

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **Dixon Run**)
Solar, LLC for a Certificate of Environmental)
Compatibility and Public Need for a Solar Facility) Case No. 21-0768-EL-BGN
Located in Jackson County, Ohio.)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Dixon Run Solar, LLC (“Dixon Run” or “Applicant”), Ohio Farm Bureau Federation (“OFBF”), the Ohio Environmental Council (“OEC”), and Staff of the Ohio Power Siting Board (“OPSB Staff”) who represent the parties to this proceeding, submit this Joint Stipulation and Recommendation (“Joint Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“O.A.C.” or “Ohio Adm. Code”) 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (“Parties” or in the singular “Party”), and to recommend that the Board approve and adopt this Joint Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters raised by the OPSB Staff pertinent to the approval and construction of Dixon Run Solar, a 140 megawatt (“MW”) solar-powered electric facility in Jackson County, Ohio and its associated facilities (“Project” or “Facility”).

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

is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Parties have engaged in settlement discussions related to the topics raised in this proceeding. This Joint Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. JOINT STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The Parties recommend that the Board approve Dixon Run's Application subject to the conditions in the Staff Report of Investigation issued on November 14, 2022 as listed and modified below.

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.
- (2) The Applicant shall conduct a preconstruction conference prior to the commencement 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 and shall file a copy of the agenda on the case docket. The Applicant may conduct separate preconstruction conferences for each stage of construction.
- (3) Within 60 days of commencement of commercial operation of the solar facility, point-of-interconnection switchyard, the Applicant shall submit to Staff a copy of the as-built specifications for that 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) In the event that the federal requirements for an SPCC Plan does not apply to the proposed facility, the Applicant shall develop and implement a Spill Prevention Plan or comparable plan that will address prevention of, response to, and notification to the appropriate authorities in the event of any spills.
- (5) 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 waiver or extension of time.
- (6) As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (7) The Applicant shall obtain transportation permits prior to the commencement of construction activities that require them. 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 proposed facility. 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. That Applicant shall also submit the completed Transportation Study as part of the final transportation management plan.
- (8) Prior to the commencement of construction activities in areas that require permits or authorizations by federal, state, or local 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 within seven days of issuance or receipt by the Applicant 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(s). Any permit violation received by the Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
- (9) 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.
- (10) The facility shall be operated in such a way as to assure that no more than 140 megawatts would be injected into the Bulk Power System at any time.
- (11) The Applicant shall not commence any construction of the facility until it has as executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, LLC, 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 shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

- (12) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff, and shall file on the public docket, an updated glare analysis based on the final design that
- (a) accounts for glare along roads and nearby residences in the project area,
 - (b) provides an executive summary of the results,
 - (c) includes a recommendation to minimize and address all predicted glare impacts.
- (13) At least 30 days prior to the preconstruction conference, the Applicant shall provide proof that the solar panels used for the project utilize an anti-reflective coating.
- (14) Prior to commencement of construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. 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 plan shall incorporate planting design features or measures to address aesthetic impacts to the traveling public, nearby communities, sensitive institutional land uses and recreationalists. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall substitute 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.
- (15) Prior to commencement of construction, the Applicant shall submit to Staff for approval a solar panel perimeter fence type that is small-wildlife permeable. This fencing should be aesthetically fitting for a rural setting in locations where vegetative screening is planned. Fencing around panels should incorporate gaps or spaces of at least six inches by six inches to allow passage of small mammals. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Barbed wire shall not be utilized for the perimeter fence. This condition shall not apply to substation fencing.
- (16) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 6:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk

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

- (17) The Applicant shall operate a facility that limits sound levels emitted to nonparticipating receptors to no higher than the daytime ambient Leq level plus five dBA, during the day, and nighttime ambient Leq level plus five dBA, during the night. If the facility is found to be above these limits, the Applicant shall install additional noise mitigation measures to maintain compliance with this provision. If an inverter or transformer model with a higher sound power level than the proposed inverter or transformer model is chosen, the Applicant shall submit a noise report confirming that no non-participating receptors were modeled to receive noise impacts greater than the daytime and nighttime ambient noise level, respectively, plus five dBA.
- (18) 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 or rerouted to at least original conditions or modern equivalent at the Applicant's expense to ensure proper drainage. However, if the affected landowner(s) agrees to not having the damaged field tile system repaired, they may do so only if: i) the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system; and ii) the damaged field tile does not route directly onto or into an adjacent parcel. 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. Applicant shall document benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches. The Applicant shall consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and the county to request drainage system information over those parcels. The Applicant shall consult with the county engineer for tile located in a county maintenance/repair ditch. A map of discovered and repaired drain tile systems shall be filed in the case docket once construction is complete.
- (19) 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 salvage value on the public docket that includes:
 - (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee;
 - (b) a timeline of up to one year for removal of the equipment;
 - (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation;

- (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 damaged 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;
 - (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by the Applicant; and
 - (i) a provision that underground equipment will be removed to the extent that allows for future drain tile repairs and installation to be completed. The Applicant shall implement and comply with the decommissioning plan as approved by Staff.
- (20) At the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approved by Staff.
- (21) The Applicant shall only use solar panel modules that do not exhibit the characteristic of toxicity verified through analysis or documentation with the US EPA's Toxicity Characteristics Leaching Procedure test.
- (22) The Applicant shall avoid construction within the FEMA designated 100-year floodplain.
- (23) The Applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (24) The Applicant 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. This would be achieved through appropriate seed selection, and annual vegetative surveys. If noxious weeds are found to be present, the Applicant shall remove and treat them with herbicide pursuant to R.C. 921.06, as necessary, and shall follow all applicable state laws regarding noxious weeds and invasive plant species.
- (25) 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 listed bat species, unless coordination with the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service 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.

- (26) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat, unless coordination with the ODNR reflect a different course of action which shall be filed on the docket.
- (27) Construction in sandhill crane preferred nesting habitat types shall be avoided during the species' nesting period of April 1 through September 1. If present, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with the ODNR reflect a different course of action which shall be filed on the docket.
- (28) Construction in the northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1. If present mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with the ODNR reflect a different course of action which shall be filed on the docket.
- (29) The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas 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 shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas, which would be impacted during construction with information on when the environmental specialist would be present.
- (30) The Applicant shall minimize tree clearing to the greatest extent possible. This includes cutting no more than 127.5 acres.
- (31) Prior to commencement of any construction, the Applicant shall prepare an updated vegetation management plan in consultation with ODNR. The goals of the plan shall include planting a minimum of 70 percent of the impacted project area in beneficial vegetation, utilizing plant species listed in Attachment A of ODNR Recommended Requirements for Proposed Solar Energy Facilities in Ohio, and shall follow the Ohio Solar Site Pollinator Habitat Planning and Assessment Form with a minimum score of 80 points. The plan shall include a narrative on how the project proposes to establish and maintain beneficial vegetation and pollinator habitat in accordance with the guidelines provided above. The plan shall include mapping of the areas where pollinator habitat would be established and maintained. The plan shall include that routine mowing would be limited to fall/spring seasons, as needed, to allow for natural reseeding of plantings and reduce impacts to ground-nesting birds.
- (32) At least 30 days prior to the preconstruction conference, the Applicant shall file a copy of the grazing plan on the public docket for Staff review and acceptance. The grazing plan shall include:
 - (a) a map of the area to be utilized for sheep grazing;

- (b) seed mix selected for the site;
 - (c) times of year when sheep grazing would occur;
 - (d) stocking rate;
 - (e) how manure and deceased livestock would be managed;
 - (f) and the Applicant's plan to comply with Condition 9 in relation to sheep grazing.
- (33) The Applicant shall contact Staff, the ODNR, and the USFWS 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. The Applicant shall also keep a running list of and notify OPSB Staff and the ODNR Division of Wildlife if any wildlife mortality or entrapment is discovered in the facility during operation.
- (34) The Applicant shall avoid wetland impacts associated with panel installation. Avoidance shall also include a 25-foot buffer from panels surrounding these surface water resources.
- (35) Should construction be delayed beyond five years of the date of the certificate, certain wildlife surveys may be required to be updated as determined by Staff and the ODNR.
- (36) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design for that phase of construction 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 the siting detailed in the application. The detailed engineering drawings of the final project design for each phase of construction 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 for review and concurrence.
- (37) The Applicant shall avoid construction over mine locations JKN-179 and JKN-132.
- (38) With written concurrence from the parcel's title and/or deed holder, the Applicant shall plug and abandon oil and gas well API 34079202610000 in accordance with all applicable laws and regulations prior to initiation of any construction. The Applicant's final design shall observe a minimum setback of 25 feet between any plugged and abandoned oil and gas wells and any project infrastructure.
- (39) At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final Unanticipated Discovery Plan.

- (40) At least 30 days prior to the reconstruction conference, the Applicant shall provide Staff, for review and acceptance, a Subsidence Mitigation Plan.
- (41) If any changes are made to the facility layout after the 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 for compliance with all conditions of the certificate, prior to construction in those areas.
- (42) The Applicant's final project design shall include input from a qualified corrosion engineer to account for potentially corrosive soils.
- (43) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan for construction and operation of the project 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 all affected property owners and tenants who were provided notice of the public informational meeting and OPSB hearings; local officials who received a copy of the application; residences located within one mile of the certificated boundary; schools, libraries, and emergency responders that serve residents in the project area; and any other person who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution program. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that the Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. Staff also recommends that the Applicant prepare a quarterly complaint summary report about the nature and resolution of all complaints received in that quarter and file these reports on the public docket during the first five years of operation. The Applicant shall file on the public docket a complaint summary report by the fifteenth day of April, July, October, and January of each year during construction and through the first five years of operation. The report shall include a list of all complaints received through the Applicant's complaint resolution program, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved.
- (44) At least 30 days prior to the preconstruction conference, the Applicant shall provide proof that it has a fully executed power purchase agreement and a deed restriction which outlines a preservation zone for 227 acres of forested land within the project area.
- (45) The Applicant shall implement a minimum setback from the project's solar modules of at least 150 feet from non-participating parcel boundaries, at least 300 feet from non-participating residences, and at least 150 feet from the edge of any paved state, county, or township road within or adjacent to the project area.
- (46) The Applicant shall avoid, where possible, or minimize to the extent practicable any damage to installations and/or land forming located within the Project footprint that are used to prevent subsidence, maintain drainage, and preserve soils that impact adjacent landowners. If it is established that damages occurred to such installations and/or land forming located

within the Project footprint due to the Applicant's activities which affect adjacent landowners, the Applicant shall promptly ensure adequate repairs are performed to the extent necessary to cease impact on adjacent landowners and for proper soil preservation, drainage, subsidence, and erosion control. If, during construction, operation, or decommissioning, it is established that an incident occurred which results in physical damage to an adjacent landowner's property due to the Applicant's activities within the Project footprint, the Applicant will coordinate with: (1) the affected adjacent landowner and (2) the relevant governmental entities involved with regulating soil preservation, erosion control, subsidence prevention and/or drainage system protection (e.g., ODNR – Division of Mineral Resources Management, the county soil and water conservation district, the county engineer) to the extent such coordination with the governmental entities is necessary

B. Exhibits

Subject to the terms and conditions of this Joint Stipulation, the Applicant and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

1. Applicant Exhibit 1, the Application, filed on September 29, 2021 and all amendments and supplements to the Application filed on the docket;
2. Applicant Exhibit 2, Proof of Service of the Application on local public officials and libraries as filed on August 2, 2022;
3. Applicant Exhibit 3, Applicant's Responses to Staff's first (filed October 28, 2021), second (filed November 16, 2021), third (filed January 14, 2022), November 17, 2021 (filed January 21, 2022 and supplemental response filed February 9, 2022), February 1, 2022 (filed February 10, 2022), May 12, 2022 (filed May 26, 2022), September 30, 2022 (filed October 14, 2022), and October 21, 2022 (filed November 4, 2022 and additional response filed October 31, 2022) data requests;
4. Applicant Exhibit 4, a copy of the letters sent to property owners and tenants within the plan site or contiguous to the plan site on June 30, 2021 announcing the first Public Informational Meeting would be held on July 22, 2021, and on February 28, 2022 announcing the second Public Informational Meeting would be held on March 22, 2022;
5. Applicant Exhibit 5, Proofs of Publication for the Public Informational Meetings filed on July 14, 2021 (first meeting published on July 7, 2021 in *The Vinton County Courier*), and March 14, 2022 (second meeting published on March 9, 2022 in both *The Vinton County Courier* and *The Telegram*);
6. Applicant Exhibit 6, Proofs of filed on October 4 (first publication of the description of the application and hearing dates published on September 30, 2022 in *The Vinton County Courier* and on September 24, 2022 in *The Telegram*); and November 28,

2022 (second publication of the description of the application and hearing dates published on November 18, 2022 in *The Vinton County Courier* and November 12, 2022 in *The Telegram*) in accordance with Ohio Revised Code (“R.C.”) 4906.06(C) and O.A.C. 4906-3-10(B) for the first and second publications of the description of the application and the hearing dates;

7. Applicant Exhibit 7, Completed Copy of the Spring and Summer Ecological Survey Results and Correspondence filed on July 14, 2022;
8. Applicant Exhibit 8, August 15, 2022 Ohio State Historic Preservation Office Section 106 Concurrence; filed on August 17, 2022
9. Applicant Exhibit 9, the “Direct Testimony of Dustin Smith” filed on December 2, 2022;
10. Applicant Exhibit 10, the “Direct Testimony of Jordan R. Rofkar” filed on December 2, 2022;
11. Applicant Exhibit 11, the “Direct Testimony of Kevin R. Schwartz” filed on December 2, 2022;
12. Applicant Exhibit 12, the “Direct Testimony of Mark J. Bonifas” filed on December 2, 2022;
13. Applicant Exhibit 13, the “Direct Testimony of Mitchell T. Hardert” filed on December 2, 2022;
14. Applicant Exhibit 14, the “Direct Testimony of Rob Corzat” filed on December 2, 2022;
15. Applicant Exhibit 15, the “Direct Testimony of Jacob S. Runner” filed on December 2, 2022;
16. Applicant Exhibit 16, the “Direct Testimony of Gordon Perkins” filed on December 2, 2022;
17. Applicant Exhibit 17, the “Direct Testimony of Sean Hollowell” filed on December 2, 2022;
18. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the Applicant, OFBF, OEC, and OPSB Staff;
19. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on November 14, 2022; and

C. Other Terms and Conditions

This Stipulation is conditioned upon adoption of the Stipulation by the Board in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation constitutes a "material modification" thereof. If the Board rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdrawal"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Board review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after a hearing if necessary.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Joint Stipulation, contains sufficient probative evidence for the Board to find and determine, as

findings of fact and conclusions of law, that:

A. Findings of Fact

1. The Facility qualifies as a “major utility facility” defined in R.C. 4906.01(B)(1)(c).
2. Applicant formally submitted its Application for Certificate of Environmental Compatibility and Public Need on September 29, 2021.
3. On August 2, 2022, Applicant filed a copy of the Proof of Service of the Application on local public officials and libraries.
4. On October 4, 2022, Applicant filed a copy of the Proofs of Publication in accordance with O.A.C. 4906-3-09 and 4906-3-10 for the publication of the description of the Application and the hearing dates in the *Vinton-County Courier* and *The Telegram*.
5. The Staff Report was filed on November 14, 2022.
6. The Administrative Law Judge, by Entry dated September 14, 2022, ordered that any stipulation entered into by the parties shall be filed by no later than 12:00 p.m. on December 12, 2022.
7. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
8. Adequate data on the project has been provided to determine that the Facility described in the Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3).
9. Adequate data on the project has been provided to determine 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, as required by R.C. 4906.10(A)(4).
10. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
11. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).

12. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. 4906.10(A)(7).
13. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
14. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

- (1) Dixon Run Solar, LLC is a "person" under R.C. 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in R.C. 4906.01(B)(1).
- (3) The Application complies with the requirements of O.A.C. Chapter 4906-4.
- (4) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
- (5) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
- (6) The record establishes, as required by R.C. 4906.10(A)(4), 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.
- (7) The record establishes, as required by R.C. 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
- (8) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
- (9) The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).

- (10) The record establishes that the Facility incorporates maximum feasible water conservation practices, as determined by the Board, considering available technology and the nature and economics of the various alternatives consistent with R.C. 4906.10(A)(8).
- (11) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility which includes the conditions in the Staff Report of Investigation, as presented and modified, by the Joint Stipulation and Recommendation.

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

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER
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Orahood on behalf of Herrnstein, Kara