

**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 a Generation Tie Transmission Line in)
Pickaway County, Ohio)

Case No. 22-117-EL-BTX

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Circleville Solar LLC (“Circleville Solar” or “Applicant”), Pickaway County Engineer (“County Engineer”) 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 (“Signatory Parties” or in the singular “Signatory 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 and County Engineer pertinent to the approval and construction of Circleville Solar 3.9-mile, 138 kilovolt (“kV”) generation tie (“gen-tie”) transmission line in Pickaway County, Ohio and its associated facilities (“Facility” or “Circleville Gen-Tie Line”).

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 Signatory Parties in a cooperative process to resolve all of the issues in this proceeding.

The Signatory 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 Signatory Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Signatory 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 Signatory Parties recommend that the Board approve Circleville Solar's Application subject to the conditions listed below.

General Conditions

- (1) Certification of this transmission line facility shall be contingent on the certification of the generation facility (Circleville Solar 20-1090-EL-BGN) to which this transmission line facility would connect.
- (2) The Applicant shall install the Preferred Route, 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.
- (3) 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.
- (4) As the information becomes known, the Applicant shall file in 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.
- (5) 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.

Preconstruction

- (6) 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.
- (7) 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.
- (8) At least 30 days prior to the initial preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This report shall include the results and analyses of any additional geotechnical investigation studies. This report shall include a final summary statement addressing the geologic and soil suitability addressing any inadequacies found and proposed remedies if applicable.
- (9) 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 affected property owners and tenants; all residents, airports, schools, and libraries located within one mile of the project area; parties to this case; county commissioners, township trustees, and emergency responders; and any other person who requests 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 pre-construction 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.
- (10) The Applicant shall coordinate with the appropriate authorities regarding traffic and transportation requirements necessary for construction and operation of the proposed Facility. At least 30 days prior to construction, the Applicant shall enter into a Road Use and Maintenance Agreement with the County Engineer and submit to OPSB Staff. To assure compliance with this condition, prior to the preconstruction conference, the

Applicant shall file a final transportation management plan, this plan shall include (but not be limited to) the following:

- a. A summary of coordination with appropriate authorities regarding traffic and transportation requirements, including 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.
 - b. Documentation of this coordination, with copies of applicable permits or authorizations, or schedule for obtaining permits or authorizations not yet applicable.
 - c. A description of best management practices that would be implemented to maintain clean roads free of construction debris and excess mud.
 - d. Details summarizing signage and other best management practices that would ensure construction vehicles only use designated transportation routes.
 - e. Mapping of roads to be used for construction that includes identifying any anticipated permitting/authorization requirements in their respective locations.
- (11) 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.
- (12) Prior to the start of construction, the Applicant shall conduct an aquatic resources survey of the 0.4-acre portion of the project area which has not yet been surveyed, as described in the Amendment Application of Circleville Solar, LLC. At least 30 days prior to construction, the Applicant shall docket the results of this survey, as well as an updated table detailing the acreage of surface water impacts, and a description of appropriate mitigation measures to be taken should aquatic resources identified in this area be impacted. Proposed mitigation shall be subject to Staff review for confirmation of compliance with this condition.

Construction

- (13) 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.
- (14) 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, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. HDD operations if started during general construction activities hours may continue until the completion of the HDD activity. Construction activities that do not involve noise increases above ambient levels or light pollution at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify Staff and affected 36 property

owners or tenants of upcoming construction activities including potential for nighttime construction activities.

- (15) The Applicant shall remove all construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the Ohio EPA General NPDES permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project. All construction debris and any contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.
- (16) During construction, the Applicant shall retain a qualified geotechnical engineer to evaluate and confirm the soil suitability at all drilled shaft locations in addition to areas demonstrated to have elevated organic content and/or undocumented fill.
- (17) 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.
- (18) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31, unless coordination by the Applicant with the ODNR allows a different course of action during that period. If coordination with the ODNR allows clearing between April 15 and July 31, the Applicant shall file proof of such coordination on the docket. Absent coordination with the ODNR that allows a different course of action, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates.
- (19) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31. 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 Ohio Department of Natural Resources allows a different course of action which shall be filed on the docket.
- (20) Construction in lark sparrow preferred nesting habitat types shall be avoided during the species' nesting period of May 1 through July 31. 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 Ohio Department of Natural Resources allows a different course of action which shall be filed on the docket.
- (21) 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.
- (22) 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.

- (23) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the ODNR allows a different course of action. If coordination with the 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.

Post Construction/Operation

- (24) 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.

B. Exhibits

Subject to the terms and conditions of this Joint Stipulation, the Applicant, County Engineer, 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, Application, filed on June 8, 2022, and Amendment Application filed on March 15, 2023 (collectively “the Application”) filed on the docket;
2. Applicant Exhibit 2, Applicant’s Responses to Staff’s data requests filed to docket on July 12, 2022, August 5, 2022, and May 9, 2023;
3. Applicant Exhibit 3, Proof of Service of the Application on local public officials and libraries as filed on September 14, 2022;
4. Applicant Exhibit 4, a copy of a letter sent to property owners and tenants within the plan site or contiguous to the plan site on February 16, 2022 announcing that the Public Informational Meetings would be held on March 10, 2022, filed to docket on February 22, 2022;
5. Applicant Exhibit 5, Proof of Publication filed to docket on February 24, 2022 (publication for the public information meeting) in accordance with O.A.C. 4906-3-03(B) published on February 19, 2022 in the *Circleville Herald*;

6. Applicant Exhibit 6, Proofs of Publication in accordance with the administrative law judge entry on February 10, 2023 for first publication of the description of the application and hearing dates published in in the *Circleville Herald* on February 17, 2023 (filed on February 28, 2023); and second publication of the description of the application and hearing dates published on April 11, 2023 in the *Circleville Herald* (filed on April 25, 2023);
7. Applicant Exhibit 7, Ohio State Historic Preservation Office concurrence dated June 14, 2022 filed on August 2, 2022; and March 16, 2023 filed on April 19, 2023;
8. Applicant Exhibit 8, “Direct Testimony of Zachary Melda” filed on May 9, 2023;
9. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the Applicant, County Engineer, and OPSB Staff; and
10. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on April 7, 2023; and
11. OPSB Staff Exhibit 2, “Direct Testimony of Mark Bellamy filed on May 16, 2023.

C. Other Terms and Conditions

This Joint Stipulation is conditioned upon adoption of the Joint 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 Joint Stipulation constitutes a “material modification” thereof. If the Board rejects or materially modifies all or any part of this Joint Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Joint Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Joint 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 Joint 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 Joint 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 Joint 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 Joint 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 Joint Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Joint Stipulation to the Board for approval after a hearing if necessary.

III. FINDINGS

The Signatory 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).
2. Applicant formally submitted its Application on June 8, 2022 and on March 15, 2023.
3. On February 22, 2022, Applicant filed a copy of a letter sent to property owners and tenants within the plan site or contiguous to the plan site on February 16, 2022 announcing that the Public Informational Meetings would be held on March 10, 2022.
4. On February 24, 2022, Applicant filed Proof of Publication for the public information meeting in accordance with O.A.C. 4906-3-03(B) published on February 19, 2022 in the *Circleville Herald*.
5. On September 14, 2022, Applicant filed a copy of the Proof of Service of the Application on local public officials and libraries.

6. On February 28, 2023, Applicant filed Proof of Publication for first publication of the description of the application and hearing dates, published on February 17, 2023 in the *Circleville Herald*; and on April 25, 2023, Applicant filed Proof of Publication for second publication of the description of the application and hearing dates, published on April 11, 2023 in the *Circleville Herald*, in accordance with the administrative law judge entry of February 10, 2023.
7. The Staff Report was filed on April 7, 2023.
8. Adequate data has been provided to determine the basis of the need for the facility as required by R.C. 4906.10(A)(1).
9. Adequate data has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
10. Adequate data 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).
11. Adequate data 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).
12. Adequate data 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 wastes, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
13. Adequate data 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).
14. Adequate data 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).
15. Adequate data 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).
16. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

- (1) Circleville 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 Signatory 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
SITING BOARD**

/s/ Robert Eubanks

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Summary: Text Joint Stipulation and Recommendation electronically filed by Teresa Orahod on behalf of Dylan F. Borchers.