain a timeline for the start of operation. Hecate shall file a copy of these notices in the case docket. Hecate 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 3.)

- (10) The facility shall be operated in such a way to assure that it injects no more than 100 megawatts into the Bulk Power System. (Joint Ex. 1 at 4.)
- (11) 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. Hecate 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.)
- (12) Prior to the commencement of construction, Hecate, 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. Hecate 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. Hecate 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 4.)

- (13) Hecate 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 Hecate's 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 4.)

- (14) At least 30 days prior to construction, Hecate shall submit an updated noise study, using noise data from the inverter and substation transformer 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.)
- (15) At least 30 days prior to the preconstruction conference, Hecate shall submit an updated decommissioning plan that includes a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee (Joint Ex. 1 at 5).
- (16) If horizontal directional drilling is required, the Applicant shall docket a frac-out contingency plan seven days before horizontal drilling is used (Joint Ex. 1 at 5).
- (17) The Applicant 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, unless coordination with the Ohio Department of Natural Resources (ODRN) and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action (Joint Ex. 1 at 5).
- (18) Hecate shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas.

Sensitive areas include, but are not limited to, wetlands and streams and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during construction, as well as have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. Hecate shall provide Staff a map showing sensitive areas which would be impacted during construction and provide Staff with information on when the environmental specialist would be present. (Joint Ex. 1 at 5.)

- (19) Hecate 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 Hecate, Staff, and the appropriate agencies (Joint Ex. 1 at 5).
- (20) Hecate shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005(Part III.G.2.e, pp 19-27) as applicable in accordance with the applicable requirements of the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays (Joint Ex. 1 at 6).
- (21) The Applicant will 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).

- (22) Hecate shall obtain transportation permits prior to the commencement of construction activities that require them. Hecate 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. Hecate 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.)
- (23) At least 30 days prior to the preconstruction conference, the Applicant shall provide the status (i.e., avoidance, mitigation measures, or capping) of each water well in the Project area. The Applicant 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 6.)

VIII. CONSIDERATION OF COMBINED STIPULATIONS

{¶ 71} 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?

{¶ 72} Upon review, the Board finds that the terms of the Stipulation are supported by law. Further, the Board declines to adopt the parties' recommendations from the Supplemental Stipulation. Accordingly, we will consider the Stipulation independent of the request made in the Supplemental Stipulation.

{¶ 73} The Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Ms. Shorr, Vice President of Project Development for Hecate Energy, 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. Shorr acknowledges that the Stipulation takes into account concerns raised by the parties and the local community. (Applicant Ex. 21 at 1, 5-6, 8, 11, 15-16; Tr. at 13-16.)

{¶ 74} 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. As Applicant witness Shorr 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. Shorr states that the construction and operation of the Facility provides benefit to the public interest. Further, Ms. Shorr 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 Shorr also noted the positive financial impacts of the Facility for the community. Ms. Shorr 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 134 jobs in the state of Ohio during construction. In addition, the Facility is expected to create 8 jobs during its operation. During the 35-year operational life of the Facility, it is expected to provide Highland County with combined labor income of \$24.9 million, and result in combined economic output of \$175 million. (Applicant Ex. 21 at 9-11.)

{¶ 75} 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 the case, and the conditions described in the Stipulation. (Applicant Ex. 21 at 9-13; Staff Ex. 1 at 3; Joint Ex. 1 at 2-6.)

{¶ 76} 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 Stipulation and consistent with this Opinion, Order, and Certificate. The Board also finds that the Stipulation should be modified, consistent with the September 2, 2020 application, to authorize a certificate for New Market Solar I for the 65 MW facility to be constructed and operated by Hecate Energy Highland 4, LLC.²

{¶ 77} Specifically, the Stipulation should be modified as follows:

Condition 1 shall be modified as follows:

Insert "as modified by the Opinion, Order, and Certificate" after *Joint Stipulation and Recommendation*.

Replace Condition 10 with the following:

New Market Solar I shall be operated in such a way to assure that it injects no more than 65 megawatts into the Bulk Power System.

Replace Condition 12 with the following:

Prior to commencement of any construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses 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 and also include a plan describing the methods to be used 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

² The Applicant's request for certification of 35 MW for New Market Solar II will not be addressed.

by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall plant special vegetative screening along South Hollowtown Road and West New Market Roads. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.

{¶ 78} Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as modified, and hereby issues a certificate to Hecate for a 65 MW solar-powered electric generation facility in accordance with R.C. Chapter 4906.

IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 79} Hecate and Hecate 2 are persons under R.C. 4906.01(A).

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

{¶ 81} On August 7, 2020, Hecate filed a pre-application notification letter informing the Board of a public informational meeting for its proposed facility.

{¶ 82} On August 27, 2020, Hecate filed its confirmation of notification to property owners and affected tenants of the date of the public informational meetings in accordance with Ohio Adm.Code 4906-3-03.

{¶ 83} Hecate held the public informational meeting regarding the proposed Facility on August 24, 2020.

{¶ 84} On September 2, 2020, Hecate filed its application for a certificate of environmental compatibility and public need to construct the proposed solar-powered electric generation facility. Hecate also filed a motion for protective order of certain information to be included in its application.

{¶ 85} By Entry issued November 18, 2020, Hecate's motion for protective order was granted.

{¶ 86} Hecate supplemented its application on October 15, 2020, October 20, 2020, October 23, 2020, November 10, 2020, and December 1, 2020.

{¶ 87} By letter dated November 2, 2020, the Board notified Hecate that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 88} On November 2, 2020, Hecate simultaneously filed 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(A).

{¶ 89} On December 14, 2020, the Applicant filed a Certificate of Service indicating that on December 1, 2020, copies of the application had been served upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 90} On December 21, 2020, OFBF filed a motion to intervene, which was granted by Entry issued January 21, 2021.

{¶ 91} On December 14, 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).

{¶ 92} The Staff Report was filed on January 4, 2021.

{¶ 93} On January 13, 2021, 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).

{¶ 94} The public hearing was held on January 19, 2021, via remote access technology.

{¶ 95} On January 22, 2021, Hecate, Staff, and OFBF filed a Stipulation resolving all the issues in the case. On January 25, 2021, Hecate, Staff, and OFBF filed a Supplemental Stipulation.

{¶ 96} On January 25, 2021, the evidentiary hearing was conducted, via remote access technology, where the Combined Stipulations were presented for the Board's consideration.

{¶ 97} 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 data to enable the Board to make an informed decision.

{¶ 98} 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.

{¶ 99} 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).

{¶ 100} 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).

{¶ 101} 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).

{¶ 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 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).

{¶ 103} 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).

{¶ 104} 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.

{¶ 105} 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).

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

{¶ 107} Based on the record, the Board should issue Hecate 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

{¶ 108} It is, therefore,

{¶ 109} ORDERED, That the Stipulation be approved and adopted as modified herein. It is, further,

{¶ 110} ORDERED, That a certificate be issued to Hecate for the construction, operation, and maintenance of the New Market Solar I 65 MW solar-powered electric generation facility subject to the conditions set forth in the Stipulation, as modified consistent with this Opinion, Order, and Certificate. It is, further,

{¶ 111} 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). 20-1288-EL-BGN

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Hecate Energy Highland 4, LLC for the construction, operation, and maintenance of a 65 MW solar-powered electric generation facility subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate as modified. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board