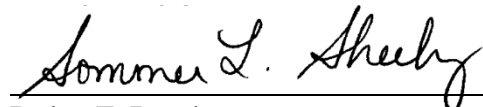


**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **South Branch**)
Solar, LLC for a Certificate of Environmental) Case No. 21-0669-EL-BGN
Compatibility and Public Need for a Solar Facility)
Located in Hancock County, Ohio.)

**REPLY BRIEF OF SOUTH BRANCH SOLAR, LLC
IN SUPPORT OF THE JOINT STIPULATION AND RECOMMENDATION AND
ISSUANCE OF THE CERTIFICATE**

Respectfully submitted on behalf of
SOUTH BRANCH SOLAR, LLC



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I. INTRODUCTION

As set forth in the Opening Briefs of South Branch Solar, LLC (“South Branch” or “Applicant”) and the Ohio Power Siting Board (“OPSB”) Staff (“Staff”), Applicant, Staff, the Ohio Farm Bureau Federation (“OFBF”), and the Board of County Commissioners of Hancock County (“Hancock County”) (together, the “Stipulating Parties”) recommend that the Board adopt the Stipulation filed on May 31, 2022 and issue a Certificate to South Branch, subject to the 50 conditions set forth in the Stipulation.¹

The single opposing intervenor, Travis Bohn, raised a number of issues in his Initial Post-Hearing Brief (“Mr. Bohn’s Brief” or “Bohn Br.”), but each and every one of these concerns is either hypothetical and without basis in record evidence, or is sufficiently addressed by the remainder of the statutory processes South Branch must follow and the Conditions to which South Branch has agreed to adhere in the Stipulation.

II. SUPPLEMENTAL PROCEDURAL HISTORY AND ISSUES

South Branch, Staff, and Mr. Bohn filed their opening briefs on August 5, 2022. As expected given its agreement to the Stipulation, Staff’s Opening Brief, like South Branch’s, supports a finding that South Branch has met all statutory criteria and that the Stipulation should be accepted and the Certificate granted to South Branch.

South Branch will, therefore, address the content of Mr. Bohn’s Brief below. One issue, however, bears noting at the outset. On August 26, 2022, South Branch filed a Motion to Strike Portions of Intervenor Travis Bohn’s Opening Brief. In short, the portions sought to be stricken—contained within pages 24 through 29 of Mr. Bohn’s Brief, contain improper “expert” evidence and analysis based upon the purported authority of that “expert” evidence. As Mr. Bohn identified

¹ Joint Exhibit (“Ex.”) 1 at 1; Opening Briefs of South Branch and Staff, filed August 5, 2022.

no expert witnesses—and none testified or were present at the Local Public Hearing or Evidentiary Hearing so that they could be cross-examined by any party—all such evidence and analysis relying upon it should be stricken from the record. As that Motion is pending as of the date of this Reply Brief, South Branch reserves the right to supplement its response if the subject material is not stricken.

III. THE BOARD SHOULD ADOPT THE STIPULATION AND GRANT SOUTH BRANCH'S CERTIFICATE.

Nothing in Mr. Bohn's Brief changes the fact that the Stipulation and the record strongly support the finding and determination by the Board that South Branch has met all of the criteria in R.C. 4906.10. Therefore, the Stipulation should be adopted, and a Certificate should be issued to South Branch. The Stipulating Parties have presented a negotiated and thorough Stipulation that is supported by the record. Again, of particular importance is Condition 1 in the Stipulation, which requires that the Applicant:

. . . shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report of Investigation.²

This Condition in the Stipulation includes extensive and significant commitments and conditions by which South Branch must monitor, construct, and operate the Project. In fact, throughout the Application, Modification, and Stipulation, South Branch made substantial commitments regarding all facets of the construction, operation, and maintenance of the Project, including many commitments specifically in response to input from local residents and local government officials.³ These commitments reflect minimum standards the Applicant will maintain and its attention to meeting key community concerns. For example, the final landscape and lighting plan that must be

²Joint Ex. 1 at 2, Condition 1.

³ Applicant ("App.") Ex. 1; Joint Ex. 1; App. Ex. 7 at 9-12, 15-17.

provided prior to construction cannot be any less than what is set forth in the Application and committed to by the Applicant through the Stipulation.⁴

There is a strong record, including the Stipulation's conditions, to support a finding by the Board that all of the requisite criteria set forth in R.C. 4906.10 have been met and that South Branch should be issued a Certificate.

A. The Stipulation and record support the Board's finding and determination that the Project complies with each applicable element of R.C. 4906.10, despite some reports and data being denoted as "preliminary." (Responsive to Bohn Brief at Section II)

The criteria for granting a certificate for construction, operation, and maintenance for a major utility facility is well established. The Ohio Supreme Court has held that "the board must determine [the] eight specific points" set forth in R.C. 4901.10(A)(1)-(8)."⁵

In his Brief, Mr. Bohn contends that South Branch "failed to provide and the evidentiary record lacks much of the information required by Ohio Adm.Code Chapter 4906-4" such that the Board cannot issue a certificate.⁶ Specifically, Mr. Bohn finds issue with the record containing a "preliminary" project plan and stormwater management report.⁷ He claims "the missing information is necessary to participate meaningfully in the process," and he "would be prejudiced by the Board's failure to comply with these rules."⁸

The Board has previously rejected similar arguments in the context of due process.⁹ In addressing this type of argument, the Board first ensures an intervenor had an opportunity to participate in the siting process.¹⁰ Here, South Branch's Application was deemed completed on

⁴ Joint Ex. 1 at 5, Condition 29.

⁵ *In re Application of Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 2012-Ohio-878, at ¶ 27 citing R.C. 4906.10(A).

⁶ Bohn Br. at 4.

⁷ Mr. Bohn claims that South Branch is "asking to proceed with Project construction without even having finalized plans for the Project layout and design and other mitigation plans." Bohn Brief at 3-4.

⁸ *Id.*

⁹ *In re Angelina Solar I, LLC* Case No. 18-1579-EL-BGN, Opinion, Order and Certificate (June 24, 2021) at 150.

¹⁰ *Id.*

September 20, 2021.¹¹ Mr. Bohn filed a petition to intervene on October 22, 2021, which was not opposed and was granted on January 7, 2022.

The Application (including Modification, filed on December 20, 2021), along with South Branch's nine sets of data request responses, were found to comply with O.A.C. Chapters 4906-01, *et seq.*¹² This 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 investigation of the Project.¹³ As shown in the Staff Report, subsequent investigations involved the review of additional information and resulted in recommendations regarding the Application's compliance with R.C. 4906.10(A).¹⁴

In *Angelina*, the Board explained that, during this review and assessment of the Project, all parties have 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.¹⁵

Mr. Bohn had all of these opportunities in this proceeding. Thus, a review of preliminary plans and submission of post-certificate plans “is not a violation of due process” and is consistent with *Buckeye Wind*, in which the Court also considered and deemed such plans acceptable.¹⁶

Additionally, and contrary to Mr. Bohn's contention, the public was included in both pre- and post-application activities via public information meetings, local hearings, and the ongoing

¹¹ See Letter of Compliance, filed September 20, 2021.

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ See Staff Report, filed on April 11, 2022, generally

¹⁵ *In re Angelina Solar I, LLC* at 150; *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

¹⁶ *In re Angelina Solar I, LLC* at 150.

ability to submit public comments.¹⁷ Moreover, members of the public, including Mr. Bohn, may continue to participate through the complaint resolution process outlined in—and enforceable through—Condition 46 of the Stipulation, as well as through the statutory safeguard of R.C. 4906.98 enforced through O.A.C. Chapter 4906-7.¹⁸

Furthermore, the Project is a proposal and still in progress; it is normal for final engineering and design plans not to be completed until post-adjudicatory hearing and post-certificate, as evidenced by several conditions in the Staff Report and Stipulation requiring later submission of and confirmation of final information.¹⁹ Mr. Bohn’s argument that the Application “lacks final design plans” is nonsensical, as this assertion would require the Board to only issue certificates for projects for which all final engineering and design studies for every aspect of the project are complete.²⁰ As the Board acknowledged in *Angelina*, “not only is this [requirement] unworkable,” it is “not required by law and would discourage investment in projects brought before the Board.”²¹ Thus, this argument has already been rejected by the Board and so should again be here.

B. The Stipulation and record support the Board’s finding and determination that the Project will serve the public interest, convenience, and necessity, in compliance with R.C. 4906.10(A)(6), notwithstanding Mr. Bohn’s argument regarding public opposition. (Responsive to Bohn Brief at Sections III and XI)

Nearly the entirety of Mr. Bohn’s argument that the Project does not serve the public interest, convenience, and necessity suggests the Board should take an impermissibly narrow view of the meaning of “public interest, convenience, and necessity” in this context. To the contrary, R.C. 4906.10(A)(6) requires Staff and the Board to view public interest through a broad lens and

¹⁷ See Public Comments, *generally*. South Branch held a public information meeting on June 24, 2021; a public hearing on April 27, 2022; and an evidentiary hearing on June 1, 2022. See Staff Report at 5; Public Hearing Transcript, filed May 5, 2022; Evidentiary Hearing Transcript filed, June 21, 2022.

¹⁸ *In re Angelina Solar I* at 151.

¹⁹ *Id.*; *In re Nestlewood Solar I LLC*, Case No 18-1546-EL-BGN, Opinion, Order and Certificate (Apr. 16, 2020) at 72, 96.).

²⁰ *In re Angelina Solar I* at 140-141.

²¹ *Id.*

balance the benefits. The Board has recently explained that “[t]o determine that projects serve the public interest, convenience, and necessity, that projected benefits of the projects should be balanced against the magnitude of potential negative impacts on the local community.”²²

In past cases, the Board has ruled that a project should be approved as long as its larger benefits to the state, the public, and the grid outweigh local disapproval, even in the event—not present here—that there are “thousands of comments from members of the general public, local organizations, and local officials” and opposing intervention from local governments.²³

While Mr. Bohn attempts to analogize this Project to the Republic Wind case for which the Board denied a Certificate, the projects and circumstances are dramatically different, and Mr. Bohn’s characterization is belied by facts in evidence. He states opposition has been “one-sided” and includes the Hancock County Commissioners among those opponents. In fact, as set forth in South Branch’s Opening Brief and as can be found in many public comments on the docket, there is broad support for the Project among residents, local economic development personnel and groups, and local business owners and union members. In fact, the Hancock County Commissioners have entered into the Stipulation recommending approval of the Project, as further discussed below.

Mr. Bohn states that “around 70% of witnesses going on record” at the Local Public Hearing were opposed to the Project. However, that figure (assuming for the sake of argument that it is correct), when used as “evidence” of the balance of support for or opposition to the Project, is misleading in a number of ways. First, opposition always turns out in greater numbers because the Project is its own key proponent; therefore, local public hearings are naturally and typically skewed

²² *In the Matter of the Application of American Transmission Systems, Inc. for a Certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Line in Mahoning County*, Case No. 19-1871-EL-BTX, Order (May 19, 2022) at ¶ 58.

²³ *In re Duke Energy Ohio, Inc.*, No. 16-253-GA-BTX, Order, Opinion, and Certificate, at 82-83 (November 21, 2019).

toward those wanting to be heard in opposition. Finally, the proponents of the Project at the Local Public Hearing tended to be representing large groups of people, and the opponents tended to be speaking from their own perspective. For example, Kip Siesel spoke on behalf of all members of his organization, the Operations Engineers Local Union 18, stating that the Project and projects like it would provide the membership “with numerous employment opportunities, in turn, high-paying wages, health care benefits, and apprenticeship programs can continue to grow because of the solar industry.”²⁴

Dan Schaeffer with the Findlay Hancock County Economic Development office spoke on behalf of the need for renewable energy in Ohio to meet end users’ sustainability goals, stating:

The State of Ohio has set a policy by the end of 2026, eight and a half percent power generated will be from renewable sources . . . Ohio has a policy of requiring renewable energy for many reasons. One is to reflect the policy of many energy users in our state. Locally, Marathon Petroleum, ValGroup, Ball Corporation, and Whirlpool have all implemented on-site wind energy to provide power to their facilities. In addition, companies have set interim policies for energy consumption. Whirlpool, net zero emissions by 2030. Volvo, net zero emissions by 2040. Honda, carbon neutrality by 2050. Proctor and Gamble, net zero by 2040. And many others have all set internal policies. South Branch and similar projects will provide opportunities for our large power users to meet their energy goals. South Branch is, therefore, a tool to retain our companies.²⁵

And Dominic Chamberlain spoke on behalf of the Project for the International Brotherhood of Electrical Workers, Local 8, whose many members benefit from good-paying local construction jobs. To that end, Mr. Chamberlain testified:

And these projects are our lifeblood. Working construction, which some folks call them temporary projects, are what we make our living on. We feed our families. We make our life work through temporary projects. Minimizing them say that they don’t last very long, I’ve got 27 years working these temporary projects feeding my family. This project here in

²⁴ Local Public Hearing Tr. at 35.

²⁵ *Id.* at 67-68.

Hancock County is an opportunity for our members to work close to home so we don't have to travel far away from their families.²⁶

Merely counting the individuals who testified in favor of the project would, therefore, significantly underestimate the total number of Project supporters and the breadth of Ohioans' positive interests in the Project.

Additionally, Mr. Bohn's characterization of the position of the Board of Commissioners of Hancock County is incorrect. In fact, other than intervening to participate in the proceedings, Hancock County has never taken an official action to oppose this Project. While it is unknown what remarks individual commissioners may have made, Hancock County's official actions are consistent with its approval of the Project with inclusion of conditions appropriate to serve local interests. To that end, Hancock County has approved the payment in lieu of taxes ("PILOT") payment associated with the Project.²⁷ And, while it passed a prospective exclusion zone under Senate Bill ("SB") 52, it clearly recognized in the course of doing so that this Project is grandfathered and would not be subject to the ban.²⁸ And most important, the County's counsel helped to negotiate—and then Hancock County agreed to—the Stipulation. The position of the County is clear on the record.

Likewise, the Staff Report provides that "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)," subject to the Conditions in the Staff Report. And Staff, too, approved the Stipulation.

²⁶ Local Public Hearing Tr. at 137.

²⁷ App. Ex. 7 at 8.

²⁸ This action was taken with a 2-1 vote of the Hancock County Commissioners, so Mr. Bohn's statement that "all" of the Commissioners oppose the Project is incorrect. See April 19, 2022 Hancock County Board of Commissioners Meeting Minutes, available at https://www.co.hancock.oh.us/docs/commissionerdatapreviewer/minutes/april-19-2022.pdf?sfvrsn=c1d43ac4_2. Mr. Bohn also states Washington Township is opposed to the Project; it is important to note that Washington Township never intervened in this proceeding and submitted no evidence at the adjudicatory hearing.

Indeed, no evidence was presented after the Staff Report to change this recommended outcome. In his Brief, Mr. Bohn raises several concerns (not necessarily evidence, often hypothetical concerns), all of which are either non-issues or addressed by the Conditions in the Stipulation. To that end, Mr. Bohn accuses South Branch of not engaging with the local community of Arcadia. The evidence, instead, is that South Branch attempted to engage Arcadia and got little or no return engagement. For example, South Branch held its public information meeting in Arcadia and offered a location within Arcadia to the Board for the Local Public Hearing, among other potential locations. Mr. Bohn criticizes South Branch for supporting and contributing to public programs such as Cops & Kids Go Shopping in Findlay, but fails to recognize South Branch was also attempting to engage and support Arcadia in similarly beneficial ways.²⁹ And all of this ignores the many, many personal visits, telephone calls, and texts South Branch had with residents of Arcadia, both in support of and in opposition to the Project.³⁰ What cannot be denied is the steady stream of revenue to Arcadia Schools, Washington Township, and Hancock County that will flow from the Project above and beyond any additional engagement or support.³¹

Finally, Mr. Bohn claims the Project is not in the public interest based upon the Project's allegedly "inexperienced" developer. Not only is this not a factor the Board is required to consider, but Mr. Bohn selectively ignores facts in the record that show the depth of experience of Mr. Kalbouss, South Branch, and its parent Leeward Renewable Energy ("LRE"). He points to Mr. Kalbouss' testimony that construction is completed on one of his projects in Ohio.³² He ignores both Mr. Kalbouss' stated portfolio of projects in other states and in other stages of development.³³

²⁹ Bohn Br. at 7.

³⁰ Tr. at 30-31, 44-45; App. Ex. 7 at 9-12, 15-16.

³¹ App. Ex. 1, Original Application at Appendix I; Modification at Updated Appendix I at 2; App. Ex. 7 at 8; Local Public Hearing Tr. at 42.

³² Bohn Br. at 36.

³³ Tr. at 42-43; App. Ex. 7 at 1 and Attachment RK-1.

And more important, he ignores that Mr. Kalbouss is one employee on the Project's team assembled by South Branch's parent, LRE, and is supported by LRE's full development, construction, and operational team. As set forth in the Application and on its website, LRE is a longstanding renewable energy company that owns and operates a portfolio of 24 renewable energy facilities across 9 states, totaling more than 2,500 MW of installed capacity. In Ohio, LRE has a 108 MW solar project certificated and a 196 MW solar facility in construction. And it is actively developing new wind, solar, and energy storage projects in energy markets across with United States, with about 20 GW of capacity under development corresponding to over 100 projects. With projects currently under construction and soon to commence construction, LRE expects to commercialize over 1,000 MW of renewable energy in the next 2 years.³⁴ And this experience does not include the decades of experience that LRE and South Branch brought to bear on development of the Project and the Application through its many expert consultants.³⁵ South Branch and LRE are factually not inexperienced, and their depth of experience only further supports the public interest.

Critically, viewed through the required "broad lens," none of these concerns refute the many significant and important benefits to the local, county, and state communities that South Branch set forth in its Application, Modification, and the evidence at the hearing.

C. The Stipulation and record support the Board's finding and determination that the Project serves the public convenience and necessity under R.C. 4906.10(A)(6), notwithstanding Mr. Bohn's argument that the Project conflicts with the objectives of local land use planning codes and the Project

³⁴ App. Ex. 1, Original Application at ES-1 (numbers have increased since provided at the time of the Original Application; *see also* <https://www.leewardenergy.com/our-company/>).

³⁵ App. Ex. 7 at 4-6.

will temporarily take the Project Area out of food production. (Responsive to Bohn Brief at Sections IV and V)

Mr. Bohn characterizes the Project as anti-agriculture and ignores the many facts in the record showing that the Project is a benign use of the land that is well within the participating landowners' rights to conduct on their property, for the benefit of their families and their community.

Among the many facts in evidence and set forth in more detail in the Application, Modification, and South Branch's Opening Brief are the following. First, participation by signing an agreement with South Branch for the use of the land for the Project Area was an entirely voluntary transaction by individual landowners. To this end, Mr. Cunningham—one of the participating landowners—testified:

This is our family's land. The Project is being developed responsibly, and we have a right to use our land as we see fit. Many of the commentators and participants at the local public hearing acted as if my land is theirs and the solar project is taking it away. In fact, some of the opponents either previously owned some of the land or farmed this land that is included in this Project. Those individuals made a decision to sell or no longer farm the land as a personal choice. Each of these opponents made a personal decision to move on from the property, and I believe our family has the same right to make that personal decision.³⁶

Additionally, while approximately 490.6 acres would not be used for food production during the operation of the Project, that acreage represents only a small fraction—0.2%—of agricultural land under cultivation in the county.³⁷ Instead, during the Project's life, the land will be used not only for essential energy production, but will also be used to provide beneficial pollinator habitat and ground stabilization in areas Mr. Bohn and other neighbors have indicated are prone to flooding.³⁸

³⁶ App. Ex. 8 at 3.

³⁷ Hancock County Agricultural Census 2017 (240,107 acres).

³⁸ App. Ex. 10 at 3-5; App. Ex. 1, Modification at Updated Appendix E.

Mr. Bohn's statements also ignore the importance to farmers of diversifying their income streams. Solar revenue can allow an individual farmer to supplement agricultural income and increase the sustainability of the overall farming operation.³⁹

Finally, OFBF intervened and represents the interests of Ohio's agricultural community in this proceeding. OFBF was involved in negotiating certain Conditions in the Stipulation specifically intended to protect current surrounding agricultural uses and future use of the Project Area for agriculture, if desired following decommissioning. There is significant evidence in the record that refutes Mr. Bohn's claim of adverse agricultural impacts.

D. The Stipulation and record support the Board's finding and determination that the Project has provided necessary information under O.A.C. 4906-4-06(E)(4) and that the Project complies with R.C. 4906.10(A)(6) relative to potential economic impacts. (Responsive to Bohn Brief at Section VI))

The most prominent feature of this section of Mr. Bohn's Brief is the complete lack of evidence supporting what can only be called hypothetical theories of speculative adverse economic impacts. Without evidence, this section cannot impact the overwhelming evidence in the record showing the many positive economic impacts of the Project.

For example, the Project has provided unrefuted specific statistics in terms of jobs created, both during construction and long-term operational jobs.⁴⁰ Mr. Bohn hypothesizes—but offers no evidence—that there could be other jobs (he does not say which other than agricultural) lost, resulting in possible net job loss. Given the current private ownership and use of the agricultural land in question and the extremely small percentage of agricultural land temporarily used for the Project, such a result would be surprising.

³⁹ See Public Comment of James and Carole Gano, filed March 31, 2022.

⁴⁰ App. Ex. 1, Modification at 18-19 and Updated Appendix I; App. Ex. 7 at 6-8.

Further, without any evidence, Mr. Bohn hypothesizes that the presence of the Project will limit Arcadia's growth to the north. Not only does the active rail line extend between the Project Area and Arcadia, providing a natural barrier, there no record evidence of such a limitation or any known plan for growth in that direction.⁴¹

Finally, Mr. Bohn, without basis, minimizes the very real construction jobs created by the Project by focusing on the relatively low number of long-term operational jobs. But, as described above, that is not how Ohio's workers employed in these professions feel about this opportunity.

E. The Stipulation and record support the Board's finding and determination that the Project will provide adequate setbacks to minimize the Project's adverse environmental impact under R.C. 4906.10(A)(3). (Responsive to Bohn Brief at Section VII)

Mr. Bohn's claim that the proposed setbacks in the Application "are so minimal as to offer no meaningful isolation from the Project's harmful impacts" is baseless, and is really a repackaged argument relative to the potential noise and visual impacts of the Project.⁴² In granting a certificate, the Board must find and determine, based on the evidentiary record, that "the facility represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations."⁴³ The Board, however, is not required to find and determine that adverse impacts do not exist.⁴⁴

Based on the proposed setbacks from a public road and nonparticipating receptors, Mr. Bohn concludes that, "many neighbors will be constantly exposed to unwanted and unpleasant views from their yards and houses for at least 35 years."⁴⁵ Mr. Bohn makes this bold assertion without citing to any evidence in the record. In fact, the evidentiary record supports a finding that

⁴¹ App. Ex. 1, Modification at Updated Figure 02-1.

⁴² Bohn Br. at 14.

⁴³ R.C. 4906.10(A)(3).

⁴⁴ R.C. 4906.10(A)(3); *In re Angelina Solar I* at 98.

⁴⁵ Bohn Br. at 15.

the neighbors will experience minimal visual impacts.⁴⁶ South Branch will implement landscaping in strategic locations to offset visual impacts for local viewers from individual non-participating residences and travelers along local roadways.⁴⁷ Additionally, the use of fencing compatible with the agricultural character of the surrounding area and the implementation of a landscaping plan will provide for softening of the horizontal lines to lessen potential impacts associated with near-foreground views.⁴⁸

Moreover, there is no evidence in the record to support Mr. Bohn's claim that South Branch's "proposed noise levels associated with Project construction and operation could cause extreme health and wellbeing consequences for the Project's neighbors."⁴⁹ There is, however, evidence in the record indicating, "the adverse impact of construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours."⁵⁰ Furthermore, South Branch is committed to using mitigation practices such as limiting construction activities to daylight hours, keeping equipment in good working condition and establishing a complaint resolution process.⁵¹ With regard to operational noise, solar facilities are extremely quiet, and this Project is no different, as it will produce operational sound that is less than 5 A-weighted decibels ("dBA") over the ambient sound level and will be monitored for deviations.⁵²

⁴⁶ App. Ex. 1, Modification at Updated Appendix R at 11.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Bohn Brief at 15.

⁵⁰ Staff Report at 13; App. Ex. 1, Modification at Updated Appendix N at 6.

⁵¹ Staff Report at 13; Joint Ex. 1 at 9, Condition 40; App. Ex. 1, Modification at Updated Appendix N at 6.

⁵² App. Ex. 1, Modification at Updated Appendix N at Table 4; Joint Ex. 1 at 8, Condition 44. In fact, multiple tested locations demonstrated no anticipated operational sound increase over the ambient level, and no tested locations were predicted to produce sound more than 1 decibel over the ambient level. App. Ex. 1 at Updated Appendix 4 at 11 and Table 4.

Last, Mr. Bohn’s contention that the Board must apply the common usage meaning of “minimal” when determining compliance to R.C. 4906.10(A)(3) is an absurd attempt to constrain the Board’s discretion as the trier of fact.⁵³ The Board is required to review the record as a whole in finding minimal adverse environmental impacts.⁵⁴ The Ohio Supreme Court has stated 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.’”⁵⁵ Thus, Mr. Bohn’s unsolicited reinterpretation of R.C. 4906.10(A)(3) is unnecessary.

As the Board found in *Angelina* and *Nestlewood*, the evidentiary record supports a finding that the setbacks required in the Application and Joint Stipulation and Recommendation are sufficient and reasonable.⁵⁶

F. The Stipulation and record support the Board’s finding and determination that the Project provided the information required by O.A.C. 4906-4-08(B) and R.C. 4906.10(A)(2) and (3) concerning potential impacts to wildlife. (Responsive to Bohn Brief at Section VIII)

Mr. Bohn’s Brief selectively lists some of the requirements in the rules for evaluating ecological resources. Based upon the voluminous information and studies submitted by Applicant, each of the statutory requirements have been met in a manner that allows the Board to appropriately understand Project Area characteristics and potential impacts. The adequacy of the information provided is also reflected in the determination of completeness dated September 20, 2021, in which

⁵³ Bohn Br. at 16.

⁵⁴ R.C. 4906.10(A)(3).

⁵⁵ *In re Angelina* at 90, citing *In re Application of Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 30.

⁵⁶ In *Angelina*, the Board found despite [Intervenor’s] protestations, *Angelina* has committed in the Amended Joint Stipulation to provide screening for all non-participating parcels containing a residence with a direct line of sight to the Project Area for the entire lifetime of the Project.” *In re Angelina* at 18. In *Nestlewood*, the Board found that “due to the potential impacts on non-participating residences surrounding the facility, Staff recommends that *Nestlewood* incorporate a landscape and aesthetics plan to reduce impacts in areas where an adjacent nonparticipating parcel contains a residence with a direct line of sight to the Project area.” *In re Nestlewood Solar I LLC*, at 10.

no areas for additional information relating to ecology were identified by Staff.⁵⁷ The level of information provided and the conclusions are consistent with the active agricultural row-crop habitat that extends through all but the limited wooded portions of the Project Area. As noted by Lynn Gresock: “after construction, the Project Area will be stabilized with permanent vegetation – an improvement from row crops – which will provide potential foraging habitat for area birds and wildlife.”⁵⁸

Applicant specifically addressed the ecological requirements in O.A.C. 4906-4-08(B)(1), as re-summarized here. First, 4906-4-08(B)(1)(a) provides that that Applicant shall provide the following:

- (a) Provide a map of at least 1:24,000 scale containing a one half-mile radius from the project area, showing the following:*
 - (i) The proposed facility and project area boundary.*
 - (ii) Undeveloped or abandoned land such as wood lots or vacant tracts of land subject to past or present surface mining activities, not used as a registered game preserve or in agricultural production.*
 - (iii) Wildlife areas, nature preserves, and other conservation areas.*
 - (iv) Surface bodies of water, including wetlands, ditches, streams, lakes, reservoirs, and ponds.*
 - (v) Highly-erodible soils and slopes of twelve percent or greater.*

This information was provided in Figure 08-7 in the Original Application, indicating that the Project Area and surroundings predominantly consist of open, agricultural land with small tree areas, with the exception of the Village of Arcadia to the south.⁵⁹ No wildlife areas, natural preserves, or other conservation areas were identified within the mapped area. Water and wetlands

⁵⁷ See September 20, 2021 letter from Theresa White to Dylan Borchers, filed the same day, advising that South Branch’s application and data requests to date were found to comply with O.A.C. 4906-01, *et seq.*

⁵⁸ App. Ex. 11 at 10.

⁵⁹ App. Ex. 1 at Figure 08-7.

information indicated that wetland resources appear limited, while several streams extend through the area.⁶⁰ Mapping indications that areas of steep slopes appear limited to locations proximate to streams and to the existing railroad.⁶¹ Based on this mapping, limited sensitive ecological resources were identified within and near the Project Area, consistent with its predominant use for active row-crop agriculture.⁶²

O.A.C. 4906-4-08(B)(1)(b) requires Applicant to:

(b) Provide the results of a field survey of the vegetation and surface waters within one-hundred feet of the potential construction impact area of the facility. The survey should include a description of the vegetative communities, and delineations of wetlands and streams. Provide a map of at least 1:12,000 scale showing all delineated resources.

This information was presented based on field reconnaissance completed during the time of the wetland and stream delineation effort. Vegetation is described both in Table 08-4 of the Application and the related narrative and in the Wetland and Stream Delineation Report.⁶³ The field delineation confirmed that the Project Area, with the exception of wooded areas and the streams, is in active use for row crop agriculture. Wetlands and streams were formally delineated in accordance with applicable guidance, and mapping was provided in the Wetland and Stream Delineation Report and in Figure 08-8.⁶⁴ The limited wetland and stream resources depicted there were even further reduced when the Project Area was modified such that only one wetland and three stream segments remained within the Project Area.⁶⁵ No impacts are proposed to the wetland, and impact to the stream segments will be avoided through the use of horizontal directional drilling or similar techniques.

⁶⁰ App. Ex. 1, Original Application at Figure 08-8.

⁶¹ *Id.* at Figure 08-7.

⁶² App. Ex. 1, Original Application at Figure 08-9.

⁶³ App. Ex. 1, Original Application at Table 08-4 and Appendix O.

⁶⁴ App. Ex. 1, Original Application at Figure 08-8 and Appendix O.

⁶⁵ App. Ex. 1, Modification at 5 and Updated Figure 08-9,

O.A.C. 4906-4-08(B)(1)(c) requires Applicant to:

(c) 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.

Consultation, and follow-up where necessary, was undertaken with both the USFWS and ODNR to determine the need for consideration of specific species. As summarized in Gresock testimony (A8) the Project will restrict the 2 acres of tree clearing to avoid the summer roosting season for protected bat species. No other species were identified for which additional surveys were recommended or that would require special measures to avoid species impact.⁶⁶

Given the private ownership and active agricultural nature of the Project Area, particularly with its use for row crops, commercial and recreational species were not considered to be either publicly accessible or likely to be meaningfully present. For example, while hunting could occur for common species such as squirrels or deer, the Project Area is owned privately and would not be accessible for public use in this way, even if such use would be prudent. Because the closest wildlife area set aside for hunting is approximately 5 miles away, its review was not considered relevant for this location. As has been concluded by every other review of similar projects proposed on agricultural properties, the fact that the Project has been sited within an existing agricultural monoculture results in impact to habitat with low ecological value and diversity. With the Project in place, its vegetation, including pollinator-friendly species, will increase the diversity of plants and provide for enhanced potential for wildlife usage.

O.A.C. 4906-4-08(B)(1)(d) requires Applicant to:

(d) Conduct and provide the results of field surveys of the plant and animal species identified in the literature survey.

⁶⁶ App. Ex. 9 at 7-9.

Observations gathered during the field reconnaissance conducted for wetland and stream delineation included compiling lists of field-observed vegetation (Table 08-4) and wildlife species (Table 08-5). The animals observed were those physically observed or for which sign was identified. Animal species would be expected to move throughout the area, and therefore, any field listing of observed animal species would be considered representative rather than definitive. The representative information confirmed the Project Area's use as active row-crop agriculture and noted that common species of birds, mammals, and amphibians were apparent, indicating the habitat as typical for this type of agricultural field area in Ohio.

Finally, O.A.C. 4906-4-08(B)(1)(e) requires Applicant to:

(e) Provide a summary of any additional studies which have been made by or for the applicant addressing the ecological impact of the proposed facility

Given the active use of the Project Area for row-crop agriculture, which is considered to have a relatively low potential for species diversity, and the lack of a recommendation for additional studies from either the USFWS or ODNR, no additional studies were deemed necessary.

With the information provided and given the nature of the Project Area, the Board has fully adequate information upon which to consider impacts with regard to ecology.

Additionally, Mr. Bohn devotes much space in his brief to photographs purporting to show the presence of eagles in or near the Project Area.⁶⁷ His brief notes that the presence of bald eagles was not referenced in the species literature survey documented for the Project. As noted above, the representative list of observed species was not intended to be all-encompassing; it simply reflects that this particular species (nor their nesting, which was considered during the field effort) was not observed at the time of the field efforts. The professional completing the field survey did observe that no eagle nests were present and that suitable habitat for nesting did not appear to be available

⁶⁷ Bohn Br. at 17-23.

at the Project Area. Eagles do travel considerable distances from their nests, hunting for prey that would include fish, birds, reptiles, amphibians, small mammals, and carrion, including roadkill. As noted in Ms. Gresock's testimony, bald eagles have become more common throughout Ohio, and have the possibility to traverse the vicinity of the Project Area in search of prey.⁶⁸ However, it is noteworthy that neither USFWS nor ODNR identified bald eagles as a particular species of interest and did not indicate that the Project Area was in proximity to known eagle nesting (although this issue has been tracked closely by ODNR). Where protection of bald eagles is meaningful to be implemented, it is typically focused on maintaining appropriate distances (660 feet) from active nests during the nesting season. Should bald eagles traverse the vicinity of the Project Area, the Project is not expected to adversely change that use.

G. The Stipulation and record support the Board's finding and determination that the Project will not cause noise that is either "miserable" or "unsafe," in compliance with R.C. 4906.10(A)(6). (Responsive to Bohn Brief at Section IX)

This section of Mr. Bohn's Brief provides a discussion of articles sponsored by persons who were not witnesses in the case, and that were not submitted as evidence or subject to review or cross-examination. As such, the content of the articles and analysis and discussion relying upon them as authoritative should be stricken from the record, as set forth in South Branch's pending motion. As it is, they can only be called hypothetical theories about sound levels. Without evidence, this discussion cannot impact the overwhelming evidence in the record that construction and operational sound levels of the Project will be appropriately controlled and managed.

Notably, the vast majority, if not all, of the concerns Mr. Bohn raised in his Brief (including the concerns of Megan Grau, which were incorporated in Mr. Bohn's Brief) regarding possible sound impacts of the Project pertain to construction, rather than operation. There is evidence in

⁶⁸ App. Ex. 9 at 7-9.

the record that operational noise will be minimal. Mr. Bohn's claims must be considered in the context that construction noise is temporary, intermittent, and significantly restricted in terms of the days of the time and times of day during which such work can be conducted.

Specifically, the Application provides that the anticipated length of construction will be approximately 15 months (not 18 as incorrectly stated at the adjudicatory hearing).⁶⁹ The Stipulation provides limited days and hours during which construction may be conducted, restricting such activities as follows:

General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 6:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., the Applicant shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm. Code 4906-3-03(B)(2) of upcoming construction activities including the potential for nighttime construction.

As with all construction and as recognized in Stipulation Condition 40, some activities produce more sounds than others. To that end, Mr. Bohn has overstated and failed to take into consideration mitigating factors set forth in South Branch's Noise Evaluation and in the testimony of Alex Odom, South Branch's sound expert.⁷⁰ For example,

- Failure to account for dissipation of noise over distance. While a conservative estimate of outdoor sound associated with that period is provided in Table 6 of the noise report

⁶⁹ App. Ex. 1, Modification at 17.

⁷⁰ App. Ex. 1, Modification at Updated Appendix N; App. Ex. 11.

for the closest possible distance per construction phase (not accounting for such factors as ground absorption, atmospheric attenuation, or natural barriers), Tables 6 and 7 of the report also clearly shows the effect of distance in reducing sound experienced at a given receiver. As noted below, each given phase of activity will only occur over a discrete subset of time in a given area.

- Failure to account for limited time during which the specific construction noise phases will be experienced. Project construction, which will comply with the time-of-day restrictions reflected in Stipulated Condition 40, has been identified in the Modification as extending for approximately 15 months. Over the course of this period, various phases of construction activity will occur, moving through the Project Area to address all locations. The phases reflected in the noise report begin with grading and site preparation, followed by installation of the array foundations, solar panel assembly, inverter pad/substation construction, and various commissioning and finishing tasks. Of the required work, the array foundation installation, which will follow the initial grading, includes the loudest activities, associated with installing the supporting piles. This work will occur only for a limited portion of the construction period, and will be completed in certain areas and then move into other areas until the necessary supports are installed.
- Failure to account for less sound when indoors. As noted in the hearing testimony by Alex Odom, the estimates provided represent outdoor sounds, and interior sound levels would be different. The amount of reduction would vary depending upon the type of windows in the residence and whether the windows were open or closed. While industry reports reflect greater decreases in some instances, a reduction of

approximately 20 dBA would be expected for windows that are closed, 15 dBA for partially open windows, and 10 dBA for open windows. Planning indoor activities on the limited days when construction sound would be in proximity will, therefore, considerably reduce the potential for impact.

- Failure to account for construction communication and planning. Mr. Bohn’s concerns fail to reflect the fact that the Applicant is willing to work with individuals in the Project’s surroundings toward optimizing timing of nearby construction to the greatest extent possible. At a minimum, notifications regarding work would be made such that residents could better understand the likely timing and duration of specific construction efforts that could result in short-term disruptions of daytime activities.⁷¹

In addition to Mr. Bohn’s specific concerns, references are made in the Brief to several other parties or locations. Of these, several – the Pamela Young residence (over .5 miles away), the two closest recreational areas (0.46 and 0.74 miles away), the nearest school (0.75 miles away, but even if it is assumed to be 0.5 miles) – are at distances from the Project such that operational sound from the Project would be 30 dBA or less, and construction noise would be even quieter than the quietest level reflected in Table 6 of the Noise Assessment.⁷²

Although Mr. Bohn alleges unfounded “ominous ramifications” to the residences within 250 feet, the residences closest to the Project Area were specifically evaluated to identify the operational sound level projected to be experienced, and in no instance was the sound level greater than 1 decibel over existing conditions.⁷³ As noted in the Noise Assessment, potential receivers farther from the modeled locations will experience even lower Project-related sound levels.

⁷¹ App. Ex. 1, Original Application at Appendix N, Modification at Updated Exhibit N; Joint Ex. 1 at 7, Condition 40.

⁷² App. Ex. 1 at Updated Appendix N at Updated Table 6.

⁷³ App. Ex. 1, Modification at Updated Appendix N at Table 4.

During construction, the factors noted above are important to understanding the short-term construction sound levels reflected in Table 6 of the Noise Assessment.

Regarding the alleged effect on the bison associated with “low level but constant noise,” all of the fields are at sound levels similar to the nearer residences evaluated in that location, and reflect operational impacts that are very similar to existing conditions. The bison experience the regular sound of trains traveling on the nearby rail line and farm equipment, as Ms. Grau testified: “They are familiar with the trains we have go by the farm, and with the tractors we run on the farm. Yes those are loud noises, but not constant.”⁷⁴ Those noises would be similar to the more intermittent, temporary sounds anticipated during the short-term construction period. Testimony offered regarding the use of fields associated with the bison farm indicates that the herd can be readily moved into pastures located farther from the roads (indicating that they “keep the bison back from the road during mating and calving season”), which could also be done during periods when louder construction sound is in greater proximity.⁷⁵ The same mitigating aspects of construction sound levels as noted above would apply for this land use as for others in the local community.

Finally, Mr. Bohn offered testimony that his son is experiencing and seeking treatment for hearing issues at Nationwide Children’s Hospital in Columbus, Ohio.⁷⁶ Mr. Bohn expressed concern that increased noise levels could adversely affect his son more seriously than others. In support of this concern, he recited and relied upon above-referenced impermissible sound “studies” taken from articles that do not form proper expert evidence in this proceeding.⁷⁷ Again, all recitation of, reference to, and reliance on these “studies” must be stricken as hearsay and

⁷⁴ Bohn Ex. 2. at 3.

⁷⁵ Tr. at 111 and Bohn Ex. 2A.

⁷⁶ Bohn Br. at 26.

⁷⁷ Bohn Br. at 24-29.

improper expert testimony that was not subject to cross-examination by Staff or South Branch. Nonetheless, South Branch does not wish to create any additional obstacles for Mr. Bohn's son and remains willing to engage in discussions with him regarding any specific needs his son may have.⁷⁸ As it is, though, there is no evidence in the record that either the construction or operational sounds from the Project will adversely affect health, including the health of Mr. Bohn's son.

H. The Board has Adequate Evidence to Find and Determine that the Project will Comply with the requirements of R.C. 4906.10(A)(2) and (3) as it relates to the Project's drainage impacts and associated mitigation to prevent flooding. (Responsive to Bohn Brief at Section X)

South Branch has invested significant resources to identify and avoid existing drain tile in the Project Area.⁷⁹ While Mr. Bohn admits "the Project area is prone to flooding," he fails to cite to any technical evidence indicating that "the Project's design and construction will increase the runoff of stormwater or prospects of flooding by altering the terrain."⁸⁰

From a technical prospective, South Branch is fully aware that a portion of the land near the Project Area contains drainage tile.⁸¹ As such, South Branch developed a drainage tile mitigation plan ("Mitigation Plan") to avoid adverse impacts to existing tile during construction.⁸² In addition, South Branch hired consultant, Boes Quality Drainage, to help identify existing drain tile.⁸³ Mapping of existing drain tile was developed based on expertise from Boes Quality Drainage, coordination with county engineer, desktop aerial photography, and coordination with landowners.⁸⁴

⁷⁸ Tr. at 33-34, 90-91

⁷⁹ Tr. at 34, Application Modification, Appendix F at 2; *see* Joint Ex. 1 at 9, Condition 45.

⁸⁰ Bohn Br. at 30.

⁸¹ Tr. at 32.

⁸² App. Ex. 1, Modification at Updated Appendix F at 1.

⁸³ Tr. at 43, 51; App. Ex. 1, Modification at Updated Appendix F at 1.

⁸⁴ App. Ex. 1, Modification at Updated Appendix F at 1.

South Branch is committed to implementing avoidance measures prior to construction and avoid drain tile “to the greatest extent possible.”⁸⁵ Avoidance measures include implementing a 50 foot no-build corridor (25 feet of centerline) to protect the outlets and two sanitary lines during construction.⁸⁶

The Mitigation Plan also addresses Mr. Bohn’s concern that tiles can be damaged by heavy equipment during construction.⁸⁷ Included in the Mitigation Plan are techniques South Branch is committed to using to identify damaged drain tile during construction.⁸⁸ The mitigation plan provides protocols that will be implemented if broken drain tile is identified.⁸⁹ Furthermore, all repairs will be completed by a qualified contractor.⁹⁰ Moreover, the additional requirements in proposed Condition 45 of the Stipulation are designed to ensure, amongst other things, coordination with county engineer and the county soil and water conservation district and prompt repair of damaged tiles.⁹¹ Finally, South Branch is committed to addressing landowner concerns regarding drain tile repair and maintenance.⁹² Thus, Mr. Bohn’s claim that South Branch “has done virtually nothing to analyze the prospect of flooding inside and near the Project area” is not reflective of the evidentiary record.⁹³ South Branch has provided adequate evidence for the Board to find and determine that the Project will comply with the requirements of R.C. 4906.10(A)(2) and (3).

⁸⁵ Tr. at 34; App. Ex. 1, Modification at Updated Appendix F at 2.

⁸⁶ Tr. at 33; App. Ex. 1, Modification at Updated Appendix F at 2.

⁸⁷ Bohn Br. at 31.

⁸⁸ App. Ex. 1, Modification at Updated Appendix F at 2

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Joint Ex. 1 at 9, Condition 45

⁹² *Id.*

⁹³ Bohn Br. at 36.

On the contrary, South Branch's Stormwater Management Report specifically considered the area and concluded that the Project will have no adverse impact in terms of runoff or flooding.⁹⁴ In fact, perennial vegetation with deeper root systems year-round will be planted beneath the solar panels will provide better groundcover, keep soil in place more effectively, and if anything, to abate runoff and flooding.⁹⁵

IV. THE STIPULATION SATISFIES ALL 3 PARTS OF THE TEST USED BY THE BOARD FOR REVIEW AND CONSIDERATION OF STIPULATIONS. (Responsive to Bohn Brief at Section XI)

Mr. Bohn sets forth and accepts the applicability of the 3-part test used by the Board to review and consider stipulations, as follows:

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

O.A.C. 4906-2-24; *see also In re the Application of Am. Transmission Sys., Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re the Application of Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re the Application of AEP Transmission Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re the Application of Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN (Sept. 16, 2021); *In re the Application of Clearview Solar, LLC*, Case No. 20-1362-EL-BGN (Oct. 21, 2021); *In re the Application of Marion County Solar Project, LLC*, Case No. 21-36-EL-BGN (Nov. 18, 2021).

Mr. Bohn then argues the Stipulation meets none of the 3 parts of the test. As an initial matter, Mr. Bohn admitted refusing to participate in the negotiations and discussions resulting in

⁹⁴ App. Ex. 1 at Appendix E and Updated Appendix E at 11.

⁹⁵ App. Ex. 10 at 3-5.

the Stipulation among the Stipulating Parties, including failing even to respond to invitations to do so from both counsel for Application and counsel for Staff.⁹⁶ As such, any argument that he or Ms. Deuble were excluded must be rejected as patently false.⁹⁷ Additionally, their failure to participate also means they have no knowledge of the process undertaken among the parties who did participate.

The basis for Mr. Bohn's arguments that the Stipulation fails parts 2 and 3 of the test are duplicative of his arguments that the Project is not in the public interest and that South Branch has failed to meet the statutory criteria for certification of the Project. To avoid duplication here, see *infra*, above discussion establishing that the Project is in the public interest and that South Branch has met all criteria for Board approval of the Stipulation and issuance of the Certificate.

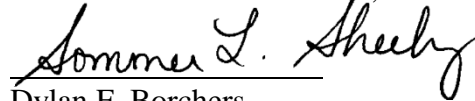
⁹⁶ Tr. at 89-91.

⁹⁷ Bohn Br. at 27-29.

CONCLUSION

As set forth herein and in South Branch's and Staff's Opening Briefs, each of the criteria in R.C. 4906.10 have been addressed and met by the Applicant and the Stipulating Parties in the Stipulation. In addition, all three prongs of the test used by the Board in considering a stipulation have been met. Therefore, for the foregoing reasons, the Board should adopt the Stipulation without modification and issue a Certificate to South Branch.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served by both the Ohio Power Siting Board's e-filing system and electronic mail this 26th day of August, 2022 upon the following:

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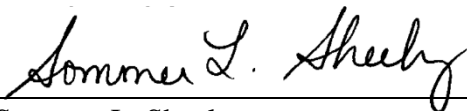
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A handwritten signature in black ink, reading "Sommer L. Sheely", written over a horizontal line.

Sommer L. Sheely

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Summary: Text Reply Brief of South Branch Solar, LLC electronically filed by
Teresa Orahod on behalf of Sommer Sheely