

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
BLOSSOM SOLAR, LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED TO  
CONSTRUCT A SOLAR-POWERED  
ELECTRIC GENERATION FACILITY IN  
MORROW COUNTY, OHIO.

CASE NO. 22-151-EL-BGN

### OPINION AND ORDER

Entered in the Journal on May 18, 2023

#### I. SUMMARY

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

#### II. PROCEDURAL BACKGROUND

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

{¶ 3} Blossom Solar, LLC (Blossom or Applicant), which is owned by Radiant Planet Renewable Energy, LLC (Radiant), is a person as defined in R.C. 4906.01. Radiant is a joint venture partnership between Eolian, L.P. and Open Road Energy, LLC, an affiliate of Open Road Renewables, LLC (Open Road). Open Road is a developer of utility-scale solar projects operating in Ohio, California, and Maryland.

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

{¶ 5} On March 23, 2022, Blossom filed its preapplication notice informing the Board of a to-be-proposed 144 megawatt (MW) solar-powered electric generation facility to be constructed on approximately 1,100 acres in Washington Township, Morrow County, Ohio. Further, the notice stated that Blossom would be hosting a public information meeting on April 6, 2022, in Iberia, Ohio.

{¶ 6} Ohio Adm.Code 4906-3-03(A) requires the applicant to file a preapplication notification letter with the Board at least fifteen days prior to the date of any public information meeting.

{¶ 7} On March 23, 2022, Blossom also filed a motion for waiver of Ohio Adm.Code 4906-3-03(A), to the extent that the provision requires the applicant to file notice at least fifteen days in advance of the public information meeting. Blossom held its public information meeting on April 6, 2022; thus, the notice was one day late. Blossom's motion was granted pursuant to Entry issued August 26, 2022.

{¶ 8} On April 4, 2022, Blossom filed its proof of publication for the public information meeting in the *Morrow County Sentinel*, on March 23, 2022. Further, Applicant states that notice was provided to local officials, property owners, and affected tenants by first class mail on March 16, 2022.

{¶ 9} On May 27, 2022, as amended on August 5, 2022, Blossom filed its application for a certificate to construct a 144 MW solar-powered electric generating facility in Washington Township, Morrow County. The project would consist of large arrays of photovoltaic (PV) modules, commonly referred to as solar panels, ground-mounted on a tracking rack system. The project would occupy approximately 1,073 acres comprised of private land secured by Applicant through agreements with the landowners. The project would include associated facilities such as access roads, underground and overhead electric collection lines, weather stations, inverters and transformers, and a collection substation. The Project would be secured by perimeter fencing which would be six to seven feet tall and accessed through gated entrances (Project or Facility).

{¶ 10} On May 27, 2022, Blossom also filed a motion for waiver of Ohio Adm.Code 4906-4-08(D)(2) through (D)(4), to allow for a reduced study area regarding the review of cultural resources, landmarks, recreation areas, and visual impacts. The motion was granted by Entry issued on August 26, 2022.

{¶ 11} In addition, on May 27, 2022, Blossom also filed a motion for protective order. In its motion, Applicant seeks protective treatment for certain pages of its Phase 1 Archaeological Reconnaissance Report, Exhibit W, which is not usually a required part of an application before an applicant is granted a certificate from the Board. Blossom seeks a protective order from the Board to protect the archaeological sites/finds, deter unauthorized field investigations, and protect the resources and locational information in the report. Blossom contends that several federal laws seek to protect and limit harm to archaeological resources on federal land and Native Indian sacred sites. See 16 USC § 470hh; 54 USC § 307103; 36 C.F.R. § 296.18 and 43 C.F.R. § 7. Applicant reasons that disclosing archeological sites/finds information will disclose sensitive information and unnecessarily risk harm in those areas and in accordance with Ohio Adm.Code 4906-2-21(D), R.C. 1331.61 to 1333.69, and the six-factor test adopted by the Ohio Supreme Court in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513 citing to *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 7 OBR 165, 169, 454 N.E.2d. 588, 592 (1983). Staff did not file a response to Blossom's motion for protective treatment.

{¶ 12} Pursuant to Ohio Adm.Code 4906-2-21(D), the Board "may issue any order which is necessary to protect the confidentiality of information contained in [a] document, to the extent that state or federal law prohibits release of the information, including where it is determined that both \* \* \* [t]he information is deemed \* \* \* to constitute a trade secret under Ohio law \* \* \* and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code." The Supreme Court of Ohio has established a six-part test to apply when analyzing a trade secret claim. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). In addition to information deemed to be a trade secret, Ohio Adm.Code 4906-2-21(A)(7) empowers the Board to issue

a protective order providing that other confidential research, development, commercial, or other information not be disclosed, or be disclosed only in a designated manner.

{¶ 13} The Board has examined the information filed under seal, as well as the assertions set forth in Blossom's memorandum in support of its motion for protective order. Applying the requirements discussed above, the Board finds that Applicant's motion should be granted. Consequently, the pages of Exhibit W to the application that Blossom filed under seal should be kept confidential and not subject to public disclosure.

{¶ 14} Ohio Adm.Code 4906-2-21(F) specifies that, unless otherwise ordered, a protective order issued under Ohio Adm.Code 4906-2-21(D) expires 24 months after the date of its issuance. Should Blossom wish to extend that 24-month period, it shall file an appropriate motion at least 45 days in advance of the expiration date. Ohio Adm.Code 4906-2-21(F). If no such motion is filed, the docketing division may release the information without prior notice.

{¶ 15} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 16} On July 26, 2022, the Board notified Blossom that its application was found to be sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's letter instructed Blossom to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12. Staff also identified additional information that would be requested during its investigation to ensure that Staff would be able to conduct its review of the application, including but not limited to, (a) the technical specifications for certain

solar panels under consideration and (b) additional information regarding the removal of underground infrastructure during the decommissioning phase to determine the way future drain tile repairs and installation may be completed.

{¶ 17} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the administrative law judge (ALJ) shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. R.C. 4906.07(A) directs that the public hearing be held not less than 60 nor more than 90 days after the effective date.

{¶ 18} On August 9, 2022, Blossom filed proof of service of its accepted and complete application on local government officials and the main public library as required by Ohio Adm.Code 4906-3-07(A). Further, Blossom states that it maintains a copy of its accepted complete application on its website. On August 9, 2022, Blossom also filed, pursuant to Ohio Adm.Code 4906-3-07(C), proof of submission of its application fee.

{¶ 19} By Entry issued August 26, 2022, the effective date of the application was established as August 26, 2022, the local public hearing was scheduled for November 15, 2022, and the evidentiary hearing was scheduled to commence on December 19, 2022. Additionally, the Entry advised that the Board would accept petitions to intervene up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by October 7, 2022, whichever is later, and established a procedural schedule directing Staff to file its report of investigation (Staff Report) on or before October 31, 2022; parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing by November 22, 2022; Blossom to file all expert and factual testimony by December 2, 2022; Staff and intervenors to file all expert and factual testimony by December 9, 2022; and any stipulation entered into by the parties be filed by noon on December 15, 2022, along with the associated testimony supporting the stipulation.

{¶ 20} On September 16, 2022, Blossom filed its first proof of publication of the proposed Project. The notice was published in *Morrow County Sentinel* on August 24, 2022, and September 7, 2022. Further, Blossom represented that written notice of the accepted, complete application was sent to local officials, libraries, and affected property owners and tenants, pursuant to Ohio Adm.Code 4906-3-09(A)(1), on September 1, 2022.

{¶ 21} On September 26, 2022, and October 6, 2022, the Ohio Farm Bureau Federation (OFBF) and the Ohio Environmental Council (OEC), respectively, filed motions to intervene, which were granted by Entry dated November 2, 2022.

{¶ 22} On October 31, 2022, the Staff Report was filed.

{¶ 23} On November 8, 2022, Applicant filed its proof of publication of the second public notice, in the *Morrow County Sentinel* on November 2, 2022, in compliance with Ohio Adm.Code 4906-3-09(A)(2). In addition, Blossom stated that written notice of the accepted, complete application was provided to local officials, affected property owners, and tenants, pursuant to Ohio Adm.Code 4906-3-09(A)(2), on November 2, 2022.

{¶ 24} The local public hearing was held, as scheduled, on November 15, 2022, in Iberia, Ohio, where 26 members of the public provided testimony at the hearing.

{¶ 25} Consistent with the procedural schedule, issues lists were filed by Blossom and OEC on November 22, 2022.

{¶ 26} By Entries issued on November 30, 2022, and December 12, 2022, the joint motions to continue the procedural schedule, filed on November 30, 2022, and December 8, 2022, were granted. To facilitate continued settlement discussions by the parties, the above-noted Entries granted the request of Blossom and other parties to call the evidentiary hearing, as scheduled, on December 19, 2022, and to extend the due date for testimony, revised issues list, and any stipulation and to reconvene the evidentiary hearing on a date to be determined.

{¶ 27} On February 3, 2023, a Joint Stipulation and Recommendation (Stipulation) was filed with the Board. The Stipulation was executed by all the parties to the proceeding, Blossom, Staff, OFBF and OEC, and purportedly resolves all matters pertinent to the certification and construction of the proposed Project.

{¶ 28} By Entry issued February 13, 2023, the evidentiary hearing was scheduled to resume on March 7, 2023, with testimony in support of or in opposition to the Stipulation to be filed by February 27, 2023. On February 27, 2023, Blossom and Staff filed testimony in support of the Stipulation as well as other matters.

{¶ 29} The evidentiary hearing resumed, as scheduled, on March 7, 2023, at the offices of the Board, where the following exhibits were admitted into the record:

<b>Exhibit</b>	<b>Date Filed</b>	<b>Description</b>
Applicant Ex. 1	May 27, 2022	Blossom Solar, LLC Application
Applicant Ex. 1C	May 27, 2023	Confidential Exhibit W to Application
Applicant Ex. 2	August 5, 2022	Project Footprint Modification
Applicant Ex. 3	August 9, 2022	Proof of Service of Application
Applicant Ex. 4		Compilation of Proofs of Publication
Applicant Ex. 5		Compilation of Responses to Staff Data Requests
Applicant Ex. 6	February 27, 2023	Direct Testimony of Patrick Buckley
Applicant Ex. 7	February 27, 2023	Direct Testimony of Mark Bonifas
Applicant Ex. 8	February 27, 2023	Direct Testimony of John Woods
Applicant Ex. 9	February 27, 2023	Direct Testimony of Brooke Harrison
Joint Ex. 1	February 3, 2023	Joint Stipulation and Recommendation
Staff Ex. 1	October 31, 2022	Staff Report
Staff Ex. 2	February 27, 2023	Prefiled Testimony of James S. O'Dell

(Tr. at 7-17).

### III. PROJECT DESCRIPTION

{¶ 30} Blossom seeks certification to build an array of PV modules, commonly referred to as solar panels, ground-mounted on a tracking rack system on approximately 1,100 acres. The Project would include associated facilities such as access roads, underground and overhead electric collection lines, weather stations, inverters and transformers, and a collection substation. The Project would be secured by perimeter fencing which would be six to seven feet tall with access through gated entrances. The Facility would be constructed on private land secured by Blossom through agreements with the landowners.

### IV. CERTIFICATION CRITERIA

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

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;



- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

## V. SUMMARY OF EVIDENCE

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

### A. *Local Public Hearing*

{¶ 33} At the November 15, 2022 local public hearing held in Iberia, Ohio, 26 witnesses elected to provide testimony – 24 witnesses in support, one in opposition, and one who raised a concern regarding a condition in the Staff Report but otherwise did not support nor oppose the Project.

{¶ 34} The sole witness testifying in opposition to the Project expressed concern regarding the loss of local farmland in the community and across the country, the unreliable

nature of solar energy, and the inability to store energy generated by the Project. The witness offered that farmers and the jobs associated with farming in the community will be lost and emphasized that damage to drain tile is expensive and must be addressed as it impacts surrounding properties. (Public Tr. at 71-73.)

{¶ 35} Another witness noted that condition 38 of the Staff Report directs that Applicant identify the precise location of a plugged oil and gas well and observe a minimum setback of 25 feet between all project infrastructure and the well. The witness argued that a setback of 25 feet from the oil and gas well is inadequate, would limit options to remedy any situation that may occur with the well and does not facilitate maintenance. (Public Tr. at 58 - 59.)

{¶ 36} The rationale offered by witnesses in support of the Project includes the approximately 400 good paying construction jobs created by the Project which includes that 80 percent of the workforce be residents of Ohio (Public Tr. at 11, 27, 40, 42, 44, 49, 53, 69), the positive economic impact for the community including additional tax revenue to support area police, fire, emergency, and roads (Public Tr. at 12, 14, 16, 21, 22-23, 26, 36, 40, 47, 49, 51, 54, 65), the financial support for the Northmoor School District, the establishment of vocational opportunities, and retraining programs for displaced workers (Public Tr. at 18, 23, 36, 42-43, 53, 55), solar energy is clean and quiet and will improve area air quality (Public Tr. at 12, 14, 26, 29, 33, 36, 53, 66), the reduction in farming chemicals (Public Tr. at 29, 55, 68), the rights of property owners and the financial stability offered to lessees (Public Tr. at 14, 22, 46, 68), and that the Project will make the land available to future generations upon decommissioning of the Facility (Public Tr. at 23, 26, 27, 33, 46, 49, 55, 68). Witnesses noted that Blossom has made a commitment to repair drain tile and improve flooding in the Project area, offered home solar to adjacent residents, established a community presence, and been a good neighbor (Public Tr. at 38, 50, 65, 66).

{¶ 37} In addition to the testimony provided at the public hearing, through January 20, 2023, the Board has received more than 59 public comments regarding the

proposed Facility, three in opposition and 56 in support of the Project.<sup>1</sup> In addition to the reasons offered at the public hearing, the comments note the use of plant pollinator habitats and native landscape to screen the Project and the diversity of Ohio's energy generation mix as rationale for supporting the Project. The three comments received by the Board that expressed opposition to the Project cited the purported negative impact to property values, claimed that the property owners participating in the Project are landlords and investors from outside the community, noted the erodible nature of the agricultural land in the area, and the importance of drain tile as the rationale for their opposition.

### ***B. Staff Report***

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

#### **1. BASIS OF NEED**

{¶ 39} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Project is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable. (Staff Ex. 1 at 9.)

#### **2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT**

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

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<sup>1</sup> Two of the public comments submitted were duplicates of comments submitted previously and, therefore, the comments were not counted twice.

*a. Community Impacts*

**i. Land Use and Regional Planning**

{¶ 41} The proposed Project would utilize 1,073 acres of land; however, the only land use type that would be permanently impacted is agricultural at approximately 25 acres. The only structures within a one-mile radius of the Project area are residences, commercial buildings, and schools. Applicant has designed the Project layout such that the three non-participating residences are at least 250 feet from the Project fence line. Applicant would remove a vacant house as a part of the Project. Except where facility infrastructure, piles, and unpaved roads are located, the remaining land, including land under and around panels, would be planted with deep rooted grasses and pollinators as recommended by the Ohio Department of Natural Resources (ODNR). In terms of regional planning, the proposed Facility would reside within Morrow County and would align with Morrow County's 2012 Land Use Plan goals which include to encourage employment, attract new business, preserve agriculture, strengthen and improve local grid infrastructure, and prevent the permanent loss of prime farmland to urban development. Staff believes the Project is compatible with Morrow County's goals as set forth in its regional plan, would support the local economy with the supplemental income to property owners for leased land and increase local tax revenues, protect, and preserve the agricultural industry, protect the land from permanent development and allow the land to be returned to agricultural production upon decommissioning. (Staff Ex. 1 at 10-12.)

**ii. Recreation**

{¶ 42} Applicant identified 23 recreation areas within 5 miles of the Project footprint including six fishing and water access sites, seven local parks and recreation areas, and six rivers/streams with public fishing access. Seven of the recreation areas are within 1.4 miles and would have limited visibility of the Facility, which would be obscured by vegetation. Three of the recreation areas are associated with Amick Reservoir; however, Staff contends visibility of the Project from the recreation areas is unlikely to be negatively affected. (Staff Ex. 1 at 12.)

### iii. Aesthetics

{¶ 43} Staff reports that traffic volume on roads surrounding the Project area is typically light, and the Project area is primarily agricultural and rural land, thus limiting the potential number of viewers. Three non-participating residences are at least 250 from the Project fence line. The highest elevation of the solar panels and weather stations would be 15 feet above ground level. According to Applicant's visual resources assessment, the panels are "nearly imperceptible" and not likely to be visible from locations beyond 1.5 miles from the perimeter of the Project, the solar panels would be "nearly imperceptible" with area woodlots and windrows serving as screening of the panels. Blossom's viewshed analysis demonstrates that 91 percent of the solar panels and 97 percent of the tall structures of the substation would be screened from the viewshed by woodlots and windrows. Further, Staff notes that in addition to the setback from residences, Applicant's preliminary landscape plan would include the installation of plants of various species, in varying heights and variety, along the Facility fence line to soften the viewshed based on the aspect of the Facility to be screened and the sensitive receptors and subject to ongoing feedback from neighbors. Lighting at the Facility would be minimal, downward facing with side shields and motion- activated. Perimeter fencing would be six- to seven-foot-tall agricultural style metal fencing without barbed wire. Among Staff's recommended conditions is that Applicant consult with a certified professional landscape architect to develop its landscape mitigation plan. Further, Staff recommends that Applicant's landscape and lighting plans incorporate measures to reduce impact areas where an adjacent non-participating parcel includes a residence with a direct line of sight to the Project's infrastructure, as well as the travelling public, nearby communities, and recreationalists, as well as incorporate good neighbor agreements, or other methods in consultation with the affected landowners. Staff concludes that, with the implementation of the recommended landscape, lighting and fencing conditions, the overall expected aesthetic impact of the Project would be minimal. (Staff Ex. 1 at 7, 12-13.)

#### iv. Cultural Resources

{¶ 44} Applicant's Phase I cultural archaeological reconnaissance survey identified 84 newly identified archaeological resources within the Project area. Eighty-two of the 84 sites were recommended as ineligible for listing in the National Register of Historic Places (NRHP), while two sites appear to be potentially eligible to be listed in the NRHP. Blossom has committed to avoid the two sites eligible for the registry, and the Ohio Historic Preservation Office (OHPO) concurs with the survey and Applicant's commitment to avoidance measures proposed by the consultant. Staff recommends Blossom implement an avoidance plan for these resources. (Staff Ex. 1 at 13.)

{¶ 45} Applicant's historic/architectural report identified one historic/architectural resource recommended as eligible for listing in the NRHP. Applicant's cultural consultant determined that due to the distance and vegetative screening between the resource and the Project, the resource would not be impacted by the Project and OHPO concurred. Blossom has committed to coordinate with OHPO and Staff should the scope of work change or new or additional archaeological remains be discovered. Accordingly, with the recommended conditions and Applicant's commitments, Staff concludes that the Project would result in minimal adverse environmental impacts to cultural resources. (Staff Ex. 1 at 13-14.)

#### v. Economic Impact

{¶ 46} Applicant estimates its capital and intangible costs to be \$932 per kilowatt (kW). Staff notes that cost comparisons between the proposed Facility and other comparable facilities must be included in the application. Blossom referenced a 2021 study, Lazard's Levelized Cost of Energy Analysis, that determined the average installed cost of PV projects to range from \$800 to \$950 per kW, a range which encompasses Applicant's estimated costs. Staff confirmed that the estimated capital costs for Blossom are not substantially different from the average installed costs for utility-scale solar projects and that estimated costs are not substantially different from the reported average cost of similar facilities. Staff also

confirmed that Blossom's estimated operations and maintenance (O&M) costs, at \$9 per kW for the first two years, increasing by approximately 2 percent per annum, is below but not substantially different from those incurred by similar facilities in the mid-Atlantic region. Applicant estimates the cost of delays in permitting and construction of the proposed Facility to be \$1.25 million per month, including delays which prevent the Project from complying with federal tax credit deadlines resulting in the loss of benefits for Applicant. According to Staff, these estimated costs appeared reasonable. (Staff Ex. 1 at 14.)

{¶ 47} Blossom estimates that the proposed Facility would create 583 on-site construction jobs and 25 long-term operational jobs for the state of Ohio. During the construction period, wages would produce \$38.5 million in annual earnings for the state of Ohio and \$2.3 million in annual earnings during operation. Further, the Project would produce \$119.4 million in local output for the state of Ohio during construction and \$12.4 million in local output during operation for the state of Ohio. The Staff Report notes that the Morrow County Commissioners unanimously agreed to a Payment in Lieu of Taxes agreement with Applicant whereby Blossom will pay between \$7,000 per MW and \$9,000 per MW annually for a total of 144 MW, equaling between \$1.0 million to \$2.96 million per year. Morrow County Commissioners also endorsed the Project's application to be a qualified energy project which requires that 80 percent of construction employees be Ohio residents. (Staff Ex. 1 at 15.)

#### vi. Glare

{¶ 48} Glare is the phenomenon where sunlight reflects from the solar panels to create a duration of bright light. Included in glare is the concept of glint, which is a momentary flash of bright light. The potential impacts from solar panel glare include a possible brief loss of vision, afterimage which is a safety risk to pilots, and a perceived nuisance to neighbors. According to its glint and glare analysis, Applicant predicts that there will be glare impact to vehicles along State Routes 61 and 288. Staff recommends that Blossom update its glare analysis based upon the final Project design and incorporate additional screening along the solar array areas identified to provide concealment along

State Routes 61 and 288. Further, Staff notes that setbacks to roads and aesthetic impact mitigation measures, which include vegetative plantings, may also further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 15-16.)

**vii. Decommissioning**

{¶ 49} Applicant holds land rights to and expects to operate the Project for 40 years. Blossom prepared a decommissioning plan which estimates a total decommissioning cost of \$14,926,000 with decommissioning activities and restoration to be completed over approximately six to twelve months. Blossom would restore the land to allow resumption of agricultural land use. (Staff Ex. 1 at 16.)

{¶ 50} As a result of the weather dependent nature of site restoration, Staff recommends that Applicant monitor the site to ensure successful revegetation and rehabilitation, remove underground equipment to the extent that allows for future drain tile repairs and installation after decommissioning, and send disposed solar panel components to an engineered landfill or other Staff-approved disposal location. Blossom will provide financial security to ensure that funds are available for decommissioning/land restoration by way of a performance surety bond during the life of the Project. Every five years after the commercial operations date, Applicant would review the decommissioning plan and costs and provide an updated report, prepared by an independent, licensed, and registered professional engineer, to the Board. The updated decommissioning reports would estimate the total cost of decommissioning the facility, and the appropriateness of any contingency amount or percentage. As a condition of approval, Staff recommends that at least 30 days prior to the preconstruction conference, Applicant submit an updated decommissioning plan and total decommissioning costs estimate excluding salvage value in the case docket as well as nine other specific provisions. (Staff Ex. 1 at 16-18.)

**viii. Wind Velocity**

{¶ 51} Staff describes that the Project will be designed to account for wind in accordance with the American Society of Civil Engineers standards, approved by a



professional engineer licensed in Ohio, and installed to withstand and minimize potential damage from high-wind occurrences (Staff Ex. 1 at 18).

**ix. Existing Natural Gas Pipeline**

{¶ 52} Staff notes that there are three existing natural gas or oil pipelines with 50-foot easements in the northern section of the project area. After a certificate is issued, Applicant will determine the precise location of the right-of-way pipeline easement. Applicant intends that its electric collection system would cross the pipeline, but no solar panels would be within the pipeline right-of-way. At least 30 days prior to the preconstruction conference, Staff recommends that Applicant (1) submit a refined solar facility layout plan that shows the pipeline(s) easement(s) and right-of-way, Applicant's setback of perimeter fence, solar panels, and inverters, to the pipeline(s) easement(s) and right-of-way, the access roads necessary to reduce crossing the pipeline(s) easement(s), the location of the underground electric collection system within the easement, and the method for installing the underground electric collection system within the pipeline easement. Additionally, Staff recommends that Applicant submit a document addressing its plan for compliance with the pipeline owner's written safety guidelines or, if such a written plan does not exist, that Applicant's submission include at least (1) limits of encroachment, (2) proof of insurance coverage, (3) an engineering study for crossing pipelines with equipment, (4) a plan for the use of protective material when crossing the pipeline, (5) a plan for horizontal directional drilling (HDD) clearance of at least 60 inches from the pipeline, (6) confirmation of non-interference with the pipeline's cathodic protection system, (7) a plan for properly shielding underground electric cables, and (8) the use of a blast plan analysis, including setbacks, if blasting is to occur. Further, Staff recommends that Applicant denote pipeline easements on its final engineering drawings and install construction fence along the pipeline easement so that it is avoided during construction. (Staff Ex. 1 at 18-19.)

#### x. Roads and Bridges

{¶ 53} According to Staff, Blossom had not, as of the filing of the Staff Report, finalized its delivery route, but expects deliveries to the project site would utilize Hunter Road, State Routes 61 and 309 and County Road 30. Applicant conducted a route evaluation study report to identify potential impacts and did not find any issues with road surfaces, bridges, overhead obstructions, or culverts. Applicant did identify that some modifications will need to be made to local roads primarily at access points to the project area. Staff notes most of the construction traffic will consist of conventional heavy equipment, which requires no special permit; however, the electrical transformer is likely to be overweight and would require a special permit and route coordination for delivery. While Blossom anticipates an increase in truck traffic during construction, the Applicant does not expect any significant changes to traffic patterns. After construction, Applicant does not anticipate that operation of the Facility will result in any additional traffic beyond routine maintenance. Blossom will coordinate with the appropriate state and local officials regarding road and lane closures, and road access restrictions and traffic control. (Staff Ex. 1 at 19-20.)

#### xi. Noise

{¶ 54} Staff reviewed noise issues in terms of both construction and operation activities. As for construction activities, Staff acknowledged that construction activity noise levels would be significant, but that adverse impacts are mitigated by (1) the noise would be temporary and intermittent, (2) the construction would occur during daytime hours and occur away from most residential structures, and (3) Applicant's commitment to using proper equipment and establishing a complaint resolution process. Similarly, regarding operation of the Facility, Staff concluded, based on Applicant's ambient noise level study, that the Project's noise impacts to non-participating receptors would be less than ambient noise plus five dBA such that the Project would be expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 20-21.)

## **xii. Geology**

{¶ 55} Staff states that the project area lies within the glaciated margin of the state and includes several Wisconsinian-age glacial features and is covered by end moraine deposits of clayey till and hummocky ridges. Glacial drift within most of the project area ranges from zero to 88 feet in thickness. Staff notes that bedrock within the project area consists of Berea Sandstone and Beford Shale underneath Sunbury Shale, which may pose some excavation challenges during construction. The project area is devoid of karst geology. Applicant identified two oil and gas wells permitted within the project area which are plugged and abandoned with 31 oil and gas wells located within one mile of the project area according to ODNR records. Applicant estimates, based on ODNR maps, the wells (API#34117235930000 and API#34117600310000) are located approximately 38 feet and 348 feet, respectively, from proposed Facility infrastructure. Applicant should ensure that no project infrastructure is located within 25 feet of plugged and abandoned well features. There are no Class II injection wells located within several miles of the project area. Staff describes that there is no active mining and no known abandoned underground mines within the project area. The closest mine is an active stone quarry 1.3 miles south. (Staff Ex. 1 at 21-22.)

{¶ 56} According to the United States Department of Agriculture Natural Resources Conservation Service survey, the project area consists primarily of soils derived from alluvium, loess, outwash, and till which present a low to moderate risk of shrink-swell potential. Slopes in the project area are relatively flat seldomly exceeding a 12 percent grade, except along stream bands. Applicant indicates that project infrastructure would occur on less than four acres of the total project footprint. (Staff Ex. 1 at 23.)

## **xiii. Seismic Activity**

{¶ 57} Staff states that ODNR records substantiate a low risk of seismicity for Morrow County since no earthquakes have been documented recently in the county. As of the filing of the Staff Report, Applicant had not provided a preliminary seismic site

classification to ensure Facility design conforms to applicable building code. Applicant declares that no blasting activities are required for the construction or operation of the Facility, therefore no blasting-induced seismic activity is expected. (Staff Ex. 1 at 23.)

#### **xiv. Geotechnical Report**

{¶ 58} Staff reviewed Applicant's geotechnical report and noted that geologic and soil conditions appear suitable for the Project but pose a high risk of corrosion potential with steel. Staff recommends additional geotechnical exploration including borings, test pits, and full-scale pile load testing, with a certified corrosion engineer retained to evaluate Project design for corrosion protection requirements. Applicant should develop a final geotechnical report that analyzes the Project's final design. Staff notes that Applicant has not conducted any preliminary access rod design considerations. (Staff Ex. 1 at 23-24.)

{¶ 59} Staff recommends that final detailed engineering drawings of the final project design 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. Staff further recommends that Applicant provide the final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. A corrosion engineer should also be part of the final design evaluation process. Staff also recommends a final Unanticipated Discovery Plan (UDP) to address the course(s) of action to be taken in the event that previously unidentified subsurface hazards/features are encountered during construction (e.g., oil and gas well infrastructure, abandoned mines, contaminated soils, etc.). In addition, Staff recommends all project infrastructure observe a minimum setback of 25 feet from the two plugged and abandoned oil and gas wells identified within the project area. After reviewing the application, based on Staff's assessment, and considering the input provided by ODNR, and contingent upon implementation of the recommended conditions, Staff believes that there are no particular geological features in the project area that are incompatible with construction and operation of the Facility. (Staff Ex. 1 at 24.)

*b. Ecological Impacts*

i. Public and Private Water Supplies

{¶ 60} Staff reviewed the well location information that Applicant provided in conjunction with records maintained by the Ohio Environmental Protection Agency (OEPA) and ODNR. Applicant determined one public water supply near the project area which, according to OEPA, has been deactivated since the application was filed. While a portion of the project area falls within a source water area watershed, it is outside of the corridor management zone. Applicant determined seven water wells within the project area, with the closest private well 350 feet from project infrastructure. There are no source water protection areas within the project area. Based on the information provided and the implementation of the Spill Prevention, Control and Countermeasures (SPCC) Plan, a Storm Water Pollution Prevention Plan (SWPPP) and a UDP, Staff determined that construction and operation of the Facility is unlikely to adversely impact public or private drinking water supplies. (Staff Ex. 1 at 24-25.)

i. Surface Waters

{¶ 61} Applicant delineated 19 streams within the project area, including one perennial, one intermittent, and 17 ephemeral streams of which approximately .14 acres of streams would be temporarily impacted during construction for the installation of access roads and collection lines. Approximately .05 acres of streams would be permanently impacted. Applicant also noted 26 wetlands totaling approximately 51.74 acres within the project area, including 15 Category 1 wetlands, of which .14 acre of one such stream would be temporarily impacted and 11 Category 2 wetlands. There are no high-quality Category 3 wetlands within the project area. No wetlands would be permanently impacted by construction of the Project. Further, while up to four stream and wetland crossings are being proposed for the installation of underground collection lines, Applicant intends to employ HDD for such crossings, and has developed an HDD Contingency Plan to address any complications that might arise during construction. Staff recommends an on-site

environmental specialist be on site during HDD activities that may impact surface waters, and that Applicant obtain an Ohio National Pollutant Discharge Elimination System (NPDES) permit from the OEPA, and comply with the SWPPP, and OEPA's published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays. (Staff Ex. 1 at 26-27.)

iii. *Threatened and Endangered Species*

{¶ 62} Staff reviewed Applicant's information as to potential impacts to threatened and endangered species, which included information from ODNR and the United States Fish and Wildlife Service (USFWS), field assessments, and document reviews. Within the project area, Staff identifies the following species as either threatened or endangered: four mammals, four mussels/invertebrates, two fish, and four birds. Applicant, ODNR, and USFWS did not identify any concerns regarding impacts to listed plants or animal species during construction of the Facility. Applicant expects approximately 32.01 acres of tree clearing for construction of the Project. To avoid impacts to listed species, Applicant has committed to adhere to ODNR and USFWS recommended seasonal tree clearing dates of October 1 through March 31 for all trees three inches or greater in diameter, unless further coordination efforts with the ODNR and the USFWS reflects a different course of action. Staff recommends that Applicant commit to the following as part of the Project: if Applicant encounters any threatened or endangered species before or during construction, Applicant must coordinate with Staff, ODNR, and USFWS to obtain approval for avoiding such impacts; and Applicant shall adhere to seasonal tree cutting dates as recommended by ODNR and USFWS. (Staff Ex. 1 at 27-30.)

iv. *Vegetation*

{¶ 63} Of the 1,653.34 acres within the project area, Staff notes that there are 1,247.24 acres of cultivated crops, 175.59 acres of hay/pasture, 147.41 acres of deciduous forest, 53.19 acres of developed open space, 16.16 acres of developed low- and medium- intensity, 5.91 acres of evergreen forest, 5.78 acres of scrub shrub and less than one acre each of herbaceous,

woody wetlands and open water. However, Staff notes that the vegetative impact includes the entire project area, although the entire area will not be developed as a part of the Project. Accordingly, the permanent vegetative impact would be less than the above listed acreage with the primary permanent impacts to agricultural lands. Staff further notes that Applicant's vegetation management plan incorporates pollinator plantings across 70 percent of the developed project area in accordance with ODNR Guidance for Proposed Solar Energy Facilities and the recommendations of the Ohio Solar Site Pollinator Habitat Planning and Assessment, so as to enhance the visual appeal of the Project, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. Conditioned upon Applicant acting to mitigating noxious weed propagation as identified in Ohio Adm.Code 901:5-37, Staff concludes that the Project would represent a reduced environmental impact when compared to the current agricultural land use due to reducing the erosion and sedimentation caused by frequent tilling and reducing the application of fertilizers and pesticides. (Staff Ex. 1 at 30-31.)

{¶ 64} In sum, Staff recommends that the Board find that Applicant has determined the nature of the probable environmental impact for the proposed Facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 31).

### 3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

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

{¶ 66} Staff describes Applicant's rationale for the Project's site selection and notes that Applicant engaged local officials and the public prior to filing its application with the Board. Staff also notes the Project's overall positive financial impact on the state and local economies. It is Staff's opinion that the geology of the project area does not present

conditions that would limit or negatively impact construction or operation of the Facility. Construction or operation of the Facility is unlikely to adversely impact public or private drinking water or the 100-year floodplain. Staff describes minimal impacts are expected to wetlands, streams, and threatened or endangered species and plants. Staff also describes Applicant's plans and Staff recommendations for environmental impact avoidance or mitigation, which include the solar panels to be utilized, protecting public or private drinking water supplies, road use, visual, agricultural mitigation including drain tiles, and noise, and avoiding impacts to wetlands and streams, as well as threatened or endangered species. Staff notes that Applicant found, and OHPO agrees, that by avoiding two unevaluated archaeological sites, the Project will not adversely affect archaeological sites or historical properties. Further, Staff notes Applicant's plan for decommissioning, which is bolstered by Staff's recommended condition regarding updating the plan to account for financial assurances and a cost estimate, among other factors. Upon review of these factors, Staff concludes that, while the Project will result in temporary and permanent environmental impacts, those impacts are unlikely to be significantly adverse such that the Project represents the minimum adverse environmental impact. (Staff Ex. 1 at 32-33.)

{¶ 67} Based on its review of the application and investigation, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 33).

#### **4. ELECTRIC POWER GRID**

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



{¶ 69} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the solar-powered electric generation facility would be capable of producing 144 MW through the Facility substation and connect through a new 138 kV gen-tie line, which would require a separate filing with the Board, and would connect to the existing ATSI 138 kV Galion substation. Staff also describes that the Project is required to comply with North American Electric Reliability Corporation reliability standards and PJM Interconnection, LLC (PJM) standards. PJM is the regional transmission organization responsible for planning upgrades and administering the generation queue for the regional transmission system in Ohio. Applicant submitted two generation interconnection requests to PJM. PJM determined that: (1) the Project's Bulk Power System is not to exceed 144 MW, (2) the Project does not create reliability violations, (3) the Project does not cause any reliability criteria violations as to current system operations, and any system upgrades that may be necessary due to overloads identified in earlier PJM queue projects would not be Applicant's responsibility, (4) local energy delivery upgrades are not required, and (5) the Project does not create any circuit breaker problems. (Staff Ex. 1 at 34-35.)

{¶ 70} Staff concludes that the Facility would be consistent with plans for expansion of the regional power system and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided that any certificate issued for the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 36.)

## 5. AIR, WATER, SOLID WASTE, AND AVIATION

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

{¶ 72} This Project will not require air quality permits for construction nor operation, and, as the Project will not include a source of air emissions, no air pollution control equipment is needed. Although the Project will not require any air quality permits, fugitive dust rules may be applicable during the construction of the Project. Therefore, Applicant would need to minimize construction-related fugitive dust by implementing best management practices including retention of knowledgeable, licensed construction firms. (Staff Ex. 1 at 37.)

{¶ 73} Applicant will seek environmental permits, if and where necessary. As explained above, some impacts to streams is anticipated; accordingly, Applicant will mitigate potential water quality impacts by obtaining a Section 404 Clean Water Act permit from the U. S. Army Corps of Engineers, the NPDES construction storm water general permit issued by the OEPA, which also requires that Applicant develop a SWPPP, to ensure compliance with the Clean Water Act. With these measures, construction and operation of the Project would comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. Applicant states all construction-related debris would be disposed of by a contractor. Applicant would not have an O&M facility, and therefore would not generate solid waste during operation of the Facility. Staff indicates that Applicant's solid waste management complies with R.C. Chapter 3734 in that Applicant will properly dispose of Project materials. Further, Staff assessed the Project's potential impact on aviation, describing that the Project has been evaluated by the Federal Aviation Association and Ohio Department of Transportation Office of Aviation, and that neither agency indicates that the Project will adversely affect local aviation. (Staff Ex. 1 at 37-39.)

{¶ 74} Based on these findings, Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued for the Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 39).

## 6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 75} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity. As a part of its investigation, Staff reviewed the Project's impact on the public interest, convenience, and necessity and a summary of Staff's findings are as follows.

### *a. Safety*

{¶ 76} Staff reviewed and described Applicant's plan to use a Tier 1 solar panel manufacturer, for standard industry warranties on all primary components of solar facility and planned for O&M expenses to maintain safety and reliability. Further, Applicant will secure the Facility, via approved fencing and gates, to preserve setbacks, including those recommended by equipment manufacturers. Staff has recommended additional setback distances for aesthetic purposes as well as a clear zone from the solar facility fence line to the edge of public roads. Further, prior to construction, Applicant will develop and implement an emergency response plan, in consultation with area emergency response personnel, consistent with an example that Staff has previously reviewed. (Staff Ex. 1 at 40-41.)

### *b. Electromagnetic Fields*

{¶ 77} Staff states that electromagnetic field health concerns are not expected because the gen-tie transmission line is more than 100 feet from any occupied structure and Applicant's intended equipment and transmission facilities are expected to meet the requirements of PJM, the National Electric Code, the National Electric Safety Code, and the Institute of Electrical and Electronics Engineers (Staff Ex. 1 at 41).

### *c. Public Interaction and Participation*

{¶ 78} Staff describes that Applicant has acted to engage the public as to the Project, including (1) hosting a public information meeting that was used to afford to engage the

community prior to submitting its application, (2) maintaining a Project website, (3) drafting a complaint resolution plan, which includes plans for filing complaint summaries on the public docket, (4) committing to preconstruction and pre-operation public notices, and (5) participating in the local public and evidentiary hearings in the case. (Staff Ex. 1 at 41-42.)

{¶ 79} Staff notes that 27 public comments were filed in the case docket as of the date of the Staff Report, which included one comment in opposition with the remainder of comments in support of the Project. Comments supporting the Project were filed by Morrow County Commissioners and the Northmoor Local School District. Pursuant to Senate Bill 52, Morrow County Commissioners and the Board of Trustees of Washington Township appointed ad hoc members to the Board for this Project. (Staff Ex. 1 at 42.)

{¶ 80} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 42).

## 7. AGRICULTURAL DISTRICTS

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

{¶ 82} Staff notes that while the Project will temporarily disturb approximately 1,073 acres, of which approximately 160 acres is currently enrolled in the Agricultural District program, and permanently impact approximately 25 acres of agricultural land, the repurposed land is capable of being returned to agricultural uses when the Project is decommissioned. Further, Staff acknowledges that the Project may impact drain tiles, but such impacts are reduced by Applicant's mitigation plan, which addresses plans for construction avoidance and repair of any impacted drain tiles. (Staff Ex. 1 at 43.)

{¶ 83} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, provided any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 43).

#### 8. WATER CONSERVATION PRACTICE

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

{¶ 85} Neither construction nor operation of the Project would require significant amounts of water. The Project may require some water use during construction for dust suppression and control purposes as needed. Operation of the Facility would not require appreciable amounts of water. Staff concurs in Blossom's assessment and, therefore, finds that the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8), subject to the recommended conditions. (Staff Ex. 1 at 44).

#### 9. RECOMMENDATIONS

{¶ 86} In addition to making various findings throughout its report, Staff recommended that 41 conditions be made part of any certificate issued by the Board for the proposed Project. The recommended conditions found in the Staff Report were substantially incorporated into and certain conditions expanded in the unopposed Stipulation filed February 3, 2023. The conditions are discussed below.

### VI. STIPULATION AND CONDITIONS

{¶ 87} As previously noted, the Stipulation entered into by all the parties to the case was filed on February 3, 2023, and admitted into the record at the evidentiary hearing. Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Blossom, subject to 41 listed conditions. The following is a summary of the

conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) 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 the Staff Report, as modified by this Stipulation.
- (2) Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, 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 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, Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. Applicant may conduct separate preconstruction conferences for each stage of construction.
- (3) Within 60 days of commencement of commercial operation of the Facility and point-of interconnection switchyard, Applicant shall submit to Staff a copy of the as-built specifications for that Facility. If Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Project within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. 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 does not apply to the Facility, 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 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, 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) Applicant shall obtain transportation permits prior to the commencement of construction activities that require them. Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the Facility. 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. Applicant shall also submit the completed Transportation Study as part of the final transportation management plan.
- (8) Subject to the application of R.C. 4906.13(B), prior to the commencement of construction activities in areas that require permits or authorizations by federal, state, or local laws and regulations,

Applicant shall obtain and comply with such permits or authorizations. Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by Applicant and shall file such permits or authorizations on the public docket. 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 Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.

- (9) Subject to the application of R.C. 4906.13(B), the certificate authority provided in this case shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (10) Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the Facility into the regional transmission system reliably and safely. 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.
- (11) The Facility shall be operated in such a way as to assure that no more than 144 MW would at any time be injected into the Bulk Power System.



- (12) At least 30 days prior to the preconstruction conference, 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, and (c) includes a recommendation to minimize and address all predicted glare impacts.
  
- (13) Prior to commencement of construction, 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 will take into account the updated glare analysis prepared pursuant to Condition 12. 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. Applicant shall maintain vegetative screening for the life of the facility and Applicant shall substitute or replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. 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. Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition:

- (a) Applicant shall incorporate additional screening for the following observation points as identified in the initial glare study dated July 20, 2022, observation points 119, 120, 127, 128, 136, 138, 142, 145, 146, 149, 150, 152, 160, 162, 166, 168, 170, 178 in order to mitigate any predicted glare at those locations.
  - (b) Applicant shall incorporate additional screening for the following routes as identified in the initial glare study dated July 20, 2022: route five (along State Route 61) and route six (along State Route 288) in order to mitigate any predicted glare at those locations.
- (14) At least 30 days prior to the preconstruction conference, Applicant shall submit a refined solar facility layout that shows pipeline(s), easement(s), and right-of-way, Applicant's setback of perimeter fence, solar panels, and inverters to that pipeline(s), easement(s), and right-of-way, the access roads necessary to reduce crossing the pipeline(s) easement(s), the location of the underground electric collection system within the pipeline easement, and the method for installing the underground electric collection system within the pipeline easement.
- (15) At least 30 days prior to the preconstruction conference, Applicant shall submit a document indicating that it has met or addressed notable points from the pipeline owner's written guidelines for third-party

construction or maintenance activities within the pipeline's easement. If written guidelines are unavailable, Applicant shall include and address the following specific notable points in its document but are not limited to at least the following: obtain an encroachment agreement if such agreement is required by the pipeline owner (or, if such an agreement is not required by the pipeline owner, Applicant shall use industry accepted practices to design the limits of encroachment); insurance coverage; conduct an engineering review for crossing of pipelines with equipment if such a review is required by the pipeline owner, which may include a description of the use of timber mats, bridges, or other protective material to cross the pipelines during construction; meet or exceed minimum HDD pipeline clearance of 60 inches from the pipeline; establish non-interference with the pipeline's cathodic protection system; utilize proper shielding of the underground electric cable; comply with setbacks for blasting near the pipeline; and conduct a prior blast plan impact analysis.

- (16) Applicant shall denote the pipeline(s) easement(s) on the final engineering drawings and install construction fence along the pipeline(s) easement(s) so that crossing the pipeline easement is minimized during construction.
- (17) Prior to commencement of construction, Applicant shall submit to Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location. Fencing around panels should incorporate gaps or spaces of at least six inches by six inches to allow passage of small mammals. 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.

- (18) 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., 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. 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 the potential for nighttime construction.
- (19) Applicant shall operate the Facility in a manner that limits sound levels emitted to non-participating receptors to no higher than the daytime ambient Leq sound level limit plus five dBA, as listed in the Sound Report Exhibit L, Appendix C for the applicable non-participating receiver. If the Facility is found to be above these limits, Applicant shall install additional noise mitigation measures to maintain compliance with this provision.

- (20) 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 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. 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. 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. 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.
- (21) At least 60 days prior to the preconstruction conference, Applicant shall file an agricultural protection plan that is designed to minimize impacts to agricultural land use during the construction, operation, maintenance, and decommissioning. The plan shall be comprised of a

narrative and detailed mapping that includes, but is not limited to, the following:

- (a) Implements a program for the collection of baseline data establishing preconstruction soil conditions for the production of row crops for the agricultural areas within the project area. The program shall establish the relevant characteristics of both topsoil (defined as the upper most part of the soil commonly referred to as the plow layer, the A layer, or the A horizon, which typically is 5 to 10 inches in depth in Ohio) and subsoil (defined as the soil material that starts at the bottom of the topsoil, which typically is approximately 36 inches in depth in Ohio, unless fractured or hard bedrock is encountered first). The baseline data shall be derived from field and laboratory testing of soil conditions, including depth, density, and quality from representative locations. Laboratory testing shall be conducted by an accredited laboratory. Parameters for assessing soil quality shall include, at a minimum, the following: infiltration rate, bulk density, water holding capacity, pH, percent organic matter, cation exchange capacity, Phosphorous/Phosphate (P), Nitrogen (N), and Potassium/Potash (K). After 30 years of operation and again after 35 years of operation, soil conditions shall be determined for the same sampling locations using the same parameters and the results used to plan soil restoration activities. After equipment is removed as part of decommissioning, soil conditions shall be determined for the same sampling locations using the same parameters. Soil

restoration activities shall be performed as necessary to return soil conditions to at least baseline conditions. Staff will be provided with data of soil conditions within 30 days after the receipt of results.

(b) Seeks to achieve a goal of grading no more than five percent, but firmly limits grading to no more than 20 percent, of the agricultural lands within the project area, as defined in the application. The plan shall minimize grading to the extent practicable and economically feasible, specify the percentage of agricultural lands within the project area for which grading is anticipated and, if applicable, provide the reason(s) that the five percent goal is not practicable or economically feasible for the project area. For purposes of this condition only, grading is defined as earthmoving activities incidental to building roads, equipment pads, substations, and laydown yards, installing buried electric lines and drain tile, excavating stormwater basins, performing soil removal activities, soil filling activities, and cut-and-fill activities, but shall not include routine ground disturbance incidental to installing piles, fences, poles for electric lines, vegetation, landscaping, and temporary erosion and sediment controls, performing soil sampling, geotechnical investigations, and archeological investigations, disking topsoil to promote the growth of vegetation, and raking, smoothing ruts, or otherwise creating a smooth and safe work surface.

(c) Map(s) and geospatially referenced electronic data including the following:

- i. Planned areas of grading.
  - ii. Agricultural lands within the project area.
  - iii. Planned locations for topsoil storage or stockpile areas.
- (d) Follows best management practices for preserving agricultural land that include, but may not be limited to, the following:
- i. Prior to starting to grade in a particular location, topsoil shall be removed and stockpiled separate from subsoil.
  - ii. No stockpiles shall be located in or near drainage ways. Stockpiles shall be stabilized in accordance with the OEPA's NPDES Construction Storm Water General Permit.
  - iii. Topsoil will remain in the project area.
  - iv. Topsoil shall not be re-applied to the surface in excessively wet/moist conditions.
  - v. For cut-and-fill activities, a profile of the depth and density of the topsoil and subsoil for each area shall be established using representative sampling locations prior to the start of the activity, and a similar profile shall be reestablished upon completion of such activity. Topsoil will be removed from the area for which activity is to be performed and separately stockpiled, the subsoil will be excavated and redistributed to lessen the slope,



the subsoils will be decompacted, and then the topsoil will be redistributed over the area.

- vi. Existing grassed waterways shall be preserved to the extent practicable. In instances where grassed waterways are to be significantly altered, Applicant shall submit an analysis that demonstrates how the alteration will not adversely affect drainage of both the project area and neighboring parcels.
  - vii. Shall sequence construction such that access roads are constructed prior to other grading activities.
  - viii. Shall instruct construction workers to utilize established access roads and laydown areas for equipment and vehicular traffic, rather than agricultural land, unless installing equipment in the immediate area or as necessary to safely pass other equipment or vehicles.
- (22) At least 30 days prior to the preconstruction conference, Applicant shall submit, on the public docket, an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value that includes: (a) a provision that the decommissioning financial assurance mechanism include a performance bond where Applicant is the principal, the insurance company is the surety, and the Board is the obligee; (b) a timeline of up to one year for 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 Applicant; and (i) a provision that underground equipment will be removed to the extent such removal is necessary for future drain tile repairs and installation to be completed. Applicant shall implement and comply with the decommissioning plan as approved by Staff.

- (23) 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.
- (24) Applicant shall only use solar panel modules that do not exhibit the characteristic of toxicity verified through analysis or documentation with the U. S. Environmental Protection Agency's Toxicity Characteristics Leaching Procedure test.

- (25) Prior to construction, Applicant shall implement an avoidance plan for Ohio Archaeological Inventory sites 33MW0251 and 33MW0288. If the project scope changes or newly identified cultural resources are discovered during construction, Applicant shall notify OHPO and Staff concerning the need for mitigation or avoidance.
- (26) If Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, Applicant shall include the location in the final engineering drawings and associated mapping. Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.
- (27) Applicant shall contact Staff, ODNR, and 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 Applicant, Staff, and the appropriate agencies. Applicant shall also keep a running list of and notify Staff and ODNR Division of Wildlife if any wildlife mortality or entrapment is discovered in the Facility during operation.
- (28) Applicant shall construct the Facility in a manner that incorporates post construction stormwater management under OHC000005 (Part III.G.2.e, pp. 19-27) in accordance with the OEPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.

- (29) 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) 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 ODNR and the USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (31) Prior to commencement of any construction, 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) Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 during implementation of any pollinator-friendly plantings. This would be achieved through appropriate seed selection, and annual vegetative surveys. If noxious weeds are found to be present, Applicant shall remove and treat them with herbicide as necessary and shall follow all applicable state laws regarding noxious weeds.
- (33) 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, 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 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.

- (34) Additional geotechnical studies shall include additional borings throughout the project area to confirm the preliminary geotechnical engineering report's initial findings, including a minimum of one boring within or immediately adjacent to the proposed substation location. Test pits shall be dug throughout the project area to further characterize soils. This data shall be used to evaluate and design access roads and to assign a seismic site classification applicable to Ohio Building Code. A full-scale pile load testing program shall also be part of the final project design considerations.

- (35) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This report shall include a final summary statement addressing the geologic and soil suitability.
- (36) If any changes are made to the Facility layout after the submission of final engineering drawings, 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.
- (37) Applicant's final project design shall include input from a qualified corrosion engineer to account for potentially corrosive soils.
- (38) Applicant shall make all reasonable efforts, including but not limited to, aerial and ground magnetic surveys, ground penetrating radar, hydro-excavation, etc. to identify the precise location of the plugged oil and gas well (API 4 34117235930000) and observe a minimum setback of 25 feet between all Project infrastructure and the well.
- (39) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final UDP to account for any previously unknown conditions or features discovered during the proposed construction and which includes course(s) of action to be taken in the event previously unidentified subsurface hazard(s)/feature(s) are

encountered during construction (e.g., oil and gas well infrastructure, abandoned mines, contaminated soils, etc.).

- (40) At least 30 days prior to the start of construction, 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, Applicant shall notify, via mail: all affected property owners and tenants who were provided notice of the public informational meeting and Board 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 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 Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. Applicant shall file a copy of these notices on the public docket. Applicant shall also 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. Applicant shall file on the public docket a complaint summary report by the last 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 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.

- (41) Applicant shall implement a minimum setback from the Project's solar modules of at least 50 feet from non-participating parcel boundaries not containing a residence, at least 300 feet from non-participating residences existing as of the application date, and at least 150 feet from the edge of any state, county, or township road within or adjacent to the project area, unless otherwise agreed to by an authorized government representative with authority over a state, county, or township road or a waiver is granted.

(Joint Ex. 1 at 5-15.)

## VII. CONCLUSION

{¶ 88} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted 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. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. See, e.g. *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN, et al., Opinion,

Order, and Certificate (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN, Opinion, Order, and Certificate (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB, Opinion, Order, and Certificate (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA, Order on Certificate Amendment (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12- 1727-EL-BSB, Opinion, Order, and Certificate (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. Particularly where the stipulation is unopposed, the Board may accord it significant weight. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principal or practice?

{¶ 89} Patrick Buckley, Vice President, Development for Open Road, and project lead for Blossom, offered testimony in support of the Stipulation. Mr. Buckley is responsible for the planning, community engagement, and development for Open Roads' Ohio projects, including the production of various studies for the Board's certificate process. Applicant witness Buckley states he was involved in the negation process and the Stipulation is the result of many meetings between the parties over several months. Blossom witness Buckley testified that all parties participated in the negotiation of the Stipulation and were represented by counsel. In addition to generating clean and quiet renewable electricity, Mr. Buckley notes that the Project will create an estimated 583 construction jobs and six operations jobs at the Facility. In addition to the jobs created, Mr. Buckley states the Project will provide economic benefits to the Morrow County, Washington Township, and other county taxing jurisdictions, of \$1,296,000 annually with operations expected to commence by the end of 2025 and continue for up to 40 years. Applicant witness Buckley cited many

of the conditions adopted in the Stipulation that serve to protect the community and adjacent landowners, and minimize impacts of the Project, including but not limited to requirements to file information with the Board, vegetative screening, drain tile repair and replacement, control of noxious weeds, and return of the project area to substantially preconstruction conditions. Finally, Mr. Buckley testified that the Stipulation did not violate any important regulatory principles or practices. Accordingly, Mr. Buckley advocates that the Stipulation be approved by the Board and a certificate be issued to Blossom for the Project. (Applicant Ex. 6 at 6, 7, 23, 25-26, 28.)

{¶ 90} Staff offered the testimony of James O'Dell, Senior Siting Specialist for the Board Staff and Staff Project Lead on Blossom responsible for managing Staff's investigation and preparation of the Staff Report. Mr. O'Dell notes that based on Staff's analysis of the application, its site visits, additional information from Applicant and input from state agencies on the Board, Staff recommended, as reflected in the Staff Report, that the Board approve Blossom's application, subject to 41 conditions. Further, Staff witness O'Dell notes that Staff is a signatory party to the Stipulation. (Staff Ex. 1; Staff Ex. 2 at 1-3.)

{¶ 91} Upon review, the Board finds that the Stipulation meets the criteria used by the Board to evaluate and adopt a stipulation. The Board concludes that the record evidence supports a finding that the Stipulation meets the first part of the three-part test. We note that all the parties, Blossom, Staff, OFBF and OEC, were afforded the opportunity to participate in the negotiation of the Stipulation, were knowledgeable about the issues presented in this case, and are represented by counsel. Indeed, the Board notes that all parties to the case executed the Stipulation, which is the result of negotiations which took place over several months. Accordingly, we find that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (Applicant Ex. 6 at 25-26, 28.)

{¶ 92} The Board also concludes that the second and third criteria of the three-part test are satisfied. The record evidence supports a finding that the Stipulation, as a package, benefits the public interest in various ways. At the outset, the Board finds that certain issues

raised at the public hearing are addressed in the Stipulation, which substantially incorporates the conditions recommended in the Staff Report. Record evidence supports a finding that the Project, in accordance with the Stipulation, represents the minimum adverse environmental impact during construction and operation, considering the state of available technology, and the nature and economics of various available alternatives, and avoids adverse impacts to cultural historic resources, as well as other pertinent considerations. (Applicant Ex. 6 at 6-9, 10-14, 20-21, 25-28; Staff Ex. 2 at 2-3). In addition, the construction and operation of the Project provides benefits to the public interest including employment opportunities, tax revenues for the local school districts, and the generation of clean energy (Applicant Ex. 6 at 6-7). In regard to the last criterion, we find that the Stipulation does not violate any important regulatory principle or practice (Applicant Ex. 6 at 28). Further, the Board notes that Staff recommends, based on its investigation, that the Board approve the application for the Facility subject to 41 recommended conditions which have been incorporated into the Stipulation. Accordingly, the Board finds that the Stipulation complies with parts two and three of the three-part test. (Joint Ex. 1; Applicant Ex. 6 at 6-9, 10-14, 20-21, 25-28; Staff Ex. 2 at 2-3.)

{¶ 93} Based on the record in this proceeding, the Board concludes that all of the required elements in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Blossom's application, as amended, and supplemented, subject to the conditions set forth in the Staff Report and consistent with this Opinion and Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Blossom in accordance with R.C. Chapter 4906.

### VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 94} Blossom is a person under R.C. 4906.01(A).

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

{¶ 96} On March 23, 2022, Blossom filed a preapplication notification letter informing the Board of a public information meeting for a facility to be proposed.

{¶ 97} On March 23, 2022, Blossom also filed a motion for waiver of Ohio Adm.Code 4906-3-03(A), to the extent that the provision requires the applicant to file notice at least fifteen days in advance of the public information meeting. By Entry issued August 26, 2022, the motion was granted.

{¶ 98} On April 4, 2022, Blossom filed its proof of publication for the public information meeting in the *Morrow County Sentinel*, on March 23, 2022, and indicated that letters notifying affected landowners and tenants were mailed on March 16, 2022.

{¶ 99} Blossom held its public information meeting on April 6, 2022.

{¶ 100} On May 27, 2022, as amended on August 5, 2022, Blossom filed its application for a certificate to construct a 144 MW solar-powered electric generating facility in Washington Township, Morrow County.

{¶ 101} On May 27, 2022, Blossom also filed a motion for protective order of certain information included in Exhibit W to its application. The motion for protective order is granted, as discussed above in Paragraphs 13 and 14 of this Opinion and Order.

{¶ 102} By letter dated July 26, 2022, the Board notified Blossom that its application, as supplemented, had been found to be sufficiently complete to permit Staff to commence its review and investigation pursuant to Ohio Adm.Code Chapter 4906-1, et seq. Further, the letter identified additional information that would be required by Staff.

{¶ 103} On August 9, 2022, Applicant filed its proof of service that copies of the application had been served upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 104} On August 9, 2022, Applicant also filed notice that the application fee had been submitted to the Board pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 105} By Entry issued on August 26, 2022, the effective date of the application was established as August 26, 2022, and a procedural schedule set, including that the Staff Report was due on or before November 15, 2022, the local public hearing scheduled for November 15, 2022; and the evidentiary hearing scheduled to commence on December 19, 2022.

{¶ 106} On September 16, 2022, Blossom filed its first proof of publication of the Project, in the *Morrow County Sentinel* on August 24, 2022, and September 7, 2022. In addition, Blossom declared that written notice of the accepted, complete application was sent to affected property owners, tenants, and local officials pursuant to Ohio Adm.Code 4906-3-09(A)(1) on September 1, 2022.

{¶ 107} OFBF and OEC timely filed motions to intervene and their respective motions to intervene were granted pursuant to Entry issued November 2, 2022.

{¶ 108} The Staff Report was filed on October 31, 2022.

{¶ 109} On November 8, 2022, Applicant filed its proof of publication of the second public notice, in the *Morrow County Sentinel* on November 2, 2022, in compliance with Ohio Adm.Code 4906-3-09(A)(2). In addition, Blossom stated that written notice of the accepted, complete application was provided to local officials, affected property owners and tenants, pursuant to Ohio Adm.Code 4906-3-09(A)(2), on November 2, 2022.

{¶ 110} The local public hearing was held, as scheduled, on November 15, 2022, in Iberia, Ohio where 26 members of the public provided testimony.

{¶ 111} By Entries dated November 30, 2022, December 12, 2022, and February 13, 2023, the procedural schedule was modified such that, among other dates, the evidentiary hearing was called on December 19, 2022, and ultimately resumed on March 7, 2023.

{¶ 112} On February 3, 2023, a unanimous Stipulation was filed, which purportedly resolves all the issues in the case.

{¶ 113} On February 27, 2023, Blossom filed the testimony of Patrick Buckley, Mark Bonifas, John Woods and Brooke Harrison and Staff filed the testimony of James S. O'Dell.

{¶ 114} On March 7, 2023, the evidentiary hearing was conducted, where the Stipulation was presented for the Board's consideration.

{¶ 115} By way of the application, as amended, and supplemented through responses to data requests, adequate data on the proposed generation facility has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

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

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

{¶ 118} The record establishes that the Project, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).

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

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

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

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

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

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

{¶ 125} Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the solar-powered electric generation facility subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order.

## IX. ORDER

{¶ 126} It is, therefore,

{¶ 127} ORDERED, That Blossom's motion for protective order be granted consistent with Paragraphs 13 and 14. It is, further,



{¶ 128} ORDERED, That, for a period of 24 months, the Board's docketing division maintain, under seal, the information in Exhibit W to the application. It is, further,

{¶ 129} ORDERED, That the Stipulation filed on February 3, 2023, be approved and adopted. It is, further,

{¶ 130} ORDERED, That a certificate be issued to Blossom for the construction, operation, and maintenance of the solar-powered electric generation facility subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order. It is, further,

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

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

Dan Bucci, Designee for Lydia Mihalik, Director  
Ohio Department of Development

Damian Sikora, Designee for Mary Mertz, Director  
Ohio Department of Natural Resources

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

Drew Bergman, Designee for Anne Vogel, Director  
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Brian Baldrige, Director  
Ohio Department of Agriculture

Gregory Slone  
Public Member

Tom Whiston  
Morrow County Commissioners

Robert Kochman  
Washington Township Trustees

GNS/dr

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**Case No(s). 22-0151-EL-BGN**

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