IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Angelina Solar I, LLC, for a Certificate of Environmental Compatibility and Public Need	))))	Case No. _____ On Appeal from the Ohio Power Siting Board, Case No. 18-1579-EL-BGN

NOTICE OF APPEAL OF APPELLANTS CONCERNED CITIZENS OF PREBLE COUNTY, LLC, ROBERT BLACK, MARJA BRANDLY, CAMPBELL BRANDLY FARMS, LLC, MICHAEL IRWIN, KEVIN AND TINA JACKSON, VONDERHAAR FAMILY ARC, LLC, AND VONDERHAAR FARMS INC.

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Appellants Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, Campbell Brandly Farms, LLC, Michael Irwin, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms Inc. (collectively, "Appellants") hereby give notice of their appeal pursuant to R.C. 4903.11, 4903.13, and R.C. 4906.12 to the Ohio Supreme Court from the following attached orders of the Ohio Power Siting Board ("OPSB") in Case No. 18-1579-EL-BGN (hereinafter referred to as the "Orders"): (1) Opinion, Order and Certificate entered on June 24, 2021; and (2) Order on Rehearing entered on November 18, 2021. All of these Appellants are and were parties of record in Case No. 18-1579-EL-BGN and they timely filed their Application for Rehearing of the Board's Opinion, Order and Certificate on July 23, 2021 pursuant to R.C. 4903.10. On August 20, 2021, OPSB granted Appellants' Application for Rehearing pursuant to Ohio Adm.Code 4906-2-32(E) to afford OPSB more time to consider the application. OPSB then denied the Application for Rehearing on November 18, 2021.

The Orders granted Applicant Angelina Solar I, LLC ("Angelina") a Certificate of Environmental Compatibility and Public Need ("Certificate") to construct and operate a new solar-powered electric generation facility ("Project"). The Orders are in error and are unlawful and unreasonable for the reasons stated in Paragraphs 1 through 15 below:

1. The Board erred by not requiring Angelina to submit, and by not including in the Orders, the simulations, plans for installing and maintaining vegetative barriers, adequate setbacks, other mitigation measures, and other information pertaining to the Project's visual impacts required to comply with Ohio Adm.Code 4906-4-08(D)(4)(a), (e), and (f) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st and 2nd full paragraphs; Page 4, 4th paragraph, 5th paragraph and 6th paragraph

(which continues on Page 5); Page 5, 2nd full paragraph and last paragraph[1]; the introductory paragraph of Section III on Pages 12-13; Section III. A on Pages 13-33; Section III. R on Pages 109-113; Section III. S on Page 113; Section IV on Pages 113-115][2]

2. The Board erred by not requiring Angelina to submit, and by not including in the Orders, the locations of lights, vegetation plans and other mitigation measures, and other information pertaining to the Project's light pollution that are required to comply with Ohio Adm.Code 4906-4-08(D)(4) and 4906-4-08(D)(4)(f) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st and 3rd full paragraphs; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. B on Pages 33-36; Section III. S on Page 113; Section IV on Pages 113-115]

3. The Board erred by not requiring Angelina to submit, and by not including in the Orders, the measurements or modeling of the operational noise from inverters expected at the nearest property boundary and at residences, adequate setbacks, other mitigation measures, and other information pertaining to the Project's inverter noise, that are required to comply with Ohio Adm.Code 4906-4-08(A)(3)(b), (c), and (d) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st and 4th full paragraphs; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. C on

[1] The last paragraph on Page 5 of the Application for Rehearing incorporates by reference the text of the Memorandum in Support of the Application for Rehearing.
[2] The page and paragraph identifications in brackets at the end of each paragraph herein are provided in accordance with S.Ct.Prac.R. 10.02(A)(2)(b) and S.Ct.Prac.R. 10.03(A) to identify where in the Application for Rehearing the issues to be raised on appeal were preserved.

Pages 36-51; Section III. R on Pages 109-113; Section III. S on Page 113; Section IV on Pages 113-115]

4. The Orders do not contain the information on mitigation procedures and avoidance of damage to field tile systems that is required to comply with Ohio Adm.Code 4906-4-08(E)(2)(c) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph and the last paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. E on Pages 54-59; Section III. S on Page 113; Section IV on Pages 113-115]

5. The Orders do not contain the information on mitigation measures to protect vegetation and control noxious and invasive weeds that is required to comply with Ohio Adm.Code 4906-4-08(B)(2), 4906-4-08(B)(3), and 4906-4-08(E)(2)(c) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 3, 5th paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. J on Pages 70-74; Section III. S on Page 113; Section IV on Pages 113-115]

6. The Board erred by not requiring Angelina to submit literature searches and field surveys of plants and animals that are required to comply with Ohio Adm.Code 4906-4-08(B)(1)(c) and (d) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 3, 6th paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last

paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. K on Pages 74-79; Section III. S on Page 113; Section IV on Pages 113-115]

7. The Board erred by not requiring Angelina to submit information on flooding, drainage, and quantity of flows during construction and operation that is required to comply with Ohio Adm.Code 4906-4-08(A)(4)(e) and 4906-4-07(C) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 3, 8th paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. M on Page 82-98; Section III. S on Page 113; Section IV on Pages 113-115]

8. The Board erred by not requiring Angelina to submit information on pollution, erosion, and water quality of surface water flows that is required to comply with Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 3, last paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; Page 12; the introductory paragraph of Section III on Pages 12-13; Section III. N on Pages 98-104; Section III. S on Page 113; Section IV on Pages 113-115]

9. The Board erred by not requiring Angelina to submit estimates of the quantities of solid waste that are required to comply with Ohio Adm.Code 4906-4-07(D) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 4, 1st paragraph, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. O on Pages 104-105; Section III. S on Page 113; Section IV on Pages 113-115]

10. The Board erred by not requiring Angelina to submit, and by not including in the Orders, mitigation measures for traffic impacts that are required to comply with Ohio Adm.Code 4906-4-06(F)(4) and R.C. 4906.10(A)(2), (3), and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 4, 2nd paragraph, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. P on Pages 105-109; Section III. S on Page 113; Section IV on Pages 113-115]

11. The Board erred by not requiring Angelina to submit information about, and by not including in the Orders, emergency plans that are required to comply with Ohio Adm.Code 4906-4-08(A)(1)(e) and R.C. 4906.10(A)(2), (3) and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 3, 3rd paragraph; Page 4, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. H on Pages 66-68; Section III. S on Page 113; Section IV on Pages 113-115]

12. The Board erred by not requiring Angelina to provide wider setbacks between solar facilities and neighboring properties and homes that are required to comply with R.C. 4906.10(A)(2), (3) and (6). [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 4, 4th paragraph, 5th paragraph and 6th paragraph (which continues on Page 5); Page 5, 2nd full paragraph and last paragraph; the introductory paragraph of Section III on Pages 12-13; Section III. R on Pages 109-113; Section III. S on Page 113; Section IV on Pages 113-115]

13. The Board erred in ruling that the evidentiary record contains enough information for the Board to find and determine the nature of the Project's probable environmental impact under

R.C. 4906.10(A)(2), to find and determine that the Project represents the minimum adverse impact under R.C. 4906.10(A)(3), and to find and determine whether the Project will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6), with respect to the Project's visual impacts, light pollution, inverter operational noise, damage to field tile systems, damage to vegetation, the propagation of noxious and invasive weeds, flooding, drainage, and quantity of flows, pollution, erosion, and water quality of surface water flows, solid waste pollution, traffic impacts and congestion, and inadequate setbacks between solar facilities and neighboring properties and homes. [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 2, 1st full paragraph; Page 4, 5th paragraph; Page 5, 2nd full paragraph and last paragraph; Section I on Pages 6-9; Section II on Pages 9-12; Sections III and IV on Pages 12-115]

14. The Board erred by delegating its duties to the Staff and other governmental agencies for approving post-certificate plans and submittals, which unfairly undermines the purpose of the evidentiary hearing, relieves Angelina of its burden of proof during the adjudication, circumvents the Board's application of the statutory criteria under R.C. 4906.10(A), circumvents statutory rights of public participation and public notice, and deprives the intervenors of due process. [Page 1, 2nd paragraph and last paragraph (which continues on Page 2); Page 5, 1st and 2nd full paragraphs and last paragraph; Section I on Pages 6-9; Section II on Pages 9-12; Section V on Pages 115-120; Section VI on Pages 120-122]

15. The Board erred by finding the Amended Stipulation to be in the public interest and by approving it. [Page 5, 2nd full paragraph; Section II on Pages 9-12; Sections III and IV on Pages 12-115; Section VI on Pages 120-122]

Accordingly, Appellants request that the Court remand the Orders to the Ohio Power

Siting Board with instructions to correct the errors identified herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 14, 2022, a copy of the foregoing Notice of Appeal was served upon the Chairman of the Public Utilities Commission and the Ohio Power Siting Board, Jenifer French, by leaving a copy at her office at 180 East Broad Street, Columbus, OH 43215, and upon the following counsel of record by regular U.S. mail and electronic mail:

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I also certify that, on January 14, 2022, a copy of the foregoing Notice of Appeal was served upon the following parties of record by regular U.S. mail:

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CERTIFICATE OF FILING

I hereby certify that, on January 14, 2022, a copy of the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission and the Power Siting Board at 180 East Broad Street, Columbus, Ohio 43215 pursuant to R.C. 4903.13, R.C. 4906.12, and Ohio Adm.Code 4901-1-02(A), 4901-1-36, and 4906-2-33.

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THE OHIO POWER SITING BOARD

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

CASE NO. 18-1579-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on June 24, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Angelina Solar I, 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} Angelina Solar I, LLC (Angelina 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 October 29, 2018, Angelina filed a corrected pre-application notification letter with the Board regarding a proposed solar-powered electric generating facility in Preble County, Ohio. On November 15, 2018, Angelina held a public informational meeting to discuss the proposed project with interested persons and landowners. Angelina filed its proof of publication regarding the public informational meeting on November 5, 2018.

{¶ 6} On December 3, 2018, Angelina filed its application with the Board for a certificate of environmental capacity and public need for an 80 megawatt (MW) solar-powered electric generation facility in Preble County, Ohio (the Facility or Project).[1]

{¶ 7} With the application, Angelina filed a motion seeking waivers from certain provisions of the Board's rule requirements, as well as a motion for protective order to keep portions of its application confidential. Neither motion was opposed or otherwise commented upon. The administrative law judge (ALJ) granted both motions in an Entry dated January 17, 2019.

{¶ 8} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chairman of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated February 1, 2019, the Board notified Angelina that its application was compliant and provided sufficient information to permit Board Staff (Staff) to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's February 1, 2019 letter directed Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Angelina to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On February 7, 2019, Angelina filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07, as well as separate proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 10} On February 14, 2019, the ALJ issued an Entry establishing February 15, 2019, as the effective date of the application. The February 14, 2019 Entry also set forth a

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1 The application seeks approval of up to 80 MW of installed capacity, but studies panel locations that could accommodate a 100 MW project for engineering flexibility in the final design.

procedural schedule under which a local public hearing would be conducted on April 30, 2019, and an evidentiary hearing would be held on May 14, 2019. The ALJ also directed Angelina to issue public notices of the application and hearing pursuant to Ohio Adm.Code 4906-3-9 indicating that petitions to intervene would be accepted by the Board up to 30 days following the service of the notice or by March 29, 2019, whichever was later. Finally, the Entry instructed Staff to file its report of investigation pursuant to Ohio Adm.Code 4906-3-06(C) and provided deadlines for the filing of testimony.

{¶ 11} On March 15, 2019, Angelina filed a proof of service regarding the accepted, complete application being sent to public officials and property owners, pursuant to Ohio Adm.Code 4906-3-09(A)(1). Angelina also filed proof of publication of the accepted, complete application being published on March 2, 2019, in the *Eaton Register-Herald*, a newspaper of general circulation in Preble County, in accordance with R.C. 4906.06(C).

{¶ 12} On April 15, 2019, Staff filed its report of investigation (Staff Report).

{¶ 13} By Entry dated April 18, 2019, the ALJ granted intervention to the following parties, all of whom filed timely notices of intervention or motions to intervene: the Preble County Commissioners (County Commissioners); Kyle Cross, the Preble County Engineer (County Engineer); Preble County Soil & Water Conservation District, Preble County, Ohio (Preble SWCD); the Board of Trustees of Israel Township, Preble County, Ohio (Israel Trustees); the Board of Trustees of Dixon Township, Preble County, Ohio (Dixon Trustees); the Preble County Planning Commission, Preble County, Ohio (Planning Commission); the Eaton Community School District (ECSD); the Ohio Farm Bureau Federation (OFBF); and Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, and Michael Irwin, Campbell Brandly Farms, LLC, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms, Inc. (collectively, CCPC or Citizens).

{¶ 14} On April 26, 2019, Applicant filed proof of publication and notice in substantial compliance with Ohio Adm.Code 4906-3-09(A)(2). Angelina represents that a

second written notice was sent to public officials and landowners on April 19, 2019 and was published in the *Eaton Register-Herald* on April 20, 2019.

{¶ 15} The local public hearing was conducted as scheduled on April 30, 2019. The hearing was well-attended, and 28 members of the public provided testimony.

{¶ 16} On May 3, 2019, Applicant filed a motion to call and continue the evidentiary hearing to allow more time for the parties to engage in settlement discussions. The ALJ granted Applicant's motion in an Entry issued May 7, 2019.

{¶ 17} On May 14, 2019, the ALJ commenced the evidentiary hearing, as originally scheduled. Approximately 20 members of the public were in attendance, none of whom provided testimony. After opening the record, taking appearances of counsel, and offering the opportunity to provide testimony, the ALJ adjourned the hearing.

{¶ 18} By Entry dated May 17, 2019, the ALJ scheduled the hearing to reconvene on June 18, 2019, at 10:00 a.m. On May 29, 2019, however, the ALJ granted a motion filed by Staff to continue the hearing by one day—to June 19, 2019—to accommodate a scheduling conflict.

{¶ 19} On June 14, 2019, Applicant filed a joint stipulation and recommendation (Stipulation) executed by Angelina, OFBF, County Commissioners, County Engineer, Preble SWCD, Israel Trustees, Dixon Trustees, Planning Commission, and Staff.

{¶ 20} Also on June 14, 2019, the ALJ granted Applicant's same-day motion to continue the hearing in order to allow for the preparation and filing of testimony in support of the Stipulation. The ALJ further directed that the June 19, 2019 hearing date be converted to a telephonic status conference to discuss a new date for the evidentiary hearing.

{¶ 21} By Entry dated June 19, 2019, the ALJ scheduled the hearing to recommence on July 31, 2019, at 10:00 a.m. The Entry also set forth filing deadlines for testimony in support of and opposition to the Stipulation.

{¶ 22} The evidentiary record was reopened on July 31, 2019, carried over to August 1, 2019, and convened again on August 12, 2019. Following the presentation of direct testimony, counsel for Angelina requested the opportunity to file rebuttal testimony. No party objected. Accordingly, the ALJ instructed that rebuttal testimony should be filed no later than August 23, 2019, and indicated that a hearing date would be set by future entry.

{¶ 23} Pursuant to an Entry issued August 21, 2019, the hearing reconvened for the purpose of taking rebuttal testimony on September 10, 2019.

{¶ 24} Applicant, Staff, and CCPC filed initial post hearing briefs on October 18, 2019, and reply briefs on November 1, 2019.

{¶ 25} On July 29, 2020, Applicant filed an Amended and Restated Stipulation (Amended Stipulation) executed by Angelina, OFBF, County Commissioners, County Engineer, Preble SWCD, Dixon Trustees, Planning Commission, and Staff (Signatory Parties). Contemporaneously, the Signatory Parties filed a joint motion to reopen the hearing record for consideration of the Amended Stipulation.

{¶ 26} By Entry dated September 14, 2020, the ALJ granted the motion to reopen proceedings and set a prehearing conference to discuss a procedural schedule. Subsequently, on September 25, 2020, the ALJ issued an Entry establishing filing deadlines for testimony in support of and in opposition to the Amended Stipulation, for motions to strike, and for the exchange of exhibits. Finally, the Entry scheduled the reopened evidentiary hearing for October 29, 2020.

{¶ 27} On October 29, 2020, the reopened evidentiary hearing was conducted as scheduled.

{¶ 28} Applicant, Staff, and CCPC filed substitute initial post hearing briefs on December 11, 2020, and substitute reply briefs on January 4, 2021.[2]

III. PROJECT DESCRIPTION

{¶ 29} The Angelina Solar Farm will be constructed as an 80 MW solar-powered generating facility in Israel and Dixon townships, Preble County, Ohio. The Facility will consist of large arrays of ground-mounted photovoltaic modules, commonly known as solar panels. The Facility will also include associated support facilities, such as access roads, up to four meteorological stations, pyranometers, buried electrical collection lines, inverter pads, and a substation. (Staff Ex. 1 at 7.)

{¶ 30} Angelina plans to install an underground collector system made up of a network of electric and communication lines that will transmit the electric power from the solar arrays to a common substation. Angelina proposes to install up to 10.6 miles of buried cable. Installation of the cable would require an approximately 20-foot wide temporary work area along its entire length. The major components of the Applicant's substation are collection line feeders and breakers, a 34.5 kilovolt (kV) bus, a main power transformer to step up the voltage to 138 kV, a high-voltage breaker, metering/relaying transformers, disconnect switches, an equipment enclosure, and a lightning mast. A 138 kV electric transmission line, approximately 700 feet in length, would connect the Facility substation to the existing AEP College Corner substation. This gen-tie electric transmission line and the tap would be filed as separate cases with the Board at a later date. (Staff Ex. 1 at 7-8.)

{¶ 31} The Facility would occupy up to 827 acres within a 934-acre project area. The solar panels would be attached to either fixed-tilt or tracking metal racking and would be grouped in large clusters that would be fenced, with locked gates at all entrances. While Angelina has not yet selected the final solar panel technology for the Facility, it has limited its consideration to two commonly used solar panel technologies that are substantially

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2 All references to the parties' briefs in this Opinion, Order, and Certificate are to the parties' substitute briefs, which were intended to completely supplant the briefs filed in 2019.

similar in design: crystalline or thin-film. Both potential racking systems can accommodate crystalline or thin-film panel modules. The Applicant plans to submit the final project designs to the Board for review prior to construction. (Staff Ex. 1 at 7.)

{¶ 32} Angelina proposes to use up to 6.2 miles of access roads for construction, operation, and maintenance of the Facility. The access road would consist of aggregate material and/or grass. The roads would be up to 25 feet wide during construction and then reduced to 16 feet wide during operation of the Facility. Additionally, the Applicant proposes up to 15 acres of temporary equipment laydown area within the project area. Approximately three acres of the laydown areas would be maintained as permanent gravel-covered areas for vehicle parking and equipment storage. (Staff Ex. 1 at 8.)

{¶ 33} The Facility would include up to four meteorological stations that would be up to 15 feet tall and enclosed with a gated fence. These meteorological stations would typically include pyranometers, an anemometer, wind vane, barometer, rain gauge, thermometer, and communications equipment. (Staff Ex. 1 at 8.)

{¶ 34} Permanent lighting at the Facility will only be installed at gates, inverters, and the collection yard. All lights would be shielded, downward- or inward-facing, and motion-activated. There would be no permanent lighting associated with the solar panels themselves, the access roads, or any other components of the Facility. (Staff Ex. 1 at 8.)

{¶ 35} Angelina will not construct or operate the solar farm but, instead, will select another company to construct and operate the Facility through a competitive process (Staff Ex. 1 at 5).

{¶ 36} As filed in the application, Angelina anticipated to finalize design and commence construction of the Facility in the fourth quarter of 2019 and complete construction in the fourth quarter of 2020. The Applicant stated that postponement of the start of construction could affect the Facility's eligibility for certain financial incentives. (Staff Ex. 1 at 8.)

IV. SUMMARY OF EVIDENCE

{¶ 37} 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. Public Participation/Public Input

{¶ 38} Before reviewing the evidence presented at the adjudicatory hearings regarding the statutory certification criteria, the Board will address the testimony provided during the local public hearing and the public comments filed to the record.

{¶ 39} The local public hearing was conducted on April 30, 2019, in Eaton, Ohio; 28 individuals presented testimony (Pub. Tr. at 10-117). Sixteen witnesses opposed the proposed project. A number of witnesses expressed displeasure with the entire history and process of the project, believing that the developer and some public officials have not been transparent about its progress (Pub. Tr. 17-19, 40-41, 45-47, 93-101, 115-116). Some witnesses felt that construction of the Facility would not be a wise use of farmland and that the Facility would have an overall harmful effect on agricultural operations in the surrounding area (Pub. Tr. at 11, 24-26, 60-62, 66-67, 109-113). Similarly, witnesses expressed concern over how the construction and operation of the Facility would disrupt the rural nature of the Preble County community (Pub. Tr. at 25-26, 40-41, 57, 66, 108). Despite claims that the project site would ultimately be returned to agricultural uses, a number of witnesses expressed skepticism that the Facility would be properly decommissioned or that any harm to the land would be remedied to allow a return to farming (Pub. Tr. at 23, 27, 36, 50-51). Witnesses also expressed a variety of environmental harms that they fear will result from construction and operation of the Facility. Witnesses raised concerns regarding the adverse effects that the Facility could have on drain tiles in the area, the potential for increased flooding, the effects of weather, and the potential for hazardous/toxic waste to be leaked from the solar panels and potential contamination of local water supplies (Pub. Tr. at 12-13,

20, 23-24, 27-28, 33-34, 50-51, 53-54, 58, 59-60, 70, 80-83, 110). A number of witnesses also expressed worry for the effects that the Facility would have on local livestock, wildlife, and the overall ecosystem (Pub. Tr. at 13-14, 20, 30-31, 53-55, 70, 110-112). Additionally, safety was cited as a concern, both in terms of safety at the project site and the potential for the Facility to cause an increase in crime in the area (Pub. Tr. at 15-16, 29, 48-51).

{¶ 40} Witnesses also questioned the economic viability the project. Some witnesses questioned whether a solar farm could even be effective in the climate of Ohio. (Pub. Tr. at 11-12, 22-23, 27-28, 68.) A number of witnesses were skeptical of the actual economic benefits that will flow from the Facility, arguing that the details concerning the Payment in Lieu of Taxes (PILOT) plan are unclear and that local schools and government entities would not see an increase in revenue (Pub. Tr. at 18-19, 20-21, 29, 41-44, 67-69, 102, 116). Many witnesses asserted that locating the Facility within Preble County would decrease the property values of land in the surrounding area (Pub. Tr. at 16-17, 21, 28-29, 62-64, 67-68, 71, 94, 110). Some witnesses also took issue with the Applicant planning to own the Facility, but not actually construct or operate it, and questioned whether Angelina will be able to remain solvent (Pub. Tr. at 35-36, 69, 83-84).

{¶ 41} Twelve witnesses expressed support for the proposed Facility. Many of them cited the steady source of income that the Facility would provide to farmers receiving lease payments as a key reason for their support (Pub. Tr. at 72, 77, 78-79, 79-80, 89-90). One witness specifically testified that solar facilities provide jobs for local workers (Pub. Tr. at 90-91). Additionally, supporting witnesses also felt that tax revenues flowing to local schools and the county would increase as a result of the construction and operation of the Facility (Pub. Tr. at 39, 73, 76, 77, 79, 106, 108). Some participating landowners testified that they disagree with the alleged adverse environmental and economic effects that the Facility will cause to the land and environment (Pub. Tr. at 39, 72, 76, 87-88, 107). Witnesses also felt that the Facility will provide a clean, renewable source of energy that will help both the environment and the power grid (Pub. Tr. at 77, 79, 88-89, 104-105). One witness felt it

important that landowners be permitted to decide how to use their land, within legal limits (Pub. Tr. 91-93).

{¶ 42} In addition to testimony provided at the local public hearing, 16 public comments regarding the proposed Facility have been filed on the docket in this case. Ten of these public comments express opposition to the proposed Facility, while six offer support of its construction and operation.

B. Staff Report

{¶ 43} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The Staff Report, filed on April 15, 2019, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 44} 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. In its review of the application under R.C. 4906.10(A)(1), Staff notes that the Facility is a proposed electric generation facility, not a transmission line or pipeline. Accordingly, Staff recommends that the Board find that this consideration is inapplicable. (Staff Ex. 1 at 11.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

a. Socioeconomic Impacts

{¶ 46} Staff states that Angelina proposes to construct the Facility on up to 827 acres of land, the majority of which is currently used for agricultural production, although Staff

notes that small segments of the project area are utilized as rural residential or contain woodlots and farm buildings. There are no national scenic trails, national wildlife refuges, or state wildlife management areas located within five miles of the project area. Additionally, the project footprint does not include any major population centers or industries other than farming. Preble County has adopted a land use plan which includes support for the agricultural economy and preservation of agricultural land from encroachment of urban-type uses. Staff believes that the Facility would not conflict with the County's plans, as the proposed Facility would not interfere with surrounding agricultural land use and the development of the project could preserve land for future viable farming operations. Further, after the Facility is decommissioned, the majority of the land could be returned to farming or developed for other uses. (Staff Ex. 1 at 12.)

{¶ 47} Angelina enlisted a consultant to complete a cultural resources record review for the area within two miles of the project boundary. The Applicant conducted a literature review and an evaluation of cultural resource surveys previously performed in the area. From the literature review, Angelina's consultant determined that there is one National Register of Historic Places (NRHP) listed property within two miles of the project boundary. Angelina's consultant also found 30 Ohio Historic Inventory (OHI) structures that were identified within the two-mile radius of the project area. None of the identified OHI structures are located within the project area, with the closest one being an estimated 0.9 miles from the project area. Angelina's consultant identified no Ohio Archaeological Inventory sites within the two-mile radius of the project boundary but noted five mapped cemeteries within two miles of the project area. One of the mapped cemeteries is 0.1 mile from the project boundary. The Applicant's consultant states that there would be no anticipated direct physical impacts to known cultural resources because of the project. However, because there would likely be indirect visual impacts to cultural resources within two miles of the Facility, Staff recommends that a Phase I cultural survey should be performed, including an archaeological survey limited to areas of significant ground disturbance. Staff also recommends the development of a reconnaissance survey for

architectural resources in the two-mile viewshed, to be developed in consultation with the Ohio Historic Preservation Office (OHPO) and Staff. Staff believes that these recommendations will further verify that the site does not contain unknown cultural resources. (Staff Ex. 1 at 12-13.)

{¶ 48} With respect to aesthetics, Staff notes that the Applicant included a Visual Resource Assessment (VRA) within its application. The VRA utilized a panel component height for the project at a maximum height of 14 feet. Based on the results of the VRA, the views of the solar panels would be screened in 36.7 percent of the five-mile study area based upon topography alone, and 83.2 percent from a combination of topography, vegetation, and existing structures. The VRA states that the Facility would not likely be visible at locations beyond 2.5 miles. The VRA further notes that the Facility would be predominantly visible within 0.5 mile. Due to potential impacts on non-participating residences surrounding the Facility, Staff recommends that Angelina incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Facility. Angelina has also indicated to Staff that it may be appropriate for vegetative screening to be employed in some areas of the project, and that Angelina will consider these measures when developing a landscape plan for the project. (Staff Ex. 1 at 13.)

{¶ 49} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include a possible brief loss of vision, afterimage, a safety risk to pilots, and a perceived nuisance to neighbors. The Applicant stated that the project will have a low reflectivity. Angelina may use an anti-glare coating and a tracking array system, both of which would reduce the potential for glare. Staff also notes that aesthetic impact mitigation measures such as vegetative plantings would further reduce potential glare impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 15-16.)

{¶ 50} Angelina will own all the assets that would comprise the Project or that would be used to construct, own, and operate the Facility. Angelina currently owns all the land development rights for 90 percent of the project area and rights of access for the remainder. Angelina intends to own the Facility but will hire a third party for construction and operation. Staff notes that the Applicant included total costs comparisons between the proposed Facility and other comparable facilities as part of its application. Staff verified Angelina's assertion that the reported average cost of similar facilities is not substantially different from its estimated costs for the proposed Facility. Staff also confirmed that recent solar photovoltaic projects of comparable scale undertaken by Angelina's partners report similar capital costs. (Staff Ex. 1 at 14.)

{¶ 51} Angelina provided estimates of the cost of delays in permitting and construction of the proposed Facility, which it filed under seal. Angelina characterized permitting stage delay costs as being associated with the time value of delayed revenue payments. Angelina also stated that delays could prevent the project from meeting federal Investment Tax Credit deadlines resulting in the loss of those benefits. Additionally, Angelina stated that delays could result in contract penalties if such delays prevented the Applicant from meeting delivery deadlines under a potential power purchase agreement. Staff believes that Angelina's characterization of its estimated costs of delays is reasonable. (Staff Ex. 1 at 14.)

{¶ 52} The Applicant estimates that the proposed Facility would create between 518 and 1,076 construction-related jobs and 19 to 22 long-term operational jobs for the state of Ohio. Specifically, in Preble County, the Applicant estimates the creation of 352 construction-related jobs and 13 long-term operational jobs. During the construction period, wages are estimated to produce between $50.2 million and $161.8 million in local output for the state of Ohio, with $24.8 million in local output in Preble County; operations would add an estimated annual impact of between $1.5 million and $2.3 million for the state of Ohio, with $786,000 in local annual output in Preble County. (Staff Ex. 1 at 15.)

{¶ 53} The Facility would generate an estimated $560,000 annually for the Preble County taxing district, Eaton Community Schools, and Israel and Dixon townships. This estimate is based on a Payment in Lieu of Taxes (PILOT) plan in which Open Road Renewables would pay $7,000/MW annually for an 80 MW facility. The Applicant states that this revenue would be distributed on a pro rata basis to the Preble County taxing district, Eaton Community Schools, and Israel and Dixon townships. (Staff Ex. 1 at 15.)

{¶ 54} According to Staff, Angelina holds the land rights to, and expects to operate, the Facility for up to 40 years. Angelina represented to Staff that it will prepare a comprehensive decommissioning plan that will specify the responsible parties, outline a nine-month or less decommissioning schedule, outline projected decommissioning/restoration costs, require restoration of the project area, and require proper disposal of all project components. Angelina also stated that it will provide for financial security to ensure that funds are available for decommissioning and land restoration. Prior to construction, the Applicant intends to retain an independent and registered professional engineer to calculate the net decommissioning costs to decommission the Facility as outlined in the Applicant's plan. These cost estimates will be recalculated approximately every five years over the life of the Facility and Angelina will post a surety bond or similar financial assurance instrument in the amount of the applicable net decommissioning costs. (Staff Ex. 1 at 16.)

b. Ecological Impacts

{¶ 55} Staff states that the Applicant does not anticipate adverse impacts to public or private water supplies. Staff notes that solar energy facilities are constructed and generate electricity without impacts to surface or groundwater. While the homes within the project area are in a rural section of Preble County that derives its water source from private groundwater wells, Staff states that there are no Source Water Protection Areas (SWPAs) located within the project area. There is one Groundwater Protection Area located seven miles downstream from the Facility, which is outside the project area. According to Staff, private groundwater wells in the area would not be impacted because construction in the

project area would not likely extend beyond 10 feet below the surface. Staff concurs with Angelina's contention that construction of the proposed Facility would not be considered an activity that would be restricted within either a surface water or groundwater SWPA. (Staff Ex. 1 at 16.)

{¶ 56} Preble County is located within the Till Plains Section of the Central Lowlands Physiographic Province. According to Staff, rocks that outcrop in this county belong to relatively flat-lying sedimentary rocks consisting of limestone, dolomite, and calcareous shales. Staff states that karst limestone occurs primarily south of the project area and that Angelina did not identify any karst features within the proposed project area. The Applicant did not identify any active oil and gas operations in the project area. Likewise, the Applicant researched the records of the Ohio Department of Natural Resources (ODNR) and found no active or abandoned coal or industrial mineral surface or underground mines in the project area. Staff states that there is no record of any seismic activity within the project area. In conclusion, Staff agrees with the analysis provided by Angelina and states that there are no geological features that exist within the project area that would restrict or limit the construction of the proposed Facility. (Staff Ex. 1 at 16-17.)

{¶ 57} Regarding slopes and soil suitability, Angelina stated that the Facility would primarily cross soil types described as silt loam, with a small portion of the project area classified as clay loam. Staff notes that these soils are generally considered to be poorly to moderately drained, moderately slow permeability, and a somewhat high water capacity. According to Staff, the water table is shallow and fluctuates seasonally. Angelina would conduct a geotechnical drilling investigation at the project site to obtain further site-specific detailed information and engineering properties for the soils for design and construction purposes. This planned drilling would ensure that the structures would be installed in locations that are suitable with the soil and rock properties of selected sites. Staff states that Angelina would also implement a stormwater pollution and prevention plan (SWPPP) to ensure the long-term stability of the Facility, both during and after construction. Staff acknowledges that there are potential land use limitations related to surface water drainage,

erosion, and moisture content, but concludes that with proper design and compensating construction methods these limitations should not adversely affect or restrict construction of the Facility. (Staff Ex. 1 at 17.)

{¶ 58} Angelina delineated six streams within the project area, including three perennial streams, one ephemeral stream, and two intermittent streams. According to Staff, the planned installation of collection lines may result in stream crossings and the Applicant stated that all collection line stream crossings would be conducted via horizontal directional drilling (HDD). Because the project would use HDD, Staff recommends that prior to construction Angelina provide a frac-out contingency plan detailing monitoring, containment measures, cleanup, and restoration in the event of an inadvertent return. (Staff Ex. 1 at 17.)

{¶ 59} Angelina identified seven wetlands within the project area, including three Category 2 wetlands and four Category 1 wetlands. The Applicant submitted that no wetlands would be impacted by the construction, operation, or maintenance of the Facility. The Applicant further stated that no ponds or lakes would be impacted by the Facility during construction or operation. Additionally, the Facility will not impact any 100-year floodplains. According to Staff, specifics as to how surface water would be further protected from indirect construction stormwater impacts would be outlined in Angelina's SWPPP. Any direct impacts, including proposed access road crossings, would be covered under the U.S. Army Corps of Engineers (USACE) National Wide Permit Program. (Staff Ex. 1 at 17.)

{¶ 60} The project area is within the historic range of the Indiana bat, a state and federal endangered species, and the northern long-eared bat, a state and federal threatened species. In order to avoid impacts to these bat species, Staff recommends that Angelina adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the United States Fish and Wildlife Service (USFWS) recommends a different course of action. Regarding tree clearing, Angelina has proposed up to 0.07 acre of clearing. Staff recommends that Angelina leave

narrow areas of woodlot-connecting trees and shrubs intact unless the clearing would be a small area needed for installation of collection lines or access roads. In those instances, the corridors would retain some functionality due to the small size of gaps in habitat. (Staff Ex. 1 at 18.)

{¶ 61} The project area is also within range of Sloan's crayfish, a state threated species, and the Eastern massasauga rattlesnake, a federally threated and state endangered species; however, impacts to the habitats of these two species are not anticipated as there is no in-water work proposed. (Staff Ex. 1 at 18.)

{¶ 62} Of the 934 acres within the project area, Staff notes that 864 acres are agricultural lands and the remaining acreage consists of either forestland or grassland/open land. According to Staff, permanent vegetative impacts will occur primarily within agricultural lands. The estimated impact to forestland is 0.07 acre, but this estimate is based upon geographic information system calculations and the actual impact could be more or less than that amount. Staff also states that its recommendation to preserve wooded corridors would reduce total tree clearing. Staff further recommends that Angelina be required to provide a vegetation management plan for review prior to the preconstruction conference, with the plan to identify all areas of proposed vegetation clearing. The plan would specify the extent of any clearing and describe how such clearing work would be done to minimize removal of woody vegetation. Staff also states that the plan should include the implementation and maintenance of native pollinator-friendly plantings in selected locations along the outside border of the solar fields and incorporate plantings of legumes and wildflowers in areas between the solar panels. Plantings should be selected in consultation with the Ohio Pollinator Habitat Initiative. According to Staff, these features would enhance the visual appeal of the project, enrich local wildlife habitat, and benefit the local farming community. Further, according to Staff, pollinator plantings would: help reduce erosion; reduce fertilizer, herbicide, and pesticide use; discourage invasive species; and improve water quality. (Staff Ex. 1 at 19.)

c. Public Services, Facilities, and Safety

{¶ 63} With respect to wind velocity, Applicant stated that components of the proposed facility are not susceptible to damage from high winds except for those at tornado-force. Staff notes that to minimize and mitigate any potential damage from high wind velocities, Angelina proposes to install the project support equipment at sufficient depths based on the site-specific soil conditions. (Staff Ex. 1 at 19.)

{¶ 64} Regarding roads and bridges, Staff states that the principal impact would be increases in truck traffic on routes leading to the project area. According to Staff, some traffic management during the construction phase may be necessary in the immediate vicinity of the project area to ensure safe and efficient maintenance of existing traffic patterns. While a final delivery route has not been finalized, Staff states that there are numerous delivery routes possible for transportation of equipment to the project site, including Interstate 70, US Route 127 from the north, and State Route 725 from the east. Angelina has committed to coordinating with local officials to ensure that impacts associated with this increase in traffic would be minimal. During operation, Facility-related traffic is anticipated to be minimal and would not be expected to significantly impact local roads. Staff states that potential emergency service requirements would be coordinated with local officials during construction and operation. Further, Angelina stated that its contractor will obtain all necessary permits from the Ohio Department of Transportation (ODOT) and the County Engineer prior to construction, as a Road Use and Maintenance Agreement might be required by the County Engineer for construction activities. Staff recommends that Angelina be required to develop a final transportation management plan that, if necessary, would include a road use agreement. Staff also recommends that Angelina be required to promptly repair any damaged public roads and bridges to their previous condition, doing so under the guidance of the appropriate regulatory authority. (Staff Ex. 1 at 20.)

{¶ 65} Staff identifies construction activities such as site clearing, installation of mechanical and electrical equipment, and commissioning and testing of equipment as potential noise impacts from construction activities. According to Staff, many of the

construction activities would generate significant noise levels during the planned year of construction. These activities, however, would be temporary and intermittent and would occur away from most residential structures. Additionally, construction activities would be limited to daytime working hours. Angelina stated that it would use mitigation practices such as maintaining engines and mufflers in good operating order, limiting construction activities to daylight hours, and establishing a complaint resolution process. Staff identifies operational noise sources for a solar generation facility to include inverters and transformers within solar panels, the step up transformer at the new substation, and tracking motors. According to Staff, the noise impacts during operation of the Facility would be relatively minor and occur only during the day. (Staff Ex. 1 at 20.)

{¶ 66} The Applicant conducted an ambient noise level study in order to understand the existing noise levels near the proposed Facility. The study modeled noise impacts to non-participating receptors. The results of the study showed that operational noise levels will be approximately the same as or less than ambient noise levels. According to the study, no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus 5 dBA. Thus, according to the Applicant, the project would be expected to have minimal adverse noise impacts. (Staff Ex. 1 at 20.)

{¶ 67} Staff recommends that the Board find that Angelina has determined the nature of the probable environmental impact for the proposed Facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 21).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 68} 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.

{¶ 69} Angelina considered four criteria in selecting the specific location of the Facility: (1) the land needed to be relatively level, previously disturbed, and dry; (2) parcels to be used for the project needed to be contiguous to or in proximity to other similarly suitable parcels; (3) minimal impacts to sensitive features such as streams, wetlands, and potential wildlife habitat; and (4) willingness of property owners to lease land for solar panels and other components of the Facility (Staff Ex. 1 at 22).

{¶ 70} Staff states that of the 934 acres of leased land, approximately 827 acres would be occupied by permanent facilities, and agricultural land accounts for approximately 98 percent of all land that would be impacted by the proposed Facility. While relatively few previously recorded cultural resources were identified in the immediate vicinity of the proposed Facility, Angelina is currently in the process of designing a systematic Phase I survey program for the project, in conjunction with input from the OHPO, to assure that any impacts to cultural resources are mitigated. (Staff Ex. 1 at 22.)

{¶ 71} Staff believes that the proposed Facility would have an overall positive impact on the local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to local landowners, and potential PILOT revenue (Staff Ex. 1 at 22).

{¶ 72} To the extent that impacts to the project and surrounding areas were identified, Staff believes that such impacts that cannot be avoided can be mitigated and/or reduced. For example, Angelina has committed to using HDD to install underground collection cables under all streams; impacts on wildlife and habitat can be avoided or abated by following seasonal construction restrictions; noise impacts would be primarily limited to the construction phase, would be temporary and intermittent, and would occur away from most residential structures; and, traffic impacts would also be temporary. Given the low profile of the Facility and existing vegetation in the area, visual impacts would be most prominent to landowners in the immediate vicinity of the Facility and such effects will be mitigated through measures committed to by the Applicant, as well as the landscape and

aesthetics plan recommended by Staff. Additionally, Angelina will submit a plan to decommission the Facility that will accurately calculate the costs to properly dispose of the Facility's components at the end of their useful life, will provide financial instruments sufficient to fund decommissioning, and will restore the land to original conditions. (Staff Ex. 1 at 23.)

{¶ 73} 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 conditions specified in the Staff Report (Staff Ex. 1 at 23).

4. **ELECTRIC POWER GRID**

{¶ 74} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed facility will serve the interest of the electric system economy and reliability.

{¶ 75} Staff explains that the North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM Interconnection, LLC (PJM). PJM is the regional transmission organization charged with planning for upgrades and administrating the generation queue for the regional transmission system in Ohio. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area must submit an interconnection application for review by PJM. (Staff Ex. 1 at 24.)

{¶ 76} PJM analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM system studies indicate that no reliability violations would occur during single and multiple contingencies. In addition, no potential violations were found during the short circuit analysis. Based upon PJM's analysis, Staff states that the Facility would provide additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of the electric system economy and reliability. (Staff Ex. 1 at 25.)

{¶ 77} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the expansion of the electric power 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. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 25.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

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

a. Air

{¶ 79} While Staff states that the proposed Facility will not require any air quality permits, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to its construction. Accordingly, Angelina would control temporary and localized dust by hiring a licensed construction firm with knowledge and experience in dust minimization, ensuring construction vehicles are in proper working condition, and using water and/or dust suppressant. Staff also notes that the Facility would not include any stationary sources of

air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 26.)

b. Water

{¶ 80} According to Staff, neither construction nor operation of the proposed Facility would require significant amounts of water and, therefore, the requirements under R.C. 1501.33 and 1501.34 are not applicable. Although the project area is large, Staff states that storm water pollution from the Facility's construction activities would be limited in scope. Angelina would obtain coverage under the Ohio Environmental Protection Agency (Ohio EPA) general national pollutant discharge elimination (NPDES) permit. Staff believes that sedimentation in the local watercourse may occur because of construction activities, but this could be minimized through best management practices such as silt fences or diversion berms. Best management practices to be followed by Angelina would be outlined in its SWPPP, which is required as part of the NPDES permit. If necessary, Angelina will also mitigate potential water quality impacts by: obtaining NPDES Construction Storm Water General Permits from the Ohio EPA; pursuing the USACE Section 404 or nationwide permit for limited stream crossings; and preparing an SWPPP that identifies potential sources of pollution and describes and ensures the implementation of best management practices. (Staff Ex. 1 at 26.)

{¶ 81} Angelina stated that it does not anticipate the need for a spill prevention, control, and countermeasure plan. Staff does not believe that an NPDES permit would be required during operation of the Facility because solar panels generate electricity without water discharge. Water usage at the Facility will primarily be for the occasional cleaning of solar panels a few times per year, as needed. Staff states that with these measures in place, construction and operation of the Facility will comply with the requirements of R.C. Chapter 6111. (Staff Ex. 1 at 26-27.)

c. Solid Waste

{¶ 82} Staff states that while the Facility is located in a rural setting with little to no solid waste present, Angelina would still retain the services of an experienced and qualified firm to perform a Phase 1 environmental site assessment survey of the project area prior to construction. Angelina committed to the final design of the Facility avoiding any recognized environmental condition identified in the Phase 1 site assessment. Debris from construction activities would consist of items such as crates, nails, boxes, containers, packing materials, damaged/unusable parts, litter, and miscellaneous debris. The Applicant stated that materials with reuse or salvage value will be removed for such use and all other construction-related debris will be disposed of at a licensed municipal landfill. During operation, the Facility could generate small amounts of non-hazardous solid waste, which Angelina commits to reuse, recycle, or dispose of in accordance with federal, state, and local requirements. Staff avers that Angelina's solid waste disposal plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 27.)

d. Aviation

{¶ 83} Staff states that the height of the tallest structure at the Facility would be a single narrow lightning mast, at 70 feet. Staff further explains that there are no public use airports, helicopter pads, or landing strips within five miles of the project area. According to the Federal Aviation Administration (FAA), the closest public-use airport is the Richmond Indiana Municipal Airport, which is about six miles from the proposed Facility. Because the Facility is well outside three nautical miles away from Richmond Indiana Municipal Airport, Staff states that an aeronautical study regarding glare is not warranted. There are no private use airports or helicopter pads within or adjacent to the project area, but there is one private use airstrip jest west of the project area in Indiana. Staff states that it contacted the ODOT Office of Aviation during review of Angelina's application, as required by R.C. 4906.10(A)(5), and ODOT identified no impacts on local airports. (Staff Ex. 1 at 27.)

{¶ 84} 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 include the conditions specified in the Staff Report (Staff Ex. 1 at 27).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 86} Angelina stated that it will use equipment compliant with safety standards applicable to commercial-scale solar farms set by the Occupational Safety and Health Administration (OSHA) and the National Fire Protection Association. Angelina indicated that it would use equipment compliant with applicable Underwriters Laboratories, Institute of Electrical and Electronics Engineers, National Electrical Code, National Electrical Safety Code, and American National Standards Institute standards. The Applicant intends to use warning signs, fencing, and locked gates to restrict access to the Facility. The Applicant will also design the Facility with setbacks from the fence to public roads, from the above-ground equipment to public roads, from its fence and adjacent property lines, and from above-ground equipment and habitable residences. Staff points out that most of the construction activities would occur on private land far from roads and residences. Angelina has committed to work with local fire departments and emergency responders to develop an emergency response plan and provide training for response emergencies related to a solar farm. (Staff Ex. 1 at 28.)

{¶ 87} Staff highlights that Angelina hosted a public informational meeting for the project, where attendees were provided the opportunity to view maps of the project, speak with representatives of Angelina, and provide written comments to the Applicant. Angelina served copies of the complete application on the Preble County Commissioners, the Dixon and Israel township trustees, the Preble County Planning Commission, the Preble Soil and Water Conservation District, and the Preble County Engineer. The Applicant also made the complete application available publicly by sending a copy to the Preble County Library

District, as well as it being available for inspection at the offices of the PUCO and on the PUCO online Docketing Information System. Staff states that Angelina has committed to notify, via mail, affected property owners and affected tenants who were provided notice of the public informational meeting, as well as anyone who requests updates regarding the project, no later than seven days prior to the start of construction. Staff recommends that a similar notice be mailed to these same individuals at least seven days prior to the start of operations at the Facility. (Staff Ex. 1 at 28.)

{¶ 88} Angelina further committed that during Facility operation it will ensure that a point of contact is established for complaints, concerns, or comments, and that reasonable efforts will be made to resolve complaints. Staff recommends that Angelina formalize a complaint resolution process for use during the construction and operation period. (Staff Ex. 1 at 29.)

{¶ 89} In conclusion, 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 include the conditions specific in the Staff Report (Staff Ex. 1 at 29).

7. AGRICULTURAL DISTRICTS

{¶ 90} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility.

{¶ 91} According to Staff, no agricultural district parcels would be impacted by construction of the proposed Facility. Proposed construction activities will result in the loss of 732 acres of cultivated lands and 52 acres of pasture. The repurposed land could, however, be restored for agricultural use when the Facility is decommissioned. Staff states that construction and operation of the proposed Facility would disturb the existing soil and could lead to broken drainage tiles. Angelina has committed to take steps to address

potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. In order to avoid impacts to drain tiles, Angelina stated that it would locate drain tiles as accurately as possible prior to construction. Angelina's decommissioning plan for the proposed Facility calls for returning the affected land to original or similar conditions, and the plan includes repairing any drainage tiles and the de-compaction of soil. (Staff Ex. 1 at 30.)

{¶ 92} 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 specified in the Staff Report (Staff Ex. 1 at 31).

8. WATER CONSERVATION PRACTICE

{¶ 93} 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.

{¶ 94} According to Staff, construction of the proposed Facility would not require the use of significant amounts of water. Water may be utilized for dust control during earthwork activities as needed. Operation of the proposed Facility would not require the use of significant amounts of water. No water is needed for any function and no water or wastewater discharge is expected. Therefore, the requirements under R.C. 1501.33 and 1501.34 are not applicable to this project. (Staff Ex. 1 at 30.)

{¶ 95} Staff recommends that the Board find that the proposed Facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the certification of the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 31.)

9. RECOMMENDATIONS

{¶ 96} In addition to making various findings throughout its report, Staff recommended that 27 conditions set forth in Staff Ex. 1 be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 33-37). Many of the recommended conditions found in the Staff Report, some with modifications, are adopted in the Amended Stipulation. The conditions are discussed below.

V. EVIDENTIARY HEARINGS

{¶ 97} As detailed below, Angelina presented eight expert witnesses, each with significant experience working with renewable generation and solar facilities (App. Initial Br. at 10). Angelina asserts that CCPC's witnesses were non-experts who were stating unsupported concerns that have no evidentiary value (App. Initial Br. at 3 citing Tr. III at 343-345; App. Initial Br. at 10).

{¶ 98} Angelina presented the testimony of Douglas Herling in support of the original stipulation and the Amended Stipulation. Mr. Herling testified regarding the application and the company's exhibits identified at the initial adjudicatory hearing. As the Vice President of Development with Open Road Renewables, LLC, the parent company of Angelina, Herling generally testified about all aspects of the Facility's development. (Co. Exs. 6, 19, 22.)

{¶ 99} Angelina presented the testimony of Noah Waterhouse for the purpose of describing the methodology of the drain tile assessment to be performed on behalf of Angelina and to summarize the anticipated impacts of the Facility on drain tile, drainage, and runoff in the area surrounding the Facility. Mr. Waterhouse also testified as to the benefit of Condition 16 in the original and the Amended Stipulation. (Co. Exs. 8, 9, 25.)

{¶ 100} Angelina presented the testimony of Mark Bonifas for the purpose of describing the studies performed to evaluate the anticipated impact of the Facility on roads, bridges, any needed improvements prior to construction, or likely repairs needed after

construction. Mr. Bonifas also discussed the evaluation of any needed transportation-related permits and the potential impact of the project on local traffic. Mr. Bonifas addressed Conditions 25, 26, and 29 of the Amended Stipulation pertaining to the need for a road use agreement and the submission of a decommissioning plan to Staff. (Co. Exs. 10, 11, 27; Joint Ex. 2.)

{¶ 101} Angelina presented the testimony of David Hessler for the purpose of describing the noise assessment study included as part of the application. Mr. Hessler also testified as to the benefits of Condition 3 in the Amended Stipulation. (Co. Ex. 14, 20, 23; Joint Ex. 2.)

{¶ 102} Angelina presented the testimony of Ryan Rupprecht for the purpose of describing the ecological assessment studies performed on behalf of Angelina and to summarize the permits that the Applicant expects to obtain prior to initiating construction in or near surface waters. Mr. Rupprecht also provided an overall assessment of the potential environmental impacts of the Facility. (Co. Ex. 13.)

{¶ 103} Angelina presented the testimony of Andrew Lines for the purpose of evaluating the potential impact of the Facility on property values on lands surrounding the project area (Co. Ex. 15).

{¶ 104} Angelina presented the testimony of Matthew Robinson for the purpose of describing the visual resource assessment in order to identify the visually sensitive resources and potential visual impacts associated with the installation of the proposed Facility. Mr. Robinson also testified on Conditions 3 and 11 of the Amended Stipulation. (Co. Ex. 21, 26; Joint Ex. 2.)

{¶ 105} CCPC presented the lay testimony of Rachel Vonderhaar (CCPC Ex. 2, 3). Ms. Vonderhaar testified regarding her and the Concerned Citizens' concerns about the Project, including but not limited to the proximity of several Citizens' properties to the Project, the possible effects of the Facility on farming operations, wildlife, and the

community, and storm water drainage and field tile systems (CCPC Exs. 2, 3; Tr. III at 333-420).

{¶ 106} CCPC presented the lay testimony of Marja Brandly (CCPC Ex. 4). Ms. Brandly relayed her worries regarding her views of the Facility and the project area when she is living at Brandly Farms, a non-participating property of which portions of its northern, western, and southern property lines will border the project area. Ms. Brandly indicated that she shares the same concerns stated by Ms. Vonderhaar. Ms. Brandly also shared her and CCPC's apprehension about having a power facility in an agricultural community, noise during installation, wildlife being diverted to neighboring farms, road traffic, and crime in the area. (CCPC Ex. 4; Tr. III at 422-429.)

{¶ 107} CCPC presented the lay testimony of Walter Mast (CCPC Exs. 5, 6). Mr. Mast testified regarding his concerns that the Project will increase flooding to his home, the village of Fairhaven, and surrounding farmland. On behalf of CCPC, Mr. Mast shared his concern regarding criminal activity in the area near the proposed project area and the possible interplay between that activity, the Facility, and the community at large. (CCPC Ex. 5, 6; Tr. III 430-477.)

{¶ 108} Staff presented the testimony of Tyler Conklin for the purpose of sponsoring sections of the Staff Report pertaining to economics, air, water, and solid waste (Staff Ex. 1 at 14-15, 26-27, Staff Ex. 2).

{¶ 109} Staff presented the testimony of Derek F. Collins for the purpose of sponsoring sections of the Staff Report pertaining to ecological impacts, specifically the public and private water supply, geology and seismology, and slopes and soil suitability (Staff Ex. 1 at 16-17; Staff Ex. 3).

{¶ 110} Staff presented the testimony of Jason Cross for the purpose of sponsoring sections of the Staff Report pertaining to whether the proposed Facility is consistent with regional plans for expansion of the electric power grid of electric systems serving the state

of Ohio and interconnected utility systems, and whether the Facility will serve the interests of the electric system economy and reliability. Mr. Cross was also responsible for Condition 27 recommended in the Staff Report. (Staff Ex. 1 at 24-25, 37; Staff Ex. 4.)

{¶ 111} Staff presented the testimony of Matt Butler for the purpose of sponsoring portions of the Staff Report pertaining to the history of the application and public interaction and participation. Mr. Butler was responsible for Conditions 12 through 15 recommended in the Staff Report. (Staff Ex. 1 at 28-29, 34-35; Staff Ex. 5.)

{¶ 112} Staff presented the testimony of Robert Holderbaum for the purpose of sponsoring portions of the Staff Report pertaining to the impact of the Facility on surface waters, threatened and endangered species, and vegetation. Mr. Holderbaum was also responsible for Conditions 18 through 24 recommended in the Staff Report. (Staff Ex. 1 at 17-19, 35-36; Staff Ex. 6.)

{¶ 113} Staff presented the testimony of Jon C. Pawley for the purpose of sponsoring portions of the Staff Report pertaining to land use, cultural resources, and aesthetics. Mr. Pawley was also responsible for Conditions 9 and 11 recommended in the Staff Report. (Staff Ex. 1 at 12-13, 34; Staff Ex. 7.)

{¶ 114} Staff presented the testimony of Mark Bellamy for the purpose of sponsoring portions of the Staff Report pertaining to noise and agricultural districts. Mr. Bellamy was also responsible for Conditions 10 and 16 recommended in the Staff Report. (Staff Ex. 1 at 20, 30, 34, 35; Staff Ex. 9.)

{¶ 115} Staff presented the testimony of Andrew Conway for the purpose of sponsoring the Staff Report, as Mr. Conway served as the overall Staff project lead for the investigation of the application which resulted in the Staff Report. Mr. Conway also testified in support of the original stipulation and the Amended Stipulation. (Staff Exs. 1, 11, 12, 13; Joint Exs. 1, 2.)

VI. STIPULATION AND CONDITIONS

{¶ 116} At the October 29, 2020 evidentiary hearing, Angelina presented the Amended Stipulation (Joint Ex. 2). Pursuant to the Amended Stipulation, the Signatory Parties recommend that the Board issue the certificate requested by Applicant, subject to 31 conditions. The Signatory Parties stipulate that: [3]

(1) Angelina shall install the Facility as described in the application and modified or clarified by all relevant subsequent filings, including the recommendations in the Staff Report as modified by the Amended Stipulation.

(2) Prior to the start of any construction activities, Angelina shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Facility. The conference shall include a presentation of the measures to be taken by Angelina and contractors to ensure compliance with all conditions of the certificate. Applicant shall provide a proposed agenda for Staff review prior to the conference.

(3) At least 30 days before the preconstruction conference, Angelina shall submit one set of detailed engineering drawings of the final project design to Staff. The final design shall include all conditions of the certificate and references at the locations where Angelina must adhere to a specific condition in order to comply with the certificate. The final project layout shall reflect any road adjacent setbacks as measured from the edge of the right-of-way rather than the

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[3] This is a summary of the conditions agreed to by the Signatory Parties and is not intended to replace or supersede the actual Amended Stipulation.

edge of the roadway and shall reflect at least the following minimum setbacks: (1) 25 feet between the facility fence and any property line of a non-participating parcel or any edge of right-of-way of a public road; (2) 150 feet between the facility fence and any residence on a non-participating parcel; and (3) 500 feet between any central inverter and any residence on a non-participating parcel. Angelina shall promptly retrofit any inverter as necessary to effectively mitigate any off-site noise issue identified during operation of the Facility.

(4) Angelina shall provide Staff all changes made to the project layout after submission of the final engineering drawings. All changes are subject to Staff review to ensure compliance with all conditions of the certificate prior to construction in affected areas.

(5) Within 60 days after commencement of commercial operation, Angelina shall submit to Staff a copy of the as-built specifications for the entire Facility.

(6) If Angelina has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid unless the Board grants a waiver or extension of time.

(7) As information becomes known, Angelina shall docket in the case record the date on which construction will begin, on which construction was completed, and on which the Facility begins commercial operation.

(8) Before commencement of construction activities in any affected areas, Angelina shall obtain and comply with all necessary permits and authorizations. Within seven days of issuances or receipt of such permits and authorizations, Angelina shall provide copies of the same, including all supporting documentation, to Staff. Angelina shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

(9) If the resulting work from the specified Historic Resource Survey Research Design and Phase 1 Archeological Survey Research Design, each as approved by the OHPO on February 19, 2020, discloses a find of cultural, archeological, or architectural significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then Angelina shall submit a modification or mitigation plan detailing how such site(s) will be avoided or impacts minimized. Any necessary mitigation efforts shall be developed in coordination with the OHPO and submitted to Staff for review and acceptance.

(10) 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 may occur between the hours of 9:00 a.m. and 7:00 p.m. Monday through Friday; hoe ram and blasting operations, if required, may occur between 10:00 a.m. and 4:00 p.m., Monday through Friday. Angelina 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.

(11) Prior to commencement of construction, Angelina shall prepare a landscape and lighting plan in consultation with a licensed landscape architect to address the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. The plan shall include measures such as fencing (including methods for fence repair), vegetative screening, or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of such a residence, the plan shall provide for the planting of vegetative screening designed to enhance the view from the residence and to be in harmony with the existing vegetation and viewshed in the area. Angelina shall maintain vegetative screening for the life of the Facility and shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Angelina shall maintain all fencing along the perimeter of the Facility in good repair for the term of the project and 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.

(12) At least 30 days before the preconstruction conference, Applicant shall provide Staff with a copy of its public information program. To comply with this condition, the program should inform affected property owners and tenants

of the nature of the project, and provide specific contact information of Applicant personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities.

(13) At least 30 days before the preconstruction conference, Angelina shall provide Staff with a copy of its complaint resolution process to address potential public complaints resulting from facility construction and operation. To comply with this condition, the resolution process must describe how the public can contact the Facility, as well as how the Facility would contact anyone issuing a complaint, and require Applicant to acknowledge receipt of a complaint within 48 hours and promptly respond.

(14) At least seven days prior to the start of operation, Angelina shall notify by mail affected property owners and tenants who were provided notice of the public informational meeting, anyone who has requested updates regarding the project, and all intervening parties to the certification process. The notice will provide information about the start of operation and describe how the public can contact the Facility.

(15) During the construction and operation of the Facility, Angelina shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year for the first five years of operation. The report should include a list of all complaints received through the Applicant's complaint resolution process, a description of the

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

(16) Angelina shall avoid, where possible, or minimize to the extent practicable, any damage to functioning surface and subsurface field tile drainage systems, whether publicly or privately maintained, and soils resulting from the construction, operation, and/or maintenance of the Facility in agricultural areas. Benchmark conditions of surface and subsurface drainage systems shall be documented and provided to the County Engineer prior to construction, including the location of mains and grassed waterways and efforts to contact the owner of all parcels adjacent to the project area to request drainage system information on those parcels. To the extent practicable, any tile installation or repairs shall be performed in accordance with applicable provisions of Standard Practice for Subsurface Installation of Corrugated Polyethylene Pipe for Agricultural Drainage or Water Control, ASTM F499-02 (2008). If uncertainty arises concerning the proper procedures for tile repair, Angelina may consult with the Preble SWCD or a USDA Natural Resources Conservation Service representative for privately maintained tile and shall consult with the County Engineer for tile located in a county maintenance/repair ditch. No later than 30 days after damage is discovered, damaged field tile systems shall be promptly repaired and be returned to at least original conditions or their modern equivalent at Applicant's expense. Prior notice to shall be provided, and the County Engineer shall have the right to visually inspect and approve

repair work; if the County Engineer does not approve of the repair work in a timely manner, Staff shall have the right to visually inspect and approve repair work. If there is a difference in opinion between the two, Staff shall have final authority to approve the work. As stated in the application, Applicant will develop a Stormwater Pollution Prevention Plan that will require utilization of silt fences during construction and the prompt removal of construction silt from drainage ditches when necessary for continued efficient drainage. Angelina shall provide the Preble SWCD and the County Engineer with a single point of contact once construction is complete to address any resource concerns.

(17) Within 30 days after issuance or receipt, Applicant shall provide Staff a copy of any arrangement or resulting resolution adopted by Preble County relating to the PILOT program.

(18) Prior to the preconstruction conference, Angelina shall submit a vegetation management plan to Staff for review and confirmation of compliance with this condition. The plan should: identify all areas of proposed vegetation clearing for the project, specifying the extent of the clearing and actions to be taken to minimize removal of woody vegetation; describe how trees and shrubs along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities would be protected from damage; describe the implementation and maintenance of vegetative ground cover for the solar fields and any vegetative screening, including any pollinator-friendly

plantings; describe planned herbicide use; and describe the steps to be taken to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 during implementation of pollinator-friendly plantings. Prior to purchase of seed stock, Angelina shall consult with the Ohio Seed Improvement Association regarding the names of reputable vendors and shall purchase seek stock used on this project from such recommended sources to the extent practicable.

(19) Unless otherwise coordinated with ODNR and USFWS, Angelina shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats and northern long-eared bats.

(20) Applicant shall have an environmental specialist, who is authorized to report any issues to Staff and Angelina, on site during construction activities that may affect sensitive areas, such as areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat.

(21) Angelina shall contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities, and any such activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon.

(22) Prior to the preconstruction conference, Angelina shall file a construction access plan to the record of this case. The plan should consider the location of streams, wetlands, wooded areas, and sensitive wildlife and plant species; explain how impacts to all sensitive resources will be avoided or minimized; include the measures to be used for restoring the area around all temporary access points; and describe any long-term stabilization required along permanent access routes.

(23) Prior to the use of any horizontal directional drilling, Angelina shall file a frac-out contingency plan detailing monitoring, environmental specialist presence, containment measures, cleanup, and restoration.

(24) To the extent practicable, Applicant shall minimize the clearing of wooded areas, including scrub/shrub areas that would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.

(25) Angelina shall obtain transportation permits prior to the commencement of construction activities that require them. Angelina shall coordinate with the appropriate authority regarding any temporary road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed Facility.

(26) Angelina shall provide Staff a copy of the transportation management plan and any changes to the Road Use and Maintenance Agreement for Solar Projects and Infrastructure

dated December 9, 2019 between Applicant and the County Commissioners, County Engineer, Israel Township, and Dixon Township 30 days prior to the preconstruction conference.

(27) Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, LLC and shall file a letter on the docket stating the Agreements have been signed or a copy of the executed Agreements.

(28) Local fire and EMS service providers will be trained in how to respond to emergency/fire situation that could occur at the Facility, with at least one in-service emergency training being conducted prior to commencement of construction. Additionally, safety meetings shall be held with emergency service personnel on an on-going basis. If local fire and EMS responders lack any specialized equipment needed for appropriate emergency response at the Facility, Angelina shall provide such equipment when construction commences.

(29) Applicant shall submit a comprehensive decommissioning plan prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors at least 60 days prior to construction. The plan will specify responsible parties, outline a decommissioning schedule of fewer than 12 months, estimate full decommissioning and restoration costs net of salvage value, require restoration of the project area, and require proper

disposition of all project components. If applicable, Angelina shall post financial security in the form of a performance bond naming the Board as obligee. The net decommissioning estimate shall be recalculated, and the financial security adjusted, at least every five years, but no downward adjustment to reflect a decrease in net decommissioning costs will be made.

(30) If one acre or more of ground is disturbed, Angelina shall obtain from the Ohio EPA a "General Permit Authorization for Storm Water Discharges Associated with Construction Activity" (Construction General Permit). Following the completion of the final project engineering design, Angelina shall perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required, based on requirements found in the Construction General Permit. Applicant shall also provide confirmation that it incorporated guidance from the Ohio EPA's "Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays" to the Preble County Office of Land Use Management and the Preble SWCD. If required, Angelina shall submit construction drawing detailing any stormwater control measures to the Preble County Office of Land Use Management and/or the Preble SWCD no less than seven days prior to applicable construction activities.

(31) Any certificate authority shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations. Nor shall such authority be used to affect the exercise of discretion of any other local, state, or federal

permitting or licensing authority with regard to areas subject to their supervision or control.

(Joint Ex. 2 at 6-13.)

VII. CERTIFICATE CRITERIA

{¶ 117} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;

(2) The nature of the probable environmental impact;

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

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

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

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

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

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

VIII. CONSIDERATION OF CERTIFICATE CRITERIA

{¶ 118} In preface, the Board notes that, as a general theme to all arguments against the issuance of a certificate, CCPC argues that Angelina's application is incomplete and, as such, lacks the information necessary for the Board to make the determinations required by R.C. 4906.10. The Board addresses CCPC's concerns with Angelina's application and the alleged informational deficiencies within our analysis of the requirements of R.C. 4906.10.

{¶ 119} The Board additionally notes that several of CCPC's arguments against a finding of compliance with R.C. 4906.10(A)(2) overlap and interact with the arguments made against a finding of compliance with R.C. 4906.10(A)(3) and, to some degree, R.C. 4906.10(A)(6). Additionally, Applicant combines the two criteria in its discussion of the record. The Board, pursuant to our statutory mandate under R.C. 4906.10, addresses each criterion separately. Any argument raised by a party regarding the nature of the probable environmental impacts or minimal adverse environmental impacts of the Facility that is not specifically addressed in this decision has, nonetheless, been carefully considered and, to the extent applicable, is hereby denied.

A. R.C. 4906.10(A)(1): Basis of Need for Electric, Gas, or Natural Gas Transmission Lines

{¶ 120} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the facility is a gas pipeline or an electric transmission line.

{¶ 121} Staff concluded that R.C. 4906.10(A)(1) is not applicable to this proceeding, given that the Facility is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 11). The Signatory Parties agree that this criterion is not applicable to this proceeding, and CCPC raises no issue as to this finding (Joint Ex. 2 at 17).

{¶ 122} Because the Facility is not a gas pipeline and does not include approval of an electric transmission line, the Board finds that R.C. 4906.10(A)(1) is not applicable in this proceeding (Staff Ex. 1 at 11; Joint Ex. 2 at 17).

B. R.C. 4906.10(A)(2): Nature of the Probable Environmental Impact

{¶ 123} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed Facility.

{¶ 124} Angelina and Staff represent that the record in this proceeding provides the Board with ample evidence to determine the nature of the probable environmental impacts of the Project as required by R.C. 4906.10(A)(2). The Stipulating Parties make the same representation in the Amended Stipulation (Joint Ex. 2 at 17). CCPC, on the other hand, submits that the application is incomplete. CCPC further submits that neither the record resulting from the faulty application nor the Amended Stipulation cures the deficits in information. Accordingly, CCPC states that the Board lacks the information necessary to determine the Facility's probable environmental impacts as required by the statute. With these arguments in mind, the Board turns to our analysis of R.C. 4906.10(A)(2).

1. SOCIOECONOMIC IMPACTS

a. Land Use and Planning, Cultural Resources, and Economics

{¶ 125} Angelina states that the Facility will be located on previously disturbed land that has been mostly used for agriculture and is already level. According to Applicant witness Herling, the project area is largely characterized by large-sized farms with a few pockets of trees and the predominant industry in the area is agriculture. (Co. Ex. 6 at 3-4; Staff Ex. 1 at 12.) The project area does not include any population centers, major industries,

or notable landmarks, and Angelina anticipates relocating only one residence and associated farm structure to accommodate the Facility (Co. Ex. 1 at 78; Co. Ex. 6 at 4). Angelina believes that the proposed Facility aligns with regional development plans in Preble County and is not expected to have any significant adverse effect on regional development. According to the Applicant, the Facility will allow farms to diversify income, preserve land for future generations, increase township and county tax revenues, and create temporary and permanent jobs in Preble County. (Co. Ex. 1 at 80-81.) Furthermore, Mr. Herling opined that the Project will not cause any long-term impacts that would preclude the land's return to agricultural use after the useful life of the Facility (Co. Ex. 7 at 4). Thus, Applicant submits that the Project will have a minimal impact on land use.

{¶ 126} Angelina similarly asserts that the Project will have minimal impact on cultural and historic resources. Angelina engaged consultant Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C. (EDR) to identify registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within two miles of the project area. EDR determined that no such resources occur within the project area itself. (Co. Ex. 6 at 9-10; Co. Ex. 1 at 84.) The Cultural Resources Records Review submitted as part of the application found that "[b]ecause all of the landmarks are distant from the Project Area * * * there would be no direct effects from the construction or operation of the Project on any of the landmarks" (Co. Ex. 1 at 84; Co. Ex. 1, Exhibit H at 13).

{¶ 127} After the hearing on the original stipulation, Angelina prepared work plans for the historic resource survey and Phase I archaeological survey required under Condition 9 of that first stipulation. On February 9, 2020, the OHPO issued correspondence to Angelina approving its proposed work plans for the cultural resource survey program. (Co. Ex. 22 at 7.) Angelina will perform this survey work prior to finalizing the Facility layout, and as part of the requirements of Condition 9 in the Amended Stipulation (App Initial Br. at 17; Joint Ex. 2 at 7, Condition 9).

{¶ 128} Staff explains that the Facility is estimated to generate an estimated $560,000 annually for the Preble County taxing district, Eaton Community Schools, and Israel and Dixon townships. This estimate is based on a PILOT plan in which Open Road Renewables would pay $7,000/MW annually for an 80 MW facility. (Co. Ex. 1 at 32.) According to Angelina witness Herling, the $7,000/MW payments equates to roughly 11 times the level of property taxes currently being paid by participating parcels (Tr. I at 57). Angelina predicts that the Facility will create approximately 518 to 1,076 direct and indirect construction-related jobs with corresponding payroll of $25.4 million to $55.6 million (Co. Ex. 1 at 31, Exhibit C). During operations, depending on the percentage of locally sourced content for maintenance activities, Angelina estimates that the Facility will create approximately 19 to 22 direct and indirect jobs with corresponding annual payroll of approximately $630,000 to $1 million. According to Angelina, the Facility is expected to generate new economic output of around $161.7 million during construction and $1.5 million annually during operation. (Co. Ex 1 at 31-32, Exhibit C.)

{¶ 129} As fully outlined in its Staff Report, Staff generally concurs with the socioeconomic impacts outlined by the Applicant. Staff reiterates that the Facility is being constructed on land that is currently being used for agricultural production and would not interfere with agricultural operations in the surrounding area. Staff agrees that the Facility would not conflict with the County's regional planning, as the development of the Facility could preserve land for future viable farming operations. (Staff Ex. 1 at 12.) In reviewing the cultural resources record review submitted by Angelina, Staff accepts its findings that the Facility will not impact any known cultural resources within a two-mile area (Staff Initial Br. at 8). Staff also points out that should resulting survey work in the project area disclose a site of cultural, archaeological, or architectural significance, then Angelina will be required to submit a modification or mitigation plan detailing how such site(s) will be avoided (Staff Initial Br. at 8; Joint Ex. 2 at 7, Condition 9).

{¶ 130} Staff found Angelina's economic analysis to be reasonable. In alignment with Angelina's analysis, Staff noted the $560,000 in PILOT payments expected to be

generated annually for the Preble County taxing district, Eaton Community Schools, and Israel and Dixon townships. Staff highlights that this revenue will be distributed pro rata to the Preble County taxing district, Eaton Community Schools, and the townships. (Staff Ex. 1 at 15.) In short, Angelina and Staff submit that the record supports a finding that the socioeconomic impacts regarding land use, cultural resources, and economics will either be minimal or positive for the community.

b. Visual Impact

{¶ 131} With respect to visual impacts, Angelina refers to the Visual Resource Assessment (VRA) it performed on the project area. The VRA took into account topography and vegetation and demonstrated that: the Facility's solar panels would be potentially visible from only 16.79 percent of the five-mile visual study area; the proposed substation would be potentially visible from only 9.7 percent of the study area; at a distance beyond 0.5 miles any view of the Facility would be minimal; and at distances of 2.5 miles or more the Facility would generally not be visible at all (Co. Ex. 12 at 4, 7). According to Angelina witness Robinson, beyond 0.5 miles, "discernible equipment starts to go away and you can't tell what it is; you can't see individual components anymore" (Tr. II at 206). Further, Angelina witness Robinson testified that the Facility will not be visible from the two communities in the general vicinity of the project area, Fairhaven and College Corner (Tr. II at 204-205).

{¶ 132} Angelina contends that the VRA is a conservative analysis of visibility that demonstrates that the Facility will have minimal visual impact (App. Initial Br. at 19; Tr. II at 182). Even with the limited visibility results provided in the VRA, Angelina stresses that the Amended Stipulation commits it to implement visual mitigation measures that will minimize any potential impact, particularly on non-participating adjacent properties. (Joint Ex. 2 at 8; Co. Ex. 24 at 4.) Visual mitigation measures incorporated into the Amended Stipulation include development of a landscape plan that includes the use of vegetative buffers to screen the project area for owners of non-participating parcels. This landscape plan, which must be approved by an Ohio-licensed landscape architect, will also be included

as part of the final design for the Facility and must be submitted to Staff prior to the start of construction. (Joint Ex. 2 at 7-8, Condition 11.) The Amended Stipulation also requires setbacks from the project area that are, according to Angelina, more than adequate to allow for robust visual screening for non-participating adjacent property owners (Joint Ex. 2 at 6, Condition 3; Co. Ex. 24 at 1).

{¶ 133} Further, Angelina submits that the use of native shrubs and planting will soften the overall visual effect of the Facility and help to better integrate the Facility into the surrounding landscape (Company Ex. 24, Att. 1 at 2). Angelina highlights that the Amended Stipulation not only requires the Applicant to provide vegetative screening, it requires Angelina to maintain that screening for the entire life of the Facility. Pursuant to the terms of the Amended Stipulation, failed plantings will be replaced so that after five years at least 90 percent of the vegetation has survived in order to ensure that the visual impacts of the Facility remain mitigated and do not denigrate over time. (Joint Ex. 2 at 9, Condition 11; Co. Ex. 24 at 4.)

{¶ 134} Staff believes that the proposed vegetative and landscape screening that Angelina outlines in its application, and that which is further required under the Amended Stipulation, will minimize any potential visual impacts from the Facility (Staff Initial Br. at 7).

{¶ 135} CCPC argues that the application fails to provide information required by Ohio Adm.Code 4906-4-08(D)(4) about the Project's visual impacts and mitigation measures, such as photographic simulations of the proposed facility from public vantage points that cover the range of viewer groups in the study area and measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, and visual screening. For example, the Citizens submit that the photographic simulations provided in the VRA are inaccurate and misleading, as the images are based on solar panels that are eight feet tall whereas the application permits Angelina to use panels that are up to 15 feet tall. Additionally, the

Citizens assert that none of the visual simulations account for the viewer group most negatively impacted by the Facility: non-participating landowners whose properties border the project area. CCPC also asserts several arguments regarding vegetative screening and the Project's lighting.

{¶ 136} The Citizens state that the Facility, if approved, would impose a serious visual blight on the scenic views in Preble County, would expose them to unsightly views and intrusive lighting, among other hazards, and would threaten the quality of life and livelihood of nearby residents. Pointing to the VRA, CCPC explains that the solar equipment will be potentially visible for most of the area surrounding the project area, and Angelina witness Robinson testified that the Facility will be clearly visible from nearby roadways and residences directly adjacent to the Project, particularly where the panels are situated in open fields next to roadways devoid of vegetative screening (Co. Ex. 1, Exhibit I, Figure 7, Sheets 1 and 2; Co. Ex. 12 at 4).

{¶ 137} CCPC takes issue with Angelina's "attempt to disguise" the Project's actual visual impacts by focusing on those impacts at a distance beyond 2.5 miles from the Facility (CCPC Initial Br. at 12-13). CCPC points out that the application concedes an adverse visual effect when largely unscreened and viewed in the immediate foreground, which would be the views subjected on neighbors in the immediate vicinity (Co. Ex. 1 at 88). Furthermore, the VRA demonstrates that the Project will be potentially visible from 82.26 percent of the area within a half mile of the project, wherein a viewer would be able to perceive details with clarity; 41.48 percent of the area between one-half and one mile; and 30.78 percent of the area between one and two miles (Co. Ex. 1, Exhibit I at 18, 23; Tr. II at 185). To CCPC and the 14 member citizens who own or occupy land adjacent to the project area, these are the relevant visual impacts.

{¶ 138} The Citizens argue that Angelina further attempts to disguise the true visual impacts of the Facility with inaccurate photographic simulations from advantageously selected viewer groups. CCPC asserts that the photographic simulations depict views using

eight-foot panels even though Angelina has applied to use, and still could use, panels up to 15-feet tall (Co. Ex. 1, Exhibit I; Tr. II at 182-183; Co. Ex. 22, Attachment DH2). Compounding this problem, says CCPC, is the application's failure to present visual simulations from the proposed setback distances, i.e., the viewer group of neighboring non-participating landowners. The VRA shows views from 300, 600, and 900 feet away, but not from 25 or 150 feet away, which are the distances between solar fences and neighbors' property and solar equipment and neighbors' houses, respectively (Co. Ex. 1, Exhibit I). What the VRA does not show, but the preliminary landscape plan allegedly admits, is that those closest to the Facility will have essentially open views of the solar panel array (Co. Ex. 24, Attachment 1 at 12-22). Absent accurate simulations from all viewer groups, CCPC states the Board cannot accurately determine the visual impacts of the Facility.

{¶ 139} Moving on to vegetation, CCPC contends that the application does not include measures that would minimize the Facility's adverse impacts as required by Ohio Adm.Code 4906-4-08(D)(4); it merely lists types of visual mitigation that are theoretically available without making any enforceable commitments (Co. Ex. 1 at 88-80, Exhibit I at 41-42). CCPC submits that neither the Signatory Parties' attempt to remedy this failure by requiring a post-certificate landscape plan in Amended Stipulation Condition 11 nor Angelina's submission of a preliminary landscape plan at hearing cures this lack of information because the former does not yet exist and the latter is unenforceable. Thus, the Board is left without information to accurately identify the Facility's visual impacts, let alone whether those impacts will be satisfactorily managed.

{¶ 140} CCPC asserts that Amended Stipulation Condition 11 is also insufficient because it does not provide non-participating neighbors with a voice in determining the implementation of visual mitigation measures; instead, the neighbors are at the mercy of decisions made by Applicant and Staff after the issuance of a certificate. In fact, impacted neighbors will not even be consulted in the development of the landscape plan (Tr. II at 200-201). CCPC believes that the preliminary landscape plan submitted at hearing demonstrates that Angelina could have submitted a more detailed plan with the application, thus allowing

full participation and comment from the community, but chose not to. And, neither the Application nor the Amended Stipulation provide a condition that is critical to the Citizens: a complete screen between the solar panels and their yards and houses.

{¶ 141} Continuing, the Citizens discount the requirements found in Amended Stipulation Condition 11 as inadequate and vague. CCPC states that post-certificate landscape plan requires vegetative screening, but no detail on how the vegetation will be planted, leaving potentially huge gaps through which the unsightly facility will be seen. The Citizens also object that Condition 11 requires Angelina to keep only 90 percent of plants alive for the first five years without specifying how much of the screening must survive for the remaining 35 years of the facility. CCPC submits that there is no good reason why Applicant cannot keep 100 percent of the screening intact. Furthermore, while the condition provides that "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," CCPC believes it otherwise leaves many questions unanswered. For example, must 90 percent of the screening for each viewpoint or 90 percent of the entirety of the screening survive; and, what percentage of vegetation must survive after year five. The height of the required vegetation is also not addressed. Furthermore, while Staff is responsible for confirming that the plan complies with the condition, Staff member Conway testified that he did not know what method would be used to determine whether 90 percent of the vegetation survived (Tr. V at 648-649). CCPC states that these loopholes in Amended Stipulation Condition 11 eviscerate the screenings' effectiveness.

{¶ 142} CCPC also asserts that the application is deficient in providing information required by Ohio Adm.Code 4906-4-08(D)(4) regarding the visual impacts of project lighting and associated mitigation measures. According to CCPC, the application acknowledges that lights will be located at gates and a few other select locations (Co. Ex. 1 at 87, Exhibit I at 40). The application does not divulge where gates will be situated, however, resulting in the inability to know how the Project's lights will impact neighbors. CCPC recognizes that

Mr. Herling's second preliminary site plan identifies some light placement, but states that the plan is not part of the application and is not made binding by the Amended Stipulation and is, thus, unenforceable. CCPC similarly contends that the application fails to contain enforceable commitments for mitigation measures that will be taken to minimize adverse visual impacts of lighting and complains that the terms of Amended Stipulation Condition 11 fail to fully protect against adverse impacts because, without knowing the location of the lights, assurances that they will be motion-activated or designed to narrowly focus light inward to the facility fall short. In short, the Citizens argue that nothing about the Project prevented Angelina from submitting a lighting plan with the application and that no certificate should issue without that plan being submitted accordingly (Tr. II at 304).

{¶ 143} In response to CCPC's assertions concerning visual impacts, Angelina states that CCPC's claim that the Facility would impose a blight on the scenic views of Preble County is supported by nothing other than a conclusory assertion and a recitation of the Facility's general visibility. Angelina does not dispute that the Facility will be visible from certain locations but asserts that CCPC's speculative "concern" is not evidence to substantiate CCPC's assertion that the solar panels will spoil the "visual and aesthetic enjoyment of the area." (App. Reply Br. at 15-16.) CCPC's attempts to undermine the validity of the VRA by pointing out that the visual simulations showed a solar panel height of eight feet are, according to Angelina, "trumped-up claims" (App. Initial Br. at 16). Contrary to CCPC's arguments, Angelina states that it has thoroughly investigated the visual impacts of the Project. Angelina reiterates that its VRA determined that the Project will not be visible from areas located more than 2.5 miles from the proposed Project panels. (App. Reply Br. at 16; Co. Ex. 12 at 2, 4.) Angelina points to the testimony of witness Robinson, in which he stated that had the visual simulations depicted a panel height of 15 feet, his ultimate conclusions in the VRA would not change (Tr. II at 205). On this point, Staff likewise points out that the application states that the installed panels could be between eight and 15 feet. Thus, the simulations, which are not intended to be exact pictures of the

final panel design, is in alignment with information submitted as part of the application. (Staff Reply Br. at 6; Co. Ex. 1 at 7-8.)

{¶ 144} Angelina responds to CCPC's contention that the Ohio Administrative Code requires simulations "from the perspective of every 'viewer group' exposed to Facility views," by calling this a mischaracterization (App. Reply Br. at 17 citing CCPC Initial Br. at 15). Angelina states that Ohio Adm.Code 4906-4-08(D)(4)(e) actually requires a "range of * * * viewer groups" not every possible viewer group. According to Angelina, this is precisely what its application provides, as the VRA generally "represented the most open, unobstructed available views of the Project Area." (App. Reply Br. at 17-18; Co. Ex. 1 at 25.)

{¶ 145} In response to CCPC taking issue with the flexible approach to landscape screening adopted in the Amended Stipulation, and claiming that the application is deficient because it does not specifically commit to a precise method of visual mitigation, Angelina asserts that this is yet another mischaracterization by CCPC (App. Reply Br. at 20). Angelina points out that, pursuant to the terms of the Amended Stipulation, it is obligated to screen the non-participating parcels for the entire life of the Project. Angelina believes that it has provided numerous, effective options for meeting this obligation. Further, Angelina is obligated to submit a final landscape plan that must be reviewed by Staff to ensure that it meets the requirements of Amended Stipulation Condition 11. Angelina also highlights that Condition 11 requires that vegetative screening must be maintained for the life of the Facility, which Angelina believes will ensure that the screening measures will remain effective. With respect to CCPC's claim that visual mitigation plans fail to meet the expectation of nonparticipating neighbors who want the solar equipment completely screened from view via vegetation, Angelina states that this speculative concern is also unsupported by any evidence. Angelina states that CCPC did not provide a single witness or any other evidence to support its contention that complete screening is a measure that any of its members may want. (App. Reply Br. at 21.) Staff similarly responds that the flexible approach outlined in Amended Stipulation Condition 11 is not a license for the Applicant to "do whatever it wants," as CCPC contends, but allows for the landscape

architect engaged by Angelina to suggest certain techniques, designs, or plantings that will work better in coordination with the selected solar panels or to screen the direct line of sight of particular residences (Staff Reply Br. at 7).

{¶ 146} In response to CCPC's issue with the requirement in the Amended Stipulation that 90 percent of any vegetative screening plantings must survive the first five years after planting, Angelina believes that CCPC is again making unfounded claims (App. Reply Br. at 21). Angelina characterizes CCPC as claiming that every plant that dies must be replaced and that there should be at least two rows of plants so that a dead spot does not open a view of the Facility (App. Reply Br. at 21 citing CCPC Initial Br. at 20-21). Angelina believes that CCPC offered no evidence to support this unfounded claim and, in doing so, also ignored the operation of Condition 11. Angelina asserts that witness Robinson responded to questioning on this issue by making clear that Amended Stipulation Condition 11 has two prongs: first, at least 90 percent of the plantings, measured Facility-wide, must survive five years after planting; second, screening must be maintained for the life of the Project. (Tr. V at 614-616.) In summary, Angelina states that Condition 11 will ensure that plantings are properly established and that the vegetative screening is maintained for the entire life of the Project (App. Reply Br. at 22).

{¶ 147} In response to CCPC's issue with the application's alleged lack of detail regarding lighting, Angelina asserts that CCPC makes no argument that lighting from the Project does not meet applicable statutory criteria in R.C. 4906.10. Instead, Angelina points out that CCPC relies solely on an alleged deficiency in not describing measures to limit the impact due to lighting (App. Reply Br. at 22 citing CCPC Initial Br. at 22-25). To make this claim, Angelina believes that CCPC is ignoring the portions of the VRA describing lighting measures that will be incorporated into the Project to minimize visual impacts (App. Ex. 1, Exhibit I at 40). Further, Angelina points out that Condition 11 of the Amended Stipulation obligates Angelina to include motion-activated lights that are designed to narrowly focus light toward the Facility (Joint Ex. 2 at 8, Condition 11). Angelina asserts that CCPC dismisses this condition with an unsupported claim that Angelina was required to place this

condition in its application (App. Reply Br. at 23 citing CCPC Initial Br. at 24). Angelina believes this reasoning is flawed, as it and the other signatory parties are submitting the conditions contained in the Amended Stipulation for the Board to include them as part of any issued certificate, as the Board is permitted to do (App. Reply Br. at 23; R.C. 4906.10(A)).

c. Decommissioning

{¶ 148} Angelina asserts that, given the modest impact of construction of the project, decommissioning the Facility should be relatively easy. Angelina points to its application, in which the company makes clear that the project area will be restored to use for cultivation, unless circumstances prevailing shortly in advance of the start of decommissioning indicate that another use is more appropriate or explicitly desired by a landowner. Such restoration activities will include a return to the same or functionally similar preconstruction drainage patterns, decompaction of soil, and seeding with an appropriate, low-growing vegetative cover to stabilize soil, enhance soil structure, and increase soil fertility. Additionally, to the extent that materials can be recycled, Angelina commits to doing so. (App. Initial Br. at 33; Co. Ex. 1 at 37, 39; Co. Ex. 6 at 13.)

{¶ 149} Angelina also highlights two requirements in the Amended Stipulation that it claims will ensure that the costs to accomplish the decommissioning plan will be available. First, decommissioning costs are to be re-estimated at least every five years and can only be adjusted upward. Second, Angelina is required, if necessary, to provide financial security in the form of a performance bond with the Board named as obligee, and which will be adjusted to reflect any increases in the net decommissioning costs. (Joint Ex. 2 at 11-12, Condition 29.) According to Angelina, this is significant because it means that, prior to beginning construction, it has committed to post the necessary financial security to ensure the availability of funds to pay for net decommissioning costs at the end of the Facility's life. Angelina witness Bonifas supports this conclusion, as he testified that Condition 29 of the Amended Stipulation ensures that the Facility will be decommissioned as planned and the land returned to another use. (App. Initial Br. at 33; Co. Ex. 11 at 3.)

d. Conclusion

{¶ 150} Consistent with the Staff Report, the Board finds that the Facility's probable impact on socioeconomic conditions has been properly evaluated and determined. The Board first notes that the planned construction and operation of the Facility is unlikely to conflict with the regional planning of Preble County, as the proposed Facility is not expected to interfere with surrounding agricultural land use and the project site could be returned to farming, or developed for other uses as desired, following decommissioning (Staff Ex. 1 at 12). Similarly, the Board agrees with Staff's assessment that the Facility will not directly impact any known cultural resources within the two-mile area surrounding the Project. To the extent that any impacts to cultural, historical, or archaeological resources are discovered during development, the Board believes that conditions outlined in the Amended Stipulation provide adequate protections to minimize such impacts (Joint Ex. 2. at 7, Condition 9).

{¶ 151} The Board notes that the economic impact generated by the construction and operation of the Facility is projected to be significant for the local community. As Angelina and Staff both highlighted, the $560,000 PILOT payments expected to be generated annually will be distributed to local schools and taxing districts and represents approximately 11 times more revenue to these entities than is currently generated via property taxes (Staff Ex. 1 at 15; Tr. I at 57). Additionally, the job creation and corresponding payrolls that Angelina projects to occur as a result of the Project are meaningful. The estimated 518 to 1,076 direct and indirect construction-related jobs, with corresponding payroll of $25.4 million to $55.6 million, represents meaningful employment for area workers. Likewise, the up to 19 to 22 direct and indirect jobs, with corresponding annual payrolls of approximately $630,000 to $1 million, during operation of the Facility is also a notable benefit for workers. A Facility generating new economic output of approximately $161.7 million during construction and $1.5 million annually during operations will be an asset added to the local economy. (Co. Ex. 1 at 31-32, Exhibit C.) Further, as noted by Angelina and a number of witnesses at the public hearing, the Facility provides participating farmers with the ability to diversify

income and ensure a steady revenue stream in addition to regular agricultural activities (Co. Ex. 1 at 80-81; Pub. Tr. at 72, 77, 78-79, 79-80, 89-90).

{¶ 152} With respect to the visual impact, the VRA sufficiently demonstrated the potential visibility of the Facility to the surrounding area. The conclusions of the VRA, as fully outlined above, are significant and support Angelina's contention that it has addressed the visual impacts that the Facility may have on surrounding parcels. Regarding CCPC's concern that the heights of panels in the visual simulations relied upon by Angelina were not the full 15 feet, the Board agrees with Staff that such simulations are not required to be exact pictures of final designs. While the simulations might not reflect the final panel design, the simulations are in alignment with what was outlined in the application. Further, Angelina witness Robinson testified that had the visual simulations depicted a panel height of 15 feet, his ultimate conclusions in the VRA would not change (Tr. II at 205). The Board finds concerns from CCPC regarding lighting measures that will be incorporated into the Facility to be unfounded, as the application does describe lighting measures to be installed on-site, such as shielded, downward-facing fixtures to minimize light pollution (Co. Ex. 1, Ex. 1 at 40). In addition, Amended Stipulation Condition 11 further obligates Angelina to incorporate certain lighting measures such as motion-activated and narrowly focused lights, which would further decrease potential lighting impacts (Joint Ex. 2 at 8, Condition 11).

{¶ 153} Finally, the Board finds that the decommissioning process, as outlined in Amended Stipulation Condition 29, satisfies the decommissioning requirements of Ohio Adm.Code 4906-4-09(I) and will be overseen by the Board and Staff. We specifically note that the preliminary decommissioning plan includes an estimate of the net commissioning costs. As part of its obligations under the Amended Stipulation, however, Angelina is required to recalculate the net decommissioning estimates at least every five years by an engineer retained by the Applicant. We note that the Board maintains the authority to ultimately accept or reject the engineer chosen by Angelina to conduct such an analysis, further fulfilling our obligation to ensure compliance with the decommissioning requirements set forth in Ohio Adm.Code 4906-4-09(I). Furthermore, Angelina is required,

if necessary, to provide financial security in the form of a performance bond with the Board named as obligee, and which will be adjusted to reflect any increases in the net decommissioning costs.

2. ECOLOGICAL IMPACT

{¶ 154} Ecological impacts are broadly divided into six categories: public and private water supply, geology and seismology, slopes and soil suitability, surface waters, threatened and endangered species, and vegetation (Staff Ex. 1 at 16-19).

a. Water, Geology, and Soil

{¶ 155} Angelina submits that its initial investigation concluded that soil in the project area is suitable for drainage for the Facility and that there are no soil-related inadequacies that need to be remedied for the Facility (Co. Ex. 1 at 63). Angelina witness Waterhouse—a licensed professional engineer with extensive experience evaluating drainage, runoff, and drain tile issues at solar projects—concluded that the Facility should not have an impact on drainage nor result in increased runoff. In fact, Mr. Waterhouse testified that he expects the Facility to have superior drainage and runoff characteristics as compared to a fallow field, due to the year-round vegetation maintained in and around the project area. (Co. Ex. 8 at 4; Tr. I at 150.) Applicant states that witness Marquis—a professional engineer with experience in hydrology and hydraulics—confirmed Waterhouse's conclusion when he testified that the proposed changes to land use for the Facility, in his opinion, "would not result in an increase in runoff." (App. Initial Br. at 34; Tr. IV at 525.) Mr. Marquis further testified that runoff from the solar panels can be managed through management of the ground surfaces beneath the panels, which is typically how it is handled on large-scale utility projects (Tr. IV at 634). Angelina also points to the testimony of CCPC witness Vonderhaar as corroboration of these conclusions, as Ms. Vonderhaar agreed that "[g]rass or any kind of plant can slow down surface water runoff" (App. Initial Br. at 34-35 citing Tr. III at 373).

{¶ 156} Although it believes the Facility will have a minimal impact on runoff, Angelina is still committed to satisfying a General Authorization for Storm Water Discharges Associated with Construction Activity (Construction General Permit) issued by the Ohio EPA. Angelina also reaffirms its commitment to perform pre- and post-construction stormwater calculations to determine if post-construction best management practices are required per the Construction General Permit. Further, pursuant to the terms of the Amended Stipulation, if any such practices are required, Angelina must incorporate guidance from the Ohio EPA titled "Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays." Angelina submits that although no negative impact on runoff or drainage is expected, the company is still committed to mitigate any such impacts pursuant to the terms of the Construction General Permit and guidance from the Ohio EPA (App. Initial Br. at 35; Joint Ex. 2 at 12).

{¶ 157} According to Angelina, there are 1.19 acres of wetland located within the project area. As testified by Angelina witness Rupprecht, there will be no wetland impacts resulting from the construction and operation of the Facility. Mr. Rupprecht also testified that a total of six non-wetland waterbodies are located within the project area, but there will be no impacts to these waterbodies, due in part to the use of mitigation measures such as horizontal direct drilling. Therefore, Angelina concludes that the Facility will have minimal impact on surface waters. (Co. Ex. 13 at 5-6.)

{¶ 158} Regarding geology in the project and surrounding areas, Angelina cites the conclusion of the Groundwater Hydrogeological and Geotechnical Desktop Document Review Summary Report (Hydrogeological Report") attached to its application, which states that "it does not appear that the construction of the proposed solar array will have a significant impact on the local geology and/or hydrogeology of the Project Area" (App. Reply Br. at 37 citing Co. Ex. 1, Exhibit F at 7).

{¶ 159} Staff concurs with the assessments offered by Angelina concerning potential effects of the Facility on water supplies. Staff notes that solar energy facilities are generally

constructed and generate electricity without impacts to surface or groundwater. Staff also notes that while homes within the project area derive their water source from private groundwater wells, there are no Source Water Protection Areas within the project area. (Staff Ex. 1 at 16.) Regarding geology, Staff states that there are no geological features that exist within the project area that would restrict or limit the construction of the proposed Facility. Further, Staff states that there is no record of any seismic activity within the project area. (Staff Ex. 1 at 16-17.) With respect to slopes and soil suitability, Staff states that the water table in the area is shallow and fluctuates seasonally. Staff approves of Angelina's intention to conduct geotechnical drilling at the project site to obtain further site-specific detailed information and engineering properties for the soils for design and construction purposes. Staff acknowledges that there are potential land use limitations related to surface water drainage, erosion, and moisture content, but concludes that with proper design and construction methods such limitations should not adversely affect or restrict construction of the Facility. (Staff Ex. 1 at 17.)

{¶ 160} Staff also agrees with Angelina that no ponds or lakes would be impacted by the Facility during construction or operation. Additionally, Staff notes that the Facility will not impact any 100-year floodplains. According to Staff, specifics as to how surface water would be further protected from indirect construction stormwater impacts would be outlined in Angelina's SWPPP. Any direct impacts, including proposed access road crossings, would be covered under the USACE National Wide Permit Program. (Staff Ex. 1 at 17.)

{¶ 161} CCPC argues that the application provides no data on the quantity of, and mitigation measures for, the surface water draining from the Facility during construction and operation as required by Ohio Adm.Code 4906-4-07(C). The Citizens assert that the Ohio Adm.Code requires an applicant to quantify the stormwater runoff from soil and other surfaces regardless of whether the flow is expected to increase, decrease, or remain the same. Similarly, CCPC maintains that the Application provides no data on the quality of surface water flows during construction and operation. The Citizens contend that, despite these

prerequisites, Angelina simply claims that the requirements do not apply to the Facility because there are no anticipated changes in flow patterns and erosion and no discharges are expected to occur (Co. Ex. 1 at 46). CCPC contends that Angelina's beliefs that its activities will not increase the amount of stormwater flow from the project area are not only irrelevant but directly contradicted by other statements in the application instructing Applicant to drain its construction sites into drainage swales to keep the sites dry and use best management practices to minimize sedimentation and erosion (Co. Ex. 1, Exhibit F at 6 and Exhibit G at 1-5). Furthermore, the Amended Stipulation Condition 30 requires Angelina to obtain the Construction General Permit, which would only be necessary when construction activities are anticipated to discharge stormwater into the waters of the state (App. Initial Br. at 62 citing Co. Ex. 26 at 2). Here, CCPC also points to Angelina witness Marquis' testimony that "Condition 30 will help to ensure that post-construction stormwater flows are appropriately managed" (Co. Ex. 26 at 3).

{¶ 162} CCPC is concerned that the Board does not have the information necessary to determine whether construction and operation of the facility will increase stormwater runoff. While Angelina contends that it will plant vegetation in the solar fields to absorb more precipitation and decrease runoff, CCPC states that no attention is paid to potentially increased flows before the vegetation is planted and matures. This is especially disconcerting, says the Citizens, because any increase in the amount or speed of stormwater flows from the Project would aggravate what they believe is an existing drainage problem. The Citizens also feel that any increase in flow or flow velocity from the project area would exacerbate drainage and flooding problems in the village of Fairhaven, a portion of which along Four Mile Creek is within a 100-year flood plain (Co. Ex. 21 at 4). CCPC worries that any increase in storm or surface water runoff from the project area will ultimately drain into Four Mile Creek, which Walter Mast testified already overflows its banks every year (CCPC Ex. 5 at 3). The Citizens acknowledge Angelina expert Marquis' testimony that vegetation and other characteristics of the Facility will prevent any increase in surface water runoff from the project area (Co. Ex. 21 at 2) but assert that Mr. Mast's observations to the contrary

are more compelling (CCPC Ex. 6 at A.6). And, based on Mr. Mast's testimony, CCPC argues that the Project's threat to flood downstream areas is high enough to justify inclusion of storm water retention basins, ponds, or other measures in the Amended Stipulation (CCPC Ex. 6 at A.6).

{¶ 163} In short, CCPC states that, without a hydrology study to quantify the stormwater flowing from the project area during construction and operation, the Board is deprived of the information necessary to make judgments on this issue. CCPC further claims that, without a hydrology study, no measures to mitigate the effects from the quality of aquatic discharges are or can be identified. CCPC declares that the Board may not issue a certificate based on the faulty application and that submitting a hydrology study and preparing a SWPP per Amended Stipulation Condition 16 after the issuance of a certificate is not an acceptable substitute.

{¶ 164} In response to CCPC's assertion that the application does not adequately provide the "information regarding water quality during construction" required under Ohio Adm.Code 4906-4-07(C)(2), Angelina states that this is a misguided attack on the Project (App. Reply Br. at 36 citing CCPC Initial Br. at 60). First, Angelina states that such information is irrelevant as to the Board's decision to issue a certificate. Further, Angelina submits that the application clearly provides the required information. Angelina points out that the application states that there will be little grading or excavation and that, as a result, there will be no water monitoring or gauging stations, no aquatic discharges, no anticipated changes in flow patterns and erosion, and no equipment to control discharge of effluents because the Facility will not discharge any effluents. (App. Reply Br. at 36; Co. Ex. 1 at 44-48.) Regarding CCPC's claim that Ohio Adm.Code 4906-4-07(C) requires an applicant to "quantify the amount of water that will flow off the Project Area" via hydrology study, Angelina responds that this is not a requirement and that CCPC misrepresents the rule (App. Reply Br. at 36-37 citing CCPC Initial Br. at 59-60, 63).

{¶ 165} Angelina states that CCPC blatantly mischaracterizes Angelina's position that the Facility will have little to no impact on current stormwater flows by representing that it is Angelina's position that there will be no stormwater flow whatsoever. In support of this position, CCPC cites the Amended Stipulation's requirement that Angelina obtain a General Permit Authorization for Stormwater Runoff and witness Marquis' testimony that a solar panel will interrupt rainfall's trajectory to the ground. None of these arguments, according to Angelina, counter the clear record evidence that the Facility will have no negative impact on surface water drainage. (App. Reply Br. at 37 citing CCPC Initial Br. at 61-62.) Angelina believes that CCPC ignores the Groundwater Hydrogeological and Geotechnical Desktop Document Review Summary Report (Hydrogeological Report) conclusion that "it does not appear that the construction of the proposed solar array will have a significant impact on the local geology and/or hydrogeology of the Project Area" (Co. Ex. 1, Exhibit F at 7). Further, witness Waterhouse testified that, in his experience, when compared to a fallow field he would expect the Project to have superior drainage and runoff characteristics (Co. Ex. 8 at 4; Tr. I at 150). Witness Marquis agreed with Mr. Waterhouse, stating that in his opinion, the proposed changes in land use resulting from the Project would not result in an increase in runoff (Tr. V at 525).

{¶ 166} Angelina believes that CCPC's claims regarding groundwater relies heavily on the "anecdotal testimony" of witness Walter Mast to describe potential water-related consequences of the Project in "florid detail" (App. Reply Br. at 38). In response to CCPC relying on Mr. Mast's testimony to claim that there is a "disagreement between Mr. Mast and Mr. Marquis," Angelina states that the distinction between the testimonies of the two witness is, in fact, significant. Whereas Mr. Marquis possesses a master's degree in civil engineering, has extensive experience analyzing surface water management, and has reviewed the Project application, Angelina points out that Mr. Mast has no experience with utility-scale solar farms and has not even reviewed the application for this Project (App. Ex 21 at 2; Tr. V at 5256; Tr. III at 450-451, 457-458). Rather than conducting drainage calculations or studies regarding the impact of the Project on surface water, Mr. Mast

testified that he used "thought experiments" to arrive at his conclusions on flooding. Angelina concludes that Mr. Mast's testimony, with respect to the impact of the Project on flooding, is not credible or reliable. (App. Reply Br. at 39 citing Tr. III at 475.)

{¶ 167} In response to CCPC's claims that the application failed to describe any changes in flow patterns and erosion, Angelina states that the application did provide such information. The application said that "[t]here are no anticipated changes in flow patterns and erosion," due to the fact that very little grading will be needed in the project area (Co. Ex. 1. 46). Angelina states that CCPC's assertion that the application was misleading on this issue is based on a statement made by consultant Cardno in its ecological report, in which it states that "[t]emporary soil erosion and sedimentation control measures will be installed…as applicable" (Co. 1, Exhibit G at 1-5). According to Angelina, this statement does not mean that erosion will necessarily occur, and this argument is another example of CCPC "misinterpreting and misapplying the record" (App. Reply Br. at 40).

{¶ 168} Angelina asserts that information on water discharges is not required in its application because there will be "no impacts" to water quality due to construction and operation (App. Reply Br. 41). Angelina points out that its application makes clear that there will be no changes in flow patterns and erosion and no direct aquatic discharge to streams as a result of Facility construction (Co. Ex. 1 at 46). Even so, Angelina highlights that it still committed in the application to implementing an SWPPP for erosion control and the management of stormwater and as part of an Ohio EPA construction stormwater permit (Co. Ex. 1 at 45; Tr. I at 147-148). Angelina stresses, however, that its commitment to develop and implement an SWPPP does not, as CCPC suggests, contradict the application and expert testimony offered in this case which show that the Facility will have no adverse impact on water quality. Rather, it is an example of Angelina's due diligence in the proceeding and its compliance with permitting requirements. (App. Reply Br. at 42.)

b. Threatened and Endangered Species

{¶ 169} Angelina states that the project area and surrounding area within a quarter-mile buffer are not expected to provide habitat for any listed or other rare, threated, or endangered (RTE) species. During field studies conducted by its consultant Cardno in November 2017, April 2018, and October 2018, no RTE species were identified. (Co. Ex. 11 at 4; Tr. II at 209-210.) Angelina acknowledges, however, that the historic ranges of the endangered and/or threated Indiana bat, northern long-eared bat, Sloan's crayfish, and eastern massasauga rattlesnake are included in the project area (App. Initial Br. at 21; Staff Ex. 1 at 18).

{¶ 170} Angelina highlights that witness Rupprecht testified that the Facility "has no proposed tree clearing that affect [Indiana bat] habitat." Rupprecht based this conclusion on the fact that the Facility will only involve clearing 0.07 acres of trees, which "will not represent a change in the habitat for bats." (Tr. II at 215.) To ensure that no possible adverse impact to the Indiana bat or northern long-eared bat occurs, in compliance with Amended Stipulation Condition 19, Angelina has committed to adhere to seasonal cutting dates outlined therein, unless coordination with ODNR and USFWS allows a different course of action (Joint Ex. 2 at 10). Angelina further points out that no impact to either Sloan's crayfish or the eastern massasauga rattlesnake is expected from the Project due to the absence of impact to surface waters and wetlands (Staff Ex. 1 at 18). Based upon the RTE evaluations performed for the Project, as well as the conditions incorporated into the Amended Stipulation, Angelina believes that the Board has adequate evidence to find that the Project's impact on RTE species will be minimal (App. Initial Br. at 22; Joint Ex. 2 at 6-13).

{¶ 171} In addition to investigating the impact on RTE species, Angelina evaluated the impact that the Facility would have on other wildlife in the area. Angelina consultant Cardno determined that the Project "would not significantly impact wildlife or wildlife habitat" (Co. Ex. 13 at 6). Angelina believes that the Facility has been designed to locate the majority of infrastructure on active agricultural land, which provides habitat for only a limited number of wildlife species (App. Initial Br. at 22; Co. Ex. 13 at 6). To the extent that

any species might be disturbed, Angelina witness Rupprecht testified that there is an abundance of similar agricultural fields within the project area and surrounding area that can be used as similar habitat. Further, Mr. Rupprecht stated that few birds and mammals forage within these fields and would likely avoid areas that are being disturbed during construction, opting instead for higher quality habitat nearby for roosting, foraging, and breeding. (Co. Ex. 13 at 4, 6.)

{¶ 172} Mr. Rupprecht also led a multi-person Cardno team that determined that deer in the area surrounding the project area would increase by less than 5 percent (or 0.01 deer per acre) as a result of construction of the Project (Co. Ex. 13 at 2, 7; Tr. II at 218, 222). According to Mr. Rupprecht, the displacement caused to deer as a result of the Facility would be no different from the displacement currently experienced during the annual tilling and harvesting of agricultural fields within the project area. Further, while Cardno based its analysis on deer population, Mr. Rupprecht testified that other wildlife, including coyotes, would likely make the same adjustments as deer to the construction of the Facility, and therefore the conclusion could be applied to other terrestrial species. (Tr. II at 226-227, 231.) In conclusion, Mr. Rupprecht stated that the Facility will not displace wildlife to surrounding properties in numbers that would cause a negative impact (Co. Ex. 13 at 7).

{¶ 173} Staff also notes that while no listed animal or plant species were identified in field survey, the project area is within range of the state and federal endangered Indiana bat and the state and federal threatened northern long-eared bat. Staff therefore supports the provisions in the Amended Stipulation that Angelina adhere to seasonal cutting dates from October 1 through March 31 for the removal of trees three inches or greater in diameter in order to avoid impacts on either of the bat species. (Staff Ex. 1 at 18; Joint Ex. 2 at 10, Condition 19.)

{¶ 174} CCPC raises two general arguments regarding wildlife in the area. First, CCPC states that the application does not provide the data required by Ohio Adm.Code 4906-4-08(B) to evaluate the Project's adverse impacts on wildlife, specifically the results of

a literature survey of the animal life found within at least one-fourth mile of the project area boundary and the results of field surveys of those species identified in the literature survey. CCPC asserts that Angelina performed only a partial literature search for animal life and failed to conduct the appropriate field surveys. CCPC says that Angelina improperly limited the literature survey to only plant and animal species that are endangered, threatened, of concern, or of special interest, thus leaving a huge gap in the information regarding ecological resources in the project area (Co. Ex. 1, Exhibit G at Appx. C). In this, CCPC alleges that Angelina's field surveys were also inappropriately limited, leading to the same informational gap. In support of this contention, CCPC points to Cardno's summary of field studies, which indicates Cardno did field studies for "sensitive species assessment" only, such that wildlife observations were limited to common species in the agricultural area during the month of November, when CCPC believes most birds have already migrated away from the area (Co. Ex. 1, Exhibit G at 1-1). CCPC additionally notes Angelina witness Rupprecht's testimony that Cardno performed no direct bird, bat, or mammal surveys (Tr. II at 214, 217).

{¶ 175} Second, CCPC contends that the application fails to provide information required by Ohio Adm.Code 4906-4-08(B)(3) to assess, avoid, and mitigate impacts on wildlife that will result in crop and livestock damage on nearby farms. The Citizens claim that, because Angelina did not conduct the literature search and field surveys necessary to identify all plant and animal species in the area, the application also fails to evaluate the Facility's potential impacts on these species during operation and the mitigation measures necessary to minimize them. The Citizens allege that the application also fails to evaluate the potential impacts on deer and coyote populations excluded from the project area by the fencing of the fields. This is a concern for CCPC, who believe that the Facility fencing will reduce the area available for deer and coyote to roam and forage, forcing those populations onto surrounding lands, where they will eat the Citizens' crops and livestock, or onto public roads, where they will be prone to vehicle collisions (CCPC Ex. 2 at 5, 8-9; CCPC Ex. 4 at 4). CCPC is also concerned that reduction of occupiable space for deer will cause the animals

to pack more closely together, which could lead to increased spread of disease that can be passed to cattle (CCPC Ex. 2 at 8). CCPC notes that Angelina witness Rupprecht confirmed that deer will not be able to use the project area for foraging once the Facility is fenced and did not dispute that deer and coyotes may be present in and around the area (Tr. II at 223, 225, 231-232). CCPC extrapolates that, without the data necessary to make these determinations regarding wildlife displacement, the application also fails to determine what mitigation may be necessary to address the problem pursuant to Ohio Adm.Code 4906-4-08(B)(3).

{¶ 176} Angelina asserts that CCPC is incorrect and that it conducted a literature review and field surveys in accordance with the Board's rules. Despite the claims of CCPC to the contrary, Angelina states that the Ecological Assessment conducted by Cardno includes information regarding rare, threatened, and endangered species, as well as a discussion of non-threatened species. (Co. Ex. 1, Exhibit G at 4-7.) CCPC's argument that a literature survey must include *all* plant and animal life is, according to Angelina, misleading, as the word "all" does not appear in Ohio Adm.Code 4906-4-08(B)(1)(c) (App. Reply Br. at 49 citing CCPC Initial Br. at 55). Ohio Adm.Code 4906-4-08(B)(1)(c) requires an applicant to: "Provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary. The literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened." Angelina believes that to read the word "all" into the rule would render the second sentence superfluous. (App. Reply Br. at 49; Ohio Adm.Code 4906-4-08(B)(1)(c).)

{¶ 177} Applicant disputes CCPC's allegation that Angelina failed to conduct the required field survey under Ohio Adm.Code 4906-4-08(B)(1)(d) and then falsely represented in the application that the survey was conducted (App. Reply Br. at 50; CCPC Initial Br. at 56). Angelina points to the Ecological Assessment conducted by Cardno, which included habitat observations and sensitive species assessment, as well as wildlife observations during field surveys for common species in agricultural areas, including white tailed deer

and gray squirrels. The Ecological Assessment stated that Cardno staff observed minimal wildlife use in the project area and observed no RTE species. Angelina believes that the Ecological Assessment demonstrates that it made observations of all wildlife, not just RTE species. (App. Reply Br. at 49; Co. Ex. 1, Exhibit G at 1-1, 6-3.) Further, Condition 19 of the Amended Stipulation requires Angelina to adhere to seasonal cutting dates to protect the habitats of the Indiana bats and northern long-eared bats (Joint Ex. 2 at 10).

{¶ 178} With respect to CCPC's arguments concerning the Facility's displacement of species and the impacts on nearby crops and livestock, Angelina believes that CCPC ignores large portions of the record that properly evaluate these impacts. First, Angelina states that the project area is comprised almost entirely of farmland that is already annually disturbed (App. Reply Br. at 51). Further, as outlined in the application, Angelina states that the Facility was designed to locate the majority of infrastructure within active agricultural lands that only provide habitat for a limited number of wildlife species. According to the application, the few birds and mammals that may forage in these lands should be able to vacate the areas that are disturbed by construction. (Co. Ex. 1, Exhibit G at 7-5.) Witness Rupprecht testified that the Project will have minimal, if any, impact with respect to the exclusion of wildlife from the project area. For example, Mr. Rupprecht described how a Cardno team determined that deer in lands surrounding the project area would increase by less than 5 percent, or 0.01 deer per acre, as a result of construction of the Project. (Co. Ex. 13 at 2, 7.) Mr. Rupprecht further testified that this conclusion could also be applied to other terrestrial species (Tr. II at 231). Angelina argues that nothing in the testimonies of CCPC witnesses Brandly or Vonderhaar support CCPC's arguments to the contrary. Angelina submits that neither Ms. Brandly nor Ms. Vonderhaar are qualified to offer opinions on the impact of the Facility on wildlife and their testimony regarding theoretical impacts on deer, cattle, and coyote populations is based solely on unfounded "concerns" rather than evidence (App. Reply Br. at 52-53 citing Tr. IV at 355, 424, 425, 429; CCPC Ex. 2 at 8-9; CCPC Ex. 4 at 4). According to Angelina, the evidence provided in the application and from Mr.

Rupprecht show that the increase in wildlife displaced into the surrounding area will be minimal (App. Reply Br. at 53-54).

{¶ 179} Staff responds that Angelina conducted all required studies. According to Staff, Angelina requested information from ODNR and USFWS regarding state and federal listed threatened or endangered species and conducted a survey of those species in the project area. (Staff Reply Br. at 14-15; Staff Ex. 1 at 17-18.) Further, Staff points out that potential impacts to threatened or endangered species are addressed in Condition 21 of the Amended Stipulation, which requires Angelina to contact Staff, ODNR, and USFWS within 24 hours if any state or federal listed species are encountered during construction, will provide further protections (Staff Reply Br. at 15; Joint Ex. 2 at 10, Condition 21). Staff concludes that Angelina satisfied the requirements of Ohio Adm.Code 4906-4-08(B) and that the Board should find that the impacts have been adequately described and appropriate measures will be taken to minimize these impacts (Staff Reply Br. at 15).

c. Vegetation Impacts

{¶ 180} Angelina states that construction of the Facility will require, at most, tree clearing about 0.07 acres, or about 0.0008 percent of the project area and that the vast majority of trees in the project area will remain undisturbed. Further, because the project area is already relatively level, the majority of the project area will not require excavation of soils. Thus, according to Angelina, the Facility will have minimal impact on existing vegetation. (App. Initial Br. at 24; Co. Ex. 1, Exhibit G at 3-1; Co. Ex. 1 at 46, 73; Staff Ex. 1 at 18.) The Applicant also asserts that it is committed to adding vegetation to the project area. Angelina witness Herling testified that Angelina will provide pollinator habitat along fencing in order to soften views and will plant vegetative screening to enhance the view for non-participating residences (Co. Ex. 6 at 11; Co. Ex. 22 at 7). As discussed above, Angelina witness Robinson testified the company will plant native shrubs and plantings to help better integrate the Facility into the surrounding landscape (Co. Ex. 24, Att. 1 at 2). Further, the Amended Stipulation requires Angelina to provide vegetative screening and replacement of failed plantings (Joint Ex. 2 at 8, Condition 11).

{¶ 181} With respect to noxious weeds, Angelina points out that it will be bound by Ohio law, as is any other entity operating within the state. R.C. 5579.05 requires the removal or destruction of noxious weeds upon notice and Angelina must comply with this statute. (App. Initial Br. at 25.) Angelina states that it is committed to the control of noxious weeds, primarily through mechanical means rather than use of commercial herbicides (Co. Ex. 6 at 8; Co. Ex. 1 at 75). The Amended Stipulation also commits Angelina, to the extent practicable, to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association and to "describe the steps taken to prevent the establishment and/or further propagation of noxious weeds identified in OAC 901:5-37." As part of the draft vegetation management plan, which must be submitted to Staff for review and confirmation prior to the preconstruction conference, Angelina will monitor the project area post-construction for the presence of any noxious weeds (as identified in Ohio Adm.Code 901:5-37) and herbicide application will occur only when necessary and will be discontinued at least one year prior to decommissioning. (Joint Ex. 2 at 10, Condition 18; Co. Ex. 1 at 75; Co. Ex. 27, Att. 1 at 4.3.) Based upon the lack of disturbance of most of the land within the project area, as well as the Applicant's commitments in the Amended Stipulation, Angelina believes that the Board has adequate evidence to find that the Facility will have a minimal impact on vegetation and will not contribute to noxious or invasive weeds (App. Initial Br. at 25).

{¶ 182} CCPC, on the other hand, contends that the application does not contain mitigation procedures to prevent damage to agricultural land or for preventing noxious or invasive weed species from spreading to neighboring farmland as required by Ohio Adm.Code 4906-4-08(E). CCPC cites to Mrs. Vonderhaar's testimony regarding farmers' continuous fight against crop damages from weeds, generally, and from already problematic noxious plant species such as thistle, johnson grass, honeysuckle, and pig weed (CCPC Ex. 4 at 7). CCPC complains that the application provides no procedures for ensuring that the vegetation Angelina plans to establish in the project area will not include weeds that will invade surrounding farms and, instead, states only that personnel "may"

use herbicides to control the offending vegetation (Co. Ex. 1 at 75). The Citizens posit that the Project should be required to use only native seeds and plants that are certified to be free of noxious and invasive plant species and should be required to promptly eliminate any noxious and invasive plants that appear in the project area so that they do not spread to nearby farm land.

{¶ 183} CCPC states that its concerns are not allayed by Amended Stipulation Condition 18, as the condition itself is deficient. CCPC contends that Condition 18 simply requires Angelina to plant seeds from certified vendors identified by Ohio Seed Improvement Association "to the extent practicable," and interprets this to mean only if the seed is available for the type of vegetation Applicant wishes to plant (Joint Ex. 2 at 10). CCPC also interprets Amended Stipulation Condition 18 as requiring Angelina to submit a vegetation plan that outlines steps to be taken to prevent establishment of offensive vegetation only during implementation of pollinator-friendly plantings. This, states CCPC, is unreasonable in that it disregards all other vegetation and, as a post-certificate requirement, avoids public comment and scrutiny. Finally, the Citizens assert that the preliminary vegetation plan submitted with Mr. Robinson's testimony does not cure the defect, as it is not included in the application or made enforceable by the Amended Stipulation.

{¶ 184} Angelina insists that both the application and the Amended Stipulation contain conditions relating to noxious weeds. In the application, Angelina commits to the control of noxious weeks primarily through mechanical means rather than with the widespread use of herbicides. Additionally, Angelina reiterates that, like all other businesses, it will be bound by R.C. 5579.05, which requires the removal or destruction of noxious weeds upon notice. (App. Reply Br. at 47-48; Co. Ex. 1 at 75; Co. Ex. 6 at 8; Tr. I at 106.) Condition 18 of the Amended Stipulation also requires a vegetation management plan, which must describe the steps to be taken to prevent the establishment and/or further propagation of noxious weeds and mandates that Angelina must consult with the Ohio Seed Improvement Association prior to purchasing seed stock (Joint Ex. 2 at 9-10, Condition 18).

Angelina believes that these commitments in both the application and the Amended Stipulation evidence the Applicant's commitment to controlling noxious or invasive weeds (App. Reply Br. at 48).

{¶ 185} Staff counters CCPC's arguments regarding noxious weeds by pointing out that Condition 18 in the Amended Stipulation requires Angelina to consult with the Ohio Seed Improvement Association, which is the state's official Noxious Weed Free Forage and Mulch Certification agency. Staff also believes it is significant that OFBF is a signatory to the Amended Stipulation, as it represents members that would be concerned with the control of invasive weeds. (Staff Reply Br. at 14; Joint Ex. 2 at 9-10.)

d. Conclusion

{¶ 186} Consistent with the Staff Report, the Board finds that the probable ecological impact of the project has been evaluated and determined. Specific to water, geology, and soil, the Board finds that Angelina has adequately identified the ecological impacts of the Facility. The Board believes that the concerns discussed by CCPC are premature and, to the extent that they raise potential issues, such issues can be properly addressed through the conditions outlined in the Amended Stipulation and this Order. The Board is not dismissing the potential for adverse ramifications resulting from the construction of solar panels. However, the Board must also rely on the expert testimony in the record, wherein witness Waterhouse, an engineer with 15 years of experience and five years working with solar projects, testified that "the construction and operation of similar projects to the Project has not led to drainage issues, or an increase in runoff." (Co. Ex. 8 at 4). Based on its investigation, Staff concurs with this assessment and found that solar facilities are constructed and generate electricity without impacts to surface or groundwater (Staff Ex. 1 at 16). In this case, the expert testimony goes even further, as witness Waterhouse testified that he would actually expect the Facility to have superior drainage and runoff characteristics (Co. Ex. 8 at 4; Tr. I at 150). Integral to the Board's decision is the requirement that Angelina comply with Amended Stipulation Conditions 16 and 30. Specifically, the Project will follow established Ohio EPA regulator programs for the management of

stormwater and Angelina will implement a SWPPP as part of its Ohio EPA construction stormwater permit and the Amended Stipulation Condition 16 (Joint Ex. 2 at 9, Condition 16). Additionally, pursuant to Amended Stipulation Condition 30, if an acre or more of ground is disturbed, Angelina will obtain a Construction General Permit from the Ohio EPA and determine whether post-construction stormwater best practices are required. Condition 30 also obligates the Applicant to submit documentation of its supporting calculations to the Preble County Office of Land Use Management and to Preble SWCD and requires the Applicant to provide confirmation that it has incorporated guidance from Ohio EPA's "Guidance on Post-Construction Storm Water Controls" to the two local agencies. Rather than find these commitments contradictory to Angelina's assertions in the application, the Board agrees that these conditions evidence a commitment to ensure continued compliance with permitting and statutory requirements.

{¶ 187} The Board also finds that Angelina conducted a literature survey as well as field surveys of animal species in the Project Area, as required by the Board's rules. As discussed in the Staff Report, the findings and recommendations set forth by Staff were a result of coordination with the Ohio EPA, the Ohio Department of Health, the Ohio Development Services Agency, ODNR, and the Ohio Department of Agriculture. Additionally, Staff coordinated with ODOT, OHPO, and USFWS (Staff Ex. 1 at ii). Based on its review of the record, the Board concludes that Angelina has made an adequate demonstration of the nature of the probable environmental impact relative to threatened and endangered species. In support of our determination, the Board relies on the undisputed representation that Angelina consulted with ODNR and USFWS in preparing wildlife study plans prior to conducting the studies.

{¶ 188} The Ecological Assessment conducted by Angelina consultant Cardno includes information regarding rare, threatened, and endangered species, as well as a discussion of non-threatened species (Co. Ex. 1, Exhibit G at 4-7). The Ecological Assessment also includes habitat observations and sensitive species assessment, as well as wildlife observations during field surveys for common species in agricultural areas, including white

tailed deer and gray squirrels, and clearly states that Cardno staff observed minimum wildlife use in the project area and observed no RTE species (Co. Ex. 1, Exhibit G at 1-1, 6-3). Angelina witness Rupprecht testified that the Facility "would not significantly impact wildlife and wildlife habitat" (Co. Ex. 13 at 6). To the extent that any species might be disturbed, Mr. Rupprecht further testified that there is an abundance of similar agricultural fields within the project area and surrounding area that can be used as similar habitat. Further, Mr. Rupprecht stated that few birds and mammals forage within these fields and would likely avoid areas that are being disturbed during construction, opting instead for higher quality habitat nearby for roosting, foraging, and breeding. (Co. Ex. 13 at 4, 6.) The Board is not persuaded by the testimonies of CCPC witness Brandly or Vonderhaar on this issue, as their lay testimony simply states theoretical concerns regarding wildlife. The Board relies heavily on qualified, expert testimony, and the inclusion of the Ecological Assessment and the testimony of witness Rupprecht sufficiently demonstrates that Angelina made the required study and observation of wildlife, both RTE and non-threatened, in the area.

{¶ 189} Finally, the Board finds that the nature of probable environmental impact on vegetation has been determined for the proposed facility in accordance with R.C. 4906.10(A)(2) provided that the certificate issued includes Staff's recommendations set forth in the Staff Report, as modified by this Order. The Board initially points out that regardless of what is contained in any documentation in the record or any certificate issued, Angelina will remain subject to R.C. 5579.05 and be required to abide by its statutory requirements regarding the destruction of noxious weeds. Further, the Board finds that Amended Stipulation Condition 18, which has been significantly modified from the recommendation made in the Staff Report, ensures that Angelina will take adequate measures to prevent noxious and invasive weed species from spreading to neighboring farmland. While CCPC argues that the commitments in Amended Stipulation Condition 18 do not go far enough, the requirement that Angelina is required to consult with the Ohio Seed Improvement Association is significant, as it is Ohio's Noxious Weed Free Forage and Mulch Certification agency. (Staff Reply Br. at 18.) To require Angelina to commit at this time to a specific

vendor or seed type for plantings would be impractical and may not result in the best vegetation selected as part of the vegetation management plan. The Board believes that Condition 18 provides sufficient protections to ensure that Angelina is consulting with knowledgeable agencies and implementing a plan that will properly address noxious weeds.

3. PUBLIC SERVICES, FACILITIES, AND SAFETY

a. Traffic

{¶ 190} Angelina asserts that, once operational, the Facility will not significantly contribute to traffic on local roads (Co. Ex. 1 at 76). Applicant reports that state and local roads in the vicinity of the project area will experience increased traffic during construction, due to the delivery of materials and equipment. Based upon a preliminary route evaluation study performed by Angelina consultant Hull & Associates, Interstate 70 and U.S. Route 127 are expected to be the primary roads to access the project area vicinity. The local roadways in the area are generally in good condition and Angelina is committed to working with local officials to repair any damage to roads resulting from construction. (Co. Ex. 1 at 36; Co. Ex. 1, Exhibit D at 7.) According to Angelina witness Bonifas, the delays on the roads resulting from construction equipment would typically be for a very short duration (Co. Ex. 10 at 4). Further, Mr. Bonifas states that only a small percentage of the loads brought into the project area will be overweight or oversized loads requiring a special permit from ODOT (Tr. I at 162, 165).

{¶ 191} Angelina highlights that on December 9, 2019, it entered into a Road Use and Maintenance Agreement for Solar Projects and Infrastructure (RUMA) with Preble County local authorities including the Board of County Commissioners and the Trustees of Israel and Dixon townships. The RUMA requires Angelina to work with the Preble County Engineer to repair, at Angelina's expense, all portions of the impacted roads that may be damaged by Angelina's activity to a level consistent with the condition of such roads at the commencement of Angelina's use. As added security to ensure that there is funding for

necessary repairs, the RUMA also requires Angelina to deliver an acceptable bond prior to beginning any on-site construction work on the Facility. Witness Bonifas testified that, in his experience, road use and maintenance agreements, such as the RUMA entered into by Angelina, are common practice in large construction projects and are effective in minimizing damage and ensuring that repairs are timely made. (App. Initial Br. at 27; Co. Ex. 27, Att. 2; Co. Ex. 27 at 4.)

{¶ 192} Angelina has also committed to work with the Preble County Engineer, the Trustees for Israel and Dixon townships, and ODOT to ensure that any impacts to road surface conditions and traffic flow are accounted for and properly addressed. Where possible, Angelina states that deliveries on single lane roads to the Facility will be limited despite low traffic volumes in and around the project area. (App. Initial Br. at 27-28; Co. Ex. 1 at 36.) In addition to the route evaluation study performed by Hull & Associates, the Amended Stipulation also obligates Angelina to implement a transportation management plan and to provide a copy of the plan to Staff at least 30 days prior to the preconstruction conference (Joint Ex. 2 at 11, Condition 26).

{¶ 193} Staff believes that traffic should only be affected during the construction phase of the Facility. Staff further states that there is no evidence that the impact to traffic during construction will be any greater than that created during current farming operations. After construction is completed, Staff states that there will be no impact on traffic. Even so, Staff points out that Condition 25 of the Amended Stipulation requires Angelina to coordinate with the county engineer, ODOT, local law enforcement, and health and safety officials regarding any road access issues. (Staff Initial Br. at 9; Joint Ex. 2 at 10-11, Condition 25.)

{¶ 194} CCPC contests the sufficiency of information regarding the mitigation of impacts from construction activities on local traffic, especially farming activities. The Citizens state that Angelina seeks to site the Facility in a rural farming community accessible by two-lane roads on which passing other vehicles is already risky. As such, CCPC is

concerned that large equipment used to construct the Facility will create unsafe conditions when encountering large farm equipment, such as combines, sprayers, and planters, on narrow county roads. (CCPC Ex. 4 at 5.) And, while Angelina will construct access roads within the project area to be 25-feet wide to allow for two-way traffic, all eight of the public access roads used for the Project's deliveries are much narrower: one only 13-feet wide and the others 15- or 17-feet wide (Co. Ex. 1, Exhibit D at 3; Tr. I at 162). According to CCPC, 1,700 to 1,800 loads of equipment and construction materials will be brought into the project area, some of which will be oversized and overweight; oversized loads will hang over the midway point of any area road used for delivery (Co. Ex. 1, Exhibit D at 7-8; Tr. I at 162-164). CCPC asserts that the transportation of oversized loads typically requires an escort vehicle and flagger to restrict the road to one-way traffic, which will interrupt the movement of farm machinery until the load passes (Tr. I at 167-168).

{¶ 195} CCPC avers that the application and Amended Stipulation fail to explain how Angelina will protect the farmers' access to the public roads during planting and harvesting. The application, says CCPC, does not contain the requisite information identified in Ohio Adm.Code 4906-4-06(F)(4). Further, Condition 25 of the Amended Stipulation does not identify the mitigation efforts, but instead allows Applicant to study the issues later and then report to Staff via the transportation plan and traffic management plan, neither of which have been prepared (Tr. I at 121, 166-168). CCPC also points out that, while Amended Stipulation Condition 26 requires the transportation plan to be submitted to Staff, the condition does not require Staff approval. In short, where mitigation plans do not exist and the RUMA remains subject to change, CCPC opines that the Board lacks the information needed to determine that the Project represents the minimum environmental impact on the use of public roads.

{¶ 196} CCPC additionally submits that the application fails to determine whether solar fences and other equipment will obstruct motorist visibility at intersections. The Citizens' argument is general in nature—that placement of solar panels or fences close to roads could obstruct motorist's views—but they do cite two particular intersections at which

visibility is already deemed challenging (CCPC Ex. 2 at 9). CCPC states that the application provides for a 25-foot setback between the project perimeter and public roads, which setback is expanded by Amended Stipulation Condition 3 by applying it to the edge of the right-of-way rather than the edge of the roadway (Co. Ex. 1 at 54; Joint Ex. 2 at 6). CCPC alleges that Angelina has the burden to prove that the Project will represent the minimum environmental impact yet fails to introduce any evidence regarding the impact to motorist views, generally, or about the impact the additional distance Condition 3 creates. Without knowing the distance between solar fences and the public roads, CCPC submits that the Board cannot determine whether the Project will obstruct motorists' views of the crossroads at intersections. (CCPC Initial Br. at 51-52; CCPC Reply Br. at 33-34, 45.)

{¶ 197} With respect to CCPC's concern about oversize vehicles on local roadways, Angelina points to the testimony of witness Bonifas, who stated that the traffic management plan that the company is required to adopt under Amended Stipulation Conditions 25 and 26 will handle the movement of oversize vehicles. According to Mr. Bonifas, an oversize vehicle would need to obtain an ODOT permit and part of that permitting process includes an evaluation of the planned route. Further, oversize vehicles will typically require escort vehicles and other traffic control measures to reduce potential difficulties on the roads. Thus, according to Mr. Bonifas, if an oversize vehicle is en route to the project site and it encounters a piece of local farm equipment, Angelina will have a process in place whereby a traffic control measure such as a flagger will go ahead of the vehicle to ensure that traffic is clear, to hold up traffic until the oversize vehicle passes, and then continue the process through each intersection. Mr. Bonifas acknowledges that these situations could create minor delays during construction but that such delays would be for only a short duration. (Tr. I at 167-168.)

{¶ 198} In response to CCPC's claims that the application does not adequately address traffic mitigation plans, Angelina points out that it committed in the application to work with the Preble County Engineer, the trustees for the impacted townships and, and ODOT to ensure that that any impacts to road conditions and traffic are addressed and

rectified. As outlined in the application, where possible Angelina plans to limit the amount of deliveries to the Facility made on single lane roads. (Co. Ex. 1 at 36.) To the extent that there are potential traffic issues, Angelina believes that such issues will be adequately addressed through coordination with local officials and the implementation of a traffic management plan, as described in the application and required in the Amended Stipulation (App. Reply Br. at 57).

{¶ 199} Angelina argues that there is no evidence to substantiate CCPC's claims that the Facility will obstruct motorists' views of cross-traffic at road intersections. Angelina points to the setbacks required under the application and Amended Stipulation, which set perimeter fencing and above ground equipment set at least 25 feet and 40 feet, respectively, from the edge of a public road right-of-way (Co. Ex. 1 at 54; Joint Ex. 2 at 6, Condition 3). Further, Angelina points to the testimony of witness Robinson, in which he stated that these setback distances would provide adequate distance for motorist visibility at road intersections at the edges of the project area while maintaining effective screening (Co. Ex. 16 at 3). Staff also points to Mr. Robinson's testimony in response to CCPC and likewise asserts that CCPC provided no evidence that motorist visibility would be impaired by the Facility (Co. Ex. 16 at 3; Staff Reply Br. at 13-14).

b. Noise

{¶ 200} With regard to construction noise, Angelina points to the report prepared by its noise consultant David Hessler, in which Mr. Hessler concluded that, in contrast to other forms of power generation, sound emissions during construction of the Project are expected to be dramatically lower in magnitude and duration. Table 6.0.1 of Mr. Hessler's noise report provides representative sound levels from construction equipment at 50 feet, which Angelina believes to approximate the property boundary. Angelina asserts that, in general, the noise report concluded that construction-related noise would be modest and intermittent and would result in only minimal, unavoidable impacts. (Co. Ex. 1, Exhibit E at 15; Co. Ex. 1, Exhibit E at 14, Table 6.0.1.) Angelina further submits that the Facility will not involve extensive excavation or other earth-moving work or construction of significant

concrete foundations. Although the Applicant acknowledges that numerous piles will be driven, Angelina states that they likely will be only to a depth of less than 10 feet and the driving activity will be relatively brief at each location. (Co. Ex. 1 at 57.)

{¶ 201} Despite the anticipated minimal construction noise, Angelina states that it is committed to mitigate any such noise that is created. The Applicant points to provisions in the Amended Stipulation that require Angelina to limit the hours of construction, maintaining vehicles in proper working condition, and working with the local community to advise residents of periods when sustained construction activity is expected to take place close to their homes. (Co. Ex. 1 at 59; Joint Ex. 2 at 7, Condition 10.) Given the short duration of construction and the limitations of such activity, Angelina submits that the Board has adequate evidence to find that the Facility's construction noise will be minimal (App. Initial Br. at 29).

{¶ 202} CCPC alleges that the application lacks effective measures to minimize disagreeable construction noise as required by Ohio Adm.Code 4906-4-08(3)(d). There is no question that construction noise will be audible; the application predicts numerous piles will be driven into the ground using a pile driver or a drill rig truck (Tr. II at 258-259; Co. Ex. 1 at 57; Tr. I at 62-63). CCPC asserts that the application further admits that the pile driver or drill rig truck used to drive posts into the ground will produce noise levels as high as 85dBA at a distance of 50 feet – conservatively interpreted as the site property boundary (Co. Ex. 1 at 57).

{¶ 203} CCPC believes Applicant tries to diminish the severity of construction noise by stating that pile driving noise will be temporarily produced and fairly short-lived in any particular location (Co. Ex. 1 at 57; Co. Ex. 1, Exhibit E at 2). CCPC contends that Angelina's assertion is wrong. Instead, states CCPC, the noise will be repeated about 45,300 times during construction over the course of three to four months (Co. Ex. 1 at 8; Co. Ex. 1, Exhibit G at 7.4; Tr. I at 63). And, Angelina could not say how long the post installation would occur near a particular neighbor's home, such as the 8,000 posts that will be placed in the 120-acre

field bordering one neighbor's house on three sides (Tr. I at 64-70). CCPC argues that simply requiring Angelina to limit pile driving to certain hours, or providing advance notice of upcoming construction activity, will not provide the Facility's neighbors adequate relief from the nuisance. As such, CCPC submits that the Board should not issue a certificate without first instructing Angelina to devise more effective mitigation measures to address construction noise.

{¶ 204} Angelina responds that it has already committed to adequate measures that will result in the Facility having a minimal impact on noise during construction (App. Reply Br. at 30). In its application, Angelina committed to mitigate construction noise employ best management practices such as limiting the hours of construction, properly maintaining vehicles, and working with the local community to advise residents of those periods when sustained construction activity is expected to take place in close proximity to their homes (Co. Ex. 1 at 59). Additionally, Angelina points to Condition 10 in the Amended Stipulation, which requires that general construction hours be generally be limited to between 7:00 a.m. and 7:00 p.m. (or dusk when sunset is later) and limiting impact pile driving to between 9:00 a.m. and 7:00 p.m. (Joint Ex. 2 at 7). Angelina states that this condition is common for similar projects granted certificates by the Board (*See In re Hecate Energy Highland, LLC*, Case No. 18-1334-EL-BGN, Opinion, Order and Certificate (May 16, 2019) at 18; *In re Harrison Power LLC*, Case No. 17-1189-EL-BGN, Opinion, Order and Certificate (June 21, 2018) at 33).

{¶ 205} Angelina believes that CCPC mischaracterizes the evidence concerning pile driving noise. Witness Herling estimated that the installation of posts through the entirety of the project area, not in a single location, would take three to four months (Tr. I at 63). Mr. Herling estimated that individual crews would be able to install approximately 100-200 posts per day and that the installation of each post would take under a minute (Tr. I at 67, 130). In response CCPC's claim that Mr. Herling "could not say how long post installation would occur," Angelina points out that Mr. Herling provided a "very, very conservative" estimate of 8,000 posts to be installed (Tr. I at 68). In Mr. Herling's opinion, if only one crew were used to install posts, installation would take 40 to 80 days. However, in Mr. Herling's

experience, multiple crews work on post installation in the same field (Tr. I at 68-69). In summary, Angelina asserts that, despite CCPC's arguments to the contrary, construction or pile driving in any particular area will be brief in duration (App. Reply Br. at 31).

{¶ 206} Staff indicates that Applicant, via the application and Amended Stipulation Condition 10, has done exactly what is required by Ohio Adm.Code 4906-4-08(A)(3)(d): described the equipment and procedures to mitigate the effects of noise emissions from the proposed Facility during construction and operation, including limits on the time of day at which construction activities may occur. Staff says that Condition 10 clearly limits general construction activities to, essentially, daytime hours and places additional limitations on pile driving, hoe ramming, and blasting. These restrictions, state Staff, will minimize any adverse impacts of construction noise and are in compliance with rule and general Board procedure.

{¶ 207} As to operational noise, Angelina states that the only sources of such noise at the Facility will be the solar panel inverters and the substation and associated transformer. Angelina submits that the record in this case establishes that these components will have minimal, if any, impact on noise levels. According to Angelina witness Hessler, who has nearly 30 years of acoustics experience and involvement in numerous solar projects, he has never heard of any complaints concerning sound from solar projects. (App. Initial Br. at 29; Tr. II at 265.)

{¶ 208} With respect to the substation and transformer, Mr. Hessler concluded that "no significant adverse reaction is expected from the proposed substation at an of the nearest [non-participating] residences" (Co. Ex. 1, Exhibit E at 15). According to noise modeling performed by Mr. Hessler, at the nearest non-participating residence to the substation location, modeled noise from the substation would be comparable to or below the existing environmental sound level. Mr. Hessler concludes, therefore, that there will be no significant change in what is audible at the houses. (Co. Ex. 14 at 3.) Mr. Hessler's modeling utilized a very conservative sound measure in which he compared projected noise

emissions from the transformer with the daytime L90 (near minimum) sound level in the area. He established the daytime L90 sound level in the area to be 31 dBA. Mr. Hessler's projections of transformer sound to the nearest non-participating residences to the west and north were determined to be 28 and 26 dBA, respectively. Thus, with respect to the transformer, because Facility sound levels are either below or do not significantly exceed the background, Mr. Hessler concluded that no adverse impact would be anticipated from noise emanating from the transformer. (Co. Ex. 20 at 5; Co. Ex. 1, Exhibit E at 15.)

{¶ 209} Angelina asserts that the same minimal impact is true of the central inverters. Mr. Hessler testified that sound from inverters is only perceptible at short distances and that it is highly unlikely to be significant or problematic at any residences (Co. Ex. 14 at 4.) Even so, after Mr. Hessler offered this testimony, Angelina entered into the Amended Stipulation in which it committed to a minimum setback of 500 feet between any central inverter and any residence on a non-participating parcel. Angelina states that it prepared a preliminary layout of the Facility based on this expansive setback. (Joint Ex. 2 at 6, Condition 3; Co. Ex. 22 at 4, Att. DH2.) Mr. Hessler then modeled the sound contours of the solar panel inverters using the Facility's preliminary layout and confirmed his original conclusion that inverter noise is not a legitimate concern for any nearby non-participating residences (App. Initial Br. at 31; Co. Ex. 23 at 2-4). Although the Applicant believes it highly unlikely given the quiet operation of inverters, Angelina claims options do exist to mitigate inverter sound emissions if needed (App. Initial Br. at 31; Co. Ex. 1, Exhibit E at 15). According to Mr. Hessler, sound emission from inverters can be mitigated on a retrofit basis by utilizing acoustical hoods, louvers, or silencers (Co. Ex. 23 at 4). Angelina points out that the Amended Stipulation commits it to "promptly retrofit any inverter as necessary to effectively mitigate any off-site noise issue identified during operation of the facility" (Joint Ex. 2 at 6, Condition 3).

{¶ 210} Staff likewise found that operational noise at the Facility would be relatively minor and would occur only during daytime hours (Staff Initial Br. at 9). Staff points to the

testimony of Angelina witness Hessler who testified that sound from the substation would be "inaudible" at homes near the Project area (Co. Ex. 14 at 4-5).

{¶ 211} CCPC submits that the application lacks the data and mitigation measures for operational noise from inverters as required by Ohio Adm.Code 4906-4-08(A)(3). Foundational to CCPC's arguments regarding the Project's operation noise is the assertion that the proposed facility is to be located in a quiet, rural community. CCPC reminds the Board that background sound level can mask the sound from a new noise source only if the former is as high as the latter; and, in this case, even Angelina's noise expert concedes that the project area, with an average L90 background sound level of only 31 dBA in daytime, is "extremely quiet" (Co. Ex. 1, Exhibit E at 5; Tr. II at 241-242).

{¶ 212} CCPC states that although Ohio Adm.Code 4906-4-08(A)(3) requires Applicant to describe the operational noise levels expected at the nearest property boundary and at each habitable residence, the application contains inadequate information regarding sound emissions from the Project's inverters. CCPC indicates that Angelina will construct up to 40 central inverters and, possibly, an unknown number of string inverters, but the application contains no modeling for the noise from inverters (Tr. I at 75; Tr. II at 312). Instead, Angelina's asks the Board to accept representations in the application that the solar facility "comes close to operating silently" and that noise from inverters is "inaudible at a distance of 50 to 150 feet from the source," as well as Mr. Herling's statement that solar arrays are "near silent" and Mr. Hessler's contention that inverter sound "is rarely audible at the perimeter fence of typical solar fields." (Co. Ex. 1 at 57-58; Co. Ex. 7 at 8; Co. Ex. 1, Exhibit E at 2). But, CCPC contends these representations are not adequate substitutes for providing actual data for two important reasons. First, the application contains no requirement that inverters be sited 150 feet from neighboring land or houses (Tr. I at 491). Second, assumptions underlying those representations were incorrect because the background noise in the project area measures at an average L90 of 31 dBA, while the average L90 background noise in the Massachusetts Clean Energy Center report

(Massachusetts Report) relied on by Mr. Hessler measured at 43.9 dBA, 49.6 dBA, and 42.5 dBA (Tr. II 249-256; CCPC Ex. 1 at 9, 17, 25).

{¶ 213} CCPC is not assuaged by the revised setbacks contained in Amended Stipulation Condition 3. CCPC explains that Angelina now admits that central inverters will emit noise at a level of 38 dBA at a distance of 500 feet (Co. Ex. 23 at 3). Specifically, at the October 2020 hearing, Mr. Hessler testified that Angelina was able to obtain a highly detailed sound test report from the manufacturer of a common inverter model that is of the type likely to be used for the Project and used this data to model anticipated noise emissions from central inverters for the Project. Mr. Hessler included a sound contour map as part of his supplemental testimony. (Co. Ex. 23 at 2-3, Exhibit DMH-S1.) Mr. Hessler indicated that at 500 feet, central inverter sound is 38 dBA and opined that no non-participating houses would be exposed to more than 35 dBA (Co. Ex. 23 at 3, 4, Exhibit DMH-S1). CCPC points out, however, that the sound contour map shows that noise from central inverters will be as high as 40 dBA and 45 dBA at the property lines of nonparticipating neighbors (Co. Ex. 23 at Exhibit DMH-S1). Regardless, says CCPC, even using the 38 dBA at 500 feet measurement, it is apparent that the central inverters will raise the community's average noise level by seven dBA when perceived from 500 feet away from any given central inverter. And, given that the L90 background levels range between 20 dBA and 35 dBA, the central inverters can increase the community's noise levels by as much as 18 dBA at 500 feet (Co. Ex. 1, Exhibit E at 5). Furthermore, CCPC asserts that the noise from central inverters will be raising sound levels as much as 14 dBA over the average L90 level on non-participating land.

{¶ 214} Continuing, CCPC maintains that the Amended Stipulation's 500-foot setback between the central inverters and non-participating homes is also insufficient because it does not account for the use of string inverters. CCPC states that Mr. Herling testified that the project may use string inverters (Tr. I at 75; Tr. V at 561-562). Mr. Herling further testified that string inverters can be "grouped into what is essentially a central inverter and operate the same way as a central inverter" (Tr. V at 562). The 500-foot setback,

however, applies only to central inverters and not string inverters, and nothing in the application or Amended Stipulation precludes the use of string inverters, whether sited individually or in groups, to be placed any farther than 25 feet from non-participating land or yards or 150 feet from non-participating residences (Joint Ex. 2 at 6). Therefore, CCPC argues that Amended Stipulation Condition 3 is meaningless and ineffectual. Moreover, note the Citizens, no noise measurements or modeling has been conducted for string inverters (Tr. V at 596). And, due to the previously noted errors in loosely quantifying the sound emissions from central inverters, CCPC submits that any assertions that string inverters are subjectively "quiet," should not be given any weight (Tr. V at 570-574).

{¶ 215} CCPC also asserts that the application fails to comply with Ohio Adm.Code 4906-4-08(A)(3)(b) because it does not identify inverter noise levels at the homes of non-participating neighbors. CCPC argues that the revised setbacks in Amended Stipulation Condition 3 and Mr. Hessler's supplemental testimony containing a map showing the locations of central inverters with sound contours, does not comply with the mandate in Ohio Adm.Code 4906-4-04(B)(1) to provide a constraint map showing setbacks with the application. Furthermore, the map attached to Mr. Hessler's testimony demonstrates the noise contours for central inverters vis-à-vis the neighbors' homes only if the central inverters are actually sited in those locations; CCPC contends that Angelina is not required by the application or the Amended Stipulation to place central inverters as shown on the map. Rather, Angelina could site the central inverters anywhere that is at least 500 feet from a non-participating house.

{¶ 216} Finally, CCPC submits that the application fails to describe the mitigation equipment and procedures for mitigating noise problems from operating the inverters as required by Ohio Adm.Code 4906-4-08(A)(3). Mr. Hessler's report states that options exist for mitigation of inverter noise if needed, including cabinet damping and ventilation silencers (Co. Ex. 1, Exhibit E at 2, 13). CCPC believes, however, that mitigating noise after it becomes a problem is a poor substitute for properly siting facilities to prevent a problem from occurring. Moreover, states CCPC, the mitigation measures contained in the Amended

Stipulation are vague in that Condition 3 fails to identify the noise level at which mitigation will be employed (Joint Ex. 2 at 6; Tr. V at 600).

{¶ 217} Angelina contends that CCPC's alleged concerns regarding operational noise deal less with the substance of the evidence than with perceived regulatory deficiencies in the application and that CCPC's efforts are primarily to obfuscate that operational noise will actually be minimal. First, Angelina points outs that the application clearly states Applicant will design the Facility such that the inverters do not cause material, adverse impacts (Co. Ex. 1 at 58). This commitment was made prior to the inclusion of the 500-foot setback in the Amended Stipulation. The extended setback distances will, in the opinion of witness Hessler, mean that the precise location of central inverters "will be immaterial from a noise impact perspective" (Co. Ex. 23 at 5). To support this conclusion, Mr. Hessler did sound modeling which incorporated the 500-foot setback from any central inverter and a non-participating residence required under the Amended Stipulation. This modeling found that all non-participating residences were either close to, or in the vast majority of cases, outside of, a 35 dBA sound contour. At 35 dBA, according to Mr. Hessler, the noise is "so low in absolute terms that it is generally considered inconsequential even in rural environments." (Co. Ex. 23 at 3-4.) By way of comparison, Angelina offers that a noise level of 40 dBA is equivalent to an empty theater or a library (App Reply Br. at 25 citing CCPC Ex. 1 at A-3). Put even more bluntly, Mr. Hessler stated that 40 dBA "is the minimum absolute threshold any project would ever need to be designed to" because at that sound level complaints are rare even if there is no significant background masking noise (Co. Ex. 20 at 5-6).

{¶ 218} Angelina submits that no evidence is offered to support CCPC's attacks on Mr. Hessler's supplemental testimony and that the Citizens' claims that it is at odds with testimony at the initial hearing are unfounded. According to Angelina, Mr. Hessler's testimony has at all times been consistent with his conclusion that was included with the application – that inverter sound is rarely audible at the perimeter fencing of solar fields and that an adverse impact at residences beyond the project boundary is unlikely. (App. Reply

Br. at 26; Co. Ex. 1, Exhibit E at 15.) With respect to CCPC's claims regarding the Massachusetts Report, Mr. Hessler testified that the report concluded that at 150 feet any sound from the inverters "faded away into the background" (Tr. II at 256). Angelina notes that the background levels at 150 feet in the Massachusetts Report were higher than the ambient background levels in the project area of the proposed Facility and points out that Mr. Hessler testified that the sound emanating from the inverters in the Massachusetts Report were equivalent to the level of a domestic air conditioner unit (App. Reply Br. at 26 citing Tr. V at 500). Anecdotally, Mr. Hessler also testified that he took sound measurements at a solar facility in New York where people lived across the street from the project fencing and that he was aware of no problems at that location (Tr. II at 270). Mr. Hessler repeatedly pointed out that inverters at this Facility would be located hundreds of feet away from the Facility boundary and that the area is large enough to accommodate such large buffer distances (Tr. V at 501-502).

{¶ 219} In response to CCPC's claims that the inverters will increase the community's noise levels by as much as 18 dBA at 500 feet, Angelina questions the methodology used by CCPC to arrive at this conclusion. Angelina explains that to make this claim, CCPC took the lowest registered L90 background level of 20 dBA in Mr. Hessler's background noise study, which was a level recorded at night. However, according to Angelina, the inverters will be completely inert and silent at night, emitting no noise whatsoever (App. Reply Br. at 27 citing Co. Ex. 1 at 5, Tr. II at 25, Co. Ex. 20 at 3). Angelina points to the testimony of Mr. Hessler, in which he confirms that the range of background noise during the day is around 35 dBA, or potentially up to the high 40s or 50s depending on wind. Therefore, Mr. Hessler concluded that the inverters, which will not operate at night, will not increase the community's noise levels. (Tr. II at 260.)

{¶ 220} Angelina believes that CCPC's concern regarding string inverters is a non-issue. Angelina asserts that string inverters are actually smaller than central inverters, are attached to solar panel tracking and therefore do not have their own footprint, handle significantly less current than central inverters, and are "very quiet" (Tr. V at 592-593, 569,

509-610). Mr. Hessler testified as to how the setbacks in the Amended Stipulation – 150 feet from a residence to the fence line and 25 feet for equipment to the fence line – would work well with string inverters (Tr. V at 602-603). Angelina points out that the Facility's design currently calls for central inverters, but that string inverters have not been fully ruled out. Angelina asserts that the uncontroverted testimony establishes that string inverters are quieter than central inverters. (App. Reply Br. at 29.)

{¶ 221} Angelina also feels that potential noise mitigation measures are clearly described in the application and that these measures can be easily implemented if an unexpected operational noise issue develops. For instance, in the Noise Report attached to the application as Exhibit E, Mr. Hessler notes that measures such as cabinet damping and ventilation silencers are available to retroactively mitigate noise from inverters. (App. Reply Br. at 29; Co. Ex. 1, Exhibit E at 13.) Mr. Hessler further explained in his testimony how these mitigation measures could be accomplished (Co. Ex. 20 at 2-3; Co. Ex. 23 at 4). The requirement to mitigate inverter noise if an issue develops is also a condition of the Amended Stipulation (Joint Ex. 2 at 6, Condition 3).

{¶ 222} Angelina asserts that the noise level thresholds for the Facility align with the Board's rules and prior decisions and encourages the Board to follow past precedent (App. Reply Br. at 28-29).

{¶ 223} With regard to CCPC's arguments to operational noise, Staff states that the record demonstrates that Angelina adequately evaluated sound impacts from the project's operation and mitigated those impacts with increased setbacks and commitments to promptly retrofit any inverters as necessary. Included in this argument is the representation that, contrary to CCPC's position that mitigation measures found in the Amended Stipulation have escaped public scrutiny, the Signatory Parties agreed to and tailored additional mitigation measures based on public input. (Co. Ex. 14 at 4-5; Joint Ex. 2 at 6, Condition 3.)

{¶ 224} With regard to electromagnetic field (EMF) generated by the Facility, Angelina states that it will dissipate rapidly within short distances and will not impact signals or electronic devices (App. Initial Br. at 32). Angelina witness Herling provided uncontroverted testimony that the Facility will not impact telephone, radio, other signals, or electronic devices because it will generate only "very weak electromagnetic fields" and will only do so during the day (Co. Ex. 19 at 2). Additionally, the Amended Stipulation commits Angelina to setbacks of at least 500 feet between any inverter and any residence located on a non-participating parcel, which would presumably lessen any potential EMF impact (Joint Ex. 2 at 6, Condition 3).

c. Conclusion

{¶ 225} Upon review of the record and the arguments raised by the parties, the Board finds that the probable impact of the Facility on public services, facilities, and safety has been evaluated and determined. With respect to traffic- and road-related matters, the Board acknowledges that some traffic disruptions during construction are unavoidable, but the Board agrees that such disruptions will typically be short in duration. The Board disagrees with CCPC's arguments that the application does not describe measures that will be taken with respect to mitigating potential impacts to road conditions and the measures that will be taken to lessen the impact of traffic during construction. Angelina committed in the application to work with the relevant local authorities to ensure that any impacts to road conditions and traffic are addressed and rectified and has continued to fine-tune its traffic and road management plans during project development. Further, the traffic management plan required under Amended Stipulation Conditions 25 and 26 will provide an effective framework for Angelina, with input from Preble County local authorities, to deal with issues that may arise. The Board also notes that the RUMA requires Angelina to work with the Preble County Engineer to repair, at Angelina's expense, portions of roads that are impact by Angelina's activity to a level consistent with the condition of such roads at the commencement of Angelina's use, and to deliver a bond to cover such costs prior to beginning construction.

{¶ 226} The Board believes that Angelina has committed to take practical measures that will mitigate construction noise generated at the Facility. In its application, Angelina committed to employing best management practices such as limiting hours of construction, properly maintaining vehicles and equipment, and providing warnings to local residents prior to periods of sustained construction activities. Amended Stipulation Condition 10 memorializes the commitment to limit construction activities to between 7:00 a.m. and 7:00 p.m. and to notify certain residents of upcoming construction. While the Board understands CCPC's concerns on this issue, some construction noise is inevitable, and the Board believes that Angelina and Staff have created parameters within which its effect on the surrounding community is minimized.

{¶ 227} With respect to operational noise at the Facility, the Board agrees with the Applicant and Staff that there will be no significant change in what is audible at nearby residences and that the operational sound emissions from the Facility should not have any negative impact in the surrounding community. Angelina witness Hessler is an engineer with 30 years of experience specializing in acoustical design and the analysis of power generation facilities, including solar energy projects, and testified that in his decades of work with noise at solar facilities, he has never heard of any complaints concerning sound from solar projects (Tr. II at 265). Mr. Hessler produced sound modeling that supports this observation. For instance, Mr. Hessler testified that at the nearest non-participating residence to the substation location, noise from the substation would be comparable to or below the existing environmental sound level (Co. Ex. 14 at 3). Likewise, Mr. Hessler found that noise from central inverters used in solar panels is perceptible only at short distances and that it is unlikely to be problematic at any surrounding residence (Co. Ex. 14 at 4). In modeling sound contours based on the expanded setbacks in Amended Stipulation Condition 3, Mr. Hessler again concluded that inverter noise is not a legitimate concern for nearby non-participating residences would be so low as to be virtually inconsequential, even in a rural environment (Co. Ex. 23 at 3-4). The Board finds this expert testimony from Mr. Hessler persuasive. While CCPC may point out certain differences between Mr.

Hessler's conclusions and sound levels emitted under specific conditions, the Board does not find these arguments convincing. As Angelina points out, when CCPC declares that central inverters could raise the community's noise levels by as much as 18 dBA, this conclusion appears to be based on a background noise level of 20 dBA; this measurement is only applicable at night when the inverters will not be operational. The evidence in the record demonstrates that operational noise will disturb the surrounding community little, if at all, particularly with the increased setbacks provided for in Amended Stipulation Condition 3. Further, in the event that unforeseen noise issues should arise, Angelina has listed measures such as acoustical hoods and damping sheets that can promptly be used to retrofit any inverter and mitigate sound emissions.

{¶ 228} Finally, the Board relies on the undisputed representation of Angelina that any EMF generated by the Facility will dissipate rapidly within short distances and will not impact signals or electronic devices (Co. Ex. 1 at 66).

{¶ 229} In summary, the Board finds that the record establishes that the nature of the probable environmental impact from construction, operation, and maintenance of the Facility has been established by the Applicant, as required under R.C. 4906.10(A)(2).

C. R.C. 4906.10(A)(3): Minimum Adverse Environmental Impact

{¶ 230} R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent conditions.

{¶ 231} The Stipulating Parties represent that adequate data on the proposed Facility has been provided to determine that the facilities described in the application and supplemental filings and subject to the conditions in the Amended Stipulation represent the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives and other pertinent considerations, as required by R.C. 4906.10(A)(3) (Joint Ex. 2 at 17).

{¶ 232} In conjunction with its various arguments that the record lacks sufficient evidence to determine the nature of the Facility's probable environmental impacts under R.C. 4906.10(A)(2), CCPC also asserts that there is insufficient evidence with which the Board may find and determine that the Facility represents the minimum adverse environmental impact. CCPC accuses Angelina of "green-washing" the Project to portray it as a benign and environmentally beneficial Facility with negligible impacts. To the contrary, CCPC submits that the record reveals a vastly different Project: a major industrial plant spread over a rural residential landscape on a vast scale that harms the community in innumerous ways. The Citizens assert that Angelina has failed to carry its burden of demonstrating that the Project designed in the application will represent the minimum adverse environmental impact as required by R.C. 4906.10(A)(3).[4] In contrast, the Citizens believe they have proven the existence of adverse environmental impacts to scenic views, troublesome lighting, disruptive noise, ground and surface waters, wildlife, farmland via displaced wildlife, noxious and invasive weeds, and damaged field tiles, and local traffic, amongst the others discussed throughout this Order.

{¶ 233} CCPC additionally argues that the setbacks proposed by the Amended Stipulation do not represent the minimum adverse environmental impact. First, CCPC stresses that R.C. 4906.10 entrusts the Board, over the typical zoning powers of a local government, with the authority and responsibility to responsibly site facilities. The Citizens indicate that, to implement this mandate, it is imperative that the Board not accept the "ridiculously short" setbacks between the Project and its neighbors' homes and land. (CCPC Initial Br. at 79.)

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4 In the same vein, CCPC states that Angelina has not demonstrated that the Project as designed in the application will serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). As alluded to in the introduction to Section VIII of this decision, the Board is addressing similar arguments made under several certification criteria under the criterion deemed most appropriate. To the extent an argument made by any party under R.C. 4906.10(A)(2), R.C. 4906.10(A)(3), and R.C. 4906.10(A)(6) is primarily discussed under one criterion but not all, the Board has nevertheless given the argument full and careful consideration and that argument is denied as to the remaining criteria.

{¶ 234} CCPC contends that Amended Stipulation Condition 3 provides for egregiously short setbacks of 25 feet between the Facility's fence and non-participating landowners' yards and 150 between the solar panels and non-participating homes. The Citizens state that, unless corrected by the Board, Angelina's plans for vegetative screening between the Facility and adjacent properties will needlessly expose the neighbors to unwanted and unpleasant views, especially those members of CCPC whose land is boarded on two or three sides by the project area. CCPC says that Angelina's lack of commitment on what will occur with the vegetative screening after the first five years of facility operation to prevent gaps is also of concern. (CCPC Initial Br. at 80; CCPC Reply Br. at 11-20, 45-46.)

{¶ 235} CCPC implies that Angelina could appropriately ensure that the Facility represents the minimum adverse environmental impacts on the viewshed by simply accommodating larger, more reasonable setbacks and asserts Applicant has no good reason not to do so. CCPC states that Angelina has 934 acres available for the approximately 827 acres it needs for the facility. Regardless, CCPC argues that the Board should not condone building an industrial facility along the perimeter of other people's land in an agriculturally zoned area. (CCPC Initial Br. at 80; CCPC Reply Br. at 11-20, 46.)

{¶ 236} The Citizens further assert that the revised setbacks in Amended Stipulation Condition 3 are procedurally infirm because they were not included on a constraint map in the application in accordance with Ohio Adm.Code 4906-4-04(B)(1). Because the revised setbacks are not contained in the application, the new distances were not subject to public notice, comment, or hearing. Thus, the Citizens maintain that, in order for the revised setbacks to be utilized, Angelina must revise the application and restart the adjudicatory process. (CCPC Initial Br. at 80-81; CCPC Reply Br. at 20-26, 44-45.)

{¶ 237} In response to CCPC's arguments that the Board cannot accept the revised setbacks found in Amended Stipulation Condition 3 because they fail to represent the minimal adverse environmental impact, are procedurally unsound, or are otherwise not in the public interest, Angelina asserts that CCPC offers no evidentiary or legal support.

Angelina argues that the Board is not constrained by what is in the application, but can approve an application "upon such terms, conditions, or modifications * * * as the board considers appropriate (App. Reply Br. at 57 citing R.C. 4906.10(A)). Angelina further contends that Condition 3 has simply been submitted to the Board as a recommended condition and that the Board has authority under R.C. 4906.10(A) to impose that condition as part of any certificate it issues for the Project (App. Reply Br. at 57-58).

{¶ 238} Moreover, Angelina stresses that the setbacks proposed by Condition 3 are, in fact, more expansive than those in the original application. Whereas the original application provided for a 10-foot setback from the perimeter fence and non-participant's property line, proposed Condition 3 increases that distance to 25 feet. Further, where the original application called for a 100-foot setback between above-ground equipment and a non-participating residence, proposed Condition 3 increases that distance to 150 feet between the fence and a non-participating residence. (Co. Ex. 1 at 54; Joint Ex. 2 at 6.) Angelina also points out that the 500-foot inverter setback in Condition 3 is actually 350 feet more than what CCPC itself requested as a setback distance at the original hearing (App. Reply Br. at 58 citing Tr. I at 77-78). Angelina insists that the setbacks outlined in Condition 3 of the Amended Stipulation are in the public interest, as they will improve its ability to effectively screen and mitigate the Project's visual impacts (App. Reply Br. at 58 citing Co. Ex. 24 at 3).

{¶ 239} Based on our review of the record, the Board is persuaded that Angelina has demonstrated that the Facility will represent the minimum adverse environmental impact. Contrary to CCPC's arguments attempting to limit our review to the application, R.C. 4906.10(A) allows the Board to base our decision "upon the record," which, in this proceeding, non-exhaustively includes the Staff Report, testimony and accompanying exhibits from two hearing phases, and the Amended Stipulation. The statute further allows the Board to grant or deny an application as filed or upon such terms, conditions, or modifications we consider appropriate. Thus, CCPC's argument that the setbacks cannot be accepted because they were not included in the application fails. As noted by CCPC, the

Board's process requires an applicant to provide a constraint map showing setbacks from residences and any other constraints of the site design. Angelina provided a constraint map with the application (Co. Ex. 1 at 21, Figure 7). CCPC's current complaint is that the setbacks described in Amended Stipulation Condition 3 are larger than—less impactful than—what is shown on the constraint map. Described differently, CCPC seeks to penalize Angelina and the other Stipulating Parties for identifying a means by which to ensure adverse environmental impacts were minimized. The Board does not find greater mitigation of impacts good cause to require Angelina to restart the siting process with a new application.

{¶ 240} Further, while CCPC argues the setbacks remain egregiously short, the evidence before us supports a finding that they will result in the minimum adverse impact on the community. The Board must conclude that adverse impacts are minimal within the context of the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations, not that adverse impacts do not exist. It is evident that Angelina has invested effort into ensuring that the vegetative screening will be as effective as possible to make the impact of siting the facility in a rural area minimal. While the Citizens may prefer a complete screen, Angelina has provided testimony demonstrating that a complete screen would create a greater impact than properly designed landscaping (Co. Ex. 16, Attachment 1 at 1-2, 23; Tr. II at 199-200; Co. Ex. 24 at 2). The Board must weigh the impacts to all, not some. CCPC would prefer that the Board require Angelina to site the panels with more expansive setbacks, but there is no evidence to support a finding that such a modification would be economically and technologically feasible or, in light of all other probable environmental impacts identified, create a facility representing the minimum adverse environmental impact. Additionally, there is sufficient evidence to find that noise impacts from the inverters will be minimal with the revised setback in Amended Stipulation Condition 3 (Co. Ex. 23 at 2-5; Tr. V at 598, 602-603). Furthermore, there is no evidence that the setbacks from solar fences to roadways will impede motorists.

{¶ 241} The Ohio Supreme Court has stated that whether "setbacks [are] sufficient to protect the public . . . [is] an evidentiary issue, and we have 'consistently refused to

substitute [our] judgment for that of the commission on evidentiary matters." *In re Application of Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 30. Here, we are persuaded by the evidentiary record that the setbacks required in the application and Amended Stipulation, as modified by this Order, are sufficient and reasonable.

{¶ 242} Based on the above, and drawing from our discussion and conclusions relative to R.C. 4906.10(A)(2) and the Amended Stipulation, as modified by this Order, the Board determines that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economic of the various alternatives, and other pertinent considerations in compliance with R.C. 4906.10(A)(3).

D. R.C. 4906.10(A)(4): Consistency with Regional Plans

{¶ 243} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such 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 such facility will serve the interests of electric system economy and reliability.

{¶ 244} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM Interconnection, LLC (PJM). PJM is the regional transmission organization charged with planning for upgrades and administrating the generation queue for the regional transmission system in Ohio. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area must submit an interconnection application for review by PJM. (Staff Ex. 1 at 24.)

{¶ 245} PJM analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM system studies indicate that no reliability violations would occur during single and multiple contingencies. In addition, no potential violations were found during the short circuit analysis. Based upon PJM's analysis, Staff states that the Facility would provide additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of the electric system economy and reliability. (Staff Ex. 1 at 25.)

{¶ 246} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the expansion of the electric power 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. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 25.) Angelina echoes Staff's recommendation, submitting that the Facility is consistent with plans for expansion of the regional power system and will serve the interests of the electric system economy and reliability (App. Initial Br. at 39).

{¶ 247} The evidence provided by Staff and Angelina regarding this criterion is compelling and unrefuted. The Board therefore finds that the Facility will serve the interest of electric system economy and reliability and is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems in accordance with R.C. 4906.10(A)(4).

E. R.C. 4906.10(A)(5): Air, Water, Solid Waste, and Aviation

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

1. **AIR**

{¶ 249} Angelina contends that the Project will comply with R.C. Chapter 3704. Angelina acknowledges that small amounts of fugitive dust will be generated during construction of the Facility and, therefore, the fugitive dust rules in R.C. Chapter 3704 may be applicable. The Applicant states that it will use best management practices to minimize dust emissions, including: retention of licensed construction firms that are knowledgeable about minimizing dust creation; maintenance of construction vehicles in proper working condition; and use of water and/or dust suppressant on unpaved roads as needed to reduce dust creation. Further, during operations, Angelina states that the Facility will generate electricity without releasing pollutants into the atmosphere and, therefore, air-related regulations are not triggered during operation and the Facility will not require any air permits. (App. Initial Br. at 39; Co. Ex. 1 at 43.)

{¶ 250} Staff's assessment aligns with that of Angelina. Staff states that while the Facility will not require any air quality permits, fugitive dust rules adopted under R.C. 3704 may be applicable to its construction. Accordingly, Angelina will control temporary and localized dust by hiring a licensed construction firm with knowledge and experience in dust minimization, ensuring construction vehicles are in proper working condition, and using water and/or dust suppressant. Staff also notes that the project would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 26.)

{¶ 251} Based on the record in this case, the Board finds that both the construction and operation of the Facility, subject to the conditions set forth in the Amended Stipulation, will be in compliance with the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted thereunder.

2. **WATER**

{¶ 252} Angelina submits that the project will comply with R.C. Chapter 6111 regarding water pollution control and all rules and standards adopted thereunder.

Angelina states that construction and operation of the Facility will require virtually no water and that construction, although covering a large area, will involve only limited activities requiring management of storm-water related pollutants. Applicant explains that construction will necessitate little earth-moving or grading and only the occasional clearing of trees. Nevertheless, Angelina states that the Project will satisfy any requirements under an Ohio EPA construction stormwater general National Pollutant Discharge Elimination System (NPDES) permit, which requires the development and implementation of a SWPPP for erosion control and management of stormwater. (Co. Ex. 1 at 45-48.) Angelina additionally notes that Mr. Rupprecht testified that the Facility will have no impacts on the 1.19 acres of wetlands or the six other waterbodies located within the project area (Co. Ex. 13 at 5-6).

{¶ 253} Angelina points out that, based upon the permit measures and mitigation efforts proposed by Angelina, Staff concluded that construction and operation of the Facility will comply with the requirements of R.C. Chapter 6111 and the rules and laws adopted thereunder. Angelina concurs with Staff's conclusion and urges the Board to similarly find that, with the measures that it plans to put in place, that the Facility will comply with R.C. Chapter 6111. (Staff Ex. 1 at 27; App. Initial Br. at 42.)

{¶ 254} Angelina believes that there is no risk of either soil or water contamination from the panels to be used at the Facility. According to the Applicant, the panels to be used are composed primarily of readily recyclable materials such as glass, aluminum, and copper, and that such panels have been demonstrated to pass the U.S. EPA's "Toxicity Characteristic Leaching Procedure" TCLP, thus qualifying as routine "solid" waste that can be disposed of at landfills. (Co. Ex. 6 at 16.) Angelina witness Herling further testified that even if a solar panel is damaged, nothing liquid or gaseous can leak out of it. If a panel at the Facility is damaged, the company will quickly be aware of the issue due to constant monitoring provided by a supervisory control and data acquisition system that will be used on site. (Co. Ex. 6 at 16, 47.)

{¶ 255} Angelina is also committed to mitigating any effects that the Facility might have on stormwater. Angelina highlights that Condition 30 was added to the Amended Stipulation to address potential stormwater issues. (App. Initial Br. at 57.) Condition 30 requires the Applicant to obtain a General Construction Permit if one or more acres of ground are disturbed. Angelina states the General Construction Permit will require the company to perform pre- and post-construction stormwater calculations to determine if any post-construction best management practices are required. Condition 30 further requires Angelina to submit those stormwater calculations, along with a copy of any stormwater submittals made to the Ohio EPA, to the Preble County Office of Land Use Management and the Preble SWCD. (Joint Ex. 2 at 12, Condition 30.) Angelina believes that Condition 30 is in the public interest because, in the words of witness Marquis, it "will help to ensure that post-construction stormwater flows are appropriately managed" and that any necessary corrective measures are designed in accordance with Ohio EPA regulations (App Initial. Br. at 57 citing Co. Ex. 26 at 3).

{¶ 256} CCPC has a different view. The Citizens contend that the application does not adequately evaluate the impact to underground water supplies from contaminants that could be released from solar panels when destroyed, whether by humans or natural disasters. The Citizens are concerned that the Amended Stipulation does not adequately protect soil and water from contamination that could occur if severe weather (such as high winds, hail, lightning strikes, or tornadic activity), fire, or criminal activity were to break or otherwise damage the solar panels. CCPC indicates that any such event could release chemicals into the ground, thus contaminating soil and water. (CCPC Ex. 6 at A. 8.) And, because area wells are relatively shallow, CCPC believes that water contamination could occur quickly (CCPC Ex. 5 at 10).

{¶ 257} CCPC recognizes Applicant's representation that suppliers of most solar panels have demonstrated the panels pass the U.S. EPA's TCLP, which is used to evaluate the tendency of toxic metal contaminants to leach from the material into the soil or water (Co. Ex. 1 at 38; 40 C.F.R. 261.24). CCPC further recognizes that Mr. Herling testified that

Angelina would, in fact, use solar panels that pass the TCLP test (Co. Ex. 6 at 16). CCPC submits, however, that Mr. Herling's testimonial promise is not part of the application and is not required by the Amended Stipulation; in other words, CCPC believes the representation to be meaningless.

{¶ 258} CCPC suggests that the Board require Angelina to perform a complete risk assessment and review of the Applicant's risk mitigation plans, including training of fire and emergency personnel, to ensure identified risks are adequately addressed. The assessment should analyze the wind speeds the panels can withstand as attached to the pilings and investigate all other risks, such as chemicals, fire, and theft. CCPC insists the assessments should be made available to for public comment and should be performed before the Board acts on the application such that the certificate, if issued, can include protective measures found to be necessary. (CCPC Ex. 6 at A. 11.)

{¶ 259} To ensure safe water quality throughout the duration of the Project, CCPC additionally recommends that an independent, third party company analyze the entire chemical composition of the well water on farms adjacent to the solar farm and surrounding townships. CCPC says that the testing should be conducted prior to the start of any construction; annually during every year of facility operation; annually during decommissioning, site clearance, and the return of the land to productive farm use; and at the end of all activity on site. Further, the Citizens state that the Amended Stipulation should require the Facility to immediately remediate any abnormalities in the chemical composition of the water and supply replacement water to all impacted individuals so long as the water quality is impacted. Finally, the Citizens advocate for the Board to require Angelina to provide an accurate and complete listing of all water wells and their locations in the vicinity of the project area. (CCPC Ex. 6 at A. 8.)

{¶ 260} Angelina discards CCPC's concerns that natural disasters or human destruction would damage or destroy solar panels, thus releasing contaminants into

groundwater. To the contrary, Applicant affirmatively states that there is no evidence in the record to support any accusation that the Project poses any danger to groundwater.

{¶ 261} Applicant reiterates that panels are composed primarily of readily recyclable materials such as glass, aluminum, and copper; and, solar panels to be used for the Project pass the U.S. EPA's TCLP, which qualifies them as routine solid waste (Co. Ex. 6 at 16; Tr. I at 16). Angelina denies that there is a possibility that the panels selected for the Project will not be TCLP-compliant: Mr. Herling has unequivocally stated that panels used for the Project will be required to pass the test and testified that panels that are sold in the United States would be performing that test as a benchmark (Co. Ex. 6 at 16; Tr. I at 100). Furthermore, Mr. Herling explained that it is "exceedingly unlikely" that solar panels will "release any material to the environment necessitating soil or water remediation," even if damaged by breakage or fire (Co. Ex. 6 at 16). Angelina contends that the Board has adequate evidence to find the Facility will have minimal impact on soil and water and that the Citizens have produced no evidence to the contrary in justification of their recommendations.

{¶ 262} Staff agrees with Angelina that CCPC produced no credible evidence that shows that solar panels increase the chances of groundwater contamination (Staff Reply Br. at 11-12). Staff highlights that the Preble SWCD is responsible for overseeing water quality and soil protection in the area and that it – along with the County Commissioners, Dixon Trustees, the Planning Commission, and the County Engineer – was actively involved in the negotiations of the Amended Stipulation. Staff also notes that each of these entities is a signatory to the Amended Stipulation. Staff asserts that other concerns, such as potential stormwater pollution, will be addressed through Angelina's SWPPP. For all these reasons, Staff believes that groundwater issues are adequately addressed. (Staff Reply Br. at 11-12; Joint Ex. 2 at 20.)

{¶ 263} Upon review of the record, the Board finds that the Project will comply with Ohio law regarding water pollution control. As noted by Applicant, potential water quality

impacts are unlikely and, to the extent they occur, will be mitigated through compliance with applicable required permits. In reaching this conclusion, the Board is fortified by the fact that Preble SWCD, the body that holds itself out as working to ensure water, drainage, and the environment are dealt with in a way that does no harm to the county, is a Signatory Party to the Amended Stipulation and will be actively involved in water mitigation efforts (Motion to Intervene, Mar. 13, 2019; Joint Ex. 2 at 12, 20). The Board further notes that there is no record evidence to objectively support the Citizen's concerns that damaged solar panels will lead to soil or water contamination. Furthermore, considering the lack of evidence to support the concerns, the Board finds CCPC's recommendations for annual well water testing to be overbroad.

3. SOLID WASTE

{¶ 264} Angelina submits that the project area is already relatively free of debris and solid waste. The Applicant acknowledges that during construction, some solid waste will be generated, but believes that it will be minimal. Waste generated during construction will consist primarily of package-related materials, such as crates, nails, boxes, containers, and packing materials, damaged or otherwise unusable parts/materials, and occasional litter and miscellaneous worker-related debris. Angelina states that any waste that cannot be reused or recycled will be disposed of in a municipal landfill. During operation of the Facility, Angelina believes that exceedingly small amounts of waste will be generated, similar in type to those generated during construction. Angelina represents that no permits related to waste will be required. (Co. Ex. 1 at 48-50.)

{¶ 265} Staff agrees with Angelina's description of solid waste that might be generated at the Facility. Staff approves of Angelina's solid waste disposal plans and states that the plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 27.)

{¶ 266} CCPC argues that the application contains no estimate of the volume of solid waste and debris that will be generated during construction, and likewise fails to identify

the disposal destination of such debris, as required by Ohio Adm.Code 4906-4-07(D). CCPC notes that the application acknowledges that project construction will generate solid waste in various forms, e.g., package-related materials such as crates, nails, boxes, and containers, damaged or otherwise unusable materials, and occasional litter and miscellaneous human-generated debris, and that one or more buildings may be demolished (Co. Ex. 1 at 49, 78). Angelina witness Herling further testified that two farm buildings, one house, and several sheds will be removed, thus generating construction and demolition debris (Tr. I at 109-110; Tr. V at 560-561). Despite identifying such solid waste and construction debris, CCPC objects that the amount of waste and debris that the Project will generate is not estimated (Tr. I at 109-110). Likewise, CCPC objects that the application does not explain how the demolition waste from old buildings will be properly disposed. Without this information, CCPC states that the application is deficient and implies that the Board is, thus, precluded from making necessary determinations to issue a certificate.

{¶ 267} Despite CCPC's bald statements to the contrary, Angelina states that it has fully complied with application regulations for describing waste; Applicant described the types of waste expected to be generated and estimated that the amount of such waste would be limited (Co. Ex. 1 at 49-50). Angelina further defends its application against CCPC's allegations of non-compliance with regard to the demolition debris resulting from removal of buildings. Angelina expounds that demolition debris, unlike solid wastes, is not regulated under R.C. Chapter 3734 and, therefore, is not indicated by Ohio Adm.Code 4906-4-07(D). Nor, says Applicant, is it subject to the Board's review under R.C. 4906.10(A)(5). Nevertheless, Angelina states that Mr. Herling testified that the amount of demolition debris expected to be produced would be minor (Tr. I at 110). According to Angelina, the record establishes that solid waste generated during construction and demolition will be minimal and will be disposed of in a municipal landfill, and CCPC presents no evidence to the contrary (Co. Ex. 1 at 49). Staff adds that the Project's operations may generate small amounts of non-hazardous solid waste that will be reused, recycled, or disposed of according to federal, state, and local requirements (Staff Ex. 1 at 27).

{¶ 268} The Board finds that Angelina has properly demonstrated that the Project will comply with Ohio law regarding solid and hazardous waste. In this, the Board finds that CCPC reads a level of specificity into Ohio Adm.Code 4906-4-07(D) that does not exist. The rule does not require an exact measurement or weight of debris or solid waste generated during construction or operation of a facility; it merely requires an estimate of the nature and amount, as well as the proposed methods of storage, disposal, treatment, or transport of the waste. The Board finds that Angelina's application abides by the respective rules in informing the Board regarding compliance with solid waste requirements. The Board also notes that Staff found that Angelina's solid waste disposal plans will comply with the requirements set forth in R.C. Chapter 3734 (Staff Ex. 1 at 27). In sum, the Board concludes that the Facility will comply with R.C. Chapter 3734 and all rules and standards adopted thereunder.

4. AVIATION

{¶ 269} Regarding compliance with the requirements of R.C. 4561.32, Angelina reports that the highest point of the Facility will be a single lightning mast located at the substation, which will be approximately 70 feet in height. The solar panels will be no more than 15 feet above ground level. (Co. Ex. 1 at 82.) Angelina submits that there are no public use airports, helicopter pads, or landing strips within five miles of the project area. The closest airport, Norris Field, is located approximately 2.5 miles from the project area. The closest public use airport is the Richmond Indiana Municipal Airport, approximately 6.5 miles from the project area. Angelina states that Richmond Indiana Municipal Airport is well outside the vicinity of the project area, and therefore an aeronautical glare study is not warranted. (Co. Ex. 1 at 51-53; Staff Ex. 1 at 27; 14 C.F.R. 77.17(a)(2).) Angelina witness Robinson testified that glare from the Project is not a concern. According to Mr. Robinson, the potential for glare from solar panels is generally lower than the glare and reflectance generated by common surfaces in the surrounding environment. (Co. Ex. 12 at 6-7.)

{¶ 270} Staff concurs with Angelina's description of aviation matters related to the Facility. Staff also states that it contacted the ODOT Office of Aviation during the review of the application, as required by R.C. 4906.05(A)(5), and that the agency identified no impacts on local airports. (Staff Ex. 1 at 27.)

{¶ 271} Based on our review of the record, the Board finds that the Facility will comply with Ohio law regarding aviation.

{¶ 272} In summary, the Board finds that the Facility will comply with R.C. Chapters 3704., 3734., and 6111., as well as rules and standards adopted under those chapters and under R.C. 4561.32. Accordingly, the certification criterion found at R.C. 4906.10(A)(5) has been met.

F. R.C. 4906.10(A)(6): Public Interest, Convenience, and Necessity

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

{¶ 274} Angelina submits that it has involved the public during its development of the project. The Applicant has met with a number of public officials, at both the township and county level, and participated in public meetings beginning in 2017. Between 2016 and 2018, Angelina reached out to area landowners to gauge interest in participating in the Facility or to understand any concerns that residents might have related to the Facility. (Tr. I at 38-39.) As part of the standard proceeding before the Board, Angelina states that it held a public information meeting in November 2018 and made public notice filings and newspaper publications regarding the Project, as required under Board rules (Co. Ex. 1 at 22; Co. Ex. 4; Co. Ex. 5; Staff Ex. 1 at 28). Going forward during construction and operation of the Facility, Angelina points out that it is required under Condition 13 of the Amended Stipulation to implement a complaint resolution process that will allow any member of the public to submit any concerns regarding the project (Joint Ex. 2 at 8, Condition 13).

{¶ 275} Angelina maintains that the Board has adequate evidence to determine that the Project will have no effect on property values in the local area. Angelina commissioned Andrew Lines, of CohnReznick LLP, to evaluate the potential impact of the Facility on property values in surrounding areas. Mr. Lines is a designated Member of the Appraisal Institute with over 16 years of real estate appraisal experience and is a Certified General Real Estate Appraiser with active licenses in nine states. CohnReznick conducted a study of other large-scale solar farms to determine what impact, if any, the Facility may have on the value of surrounding properties. (Co. Ex. 15 at 1-3; Tr. II at 277.) According to witness Lines, the study determined that "no consistent and measurable negative impact had occurred to adjacent property that could be attributed to proximity to adjacent, commercial-scale, solar energy use, with regard to unit sale prices or other influential market indicators such as marketing time." Mr. Lines concluded that he would not expect the Facility to cause a decrease in property value in the area (Co. Ex. 15 at 6-7). Angelina submits that Mr. Lines' expert testimony and the study his firm conducted provide the Board with adequate evidence to find that the Facility will not have an impact on local property values (App. Initial Br. at 44).

{¶ 276} Angelina further maintains that the record demonstrates that the Facility will have no negative impact on emergency services and will not cause an increase in crime. With regard to safety at the Facility, Angelina states that the fields containing solar arrays will be enclosed with fencing and locked gates (Co. Ex. 1 at 8). Witness Herling testified as to further safety measures planned for the Facility, such as periodic security checks and the training of all on-site personnel to detect unusual activity. Additionally, the Facility could use nighttime security checks. (Tr. at 92-93.)

{¶ 277} Angelina intends to develop an emergency response plan for local officials and emergency personnel (Co. Ex. 1 at 55). Angelina points out that Condition 28 in the Amended Stipulation commits Angelina to providing initial, pre-construction training to the local fire and EMS service providers, as well as providing ongoing safety meetings and specialized equipment needed by providers. Angelina explains that the initial training will

educate emergency service providers on situations and emergency procedures specific to solar energy facilities such as the Project. Angelina intends to hold the safety meetings on an ongoing basis. (Joint Ex. 2 at 11, Condition 28; Tr. at 123.) According to Angelina, the Facility will not introduce any new types of risks to the local community that do not already exist through the presence of farming operations. In fact, Angelina believes that the Facility could reduce such risks. Angelina points out that CCPC witness Vonderhaar testified that many hazardous substances are already stored on farms and that serious injuries can occur during farming. (App. Initial Br. at 45; Tr. III at 371, 380-381.)

{¶ 278} Staff highlights that Angelina has committed to comply with applicable safety standards set by OSHA and the National Fire Protection Association. Angelina will use warning signs, fencing, and locked gates to restrict access to the Facility and will work with local emergency responders to provide training for responses to solar farm emergencies. (Staff Initial Br. at 13; Staff Ex. 1 at 28.) Staff also approves of the inclusion of Condition 28 as part of the Amended Stipulation, as it will require Angelina to provide training opportunities, ongoing safety meetings, and any specialized equipment that responders may need to appropriately respond to an emergency at the Facility. (Staff Initial Br. at 13; Joint Ex. 2 at 12.)

{¶ 279} CCPC submits that the application does not contain adequate provisions for emergency services per Ohio Adm.Code 4906-4-08(A)(1)(e), which requires the applicant to describe the fire protection, safety, and medical emergency plans(s) to be used during construction and operation of the facility, as well as how the plans will be developed in consultation with local emergency responders. CCPC contends the three-sentence paragraph in the application indicating that Angelina will develop an emergency response plan is insufficient. CCPC further contends that this insufficiency is not cured by Condition 28 of the Amended Stipulation.

{¶ 280} CCPC explains that the application fails to provide for protection against criminals who CCPC believes will be attracted to the Facility to steal recyclable materials

found within the solar components. CCPC states that there are typically only two deputies on each shift to cover the entire county, including the 1-70 corridor, and the response of those deputies to potential criminal activity at the Facility could detract from the deputies' needed presence elsewhere (Mast at 11; Vonderhaar at 12). The Citizens also state that the recent hiring of two additional deputies does not allay their concerns, as the sheriff's office was previously under-staffed and the new hires are not expected to increase law enforcement's presence on any given shift (Tr. III 354, 461, 464-465).

{¶ 281} Additionally, CCPC maintains that the application contains no analysis of the personnel needs that will result from the presence of the Facility, nor does it provide any assurance of the safety of the Facility itself. Ms. Vonderhaar testified that emergency services in Israel Township are already stretched thin, and the township contracts fire services with the villages of College Corner and Camden (CCPC Ex. 2 at 12). The Citizens contend that, given these resources, Applicant should commit to funding additional fire and emergency services personnel necessary to adequately serve the Facility. And, while Amended Stipulation Condition 28 requires Applicant to pay for any specialized equipment that may be necessary to fight fires or respond to emergencies, CCPC avers it falls short in failing to require Applicant to provide funding for additional emergency services to compensate for the Project's potential demands.

{¶ 282} The Citizens similarly declare that Condition 28 of the Amended Stipulation fails to provide sufficient training for fire and emergency response personnel on how to respond to facility-specific hazards. Although Condition 28 does provide for training prior to construction, CCPC indicates that Condition 28 requires only periodic safety meetings thereafter. CCPC explains that this is not adequate training for a community for which there is a high turnover of volunteer firefighters and emergency responders. Instead, the Citizens submit that emergency training for local fire and EMS service providers should be held annually during the Project's construction and operation. (CCPC Ex. 3 at 4.)

{¶ 283} In a related argument, CCPC asserts that the application does not describe or evaluate the reliability of the Project's equipment for preventing criminal access, which CCPC believes is required by Ohio Adm.Code 4906-4-08(A). CCPC contends that locating above-ground equipment "behind fences with locked gates" and posting "appropriate warning signs" does not satisfy public safety objectives (Co. Ex. 1 at 55).

{¶ 284} The Citizens criticize Applicant's intention to use typical locks, identified by Mr. Herling as either a keyed entry, keypad, or a padlock, and standard chain link fencing to enclose the Facility (Tr. I at 90-91; Co. Ex. 1 at 13). CCPC posits that thieves can use bolt cutters to destroy padlocks and to cut through chain link fences (Tr. I at 90-91; Tr. III 428). The Citizens also decry Applicant's representation that periodic security checks of the Facility will enhance safety measures, especially since the Project will be largely isolated and there is no quantification of the frequency of such security checks (Co. Ex. 6 at 13; Tr. I at 91-92, 94). Most disturbingly, says CCPC, Angelina has not determined whether the periodic security checks will be made after dark (Tr. I at 92, 94).

{¶ 285} CCPC reports that solar facilities use copper wire in construction, and thieves steal copper in order to sell it. While Mr. Herling has never heard of such activity connected to a solar project, CCPC counters that Mr. Herling has never sited a project near the village of Fairhaven. (Tr. I at 94-95.) This is problematic to the Citizens, who characterize their surrounding community as one in which crime runs rampant. Mr. Mast, co-leader of the Neighborhood Watch Team in Fairhaven, catalogued the numerous instances of grand thefts, petty thefts, property damage incidents, and suspicious events reported in Fairhaven over a period of five years, and described drug activity as constant. Mr. Mast also testified that burglary, gunfire, murder, and arson have occurred. Based on this knowledge, Mr. Mast asserts that criminals are opportunists; CCPC worries that the Facility will present an attractive opportunity. (CCPC Ex. 5 at 6-10.) CCPC argues that, despite existing criminal activity, Angelina has made no discernable effort to prevent criminal access to its Facility, or at least fails to do so in its application. Thus, CCPC asserts that the Board has insufficient

information to determine whether and to what degree the Facility will harm the public and what measures will be taken to address that harm.

{¶ 286} Angelina asserts that there is no evidence in the record, beyond what it calls "mere conjecture," "concerns, " or "speculative and inflammatory statements" of CCPC, that the Facility will lead to increased crime in the project area (App. Initial Br. at 45-46 citing CCPC Ex. 2 at 6; App. Reply Br. at 42). Applicant suggests that CCPC has expressed fears, but there is no evidence that criminals will be attracted to the community by the Project, that criminals will attempt to steal facility components for recycling, or that they will then present a danger to CCPC's members. Angelina again calls attention to the testimony of CCPC witness Vonderhaar in which she stated that local farmers already store significant amounts of equipment in barns and outbuildings in the area (Tr. III at 381). Witness Herling testified that he is unaware of any instances of copper theft involving a solar project (Tr. I at 95).

{¶ 287} Staff is also unswayed by CCPC's contentions. Staff believes that the Citizens attempt to hold Angelina and the Board to an impossible standard, as there is nothing in Ohio Adm.Code 4906-4-08(A) that requires safety measures to be 100 percent foolproof. Staff states that the record supports a finding that Angelina will take all appropriate security and safety measures to restrict public access to the Project and to safeguard against safety hazards to the community. (Staff Reply Br. at 10 citing Staff Ex. 1 at 28, Joint Ex. 1 at 10, Tr. I at 90.)

{¶ 288} Based on our review of the record, the Board finds that the proposed Facility, subject to the conditions specified in the Amended Stipulation, satisfies the public interest, convenience, and necessity as specified in R.C. 4906.10(A)(6). Public interest, convenience, and necessity should be examined through a broad lens. For example, this factor should consider the public's interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest,

ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. In reaching the determination in this case that the public interest, convenience, and necessity is satisfied we fully considered the testimony presented by the Citizens concerning crime and the impact on emergency services. The Board recognizes that citizens have an understanding of typical crimes within their community, such as drug-related offenses, burglary, theft, arson, or even murder (CCPC Ex. 5 at 6-10; Tr. III 460; CCPC Ex. 4 at 3; Tr. III at 428.) However, neither Citizen witness Mast or Brandly presented any evidence that a solar facility will create more opportunity for crime or will actively attract more criminal activity to a community; nor is there any evidence in the record that solar facilities are generally susceptible to criminal activity. "The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture]." *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at ¶ 40. The Citizens' concerns regarding the adequacy of emergency services, too, are understandable. Regardless, the Board finds sufficient evidence to determine that any impact from the Facility on local services, if manifested, will be minimal and that Applicant is obliged by Amended Stipulation Condition 28 to cooperate and coordinate with the community to provide initial and ongoing facility-specific training to emergency-responders. The record also supports the conclusion that, contrary to anxieties expressed by the community in public testimony and comments, the Facility is not expected to have a negative effect on property values.

{¶ 289} These findings, together with our foregoing discussion and conclusions regarding the probable environmental impacts and Facility's minimal adverse impacts on the community as a whole, persuade the Board that the Facility will serve the public interest, convenience, and necessity.

G. R.C. 4906.10(A)(7): Agricultural Districts

{¶ 290} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on agricultural viability of any land in an existing agricultural district within the project area of the proposed facility.

{¶ 291} Both Staff and Angelina state that the Facility will have no impact on agricultural district land because there is no agricultural district land in the project area (Co. Ex. 1 at 91; Staff Ex. 1 at 30). According to Staff, proposed construction activities will result in the loss of 732 acres of cultivated lands and 52 acres of pasture. The repurposed land could, however, be restored for agricultural use when the Facility is decommissioned. Staff states that construction and operation of the proposed Facility would disturb the existing soil and could lead to broken drainage tiles. Staff indicates that Angelina has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Additionally, in order to avoid impacts to drain tiles, Angelina stated that it would locate drain tiles as accurately as possible prior to construction. Staff also points out that Angelina's decommissioning plan for the proposed Facility calls for returning the affected land to original or similar conditions, and the plan includes repairing any drainage tiles and the de-compaction of soil. (Staff Ex. 1 at 30; Co. Ex. 6 at 15-16; Co. Ex. 27 at Att. 3.)

{¶ 292} Angelina emphasizes that after the conclusion of the Facility's useful life, the Facility will be decommissioned and the land will be restored to potential use as an agricultural area. According to Angelina, the Facility will have only modest impacts to the project area. (App. Initial Br. at 46; Co. Ex. 6 at 14.) Specifically, the solar panels and racking will be installed on simple posts driven or rotated into the ground, likely to a depth of less than 10 feet. Inverters and pyranometers will be installed on gravel pads or prefabricated foundations, which can be lifted out of place at decommissioning. The Facility's substation will be installed on poured concrete, but Angelina states that it will not cover a large area. Further, roads will be constructed of aggregate material or covered in grass, not paved, which will allow participating landowners to choose whether to retain roads for their own use following decommissioning. Angelina asserts that there will be no long-term impacts

from the Facility that would preclude its use for farming after the Facility is decommissioned. (Co. Ex. 1 at 37-38, 91.)

{¶ 293} As to drainage, Angelina first reiterates that its preliminary investigation revealed that soil in the project area is suitable for drainage for the Facility, as well as Mr. Waterhouse's conclusion that the Facility should not have an impact on drainage. Even with this preface, however, Angelina submits that it is committed to ensuring that any unavoidable impacts to drain tile are minimized. Angelina explains that it engaged Mr. Waterhouse to identify all drain tile in the project area prior to construction. In order to accurately map the drain tile, Mr. Waterhouse testified that he worked with the County Engineer and the Preble SWCD to obtain maps of any drain tile in the project area, spoke with landowners in the project area to identify any drain tile locations, and conducted an on-site review to visually identify any drain tile indicators. (Tr. I at 139; Co. Ex. 8 at 6.) Angelina witness Herling also described the Applicant's efforts to seek information from adjoining landowners regarding drain tile or other drainage infrastructure on their property through a targeted mail campaign (Co. Ex. 22 at 9; Joint Ex. 2 at 9, Condition 16).

{¶ 294} To ensure an understanding of draining in the project area, the Amended Stipulation obligates Angelina to establish benchmark drainage conditions prior to construction. If damage to drain tile cannot be avoided, Angelina has further committed in Amended Stipulation Condition 16 to promptly repairing such damage no later than 30 days after it is discovered and to return the drain to at least original conditions or its modern equivalent, all at Angelina's expense. (Joint Ex. 2 at 8-9; Co. Ex. 25 at 2; Co. Ex. 1 at 91-92.) Anticipating an argument from CCPC that these terms are insufficient, Angelina maintains that CCPC witness Vonderhaar acknowledges that "promptly" is synonymous with "as soon as the opportunity exists" and that a 30-day deadline is reasonable (Tr. III at 380). Angelina additionally indicates that there is sufficient room between the solar panel rows for larger equipment to repair or replace drain tile where a mini excavator or manual tools are not adequate; thus, the panels should not prevent any necessary repairs (Co. Ex. 1, Exhibit G at 1-5).

{¶ 295} Angelina submits that these safeguards are robust enough to ensure the prompt repair of any damaged drain tile, but still believes that the likelihood of such damage is low. Angelina points to the testimony of Mr. Waterhouse, who testified that in his experience on more than 50 solar projects, he has never encountered a single issue of drain tile breakage as a result of solar farm construction. (App. Initial Br. at 38; Tr. I at 154-156.)

{¶ 296} Staff concludes that construction and operation of the Facility could lead to broken drainage tiles which could impact CCPC members who operate farms in the area adjacent to the Facility boundary (Staff Initial Br. at 14; Staff Ex. 1 at 30.) Staff believes, however, that Condition 16 in the Amended Stipulation adequately addresses the potential repair of damaged drainage tile. Staff supports the inclusion of Condition 16 because, as Staff witness Bellamy testified, functioning drain tiles are important to the continued operation of the agricultural crop fields. According to witness Bellamy, Staff recommends Condition 16 in order to avoid damage to drain tiles when possible and to ensure that any damaged drain tiles are repaired. (Staff Initial Br. at 15; Staff Ex. 10 at 3.)

{¶ 297} CCPC argues that the application lacks the procedures necessary to comply with the requirement in Ohio Adm.Code 4906-4-08(E)(2) for avoiding and repairing damage to field drainage tiles. As background, the Citizens articulate field drainage tiles are of utmost importance to a crop farmer: oversaturated soil in the spring can delay planting, decreasing yield, and flooding after planting can kill or damage growing crops (CCPC Ex. 2 at 9). Ms. Vonderhaar testified that much of the land in the project area slopes to the southeast, thus the tiles in this area drain to the southeast so that water can flow downgradient to Four Mile Creek. She believes some of the tiles in the project area flow southeast into tiles on land owned by the Citizens, including two main trunk tiles that flow into tiles on land owned by Vonderhaar Family ARC, LLC and Campbell Brandly Farms, which connect to tile in another parcel of the project area. CCPC surmises that if the solar panels on that parcel increase the rate of runoff from rainfall, it would increase the amount

of flow in Brandly Farm's tile and may keep that land wet for a longer period of time, potentially decreasing crop yields. (CCPC Ex. 2 at 10; CCPC Ex. 4 at 4.)

{¶ 298} The Citizens assert that Angelina's application disregards the importance of the field drainage tiles by failing to provide for their timely repair to at least original condition per Ohio Adm.Code 4906-4-08(E)(2)(c)(ii). Instead, the application simply states that Applicant will use commercially reasonable efforts to repair tiles, which to CCPC implies Angelina may decline to take action if repairs are deemed too costly or difficult (Co. Ex. 1 at 92). CCPC further says that this language conflicts with the language in Amended Stipulation condition 16 requiring all damaged tile systems to be repaired. CCPC maintains that the Board should not issue a certificate while such vagueness exists.

{¶ 299} CCPC also declares the timing of repairs to be an issue. The application states that repairs will be made "promptly," while the Amended Stipulation requires tiles to be "promptly repaired no later than 30 days after" discovery of the damage (Co. Ex. 1 at 92; Joint Ex. 2 at 9). CCPC contends the provision is poorly drafted and could be interpreted to allow Applicant to argue that any repair done within 30 days is prompt even where immediate tile repair is necessary to prevent crop damage to a downgradient landowner. Accordingly, the Citizens recommend that Condition 16 be revised as follows: "Damaged field tile systems shall be replaced as quickly as feasible, but in no event later than 30 days after the damage is discovered." (CCPC Reply Br. at 40-41.)

{¶ 300} CCPC additionally argues that the application does not satisfy the requirement in Ohio Adm.Code 4906-4-08(E)(2)(c) to provide procedures for avoiding and mitigating damage to field tiles to the maximum extent practicable. The Citizens describe some of the tiles in the project area as having reached, or being closed to reaching, their life expectancy and will need to be replaced completely upon failure. Ms. Vonderhaar indicates that a sizable replacement of deteriorated tiles will require heavy equipment, and the Amended Stipulation does not explain how the tiles will be repaired or replaced amid the solar panels. (CCPC Ex. 3 at 4.) CCPC states that the application nor the Amended

Stipulation identify any procedures that will be used to determine whether tiles have been broken or damaged during project construction or operation (Co. Ex. 1 at 91-92). The Citizens further insist that the application must provide a procedure for immediately detecting tile damage caused by construction, alleging that a construction crew will not be able to tell a tile has been broken as posts are driven into the ground; Ms. Vonderhaar states that clay and plastic tiles offer little resistance to heavy pressure and construction crews will not be able to hear the tile break over the noise resulting from post installation (CCPC Ex. 2 at 11). To further ensure that impacts to field drainage tiles are minimized to the maximum extent possible, CCPC submits that Angelina should be required to consult with landowners whose land may be affected by tile damage or blockage to be certain that Applicant and the County Engineer have all necessary information and that tile repairs or replacement are effective to correct any drainage problems on the affected land (CCPC Ex. 3 at 3).

{¶ 301} In response, Angelina alleges that CCPC is attempting to "manufacture an issue" regarding drain tile by attacking the completeness of the application with respect to water-related issues. Angelina disputes CCPC's assertion that the application and the Project are deficient due to the use of the phrase "commercially reasonable" where Mr. Herling testified that the phrase references "how promptly we'll fix it * * * depending on the situation," not whether a repair would occur at all (Tr. I at 87-88). Regardless, Angelina points out that Condition 16 of the Amended Stipulation does not include the "commercially reasonable" qualifier, it simply requires damaged field tile systems to be promptly repaired no later than 30 days after discovery of damage. Thus, Angelina states that this is a non-issue. (App. Reply Br. at 33; Joint Ex. 2 at 9.)

{¶ 302} Angelina also disputes that timing of repairs to damaged drain tiles is an issue. Applicant reiterates that Condition 16 of the Amended Stipulation requires that repairs be done promptly and in no event later than 30 days after the discovery of damage (CCPC Initial Br. at 40; App. Reply Br. at 33). Here, Angelina again points to the testimony of Ms. Vonderhaar, who admitted that "promptly repaired" is synonymous with "as soon as the opportunity exists" and further admitted that she believed the deadline of 30 days to

be reasonable (Tr. III at 380). Angelina submits that, based on Ms. Vonderhaar's testimony, no changes to the Amended Stipulation are necessary to ensure that repairs are made promptly (App. Reply Br. at 33).

{¶ 303} Angelina submits that CCPC's noted concern that tile replacement activities could require the removal of solar panels to provide room for necessary equipment is similarly contradicted by Ms. Vonderhaar's testimony (App. Reply Br. at 33 citing CCPC Initial Br. at 41). Applicant explains that Ms. Vonderhaar acknowledged that mini-excavators and hand shovels are sufficient to repair drain tile (Tr. III at 375). Further, Mr. Waterhouse, Angelina's expert on drainage and drain tile issues, testified that in his experience working on over 50 solar projects, he has not encountered a single issue of tile breakage or drainage issues resulting from construction at a solar farm (Tr. I at 154-156).

{¶ 304} Angelina also challenges CCPC's claims that Angelina's efforts to identify drain tile in the project area are insufficient. Angelina reiterates that it is engaged in an ongoing effort to identify all drain tile in the project area and is actively engaged with local authorities and landowners, as well as performing on-site reviews, to do so (App. Reply Br. at 34; Co. Ex. 8 at 6; Co. Ex. 27 at 9). Angelina characterizes as "never-ending and far-reaching," CCPC's demand that Angelina should be required to consult with all potentially affected upstream and downstream landowners on repairs (App. Reply Br. at 34; CCPC Initial Br. at 42). Angelina further asserts that such a mandate is unnecessary and potentially unworkable; Mr. Waterhouse testified that, depending on location upstream or downstream, consultation with adjacent landowners is already part of the process (App. Reply Br. at 34-35; Tr. I at 140-141). Further, mandating consultation with all possibly affected landowners may actually slow the process of tile identification and repairs if a neighboring landowner is unwilling or unable to consult on the issue. As an example, Angelina states that it sent two letters to CCPC member Campbell Brandly Farms, LLC in early 2020 asking for drainage and tile mapping and had received no response as of the October 29, 2020 hearing. Angelina additionally submits that the demand is impractical, as tile networks could conceivably be connected for miles in any direction and an obligation to

consult with all potentially affected landowners, upstream or downstream, could result in the Applicant being forced to consult with landowners far from the project area. (App. Reply Br. at 35-36.) Angelina responds that the solution to CCPC's concern is already before the Board: Condition 16 of the Amended Stipulation, which requires that Angelina make efforts of all parcels adjacent to the project area to request drainage system information on those parcels (App. Reply Br. at 36; Joint Ex. 2 at 8-9).

{¶ 305} Staff concurs. Staff stresses that Applicant has agreed to repair any damaged tile promptly and in no event later than 30 days after discovery, which comports with Ohio Adm.Code 4906-4-08(E)(2). Staff also highlights Angelina's efforts to consult with owners of agricultural land in order to ascertain the type, size, and location of all functioning drain tile in the project area and commitment to engage the County Engineer when repairing existing drain tile (Co. Ex. 6 at 10; Co. Ex. 9 at 3).

{¶ 306} Based on the commitments contained in the application and the conditions in the Amended Stipulation, Staff and Angelina believe that the Board has adequate evidence to find and determine that the overall impact to drain tile will be minimal and conditions related to such tile in the project area satisfy the Board's rules (App. Reply Br. at 34; Staff Reply Br. at 10).

{¶ 307} The Board finds that the record provides adequate evidence with which to perform the statutorily required analysis. Initially, the Board notes that it is undisputed that there is no agricultural district land in the project area (Co. Ex. 1 at 91; Staff Ex. 1 at 30). Still, there is ample evidence to demonstrate that the Facility will have minimal and relatively temporary impacts on the agricultural acres within and surrounding the project area. Angelina has established that, upon decommissioning, the land can be returned to agricultural use (Co. Ex. 1 at 37-39; Staff Ex. 1 at 30). And, while the Board recognizes that CCPC's concern with regard to agricultural land is that construction and operation of the Facility will result in broken and damaged field drain tiles, the Board finds that there is

sufficient record evidence to conclude that Applicant has and will continue to adequately address that concern.

{¶ 308} To enhance Angelina's original commitment to locate drain tiles as accurately as possible prior to construction, Amended Stipulation Condition 16 requires that benchmark conditions of surface and subsurface drainage systems be documented prior to construction, including efforts to contact the owners of all parcels adjacent to the project area to request relevant drainage system information (Co. Ex. 1 at 91; Staff Ex. 1 at 30; Joint Ex. 2 at 9). Furthermore, compliance with Condition 16 requires that damaged field tile systems shall be promptly repaired no later than 30 days after such damage is discovered and be returned to at least original conditions or their modern equivalent at Applicant's expense.

{¶ 309} The Board finds that CCPC's concerns regarding the efforts to be taken in order to identify the benchmark conditions of existing drainage tile systems are appropriately addressed by the proposed plan. The planned approach is reasonable in that includes working with the County Engineer and Preble SWCD to obtain maps of any drain tile in the area; communications with landowners with landowners in the project area; and onsite reviews to identify drain tile indicators (Co. Ex. 8 at 6; Co. Ex. 22 at 8-9; Co. Ex. 9 at 2; Joint Ex. 2 at 9).

{¶ 310} With respect to the requirement that damaged field tile systems be promptly repaired no later than 30 days after such damage is discovered, the Board concedes that the current language could be interpreted in more than one way. On the other hand, the Board finds that the language proposed by CCPC inserts additional ambiguity. Accordingly, the Board believes that Condition 16 of the Amended Stipulation should be amended to require that "Damaged field tile systems shall be promptly repaired after the damage is discovered and reported to Applicant and be returned to at least original conditions or their modern equivalent at the Applicant's expense; repair activities should commence as soon as practicable and be completed no later than 30 days following discovery and report. " The

Board also notes that pursuant to Condition 16, Angelina is required to make all field tile repairs without regard to degree of difficulty or cost. Through full compliance with Condition 16 and adherence to the decommissioning plan, through which the project area will be returned to agricultural use at the end of the Facility's useful life, the continuation of agricultural activity will be protected.

{¶ 311} Pursuant to the above, the Board concludes that the Project satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable provisions of the Amended Stipulation, as amended by this Order

H. R.C. 4906.10(A)(8): Water Conservation Practice

{¶ 312} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature of and economics of the various alternatives.

{¶ 313} During operation, Angelina believes that the Facility will use an extremely small volume water, if any at all. What little water is used at the Facility will be used for the occasional cleaning of solar panels. Angelina anticipates no water discharge from the Facility and states that there will be no impacts to water quality due to construction or operations. Because of such minimal water demands, Angelina asserts that the Facility incorporates maximum feasible water conservation practices. (App Initial Br. at 47; Co. Ex. 1 at 11, 45.) Staff concurs with Angelina's assessment and finds that the requirements under R.C. 1501.33 and 1501.34 are not applicable to this project. Staff therefore recommends that the Board find that the 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 includes the conditions specified in the Staff Report. (Staff Ex. 1 at 31.)

{¶ 314} Upon a review of the record, the Board finds that the Facility incorporates the maximum feasible water conservation practices, and, therefore, satisfies the

requirements of R.C. 4906.10(A)(8), provided that the certificate issued incorporates the applicable provisions of the Amended Stipulation. In making this determination, the Board recognizes the representation that construction and operation of the Facility will not require the use of significant amounts of water and that nearly no water or wastewater discharge is expected (Staff Ex. 1 at 31).

IX. CONSIDERATION OF STIPULATION

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

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

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

c) Does the settlement package violate any important regulatory principal or practice?

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

{¶ 316} Angelina states that the original stipulation, filed on June 14, 2019, was the product of negotiations held with all parties to this proceeding, all of whom were represented by counsel. According to Angelina, the serious nature of the bargaining that led to that first stipulation is evidenced by the fact that all signatories agreed to modify some of the conditions recommended by Staff and to add new conditions that were not in the Staff Report. (Co. Ex. 7 at 2; Staff Ex. 1 at 33-37; Joint Ex. 1 at 6-11.) Angelina avers that the Amended Stipulation is also the product of serious bargaining. Angelina reports that, as time progressed and plans continued to be developed and revised, it engaged all parties to negotiate and finalize the Amended Stipulation, which all signatories acknowledge "presents both revised and new conditions that are more protective than the conditions in the original stipulation submitted on the record" (App. Initial Br. at 48 citing Joint Motion to Reopen Hearing Record, July 29, 2020 at 3). Angelina submits that all parties had the opportunity to participate in negotiation of the Amended Stipulation, that all parties were represented by counsel, and that the changes made from the original stipulation reflect input from all signatories (App. Initial Br. at 48; Co. Ex. 22 at 12).

{¶ 317} Staff confirms that counsel for all parties to this proceeding participated in settlement discussions and that the Amended Stipulation is the product of an "open process" (Staff Initial Br. at 18). Staff points to the testimony of Angelina witness Herling, who attested that "extensive negotiations" took place among the parties and that the original stipulation represented a "comprehensive compromise of the issues raised by parties with diverse interest" (Staff Initial Br. at 18 citing Co. Ex. 7 at 2; *see also* Co. Ex. 22 at 12). Staff explains that after the record was closed and the parties awaited a decision by the Board, settlement discussions were reopened by the parties and Angelina provided additional information about details of the Project. Staff states that continued "serious bargaining" between the parties resulted in additional conditions being added to the Amended Stipulation, with greater detail and increased protections added to the previously

proposed conditions. Staff states that all parties were again invited to participate in discussions and that the signatory parties were active in crafting the amended conditions. Staff submits that the Amended Stipulation is, therefore, undeniably the product of serious bargaining among capable, knowledgeable parties. (Staff Initial Br. at 18-19.)

{¶ 318} Upon review, the Board finds that the Amended Stipulation is the product of serious bargaining among capable, knowledgeable parties. Initially, the Board notes that parties to this proceeding were represented by knowledgeable, competent counsel. Additionally, the Board notes that all parties to this proceeding were invited to participate in the negotiations that resulted in both the original and the Amended Stipulation. Thus, the Board finds that the first criterion is met.

B. ***Does the settlement, as a package, benefit ratepayers and the public interes***t?

{¶ 319} As a general matter, Angelina asserts that the Amended Stipulation is in the public interest because signatories such as the County Commissioners, County Engineer, Preble SWCD, Dixon Trustees, and the Planning Commission are the elected officials and appointed bodies that represent the public in the project area (App. Initial Br. at 58; Joint Ex. 2 at 20).

{¶ 320} Angelina believes that the Amended Stipulation is in the public interest because of "substantial benefits" that it alleges will result from construction of the Facility. First, Angelina states that the Facility will generate emission-free power, which will assist in the attainment of air quality goals in southwestern Ohio (Co. Ex. 1 at 41-42). Angelina states that payments will flow to local governments, including Preble County and Dixon and Israel townships, and the local school district, which, according to witness Herling, will be far in excess of the property taxes currently being paid on the parcels forming the project area (Tr. I at 57). Angelina submits that payments to local government from the Facility will be a minimum of $720,000 per year (Co. Ex. 22 at 14, Att. DH6).

{¶ 321} Angelina states that the Facility will create approximately 518 to 1,076 direct and indirect construction-related jobs with corresponding payroll of $25.4 million to $55.6 million (Co. Ex. 1 at 31, Exhibit C). During operations, depending on the percentage of locally sourced content for maintenance activities, Angelina estimates that the Facility will create approximately 19 to 22 direct and indirect jobs with corresponding annual payroll of approximately $630,000 to $1 million. According to Angelina, the Facility is expected to generate new economic output of around $161.7 million during construction and $1.5 million annually during operation. (Co. Ex 1 at 31-32, Exhibit C.)

{¶ 322} Angelina submits that Condition 3 of the Amended Stipulation is in the public interest because it extends setbacks to distances greater even than those included in the application and the original stipulation. The application made clear that the project area would contain certain setbacks and the original stipulation extended setbacks so that they would measure to the "edge of the right-of-way rather than the edge of the roadway" (Co. Ex. 1 at 54; Joint Ex. 1 at 6). The Amended Stipulation preserves this language and also expands other setbacks in Condition 3. For instance, where the application called for a 10-foot setback between the perimeter fence and the property line of any non-participating parcel, Condition 3 extends the setback to a minimum of 25 feet. In addition, where the application called for a 100-foot setback between any above-ground equipment and any non-participating residence, Condition 3 requires a 150-foot setback between the Facility fence and any non-participating residence. Finally, Condition 3 requires an additional, new setback of 500 feet between any central inverter and any non-participating residence. (Co. Ex. 1 at 54; Joint Ex. 2 at 6.) Angelina believes that these expanded setback distances have numerous benefits. The larger setbacks from roadways will address any concerns about visibility at crossroads, if such a potential hazard even exists (Co. Ex. 7 at 3). Angelina further alleges that these increased setbacks benefit vegetative screening, as witness Robinson testified that the greater distances would allow proposed plant modules to fully achieve the goals of the landscape mitigation plan (Co. Ex. 24 at 1-2). With regard to noise-related issues, Angelina believes that the 500-foot inverter setback ensures that such issues,

if any, are effectively mitigated. According to witness Hessler, sound modeling based on the 500-foot setback shows that all non-participating residences are either close to or outside the 35 dBA contour, which he states is "generally considered inconsequential even in rural environments." (Co. Ex. 23 at 2-3.)

{¶ 323} Angelina believes that Condition 10 of the Amended Stipulation also benefits the public because it limits the hours of construction activities. Witness Hessler opined that construction noise from the Facility would be brief in duration and only occur during the daytime (Co. Ex. 14 at 4). Angelina points out that Condition 10 of the Amended Stipulation reinforces this by limiting construction hours. Angelina views these limits as being in the public interest because they prevent noise-producing construction from occurring outside of daylight hours when it would be more apparent to nearby residences. (Joint Ex. 2 at 7, Condition 10; App. Initial Br. at 52.)

{¶ 324} Angelina states that Condition 11 of the Amended Stipulation benefits the public because it requires the preparation of a landscape and lighting plan and the maintenance of fencing in good repair in order to reduce the aesthetic and lighting impacts of the Facility on adjacent non-participating residential parcels (Joint Ex. 2 at 7-8, Condition 11). Angelina asserts that Condition 11 not only incorporates Staff's recommendation regarding landscape and lighting but extends the commitments even further (App. Initial Br. at 52; Staff Ex. 1 at 34). First, Condition 11 requires that the landscape and lighting plan be developed in consultation with a landscape architect licensed by the Ohio Landscape Architects Board, which Angelina asserts will ensure that the plan is designed by a professionally certified architect. Second, Condition 11 makes clear that unless alternative mitigation is agreed upon with the owner of an adjacent non-participating parcel, then the plan provides for the planting of vegetative screening and requires Angelina to ensure that 90 percent of the plantings have survived after five years, as well as committing Angelina to maintain the vegetative screening for the entire life of the Facility. (Joint Ex. 2 at 7-8, Condition 11.)

{¶ 325} Specific to lighting, Angelina believes that Condition 11 goes beyond Staff's own recommendations. Whereas Staff requested a lighting plan, Condition 11 specifically mandates that any lights are to be motion-activated and designed to narrowly focus light inward toward the Facility. (Staff Ex. 1 at 34; Joint Ex. 2 at 8, Condition 11.) Angelina submits that these measures will soften the visual impact of the Project and improve Angelina's "ability to effectively screen and mitigate the Project's visual impact" (App. Initial Br. at 53 citing Co. Ex. 24 at 3). With respect to fencing, Angelina points out that Condition 11 contains a requirement to submit a plan describing methods of fence repair and a requirement to maintain perimeter fencing, both of which will serve to strengthen security at the Facility and minimize the negative visual impact of any damaged fencing (Joint Ex. 2 at 8, Condition 11; Co. Ex. 7 at 3).

{¶ 326} Angelina states that Condition 16 of the Amended Stipulation is in the public interest because it requires Angelina to avoid, where possible, or minimize to the extent practicable, damage to drain tile and to repair damaged drain tile. Further, Condition 16 requires that Angelina promptly repair damaged field tile systems no later than 30 days after discovery of damage. Angelina states that it is committed to working with adjoining landowners to secure all available information regarding the project area's drainage system to minimize potential damage. Angelina points out that Condition 16 also requires that the Applicant consult with the County Engineer or Staff before repairing any county maintenance/repair ditches. (Joint Ex. 2 at 8-9; Co. Ex. 25 at 2.) Angelina, reiterates the opinion of witness Waterhouse, who testified that Condition 16 benefits the public interest "by ensuring the protection of drain tile and existing drainage in the project area." (App. Initial Br. at 54 citing Co. Ex. 25 at 2).

{¶ 327} Angelina argues that Conditions 18 and 24 of the Amended Stipulation are in the public interest because they require Angelina to develop a vegetation management plan, minimize, to the extent practicable, the clearing of wooded areas, and take steps to avoid the propagation of noxious weeds (App. Initial Br. at 54). With respect to the clearing of wood areas, Angelina submits that the Project will involve only an estimated 0.7 acres of

tree clearing (Co. Ex. 1, Exhibit G at 3-1). Even with such minimal tree clearing planned, Angelina points out that Condition 24 commits the company to minimize the clearing of wooded areas (Joint Ex. 2 at 10, Condition 24). Condition 18 requires Angelina to develop a vegetation management plan. Specifically, as part of the vegetation management plan, Condition 18 requires Angelina to outline steps it intends to take to prevent the establishment or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 during the planting of pollinator-friendly vegetation. (Joint Ex. 2 at 9.) Angelina states that it has already prepared a draft Vegetation Management Plan that meets the requirements of Condition 18 (App. Initial Br. at 54; Co. Ex. 27, Att. 1 at 27). Condition 18 further requires Angelina, to the extent practicable, to purchase seed stock from a vendor recommended by the Ohio Seed Improvement Association (Joint Ex. 2 at 9).

{¶ 328} Angelina submits that the provisions of Conditions 25 and 26 of the Amended Stipulation, requiring Angelina to develop a traffic management plan and enter into a road use maintenance agreement, are in the public interest (App. Initial Br. at 55). Specifically, Condition 26 requires Angelina to provide Staff with a transportation management plan and notice of any change to the RUMA entered into between Angelina, the Preble County Board of County Commissioners, the Preble County Engineer, Israel Township, and Dixon Township at least 30 days prior to the preconstruction conference (Joint Ex. 2 at 11, Condition 26). Further, Angelina witness Bonifas testified that the Amended Stipulation will ensure that the Project will not have a negative impact on local roads after Facility construction and decommissioning (Co. Ex. 11 at 2). Mr. Bonifas ultimately concluded that Condition 25 is in the public interest (Co. Ex. 27 at 5).

{¶ 329} Angelina submits that Condition 28 is in the public interest because it obligates the company to provide opportunities for training to local first responders, furnish specialized equipment that might be needed, and hold ongoing safety meetings with local fire and EMS providers (Joint Ex. 2 at 11, Condition 28; Co. Ex. 7 at 3-4). According to Angelina witness Herling, himself a former EMT and operations director for a local volunteer EMS, this training and equipment will help ensure that local fire and EMS

providers are familiar with the Facility and are able to effectively respond to any emergency on the site (Co. Ex. 7 at 3-4; Tr. I at 126).

{¶ 330} Angelina believes that Condition 29 of the Amended Stipulation is in the public interest because it requires the company to implement a decommissioning plan that includes financial assurance requirements (App. Initial Br. at 56). Angelina committed in the application to put a decommissioning plan in place (Co. Ex. 1 at 38-40). Angelina states that Condition 29 expressly requires the creation and implementation of a decommissioning plan. Condition 29 also requires that Angelina post financial security in the form of a performance bond with the Board as oblige to ensure that there are funds available to pay the net decommissioning costs. Additionally, Condition 29 requires that the net decommissioning costs be recalculated every five years and that the bond be increased accordingly (Joint Ex. 2 at 11, Condition 29). According to witness Herling, Condition 29 will ensure that the Project does not become an inconvenience to the local community at the end of its useful life. Herling states that the decommissioning plan required by Condition 29 will allow the project area to be converted to another productive use. (Co. Ex. 7 at 4.) Angelina highlights that witness Bonifas echoed these sentiments when he testified that the inclusion of Condition 29 ensures that an effective decommissioning plan is implemented and properly funded in order to allow the land to be returned to a use that benefits the public (Co. Ex. 11 at 3; Co. Ex. 19 at 5).

{¶ 331} Angelina states that Condition 30 is newly added to the Amended Stipulation and is in the public interest (App Initial Br. at 57). Condition 30 requires the Applicant to obtain a General Construction Permit if one or more acres of ground are disturbed. Angelina states the General Construction Permit will require the company to perform pre- and post-construction stormwater calculations to determine if any post-construction best management practices are required. Condition 30 further requires Angelina to submit those stormwater calculations, along with a copy of any stormwater submittals made to the Ohio EPA, to the Preble County Office of Land Use Management and the Preble Soil & Water Conservation District. (Joint Ex. 2 at 12.) Angelina believes that

Condition 30 is in the public interest because, in the words of witness Marquis, it "will help to ensure that post-construction stormwater flows are appropriately managed" and that any necessary corrective measures are designed in accordance with Ohio EPA regulations (App Initial. Br. at 57 citing Co. Ex. 26 at 3).

{¶ 332} Staff echoes the testimony of Angelina witness Herling, who stated that the Facility will generate clean and quiet renewable electricity. Additionally, the Facility will benefit the local economy through the creation of construction jobs, operational jobs, and new tax revenue. Staff believes that creation of 518 to 1,076 direct and indirect jobs during construction, 19 to 22 jobs during operation of the Facility, and the anticipated $560,000 in PILOT payments demonstrate that the Facility would be in the public interest. (Staff Initial Br. at 19 citing Co. Ex. 7 at 2.)

{¶ 333} Staff believes that another public benefit of the Amended Stipulation is the negotiation of the recommended condition concerning setbacks that will be measured from the road right-of-way rather than the edge of roadways. Staff cites the testimony of witness Herling, who stated that this will result in larger setbacks from roadways and address any concerns about visibility at crossroads. (Staff Initial Br. at 19; Co. Ex. 7 at 2-3; Co. Ex. 22 at 4-5; Joint Ex. 2 at 6, Condition 3.) Staff also points out that the Amended Stipulation contains detailed language concerning drainage systems, both public and private, and requires Angelina to consult with the County Engineer or Staff prior to repairing county maintenance/repair ditches. According to Staff, this ensures that existing drainage in the project area is protected. (Staff Initial Br. at 19-20; Co. Ex. 7 at 2-3; Joint Ex. 2 at 8-9, Condition 16.)

{¶ 334} Staff states that the Amended Stipulation improved provisions for security of the Facility, minimization of visual impacts, increased cooperation and involvement of local officials, and training and equipment for first responders (Co. Ex. 7 at 2-3; Joint Ex. 2). Staff therefore believes that the Amended Stipulation benefits the public interest and

submits that the Facility satisfies the public interest standard of R.C. 4906.10(A)(6) (Staff Initial Br. at 20).

{¶ 335} Consistent with its position relative to the issues discussed above, CCPC insists that the Facility will harm the public for the following reasons:

(a) The solar equipment will spoil the neighborhood's scenic views. The unsightly equipment will be located in close proximity to neighboring residences and land, and Angelina has not provided meaningful assurances that the views will be adequately mitigated via effective screening designs acceptable to neighbors.

(b) Lighting at the Facility may be annoying and intrusive to neighbors.

(c) The inverters may produce annoying and intrusive noises that reaches neighboring homes and land.

(d) Post installation at the project site will produce noise that is loud, bothersome, and long lasting.

(e) The provisions for preventing and replacing damage field tiles are inadequate and could result in the flooding of neighboring land and damaged crops.

(f) The unguarded recyclable materials in the solar equipment will attract criminals to the area.

(g) Solar panels damaged by vandals or disasters may leak contaminants into the groundwater, thus polluting the neighbors' wells.

(h) The Facility may be a drain on emergency services, thus depriving the residents of adequate emergency services.

(i) The applicant does not provide adequate controls for noxious and invasive weeds.

(j) The Facility will harm area wildlife.

(k) The Facility will force deer, coyotes, and other wildlife to congregate in the neighbors' fields and yards and damage the neighbors' crops and livestock.

(l) The Facility may increase stormwater runoff and flood the neighbors' fields and homes, including those in Fairhaven.

(m) The solar equipment may obstruct motorists' views of cross-roads at intersections.

(n) Erosion from construction at the Facility may pollute the streams.

(o) The application lacks sufficient detail about solid waste and debris generation.

(p) Construction at the Facility will clog the neighborhood roads and delay the movement of farm equipment.

(CCPC Initial Br. at 88-89.)

{¶ 336} The Board concludes that the second element is satisfied and that as a package, the Amended Stipulation benefits the public interest in a variety of ways. While some members of the public questioned the suitability of the climate in Ohio, no evidence was put forth from any party to dispute that the Facility will generate a new source of clean, emission-free power which will assist in the achievement of air quality goals in the state (Co. Ex. 1 at 41-42). The Board also notes that the economic benefits expected to flow from construction and operation of the Facility are considerable, both in terms of job creation and revenue streams that will flow to participating farmers, local school districts, and local

government entities and taxing districts (Co. Ex. 1 at 31-32, Exhibit C; Staff Ex. 1 at 15). The Board agrees with Angelina and Staff that the Amended Stipulation provides a framework within which these benefits can be realized while ensuring that potential detrimental impacts are prevented or minimized. CCPC rightly raises its concerns regarding the impact of the Facility on the public interest of the community, but the Board believes that the majority of these concerns are addressed in the conditions set forth in the Amended Stipulation, as outlined in this section and in our above analysis of R.C. 4906.10(A)(1)-(8). For example, the various plans required under the Amended Stipulation, such as the landscape and lighting plan, the vegetation maintenance plan, plans to minimize damage to drain tile, and the decommissioning plan, require Angelina to implement plans and procedures that address CCPC concerns such as screening, light emission, effects on drain tile, and effects on wildlife (*see* Joint Ex. 2 at 6-12). Further, requirements such as the increased setbacks established under Amended Stipulation Condition 3 provide protections more expansive even than those previously approved by Staff (Joint Ex. 2 at 6, Condition 3). To the extent that CCPC argues that these plans and requirements do not provide enough specificity, the Board disagrees and believes that they provide adequate detail while also allowing sufficient flexibility for such plans to be refined as necessary during project development. The Board also notes that a number of provisions in the Amended Stipulation requires that Angelina continue to work with local authorities in Preble County, thus ensuring that relevant local authorities are involved in the project and can provide their input (Joint Ex. 2 at 9, 10, 11, Conditions 16, 25, 26, 28). Based on this analysis, the Board finds that the Amended Stipulation is in the public interest.

C. ***Does the settlement package violate any important regulatory principle or practice?***

{¶ 337} Angelina believes that the Facility, as described in the application, Staff Report, and the remaining record, meets the criteria for issuance of a certificate under R.C. 4906.10. In Angelina's assessment, the Amended Stipulation, in recommending conditions on the Facility, furthers the regulatory principles and practices of the Board. (App. Initial

Br. at 49.) According to Angelina witness Herling, the Amended Stipulation does not violate any important regulatory principle or practice (Co. Ex. 22 at 15). Angelina views the Amended Stipulation as representing a "significant achievement" given that it was executed by Staff, OFBF, the County Commissioners, the County Engineer, the Preble SWCD, and the Dixon Trustees (App. Initial Br. at 49; Joint Ex. 2 at 20). Staff supports Angelina's position on this issue and submits that there is no evidence in the record to the contrary (Staff Initial Br. at 20).

{¶ 338} For CCPC, however, the Amended Stipulation represents an attempt by Angelina to fill in the gaps created by an application that the Citizens deem insufficient and noncompliant with Board rules and regulations. CCPC asserts that the Project has been plagued by Applicant's lack of transparency, and Angelina's reluctance to communicate with the community—in particular the Project's nonparticipating neighbors—has resulted in an application that is wholly deficient in the details necessary to identify and mitigate potential hazards. CCPC characterizes the Amended Stipulation as a "scheme" concocted by Angelina and Staff to altogether insulate the public from involvement and input into the decision-making process. Here, and throughout this proceeding, CCPC argues that the application is simply incomplete and that the Board may not approve an application that does not contain the information required by law (CCPC Reply Br. at 47 citing *Anderson v. Vandalia*, 159 Ohio App.3d 508, 2005-Ohio-118).

{¶ 339} Specifically, CCPC states that the Amended Stipulation is an unlawful attempt to circumvent the Board's statutory and regulatory mandates to base its proceedings on complete applications so that neighboring citizens can provide meaningful input on siting decisions that affect them. As addressed throughout our discussion of the criteria in R.C. 4906.10, CCPC argues that many of the studies and information needed to evaluate the Project's threats and the mitigation of those threats are missing. CCPC asserts that, to compensate for those deficiencies, the Signatory Parties entered into the original and Amended Stipulation to permit the informational gaps to be filled with post-certificate studies that would be secretly formulated and approved. In other words, CCPC asserts that

the Amended Stipulation requires Angelina to perform and submit 12 "studies" to Staff after the certificate is issued instead of properly testing them in the adjudicatory process (Joint Ex. 2 at Conditions 3, 4, 9, 11, 12, 16, 18, 22, 25, 26, 29, and 30).

{¶ 340} CCPC acknowledges that by the time of the October 2020 supplemental hearing, Angelina had completed a number of studies that had been contemplated by the original stipulation, such as a noise study and contour map, preliminary site plan, a letter from OHPO regarding Applicant's proposed cultural resource study, a complaint resolution process, the RUMA, the preliminary landscape plan for mitigating visual impacts, and a preliminary vegetation management plan. However, the Citizens contend that neither the plans nor the sponsoring testimony were included in the application or subjected to the entire adjudicatory process. And, receiving the new testimony and exhibits 16 days prior to the October 2020 hearing, say the Citizens, does not replace proper public process. As such, CCPC submits that acceptance of the Amended Stipulation and its inclusion of a multitude of post-certificate studies would violate the Board's enabling statute and its own rules.

{¶ 341} In support of this position, CCPC cites to R.C. 4906.06(A)(2) (requiring an application to contain a "summary of any studies that have been made by or for the applicant of the environmental impact of the facility), as well as Ohio Adm.Code 4906-2-04(B) (requiring an application to include the information required by Ohio Adm.Code Chapter 4906-4) and Ohio Adm.Code Chapter 4906-4 (rules governing standard certificate applications for electric generation facilities). Additionally, CCPC states that Ohio Adm.Code 4906-3-06(A) requires the Board Chair to determine whether an application is complete and complies with the content requirements of the Board's rules before the application can be processed. Continuing, the Citizens contend that, once the application is complete, Staff must conduct an investigation and submit its report and recommendations as to whether the application complies with Board rules and R.C. 4906.10(A) (Ohio Adm.Code 4906-3-06(C)), which Report is then made available for public review (Ohio Adm.Code 4906-3-07(A)(2); R.C. 4906.07(C)). Meanwhile the applicant is required to publish public notices regarding the application, and the Board schedules a hearing where

members of the public have an opportunity to comment on the application, incorporating any included studies (R.C. 4906.06(C); Ohio Adm.Code 4906-3-06(C); 4906-3-07; 4906-3-09; R.C. 4906.07(A)). Thereafter, an adjudicatory hearing is held to hear evidence.

{¶ 342} CCPC submits that this proceeding runs afoul of the above strictures. CCPC argues that, here, the application does not contain many of the required studies and that, despite this deficiency, the Board erred in determining that the application is complete and in scheduling a hearing without having received a complete application. CCPC asserts that the Board is required to follow its own rules and applicable statutes but has failed to do so (CCPC Initial Br. at 7-8 citing *State Ex rel. Cuyahoga Cty. Hosp. v. Ohio Bureau of Workers' Comp.*, 27 Ohio St.3d 25, 27-28 (1986) and *Parfitt v. Columbus Corr. Facility*, 62 Ohio St.2d 434, 436-437 (1980)). Furthermore, the Citizens contend that this alleged failure has prejudiced their right to vet Angelina's studies through the application and adjudicatory process, as post-certificate plans will not be subject to public comment, testing, or adjudication.

{¶ 343} Thus, instead of accepting the Amended Stipulation and the studies introduced at the October 2020 hearing, CCPC argues that the Board should vacate its finding that the application is complete under Ohio Adm.Code 4906-3-06(A), require Angelina to supplement its application with the offending post-certificate studies regarding the identification and mitigation of environmental impacts, and re-adjudicate the matter such that the Board—not Staff—can make the necessary determinations regarding a certificate. For the Board to do otherwise, announces CCPC, is to unlawfully abdicate to Staff the Board's duty to make the required findings and deprive the Citizens of their due process rights.

{¶ 344} Alternatively, if the Board proceeds on the Amended Stipulation and its post-certificate conditions, CCPC suggests that several modifications should be made to close "loopholes" in the conditions and remove secrecy from Staff's review and acceptance of post-certificate plans and oversight of Facility operations. Specifically, CCPC proposes that Angelina should be required to post notices of and copies of all permit applications,

permits, plan submittals, and other correspondence to and from public agencies about the design, construction, and operation of the Facility on its website and provide the public with a mechanism by which it can obtain more information about and comment on issues associated with these actions. CCPC also recommends that any facility requests for permits and other governmental action should be posted on Angelina's website at least 15 days prior to submission to the government so the public can provide Applicant and the pertinent government agency with comments on the proposals; for the purpose of public comment, the posted notifications should identify a contact person and email address for Angelina and for the government official who is the contact person for Angelina. CCPC submits that notice of the pre-construction meeting and other meetings between Angelina and Staff about the Facility should be posted on Angelina's website at least 14 days prior to the meeting, which should be open to the public. CCPC requests that Angelina should be required to send all notices described above to the owners and occupants of the land adjoining the project area. Last, CCPC advocates that all complaint summaries should be posted on Angelina's website, redacting information identifying the complainant as necessary. On a final note, the Citizens submit that the Amended Stipulation is not a compromise among *all* parties to this proceeding, only those parties who favor the Facility. Therefore, CCPC posits that the Amended Stipulation is not entitled to "substantial" weight and deference as Angelina claims in its brief.

{¶ 345} Initially, Angelina states that CCPC's stance that various studies and plans should have been included in the application is at odds with the Board's rules and prior decisions, as well as decisions from the Supreme Court of Ohio. Because the Project is a proposal and still in progress, Angelina submits that it is normal for final engineering and design plans to not yet be completed. (App. Reply Br. at 1; *In re Nestlewood Solar I LLC*, Opinion, Order and Certificate (Apr. 16, 2020) at 72, 96.) Angelina describes CCPC's argument as "nonsensical," as it would allow the Board to only issue certificates for projects for which all final engineering and design studies for every aspect of the project are complete. Not only is this unworkable, but in Angelina's estimation it is not required by

law and would discourage investment in projects brought before the Board. (Angelina Reply Br. at 1; Co. Ex. 22 at 6.)

{¶ 346} Angelina asserts CCPC's allegations that Angelina is attempting to improperly submit studies to supplement its application are blatant misrepresentations. CCPC's deliberate use of the term "study" is, in Angelina's opinion, both misleading and improper. According to Angelina, the alleged "studies" should not be referred to as such and are typical of plans supporting the construction and operation of these types of projects. (App. Reply Br. at 4.) First, Angelina asserts that the documents provided by it at the October 29, 2020 hearing are clearly not "studies," but rather are plans and other documents representing Angelina's ongoing work to prepare for the construction and operation of the project. With the possible exception of witness Hessler's sound modeling of the preliminary layout, which was made possible only because of circumstances occurring post-application, Angelina asserts that none of the documents that it presented at the October 29, 2020 hearing or that are required as part of the Amended Stipulation are "studies." (App. Reply Br. at 4-5; Tr. V at 588, 592.) Even with regard to Mr. Hessler's sound modeling, Angelina points out that CCPC did not object to his testimony, and the sound contour map that he created, being admitted into evidence (App. Reply Br. at 5; Co. Ex. 20).

{¶ 347} Angelina also finds it significant that CCPC raises the argument that Angelina witness testimony exhibits are improper after the October 29, 2020 hearing rather than raising such concerns at the hearing. According to Angelina, CCPC failed to make a single objection to any of these documents being admitted into the record and offered "extremely limited, if any, cross-examination" of the documents. (App. Reply Br. at 6-7; App. Reply Br. at 7 citing Tr. V at 560-562, 566-568, 590-591, 611-613, and 638-639.) Angelina also submits that CCPC had ample opportunity to engage in discovery and take depositions before the October 29, 2020 hearing, but served no official discovery requests on Angelina. Further, CCPC never objected—either by motion or orally—to the scheduling of the public hearing and any part of the evidentiary hearing even though it now claims that neither hearing should have been held. (App. Reply Br. at 7.)

{¶ 348} Similarly, Angelina states that the following post-certificate submittals required in the Amended Stipulation are also not studies, but instead relate to the construction and operation of the Facility. Angelina enumerates the same as follows: (a) detailed first engineering drawings, (b) drawings showing changes to the project layout after the submission of final engineering drawings, (c) a public information program, (d) a plan for avoiding cultural resources, (e) a landscape and lighting plan; (f) a Storm Water Pollution Prevention Plan; (g) a vegetation management plan; (h) a construction access plan; (i) a final traffic plan; (j) a transportation management plan, (k) a decommissioning plan; and (l) pre-and post-construction stormwater calculations. (App. Reply Br. at 5-6; Joint Ex. 2 at 7-11, Conditions 9, 11, 13, 18, 22, 25, and 29.) These are not studies, according to Angelina, but are documents that demonstrate the Applicant's continued work on the Facility and its ongoing engagement with local authorities. The Amended Stipulation requires these plans to be submitted to Staff and that Staff will then confirm that the plans comply with the terms of conditions outlined in the Amended Stipulation. (App. Reply Br. at 6.)

{¶ 349} In response to CCPC's arguments that the application is incomplete and did not satisfy the requirements of Ohio Adm.Code 4906-4, and therefore the Board cannot grant a certificate for the Facility, Angelina argues that the Board is required to determine whether the record, as a whole, provides sufficient evidence to meet each element of R.C. 4906.10 (App. Reply Br. at 11). Angelina points to the Supreme Court of Ohio's decision in *In re Application of Buckeye Wind, L.L.C.* in which the Court held that in granting a certificate the Board must determine compliance with the eight factors outlined in R.C. 4906.10(A)(1)-(8). (App. Reply Br. at 11 citing *In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869.) Angelina stresses that whether the application complied with Ohio Adm.Code 4906-4 is not one of the criteria listed in R.C. 4906.10(A).

{¶ 350} Angelina submits that the determination that an application complies with the Ohio Administrative Code is merely a preliminary step to initiate the process of holding a public hearing and creating the record. The substantive decision to issue a certificate is,

according to Angelina, unrelated to the approval of an application's procedural compliance. Approval of the application is a determination to accept the application as complete and compliant with the requirements of Ohio Adm.Code 4906-1 to 4906-7, not an in-depth analysis of the sufficiency of evidence submitted as part of the application. (App. Reply Br. at 11; App. Reply Br. at 11 citing R.C. 4906.07, R.C. 4906.08, R.C. 4906.09, Ohio Adm.Code 4906-3-06(A)). Angelina asserts that it is only after this procedural check of compliance with Ohio Administrative Code provisions that Staff begins its substantive investigation into the application. Further, the purpose of Staff's subsequent investigation is not to evaluate the evidence in relation to the Ohio Administrative Code, but rather to make "make recommended findings with regard to division (A) of section 4906.10 of the Revised Code." (App. Reply Br. at 12-13 citing R.C. 4906.07(C).)

{¶ 351} Angelina points out that its application was deemed compliant nearly two years ago on February 1, 2019, and that CCPC made no attempt to challenge that determination when it was made. Instead, CCPC allowed this procedural determination to proceed without challenging it prior to or during the hearing. Further, with the sole exception of moving to strike Exhibit C to the application, which deals with a study on the economic impact of the Facility, on the grounds that no witness was testifying as to its contents, CCPC made no objection to prevent Angelina from moving the application into the record. (App. Reply Br. at 14; Tr. I at 135.) Further, Angelina asserts that CCPC's challenge of the sufficiency of the application is not only factually incorrect, but that based on the Supreme Court of Ohio's ruling in *In re Black Fork Wind Energy, LLC*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, CCPC's arguments should be rejected as untimely (App. Reply Br. at 14).

{¶ 352} Staff also disputes CCPC's arguments that the application is incomplete and fails to satisfy certain statutory and regulatory requirements. For instance, in response to CCPC's claims that the application makes no commitments for mitigation measures to minimize adverse visual impacts and that the Applicant's simulations do not accurately portray the Facility, Staff states that the application itself does accurately depict the possible

panel height at the Facility (Staff Reply Br. at 6; Co. Ex. 1 at 7-8; CCPC Initial Br. at 10-11, 13). While CCPC points to Angelina's simulation using eight-foot solar panels rather than the up to 15-foot panels described in the application, Staff states that simulations are not exact pictures of final panel design. Staff believes that the application provides the necessary details concerning the panels that may be used at the Project. (Staff Initial Br. at 6.)

{¶ 353} Angelina contests the Citizen's contention that the Board is improperly abdicating our authority to grant or deny a certificate. To the contrary, Angelina submits that it is well-established in Ohio law that the Board can delegate to Staff the responsibility to flesh out certain conditions. Angelina points to the Supreme Court of Ohio's ruling in *Buckeye Wind*, which took up an appeal concerning a certificate issued by the Board in Case No. 08-666-EL-BGN. In that case, Angelina represents that the applicant was required to submit the following to Staff after the issuance of the certificate:

(a) A final equipment delivery route and transportation routing plan;

(b) One set of detailed drawings for the proposed project so that Staff can confirm that the final design is in compliance with the terms of the certificate;

(c) A stream crossing plan;

(d) A detailed frac-out contingency plan;

(e) A tree clearing plan;

(f) A final access plan;

(g) A fire protection and medical emergency plan;

(h) An avian and bat mortality survey plan;

(i) A Phase I cultural resources survey program;

(j) An architectural survey work program;

(k) A screening plan for one specific property;

(l) A determination of the probable hydrologic consequences of the decommissioning and reclamation operations;

(m) A study identifying any prime farmlands;

(n) Engineering techniques proposed to be used in decommissioning and a reclamation and description of the major equipment.

(Angelina Reply Br. at 8-9 citing *In the Matter of the Application of Buckeye Wind, LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, Opinion, Order and Certificate (Mar. 22, 2010) at 82-96.)

{¶ 354} Angelina asserts that these post-certificate plans and information to be submitted go well beyond limits that CCPC implies the *Buckeye Wind* decision imposes. Angelina points out that while CCPC cites extensively from the dissenting opinion in the case, the Supreme Court of Ohio Court affirmed the Board's certificate conditions requiring post-certificate submittals of the various plans (App. Reply Br. at 8, 9; *Buckeye Wind,* 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, at ¶18). Angelina believes that the Board has followed this decision ever since and has added conditions to certificates that require the submission of project specific plans after the issuance of a certificate. Angelina contends that the post-certificate plans to be submitted under the Amended Stipulation are very similar to those upheld in *Buckeye Wind* and other Board decisions. (App. Reply Br. at 10, including table of cases to demonstrate that the post-certificate submissions required by the Amended Stipulation are similar to those required in certificates previously granted by the Board.) Angelina further states that, regardless of the language used in the conditions, all

proposed delegations to Staff related to condition compliance do not constitute a delegation of the Board's responsibilities under R.C. 4906.10 (App. Reply Br. at 11).

{¶ 355} Staff also disputes CCPC's argument that the Amended Stipulation improperly delegates post-certificate approvals to Board Staff. Staff states that post-certificate studies, plans, and details are routine conditions that are regularly approved by the Board. While CCPC complains that many of the studies were added through the Applicant's supplemental testimony and that there are post-certificate studies not subject to the adjudicatory process, Staff states that the Amended Stipulation actually includes stricter requirements and additional details that were not previously included in Staff's recommendations or the original stipulation. For example, Staff points out that defining minimum setbacks to rights-of-way and increasing the setbacks between inverters and non-participating parcels affords greater protection than previously recommended. (Staff Reply Br. at 4; Joint Ex. 2 at 6, 7.)

{¶ 356} Staff states that the submission of post-certificate studies is consistently authorized by the Board to allow Staff to have access to more accurate and detailed information nearer to the commencement of construction. Staff submits that this allows it the opportunity to confirm that an applicant installs a facility, utilizes equipment and construction practices, and implements mitigation measures as described in an application, as modified by supplemental filings, such as replies to data requests, recommendations in the Staff Report, and any stipulation. Staff asserts that the Ohio Supreme Court sanctioned the exercise of this discretion by the Board in *In re Application of Am. Transm. Sys, Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, in which the Court states that R.C. Chapter 4906 "expressly allows the board to delegate many responsibilities to subordinates." The Court confirmed that R.C. 4906.02(C) states that the authority to grant a certificate cannot be delegated by the Board, it further stated that a condition to "simply require additional submissions to staff before the preconstruction conference" is not an improper delegation of the Board's authority. (Staff Reply Br. at 4-5 citing *Am. Transm. Sys, Inc.*, at ¶¶ 20-21.) Staff also points to the Court's ruling in *Buckeye Wind,* where the Court held that "[s]imply

because certain matters are left for further review and possible comment does not mean that they have been improperly delegated to staff" (*Buckeye Wind* at ¶¶ 13-14). Staff submits that CCPC is ignoring the *Buckeye Wind* ruling and instead relying on the dissenting opinion in the case (Staff Reply Br. at 5 citing CCPC Initial Br. at 82-83).

{¶ 357} With respect to CCPC's argument that it has been deprived of its procedural due process rights, Angelina responds that CCPC is replicating the arguments made by the citizen-intervenors, Union Neighbors United, in *Buckeye Wind*. Just as these arguments were rejected by the Court in *Buckeye Wind*, Angelina believes that the Board should reject them in this matter. Additionally, Angelina submits that the fact that it will submit information to the Board and/or its Staff as a condition of a future certificate does not rise to the level of a government decision warranting the protections of due process. In this regard, Applicant indicates that the cases cited by the Citizens regarding denial of due process are simply not applicable and reveal a misunderstanding of the process that the General Assembly has approved for cases before the Board (App. Reply Br. at 59). Angelina notes that the Board has already held an evidentiary hearing and the Board will issue its decision based on the statutory criteria under R.C. 4906.10(A). Angelina argues that the submission of the additional information required in the Amended Stipulation is intended to ensure compliance with the future certificate and that future compliance is not the equivalent of a governmental decision ensuring CCPC to the right of an evidentiary hearing. Angelina states that requiring an evidentiary hearing on information submitted in compliance with the conditions included in an issued certificate would impose significant fiscal and administrative burdens on the Board and its Staff that far outweigh any countervailing benefits. Additionally, Angelina notes that CCPC is fully entitled to follow the formal complaint process already provided for in R.C. 4906.97, R.C. 4906.98, and Ohio Adm.Code 4906-7 if any complaint is not resolved by the informal complaint process recommended in the Amended Stipulation. (App. Reply Br. at 58-61.) Angelina references the protections set forth in R.C. 4906.04, which provides that "[n]o person shall commence a major utility facility without first having obtained a certificate for the facility," and R.C. 4906.10, which

requires that the Board evaluate the estimated impacts of a proposed project and may impose any terms and conditions that its believes are necessary. Finally, Angelina notes that CCPC has fully participated in these proceedings: the Board held an evidentiary hearing during which CCPC exercised it opportunity to present documentary and testimonial evidence, as well as to cross-examine witnesses presented by Staff and Angelina, to raise concerns about the Project's impacts. As such, Angelina asserts that CCPC has received all the process that it is due. (App. Reply Br. at 60-61.)

{¶ 358} In response to CCPC's concern that the pre-construction meetings are not open to the public and that Staff's post-certificate actions will be conducted in "secrecy," Angelina believes that CCPC is attempting to improperly "intertwine itself into all aspects" of the Facility's development (App. Reply Br. at 61-62). Angelina states that any member of the public that has a concern about any activity occurring under the Facility's certificate is entitled to utilize the complaint resolution process required under Condition 13 of the Amended Stipulation (App. Reply Br. at 61; Joint Ex. 2 at 8). Further, in its application, Angelina committed to require its general contractor to identify a person to expeditiously address any complaints or concerns from the public during construction of the Facility, and that contact information for the public to submit complaints or comments be made public (Co. Ex. 1 at 33-34). Angelina states that CCPC should not be allowed to assume the Board's or Staff's roles in ensuring certificate compliance by commenting on every permit or attending every meeting that may occur regarding the Facility. For instance, Angelina submits that CCPC has no role to play in its communications with local authorities, government permitting approvals, or at pre-construction meetings. (App. Reply Br. at 62.)

{¶ 359} CCPC responds that the post-certificate submissions contemplated by the Amended Stipulation fall within the dictionary definition of a study and, thus, should have been presented with the application. Furthermore, to CCPC, the very fact that Angelina was able to produce the information attached to testimony at the October 2020 hearing is indicative that the data was capable of being submitted with the application. Additionally, CCPC asserts there was no reason to object to the introduction of the testimony and exhibits,

let alone the application or reopening of the record; CCPC believes the studies and reopened record proved its point that including the information in the application is practical. Furthermore, without admitting the application into the record, the Board would have no evidence of its inadequacy. Finally, the Citizens submit that their challenge to the completeness of the application is not untimely.

{¶ 360} The Board finds that the Citizens' intertwined arguments regarding delegation, due process, and the completeness of the application are not persuasive. Initially, the Board rejects the premise that, in issuing a certificate with conditions incorporating and requiring additional plans, we are unlawfully delegating our responsibility to grant a certificate under R.C. 4906.10. In *Buckeye Wind*, the Supreme Court of Ohio weighed in on this issue and affirmatively concluded that "[t]he board [does] not improperly delegate its responsibility to grant or deny a provisional certificate when it allow[s] for further fleshing out of certain conditions of the certificate." *Buckeye Wind*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, at ¶ 18. Rather, R.C. 4906.10(A) allows a certificate to be issued *upon such conditions as the board considers appropriate*, and the statutes authorize a dynamic process that does not end with the issuance of a certificate. *Id*. at ¶ 16 (Emphasis sic). Thus, where the Board makes the determinations mandated in R.C. 4906.10(A) and issues a certificate with conditions that call upon Staff to monitor compliance with those post-certificate conditions, there is no abdication of authority. *Buckeye Wind* at ¶ 16-18. Rather, Staff's ongoing duties are a necessary component of the dynamic siting process.

{¶ 361} In Section VIII of this Opinion, we made the statutory determinations necessary to render a decision and concluded that the requested certificate should be issued subject to the proposed conditions found in the Amended Stipulation as modified in this Order. To ensure that Angelina complies with those conditions and each of the numerous requirements found therein, ongoing monitoring is required in the form of pre-construction conferences, the submission of final plans, and permitting requirements. As argued by Angelina, the plans contemplated by these conditions are similar in nature to those

addressed in the *Buckeye Wind* decision and are not new to the power siting process. Furthermore, the Board agrees that CCPC's participation in the preconstruction conference is not necessary to achieve the goals of that meeting, i.e., to ensure that all involved in the construction process are aware of and will abide by the conditions of the certificate. To increase public awareness of our process, however, the Board does direct that all submissions required to be provided to Staff, including, but not limited to, plans, studies, programs, permits, and letters, shall also be docketed in this case.

{¶ 362} The Board also finds the Citizens' due process arguments to be without force. Although CCPC argues that the application is not complete as required by Ohio Adm.Code 4906-3-06, the Board notes that the determination of completeness was issued on February 1, 2019, and, until now, has not been directly challenged. As noted in the February 1, 2019 letter, the determination signified that the Board had received sufficient information to begin its review of the application, although additional information could be requested to ensure a full and fair assessment of the Project. And, as noted by Applicant and shown in the Staff Report, subsequent investigation did encompass the review of additional information and resulted in recommendations regarding the application's compliance with R.C. 4906.10(A).

{¶ 363} The Board notes that during this review and assessment of the Project, all parties—including CCPC—had the ability to seek discovery, comment on the application, test the conclusions contained in the application and Staff Report, and, as the process continued, to be heard and participate in the public hearing, file motions, participate in prehearing conferences, hire experts, present witnesses, question opposing witnesses, and submit arguments for and against asserted positions. *See Buckeye Wind,* 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869 at ¶ 8-12; *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173. Here, the Board also agrees with Staff and Angelina that the provisioning of plans via supplemental testimony and the submission of post-certificate plans is not a violation of due process and is consistent with *Buckeye Wind*, in which the Court considered and deemed acceptable the provision of post-certificate plans

to Staff. Additionally, and contrary to CCPC's suggestion, the public was included both pre- and post-application via public information meetings, local hearings, and public comment. Moreover, members of the public, including members of CCPC, may continue to participate through the complaint process outlined in—and enforceable through—Condition 13 of the Amended Stipulation, as well as through the statutory safeguard of R.C. 4906.98 enforced through Ohio Adm.Code Chapter 4906-7.

{¶ 364} As argued by Staff and Angelina, the Board finds that the Amended Stipulation is consistent with regulatory principles and practices of power siting. The many conditions will allow for continuous streamlining of plans as technologies and conditions evolve toward the ultimate construction and operation of the Facility, and Staff's ongoing monitoring will ensure compliance with the conditions the Board has placed on the construction, operation, and maintenance of the Facility in issuing the certificate. This, in turn, will aid in ensuring that the Facility will represent the minimal adverse environmental impact and will serve the public interest, convenience, and necessity. Accordingly, the Board concludes that the final criterion is satisfied.

X. CONCLUSION

{¶ 365} Accordingly, based on the record in this proceeding, the Board concludes that all of the required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered generation facility described in Angelina's application, subject to the conditions set forth in the Amended Stipulation and consistent with this Opinion, Order, and Certificate. The Board thus approves and adopts the Amended Stipulation and hereby issues a certificate to Angelina in accordance with R.C. Chapter 4906.

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 366} Angelina is a person under R.C. 4906.01(A).

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

{¶ 368} On October 29, 2018, Angelina filed a pre-application notification letter informing the Board of a scheduled public informational meeting for a proposed solar-powered electric generation facility in Preble County, Ohio.

{¶ 369} On November 5, 2018, Angelina filed its confirmation of notification to property owners and occupants of the date of the public informational meeting as well as proof of publication of the notice regarding the public informational meeting in accordance with Ohio Adm.Code 4906-3-03.

{¶ 370} On December 3, 2018, Angelina filed its application for a certificate of environmental compatibility and public need to construct the Facility. Applicant also filed a motion for protective order to keep portions of its application confidential, as well as a motion for waivers of certain Board rules.

{¶ 371} By Entry dated January 17, 2019, the ALJ granted the motion for protective order and motion for waivers, both of which were unopposed and otherwise not commented upon.

{¶ 372} By letter dated February 1, 2019, the Board notified Angelina that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 373} On February 7, 2019, Angelina 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), as well as notice that the application fee had been paid pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 374} On February 14, 2019, the ALJ issued an Entry establishing the effective date of the application as February 15, 2019, adopting a procedural schedule, including the date

of the local public and evidentiary hearings, and directing Applicant to issue public notices of the application and hearings.

{¶ 375} On March 15, 2019, Angelina filed a proof of service and publication regarding the date and time of the scheduled hearings to affected property owners and public officials in compliance with Ohio Adm.Code 4906-3-09(A)(1).

{¶ 376} The Staff Report was filed on April 15, 2019.

{¶ 377} By Entry dated April 18, 2019, granted intervention to the County Commissioners, County Engineer, Preble SWCD, Israel Trustees, Dixon Trustees, Planning Commission, ECSD, OFBF, and CCPC.

{¶ 378} On April 26, 2019, Angelina filed proof of service and publication of a second public notice in compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 379} The local public hearing was held in Eaton, Ohio, on April 30, 2019.

{¶ 380} By Entry dated May 7, 2019, the ALJ granted an unopposed motion to call and continue the evidentiary hearing.

{¶ 381} On May 14, 2019, the ALJ opened the evidentiary hearing as originally scheduled and continued the proceeding to a date to be determined by future entry. By Entries issued May 17, 2019, and May 29, 2019, the hearing was scheduled to reconvene on June 19, 2019.

{¶ 382} On June 14, 2019, Angelina, OFBF, County Commissioners, County Engineer, Preble SWCD, Israel Trustees, Dixon Trustees, Planning Commission, and Staff filed a Stipulation purporting to resolve all issues in this case. With the Stipulation, Angelina filed a motion to continue the hearing, which the ALJ granted.

{¶ 383} By Entry dated June 19, 2019, the ALJ rescheduled the hearing to reconvene on July 31, 2019.

{¶ 384} Consistent with the June 19, 2019 Entry, the evidentiary hearing recommenced on July 31, 2019. The presentation of direct evidence carried over two additional days: August 1, 2019 and August 12, 2019. Angelina later presented rebuttal evidence on September 10, 2019. Applicant, Staff, and CCPC filed post-hearing initial and reply briefs on October 18, 2019, and November 1, 2019, respectively.

{¶ 385} On July 29, 2020, the Signatory Parties filed an Amended and Restated Stipulation (Amended Stipulation), as well as a joint motion to reopen the hearing record for consideration of the Amended Stipulation. The ALJ granted the motion to reopen the record on September 14, 2020.

{¶ 386} By Entry dated September 25, 2020, the ALJ scheduled a supplemental evidentiary hearing for October 29, 2020.

{¶ 387} On October 29, 2020, the supplemental evidentiary hearing to consider the Amended Stipulation, along with additional testimony in support, was conducted.

{¶ 388} Applicant, Staff, and CCPC filed substitute initial and reply briefs on December 11, 2020, and January 4, 2021, respectively.

{¶ 389} 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.

{¶ 390} 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.

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

{¶ 392} The record establishes that the Facility, subject to the conditions set forth in the Amended 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).

{¶ 393} The record establishes that the Facility, an electric generation facility, is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the Facility will serve the interests of electric system economy and reliability consistent with R.C. 4906.10(A)(4).

{¶ 394} The record establishes that the Facility, subject to the conditions set forth in the Amended 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).

{¶ 395} The record establishes that the Facility, subject to the conditions set forth in the Amended 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).

{¶ 396} 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).

{¶ 397} The record establishes that the Facility will not require significant amounts of water, nearly no water or wastewater discharge, and incorporates maximum feasible water conservation practices. Accordingly, the Facility meets the requirements of R.C. 4906.10(A)(8).

{¶ 398} The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the Facility as proposed by Angelina, subject to the conditions set forth in the Amended Stipulation and consistent with this Opinion, Order, and Certificate.

{¶ 399} Based on the record, the Board should issue a certificate of environmental compatibility and public need to Angelina, 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 Amended Stipulation and consistent with this Opinion, Order, and Certificate.

XII. ORDER

{¶ 400} It is, therefore,

{¶ 401} ORDERED, That the Amended Stipulation, as modified by this Order, be approved and adopted. It is, further,

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

{¶ 403} ORDERED, That all required submissions to be provided to Staff shall also be filed on the docket in this case. It is, further,

{¶ 404} 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

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Stephanie McCloud, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

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Case No(s). 18-1579-EL-BGN

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to Angelina Solar I, 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

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF ANGELINA SOLAR I, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED.	**CASE NO. 18-1579-EL-BGN**

ORDER ON REHEARING

Entered in the Journal on November 18, 2021

I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the application for rehearing filed by the Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, Campbell Brandly Farms, LLC, Michael Irwin, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms, Inc.

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} Angelina Solar I, LLC (Angelina 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.

{¶ 5} On December 3, 2018, Angelina filed its application with the Board for a certificate of environmental capacity and public need for an 80 megawatt (MW) solar-powered electric generation facility in Preble County, Ohio (the Facility or Project).[1]

{¶ 6} By Entry dated April 18, 2019, the administrative law judge (ALJ) granted intervention to the following parties, all of whom filed timely notices of intervention or

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1 The application seeks approval of up to 80 MW of installed capacity, but studies panel locations that could accommodate a 100 MW project for engineering flexibility in the final design.

motions to intervene: the Preble County Commissioners (County Commissioners); Kyle Cross, the Preble County Engineer (County Engineer); Preble County Soil & Water Conservation District, Preble County, Ohio (Preble SWCD); the Board of Trustees of Israel Township, Preble County, Ohio (Israel Trustees); the Board of Trustees of Dixon Township, Preble County, Ohio (Dixon Trustees); the Preble County Planning Commission, Preble County, Ohio (Planning Commission); the Eaton Community School District (ECSD); the Ohio Farm Bureau Federation (OFBF); and Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, and Michael Irwin, Campbell Brandly Farms, LLC, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms, Inc. (collectively, CCPC or Citizens).

{¶ 7} On June 14, 2019, Applicant filed a joint stipulation and recommendation (Stipulation) executed by Angelina, OFBF, County Commissioners, County Engineer, Preble SWCD, Israel Trustees, Dixon Trustees, Planning Commission, and Board Staff (Staff).

{¶ 8} On July 29, 2020, Applicant filed an Amended and Restated Stipulation (Amended Stipulation) executed by Angelina, OFBF, County Commissioners, County Engineer, Preble SWCD, Dixon Trustees, Planning Commission, and Staff (Signatory Parties).

{¶ 9} By Opinion, Order, and Certificate dated June 24, 2021, the Board issued a certificate of environmental compatibility and public need to Angelina for the construction, operation, and maintenance of the proposed solar-powered electric generation facility, subject to the conditions set forth in the Amended Stipulation and consistent with the Board's Order.

{¶ 10} R.C. 4906.12 provides that R.C. 4903.02 to 4903.16 apply to any proceeding or order of the Board in the same manner as if the Board were the Public Utilities Commission of Ohio (Commission). R.C. 4903.10 provides that any party to a proceeding before the Commission may apply for rehearing with respect to any matter determined in that proceeding within 30 days after entry of the order upon the journal of the Commission.

The statute further directs that applications for rehearing be in writing and set forth specifically the ground or grounds on which the party seeking rehearing considers an order unreasonable or unlawful. Additionally, Ohio Adm.Code 4906-2-32 provides that any party may file an application for rehearing within 30 days after an order has been journalized by the Board in the manner, form, and circumstances set forth in R.C. 4903.10.

{¶ 11} On July 23, 2021, CCPC filed an application for rehearing of the Board's June 24, 2021 Opinion, Order, and Certificate.

{¶ 12} On August 2, 2021, Angelina filed a memorandum contra the application for rehearing.

{¶ 13} By Entry dated August 20, 2021, the ALJ granted CCPC's application for rehearing for the express purpose of affording the Board more time to consider the issues raised in the application pursuant to Ohio Adm.Code 4906-2-32(E).

III. DISCUSSION

{¶ 14} As an initial matter, Angelina asserts that the Board lacks jurisdiction over the Citizens' application for rehearing, arguing that the application fails to present any ground for rehearing specific enough to comply with the rehearing statute. Angelina states that R.C. 4903.10 governs applications for rehearing and that its requirements are jurisdictional. Here, Angelina points to the requirement in R.C. 4903.10 that the party requesting rehearing "set forth specifically the ground or grounds on which the [party] considers the order to be unlawful" and claims that the Citizens' application for rehearing fails this jurisdictional requirement. Quoting the Supreme Court of Ohio, Angelina argues that "the General Assembly indicated clearly its intention to deny the right to raise a question on appeal where the appellant's application for rehearing used a shotgun instead of a rifle to hit that question." Memorandum Contra at 3 citing *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248, 638 N.E.2d 550, 553 (1994), quoting *City of Cincinnati v. Pub. Util. Comm.*, 151 Ohio St. 353, 378, 86 N.E.2d 10, 23 (1949).

{¶ 15} Quoting the Citizens' filing, Angelina posits that CCPC's application for rehearing is jurisdictionally insufficient because it raises only two conclusory grounds for rehearing:

> The Board did not find and determine the nature of the probable environmental impact of the [Project] under R.C. 4906.10(A)(2), because [Angelina] failed to provide the information in the evidentiary record required by the Board's rules necessary to make such a finding and determination; [and]
>
> The Board erred in finding and determining that the Project 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, pursuant to R.C. 4906.10(A)(3).

(Application for Rehearing at 1-2.) Angelina states that these two paragraphs followed by the approximately three pages of "examples" of "the Board's failures to comply with R.C. 4906.10(A)(2), (3), and (6)" are not sufficiently specific to bestow jurisdiction upon the Board to hear them.

{¶ 16} The Board disagrees. We find that CCPC's filing does not suffer the level of vagueness deemed fatal to review. See *In re Application of Icebreaker Windpower, Inc.*, Case No. 16-1871-EL-BGN, Order on Rehearing (Oct. 8, 2020) at ¶ 29; *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Entry on Rehearing (Jan. 21, 2021) at ¶ 27. To the contrary, reading the application for rehearing as a whole, the Board identifies five assignments of error for its review: (1) the Board erred in determining that it has the information necessary to find and determine the nature of the Project's probable environmental impact under R.C. 4906.10(A)(2); (2) the Board erred in opining that the Project represents the minimum adverse impact under R.C. 4906.10(A)(3); (3) the Board erred in opining that the Project will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6); (4) the Board erred by delegating its duties to Staff and other governmental agencies for approving post-certificate plans and submittals; and (5) the Board erred by approving the Amended Stipulation because it violates important regulatory principles and is contrary to the public interest.

A. First Three Assignments of Error

{¶ 17} Because CCPC presents and argues its first three assignments of error together, the Board will also address them as a whole. In essence, CCPC argues that the Board erred in finding and determining the three specified statutory criteria: the nature of the probable environmental impact under R.C. 4906.10(A)(2); 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 under R.C. 4906.10(A)(3); and the facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6). Interwoven through the Citizens' first three assignments of error is the argument that the evidentiary record lacks the information required by the Board's rules that would have properly informed the Board on each of the allegedly faulty statutory determinations.

{¶ 18} In the first assignment of error, the Citizens assert that the Board erred in finding and determining the nature of the Project's probable environmental impact with regard to: visual (i.e., aesthetic and viewshed) impacts; visual impacts from lighting; operational noise; construction noise; damage to field drainage tiles; crime and/or criminal access; groundwater contamination; emergency services; motorist safety at intersections; vegetation, including noxious and invasive weeds; plants and wildlife, including those impacts on wildlife that will result in crop and livestock damage on nearby farms; drainage and flooding (i.e., quantity of surface water drainage); water quality (i.e., quality of surface water drainage); solid waste; traffic impacts; and setbacks.

{¶ 19} In the second assignment of error, CCPC asserts that the Board erred in opining that the Project represents the minimum adverse impact under R.C. 4906.10(A)(3) with regard to the same list of topics outlined above, with the additional consideration of the alleged destruction of prime farmland.

{¶ 20} In the third assignment of error, the Citizens assert that the Board erred in opining that the Project will serve the public interest, convenience, and necessity under R.C.

4906.10(A)(6). CCPC raises this argument two ways. First, the Citizens intermix their broad critique of the Board's consideration of field drainage tiles, crime, emergency services, and treatment of prime farmland under R.C. 4906.10(A)(2) and R.C. 4906.10(A)(3) with that under R.C. 4906.10(A)(6). Second, in a separate section of the application for rehearing, the Citizens set forth a related laundry list of ways in which they claim the Facility will harm the public.[2]

{¶ 21} Angelina broadly responds to all of CCPC's assignments of error by characterizing the application for rehearing as a regurgitation of the Citizens' post-hearing briefs. Thus, in the interest of preserving the Board's time and resources, and to prevent delay of the approved Project, Angelina urged the Board to allow the application for rehearing to be denied by operation of law pursuant to R.C. 4903.10(B). While we have declined to do so, the Board does note that CCPC's application for rehearing is, largely, a verbatim recitation of arguments raised in either the substitute initial post-hearing brief or the substitute reply brief. Consequently, and as was the case during our original analysis and determination reflected in the Opinion, Order, and Certificate, any claim or argument raised by the application for rehearing that was not specifically discussed herein was, nevertheless, thoroughly and adequately considered by the Board and is denied.

{¶ 22} Specific to the first three assignments of error, Angelina counters that the Board properly determined that the Facility satisfies all eight statutory criteria required for the issuance of a certificate under R.C. 4906.10(A)(1)-(8). According to Angelina, the Board's highly detailed opinion sets forth the evidence and arguments for each statutory element and makes the required findings based on the record. As such, Angelina asserts that the Board carefully and thoroughly determined the nature of the probable environmental impact of the Facility, properly opined that the Facility represents the minimum adverse

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2 The Board notes that, except for small changes to tense, reference to the application versus the record, and omitting reference to R.C. 4906.10(A)(3), this portion of the application for rehearing is a recitation of pages 87-89 of CCPC's substitute initial post-hearing brief. The Board's Opinion, Order, and Certificate thoroughly and adequately addressed these concerns. Opinion, Order, and Certificate (June 24, 2021) at ¶ 335-336.

environmental impact, and correctly concluded that the Facility will serve the public interest, convenience, and necessity. In support, Angelina parses the Opinion, Order, and Certificate to point out how and where the Board analyzed and declined CCPC's arguments against the statutory findings of R.C. 4906.10(A)(2) (socioeconomic, ecological, public services, facilities, and safety), R.C. 4906.10(A)(3) (all considerations from R.C. 4906.10(A)(2) and setbacks), and R.C. 4906.10(A)(6) (public interest, convenience, and necessity concerns, including emergency services and crime).

{¶ 23} Angelina also addresses CCPC's general contention that the evidentiary record is incomplete and lacks information required by the Board's rules. Angelina asserts that CCPC continues to conflate rules regarding an application and the statutory requirements the Board must decide in granting or denying a certificate. Angelina emphasizes that Staff's completeness determination, made in February 2019, triggered a more strenuous investigation into the application pursuant to the criteria in R.C. 4906.10(A). Angelina states that this investigation, combined with evidence and testimony from multiple days of hearings, created a robust record which supports the Board's decision. In short, citing to Paragraphs 362-365 of the Opinion and Order, Angelina contends that the Board already considered and rejected CCPC's argument regarding whether the record contains the information necessary to inform the Board's statutory analysis.

{¶ 24} The Board finds the Citizens' first three assignments of error to be without merit. As argued by Angelina, and based on our own painstaking review, it is apparent that the Citizens' first three arguments on rehearing were previously raised during post-hearing briefs, with large swaths being verbatim recitations, and were rejected in our issuance of the Opinion, Order, and Certificate. The Board addressed each of the identified topics within the confines of the statutory criteria deemed most suitable, but with each we ascertained the nature of the probable environmental impacts and determined whether the Facility represents the minimum adverse environmental impact. Specifically, the Board addressed visual and lighting impacts (¶ 131-147, 152, 232-234, 293-242); operational noise (¶ 207-224, 228); construction noise (¶ 200-206, 226); potential damage to field drainage tiles (¶ 293-306,

307-310); crime and/or criminal access (¶ 283-287, 288); groundwater contamination (¶ 252-262, 263); emergency services (¶ 276-282, 288); motorist safety at intersections (¶ 196, 199, 225); vegetation, including noxious weeds (¶ 181-185, 189); plants and wildlife, including those impacts on wildlife that could result in crop and livestock damage on nearby farms (¶ 169-179, 187-188); drainage and flooding, i.e., the quantity of surface water drainage (¶ 155-163, 165-168, 186); water quality, i.e., the quality of surface water drainage (¶ 163-164, 186); solid waste (¶ 264-267, 268); traffic impacts (¶ 190-195, 197-198, 225); agricultural land (¶ 290-296, 307); and the Project's setbacks (¶ 213, 232-238, 239-242). And, to the extent that CCPC believes that the nature of the environmental impact or the minimum adverse environmental impact was not determined because it was not specifically addressed under the section dedicated to R.C. 4906.10(A)(2) or R.C. 4906.10(A)(3), the Board openly specified that was not the case. Opinion, Order, and Certificate (June 24, 2021) at ¶ 119. Furthermore, the Board fully considered the record evidence in determining that the Facility will serve the public interest, convenience, and necessity (¶ 273-289, 335-336).

{¶ 25} In short, CCPC fails to present any new argument regarding the required statutory findings, findings made by this Board upon full consideration of the record evidence. We decline the invitation to reweigh the evidence, which is, essentially, what CCPC requests in its application for rehearing. CCPC's disagreement with our determinations simply does not merit rehearing. *See In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2021-Ohio-3301, at ¶ 50. CCPC's first three assignments of error are denied.

B. Fourth Assignment of Error

{¶ 26} The Citizens further allege that the Board erred by delegating its duties to Staff and other governmental agencies for approving post-certificate plans and submittals. CCPC claims that this alleged unlawful delegation unfairly undermines the purpose of the evidentiary hearing, relieves Angelina of its burden of proof during the adjudication, circumvents the Board's application of the statutory criteria under R.C. 4906.10(A), circumvents statutory rights of public participation and public notice, and otherwise

deprives the intervenors of due process. CCPC states that, in issuing the Opinion, Order, and Certificate approving the Amended Stipulation, the Board is not simply issuing a certificate that calls upon Staff to monitor compliance with post-certificate conditions but is entrusting Staff to obtain and evaluate plans and similar information to determine whether the Project complies with the criteria in R.C. 4906.10(A). The Citizens maintain that any attempt to introduce new details for facility design after certification deprives intervenors and the public of their rights to fully test and comment upon the Facility.

{¶ 27} Responding, Angelina states that the Board has already considered CCPC's arguments on this issue and properly determined that the post-certification submissions and Staff's ongoing post-certification role is appropriate. Angelina clarifies that, contrary to CCPC's characterizations, none of the post-certificate submissions are studies; rather, they are plans related to the construction and operation of the Facility like those regularly required with similar projects consistent with case law. Angelina contends that the Board correctly recognized the Supreme Court of Ohio's affirmance of this practice, i.e., Staff's continued monitoring to ensure compliance with the Board's conditions, in *In re Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869. Angelina further contends that the post-certificate submittals in this matter are similar to, but much less than, what Buckeye Wind's certificate required.

{¶ 28} The Board is not persuaded by CCPC's fourth assignment of error, which is denied. Like the arguments presented under the first three assignments of error, CCPC's assertions here were raised during post-hearing briefs, duly considered by the Board, and determined to be without merit. Opinion, Order, and Certificate (June 24, 2021) at ¶ 338-344, 360-363. CCPC has raised no new argument on this topic. Instead, the Citizens repeat their previous citation to and reliance upon the dissent in the *Buckeye Wind* case and groundlessly reassert that their due process rights have been violated. Here, the Board reiterates our findings that CCPC was able to fully participate in this proceeding (from the discovery process through presenting and cross-examining witnesses at the evidentiary hearing and submitted post-hearing briefs), and the public was included both pre- and post-

application via public information meetings, local hearings, and public comment with continuing rights to participate through the complaint process outlined in—and required by the Board through—Condition 13 of the Amended Stipulation. Opinion, Order, and Certificate at ¶ 363. In short, we reject CCPC's repeated suggestion that the Board failed to make the statutory determinations required to issue the certificate because it granted a certificate pursuant to conditions that will be monitored by Staff to ensure compliance. We further reject CCPC's reiterated assertion that the Board violated due process rights in granting the certificate.

C. Fifth Assignment of Error

{¶ 29} In its last assignment of error, CCPC asserts that the Board erred by approving the Amended Stipulation because it violates important regulatory principles and is contrary to the public interest. In support of this argument, the Citizens state that Angelina failed to sustain its burden regarding the Amended Stipulation citing a purportedly incomplete record, as well as the Amended Stipulation's unlawful delegation of the Board's duties to Staff, and arguing that the Project will not represent the minimum environmental impact as required by R.C. 4906.10(A)(3) nor serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). CCPC further challenges the stipulation process, alleging that a stipulation signed by allied parties over the objection of others is not entitled to any level of deference; instead, the Board may take note of the stipulation, but must independently determine what is just and reasonable from the record evidence.

{¶ 30} Throughout its memorandum contra, Angelina counters each of the points asserted, i.e., the completeness of the record, any alleged improper delegation of authority, and whether the Board made the requisite statutory findings to issue a certificate under R.C. 4906.10. Angelina maintains that the Board accurately determined that the Amended Stipulation was reasonable and satisfied the Board's criteria for stipulations. Angelina emphasizes that the Board properly adhered to regulatory practices and procedures while examining a robust record and determining each of statutory criteria, including whether the

Project represents the minimum adverse environmental impacts under R.C. 4906.10(A)(3) and would serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).

{¶ 31} The Board finds CCPC's final assignment of error, which essentially combines the first four asserted errors and rephrases them as a condemnation of the Board's analysis of the Amended Stipulation, to be without merit. As we determined above, in issuing the certificate, the Board did not improperly delegate any of its statutory duties to Staff or any other entity. Instead, the Board complied with applicable precedent from the Ohio Supreme Court, which has affirmed that the Board "[does] not improperly delegate its responsibility to grant or deny a provisions certificate when it allow[s] for further fleshing out of certain conditions of the certificate." *Buckeye Wind*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, at ¶ 18. In our Opinion, Order, and Certificate, we thoroughly addressed CCPC's "intertwined arguments regarding delegation, due process, and the completeness of the [record]" in finding that the Amended Stipulation is consistent with regulatory principles and practices of power siting. Opinion, Order, and Certificate (June 24, 2021) at ¶ 360; 337-364. We find that CCPC has presented the Board with no argument justifying a different conclusion here.

{¶ 32} Similarly, we reject the repeated contention that the Amended Stipulation is contrary to the public interest. Once again, CCPC's assignment of error on rehearing raises identical arguments to those in post-hearing briefs. (Compare Post Hearing Brief (Dec. 11, 2020) at p. 89-91; Application for Rehearing (July 23, 2021) at p. 120-122.) The Board has already comprehensively considered the Citizens' assertion (Opinion, Order, and Certificate (June 24, 2021) at ¶ 319-336) and finds that CCPC has presented no cause to re-examine our determination on rehearing.

{¶ 33} CCPC's fifth assignment of error is, therefore, denied.

D. Board Conclusion

{¶ 34} The Board has reviewed and considered all claims and arguments contained in the application for rehearing and, based on the foregoing, finds that the Citizens' application for rehearing is without merit. The Board finds that the Citizens have raised no new arguments nor brought to our attention any error demonstrating that our prior consideration of this matter was inadequate, against the manifest weight of the evidence, or otherwise unlawful and unreasonable. Accordingly, as to each of the claimed errors, we affirm the determinations made in our June 24, 2021 Opinion, Order, and Certificate.[3]

IV. ORDER

{¶ 35} It is, therefore,

{¶ 36} ORDERED, That the application for rehearing filed by CCPC be denied. It is, further,

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[3] Any claim or argument raised by the application for rehearing that was not specifically discussed herein was, nevertheless, thoroughly and adequately considered by the Board and is denied.

{¶ 37} ORDERED, That a copy of this Order on Rehearing 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 Pelanda, Director
Ohio Department of Agriculture

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Case No(s). 18-1579-EL-BGN

Summary: Opinion & Order on Rehearing denying the application for rehearing filed by the Concerned Citizens of Preble County, LLC, Robert Black, Marja Brandly, Campbell Brandly Farms, LLC, Michael Irwin, Kevin and Tina Jackson, Vonderhaar Family ARC, LLC, and Vonderhaar Farms, Inc. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board

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Case No(s). 18-1579-EL-BGN

Summary: Supreme Court Appeal electronically filed by Mr. Jack A. Van Kley on behalf of Concerned Citizens of Preble County, LLC and Black, Robert Mr. and Marja Brandly and Campbell Brandly Farms and Irwin, Michael Mr. and Jackson, Kevin Mr. and Jackson, Tina Ms. and Vonderhaar Family ARC, LLC and Vonderhaar Farms Inc.