

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
ARCHE ENERGY PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-979-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on April 15, 2021

I. SUMMARY

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

II. PROCEDURAL BACKGROUND

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

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

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

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Ohio Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of

Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Ohio Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 6} On June 22, 2020, Arche filed a pre-application notification letter with the Board regarding a proposed 107 megawatt (MW) solar-powered electric generation facility (Facility) in Fulton County, Ohio. Due to restrictions in place during the COVID-19 emergency, Arche held a two-phase public informational meeting to discuss the proposed Facility with interested persons and landowners: Applicant held a web-based meeting on July 14, 2020, and a telephone-based meeting on July 16, 2020. Arche filed a letter of compliance regarding service of notice to each property owner and affected tenant within the project area and proof of publication regarding the public informational meetings with the Board on June 23, 2020, and August 4, 2020, respectively.

{¶ 7} On July 30, 2020, as supplemented on September 11, 2020, Arche filed its application with the Board for a certificate of environmental compatibility and public need to construct the Facility. In conjunction with its application, Arche filed a motion for protective order to keep portions of its application confidential, as well as a motion seeking waivers of certain Board rules contained within the Ohio Administrative Code. On September 18, 2020, Board Staff (Staff) filed a letter to the docket indicating it did not object to the requested waivers. The motion for protective order was unopposed.

{¶ 8} By Entry dated September 23, 2020, the administrative law judge (ALJ) granted Applicant's motion for a protective order and motion for waiver of the specified Board rules.

{¶ 9} 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 September 28, 2020, the Board notified Arche that its application, as supplemented, was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's September 28, 2020 letter directed Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Arche to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 10} On October 2, 2020, Arche filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. In further compliance with that rule, on October 15, 2020, Applicant filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 11} By Entry issued October 30, 2020, the ALJ established the effective date of the application as October 30, 2020. The Entry also set forth a procedural schedule directing Staff to file a report of investigation by January 11, 2021, scheduling a public hearing for January 26, 2021, and setting an evidentiary hearing on February 17, 2021. The ALJ further directed Arche to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 indicating that petitions to intervene would be accepted by the Board up to 30 days following service of the notice or by December 11, 2020, whichever was later. Finally, the Entry provided deadlines for all parties to file testimony, as well as for the filing of any stipulation, and indicated that the public and evidentiary hearings would both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

{¶ 12} On December 2, 2020, Arche filed proof of publication of a description of the accepted, complete application, published on November 18, 2020 in the *State Line Observer*, in accordance with R.C. 4906.06(C). The published notice also contained information regarding the scheduled hearing dates.

{¶ 13} On December 9, 2020, Ohio Farm Bureau Federation (OFBF) filed a motion to intervene.

{¶ 14} On January 11, 2021, Staff filed its report of investigation (Staff Report).

{¶ 15} On January 26, 2021, Applicant filed proof of publication of the second public notice, this time in *The Fulton County Expositor* on January 14, 2021, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). As did the initial notice filed December 2, 2020, the second public notice included information regarding the date, time, and process to participate in the public hearing, as well as the date and time of the evidentiary hearing.

{¶ 16} On January 26, 2021, the ALJ conducted the public hearing via Webex. No members of the public provided testimony during the remote hearing.

{¶ 17} On February 5, 2021, Arche filed the direct expert testimony of Cliff Scher.

{¶ 18} On February 8, 2021, the ALJ issued an Entry providing information for any interested members of the public to attend the adjudicatory hearing via telephone or the internet. The Entry also granted the motion to intervene filed by OFBF.

{¶ 19} On February 11, 2021, Arche, OFBF, and Staff filed a joint stipulation and recommendation (Stipulation) through which the parties intend to resolve all matters pertinent to the certification and construction of the proposed Facility. Additionally, Staff filed the testimony of James S. O'Dell. Arche filed supplemental testimony by Cliff Scher in support of the Stipulation on February 16, 2021.

{¶ 20} On February 17, 2021, the evidentiary hearing was held as scheduled. On behalf of Arche, Cliff Scher presented his direct testimony in support of the application (Applicant Ex. 6), his supplemental testimony in support of the Stipulation (Applicant Ex. 7), the Stipulation (Joint Ex. 1), and a number of exhibits identified in the Stipulation (Applicant Exs. 1 - 5). Upon agreement of the parties, the Staff Report (Staff Ex. 1) and the direct testimony of James S. O'Dell (Staff Ex. 2) were also admitted to the record.

III. PROJECT DESCRIPTION

{¶ 21} Arche seeks certification to build a 107 MW solar-powered electric generation facility in Gorham Township, Fulton County, Ohio. The Facility would consist of large arrays of ground-mounted photovoltaic panels, commonly referred to as solar panels, which will be ground-mounted on a tracking rack system. The Facility would include associated support facilities, such as access roads, electrical collection lines, a substation, a short generation interconnection (gen-tie) line, a laydown area for construction staging, an operation and maintenance building, and pyranometers. Arche is proposing to begin construction in the fourth quarter of 2021, with construction being completed within 12 months and commercial operations commencing thereafter.

IV. CERTIFICATION CRITERIA

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

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

V. SUMMARY OF EVIDENCE

{¶ 23} 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*

{¶ 24} On January 26, 2021, the local public hearing was conducted through Webex. Two individuals registered to provide testimony, however neither witness attended the public hearing. The ALJ stated that the registered witnesses, with prior communication with the ALJ and a showing of good cause, could have the opportunity to provide testimony at the beginning of the evidentiary hearing scheduled for February 17, 2021. (Pub Tr. at 12-13.) Neither of the registered witnesses contacted the ALJ or requested the opportunity to provide testimony prior to the evidentiary hearing.

{¶ 25} Four public comments regarding the proposed Facility have been received by the Board. The Fulton County Board of Commissioners and the Fulton County Economic Development Corporation both expressed support for the proposed Facility. The two remaining public comments both expressed opposition to the project.

B. Staff Report

{¶ 26} 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

{¶ 27} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Facility is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 1 at 9.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 28} 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 the following is a summary of Staff's findings:

a. Socioeconomic Impacts

{¶ 29} Staff states that the predominant land use within the project area is agricultural, which Arche states will be the only land use impacted by construction and operation of the Facility. Staff notes that of the 1,010 acres of land leased for the project, roughly 600 acres of agricultural land would be converted to solar and ancillary uses. Staff does not anticipate significant overall impacts to commercial, industrial, residential, recreational, and institutional land uses, and believes that agricultural activities on surrounding lands should continue with minimal disruption. In terms of regional planning,

Staff notes that Arche reviewed the 1998 Fulton County Comprehensive Plan and associated amendments, which emphasize preservation of agricultural land's future viability and diversified economic growth opportunities. Staff agrees with Arche's analysis that the Facility is not expected to conflict with these planning goals. Additionally, the Facility is consistent with agricultural industry support, in that it would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning of the Facility. (Staff Ex. 1 at 10.)

{¶ 30} Staff believes that construction and operation of the Facility would not physically impact any recreational areas. Arche identified 21 recreational areas within 10 miles of the project area. The nearest recreational area to the project footprint is Normal Grove Community Park, which is located about a mile from the Facility and within the Village of Fayette. Three other recreational resources are located at 1.7 to 3.6 miles from the Facility. Staff's review of Arche's viewshed analysis determined that significant adverse aesthetic impacts on recreational areas are not likely. (Staff Ex. 1 at 10.)

{¶ 31} In further analysis of the aesthetic impact, Staff reports that the rural nature of the Facility generally limits the number of potential viewers. The highest elevation of the solar panels would be 14 feet above ground level. According to Arche's five-mile visual resources report, the panels are unlikely to be visible at locations beyond two miles of the perimeter of the Facility. Staff states that existing landscape features limit likely concentration of viewshed impacts to a half-mile. Arche's visual impact study included a mitigation plan that proposes to install various planting modules along the fence line of the Facility to soften viewshed impacts and to blend the Facility into existing vegetation. Staff recommends that Arche incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of site to the Facility's infrastructure, and recommends that aesthetic impact mitigation include native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners and subject to Staff review. With the implementation of Staff's recommendation and the details provided in a Memorandum of

Understanding (MOU) executed by Arche and the Ohio Historic Preservation Office (OHPO) on January 4, 2021, Staff believes that the overall expected aesthetic impact of the Facility would be minimal. (Staff Ex. 1 at 10-11.)

{¶ 32} 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 Arche's glint and glare analysis, there is no anticipated glare for residences with an estimated first story viewing height of eight feet or a second story viewing height of 16 feet. Arche also predicted no glare from the solar arrays along the nearest roads for cars with an estimated viewing height of four feet and trucks with an estimated viewing light of eight feet. Additionally, Arche does not anticipate appreciable glare impacts to air navigation because there are no airports, helicopter pads, or landing strips within five miles of the project area and the Facility would be outside the final approach path of the nearest public-use airport. The ODOT Office of Aviation has determined that the Facility would not constitute an obstruction to air navigation based on its rules. Staff concurs with the Applicant's analysis and notes that aesthetic impact measures, such as vegetative screening, may further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 13-14.)

{¶ 33} Arche commissioned a cultural resources literature review of the area. Based upon consultation with OHPO and the Ohio Genealogical Society, the survey area was ultimately expanded to include a pedestrian survey, site surface collection, and shovel excavations. The review identified 49 new archaeological sites. Only one of the sites, Coffin Cemetery, was eligible for registration with the National Register of Historic Places (NRHP). Arche's historical survey identified 65 architectural sites. Staff states that the project could result in a visual effect that may diminish the integrity of setting, feeling, and association of one of these sites, known as Resource 18, and could therefore result in an adverse effect to

the agricultural landscape of this historic property. To alleviate the Facility's potential adverse impacts to Resource 18, Arche proposed vegetative screening at the site. Based upon these findings and Arche's proposed measures, Arche and OHPO entered into the MOU, pursuant to which Arche committed to avoid Coffin Cemetery and provide for visual mitigation of Resource 18. With the implementation of these commitments and final concurrence of OHPO, Staff states that minimal adverse environmental impacts to cultural resources will occur. (Staff Ex. 1 at 11-12.)

{¶ 34} Economically, Arche has obtained all of the leases and options to purchase agreements within the proposed project area. Staff notes that cost comparisons between the proposed Facility and other comparable facilities must be included in the application. Staff confirmed that the estimated capital costs for Arche are not substantially different from the average capital costs for utility-scale solar farm projects and that the estimated capital costs are not substantially different from the reported average cost of recent similar projects undertaken by 7X Energy, Inc. (7X).¹ Staff also confirmed that Arche's estimated operation and maintenance costs were below those incurred by the average utility-scale solar operations facility. Arche also provided estimates of the cost of delays in permitting and construction of the proposed Facility. Arche characterized permitting stage delay costs as being associated with the time value of delayed revenue payments. Arche also stated that delays could prevent the project from meeting federal Investment Tax Credit deadlines resulting in the loss of those benefits. Additionally, delays could result in penalties under a potential power purchase agreement. Staff states that Arche's characterization of its estimated costs of delays appears reasonable but notes that federal legislation passed subsequent to the filing of the application extends the Investment Tax Credit incentives. (Staff Ex. 1 at 12.)

{¶ 35} Arche estimates that the proposed Facility would create 655 construction-related jobs and 11 long-term operational jobs for the state of Ohio. During the construction

¹ 7X Energy, Inc. is the parent company of 7X DEV, LLC, which is the holding company that owns Arche.

period, wages would produce \$79 million in local output for the state of Ohio; operations would add an annual impact of \$1.3 million for the state of Ohio. Based upon a Payment in Lieu of Taxes (PILOT) plan, the Applicant estimates that the Facility will produce PILOT revenues of approximately \$802,500 annually for the Fulton County taxing districts. (Staff Ex. 1 at 13.)

{¶ 36} Arche estimates that the Facility can operate for 30 years or more. Arche has prepared a decommissioning plan according to which Arche will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land. Arche states that it will coordinate with Staff prior to the start of any decommissioning activities and will obtain all applicable federal, state, and local permits. Arche would remove all above-ground solar components, with a few exceptions, and remove any below-ground components up to a minimum removal depth of three feet below grade. Arche would prepare the site for component removal, including strengthening access roads, where needed, and installing temporary fencing and other best-practice measures to protect ecological and cultural sites. The solar arrays would then be de-energized and Arche would dismantle panels, racking, inverters, and transformers. Arche would then remove access and internal roads and grade site unless a landowner requests to retain the road. Drain tiles damaged during decommissioning would be replaced with a functional equivalent system, as needed or based on landowner preference. Lastly, Arche would restore and revegetate disturbed land to its pre-construction condition, to the extent practicable. Arche anticipates that most facility components would be removed within three to six months, although monitoring and site restoration may extend beyond that period. Prior to commencing construction, Arche states that it will retain an independent and registered professional engineer to calculate the net decommissioning costs, with such estimates to be recalculated every five years over the life of the Facility. Arche anticipates that the decommissioning costs would range from \$3,200,000 to \$5,300,000. Arche commits to posting a surety bond or similar financial assurance instrument in the amount of the anticipated decommissioning costs at least three years prior to the earlier of the termination of the solar farm power

purchase agreement or the operational life of the Facility. Staff recommends that an updated decommissioning plan be provided at least 30 days prior to the preconstruction conference and that it include (a) a total cost estimate to decommission the Facility without regard to salvage value of equipment, and (b) that the financial assurance mechanism include a performance bond where the Applicant is the principal, the insurance company is the surety, and the Board is the obligee. (Staff Ex. 1 at 14-15.)

b. Site Geology

{¶ 37} The proposed project site is in two physiographic regions: the Central Ohio Clayey Till Plain and the Maumee Lake Plains. The Central Ohio Clayey Till Plain region's prominent features consist of well-defined moraines and flat-lying ground moraines, with intermodal lake basins filled with silt, clay, and till also present. The Maumee Lake Plains region is defined by a flat-lying Ice Age lake basin, with beach ridges, bars, dunes, deltas, and clay flats also found there. Ohio Department of Natural Resources' (ODNR) geological survey found that the project area is not classified as being located in probable karst area due to significant glacial till cover. Further, Staff summarizes report findings from two of Arche's consultants. Arche consultant, Hull & Associates (Hull), performed a Groundwater, Hydrogeological and Geotechnical Desktop Documents Review Summary Report. Hull also conducted a field reconnaissance report of the proposed project area and did not identify any problematic site features. Hull concluded that conventional foundation supports, such as driven steel or helical piles, can be used in the area, but that further refinement of site-specific geotechnical conditions and evaluation of suitability with site soils would be needed for final design of the project. Hull also concluded that construction of the access roads would use typical methods and preparation work such as stabilization of localized subgrade areas through undercutting, chemical stabilization, or geogrid reinforcement. Arche consultant, Terracon Consultants, Inc., prepared a preliminary geotechnical engineering report within which it recommended certain support equipment be used for the solar panels and collection substation equipment, recommendations Staff notes are typical for utility-scale solar farms. Staff recommends that the final detailed

engineering drawings of the final project design shall account for geological features and shall include the identity of the registered professional engineer, structural engineer, or engineering firm licensed to practice engineering in the state of Ohio who reviewed and approved the designs. (Staff Ex. 1 at 15-16.)

c. Ecological Impacts

{¶ 38} Arche identified two private water wells within the project area. Arche does not anticipate adverse impacts to the nearest water wells and states that solar equipment would be significantly set back from those well locations. To protect these private wells, Staff recommends that at least 30 days prior to the preconstruction conference, Arche provide the status (i.e. avoidance, mitigation measures, or capping) of each well in the project area. Staff also recommends that Arche indicate 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. (Staff Ex. 1 at 16.)

{¶ 39} There is one drinking water source water protection area (SWPA) within the project area. Also, the nearest downstream Groundwater Protection Area is located approximately 12 miles south of the project area. Arche states that this Groundwater Protection Area acts as a protective measure for potable water resources at two community wells located in Stryker, Ohio, which draw water from an unconsolidated aquifer deep below the ground surface. Staff notes that the Ohio Environmental Protection Agency (Ohio EPA) and other regulatory agencies restrict activities within SWPAs. Arche consultant Hull states that construction of the proposed Facility would not be a restricted activity within a surface SWPA or groundwater SWPA. Staff concludes that accidental discharge or petroleum or other chemicals during construction of the Facility have the potential to impact groundwater. Staff therefore recommends that Arche develop and submit a Spill Prevention and Response Plan that outlines procedures to be implemented to prevent the release of hazardous substances into the environment during construction. Staff also recommends that the environmental specialist be familiar with water quality project issues that may be encountered during construction. Finally, Staff notes that Arche plans to implement a

Stormwater Pollution Prevention Plan (SWPPP) during construction to minimize potential discharges to surface waters in the project area and surrounding areas. (Staff Ex. 1 at 16-17.)

{¶ 40} Arche identified six stream segments, including four perennial stream segments and two ephemeral stream segments, in the project area. Staff states that one perennial stream would be crossed by an underground collection line, which would be installed using horizontal directional drilling (HDD). Arche has developed a frac-out contingency plan to use when conducting HDD. Staff states that Arche has committed to have an environmental specialist on site during construction where HDD activities may impact surface waters and that the environmental specialist would have authority to stop HDD activities to ensure that any impacts related to a frac-out are addressed. (Staff Ex. 1 at 17.)

{¶ 41} Arche noted four Category 2 wetlands within the project area but anticipates no impacts to the wetlands. Arche states that the boundaries of streams and wetlands within and immediately adjacent to the construction limits of disturbance would be flagging, staking, or fencing prior to construction. These sensitive areas would be depicted on construction drawings and all contractors and subcontractors would be provided training to understand the significance of respecting these boundaries, especially in and adjacent to marked sensitive resource areas such as wetlands. Specifics as to how surface waters would be further protected from indirect construction stormwater impacts using erosion and sedimentation controls would be outlined more specifically in Arche's SWPPP. Arche would obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio EPA prior to the start of construction. Arche would also apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to construction and operations activities. (Staff Ex. 1 at 17.)

{¶ 42} Staff also notes that the project would cross a small portion of a 100-year floodplain. Arche has initiated coordination with the local floodplain administrator, the

Fulton County Regional Planning Commission, and received the Flood Hazard Area Development Permit application. Arche states that the floodplain administrator was accepting of the design approach pending review of the final detailed grading design, electrical, and structural plans. The floodplain permit application would be submitted prior to the commencement of construction. (Staff Ex. 1 at 17.)

{¶ 43} The project area is within range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a federal threatened species and state endangered species. In order to avoid impacts to these bat species, Staff recommends that Arche 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. The Facility would not impact any hibernacula. (Staff Ex. 1 at 19.)

{¶ 44} The project area is also within range of two state endangered bird species, commonly known as the lark sparrow and northern harrier. To reduce impacts on the lark sparrow, Staff recommends that construction in lark sparrow preferred nesting habitat types be avoided during the species' nesting period of May 1 through June 30. To reduce impacts on the northern harrier, Staff recommends that construction in northern harrier preferred nesting habitat types be avoided during the species' nesting period of May 15 through August 1. Staff also recommends that further mapping of any lark sparrow or northern harrier habitat areas should be provided to the construction contractor along with instructions to avoid these areas during the applicable restricted dates, unless coordination with ODNR allows a different course of action. (Staff Ex. 1 at 19.)

{¶ 45} The project area is also within range of several other endangered or threatened species of mussels, fish, and birds; however, the Applicant and Staff do not anticipate the project area to impact these species, as the project would not impact suitable habitats (Staff Ex. 1 at 18-20).

{¶ 46} Of the 970.4 acres within the project area, Staff notes that 929.7 acres are agricultural lands and the remaining acreage consists of either forestland or wetlands. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. The estimated forestland impact is estimated to be approximately 2.8 acres and would be limited to narrow tree-lines between fields. Staff notes that Arche has developed a vegetation management plan which incorporates pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative. This habitat would enhance the visual appeal of the proposed Facility, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. The vegetation would be incorporated under and between panels and in the open areas of the project. To further assure that these benefits are realized, Staff states that Arche has committed to take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 et seq. during implementation of any pollinator-friendly plantings. (Staff Ex. 1 at 19-20.)

d. Public Services, Facilities, and Safety

{¶ 47} Arche stated that the proposed Facility would be designed and installed to withstand typical high-wind occurrences. Staff found that the components of the proposed facility are generally not susceptible to damage from high winds except for those of tornado-force strength. Staff further states that during the detailed engineering phase, Arche would take additional measures to minimize potential damage from high wind velocities. (Staff Ex. 1 at 20.)

{¶ 48} According to Staff, Arche stated that it does not anticipate significant changes to traffic patterns around the project area. Arche did identify an expected increase in truck traffic during construction. Arche does not anticipate any road closures during construction, but states that traffic control measures would be used on narrow roadway sections. After construction and during operation of the Facility, Arche does not anticipate any additional traffic beyond routine maintenance. Once the transportation permitting process has been completed, Staff recommends that Arche develop a final transportation

management plan which would include any county-required road use maintenance agreements. (Staff Ex. 1 at 21.)

{¶ 49} 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 noises would include inverters and tracking motors. Arche's noise level study showed that operation noise impacts would be less than ambient noise levels and no nonparticipating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. The Facility, therefore, is expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 21.)

{¶ 50} In sum, Staff recommends that the Board find that Arche has determined the nature of the probable environmental impact for the proposed Facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 21-22).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 51} 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.

{¶ 52} Staff notes that initial OHPO correspondence indicated that the Facility, as proposed, would create an adverse effect on cultural resources. Arche and OHPO entered into the MOU detailing avoidance of the archaeological site and specific visual mitigation to address adverse effects to the identified historical site. Staff states that the proposed

Facility would have an overall positive impact on the local and state of Ohio economies due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to local landowners, increased tax revenue, and potential PILOT revenue. To the extent that impacts to the project and surrounding areas were identified, Staff believes that such impacts that cannot be avoided can be mitigated and/or reduced. 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 low profile of the Facility and existing vegetation in the area, visual impacts would be most prominent to landowners in the immediate vicinity of the Facility, and such effects will be mitigated by the landscape and lighting plan proposed by Staff. Additionally, Arche has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use upon decommissioning. (Staff Ex. 1 at 23-24.)

{¶ 53} Overall, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 24).

4. ELECTRIC POWER GRID

{¶ 54} 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.

{¶ 55} 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 107 MW and would interconnect to a newly proposed gen-tie connection to the existing American Transmission Systems, Incorporated's (ATSI) East Fayette 138 kV substation. Energy would be injected to the bulk power system (BPS) via ATSI's existing Allen Junction-East Fayette 138 kV transmission line. (Staff Ex. 1 at 25.)

{¶ 56} Arche submitted two generation interconnection requests for the proposed Facility, the combined energy output of which totals 107 MW, to PJM Interconnection, LLC (PJM), which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed the feasibility study and a System Impact Study (SIS). Through its analysis, PJM found that Queue ID AE2-282, when modeled with a 2022 summer peak power flow case, would result in reliability criteria violations on the BPS under certain multiple contingencies on the Lemoyne-Woodville 138 kV and South Berwick-Galion 345 kV transmission lines. PJM's analysis showed that certain network upgrades would alleviate the overloads. Arche would pay for these upgrades. PJM's analysis of the Facility's impact on earlier projects in the PJM Queue identified several network impacts. PJM noted that these impacts on earlier projects would be mitigated by network updates, but that there is no cost for these upgrades and that these impacts could change as various projects progress through the interconnection queue. PJM's analysis revealed no other reliability impacts or circuit breaker problems. (Staff Ex. 1 at 25-27.)

{¶ 57} Staff concludes that the Facility would be consistent with plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) so long as any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 27.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 58} 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.

{¶ 59} Although the proposed Facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Arche would need to control and localize fugitive dust by using best management practices such as calcium carbonate or water to wet soil to minimize dust. (Staff Ex. 1 at 28.)

{¶ 60} Neither construction nor operation of the proposed Facility would require significant amounts of water. Arche would mitigate potential water quality impacts associated with aquatic discharges by obtaining NPDES construction storm water general permits from the Ohio EPA as part of its submission of a SWPPP for stormwater discharge related to construction activities. If necessary, Arche will seek certain water protection permits issued by the U.S. Army Corps of Engineers and the Ohio EPA under Sections 404 and 401 of the federal Clean Water Act, as well as seek an Ohio EPA Isolated Wetland Permit. (Staff Ex. 1 at 28.)

{¶ 61} Debris from construction activities would consist of items such as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. Arche stated that all construction-related debris will be disposed of at an authorized solid waste disposal facility. During operation, the Facility could generate small amounts of similar solid waste, which would be disposed of in accordance with federal, state, and local requirements. Staff states that Arche's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 28-29.)

{¶ 62} Staff notes that the height of the tallest structures at the Facility would be the overhead collection line support structures. The height of these structures would not exceed 60 feet, which is under the height requirement in the Federal Aviation Administration (FAA)

regulations. No airports, helicopter pads, or landing strips are located within five miles of the proposed Facility. Staff confirmed through the FAA that the closest public-use airports are the Columbus Southwest Airport and Madison County Airport, which are between seven and eight miles from the proposed project's collection substation. An FAA analysis determined that no hazard to air navigation existed within its study area. In a coordinated review of the proposed Facility's potential impacts on local airports, no concerns have been identified by Staff or the Ohio Department of Transportation's Office of Aviation. (Staff Ex. 1 at 29.)

{¶ 63} Based on these findings, Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 29).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 65} For reasons of public safety, Arche will limit public access to the proposed Facility by enclosing it with a six-foot tall chain-link fence. Arche will also utilize warning signs, fencing, and gates to restrict access to potential hazards within the project area and will implement setbacks between certain equipment and the public. Arche intends to use reliable equipment compliant with national standards. Further, the Applicant also intends to develop and implement an emergency action/response plan and consult with potentially affected emergency response personnel. Staff states that Arche has already met with Fulton County Emergency Services, including local fire and EMS officials, to discuss safety plans and training. Arche has committed to submit its finalized emergency action/response plan to the Board prior to construction. (Staff Ex. 1 at 30.)

{¶ 66} Staff notes that the Facility is not within 100 feet of an occupied residence or institution, and therefore calculation of the production of electromagnetic fields during operation of the proposed transmission line is not warranted per Ohio Adm.Code 4906-5-07(A)(2) (Staff Ex. 1 at 30).

{¶ 67} Arche has worked with the community in developing the Facility by way of hosting virtual and telephonic public informational meetings. In these public informational meetings, attendees were provided the opportunity to view a map of the project, ask questions, and provide comments to the Applicant. Staff notes that Arche has already developed a draft complaint resolution plan to handle complaints during the construction and operation of the Facility. Staff recommends that a final version of this plan be filed in the case docket no later than 30 days prior to the start of construction. Arche has committed to notify affected property owners and tenants about the project and the complaint resolution plan no later than seven days prior to the start of construction. Staff recommends that Arche send a similar notice to those same individuals at least seven days prior to the start of Facility operations. Staff also recommends that Arche submit to Staff a quarterly complaint summary report during construction and the first five years of operation of the Facility. (Staff Ex. 1 at 30.)

{¶ 68} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 31).

7. AGRICULTURAL DISTRICTS

{¶ 69} 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.

{¶ 70} Staff states that approximately 20 acres of agricultural district land would be disturbed by the proposed Facility. Of those 20 acres, approximately 14 acres would be permanently altered. In total, construction of the Facility would result in the loss of approximately 596 acres of agricultural land. Staff notes, however, that the repurposed land could be restored for agricultural use when the Facility is decommissioned. Arche has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Arche's decommissioning plan for the proposed Facility calls for returning the affected land to original or similar conditions, and the plan includes repairing any drainage tiles and the de-compaction of soil. (Staff Ex. 1 at 32.)

{¶ 71} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 32).

8. WATER CONSERVATION PRACTICE

{¶ 72} 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.

{¶ 73} Staff states that the project may require some water use during construction for dust suppression and control. Operation of the proposed Facility would not require the use of significant amounts of water, with some usage for occasional cleaning of panels. The operations and maintenance building would have wastewater discharge comparable to an office building. Arche has committed to install and maintain modern, efficient water fixtures at the Facility. (Staff Ex. 1 at 33.)

{¶ 74} In all, Staff believes that the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 1 at 33).

9. RECOMMENDATIONS

{¶ 75} In addition to making various findings throughout its report, Staff recommended that 25 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 34-38). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' February 11, 2021 Stipulation. In addition, the parties added a new Condition 26 as part of the Stipulation. (App. Ex. 7 at 1; Joint Ex. 1.) The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 76} At the evidentiary hearing, Arche presented the Stipulation executed by Arche, OFBF, and Staff (Joint Ex. 1). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Applicant, subject to 26 conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) Arche shall install the Facility using the equipment, construction practices, and mitigation measures presented in the application as modified by supplemental filings.
- (2) Prior to the start of any construction activities, Arche 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. Applicant shall provide a proposed agenda for Staff review prior to the conference.

- (3) Within 60 days after the commencement of commercial operation, Arche shall submit to Staff a copy of the as-built specifications for the entire facility.
- (4) If Arche has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid unless the Board grants a waiver or extension of time.
- (5) As information becomes known, Arche 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.
- (6) Before commencement of construction activities in any affected areas, Arche shall obtain and comply with all necessary permits and authorizations. Within seven days of issuance or receipt of such permits and authorizations, Arche shall provide copies to Staff. Arche shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (7) To the extent permitted by R.C. 4906.13(B), the certificate authority shall not exempt the facility from any other applicable local, state, or federal rules or regulations nor be used to affect the discretion of any other local, state, or federal permitting or licensing authority in the areas subject to their supervision and control.

- (8) At least 30 days prior to the preconstruction conference, Arche shall submit one set of detailed engineering drawings—reviewed and approved by registered professional engineers, structural engineers, or engineering firms, as is relevant—and mapping of the final project design to Staff for review and acceptance. All final geotechnical study results shall be included in this submission.
- (9) Arche shall include in the final engineering drawings and associated mapping required in Condition 8 any new listed plant or animal species, or suitable habitat of these species, encountered by Applicant prior to construction and shall avoid impacts to these species during construction.
- (10) At least 30 days prior to the start of construction, Arche shall file a copy of the final complaint resolution plan on the public docket. At least seven days before the start of construction and seven days before the start of facility operations, Arche 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. Each notice shall include written confirmation that the Applicant has complied with pre-construction or construction-related conditions of the certificate, as is relevant, and Applicant shall file a copy of the notices on the

public docket. Arche shall submit to Staff a complaint summary report by the fifteenth of April, July, October, and January of each year for the first five years of operation, which must include a list of all complaints received through the complaint resolution process, a description of actions taken towards resolution, and a status update if yet to be resolved.

- (11) Arche shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, LLC.
- (12) Arche shall operate the facility in such a way as to assure that no more than 107 MW would at any time be injected into the Bulk Power System.
- (13) Prior to the commencement of construction, Arche shall prepare a landscape and lighting plan in consultation with a licensed landscape architect 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 shall include measures such as fencing (including methods for fence repair), vegetative screening, or good neighbor agreements. The plan shall provide for the planting of vegetative screening designed to enhance the view from the residence and to be in harmony with existing vegetation and viewshed in the area. Arche 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. Arche shall maintain all fencing along the perimeter of the project in good repair for the term of the project. Arche shall additionally adhere to mitigation measures for a historic architectural resource within the project area and incorporate any landscape and screening measures for this resource in the landscape and lighting plan.

- (14) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between the hours of 9:00 a.m. and 7:00 p.m., or until dusk after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Arche shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (15) If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, Arche shall submit at least 30 days prior to construction an updated noise study using noise data from the inverter and substation chosen for the project. The updated noise study shall show that sounds levels will not exceed the daytime ambient level plus five dBa at any non-participating sensitive receptor.

- (16) Arche shall avoid, where possible, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or the modern equivalent at Applicant's expense.
- (17) Arche shall submit an updated decommissioning plan 30 days prior to the preconstruction conference. The plan shall include a total cost estimate without regard for salvage value and a provision that the decommissioning financial assurance mechanism include a performance bond naming the company as principal, the insurance company as surety, and the Board as obligee.
- (18) Unless otherwise coordinated with ODNR and USFWS, Arche shall adhere to the seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter or greater to avoid impacts to Indiana bats and northern long-eared bats.
- (19) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1, and, unless otherwise coordinated with ODNR, the construction contractor shall be provided mapping of these habit areas with instructions to avoid the areas during the restricted dates.
- (20) Construction in lark sparrow preferred nesting habitat types shall be avoided during the species' nesting period of May 1 through June 30, and, unless otherwise coordinated with

ODNR, the construction contractor shall be provided mapping of these habit areas with instructions to avoid the areas during the restricted dates.

- (21) Arche shall have an environmental specialist with authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve those impacts on site during construction activities that may affect sensitive areas such as wetlands, streams, and locations of threatened or endangered species. A map shall be provided to Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.
- (22) Arche 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.
- (23) Arche shall submit to Staff, for review and acceptance, a spill prevention and response plan that outlines procedures to be implemented to prevent the release of hazardous substances into the environment during construction at least 30 days prior to the preconstruction conference.
- (24) Arche shall obtain transportation permits prior to the commencement of construction activities that require them. 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. 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.

- (25) Arche shall provide the status of each water well within the project area and indicate to Staff whether the nearest solar components to each uncapped water well within the project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7 at least 30 days before the preconstruction conference.
- (26) Arche shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm. Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings.

(Joint Ex. 1 at 2-7.)

VII. CONSIDERATION OF STIPULATION

{¶ 77} 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?

{¶ 78} Upon review, the Board finds that the Stipulation is reasonable as judged by this three-part test and should be approved. Initially, the Board finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Scher testified that the parties were able to efficiently negotiate the Stipulation through a series of emails and phone calls amongst all parties and their counsel. Additionally, Mr. Scher describes the Stipulation as representing a reasonable compromise that balances competing positions and incorporates new or modified requirements as compared to the application or the Staff Report. (Company Ex. 7 at 2.) The Board further notes that OFBF and Staff have extensive experience in Board matters and that all parties involved were represented by counsel with similar significant experience.

{¶ 79} The Board also concludes that the second prong of the test is satisfied. The record evidence supports the conclusion that the Stipulation, as a package, benefits ratepayers and the public interest. Mr. Scher testified to several different ways in which the Facility is expected to have a positive impact on the local community. For example, the project as a whole is expected to create approximately 655 jobs during construction and 11

long-term jobs during operation for the state of Ohio, as well as generate an estimated \$802,500 annually based on a PILOT amount calculated at \$7,500 per MW for the proposed 107 MW Facility. Additionally, the local community can expect to see an increase in local tax revenues, which will aid regional development. (Applicant Ex. 6 at 6.) More broadly, Mr. Scher testified that the Facility will help meet Ohio's demand for in-state carbon free energy resources, which will ultimately serve the needs of electric utilities and their customers, and will fill the need for a more diverse national energy portfolio (Applicant Ex. 6 at 2; Applicant Ex. 7 at 2-3). Furthermore, the Stipulation ensures that the Facility will represent the very minimum adverse environmental impact during both construction and operation; serves to ensure the fullest realization of Applicant's plan for pollinator-friendly plantings; and avoids the waste of resources through litigation (Applicant Ex. 7 at 2).

{¶ 80} Finally, the Board finds that the record supports the conclusion that the Stipulation observes and promotes regulatory practices and principles. Consistent with our recent findings in similar cases, the evidence demonstrates that the application, as modified by the Stipulation, satisfies each of the necessary statutory components enumerated in R.C. 4906.10(A) (Staff Ex. 1 at 9-33; Joint Ex. 1 at 2-7; Applicant Ex. 6 at 7; Applicant Ex. 7 at 3). The record is devoid of any evidence to contradict this conclusion. As such, we find the third facet of our analysis has been met.

{¶ 81} In conclusion, and based on the record in this proceeding, the Board finds that all relevant required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Arche's application, as supplemented and modified, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. The Board clarifies that all required information submitted to Staff in support of the conditions addressed in the Stipulation should be filed on the docket of this case. Based on the record in this case, the Board thus approves and adopts the Stipulation and hereby issues a certificate to Arche in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 82} Arche is a person under R.C. 4906.01(A).

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

{¶ 84} On June 22, 2020, Arche filed a pre-application notification letter informing the Board of a scheduled, two-part public informational meeting for its proposed 107 MW solar-powered electric generation facility in Fulton County, Ohio.

{¶ 85} On June 23, 2020, Arche filed its confirmation of notification to property owners and affected tenants of the dates and formats of the public informational meetings in accordance with Ohio Adm.Code 4906-3-03.

{¶ 86} Applicant held a web-based public informational meeting and a telephone-based public informational meeting regarding the proposed Facility on July 14, 2020, and July 16, 2020, respectively.

{¶ 87} On July 30, 2020, Arche filed its application for a certificate of environmental compatibility and public need to construct the Facility. Applicant also filed a motion for protective order to keep portions of its application confidential, as well as a motion for waivers of certain Board rules. Arche supplemented its application on September 11, 2020.

{¶ 88} By Entry dated September 23, 2020, the ALJ granted Applicant's motion for a protective order and motion for waiver of certain Board rules.

{¶ 89} By letter dated September 28, 2020, the Board notified Arche that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 90} On October 2, 2020, Arche filed proof of service of its accepted and complete application upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 91} On October 15, 2020, Arche filed proof that the application fee had been paid pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 92} On October 30, 2020, the ALJ issued an Entry establishing the effective date of the application as October 30, 2020, and adopting a procedural schedule, including the date of the local public hearing and the evidentiary hearing.

{¶ 93} On December 2, 2020, Arche filed proof of initial publication, in the *State Line Observer*, of a public notice regarding the date and time of the scheduled hearings, including the process to participate in the public hearing.

{¶ 94} On December 9, 2020, OFBF filed a motion to intervene.

{¶ 95} The Staff Report was filed on January 11, 2021.

{¶ 96} On January 26, 2021, Applicant filed proof publication of the second public notice in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). The second public notice was published in *The Fulton County Expositor* on January 14, 2021.

{¶ 97} The public hearing was held on January 26, 2021, via remote access technology.

{¶ 98} On February 8, 2021, the ALJ issued an Entry providing access information for the February 17, 2021 adjudicatory hearing and granting OFBF's motion to intervene.

{¶ 99} On February 11, 2021, Arche, OFBF, and Staff filed a Stipulation resolving all issues in the case.

{¶ 100} On February 17, 2021, the evidentiary hearing was conducted, as scheduled, via Webex.

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

{¶ 102} 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.

{¶ 103} 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).

{¶ 104} 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).

{¶ 105} 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).

{¶ 106} 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).

{¶ 107} 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).

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

{¶ 109} 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).

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

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

IX. ORDER

{¶ 112} It is, therefore,

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

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

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

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

BOARD MEMBERS:

Approving:

Jenifer French, 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). 20-0979-EL-BGN

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