

BEFORE THE OHIO POWER SITING BOARD

- - -

In the Matter of the :
Application of Border :
Basin I, LLC, for a :
Certificate of :
Environmental :
Compatibility and Public : Case No. 21-277-EL-BGN
Need to Construct a :
Solar-Powered Electric :
Generation Facility in :
Hancock County, Ohio. :

- - -

PROCEEDINGS

before Ms. Patricia Schabo and Mr. Michael Williams,
Administrative Law Judges, at the Ohio Power Siting
Board, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 9:06 a.m. on Wednesday, April 20,
2022.

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VOLUME II

- - -

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On behalf of the Ohio Farm Bureau
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On behalf of the Board of County
Commissioners of Hancock County, Ohio.

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By Ms. Lucinda M. Land,
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On behalf of the Board of Trustees, Cass
Township, Hancock County.

Dave Yost, Ohio Attorney General
By Mr. Robert Eubanks
and Mr. Thomas Shepherd,
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On behalf of the Staff of the PUCO.

APPEARANCES:

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On his own behalf.

Mr. Richard S. Lewis
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On their own behalf.

Ms. Deidra L. Noel
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On her own behalf.

Ms. Robin L. Gardner
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On her own behalf.

- - -

1	INDEX		
2	- - -		
3	WITNESS		PAGE
4	Mark Bellamy		
	Direct Examination by Mr. Eubanks		232
5	Cross-Examination by Overmyer		234
	Examination by ALJ Schabo		236
6			
	James S. O'Dell		
7	Direct Examination by Mr. Eubanks		238
	Cross-Examination by Mr. Overmyer		240
8	Cross-Examination by Mr. Lewis		242
	Examination by ALJ Williams		243
9			
	Eric Morrison		
10	Direct Examination by Mr. Eubanks		246
	Cross-Examination by Mr. Overmyer		250
11	Cross-Examination by Ms. Gardner		251
12			
	Thomas J. Crawford, PhD, PE		
	Direct Examination by Mr. Eubanks		252
13	Cross-Examination by Mr. Overmyer		253
	Cross-Examination by Mr. Lewis		254
14	Examination by ALJ Williams		256
15			
	Grant Zeto		
	Direct Examination by Mr. Eubanks		259
16	Cross-Examination by Mr. Overmyer		260
	Cross-Examination by Mr. Lewis		261
17	Cross-Examination by Ms. Noel		263
	Examination by ALJ Williams		264
18	- - -		
19	STAFF EXHIBIT	IDENTIFIED	ADMITTED
20	1 Staff Report of Investigation	I-192	252
21	6 Prefiled Testimony of	233	238
	Mark Bellamy		
22			
	7 Prefiled Testimony of	239	245
23	James S. O'Dell		
24	8 Prefiled Testimony of	250	252
	Eric Morrison		
25	- - -		

INDEX (Continued)

- - -

STAFF EXHIBIT

IDENTIFIED ADMITTED

9	Prefiled Testimony of Thomas J. Crawford, PhD, PE	253	258
---	--	-----	-----

10	Prefiled Testimony of Grant Zeto	260	265
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- - -

JOINT EXHIBIT

IDENTIFIED ADMITTED

1	Joint Stipulation and Recommendations	I-17	252
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- - -

1 Wednesday Morning Session,
2 April 20, 2022.

3 - - -

4 ALJ SCHABO: We are on the record.
5 We are here for day two of our
6 evidentiary hearing in Case No. 21-277-EL-BGN which
7 is the application of Border Basin I for a
8 certificate of environmental compatibility and public
9 need.

10 Yesterday we left off about halfway
11 through Staff's witnesses. Mr. Eubanks, I will turn
12 it over to you.

13 MR. EUBANKS: Thank you, your Honor. I
14 would like to call to the stand Mark Bellamy.

15 (Witness sworn.)

16 ALJ SCHABO: Thank you.

17 - - -

18 MARK BELLAMY
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Eubanks:

23 Q. Please state and spell your name for the
24 record.

25 A. My name is Mark Bellamy, M-A-R-K

1 B-E-L-L-A-M-Y.

2 Q. And what is your position with Staff?

3 A. I am a Utility Specialist.

4 Q. Did you prepare prefiled testimony for
5 this matter?

6 A. Yes.

7 Q. If you see it before you, could you
8 please take it and identify it.

9 A. Yes. I have before me my prefiled
10 testimony.

11 MR. EUBANKS: I would like to have that
12 marked.

13 MS. GARDNER: We are having a hard time
14 hearing.

15 ALJ SCHABO: Mr. Bellamy, if you could
16 try to get a little bit closer to that.

17 MS. GARDNER: And this gentleman also.

18 ALJ SCHABO: I think it's a line of sight
19 thing. It's easier to hear people when you can see
20 them so just make sure you project.

21 MR. EUBANKS: I would like to have Mark
22 Bellamy's prefiled testimony marked as Staff's
23 Exhibit 6.

24 ALJ SCHABO: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Eubanks) Sir, if I were to ask
2 you the same questions that you find in your prefiled
3 testimony today, would you give the same answers?

4 A. Yes.

5 Q. Is that copy that you have before you a
6 true and accurate copy?

7 A. Yes.

8 Q. And are there any corrections you would
9 like to make to your testimony?

10 A. No.

11 MR. EUBANKS: With that I would like to
12 offer the witness for cross-examination.

13 ALJ SCHABO: Thank you.

14 Mr. Overmyer, do you have any questions?

15 MR. OVERMYER: Yeah.

16 ALJ SCHABO: Go ahead and turn on your
17 microphone.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Overmyer:

21 Q. I see that you sponsored item No. 24, and
22 when I read through it, I see that the condition does
23 not apply to substation fencing. Is there a reason
24 for that?

25 A. Are you referring to the condition in the

1 Joint Stipulation?

2 Q. Yeah.

3 A. Okay. Give me a second to --

4 Q. Sorry about that.

5 A. No, that's okay. Let me open up the
6 Joint Stipulation so I can see which condition you
7 are talking about. I'm sorry. What was the number
8 again?

9 Q. 24.

10 A. Okay. Yes. The reason that Condition 24
11 does not apply to the substation fencing is because
12 there are specific state or federal requirements,
13 electrical code requirements about substation
14 fencing. And anybody that constructs a substation
15 has to comply with those codes, and those codes would
16 not allow the -- the agricultural type of fence that
17 we are requiring for the perimeter to be applied to
18 the substation.

19 Q. So the aesthetics that they are putting
20 around the other fence to protect our views isn't
21 going to apply to the substation?

22 A. Correct.

23 MR. OVERMYER: Thank you.

24 ALJ SCHABO: Ms. Gardner? No?

25 Mr. Lewis?

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MR. LEWIS: No.

- - -

EXAMINATION

By ALJ Schabo:

Q. Mr. Bellamy, I had a couple for you. I might have a couple, but I will start with the one I do have marked. If you would turn to Condition 41.

A. I'm there.

Q. I'm paraphrasing from my own summary so it won't be on point, but in Condition 41 it indicates that if the noise data from the inverter and the transformer are not available from the manufacturer, that an operational noise test may be performed to comply with the condition. And then it specifies that the test must be performed on a sunny day the months of May through August. And I was just wondering what benefit or -- or purpose there is behind specifying that the test must take place during that time frame.

A. Yes. The reason that May through August was selected as the required time frame for the operating test to be performed is because those are the sunniest months of the year; and, therefore, during those months the solar facility would be operating at its maximum capability, so it would

1 be -- it would produce the loudest noise during those
2 months when it's producing the maximum amount of
3 energy production.

4 Q. So it's not connected to ambient noise
5 levels so much as it is the facility being at its
6 loudest.

7 A. Correct. It has nothing to do with
8 ambient levels. The ambient levels have already been
9 evaluated. This is a test so that if the
10 Applicant -- whatever transformer and inverter the
11 Applicant uses for the project, if those components
12 have a louder sound power level than the ones
13 presented in the sound model, then the Applicant
14 needs to show that those still comply with the
15 ambient plus 5 limit and to do so -- inverter data --
16 inverter manufacturers don't typically publish noise
17 data because noise from solar inverters has not been
18 a big enough issue for them to conduct a noise test
19 and publish it.

20 So because of the data is not readily
21 available, we have put this in there to make sure
22 that the Applicant will eventually check if the data
23 is not available, that the operating solar facility
24 still complies with our ambient plus 5 limit.

25 ALJ SCHABO: Thank you.

1 Judge Williams?

2 Any redirect?

3 MR. EUBANKS: No, your Honor.

4 ALJ SCHABO: Thank you, Mr. Bellamy.

5 MR. EUBANKS: Your Honor, at this time I
6 would like to move for the admission of Staff's
7 Exhibit 6.

8 ALJ SCHABO: Are there any objections?

9 Seeing none, Staff Exhibit 6 is admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 MR. EUBANKS: And Staff would like to
12 call to the stand James O'Dell.

13 (Witness sworn.)

14 ALJ SCHABO: Thank you.

15 - - -

16 JAMES S. O'DELL

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Eubanks:

21 Q. Could you state and spell your name for
22 the record, please.

23 A. James S. O'Dell, J-A-M-E-S, middle
24 initial S, last name O'Dell, capital O apostrophe
25 D-E-L-L.

1 Q. Could you state your position with Staff.

2 A. Yes. I am a Senior Siting Analyst with
3 the Power Siting Board.

4 Q. Did you file prefiled testimony in this
5 matter?

6 A. Yes, I did.

7 Q. If you see it before you, could you
8 please pick it up and identify the document.

9 A. This is my prefiled testimony.

10 Q. And is it a true and accurate copy?

11 A. Yes.

12 Q. If I were to ask you the same questions
13 today that can be found in your prefiled testimony,
14 would you give the same answers?

15 A. Yes, I would.

16 Q. And are there any corrections you would
17 like to make to your prefiled testimony?

18 A. No.

19 MR. EUBANKS: At this time I would like
20 to offer the witness for cross-examination, and I
21 also would like to have his prefiled testimony marked
22 as Staff's Exhibit 7.

23 ALJ SCHABO: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 ALJ SCHABO: Mr. Overmyer, do you have

1 any questions for Mr. O'Dell?

2 MR. OVERMYER: Yes.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Overmyer:

6 Q. I see that you are a co-sponsor of
7 Condition 23 on the Staff Report.

8 A. Let me check. Yes.

9 Q. And so if you are not allowed to put
10 aesthetic fencing around the substation, how are you
11 going to be able to protect the neighborhood and the
12 people in the community from the substation with --
13 in this requirement 23?

14 A. This requirement specifically speaks to
15 the idea of vegetative screening for sensitive land
16 uses on the perimeter fencing. The landscaping is
17 designed to soften and blend the facility, not to
18 make the facility obviously invisible.

19 As far as what Mr. Bellamy testified to
20 regarding the fencing around the substation, those
21 are governed by the National Electric Safety Code,
22 also by security and safety requirements, so the same
23 fencing would not apply to the substation.

24 Q. So in all of your conditions that you
25 have listed, the 44, there's nothing in there that

1 addresses protecting local neighbors from the
2 unsightly view of the substation?

3 A. Other than the setbacks that would be
4 applied in the distances, no, there -- like I say,
5 they are governed by security requirements and by the
6 National Electric Safety Code and by federal and
7 state law, local law enforcement.

8 Q. So even though it says that the land --
9 Ohio Landscape Architects Board addresses the
10 aesthetic and lighting impacts of the facility with
11 an emphasis of locations of not adjacent and
12 non-participating parcels, there's nothing really
13 that's going to be able to protect us from the
14 substation because of federal, state, and them kind
15 of guidelines?

16 A. Yes. I've answered that question. This
17 condition in the Staff Report is designed to the
18 greatest extent practical to mitigate the aesthetic
19 impacts of the facility.

20 Q. But the federal and state overrule the --
21 this part of aesthetic when it comes to the
22 substation.

23 A. I am not an attorney, but the reason is
24 there are requirements from the federal, state, and
25 security requirements and National Electric Safety

1 Code, sir.

2 Q. Okay. In this -- you are like the lead
3 guy of this process?

4 A. I helped assemble and lead the production
5 of the Staff Report, sir.

6 Q. Okay. Are the OAC rules important in
7 this process?

8 A. Yes.

9 Q. So if OAC Rule 4906-3-03(B)(2) didn't
10 have all the adjacent affected property owners, it
11 should be a problem?

12 A. Sir, I am not an attorney, so I can't
13 comment on the legal ruling for the OAC code, sir.

14 MR. OVERMYER: Okay. Thank you.

15 ALJ SCHABO: Ms. Gardner?

16 MS. GARDNER: I have no questions.

17 ALJ SCHABO: Mr. Lewis?

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Lewis:

21 Q. The 120-megawatt size of this project,
22 were you involved in the determining the size in any
23 way or limiting that in any way?

24 A. No, sir. The size of the facility is
25 presented by the Applicant.

1 MR. LEWIS: Okay. The question was
2 leading to further expansion, I guess, is what I was
3 trying to find out. Thank you. That's all I have.

4 ALJ SCHABO: Okay. Thank you.

5 Ms. Noel?

6 MS. NOEL: I don't have anything.

7 Thanks.

8 ALJ SCHABO: Judge Williams?

9 ALJ WILLIAMS: I know we just replaced
10 that battery but. Thank you.

11 - - -

12 EXAMINATION

13 By ALJ Williams:

14 Q. Just briefly, as the project lead then,
15 were you overseeing in a primary capacity
16 negotiations relative to the application and the
17 ultimate partial Stipulation?

18 A. Yes, sir.

19 Q. So obviously the Board has a three-part
20 test to employ with regard to consideration of this
21 case, and I just wanted to get some background
22 information aimed at part 1 of that test, namely,
23 that the Stipulation is the product of serious
24 bargaining among capable, knowledgeable parties. So
25 did you participate in the negotiations that led to

1 the partial Stip?

2 A. Yes, I did.

3 Q. And I don't want to reveal any
4 attorney-client privileges, but I am curious as to
5 how many negotiation sessions were there?

6 A. Is your question how many negotiation
7 sessions there were, sir?

8 Q. That's correct.

9 A. I don't recall the number but there were
10 extensive, extensive sessions.

11 Q. More than -- more than five?

12 A. I recall at least five it seems to me.

13 Q. Okay.

14 A. I'm not positive of the exact number,
15 sir.

16 Q. Okay. Just trying to get a general idea
17 obviously. And in terms of the participation, there
18 was also participation by Applicant and Staff,
19 correct?

20 A. That is correct.

21 Q. Participation by the Township and the
22 County?

23 A. That is correct.

24 Q. Okay. And were the Intervenors invited
25 to participate as well?

1 A. Yes, they were.

2 Q. Did any of the Intervenors participate?

3 A. They were present so, yes, some of the
4 Intervenors were present during those calls.

5 Q. Okay. And ultimately were you aware that
6 the Stipulation was entered into within the last week
7 or so?

8 A. To the best of my knowledge, yes.

9 ALJ WILLIAMS: Okay. That's all I have.
10 Thank you.

11 THE WITNESS: Thank you, sir.

12 ALJ SCHABO: Any redirect?

13 MR. EUBANKS: No redirect, your Honor.

14 THE WITNESS: Sorry.

15 ALJ SCHABO: No, you're fine.

16 MR. EUBANKS: At this time Staff would
17 like to call to the stand Eric Morrison.

18 ALJ SCHABO: Would you like to move his
19 testimony into evidence?

20 MR. EUBANKS: Yes, your Honor. Can we
21 please move into evidence Staff's Exhibit 7?

22 ALJ SCHABO: Any objections?

23 Seeing none, it will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 (Witness sworn.)

1 ALJ SCHABO: Thank you.

2 - - -

3 ERIC MORRISON

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Eubanks:

8 Q. Would you state and spell your name for
9 the record.

10 A. Eric L. Morrison, E-R-I-C, middle initial
11 L, M-O-R-R-I-S-O-N.

12 Q. Could you state your position with Staff.

13 A. I am a Utility Specialist.

14 Q. Did you file prefiled testimony in this
15 matter?

16 A. Yes.

17 Q. And are you sponsoring a condition --

18 A. Yes.

19 Q. -- for the Staff Report?

20 A. Yes.

21 Q. So if you were to see the Staff Report,
22 would you recognize it?

23 A. Yes.

24 Q. Could you look at the documents before
25 you and see if there is a Staff Report up there.

1 A. Yes, there is.

2 MR. EUBANKS: I submit on the record that
3 the Staff Report before the witness is the same copy
4 I passed out before asking questions today.

5 Q. If you could look at that Staff Report
6 and tell me if it's a true and accurate copy of the
7 Staff Report docketed with the Commission.

8 A. It appears to be.

9 Q. Are you also familiar with the
10 Stipulation that has been premarked as Joint
11 Exhibit 1?

12 A. Yes.

13 Q. Do you see the Stipulation before you?
14 Could you please pick it up and identify it.

15 A. Yes.

16 Q. Is that a true and accurate copy of the
17 Joint Stipulation that Staff entered into with other
18 various parties in this matter?

19 A. Yes, it appears to be.

20 Q. Focusing back on your -- on your
21 testimony -- sorry. Did you say that was a true and
22 accurate copy of your testimony?

23 A. Yes, sir.

24 Q. Okay. And if I were to ask you the same
25 questions in your testimony -- that you have in your

1 testimony, ask them again today, would you provide
2 the same answers?

3 A. I do have one amendment.

4 Q. To the answer or just a correction?
5 Well, just point me out where you would have your
6 correction.

7 A. It would be page 2, line 2.

8 Q. And what would the change be?

9 A. The change would be in addition to
10 agricultural lands and roads and bridges in the Staff
11 Report, I also co-sponsored the water conservation
12 practice project description and project schedule
13 portions of the Staff Report.

14 Q. Other than that would there be any
15 changes you would make to your testimony?

16 A. No.

17 ALJ WILLIAMS: Mr. Eubanks, we are going
18 to have to slow down and make that notation in
19 detail. So if you could -- I see where you are at,
20 page 2, line 2. He added what appeared to be a whole
21 sentence to his testimony, so I am going to ask you
22 to walk us through that slowly so we can all capture
23 that for the record.

24 Q. (By Mr. Eubanks) Okay. Could you state
25 that change again.

1 A. Correct. It's not an entire sentence.
2 It's -- I would say it would be -- I will read
3 what -- should I read the sentence as it should read?

4 ALJ WILLIAMS: Yes.

5 Q. (By Mr. Eubanks) Okay.

6 A. The sentence should read "I am sponsoring
7 portions of the Staff Report of Investigation" --

8 ALJ WILLIAMS: Slow down.

9 ALJ SCHABO: Yeah.

10 ALJ WILLIAMS: So you are now at the
11 bottom of page 1.

12 THE WITNESS: Page 1, line 20.

13 ALJ WILLIAMS: Slow down. We are going
14 to write down the changes you are making, okay?

15 THE WITNESS: Okay.

16 ALJ WILLIAMS: Go ahead.

17 A. "I am sponsoring portions of the Staff
18 Report of Investigation that was filed on March 16,
19 2022, where I was a staff analyst. Specifically, I
20 was a staff analyst for portions of the Staff Report
21 pertaining to agricultural lands, roads and bridges,
22 project description comma" --

23 ALJ WILLIAMS: Slow down. Slow down.
24 "Project description comma."

25 A. "Project schedule."

1 ALJ WILLIAMS: Okay.

2 A. "And water conservation practices."

3 ALJ WILLIAMS: Thank you.

4 MR. EUBANKS: I would like to have the
5 testimony marked as Staff's Exhibit 8, and with that
6 I offer the witness for cross-examination.

7 ALJ SCHABO: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 ALJ SCHABO: Mr. Overmyer, do you have
10 any questions for Mr. Morrison?

11 MR. OVERMYER: Yeah.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Overmyer:

15 Q. On the 18th Stipulation, this
16 coordination effort, how is it going to be
17 accomplished for people in the community, school
18 buses, flooding, and other things like that?

19 A. This condition spells out the Applicant's
20 requirement to communicate with the appropriate
21 regulatory authorities concerning State, Township,
22 and County roads. I believe the question you are
23 asking would fall under one of the safety conditions.

24 Q. Okay. Did you have anything to do with
25 that?

1 A. No; no, sir.

2 MR. OVERMYER: All right. Thank you.

3 ALJ SCHABO: Ms. Gardner?

4 Mr. Lewis?

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Lewis:

8 Q. In your involvement did -- was there
9 anything referring to the size of the facility, the
10 120 megawatt? Did your findings limit that in any
11 way or allow that to expand?

12 A. No, sir.

13 MR. LEWIS: That's all I had. Thank you.

14 ALJ SCHABO: Thank you.

15 Ms. Noel? Judge Williams?

16 Redirect?

17 MR. EUBANKS: No, your Honor.

18 ALJ SCHABO: Okay. Thank you,

19 Mr. Morrison.

20 THE WITNESS: Thank you.

21 MR. EUBANKS: Your Honor, I would like to
22 have Joint Exhibit 1, Staff's Exhibit 1, and Staff's
23 Exhibit 8 moved into evidence.

24 ALJ SCHABO: Is there any objections to
25 the admission of the Stipulation and Recommendation,

1 the Staff Report, or Mr. Morrison's testimony?

2 Seeing none, they will be admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 MR. EUBANKS: Your Honor, I would like to
5 call to the stand Thomas Crawford.

6 (Witness sworn.)

7 ALJ SCHABO: Thank you.

8 - - -

9 THOMAS J. CRAWFORD, PhD, PE
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Eubanks:

14 Q. If you could state and spell your name
15 for the record, please.

16 A. Thomas Crawford, T-H-O-M-A-S, middle
17 initial J, C-R-A-W-F-O-R-D.

18 Q. And would you please state your position
19 with Staff.

20 A. Electric Energy Specialist.

21 Q. Did you file prefiled testimony in this
22 matter?

23 A. Yes, sir.

24 Q. Do you see it before you?

25 A. Yes, sir, I do.

1 Q. Is it a true and accurate copy of your
2 testimony?

3 A. Yes, sir.

4 Q. And if I were to ask you the same
5 questions that are in -- that's in your testimony
6 today, would you provide the same answers?

7 A. Yes, sir.

8 Q. Are there any corrections that you would
9 like to make to your testimony?

10 A. No, sir.

11 MR. EUBANKS: I would like to have marked
12 as Staff's Exhibit 9 the testimony of Thomas
13 Crawford, and with that I would like to offer him up
14 for cross-examination.

15 ALJ SCHABO: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 ALJ SCHABO: Mr. Overmyer, do you have
18 questions for this witness?

19 MR. OVERMYER: Yeah.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Overmyer:

23 Q. On Stipulation 22 I read somewhere in the
24 Staff Report that they do not have an
25 interconnection -- or interconnection service

1 agreement as of the Staff Report. Is that something
2 that's going to happen for sure, or it could not
3 happen?

4 A. I don't know. I can't predict the
5 future. You are correct that they have not yet
6 entered into the interconnection service agreement.

7 MR. OVERMYER: Thank you.

8 ALJ SCHABO: I am going to go ahead and
9 just quickly interrupt this flow and ask a follow-up
10 question to Mr. Overmyer's question. It is a
11 condition of the Stipulation that the agreement be
12 entered into prior to construction of this facility,
13 correct?

14 THE WITNESS: That's correct.

15 ALJ SCHABO: Okay. Thank you.

16 Ms. Gardner? Mr. Lewis?

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Lewis:

20 Q. Maybe I'm finally asking this question of
21 the right person. Do you have anything to do with
22 the determining of the size of this facility or maybe
23 a limit on it as far as the connection?

24 A. No, sir, I don't make that determination
25 at all. The Applicant comes in with an application

1 for 120 megawatts, and we complete the Staff Report
2 based on that assumption, that request.

3 MR. LEWIS: Okay. Thank you. That's all
4 I had.

5 ALJ SCHABO: Ms. Noel?

6 Once again, I am going to piggyback on
7 that question. Could the Applicant build anything
8 greater than 120 megawatts?

9 THE WITNESS: We don't know the final
10 design of the project yet, but if they -- if they
11 build the facility that generates more than
12 120 megawatts, it would be a violation of the
13 conditions that are -- for which the certificate is
14 awarded.

15 ALJ SCHABO: Thank you.

16 THE WITNESS: Did that make sense?

17 ALJ SCHABO: Yes.

18 MR. LEWIS: Could he repeat that, please?

19 THE WITNESS: We don't know the final
20 design of the project. There may be more panels than
21 what they put in the application. It might be a
22 brighter sunny day, things like that. But if there
23 is more than 120 megawatts generated on any
24 particular day, they are in violation of the
25 conditions of the stipulations set forth in the

1 awarding of the certificate for this project.

2 MR. LEWIS: Okay. Thank you.

3 - - -

4 EXAMINATION

5 By ALJ Williams:

6 Q. My battery came back on, so it must be
7 destiny. Just a quick clarification. Some of this
8 is educational. So Applicant comes in and requests
9 authority for a 120-megawatt facility, correct?

10 A. Yes, sir.

11 Q. Okay. And Staff doesn't have anything to
12 do with that request. Staff is supposed to respond
13 to the request, correct?

14 A. That's correct.

15 Q. And then further the interface between is
16 it 120 megawatt or something greater or lesser,
17 that's -- that's a conversation that's had between
18 Applicant and PJM; is that correct?

19 A. PJM does an analysis for a certain amount
20 of energy being produced or amount of power. In this
21 case they did for 120 megawatts.

22 Q. Okay. So that's Applicant's carry in
23 terms of what they come forward with and in terms of
24 how that's approved or considered for injection into
25 the electric grid. That's a communication between

1 Applicant and somebody outside of the Board Staff as
2 well.

3 A. Yes, sir.

4 Q. And that's PJM who oversees the grid
5 regionally, correct?

6 A. Correct.

7 Q. Okay. So if Applicant wanted to change
8 or add on to what's proposed here, not only would
9 Board Staff re-review that or have some role in that
10 regarding the fact that there is a condition of
11 120-megawatt capacity ceiling on this project but
12 also there would be some other interplay between --
13 presumably between Applicant and PJM that would be
14 outside the Board's control, correct?

15 A. Correct.

16 ALJ WILLIAMS: Okay. That's all I have
17 in terms of that clarification.

18 ALJ SCHABO: I have been remiss in
19 offering this, is there any cross from any of the
20 other parties in the room?

21 MR. SECREST: Just one moment, your
22 Honor.

23 ALJ SCHABO: Sure. We will go off the
24 record for one moment.

25 (Discussion off the record.)

1 ALJ SCHABO: Back on the record.
 2 Did you have any cross for Mr. Crawford?
 3 MR. SECREST: We do not. We appreciate
 4 everyone's patience. Thank you.
 5 ALJ SCHABO: Okay. Thank you.
 6 Any redirect?
 7 MR. EUBANKS: No, your Honor.
 8 ALJ SCHABO: Thank you, Mr. Crawford.
 9 MR. EUBANKS: At this time I would like
 10 to have Staff's Exhibit 9 moved into evidence.
 11 ALJ SCHABO: Any objections?
 12 Seeing none, Mr. Crawford's Staff
 13 Exhibit 9 will be admitted into evidence.
 14 (EXHIBIT ADMITTED INTO EVIDENCE.)
 15 MR. EUBANKS: Your Honor, Staff would
 16 like to call to the stand Grant Zeto.
 17 ALJ SCHABO: Good morning.
 18 (Witness sworn.)
 19 ALJ SCHABO: Thank you.

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GRANT ZETO

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Please state and spell your name for the
record.

A. Grant Zeto, G-R-A-N-T Z-E-T-O.

Q. And your position with Staff?

A. Public Utility Administrator 2.

Q. Did you file prefiled testimony in this
matter?

A. Yes, I did.

Q. Do you see it before you?

A. Yes.

Q. Is it a true and accurate copy?

A. Yes.

Q. If I were to ask you the same questions
today that you find in that testimony, would you
provide the same answers?

A. Yes, I would.

Q. Are there any changes you would like to
make to your testimony?

A. No.

MR. EUBANKS: I would like to have the

1 testimony marked as Staff's Exhibit 10.

2 ALJ SCHABO: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. EUBANKS: And with that I'll offer
5 the witness for cross-examination.

6 ALJ SCHABO: Thank you.

7 Mr. Overmyer, do you have any questions
8 for Mr. Zeto?

9 MR. OVERMYER: Yes.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Overmyer:

13 Q. On page 27 of the Staff Report, you talk
14 about how surface waters will be further protected
15 from indirect construction. Have you viewed the
16 pictures that we posted on file as a public comment
17 about the flooding in our area?

18 A. I have not seen those pictures, no.

19 Q. So if they was doing their construction
20 on the substation, they would have to have things in
21 place to keep -- if it flooded to run off into the
22 ditch, correct?

23 A. Sorry. Could you rephrase that, please?

24 Q. It says here that there -- when -- we're
25 supposed to be protected from indirect construction

1 stormwater impacts using erosion, sediment controls
2 will be outlined, so that means in the flooding area
3 they are going to build a substation. So when they
4 start putting the substation in, they have to put
5 things in to protect the ditch, my property, and
6 other things?

7 A. Yes. They would put in controls to
8 minimize the sedimentation that would be going into
9 the water that's coming off of the surface from the
10 construction, and yes.

11 MR. OVERMYER: I'm good.

12 ALJ SCHABO: Ms. Gardner? Mr. Lewis?

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Lewis:

16 Q. I'm not sure what Stipulation covers the
17 noxious weeds and invasive species. Is that part of
18 your field?

19 A. Yes, it is.

20 Q. My question is I understand the buffer
21 strips and the vegetation on the outside. Is there
22 anything required to be planted inside the fence as
23 far as some kind of lagoon or something to control
24 the growth, or is this area going to be sprayed and
25 maintained or required to be sprayed and maintained

1 to keep the noxious weeds from?

2 A. One moment, please.

3 Q. I apologize for not having that
4 Stipulation in front of me but.

5 ALJ WILLIAMS: You are doing great. No
6 worries. I believe Condition 33 talks about noxious
7 weeds.

8 THE WITNESS: Thank you.

9 A. Yes. Conditions 32 and 33 help to
10 address that kind of issue. There will be -- they
11 propose to do pollinator species within the fence.
12 There is a condition going to that as well as grasses
13 within and outside the fence, and the noxious weed
14 condition applies to the facility entirely, not just
15 the outside buffer.

16 MR. LEWIS: Okay. That was a huge
17 concern of most of the neighbors of the farm --
18 how -- we all understood how the buffer strip was to
19 work, but we were not sure what was going on inside
20 because the noxious weeds already exist, and they are
21 controlled through farming practices, but once that's
22 done away with, that things change drastically.

23 Thank you. That's all I have.

24 ALJ SCHABO: Ms. Noel?

25 - - -

CROSS-EXAMINATION

By Ms. Noel:

Q. What pollinator mix will you guys be using inside the project?

A. So Condition 32 speaks to the ODNR recommended requirements, and they have a table listing the pollinator species they recommend that would be in this project in there, I believe. Yes, so it would be through that one or any other coordination with ODNR if they wanted to do something a little different.

Q. And just one more question. Referring back to Mr. Overmyer's question about the flood control at the substation, you said controls would be put in place to deal with the stormwater runoff. What controls are you guys going to use? Do you know?

A. So the Applicant's construction stormwater permit requires things like silt fencing and filter socks, things like that to keep exposed soil that's leading sedimentation into the surface water minimized and kept on site.

MS. NOEL: Okay. Thank you. That's all I had.

ALJ SCHABO: Thank you. I am making sure

1 I had all my questions answered.

2 Judge Williams, do you have anything?

3 - - -

4 EXAMINATION

5 By ALJ Williams:

6 Q. Just to clarify, I note that Condition 26
7 describes the requirement that Applicant have an
8 environmental specialist experienced in drinking
9 water quality protection during construction
10 activities. Is that a condition that the Board
11 commonly agrees to or requires? Or Board Staff.

12 A. I believe that is new to this Staff
13 Report but was not one of the conditions I am
14 sponsoring.

15 ALJ WILLIAMS: Thank you.

16 ALJ SCHABO: Bear with me just a minute.

17 ALJ WILLIAMS: Actually I will have a
18 follow-up then. Page 2, line 7 of your testimony,
19 you describe you are sponsoring Condition 26. Of the
20 Staff Report. I apologize.

21 Thank you, Judge.

22 ALJ SCHABO: You're welcome.

23 All right. I don't see anything that I
24 had marked out so thank you.

25 Is there any -- is there any cross? Any

1 redirect?

2 MR. EUBANKS: No, your Honor.

3 ALJ SCHABO: All right. Thank you,
4 Mr. Zeto.

5 MR. EUBANKS: Staff would like to move
6 Staff's Exhibit 10 into evidence.

7 ALJ SCHABO: Is there any objections?
8 Seeing none, Staff Exhibit 10 will be
9 admitted to the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. EUBANKS: That's all the Staff
12 witnesses.

13 ALJ SCHABO: Thank you. Let's go off the
14 record.

15 (Discussion off the record.)

16 ALJ WILLIAMS: Back on, Karen.

17 All right. We were off the record 5
18 minutes, plus or minus, while we discussed a briefing
19 schedule, accommodated a couple of upcoming new
20 babies on behalf of some of the parties.

21 So what we've decided is we are expecting
22 the transcript in this case to ripen approximately
23 May 4 and we are going to set the deadline for
24 initial briefing of June 10, and we are going to then
25 set the deadline for reply briefing of July 1.

1 As I instructed the parties, there is
2 certainly no obligation to file an initial brief. If
3 you want to simply file a reply brief and respond to
4 the arguments of some or all of the parties, you are
5 able to do that. If you want to file only an initial
6 brief and not a reply brief, you are free to do that.
7 And if you want to file no brief, you are free to do
8 that as well.

9 As I described, the briefing really is a
10 way for the parties to help emphasize what they feel
11 developed in the testimony and the admitted evidence
12 in the record of the case in terms of how they feel
13 that supports their arguments and refutes the
14 arguments perhaps of some of their case adversaries.

15 So with that explanation, I will invite
16 any questions or clarification predominantly from the
17 Intervenors for whom this is relatively new.
18 Anything that we can clarify on the record before we
19 close?

20 All right.

21 MS. PIRIK: Your Honor, I do have a
22 question.

23 ALJ WILLIAMS: Yes, Ms. Pirik.

24 MS. PIRIK: In light of the process not
25 needing to file a brief is relatively new for us as

1 well, would we be provided any leniency because
 2 typically we focus our brief on focusing on, you
 3 know, the items that we are summarizing for your
 4 benefit as opposed to responses to, you know, what
 5 the important issues that the Intervenor are citing.
 6 So we -- let's assume that we are the only ones that
 7 file a brief, and our brief is focused on our case in
 8 chief. Would we have the leniency to be able to file
 9 a reply brief to the record, so to speak, as to the
 10 evidence that was presented by the Intervenor in the
 11 case because we are not going to have anything to
 12 reply to?

13 ALJ WILLIAMS: I understand. So point of
 14 clarification, the reply brief would generally be in
 15 response to the arguments that you made to their
 16 brief, and so to the extent arguments are raised that
 17 are outside the confines of your merit brief, I would
 18 certainly encourage the parties to be aware of what
 19 we are expecting is the arguments, and the reply will
 20 evolve from what's in the other side's merit briefs.
 21 You are not encouraged to wait, file what should be
 22 your merit brief as a reply brief. And that's a good
 23 point of clarification.

24 So if -- if you find yourself raising
 25 issues in your second brief that are new that are not

1 in response to what came in in the initial briefing,
2 that's not going to be looked upon favorably by the
3 Board or by the Bench. Does that make sense?

4 MR. OVERMYER: Yeah, kind of like the
5 recross.

6 ALJ WILLIAMS: Right, exactly. You
7 shouldn't be sandbagging. If you have arguments you
8 want to make, they should come in on your initial
9 brief. Your reply brief is an opportunity to respond
10 to what you see in the other side's brief. Does that
11 help?

12 MS. PIRIK: It helps. It just doesn't
13 really answer what -- what kind of reply brief we
14 would be able to provide.

15 ALJ WILLIAMS: Probably not much of one.
16 To the extent if yours is the only brief that comes
17 in and a reply brief comes in responding to your
18 merit brief, obviously you are not going to have the
19 opportunity to file a surreply. If you feel that
20 briefing comes in that's not in response to your
21 briefing, we would certainly encourage the parties,
22 any of the parties, to file something on the docket
23 that lets the Bench be aware that certain portions of
24 that briefing either should not be considered or
25 should be considered in an unfavorable light in light

1 of the fact it was actually a delayed merit brief as
2 opposed to a reply brief.

3 MS. PIRIK: Thank you, your Honor.

4 ALJ WILLIAMS: You're welcome. Does that
5 make sense to the Intervenors as well?

6 Okay. So again, we're looking for a
7 reply brief is a reply to what's raised in the merit
8 brief.

9 Okay. Anything else?

10 ALJ SCHABO: Let's go off the record for
11 a moment.

12 (Discussion off the record.)

13 ALJ SCHABO: We're back on.

14 We took a brief moment there for me to
15 better understand the question that was posed. I
16 guess in response, Ms. Pirik, yes, there is some
17 leniency. If there were no initial briefs filed by
18 the Intervenors, I would suggest that you prepare for
19 that eventuality and maybe highlight a couple of the
20 topics that you believe they might raise so that you
21 can dig in a little deeper in your reply brief if you
22 deem that necessary.

23 MS. PIRIK: Thank you very much.

24 EXAMINER PARROT: Okay. With that
25 initial briefs due June 10, reply briefs due July 1.

1 Thank you very much. We are adjourned.

2 (Thereupon, at 10:07 a.m., the hearing
3 was adjourned.)

4 - - -

5 CERTIFICATE

6 I do hereby certify that the foregoing is
7 a true and correct transcript of the proceedings
8 taken by me in this matter on Wednesday, April 20,
9 2022, and carefully compared with my original
10 stenographic notes.

11

12

13 Karen Sue Gibson, Registered
14 Merit Reporter.

15 (KSG-7269)

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Case No(s). 21-0277-EL-BGN

Summary: Transcript April 20th 2022 In the Matter of the Application of Border Basin I, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Hancock County, Ohio. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.