

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
MARION COUNTY SOLAR PROJECT, LLC,
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION OF A SOLAR-
POWERED ELECTRIC GENERATION
FACILITY IN MARION COUNTY, OHIO.

CASE NO. 21-36-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 Marion County Solar Project, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the stipulation and consistent with this Opinion, Order, and Certificate.

II. PROCEDURAL BACKGROUND

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

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

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

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the

dangerous effects of COVID-19. As described in the Executive Order, state agencies were required to implement procedures consistent with recommendations from the Ohio Department of Health to prevent or alleviate the public health threat associated with COVID-19.

{¶ 6} On February 4, 2021, Marion Solar filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 100-megawatt (MW) solar-powered electric generation facility in Marion County, Ohio (Facility). In the letter, Applicant explained that construction on the Facility is anticipated to begin as early as the fourth quarter of 2022, resulting in commercial operations in the fourth quarter of 2023. Applicant further stated in the letter that it had scheduled a public information meeting for February 17, 2021.

{¶ 7} On January 13, 2021, Marion Solar filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) to allow for its public information meeting to be held virtually, rather than in-person. On January 19, 2021, the administrative law judge (ALJ) granted Marion Solar's motion to conduct the virtual public information meeting.

{¶ 8} On February 17, 2021, Applicant held a virtual public meeting to discuss the Facility with interested persons and landowners. Applicant filed with the Board proof of publication regarding the public information meeting on February 5, 2021.

{¶ 9} On March 5, 2021, Applicant filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Facility. In conjunction with its Application, Applicant filed a motion for protective order to keep portions of its Application confidential. That motion was granted by an ALJ Entry issued on March 22, 2021.

{¶ 10} 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 May 4, 2021, the Board notified Marion Solar that its application, as supplemented, is 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 letter instructed Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 11} On May 6, 2021, Marion Solar filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. On May 14, 2021, Applicant filed proof that it submitted its application fee.

{¶ 12} On July 27, 2021, the ALJ issued an Entry that established the procedural schedule for this case. Specifically, the Entry stated that the effective date of the Application would be July 27, 2021; that an in-person local public hearing would be held on September 28, 2021; and that an in-person adjudicatory hearing would take place on October 28, 2021. The ALJ directed Marion Solar to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-09; and further, indicated that petitions to intervene would be accepted by the Board up to 30 days following the service of the notice or by August 31, 2021, whichever is later. The Entry also provided deadlines for all parties to file testimony, as well as for the filing of any stipulation. On October 7, 2021, the ALJ issued an Entry directing that the October 28, 2021 adjudicatory hearing should be held as scheduled but also directing that its format should be converted from in-person hearing into a remote-access event.

{¶ 13} On August 24, 2021, Marion Solar filed proof of publication of a description of the accepted, complete Application, on August 10, 2021, in the *Marion Star* in accordance with R.C. 4906.06(C). The published notice also contained information regarding the scheduled hearing dates.

{¶ 14} On August 23, 2021, the Ohio Farm Bureau Federation (OFBF) timely filed a motion to intervene in this proceeding. No memoranda contra were filed. The motion was granted on September 10, 2021.

{¶ 15} On September 13, 2021, Staff filed its report of investigation (Staff Report).

{¶ 16} On September 23, 2021, Marion Solar filed proof of publication of the second public notice, in the *Marion Star* on September 15, 2021, in compliance with Ohio Adm.Code 4906-3-09(A)(2). As did the initial notice, the second public notice included information regarding the date, time, and process to participate in the public hearing, as well as the date and time of the adjudicatory hearing.

{¶ 17} On September 28, 2021, the local public hearing was held, as scheduled, at Evers Arena, 220 E. Fairground St, Marion, Ohio 43302. Thirteen people provided testimony during the local public hearing.

{¶ 18} On October 13, 2021, Marion Solar, OBFB, and Staff filed a joint stipulation and recommendation (Stipulation) through which the parties intend to resolve all matters pertinent to the certification and construction of the proposed Facility. In support of the Stipulation, Marion Solar filed the direct testimony of Sean Flannery on October 13, 2021. Additionally, Staff filed the testimony of Jon C. Pawley on October 20, 2021.

{¶ 19} On October 28, 2021, the adjudicatory hearing was held as scheduled. On behalf of Marion Solar, Mr. Flannery presented his direct testimony (Applicant Ex. 14) in support of the Application, the Stipulation (Joint Ex. 1), and several exhibits identified in the Stipulation (Applicant Exs. 1-15). Upon agreement of the parties, the Staff Report (Staff Ex. 1) and the direct testimony of Mr. Pawley (Staff Ex. 2) were also admitted on the record.

III. PROJECT DESCRIPTION

{¶ 20} As already noted, Marion Solar seeks certification to build an up to 100 MW solar powered electric generating facility in Marion, Township, Marion County, Ohio. The

Facility would consist of large arrays of photovoltaic panels, commonly referred to as solar panels, as well as a battery energy storage system (BESS) capable of discharging 203,000 kW-h of electrical energy at a 20.3 MW capacity into the grid. The Facility would include associated support facilities including access roads, electric collection lines, inverters, weather stations, a facility substation, a generation interconnect (gen-tie) line, an operations and maintenance facility, and a temporary construction laydown yard. The project will be secured by perimeter fencing and accessed through gated entrances. The Applicant has or would design the Facility to account for setbacks of at least 300 feet from generating equipment to non-participating residences and at least 50 feet from generating equipment to non-participating parcels and public roads. The Applicant intends to utilize approximately 724 acres for construction and operation.. Marion Solar is proposing to begin construction as early as the fourth quarter of 2022, resulting in commercial operations in the fourth quarter of 2023.

IV. CERTIFICATION CRITERIA

{¶ 21} 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 a proposed or a modified by the Board, unless it finds and determines all of the following:

- 1) The basis of need for the facility if the facility is an electric transmission line or a gas or a natural gas transmission line.
- 2) The nature of the probable environmental impact.
- 3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- 4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of

the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.

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

V. SUMMARY OF THE EVIDENCE

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

A. *Local Public Hearing*

{¶ 23} On September 28, 2021, the local public hearing was held on the Marion County fairgrounds, where thirteen members of the public testified. Twelve individuals, Ray Davis, Connie Thomas, Lynn Thomas, Jeremy Welch, Matt Russell, Dominic

Straquadine, Jeremy Hinkle, Carl Neutzling, Mike Huffman, Gus Comstock, David Carnes, and Scott Stover, testified in a personal or representative capacity indicating that they support the proposed facility, noting, among other things, the environmental benefits, employment opportunities the Facility would provide, and the impact it would have on the local economy including through tax payments that would support the local school district and the local government. (Pub. Tr. at 8-26, 28-31.)

{¶ 24} One individual, Jim Bauer, testified without directly expressing either his support or his opposition to the proposed Facility, though principally expressing wonder and concern over “why we’re covering some of the best farmland in the United States with solar panels” (Pub. Tr. at 27).

{¶ 25} In addition to the testimony provided at the local public hearing, the Board received written comments regarding the proposed Facility, including written comments provided by one of the same individuals who also testified at the public hearing. Except as noted here, the submitted comments uniformly reflect support for the proposed Facility. However, the particular written comments submitted by both Betty Jo Lill and by Lill Farms, Inc. (the Lill comments) are the exceptions. Both are principally addressed to the importance of farmland preservation. These comments advise the Board to exercise caution, and to carefully consider the full implication, as espoused in the Lill comments, of the development of large scale utility wind and solar projects on Marion County farmland.

B. Staff Report

{¶ 26} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the Application, which included recommendations regarding R.C. 4906.10(A). The following is a summary of Staff’s findings.

1. BASIS OF NEED

{¶ 27} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Facility is

a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable (Staff Ex. 1 at 2).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

a. Socioeconomic Impacts

{¶ 29} Staff notes that the predominant land use within the project is agriculture. Moreover, according to the Applicant, all impacts from construction and operation of the facility would occur on agricultural land. Approximately 710 acres of agricultural land would be converted to solar and ancillary uses. The Applicant does not intend to remove or relocate any structures. Significant impacts to residential, commercial, industrial, recreational, and institutional land uses are not anticipated, and surrounding agricultural land use would continue with minimal disruption. (Staff Ex. 1 at 9.)

{¶ 30} Staff asserts that the proposed solar facility is not expected to conflict with local land use plans. It would be expected to aid regional development by increasing local tax revenues. The proposed solar facility is consistent with agricultural industry support, in that the Facility would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning. (Staff Ex. 1 at 9.)

{¶ 31} Construction and operation of the Facility would not physically impact any recreational areas. Only one recreational area, Quarry Park, is located within two miles of the project area. This park would only experience limited visibility to the facility. (Staff Ex. 1 at 10.)

{¶ 32} As to aesthetics, Staff Reports that traffic volume on roads surrounding the project area is typically light, and the project is primarily surrounded by agricultural land,

thus reducing the potential number of viewers. Additionally, the highest elevation of the solar panels would be 15 feet above ground level. According to the Applicant's visual resources report, the panels are not likely to be visible from locations beyond 0.4 miles away and difficult to identify in views greater than one mile away. Included with its visual impact analysis, the Applicant included a mitigation plan that proposes to install various planting modules along the Facility's fence line, in the form of vegetative screening or good neighbor agreements at selected sensitive areas around the project site. The mitigation plan also calls for planting numerous, varying plant species to mitigate the viewshed impacts of sensitive receptors. Staff recommends that Marion Solar incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence in direct line of sight to the Facility's infrastructure. Staff also recommends that aesthetic impact mitigation measures include native vegetative plants, alternative fencing, good neighbor agreements, and other methods in consultation with affected landowners and subject to Staff review. (Staff Ex. 1 at 10, 11.)

{¶ 33} In response to Staff's data request docketed August 23, 2021, the Applicant stated that it is considering the use of a fence type that is both small-wildlife permeable and aesthetically fitting for the project area. However, the Applicant also stated in the same response that the selection of fencing materials and design types would depend on market factors, future decisions by investors, the project owner, and the project operator. Staff believes this degree of ambiguity does not adequately address aesthetic and wildlife concerns. Therefore, Staff is recommending a fencing condition on the certificate to alleviate aesthetic and wildlife concerns. Staff asserts that, with implementation of its landscape, lighting, and fencing conditions, the overall expected aesthetic impact of the Facility would be minimal. (Staff Ex. 1 at 11.)

{¶ 34} Marion Solar enlisted a consultant to gather background information and complete cultural resources studies for this project. A Phase I cultural archeological reconnaissance survey was completed and submitted to the Ohio Historical Preservation Office (OHPO) for review in June 2021. In the archeological survey report, it was

determined that a total of 80 archeological sites were newly identified within the project area as prehistoric isolated finds and were recommended as ineligible for listing in the National Register of Historic Places (NRHP). The OHPO issued the Applicant a concurrence letter dated July 16, 2021 regarding the potential for impacts to the archeological sites from this project and agrees that the 80 sites are ineligible for listing in the NRHP and that no additional archeological investigation is needed. On July 16, 2021, the Applicant filed a supplement for the record in this case, which included additional information regarding the Phase I architectural reconnaissance survey. Staff determines that, based on research and field work performed by the Applicant and confirmed by the Ohio Historical Preservation Offices, minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 11, 12.)

{¶ 35} Staff asserts, that economically, Marion Solar would be responsible for the ownership, construction, operation, and maintenance of the proposed project. The Applicant has obtained the necessary landowner agreements for the project. All other components of the Facility would be located entirely on privately-owned land, and voluntary lease agreements between the Applicant and private landowners will accommodate the Facility. Staff confirms that the estimated capital costs for Marion Solar are not substantially different from the average capital costs for utility scale solar farm projects. Staff also states that Marion Solar's estimated operation and maintenance costs are below the average of those incurred by the average utility scale solar operation facility (Staff Ex. 1 at 12.)

{¶ 36} Marion Solar estimates that the proposed Facility would create 332 construction related jobs and 10 long-term operational jobs for the state of Ohio. During the construction period, wages would produce \$45 million in local output for the state of Ohio; operations would add a local annual impact of \$1.6 million for the state of Ohio. Based upon a Payment in Lieu of Taxes (PILOT) plan, the Applicant estimates that the Facility will produce PILOT revenues of approximately \$700,000 annually for the Marion County taxing districts. (Staff Ex. 1 at 13).

{¶ 37} Glare is the phenomenon where sunlight reflects from a surface to create a duration of bright light. Glare also encompasses glint, which is a momentary flash of bright light. The potential impacts a solar panel glare include a possible brief reduction in visibility, afterimage, a safety risk to pilots, or a perceived nuisance to neighbors. Solar panels are designed to absorb as much as sunlight as possible with minimal reflectivity and include an anti-reflection coating. The Applicant conducted a glint and glare analysis to identify any potential impacts in the project area. The Applicant found that no glare from the project is predicted to impact vehicles using the roadways, the local railroad, or nearby neighbors. Also the Applicant does not anticipate impacts from glare at area airports or heliports. Staff agrees with the study results. Staff notes that aesthetic impact mitigation measures that include vegetative plantings, as part of a landscape and lighting plan, may also further reduce potential impacts. (Staff Ex. 1 at 13.)

{¶ 38} As explained by Staff, Marion Solar estimates that the Facility can operate for 30 years or more. Applicant has prepared a decommissioning plan according to which it will decommission the Facility at the end of its useful life and return the land to its current use as agricultural land or other economical land use desired by the landowner. Marion Solar states that, prior to the start of decommissioning the Facility, it will obtain all applicable federal, state, and local permits. Applicant will remove all solar components constructed above ground with few exceptions and remove any below ground structures up to a minimum removal depth of three feet below grade. All the solar components would be properly disposed of or recycled. In order to decommission the Facility, the Applicant would generally implement the following decommissioning sequence. The Applicant would prepare the site for component removal, including strengthening access roads, where needed. The Applicant would install temporary fencing and implement best management practices (BMPs) to protect sensitive ecological or cultural resources. Next, the solar arrays would be de-energized. Then the Applicant would dismantle the solar panels, racking, inverters, and transformers. The Applicant would remove access and internal roads and grade site, unless requested by the landowner to retain the road. Drain tiles damaged

during decommissioning would be replaced with functional equivalent system(s) as needed or based on landowner preference. Lastly, the Applicant would restore and revegetate disturbed land to pre-construction conditions to the extent practicable. (Staff Ex. 1 at 14.)

{¶ 39} Applicant anticipates that decommissioning activities and restoration, which is often weather dependent, to occur over a 12-month period. Based on the weather dependent nature of site restoration, Staff recommends that the updated decommissioning plan include a requirement to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation. (Staff Ex. 1 at 14).

{¶ 40} The Applicant currently approximates that the decommissioning cost is \$2,998,643. According to the Applicant, this cost estimate is preliminary, and an updated decommissioning plan and cost estimate based on the final design layout would be provided prior to commencement of construction. Prior to the start of construction, Staff recommends that the Applicant retain an independent and registered professional engineer to calculate the net decommissioning costs for the solar facility with line items and analysis of the BESS decommissioning. Cost estimates would be recalculated every five years over the life of the Facility. This cost calculation would include the total cost estimate for implementing the decommissioning plan and account for any unanticipated contingencies and would exclude salvage value estimates of the solar facility components. (Staff Ex. 1 at 14, 15.)

{¶ 41} The BESS is a unique component for this solar facility. The currently proposed BESS layout would consist of the following components: 32 battery containers, eight inverters, and project control switchgear. Staff has found that the decommissioning plan and cost estimate does not sufficiently address decommissioning of the BESS. Staff has found that costs to decommission the BESS may be in the \$4M to \$5M range. Staff has also found that the Resource Conservation and Recovery Act regulates the generation, transportation, treatment, storage, and disposal of the batteries as hazardous solid waste. Staff expects the Applicant may need to manage the batteries as hazardous waste to

properly collect and recycle them at the end of their useful life. This may increase the cost of decommissioning the BESS. The decommissioning cost estimate does not currently include removal, transportation to a recycle station, use of a skilled workforce required to handle the system, recordkeeping, testing/sampling, basic remediation, or contingency for minor contamination. Staff does not expect site remediation to be necessary, because the batteries will be enclosed within containers, but should be analyzed (Staff Ex. 1 at 15.)

{¶ 42} Staff believes that BESS components may be recyclable or have an inherent salvage value. However, Staff notes that according to guidelines issued by the Energy Storage Association Corporate Responsibility Initiative, there is little opportunity to refurbish or reuse lithium-ion batteries and that recycling is preferred. Also, according to that same document, there are few battery recyclers in North America. (Staff Ex. 1 at 15.)

{¶ 43} Staff notes that there is some uncertainty with the following aspects of the BESS and its decommissioning evaluation. First, the lifespan of the Facility including the BESS is 30 years; however, some equipment may need to be augmented or replaced sooner. This raises the possibility that the BESS may be decommissioned early. Second, the batteries are characterized as hazardous waste and may fall under the United States Environmental Protection Agency's (EPA's) universal waste regulations. The universal waste regulation framework streamlines the hazardous waste standards for certain categories of hazardous waste, such as batteries, to encourage recycling of those waste materials. Third, Staff has found that BESS are often separately owned and independently operated from the solar facility. This ownership framework/construct occurs, because in order to recover the significant capital cost of the BESS, the owner of the BESS would need to pursue all economically profitable options. In addition to discharging the stored electrical energy at peak demand, the BESS can also discharge at night or be used for the PJM Interconnection LLC (PJM) frequency regulation. According to the Applicant, currently the BESS is expected to be owned, operated, and maintained by Marion Solar. However, there is a chance that the BESS could be owned, operated, and maintained by a separate owner. (Staff Ex. 1 at 15, 16.)

{¶ 44} To further address these concerns, Staff recommends that at least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan (which shall include not only solar components but also BESS components) and total decommissioning cost estimate with 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 a surety, and the Ohio Power Siting Board is the obligee; (b) a timeline of up to one year for removal of equipment; (C) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation; (d) a provision where the performance bond is for the total decommissioning costs and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; (h) a provision stating that the board shall be recalculated every five years by an engineer retained by the Applicant; (i) a provision that the BESS decommissioning cost estimate not include salvage value; and (j) a provision that the BESS decommissioning cost include a significant contingency percentage which can be lowered to ten percent if the Applicant demonstrates environmental insurance coverage has been obtained that covers hazardous waste remediation. (Staff Ex. 1 at 16.)

b. Site Geology

{¶ 45} Staff asserts that the proposed project site lies within the glaciated margin of the state and includes several Wisconsin-age glacial features. Glacial drift within the project area ranges from zero feet to approximately 50 feet in thickness. Drift thickness within the footprint of the project averages approximately 10 feet thinning to zero going from northwest to southeast. Special project foundation engineering design such as pre-drilling of pile foundations will likely be necessary within certain portions of the project area where shallow bedrock is present. Weathered and highly fractured bedrock may be removed by ripping, conventional excavation, or inline drilling techniques. Conditions typically

necessary for the formulation of karst geology do exist within the project area. However, according to an Ohio Department of Natural Resources (ODNR) geological survey, the nearest documented sinkhole feature is several miles away from the project area. (Staff Ex. 1 at 19, 20.)

{¶ 46} ODNR records indicate that no oil and gas activity occurs within the project footprint. One historic well is located within one mile of the project area. Records indicate this well is plugged and abandoned. No Class II injection well activity occurs within several miles of the project area. No active mining occurs within the project area. The nearest mine is the J.M. Hamilton and Sons Company approximately 0.25 miles east of the project area. ODNR records show this to be an inactive surface mining quarry. No known abandoned underground mines are located within several miles of the project area. (Staff Ex. 1 at 20.)

{¶ 47} Recent geologic history shows Marion County to be at low risk for seismicity caused by earthquakes as only one earthquake has been documented in the county. This 1930 event epicenter occurred approximately 2.5 miles to the southwest of the project area. The next nearest documented earthquake event is 25 miles from the project area. (Staff Ex. 1 at 21.)

{¶ 48} Although bedrock will likely be a factor in portions of the project area, the Applicant has indicated that no blasting activities are anticipated for the construction or operation of the proposed solar facility (Staff Ex. 1 at 21).

{¶ 49} Staff recommends detailed engineering drawings of the final project design shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. Staff recommends that the Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. (Staff Ex. 1 at 22.)

{¶ 50} Based on the data and considerations provided within the application submittal to date, and on Staff assessment (with consideration and input from ODNR), and implementation of the recommended conditions, there appears to be no particular geological features within the project area that are incompatible with construction and operation of the proposed solar facility. However, conditions necessary for the formation of karst geology features do exist throughout the project site. The lack of documented karst features such as channels, sinkholes, or caverns within several miles of the project area suggests karst features are not expected to impact the construction and operation of the proposed project. Should karst features be discovered during construction, the Applicant's primary mitigation effort would be avoidance measures. In the unlikely event karst features are found to be extensive, thereby rendering avoidance unfeasible, additional mitigation options would be evaluated by the geotechnical engineer of record at that time. (Staff Ex. 1 at 22.)

c. Ecological Impacts

{¶ 51} Staff reports that groundwater resources throughout the project are plentiful, yielding up to 500 gallons per minute (GPM). The ODNR has record of 125 water wells drilled within 1 mile of the project area. The average depth of these wells is 66 feet with an average yield of 26 GPM. Five drinking water (ground sourced) supply source water protection areas (SWPAs) occur within one mile of the project area. A portion of the boundary of a non-community water system SWPA overlaps a small portion of the southeastern project area. In addition, the northern portion of the project area is overlapped by the corridor management zone of a community water system SWPA located to the southwest of the project area. Both of these two SWPAs are categorized by the Ohio Environmental Protection Agency (OEPA) as highly susceptible to contamination. The Applicant does not anticipate construction or operation of the proposed solar facility will impact groundwater. Solar facilities are not a "regulated activity" per OEPA standards established for SWPAs. (Staff Ex. 1 at 23.)

{¶ 52} The Applicant has indicated two private water wells exist within the project area. The Ohio Department of Health regulations establish setbacks from potential contaminant sources to potable water supplies. Although solar facilities are an unlikely potential source of contamination, the 50-foot “setback” or isolation radius from potable water supply wells as established by Ohio Adm.Code 3701-28-7(F) should be followed. For non-potable wells, and primarily for access purposes, a minimum setback of 10 feet should be observed. Both set setbacks will require the Applicant to “ground-truth” all water well locations within or immediately adjacent to the project area. Staff recommends that the final detailed engineering drawings of the final project design shall account for and accommodate the setbacks just discussed. (Staff Ex. 1 at 23.)

{¶ 53} Based on the data and considerations provided within the application submittal to date, including implementation of a Spill Prevention, Control, and Countermeasure Plan, and based on Staff assessment and implementation of the recommended conditions, there appears to be no unreasonable risk posed to public and private drinking water supplies (Staff Ex. 1 at 23).

{¶ 54} In consultation with OEPA drinking water staff, communication between the Applicant and SWPA owners/operator(s) is strongly recommended. This communication helps ensure the SWPA owner/operator(s) are informed thereby allowing these parties to take steps it may deem necessary (e.g., drinking water advisories) in the event of a spill or significant panel damage. Staff recommends that at least 30 days prior to the preconstruction conference, the Applicant submit its final emergency response plan. This plan shall include provision(s) to keep the involved SWPA owner/operators informed of the status of any spills, significant panel damage, and associated repair/remediation schedule. (Staff Ex. 1 at 23.)

{¶ 55} Marion Solar’s consultant Stantec delineated three streams within the project area, including two perennial streams, and one intermittent stream. Four wetlands were also delineated within the project area, totaling approximately 3.62 acres. This includes one

category 1 wetland and three category 2 wetlands. The Applicant plans to avoid all delineated wetlands and streams and no in-water work is proposed to cross streams and wetlands. At the time of the application, no installation of collection lines is proposed to cross streams or wetlands. The Applicant states that if, in the installation of collection lines, it becomes necessary to cross streams or wetlands it would be done via Horizontal Direct Drilling (HDD). The HDD process includes the risk of a frac-out. A frac-out occurs when the drilling lubricant, typically water or a non-toxic, fine clay bentonite slurry, is forced through cracks in bedrock and/or surface soils. The Applicant has prepared a Frac Out Contingency Plan as part of the application that would be implemented at any stream or wetland crossings. Further specifics about how surface waters would be protected from indirect construction stormwater impacts would be outlined in the Applicant's Storm Water Pollution Prevention Plan (SWPPP). The Applicant would obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the OEPA prior to the start of construction. Staff does not anticipate issues with the Applicant's procurement of this permit. Staff recommends the Applicant apply OEPA published Guidance on Post-Construction Storm Water Control for Solar Array Panels to project construction and operation. (Staff Ex. 1 at 24.)

{¶ 56} A portion of approximately 33.7 acres of the project area overlaps with the FEMA-designated 100-year floodplain. The applicant would coordinate with the Marion County Sanitary Engineer to obtain floodplain permitting prior to construction. Major project infrastructure has been sited to avoid floodplain areas as to avoid a change in drainage or increase upstream and downstream impacts. (Staff Ex. 1 at 24.)

{¶ 57} The Applicant requested information from ODNR and the U.S. Fish and Wildlife Service (USFWS) regarding state and federal listed threatened or endangered plant and animal species. Staff gathered additional information through field assessments and review of published ecological information. The Applicant did not identify any listed plant or animal species during filed surveys. The ODNR and the USWFWS did not identify any concerns regarding impacts to listed plant or animal species. In the event that the Applicant

encounters listed plant or animal species during construction, Staff recommends that the Applicant contact Staff, the ODNR, and the USFWS, as applicable. Staff also recommends that if the Applicant encounters any listed plant or animal species prior to construction, the Applicant include the location and how impacts would be avoided in mapping based on final engineering drawings to be provided to Staff prior to the preconstruction conference. (Staff Ex. 1 at 27.)

{¶ 58} Staff asserts the project area is within range of the Indiana bat, a state and federal endangered species; the northern long-eared bat, which is listed as a state endangered species and a federal threatened species; the little brown bat, which is listed a state endangered species; and the tricolored bat, which is listed a state endangered species. In order to avoid impacts to these bat species, Staff recommends that Marion Solar adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the USFWS recommends a different course of action. The Applicant has committed, in the event that tree clearing proves necessary, that clearing of any trees would occur within these recommended dates. (Staff Ex. 1 at 27.)

{¶ 59} Additionally, Staff explains that the project area is within range of the several listed bird species, such as the state endangered Northern Harrier, American Bittern, King Rail, and Upland Sandpiper, as well as the state threatened Black-Crowned Night Heron, and Least Bittern. All of these species were recognized by the ODNR and the USFWS as having suitable habitat within the project area. However, the Applicant has sited project infrastructure to avoid the nesting habitat (i.e., wetlands and grasslands) for these listed bird species. Winter habitat would be impacted (i.e., croplands), however, due to the highly mobile nature of these species and the availability of wintering habitat in the area, impacts to these species is not anticipated. (Staff Ex. 1 at 27.)

{¶ 60} The project is within the range of several invertebrate mussel species such as the state and federally endangered Snuffbox, Clubshell, and Rayed Bean, as well as the state

endangered and federally threatened Rabbitsfoot. However, quality suitable habitat for these species was not observed within the project area, and furthermore, no in-water work is proposed and impacts to these species is not anticipated. (Staff Ex. 2 at 27.)

{¶ 61} The project is within the range of the Eastern Massasauga, a state endangered and federally threatened snake species. This species prefers wet habitats in fall, winter, and spring, and drier grasslands and deciduous forest in the summer. However, the Applicant has sited project infrastructure to avoid these habitats. Impacts to this species is not anticipated. (Staff Ex. 1 at 27.)

{¶ 62} If the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction. (Staff Ex. 1 at 27.)

{¶ 63} The Applicant has developed a vegetation management plan. Permanent vegetative impacts would occur primarily within agricultural lands. All infrastructure has been sited to avoid the approximate 17 acres within the project area of upland forest and no disturbance to forested habitat would occur. In its vegetative management plan, the Applicant commits to incorporate pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative. This habitat would enhance the visual appeal of the project, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. This vegetation would be incorporated under and between the panels and in the open areas of the project. This project would be expected to represent a reduced environmental impact when compared to the current land use of agricultural plant production. This is due to the reduction of frequent tilling leading to erosion and sedimentation, and reduced fertilizer and pesticide application. To further assure that these benefits would be realized, Staff recommends that the Applicant 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. (Staff Ex. 1 at 28.)

{¶ 64} In sum, Staff recommends that the Board find that the Applicant has determined the nature of the probable impact for the proposed facility, and therefore complies with the requirements specified in R.C. 4905.10(A)(2), provided that any certificate issued by the Board for the proposed facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 28).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 65} Pursuant to R.C. 4906.10(A)(3) the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 66} Staff states that the proposed facility would have an overall positive impact on the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues, and potential PILOT revenue. Staff believes that the project is unlikely to pose a significant adverse impact to existing land use, cultural resources, recreational resources, or wildlife. (Staff Ex. 1 at 29.)

{¶ 67} Staff has determined that, with the implementation of the commitments for protecting cultural resources per Staff's condition, minimal adverse impacts to cultural resources would be achieved. The geology of the project site in Marion County does not present conditions that would limit or negatively impact the construction and future operation of the proposed facility. Staff recommends that the final detailed engineering drawings of the final project design shall account for geological features. No significant impacts are proposed to stream or wetlands. Impact to any state or federal listed species can be avoided by following seasonal restrictions for construction in certain types of

habitats. Noise impacts are expected to be limited to construction activities. The adverse impact of construction noise would be temporary and intermittent and would occur away from residential structures. Staff recommends that the Applicant limit the hours of construction to address potential construction-related concerns from any nearby residents. If the Applicant changes inverter or transformer models, Staff recommends that the Applicant submit an updated noise study. Applicant has developed a complaint resolution plan which would be implemented throughout construction and operation. (Staff Ex. 1 at 29).

{¶ 68} During the construction period, local, state, and county roads would experience a temporary increase in truck traffic due to deliveries of equipment and materials. Applicant will develop a transportation management plan, which will be finalized once the engineering layout is determined. The Applicant intends to enter into a road use agreement with the county engineer. (Staff Ex. 1 at 30.)

{¶ 69} In order to reduce visual impacts in areas where an adjacent, non-participating parcel contains a residence in a direct line of sight to the project, Staff has recommended a condition requiring a final landscape and lighting plan that addresses the potential impacts of the Facility. Staff also recommends that the Applicant adjust its landscape and lighting plan to address potential impacts to the traveling public, nearby communities, and recreationalists. In addition, Staff recommends a perimeter fencing condition to further minimize overall aesthetic concerns and to provide more wildlife friendly access for small animals. (Staff Ex. 1 at 30.)

{¶ 70} The Applicant has committed to take steps in order to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. The Applicant has committed to promptly repair any drain tile found to be damaged by the project during the operational life of the project. Following decommissioning of the Facility, land can be restored for agricultural use. (Staff Ex. 1 at 30.)

{¶ 71} Overall, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the Staff-recommended conditions specified in the Staff Report (Staff Ex. 2 at 30, 31).

4. ELECTRIC POWER GRID

{¶ 72} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed electric facility is consistent with regional plans for extension 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.

{¶ 73} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generating facility would be capable of producing 100 MW and would interconnect to the regional transmission grid through a gen-tie line into a 138 kV three-ring bus switchyard to be constructed at the project site, then with the American Transmission Systems Incorporated (ATSI) transmission system along the existing Galion-Roberts South 138 kV circuit. The switchyard will be owned and operated by ATSI. The Facility will include a BESS of 20.3 MW using energy produced by the solar panels. (Staff Ex. 1 at 32.)

{¶ 74} According to Staff, Marion Solar is subject to compliance with various North American Electric Reliability Corporation reliability standards. The Applicant submitted two generation interconnection requests for the proposed Facility to PJM, which is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM has completed the feasibility and system impact studies. As regards queue project AC2-195, when modeled with a 2020 summer peak case, the studies revealed two lines that may overload, and the Applicant has indicated that corrective actions in the manner of network upgrades identified in the PJM Facility would be incorporated. On the other hand, PJM identified no

problems associated with queue project AE2-234, the BESS. PJM's analysis revealed no other reliability impacts or circuit breaker problems. (Staff Ex. 1 at 33, 34.)

{¶ 75} Staff recommends that the Board find that the proposed facility complies with regional plans for expansion of the electric grid of the electric systems serving this state and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Therefore, Staff recommends that the Board find that the Facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facility include the conditions elaborated in the Staff Report. (Staff Ex. 1 at 34.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 76} Pursuant to R.C. 4906.10(A)(5) the facility must comply with Ohio law regarding air and water pollution, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 77} Although the proposed Facility will not require air quality permits, Staff states fugitive dust rules may be applicable to its construction. Accordingly, Marion Solar would need to control and localize fugitive dust by using best management practices such as using water to wet soil to minimize dust during periods of high heat (Staff Ex. 1 at 35).

{¶ 78} Staff states that Marion Solar would mitigate potential water quality impacts associated with aquatic discharges by obtaining a NPDES construction storm water general permit from the OEPA as part of its submission of a SWPPP for stormwater discharge related to construction activities. If necessary, Marion Solar will seek certain water protection permits issued by the U.S. Army Corps of Engineers and the OEPA under Sections 401 and 404 of the federal Clean Water Act, as well as seek an Ohio Isolated Wetland Permit. (Staff Ex. 1 at 35, 36.)

{¶ 79} As explained by Staff, debris from construction activities would consist of items such as plastic, wood, cardboard, metal packing/packaging materials, construction

scrap, and general refuse. Applicant has stated that all construction-related debris will be disposed of at an authorized solid waste disposal facility. During operation of the Facility, the Applicant anticipates that the operations and maintenance building would generate solid waste comparable in type and quantity to a small business office. The Applicant would use a local solid waste disposal and recycling service to handle the waste. Staff states that Marion Solar's solid waste disposal plans comply with federal, state, and local requirements set forth in R.C. Chapter 3734 (Staff Ex. 1 at 36.)

{¶ 80} Staff notes that the height of the tallest structure, the gen-tie and substation support structures, would not exceed 110 feet tall. That height is under the height requirement in the Federal Aviation Administration's (FAA) regulations. According to the Applicant, the closest public use airport is the Marion Municipal Airport which is located approximately three miles to the east of the project area. The Applicant also found that the nearest private use heliports belong to the Marion County Sheriff's Office (1.5 miles east of the project area) and Marion General Hospital (about three miles south of the project area). The Applicant performed an analysis of the potential impact on the proposed solar facility to the operation of Marion Municipal Airport's VHF Omni-directional radio range (VOR) electronic navigation system. The applicant found that the elevation of the solar facility would be well below the VOR navigation system elevation and therefore would not affect its operation. In accordance with R.C. 4906.10(A)(5), during its review of the Application, Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation in order to coordinate review of potential impacts of the Facility on local airports. No such concerns have been identified. (Staff Ex. 1 at 36.)

{¶ 81} 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 by the Board for the proposed Facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 37).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

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

{¶ 84} Staff asserts that, for reasons of public safety, the Applicant would use reliable and certified equipment compliant with applicable standards and that components are inspected regularly for safe and reliable operation. Marion Solar will use warning signs, fencing, and gates to restrict access to the potential hazards within the project area and implement setbacks between certain equipment and the public. The Applicant stated that it intends to restrict public access to the Facility by enclosing the project area with seven-foot fencing. Further, the Applicant also intends to develop and implement an emergency action plan and consult with potentially affected emergency response personnel. (Staff Ex. 1 at 38.)

{¶ 85} Marion Solar has worked with the community by way of hosting public informational meetings, at which attendees were provided the opportunity to listen to a virtual presentation about the project, ask questions, and provide comments to the Applicant. Staff notes that Marion Solar has already developed a draft complaint resolution

plan to handle complaints during the construction and operation of the Facility. Staff recommends that a final version of this plan be filed in the case docket no later than 30 days prior to the start of construction. Marion Solar has committed to notify affected property owners and tenants about the Facility and the complaint resolution plan no later than seven mailing days prior to the start of construction. Staff recommends mailing a similar notice to those same individuals, as well as to additional recipients, at least seven days prior to the start of the Facility's operation. Staff also recommends that the Applicant be required, and Marion Solar has committed, to provide the Board with a quarterly complaint summary report during construction and the first five years of operation of the Facility. (Staff Ex. 1 at 39.)

{¶ 86} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 40).

7. AGRICULTURAL DISTRICTS

{¶ 87} 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 facility. The agricultural district program is established under R.C. Chapter 929. Agricultural district land is exempt from sewer, water, or electrical service tax assessments. Agricultural land can be classified as an agricultural district through an application process that is administered through local county auditors' offices. Eligible land must be devoted exclusively to agricultural production or be qualified for compensation under a land conservation program for the preceding three calendar years. Furthermore, eligible land must be at least ten acres in size or produce a minimum average gross annual income of \$2,500. (Staff Ex. 1 at 41.)

{¶ 88} Approximately 710 acres of agricultural land would be taken out of service by the proposed project, including approximately 513 acres of agricultural district land. The Applicant states that the repurposed land could be restored for agricultural use when the project is decommissioned. Marion Solar has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original uses. Excavated topsoil would be separated during construction and returned as topsoil after construction. Restored topsoil would be de-compacted and seeded after construction. (Staff Ex.1 at 41.)

{¶ 89} 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 specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board for the proposed facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 41).

8. WATER CONSERVATION PRACTICE

{¶ 90} 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.

{¶ 91} Staff notes that construction of the proposed Facility would not require the use of significant amounts of water, although some water may be utilized for dust suppression and control on open soil surfaces such as construction access roads or public roads as needed (Staff Ex. 1 at 42).

{¶ 92} Operation of the proposed Facility would also not require the use of significant amounts of water, with some usage for occasional cleaning of panels. The operations and maintenance building would have wastewater discharge comparable to a small office building. If public utility services are unavailable, Applicant anticipates obtaining water by drilling a new onsite water well and discharge wastewater/sewage

through an onsite septic system for the operations and maintenance building. (Staff Ex. 1 at 42.)

{¶ 93} 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), provided that any certificate issued by the Board for the proposed facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 42).

9. RECOMMENDATIONS

{¶ 94} In addition to making various findings throughout its report, Staff recommended that 32 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 2 at 43-49). The recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' October 13, 2021 Stipulation. (Joint Ex. 1). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 95} At the adjudicatory hearing, Marion Solar presented the Stipulation executed by Applicant, OFBF, and Staff (Joint Ex. 1). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by the Applicant, subject to 32 conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- 1) 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.
- 2) The Applicant shall conduct a preconstruction conference prior to the commencement 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 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 conferences for each stage of construction.

- 3) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff 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 for filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- 4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 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 docket of this case, and

geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings of the final project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final project design to Staff.

- 5) At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This shall include a summary statement addressing the geologic and soil suitability.
- 6) Should karst features be identified during additional geotechnical exploration or during construction, the Applicant shall avoid construction in these areas when possible.
- 7) The Applicant shall adhere to a minimum solar equipment setback of 50 feet from any existing potable water supply wells.
- 8) The Applicant shall adhere to a minimum solar equipment setback of 10 feet from any existing non-potable water wells.

- 9) At least 30 days prior to the preconstruction conference, the Applicant shall submit its emergency response plan on the case docket for Staff review and acceptance. That plan shall include a provision(s) to keep the appropriate representatives of the City of Marion, Aqua Ohio - Marion, and Enterprise Baptist Church informed of the status of any spills, significant panel damage, and associated repair/remediation schedule.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.

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

- 15) The facility shall be operated in such a way as to assure that no more than 100 megawatts would be injected into the Bulk Power System at any time.
- 16) The Applicant shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. 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.
- 17) Prior to construction, the Applicant shall finalize the architectural cultural resources investigations for the project. If the resulting survey work discloses a find of architectural significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall prepare a modification, or mitigation plan detailing how such site(s) will be avoided or impacts minimized. Any such mitigation effort, if needed, shall be developed in coordination with the Ohio Historic Preservation

Office ("OHPO") and submitted to Staff for review and acceptance.

- 18) 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. Following Staff approval, the Applicant shall file details of this solar panel perimeter fence on the public docket. This condition shall not apply to substation fencing.
- 19) 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. 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, nonparticipating 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 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 to Staff for review and confirmation that it complies with this condition.

- 20) 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.

- 21) 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 10:00 a.m. and 2:00 p.m. in the months of May-August, at a distance equal to the minimum distance from an inverter to a nonparticipating 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 nonparticipating 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.
- 22) 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 systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at the Applicant's

expense to ensure proper drainage. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system and the damaged field tile system does not include a lateral or main draining to or from an adjacent parcel.

- 23) The Applicant shall ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the project. The Applicant shall ensure this by either 1) documenting benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches. The Applicant will make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and the county to request drainage system information over those parcels. The Applicant shall consult with the county engineer for tile located in a county maintenance/repair ditch, or 2) locate and replace all project field tile drainage systems in the project area, or 3) in addition to prompt repair as required under Condition 22, agree to compensate parcels owners affected by damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas for damage to crops or other agricultural activities.

- 24) The Applicant shall contact Staff, the Ohio Department of Natural Resources (“ODNR”), and the U.S. Fish and Wildlife Service (“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.
- (25) If the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.
- (26) The Applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (27) 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 listed bat species unless coordination with ODNR and 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.

- (28) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with ODNR allows a different course of action.
- 29) 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 as well as during construction, operation, and decommissioning. This would be achieved through appropriate seed selection, and annual vegetative surveys. If noxious weeds are found to be present, the Applicant shall remove and treat them with herbicide as necessary.
- (30) 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 Marion County Engineer, the Ohio Department of Transportation ("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.

- 31) 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. The plan shall include solar components and, prior to construction of the BESS, the BESS components and the cost estimate for the BESS must be added to the plan. The plan shall include: (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee; (b) a timeline of up to one year for removal of the equipment; (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation; (d) a provision where the performance bond is posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by

the Applicant; (i) a provision that the BESS decommissioning cost estimate not include salvage value (this provision only applies prior to construction of the BESS components); and (j) a provision that the BESS decommissioning cost include a significant contingency percentage which can be lowered to ten percent if the Applicant demonstrates environmental insurance coverage has been obtained that covers hazardous waste remediation (this provision only applies prior to construction of the BESS components).

- (32) At the time solar panel end of life disposal, retired panels marked for disposal shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater.

VII. CONSIDERATION OF THE STIPULATION

{¶ 96} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all other issues in a proceeding. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. See, e.g. *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co. Inc.*, Case No 12-1361-1361-EL-BSB (Sept.30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm Systems, Inc.* Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- b) Does the settlement, as a package, benefit ratepayers and the public interest?
- c) Does the settlement package violate any important regulatory principle or practice?

{¶ 97} Upon review, the Board finds that the Stipulation is reasonable as judged by this three-part test and should be approved. Initially, the Board finds the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The parties agree that the Stipulation is a product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process (Applicant Ex. 14 at 9; Joint Ex. 1 at 1-2). Marion Solar witness Mr. Flannery testified that all parties participated in the negotiations and the agreement is the product of serious bargaining among capable knowledgeable parties (Applicant Ex. 14 at 9). The Board further notes that OFBF and Staff have extensive experience in Board matters and that all parties involved were represented by counsel with similar significant experience.

{¶ 98} The Board also concludes that the second prong of the test is satisfied. The record evidence supports the conclusion that the Stipulation, as a package, benefits ratepayers and the public interest. In his testimony, Mr. Flannery represents that the Facility will garner positive economic impact on the local economy through job creation, as well as an annual service PILOT plan. Specifically, Mr. Flannery states that the PILOT plan would generate approximately \$700,000 for the local community annually. Mr. Flannery also states that the proposed Facility would aid regional development by increasing local tax revenues. The land on which the Facility will be built can be returned to agricultural production after decommissioning. Mr. Flannery also explains that Marion Solar followed, and even went beyond, the Board's public information and public notice requirements to engage the local community. These efforts include holding in-person meetings, on several occasions, with

local residents, school officials, and community leaders and representatives to answer questions on the Project. (Applicant Ex. 14 at 5, 6.) Furthermore, Mr. Flannery testifies that the Stipulation ensures that the Facility will represent the minimum adverse environmental impact for both construction and operation, considering the state of available technology, and the nature and economics of the various alternatives, as well as other pertinent considerations (Applicant Ex. At 7).

{¶ 99} In conclusion, and based on the record in this proceeding, the Board finds that all relevant required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Marion Solar's application, as supplemented and modified, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. The Board thus approves and adopts the Stipulation and hereby issues a certificate to Marion Solar in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 100} Marion Solar is a person under R.C. 4906.01(A).

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

{¶ 102} On February 4, 2021, Marion Solar filed a preapplication notification letter informing the Board of its proposed construction of a 100 MW solar-powered electric generation facility in Marion County, Ohio.

{¶ 103} On February 17, 2021, Applicant held a virtual public meeting to discuss the Facility with interested persons and landowners. On February 5, 2021, Applicant filed with the Board proof of publication regarding the public information meeting.

{¶ 104} On March 5, 2021, Applicant filed with the Board its Application for a certificate of environmental compatibility and public need to construct the Facility. The

Application was supplemented by filings made on March 21, April 20, April 27, June 29, July 23, August 6, August 23, and October 26, 2021.

{¶ 105} On March 5, 2021, Applicant filed a motion for protective order to keep portions of its Application confidential. That motion was granted by an ALJ Entry issued on March 22, 2021.

{¶ 106} By letter dated May 4, 2021, the Board notified Marion Solar that its Application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 107} On May 6, 2021, Marion Solar filed proof of service of its accepted and complete Application upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 108} On May 14, 2021, Applicant filed proof that it submitted its application fee.

{¶ 109} By Entry dated July 27, 2021, the ALJ established the effective date of the Application and adopted a procedural schedule which included the date of the local public hearing and the adjudicatory hearing.

{¶ 110} On August 24, 2021, Marion Solar filed proof of initial publication, in the *Marion Star*, of a public notice regarding the dates and times of the scheduled hearing, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(1). On September 23, 2021, Marion Solar filed proof of publication of the second public notice in this regard, in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 111} On August 24, 2021, OFBF filed a motion to intervention, which was granted by ALJ Entry issued September 10, 2021.

{¶ 112} The Staff Report was filed on September 13, 2021.

{¶ 113} The public hearing was held at the Marion County Fairgrounds on September 28, 2021.

{¶ 114} On October 13, 2021, the Applicant, OFBF, and Staff filed a Stipulation resolving all issues in the case.

{¶ 115} On October 28, 2021, the adjudicatory hearing was conducted, as scheduled, via Webex.

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

{¶ 117} 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.

{¶ 118} The record establishes that the nature of the probable environmental impact from the construction, operation, and maintenance of the Facility, consistent with R.C. 4906.10(A)(2).

{¶ 119} 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).

{¶ 120} 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 consistent with R.C. 4906.10(A)(4).

{¶ 121} 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).

{¶ 122} 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).

{¶ 123} 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).

{¶ 124} The record establishes that the Facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives. Accordingly, the Facility meets the requirements of R.C. 4906.10(A)(8).

{¶ 125} 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 solar-powered electric generation Facility as proposed by Marion Solar, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

{¶ 126} Based on the record, the Board should issue a certificate of environmental compatibility and public need to Marion Solar, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the solar-powered electric generation Facility subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

IX. ORDER

{¶ 127} It is, therefore,

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

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

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

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 Peland, Director
Ohio Department of Agriculture

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Case No(s). 21-0036-EL-BGN

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