

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Fox Squirrel)
Solar, LLC for a Boundary Amendment to its) Case No. 21-1031-EL-BGA
Certificate in Case No. 20-931-EL-BGN.)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Fox Squirrel Solar, LLC (“Applicant”), and the Ohio Power Siting Board (“Board”) Staff (“Staff”) (jointly referred to herein as “Signatory Parties”¹) submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Board. Ohio Adm.Code 4906-2-24(A) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below, and to jointly recommend that the Board approve and adopt this Stipulation as part of its Order on Certificate in this proceeding, resolving all matters pertinent to the application for amendment to the Applicant’s certificate issued in Case No. 20-931-EL-BGN.

On October 8, 2021, the Applicant filed an application for a boundary amendment to its Certificate of Environmental Compatibility and Public Need issued in Case No. 20-931-EL-BGN (“Application”). This Application seeks to expand the boundary of the project area. The Report of Investigation was issued by the Staff on January 3, 2022 (“Staff Report”). The public hearing is scheduled to commence on April 12, 2022.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent;

¹ For the purpose of entering into a stipulation before the Board pursuant to Ohio Adm.Code 4906-2-24, Staff is considered a party in accordance with Ohio Adm.Code 4906-2-11(C).

and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all of the issues in this proceeding. This Stipulation represents the culmination of these discussions, and the Signatory Parties acknowledge that this agreement is amply supported by the record and, thus, entitled to careful consideration by the Board. Accordingly, the Signatory Parties recommend that the Board issue an Order on Certificate adopting this Stipulation and approving the Application for boundary amendment.

II. JOINT RECOMMENDATIONS OF THE SIGNATORY PARTIES

A. Recommended Conditions

On July 15, 2021, in Case No. 20-931-EL-BGN, the Board issued a Certificate to the Applicant for the construction, operation, and maintenance of a solar-powered electric generation of up to 577 megawatts alternating current (“MWs”) located in Madison County, Ohio. Construction of the facility is expected to begin as early as the second quarter of 2022.

The Signatory Parties recommend that the Board issue an Order on Certificate adopting this Stipulation and approving the Application subject to the following conditions:

1. The Applicant shall continue to adhere to all conditions as certificated in Case No. 20-931-EL-BGN.
2. Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, on the case docket prior to commencement of construction.
3. Prior to commencement of construction, the Applicant shall submit to Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location. The condition shall not apply to substation fencing.
4. The Applicant shall relocate or install solar equipment at least 50 feet from each water well within the project area for 21-1031-EL-BGA or demonstrate that the well is for non-potable use and relocate solar

equipment at least 10 feet from that well, or seal and abandon the water well.

5. At the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approval by Staff.
6. The Applicant shall adhere to mitigation measures for archaeological and historic resources, including the development of an MOU with OHPO, subject to Staff's review. The Applicant shall incorporate landscaping and screening measures for these cultural resources in its landscape and lighting plan per this condition.
7. Prior to commencement of construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area and also include a plan to describe methods to be used for fence repair. The plan shall also address aesthetic impacts to the McClimans Cemetery by its inclusion in the plan. The plan shall also address glare impacts through planting of vegetative screening along London-Circleville Road, Yankeetown-Chenoweth Road, Moorman Road, Madden Higgins-Road, Van Wagener Road, and Johnston Road. The plan shall also address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings. The plans shall also include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition and shall also file it on the public docket. Additionally, the Applicant shall adhere to mitigation

measures for a historic architecture resource within the project area and incorporate any landscape and screening measure for this resource in the landscape and lighting plan per this condition.

B. Exhibits

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

1. Applicant Exhibit 1: Application filed on October 8, 2021, including proof of publication of the Open House held on October 6, 2021 as Exhibit B to the Application.
2. Applicant Exhibit 2: Proof of Service of the Application on public officials, libraries, and parties in Case No. 20-931-EL-BGN filed on October 8, 2021.
3. Applicant Exhibit 3: Proof of Publication of the filing of the Application in *The Madison Messenger* filed on November 15, 2021.
4. Staff Exhibit 1: Staff Report of Investigation filed on January 3, 2022.
5. Joint Exhibit 1: The April 5, 2022, Stipulation signed on behalf of the Applicant and Staff.

C. Other Terms of the Stipulation

1. This Stipulation is expressly conditioned upon its adoption by the Board without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation constitutes a "material modification" thereof. If the Board rejects or materially modifies all of any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within 30 days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdraw"). No Signatory Party shall file a Notice of Withdraw without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for the Board's review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary

hearing to afford the Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after hearing if necessary.

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

III. RECOMMENDED FINDINGS

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

A. Recommended Findings of Fact

1. The Applicant is a wholly-owned subsidiary of EDF Renewables Development, Inc., which is a subsidiary of EDF Renewables, Inc., and is licensed to do business in the state of Ohio.
2. The facility qualifies as a major utility facility as defined in R.C. 4906.01(B)(1).
3. The Applicant filed its Application on October 8, 2021.
4. On October 8, 2021, the Applicant filed Proof of Service of the Application on public officials, libraries, and parties in Case No. 20-931-EL-BGN filed on October 8, 2021.
5. On November 15, 2021, the Applicant filed Proof of Publication of the filing of the Application in *The Madison Messenger*.
6. The Staff Report was filed on January 3, 2022.

7. On March 8, 2022, the Administrative Law Judge established the procedural schedule and scheduled the public hearing for April 12, 2022.
8. On April 5, 2022, the Applicant and Staff filed the Stipulation.
9. The Application complies with R.C. 4906.06(E)(1) and the sections of R.C. 4906.10 relevant to this Application.
10. Adequate data on the boundary amendment has been provided to determine the nature of the probable environmental impact within the expanded boundary of the project area, as required by R.C. 4906.10(A)(2).
11. Adequate data on the boundary amendment has been provided to determine that the facility described in the Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations within the expanded boundary of the project area, as required by R.C. 4906.10(A)(3).
12. Adequate data on the boundary amendment has been provided to determine what the facility's impact within the expanded boundary of the project area will be on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site of the proposed facility, as required by R.C. 4906.10(A)(7).
13. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Recommended Conclusions of Law

1. The Applicant is a "person" under R.C. 4906.01(A).
2. The facility is a major utility facility as defined in R.C. 4906.01(B)(1).
3. The Application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
4. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility within the expanded boundary of the project area under R.C. 4906.10(A)(2).
5. The record establishes that the boundary amendment, if conditioned in the certificate as recommended by the Signatory Parties, represents the minimum adverse environmental impact on the additional property, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations within the expanded boundary of the project area under R.C. 4906.10(A)(3).

6. The boundary amendment impact on the viability as agricultural land of any land in an existing agricultural district in the additional property has been determined within the expanded boundary of the project area under R.C. 4906.10(A)(7).
7. Based on the record, the Signatory Parties recommend that the Board issue an Order on Certificate, which includes the conditions in the Staff Report, as presented by this Stipulation.

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

Respectfully submitted on behalf of,

THE STAFF OF THE OHIO POWER SITING BOARD Fox Squirrel Solar, LLC

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Summary: Stipulation - Joint Stipulation and Recommendation electronically filed
by Christine M.T. Pirik on behalf of Fox Squirrel Solar, LLC