

THE OHIO POWER SITING BOARD

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

CASE NO. 20-1084-EL-BGN

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 Powell Creek 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} Powell Creek Solar, LLC (Powell Creek 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 Department of Health (DOH) to prevent or alleviate the public health threat associated with COVID-19.

Additionally, all citizens are urged to heed the advice of the DOH 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 DOH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 6} On May 29, 2020, Powell Creek filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B). Powell Creek is proposing to construct and operate a 150 megawatt (MW) solar facility in Putnam County, Ohio (Facility) and sought a waiver of Ohio Adm.Code 4906-3-03(B) to allow for the required public informational meeting to be conducted virtually and telephonically instead of in-person in the area in which the Facility will be located.

{¶ 7} On June 11, 2020, Staff filed a response to Powell Creek's motion for waiver, in which it acknowledged the unique nature of COVID-19 and the changed environment that has resulted from the response to the virus. Staff concluded that, due to the above circumstances, it did not object to Powell Creek's requested waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 8} On June 15, 2020, the administrative law judge (ALJ) granted Powell Creek's motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B), noting that the Board does not endorse or object to the actual manner in which Powell Creek proposed to hold the public information meeting.

{¶ 9} On July 13, 2020, Powell Creek filed a pre-application notification letter with the Board regarding the proposed Facility. In the letter, Powell Creek explained that construction of the proposed 150 MW solar-powered electric generation Facility is estimated to begin in late 2021, resulting in commercial operations in 2022.

{¶ 10} On October 7, 2020, as supplemented on October 29, 2020, Powell Creek filed an application (Application) with the Board for a certificate of environmental compatibility

and public need to construct the Facility. 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. The motion for waivers was fully briefed, with Board Staff (Staff) filing a memorandum contra on October 22, 2020, and Powell Creek filing a reply on October 29, 2020. No party filed a memorandum contra Applicant's motion for protective order.

{¶ 11} By Entry dated January 25, 2021, the ALJ granted Applicant's motion for a protective order. The ALJ also granted in part and denied in part Applicant's request for waiver of Board rules.

{¶ 12} 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 7, 2020, the Board notified Powell Creek 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 7, 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 Powell Creek to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 13} On December 21, 2020, Powell Creek filed a certificate 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 21, 2021, Powell Creek filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 14} By Entry issued January 25, 2021, the ALJ established the effective date of the application as January 22, 2021. The Entry also set forth a procedural schedule directing Staff to file a report of investigation by March 16, 2021, scheduling a public hearing for

March 31, 2021, and setting an evidentiary hearing on April 13, 2021. The ALJ further directed Powell Creek 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 March 3, 2021, 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.

{¶ 15} On March 1, 2021, Ohio Farm Bureau Federation (OFBF) filed a motion to intervene. No party filed a memorandum contra.

{¶ 16} On March 2, 2021, Applicant filed a motion for a protective order for an attachment to its modification of the Facility layout. On March 8, 2021, Staff filed a letter stating that it does not object to Powell Creek's motion for protective order.

{¶ 17} By Entry dated March 19, 2021, the ALJ granted Applicant's motion for a protective order and OFBF's motion to intervene.

{¶ 18} On March 16, 2021, Powell Creek filed proof of publication of a description of the accepted, complete application, published on February 10, 2021 in the *Putnam County Sentinel*, in accordance with R.C. 4906.06(C). The published notice also contained information regarding the scheduled hearing dates.

{¶ 19} Also on March 16, 2021, Staff filed its report of investigation (Staff Report).

{¶ 20} On March 18, 2021, Applicant filed proof of publication of the second public notice in the *Putnam County Sentinel* on March 17, 2021, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). As did the initial notice, 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.

{¶ 21} On March 31, 2021, the ALJ conducted the public hearing via Webex. Sixteen people provided testimony during the remote hearing.

{¶ 22} On April 5, 2021, Powell Creek, 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. In support of the Stipulation, Powell Creek filed the direct expert testimony of Jeffrey Reinkemeyer. Additionally, Staff filed the testimony of Jon C. Pawley on April 6, 2021.

{¶ 23} On April 13, 2021, the evidentiary hearing was held as scheduled. On behalf of Powell Creek, Mr. Reinkemeyer presented his direct testimony in support of the Application (Applicant Ex. 7), the Stipulation (Joint Ex. 1), and several exhibits identified in the Stipulation (Applicant Exs. 1 – 6). Upon agreement of the parties, the Staff Report (Staff Ex. 1) and the direct testimony of Mr. Pawley (Staff Ex. 2) were also admitted to the record.

III. PROJECT DESCRIPTION

{¶ 24} Powell Creek seeks certification to build a 150 MW solar-powered electric generation Facility in Putnam 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 system. The Facility would include associated support facilities, such as access roads, electric collection cables, a collection substation, an operations and maintenance building, laydown areas for construction staging, and inverters. Powell Creek is proposing to begin construction in late 2021, resulting in commercial operations in 2022.

IV. CERTIFICATION CRITERIA

{¶ 25} 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) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- 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) That 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) That 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) That 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

{¶ 26} 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*

{¶ 27} On March 31, 2021, the local public hearing was conducted through Webex, where 16 witnesses elected to provide testimony. Several individuals testified in support of the proposed Facility. Jim Erford, Greg Kuhlman, Jacki Verhoff, Amy Sealts, Richard Dobmeyer, Roger Niese, David Niese, Jean Forster, Leroy Kahle, Kerry Johnson, Gary Kuhlman, Tyler Niese, and Terry Short testified in a personal capacity and/or representative capacity on behalf of a company or organization, indicating that they support the proposed Facility because it offers financial benefits to the community and local schools, allowing the Village of Miller City to fund a new sanitary sewer. (Pub. Tr. at 27-62).

{¶ 28} Several individuals testified with concerns about the proposed Facility. Ken Niese, Anna Mae Wenzlick, Scott Niese, and Tyler Niese testified as residents in the project area with concerns about the sightline for vehicles at the intersection of State Route 613 and State Route 108. They also noted concerns about the aesthetics, noise, and lighting. (Pub. Tr. at 12-26, 59).

{¶ 29} In addition to the testimony provided at the public hearing, four individuals provided written comments regarding the proposed Facility to the Board. These public comments, including some provided by individuals who testified at the public hearing, express concerns for the proposed Facility, including concerns about the sightline for vehicles at the intersection of State Route 613 and State Route 108, aesthetics, noise, and lighting.

B. *Staff Report*

{¶ 30} 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

{¶ 31} 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

{¶ 32} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of its investigation, Staff reviewed the nature of the probable impact of the solar farm and following is a summary of Staff's findings:

a. *Socioeconomic Impacts*

{¶ 33} Staff notes that the predominant land use within the project area is agricultural, with some residential development and vacant parcels. The vast majority of land impacted by construction and operation of the Facility is agricultural land. Staff notes that of the 2,013 acres of leased land for the project, roughly 46 percent, or about 933 acres of 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. The agricultural industry supports the project because it would provide supplemental income to farmers and since the land will be returned to agricultural production upon decommissioning. Aside from temporary disruptions due to project construction, farming activities may proceed with only minor adjustments. Staff also does not anticipate adverse impacts to any recreational areas, including the nine recreational areas located within ten miles of the project area. In terms of regional planning, the proposed Facility is not expected to interfere with any land use plan and is expected to assist the Village of Miller City to finance and construct a new wastewater treatment system through payments made by the Applicant (Staff Ex. 1 at 10.)

{¶ 34} Powell Creek commissioned a cultural resources records review of the area. Applicant's consultant engaged in a Phase 1A literature review and a Phase 1B field reconnaissance survey. Additionally, a pedestrian survey, site surface collection and shovel excavations were completed to fully assess the potential for impacts to cultural resources. Through its work, Applicant's consultant identified 27 new archaeological sites. Of those sites, only one was deemed to be potentially eligible for the National Register of Historic Places. If this site cannot be avoided during construction, the Applicant would work with the Ohio Historic Preservation Office (OHPO) to develop a minimization and/or mitigation plan, as required by the Programmatic Agreement between the Applicant and OHPO. The Applicant's historical survey identified five Ohio Historic Inventory resources and five Ohio Genealogical Society cemeteries. The OHPO determined the project will not have an adverse effect on historic structures. Staff determines that, with implementation of the above commitments, minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 11.)

{¶ 35} As to aesthetics, Staff reports that traffic volume on roads surrounding the project area is typically light, and the project area is primarily surrounded by agricultural land, thus reducing the potential number of viewers. Additionally, the highest elevation of the solar panels would be 9.5 feet above ground level. According to the Applicant's visual resources report, the panels are not likely to be visible from locations beyond 1.5 miles distance from the Facility's perimeter. Included with its visual impact analysis, the Applicant included a mitigation plan that proposed to install various planting modules along the Facility fence line to soften viewshed impacts and to blend the Facility into existing vegetation. The mitigation plan also calls for planting numerous, varying plant species to mitigate the viewshed impacts of sensitive receptors. Staff recommends that Powell Creek incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and recommends that aesthetic impact mitigation measures include native vegetative plantings,

alternate fencing, good neighbor agreements, and other methods in consultation with affected landowners and subject to Staff review. (Staff Ex. 1 at 11-12.)

{¶ 36} According to Staff, 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. The Applicant does not anticipate glare impacts to vehicles using the roadways or adjacent residents, at single or second story heights. The Applicant found that the proposed Facility would not impact area airports. Staff concurs with Applicant's analysis and notes that aesthetic impact measures, such as vegetative screening, may further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 13-14.)

{¶ 37} Staff asserts that, economically, Powell Creek is in the process of obtaining the necessary leases and easements for the portion of the project located within public road rights-of-way. All other components of the Facility are voluntary lease agreements, and Staff notes that these agreements will not alter the ownership status of properties within the project area. Staff also confirmed that the estimated capital costs for Powell Creek 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 Avangrid Renewables, LLC's similar facilities.¹ Staff also confirmed that Powell Creek's estimated operation and maintenance costs were below the average of those incurred by the average utility scale solar operation facility. Powell Creek 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

¹ Powell Creek is a wholly owned subsidiary of Avangrid Renewables, LLC.

purchase agreement. According to Staff, these estimated costs appeared reasonable. (Staff Ex. 1 at 12-13.)

{¶ 38} Powell Creek estimates that the proposed Facility would create 680 construction related jobs and 6 long-term operational jobs for the state of Ohio. During the construction period, wages would produce \$84.5 million in local output for the state of Ohio; operations would add an annual impact of \$900,000 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 \$1.05 million annually for the Putnam County taxing districts. (Staff Ex. 1 at 13.)

{¶ 39} As explained by Staff, Powell Creek estimates that the Facility can operate for 30 years or more. Powell Creek has prepared a decommissioning plan according to which Powell Creek will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land. Powell Creek states that, prior to the start of decommissioning the Facility, it will obtain all applicable federal, state, and local permits. Powell Creek would remove electrical cables to a depth of at least three feet below grade. Powell Creek will prepare the site for component removal, including strengthening access roads, where needed, and installing temporary fencing and other best-practice measures to protect sensitive environmental resources. The solar arrays would then be de-energized and Powell Creek would dismantle panels, racking, inverters, and transformers. Powell Creek would then remove access and internal roads and grade site unless a landowner requests to retain the road. Lastly, Powell Creek would restore land to its pre-construction condition, to the extent practicable. Powell Creek anticipates that most facility components would be removed within 6 to 12 months, although monitoring and site restoration may extend beyond that period. Powell Creek states that it will provide for financial security to ensure that funds are available for decommissioning/land-restoration. Powell Creek calculates that the initial net decommissioning costs would be approximately \$4,627,948. Powell Creek commits to posting a performance bond or similar financial assurance instrument in the amount of the anticipated decommissioning costs prior to the

commencement of construction of the project. Staff recommends that an updated decommissioning plan be provided at least 30 days prior to the preconstruction conference and that it include (a) a timeframe to periodically update the decommissioning cost estimates, 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

{¶ 40} Staff asserts that the proposed project site consists of silts, sand, gravel, and boulders. Ohio Department of Natural Resources' (ODNR) geological survey found that there are no known or suspected karst features within several miles of the project study area. Resources published by the ODNR indicate there are no existing oil and gas wells in the project area. The Applicant determined and Staff confirmed that there is a low risk that significant seismic activity would impact the Facility, as no documented earthquake epicenters have occurred within several miles of the project study area. A preliminary geotechnical assessment was conducted and used to provide construction recommendations in the Geotechnical Report. Staff recommends that the final detailed engineering drawings of the final project design shall account for geological features and shall include the identity of the registered professional engineer or engineer firm licensed to practice engineering in the state of Ohio who reviewed and approved the designs. (Staff Ex. 1 at 15-17.)

c. Ecological Impacts

{¶ 41} According to Staff, Powell Creek identified five water wells within the project area. Powell Creek does not anticipate adverse impacts to the nearest water wells because it will coordinate with landowners to identify well locations and implement avoidance and mitigation measures. To protect these private wells, Staff recommends that at least 30 days prior to the preconstruction conference, Powell Creek provide the status (i.e. avoidance, mitigation measures, or capping) of each well in the project area. Staff also

recommends that Powell Creek 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 17.)

{¶ 42} Staff avers that there are no drinking water source protection areas within the project area. Powell Creek will implement a Stormwater Pollution Prevention Plan (SWPPP) and a Spill Prevention Control and Countermeasure plan during construction to minimize and prevent potential discharges to surface waters. The Applicant noted 10 streams in the project area, including six perennial streams, two intermittent streams, and two ephemeral streams. Access roads would impact two perennial streams and one ephemeral stream. The Applicant also noted 18 wetlands within the project area, including two Category 3 wetlands, 10 Category 2 wetlands, and five Category 1 wetlands. Powell Creek does not anticipate any impacts to the Category 3 wetland and anticipates that less than 0.01 acre of Category 1 wetland would be permanently impacted. Surface water crossing associated with collection lines would be accomplished using horizontal directional drilling (HDD) techniques. The Applicant has also committed to have an environmental specialist on site during construction activities where HDD activities may impact surface waters. By siting the majority of infrastructure in upland areas, Staff concludes that surface water impacts would be minimized. 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 Powell Creek's SWPPP. Powell Creek would obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio EPA prior to the start of construction. Powell Creek would also apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to construction and operations activities. No project infrastructure is proposed within the 100-year floodplain. (Staff Ex. 1 at 17-18.)

{¶ 43} Staff asserts that 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 state

endangered species and a federal threatened species. In order to avoid impacts to these bat species, Staff recommends that Powell Creek 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 U.S. Fish and Wildlife Service (USFWS) recommends a different course of action. (Staff Ex. 1 at 18-20.)

{¶ 44} Additionally, Staff explains that the project area is within range of the northern harrier, a state endangered bird species. To reduce impacts on the northern harrier, Staff recommends that construction in areas of the northern harrier's potential habitat be avoided during its nesting period of May 15 through August 1, unless coordination with the ODNR recommends a different course of action. (Staff Ex. 1 at 18-20.)

{¶ 45} Staff states that two state endangered or threatened fish species, the pugnose minnow and greater redhorse are within range of the project area. To reduce impacts on these fish, Staff recommends no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination with the ODNR recommends a different course of action. (Staff Ex. 1 at 18-20.)

{¶ 46} Finally, according to Staff, the project area is also within range of several other endangered or threatened species of mussels; 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).

{¶ 47} Of the 2,013.4 acres within the project area, Staff notes that 1,892.4 acres are agricultural lands and the remaining acreage consists of developed land, forestland, wetlands, or grassland. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. The estimated forestland impact is estimated to be approximately 0.2 acres. Staff suggests that Powell Creek develop a vegetation management plan that incorporates pollinator-friendly habitat in consultation with the recommendations of the Ohio Pollinator Habitat Initiative. This habitat would enhance the visual appeal of the proposed Facility, enrich local wildlife habitat, and benefit the local farming community.

The vegetation would be incorporated in selected locations along the outside border of the solar fields. To further assure that these benefits are realized, Staff recommends that Powell Creek 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 21.)

d. Public Services, Facilities, and Safety

{¶ 48} Staff explains that Powell Creek stated 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, Powell Creek would take additional measures to minimize potential damage from high wind velocities. (Staff Ex. 1 at 21.)

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

{¶ 50} Staff avers that minimum adverse noise impacts are expected. Although many of the construction activities would generate significant noise levels, the activities would be limited to the 16-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. Powell Creek'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 22-23.)

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

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 52} 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.

{¶ 53} Staff states that the proposed Facility would have an overall positive impact on the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues and 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, Powell Creek 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 24-25.)

{¶ 54} 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 25).

4. ELECTRIC POWER GRID

{¶ 55} 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.

{¶ 56} 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 150 MW and would interconnect to a newly proposed gen-tie connection to the proposed American Electric Power's (AEP) POI 138 kV switching station. Energy would be injected to the bulk power system (BPS) via AEP's existing East Leipsic-Richland 138 kV transmission line. (Staff Ex. 1 at 26.)

{¶ 57} According to Staff, Powell Creek submitted a generation interconnection request for the proposed Facility, the combined energy output of which totals 150 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. Through its analysis, PJM found that Queue ID AE2-072, 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 Richland-Napoleon 138 kV and Davis Besse-Hayes 354 kV transmission lines. PJM's analysis showed that certain network upgrades would alleviate the overloads. Powell Creek is not responsible for any of the costs related to 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 and identified the contribution to previously identified overloads. PJM's analysis revealed no other reliability impacts or circuit breaker problems. (Staff Ex. 1 at 26-28.)

{¶ 58} 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 28.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 59} 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.

{¶ 60} Although the proposed Facility will not require any air quality permits, Staff states fugitive dust rules may be applicable to its construction. Accordingly, Powell Creek 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 29.)

{¶ 61} Staff states that Powell Creek 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, Powell Creek 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 29.)

{¶ 62} As explained by Staff, debris from construction activities would consist of items such as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. Powell Creek 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 Powell Creek's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 29-30.)

{¶ 63} Staff notes that the height of the tallest structure, the overhead transmission line support structures, would be approximately 95 feet tall. That height is under the height requirement in the FAA's regulations. Staff confirmed through the FAA that the closest public-use airports are the Ruhe Airport and Putnam County Airport (OWX), which are between two and seven miles from the proposed project's collection substation. The Applicant also identified the nearby Agner and Hiltner airstrips which are no longer in use. 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 30.)

{¶ 64} 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 30).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 66} Staff asserts that, for reasons of public safety, Powell Creek will limit public access to the proposed Facility by enclosing it with a seven-foot tall chain-link fence. Powell

Creek intends to use warning signs, fencing, and gates to restrict access to potential hazards within the project area, and Powell Creek will implement setbacks between certain equipment and the public. Powell Creek 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 Powell Creek intends to coordinate with Putnam County Emergency Management Services, including local fire and emergency management officials, to discuss safety plans and training. Powell Creek has committed to submit its finalized emergency action/response plan to the Board prior to construction. (Staff Ex. 1 at 31.)

{¶ 67} Staff notes that the Facility is not within 100 feet of an occupied residence, 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 31).

{¶ 68} Powell Creek 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 Powell Creek 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. Powell Creek 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 Powell Creek send a similar notice to those same individuals at least seven days prior to the start of Facility operations. Staff also recommends that Powell Creek submit to Staff a quarterly complaint summary report during construction and the first five years of operation of the Facility. (Staff Ex. 1 at 31-32.)

{¶ 69} 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 32).

7. AGRICULTURAL DISTRICTS

{¶ 70} 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.

{¶ 71} Staff states that approximately 227 acres of agricultural district land would be disturbed by the proposed Facility. Of those 227 acres, approximately 219 acres would be permanently altered. In total, construction of the Facility would result in the loss of approximately 962 acres of agricultural land. Staff notes, however, that the repurposed land could be restored for agricultural use when the Facility is decommissioned. Powell Creek 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. Powell Creek's decommissioning plan for the proposed Facility calls for returning the affected land to original or similar conditions, and the plan includes restoring, de-compacting, and seeding topsoil. (Staff Ex. 1 at 33.)

{¶ 72} 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 33-34).

8. WATER CONSERVATION PRACTICE

{¶ 73} 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.

{¶ 74} 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. Powell Creek has committed to install and maintain modern, efficient water fixtures at the Facility. (Staff Ex. 1 at 35.)

{¶ 75} 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 35).

9. RECOMMENDATIONS

{¶ 76} In addition to making various findings throughout its report, Staff recommended that 27 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 36-40). The recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' April 5, 2021 Stipulation. (Joint Ex. 1.) The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 77} At the evidentiary hearing, Powell Creek 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 27 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) Powell Creek shall install the facility, utilize equipment and construction practices, and implement mitigation measures as

described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report of Investigation.

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

Powell Creek. Lastly, Powell Creek shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

- (6) To the extent permitted by R.C. 4906.13(B), the certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (7) Powell Creek shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, Powell Creek, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. Specifically, the conference shall include a presentation of the measures to be taken by Powell Creek and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, Powell Creek must provide a proposed conference agenda for Staff review. Additionally, separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, Powell Creek shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design. All applicable geotechnical study results shall be included in the submission of the final project design to Staff.

- (8) At least 30 days prior to the preconstruction conference, Powell Creek shall provide Staff, for review and acceptance, the final geotechnical engineering report.
- (9) At least 30 days prior to the start of construction, Powell Creek shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, Powell Creek shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that Powell Creek has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that Powell Creek has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. Powell Creek shall file a copy of these notices on the public docket. During the construction and operation of the facility, Powell Creek shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The report shall include a list of all complaints received through Powell Creek's complaint resolution process, a description

of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved.

(10) Powell Creek shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. Additionally, Powell Creek shall docket in the case record a letter stating that the agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

(11) The Facility shall be operated in such a way as to assure that no more than 150 MW would at any time be injected into the BPS.

(12) Prior to commencement of construction, Powell Creek shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and also include a plan describing the methods to be used for fence repair. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape

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

- (13) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 7:00 p.m. or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., Powell Creek shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Powell Creek 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.

- (14) If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, Powell Creek shall show that sound levels will not exceed the daytime ambient level plus five dBA at any nonparticipating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed during the on a sunny day in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level plus five dBA additional noise mitigation will be required. This condition is complied with if the test shows the operational noise level is less than project area ambient Leq level plus five dBA.
- (15) Powell Creek shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent at Powell Creek's expense. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system.

- (16) At least 30 days prior to the preconstruction conference, Powell Creek shall submit an updated decommissioning plan that includes a timeframe to periodically update the decommissioning cost estimates and that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee.
- (17) Powell Creek shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats and northern long-eared bats, unless coordination with ODNR and the USFWS allows a different course of action.
- (18) Powell Creek shall have an environmental specialist on site during construction activities that may affect sensitive areas, to be mutually agreed upon by Powell Creek and Staff. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff, and shall include wetlands, streams, and locations of threatened or endangered species.
- (19) Powell Creek shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by Powell Creek, Staff, and the appropriate agencies.
- (20) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1 unless coordination by Powell Creek with the

ODNR allows a different course of action during that period. Absent coordination with the ODNR that allows a different course of action, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates.

- (21) Powell Creek shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the ODNR allows a different course of action.
- (22) Powell Creek shall construct the facility in a manner that incorporates post construction stormwater management in accordance with the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (23) Powell Creek 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.
- (24) If Powell Creek encounters any new listed plant or animal species or suitable habitat of these species prior to construction, Powell Creek shall include the location in the final engineering drawings and associated mapping, as required in Condition 7. Powell Creek shall avoid impacts to these species and explain how impacts would be avoided during construction.
- (25) Prior to commencement of construction activities that require transportation permits, Powell Creek shall obtain all such permits. Powell Creek shall coordinate with the appropriate authority

regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, any affected railroads, the county engineer, the ODOT, local law enforcement, and health and safety officials. Powell Creek shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.

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

(27) At least 30 days prior to the preconstruction conference, Powell Creek shall provide the status (i.e. avoidance, mitigation measures, or capping) of each water well within the project area. Powell Creek shall indicate to Staff whether the nearest solar components to each uncapped well within the project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7.

(Joint Ex. 1 at 2-7.)

VII. CONSIDERATION OF THE STIPULATION

{¶ 78} 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?

{¶ 79} 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. The parties argue that the Stipulation is a product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process (Joint Ex. 1 at 1-2). Powell Creek witness Jeffrey Reinkemeyer testified that it was possible to reach agreement by a series of e-mails among Staff, Powell Creek, OFBF and their respective attorneys. Additionally, the parties describe the Stipulation as representing a culmination of settlement discussions related to the topics raised in this proceeding. Mr. Reinkemeyer testified that the Stipulation represents a reasonable compromise that balances competing positions. (Applicant Ex. 7 at 16.) 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.

{¶ 80} 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. Reinkemeyer testified that the Stipulation provides clarity with respect to Condition 6 in the Staff Report. Further, Mr. Reinkemeyer states that avoidance of a more lengthy and contested hearing also serves the public interest. Mr. Reinkemeyer represents that the Facility will help meet Ohio's demand for in-state carbon-free energy resources and garner positive economic impact on the local economy through construction spending and jobs as well as an annual service PILOT plan. Specifically, Mr. Reinkemeyer states that the PILOT plan would generate approximately \$1.05 million annually, resulting in over \$38 million in payments to Putnam County and other local taxing units. Mr. Reinkemeyer states that PILOT payments and additional voluntary contributions from Powell Creek would allow the Village of Miller City to construct a new wastewater treatment system. Mr. Reinkemeyer also explains that Powell Creek has attempted to address concerns raised at the local public hearing, including entering into a good neighbor agreement with an adjacent landowner and consulting with ODOT regarding the visibility for motorists at the intersection of SR 108 and SR 613. Furthermore, Mr. Reinkemeyer testifies that the Stipulation ensures that the Facility will represent the very minimum adverse environmental impact during both construction and operation; serve to ensure the fullest realization of Applicant's plan for pollinator-friendly plantings; and avoid the waste of resources through litigation. (Applicant Ex. 7 at 6-9, 17.) Additionally, no local government entities oppose the Facility. At the local public hearing, Miller City Mayor, Jim Erford, testified that he is a strong supporter of the Facility, and Putnam County Director of Economic Development, Amy Sealts, testified that the Facility will open the opportunity for new commercial and residential development in the area (Pub. Tr. at 28-30, 36-38).

{¶ 81} 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; Staff Ex. 2 at 1-3; Joint Ex. 1 at 2-7; Applicant Ex. 7 at 18). The record is devoid of any evidence to contradict this conclusion. As such, we find the third facet of our analysis has been met.

{¶ 82} 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 Powell Creek'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 Powell Creek in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 83} Powell Creek is a person under R.C. 4906.01(A).

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

{¶ 85} On July 13, 2020, Powell Creek filed a pre-application notification letter informing the Board of a scheduled, two-part public informational meeting for its proposed 150 MW solar-powered electric generation facility in Putnam County, Ohio.

{¶ 86} On August 6, 2020, Powell Creek 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.

{¶ 87} Applicant held a web-based public informational meeting and a telephone-based public informational meeting regarding the proposed Facility on July 29, 2020, and July 30, 2020, respectively.

{¶ 88} On October 7, 2020, Powell Creek 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. Powell Creek supplemented its application on October 29, 2020.

{¶ 89} By letter dated December 7, 2020, the Board notified Powell Creek that its application, as supplemented, had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 90} On December 21, 2020, Powell Creek 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 January 21, 2021, Powell Creek filed proof that the application fee had been paid pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 92} By Entry dated January 25, 2021, the ALJ granted Applicant's motion for a protective order and motion for waiver of certain Board rules. Additionally, the ALJ established the effective date of the application as January 22, 2021, and adopted a procedural schedule, which included the date of the local public hearing and the evidentiary hearing.

{¶ 93} On March 1, 2021, OFBF filed a motion to intervene.

{¶ 94} On March 2, 2021, Powell Creek filed modifications to reduce the size of the project layout with an accompanying motion for protective order and memorandum in support.

{¶ 95} On March 16, 2021, Powell Creek filed proof of initial publication, in the *Putnam County Sentinel*, of a public notice regarding the date and time of the scheduled hearings, including the process to participate in the public hearing.

{¶ 96} The Staff Report was filed on March 16, 2021.

{¶ 97} On March 18, 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 *Putnam County Sentinel* on March 17, 2021.

{¶ 98} The public hearing was held on March 31, 2021, via remote access technology.

{¶ 99} On March 19, 2021, the ALJ issued an Entry granting OFBF's motion to intervene as well as granting Applicant's March 2, 2021 motion for protective order.

{¶ 100} On April 5, 2021, Powell Creek, OFBF, and Staff filed a Stipulation resolving all issues in the case.

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

{¶ 102} 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.

{¶ 103} 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.

{¶ 104} 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).

{¶ 105} 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).

{¶ 106} 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).

{¶ 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 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).

{¶ 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 serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 109} 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.

{¶ 110} 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).

{¶ 111} 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

Powell Creek, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

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

{¶ 113} It is, therefore,

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

{¶ 115} ORDERED, That a certificate be issued to Powell Creek 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,

{¶ 116} 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

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Case No(s). 20-1084-EL-BGN

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Powell Creek 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