

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of	:	
Yellow Wood Solar Energy, LLC, for a	:	Case No. 20-1680-EL-BGN
Certificate of Environmental	:	
Compatibility and Public Need.	:	
	:	

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE OHIO POWER SITING BOARD**

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**On behalf of the Staff of  
The Ohio Power Siting Board**

**November 18, 2022**

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**INTRODUCTION**

The Ohio General Assembly created laws to allow the development of renewable energy in Ohio. Renewable energy is important to promote a diversified state energy portfolio. Many Ohioans benefit from the economic and tax opportunities that a renewable energy development, such as Yellow Wood Solar Energy, LLC (“Project”) can bring to the local community. There are a limited number of sites in Ohio that can support a commercial-size solar farm. The Yellow Wood Project will occupy up to 2,460 acres within an approximate 4,400-acre project area comprised of private land secured by the Applicant through agreements with the landowners. The facility is expected to be generally compatible with the overall low density rural residential and agricultural land use. No significant impacts to residential, commercial, industrial, recreational, and institutional land uses are expected and the surrounding agricultural land use would continue with minimal disruption. The purpose of the Project is to produce clean, renewable electricity to Ohio Electric system and serve the needs of Ohio’s electric utility

companies and their customers. Clinton County is an excellent location for this solar farm.

Though the proposed Project will have a minimal environmental impact, it is not one hundred percent impact free. Improvements and maintenance to local roads will be required and made. Landscape and lighting plans will be addressed and minimized where possible. Though there is opposition to this project, it is the Board's statutory job to analyze and review the expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and environment. The conditions proposed by Board Staff to address and mitigate impacts and modified by the Stipulation and Recommendation, are supported by a diverse group. Staff respectfully requests that the Board adopt the proposed Stipulation and Recommendation.

## **BACKGROUND AND PROCEDURAL HISTORY**

On February 24, 2021, Yellow Wood Solar Energy, LLC ("Yellow Wood" or "Applicant") filed this application to construct and operate a commercial solar farm in Clinton County, Ohio. Prior to filing the application, Applicant filed a project descriptive pre-application letter on November 25, 2020 and held a virtual public informational meeting on December 17, 2020.

The application purposed to construct a 300 MW solar-powered generating facility in Clark and Jefferson townships in Clinton County. The facility would consist of large arrays of photovoltaic modules, commonly referred to as solar panels, ground-mounted on a tracking rack system. The project would occupy approximately 2,460 acres within

an approximate 4,400-acre area. The project area is comprised of private land secured by Yellow Wood through agreements with the landowners. The project would also include associated facilities such as access roads, an operations and maintenance building, underground and overhead electric collection lines, weather stations, inverters and transformers, a collection substation, and a 345kV gen-tie electric transmission line. Six-foot tall perimeter fencing would enclose the facility, which would be accessed through gated entrances. The Staff completed its investigation and issued its Report of Investigation (“Staff Report”) on October 4, 2021. Staff Ex. 1.

A Joint Stipulation and Recommendation (“Joint Stipulation”) was filed by parties on August 8, 2022. Joint Ex. 1. The signatory parties, in addition to the Applicant, included the Board Staff and the Ohio Farm Bureau Federation. Brad Cochran/Brad Cochran Farms LLC, JWO Family Farms LLC, Diane Rhonemus, and Charles Thompson intervened, but did not sign the Stipulation.

The adjudicatory hearing was held on September 26 and 27, 2022. Testimony was provided by eleven (11) Applicant witnesses, one (1) intervenor witness, and nine (9) Staff witnesses. The Attorney Examiner ordered that Initial Briefs be filed by November 18, 2022 and Reply Briefs by December 9, 2022.

The Board’s Staff must investigate an application and recommend conditions to the Board to mitigate or minimize impacts to the project environment. Staff conducted its investigation and proposed comprehensive recommendations for the Board’s consideration in order to address and reduce Project impacts to reasonably acceptable levels. A number of those conditions were significantly expanded through the

negotiations that resulted in the Joint Stipulation. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

## **DISCUSSION**

### **I. The Board should determine the Project, with conditions as recommended in the Staff Report as modified by the Joint Stipulation and Recommendation, satisfies the criteria of R.C. 4906.10.**

Staff, after a thorough investigation, determined that the proposed facility will have minimal adverse environmental impacts. The proposed project will generate electricity; however, it will not pollute the air and will not use water. Yellow Wood's project will have a minimum adverse environmental impact.

Staff's review analyzed the socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and explains Staff's recommendations related to each of the criteria.

The Staff's recommended conditions will adequately mitigate any impacts and allow the Board to find that the Yellow Wood project, with the Stipulation's suggested conditions, will have an overall minimal adverse environmental impact. Negotiations that led to a Stipulation in this case brought about more extensive conditions that further

minimize environmental impact. The Staff Report provides the Board with an evidentiary basis for determining the project meets all of the R.C. 4906.10 criteria. Staff recommends that the Board issue a certificate containing the conditions in the Stipulation.

**A. R.C. 4906.10(A)(1) – Basis of Need**

The proposed facility is neither an electric transmission line nor a gas pipeline; therefore, R.C. 4906.10(A)(1) does not apply to this Project. Staff recommends that the Board find that this requirement is not applicable to this facility.

**B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact**

According to Ohio law governing power siting projects, the Board must determine that nature of the probable environmental impact of the facility. The Staff Report found significant impacts to residential, commercial, industrial, recreational, and institutional land uses are not anticipated, and surrounding agricultural land use would continue with minimal disruption. Staff Ex. 1 at 11. The project will occupy 2,448 acres of agricultural land, seven acres of developed land, one acre each of deciduous forest and herbaceous land. *Id.* The facility is expected to be generally compatible with the overall low density rural residential and agricultural land. The Applicant's project plans are not expected to conflict with these uses. The proposed facility is expected to benefit regional development by increasing local tax revenue. The facility will also provide supplemental income to farmers and the land could be returned to agricultural use upon decommissioning. *Id.* at 30.

Construction and operation of the facility would not physically impact any recreational areas. *Id.* at 12. The nearest recreational area is located approximately 1.25 miles away and this distance exceeds likely visibility. *Id.* The Applicant shall prepare a landscape and lighting plan in consultation with a licensed landscape architect that shall address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists. *Id.* The plan shall include measures such as shrub planting or enhanced pollinator plantings, fencing, and vegetative screening. Joint Ex. 1 at 6. The Applicant will maintain vegetative screening for the life of the facility and the Applicant must replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. *Id.*

Yellow Wood completed a cultural resources studies for the Project and submitted it to Staff and the Ohio Historic Preservation Office (“OHPO”). There are archaeological and possibly historic archeological sites that may be eligible for a listing on the National Register of Historic Places. The Applicant and OHPO have entered into a memorandum of understanding (“MOU”). Applicant Ex. 5. On October 8, 2022, Applicant docketed the MOU in which the OHPO recommended, and Yellow Wood agreed, to avoidance or mitigation measures to protect those locations. *Id.*

Staff found the Applicant’s economic analysis to be reasonable. The Applicant produced a report on the economic impact of the project that included the Jobs and Economic Development Impact (“JEDI”) model, the IMPLAN regional economic modeling system, as well as data from the Ohio Department of Taxation. Staff verified



that the methodology of the JEDI and IMPLAN models were appropriate and that the estimated impacts reported were reasonable. Staff Ex. 1 at 14.

While considering the economics of the project, Staff and the Applicant noted that the Yellow Wood project should generate an estimated \$2.1 million annually for the Yellow Wood taxing districts, based on a Payment in Lieu of Taxes (PILOT) plan in which Applicant would pay \$7000/MW annually for a 300 MW facility. *Id.* at 15.

Prior to construction, the Applicant will commit to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration. Joint Ex. 1 at 11 - 12. The plan will be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors. *Id.* at 12.

The Project will incorporate maximum feasibility water conservation practices. Joint Ex. 1 at 16, 18. Because the project area is within the range of the state and federal endangered Indiana bat, federal threatened northern long-eared bat, Little Brown bats, and Tricolored bats, Applicant will adhere to seasonal cutting dates of October 1 through March 31 for removal of trees three inches or greater in diameter to avoid impacts to these bats, if they are present in the project area. Staff Ex. 1 at 6.

Prior to the beginning of construction activities, Yellow Wood shall obtain all necessary transportation permits. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use and maintenance agreements with the County and applicable townships, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed

facility. Joint Ex. 1 at 8. This coordination shall be part of the final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff. *Id.*

Yellow Wood shall file a report on the docket that shows either (1) for the chosen inverter and substation transformer that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor or (2) results of the operational noise test showing that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor. *Id.* at 10.

Finally, Yellow Wood shall file a copy of the final complaint resolution plan on the public docket. Prior to construction and prior to operation of the facility, the Applicant shall notify property owners located within one mile of the project area, parties to the case, County Commissioners, township trustees, emergency responders, airports, schools, and libraries of the complaint resolution process and a timeline of when construction will begin and when restoration activities will occur. *Id.* at 9.

In conclusion, Staff's report indicated that the Angelina project's nature of the probable environmental impact had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff's recommended conditions and the Stipulation's conditions when issuing a certificate.

### **C. R.C. 4906.10(A)(3) – Minimum Adverse Impact**

Considering the state of available technology and the nature and economics of the various alternatives, the facility must represent the minimum adverse environmental

impact. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Those conditions have been adopted in the Stipulation, thus minimizing any potential impacts.

**D. R.C. 4906.10(A)(4) – Electric Grid**

The Project must be consistent with regional plans for expansion of the electric power grid of the electric systems serving Ohio and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Staff determined that the Project, as conditioned, would satisfy that requirement. Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4). Staff Ex. 1 at 34.

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

Air quality permits nor air pollution control equipment are not required for construction and operation of the proposed facility. However, fugitive dust rules adopted pursuant to R.C. Chapter 3704, may be applicable. The Applicant would control temporary and localized fugitive dust by using BMPs such as using water to wet soil to minimize dust during periods of high heat as outlined in ODNR's *Ohio Rainwater and Land Development Manual* and this method is typically used to comply with the fugitive dusts rules. Staff Ex. 1 at 35.

Yellow Wood 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 the implementation of a SWPPP.

*Id.* The SWPPP would outline BMPs to control soil erosion, minimize sedimentation, and describe placement of silt fence and filter sock where appropriate to minimize runoff. *Id.*

Applicant's engineering contractor would implement all measures indicated in the SPCC plan and monitor for aquatic discharges draining from the site to ensure that water resources are not at-risk during construction. *Id.*

Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff Ex. 1 at 36. Applicant is committed to using only solar panels that pass the Toxicity Characteristic Leaching Procedure test and further commits that at the time of project decommissioning and removal, retired panels and their components that are not recycled shall be sent to an engineered landfill with barriers designed to prevent leaching. Joint Ex. 1 at 12.

According to the FAA, the closest public-use airports are the Wilmington Air Park and Hollister Field, which are between 10 and 12 miles from the proposed solar facility project area. Staff Ex. 1 at 36. The FAA performed an aeronautical study from various points around the solar facility and made a determination of no hazard to air navigation. *Id.*

Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(5).

**G. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity**

The Board must determine that the facility will serve the public interest, convenience, and necessity in accordance with R.C. 4906.10(A)(6).

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Electrical Safety Code. Joint Ex. 1 at 6. As described in the testimony of Josh Hreha, the Applicant has committed to work closely with the local government officials and this is demonstrated in the following conditions:

Condition 2: the County may participate in preconstruction meetings;

Condition 3: the Applicant will submit construction and operations plans to Clinton

County Soil and Water District (“S&W District”);

Conditions 4: the Applicant will submit as-built specifications for the entire facility to the

County and the S&W District after operation;

Condition 5: the Applicant will submit detailed engineering drawings to the County;

Condition 7: the Applicant will submit corrosion analysis to the S&W District;

Condition 11: the Applicant will provide information to the County on dates when

construction begins, when construction is completed, and when commercial operation begins;

Condition 12: the Applicant will provide the County copies of all permits received within seven (7) days of receipt;

Condition 21: the Applicant will hold in-progress design meetings with the S&W District on stormwater and engage with the S&W District periodically through construction;

Condition 26: the Applicant will coordinate with the County on road agreements;

Condition 30: for the County maintenance program of County easements, the Applicant will obtain design approvals and rights to construct or modify the ditch/tile from the S&W District;

Condition 31: the Applicant will fund a \$50,000 fund to inspect perceived drainage issues, along with the commitment to fix any issues that are found; and

Condition 32: the Applicant will send the decommissioning plan to the County.

Hreha Testimony, Applicant Ex. at 5.

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

#### **H. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land**

The Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary, according to R.C. 4906.10(A)(7). The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles. Staff Ex. 1 at 41.

Paragraph 30 of the Stipulation relates to the repair of damaged drainage tile. As contained in the Stipulation, Condition 30 reads:

The Applicant shall not adversely impact the drainage on any non-participating parcel. The Applicant shall consider any disturbance or improvement made to a project parcel, as a function of the project, to result in the acceptance of responsibility for that parcel's potential drainage configuration changes from project improvements. With the acceptance of this responsibility, the Applicant can only incorporate existing known or unknown drainage infrastructure as a part of the project to meet the obligation to not adversely change the drainage on adjacent parcels.

Joint Ex. 1 at 10.

Staff recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(7).

## **II. R.C. 4906.10(A)(8) – Water Conservation Practice**

The proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives according to R.C. 4906.10(A)(8). Construction of the facility nor operation of the facility will require the use of significant amounts of water. Staff Ex. 1 at 43. Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

## **III. The Board should determine that the Stipulation meets the three-part test for reasonableness.**

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 Board must determine whether the agreement, which involved a substantial amount of time and effort by the signatory parties, is reasonable and should be adopted. The Board has used the following criteria to consider the reasonableness of a stipulation:

- (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?

The evidence of record supports and justifies a finding that its terms are just and reasonable.



### **A. Result of Serious Bargaining**

All intervenors were given an opportunity to participate and the Stipulation is the product of an open process. Counsel for parties and all intervenors were invited to all settlement negotiations of the parties. Applicant Ex. 13, Hreha testimony at 18.

Representatives of the parties involved in the deliberations leading to the Stipulation were aware of and knowledgeable about the issues addressed in the Stipulation. *Id.* Serious bargaining between the parties resulted in greater detail and increased protections added to existing proposed conditions. All parties were invited to participate, and the signatory parties were active in drafting the amended conditions. The Stipulation is a product of serious bargaining among capable, knowledgeable parties.

### **B. Benefits the Public Interest**

The project retained the services of Strategic Economic Research, LLC, report that there would be 1,235 jobs and \$102.5 million in annual earnings for the state of Ohio. And the project is estimated to produce \$2.1 million annually for the taxing districts. Staff Ex. 1 at 14 – 15.

The Stipulation benefits the public interest. Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10.

### **C. Does not violate any important regulatory principle or practice**

There is not regulatory principle that is violated. There has been no allegation of any regulatory principle or practice being violated.

## CONCLUSION

Staff respectfully requests that the Board adopt the Joint Stipulation and Recommendation. Staff further specifically requests that the Board condition any certificate issued in this case by adopting the conditions set forth in that Stipulation and Recommendation.

Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Jodi Bair*

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**On behalf of the Staff of  
The Ohio Power Siting Board**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 18<sup>th</sup> day of November 2022.

*/s/ Jodi Bair*

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Summary: Brief Staff's Initial Brief electronically filed by Ms. Jodi J. Bair on behalf of  
Staff of the Commission