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**

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on November 18, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Cadence Solar Energy LLC for the construction, operation, and maintenance of an up to 275 megawatt solar-powered electric generation facility in York, Liberty, and Taylor townships in Union County, Ohio, 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} Cadence Solar Energy LLC (Cadence or Applicant) is a person as defined in R.C. 4906.01. Cadence is an affiliate of Invenergy Solar Project Development LLC.

{¶ 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, an applicant must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-2 and 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 were required to implement procedures consistent with recommendations from the Ohio

Department of Health (ODH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens were urged to heed the advice of the ODH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and remained in effect until the COVID-19 emergency was lifted on June 18, 2021, pursuant to Executive Order 2021-08D.

{¶ 6} On November 12, 2020, Cadence filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of such waiver. Specifically, Cadence sought to allow for the required public informational meeting to be conducted virtually and telephonically instead of in person in the area in which the project will be located. The motion was granted pursuant to the administrative law judge (ALJ) Entry of November 20, 2020.

{¶ 7} On November 25, 2020, Cadence filed a pre-application notification letter with the Board regarding its proposed solar-powered electric generation facility in York, Liberty, and Taylor townships in Union County, Ohio with a capacity of up to 275 megawatts (MW) of electric generating capacity (Project).

{¶ 8} Due to the restrictions in place during the COVID-19 emergency, Cadence held a two-phase public informational meeting to discuss the proposed facility with the interested persons and landowners. Applicant held a web-based virtual public meeting on December 18, 2020. Immediately following the web-based meeting, Applicant hosted a phone-based public informational meeting. Cadence filed a letter of compliance regarding service of notice to each property owner and affected tenant within the Project area and proof of publication regarding the public informational meetings with the Board on November 25, 2020, and December 10, 2020, respectively.

{¶ 9} On February 1, 2021, February 2, 2021, as supplemented on February 12, 2021, and March 16, 2021, Cadence filed an application with the Board for a certificate of environmental compatibility and public need to construct and operate a solar-powered electric generation facility of up to 275 MW in Union County, Ohio.

{¶ 10} Additionally, on February 1, 2021, Cadence filed a motion with the Board seeking waivers from Ohio Adm.Code 4906-4-08(D)(2)-(3) regarding impacts on landmarks, recreation and scenic areas, and the visual impact of the facility. Specifically, Cadence requested a waiver to allow for a two-mile focused study area as opposed to the required ten-mile radius. The requested waivers were granted pursuant to the ALJ's Entry of February 18, 2021.

{¶ 11} Along with the motion for waivers, Applicant filed a motion for protective order on February 1, 2021. The information the Applicant sought to protect included the total estimated capital and intangible costs, operations and maintenance costs, and the present worth of the operations and maintenance cost of the Project. Applicant also sought protective treatment of a portion of Exhibit N of the application, which contains the certificate and policy numbers of the certificate of liability insurance.

{¶ 12} Pursuant to the ALJ Entry of February 18, 2021, the February 1, 2021 motion for protective treatment was granted.

{¶ 13} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair 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 April 2, 2021, the Board notified Cadence 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 April 2, 2021 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 Cadence to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 14} On April 5, 2021, Cadence filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07.

{¶ 15} On April 13, 2021, Applicant filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 16} By Entry issued April 15, 2021, the ALJ established the effective date of the application as April 15, 2021. The Entry also set forth a procedural schedule directing Staff to file a report of investigation by June 14, 2021, scheduling a virtual public hearing for June 29, 2021, and setting a virtual adjudicatory hearing to begin on July 20, 2021. The ALJ further directed Cadence to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-09 indicating that petitions to intervene would be accepted by the Board up to 30 days following service of the notice or by June 1, 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 adjudicatory hearings would both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

{¶ 17} On April 20, 2021, the Union Soil and Water Conservation District filed a notice of intervention and accompanying resolution.

{¶ 18} On April 26, 2021, the Union County Commissioners filed a notice of intervention and accompanying resolution.

{¶ 19} On May 17, 2021, the Board of Trustees of York Township filed a notice of intervention with a supporting resolution, stating that it has a real and substantial interest which cannot be represented by another party, that its contribution is essential to a just and expeditious resolution of the issues involved in the proceeding, and that its intervention would not delay or prejudice any existing party.

{¶ 20} On May 28, 2021, the Ohio Farm Bureau Federation (Farm Bureau) filed a motion to intervene and memorandum in support.

{¶ 21} On June 1, 2021, the Boards of Trustees of Liberty and Taylor townships each filed notices of intervention with supporting resolutions, stating that they have a real and

substantial interest which cannot be represented by another party, that their contributions are essential to a just and expeditious resolution of the issues involved in the proceeding, and that their respective interventions would not delay or prejudice any existing party.

{¶ 22} On June 14, 2021, Staff filed its Report of Investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 23} By Entry issued on June 15, 2021, the ALJ granted intervention to the Farm Bureau, the Union Soil and Water Conservation District, the Union County Commissioners, York Township, Liberty Township, and Taylor Township.

{¶ 24} Also in the Entry of June 15, 2021, the ALJ ordered that both the local public hearing and the adjudicatory hearing be held in person and that the Applicant provide notice of the same.

{¶ 25} On June 28, 2021, Cadence filed its proof of second and third publication and service of the procedural schedule and accepted, complete application.

{¶ 26} The local public hearing was conducted in person, as scheduled, on June 29, 2021.

{¶ 27} On July 16, 2021, Cadence, Staff, the Farm Bureau, York, Liberty, and Taylor townships, the Union Soil and Water Conservation District, and the Union County Commissioners filed a joint motion to call and continue the adjudicatory hearing scheduled for July 20, 2021.

{¶ 28} On July 16, 2021, the ALJ, by Entry, granted the parties' joint motion to call and continue the adjudicatory hearing scheduled for July 20, 2021.

{¶ 29} On July 20, 2021, the adjudicatory hearing was called and continued for the purpose of allowing the parties to continue negotiating toward a stipulation in the case.

{¶ 30} On September 3, 2021, the parties filed a joint stipulation and recommendation (Stipulation).

{¶ 31} Also on September 3, 2021, Cadence filed its testimony in support of the Stipulation.

{¶ 32} On September 3, 2021, Staff filed its testimony addressing its investigation and supporting the Stipulation.

{¶ 33} On September 8, 2021, the adjudicatory hearing resumed to allow presentation of the Stipulation and testimony in support to be offered and admitted into the record. The adjudicatory hearing was completed on September 8, 2021.

III. PROJECT DESCRIPTION

{¶ 34} Cadence seeks certification to construct up to a 275 MW solar-powered electric generating facility in York, Liberty, and Taylor townships in Union County. The Project will consist of large arrays of solar panels ground-mounted on a tracking rack system. The Project will occupy approximately 1,925 acres within an approximate 4,900-acre Project area comprised of private land secured by Cadence through agreements with landowners. The Project will include associated facilities such as access roads, an operations and maintenance building, underground and overhead electric collection lines, weather stations, inverters and transformers, a collection substation, and a 345 kilovolt (kV) gen-tie electric transmission line. Construction is anticipated to begin in the second quarter of 2022 and is expected to last 18-21 months with the facility being placed into service in the fourth quarter of 2023. (Staff Ex. 2 at 4-7.)

IV. CERTIFICATION CRITERIA

{¶ 35} 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 pipeline;

(2) The nature of the probable environmental impact;

(3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line or generating facility, 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 the facility will serve the interests of electric system economy and reliability;

(5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;

(6) The facility will serve the public interest, convenience, and necessity;

(7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of the proposed major utility facility; and,

(8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives.

V. SUMMARY OF THE EVIDENCE

{¶ 36} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate this application. Any evidence not specifically addressed herein has, nevertheless, been considered and weighed by the Board in reaching its final determination.

A. Local Public Hearing

{¶ 37} Twenty individuals testified at the local public hearing that was held in person on June 29, 2021. Four witnesses expressed their support for the proposed Project, two witnesses expressed neither support nor opposition, and 14 witnesses opposed the Project. One of the four witnesses in support of the Project was a participating landowner and has a lease agreement with Cadence. The landowner emphasized the importance of being able to decide how to utilize her family's land. (June 29, 2021 Tr. at 24-28.) Those in favor of the proposed Project recognized the importance of solar energy as an alternative, renewable energy source, and noted the environmental and economic benefits to the community and the farmers who receive lease payments (June 29, 2021 Tr. at 16-28). One witness praised the Applicant's parent company Invenergy and stated that the company was very responsive to concerns such as vegetative setbacks and the limiting of access points to control traffic to and from the site (June 29, 2021 Tr. at 27-28).

{¶ 38} Objecting witnesses raised concerns related to environmental impact, including the impact on and safety of wildlife and animals, including endangered species, and the ability to enjoy nature, scenic views, and the state parks (June 29, 2021 Tr. at 7, 9-10, 17-18, 20-21, 36, 37, 45 52, 78, 79, 81). Concerns were raised regarding the safety of the solar panels and potential resulting contaminants and waste, the manner in which they will be recycled, and potential health concerns, including the contamination of water resources due to the presence of karst (June 29, 2021 Tr. at 8, 10, 20, 29-31, 42-43, 49, 50, 52-54, 82,85). Testimony identified a concern regarding noise from the solar panels and regarding the loss of agricultural land (June 29, 2021 Tr. at 20, 24, 29, 30, 53, 58-59). Witnesses also testified

regarding the Project's adverse impact on property value, the ability to obtain financing, and the long-term tax implications for surrounding non-participating landowners (June 29, 2021 Tr. at 8, 10-12, 15, 22, 23, 29, 33-35, 41-42, 45, 51, 61-62, 80, 81, 86). Opposing witnesses also complained of Applicant's lack of communication with non-participating landowners regarding the Project and its effect on these individuals (June 29, 2021 Tr. at 12, 15, 28, 29, 40, 41, 48, 77, 83-84). Witnesses questioned the efficiency of producing solar energy, loss of land for food production, and the lack of any economic benefit to non-participating landowners (June 29, 2021 Tr. at 15, 31, 32, 44, 45, 76, 81, 84). Concerns were also raised regarding glare resulting from the solar panels and its potential to cause major road accidents in the project area due to the increase in truck traffic (June 29, 2021 Tr. at 37, 54,).

B. Staff Report

{¶ 39} 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

{¶ 40} 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. As the Project is a proposed electric generating facility, Staff recommends that the Board find that this consideration is inapplicable to this application (Staff Ex. 2 at 9).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

a. Socioeconomic Impacts

{¶ 42} Cadence is seeking to construct the Project on approximately 1,925 acres within 4,894 acres of leased private land in a rural area of Union County. Staff concludes in its report that the proposed Project would not conflict with any of the two planning documents for governments within the five-mile Project study area; these include the "Union County Economic Development Strategy" which calls for focus on five industries in agriculture, manufacturing, research and development, corporate services, and targeted retail. The plan includes, as of 2018, a "33 Smart Mobility Corridor Economic Development Strategy," aimed at promoting smart mobility such as driverless cars and trucks in Union County. Next, the sole document from the three involved townships is the "Taylor Township Comprehensive Plan" which contains two goals the Applicant identifies as being affected by the Project: economic development and attracting manufacturing operations that will employ township residents. Also affected according to the Applicant is a land-use goal of encouraging well-managed growth that preserves the rural character of the township. Staff also asserts that the proposed Project would be expected to aid regional development by increasing local tax revenues. The facility will provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning. (Staff Ex. 2 at 10.)

{¶ 43} The predominant land use within the Project area is agriculture. The Applicant states that all impacts from construction and operation of the facility will occur on agricultural land. Of the 4,894 acres of leased land for the Project, approximately 1,925 acres, or 40 percent, of agricultural land is expected to be converted to solar and ancillary uses. Significant impacts to commercial, industrial, recreational, and institutional land uses are not anticipated, and surrounding agricultural land use will continue with minimal disruption. (Staff Ex. 2 at 10.)

{¶ 44} The construction and operation of the proposed facility will not physically impact any recreational areas. The Applicant identified two recreational areas within five

miles of the Project area. According to the Applicant's visual impact study, for both of the recreational areas, visibility of the facility is not anticipated. The two recreational areas in the five-mile study area are Wood Longbrake Memorial Park and Keckley Park, which are located 1.1 and 3.4 miles, respectively, from the closest solar panels. Following its review of the Applicant's visual impact study, Staff opines that significant adverse aesthetic impacts to recreational areas adjacent to the Project area are not likely. (Staff Ex. 2 at 10-11.)

{¶ 45} Staff notes that the rural nature of the vicinity limits the number of potential viewers. Additionally, due to the smaller transportation corridors, which are more lightly traveled, the number of viewing impacts are reduced. Further, existing woodlots are able to offer additional natural screening. (Staff Ex. 2 at 11.)

{¶ 46} The solar panels will be installed approximately 15 feet above ground level. Based on the results of the Applicant's ten-mile visual resources report, the solar panels will not likely be visible at most locations beyond two miles of the perimeter of the Project. Existing landscape features limit likely concentration of viewshed impacts to within two miles of the perimeter of the Project. The Applicant estimates that less than 20 percent of the solar arrays would be visible from any viewing location within the Project area. (Staff Ex. 2 at 11.)

{¶ 47} Applicant's landscape mitigation plan proposes the installation of three levels of screening modules, which would provide for the installation of numerous plant species that would vary in height and variety. Applicant's overall aesthetic design centers on softening viewshed impacts and blending the facility into the existing vegetation and overall landscape features. Staff recommends Cadence's landscape and lighting plan incorporate design features to further reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project's infrastructure. Staff further recommends the Applicant include screening measures for the traveling public, recreationalists, and nearby communities in the landscape and lighting plan. Finally, Staff recommends the aesthetic impact mitigation include native vegetative

plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners and subject to Staff review. (Staff Ex. 2 at 11.)

{¶ 48} In addition to vegetative screening and mitigation measures, Staff expresses concern about aesthetic impacts related to the Project's perimeter fencing. Staff specifically notes that Cadence has proposed a chain-link fence design for the facility; however, chain-link fences have previously elicited many negative public comments and concerns from residents adjacent to proposed facilities. Further, Staff notes that the Board has received negative comments from concerned citizens regarding the Project's proposed fencing. In response to Staff's data requests, Cadence proposes using an agricultural fence design; this design, with Staff's recommendations incorporated, would reduce the expected aesthetic impact to a minimum. (Staff Ex. 2 at 11-12.)

{¶ 49} The Applicant enlisted a consultant to gather background information and conduct a cultural resources literature review to ascertain potential impacts to historical properties and archeological sites in a two-mile radius around the Project. The review initially was based on data provided by Ohio Historic Preservation Office's (OHPO) online geographic information system mapping, Ohio Historic Inventory, the Ohio Archeological Inventory, and the National Register of Historic Places. The Applicant also obtained information on historic cemeteries from the Ohio Genealogical Society. Applicant's historical survey initially identified 68 potential historic resources. OHPO worked with the Applicant to develop a survey plan for historical and archaeological resources. Preliminary results showed that one location needed additional study and potential avoidance. The archaeological survey report was expected to be completed by June 2021, and concurrence with OHPO was expected to be reached by July 2021. On January 25, 2021, OHPO executed a programmatic agreement with the Applicant which details the coordination that must occur if a previously unidentified site is discovered and how, once mitigation and/or avoidance is completed, concurrence with OHPO is reached. Based on the field surveys completed as of the Staff Report and future commitments by Cadence to minimize adverse

environmental impacts through the programmatic agreement, Staff believes that the overall expected impact to cultural resources will be minimal. (Staff Ex. 2 at 12.)

{¶ 50} The Applicant will be responsible for the construction, operation, and maintenance of the proposed Project. The Applicant states that it has obtained the necessary landowner agreements for the Project. All other components of the facility will be located entirely on privately-owned land, and voluntary lease agreements between the Applicant and private landowners will accommodate the facility. (Staff Ex. 2 at 12.)

{¶ 51} Cadence chose to file its estimated capital and intangible costs, estimated operations and maintenance expenses, and estimated delay costs under seal, and filed a motion for protective order to keep the information confidential as discussed above. Staff notes that similar requests have been common practice in many, but not all, solar facility applications before the Board. (Staff Ex. 2 at 12.)

{¶ 52} The Applicant contends that proposed Project costs, including operations and maintenance costs, are in line with the costs of other similar facilities recently completed by the Applicant. Staff verified that the estimated installed costs of the proposed facility are comparable to those of the Applicant's other projects. Staff verified the Applicant's assertions regarding the costs of the proposed facility. (Staff Ex. 2 at 12-13.)

{¶ 53} The Applicant provided its estimates of the cost of delays in permitting and construction of the proposed facility, although, Staff notes, the estimates were under seal. The Applicant stated that delays could prevent the Project from meeting federal Investment Tax Credit deadlines which could result in the loss of those benefits to the Applicant. Additionally, Applicant states that delays could result in penalties to the extent that they would prevent the Applicant from meeting delivery deadlines under a potential power purchase agreement. Staff found Applicant's characterization of its estimated cost of delays appears to be reasonable. (Staff Ex. 2 at 13.)

{¶ 54} The Applicant hired a consultant to evaluate the potential economic impacts of the facility on the local region. The consultant utilized the National Renewable Energy Laboratory's Jobs and Economic Development Impact model, the IMPLAN regional economic modeling system, and data from the Ohio Department of Taxation, to estimate the economic impact of construction and operation of the proposed facility. In the model used by the Applicant's consultant, "earnings" are comprised of direct wages, indirect wages, and induced earnings from spending by persons in the first two categories. "Output" in Applicant's model refers to the value of goods and services produced by direct, indirect, and induced labor. The quantified projected economic benefits of the Project during construction include 2,131 construction jobs, and a total of $147.3 million in wages and $298 million in economic output. During operation, the consultant estimates the Project will provide 30 long-term jobs, with total annual earnings and economic output benefits to be $1.6 million and $4.8 million, respectively. Staff verified that the methodology of the models relied upon for the study were appropriate. (Staff Ex. 2 at 13.)

{¶ 55} The Project is estimated to generate $1.93 million annually for Union County taxing districts. This estimate is based on a potential Payment in Lieu of Taxes (PILOT) plan in which the Applicant would pay $7,000 per MW annually for a 275 MW facility. (Staff Ex. 2 at 13.)

{¶ 56} Cadence used the ForgeSolar GlareGauge solar glare tool to conduct a glint and glare analysis to analyze and identify any potential impacts along roads and to nearby residences. Cadence utilized ForgeSolar GlareGauge to determine the effect of solar glare and found no glare from the Project is predicted to affect nearby residences or drivers using the roadways. Staff states in its report that it agrees with the study results and notes that aesthetic impact mitigation measures may further reduce impacts of glare as part of the landscape and lighting plan. (Staff Ex. 2 at 14.)

{¶ 57} The Applicant holds land rights to and estimates that the solar facility can operate for 25 years or more, and has created a decommissioning plan with a total

decommissioning cost estimate of $11,543,690. Staff states in its report that it reviewed the decommissioning plan. In the plan, Cadence states that at the end of the useful life of the facility it will be decommissioned, and the land will be returned to its current use as agricultural land. Prior to the start of decommissioning, Cadence would apply for and obtain applicable federal, state, and local permits. Staff states that Cadence has identified that, during decommissioning, it will need to obtain at the least an Ohio Environmental Protection Agency (Ohio EPA) Construction Storm Water General Permit and Clean Water Act Sections 401 and 404 permits. At the time of decommissioning, Cadence would repurpose, salvage, recycle, or haul offsite to a licensed solid waste disposal facility all solar components. Some of those solar components are anticipated to have a resale or salvage value and would be sold to offset the decommissioning cost. Cadence states that its decommissioning sequence consists of, but is not limited to, reinforcing access roads, installing temporary construction fencing and best management practices to protect sensitive environmental resources, de-energizing solar arrays, dismantling panels and racking, removing inverters, removing electrical cables to a depth of at least 48 inches, removing access and internal roads, grading the site, removing the substation, removing overhead transmission lines and poles, de-compacting subsoils, and revegetating disturbed land to pre-construction conditions, to the extent practicable. Further, Staff notes that Cadence may abandon in place any electrical lines that will not impact the restored use and are at least 48 inches below-grade unless required by easement or lease agreement. At the request of the landowner, Cadence may leave access roads in place, provided that it does not violate any permits or legal requirements. Cadence will also coordinate with appropriate agencies for repair of any public roads damaged or modified during decommissioning. Cadence anticipates decommissioning activities and restoration to occur over and be completed in a 12- to 18-month period. Finally, Staff recommends that the updated decommissioning plan include a requirement to monitor the site to ensure successful revegetation and rehabilitation. Additionally, Staff recommends a timeframe be included in the draft decommissioning plan where the majority of equipment is removed within a year. Cadence states that it will periodically review the decommissioning plan and

costs and provide an updated report to the Board every five years after the commercial operations date. Cadence states that it will employ a surety bond active during the life of the Project and renewed annually. To further address concerns that were partially addressed by the website FAQs, Staff recommends that, at least 30 days prior to the preconstruction conference, the Applicant include within its decommissioning plan: (a) that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the 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; and (d) a provision where the performance bond is posted prior to the commencement of construction. (Staff Ex. 2 at 14-15.)

{¶ 58} The Project area lies within the glaciated margin of the state and includes several Wisconsinan-age glacial features. The majority of the Project area is covered by ground moraine deposits. The southern Project area overlies an end moraine with higher and more hummocky terrain. Glacial drift within the Project area ranges from zero feet to approximately 75 feet in thickness. The predominant uppermost bedrock unit within the Project area is the Salina Undifferentiated. The Tymochtee Dolomite is the uppermost bedrock in small areas of both the northeastern and southeastern Project areas. Ohio Department of Natural Resources (ODNR) records indicate the nearest known karst features are approximately six miles from the Project area. No karst features were identified by the Applicant during its geotechnical field exploration. ODNR's review indicates that no oil and gas wells have been drilled within the Project footprint. Two plugged and abandoned wells occur within one mile of the Project area. No Class II injection well activity occurs within several miles of the Project area. No active mining occurs within the Project area. An active mine is operated to the immediate north of the Project area. No abandoned underground mines are located within several miles of the Project area. ODNR records indicate no documented earthquakes within several miles of the Project area. One known Pre-Cambrian fault feature crosses the center of the Project area. No blasting activities are

planned for the Project. Applicant's geotechnical report indicates a Seismic Site Class D is appropriate for the site of the Project. According to the United States Department of Agriculture's Natural Resource Conservation Service Web Soil Survey, the Project area consists primarily of soils derived from alluvium, till, lacustrine deposits, and outwash. The most common soil series found throughout the Project area include the Bount, Wetzel, and Glynwood. These soils make up in excess of 75 percent of the Project area. There is a low to moderate risk of shrink-swell potential in these soils. Generally, the Project area is flat with slope rarely exceeding six percent. Cadence hired a consultant to prepare two Preliminary Geotechnical Reports to discuss the geotechnical work performed to date. Applicant performed 14 total borings advanced to a range of 20 to 41 feet below ground level. No borings encountered bedrock. Applicant's consultant recommended the Applicant conduct full-scale pile load testing for further Project design considerations. Staff recommends that the final detailed engineering drawings of the final Project design account for geological features and include the identity of the registered professional engineers who reviewed and approved the designs. Staff recommends that the Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. Staff opines that there does not appear to be particular geological features within the Project area that are incompatible with the construction and operation of the proposed solar facility. (Staff Ex. 2 at 15-17.)

b. Ecological Impacts

{¶ 59} Staff states that there are four water wells within the Project area and three wells within proposed overhead transmission line corridors. The nearest private well is approximately 45 feet from the proposed solar components. The Applicant has indicated that it does not anticipate adverse impacts to the nearest water wells because the structural support pile driving would occur at depths of 15 feet or less, while the expected well depths are greater. The Applicant indicates that it would adhere to a setback to homes where the water wells are generally located. (Staff Ex 2 at 17.)

{¶ 60} Staff indicates that it conferred with the ODH concerning private water wells near the Project area. According to ODH, the nearest solar components should be farther than the minimum isolation distances outlined in Ohio Adm.Code 3701-28-07 between potential contamination sources and private water wells. Staff recommends that the Applicant indicate whether the nearest facility components to each water well within the Project area meet or exceed any applicable minimum isolation distances required by Ohio Adm.Code 3701-28-07. Staff specifically recommends, for the water well that is within 45 feet of solar equipment, the Applicant relocate the equipment to at least 50 feet from the well or seal and abandon the well if it is used as a potable water source. If the well is for nonpotable use, Staff recommends that the Applicant relocate the solar equipment at least ten feet from that well or seal and abandon it. (Staff Ex. 2 at 17-18.)

{¶ 61} Staff's report states that there are no public drinking water source protection areas within the Project area. According to Staff, the Applicant will implement a Stormwater Pollution Prevention Plan (SWPPP), a spill prevention control and countermeasure (SPCC) plan, and a horizontal directional drilling (HDD) inadvertent release of drilling fluid contingency plan during construction to minimize and prevent potential discharges to surface waters in the Project area and surrounding area. (Staff Ex. 2 at 18.)

{¶ 62} The Applicant delineated 37 stream segments within the Project area, including 5 perennial stream segments, 24 ephemeral stream segments, and 8 intermittent stream segments (Staff Ex. 1 at 18). Cadence indicates that no facility components will be placed in stream boundaries.

{¶ 63} The Applicant delineated 87 wetlands, including three Category 3 wetlands, with the remaining wetlands within the Project area being Category 1 and Category 2 (Staff Ex. 2 at 18). Impacts to wetlands would be temporary in nature and impacts to all wetlands will be avoided. No facility components will be placed in wetland boundaries, according to Staff.

{¶ 64} Cadence states that all underground collection line crossings of surface waters would be accomplished via HDD. Eight streams and four wetlands would be crossed by underground collection lines. HDD does present a risk of a frac-out, which occurs when the pressurized drilling lubricant, typically water or a non-toxic, fine clay bentonite slurry, is forced through cracks in bedrock or surface soils. Cadence has prepared a frac-out contingency plan, which includes the presence of an environmental specialist. According to Staff, the on-site environmental specialist should have authority to stop HDD activity to ensure any impacts related to a frac-out are addressed. (Staff Ex. 2 at 18-19.)

{¶ 65} The Applicant states that no surface water crossings for access roads would be needed. One stream and one wetland will be aerially spanned by the overhead transmission line; however, no structures will be placed within stream or wetland boundaries. (Staff Ex. 2 at 19.)

{¶ 66} Additional measures regarding the protection of surface water impacts from indirect stormwater impacts will be addressed through the Applicant's SWPPP, and the Applicant would obtain a National Pollutant Discharge Elimination System (NPDES) general permit through the Ohio EPA. Portions of the Project area would cross a 100-year floodplain. Staff recommends that the Applicant obtain any applicable floodplain development permit prior to construction. (Staff Ex. 2 at 19.)

{¶ 67} Staff recommends Cadence develop an ecologically sensitive resource impact avoidance/minimization plan. The plan should include mapping of ecologically sensitive resources, as well as facility components including access roads, collection lines, laydown areas, and limits of disturbance. Staff further recommends that those working on-site should be trained on the plan and provided with a copy of it. (Staff Ex. 2 at 19.)

{¶ 68} Staff notes that the Applicant requested information from ODNR and the United States Fish and Wildlife Service (USFWS) concerning listed threatened or endangered plant and animal species known to be located in the historical range of the Project area. Staff gathered additional information through field assessments and review of

published ecological information. Based on the Staff Report, the Applicant did not identify during field studies any plant or animal species from a compiled list of endangered or threatened species. Specific to the state and federal endangered Indiana bat, the state endangered and federal threatened northern long-eared bat, the state endangered little brown bat, and the state endangered tricolored bat, Staff indicates that the presence of both species has been documented within the Project area and that they are tree roosting species in the summer months. Therefore, Staff recommends that the Applicant adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination efforts with the ODNR and the USFWS reflect a different course of action. (Staff Ex. 2 at 20-21.)

{¶ 69} The Project is within the range of the state endangered loggerhead shrike, which nests in hedgerows, fencerows, and thickets and hunts in hayfields, pastures, and grasslands. Therefore, Staff recommends that construction in loggerhead shrike preferred nesting habitat types be avoided during the species' nesting period of April 1 through August 1, unless coordination with the ODNR allows for a different course of action. Further, Staff recommends that the mapping of any habitat areas should be provided to the construction contractor along with instructions to avoid these areas during the restricted dates. (Staff Ex. 2 at 22.)

{¶ 70} Staff states that records of a bald eagle nest exist in proximity to the northeast corner of the Project. The bald eagle is not a threatened or endangered species, but it is protected by the Bald and Golden Eagle Protection Act. Cadence has committed to adhere to USFWS's recommended guidelines to avoid negatively impacting this species, including not clearing trees within 660 feet of the nest, or within the woodlot supporting the nest tree, and working in proximity to the nest only between August 1 and January 14. Cadence states that the closest proposed limit of disturbance is approximately 3,250 feet away from the identified bald eagle nest. Staff states that impacts to the bald eagle are not anticipated. (Staff Ex. 2 at 22.)

{¶ 71} Permanent impacts to vegetation resulting from construction of the Project would occur primarily within agricultural lands, which constitute 4,615 acres of the Project area. Forestland impact is estimated to be approximately seven acres and limited to narrow tree-lines between fields in the northwest portion of the Project area. (Staff Ex. 2 at 22.)

{¶ 72} The Applicant has developed a vegetation management plan in which it would incorporate pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative. Staff states that this habitat will enhance visual appeal, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. Further, Staff states that the Project will be expected to represent a reduced environmental impact when compared to the current land use of agricultural plant production due to the reduction of frequent tilling, and reduced application of pesticides and fertilizers. The Applicant has committed to take steps to prevent propagation of noxious weeds during implementation of any pollinator-friendly plantings. (Staff Ex. 2 at 22-23.)

c. Public Services, Facilities, and Safety

{¶ 73} Staff states that the facility would be designed to withstand typical high-wind occurrences. Staff states that Cadence monitored historical wind speeds in the area and included them in Table 5 of the application. Staff determined that components of the proposed facility are generally not susceptible to damage from high winds except for tornado-force winds. (Staff Ex. 2 at 23.)

{¶ 74} Staff states that, while the Applicant has not yet finalized its delivery route, it expects deliveries to the Project site to be made by way of State Route 47, State Route 739, State Route 31, and State Route 347. Access points to the Project site would potentially be situated along State Route 47, State Route 739, State Route 31, State Route 347, Davis Road (County Road 301), Powder Lick Road (County Road 289), Barnett Road (Township Road 221), and Fawley Road (Township Road 291). According to the Applicant's Construction Route Study, the bridges along the anticipated routes are in good condition. Further, the

Applicant's consultant found that road surface quality ranges from predominantly good to fair except for State Route 739, where Cadence's consultant found poor conditions due to heavy industrial traffic. No overhead obstructions were identified along the proposed delivery routes. (Staff Ex. 2 at 23.)

{¶ 75} Staff states that conventional heavy equipment which does not require a special permit would make up the majority of construction traffic. The electrical transformer is anticipated to be overweight and thus require special permitting and route coordination for delivery. The Applicant does not anticipate significant changes to traffic patterns but does anticipate an increase in truck traffic during construction. Cadence does not anticipate post-construction and operation activity to cause any additional traffic beyond routine maintenance and does not anticipate road closures. The Applicant expects to enter a partial Road Use Maintenance Agreement or bond with Union County. Once the transportation permitting process has been completed, Staff recommends that the Applicant develop a final transportation management plan, which would include any county-required road use maintenance agreements. According to Staff, any damaged public roads and bridges will be repaired by the Applicant promptly to their previous or better condition under the guidance of the appropriate regulatory authority. Any temporary improvements will be removed unless the appropriate regulatory authority requires that they remain in place. (Staff Ex. 2 at 23-24.)

{¶ 76} Staff states that, while adverse noise impacts are expected, the construction noise during the 18- to 21-month construction phase would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. Operational noise impacts for a solar generation facility would be relatively minor and occur only during the day. The step-up transformer at the new substation and the inverters may operate at night, but the noise impact would also be relatively minor. (Staff Ex. 2 at 24.)

{¶ 77} The Applicant conducted an ambient noise level study to analyze existing noise levels near the proposed facility. No non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five A-weighted decibels (dBA). Therefore, the Project is expected to have minimal adverse noise impacts on the adjacent community. According to the Staff, if an inverter or transformer model different than the proposed inverter or transformer model is chosen, the Applicant should submit a noise report confirming that no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. (Staff Ex. 2 at 24.)

{¶ 78} Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the section of the Staff Report entitled "Recommended Conditions of Certificate" (Staff Ex. 2 at 24-25).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 79} 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 of the various alternatives, along with other pertinent considerations.

{¶ 80} The Applicant's site selection process focused on the availability of solar resources, ease of access to the bulk power transmission system, compatible land use, sufficiently low population density, few environmentally sensitive areas, landowner interest, and local government support. In preparing the application, Cadence engaged local officials and the public. Local governmental guidance and public input have been incorporated into the Project design where feasible. (Staff Ex. 2 at 26.)

{¶ 81} The OHPO and Applicant signed a programmatic agreement that, when implemented, would avoid or mitigate for any archaeological site found by the Applicant's archaeological survey (Staff Ex. 2 at 26).

{¶ 82} Staff states that the Project 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 local landowners, increased tax revenues, and PILOT revenue (Staff Ex. 2 at 26).

{¶ 83} Staff states that the geology of the Project site does not present conditions that would limit or negatively impact the construction or later operation of the proposed facility. Staff recommends that the final detailed engineering drawings of the final Project design account for geological features. (Staff Ex. 2 at 26.)

{¶ 84} Cadence does not anticipate any temporary or permanent impacts to surface waters. The Applicant did not identify any listed plant or animal species during field surveys that would be impacted. While the Project is within range of several endangered species, impacts would be avoided on suitable habitats. (Staff Ex. 2 at 26.)

{¶ 85} Cadence states that noise impacts would be temporary, intermittent, and limited to construction activities, and would occur away from most residential structures. Staff recommends that Cadence limit hours of construction to address potential concerns from any nearby residents. According to Staff, the Applicant has developed a complaint resolution plan which would be implemented throughout construction and operation. Staff recommended that Cadence submit an updated noise study if Cadence changes inverter or transformer models. (Staff Ex. 2 at 26.)

{¶ 86} Staff states that, during the construction period, roads would experience a temporary increase in truck traffic. Due to the location of the Project, Cadence anticipates that most components for the entire Project would be delivered by using flatbed or tractor-trailer vehicles and multi-axle dump trucks. A transportation management plan would be

finalized once the engineering layout is determined. A final delivery route plan would be developed through discussions with local officials. Cadence intends to enter into a partial road use agreement or bond with the Union County Engineer. (Staff Ex. 2 at 27.)

{¶ 87} Due to the low profile of the Project, combined with the existing vegetation in the area, the visual impacts would be most prominent to landowners in the immediate vicinity of the infrastructure itself. Cadence has developed a visual resource and mitigation plan, as well as a lighting plan, in order to lessen the impact to non-participating residences. Cadence has committed to using a fence that fits in aesthetically with the rural nature of the Project area. Staff will verify the fence aesthetics by recommending a fence condition. (Staff Ex. 2 at 27.)

{¶ 88} The Applicant has committed to taking steps to address potential impacts to farmland and to restore temporarily impacted land to its original use. In order to avoid impacts to drain tiles, the Applicant will locate tiles as accurately as possible prior to construction. The Applicant has committed to promptly repairing any drain tile damaged by the Project during its operational life. Further, following decommissioning of the facility, land can be restored for agricultural use. (Staff Ex. 2 at 27.)

{¶ 89} According to Staff, the Applicant has prepared a decommissioning plan for the facility. The Applicant will provide financial security to ensure that funds are available for decommissioning and land restoration. The Applicant would restore land significantly to its original topography to allow for resumption of agricultural use. (Staff Ex. 2 at 27.)

{¶ 90} Staff concludes that the proposed Project would result in both temporary and permanent impacts to the Project and surrounding areas. The Project is unlikely to pose a significant adverse impact to existing land use, cultural resources, recreational resources, or wildlife. With Staff's recommended conditions to further mitigate potential impacts, Staff concludes that the Project represents the minimum adverse environmental impact. (Staff Ex. 2 at 27.)

{¶ 91} Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and, therefore, complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the section of the Staff Report entitled "Recommended Conditions of Certificate" (Staff Ex. 2 at 27).

4. ELECTRIC POWER GRID

{¶ 92} 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 interests of electric system economy and reliability.

{¶ 93} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system. As an owner, operator, and/or user of the bulk power system, the Applicant is subject to compliance with various NERC reliability standards. NERC reliability standards are included as part of the system evaluations conducted by PJM Interconnection, LLC (PJM). PJM is the regional transmission organization charged with planning for upgrades and administrating the generation queue for the regional transmission system in Ohio. PJM reviews applications for expansions and upgrades of the PJM transmission system to ensure compliance with reliability criteria. (Staff Ex. 2 at 28.)

{¶ 94} PJM analyzed the bulk electric system, with the facility interconnected to the bulk power system, for compliance with NERC reliability standards and PJM reliability criteria. Among other things, PJM studied the delivery of the energy portion of the interconnection request. PJM identified one overloaded line for the PJM queue ID AD2-093 under the 2021 Summer Peak Analysis. Based on PJM's analysis, Staff recommends that the Board find that the facility complies with the requirements of R.C. 4906.10(A)(4), provided

any certificate issued for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 2 at 29-30.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 95} 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.

{¶ 96} Air quality permits are not required for construction or operation of the proposed facility. The facility will not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment; however, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed facility. The Applicant would control temporary and localized fugitive dust by using best management practices, such as using water to wet the soil to minimize dust during periods of high heat. (Staff Ex. 2 at 31.)

{¶ 97} With respect to water quality impacts, the Applicant anticipates obtaining environmental permits if and where necessary. The applicable permits could include: an Ohio NPDES construction storm water general permit; an individual permit or nationwide permit under Section 404 of the Clean Water Act; Ohio EPA Water Quality Certification under Section 401 of the Clean Water Act; and an Ohio Isolated Wetland Permit. (Staff Ex. 2 at 31.)

{¶ 98} The Applicant would develop an SPCC plan to manage the storage and mitigate the unlikely release of hazardous substances. Specifically, the Applicant indicates that it would follow all measures indicated in the SPCC plan and monitor for aquatic discharges draining from the site, in addition to developing the SWPPP. (Staff Ex. 2 at 31.)

{¶ 99} Staff opines that, with these measures, construction and operation of the facility would comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter (Staff Ex. 2 at 31).

{¶ 100} Regarding solid waste, debris generated from construction would include items such as plastic, wood, cardboard, metal packing materials, construction scrap, and general refuse. It is also anticipated that the operations and maintenance building will generate solid waste comparable in type and quantity to a small business office. The solid waste generated during the construction or operation of the facility would be disposed of at an authorized solid waste disposal facility. The operation and maintenance facilities would utilize local waste recycling and disposal services. Staff notes that the Applicant's solid waste disposal plans would comply with solid waste disposal requirements in R.C. Chapter 3734. (Staff Ex. 2 at 31-32.)

{¶ 101} The tallest above-ground structures would be the lightning protection structures at the collection substation, which would be approximately 100 feet tall. That height is under the height requirement from the Federal Aviation Administration (FAA), pursuant to 14 C.F.R. Part 77.9(a), for filing a Form 7460-1. (Staff Ex. 2 at 32.)

{¶ 102} The nearest public use airports are the Elliots Landing, Union County, and Packer airports, which are located between 6 and 13 miles from the proposed Project area. There is a single privately-owned, private-use airfield and heliport located within five miles of the Project area. Specifically, the Oakhaus Landing airport is approximately 4.2 miles west of the Project collection substation. The Honda Heliport is located approximately 5.5 miles southwest of the Project collection substation. An aircraft would need permission prior to landing at these private-use aviation facilities. (Staff Ex. 2 at 32.)

{¶ 103} Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation during review of the application to coordinate review of potential impacts of the facility on local airports, but no such concerns were identified as of the filing of the Staff Report (Staff Ex. 2 at 32).

{¶ 104} 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 includes the conditions specified in the Staff Report (Staff Ex. 2 at 32).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 106} The Applicant stated that it will use reliable and certified equipment compliant with the applicable standards of the Underwriters Laboratories, Institute of Electrical and Electronics Engineers, National Electrical Code, National Electrical Safety Code, and the American National Standards Institute (Staff Ex. 2 at 33).

{¶ 107} The Applicant intends to use warning signs, fencing, and gates to restrict public access to the facility by enclosing the Project area with a six-foot tall woven wire fence topped with a one-foot tall, barbed wire strand. The Applicant intends to design its facility with setbacks to non-participating sensitive receptors, non-participating properties, and public roads. Specifically, the Applicant would implement setbacks of 150 feet from the fence-line to the public road, 200 feet from the fence-line to a property line of any non-participating parcel, and 300 feet from the fence-line to a non-participating home. Prior to construction, the Applicant intends to develop and implement an emergency response plan and to further consult with potentially affected emergency response personnel. (Staff Ex. 2 at 33.)

{¶ 108} The Applicant hosted a virtual public informational meeting for the Project. Attendees were provided the opportunity to listen to a presentation about the Project, ask questions, and provide comments. According to the Applicant, the primary concern expressed by attendees was that the facility would have negative impacts on area property values; however, the property value impact study concluded the proposed solar facility would have no negative impact on the value of adjoining or abutting property. (Staff Ex. 2 at 33-34.)

{¶ 109} The Applicant has drafted a complaint resolution plan to handle complaints during the construction and operation of the facility. Staff recommends that a final version of the plan be filed in the docket no later than 30 days prior to the start of construction. The Applicant committed to notifying affected property owners and tenants at least seven days prior to the start of construction and again at least seven days prior to the start of facility operation. Staff also recommends the Applicant submit to Staff a quarterly complaint summary report during construction and each of the first five years of operation of the facility. (Staff Ex. 2 at 34.)

{¶ 110} Staff notes that, as of June 3, 2021, there were 43 public comments filed in the case docket; roughly two thirds of the comments oppose the Project, with the remaining one third supporting it. Commenters in opposition to the proposed Project expressed concerns related to drinking water, ecology and wildlife, setbacks, agricultural industry supply chain effects, property values, taxes, decommissioning, food supply impacts, aesthetics, groundwater impacts from chemicals, and surface water runoff. Commenters supportive of the proposed Project, including participating landowners, expressed the importance of landowner property rights and benefits to the land and environment. Many of the subject areas addressed by commenters are addressed through Staff's investigation. Staff also addressed some of these comments in the Staff Report. (Staff Ex. 2 at 34-35.)

{¶ 111} 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 specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 2 at 35-36).

7. AGRICULTURAL DISTRICTS

{¶ 112} 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. Agricultural district land is exempt from sewer, water, or electrical service tax assessments. (Staff Ex. 2 at 37.)

{¶ 113} Agricultural land can be classified as an agricultural district through an application and approval process that is administered through the local county auditor's office. Eligible land must be devoted exclusively to agricultural production or be qualified for compensation under a land conservation program for the preceding three years. Furthermore, eligible land must be at least ten acres or produce a minimum average gross annual income of $2,500. (Staff Ex. 2 at 37.)

{¶ 114} Approximately 935 acres of land to be impacted by Project construction are enrolled in the Agricultural District program. Of the 935 acres, 738 acres are planned to remain repurposed during the operation of the facility. Cadence states that the repurposed land could be restored for agricultural use when the Project is decommissioned. (Staff Ex. 2 at 37.)

{¶ 115} The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drain tiles. According to Staff, locating and avoiding drain tile mains can help prevent the pooling of water on Project parcels and adjacent parcels. The Applicant hired a consultant to develop a Drainage Tile Assessment and Construction Impact Report. Mapping data from landowners and public sources were consolidated to create a map of known drain tiles within the Project area. The report discusses repair and mitigation details of all known drain tile locations. The Applicant has committed to promptly repair any drain tile found to be damaged by the Project during its operational life through a partnership with a local drain tile company. (Staff Ex. 2 at 37.)

{¶ 116} No agricultural structures are expected to be impacted by the proposed Project. The Applicant has committed to take steps to address potential impacts to farmland, including repairing drain tiles, restoring temporarily impacted land to its original use, and restoring original topsoil separated during construction. (Staff Ex. 2 at 37.)

{¶ 117} 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, complies with the requirements of R.C. 4906.10(A)(7), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 2 at 37).

8. WATER CONSERVATION PRACTICE

{¶ 118} 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.

{¶ 119} Construction of the proposed facility would not require the use of significant amounts of water. Water may be utilized for dust suppression and control on construction access roads or unpaved transportation routes as needed during periods of high heat. Similarly, operation of the proposed facility will not require the use of significant amounts of water. Additionally, the Applicant states that it does not anticipate the need to clean the solar panels with water because of sufficient rainfall in the area. (Staff Ex. 2 at 38.)

{¶ 120} Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the certification of the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 2 at 38.)

9. RECOMMENDATIONS

{¶ 121} In addition to making various findings throughout its report, Staff recommended that 26 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 2 at 39-44).

VI. STIPULATION AND CONDITIONS

{¶ 122} At the September 8, 2021 adjudicatory hearing, counsel for Cadence presented the Stipulation entered into by the Applicant, the Farm Bureau, York Township, Liberty Township, Taylor Township, the Union Soil and Water Conservation District, the Union County Commissioners, and Staff (Joint Ex. 1; September 8, 2021 Tr. at 4, 7-12). Pursuant to the Stipulation, the signatory parties agree that the Board issue the Certificate of Environmental Compatibility and Public Need, as requested by Cadence, subject to the 32 listed conditions.

{¶ 123} 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 agree as follows:

(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 (Joint Ex. 1 at 2).

(2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The Applicant will notify Union County and the Union Soil and Water Conservation District of the meeting and the County and 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 Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. The Applicant may

conduct separate preconstruction meetings for each stage of construction. (Joint Ex. 1 at 2-3.)

(3) Within 60 days after the commencement of commercial operation, the Applicant shall submit to 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 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. (Joint Ex. 1 at 3.)

(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 Staff for review and acceptance, and filed with the Board. At least 45 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the 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 engineers(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. (Joint Ex. 1 at 3.)

(5) At least 30 days prior to the preconstruction conference, the Applicant shall submit the final geotechnical engineering report to 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. (Joint Ex. 1 at 3.)

(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 Board grants a waiver or extension of time (Joint Ex. 1 at 3).

(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 (Joint Ex. 1 at 3).

(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 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. (Joint Ex. 1 at 4.)

(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 (Joint Ex. 1 at 4).

(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 requested updates regarding the Project. These notices shall provide information about the Project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that the Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. During the construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the 15th 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. (Joint Ex. 1 at 4.)

(11) At least 30 days prior to the preconstruction conference, the Applicant shall submit its emergency response plan to Staff for review and acceptance and shall file it on the public docket. That plan shall include 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. (Joint Ex. 1 at 4.)

(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, 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. (Joint Ex. 1 at 4-5.)

(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 Staff for review and confirmation that it complies with this condition and shall also file it on the public docket. (Joint Ex. 1 at 5.)

(14) Prior to commencement of construction, the Applicant shall submit to 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 the Stipulation. Following 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. (Joint Ex. 1 at 5.)

(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. (Joint Ex. 1 at 6.)

(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. (Joint Ex. 1 at 6.)

(17) Prior to the commencement of construction, the Applicant shall adhere to the programmatic agreement that was signed by the Applicant and the OHPO on January 25, 2021, and shall finalize and send to OHPO and 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. (Joint Ex. 1 at 6.)

(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. (Joint Ex. 1 at 6-7.)

(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. (Joint Ex. 1 at 7.)

(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 ten 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 Polyethylete Pipe for Agricultural Drainage of Water Table Control, ASTM F499- 02 (2008), to the extent practicable. (Joint Ex. 1 at 7.)

(21) The Applicant shall provide the Union Soil and Water Conservation 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. (Joint Ex. 1 at 7-8.)

(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 bats, and the tricolored bat unless coordination with the ODNR and/or the 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. (Joint Ex. 1 at 8.)

(23) The Applicant shall have a 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 Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present. (Joint Ex. 1 at 8.)

(24) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the appropriate agencies. (Joint Ex. 1 at 8.)

(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 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. (Joint Ex. 1 at 8.)

(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 (Joint Ex. 1 at 8).

(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 the 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.

(Joint Ex. 1 at 8-9.)

(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, ODOT, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition 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. (Joint Ex. 1 at 9.)

(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 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 3701-28-07. 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 ten feet from that well; or seal and abandon the water well. (Joint Ex. 1 at 9-10.)

(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 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. (Joint Ex. 1 at 10.)

(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 (Joint Ex. 1 at 10).

(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 (Joint Ex. 1 at 10).

VII. CONSIDERATION OF THE STIPULATION

{¶ 124} Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings 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. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. *See, e.g.*, *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating*

LLC, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). 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:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable, parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 125} Cadence witness Ryan Van Portfliet testified that the Stipulation meets the criteria for Board approval. The witness testified that the Stipulation is a settlement that resulted from serious negotiations among capable, knowledgeable parties and that it will benefit the public interest by providing economic benefits to the surrounding local community, including the employment of 600 to 800 workers at peak construction and three to four full-time employees during operations. Witness Van Portfliet opined that the Stipulation does not violate any important regulatory principle or practice. (Applicant Ex. 14 at 9-10.)

{¶ 126} Upon review, the Board finds that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board recognizes that the proposed electric generation facility will produce solar-powered electricity that will maximize energy production from solar resources in the Project area to deliver clean, renewable electricity to the Ohio bulk power transmission system to serve the needs of electric utilities and their customers. Additionally, the Project will have a positive effect on the Ohio economy through the creation of jobs and a significant positive impact on

the local tax base, including local school districts and other taxing districts that serve the Project area. The Board also finds that the Stipulation does not violate any important regulatory principle or practice. (Applicant Ex. 14 at 6-7, 9-10.)

{¶ 127} In conclusion, and based upon the record in this proceeding, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the facility as described in the application filed in this case, subject to the conditions set forth in the Stipulation and this Opinion, Order, and Certificate. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Cadence in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 128} Cadence is a person under R.C. 4906.01(A).

{¶ 129} The proposed electric generation facility is a major utility facility, as defined in R.C. 4906.01(B).

{¶ 130} On November 12, 2020, the Applicant filed a motion for waiver of the requirement to conduct an in-person public informational meeting. The motion was granted on November 20, 2020.

{¶ 131} On November 25, 2020, Cadence filed a pre-application notification letter regarding its proposed Project.

{¶ 132} On November 25, 2020, in accordance with Ohio Adm.Code 4906-3-03, Cadence filed proof that legal notice was published in *The Marysville Journal Tribune,* a newspaper of general circulation in Union County, regarding the public informational meeting on its application.

{¶ 133} The Applicant held web-based and phone-based public information meetings to discuss the Project with interested persons and landowners on December 18, 2020.

{¶ 134} On February 1, 2021, and supplemented on February 2, 2021, February 12, 2021, and March 16, 2021, Cadence filed an application to construct and operate a new solar-powered electric generation facility in Union County.

{¶ 135} By letter filed April 2, 2021, the Board notified Cadence that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code 4906-1, et seq.

{¶ 136} On April 5, 2021, the Applicant filed a proof of service, indicating that a copy of its accepted, complete application was served upon the appropriate government officials and local libraries in accordance with Ohio Adm.Code 4906-3-07.

{¶ 137} On April 13, 2021, Applicant filed correspondence indicating that the application fee was paid.

{¶ 138} On April 15, 2021, and June 15, 2021, the ALJ issued procedural Entries that scheduled a local public hearing for June 29, 2021, and an adjudicatory hearing for July 20, 2021, and found the effective date of the filing of the application to be April 15, 2021.

{¶ 139} On April 20, 2021, the Union Soil and Water Conservation District filed a notice of intervention.

{¶ 140} On April 26, 2021, the Union County Commissioners filed a notice of intervention.

{¶ 141} On May 28, 2021, the Farm Bureau filed a motion to intervene.

{¶ 142} On May 17, 2021, the Board of Trustees of York Township filed a notice of intervention.

{¶ 143} On June 1, 2021, the Boards of Trustees of Liberty and Taylor townships filed notices of intervention.

{¶ 144} On June 14, 2021, Staff filed a Report of Investigation of the Project proposed in the application.

{¶ 145} On June 15, 2021, the ALJ issued an Entry granting the motion and notices of intervention filed by the Farm Bureau, York, Liberty, and Taylor townships, the Union County Commissioners, and the Union Soil and Water Conservation District. By this same Entry, the ALJ also ordered that the scheduled local public hearing and adjudicatory hearing be held in person.

{¶ 146} In compliance with Ohio Adm.Code 4906-3-09, on May 6, 2021, and June 28, 2021, Cadence filed proof of publication showing that notice was published in *The Marysville Journal Tribune*, a newspaper of general circulation in Union County.

{¶ 147} A local public hearing was held in person on June 29, 2021, at which 20 witnesses testified.

{¶ 148} On September 3, 2021, Cadence and Staff filed the direct testimony of their respective witnesses.

{¶ 149} On September 3, 2021, Cadence, the Farm Bureau, York, Liberty, and Taylor townships, the Union County Commissioners, the Union Soil and Water Conservation District, and Staff filed a Stipulation resolving all of the issues in this proceeding.

{¶ 150} An adjudicatory hearing was called and continued on July 20, 2021.

{¶ 151} On September 8, 2021, an adjudicatory hearing was held at which the testimony of the witnesses for Cadence and Staff was offered in support of the Stipulation.

{¶ 152} Adequate data on the proposed generation facility has been provided to make the applicable determination required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 153} 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.

{¶ 154} 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).

{¶ 155} 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).

{¶ 156} 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).

{¶ 157} 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).

{¶ 158} 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).

{¶ 159} 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).

{¶ 160} The record establishes that the facility will not require significant amounts of water and incorporates maximum feasible water conservation practices. Accordingly, the facility meets the requirements of R.C. 4906.10(A)(8).

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

{¶ 162} Based on the record, the Board finds that the application should be approved, and a certificate should be issued, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

IX. ORDER

{¶ 163} It is, therefore,

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

{¶ 165} ORDERED, That a certificate be issued to Cadence for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. It is, further,

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

BOARD MEMBERS:
Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Bruce T. Vanderhoff, M.D., 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

JMD/SJP/mef

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Cadence Solar Energy LLC for the construction, operation, and maintenance of an up to 275 megawatt solar-powered electric generation facility in York, Liberty, and Taylor townships in Union County, Ohio, 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