

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **POWELL**)
CREEK SOLAR, LLC for a Certificate of)
Environmental Compatibility and Public Need) Case No. 20-1084-EL-BGN
for a Solar Facility Located in Putnam County,)
Ohio.)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Powell Creek Solar, LLC (“Powell Creek” or “Applicant”), Ohio Farm Bureau Federation (“OFBF”), and Staff of the Ohio Power Siting Board (“OPSB Staff”) who represent the parties to this proceeding, submit this Joint Stipulation and Recommendation (“Joint Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“O.A.C.” or “Ohio Adm. Code”) 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (“Parties” or in the singular “Party”), and to recommend that the Board approve and adopt this Joint Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters raised by the OPSB Staff pertinent to the approval and construction of Powell Creek Solar, a 150 megawatt (“MW”) solar-powered electric facility in Liberty and Palmer Townships, Putnam County, Ohio and its associated facilities (“Project” or “Facility”).

This Joint Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent;

and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Parties have engaged in settlement discussions related to the topics raised in this proceeding. This Joint Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. JOINT STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The Parties recommend that the Board approve Powell Creek's Application subject to the conditions in the Staff Report of Investigation issued on March 19, 2021 as listed below.

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.
- (2) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (3) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (4) As the information becomes known, the Applicant shall file in this proceeding the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (5) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of

issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

- (6) 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 and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (7) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings of the final project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final project design to Staff.
- (8) At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report.
- (9) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility

operations notice shall include written confirmation that the Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. During the construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The report shall include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved.

- (10) The Applicant shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.
- (11) The facility shall be operated in such a way as to assure that no more than 150 megawatts would at any time be injected into the Bulk Power System.
- (12) Prior to commencement of 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 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 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.
- (13) 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 shall be limited to the hours between 9:00 a.m. and 7:00 p.m. or until dusk when sunset occurs 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. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., the Applicant shall install a noise monitor in a representative location to catalog that this threshold is not

being exceeded. Hoe ram 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. The Applicant shall notify property owners or affected tenants within the meaning of O.A.C. 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.

- (14) If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, the Applicant shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed during the on a sunny day in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level plus five dBA additional noise mitigation will be required. This condition is complied with if the test shows the operational noise level is less than project area ambient Leq level plus five dBA.
- (15) The Applicant 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 modern equivalent at the Applicant's expense. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system.
- (16) At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan that includes a timeframe to periodically update the decommissioning cost estimates and 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.
- (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 (ODNR) and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action.
- (18) The Applicant 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. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff, and shall include wetlands, 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 project construction. The environmental specialist

mutually agreed upon by Staff and the Applicant shall be authorized to report any issues simultaneously to Staff and the Applicant. To allow time for the Applicant and Staff to respond to any reported issues, the environmental specialist shall have authority to stop construction activities for up to 48 hours if the construction activities are creating unforeseen environmental impacts in the sensitive areas identified on the map.

- (19) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the appropriate agencies.
- (20) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1 unless coordination by the Applicant with the ODNR allows a different course of action during that period. Absent coordination with the ODNR that allows a different course of action, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates.
- (21) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the Ohio Department of Natural Resources allows a different course of action.
- (22) The Applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (23) The Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in O.A.C. Chapter 901:5-37 during implementation of any pollinator-friendly plantings.
- (24) If the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping, as required in condition 7. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.
- (25) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, 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, any affected railroads, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final transportation management plan submitted

to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.

- (26) Prior to the pre-construction conference, the Applicant shall submit to Staff a complete route evaluation study. This study shall include but not be limited to the present condition of roadways, culverts, and bridges, weight restrictions, overhead obstructions, railroads, and any potential impacts these findings may produce.
- (27) 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 within 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 O.A.C. 3701-28-7.

B. Exhibits

Subject to the terms and conditions of this Joint Stipulation, the Applicant and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

- 1. Applicant Exhibit 1, the Application, filed on October 7, 2020 as supplemented on October 23, 29, and December 4, 2020 and modified on March 2, 2021, with all exhibits thereto (“Application”);
- 2. Applicant Exhibit 2, Applicant’s Responses to Staff’s First through Fifth Data Requests filed on November 30 and December 7, 2020 and February 9 and 22, and March 3, 2021;
- 3. Applicant Exhibit 3, a copy of the Proof of Service of the Application on local public officials and libraries as filed on December 21, 2020;
- 4. Applicant Exhibit 4, a copy of a letter sent to property owners and tenants within the plan site or contiguous to the plan site on July 7, 2020 announcing that the Public Informational Meetings would be held on July 29 and July 30, 2020;
- 5. Applicant Exhibit 5, Proofs of Publication filed on March 16 and 18, 2021 in accordance with Ohio Revised Code Section (“R.C. 4906.06(C) for the first and second publications of the description of the application and the hearing dates, published on February 16 and March 17, 2021 in the *Putnam County Sentinel*;
- 6. Applicant Exhibit 6, correspondence among ODOT, OPSB Staff, Applicant, and OFBF dated March 26-27, March 30, and April 1-2, 2021, attached to Applicant Exhibit 7 and filed on April 5, 2021;

7. Applicant Exhibit 7, the “Direct Testimony of Jeffery Reinkemeyer” filed on April 5, 2021.
8. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the Applicant, OFBF, and OPSB Staff;
9. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on March 16, 2021; and
10. OPSB Staff Exhibit 2, the “Prefiled Testimony of Jonathon Pawley” which will be filed by April 9, 2021.

C. Other Terms and Conditions

This Stipulation is conditioned upon adoption of the Stipulation by the Board in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board’s approval of this Stipulation constitutes a “material modification” thereof. If the Board rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdrawal"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Board review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues

that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after a hearing if necessary.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Joint Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

A. Findings of Fact

1. The Facility qualifies as a “major utility facility” defined in R.C. 4906.01(B)(1)(c).
2. On October 7, 2020, the Applicant filed a motion for waiver from the requirements set forth in O.A.C. 4906-4-08(D)(2)-(4) which requires a ten-mile study area with respect to the impact on landmarks and cultural resources, and 4906-4-08(A)(1)(c), pertaining to the submission of manufacturers’ safety manuals or similar documents and any manufacturer recommended setbacks.
3. Applicant formally submitted its Application for Certificate of Environmental Compatibility and Public Need on October 7, 2020
4. Applicant formally submitted supplements to its Application on October 23, 29, and December 4, 2020.
5. The Administrative Law Judge, by Entry dated January 25, 2021, granted Applicant’s request for waivers.
6. On March 2, 2021, Applicant filed a Modification to Reduce Size of Project Layout, with exhibits thereto.
7. On December 21, 2020, Applicant filed a copy of the Proof of Service of the Application on local public officials and libraries.
8. On March 16, 2021 and March 18, 2021, Applicant filed a copy of the Proofs of Publication in accordance with O.A.C. 4906-3-09 and 4906-3-10 for the publication of the description of the Application and the hearing dates in the *Putnam County Sentinel*.
9. The Staff Report was filed on March 16, 2021.

10. The Administrative Law Judge, by Entry dated January 25, 2021, ordered that any stipulation entered into by the parties shall be filed by no later than 12:00 p.m. on April 12, 2021.
11. The requirement for the need for the facility under R.C. 4906.10(A)(1) has been demonstrated..
12. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
13. Adequate data on the project has been provided to determine that the Facility described in the Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3)
14. Adequate data on the project has been provided to determine 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, as required by R.C. 4906.10(A)(4).
15. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
16. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
17. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. 4906.10(A)(7).
18. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
19. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

- (1) Powell Creek Solar, LLC is a “person” under R.C. 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in R.C. 4906.01(B)(1).
- (3) The Application complies with the requirements of O.A.C. Chapter 4906-3.
- (4) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
- (5) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
- (6) The record establishes, as required by R.C. 4906.10(A)(4), 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.
- (7) The record establishes, as required by R.C. 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code
- (8) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
- (9) The Facility’s impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
- (10) The record establishes that the Facility incorporates maximum feasible water conservation practices, as determined by the Board, considering available technology and the nature and economics of the various alternatives consistent with R.C. 4906.10(A)(8).
- (11) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility which includes the conditions in the Staff Report of Investigation, as presented and modified, by the Joint Stipulation and Recommendation.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER
SITING BOARD**

/s/ Jodi Bair

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Summary: Text Joint Stipulation and Recommendation electronically filed by Teresa OrahooD
on behalf of Dylan F. Borchers