

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Cadence )  
Solar Energy LLC for a Certificate of )  
Environmental Compatibility and Public Need ) Case No: 20-1677-EL-BGN  
to Construct a Solar-Powered Electric )  
Generation Facility in Union County, Ohio. )

**JOINT STIPULATION AND RECOMMENDATION**

**I. INTRODUCTION**

Cadence Solar Energy LLC (“Applicant”), the Ohio Power Siting Board (“OPSB” or “Board”) Staff (“OPSB Staff”), the Union County (“County”) Commissioners (the “County Commissioners”), Union Soil and Water Conservation District (the “District”), the Ohio Farm Bureau Federation (“OFBF”), and the Boards of Township Trustees for York, Liberty, and Taylor Townships (the “Townships”) (jointly referred to herein as “Signatory Parties”) submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Board. Ohio Adm.Code 4906-2-24(A) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below, and to jointly recommend that the Board approve and adopt this Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters pertinent to the certification and construction of the solar-powered electric generation facility in York, Liberty, and Taylor Townships, Union County, Ohio as proposed in this proceeding.

The County Commissioners, the District, the OFBF, and the Townships filed motions to intervene in this proceeding, which were granted by the Administrative Law Judges (“ALJs”) on June 15, 2021. The Report of Investigation was issued by the OPSB Staff on June 14, 2021 (“Staff

Report”). The local public hearing was held June 29, 2021. The evidentiary hearing was called and continued on July 20, 2021, and is scheduled to recommence on September 8, 2021.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all of the issues in this proceeding. This Stipulation represents the culmination of these discussions, and the Signatory Parties acknowledge that this agreement is amply supported by the record and, thus, entitled to careful consideration by the Board. Accordingly, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the facility.

## **II. JOINT RECOMMENDATIONS OF THE SIGNATORY PARTIES**

### **A. Recommended Conditions**

The proposed facility is located in Union County, Ohio and its total generating capacity will not exceed 275 megawatts alternating current (“MW”). Construction of the facility is expected to begin as early as first quarter of 2022.

The Signatory Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by the Applicant subject to the following conditions:

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.
- (2) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. OPSB Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The Applicant will notify the County and the District of the preconstruction meeting and the County and the District may send representatives. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site

investigations by OPSB Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for OPSB Staff review and shall file a copy of the agenda on the case docket. The Applicant may conduct separate preconstruction conferences for each stage of construction.

- (3) Within 60 days after the commencement of commercial operation, the Applicant shall submit to OPSB Staff and the County Engineer a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time from OPSB Staff for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. If the project layout changes after the preconstruction conference(s), the Applicant shall submit the updated project layout to OPSB Staff for review and acceptance, and filed with OPSB. At least 45 days prior to each preconstruction conference, the Applicant shall submit to OPSB Staff, for review and acceptance, one set of detailed engineering drawings of the final project design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the public docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings of the final project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final project design to Staff.
- (5) At least 30 days prior to the preconstruction conference, the Applicant shall submit the final geotechnical engineering report to OPSB Staff for review and acceptance, and then shall file it on the public docket. This shall include a summary statement addressing the geologic and soil suitability.
- (6) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the OPSB grants a waiver or extension of time.
- (7) As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.

- (8) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to OPSB Staff within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (9) 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.
- (10) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that the Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. During the construction and operation of the facility, the Applicant shall submit to OPSB Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The report shall include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved.
- (11) At least 30 days prior to the preconstruction conference, the Applicant shall submit its emergency response plan to OPSB Staff for review and acceptance, and shall file it on the public docket. That plan shall include a provision(s) to keep the affected source water protection area designees informed of the status of any spills, significant panel damage, and repair/clean-up schedule.
- (12) The Applicant shall not commence any construction of the facility until it has executed an Interconnection Service Agreement ("ISA") or Interim ISA, and an 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. In the event of the use of the Interim ISA, the Applicant will identify the circumstances and specifics thereof that warrant the use of the Interim ISA. The Applicant will also provide support as to why the conventional ISA would not be feasible for its situation. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement. The facility shall be operated in such a way as to assure that no more than 275 megawatts would be injected into the Bulk Power System at any time.

- (13) Prior to commencement of construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and also include a plan describing the methods to be used for fence repair. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall adjust its landscape and lighting plan to incorporate additional planting design features or measures to address aesthetic impacts to the traveling public, nearby communities, and recreationalists. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Lights shall be motion-activated, except for the substation lighting where the lights may be on 24/7 in compliance with the applicable regulation, and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields. The Applicant shall provide the plan(s) to OPSB Staff for review and confirmation that it complies with this condition and shall also file it on the public docket.
- (14) Prior to commencement of construction, the Applicant shall submit to OPSB Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location and meets all applicable electrical codes. The perimeter fence shall include horizontal wood paneling. An example image of fencing that would be aesthetically fitting is provided for reference in Attachment 1 of this Stipulation. Following OPSB Staff approval in coordination with Township and County officials, the Applicant shall file details of this solar panel perimeter fence on the public docket. This condition shall not apply to substation fencing.

- (15) 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 6:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.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., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., the Applicant shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (16) If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, the Applicant shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed on a sunny day between 10 a.m. and 2 p.m. 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 equal or less than project area ambient Leq level plus five dBA. The Applicant shall file a report on the public docket that shows either 1) for the chosen inverter and substation transformer that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor or 2) results of the operational noise test showing that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor.
- (17) Prior to the commencement of construction, the Applicant shall adhere to the programmatic agreement that was signed by the Applicant and the Ohio Historic Preservation Office (“OHPO”) on January 25, 2021 and shall finalize and send to OHPO and OPSB Staff, and file on the public docket, the archaeological report. Additionally, prior to the commencement of construction, the Applicant must reach concurrence with OHPO on the avoidance and/or mitigation for resources identified.
- (18) Benchmark conditions of surface and subsurface drainage systems shall be documented prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance ditches. The Applicant will conduct a perimeter dig utilizing a tile search trench. The Applicant will also consult with owners of all parcels adjacent to the property, the District, or a County

representative to request and identify, to the extent possible, drainage system information over those parcels. For purposes of the conditions in this Stipulation, “field tile drainage systems” or “drainage system” include both mains and laterals within the facility footprint. As a part of benchmarking, the Applicant shall consult with the County Engineer for tile located in a county maintenance ditch. The County will provide a list of county-maintained drainage facilities in the Project Area. Upon receipt of the list of county-maintained drainage facilities, the Applicant will comply with existing drainage access easements.

- (19) The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile drainage systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at the Applicant's expense to ensure proper drainage within the drainage system watershed. However, if the affected landowner agrees to not having the damaged field tile drainage system repaired, they may do so only if the field tile drainage systems of upstream landowners within the drainage system watershed remain unaffected by the non-repair of the landowner's field tile drainage system. The Applicant will fund two inspectors, employed by the District to help determine, inspect, and, as necessary, require the Applicant's contractor to cause repairs to be made, including the delay of construction activities in the immediate area of the damaged tile to facilitate said repair or reroute, if any upstream landowner within the drainage system watershed is impacted by damage to the drainage system that was caused by the construction, operation, or maintenance of the facility.
- (20) In addition to the requirements in Condition 18, when designing the facility, the Applicant shall avoid, where practicable, impacting main drain tiles and/or reroute main drain tiles. If a main drain tile is impacted due to the construction of the facility, the damaged field tile drainage system shall be promptly repaired and/or rerouted no later than 10 days after such damage is discovered, pending weather and contractor availability, and be returned to at least original condition or their modern equivalent. If a main drain tile is found to be impacted during the operation, and/or maintenance of the facility, the damaged field tile drainage systems shall be promptly repaired and/or rerouted no later than 45 days after such damage is discovered, pending weather and contractor availability, and be returned to at least original conditions or their modern equivalent at the Applicant's expense. While rerouting a main drain tile, if it is determined that a drainage pump is necessary to ensure proper waterflow, this will be implemented at the Applicant's expense. Any tile installation or repairs shall be performed in accordance with the applicable provision of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage of Water Table Control, ASTM F499-02 (2008), to the extent practicable.
- (21) The Applicant shall provide the District and the County Engineer with the primary points of contact with the Applicant after construction is completed to address any resource concerns. The Applicant will also allow for periodic inspections of

operating tiles throughout the facility to ensure functionality. Inspections are to be conducted by the Applicant accompanied by the District, the County Engineer, and/or landowners within the drainage system watershed.

- (22) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats, northern long-eared bats, little brown bat, and the tricolored bat unless coordination with the Ohio Department of Natural Resources (“ODNR”) and the U.S. Fish and Wildlife Service (“USFWS”) allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, the Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (23) The Applicant shall have an OPSB Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas may include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. The environmental specialist shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to OPSB Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.
- (24) The Applicant shall contact OPSB Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, OPSB Staff, and the appropriate agencies.
- (25) Construction in loggerhead shrike preferred nesting habitat types shall be avoided during the species' nesting period of April 1 through August 1, unless coordination by the Applicant with the ODNR allows a different course of action during that period. If coordination with ODNR allows construction in such areas between April 1 and August 1, the Applicant shall file proof of such coordination on the public docket.
- (26) The Applicant shall minimize, to the extent practicable, the clearing of wooded areas, including scrub/shrub areas that would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.
- (27) Thirty days prior to the first preconstruction conference, the Applicant shall file on the public docket an ecologically sensitive resource impact avoidance /minimization plan. The plan shall ensure clear communication of impact minimization measures for all project personnel. Ecologically sensitive resources include but are not limited to streams, wetlands, and suitable habitats of state and



federal listed animal and plant species. Those working on-site shall be trained on the plan and provided with a copy of the plan. The plan shall contain the following:

- a. mapping of ecologically sensitive resources, as well as facility components including access roads, collection lines, laydown areas, and limits of disturbance
- b. demarcation of ecologically sensitive resources in the field with highly visible flagging, staking, or fencing prior to construction in those areas
- c. listed steps explaining how impacts to all ecologically sensitive resources will be avoided or minimized during construction, including compliance with applicable conditions of this certificate
- d. the presence of an environmental specialist, who is familiar with water quality protection issues and state and federal listed species, on site during construction activities that may affect ecologically sensitive areas.
  - i. The environmental specialist shall be authorized to report any issues simultaneously to Staff and the Applicant.
  - ii. To allow time for the Applicant and Staff to respond to any reported issues, the environmental specialist shall have authority to stop construction activities for up to 48 hours if the construction activities are creating unforeseen environmental impacts.

- (28) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final transportation management plan submitted to OPSB Staff prior to the preconstruction conference for review and confirmation by OPSB Staff that it complies with this condition and then file the plan on the public docket. This final transportation management plan would include any county required road use maintenance agreements. Any damaged public roads, culverts and bridges would be repaired promptly to their previous or better condition by the Applicant under the guidance of the appropriate regulatory authority. Any temporary improvements would be removed unless the appropriate regulatory authority requests that they remain in place.
- (29) At least 30 days prior to the preconstruction conference, the Applicant shall provide the status (i.e. avoidance, mitigation measures, or capping) of each water well within the project area. The Applicant shall indicate to OPSB 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. For that water well (Well ID #1010027) which is approximately 45 feet from solar equipment, the Applicant shall relocate the solar equipment at least 50 feet from that water well, demonstrate that the well is for nonpotable use and relocate solar equipment at least 10 feet from that well, or seal and abandon the water well.

- (30) At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan, and total decommissioning cost estimate without regard to salvage value, on the public docket that includes: (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee; (b) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation; (c) a timeline of up to one year for removal of the majority of equipment; (d) a provision where the performance bond is posted prior to the commencement of construction; and (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value.
- (31) The 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.
- (32) The Applicant will incorporate warm season native grasses within the setback area if the landowner chooses to not utilize the undeveloped property that remains under lease after commercial operations.

## **B. Exhibits**

Subject to the terms and conditions of this Stipulation, the Applicant, the OPSB Staff, the County Commissioners, the District, the OFBF, and the Townships agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding:

- 1. Applicant Exhibit 1: Application filed on February 1 and 2, 2021.
- 2. Applicant Exhibit 2: Supplement to the Application filed on February 12, 2021.
- 3. Applicant Exhibit 3: Second Supplement to the Application filed on March 16, 2021.
- 4. Applicant Exhibit 4: Response to First Data Request filed on February 16, 2021.

5. Applicant Exhibit 5: Response to Second Data Request filed on March 22, 2021.
6. Applicant Exhibit 6: Supplemental Response to Second Data Request filed on April 13, 2021.
7. Applicant Exhibit 7: Response to Third Data Request filed on June 2, 2021.
8. Applicant Exhibit 8: Supplemental Response to Third Data Request filed on September 3, 2021.
9. Applicant Exhibit 9: Certificate of Service of the December 18, 2020 Public Information Meeting, notice on property owners and entities filed on November 25, 2020, in accordance with Ohio Adm.Code 4906-3-03.
10. Applicant Exhibit 10: Proof of Publication of the December 18, 2020 Public Information Meeting in the *Marysville Journal Tribune* filed on December 10, 2020, in accordance with Ohio Adm.Code 4906-3-03.
11. Applicant Exhibit 11: Certificate of Service of the accepted, complete application on local public officials and libraries filed on April 5, 2021, in accordance with Ohio Adm.Code 4906-3-07.
12. Applicant Exhibit 12: Proof of Service and Proof of Publication in the *Marysville Journal Tribune* of the procedural schedule, in accordance with the ALJ's April 15, 2021 Entry, filed on May 6, 2021.
13. Applicant Exhibit 13: Proof of Second and Third Service and Proofs of Second and Third Publications in the *Marysville Journal Tribune* of the procedural schedule filed on June 28, 2021.
14. Joint Exhibit 1: The September 3, 2021, Stipulation signed on behalf of the Applicant, the OPSB Staff, the County Commissioners, the District, the OFBF, and the Townships.

#### **C. Other Terms of the Stipulation**

1. This Stipulation is expressly conditioned upon its adoption by the Board without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation constitutes a "material modification" thereof. If the Board rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within 30 days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a

notice with the Board (“Notice of Withdraw”). No Signatory Party shall file a Notice of Withdraw without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for the Board’s review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford the Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after hearing if necessary.

2. The Signatory Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party’s participation in this Stipulation as support for any particular position on any issue. Each party further agrees that this Stipulation carries no factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

### **III. RECOMMENDED FINDINGS**

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

#### **A. Recommended Findings of Fact**

1. The Applicant is an affiliate of Invenergy Solar Project Development LLC, and is licensed to do business in the state of Ohio.
2. The facility qualifies as a major utility facility as defined in R.C. 4906.01(B)(1).
3. On November 25, 2020, the preapplication notification letter was filed informing the Board of the public information meeting in this proceeding. Notice of the public information meeting was served on county and township officials and agencies, property owners, local first responders, the

local school district, and the local libraries, and published in the *Marysville Journal Tribune*. The public information meeting was held, as scheduled, on December 18, 2020.

4. The Applicant formally submitted its application for a Certificate of Environmental Compatibility and Public Need on February 1 and 2, 2020.
5. The County Commissioners, the District, the OFBF, and the Townships were granted intervention on June 15, 2021.
6. On April 2, 2021, the OPSB Staff filed a letter stating that it had received sufficient information to begin its review of the Application as supplemented.
7. On April 13, 2021, the Applicant filed notice that the Application fee had been submitted.
8. On April 5, 2021, the Applicant filed a certificate of service indicating that a copy of the Application was served on local public officials and libraries.
9. By entries issued on April 15, June 15, 2021, the ALJ established the procedural schedule and scheduled the local public and evidentiary hearings for June 29 and July 20, 2021, respectively.
10. On May 6 and June 28, 2021, the Applicant filed proof that the first, second, and third notices of the procedural schedule were served and published in the *Marysville Journal Tribune*.
11. The Staff Report was filed on June 14, 2021.
12. The public hearing was held on June 29, 2021.
13. On September 3, 2021, the Applicant, the OPSB Staff, the County Commissioners, the District, the OFBF, and the Townships filed the Stipulation.
14. The adjudicatory hearing was call and continued on July 20, 2021. By the ALJ's entry issued September 1, 2021, the evidentiary hearing was scheduled to recommence on September 8, 2021.
15. The basis of need, as specified under R.C. 4906.10(A)(1), is not applicable to this generating facility project.
16. Adequate data on the project has been provided to determine the nature of the probable environmental impact, as required by R.C. 4906.10(A)(2).

17. Adequate data on the project has been provided to determine that the facility described in the application represents the minimum adverse environmental impact, considering the available technology and nature and economies of the various alternatives, and other pertinent considerations, as required by R.C. 4906.10(A)(3).
18. Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability, and the requirements of R.C. 4906.10(A)(4) are met.
19. Adequate data on the project has been provided to determine that, to the extent that any of them are applicable, the solar-powered generation facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
20. Adequate data on the project has been provided to determine that the facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
21. Adequate data on the project has been provided to determine what the facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site of the proposed facility, as required by R.C. 4906.10(A)(7).
22. Adequate data on the project has been provided to determine that the facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economies of the various alternatives, as required by R.C. 4906.10(A)(8).
23. The record evidence in this matter provides sufficient factual data to enable the OPSB to make an informed decision.

**B. Recommended Conclusions of Law**

1. The Applicant is a "person" under R.C. 4906.01(A).
2. The proposed facility is a major utility facility as defined in R.C. 4906.01(B)(1).

3. The application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
4. The requirement for the need for the facility under R.C. 4906.10(A)(1) is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility under R.C. 4906.10(A)(2).
6. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
7. The record establishes that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
8. The record establishes, as required by R.C. 4906.10(A)(5), that, to the extent that any of them are applicable, construction of the proposed facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the R.C.
9. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
10. The facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
11. The record establishes that the facility would incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).
12. Based on the record, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the facility, which includes the conditions in the Staff Report, as presented and modified by this Stipulation

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

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER SITING BOARD      CADENCE SOLAR ENERGY, LLC**

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Cadence Solar Energy LLC  
Case No. 20-1677-EL-BGN  
Joint Stipulation and Recommendation

## **Attachment 1**

Example Image of Fencing



0146800.0740425 4810-5507-0711v1

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Summary: Stipulation - Joint Stipulation and Recommendation electronically filed by Christine M.T. Pirik on behalf of CADENCE SOLAR ENERGY LLC