THE OHIO POWER SITING BOARD

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

CASE NO. 20-931-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on July 15, 2021

I. SUMMARY

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

II. PROCEDURAL BACKGROUND

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

{¶ 3} Fox Squirrel Solar, LLC (Fox Squirrel or Applicant) is a person as defined inR.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 July 1, 2020, Applicant filed a pre-application notification letter with the Board regarding a proposed solar-powered electric generation facility (Facility) in Madison County, Ohio. Due to restrictions in place during the COVID-19 emergency, Applicant met the public information meeting requirement of Ohio Adm.Code 4906-3-03(B) by holding a virtual web/phone question and answer session on the project on July 21, 2020, as well as offering alternative access to a presentation upon request. Applicant 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 information meeting with the Board on July 1, 2020, and July 20, 2020, respectively.

{¶ 7} On October 14, 2020, as supplemented on November 3, 2020, Applicant filed its application with the Board. In conjunction with its application, Applicant 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 October 29, 2020, Board Staff (Staff) filed a memorandum contra that opposed one of the waivers requested by Applicant. The motion for protective order was unopposed.

{¶ 8} By Entry dated November 23, 2020, the administrative law judge (ALJ) granted Applicant's motion for waiver as it pertains to Ohio Adm.Code 4906-4-08(D)(2)-(4) and granted, in part, and denied, in part, Applicant's motion for protective order.

{¶ 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 December 14, 2020, the Board notified Applicant 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 December 14, 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 Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 10} On December 16, 2020, Applicant 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 January 7, 2021, Applicant filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 11} By Entry issued January 22, 2021, the ALJ established the effective date of the application as January 21, 2021. The Entry also set forth a procedural schedule directing Staff to file a report of investigation by March 15, 2021, scheduling a public hearing for March 30, 2021, and setting an evidentiary hearing for April 13, 2021. The ALJ further directed Applicant 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. 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 February 17, 2021, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene pursuant to Ohio Adm.Code 4906-2-12.

{¶ 13} On March 1, 2021, Applicant filed proof of publication, pursuant to Ohio Adm.Code 4906-3-09(A)(1), evidencing that notice of the accepted, complete application was filed in *The Madison Messenger*, a newspaper of general circulation in Madison County, Ohio, on February 7, 2021. Simultaneous with its proof of publication, Applicant also filed

a motion for notice finding and waiver. In its supporting memorandum, Applicant explained that the notices required pursuant to R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09(A)(1) were to be completed by February 5, 2021. However, due to the timing of the scheduling entry and the fact that *The Madison Messenger* is published only once per week and requires notice five days prior to publishing, Applicant stated that the notice was not able to be published until February 7, 2021. Applicant noted that it was able to send the first written notice within the 15-day time period and submitted that publishing the required notice only two days after the date set in the Board's scheduling Entry still provided individuals with the ability to effectively participate in the proceedings. Applicant also stated that counsel for Staff and other parties in the case indicated that they did not oppose the motion.

{¶ 14} On March 15, 2021, Staff filed its report of investigation (Staff Report).

{¶ 15} By Entry dated March 24, 2021, the ALJ granted OFBF's motion to intervene and granted Applicant's March 1, 2021 motion for notice finding and waiver.

{¶ 16} On March 25, 2021, Applicant filed proof of publication of the second public notice published in *The Madison Messenger* on March 21, 2021, as required under Ohio Adm.Code 4906-3-09(A)(2). This 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.

{¶ 17} On March 30, 2021, the ALJ conducted the public hearing via Webex. Eight members of the public provided testimony at the hearing.

{¶ 18} On April 6, 2021, Applicant, 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, Applicant filed the direct testimony of Andrew Dahlen.

{¶ **19}** On April 8, 2021, Staff filed the direct testimony of Grant Zeto.

{¶ 20} On April 13, 2021, the evidentiary hearing was held as scheduled. On behalf of Applicant, Andrew Dahlen presented his direct testimony in support of the application (App. Ex. 13), the Stipulation (Joint Ex. 1), and a number of exhibits identified in the Stipulation (App. Exs. 1-12). Upon agreement of the parties, the Staff Report (Staff Ex. 1) and the direct testimony of Grant Zeto (Staff Ex. 2) were also admitted to the record.

III. PROJECT DESCRIPTION

[¶ 21] Applicant seeks certification to build a 577 megawatt (MW) solar-powered electric generation facility in Oak Run, Pleasant, and Range townships in Madison 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 and switchyard, a short generation interconnection (gen-tie) line, a laydown area for construction staging, an operation and maintenance building, and meteorological stations. The Facility would also include an operations and maintenance (O&M) building to house administrative, operations and maintenance equipment, and office space for personnel, along with associated infrastructure such as parking and oil containment areas. Applicant states that it would be responsible for the construction in the fourth quarter of 2021, with commercial operations expected to begin no later than the fourth quarter of 2023.

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:

 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 March 30, 2021, the local public hearing was conducted through Webex, and eight of the nine registered witnesses elected to provide testimony. All eight individuals testified in support of the proposed Facility. Four witnesses were members of the International Brotherhood of Electrical Workers and testified as to the job creation they believe will result from the Facility (Pub. Tr. at 19-20, 21-22, 23-24, 25-26). Two farmers participating in the project provided testimony as to the environmentally friendly energy that will be generated and the new revenue stream that the Facility will provide to participating landowners (Pub Tr. at 28-29, 30-32). Rob Slane, of the Madison County Board of County Commissioners, voiced support for the project and the additional revenue and economic development that they believe will flow from the Facility (Pub Tr. at 12-13). Finally, Chad Eisler, superintendent of the Madison Plains Local School District, testified in support of the Facility and the economic benefits that the school district will receive from the planned Payment in Lieu of Taxes (PILOT) plan. Mr. Eisler also spoke about the educational opportunities that will arise from the proposed Facility. (Pub. 15-18.)

{¶ 25} Nine public comments regarding the proposed Facility have been received by the Board. Eight of the public comments filed on the docket in this case support the proposed Facility, while one is opposed to its construction and operation.

B. Staff Report

 $\{\P 26\}$ 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

 $\{\P 27\}$ 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 8.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

 $\{\P 28\}$ 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 agrees with Applicant's assessment that the proposed Facility is not expected to conflict with existing land use planning as outlined in the 2020 Madison County Comprehensive Plan. Staff states that the Facility would be sited within existing agricultural lands and thus would not impinge upon sensitive land uses. Further, Staff believes that the Facility would be expected to aid regional development by increasing local tax revenues. Staff states that the Facility appears consistent with agricultural industry support – it would provide supplemental income to farmers and local farming activities would require only minor modifications, aside from temporary disruptions that would occur during construction. Staff states that the predominant land use within the project area is agricultural. Of the 3,766 acres of leased agricultural land for the Facility, Staff notes that 3,444 acres would be converted to solar and ancillary uses and the remaining 322 acres would remain undeveloped and provide a buffer to surrounding land uses. Staff asserts that no significant impacts to residential, commercial, industrial, recreational, and institutional land is anticipated. (Staff Ex. 1 at 9.)

{¶ 30} Staff believes that construction and operation of the Facility would not physically or indirectly impact any recreation areas. Staff states that there are no national

scenic trails, national forests, state forest or parks, or wildlife management areas within five miles of the proposed project boundaries. Staff points out that the nearest designated recreation area is Madison Park, which is over four miles away from the project area and is located outside of view. (Staff Ex. 1 at 9.)

In further analysis of the aesthetic impact, Staff reports that the rural nature **{¶ 31}** of the area surrounding the Facility generally limits the number of potential viewers. The highest elevation of the solar panels would be 15 feet above ground level. According to Applicant's five-mile visual resources report, the solar panels would not likely 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. Applicant's visual impact study included a mitigation plan in the form of vegetative screening at selected areas around the project area where a residential structure is within 200 feet of solar panels. The landscape mitigation plan would also provide for the installation of a vegetative buffer that would consist of evergreen trees, hardwood canopy trees, and various native shrubs and brushes. Staff notes that Applicant also proposed vegetative screening of the Johnston-McClimans Cemetery that is 375 feet south of the Facility. Staff recommends that Applicant incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the 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 implementation of its recommended condition, Staff believes that the Facility's overall expected aesthetic impact would be minimal. (Staff Ex. 1 at 10.)

{¶ 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

Applicant's glint and glare analysis, there is no anticipated glare at area airports and it is not anticipated that the Facility would present a risk of glare to pilots making final approaches. This is based on the fact that, per the Federal Aviation Administration (FAA), the distance of the Facility to the nearest private use airport is 4.8 miles, while the nearest public use airport is over eight miles away. Applicant's analysis did find that there is a predicted glare along London-Circleville Road, Yankeetown-Chenoweth Road, and Moorman Road. Staff states that the aesthetic impact mitigation measures should further reduce these potential impacts. Staff therefore agrees with Applicant's recommendation that the Facility, as part of its final landscape and lighting plan, incorporate additional screening along London-Circleville Road, Yankeetown-Chenoweth Road, and Moorman Road in order to provide adequate concealment of the Facility and mitigate any predicted glare along these roads. (Staff Ex. 1 at 12-13.)

{¶ 33} Applicant commissioned a cultural resources literature review for a fivemile radius around the proposed Facility. The historical survey initially identified 32 potential historic resources. On August 24, 2020, the Ohio Historic Preservation Office (OHPO) issued a letter of concurrence stating that OHPO agrees with Applicant's final recommendation that no historic properties will be affected by the Facility. Applicant later entered into a programmatic agreement which involves coordination with the OHPO to provide plans to avoid, minimize, or mitigate any adverse effects of the Facility on cultural resources. Staff notes that Applicant coordinated with the OHPO to determine an approved work plan for the historic/architectural and archaeology field surveys within the Facility's area of potential effect and that the final work plan was approved by OHPO on May 22, 2020. Staff states that 20 percent of the total acreage for the archaeological survey for the Facility was completed in the second quarter of 2020, that the remaining survey was scheduled to be completed in the final quarter of 2020, and that the report is expected to extend into the first quarter of 2021. Staff points out that if avoidance of impacts to archaeological sites is not feasible, then pursuant to the terms of the programmatic agreement with the OHPO, Applicant must work with OHPO to develop a minimization

and/or mitigation plan that would be memorialized in a memorandum of understanding. Typical mitigation strategies that would be included in such a memorandum of understanding include, according to Staff, additional survey work, registration on the National Register of Historic Places, and funding for historic preservation organizations. In consideration of the programmatic agreement between Applicant and the OHPO, Staff determined that minimal adverse environmental impacts to cultural resources will be achieved. (Staff Ex. 1 at 10-11.)

Economically, Applicant currently owns 100 percent of the development **{¶ 34}** rights for the proposed project area, including all ground lease agreements and purchase options. 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 Applicant are not substantially different from the average capital costs for recent solar projects of comparable scale and that the estimated capital costs for the Facility are not substantially different from recent solar projects of comparable scale undertaken by Geenex Solar, LLC (Geenex).¹ Staff also confirmed that Applicant's estimated operation and maintenance costs were below those incurred by the average comparable solar facilities. Applicant also provided estimates of the cost of delays in permitting and construction of the Facility. Applicant characterized permitting stage delay costs as being associated with an inability to procure necessary project components resulting in the Facility's in-service date being pushed back. Applicant further stated that delays could prevent the Facility from meeting Federal Investment Tax Credit deadlines, which could result in the loss of those benefits to Applicant. Staff finds Applicant's characterization of its estimated costs of delays to be reasonable. (Staff Ex. 1 at 11.)

{¶ 35} Staff states that Geenex retained Ohio University's Voinovich School of Leadership and Public Affairs to report on the impact of the Facility. Based upon this report, Applicant estimates that the Facility would create 1,613 construction-related jobs and 37

¹ Applicant is a wholly owned subsidiary of Geenex Solar, LLC.

long-term operational jobs for the state of Ohio. During the construction period, wages would produce \$421.5 million in local output for the state of Ohio; operations would add an annual impact of \$9.6 million for the state of Ohio. Based upon the proposed PILOT plan, Applicant estimates that the Facility will generate revenues of approximately \$3.6 million for the Madison County taxing district. This estimate is based on a PILOT plan in which Geenex would pay \$9,000/MW annually for a 577 MW Facility. Applicant represented that this revenue would be distributed to county and other local taxing districts according to millage. (Staff Ex. 1 at 11-12.)

Applicant estimates that the Facility can operate for 35 years or more. **{¶ 36}** Applicant included a preliminary decommissioning plan as part of the application. According to Applicant's plan, at the end of the useful life of the Facility, the solar farm would either be redeveloped with upgraded equipment or decommissioned, and the land returned to its current use as agricultural land. Applicant states that it would obtain the necessary permits to accomplish this plan and that waste disposal would be performed in accordance with federal, state, and local laws. Applicant would remove all above-ground solar components, with a few exceptions, and remove any below-ground components up to a minimum depth of four feet below grade. All solar components would be properly disposed of or recycled. Applicant would prepare the site for component removal, including strengthening access roads, where needed, and installing temporary fencing and other best management practices to protect sensitive ecological and cultural resources. The solar arrays would then be de-energized and Applicant would dismantle panels, racking, inverters, and transformers. Applicant would then remove access and internal roads and grade site, unless requested by the landowner to retain the road. Lastly, Applicant would restore and revegetate disturbed land to pre-construction conditions, to the extent practicable. In response to Applicant's estimate that decommissioning activities would take 12 to 18 months, Staff acknowledges that site restoration activities are often dependent on weather conditions which may require ongoing revegetation and restoration that extends slightly beyond 12 months. Even so, Staff recommends a timeframe be included in the draft

decommissioning plan stating that the majority of equipment will be removed within one year. Prior to the start of construction, Applicant states that it will retain an independent and registered professional engineer to calculate the decommissioning costs, salvage value, and any contingency percentage for the Facility. Cost estimates would be recalculated every 10 years for the life of the Facility. Applicant estimates that the total decommissioning cost, with contingencies, would range between \$23 million and \$35 million. Upon completion of the final decommissioning plan, Applicant would refine and update the total estimated decommissioning costs. Applicant also proposes that it would post and maintain a performance bond pursuant to which Applicant is the principal, the insurance company is the surety, and the Board is the obligee. Applicant would post the performance bond after commencement of construction but prior to beginning commercial operations, depending on whether the decommissioning costs with the contingency exceed the salvage value. Staff recommends that an updated decommissioning plan be provided to Staff at least 30 days prior to the preconstruction conference and that the updated plan include: a total cost estimate to decommission the Facility without regard to salvage value; a decommissioning cost net of the estimated salvage value of the equipment; and, a timeline of up to one year for removal of the majority of equipment. (Staff Ex. 1 at 13-14.)

b. Site Geology and Soils

{¶ 37} Staff review of the site geology is based upon an Ohio Department of Natural Resources (ODNR) analysis of the proposed project site. Staff states that the project area lies within Wisconsinan-aged glacial features and sits on a ground moraine made up of late Woodfordian ice deposits. Glacial drift throughout most of the area is between 82 and 347 feet thick and interbedded lenses of sand and gravel may be present within the till. According to ODNR, no bedrock surface exposure occurs within the studied area because of the glacial drift thickness in the area. Staff notes that ODNR further states that there are no known or suspected karst formations within several miles of the project study area. Staff states that there are no known records of oil and gas activity within the area, pointing out that ODNR indicates that the closest wells are approximately three miles away. According

to information provided by ODNR, no active mining is occurring in the area and no known abandoned or underground mines exist nearby. With regard to seismic activity, no documented earthquake epicenters have occurred within the project study area. Staff notes that Applicant's consultant has evaluated exploration logs for the project area and determined the seismic classification of the site as outlined in the International Building Code and Staff recommends that this classification be accounted for in the final engineering design of the Facility. (Staff Ex. 1 at 14-15.)

(¶ 38) Staff notes that Applicant provided a geotechnical assessment and findings in the application. Twenty borings, from 18.5 to 20 feet deep, were made to evaluate soil, water, and geologic conditions. Additional borings are planned to evaluate pile load testing and to determine galvanization and optimum embedment depths. Staff states that this additional testing should further consider "high risk" frost-heaving potential identified by Applicant, as well as evaluation of the appropriate engineering design to mitigate the frost-heave concerns, and that this additional testing should be included in the final geotechnical engineering report. Staff notes that weather rock was encountered 18 feet below ground level in some of the test borings, but since piling depths should not exceed 15 feet that little or no difficulty is anticipated installing the piles. Staff highlights that Applicant encountered limestone bedrock at depths of 20 feet or less, which contrasts with ODNR expectation of a minimum of 82 feet of till material. Based on this, Staff recommends that Applicant provide a final geotechnical report at least 30 days prior to the preconstruction conference. (Staff Ex. 1 at 15.)

{¶ 39} Staff notes that the project area consists primarily of soils derived from glacial till, with Kokomo and Crosby making up over 75 percent of the study area and consisting of a clay loam media. Staff states that alluvial deposits consisting of primarily the Sloan soil series, consisting of a silt loam, makes up 8.5 percent of the project area. Staff notes a low to moderate risk of shrink-swell potential in these soils. The site is described as generally flat, with little rolling topography, and therefore minimal grading is anticipated. Staff highlights that the Applicant's geotechnical consultant did identify that excavations at

the site, such as trenches for electrical cable and conduit, would likely encounter groundwater and require dewatering. (Staff Ex. 1 at 15.)

{¶ 40} Staff recommends that final detailed engineering drawings of the final project design 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. Staff further recommends that Applicant provide the final geotechnical engineering report at least 30 days prior to the preconstruction conference. After reviewing the application, and considering the input provided by ODNR and the Ohio Department of Agriculture, Staff believes that there are no particular geological features in the project area that are incompatible with construction and operation of the Facility; subject, however, to the implementation of the conditions recommended in the Staff Report. (Staff Ex. 1 at 15.)

c. Ecological Impacts

{¶ 41} Applicant identified seven water wells within the project area and approximately 70 water wells within one mile. Staff states that the private wells are more than 50 to 150 feet deep, with the nearest private well on a non-participating residence approximately 100 feet away from the proposed Facility components. The nearest private well on a participating parcel is approximately 1.5 feet from Facility components. Staff reviewed ODNR records and found that the water wells within one mile of the project area range from 30 to 277 feet dep, with an average depth of 98.4 feet. Due to limited excavation during construction and that the structural support pile driving would occur at depths of 15 feet or less, Applicant does not anticipate adverse impacts to the seven nearest water wells, as those wells are at greater depths. Staff states that it conferred with the Madison County Health Department (MCHD) and Ohio Department of Health (DOH), which are the agencies that regulate private water wells. The MCHD and DOH indicated that the nearest solar components should be further than the minimum isolation distances between potential contamination sources and private water wells outlined in Ohio Adm.Code 3701-28-7. Specifically, DOH highlighted that Ohio Adm.Code 3701-28-7(F) requires a sanitary

isolation radius of 50 feet from any known or possible source of contamination. Staff therefore recommends that Applicant indicate whether the nearest solar components to each water well within the project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7. Staff further recommends that for the water well which is approximately 1.5 feet from solar equipment that the Applicant either relocate the equipment at least 50 feet from that well or seal and abandon the well per DOH regulations if it is used as a potable water source. If the well is for nonpotable use, Staff recommends that Applicant relocate the equipment at least 10 feet from the well or seal and abandon the well or seal and abandon the well in accordance with Ohio Environmental Protection Agency (EPA) guidance. Staff also reviewed Ohio EPA records and confirmed that there are no public drinking water source protection areas within the project area. Staff states Applicant would implement a Stormwater Pollution Prevention Plan (SWPPP), a spill prevention control and countermeasure plan, and a horizontal direct drilling (HDD) inadvertent return plan during construction in order minimize and prevent potential discharges to surface waters in the area. (Staff Ex. 1 at 16.)

{¶ 42} Applicant delineated nine streams and 54 wetlands within the project area. Applicant anticipates no impacts to wetlands. Perimeter security fencing locations have not yet been finalized, but Staff states that they might impact streams. Applicant states that once fencing plans are finalized it will consult with the U.S. Army Corps of Engineers regarding applicable permitting and preconstruction notifications necessary for the fencing. Staff recommends that any fencing that must be installed near streams be installed above the ordinary highwater mark. Staff submits that the only infrastructure proposed to be installed within the surface water resources are underground collection lines and Applicant intends to avoid impacts to wetlands and streams affected by the underground lines by using HDD techniques. Because HDD carries the risk of a frac-out, Applicant included a frac-out contingency plan in the application. Staff states that Applicant also committed to have an environmental specialist on site during construction activities where HDD may

affect surface waters and that the environmental specialist would have authority to stop HDD activities if necessary to address issues that arise. (Staff Ex. 1 at 16-17.)

{¶ 43} Staff points out that Applicant would, prior to commencing construction, demarcate the boundaries of streams and wetlands within and immediately adjacent to the construction limits of disturbance with flagging. Applicant would further outline planned protections of surface water in its SWPPP. Staff states that Applicant would obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio EPA prior to commencing construction. Staff recommends that Applicant apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to its construction and operation of the Facility. (Staff Ex. 1 at 17.)

{¶ 44} Staff notes that the Facility would cross a small portion of a 100-year floodplain and that Applicant has begun coordinating with the local floodplain administrator and received the Flood Hazard Area Development application. Staff states that Applicant would also obtain any other required floodplain development permits prior to construction. (Staff Ex. 1 at 17.)

{¶ 45} The project area is within the 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 Applicant adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the United States Fish and Wildlife Service (USFWS) recommends a different course of action. Staff states that the Facility would not impact any bat hibernacula. (Staff Ex. 1 at 19.)

{¶ 46} The project area is also within range of three state endangered bird species, commonly known as the upland sandpiper, the king rail, and the northern harrier. To reduce impacts on the upland sandpiper, Staff recommends that construction in upland sandpiper preferred nesting habitat types be avoided during the species' nesting period of April 15 through July 31. To reduce impacts on the king rail, Staff recommends that

construction activities in the king rail preferred nesting habitat types be avoided during the species' nesting period of May 1 through August 1. Finally, to reduce impacts on the northern harrier, Staff recommends that construction activities 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 habitat areas should be provided to the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with ODNR allows a different course of action. (Staff Ex. 1 at 19.)

{¶ 47} The project area is also within range of several other endangered species of mussels and fish; however, 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 18-19).

Of the 3,365 acres within the project area, Staff notes that 3,146 acres are **{¶ 48}** agricultural lands and the remaining acreage consists of forestland, grassland, shrubland, and wetlands. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. The forestland impact is estimated to be about 13 acres. Staff suggests, but does not recommend as a condition for approval, the implementation and maintenance of pollinator-friendly plantings in certain locations along the border of the solar fields and the incorporation of legumes and wildflowers in areas between the solar panels. Staff suggests that such plantings should be chosen in consultation with the Ohio Pollinator Habitat Initiative. Staff believes that these plantings would enhance the visual appeal of the proposed Facility, enrich local wildlife habitat, and benefit the local farming community by helping to reduce erosion, reduce fertilizer and pesticide/herbicide use, discourage invasive species, and improve water quality. Staff does recommend that Applicant take steps to prevent the 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

{¶ 49} Applicant stated that the Facility would be designed and installed to withstand typical high-wind occurrences based on the maximum expected three-second gust referenced in building codes. 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 states that during the detailed engineering phase, Applicant would minimize any potential damage from high wind by proper structural design of support equipment at sufficient depths based on the site-specific soil conditions. (Staff Ex. 1 at 20.)

{¶ 50} While Applicant has not finalized its delivery route, Staff states that it is expected that deliveries to the project site would be made through State Route 56 and then to Moorman Road (County Road 69), Junk Road (County Road 21), Yankeetown-Chenoweth Road (County Road 9), Johnston Road (County Road 85), and Shepherd Road (County Road 73). According to Applicant's Transportation Effect and Route Evaluation Study, County Roads 9, 85, and 84 each have a bridge in poor condition in the proposed transportation routes. Fisher Associates, Applicant's consultant, recommended monitoring these structures during construction. Fisher Associates also found culverts on County Roads 9, 4, and 6 in need of monitoring during construction. All other culverts and bridges along potential delivery routes were found to be in adequate condition. Staff notes that the majority of construction traffic would be made up of conventional heavy equipment, which does not require special permitting, although the electric transformer will likely be overweight and require a special permit. Applicant does not anticipate significant changes to traffic patterns but does acknowledge that an increase in truck traffic is likely during construction. Once the Facility is operational, Applicant anticipates no additional traffic beyond routine maintenance. Staff states that Applicant expects to enter into a Road Use Maintenance Agreement with Madison County. Staff recommends that Applicant develop a final transportation management plan which should include any county-required road use maintenance agreements. Staff believes that any damaged roads and bridges should be promptly repaired to their previous or better condition by Applicant, under the guidance of the appropriate regulatory authority. Further, Staff recommends that the plan require that temporary improvements be removed unless the appropriate regulatory authority requests that they remain. (Staff Ex. 1 at 20-21.)

{¶ **51}** Staff agrees with Applicant that the Facility would be expected to have minimal adverse noise impacts on the adjacent community. Staff states that although many of the construction activities would generate significant noise levels, their effects would be temporary and intermittent. Staff submits that these noise increase would only occur during the 24-27 month construction period. Further, Staff states that these activities would occur away from residential structures and be limited to daytime working hours. To address any issues that arise, Applicant has committed to developing a complaint resolution process. With regard to operational noise, Staff notes that noise for a solar facility is relatively minor and occurs only during the day. Staff points to the ambient noise level study conducted by Applicant which showed that operational noise impacts would be less than the L90 ambient noise levels. Further, Staff states that Applicant's study showed that no non-participating receptors were modeled to receive impacts greater than the L90 ambient noise level plus five dBA. Staff notes, however, that once an inverter model is chosen, Applicant would submit a noise report confirming that no non-participating receptors were modeled to receive noise impacts greater than the L90 ambient noise level plus five dBA. (Staff Ex.1 at 21-22.)

 $\{\P 52\}$ In sum, Staff recommends that the Board find that Applicant 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 22).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

 $\{\P 53\}$ 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.

{¶ 54} Staff states that Applicant selected the proposed project site due to interest and positive feedback from landowners and local officials, positive results from initial transmission studies, and the compatibility with solar development of previously disturbed cultivated cropland. Staff highlights that Applicant received comments from the public during the public information meeting concerning issues such as drainage, land use, economic impacts of the project, construction, aesthetics, noise, and decommissioning. Applicant represented to Staff that it has worked to address each of these issues and in some cases held follow-up discussions with members of the public. (Staff Ex. 1 at 23.)

{¶ 55} Staff highlights that the OHPO issued correspondence agreeing with Applicant's representation that no historic properties will be affected by the Facility. However, because Applicant's final archaeological report writing is expected to extend into the first quarter of 2021, further coordination with OHPO to develop a minimization and/or mitigation plan to avoid impacts to archaeological sites might be necessary. Staff believes that if this is the case, such a plan should be memorialized in a memorandum of understanding between Applicant and the OHPO and should include standard mitigation strategies such as additional survey work, registration with the National Registration of Historic Places, and funding for historic preservation organizations. With such measures in place, Staff believes that minimal adverse environmental impacts to cultural resources would result from the Facility. (Staff Ex. 1 at 23.)

{¶ 56} Staff believes that the Facility would have an overall positive impact on the state and local 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, Applicant 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.)

 $\{\P 57\}$ 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

{¶ 58} 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.

{¶ 59} 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 577 MW and would interconnect from the facility substation to a newly proposed gen-tie connection which would connect to the proposed 345 kV switching substation. The switching substation would be constructed and owned by AEP Ohio Transmission Company, Inc. (AEP) and energy would be injected into the bulk power system (BPS) via AEP's existing Beatty-South Charleston 345 kV transmission line. (Staff Ex. 1 at 25.)

{¶ **60}** Applicant submitted a generation interconnection request for the proposed Facility 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. PJM assigned the project queue position AE2-148 and studied an energy injection of 577 MW, of which 397.3 MW could be available in the PJM capacity market. Through its analysis, modeled with a 2022 summer peak power flow model, PJM found no reliability criteria violations. PJM's study also identified no need for new system reinforcements, no network impacts, and no circuit breaker problems. PJM did identify 10 network impacts are not required for the Facility to be operational and are at the discretion of Applicant. (Staff Ex. 1 at 25-26.)

 $\{\P 61\}$ 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 26.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 62} 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.

{¶ 63} Although the proposed Facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Applicant 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 also concludes that the Facility

would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 27.)

(¶ 64) Neither construction nor operation of the proposed Facility would require significant amounts of water. Applicant 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 required, Applicant will seek certain water protection permits issued by the U.S. Army Corps of Engineers and the Ohio EPA under Sections 404 and 401 of the federal Clean Water Act, as well as seek an Ohio Isolated Wetland Permit. Applicant also would develop a spill prevention, control, and countermeasure plan to mitigate the unlikely release of hazardous substances. With these measures in place, Staff believes that the Facility will comply with R.C. Chapter 6111 and the rules and laws adopted thereunder. (Staff Ex. 1 at 27.)

{¶ 65} Debris from construction activities would consist of items such as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. The amount of refuse generated during construction is estimated at approximately 173,000 cubic yards. Applicant has represented that all construction-related debris would be disposed of at an authorized solid waste disposal facility. Staff states that operation of the Facility would not result in significant generation of solid waste. Based upon its review, Staff concludes that Applicant's solid waste disposal plans would comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 27-28.)

{¶ 66} Staff notes that the height of the tallest structure would be the overhead collection line support structures. The height of these structures would not exceed 100 feet, which is under the height requirement in the Federal Aviation Administration (FAA) regulations. Staff confirmed through the FAA that the closest public-use airports are the Columbus Southwest Airport and Madison County Airport, which are between 8 and 12 miles from the proposed Facility collection substation. Staff states that the FAA performed

an aeronautical study for various points around the Facility and provided Applicant with a determination of no hazard to air navigation for those various points around the Facility. Staff further confirmed that it consulted with the ODOT Office of Aviation, as required under R.C. 4906.05(A)(5), and that ODOT identified no impacts on local airports. (Staff Ex. 1 at 28.)

 $\{\P 67\}$ 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 28).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ **69}** Public interest, convenience, and necessity should be examined through a broad lens. For example, this factor should consider the public's interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. As discussed below, the parties assert that the application, and the evidence of record, as modified by the Stipulation, benefits the public in multiple ways.

{¶ 70} For public safety, the Applicant will use reliable equipment that is compliant with applicable safety standards. Applicant also intends that its components will adhere to

national building and electrical codes for safe and reliable operation. Staff states that Applicant intends to restrict public access to the Facility by enclosing the area with a six-foot tall chain-link fence topped with barbed wire and will also utilize measures such as warning signs, fencing, and gates to restrict access to potential hazards. Staff highlights that Applicant intends to incorporate a minimum setback of 100 feet from its solar equipment to a non-participating property line and a minimum setback of 200 feet from its solar equipment to a non-participating residential structure. Applicant also plans to have a 100-foot setback from its solar equipment to a road right-of-way. Staff states that Applicant intends to develop and implement an emergency response plan in consultation with affected emergency response personnel and that it would submit the plant to Staff prior to commencing construction. (Staff Ex. 1 at 29.)

 $\{\P, 71\}$ Staff states that the transmission facilities would be installed according to the requirements of the National Electric Safety Code. According to Staff, since the Facility is not within 100 feet of an occupied residence or institution, calculation of the production of electromagnetic fields during operations is not warranted per Ohio Adm.Code 4906-5-07(A)(2). (Staff Ex. 1 at 29.)

(¶ 72) Staff highlights that Applicant has engaged the community in developing the Facility by such activities as hosting virtual and telephonic public information meetings and maintaining a project website. Applicant has drafted a complaint resolution plan to address complaints from the public concerning the Facility and Staff recommends that a final version of this plan be filed on the docket in this case at least 30 days prior to the start of construction. Staff notes that Applicant has committed to notify affected property owners and tenants about the Facility and the existence of the complaint resolution plan prior to commencing construction. Staff further recommends that Applicant also mail a similar notice to these same individuals prior to the start of Facility operations. It is also recommended that Applicant submit to Staff a quarterly complaint summary report during construction and the first five years of Facility operations. (Staff Ex. 1 at 29-30.)

 $\{\P, 73\}$ 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 30).

7. AGRICULTURAL DISTRICTS

{¶ 74} 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.

{¶75**}** Staff states that two agricultural district parcels would be impacted by construction of the Facility and that, overall, construction would result in the loss of approximately 2,511 acres of agricultural lands, including 251.5 acres of agricultural district land. Staff points out, however, that the repurposed land could be restored for agricultural use once the Facility is decommissioned. Applicant 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. Specific to drain tile, Staff states that Applicant has consulted with landowners and tenants, local and state agencies, and commercial sources to determine the location of drain tile mains and intends to avoid those areas. Applicant'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 31.)

 $\{\P, 76\}$ 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 31).

8. WATER CONSERVATION PRACTICE

{¶ 77} 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.

{¶ 78} Staff states that the Facility may require some water use during construction for dust suppression and control, but the total use would not be significant. Operation of the proposed Facility would also not require the use of significant amounts of water; however, Applicant is still finalizing plans for the O&M building. Applicant is evaluating the need for office/administrative space in the O&M building and if such space is included then it will install and maintain efficient water fixtures in the building. Applicant states that any office space would have wastewater discharge comparable to a single-family home. With respect to actual solar operations at the Facility, Applicant anticipates no appreciable amount of water needed as panel cleaning is not anticipated. (Staff Ex. 1 at 32.)

 $\{\P 79\}$ 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 32).

9. **RECOMMENDATIONS**

{¶ 80} In addition to making various findings throughout its report, Staff recommended that 31 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 33-38). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' Stipulation (Joint Ex. 1 at 2-8). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 81} At the evidentiary hearing, Applicant presented the Stipulation executed by Applicant, OFBF, and Staff (Joint Ex. 1). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Applicant, subject to 31 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:

- Applicant 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, Applicant shall conduct a preconstruction conference, which shall be attended by Staff, Applicant, and representatives of the primary contractor and all subcontractors for the Facility. The preconstruction conference shall include a presentation of measures to be taken by Applicant and contractors to ensure compliance with all conditions of the certificate. Applicant shall provide a proposed agenda for Staff review prior to the conference.
- (3) Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the asbuilt specifications for the entire Facility.
- (4) At least 30 days prior to the preconstruction conference, Applicant 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 applicable geotechnical study results shall be included in this submission.

- (5) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report.
- (6) If Applicant 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.
- (7) As information becomes known, Applicant 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.
- (8) Before commencement of construction activities in any affected areas, Applicant shall obtain and comply with all necessary permits and authorizations. Within seven days of issuance or receipt of such permits and authorizations, Applicant shall provide copies to Staff. Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (9) The 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.

- (10)At least 30 days prior to the start of construction, Applicant 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, Applicant 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 preconstruction or construction-related conditions of the certificate, as is relevant, and Applicant shall file a copy of the notices on the public docket. Applicant 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) 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, LLC.

- (12) The Facility shall be operated in such a way as to assure that no more than 577 MW would at any time be injected into the BPS.
- (13)Prior to the commencement of construction, Applicant 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. Applicant 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. Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project. Applicant 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 shall be limited to 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. Applicant 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, Applicant shall submit, at least 30 days prior to construction, an updated noise study using noise data from the inverter and substation chosen for the Facility. The updated noise study shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor.
- (16) Applicant shall avoid, where possible, or minimize 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) Applicant shall submit an updated decommissioning plan at least 30 days prior to the preconstruction conference. The plan shall include a total cost estimate without regard to

salvage value, a decommissioning cost net of the estimated salvage value of equipment, and a provision for the Applicant to retain an independent, registered engineer to estimate the total cost of decommissioning in current dollars. The plan shall also provide a timeline of up to one year for removal of the majority of equipment of the Facility.

- (18) Unless otherwise coordinated with ODNR and USFWS, Applicant 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) Applicant shall have a mutually agreed upon environmental specialist with authority to stop construction to assure that unforeseen environmental impacts do not progress and to 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. The environmental specialist shall have authority to stop construction activities for up to 48 hours if activities are creating unforeseen environmental impacts in sensitive areas.
- (20) Unless applicable codes require otherwise, any fencing installed in the vicinity of streams shall have the mesh installed above the ordinary highwater mark.

- (21) Applicant 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.
- (22) Applicant shall include in the final engineering drawings and associated mapping required in Condition 4 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.
- (23) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1, unless otherwise coordinated with ODNR. Absent a different course of action approved by ODNR, the construction contractor shall be provided mapping of these habit areas with instructions to avoid the areas during the restricted dates.
- (24) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31, unless otherwise coordinated with ODNR. Absent a different course of action approved by ODNR, the construction contractor shall be provided mapping of these habit areas with instructions to avoid the areas during the restricted dates.
- (25) Construction in king rail preferred nesting habitat types shall be avoided during the species' nesting period of May 1

through August 1, unless otherwise coordinated with ODNR. Absent a different course of action approved by ODNR, the construction contractor shall be provided mapping of these habit areas with instructions to avoid the areas during the restricted dates.

- (26) Unless otherwise coordinated with ODNR, Applicant shall conduct no in-water work in perennial streams from April 15 through June 30.
- (27) Applicant shall construct the Facility to incorporate post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (28) Applicant 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.
- (29) At least 30 days prior to the preconstruction conference, Applicant shall submit to Staff, for review and acceptance, a spill prevention and response plant that outlines procedures to be implemented to prevent the release of hazardous substances into the environment during construction.
- (30) Applicant 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.

(31) At least 30 days before the preconstruction conference, Applicant 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. For the well which is approximately 1.5 feet from solar equipment, the Applicant will relocate the equipment at least 50 feet from that well, demonstrate that the well is for nonpotable use and relocate the equipment at least 10 feet from that well, or seal and abandon the well.

(Joint Ex. 1 at 2-8.)

VII. CONSIDERATION OF STIPULATION

{¶ 82} 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?

{¶ 83} 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. Dahlen, on behalf of the Applicant, testified that Fox Squirrel had ongoing conversations with Staff during Staff's investigation of the Application (App. Ex. 13 at 4). Further, Mr. Dahlen stated that counsel for all parties were invited to all settlement negotiations and parties were knowledgeable about the issues discussed in the Stipulation (App. Ex. 13 at 8). 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.

{¶ 84} 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. According to Mr. Dahlen, the project will benefit the local community in several ways. First, Mr. Dahlen explained the positive economic impact of the project. The construction phase of the project could result in up to 1,113 full-time employee jobs. Thereafter, continued operation of the project could result in 38 full-time

employee jobs. Further, a PILOT agreement with Madison County would result in an annual payment of up to \$9,000 per MW for the 577 MW project, that could directly benefit local governments and school districts. Mr. Dahlen additionally explained that the Facility will benefit the public interest by representing the minimum adverse environmental impact and generate electricity without using fuels or water and with zero air emissions and waste generation. (App. Ex. 13 at 8-9.)

{¶ 85} 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 2-8). The record is devoid of any evidence to contradict this conclusion. As such, we find the third facet of the Board's test is met.

{¶ 86} 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 Applicant'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 Fox Squirrel in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

 $\{\P 87\}$ Applicant is a person under R.C. 4906.01(A).

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

{¶ 89} On July 1, 2020, Applicant filed a pre-application notification letter informing the Board of a scheduled public informational meeting for its proposed solar-powered electric generation facility in Fulton County, Ohio.

{¶ 90} On July 1 and July 20, 2020, Applicant 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.

{¶ 91} On October 14, 2020, as supplemented on November 3, 2020, Applicant filed its application for a certificate of environmental compatibility and public need to construct the Facility.

{¶ 92} By letter dated December 14, 2020, the Board notified Applicant that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 93} On December 16, 2020, Applicant 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).

{¶ 94} On January 7, 2021, Applicant filed proof that the application fee had been paid pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 95} On January 22, 2021, the ALJ issued an Entry establishing the effective date of the application as January 21, 2021, and adopting a procedural schedule, including the date of the local public hearing and the evidentiary hearing.

{¶ 96} On March 1, 2021, Applicant filed proof of initial publication, in *The Madison Messenger*, of a public notice regarding the date and time of the scheduled hearings, including the process to participate in the public hearing.

{¶ 97} On February 17, 2021, OFBF filed a motion to intervene, which was granted by the ALJ on March 24, 2021.

[¶ 98] The Staff Report was filed on March 15, 2021.

{¶ 99} On March 25, 2021, Applicant filed proof of publication of the second public notice published in *The Madison Messenger* on March 21, 2021, as required under Ohio Adm.Code 4906-3-09(A)(2). This 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.

{¶ 100} The public hearing was held on March 30, 2021, via remote access technology.

{¶ 101} On April 6, 2021, Applicant, OFBF, and Staff filed a Stipulation resolving all issues in the case.

{¶ 102} On April 13, 2021, the evidentiary hearing was conducted, as scheduled, via Webex.

{¶ 103} 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.

 $\{\P \ 104\}$ 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.

 $\{\P \ 105\}$ 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).

{**¶ 106**} 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).

{¶ 107} 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).

{¶ 108} 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).

{¶ 109} 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).

{¶ 110} 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 conservation easements associated with the Facility parcels.

{¶ 111} 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).

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

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

{¶ 114} It is, therefore,

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

{¶ 116} ORDERED, That a certificate be issued to Fox Squirrel 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,

{¶ 117} 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

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

DMH/kck

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Case No(s). 20-0931-EL-BGN

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