

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Circleville Solar, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of a Solar Powered Electric Generation Facility in Pickaway County, Ohio.)))))))	Case No. 21-1090-EL-BGN
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SUPPLEMENTAL DIRECT TESTIMONY OF

Zachary Melda

On behalf of

Circleville Solar, LLC

April 4, 2023

Q.1 On whose behalf are you offering supplemental testimony?

A.1 I am offering testimony on behalf of Circleville Solar, LLC (“Project” or “Applicant”).

Q.2 What is the purpose of your testimony?

A.2 I will sponsor the admission of the Joint Stipulation and Recommendation (“Stipulation”) into evidence in this case. This testimony will explain the background of the Stipulation and why I believe it should be adopted by the Board. In addition, my testimony will confirm that the Stipulation complies with the Board’s three-part test for evaluating stipulations. Finally, this testimony will supplement the discussion of a project modification in my Pre-Filed Direct Testimony of March 20, 2023. Specifically, I will provide updated reductions in impacts from the Project as a result of this modification.

Q.3 Are you familiar with the Joint Stipulation?

A.3 Yes. I was involved in the discussions that resulted in the Joint Stipulation. I have reviewed and am familiar with the Joint Stipulation.

Q.4 Can you provide a brief overview of the Joint Stipulation?

A.4 Yes. The Northeast Ohio Public Energy Council (“NOPEC”) and the Ohio Farm Bureau Federation (“OFBF”) have signed the Joint Stipulation, agreeing on conditions that they recommend the Board adopt in the event the Board issues a certificate of environmental compatibility and public need for the Project. The Joint Stipulation is the product of negotiations between the signatory parties but also incorporates feedback from and addresses concerns raised by intervenors who participated in settlement discussions even though they are not signatories to the Joint Stipulation. The Joint Stipulation proposes modifications to the following Conditions presented in the Staff Report of Investigation:

- Removal of Condition No. 6; Condition No. 8, Condition No. 10, Condition No. 37; and Condition No. 38.
- Modification of Condition No. 12; Condition No. 16; Condition No. 17; Condition No. 21; and Condition No. 33.

Q.5 Please describe the Joint Stipulation’s changes to Condition No. 6; Condition No. 8, Condition No. 10, Condition No. 37; and Condition No. 38 of the Staff Report.

1 **A.5** The Joint Stipulation adopts the recommended removal of these conditions, as set forth in
2 my Pre-Filed Direct Testimony of March 20, 2023. I discuss the reasons for removal of
3 these conditions on pp. 8 and 9 of that testimony. As indicated in the Prefiled Testimony
4 of OPSB Staff Witness Jess Stottsberry, the OPSB Staff recommends that Condition Nos.
5 8, 10, 37, and 38 now be removed as recommended conditions.

6 **Q.6** **Please describe the Joint Stipulation’s changes to Staff Report Condition No. 12 of**
7 **the Staff Report.**

8 **A.6** The Joint Stipulation adopts the minor clarification edits to this condition as set forth in my
9 Pre-Filed Direct Testimony of March 20, 2023, on pp. 9 and 10 of that testimony.

10 **Q.7** **Please describe the Joint Stipulation’s changes to Staff Report Condition No. 16.**

11 **A.7** The Joint Stipulation proposes to modify Condition No. 16 as proposed in the Staff Report
12 in its entirety:

13 ~~At least 30 days prior to the preconstruction conference, the Applicant shall file a final~~
14 ~~grading plan which demonstrates, in compliance with the decommissioning condition, that~~
15 ~~the project would not obstruct future agricultural land use or a land use otherwise specified~~
16 ~~by the landowner. The plan shall include, but is not limited to the following:~~

- 17
- 18 ~~a) Preconstruction and proposed one foot contours referenced to U.S. Geological~~
- 19 ~~Survey datum~~
- 20 ~~b) Drainage arrows which delineate preconstruction and proposed drainage patterns~~
- 21 ~~c) Estimated earthwork quantities including the amount of cut and fill and the~~
- 22 ~~amount of soil to be exported or imported (in cubic yards)~~
- 23 ~~d) Location of proposed areas of cut and fill, including the extent and maximum~~
- 24 ~~depth of cut and fill~~
- 25 ~~e) Location of proposed project infrastructure~~
- 26 ~~f) Location of existing surface water locations~~
- 27

28 At least 60 days prior to the preconstruction conference, the Applicant shall file an
29 Agricultural Protection Plan (the “APP”) that is designed to minimize impacts to
30 agricultural land use during the construction, operation, maintenance, and
31 decommissioning. At least 30 days prior to filing the APP, the Applicant shall provide a
32 draft to the Pickaway County Engineer for comment. The APP shall be comprised of a
33 narrative and detailed mapping that includes, but is not limited to the following:

- 34
- 35 a. Implements a program for the collection of baseline data establishing pre-
- 36 construction soil conditions for the production of row crops for the agricultural
- 37 areas within the project area. The program shall establish the relevant
- 38 characteristics of the soil profile to a minimum depth of 16 inches to characterize
- 39 the topsoil (defined as the upper most part of the soil commonly referred to as the
- 40 plow layer, the A layer, or the A horizon, which typically is 5 to 10 inches in depth

1 in Ohio) and to identify any naturally occurring hardpan/fragipan conditions
2 below the topsoil layer that would affect soil drainage. The baseline data shall be
3 derived from field and laboratory testing of soil conditions; including depth,
4 density and quality from representative locations. Laboratory testing shall be
5 conducted by an accredited laboratory. Parameters for assessing soil quality shall
6 include, at a minimum, the following: infiltration rate, bulk density, water holding
7 capacity, pH, percent organic matter, cation exchange capacity,
8 Phosphorous/Phosphate (P), Nitrogen (N), and Potassium/Potash (K). After 30
9 years of operation or at the time of decommissioning, whichever occurs sooner,
10 soil conditions shall be determined for the same sampling locations using the same
11 parameters and the results used to plan soil restoration activities. After equipment
12 is removed as part of decommissioning, soil conditions shall be determined for
13 the same sampling locations using the same parameters. Soil restoration activities
14 shall be performed as necessary to return soil conditions to levels conducive to
15 plant growth. Staff will be provided with data of soil conditions within 30 days
16 after the receipt of results.

- 17
- 18 b. Seeks to achieve a goal of grading no more than 20 percent, of the agricultural
19 lands within the Project Area, as defined in the Application. The plan shall
20 minimize grading to the extent practicable and economically feasible, specify the
21 percentage of agricultural lands within the Project Area for which grading is
22 anticipated and, if applicable, provide the reason(s) that the 20-percent goal is not
23 practicable or economically feasible for the Project Area. For purposes of this
24 condition only, grading is defined as earth moving activities incidental to building
25 roads, equipment pads, substations, and laydown yards, installing buried electric
26 lines, excavating stormwater basins, performing soil removal activities, soil filling
27 activities, and cut-and-fill activities, but shall not include routine ground
28 disturbance incidental to installing piles, fences, poles for electric lines, drain tile,
29 vegetation, landscaping, and temporary erosion and sediment controls, performing
30 soil sampling, geotechnical investigations, and archeological investigations,
31 disking topsoil to promote the growth of vegetation, and raking, smoothing ruts,
32 or otherwise creating a smooth and safe work surface.
- 33
- 34 c. The Applicant will have a qualified environmental inspector (EI) on site during
35 grading and restoration activities. The role of the EI will be to ensure Best
36 Management Practices are implemented on-site. The EI would assist with
37 implementing a limit on heavy equipment traffic to certain areas on-site to the
38 maximum extent practicable. The EI will monitor and review the site for areas of
39 concern using visual cues such as ponding water, atypical soil subsidence, stressed
40 or poor vegetation growth, topsoil loss, wind erosion, or the formation of erosional
41 features (gulleys, rills, etc.). The EI will evaluate areas of concern and identify
42 areas on-site for soil reclamation once the construction phase is completed.
43 Following completion of construction in each area, the EI is responsible for
44 monitoring the implementation of any soil reclamation activities consistent with
45 the EI's recommendations and the APP.
- 46

- 1 d. Map(s) and geospatially referenced electronic data including the following:
- 2 i. Planned areas of grading
- 3 ii. Agricultural lands within the project area
- 4 iii. Planned locations for topsoil storage or stockpile areas
- 5
- 6 e. Follows best management practices for preserving agricultural land that
- 7 include, but may not be limited to, the following:
- 8 i. Prior to starting grading in a particular location, topsoil shall be
- 9 removed and stockpiled separate from subsoil.
- 10 ii. No stockpiles shall be located in or near drainage ways. Stockpiles shall
- 11 be stabilized in accordance with the Ohio EPA's NPDES Construction
- 12 Storm Water General Permit.
- 13 iii. Topsoil will remain in the project area.
- 14 iv. Topsoil shall not be re-applied to the surface in excessively wet/moist
- 15 conditions.
- 16 v. For cut-and-fill activities, a profile of the depth and density of the topsoil
- 17 and subsoil for each area shall be established using representative
- 18 sampling locations prior to the start of the activity, and a similar profile
- 19 shall be re- established upon completion of such activity. Topsoil will be
- 20 removed from the area for which activity is to be performed and separately
- 21 stockpiled, the subsoil will be excavated and redistributed to lessen the
- 22 slope, the subsoils will be de-compacted, and then the topsoil will be
- 23 redistributed over the area.
- 24 vi. Existing grassed waterways shall be preserved to the extent practicable. In
- 25 instances where grassed waterways are to be significantly altered, the
- 26 Applicant shall submit an analysis that demonstrates how the alteration
- 27 will not adversely affect drainage of both the project area and neighboring
- 28 parcels.
- 29 vii. Shall sequence construction such that access roads are constructed prior to
- 30 other grading activities.
- 31 viii. Shall instruct construction workers to utilize established access roads and
- 32 laydown areas for equipment and vehicular traffic, rather than agricultural
- 33 land, unless installing equipment in the immediate area or as necessary to
- 34 safely pass other equipment or vehicles.
- 35

1 The rationale and accompanying benefits of the condition as proposed in the Joint
2 Stipulation are discussed further in the Direct Testimony of Daniel King, filed April 4,
3 2023. As Witness King discusses in more detail, the Applicant's proposal is a better
4 approach for improving soil health conditions and achieving the objective of maintaining
5 soil health for agricultural activities at the time of Project decommissioning.

6 Staff Witness Andrew Conway, in his Prefiled Testimony of March 30, 2023, recommends
7 a revised grading condition from that originally proposed in the June 2022 Staff Report.
8 One aspect of this revised condition is a limitation of grading to no more than 20 percent
9 of the agricultural lands within the Project Area as defined in the Application. As Witness
10 King discusses in his testimony:

11 A simple and arbitrary limit on grading within agricultural land is not the best method for
12 improving soil health conditions and achieving the objective of maintaining soil health
13 suitable for agricultural activities at the time of Project decommissioning. Soil health is a
14 complex and dynamic system with physical, chemical, and biological properties. As
15 described [further in my testimony], the proposed Project design and vegetation
16 management strategies will allow disturbed soils to recover their structure over the 30-year
17 operational lifespan of the Project.

18 Witness King's testimony describes the enhancements to Staff's proposed revisions to the
19 grading condition, such as the addition of qualified environmental inspector onsite to
20 ensure that soil best management practices are accomplished. In addition to these
21 enhancements, the grading condition proposed by this Joint Stipulation also contains a goal
22 of limiting grading to no more than 20 percent of the agricultural lands within the Project
23 Area. The Joint Stipulation includes this quantitative standard in recognition of the grading
24 limitations recommended in the Staff proposal.

25 **Q.8 Please describe the Joint Stipulation's changes to Staff Report Condition No. 17.**

26 **A.8** The revisions to this condition incorporate additional coordination with the Pickaway
27 County Engineer:

28 Prior to the commencement of construction activities in areas that require permits
29 or authorizations by federal or state laws and regulations, the Applicant shall obtain
30 and comply with such permits or authorizations. The Applicant shall provide copies
31 of permits and authorizations, including all supporting documentation, to Staff

1 within seven days of issuance or receipt by the Applicant and shall file such permits
2 or authorizations on the public docket. The Applicant shall also provide copies of
3 such permits to the Pickaway County Engineer. The Applicant shall provide a
4 schedule of construction activities and acquisition of corresponding permits for
5 each activity at the preconstruction conference(s). Any permit violation received
6 by the Applicant shall be provided on the case docket within seven days of receipt.
7

8 Project team dialogue with the Pickaway County Engineer indicated that he is interested in
9 additional Project information when it becomes available. This revision would ensure that
10 the County Engineer receives additional permitting information.

11 **Q.9 Please describe the Joint Stipulation's changes to Staff Report Condition No. 21.**

12 **A.9** The Joint Stipulation adopts the minor clarification edits to this condition as set forth in my
13 Pre-Filed Direct Testimony of March 20, 2023, on p. 10 and 11 of that testimony.

14 **Q.10 Please describe the Joint Stipulation's changes to Staff Report Condition No. 33.**

15 **A.10** The Joint Stipulation modifies the condition to require further coordination with the
16 Pickaway County Engineer. Through dialogue with the County Engineer, the Project team
17 learned of his concerns about having final information about the project and the importance
18 of protecting local roads. The revisions to this condition achieve these goals.

19 The Applicant shall obtain transportation permits prior to the commencement of
20 construction activities that require them. The Applicant shall coordinate with the
21 appropriate authority regarding any temporary road closures, road use agreements,
22 driveway permits, lane closures, road access restrictions, and traffic control
23 necessary for construction and operation of the proposed facility. If county roads
24 are utilized, the Applicant will enter into a Road Use Maintenance Agreement with
25 the Pickaway County Engineer. The Applicant shall detail this coordination as part
26 of a final transportation management plan submitted to Staff prior to the
27 preconstruction conference for review and confirmation by Staff that it complies
28 with this condition. As least 30 days prior to submitting the final transportation
29 management plan to Staff, the Applicant shall provide a draft to the Pickaway
30 County Engineer.

31 **Q.11 Does the Stipulation include additional conditions that were not contained in the Staff**
32 **Report?**

33 **A.11** No, the Stipulation only includes revisions of conditions that were already in the Staff
34 Report.

1 **Q.12 Are you familiar with the standard of review that the Board has applied in prior**
2 **Board proceedings to evaluate the reasonableness of a stipulation?**

3 **A.12** Yes. I am aware that the Board applies a three-part test to consider the reasonableness of a
4 stipulation, which includes the following determinations:

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

10 My understanding is that traditionally, the three-part test is applied to stipulations that
11 recommend the approval of the Project. The Joint Stipulation in this proceeding only
12 presents recommended conditions to the Board to adopt in the event it decides to issue a
13 certificate of environmental compatibility and public need to the Applicant.

14 **Q.13 If the Board applies the three-part test to the Joint Stipulation, do you believe the**
15 **Joint Stipulation satisfies the three-part test?**

16 **A.13** Yes

17 **Q.14 Do you believe the Joint Stipulation is a product of serious bargaining among capable,**
18 **knowledgeable parties?**

19 **A.14** Yes. The Applicant met and corresponded with interveners over multiple months to discuss
20 various aspects of the Project, including areas of concern identified by neighbors and local
21 government officials. Based on these interactions, the Applicant made revisions to its
22 layout and increased the distance of applicable setbacks through its prior modification
23 filing. Representatives from the Project team were involved in meetings with a number of
24 the intervening parties to discuss their issues and to identify ways, including modified or
25 additional condition language, to address concerns as we understood them. I am informed
26 and believe that counsel for the parties also had conversations and other communications
27 that resulted in the conditions being proposed in the Joint Stipulation. All of the parties
28 involved in the proceeding have been represented by counsel and have had the opportunity
29 to participate in settlement discussions in this proceeding. In addition, the changes made to
30 the conditions in the Joint Stipulation principally represent efforts by the Applicant to “go

beyond” the conditions proposed by Staff in an effort to address concerns raised by various parties, including those of parties to the proceeding who are not Signatories to the Joint Stipulation. For example, the Joint Stipulation adds new commitments from the Project to address issues raised by the County Engineer.

Q.15 Does the Joint Stipulation, as a package, benefit ratepayers and the public interest?

A.15 Yes. The Joint Stipulation will benefit ratepayers and the public interest. It is worth repeating that this Joint Stipulation does not recommend approval of the Project, but rather only recommends the conditions that the Board should adopt if it elects to grant a certificate of environmental compatibility and public need for the Circleville Solar project. Moreover, the proposed conditions in the Joint Stipulations largely track the conditions proposed in the Staff Report, and therefore should be considered consistent with a finding that the Stipulation will benefit ratepayers and the public interest. More specifically, the revised conditions in the Joint Stipulation include additional commitments to 1) to prioritize soil health to enable future agricultural activity in the Project Area after decommissioning, and 2) work with the Pickaway County Engineer to help ensure he has the information about the Project he requires and to ensure protection of local roads. The Joint Stipulation reflects a consensus on conditions from a diverse set of signatory parties.

Q.16 To your knowledge, does the Joint Stipulation violate any important regulatory principle or practice?

A.16 No.

Q.17 Do you wish to further supplement your Pre-Filed Direct Testimony of March 20, 2023?

A.17 Yes. My Pre-Filed Direct Testimony of March 20, 2023 discusses the Project’s modification filing (March 10, 2023) to reduce the size of the Project boundaries, removing all portions of the facility from Wayne Township. As I also testified on p. 13 of that testimony, the Project, as originally filed, has significant setbacks, including 1) the nearest non-participating residence is 600 feet from Project facilities; 2) approximately 91% of the Project fence line is sited greater than 1,000 feet from public roads; and 3) approximately 95% of the Project fence line is sited greater than 500 feet from public roads. As a result

1 of the reduction in the size of the boundary through the March 10th modification filing, the
2 Project reduces impacts *even further*:

- 3 • The nearest non-participating residence will now be at least 749 ft. from the
4 nearest non-participating residence.
- 5 • 98% of the Project fence line is now sited greater than 1,000 ft. from public
6 roads.
- 7 • 99% of the Project fence line is now sited greater than 500 ft. from public roads.
- 8 • The area where Project facilities will be located is reduced from 756 acres to
9 619 acres.

10 These notable reductions in potential impacts, whether through reduced buildable area or
11 increased setbacks, will not impact the economic benefit of the Project to the local
12 community and state of Ohio, as indicated by the supplemental testimony of Sean
13 Hollowell.

14 **Q.18 Does this conclude your supplemental testimony?**

15 **A.18** Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Supplemental Testimony was served upon the parties of record listed below this 4th day of April 2023 via electronic mail.



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Summary: Text Supplemental Direct Testimony of Zachary Melda on behalf of
Circleville Solar, LLC electronically filed by Teresa Orahod on behalf of Dylan F.
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