

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
DODSON CREEK SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.**

CASE NO. 20-1814-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on September 15, 2022

I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to Dodson Creek Solar, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate.

II. PROCEDURAL BACKGROUND

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

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

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

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies were required to implement procedures consistent with recommendations from the Ohio Department of Health to prevent or alleviate the public health threat associated with

COVID-19. Additionally, all citizens were urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety.

{¶ 6} On December 24, 2020, Dodson filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) and requested expedited treatment of the waiver. Specifically, Dodson sought to allow for the required public information meeting to be conducted via a multi-prong approach, in which Dodson held a web-based virtual public information meeting, a separate phone-based meeting, and made company representatives available for one-on-one discussion for those unable to attend other options. The motion was granted pursuant to the administrative law judge (ALJ) Entry of January 8, 2021.

{¶ 7} On April 8, 2021, Dodson filed a pre-application notification letter with the Board regarding a proposed 117 megawatt (MW) solar-powered electric generation facility in Highland County, Ohio (Facility or Project). Due to restrictions in place during the COVID-19 emergency, Dodson met the public information meeting requirement of Ohio Adm.Code 4906-3-03(B) by holding the public information meetings as outlined in its motion for limited waiver and conducting the web-based and phone-based meetings on April 28, 2021.

{¶ 8} On April 23, 2021, Dodson filed proof of its compliance with Ohio Adm.Code 4906-3-03(B), requiring notice of the public information meeting be sent to each property owner and affected tenant and published in a newspaper of general circulation in the Project area.

{¶ 9} On May 27, 2021, as supplemented on June 29, 2021, Dodson filed its application with the Board. In conjunction with its application, Applicant filed a motion for protective order to keep portions of its application confidential, as well as a motion seeking waivers of certain Board rules contained within the Ohio Administrative Code. On June 29, 2021, Board Staff (Staff) filed correspondence that it did not oppose the motion for waiver or the motion for a protective order.

{¶ 10} On July 15, 2021, Dodson filed a second motion for protective order in which it sought to keep the Phase I Archaeological Reconnaissance Report confidential. On August 11, 2021, Staff indicated that it did not oppose this second motion for protective order.

{¶ 11} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chairman of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated July 23, 2021, the Board notified Dodson that its application, as supplemented, was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's July 23, 2021 letter directed Dodson to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Dodson to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 12} On July 29, 2021, Dodson filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. On the same date, Dodson filed proof of its application fee payment.

{¶ 13} By Entry dated August 20, 2021, the ALJ established the effective date of the application as August 20, 2021. The Entry also set forth a procedural schedule directing Staff to file a Report of Investigation by October 22, 2021, scheduling a public hearing for November 10, 2021, and setting an adjudicatory hearing for December 1, 2021. The ALJ further directed Dodson to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 indicating that petitions to intervene would be accepted by the Board up to 30 days following service of the notice. Finally, the Entry provided deadlines for all parties to file testimony, as well as for the filing of any stipulation, and indicated that the public and adjudicatory hearings would both be held using remote access technology that facilitates participation by telephone and/or live video on the internet.

{¶ 14} On August 23, 2021, Robert and Laurie Banks (Banks Petitioners) filed a petition for leave to intervene in the case.

{¶ 15} On September 2, 2021, the Board of Trustees of Hamer Township, Highland County, Ohio (Hamer Board of Trustees) filed a notice of intervention in the case.

{¶ 16} On September 3, 2021, Dodson filed its proof of first publication and proof of service of the procedural schedule and accepted, complete application.

{¶ 17} By Entry issued September 14, 2021, the ALJ granted intervenor status to the Banks Petitioners and the Hamer Board of Trustees. This Entry also granted Dodson's motion for waivers; granted, in part, and denied, in part, Dodson's May 27, 2021 motion for protective order; and granted Dodson's July 15, 2021 motion for protective order.

{¶ 18} On September 29, 2021, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in the case.

{¶ 19} On September 30, 2021, the Board of Trustees of Dodson Township, Highland County, Ohio (Dodson Board of Trustees) filed a notice of intervention in the case.

{¶ 20} On October 1, 2021, Shawn Ball and Misty Carter filed a request captioned as a "Memorandum in Support of Motion to Intervene," by which they sought intervention in this case. On October 18, 2021, Dodson filed a memorandum contra this motion to intervene, arguing that the request failed to demonstrate a real and substantial interest in the proceeding.

{¶ 21} On October 22, 2021, Staff filed its Report of Investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 22} By Entry issued November 2, 2021, the ALJ granted intervenor status to OFBF and the Dodson Board of Trustees. This Entry denied the motion to intervene filed

by Shawn Ball and Misty Carter. Further, this Entry ordered that the scheduled December 1, 2021 adjudicatory hearing be conducted via Webex, virtual hearing technology.

{¶ 23} On November 10, 2021, Dodson filed its second proof of second publication and proof of service of the procedural schedule and accepted, complete application.

{¶ 24} The local public hearing was held at the Highland County Fairgrounds, as scheduled, on November 10, 2021.

{¶ 25} On November 19, 2021, Dodson filed the direct testimonies of Robert Hanley, Eric Koch, Eddie Duncan, Lindsey Hesch, Brent Finley, Mark Bonifas, Gordon Perkins, and Andrew Lines in support of its application.

{¶ 26} On November 22, 2021, Dodson, the Banks Petitioners, and OFBF filed a joint motion to continue deadlines and requested expedited treatment of the motion. The parties to the joint motion requested that the December 1, 2021 adjudicatory hearing be called and continued and that outstanding procedural deadlines be suspended. By Entry issued November 23, 2021, the ALJ granted the joint motion to continue deadlines.

{¶ 27} On December 1, 2021, the adjudicatory hearing was called and continued for the purpose of allowing the parties to continue negotiating toward a stipulation in the case.

{¶ 28} By Entry issued December 23, 2021, the ALJ set a new procedural schedule and ordered that the adjudicatory hearing reconvene on January 19, 2022, via Webex, virtual hearing technology.

{¶ 29} On January 5, 2022, Dodson, the Banks Petitioners, and OFBF filed a second joint motion to continue deadlines and requested expedited treatment of the motion. The parties to the joint motion requested that the January 19, 2022 adjudicatory hearing be called and continued and that outstanding procedural deadlines be suspended. By Entry dated January 7, 2022, the ALJ granted the joint motion to continue deadlines.

{¶ 30} On January 19, 2022, the adjudicatory hearing was called and continued for the purpose of continuing to allow the parties to negotiate toward a stipulation in the case.

{¶ 31} Pursuant to the Entry of January 26, 2022, the ALJ set a new procedural schedule and ordered that the adjudicatory hearing reconvene on February 24, 2022, via Webex, virtual hearing technology.

{¶ 32} On February 14, 2022, Dodson, the Banks Petitioners, and OFBF filed a third joint motion to continue deadlines and requested expedited treatment of the motion. The parties to the joint motion requested that the February 24, 2022 adjudicatory hearing be called and continued and that outstanding procedural deadlines be suspended. By Entry dated February 15, 2022, the ALJ granted the joint motion to continue deadlines.

{¶ 33} On February 24, 2022, the adjudicatory hearing was called and continued for the purpose of continuing to allow the parties to negotiate toward a stipulation in the case.

{¶ 34} By Entry issued March 29, 2022, the ALJ set a new procedural schedule and ordered that the adjudicatory hearing reconvene on April 21, 2022, at the office of the Board.

{¶ 35} On April 6, 2021, Dodson, OFBF, and Staff filed a joint stipulation and recommendation (Stipulation). Additionally, Dodson filed the direct testimony of Courtney Pellisero and the supplemental testimonies of Eddie Duncan and Mark Bonifas, each in support of the Stipulation.

{¶ 36} On April 11, 2022, Dodson and the Banks Petitioners filed a joint motion to request a virtual hearing, in which the moving parties requested that the adjudicatory hearing scheduled for April 21, 2022, be converted to a Webex hearing. The ALJ granted the joint motion by Entry issued on April 13, 2022.

{¶ 37} On April 15, 2022, Staff filed the direct testimonies of Robert Holderbaum, Andrew Conway, Thomas Crawford, Jess Stottsberry, Allison DeLong, Eric Morrison, Tyler

Conklin, Mark Bellamy, Matthew Butler, and James S. O'Dell, to address its investigation and in support of the Stipulation.

{¶ 38} On April 20, 2022, the Banks Petitioners filed a notice of withdrawal, pursuant to which the Bank Petitioners gave notice of their withdrawal from this proceeding as a party of record.

{¶ 39} On April 21, 2022, the adjudicatory hearing was held via Webex, virtual hearing technology. On behalf of Dodson, Courtney Pelissero (Company Ex. 8), Eddie Duncan (Company Exs. 9, 10), and Mark Bonifas (Company Exs. 11, 12) presented their direct and supplemental testimonies in support of the application (Company Exs. 1, 1C) and the Stipulation (Joint Ex. 1). Upon agreement of the parties, all other prefiled direct and supplemental testimonies filed by Dodson were admitted into the record (Company Exs. 7, 13-17). In addition, a number of exhibits identified in the Stipulation were admitted into evidence (Company Exs. 1-6). The parties also agreed to the admission of the Staff Report (Staff Ex. 11) and all prefiled direct testimonies filed by Staff (Staff Exs. 1-10).

III. PROJECT DESCRIPTION

{¶ 40} Applicant is a wholly owned subsidiary of National Grid Renewables Development, LLC (National Grid Renewables), which is a leading North American renewable energy company based in Minneapolis, Minnesota. Dodson seeks certification to build a 117-MW solar-powered electric generation facility in Hamer and Dodson townships in Highland County, Ohio. The Facility would consist of large arrays of ground-mounted photovoltaic panels, commonly referred to as solar panels, which will be ground-mounted on a tracking rack system. The Facility would include associated support facilities, such as access roads, electrical collection lines, inverters, weather stations, a facility substation, a 138-kilovolt (kV) generation interconnect electric transmission line, a switching substation, an operations and maintenance facility, and construction laydown yards. The Facility would be secured by perimeter fencing and accessed through gated entrances. Dodson has leased or optioned approximately 1,429 acres for the Facility and it currently

plans to develop, construct and operate the Facility for the life of the Project. Dodson proposed to begin construction in the second quarter of 2022, with commercial operations expected to begin in the fourth quarter of 2023. (Staff Ex. 11 at 4-7.)

IV. CERTIFICATION CRITERIA

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

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;

- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and,
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

V. SUMMARY OF EVIDENCE

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

A. *Local Public Hearing*

{¶ 43} On November 10, 2021, the local public hearing was held at the Highland County Fairgrounds in Hillsboro, Ohio. Twenty-two individuals provided testimony, with 13 supporting the Project and 9 in opposition. A number of witnesses representing the electrical workers, operating engineers, and carpenters' unions testified as to the jobs that the Project will create (Pub Tr. at 19-20, 22, 74-76, 86-87, 127-128). A representative of a large local construction company also offered testimony as to the potential jobs the Project will create (Pub Tr. at 57). Witnesses expressed support for the Project because of the decrease in the area's carbon footprint that they believe will result from solar energy. These witnesses believe that due to national and global energy issues, a shift toward renewable energy is necessary. (Pub Tr. at 33, 53-54, 70, 83, 128-129.) Supporters of the Project also believe that it will provide increased revenue to local schools via a Payment in Lieu of Taxes (PILOT) plan and inject money into the local economy and ancillary agricultural businesses (Pub Tr. at 31-32, 52-53, 120, 124-125). Supporters and participating landowners in the Project area also expressed the belief that the rights of landowners permit them to use their land for the

Project. Further, they argued that participation in the Project will offer local farmers an opportunity to diversify and shield them from swings in farming. (Pub. Tr. at 70, 73-74, 76-77, 122, 123-124.) Some local farmers and conservationists believe that planned pollinator plantings and fencing at the Facility will enhance wildlife and sporting activities in the area, as well as conserving farmland for future use after the Facility is decommissioned (Pub. Tr. at 99-101, 120).

{¶ 44} Witnesses opposed to the Project expressed numerous reasons why they do not believe a certificate should be issued. Many witnesses voiced skepticism as to the entire power siting process, both with the Board and at the local level, submitting that the process is biased and that local input is not truly considered. These witnesses disagree with the Staff Report and argue that the Facility will not meet the statutory requirements of R.C. 4906.10(A). (Pub Tr. at 23-28, 46, 95-96, 103-107, 110-114, 145-147.) Many witnesses also acknowledged that while the recently passed Senate Bill 52 does not apply to this Project, they feel that its general principles should be followed in deciding whether to issue a certificate for the Facility (Pub. Tr. at 90-94, 114, 144). Opponents believe that the monetary benefits touted by supporters of the Project are illusory, and that schools and local governments will not benefit at the level alleged in the application (Pub. Tr. at 36-37, 39-41, 59-60, 135-136). Local residents are concerned about the impact that the Facility could have on the environment, including killing of birds, contamination of local waterways, flooding, contaminants being leaked into the environment, and general damage of local ecosystems (Pub. Tr. 62-63, 64, 115, 134-135, 143). Opponents questioned the viability of solar projects in Ohio due to the general weather in the state. Further, the witnesses argued that solar projects are only undertaken in the state because of subsidies the developers receive. (Pub Tr. at 37, 39, 58-59, 60, 138.) With respect to effects on surrounding land, opponents believe that it is harmful to take productive farmland out of production and they are concerned that construction of the Facility will cause a general decline in property values (Pub. Tr. at 63, 108, 132-133, 135-136, 144).

{¶ 45} A total of 168 public comments have been filed on the public docket. The majority of public comments filed on the docket express opposition to the Project for similar reasons to those stated in testimonies at the local public hearing. Some of the filed comments were made by individuals that also offered testimony at the local public hearing. Additionally, many of the filed comments expressed general opposition to solar projects throughout the state rather than specific opposition to this Project. Additionally, many filed public comments express support for the Project, and other solar projects around the state, for reasons similar to those expressed at the local public hearing.

B. Staff Report

{¶ 46} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 47} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Facility is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 1 at 8.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

a. Community Impacts

{¶ 49} Staff states that the only land use type that would be impacted by the Facility is agricultural land. The nearest residential structure would be 160 feet from any solar panels. Within a one-mile radius, land uses consist of agricultural, as well as some

residential and commercial. According to Applicant, a total of 1,098.5 acres of agricultural land would be permanently impacted by constructing the Facility. Of that total, 776.3 acres would house solar panels. Staff states that impacts from construction would be temporary and contained to the properties of participating landowners. Further, Staff states that significant impacts to residential, commercial, industrial, recreational, and institutional land uses are not anticipated, and that agricultural activities on surrounding land would continue with minimal disruption. Staff highlights that Dodson has not yet finalized plans to remove five structures currently located where panels are proposed to be placed. Staff believes that the Facility layout could be adjusted to provide for these structures to remain standing, or if these buildings must be removed, Dodson would either purchase the land or coordinate with affected landowners. (Staff Ex. 11 at 10.)

{¶ 50} Captured within the five-mile study area for the Project are Highland County, Clinton County, and the Village of Lynchburg, each of which have adopted comprehensive plans. Staff agrees with Dodson that the proposed Facility is compatible with the goals of each comprehensive plan. Highland County's 2003 Comprehensive Plan expresses a top priority of supporting the agricultural industry within the county by preserving agricultural land. Dodson believes that the Facility aligns with this goal by setting aside farmland and thereby protecting it from more permanent development, as well as maintaining the quality of the soil for the lifespan of the Facility. Likewise, Clinton County's 2004 Comprehensive Plan focuses on preserving agricultural land and the rural character of the area. While the Facility would not be in Clinton County, the county's comprehensive plan was analyzed because it is within five miles of the Project area. Staff believes that the Facility is compatible with the goals of Clinton County. The Village of Lynchburg's 2009 Comprehensive Plan prioritizes development within the village, which is located in Highland County, and increasing economic opportunities. According to Dodson, the Facility would aid in these goals by providing added revenues for the Lynchburg-Clay School District, and Highland County in general, through the PILOT program. Staff agrees with Dodson's assertions and does not believe that the Facility will interfere with the land

use plans of affected and neighboring communities. In general, Staff finds that the Facility is consistent with agricultural industry support and that it would provide supplemental income to farmers, while still allowing for the land to returned to agricultural production upon decommissioning. (Staff Ex. 11 at 11.)

{¶ 51} Staff states that construction and operation of the Facility would have no impacts on recreation areas. In its viewshed analysis, Dodson identified five recreation areas within five miles of the Facility, only one of which, Oldaker Wildlife Area, would potentially have visibility of the Facility. Oldaker is approximately 0.35 miles from the Project area and would have visibility at the outer edges. Dodson believes that this visibility can be diminished by its proposed vegetative screening. The other four recreation areas are more than two miles from the Project area and are not anticipated to have any visibility of the Facility (Staff Ex. 11 at 11.)

{¶ 52} In further analysis of the aesthetic impact, Staff reports that the rural nature of the area surrounding the Facility generally limits the number of potential viewers. The highest elevation of the solar panels would be 17 feet above ground level. According to Dodson's five-mile visual resources report, the panels would likely not be visible at locations 1.5 miles outside the perimeter of the Facility. Staff states that existing landscape features and vegetation limit likely concentration of viewshed impacts to less than 12.6 percent of the Project area. Staff notes that an anti-glare coating applied to the solar panels will not only maximize the capture of energy but also provide an aesthetic benefit. Staff reviewed Dodson's landscape mitigation plan, which proposes installing plant modules along the fence line of the Facility to soften viewshed impacts and to blend the Facility into the existing vegetation. Dodson's plan would provide for the installation of numerous plant species of different heights and variety as determined by the location of sensitive receptors, such as non-participating residential structures. Staff recommends that a condition be included as part of any certificate issued by the Board requiring Dodson to consult with a certified professional landscape architect in the development of its landscape mitigation plan. Staff also recommends that Dodson adjust its landscape plan to incorporate appropriate planning

measures such as shrub planting or enhance pollinator plantings, to address impacts to nearby communities and recreationalists. (Staff Ex. 11 at 11-12.)

{¶ 53} Staff provides several additional recommendations to address potential aesthetic concerns. With respect to Dodson's landscape and lighting plan, Staff recommends the incorporation of design features to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight into the Facility. Staff further recommends that aesthetic impact mitigation measures include native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners. Staff notes that it has aesthetic concerns related to the Facility's perimeter fencing. Dodson proposed a six-foot high woven wire fence mounted onto wooden posts, with an additional one foot of barbed wire. While the proposed woven fence would be aesthetically consistent with an agricultural area, Staff believes that the barbed wire poses a risk to wildlife. Staff submits that a seven-foot perimeter fence without barbed wire would meet the National Electric Safety Code recommendations for fencing. Staff also recommends that the fencing incorporate wildlife-friendly features, such as making it small-wildlife permeable. (Staff Ex. 11 at 12.)

{¶ 54} As opposed to subjective aesthetic concerns, glare is an objective phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include a possible brief loss of vision, afterimage, a safety risk to pilots, and a perceived nuisance to neighbors. Dodson commissioned a ForgeSolar Glare Hazard Analysis Tool study to investigate potential glare issues at the Facility. According to Dodson's study, no glare from the Project is predicted to affect vehicles using the roadways or other various points around the Facility. Staff agrees with this conclusion and further notes that measures, such as those recommended by Staff as part of aesthetic mitigation measures, could also further reduce potential impacts. (Staff Ex. 11 at 15.)

{¶ 55} Dodson engaged a consultant to gather background information and complete cultural resources studies for the Project. A Phase I archaeological reconnaissance survey was completed and submitted to the Ohio Historic Preservation Office (OHPO) in July 2021. This report identified 40 new archaeological sites within the Project area, 39 of which were classified as ineligible for listing in the National Register of Historic Places (NRHP). The consultant opined that one identified site could potentially be eligible for listing in the NRHP, an opinion that the OHPO concurred with in its July 21, 2021 concurrence letter to the Applicant. In addition, a site known as the “Big Onion,” a flag-stop on the B&O NW railway line was also identified. Dodson has agreed to avoid this site. The consultant also conducted a historic architecture survey of the Project area within a two-mile radius. This survey identified 127 properties, of which 10 were recommended as eligible for listing on the NHRP. Of those 10 properties, two could be adversely affected by the Project. In its June 23, 2021 concurrence letter, the OHPO agreed with the architectural findings. Staff notes that when locations are expected to have a potential adverse effect from a project, the OHPO will recommend avoidance or mitigation measures to protect such locations. As of the date of the Staff Report, Dodson and the OHPO were working to agree on a memorandum of understanding (MOU) to develop appropriate steps to mitigate for and/or avoid cultural resources with potential adverse effects from the Project, as well as outlining procedures to be followed if previously unidentified sites are discovered during construction. Staff recommends that Dodson finalize and execute the MOU with the OHPO. Assuming an MOU is finalized, Staff believes that minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 11 at 12-13.)

{¶ 56} Staff states that Dodson would be responsible for the ownership and construction of the Facility, and Dodson avers that it has obtained the necessary landowner agreements to construct and operate the Facility. It is not expected that the Facility will change the ownership status of land within the Project area. Dodson has also committed to work with local authorities to obtain any necessary crossing permits and permissions for the public right-of-way crossing. Dodson provided total cost comparisons between the

proposed Facility and other comparable facilities, referencing a 2019 study conducted by the U.S. Department of Energy's Lawrence Berkeley National Laboratory (Berkeley Laboratory) for comparison. Staff states that it agrees that Dodson's anticipated costs are below the range identified in Berkeley Laboratory's 2019 study, as well as a 2021 report published by Berkeley Laboratory. Staff verified Dodson's assertion that the reported average cost for the Facility and the reported average cost of National Grid Renewables' similar facilities is not substantially different from Dodson's cost estimates for this Project. Staff also confirmed that Dodson's estimated operation and maintenance (O&M) costs are below the levels identified by the Berkeley Laboratory report for comparable utility scale solar projects. Dodson provided estimates of the cost of delays in permitting and construction of the Facility, stating that delays during the permitting stage can result in costs associated with the time value of money. Dodson also stated that delays could prevent the Project from meeting federal investment tax credit deadlines, which could result in the loss of those benefits. Staff finds Dodson's characterization of its estimated costs of delays to be reasonable. (Staff Ex. 11 at 13-14.)

{¶ 57} Staff states that Dodson retained Environmental Design & Research (EDR) to report on the economic impact of the Project. EDR utilized the National Renewable Energy Laboratory's Jobs and Economic Development Impact model, the IMPLAN regional economic modeling system, and data from the Ohio Department of Taxation. Staff verified that the methodology utilized by EDR was appropriate, and that the impacts reported from the study are reasonable. Based upon EDR's report, Dodson estimates that the Facility would create 274.5 construction-related jobs and 14 long-term operational jobs for the state of Ohio. Dodson estimates that the Project will generate \$18.2 million in annual earnings (defined as direct wages, supply-chain labor wages, and spending by persons of those two categories); operations would add \$900,000 in annual earnings. During the construction period, wages would produce \$27.7 million in local output; operations would add an annual impact of \$1.9 million for the state of Ohio. Based upon a potential PILOT plan, Dodson estimates that the Facility will generate between \$819,000 and \$1,053,000 annually for the

Highland County taxing districts. This estimate is based on a PILOT plan in which Dodson would pay between \$7,000/MW and \$9,000/MW annually for a 117-MW facility. (Staff Ex. 11 at 14-15.)

{¶ 58} Dodson estimates that the Facility can operate for 30 years or more. Dodson included a preliminary decommissioning plan as part of the application, which estimates total decommissioning costs of \$8,705,855. According to this plan, at the end of the useful life of the Facility it would be decommissioned, and the land returned to its original topography and current use as agricultural land, or to the specific use desired by the landowner. Dodson would obtain applicable permits needed for decommissioning. Dodson plans to remove all solar components constructed above ground, with a few exceptions; for example, any electrical lines that would not impact the restored use and are greater than 48 inches below-grade may be left in place. Access roads would be left in place if requested by the landowner. Dodson anticipates decommissioning and restoration activities to occur over a 12- to 18-month period, depending on weather. Based upon the weather dependent nature of site restoration, Staff recommends that the updated decommissioning plan include a requirement to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation. Dodson intends to repurpose, salvage, recycle or haul offsite to a licensed solid waste disposal facility all solar components. Some of the components could be resold or salvaged to offset decommissioning costs. With respect to disposal, Dodson indicated that it is only considering panels that meet the United States Environmental Protection Agency (US EPA) definition of non-hazardous waste. Dodson stated that it would notify Staff at least 30 days prior to initiating decommissioning. Dodson already identified that prior to decommissioning, it will obtain all required approvals and necessary permits to commence decommissioning activities. Dodson also intends to provide for financial security to ensure that funds are available for decommissioning and land restoration. Prior to beginning commercial operations at the Facility, Dodson would provide an updated decommissioning cost estimate considering the salvage value of any components. The Applicant would then calculate the net decommissioning costs and would

have a registered professional engineer or engineering firm licensed to practice in Ohio reevaluate that figure every five years after commencement of commercial operations. As part of any subsequent reevaluation, the professional engineer/firm would also consider the appropriateness of any contingency amount or percentage. Finally, Dodson states that it would fund a decommissioning financial assurance mechanism in the form of a performance bond where the Board is the obligee. (Staff Ex. 11 at 15-17.)

{¶ 59} Staff makes several recommendations with respect to decommissioning. First, with respect to the performance bond, Staff recommends that any financial assurance mechanism clarify that the Applicant would be the principal and the insurance company would be the surety. As to the decommissioning process, Staff recommends that at least 30 days prior to the preconstruction conference, Dodson should submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket which contains information as outlined in the Staff Report. (Staff Ex. 11 at 17.)

{¶ 60} Staff states that Dodson indicated that the Facility would be designed and installed to withstand 105 mile per hour wind, based on regional weather conditions. Additionally, the tracker system and supporting structures would be designed to withstand wind gusts of up to 125 miles per hour for three seconds and other typical high-wind occurrences. Dodson also stated that the trackers or track system it is considering for the Facility have a stow mode that can be activated during high wind occurrences, which would put the panels in a horizontal position and minimize wind loading and adverse consequences. (Staff Ex. 11 at 17.)

{¶ 61} While Dodson has not finalized its delivery route, Staff states that it is expected that construction traffic will be from the north by way of I-71 to US 68 to SR 134 and to US 50, which run through the Project area. An alternate route from the south could also be used by way of SR 32 to SR 134 and to US 50. Dodson conducted a route evaluation study (RES) to identify viable means of accessing the Project area. The RES found no signs

posting load restrictions for roads or bridges in the Project area. Overhead structures and cables were also assessed along local roadways and no potential hazards were observed. Additionally, no other obstructions, such as bridges or overhanging structures that could lead to height or weight restrictions, were noted along potential transportation routes. The RES also included a traffic control plan (TCP) which describes procedures used to manage traffic during construction. Dodson stated that prior to construction the TCP would be updated with final delivery routes and shared with local law enforcement, schools, and landowners. Also prior to construction, the contractor would obtain all necessary permits, with the understanding that a road use maintenance agreement (RUMA) may be required. Staff states that during operation and maintenance of the Facility, there will be very little increase in traffic. Overall, the RES indicates very little impact to local roads during construction of the Facility. Staff states, however, that a final civil engineering design will be necessary to ensure that all transportation activities are accounted for and approved by the county engineer. (Staff Ex. 11 at 17-19.)

{¶ 62} With respect to noise at the Facility, Staff notes that activities such as site clearing, installation of mechanical and electrical equipment, and commissioning and testing of equipment are the common causes of noise impacts. Staff states that many construction activities would generate significant noise levels, but that these impacts would be temporary and intermittent and would occur away from most residential structures. Additionally, such activities would be limited to daytime working hours. Dodson has committed to using mitigation practices such as limiting the hours of construction activities and establishing a complaint resolution process. Dodson conducted an ambient noise level study to understand the existing noise levels near the proposed Facility. Noise impacts to non-participating residences were modeled using the proposed inverter model and substation transformer and no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five decibels (dBA). Staff states that based on this data, the Facility would be expected to have minimal adverse noise impacts on the adjacent community. However, if an inverter model different than that

proposed in the application is chosen, Dodson would submit a noise report confirming that no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. (Staff Ex. 11 at 19.)

b. Site Geology and Soils

{¶ 63} Staff states that the Project area lies within the glaciated margin of the state and includes several Illinoian-age glacial features. The Project area is covered by the relatively flat, gently undulating, continuous till of the Illinoian ground moraine. Staff identifies that the glacial drift thickness throughout the area averages approximately 15 feet thick. Additionally, most of the southern portion of the Project area has less than 10 feet of drift thickness prior to bedrock contact. Staff states that the uppermost bedrock unit in the Project area is Estill Shale, and Staff also details the layers underlying the Estill Shale. In total, Staff outlines that the Dayton Limestone, Noland Formation and Brassfield Undivided, and Drakes Formation and Waynesville Undivided make up an equal portion of the study area, and combined, account for 98 percent of the uppermost bedrock beneath the study area. Staff states that bedrock is not exposed to the surface within the boundaries of the Project area due to the glacial drift thickness, and that weathered bedrock is not expected to be encountered. Staff states that conditions typically necessary for karst formation do exist within the Project area, citing the nearest documented sinkhole feature as being approximately two miles east of the Project area. Dodson, however, has a high confidence that karst will not impact the Project. Should karst features be discovered during construction, the Applicant's primary mitigation effort would be avoidance measures. In the unlikely event karst features are found to be extensive, thereby rendering avoidance unfeasible, additional mitigation options would be evaluated by the geotechnical engineer of record at that time. Staff states that according to Ohio Department of Natural Resources (ODNR) records, one oil and gas well is present within one mile of the Project area. Records indicate, however, that this well is plugged and abandoned and has undergone final restoration inspection. No active mining occurs within the Project area. With respect to seismic activity, Staff states that recent geologic history shows that Highland County is at

low risk for seismicity. Further, Dodson has indicated that no blasting activities are anticipated to occur and, therefore, no blasting-induced seismic activity is anticipated. (Staff Ex. 11 at 20-22.)

{¶ 64} Staff notes that the Project area consists primarily of soils derived from glacial till and loess, and that Westboro, Clermont, Rossmoyne, and Jonesboro are the most common soil series found within the Project area. Staff states that there is a low risk of shrink-swell potential in these soils. While Dodson revised its assessment as to the highly erodible soils in the area, Staff states that implementation of a Storm Water Pollution Prevention Plan (SWPPP) will ensure the appropriate management of potential erosion. Dodson provided a preliminary geotechnical recommendation report, which included 15 borings made 15 feet below ground level to confirm soil suitability for the final Project design. The findings of the preliminary report indicate that the soils and geology at the site are suitable for the foundations proposed. (Staff Ex. 11 at 22-23.)

{¶ 65} Staff makes a number of recommendations based upon the information submitted by Dodson and analyzed by Staff in its review. In particular, Staff recommends that the final detailed engineering drawings of the final Project design account for geological features, and include the identity of the registered professional engineer, structural engineer, or engineering firm who reviewed and approved the designs. Staff also recommends that Dodson provide the final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. In accordance with the preliminary geotechnical report findings, Staff recommends that Dodson conduct full-scale pile load testing and additional California Bearing Ratio testing as part of the final design level study. (Staff Ex. 11 at 23.)

{¶ 66} In conclusion, Staff finds that, with the implementation of its recommended conditions, there appears to be no particular geological features within the Project area that are incompatible with construction and operation of the proposed Facility. (Staff Ex. 11 at 23.)

c. Ecological Impacts

{¶ 67} Staff reviewed the public and private water supplies that could be impacted by the Project. Based upon ODNR records, there are 27 water wells within one mile of the Project area, ranging in depth from 36 to 328 feet. Groundwater resources, however, are limited throughout the area. The majority of the Project area falls within the Clermont public water system source water area watershed. No public drinking water source water protection areas occur within the Project area. Dodson identified one private well within the Project area, located approximately 250 feet from a Facility access road. To ensure compliance with Ohio Adm.Code 3701-28-7, the location of the well will be field verified prior to construction. Depending on the final location of the well, Dodson will relocate solar equipment at least 50 feet from its location. If it is shown that the well is for non-potable use, then Dodson will seal and abandon the well. With Dodson's commitment to implement a Spill Prevention, Control, and Countermeasure Plan, Staff finds no unreasonable risk posed to public or private drinking water supplies by construction or operation of the Facility. (Staff Ex. 11 at 24-25.)

{¶ 68} Dodson delineated 56 streams and six ponds within the Project area, including 27 ephemeral streams, 21 intermittent streams, and eight perennial streams. Staff states that no impacts to ponds would occur. Impacts to streams associated with underground electrical installation would be avoided by using horizontal direct drilling (HDD). However, HDD creates the risk of a frac-out. A frac-out occurs when drilling lubricant is forced through cracks in bedrock and or surface soils. To mitigate this risk, Dodson included a frac-out contingency plan. Staff further recommends that Dodson have an environmental specialist on site during construction activities where HDD activities may impact surface waters, and that this specialist have authority to stop HDD to ensure that any impacts related to a frac-out are addressed. Due to access road installation and some clearing of vegetated areas, 18 streams will be temporarily and permanently impacted. Staff states that anticipated impacts to streams would be covered under the Army Corps of Engineers (USACE) nationwide permit program. Staff believes that impacts to wetlands by

underground electrical installation will be mitigated via HDD techniques. Staff states that a total of seven wetlands would be temporarily and permanently impacted, the impacts of which would also be covered under the USACE nationwide permit program. Dodson states that the boundaries of streams and wetlands within and around the Project area would be demarcated with flagging prior to construction. Specifics as to how surface waters would be further protected from indirect construction stormwater impacts using erosion and sedimentation controls would be further outlined in Dodson's SWPPP. Dodson would also obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio Environmental Protection Agency (Ohio EPA). Staff recommends that Dodson apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to its construction activities. Staff also points out that portions of the Facility would cross a 100-year floodplain; Staff, therefore, recommends that Dodson obtain any applicable floodplain development permit prior to construction. (Staff Ex. 11 at 25.)

{¶ 69} The Project area is within the range of the following bat species: the Indiana bat, a state and federal endangered species; the northern long-eared bat, a federal threatened and state endangered species; the tricolored bat, a state endangered species; and the little brown bat, a state endangered species. To avoid impacts to these bat species, Staff recommends that Applicant adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination with ODNR and the United States Fish and Wildlife Service (USFWS) recommends a different course of action. Staff states that the Facility would not impact any bat hibernacula. (Staff Ex. 11 at 26-27.)

{¶ 70} The Project area is also within range of two state endangered bird species, the kingrail and the loggerhead shrike, in addition to the state threatened bigeye shiner fish species. Due to the location of the proposed Facility, however, as well as the type of habitat within the Project area, the Project is not likely to impact these species. (Staff Ex. 11 at 26-27.)

{¶ 71} Of the approximately 1,461 acres within the Project area, Staff notes that roughly 1,297 acres are agricultural lands, with the remaining acres consisting of open water, developed land, wetlands, open space, and forestland. According to Staff, permanent vegetative impacts would occur primarily within agricultural lands and impact to forestland would be minimal. Staff states that Dodson proposed implementation and maintenance of native pollinator-friendly plantings in selected locations in and around the area. The plantings have been selected in consultation with the Ohio Pollinator Habitat Initiative. Staff states that these features would enhance the visual appeal of the Facility, enrich local wildlife habitat, and benefit the local farming community. The advantages obtained from pollinator plantings would generally represent a reduced environmental impact when compared to the current land use of agricultural plant production, due to the elimination of frequent tilling, fertilizer and pesticide application, and increased plant diversity. To ensure that these benefits are realized, Staff recommends that Dodson take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings. (Staff Ex. 11 at 27.)

{¶ 72} In conclusion, Staff recommends that the Board find that Dodson has determined the nature of the probable environmental impact of the proposed Facility, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2); provided, however, that any certificate issued by the Board includes the conditions specified in the applicable section of the Staff Report. (Staff Ex. 11 at 17.)

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

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

{¶ 74} Staff states that Dodson selected the proposed Project site after engaging with both the public and local government officials to explain the proposed Project and answer questions within the community. Once an initial area was identified, Dodson moved the southern part of the Project area to the west to meet landowner preferences, reduce impacts to sensitive receptors, and reduce the length of the collection line. With willing participants and a viable point of interconnection (POI), Dodson developed the Project area for the Facility. (Staff Ex. 11 at 28.)

{¶ 75} Staff highlights that the OHPO issued a concurrence letter dated July 21, 2021, regarding the potential for impacts to archaeological sites, in which the OHPO agreed that 39 of the 40 sites discovered during field investigation are ineligible for listing in the NRHP. The OHPO agrees that the one site that could be eligible for the NRHP should be avoided or further studied. The OHPO also issued Dodson a concurrence letter dated June 23, 2021, regarding the potential for impacts to historical/architectural sites, in which the OHPO agreed that there are two sites that could be adversely impacted by the Project and that mitigation measures should be used. Dodson committed to avoiding and mitigating for these sites and, at the time the Staff Report was issued, was developing an MOU with the OHPO to memorialize specific actions to be taken. With this and implementation of recommended conditions in the Staff Report, Staff has determined that minimal adverse impacts to cultural resources would be achieved. (Staff Ex. 11 at 28.)

{¶ 76} Staff states that the geology of the Project site does not appear to present conditions that would limit or negatively impact the construction and future operation of the Facility. To further ensure the mitigation of any impacts, however, Staff does recommend that Dodson complete additional geotechnical studies and that final detailed engineering drawings of the final Project design account for all geological features. (Staff Ex. 11 at 28.)

{¶ 77} According to Staff, no significant impacts are proposed to streams or wetlands. With respect to threatened or endangered species, Staff points out that Dodson

did not identify any listed plant or animal species during field surveys. The Project area has, however, been identified to be within range of several threatened and endangered species. Staff believes that the recommended seasonal restrictions for construction activities in certain habitat types will avoid impacts to the listed species. (Staff Ex. 11 at 28-29.)

{¶ 78} Staff states that adverse noise impacts are expected to be limited to construction activities, which would be temporary and intermittent. Further, these construction activities would take place away from most residential structures. To further mitigate these impacts, Staff recommends that Dodson limit the hours of construction to address potential construction-related concerns from any nearby residents. Staff states that no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA. If Dodson changes inverter or transformer models, Staff recommends that Dodson submit an updated noise study which would confirm that sound levels would not exceed the daytime ambient level plus five dBA at any non-participating receptor. Finally, Staff points out that Dodson has already developed a complaint resolution plan which would be implemented throughout construction and operation. (Staff Ex. 11 at 29.)

{¶ 79} Staff believes that local, state, and county roads would experience a temporary increase in traffic during the construction period. The increased truck traffic for deliveries of equipment and materials would occur primarily using flat-bed or tractor-trailer vehicles and multi-axle dump trucks. Staff states that the transportation management plan would be finalized once the final engineering layout is determined, and that the TCP will include a delivery route plan to be developed in consultation with local officials. Further, Staff states that Dodson is expected to enter into a RUMA with the county engineer. (Staff Ex. 11 at 29.)

{¶ 80} With respect to visual impacts, Staff states that the low profile of the Facility, combined with existing vegetation, will limit prominent visual impacts to landowners in the immediate vicinity of the Facility infrastructure. To reduce impacts where an adjacent,

non-participating parcel contains a residence with a direct light of sight to the Facility, Staff recommends that a final landscape and lighting plan that addresses the potential impacts be completed. Staff further recommends that Dodson adjust its landscape and lighting plan to address any potential impacts of the Facility. Staff also recommends a condition addressing perimeter fencing to further minimize overall aesthetic concerns and to provide more wildlife friendly access for small animals. (Staff Ex. 11 at 29.)

{¶ 81} Staff highlights that Dodson has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Staff states that Dodson has consulted with landowners and county records to determine the locations of drain tiles. Dodson intends to locate drain tiles as accurately as possible prior to construction, which will assist in avoiding impacts to the tiles. Dodson has committed to promptly repair any drain tile found to be damaged by the Project during its operational life and to restore land to agricultural use following decommissioning. (Staff Ex. 11 at 29.)

{¶ 82} With respect to decommissioning, Staff points out that Dodson prepared a preliminary decommissioning plan and intends to provide financial security to ensure that funds remain available for decommissioning and land restoration. Dodson intends to restore the Project site largely to its original topography to allow for resumption of agricultural activities. To further solidify decommissioning plans, Staff recommends a condition requiring that the draft decommissioning plan be updated to include improved financial assurance and a decommissioning cost estimate, among other things. (Staff Ex. 11 at 29.)

{¶ 83} As to the panels used at the Facility, Staff states that Dodson has committed to use panels that have been certified to comply with the US EPA's Toxic Characteristics Leaching Procedure test and meet that agency's definition of nonhazardous waste (Staff Ex. 11 at 30).

{¶ 84} In conclusion, Staff finds that the proposed Facility would result in both temporary and permanent impacts to the surrounding area. However, Staff believes that the Project is unlikely to pose a significant adverse impact to existing land use, cultural resources, recreational resources, or wildlife. With the implementation of its recommended conditions, Staff concludes that the Project represents the minimum adverse environmental impact and, therefore, Staff recommends that the Board find that the proposed Facility complies with the requirements of R.C. 4906.10(A)(3). (Staff Ex. 11 at 30.)

4. ELECTRIC POWER GRID

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

{¶ 86} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generation Facility would be capable of producing 117 MW and would interconnect to the regional transmission grid from the Facility substation through a gen-tie line to a new POI switching station to the AEP Hillsboro-Clinton County 138 kV transmission line. (Staff Ex. 11 at 31.)

{¶ 87} Dodson submitted a generation interconnection request for the proposed Facility to PJM Interconnection, LLC (PJM), which is the regional transmission line organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. PJM completed the feasibility study and a system impact study. PJM assigned the Project queue position AC2-061 under the name “Hillsboro-Clinton 138 kV,” and issued a Feasibility Study Report and a System Impact Study Report (SIS) in September 2017 and December 2019, respectively. PJM studied the interconnection as an injection into the bulk power system of 117 MW, of which 58.1 MW could be available

in the PJM capacity market. Through its analysis, modeled with a 2020 summer peak flow model, PJM's studies revealed that the Project contributes to the overload of two circuits of the Kyger-Sporn 345 kV line. The SIS then presented a description of upgrades required to accommodate the additional injection. PJM found no new system reinforcements to be needed and identified no problems with the Facility contributing to previously identified overloads. PJM also performed a short circuit analysis as part of the SIS which showed no additional problems, and no circuit breakers were found to be over duty for this queue position. (Staff Ex. 11 at 32-33.)

{¶ 88} Staff concludes that the Facility would be consistent with plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4), so long as any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 11 at 33.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

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

{¶ 90} Although the proposed Facility will not require any air quality permits, fugitive dust rules may be applicable to its construction. Accordingly, Applicant would need to control and localize fugitive dust by using best management practices such as calcium carbonate or water to minimize dust during periods of high heat. Staff also concludes that the Facility would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 11 at 34.)

{¶ 91} Dodson anticipates obtaining environmental permits, as necessary. Applicant is aware that access roads will require stream crossings and that these impacts

would be covered under the USACE nationwide permitting process. Dodson would mitigate potential water quality impacts associated with aquatic discharges by obtaining NPDES construction storm water general permits from the Ohio EPA with submittal of a notice of intent and development and implementation of a SWPPP. Staff states that the SWPPP would describe and outline best management practices to control soil erosion, minimize sedimentation, and outline placement of silt fence and compost filter sock where appropriate to minimize runoff. Finally, Dodson would develop a spill prevention, control, and countermeasure (SPCC) plan to manage the storage and mitigate the unlikely release of hazardous substances. Dodson stated that its engineering procurement contractor would implement and follow all measures indicated in the SPCC plan and monitor for aquatic discharges draining from the site. With these measures in place, Staff finds that construction and operation of the Facility would comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted thereunder. (Staff Ex. 11 at 34-35.)

{¶ 92} Staff states that some existing solid waste at the Project site, such as a discarded fuel tank and other miscellaneous scrap items, will be removed by Dodson. Additionally, up to five existing structures may be removed prior to construction. Debris from construction activities would consist of items such as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. The amount of refuse generated during construction is estimated at approximately 170 cubic yards. Applicant has represented that all construction-related debris would be disposed of at an authorized solid waste disposal facility. Materials such as cardboard and metal packaging would be recycled as appropriate. Staff states that operation of the Facility would not result in significant generation of solid waste. With respect to disposal of solar panels, Staff recommends that retired panels marked for disposal be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater. Based upon its review, Staff concludes that Applicant's solid waste disposal plans would comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 11 at 35.)

{¶ 93} Staff notes that the height of the tallest structures would be the substation support structures at the collection substation. The height of these structures would be 65 feet, which is under the height requirement in the Federal Aviation Administration (FAA) regulations. Staff confirmed through the FAA that the closest public-use airports are the Highland County and Wilmington Air Park airports, which are between 10 and 14 miles from the proposed Facility collection substation. Staff states that the FAA performed an aeronautical study for the Facility and provided Dodson with a determination of no hazard to air navigation for the Facility. Staff further confirmed that it consulted with the Ohio Department of Transportation (ODOT) Office of Aviation, as required under R.C. 4906.05(A)(5), and that ODOT identified no impacts on local airports. (Staff Ex. 1 at 28.)

{¶ 94} Based on these findings, Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 28).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

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

{¶ 96} Public interest, convenience, and necessity should be examined through a broad lens. For example, this factor should consider the public's interest in energy generation that ensures continued utility services and the prosperity of the State of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impacts to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. As discussed below, the parties assert that the application,

and the evidence of record, as modified by the Stipulation, benefits the public in multiple ways.

{¶ 97} For public safety, Dodson will use reliable equipment that is compliant with applicable safety standards. Applicant also intends that its components will adhere to national building and electrical codes for safe and reliable operation. Dodson plans to use warning signs, fencing, and gates to restrict access to the Facility. Dodson intends to enclose the entire Project area with fencing that would comply with National Electric Safety Code (NESC) requirements. Specifically, Dodson proposed a six-foot high woven wire fence mounted on wooden posts and with one additional foot of barbed wire on top. The substation and switching station would enclose another fence of those specifications. Staff recommends, however, that except for the substation fencing, the solar panel perimeter fence type should be both wildlife permeable and aesthetically fitting for the rural location. Dodson would design the Facility to include specified setbacks to non-participating properties and public roads. In particular, the Applicant intends to design its facility with 50-foot setbacks from the solar panels to a property line of any non-participating parcel, 300-foot setbacks from the solar panels to a non-participating residence, and 50-foot setbacks from the solar panels to the public road centerline. Prior to construction, Dodson intends to develop and implement an emergency action plan and further consult with potentially affected local and regional emergency response personnel to coordinate procedures for medical emergencies, fires, or spills at the Facility. Dodson also plans to coordinate with first responders and the Highland County Emergency Management Agency prior to construction in order to familiarize those personnel with the emergency action plan and the Facility layout. (Staff Ex. 11 at 5, 37.)

{¶ 98} Staff states that electric transmission lines, when energized, generate electromagnetic fields (EMF). While laboratory studies have failed to establish a strong correlation between exposure to EMF and effects on human health, there have still been concerns about the potential impacts. According to Staff, since the gen-tie transmission line is not within 100 feet of an occupied structure, calculation of the production of EMF during

operations is not warranted per Ohio Adm.Code 4906-5-07(A)(2). Dodson states that the transmission line facilities would be designed and installed according to the requirements of the NESC. (Staff Ex. 11 at 37.)

{¶ 99} Staff highlights that Dodson has engaged the community in developing the Facility by such activities as hosting a virtual public informational meeting. Dodson has drafted a complaint resolution plan to address complaints from the public concerning the Facility, and Staff recommends that a final version of this plan be filed on the docket in this case at least 30 days prior to the start of construction. Dodson has committed to provide the Board with quarterly complaint summary reports through the first five years of operation. Staff recommends that these quarterly reports be filed on the public docket. Staff notes that Dodson has committed to notify affected property owners and tenants who were provided notice of the public information meeting and Board hearings, local officials who received a copy of the application, residences located within one mile of the certificated boundary, and other applicable parties who have requested Project updates, at least seven days prior to the start of construction and at least seven days prior to the start of Facility operations. Staff recommends that these notices should also be mailed to airports, schools, and libraries located within one mile of the certificated boundary, all parties to the case, and emergency responders. (Staff Ex. 11 at 37-38.)

{¶ 100} Staff offers an overview of the public comments that had been filed in the public comments section of the case docket, as of October 21, 2021, highlighting many of the themes that were subsequently expressed at the local public hearing (Staff Ex. 11 at 38).

{¶ 101} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 11 at 39).

7. AGRICULTURAL DISTRICTS

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

{¶ 103} Staff states that there are no parcels within the Project area that are currently enrolled in the agricultural district program. Approximately 77 percent of the Project area will be disturbed by the proposed Project. Dodson states that repurposed land could be restored for agricultural use when the Facility is decommissioned. Dodson identifies several agricultural structures that may be disturbed by the Project and indicates that it will either own these structures or will coordinate with affected landowners. Staff represents that the Facility will disturb existing soil and could lead to broken drainage tiles. Dodson has hired Westwood Professional Services to identify and map known drain tile locations. As part of its application Dodson provided a Drainage Tile Mitigation Plan that outlines avoidance, repair, and mitigation details of all known drain tile locations. Dodson has committed to repair any drain tile found to be damaged during the operational life of the Facility. Dodson has also committed to take steps to address further impacts to farmland, such as returning topsoil after construction and restoring land following decommissioning. (Staff Ex. 11 at 40.)

{¶ 104} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, so long as any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 11 at 40).

8. WATER CONSERVATION PRACTICE

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

{¶ 106} Staff states that the Facility may require some water use during construction for dust suppression and control, but the total use would not be significant. The only Facility component that Staff identifies as requiring a water source is the O&M building. The O&M building will include an on-site water well to accommodate normal business office usage. Applicant's staff operating out of the O&M building will use water at a rate comparable to a typical small business or office. Staff states that Dodson will incorporate water conservation practices by regular maintenance to keep water fixtures in proper working order. Dodson anticipates the natural cleaning of solar panels via precipitation and does not expect manual cleaning of panels to occur unless there is a severe drought. In the unlikely event that manual panel washing would occur, it is expected that it would be in targeted and specific areas over several days or weeks and would not be necessary for the entire Project area. (Staff Ex. 11 at 41.)

{¶ 107} In all, Staff believes that the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 1 at 32).

9. RECOMMENDATIONS

{¶ 108} In addition to making various findings throughout its report, Staff recommended that 34 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 11 at 42-48). Discussions between the parties resulted in the recommended conditions found within the Staff Report being reworked into the 33 recommended conditions outlined in the Stipulation (Joint Ex. 1 at 5-11). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 109} At the April 21, 2022, adjudicatory hearing, counsel for the Applicant presented the Joint Stipulation entered into by the Applicant, OFBE, and Staff (Jt. Ex. 1; Apr. 21, 2022 Tr. at 15, 20). Both Dodson and Hamer Townships have indicated that, although they are not signatories to the Joint Stipulation, they have no objection to the agreement (Apr. 21, 2022 Tr. At 7, 8). Pursuant to the Stipulation, the signatory parties agree that the

Board should issue the Certificate of Environmental Compatibility and Public Need, as requested by the Applicant, subject to the 33 listed conditions.

{¶ 110} The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties agree as follows:

- (1) The Applicant shall install the Facility, utilize equipment, and construction practices, 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 as modified by the Stipulation.
- (2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (3) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff, a copy of the as-built specifications for the entire Facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

- (4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from siting detailed in the application. The detailed engineering drawings of the final Project design shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio, who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final Project design to Staff.
- (5) Full-scale pile load testing shall be conducted for consideration towards the final Project design.
- (6) Additional California Bearing Ratio testing shall be conducted to further ascertain adequate access road design.
- (7) At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This shall include a summary statement addressing the geologic and soil suitability.
- (8) If any changes to the Project layout are made after submission of final engineering drawings, the Applicant shall provide all such changes to Staff

in hard copy and as geographically referenced electronic data. All changes are subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.

- (9) Should karst features be identified during additional geotechnical exploration or during construction, the Applicant shall avoid construction in these areas when possible.
- (10) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed Facility within five years of the date of journalization of the certificate, unless the Board grants a request for waiver or an extension of time.
- (11) As the information becomes known, the Applicant shall file in this proceeding, the date on which construction will begin, the date on which the construction was completed, and the date on which the Facility begins commercial operation.
- (12) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff no less than seven days prior to the applicable construction activities and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (13) Subject to the application of R.C. 4906.13(B), the certificate authority provided in this case shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations, nor be used to affect

the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.

- (14) The Facility shall be operated in such a way as to assure that no more than 117 megawatts will be injected into the bulk power system at any time.
- (15) The Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating Facility into the regional transmission system reliably and safely. The Applicant may satisfy this condition by executing an Interim ISA with PJM Interconnection. In the event of the use of the Interim ISA, the Applicant will identify the circumstances and specifics thereof that warrant the issuance of the Interim ISA. The Applicant will also provide support as to why the conventional ISA would not be feasible for its situation. The Applicant shall docket either a letter stating that the applicable agreements have been signed or an executed copy of each agreement.
- (16) Prior to commencement of construction, the Applicant shall prepare an updated landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects' Board that addresses the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to

the fence of the Facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The landscape and lighting plan will also incorporate additional planting design features or measures to address potential aesthetic impacts to the traveling public, nearby communities, and recreationalists. The Applicant will maintain vegetative screening for the life of the Facility and the Applicant will substitute and/or replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the Project in good repair for the term of the Project and shall promptly repair any significant damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the Facility, such as being downward facing and/or fitted with side shields. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.

- (17) Prior to commencement of construction, the Applicant shall submit to Staff its design for the perimeter fence for confirmation that the design complies with this condition. Project perimeter fencing shall be designed to be both small-wildlife permeable and aesthetically fitting for the rural location, taking into account NESC requirements. This condition shall not apply to the substation fencing and the Operations and Maintenance building.
- (18) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats and northern long-eared bats, unless coordination with the ODNR and the USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and

September 30, the Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.

- (19) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 in order to reduce potential impacts to indigenous aquatic species and their habitat, unless coordination efforts with ODNR allows a different course of action. If coordination with ODNR allows in-water work in perennial streams between April 15 and June 30, the Applicant shall file proof of such coordination on the docket prior to conducting such work.
- (20) The Applicant will incorporate post-construction stormwater management under OHC000005 (Part III.G.2.e, pp.19-27) as applicable and will also incorporate applicable guidance from the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays, dated October 2019.
- (21) If prior to construction the Applicant encounters any new listed threatened or endangered plant or animal species or suitable habitats of these species within the construction limits of disturbance, the Applicant shall identify avoidance areas or alternatively explain appropriate mitigation measures for these species to accommodate construction activities. This information shall be included with the final engineering drawings per Condition 4. Coordination with ODNR or USFWS may allow for a different course of action.
- (22) Prior to construction, the Applicant shall file a copy of any floodplain permit required for construction of this Project, or a copy of correspondence with the floodplain administrator showing that no permit is required.

- (23) The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff and may include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during Project construction. The environmental specialist mutually agreed upon by the Applicant and Staff shall be authorized to report any issues simultaneously to the Applicant and Staff. To allow time for the Applicant and Staff to respond to any reported issue, the environmental specialist shall have the authority to stop construction for up to 48 hours if the construction activities are creating unforeseen environmental impacts in the sensitive areas identified on the map.
- (24) The Applicant shall notify Staff, ODNR, and/or USFWS as applicable within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the appropriate agencies.
- (25) The Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings, as well as during construction, operation, and decommissioning. If noxious weeds are found to be present, the Applicant shall remove and treat them with herbicide as necessary and shall follow all applicable state laws regarding noxious weeds.

- (26) Prior to commencement of construction activities that require transportation, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the Facility. Coordination shall include, but not be limited to, the county engineer, ODOT, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition and then file the plan on the public docket. Any damaged local public roads, culverts, and bridges would be repaired promptly to their previous or better condition by the Applicant under the guidance of the appropriate regulatory authority. Any temporary improvements would be removed unless the appropriate regulatory authority request that they remain in place.
- (27) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of Facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the Project area, parties to this case, county commissioners, township trustees, and emergency responders, airports, schools and libraries, as well as anyone who requested updates regarding the Project. The notices shall provide information about the Project, including contact information, a copy of the complaint resolution plan, and a reference to the Board's docketing system for additional information. The

start of construction notice shall include a timeline for construction and restoration activities. The start of facility operations notice shall include a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket, including written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate. During construction and operation of the Facility, the Applicant shall submit to Staff a complaint summary report by the 15th day of January, April, July, and October of each year for the first five years of operation. The report shall include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if a complaint has yet to be resolved. The Applicant shall file a copy of the complaint summaries on the public docket.

- (28) General construction 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 7:00 p.m. or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. Prior to pile driving activities, the Applicant will provide a map to Staff indicating areas where pile driving cannot occur between 7:00 a.m. and 9:00 a.m., based on the daytime ambient Leq plus 10 dBA from the sound data previously collected to support Exhibit Q of the Application. 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 affected property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of

upcoming construction activities, including potential for nighttime construction.

- (29) If the inverters or substation transformer chosen for the Project have higher sound power output than the models used in the noise model, the Applicant shall submit, 30 days prior to construction, the results from an updated noise model for the Project using the expected sound power output from the models chosen for the Project, to show that sound levels will not exceed the Project area average daytime ambient level at any non-participating sensitive receptor. If transformer manufacturer data is not available, the model will be updated with sound emission data following the NEMA [National Electric Manufacturers Association] TR1 [Transformers, Regulators, and Reactors] standard. If the inverter manufacturer data is not available, a similar inverter model will be used to update the sound propagation model prior to construction. Once constructed, sound level measurements will be made in close proximity to the inverter to determine the sound power level of the installed inverter. If the level is 2 dBA or more above the updated model, then the model will be updated to ensure project-wide compliance. If the sound power level is less than 2 dBA above the sound power level in the updated model, then the Project will be deemed in compliance. If the equipment chosen for the Project are at the same (or lower) sound power outlet as the models used in the noise model, no further action is needed for compliance of this condition.
- (30) The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the Facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent at the Applicant's expense. Affected landowners may agree to not having a

damaged drain tile repaired only if the systems of nearby landowners remain unaffected by the non-repair of the landowner's field tile system. The Applicant shall design the Project to ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the Project.

- (31) The Applicant shall adhere to the October 19, 2021 MOU executed between the Applicant and the OHPO, which commits the Applicant to avoid ground disturbance with regard to one archeological site and to minimize visual impacts to two identified architectural resources through the landscape mitigation plan developed for the Project.
- (32) At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to the salvage value on the public docket that includes: (a) a provision that the decommissioning financial assurance mechanism includes a performance bond where the Applicant is the principal, the insurance company is the surety, and the Board is the obligee; (b) a timeline of up to one year for the removal of the majority of equipment; (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation subject to landowner permission to access the site; (d) a provision where the performance bond is posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damages or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; and (h) a provision stating that the bond shall be recalculated every five

years by an engineer retained by the Applicant; and (i) a statement about which contingency amount or percentage was selected for the Project, if any.

- (33) At the time of solar panel end of life disposal, retired panels marked for disposal, and not recycling, shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location approved by Staff at the time of decommissioning.

(Joint Ex. 1 at 5-11.)

VII. CONSIDERATION OF STIPULATION

{¶ 111} Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. *See, e.g., In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (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?

{¶ 112} Dodson witness Courtney Pelissero testified that the Stipulation meets the criteria for Board approval. The witness testified that the Stipulation is a product of serious bargaining among capable and knowledgeable parties who were all represented by counsel. (Applicant Ex. 8 at 7.) Witness Pelissero opined that the Stipulation does not violate any regulatory principle or practice and that it benefits the public interest (Applicant Ex. 8 at 5-7).

{¶ 113} Upon review, the Board finds that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board recognizes that the proposed electric generation Facility will generate clean and quiet renewable electricity and produce “on peak” power during the high demand period of mid-day and late afternoon. (Applicant Ex. 8 at 5). Additionally, the Project will have a positive effect on the Ohio economy through the creation of jobs and a new tax revenue. (Applicant Ex. 8 at 5). Further, the Stipulation requires the Applicant to take steps and meet certain requirements during the construction and operation in order to minimize the impacts of the Project.

{¶ 114} The Applicant must provide various updates during the construction process and file numerous plans for Staff’s review. These include a landscape and lighting plan, a decommissioning plan, and a complaint resolution plan. (Applicant Ex. 8 at 5-6.). In particular, the Board highlights that the landscape and lighting plan will include measures, such as the planting of vegetative screening designed to enhance the view from a non-participating parcel, and to address potential aesthetic impacts to the traveling public, nearby communities, and recreationalists. The Stipulation reached in this case sets forth provisions for the Applicant to continue to maintain the vegetative screening and the fencing around the perimeter of the Project (Joint Ex. 1 at Conditions 16 and 17). The Board finds that the Stipulation does not violate any important regulatory principle or practice.

Additionally, in order to address concerns raised by the public relative to the proposed Project, the Board finds that the Facility design is to incorporate a minimum setback from the Project's solar modules of (a) at least 150 feet from non-participating parcel boundaries, (b) at least 300 feet from non-participating residences existing as of the application date, and (c) at least 150 feet from the edge of pavement of any state, county, or township road within or adjacent to the Project area. Finally, to alleviate aesthetic concerns regarding project perimeter fencing comprised of chain link fence with barbed wire on top, Condition 17 of the Stipulation is modified as follows:

Prior to commencement of construction, the Applicant shall submit to Staff its design for the perimeter fence for confirmation that the design complies with this condition. Project perimeter fencing shall be designed to be both small-wildlife permeable and aesthetically fitting for the rural location, taking into account NESC requirements, but will not include chain link fencing or barbed wire. This condition shall not apply to the substation fencing and the Operations and Maintenance building.

{¶ 115} In conclusion, and based upon the record in these proceedings, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the Facility as described in the application filed in this case, subject to the conditions set forth in the Stipulation, as amended, and this Opinion, Order, and Certificate. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as amended, and hereby issues a certificate to Dodson in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 116} Dodson is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

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

{¶ 118} On December 24, 2020, the Applicant filed a motion for waiver of the requirement to conduct an in-person public informational meeting. The motion was granted on January 8, 2021.

{¶ 119} On April 8, 2021, Dodson filed a pre-application notification letter regarding its proposed Project.

{¶ 120} On September 28, 2020, in accordance with Ohio Adm.Code 4906-3-03, Dodson certified that the notice regarding the April 28, 2021 public informational meeting was sent to the specified addresses via first class mail. In addition, Dodson filed proof that legal notice was published in the Highland County Press and the Hillsboro Times, newspapers of general circulation in Highland County, on April 17, 2021, and April 20, 2021, respectively, regarding the public informational meeting on its application.

{¶ 121} The Applicant held web-based and phone-based public information meetings to discuss the Project with interested persons and landowners on April 28, 2021.

{¶ 122} On May 27, 2021, as supplemented on June 29, 2021, Dodson filed an application to construct and operate a new solar-powered electric generation facility of up to 117 megawatts located in Dodson and Hamer townships, Highland County, Ohio. and a motion for a protective order to keep portions of the application confidential. A second motion for a protective order was filed on July 15, 2021. The May 27, 2021 motion was granted, in part, and denied, in part, pursuant to the Entry of September 14, 2021. The July 15, 2021 motion was granted pursuant to the same Entry.

{¶ 123} Also, on May 27, 2021, Dodson filed a motion for waiver of Ohio Adm.Code 4906-4-08(D)(2)-(D)(4) to allow for a reduced study area regarding the impact on cultural resources, landmarks, recreation and scenic areas and visual impacts of the Facility. The motion was granted on September 14, 2021.

{¶ 124} By letter filed July 23, 2020, Staff notified Dodson that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code 4906-1, et seq.

{¶ 125} On July 29, 2021, the Applicant filed correspondence indicating that the application fee was paid and a proof of service indicating that a copy of its accepted, complete application was served upon the appropriate government officials and local libraries in accordance with Ohio Adm.Code 4906-3-07.

{¶ 126} On August 20, 2021, the ALJ issued a procedural Entry that established the effective date of the application as August 20, 2021 and scheduled a local public hearing for and adjudicatory hearing for November 10, 2021, and December 1, 2021, respectively. The Entry also established a procedural scheduled, including the deadline for the filing or intervention. Pursuant to the Entry of November 2, 2021, the adjudicatory hearing was changed from an in-person to a virtual hearing.

{¶ 127} On August 23, 2021, Banks Petitioners filed a petition for leave to intervene. The motion was granted pursuant to the Entry of September 14, 2021. Banks Petitioners subsequently filed a notice of withdrawal on April 20, 2022.

{¶ 128} Hamer Township and Dodson Township filed petitions for leave to intervene on September 2, 2021, and September 30, 2021, respectively. Hamer Township was granted intervention pursuant to the Entry of September 14, 2021, and Dodson Township was granted intervention pursuant to the Entry of November 2, 2021.

{¶ 129} On September 29, 2021, the OFBF filed a motion to intervene. The motion was granted pursuant to the Entry of November 2, 2021.

{¶ 130} On October 1, 2021, Misty Carter and Shawn Ball jointly filed a motion to intervene. The motion was denied pursuant the Entry of November 2, 2021.

{¶ 131} On October 22, 2021, Staff filed its Staff Report regarding the Project proposed in the application.

{¶ 132} In compliance with Ohio Adm.Code 4906-3-09, on November 10, 2021, Dodson filed proof of publication showing that notice was published on October 28, 2021, in the Hillsboro Times Gazette, a newspaper of general circulation in Highland County.

{¶ 133} Twenty-two witnesses testified at the local public hearing held on November 10, 2021, at the Highland County Fairgrounds.

{¶ 134} An adjudicatory hearing was called and continued on December 1, 2022, January 19, 2022, and February 24, 2022. The adjudicatory hearing was ultimately rescheduled for April 21, 2022.

{¶ 135} On April 6, 2022, and April 15, 2022, Dodson and Staff filed the direct and supplemental testimony of their respective witnesses.

{¶ 136} On April 6, 2022, Dodson, OFBF, and Staff filed a Stipulation resolving issues in this proceeding.

{¶ 137} On April 21, 2022, an adjudicatory hearing was held at which witnesses for Dodson and Staff were called to testify in support of the Stipulation.

{¶ 138} Adequate data on the proposed generation Facility has been provided to make the applicable determination required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 139} The record establishes that the Facility is not an electric transmission line or gas pipeline and, therefore, R.C. 4906.10(A)(1) is not applicable.

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

{¶ 141} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, represents the minimum adverse environmental impact, considering the available technology and nature

and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).

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

{¶ 143} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will comply with R.C. Chapters 3704, 3734, and 6111; R.C. 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

{¶ 144} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 145} The record establishes the impact of the Facility on agricultural lands and agricultural district land consistent with the requirements of R.C. 4906.10(A)(7).

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

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

{¶ 148} Based on the record, the Board finds that Dodson's application should be approved, and a certificate should be issued, pursuant to R.C. Chapter 4906, for the

construction, operation, and maintenance of the electric generation Facility, subject to the conditions set forth in the Stipulation, as amended, and consistent with this Opinion, Order, and Certificate.

IX. ORDER

{¶ 149} It is, therefore,

{¶ 150} ORDERED, That the Stipulation, as amended by this Opinion, Order, and Certificate, be approved and adopted. It is, further,

{¶ 151} ORDERED, That a certificate be issued to Dodson for the construction, operation, and maintenance of the electric generation Facility, subject to the conditions set forth in the Stipulation, as amended, and consistent with this Opinion, Order, and Certificate. It is, further,

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Bruce T. Vanderhoff, M.D., Director
Ohio Department of Health

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

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

Gregory Slone
Public Member

DMH/JSA/mef/dmh

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Case No(s). 20-1814-EL-BGN

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