

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION
OF YELLOW WOOD SOLAR ENERGY LLC,
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY IN
CLINTON COUNTY, OHIO.**

CASE NO. 20-1680-EL-BGN

OPINION AND ORDER

Entered in the Journal on June 15, 2023

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Yellow Wood Solar Energy LLC, the Ohio Farm Bureau Federation, and the Board Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Yellow Wood Solar Energy LLC for the construction, operation, and maintenance of a 300 megawatt solar-powered electric generation facility in Clark and Jefferson Townships in Clinton County, Ohio.

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} Yellow Wood Solar Energy LLC (Yellow Wood or Applicant) is a person as defined in R.C. 4906.01. The Applicant is a subsidiary of Invenergy Solar Project Development LLC, which owns and operates approximately 176 solar, wind, storage, and natural gas projects with a nameplate capacity of approximately 28.3 gigawatts. (Staff Ex. 1 at 5.)

{¶ 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 November 25, 2020, Yellow Wood filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 300 megawatt (MW) solar-powered electric generation facility in Clark and Jefferson Townships in Clinton County, Ohio (Facility). Applicant also represented that a virtual public information meeting regarding the Facility would occur on December 17, 2020.

{¶ 6} On November 11, 2020, Yellow Wood filed a motion seeking a limited waiver of Ohio Adm.Code 4906-3-03(B) to allow for its public information meeting to be held virtually, rather than in-person. On November 18, 2020, Staff filed a letter stating that it does not object to the motion. Also on November 18, 2020, the administrative law judge (ALJ) granted Yellow Wood's motion to conduct a virtual public information meeting. On December 17, 2020, Applicant held a virtual public meeting to discuss the Facility with interested persons and landowners. Applicant filed with the Board proof of publication regarding the public information meeting on November 25, 2020, and December 10, 2020.

{¶ 7} On February 24, 2021, as later supplemented on June 17, August 19, September 3, and October 8, 2021, Applicant filed an application (Application) with the Board for a certificate of environmental compatibility and public need to construct the Facility. In conjunction with its Application, Applicant filed both: (1) a motion for protective order to keep portions of its Application confidential; and (2) a motion for a waiver from Ohio Adm.Code 4906-4-08(D)(2) through (4). Both motions were granted by Entry issued on March 22, 2021.

{¶ 8} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, 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. By letter dated April 23, 2021, the Board's Executive Director notified Yellow Wood that its Application, as supplemented, was compliant 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 April 23, 2021 letter directed Yellow Wood 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 Yellow Wood to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On April 29, 2021, Yellow Wood filed proof of service of its accepted and complete Application as required by Ohio Adm.Code 4906-3-07. On May 4, 2021, Applicant filed proof that it submitted its application fee.

{¶ 10} On August 17, 2021, the ALJ issued an Entry that established the procedural schedule for this case. Specifically, the Entry stated that the effective date of the Application would be August 16, 2021; that an in-person local public hearing would be held on October 20, 2021; and that an in-person adjudicatory hearing would take place on November 17, 2021. The ALJ directed Yellow Wood to issue public notices of the Application and hearings pursuant to Ohio Adm.Code 4906-3-09; and, further, indicated that petitions to intervene would be accepted by the Board up to 30 days following the service of the notice or by September 30, 2021, whichever is later. The Entry also provided deadlines for all parties to file testimony, as well as for the filing of any stipulation.

{¶ 11} On August 24, 2021, Applicant, in accordance with R.C. 4906.06(C), filed proof of publication of a description of the Application and of the procedural schedule in the *Wilmington News Journal*, a newspaper of general circulation in Clinton County, Ohio.

{¶ 12} On October 4, 2021, Staff filed its report of investigation (Staff Report).

{¶ 13} On October 18, 2021, Applicant filed proof of publication of the second public notice, in the *Wilmington News Journal* on October 5, 2021, in compliance with Ohio Adm.Code 4906-3-09(A)(2). As did the initial notice, the second public notice included information regarding the date, time, and process to participate in the public hearing, as well as the date and time of the adjudicatory hearing.

{¶ 14} Also on October 18, 2021, intervention was granted to the various persons or entities who had, by then, on various dates, timely filed petitions to intervene or notices of intervention. Subsequently, on September 23, 2022, certain of these intervenors filed notice of their withdrawal as intervenors in this case. As a result, to date, only the following persons or entities remain as intervenors in this case, namely: Ohio Farm Bureau Federation (OFBF), Clinton County Board of Commissioners (Clinton County), as well as Brad Cochran Farms LLC, Brad Cochran, JWP Family Farms LLC, Dianne Rhonemus, and Charles W. Thompson (collectively, Residents).

{¶ 15} On October 20, 2021, the local public hearing was held, as scheduled, at the Clinton County Fairgrounds, Expo Center, 958 West Main Street, Wilmington, Ohio 45177. During the local public hearing, 36 individuals provided testimony.

{¶ 16} On November 2, 2021, the ALJ issued an Entry which granted the November 1, 2021 motion to suspend the procedural schedule and directed that the November 17, 2021 adjudicatory hearing should be called and continued. Thereafter, the November 17, 2021 hearing was held as scheduled and immediately continued until a later date to be established in a subsequent entry.

{¶ 17} On August 8, 2022, Applicant, OFBF, and Staff (Signatory Parties) filed a joint stipulation and recommendation (Stipulation) which the Signatory Parties contend is supported by adequate data and information, represents a just and reasonable resolution of the issues in this proceeding, violates no regulatory principle or precedent, and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all issues in this proceeding. The Signatory Parties recommend that the

Board issue a Certificate of Environmental Compatibility and Public Need for the Facility, subject to 34 conditions contained within the Stipulation.

{¶ 18} The adjudicatory hearing was held, as scheduled, on September 26, 2022, and was completed on September 27, 2022. At the adjudicatory hearing, the Stipulation was presented for the Board's consideration. Applicant, Staff, and Residents presented witnesses who offered hearing testimony and/or hearing exhibits.

{¶ 19} On November 18, 2022, Yellow Wood, Staff, Residents, and Clinton County filed initial post-hearing briefs. On December 9, 2022, Yellow Wood, Staff, Residents, and Clinton County filed post-hearing reply briefs.

III. PROJECT DESCRIPTION

{¶ 20} As noted, Applicant seeks certification to construct, own, operate, and maintain the Yellow Wood Facility, a 300 MW solar powered generating facility in Clark and Jefferson Townships in Clinton County, Ohio. The Facility would consist of large arrays of photovoltaic (PV) modules, commonly referred to as solar panels, ground-mounted on a tracking rack system. The Facility would occupy approximately 2,460 acres within an approximate 4,400-acre project area comprised of private land secured by the Applicant through agreements with the landowners. The Facility would include associated facilities such as access roads, an operations and maintenance (O&M) building, underground and overhead electric collection lines, weather stations, inverters and transformers, a collection substation, and a 345 kilovolt (kV) generation interconnect (gen-tie) electric transmission line. The major components of the Applicant's substation would include a 345 kV circuit breaker and open-air isolation switch, main power transformers, an equipment enclosure, and lightning masts. A gen-tie line would connect the collection substation to a point of interconnection switchyard. (Staff Ex. 1 at 6-7.)

{¶ 21} The Applicant proposes to construct new access roads for construction, operation, and maintenance of the solar facility. The proposed laydown yard would be

approximately five acres and would accommodate material and equipment storage, parking for construction workers, and construction management trailers. The Facility would include up to 15 weather stations to measure solar irradiance, barometric pressure, rain, temperature, and wind speed. These stations would also contain communications equipment. The O&M building would be approximately 1,500 square feet and would serve as a workspace for operations personnel. Total construction of the Facility can be expected to take 20 to 24 months. (Staff Ex. 1 at 7-8.)

IV. SUMMARY OF EVIDENCE

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

{¶ 23} Senate Bill 52 (SB 52) was recently passed and modified certain requirements for this application process. Specifically, it requires review of a project at the county level before an applicant can apply to the Board. However, certain solar projects, including the Facility under consideration in this case, are not subject to the modified requirements because, prior to October 11, 2021, when SB 52 went into effect, the Application was already pending with the Board, the Applicant received its letter of compliance, and took certain other required actions. In other words, this Application is grandfathered into the criteria that were used to consider applications before the passage of SB 52.

A. *Public Participation/Public Input*

{¶ 24} Before reviewing the evidence presented at the adjudicatory hearing regarding the statutory certification criteria, the Board will address the testimony provided during the local public hearing and the public comments filed to the record.

{¶ 25} At the local public hearing held on October 20, 2021, 36 individuals testified. Of those witnesses, 26 expressed their support for the proposed Facility and 10 opposed the

Facility. Some commentators emphasized the importance of being able to decide how to utilize their land and derive additional income from their land (Pub. Tr. at 49, 59, 101, 106-107, 110). Those in favor of the proposed Facility recognized the importance of solar energy as an alternative, renewable energy source (Pub. Tr. at 60, 78, 111-112, 115, 122). They also noted the environmental and economic benefits to the community relative to roads, bridges, emergency services, and to schools (Pub. Tr. at 42-43, 54, 56-57, 86, 121, 132). Specifically, some individuals testified in support of the Payment in Lieu of Taxes (PILOT) payments the local community would receive from the Facility (Pub. Tr. at 18, 49, 60, 128). Supporting witnesses also highlighted the anticipated jobs to result from the proposed Facility (Pub. Tr. at 17, 49, 51, 70-71, 84).

{¶ 26} Some witnesses testified that an additional benefit of the Facility would be the reduction in the use of agricultural chemicals (Pub. Tr. at 47, 188). One witness disputed opponents' argument that the solar panels would not produce sufficient power to make the Facility worthwhile (Pub. Tr. at 48). Another witness disputed the assertion that the land would not be viable for farming after decommissioning of the Facility (Pub. Tr. at 47).

{¶ 27} Witnesses in opposition to the Facility raised concerns related to the negative impacts of the Facility on the health of residents and farm animals, including toxicity of the solar panels (Pub. Tr. at 41). Environmental concerns were also expressed due to the contention that the solar panels are not recyclable and will end up in landfills (Pub. Tr. at 38, 40-41). Witnesses also noted the potential negative impact on property values in and around the project area (Pub. Tr. at 66-67). Some witnesses expressed concern regarding water and soil contamination and decommissioning issues resulting from the Facility (Pub. Tr. at 23-24, 28, 30, 141, 144). Witnesses also were concerned that the Facility would result in the loss of prime agricultural land (Pub. Tr. at 28, 30, 75). One witness disputed the claim that the Facility would result in the creation of jobs. Instead, the witness contended that the new jobs would only be temporary in nature. (Pub. Tr. at 38.)

{¶ 28} Other witnesses do not believe that Ohio is an appropriate location for a solar project due to an insufficient amount of sunshine (Pub. Tr. at 22, 74-75). Concerns were also raised regarding the negative aesthetic and noise impact resulting from the proposed Facility. (Pub. Tr. at 32, 65)

{¶ 29} In addition to testimony provided at the local public hearing, over 275 filings have been made in the case docket from individuals and organizations expressing opinions regarding the proposed Facility. The concerns and advantages of the Facility identified in the public comment filings generally mirror those made at the local public hearing.

B. Staff Report

{¶ 30} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the Application, which included recommended findings regarding R.C. 4906.10(A). The Staff Report, filed on October 4, 2022, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 31} R.C. 4906.10(A)(1) requires an application for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Because the Facility is a proposed electric generation facility, Staff recommends that the Board find this consideration is inapplicable (Staff Ex. 1 at 10).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 32} 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 Facility and the following is a summary of Staff's findings:

a. Community Impacts

{¶ 33} The predominant land use within the project area is agriculture with some residences and varied commercial and institutional uses within one mile of the project area. The Applicant states that 2,448 acres of agricultural land, seven acres of developed land, 1 acre each of deciduous forest and herbaceous land would be impacted, totaling approximately 2,457 acres of land to be converted for the proposed solar Facility. Impacts from construction would be temporary in nature and limited to participating landowners. Staff does not anticipate significant impacts, and surrounding agricultural land use would continue with minimal disruption. (Staff Ex. 1 at 11.)

{¶ 34} Staff states that although the Clinton County zoning and land use plans do not mention large solar development, the Facility is expected to be compatible with the plans. The proposed solar Facility would also be expected to aid regional development by increasing local tax revenues. These plans also emphasize the reduction of urban sprawl, which is consistent with the Facility. The Facility would provide supplemental income to farmers, and the land could be returned to agricultural production upon decommissioning. (Staff Ex. 1 at 11-12.)

{¶ 35} Construction and operation of the Facility would not physically impact any recreational areas. The Applicant identified 18 recreational areas within five miles of the project area, the nearest of which is Lynchburg Park, approximately 1.25 miles away. The Facility is not likely to be visible from any of the recreational areas. Staff determined that significant adverse aesthetic impacts are not likely. (Staff Ex. 1 at 12.)

{¶ 36} Aesthetic impacts are inherently subjective. The rural nature of the Facility limits the number of potential viewers, and existing woodlots offer additional natural screening. The solar panels would be installed no higher than 15 feet above ground level, which would not likely be visible at locations beyond three miles, and existing landscape features limit likely visibility to 1.5 miles. The Applicant's landscape mitigation plan proposes the installation of vegetation along the Facility fence line to soften visual impacts, including numerous plant species that would vary in height and variety. The plan proposes

more vegetation to mitigate potential aesthetic impacts to non-participating residences with a direct line of sight to the planned Facility. Staff recommends that the Applicant incorporate appropriate planting measures such as shrub and tree planting or enhanced pollinator plantings. Staff recommends that the Applicant incorporate a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Facility's infrastructure, including native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners and subject to Staff review. Staff's landscaping condition requires that the Applicant also consult with a certified professional landscape architect. With implementation of that condition, Staff states that the overall expected aesthetic impact would be minimal. (Staff Ex. 1 at 12-13.)

{¶ 37} A Phase I cultural archaeological reconnaissance survey was completed and submitted to the Ohio Historic Preservation Office (OHPO), which stated that 78 archaeological sites were newly identified within the project area. All 78 sites were recommended as ineligible for listing in the National Register of Historic Places (NRHP). An additional site was identified as the "Big Onion," which was a flag-stop on the B&O NW railway line, and the Applicant has agreed to avoid this site. The Applicant's cultural resource consultant also conducted a historic architecture survey of the project area in an area within a two-mile radius of the Facility. OHPO states that 18 properties are recommended as eligible for listing on the NRHP and of these 18 properties, seven may experience an adverse effect from the Facility. Staff states that the OHPO and the Applicant are developing a memorandum of understanding (MOU) to memorialize the appropriate steps to mitigate for and/or avoid cultural resources with potential adverse effects due to the Facility and to outline procedures to be followed if previously unidentified sites are discovered during construction. Staff recommends that the Applicant finalize and execute the MOU with OHPO. With the implementation of the MOU, Staff has determined that minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 13.)

{¶ 38} Staff states that the Applicant has obtained the necessary landowner agreements for the Facility. The Applicant reported to Staff that its recent solar PV projects of comparable scale report similar capital costs and O&M costs to the proposed Facility, which Staff verified. The Applicant stated that delays could prevent the Facility from meeting federal Investment Tax Credit deadlines, which could result in the loss of those benefits to the Applicant. Applicant's consultant estimated the economic impact of the construction and operation of the solar Facility, which Staff verified. Based on the results of that analysis, the Facility is expected to create 1,235 construction-related jobs and 34 long-term operational jobs, resulting in \$102.5 million in annual earnings during construction and \$1.9 million in annual earnings during facility operations. The analysis also states that the Facility will result in \$161.3 million in local output during construction and \$5.9 million in local annual output during Facility operation. The Facility would generate an estimated \$2.1 million annually for the local taxing districts, as based on a potential PILOT plan in which the Applicant would pay \$7,000/MW annually for a 300 MW facility. Staff notes that the Applicant had not entered into a PILOT agreement with Clinton County at the time of filing. (Staff Ex. 1 at 13-15.)

{¶ 39} Staff states that glare is the phenomenon where sunlight reflects from a surface to create a duration of bright light. Glare also encompasses glint, which is a momentary flash of bright light. Potential impacts of this reflection from solar panel(s) could be a brief reduction in visibility, afterimage, a safety risk to pilots, or a perceived nuisance to neighbors. The Applicant told Staff that it considered the potential effects of glint and glare in the design of solar array layout and how the panels would be operated, for example, solar panels are designed to absorb as much sunlight as possible with minimal reflectivity and include an anti-reflection coating. The Applicant conducted a glint and glare analysis to identify any potential impacts along local roads and at nearby residences. The Applicant found that no glare from the Facility is predicted to vehicles using the roadways. However, the Applicant does predict glare at three observations points, which are located just north of the Facility's fence line at specific points on Oak Grove, Townsend, and Gladys

roads respectively. Staff recommends that the Applicant incorporate additional screening for those observation points in order to provide suitable concealment of the Facility site and mitigate any predicted glare at those locations. (Staff Ex. 1 at 15.)

{¶ 40} The Applicant holds land rights to and estimates that the solar Facility can operate for 25 years or more. The Applicant has prepared a decommissioning plan and total decommissioning cost estimate of approximately \$14,115,000. According to the Applicant's plan, at the end of the useful life of the Facility, the Facility would be decommissioned, and the land would be returned to its current use as agricultural land. Prior to the start of any decommissioning activities, the Applicant would apply for and obtain applicable federal, state, and local permits. At this time, the Applicant has identified that during decommissioning, it may need to obtain at least an Ohio Environmental Protection Agency (Ohio EPA) Construction Storm Water General Permit and Clean Water Act Sections 401 and 404 permits. At the time of decommissioning, panels would be reused, recycled, or properly disposed in accord with regulations in effect at that time. Decommissioning includes reinforcing access roads, installing temporary construction fencing and best management practices (BMPs) to protect sensitive environmental resources, de-energizing solar arrays, dismantling panels and racking, removing inverters, removing electrical cables to a depth of at least 36 inches, removing access and internal roads, grading the site, removing the substation, removing overhead transmission lines and poles, de-compacting subsoils and revegetating disturbed land to pre-construction conditions, to the extent practicable. The Applicant would also coordinate with the appropriate local agency to coordinate repair of any public roads if damaged or modified during decommissioning. The Applicant may leave in place any electrical infrastructure improvements (e.g., collection substation) pending approval by the Board, the transmission owner (which is currently AES Ohio), and the independent system operator, PJM Interconnection, LLC (PJM). The Applicant stated that it anticipates decommissioning activities and restoration to be completed in a 12 to 18-month period. Staff recommends that the updated decommissioning plan include a requirement to monitor the site to ensure successful revegetation and

rehabilitation. Staff also recommends that the majority of equipment be removed within a year of the start of decommissioning. If solar modules are to be disposed, the Applicant states that it will conduct the disposal in compliance with federal, state, and local laws and regulations. The Applicant has committed to using only solar panels that have been certified to comply with the U.S. Environmental Protection Agency's (U.S. EPA) Toxicity Characteristic Leaching Procedure (TCLP) test and meet the U.S. EPA's definition of non-hazardous waste. The Applicant states that it will employ a surety bond active during the life of the Facility and renewed annually to ensure that funds are available for decommissioning/land-restoration. The Applicant states that it would provide an updated report to the Board every five years after the commercial operations date. In the event the owner of the Facility becomes insolvent, the Applicant stated that sufficient funds would be in place to remove the Facility as a condition of Board approval. Staff recommends that at least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate on the public docket that includes specific provisions outlined by Staff. (Staff Ex. 1 at 15-17.)

{¶ 41} The Applicant has monitored historical wind speeds in the area and included them in the Application. Staff has found that components of the proposed Facility are generally not susceptible to damage from high winds except for tornado-force winds. The racking and tracking systems currently under consideration by the Applicant are rated to withstand wind speeds from 100 to 145 miles per hour and a stowing feature activated at certain wind speeds. Staff states that the final Facility will be designed to withstand wind speeds for the area. (Staff Ex. 1 at 17.)

{¶ 42} The main transportation routes to access the Facility site would be County Road 47, County Road 6, and County Road 48. According to the Applicant's transportation assessment, all bridges are in good condition along the proposed transportation routes, and road surface conditions were rated mostly good with SR 134 being rated fair condition. The Clinton County Engineer has also identified roads not to be used for construction. Conventional heavy equipment, which does not require special permitting, would make up

the majority of construction traffic. The electrical transformer is likely to be overweight and would require special permitting and route coordination for delivery. The Applicant stated that truck traffic would increase during construction due to equipment and material deliveries, but Applicant does not anticipate significant changes to traffic patterns. After construction of the Facility, the Applicant does not anticipate any additional traffic beyond routine maintenance. No road closures are to be expected. Applicant commits that it will promptly repair any damaged public roads and bridges. Staff states that the Applicant expects to enter into a Road Use Maintenance Agreement (RUMA) with the Clinton County Engineer. (Staff Ex. 1 at 18.)

{¶ 43} Construction activities would generate significant noise levels during the 21 months of construction. However, the construction noise would be temporary and intermittent, would occur away from most residential structures, and would be limited to daytime working hours. The Applicant would use mitigation practices such as limiting construction activities to daylight hours and establishing a complaint resolution process. Noise during operation of the Facility would be relatively minor and occur only during the day due to inverters and tracking motors. The Applicant conducted an ambient noise level study and found that no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five decibels (dBA). (Staff Ex. 1 at 18-19.)

b. Geology

{¶ 44} The project area lies within the glaciated margin of the state and includes several Illinoian-age glacial features. The terrain is flat and relatively continuous. The uppermost bedrock consists of interbedded shale, limestone and dolomite and makes up the western extent of the project area. Although conventional pile driving techniques should be adequate for the significant majority of the project area, pre-drilling of pile foundations (7 to 12 feet below ground level) may be necessary within certain portions of the project area where shallow bedrock is present. (Staff Ex. 1 at 19-20.)

{¶ 45} Conditions necessary for the formation of karst exist throughout the project site, but there are no documented karst features within nearly four miles of the project area. Staff does not expect karst features to impact the construction and operation of the proposed Facility. Staff states that, should karst features be discovered during construction, measures will be developed based on observed conditions to mitigate and remediate the exposed conditions. (Staff Ex. 1 at 20.)

{¶ 46} The Ohio Department of Natural Resources (ODNR) records indicate that no oil and gas activity occurs within two miles of the project area. ODNR does not have record of any mining operations within the project area, and the nearest mine is 1.3 miles away. No known abandoned underground mines are located within several miles of the project area. (Staff Ex. 1 at 20-21.)

{¶ 47} Recent geologic history shows the project area is at low risk for seismicity caused by earthquakes, as only three earthquakes have been documented within 20 miles. The Applicant has indicated that no blasting activities are anticipated for the construction or operation of the proposed solar Facility. (Staff Ex. 1 at 21.)

{¶ 48} To evaluate soil properties, 10 borings were advanced to a depth of 20 feet below ground level. The Applicant conducted electrical and thermal resistivity testing, corrosion testing, and 30 pile load tests. The proposed gravel access roads should have a minimum eight inch to 12 inch-thick aggregate base, but any construction traffic will require significantly thicker sections. Unsuitable soil conditions should be over-excavated and replaced with suitable structural fill. Thicker pile sections or additional corrosion protection measures may be required if steel loss is predicted by corrosion analyses. (Staff Ex. 1 at 21-22.)

{¶ 49} Staff recommends that the final detailed engineering drawings of the final Facility design shall account for geological features and include the identity of the registered professionals who reviewed and approved the designs. Staff recommends that the Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to

the preconstruction conference. Staff adds that, should karst features be discovered during construction, measures will be developed based on observed conditions to mitigate and remediate the exposed conditions. Staff states that there appears to be no particular geological features within the project area that are incompatible with construction and operation of the proposed solar Facility. (Staff Ex. 1 at 22-23.)

c. Ecological Impacts.

{¶ 50} ODNR has record of 79 water wells drilled within one mile of the project area. No public drinking water source water protection areas (SWPAs) occur within the project area, and one SWPA occurs within one mile of the project area. A portion of the project area overlies the East Fork of the Little Miami Watershed which is considered a source water area watershed for two public water systems. According to the Applicant, construction or operation of the proposed solar Facility will not affect the water systems, as the Facility activities are similar to or less than current agricultural use. The Applicant has indicated six private water wells exist within the project area, and none of these wells are located within the footprint of the Facility. The closest well is located 214 feet from the Facility's fence boundary. Staff states that there appears to be no unreasonable risk posed to public or private drinking water supplies. (Staff Ex. 1 at 23-24.)

{¶ 51} There are 29 streams within the project area, including 11 perennial streams, eight ephemeral streams, and 10 intermittent streams. Installation of collection lines would result in stream crossings. In an effort to avoid impacts to these waterbodies, the Applicant proposes to utilize Horizontal Directional Drilling (HDD) for perennial stream crossings, which include seven streams and 16 crossings. The HDD process includes the risk of a frac-out, which occurs when the drilling lubricant, typically water or a non-toxic, fine clay bentonite slurry, is forced through cracks in bedrock and/or surface soils. The Applicant provided a detailed plan that would be implemented at all HDD stream crossings. One perennial stream is proposed for an open-cut collection line crossing, and the Applicant will consider utilizing HDD methodology in place of an open cut crossing depending on conditions at the time of construction. The Applicant has committed to adhere to the ODNR

and U.S. Fish and Wildlife Services (USFWS) recommendation that no in-water work in perennial streams occur from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless further coordination efforts with the ODNR and the USFWS allows for a different course of action. There are 20 wetlands within the project area. Direct impacts, including a proposed access road crossing, would be covered under the U.S. Army Corps of Engineers (USACE) Clean Water Act Section 404 Nationwide permit. The Applicant would also obtain a National Pollutant Discharge Elimination System (NPDES) general permit through the Ohio EPA prior to the start of construction. The Applicant's Stormwater Pollution Prevention Plan (SWPPP) would be required as part of the NPDES General Permit. Staff does not anticipate issues with the Applicant's procurement of these permits. Staff also recommends the Applicant apply the Ohio EPA's Guidance on Post Construction Storm Water Control for Solar Panel Arrays to Facility construction and operation. No ground disturbing activities would take place within the floodplain; therefore, no floodplain permit is required. (Staff Ex. 1 at 24-25.)

{¶ 52} The project area is within the range of state and federal endangered Indiana bat, the federal threatened and state endangered northern long-eared bat, the state endangered little brown bat, and the state endangered tricolored bat. In order to avoid impacts to these listed bat species, the Applicant has committed to adhere to seasonal tree cutting dates of October 1 through March 31 for all trees with three inches or greater in diameter, unless further coordination efforts with the ODNR and the USFWS reflects a different course of action. The state endangered northern harrier and state endangered upland sandpiper birds were recognized as having suitable habitat within the project area. To avoid impacts to potential nesting birds occupying these habitats, the Applicant has committed to avoid construction in these areas during the species' nesting period of April 15 and August 1, unless further coordination with the ODNR and the USFWS allows a different course of action. ODNR and the USFWS did not identify any concerns regarding impacts to listed plant species. In the event that the Applicant encounters listed plant or animal species during construction, Staff recommends that the Applicant contact Staff, the ODNR,

and the USFWS. Staff also recommends that if the Applicant encounters any listed plant or animal species prior to construction, the Applicant include the location and how impacts would be avoided in a final access plan to be provided to Staff prior to the preconstruction conference. (Staff Ex. 1 at 25-27.)

{¶ 53} An estimated 3,436 acres of cropland, 180 acres of deciduous forest, and 112 acres of developed open space would be impacted by the Facility. Permanent vegetative impacts would occur primarily within agricultural lands. The Applicant has committed to incorporate pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative. This habitat would enhance the visual appeal of the Facility, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. This vegetation would be incorporated under and between the panels and in the open areas of the Facility. This Facility would be expected to represent a reduced environmental impact when compared to the current land use of agricultural plant production due to the reduction of frequent tilling and reduced fertilizer and pesticide application. Staff recommends that the Applicant take steps to prevent establishment and/or further propagation of noxious weeds during implementation of any pollinator-friendly plantings. (Staff Ex. 1 at 27.)

{¶ 54} In sum, Staff recommends that the Board find that the Applicant complies with the requirements specified in R.C. 4905.10(A)(2), provided that any certificate issued by the Board include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 27-28).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 55} 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.

{¶ 56} According to Staff, the Applicant's site selection process focused on the following criteria: strong solar resources, manageable access to the bulk power transmission system, sufficiently low population density, positive feedback from landowners and local officials, highly compatible land-use characteristics, and few environmentally sensitive areas. Additionally, the Applicant engaged local officials and the public. The Applicant asserts that local governmental guidance and public input have been incorporated into the Facility design where possible. (Staff Ex. 1 at 29.)

{¶ 57} An MOU between the Applicant and OHPO will commit the Applicant to avoid certain sites identified in the field investigation and the Applicant would also not impact any resources which are potentially eligible for NRHP listing. Staff has determined that minimal adverse impacts to cultural resources would be achieved. The proposed Facility would have an overall positive impact on the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues and potential PILOT revenue. The geology of the project site does not present conditions that would limit or negatively impact the construction and future operation of the proposed Facility. Staff recommends that the final detailed engineering drawings of the final Facility design shall account for geological features. No impacts are proposed to wetlands and significant impacts to surface waters are not anticipated. Impacts to any state or federal listed species can be avoided by following seasonal restrictions for construction in certain habitat types. While the Facility is within the range of several endangered species, impacts would be avoided to suitable habitats. (Staff Ex. 1 at 29.)

{¶ 58} Noise impacts are expected to be limited to construction activities, which would be temporary and intermittent and would occur away from most residential structures. Staff recommends that the Applicant limit the hours of construction. No non-participating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA during Facility operation. If the Applicant chooses an inverter or transformer model with a higher sound output, Staff recommends that the

Applicant submit an updated noise study. Further, the Applicant has developed a complaint resolution plan which would be utilized throughout construction and operation. During the construction period, local, state, and county roads would experience a temporary increase in truck traffic due to deliveries of equipment and materials. A transportation management plan will be finalized once the engineering layout is determined and finalized. A final delivery route plan would be developed through discussions with local officials. The Applicant intends to enter into a RUMA with the county engineer. Due to the low profile of the Facility, combined with existing vegetation in the area, the visual impacts would be mostly limited to landowners in the immediate vicinity. To reduce impacts, Staff has recommended a condition requiring a final landscape and lighting plan that addresses the potential impacts of the Facility. In addition, Staff recommends a perimeter fencing condition to further minimize overall aesthetic concerns and to provide more wildlife friendly access for small animals. (Staff Ex. 1 at 29-30.)

{¶ 59} The Applicant has committed to take steps to address such potential impacts to farmland. To avoid impacts to drain tiles, the Applicant stated that it would locate drain tiles as accurately as possible prior to construction. The Applicant has committed to promptly repair any drain tile found to be damaged by the Facility during construction or during the operational life of the Facility. Following decommissioning of the Facility, land can be restored for agricultural use. The Applicant has prepared a decommissioning plan, which will provide for financial security to ensure that funds are available for decommissioning and land-restoration. The Applicant would restore the land significantly to its original topography to allow for resumption of agricultural use. Staff has recommended that the draft decommissioning plan be updated to include improved financial assurance and a decommissioning cost estimate, among other things. The Applicant has committed to use panels that meet the U.S. EPA's definition of non-hazardous waste. Staff states that the proposed Facility would result in both temporary and permanent impacts to the Facility and surrounding areas but is unlikely to pose a significant adverse impact to existing land use, cultural resources, recreational resources, or wildlife. With

Staff's recommended conditions to further mitigate potential impacts, Staff concludes that the Facility represents the minimum adverse environmental impact. (Staff Ex. 1 at 30.)

{¶ 60} In sum, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact, and therefore complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 31).

4. ELECTRIC POWER GRID

{¶ 61} 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.

{¶ 62} Applicant proposes to construct a solar-powered electric generation facility, capable of producing up to 300 MW. The Facility would interconnect from the Facility substation to a newly proposed gen-tie connection to the existing AES Clinton-Stuart 345 kV transmission line. (Staff Ex. 1 at 32.)

{¶ 63} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, Applicant is subject to compliance with various NERC reliability standards. NERC reliability standards are included as part of the system evaluations conducted by PJM. (Staff Ex. 1 at 32.)

{¶ 64} The Applicant submitted one generation interconnection request for the proposed facility to PJM. PJM completed and issued the Feasibility Study Report and the System Impact Study (SIS) Report in July 2019 and February 2020, respectively. The

Applicant requested a total injection of 300 MW, of which 180 MW could be available in the PJM capacity market. The Facility was studied with a commercial probability of 100 percent. (Staff Ex. 1 at 32-33.)

{¶ 65} PJM analyzed the proposed Facility interconnection to the BPS. The 2022 summer peak power flow model was used by PJM to evaluate regional reliability impacts and did not reveal any reliability criteria violations. The PJM SIS required no new system reinforcements. PJM studied the Facility for possible overloading where the proposed Facility may affect earlier generation or transmission projects in the PJM queue and identified no network impacts. PJM also studied the delivery of the energy portion of this interconnection request and whether a potential for congestion would result and identified no congestion issues. The short circuit analysis, which is part of the SIS, evaluates the interrupting capabilities of circuit breakers that would be impacted by the proposed generation addition and identified no circuit breaker problems. (Staff Ex. 1 at 33.)

{¶ 66} Staff determines 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, and that the Facility would serve the interests of electric system economy and reliability. Therefore, Staff recommends that the Board find that the Facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report. (Staff Ex. 1 at 34).

5. AIR, WATER, SOLID WASTE, AND AVIATION

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

{¶ 68} Although the proposed Facility will not require air quality permits, Staff states fugitive dust rules may be applicable to its construction. Accordingly, Applicant

would need to control and localize fugitive dust by using BMPs such as using water to wet soil to minimize dust during periods of high heat as outlined in ODNR's *Ohio Rainwater and Land Development Manual*. This method of dust control is typically used to comply with fugitive dust rules. This Facility would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 35.)

{¶ 69} The Applicant anticipates obtaining environmental permits, as necessary. Water impacts would be sufficiently minimal that preconstruction authorization from the USACE would not be required. The Applicant would mitigate potential water quality impacts by obtaining an NPDES construction storm water general permit from the Ohio EPA with submittal of a notice of intent and development and implementation of an SWPPP. The SWPPP would describe and outline BMPs to control soil erosion, minimize sedimentation, and outline placement of silt fence and compost filter sock where appropriate to minimize runoff. The Applicant would develop a Spill Prevention, Control and Countermeasure (SPCC) plan to manage the storage and mitigate the unlikely release of hazardous substances. With these measures, Staff states that construction and operation of this Facility would comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 35-36.)

{¶ 70} As explained by Staff, debris from construction activities would include items such as plastic, wood, cardboard, metal packing/package materials, construction scrap, and general refuse. The Applicant stated that all construction-related debris would be disposed of at an authorized solid waste disposal facility or recycled at an appropriate facility. The O&M building would generate solid wastes comparable to a typical small business office. No hazardous waste would be generated as part of Facility operations. At the time of solar panel end of life disposal, regardless of whether a panel marked for decommissioning is to be considered hazardous or non-hazardous, Staff recommends that retired panels marked for disposal be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater. The

Applicant's solid waste disposal plans would comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 36.)

{¶ 71} The height of the tallest above ground structures would be the lightning mast at the substation at approximately 90 to 100 feet tall, which is under the height requirement from the Federal Aviation Administration (FAA). According to the FAA, the closest public-use airports are the Wilmington Air Park and Hollister Field airports, which are between 10 and 12 miles from the proposed project area. The FAA determined that the solar Facility will not be a hazard to air navigation. In accordance with R.C. 4906.10(A)(5), Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation during the review of this Application in order to coordinate review of potential impacts of the Facility on local airports, and no such concerns have been identified. (Staff Ex. 1 at 36-37.)

{¶ 72} 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 by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report. (Staff Ex. 1 at 37).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 73} Pursuant to R.C. 4906.10(A)(6) the Board must find that the proposed Facility will serve the public interest, convenience, and necessity.

{¶ 74} As part of the Board's responsibility to determine that all approved projects will serve the public interest, convenience, and necessity, it must balance projected benefits against the magnitude of potential negative impacts on the local community. The parties assert that the Application, as modified by the Stipulation and supported by record evidence, benefits the public in multiple ways.

{¶ 75} The Applicant stated that it would use reliable and certified equipment compliant with applicable codes and standards, including the National Electrical Safety Code (NESC). The Applicant intends to use warning signs, fencing, and gates to restrict

access to the potential hazards within the solar project area. Staff states that the Applicant would implement the following setbacks: 100 feet from the fence-line to a property line of any non-participating parcel, 300 feet from the fence-line to a non-participating home, and 100 feet from public road right-of-way.¹ The Applicant stated that it intends to restrict public access to the facility by enclosing the project area with fencing that complies with NESC requirements. The Applicant has proposed fencing that would be a seven foot tall fence with access through gates. The Applicant is also considering installation of a woven wire and wooden posts fence that is aesthetically fitting for a rural area, also known as a deer fence. Staff has recommended that, except for the substation fencing, the solar panel perimeter fence type be both wildlife permeable and aesthetically fitting for a rural location. Prior to construction, the Applicant also intends to develop and implement an emergency response plan and further consult with potentially affected local and regional emergency response personnel. (Staff Ex. 1 at 38.)

{¶ 76} The Applicant hosted a virtual public informational meeting for the Facility, and the primary concern expressed by attendees was that the facility would have negative impacts on area property values. The Applicant commissioned a property value impact study, which concluded the proposed solar Facility would have no negative impact on the value of adjoining or abutting property. The Applicant has drafted a complaint resolution plan to handle complaints during the construction and operation of the Facility. Staff recommends that a final version of this plan be filed on the docket no later than 30 days prior to the start of construction. The Applicant has committed to notify, by mail, affected property owners and tenants and other local entities at least seven days prior to the start of construction and again prior to the start of Facility operation. The Applicant has also committed to provide the Board with a quarterly complaint summary report. Staff recommends that these reports be filed on the public docket. (Staff Ex. 1 at 39.)

¹ These distances were later adjusted in the Stipulation.

{¶ 77} Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 40).

7. AGRICULTURAL DISTRICTS

{¶ 78} 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 Facility. The agricultural district program is established under R.C. Chapter 929.

{¶ 79} Agricultural land can be classified as an agricultural district through an application and approval process that is administered through local county auditors' offices. Approximately 2,450 acres of agricultural land will be disturbed by the proposed Facility, 770 of those acres are currently enrolled in the agricultural district program. The Applicant states the repurposed land could be restored for agricultural use when the Facility is decommissioned. The construction and operation of the proposed Facility will disturb the existing soil and could lead to broken drainage tiles. The Applicant utilized aerial imagery and the records of landowners and Clinton County Soil Conservation District to identify the locations of existing drain tiles within the project area. The Applicant has developed a Drainage Tile Mitigation Plan, which discusses avoidance, repair, and mitigation details of all known drain tile locations. The Applicant has committed to repair any drain tile found to be damaged by the Facility during the operational life of the Facility, however, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system. Excavated topsoil will be separated during construction and returned as topsoil after construction unless otherwise specified by

landowners. Disturbed areas upon decommissioning will be restored for agricultural use. (Staff Ex. 1 at 41.)

{¶ 80} 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 complies with the requirements specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board for the proposed Facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 41-42).

8. WATER CONSERVATION PRACTICE

{¶ 81} 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.

{¶ 82} Construction and operation of the proposed Facility would not require the use of significant amounts of water. Water may be utilized for dust suppression and control on open soil surfaces such as construction access roads as needed. The Applicant states it would adhere to the Ohio EPA's BMPs for stormwater management and pollution control, and erosion and sedimentation control. The Applicant stated the O&M facility will use water at a similar rate to that of a small business office and does not have plans to clean panels with water. The Applicant states it will choose between potable water being brought to the building for drinking needs and a greywater system to collect water for toiletry requirements or creating and using a well for all water needs for the building. A septic system would be installed for the sanitary wastewater from the O&M building. (Staff Ex. 1 at 43.)

{¶ 83} Staff recommends that the Board find that the proposed Facility would incorporate maximum feasible water conservation practices, and therefore complies with the requirements specified in R.C. 4906.10(A)(8), provided that any certificate issued by the

Board for the proposed Facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 43).

9. RECOMMENDATIONS

{¶ 84} In addition to making various findings throughout its report, Staff recommended that 33 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 44-50). The recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' August 8, 2022 Stipulation (Joint Ex. 1). The conditions are discussed below.

V. ADJUDICATORY HEARING

{¶ 85} As detailed below, Yellow Wood presented testimony from 11 witnesses. Residents presented no live witness testimony, but the prefiled direct testimony of Diane Rhonemus was proffered, and accepted without objection, into the evidentiary record at the hearing (Tr. at 136). Staff presented one live hearing witnesses, namely, Jess Stottsberry, who provided testimony concerning his prefiled testimony, marked as Staff Ex. 5 (Tr. 1 at 88-90). Additionally, Staff presented a total of 10 hearing exhibits which were admitted into the record, without objection. These included the Staff Report (Staff Ex. 1), and the prefiled testimony of nine Staff witnesses (Tr. at 138).

VI. STIPULATION AND CONDITIONS

{¶ 86} At the adjudicatory hearing, Applicant presented the Stipulation entered into by the Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed Facility (Joint Ex. 1 at 1; Tr. I at 13; Tr. II at 135, 136). Pursuant to the Stipulation, the Signatory Parties recommend that the Board issue the certificate requested by the Applicant, subject to 34 conditions. Clinton County and Residents oppose Board adoption of the Stipulation.

{¶ 87} The following is a summary of the conditions agreed to by the Signatory Parties and is not intended to replace or supersede the actual Stipulation. The Signatory Parties stipulate that:

- (1) The Applicant shall install the Facility, utilize equipment and construction practices, and implement mitigation measures as described in the Application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (2) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, Engineer of Record, and representatives of the primary contractor and all subcontractors for the Facility shall attend the preconstruction conference. A representative designated by Clinton County may also attend. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff and Clinton County's review and shall file a copy of the agenda on the case docket. Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the as-built specifications of the entire Facility. Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (3) Construction and operation of the Facility shall include measures to prevent where possible, and to mitigate where prevention is not possible, damage to soils including soil compaction and contamination. Construction and operation of the Facility shall further include measures to prevent where possible, and to mitigate where prevention is not possible, disturbance to woodlands and wetlands. To achieve these objectives, the Applicant shall submit the construction and

operations plans to the Clinton County Soil and Water District for review.

- (4) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff, Clinton County, and the Clinton County Soil and Water District a copy of the as-built specifications for the entire Facility. Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (5) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Facility design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the docket of this case and provide a copy to Clinton County, and geographically referenced data based on final engineering drawings to confirm that the final design is in conformance with the certificate. All applicable geotechnical study results shall be included in the submission of the final Facility design to Staff and Clinton County.
- (6) Test pits shall be dug in order to further characterize the site soil suitability.
- (7) Prior to developing the final structural design, a corrosion analysis shall be performed in order to determine potential steel loss over the projected life of the pile structures and such analysis shall be submitted to Staff and the Clinton County Soil and Water District for review.

- (8) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff, for review and acceptance, the final geotechnical engineering report.
- (9) Should karst features be identified during additional geotechnical exploration or during construction, the Applicant shall avoid construction in these areas when possible. Should the Applicant intend to pursue remedial measures, such proposal shall be submitted to Staff for review and concurrence prior to implementation. The Applicant shall file a copy of the final proposal on the public docket.
- (10) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed Facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (11) As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the Facility begins commercial operation. The Applicant shall also send notice of these dates to Clinton County and, by certified mail, to adjacent non-participating property owners.
- (12) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff and to Clinton County within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction

activities and acquisition of corresponding permits for each activity at the preconstruction conference(s).

- (13) 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.
- (14) The Facility shall be operated in such a way as to assure that no more than 300 MW would be injected into the BPS at any time.
- (15) The Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ICSA) with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating Facility into the regional transmission system reliably and safely. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed ISA and ICSA.
- (16) Prior to commencement of construction, the 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. No barbed wire shall be incorporated into the fencing, except at the substation. The Applicant shall install a fence that has the lowest height allowed by applicable electrical codes. Following Staff approval, the Applicant shall file details of this solar panel perimeter fence on the public docket.

- (17) Prior to commencement of any construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect 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 Facility area. The Applicant shall provide the plan to Staff and file it on the public docket for review and confirmation that it complies with this condition.
- (18) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to Indiana bats, northern long-eared bats, little brown bats, and tricolored bats, unless coordination with the ODNR and the USFWS allows a different course of action. If coordination with these agencies allows tree clearing between April 1 and September 30, the Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (19) The Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federally listed species is encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies.
- (20) If the Applicant encounters any state or federal listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping, as required in Condition 5. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.

- (21) The Applicant shall construct the Facility in a manner that fully incorporates all construction and operations phase requirements of the construction stormwater management permit OHC00005 in accordance with the Ohio EPA requirements, including the supplemental Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays. The Applicant shall also engage with the Clinton County Soil and Water District periodically throughout construction to ensure conformance with the design documents.
- (22) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat unless coordination with ODNR reflects a different course of action. If coordination with ODNR allows in-water work in perennial streams from April 15 through June 30, the Applicant shall file proof of such coordination on the case docket prior to conducting such in-water work in perennial streams.
- (23) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31. If present, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with ODNR allows a different course of action. If coordination with ODNR allows a different course of action, the Applicant shall file proof of such coordination on the case docket prior to conducting construction in such habitats.
- (24) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31. If present, mapping of these habitat areas shall be provided to

the construction contractor along with instructions to avoid these areas during the restricted dates, unless coordination with ODNR allows a different course of action. If coordination with ODNR allows a different course of action, the Applicant shall file proof of such coordination on the case docket prior to conducting construction in such habitats.

- (25) The Applicant shall take steps to prevent the establishment and/or further propagation of invasive plant species and noxious weeds during implementation of any pollinator-friendly plantings, as well as during construction, operations, and decommissioning activities. This would be achieved through appropriate seed selection and annual vegetative surveys. If noxious and invasive weeds are found to be present, the Applicant shall remove and treat them with herbicide as necessary and allowed by law.
- (26) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition. The Applicant shall update the transportation management plan with any transportation permits received after the preconstruction conference.
- (27) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of Facility operations, the Applicant shall notify of such milestones via certified mail affected property owners and

tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the Facility area, parties to this case, County Commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the Facility. The Applicant shall file a copy of these notices on the public docket. During the construction and operation of the Facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The Applicant shall file a copy of these complaint summaries on the public docket. The Applicant shall also have complaint resolution plan and contact information posted via Facility signage near the construction entrance or office areas.

- (28) General construction and decommissioning 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. 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 and decommissioning activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (29) The Applicant shall operate the Facility that limits sound levels emitted to nonparticipating receptors to no higher than the closest Long-Term Monitoring Station's area ambient Leq level plus five dBA as referenced in the Application. If the Facility is found to be above these limits, the

Applicant shall install additional noise mitigation measures to maintain compliance with this provision. If the inverters or substation transformer chosen for the Facility have a higher sound power output than the models used in the noise model, the Applicant shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and shall submit a report making this demonstration at least 30 days prior to construction. The Applicant shall file a report on the public docket that shows either: 1) for the chosen inverter and substation transformer that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor; or 2) results of the operational noise test showing that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor.

(30) The Applicant shall not adversely impact the drainage on any non-participating parcel. With the acceptance of this responsibility, the Applicant can only incorporate existing known or unknown drainage infrastructure as a part of the Facility to meet the obligation to not adversely change the drainage on adjacent parcels in accordance with specified conditions as included in the Stipulation.

(31) As a function of the Applicant's design and complaint resolution plan, with regard to drainage, the Applicant shall:

Incorporate benchmark conditions of surface and subsurface drainage systems prior to construction. The Applicant will make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the Clinton County Soil and Water District, and Clinton County to request

drainage system information over those parcels. The Applicant shall consult with the County Engineer for tile located in a county maintenance/repair ditch.

For the first five years of operations, the Applicant shall set aside a fund of \$50,000 for the purpose of investigating such claims.

- (32) At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket, and to Clinton County.
- (33) The Applicant is committing to using only solar panels that pass the TCLP test. The Applicant further commits that at the time of Facility decommissioning and removal, retired panels and their components that are not recycled or repurposed, which are then 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.
- (34) All plans, notices, and other documents submitted to Staff pursuant to the conditions of the Certificate shall be filed on the public docket within 48 hours of submittal to Staff.

(Jt. Ex. 1 at 2-12.)

VII. CERTIFICATE CRITERIA

{¶ 88} 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 transmission line;
- (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.

VIII. CONSIDERATION OF CERTIFICATE CRITERIA

{¶ 89} Consistent with R.C. 4906.10(A), the Board has reviewed the record and made determinations regarding each of the statutory criterion.

{¶ 90} As a general matter, Residents argue that Yellow Wood's Application is incomplete and lacks the information required by the Board's rules detailed in Ohio Adm.Code 4906-1, et seq. Without this information, Residents represent that the Board lacks the authority to approve the Application and issue a certificate. To that end, the Board has attempted to address Residents' concerns with Yellow Wood's Application and the requirements of Ohio Adm.Code 4906-1, et seq., by addressing these concerns within the Board's specific analysis of the requirements of R.C. 4906.10.

{¶ 91} However, some of Residents' arguments do not fit in the confines of the R.C. 4906.10 analysis, and we will address those arguments here. Residents argue that the Board is required to comply with its own rules and the Ohio Revised Code. Here, Residents assert that the evidentiary record lacks much of the information as required by Ohio Adm.Code Chapter 4906-4, and that the alleged missing information is critical for Residents to participate meaningfully in the hearing process. Specifically, Residents argue that the Applicant has not complied with notice requirements enumerated in R.C. 4906.06(C) and Ohio Adm.Code Rules 4906-3-06(C)(4), (5); 4906-3-07; and 4906-3-09, and that the Application is incomplete under Ohio Adm.Code 4906-3-06(A). Further, Residents state that the Applicant has not requested a waiver of its obligations to receive expedited treatment under Ohio Adm.Code 4906-3-06(A). Residents also point out that the burden of proof is with the Applicant, especially as Residents do not have access to the land to create applicable surveys and studies themselves. (Residents Initial Br. at 3-5.)

{¶ 92} In response, Yellow Wood argues it has provided and filed in the record all of the information that is required by statute and the Board's rules, as well as such information is extensively supported by properly filed expert witness testimony. The Applicant clarifies that R.C. 4906.06(A)(6), which calls for applicants to file information

prescribed by the Board in Ohio Adm.Code 4906, does not require solar generation facilities to meet requirements for other technologies, such as wind farm or nuclear reactor facility requirements. (App. Reply Br. at 20.) Further, Yellow Wood contends that Residents misrepresent the Board's applicable rules. For instance, Ohio Adm.Code 4906-4-08(A)(3) does not require that the Facility not cause any noise nuisance, as Residents characterized in their initial brief. (App. Reply Br. at 19; Residents Initial Br. at 4.) Moreover, Yellow Wood disputes that it needed to submit a request for waiver of filing requirements because it provided all necessary and required information under the applicable provisions of the Ohio Administrative Code for Staff to make its recommendations and for the Board to make its ultimate determination (App. Reply Br. at 20).

{¶ 93} Yellow Wood also asserts that Residents cited inapplicable cases in support of its opposition to the Facility. The Applicant states that Residents narrowly construe the purpose of the Board's rules regarding certificate applications. Yellow Wood says that the rules align with the Board's statutory duty to issue certificates to applicants that can demonstrate that the documents and information submitted on the record satisfy all statutory requirements under R.C. 4906.10(A). Further, Applicant emphasizes that the information is not interpreted in a vacuum, nor on a piecemeal basis. Applicant contends that Residents overlook the fact that the Board considers an application and case record as a package, and that the Applicant commits to implement robust safeguards to manage the Facility, which requires close coordination and interaction with Clinton County. (App. Reply Br. at 21-22.)

{¶ 94} We find that Residents' arguments regarding the opportunity for notice, completeness of the Application, and the alternative proposal for the Board to consider other sections of the Ohio Adm.Code and Revised Code are not persuasive. Although Residents argue that the Application is not complete as required by Ohio Adm.Code 4906-3-06, the Board notes that the determination of completeness was issued on April 23, 2021, and, until now, has not been directly challenged. As noted in the April 23, 2021 letter, the determination signified that the Board had received sufficient information to begin its

review of the Application, although additional information could be requested to ensure a full and fair assessment of the Facility. And, as noted by Applicant and shown in the Staff Report, subsequent investigation did encompass the review of additional information and resulted in recommendations regarding the Applicant's compliance with R.C. 4906.10(A). Furthermore, criteria under R.C. 4906.10(A)(1)-(8) provide the determinative framework for evaluating a solar application, and no arguments raised by Residents involving other sections of the Ohio Administrative Code or Revised Code convince us to abandon or modify that framework for consideration.

{¶ 95} The Board additionally notes that many of Residents' arguments concerning the impacts of the Facility overlap such that Residents simultaneously argue noncompliance with multiple subsections of R.C. 4906.10(A). In this Opinion, the Board addresses arguments that reference several certification criteria under the criterion deemed most appropriate. To the extent an argument made by Residents, or any party, that purports to relate to multiple subsections of R.C. 4906.10(A) is primarily discussed under one criterion but not all, the Board has nevertheless given the argument full and careful consideration and that argument is denied as to the remaining criteria.

A. R.C. 4906.10(A)(1): *Basis of Need for Electric, Gas, or Natural Gas Transmission Lines*

{¶ 96} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the Facility is a gas pipeline or an electric transmission line.

{¶ 97} Staff concluded that R.C. 4906.10(A)(1) is not applicable to this proceeding, given that the Facility is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 10). The Signatory Parties agree that this criterion is not applicable to this proceeding (Jt. Ex. 1 at 16), and Residents and Clinton County raise no issue as to this finding.

{¶ 98} Because the Facility is not a gas pipeline and does not include approval of an electric transmission line, the Board finds that R.C. 4906.10(A)(1) is not applicable in this proceeding (Staff Ex. 1 at 10; Jt. Ex. 1 at 16).

B. R.C. 4906.10(A)(2): Nature of the Probable Environmental Impact

{¶ 99} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed Facility.

{¶ 100} Yellow Wood contends that the record in this proceeding provides an abundant amount of information and documentation to enable the Board to determine the nature of the probable environmental impact of the Facility, including the public/safety, land use, geological and hydrogeology, cultural, and ecological impacts. According to Yellow Wood, the Application includes detailed and extensive surveys, assessments, and reports related to the probable impacts of the Facility. Additionally, Yellow Wood believes that each of these topics are supported by the testimony of expert witnesses. (App. Initial Br. at 14.) According to Yellow Wood, the Stipulation and record in this proceeding enable the Board to determine the nature of the probable environmental impact. Therefore, Yellow Wood opines that the Application and Stipulation comply with R.C. 4906.10(A)(2). (App. Initial Br. at 14.)

{¶ 101} To the extent intervenors have raised an issue regarding the nature of the probable environmental impact, the Board will address only the more significant issues in this Order. Where a party has raised an issue as to the nature of the environmental impact and the Board does not specifically address the issue in this decision, it is hereby denied.

1. COMMUNITY IMPACTS

{¶ 102} Based on the Property Value Impact Study included as App. Ex. 1 at Ex. E, Yellow Wood asserts that the Facility would not have a negative impact on nearby property values (App. Ex. 23 at 5). Applicant points out that the study found that solar farms do not have noise, odor, traffic, or other factors that could reduce property values but do offer some benefits, such as protection from future development and reduced dust, odor, and chemicals from farming operations (App. Ex. 23, Att. RCK-2 at 1-2). As further evidence, Yellow Wood points out the recent sale of a home near the project area for well above the asking price even though the proposed Facility is well known in the area (App. Initial Br. at 14-16).

{¶ 103} According to Yellow Wood, a Visual Resource Assessment (VRA) provides an analysis of the visual/aesthetic landscape in the area and the possible effects of the Facility on receptors within the visual study area (App. Ex. 1, Ex. N; App. Ex. 21 at 6). According to Yellow Wood, the VRA demonstrated that the Facility's solar arrays will be screened from view in approximately 73.7% of the 5-mile radius visual study area (VSA). Yellow Wood also submits that the Facility will not be visible from the most areas beyond 0.5 miles due to the low profile of the panels, vegetation in the area, and foreground agricultural fields. (App. Initial Br. at 16-17, citing App. Ex. 1, Ex. N and App. Ex. 21 at 11-12, 14.)

{¶ 104} Yellow Wood asserts that it provided a glare assessment, which was conservative, as it did not incorporate vegetative screening or land obstructions, which would likely reduce the glare detected. Yellow Wood adds that the models assumed a clear day, but other environmental factors such as cloud cover or precipitation would reduce the glare detected. (App. Initial Br. at 17-18, citing App. Ex. 1 at Ex. N; App. Ex. 4 at Att. 3; App. Ex. 19 at 4.)

{¶ 105} Yellow Wood states that based on the transportation assessment, there are no significant environmental concerns for use of the existing roads for the Facility from a transportation perspective. Additionally, roadways within the study area are generally well-maintained rural routes, are in fair to good condition, and are wide enough to handle two-way construction traffic. Although not generally needed for construction of this Facility, Applicant anticipates that an overweight permit will be required for delivery of the transformer. Yellow Wood plans to develop a RUMA with Clinton County. (App. Initial Br. at 19, citing App. Ex. 1 at 32, Ex. B; App. Ex. 20 at 3.)

{¶ 106} Applicant asserts that the Facility would not pose an electromagnetic field (EMF) health risk. Applicant explains that EMF measured at the perimeter of solar PV installations is indistinguishable from background EMF and is lower than household appliances like televisions and refrigerators. Yellow Wood states that the Ohio Department

of Health (ODH) confirms that EMF from solar facilities do not indicate a public health burden. (App. Initial Br. at 19-20, citing App. Ex. 1 at 63.)

{¶ 107} Yellow Wood anticipates that approximately 2,397 acres of land will have solar facilities, but the PV panel footprint will be smaller. The Facility would be built on planted/cultivated landscape, which makes up 78.6% of the VSA; developed landscape, which makes up 5.01% of the VSA; forest landscape, which makes up 15.67% of the VSA; and open water/wetland landscape, which makes up 0.45% of the land area. (App. Initial Br. at 20, citing App. Ex. 18 at 17; App. Ex. 1, Ex. N; App. Ex. 21 at 8-9.)

{¶ 108} Applicant provided a Drain Tile Mitigation Plan (App. Ex. 1, Ex. Q; App. Ex. 21 at 15). Yellow Wood sent questionnaires, requested maps and descriptions of known tile on participating landowners' land, used Geographic Information Systems (GIS) imagery and data, and coordinated with the Clinton County Sewer and Water District to request information on County maintained tile. Yellow Wood also commits to obtain an Ohio EPA SWPPP and NPDES general permit. Yellow Wood notes that grading during construction will be limited due to the fact that the project area is relatively flat. (App. Initial Br. At 20-21, citing App. Ex. 21 at 15. App. Ex. 1 at 15, 58, Ex. Q.)

{¶ 109} Yellow Wood states that it conducted a historical architectural reconnaissance survey that recorded 293 properties, of which 18 are recommended as eligible for listing to the NHRP. Of these 18 properties, only seven properties had potential adverse effects from the Facility. In consultation with the OHPO, five of the seven properties were determined to have no adverse impacts from the Facility due to distance and screening, and two of the properties were determined to have visual impacts. An archeological investigation of the project area identified 78 new archaeological sites and The Big Onion (a flag-stop on the B&O NW Railway line) within the Facility area, spanning approximately 35 acres within the direct area of potential effects that are potentially eligible for listing on the NRHP. However, there were no standing structures or NRHP-eligible archaeological sites documented in the area. Six archaeological sites in the boundaries of the Facility were

determined to be potentially eligible for the NRHP, through consultation with OHPO. (App. Initial Br. at 23-25, citing App. Ex. 1, Ex. P; App. Ex. 22 at 5, 7; App. Ex. 3.)

{¶ 110} Staff reported that Applicant satisfies R.C. 4906.10(A)(2), provided that the Board includes Staff's recommended conditions as modified by the Stipulation (Staff Initial Br. at 8). Staff does not anticipate significant impacts to residential, commercial, industrial, recreational, and institutional land uses. Staff states that the Facility would not impact any recreation, as the nearest recreational area is 1.25 miles away. Staff states that the Applicant's landscape and lighting plan will address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists. Staff states that the Applicant and OHPO have entered into a MOU, in which Yellow Wood agreed to avoidance or mitigation measures at sites that may be eligible for the NRHP. (Staff Initial Br. at 5-6, citing Staff Ex. 1 at 11-12; App. Ex 5.)

{¶ 111} Staff found Applicant's economic analysis to be reasonable. In support of its position, Staff relies on a proposed PILOT plan that is estimated to generate between \$2.1 million annually for the Yellow Wood taxing districts. Staff also notes Yellow Wood's commitment to developing a decommissioning plan to restore the Facility area and will provide financial security to ensure that funds are available for decommissioning and land restoration. (Staff Initial Br. At 7; Staff Ex. 1 at 15; Joint Ex. 1 at 11-12.)

{¶ 112} Staff asserts that Yellow Wood must obtain necessary transportation permits before beginning construction activities and coordinate with the appropriate authority regarding traffic control. All this information will be submitted to Staff as part of the final transportation management plan. (Staff Initial Br. At 7-8; Jt. Ex. 1 at 8.) With respect to noise levels generated by the Facility, Yellow Wood shall file a report on the docket that shows the inverter and substation transformer sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor or the results of a noise test showing that information. (Staff Initial Br. At 8, citing Jt. Ex. 1 at 10.) Staff adds that Yellow Wood must file a final complaint resolution plan in the docket and notify nearby property

owners of the complaint resolution process and a timeline of when construction will begin (Staff Initial Br. at 8, citing Jt. Ex. 1 at 9).

{¶ 113} *Decibel Data.* Residents argue that the Applicant failed to provide necessary decibel information for the inverters. Residents assert that Ohio Adm.Code 4906-4-08(A)(3) requires an applicant to describe operational noise levels at the nearest property boundary and at each habitable residence for both day and night operations, yet Yellow Wood failed to provide noise information for the approximately 79-81 inverters planned to be installed in the Facility. Specifically, Residents note that the inverter noise was not modelled at night because inverters do not operate at night, yet Mr. Hreha testified that inverters do have the ability to operate at night. (Residents Initial Br. at 17-18, citing App. Ex. 6 at Attch. 5 and Tr. I at 33.) Residents argue that this omission means that the Applicant has not complied with R.C. 4906.10(A)(2) and (A)(3) (Residents Initial Br. at 16-18).

{¶ 114} Yellow Wood contends that any noise from construction of the Facility would range from 37 to 75 dBA with up to 82 to 93 dBA when pile driving is taking place, which is expected noise when construction equipment is nearby and operational (App. Initial Br. at 18, citing App. Ex. 4; App. Ex. 6, Att. 5; App. Ex. 27 at 5-6). Applicant further states that the Application clearly sets forth the required information describing operational noise levels expected at the nearest property boundary, as well as the location of noise-sensitive areas within one mile of the Facility and the noise levels at each residence, school church, and other occupied building for both daytime and nighttime operations. Applicant explains that inverters would produce a fraction of the sound at night as compared to the day because no electricity is produced at night, reactive power would be significantly lower than daytime, and cooling fans do not operate at night. Explaining further, Applicant states that inverter manufacturers do not provide data for sound from reactive power because the sound level is zero or insignificant, and nighttime sound was assessed and found that there is no noise at night. The only equipment that will make sound at night is the substation transformers, which the Applicant modelled for both day and night noise levels. Yellow Wood also notes that Stipulation Condition 29 requires it to operate so that sound to non-

participating receptors is no more than ambient Leq plus five dBA. Applicant also points out that if it selects inverters or substation transformer with a higher sound output than the models in the noise study, it will submit a report demonstrating that the sound will not exceed the daytime ambient level plus five dBA prior to construction. (App. Reply Br. at 29-31, citing App. Ex. 1 at Ex. K; App. Ex. 4; App. Ex. 6, Att. 5; App. Ex. 27 at 6; Jt. Ex. 1 at 9.)

{¶ 115} Staff asserts that the Stipulation provides limitations on operational noise, which is further mitigated by setbacks of at least 300 feet to nonparticipating residences (Staff Reply Br. at 8-9, citing Jt. Ex. 1 at 9).

{¶ 116} In reply, Residents assert that it was an oversight for Yellow Wood to not model decibel data for the inverters at night. Residents assert that the average Leq background noise at night is 33 dBA, compared to 42 dBA during the daytime, and Yellow Wood has not provided proof to the Board whether the nighttime noise from inverters will disturb neighbors at night. (Residents Reply Br. At 10-11.)

{¶ 117} *Operational Noise Limit.* Residents contend that the Board generally utilizes the operational noise standard for wind projects, found in Ohio Adm.Code 4906-4-09(F)(2), for solar projects, which provides that the Facility does not result in noise levels at non-participating receptors that exceed the area ambient nighttime average sound level (Leq) by five dBA. Residents assert that Condition 29 of the Stipulation does not comply with this requirement by allowing an increase of noise levels of five dBA rather than prohibiting noise increases of five dBA or more. Residents also take issue with the language in the condition referencing daytime ambient levels but not nighttime ambient levels. Residents assert that the Board should clarify that Applicant must comply with Ohio Adm.Code 4906-4-09(F)(2) as written. (Residents Initial Br. At 18-19, citing Jt. Ex. 1 at 9-10.)

{¶ 118} Yellow Wood responds that Ohio Adm.Code 4906-4-09(F)(2) is applicable to only wind facilities, drawing the distinction that wind farms operate both day and night but solar facilities do not operate at night. Applicant asserts that Residents' argument should be rejected outright. (App. Reply Br. At 31.)

{¶ 119} Upon review of the record, the Board finds that the Facility's probable community impacts have been properly evaluated and determined. We find that the Facility would be compatible with Clinton County zoning and land use plans and would reduce urban sprawl (Staff Ex. 1 at 11-12). Applicant also has provided a property value impact study demonstrating that the Facility would not have a negative impact on nearby property values (App. Ex. 1 at Ex. E; App. Ex. 23 at 5). We also note that the Applicant identified 18 recreational areas within five miles of the Facility, and Staff determined that significant adverse aesthetic impacts are not likely (Staff Ex. 1 at 12). As to aesthetic impacts generally, the solar panels would be no higher than 15 feet above the ground, and views of the Facility would be mitigated by fencing and vegetation (Staff Ex. 1 at 12-13). The Facility would not be visible from most areas beyond 0.5 mile from the Facility (App. Ex. 1, Ex. N; App. Ex. 21 at 11-12, 14). Yellow Wood conducted a glint and glare analysis and predicted three locations for yellow glare, so Staff recommended additional screening for those observation points (Staff Ex. 1 at 15). Yellow Wood completed an archaeological survey and consulted with the OHPO and NRHP. Applicant is developing an MOU with the OHPO to mitigate and avoid cultural resources. (Staff Ex. 1 at 13; App. Ex. 1 at Ex. P; App. Ex. 22 at 5-7.) Yellow Wood also presented evidence that the Facility would not pose an EMF risk, as confirmed by ODH (App. Ex. 1 at 63). The Applicant also conducted a transportation assessment and identified transportation routes to be used for access to the Facility. Although during construction traffic is expected to increase, no significant changes to traffic patterns or road closures are expected. Applicant would promptly repair any damaged public roads or bridges and plans to enter into a RUMA with the Clinton County Engineer. (Staff Ex. 1 at 18; App. Ex. 1 at 32, Ex. B.) Furthermore, the Facility is expected to create 1,235 construction-related jobs and 34 long-term operational jobs, resulting in \$102.5 million in annual earnings during construction and \$1.9 million in annual earnings during Facility operations. The Facility would also result in \$161.3 million in local output during construction and \$5.9 million in local annual output during operation. The Facility would generate an estimated \$2.1 million annually for the local taxing districts. (Staff Ex. 1 at 13-15.) At the end of the Facility's life, the Facility would be decommissioned at a cost of

approximately \$14,115,000 and restored to its current use as agricultural land (Staff Ex. 1 at 15-17). Staff notes that construction activities would generate significant noise levels during construction, but the noise would be temporary and intermittent and limited to daytime hours. As for operation, Staff does not expect operation of the Facility to cause significant noise impacts, and any operational noise would be limited to the daytime. The Applicant's ambient noise level study showed that no non-participating receptors would receive noise impacts greater than daytime ambient levels plus five dBA. (Staff Ex. 1 at 18-19.) The documentation submitted with the Application and analyzed by Staff in the Staff Report is voluminous and consistent with what the Board has traditionally required from an Applicant in assessing the nature of the community impacts.

{¶ 120} With respect to Residents' arguments that the record does not contain information sufficient to determine the probable environmental impact of the Facility related to inverter decibel data and operational noise limits, the Board is unpersuaded. As an initial matter, Yellow Wood does provide information relative to each of these issues. Relative to decibel data, Residents complain about the lack of information for the nighttime inverter noise output. But Applicant states that inverter manufacturers do not provide data for sound from reactive power because the sound level is zero or insignificant, and nighttime sound was assessed and found that there is no noise at night (App. Ex. 1 at Ex. K; App. Ex. 6 at Att. 5). In other words, the Residents complain that Applicant failed to model noise data for instances in which Applicant has stated the noise level will be zero or insignificant. Although Applicant did not model the noise level for inverters at night, they presented evidence that the inverters will not make noise at night, so the required information has been provided.

{¶ 121} As for operational noise limits, Residents argue that Yellow Wood has not met the requirements of Ohio Adm.Code 4906-4-09(F)(2). As that section of the Ohio Adm.Code applies specifically to wind farms, it is inapplicable to the Board's analysis here. Despite the fact that Yellow Wood is not required to comply with this requirement, Applicant's ambient noise level study showed that no non-participating receptors would

receive noise impacts greater than daytime ambient levels plus five dBA, and Condition 29 in the Stipulation addresses this issue by requiring Yellow Wood to mitigate noise if noise levels are found to be above the promised levels (Staff Ex. 1 at 18-19; Jt. Ex. 1 at 9-10). For these reasons, the Board is unpersuaded by Residents' arguments regarding the community impacts of the Facility and finds that the community impacts have been sufficiently identified, as required under R.C. 4906.10(A)(2).

2. GEOLOGY

{¶ 122} Yellow Wood states that the Geotechnical Report concludes that the site is suitable for development of a solar project. The final report included geotechnical soil borings, field resistivity testing, laboratory thermal resistivity testing, corrosivity testing, and geotechnical laboratory testing. There are no SWPAs in the Facility area, so construction and operation of the Facility would not affect local water sources. Additionally, minimal excavation is expected for the Facility, and pile driving will only occur to depths of 10 to 15 feet below grade, so Yellow Wood does not anticipate impacts to public and private water supplies. (App. Initial Br. at 21-22, citing App. Ex. 1 at 55, Ex. L, Ex. S; App. Ex. 28 at 4.)

{¶ 123} Applicant states that excavations for trenches for electrical cable and conduit, and for shallow foundations, may encounter groundwater and require dewatering. Yellow Wood also explains that three field verified karst features were identified in the Facility area but comprise less than one acre total and are classified as very low to low risk. The karst areas will be graded per the construction plans and monitored, and the locations of these features will be marked with survey grade GPS prior to grading activities. (App. Initial Br. at 22, citing App. Ex. 1 at 58, Ex. L; App. Ex. 28 at 4; App. Ex. 28A at 3-4, Att. RS-1; Jt. Ex. 1 at 4.)

{¶ 124} Yellow Wood states that there are six water wells in the Facility area but no water wells within the proposed Facility fence line. Construction is not anticipated to physically damage private wells or affect well yields. Additionally, the Applicant does not anticipate impacts to the water supply because minimal excavation is associated with the

Facility and pile driving will only occur to depths of 10 to 15 feet below grade. 16.4 acres of the project area are located within the Federal Emergency Management Agency 100-year floodplain, but the fence line and everything within are not in the floodplain. (App. Initial Br. at 23, citing App. Ex. 6; App. Ex. 1 at 38.)

{¶ 125} Consistent with the Staff Report, the Board finds that the Facility's probable geological impacts have been properly evaluated and determined. The Board, therefore, finds that the geological impacts have been sufficiently identified, as required under R.C. 4906.10(A)(2).

3. ECOLOGICAL IMPACTS

{¶ 126} According to Applicant, there was no evidence of listed plant or animal species or species of concern in the project area except a northern harrier, and no nesting behavior was observed. The waterbodies in the Facility area are not likely to provide habitat to support listed aquatic species. Wetlands are mostly depressional, occurring along agriculture field edges and bordering woodlots. (App. Initial Br. at 23, citing App. Ex. 1, Ex. C; App. Ex. 21 at 5-6.)

{¶ 127} According to Applicant, the Facility has been designed to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species where possible. In the survey area, 24 wetlands were delineated, for a total of 4.54 acres, but no wetlands will be permanently impacted during construction or operation. Additionally, 29 streams were noted in the survey area, and minimal runoff from the surrounding fields was detected. HDD and open cut crossing methods are proposed. The Facility's proposed infrastructure will temporarily impact approximately 124.4 acres through soil disturbance and permanently impact up to 70 acres during operation. Additionally, Applicant submits that it is unlikely that the habitats in the project area are well developed due to the constant disturbance from cultivation and fragmentation. Applicant states that no endangered or threatened species were observed in the Facility area while surveys were conducted. Neither ODNR nor USFWS recommended additional

ecological studies. (App. Initial Br. at 25-26, citing App. Ex. 21 at 16-20; App. Ex. 1 at 65, 69-70, Ex. R, Ex. S.)

{¶ 128} According to Staff, the Facility will incorporate maximum feasibility water conservation practices. Staff also notes that the Applicant will adhere to seasonal cutting dates for trees greater than three inches in diameter to avoid impacts to threatened and endangered bats in the area. (Staff Initial Br. at 7; Jt. Ex. 1 at 16, 18; Staff Ex. 1 at 6.)

{¶ 129} *Wildlife and Plants.* Residents argue that the Board cannot issue a certificate to Yellow Wood without receiving the information required by Ohio Adm.Code 4906-4-08(B), and R.C. 4906.10(A)(2) and (A)(3) concerning the Facility's potential impacts on wildlife and plants. According to Residents, pursuant to Ohio Adm.Code 4906-4-08(B), an applicant must conduct surveys of the plant and animal species in the project area to assess and mitigate the Facility's potential ecosystem impacts. Residents submit that absent this information, the Board can neither determine the nature of the probable environmental impact under R.C. 4906.10(A)(2) nor find that a project represents the minimum adverse environmental impact under 4906.10(A)(3). (Residents Initial Br. at 26-27.) Specifically, Residents focus on Ohio Adm.Code 4906-4-08(B)(1)(c) and (d), which require an applicant to provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary and to conduct and provide the results of field surveys of the plant and animal species identified in the literature survey. Residents submit that Yellow Wood did not conduct the required literature search and field studies required and instead focused only on species that are endangered, threatened, or commercially valuable. (Residents Initial Br. at 27.) Residents point out that no species-specific field studies were conducted (App. Ex. 1 at Narrative p. 69; Tr. I at 84-85). Residents point out that Yellow Wood employees saw migratory shorebirds, game species, waterfowl, and songbirds in the project area but failed to identify them in the Application (App. Ex. 1 at Narrative p. 69). The Residents assert that granting a certificate without this required information would violate R.C. 4906.10(A)(2) and (3) (Residents Initial Br. at 26-29). In their reply, Residents state that Yellow Wood cannot merely rely on the USFWS or ODNR

recommendations. Rather, Residents state that Yellow Wood must comply with the Board's requirements. (Residents Reply Br. at 13.)

{¶ 130} Applicant states that it has complied with the requirements of Ohio Adm.Code 4906-4-08(B)(1) and (3). Specifically, Yellow Wood states that Mr. Rupprecht's testimony is clear that wildlife and plant information was obtained from numerous sources including a desktop review, field verification, observations, and correspondence with federal and state agencies. The Applicant states that it did conduct a literature review, as evidenced by the Application and explanations of the surveys and studies conducted. As to Yellow Wood's mitigation and monitoring efforts, Applicant has committed to seasonal cutting dates, contacting appropriate agencies if a state or federally listed species is encountered, conducting no in-water work in perennial streams from April 15 to June 30, preventing the establishment and propagation of noxious weeds. Yellow Wood claims that the information in the Application demonstrates its compliance with Ohio Adm.Code 4906-4-08(B), so the Board can determine that the Facility would comply with R.C. 4906.10(A). (App. Reply Br. at 38-40, citing App. Ex. 1, Exs. C, S, R; App. Ex. 21 at 18; Jt. Ex 1.)

{¶ 131} Staff emphasizes that Applicant coordinated with ODNR and USFWS regarding state and federal listed threatened or endangered plant and animal species, and Staff gathered and reviewed additional ecological information. Additionally, the Stipulation requires Applicant to continue to look for wildlife and to protect threatened or endangered species that may be encountered. Staff notes that Yellow Wood has also committed to limited seasonal cutting. Based on these facts, Staff contends that Applicant has satisfied the requirements of Ohio Adm.Code 4906-4-08(B). (Staff Reply Br. at 11-12, citing Staff Ex. 1 at 25; Jt. Ex. 1 at 6-7.)

{¶ 132} *Surface Water Runoff.* Residents assert that a certificate cannot be issued without obtaining data about the Facility's potential for surface water runoff, as required by Ohio Adm.Code 4906-4-07(C). Specifically, Residents contend that Ohio Adm.Code

4906-4-07(C)(2)(b) requires an estimate of the quantity of water discharge during construction; Ohio Adm.Code 4906-4-07(C)(3)(d) requires a quantitative flow diagram; and Ohio Adm.Code 4906-4-07(C)(2)(c) requires the plans to mitigate runoff. Residents argue that Applicant did not provide any of this required information, which relates to the certificate requirements in R.C. 4906.10(A)(2), (3), and (5). (Residents Initial Br. at 22-23, citing Tr. I at 25-26.)

{¶ 133} Yellow Wood disputes these allegations, stating that it has already provided all information necessary to comply with Ohio Adm.Code 4906-4-07, as the rule allows an applicant to substitute all or portions of documents filed to meet federal, state, or local regulations. Applicant explains that it identified the permits required to demonstrate compliance, including the Ohio EPA SWPPP and NPDES general permit. As to the quantity of water needed, the Applicant states that the main use of water during construction will be for dust control, and all necessary water will be brought in from off-site sources by 3,500-gallon water trucks. Operation of the Facility will not require water for cooling activities or discharge water into streams or water bodies. Applicant asserts that while other generation facility types, such as fossil fuel and nuclear, result in aquatic discharges and pollution, solar facilities do not result in aquatic discharge or pollution. Yellow Wood asserts that it has complied with Ohio Adm.Code 4906-4-07(C), and the Board is able to determine the environmental impacts to evaluate the criteria under R.C. 4906.10(A). (App. Reply Br. at 35-36, citing App. Ex. 1 at 10-11, 54-55.)

{¶ 134} Staff states that the Stipulation requires Applicant to comply with all of the Board's rules regarding surface water runoff, which requires specific actions and coordination with local experts (Staff Reply Br. at 10-11, citing Jt. Ex. 1 at 7).

{¶ 135} *Water Quality.* Residents contend that the Board cannot issue a certificate for the Facility without receiving the information required by Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (3), and (5) concerning the Facility's water quality impacts and associated mitigation. Residents contend that Ohio Adm.Code 4906-4-07(C)(1)(d) and Ohio Adm.Code

4906-4-07(C)(2)(b), (c), (d), and (e) require Yellow Wood to provide the Board with water quality data. Residents contend that this information is particularly important because construction will disturb soils that will be washed into streams. Residents concede that the Applicant committed to obtain an NPDES permit and develop a SWPPP, but Residents state that Applicant has not met the applicable requirements because it doesn't have any estimates of the quality of water discharge from the facility, citing the testimony of Applicant witness Hreha. (Residents Br. at 24-26, citing Tr. I at 25.)

{¶ 136} In response, Yellow Wood states that the Application included all information required by Ohio Adm.Code 4906-4-07(C), as the rule allows an applicant to substitute all or portions of documents filed to meet federal, state, or local regulations. Applicant states that if it had submitted the documents filed to meet federal, state, or local regulations, those applications would not have included the information sought by Residents, which demonstrates that the information sought by Residents is not required for the Board to evaluate compliance with water quality regulations. Further, Applicant states that it identified the permits needed to demonstrate compliance, including Section 404 nationwide permits, Section 401 water quality certification from the Ohio EPA, SWPPP, and NPDES general permit, and it has confirmed that these permit applications will be submitted to the applicable agencies before construction of the Facility commences, which demonstrates compliance with the rule. Yellow Wood also notes that Ohio law requires that landowners cannot unreasonably interfere with the flow of surface water to the detriment of their neighbor. *See McGlashan v. Spade Rockledge Terrace Condo Dev. Corp.*, Ohio St.2d 55, (1980) at *60. Yellow Wood states that because it identified all required permits and confirmed that it will timely file all permit applications and demonstrated that those permit applications do not require submission of the specific information Residents seek, the absence of that information does not prohibit the Board from issuing a certificate to Yellow Wood. (App. Reply Br. at 36-38, citing App. Ex. 1 at 37.)

{¶ 137} In reply, Residents assert that Yellow Wood offers no data to support its assertion that there will be no water pollutants associated with operations of the Facility.

Additionally, Residents argue that the construction of the Facility would create pollutants because soil is a water pollutant, and it would be discharged into the vicinity streams. To support this assertion, Residents state that R.C. 6111.01(D) defines “other wastes” to include sand and silt and R.C. 6111.01(A) defines “pollution” to include placement of other wastes in any waters of the state. Residents also note that Yellow Wood has not provided a grading plan to demonstrate how much earthmoving will occur, nor did it provide the final grades to its geotechnical engineer for evaluation. Residents repeat their assertion that Yellow Wood failed to submit water quality data to enable the Board to evaluate adverse impacts on water quality from soil erosion. (Residents Reply Br. at 11-12, citing App. Ex. 28A. Att. RS-1 at 3.)

{¶ 138} Upon review of the record, the Board notes that Staff has found that there will be no unreasonable risk posed to public or private drinking water supplies. Specifically, although six private water wells are within the project area, none of the wells are within the footprint of the Facility, and the closest well is 214 feet from the fence boundary. Staff also notes that construction and operation of the Facility will present similar or fewer effects on the water systems than current agricultural use. According to Staff, the Facility will incorporate maximum feasibility water conservation practices. (Staff Ex. 1 at 23-24; Jt. Ex. 1 at 18.) Yellow Wood has committed to limit in-water work to reduce impacts to aquatic species and to minimize impacts to streams by implementing HDD. Applicant will also obtain an NPDES general permit through the Ohio EPA prior to the start of construction. (Staff Ex. 1 at 24-25; Jt. Ex. 1 at 7.) To reduce impacts to threatened and endangered bat species in the project area, the Applicant will adhere to seasonal tree cutting dates, and to avoid impacts to endangered birds, Applicant will avoid construction in areas with the potential for nesting during the nesting season. If the Applicant encounters any listed plant or animal species prior to construction, the Applicant will include the location and how impacts would be avoided in a final access plan to be provided to Staff. (Staff Ex. 1 at 25-27; Jt. Ex. 1 at 6-7.) Applicant has committed to incorporate pollinator-friendly habitat in accordance with the recommendations of the Ohio Pollinator Habitat Initiative and to take

steps to prevent propagation of noxious weeds. The Facility would represent a reduced environmental impact when compared to the current land use of agricultural plant production due to the reduction of frequent tilling and reduced fertilizer and pesticide application. (Staff Ex. 1 at 27; Jt. Ex. 1 at 8.) The documentation submitted with the Application and analyzed by Staff in the Staff Report is voluminous and consistent with what the Board has traditionally required from an Applicant in assessing the nature of the ecological impacts.

{¶ 139} The Board is not persuaded by Residents' arguments that the record does not contain sufficient information to determine the probable environmental impact of the Facility related to wildlife and plants, surface water runoff, and water quality. Residents have argued that Applicant has not conducted the required surveys of the plant and animal species in the project area in order to mitigate impacts. Specifically, Residents contend that Applicant has not met the requirements of Ohio Adm.Code 4906-4-08(B)(1)(c) and (d). Ohio Adm.Code 4906-4-08(B)(1)(c) requires that an applicant provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary, which shall include species of commercial value or designated as endangered or threatened. Ohio Adm.Code 4906-4-08(B)(1)(d) requires that an applicant conduct and provide the results of field surveys of the species identified in the literature surveys. Witness Rupprecht testified that Yellow Wood conducted "[a] desktop review and field verification of ecological and environmental resources within the Project Area, which considers ... [w]ildlife resources," as well as a summary of pre-construction wildlife surveys, and a summary of potential impacts to documented ecological resources (App. Ex. 21 at 18). The Applicant's literature review is evidenced by the surveys and studies the Applicant conducted (App. Ex. 1 at Exs. R and S). Additionally, Yellow Wood coordinated with ODNR and USFWS regarding state and federal listed threatened or endangered plant and animal species (Staff Ex. 1 at 25). The Applicant is also required to look for threatened and endangered species before and during construction and to halt activities that could adversely affect the identified plants or animals (Jt. Ex. 1 at 7). It is clear to the Board that

Yellow Wood has complied with the requirements of Ohio Adm.Code 4906-4-08(B)(1)(c) and (d), and the Board is not persuaded by Residents' argument that Applicant has provided insufficient information regarding wildlife and plants.

{¶ 140} We also consider and reject Residents' argument that Yellow Wood has failed to provide the surface water runoff information required by Ohio Adm.Code 4906-4-07(C). Specifically, Ohio Adm.Code 4906-4-07(C)(2)(b) requires an estimate of the quantity of water discharge during construction; Ohio Adm.Code 4906-4-07(C)(2)(c) requires the plans to mitigate runoff during construction; and Ohio Adm.Code 4906-4-07(C)(3)(d) requires a quantitative flow diagram or description for water and water-borne wastes during the operation of the Facility. Ohio Adm.Code 4906-4-07(A) states that an applicant "may substitute all or portions of documents filed to meet federal, state, or local regulations." Here, Yellow Wood plans to obtain the necessary permits, including developing a SWPPP, which would describe and outline BMPs to control soil erosion, minimize sedimentation, and outline placement of silt fence and compost filter sock where appropriate to minimize runoff. Additionally, Yellow Wood would mitigate potential water quality impacts by obtaining NPDES construction storm water general permits from the Ohio EPA. Further, Applicant would develop an SPCC plan to manage the storage and mitigate the unlikely release of hazardous substances. (Staff Ex. 1 at 35-36; App. Ex. 1 at 55.) Applicant has also stated that the main use of water during construction will be for dust control, and all necessary water will be brought in from off-site sources by 3,500-gallon water trucks (App. Ex. 1 at 11). Unlike other generation facility types, solar facility operation does not result in aquatic discharge or pollution. Additionally, the Stipulation requires Yellow Wood to comply with all Board rules regarding surface water runoff (Jt. Ex. 1 at 7). For the reasons described above, we find that Yellow Wood has supplied all necessary information related to surface water runoff.

{¶ 141} Residents also contend that Yellow Wood failed to provide water quality data as required by Ohio Adm.Code 4906-4-07(C). Specifically, Ohio Adm.Code 4906-4-07(C)(1)(d) requires an applicant to describe existing water quality of the receiving

stream based on one year of monitoring data; and Ohio Adm.Code 4906-4-07(C)(2)(b), (c), (d), and (e) require an applicant to provide an estimate of quality and quantity of aquatic discharges, describe plans to mitigate, describe changes in flow patterns due to clearing and grading, and describe equipment for control of effluents discharged into bodies of water and receiving streams. As stated above, Ohio Adm.Code 4906-4-07(A) states that an applicant “may substitute all or portions of documents filed to meet federal, state, or local regulations.” Applicant has identified the required permits, including Section 404 nationwide permits, Section 401 water quality certification, an Ohio Isolated Wetland Permit, a SWPPP, and an NPDES general permit, and it has stated that these permit applications will be submitted to the applicable agencies before construction of the Facility commences. (App. Reply Br. at 36-38; App. Ex. 1 at 37; Jt. Ex. 1 at 7.) These commitments demonstrate Yellow Wood’s continued compliance with permitting and other requirements. Thus, we find that Yellow Wood has complied with R.C. 4906.10(A)(2) and all associated rules.

{¶ 142} As discussed in the Staff Report, the findings and recommendations set forth by Staff were a result of coordination with the Ohio EPA, ODH, the Ohio Department of Development, ODNR, Ohio Department of Agriculture, ODOT, OHPO, USFWS, and USACE (Staff Ex. 1 at ii). Based on its review of the record, Staff found that it could properly determine the probable environmental impacts of the Facility, and the Board agrees with this assessment.

{¶ 143} In summary, the Board finds that the record establishes that the nature of the probable environmental impact from construction, operation, and maintenance of the Facility has been established by Applicant, as required under R.C. 4906.10(A)(2).

C. R.C. 4906.10(A)(3): *Minimum Adverse Environmental Impact*

{¶ 144} R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent conditions.

{¶ 145} Signatory Parties state that the Facility, if conditioned in the certificate as recommended in the Stipulation, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economies of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).

{¶ 146} Yellow Wood states that it has committed to a number of measures through the Application and Stipulation in order to ensure the minimum adverse environmental impact of the Facility. Applicant states that the solar panels will be fenced in with agricultural or deer fencing to fit in with the local aesthetics. As to setbacks, Applicant has committed to 300 feet from nonparticipating residences, 150 feet from nonparticipating parcel boundaries, and 150 feet from roadsides. Applicant states that it will utilize PV modules from a Tier I manufacturer that have passed the TCLP test. To dispose of the panels at the end of the Facility life, Yellow Wood commits to recycle or repurpose the panels, or send to an engineered landfill with various barriers. (App. Initial Br. at 27-28, citing App. Ex. 1 at 55; App. Ex. 18 at 6; App. Ex. 12; Jt. Ex. 1 at 5, 12.)

{¶ 147} Applicant states that it will install vegetative screening at locations where there are sensitive receptor points, such as homes. It will prepare a landscape and lighting plan to address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings. As for the lighting plan, Yellow Wood will ensure that lights in the array will narrowly focus light inward toward the solar equipment, be downlit and shielded, and be motion-activated. Onsite staff will manage the Facility, manage the vegetation, and ensure the Facility is in good working order. Applicant also committed to incorporate additional screening for observation points at Grove Road, Townsend Road, and Gladys Road to mitigate any predicted glare at those locations. (App. Initial Br. at 28-30, citing App. Ex. 18 at 7; Jt. Ex. 1 at 6, 16; App. Ex. 19 at 5.)

{¶ 148} Yellow Wood commits to implement BMPs for sound abatement, including mufflers, vehicle maintenance, and adherence to speed limits. Construction noise will be

controlled through time-of-day restrictions, which limit construction to between 7:00 a.m. and 7:00 p.m. and limits pile driving to between 9:00 a.m. and 6:00 p.m. Daytime and nighttime noise limits have been calculated based on existing ambient sound levels, and operation will result in sound limits no higher than five dBA higher than the ambient Leq level. Additionally, Yellow Wood notes that its complaint resolution plan will ensure that complaints regarding noise are adequately investigated and resolved. (App. Initial Br. at 29-30, citing App. Ex. 1 at 53-54, Ex. K, Table 4-3; App. Ex. 27 at 5-6; Jt. Ex. 1 at 9.)

{¶ 149} With regard to traffic, Applicant identified certain roads that construction traffic will utilize to minimize adverse impacts from traffic. Yellow Wood also plans to pursue a RUMA with Clinton County to address possible construction issues. Applicant will create a traffic management plan that will act as a single record document containing applicable coordination efforts, agreements, and permits. An emergency response plan will also be implemented. (App. Initial Br. at 30-31, citing App. Ex. 1 at 32, 47, Ex. B; App. Ex. 20 at 3-4; Jt. Ex. 1 at 8; App. Ex. 6.)

{¶ 150} The Applicant states that a decommissioning plan has been prepared, and the final decommissioning plan will be prepared by a professional engineer. The decommissioning plan accounts for costs to return the site to substantially the same conditions as before the Facility construction, including recycling or engineered landfill disposal of the panels and soil decompaction as needed. (App. Initial Br. at 30-31, citing App. Ex. 1 at 32, Ex. J; App. Ex. 6; App. Ex. 26 at 3; Jt. Ex. 1 at 11-12.)

{¶ 151} Diverse native plantings will be installed throughout the PV array areas that will promote soil stability, soil health, and area pollinator resources, in addition to vegetation along the perimeter of the Facility. The vegetation management plan provides further details of these plans, including restoration of disturbed areas and examples of screening modules. (App. Initial Br. at 31-32, citing App. Ex. 18 at 7; App. Ex. 1, Ex. M; App. Ex. 21 at 6.)

{¶ 152} Yellow Wood will also ensure that all neighboring non-participating drainage that is connected to the Facility area drainage be maintained or improved. Newly discovered drainage tile will be mapped, inspected, and incorporated into the plan. Applicant will ensure that non-participating neighbors' drainage is not negatively impacted, setting aside a fund of \$50,000 to investigate claims regarding drainage tile identified through the complaint resolution process. (App. Initial Br. at 32-33, citing App. Ex. 21 at 15-16; Jt. Ex. 1 at 10-11.) Yellow Wood will prevent or mitigate damage to soils and disturbance to wetlands and woodlands. The Clinton County Sewer and Water District will review the construction and operation plans from the Applicant. (App. Initial Br. at 33, citing Jt. Ex. 1 at 11.)

{¶ 153} With regard to geological and hydrogeology impacts, Yellow Wood states that the geotechnical report concluded that the site is suitable for development of the Facility, and Yellow Wood will implement the recommendations therein. The known areas of karst will be graded and monitored by the Applicant, and any newly discovered karst features will be avoided during construction. The Applicant will obtain a SWPPP and NPDES permit for drainage improvements, and if drainage is affected, the Applicant will rectify any issues. Applicant has also developed a plan to ensure that no oil, hydraulic fluids, petroleum fuels, greases, cutting oils, anti-freeze, or other chemicals leak from equipment during construction. Yellow Wood will comply with requirements in the NPDES storm water permit and will ensure contractors implement appropriate BMPs to prevent erosion and control sediment in the areas of construction (App. Initial Br. at 33-34, citing App. Ex. 1 at 40, Ex. L; App. Ex. 28 at 4; Jt. Ex. 1 at 4, 10-11; App. Ex. 18 at 7; App. Ex. 6.)

{¶ 154} Yellow Wood has committed to avoid ground disturbance in the designated avoidance areas for three of the archaeological sites. Yellow Wood has also delineated an avoidance area for three locations potentially associated with the historical site The Big Onion. Yellow Wood points out that it entered into an MOU with OHPO, which defines the roles and responsibilities of it and OHPO with respect to addressing potential impacts to

cultural resources from the Facility. According to Yellow Wood, the MOU ensures that no direct impacts from the Facility will occur on known cultural resources. (App. Initial Br. at 34-35, citing App. Ex. 22 at 6-8; App. Ex. 5.)

{¶ 155} Yellow Wood has committed to construct the Facility in a manner that fully incorporates all construction and operations phase requirements of the NPDES permit, in accordance with the Ohio EPA requirements. Applicant will also coordinate with the Clinton County Storm and Water District and qualified local drainage and earthwork contractors. Additionally, a SWPPP will be developed for erosion control, storm water management, and post construction site stabilization. HDD will be utilized for perennial stream crossings to minimize impacts, the inadvertent fluid release plan will be followed, areas of avoidance will be demarcated, mature trees will be preserved to the extent possible, BMPs will be employed, and temporarily disturbed areas will be reestablished with native vegetation. The Facility will not result in physical disturbance or impacts to recreational areas, parks, wildlife areas, nature preserves, or other conservation areas. Additionally, deep-rooted ground cover will provide ecological improvement over current cropped conditions, which will reduce runoff and sedimentation to local waterbodies in comparison to an agricultural field. (App. Initial Br. at 36-37, citing App. Ex. 1 at 37, 71-74, 76, Ex. S, App. F; Jt. Ex. 1 at 7.)

{¶ 156} Yellow Wood has committed to 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 endangered and threatened bats. If Yellow Wood encounters state or federally listed species, it will immediately halt construction activities that could adversely impact the identified plants or animals and contact Staff, ODNR, and USFWS within 24 hours. Additionally, Applicant will not conduct in-water work in perennial streams from April 15 through June 30 to reduce impacts to aquatic species and their habitat and will avoid construction in nesting habitats during nesting periods for the upland sandpiper and northern harrier. If noxious and invasive weeds are found, the Applicant will remove and treat them with herbicide as necessary, and Applicant will take steps to prevent

establishment or further propagation of noxious weeds and invasive plant species. (App. Initial Br. at 37-38, citing Jt. Ex. 1 at 6-8.)

{¶ 157} Staff states that Applicant's efforts, along with Staff's recommended conditions to mitigate impacts, represent the minimum adverse environmental impact (Staff Initial Br. at 8-9).

{¶ 158} "*Minimum*" Definition. Residents assert that, under R.C. 4906.10(A)(3), the Facility must represent the minimum adverse environmental impact. Residents define "minimum" to mean "the least quantity assignable, admissible, or possible," citing the Merriam-Webster Dictionary. Based on that definition, Residents assert that Yellow Wood has not met this standard. (Residents Initial Br. at 2.)

{¶ 159} In response, Applicant asserts that Ohio courts have been clear that minimum does not mean zero. Yellow Wood points out that the Ohio Supreme Court stated that the Board must determine whether a project would represent minimum impact, not whether it represents any adverse impact at all, citing *Ohio Edison Co. v. Power Siting Comm.*, 56 Ohio St.2d 212, 383 N.E.2d 588 (1978). In another Ohio Supreme Court case, Applicant states the Court explained that the Board must balance the concerns raised regarding the R.C. 4906.10(A)(3) criterion, citing *In re Application of Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210, ¶ 26. Applicant also points out that this criterion also requires the Board to consider the state of technology; the nature and economics of various alternatives; and, importantly, other pertinent considerations. As compared to a time when coal was the primary source of energy for power plants, Applicant asserts that the Facility would not produce harmful emissions, would not introduce harmful chemicals, has no water pollutants, would not impact public or private wells or water supplies, and provides energy security and clean air. Furthermore, Applicant states that the Board should consider positive impacts of the Facility, such as payments to the taxing districts in the area. Yellow Wood also contends that the Board is required to contemplate "other pertinent considerations," including its drain tile commitments, decommissioning bond,

implementation of community requests, coordination with the county, and the creation of jobs. Applicant also contends that the Facility would significantly reduce or eliminate the negative environmental impacts associated with current agricultural operations. (App. Reply Br. at 14-19.)

{¶ 160} *Setbacks.* Residents allege that the Application requests a certificate without offering the setbacks necessary to minimize the Facility's adverse environmental impact under R.C. 4906.10(A)(3). In support of its position, Residents contend that the Board should not accept unreasonably narrow setbacks between Yellow Wood's industrial Facility and its neighbors' land and homes. In particular, Residents focus on the fact that the guaranteed setback from property lines and public roads is only 150 feet, which will cause unsightly views. Residents argue that this problem is exacerbated by the fact that the Facility's expected life is 50 years, so the damage to the community will be long term. (Residents Initial Br. at 8, citing App. Ex. 18 at 6 and App. Ex. 12 at 1.) In reply, Residents assert that although Yellow Wood claims that vegetative screening will compensate for the narrow setbacks, there is insufficient information about the vegetative screening, as it does not commit to which plant species will be planted at which locations, the spacing between the plants, or the plant growth rate. Residents contend that this lack of detail suggests that the Facility may not be adequately screened to block views of the Facility. Rather than providing more information to Staff after the Facility is certified, Residents contend that this information should have been included in the Application, as required by Ohio Adm.Code 4906-4-08(D)(4)(f). Residents ask the Board to expand the proposed setbacks to compensate for Yellow Wood's failure to provide vegetative screening that would mitigate the neighbors' views of the Facility. (Residents Reply Br. at 6-8.)

{¶ 161} Applicant emphasizes that the 150- and 300-foot setbacks are the minimum requirements, and many locations along the perimeter of the Facility will be larger. In addition to the setbacks, Yellow Wood will install vegetative screening and implement a landscape and lighting plan with a focus on minimizing impacts for non-participating residents and the travelling public. Yellow Wood asserts that the minimum setbacks,

coupled with other pertinent considerations and commitments, ensure that the Facility represents the minimum adverse environmental impact. (App. Reply Br. at 25-26.)

{¶ 162} Staff states that no evidence has been introduced to show that the 150- and 300-foot distances are inadequate, and evidence has been introduced that these setback distances will address the potential visual impacts of the Facility (Staff Reply Br. at 4-5).

{¶ 163} *Groundwater.* Residents assert that Yellow Wood did not conduct a groundwater impact study to identify threats to the community water supplies, as required by Ohio Adm.Code 4906-4-08(A)(4)(a). Residents allege that the use of grout to fill karst voids could interrupt groundwater flow to water wells used by nearby landowners (Residents Initial Br. at 12, citing Tr. I at 94-95). Residents argue that if the Board issues a certificate, it should be on the condition that Yellow Wood not site solar equipment on karst formations unless they are “very low risk,” which would help protect the risks to groundwater. Alleging that Applicant did not identify the depths of wells used by nonparticipating neighbors, Residents allege that oversight could mean that construction would interrupt the flow of groundwater to water wells, especially because the depth of groundwater in the Facility is as shallow as five feet and generally ranges from 12 to 30 feet below the surface. (Residents Initial Br. at 9-10, citing App. Ex. 6 at 9, Tr. I at 54, and App. Ex. 28A at Attachment RS-1.) Residents also assert that Yellow Wood did not evaluate the distance between the Facility and nearby nonparticipating landowner water wells (Tr. I at 28-30). Because of the setback distances, Residents assert that off-site wells could be as close as 150 to 300 feet from solar equipment. Because the record does not contain the information required in R.C. 4906.10(A)(2), (3), and (6), Residents assert that the Board should not issue a certificate. (Residents Initial Br. at 9-13.)

{¶ 164} Yellow Wood responds that Ohio Adm.Code 4906-4-08(A)(4)(a) requires an applicant to provide “an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility,” which Yellow Wood did. Specifically, Applicant states that there would be no water wells within the fence line of the

Facility, and no impacts to public or private wells are expected including physical damage to wells or affected well yields. Yellow Wood also states that rainwater will clean the solar panels, so it will not need to obtain a water well from the site. Yellow Wood states that Residents, in their initial brief, posed unproven hypotheticals but did not present expert testimony on the record to refute the facts or studies that Yellow Wood has established. As to the proposal that the Board add a restriction that Yellow Wood may not site solar equipment on karst formations unless they are very low risk, Yellow Wood has already committed to Condition 9 of the Stipulation, stating that it will avoid construction in these areas when possible and would submit any remedial measures to Staff before implementation. Yellow Wood also committed to requiring dewatering measures, and grading and monitoring the areas of known karst, which are categorized as very low risk. (App. Reply Br. at 26-28, citing Jt. Ex. 1 at 4.)

{¶ 165} Staff notes that Residents provide no citation or any evidence that explains how the Facility could be a potential threat to the area's groundwater. In making these claims, Staff points out that Residents did not identify the depth of their wells, which is information that they have, and did not provide testimony or comments regarding this issue. Staff evaluated the evidence and found that the Facility would pose no unreasonable risk to public or private drinking water supplies, so the mandates under R.C. 4906.10(A)(2) and (A)(3) have been met. As to Residents' concerns with karst, Staff notes that karst features are not expected to impact the construction and operation of the Facility, and if karst features are discovered, Applicant will avoid construction in those areas, and any remedial measures will be submitted to Staff before implementation. (Staff Reply Br. at 5-7.)

{¶ 166} In reply, Residents claim that Applicant's references to SWPAs are not useful because those apply to a water system serving at least 15 connections or 25 individuals, but the wells in the area are private and serve only a single residence. As to Yellow Wood's claim that no private water wells will be harmed by piles driven down to 10-15 feet, Residents state that the groundwater levels are as shallow as five feet. Residents also

dispute Yellow Wood's claim that its plan would not affect water wells because they state that Yellow Wood never submitted the issue to an experienced hydrologist. (Residents Reply Br. at 8-9.)

{¶ 167} *Drainage Tiles.* Residents assert that the Application does not identify locations of drainage tiles or describe specific measures to avoid damage to drainage tiles. Because of the omission, Residents assert that the Application does not comply with R.C. 4906.10(A)(3) or (6). Residents do concede that the Applicant committed to repair drainage tiles and surface waterways that may be damaged by construction. (Residents Initial Br. at 29-30.) In their reply, Residents assert that Yellow Wood has offered insufficient detail regarding how it will fix or replace compromised tiles (Residents Reply Br. at 13-14).

{¶ 168} Directly contradicting Residents' claim, Yellow Wood states that the drain tile mitigation plan, the Staff Report, and the associated expert testimony identify the location of drain tiles and measures to avoid damage. Additionally, Applicant agreed to ensure neighboring tile is maintained or improved, if new tile is discovered that it be mapped and inspected, and to set aside a fund of \$50,000 to pay for claims regarding drain tile. Applicant asserts that the Application and Stipulation provide all necessary information for an evaluation of drain tile and mitigation. (App. Reply Br. at 41-43, citing Jt. Ex. 1 at 10-11.)

{¶ 169} Staff notes that Yellow Wood would minimize damage to drainage tiles and may improve the condition of the existing drainage tile system. Staff states that Ohio Adm.Code 4906-4-08(E)(2) requires an applicant to describe mitigation procedures to be used to avoid and minimize damage to field tile drainage systems, which Yellow Wood has done. Staff explains that Yellow Wood will conduct a perimeter dig and consult with adjacent property owners, the Clinton County Soil and Water District, and Clinton County to request drainage system information. Further, any drainage tiles that are damaged must be repaired and compensation provided within 30 days. (Staff Reply Br. at 13-14, citing Jt. Ex. 1 at 11.)

{¶ 170} Based on our review of the record, the Board is satisfied that Yellow Wood has demonstrated that the Facility will represent the minimum adverse environmental impact. The Board first notes its rejection of Residents' assertion that this criterion requires the minimum adverse environmental impact to be "the least quantity assignable, admissible, or possible" (Residents Initial Br. at 2). Taken to its extreme, the only Facility that could satisfy Residents' restrictive interpretation would be one that is not built, as the least quantity of adverse environmental impact possible would be zero. This interpretation of the language crafted by the General Assembly would be illogical. Additionally, the Board has already rejected this interpretation of the definition of "minimum." See *In re Harvey Solar I, LLC*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 257.

{¶ 171} The record in this case demonstrates that Yellow Wood has made several commitments that will minimize the adverse environmental impact of the Facility. For instance, Applicant has coordinated with OHPO and plans to file an MOU to avoid certain sites and impacts to any state or federal threatened or endangered species will be avoided by following seasonal restrictions for construction in certain habitat types (Staff Ex. 1 at 29). Applicant will prepare a landscape and lighting plan to address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings (App. Ex. 5). Yellow Wood has also committed to limit noise to certain levels and limit construction to daytime hours and will finalize a transportation management plan and RUMA to account for construction traffic (App. Ex. 1 at 32, 53-54; Staff Ex. 1 at 29; Jt. Ex. 1 at 8-10). Applicant has committed to 300 feet from nonparticipating residences, 150 feet from nonparticipating parcel boundaries, and 150 feet from roadsides (App. Ex. 12; App. Ex. 18 at 6). Furthermore, Applicant will avoid or repair drain tiles, and has prepared a decommissioning plan to restore the land back to agricultural use at the end of the Facility life (Jt. Ex. 1 at 10-12; Staff Ex. 1 at 30). The Applicant has also committed to use panels that

meet the U.S. EPA definition of non-hazardous waste (App. Ex. 1 at 55; Staff Ex. 1 at 30; Jt. Ex. 1 at 12).

{¶ 172} While Residents argue that the setbacks are too narrow, the Board finds that, when analyzed in conjunction with other mitigation measures and as further discussed below, they will result in the minimum adverse impact on the community. The Board must conclude that adverse impacts are minimal within the context of the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations, not in a vacuum as to one feature. Through the landscaping plan required by Condition 17 of the Stipulation, the Staff-endorsed setbacks will work in concert with the landscaping measures planned, which include an emphasis on locations where an adjacent nonparticipating residence has a direct line of sight to the Facility. (App. Ex. 1 at Ex. M; Jt. Ex. 1 at 5-6.)

{¶ 173} We also find unpersuasive Residents' argument that Yellow Wood did not conduct a groundwater impact study, as required by Ohio Adm.Code 4906-4-08. Specifically, Ohio Adm.Code 4906-4-08(A)(4)(a) requires that an applicant "[p]rovide an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility." Yellow Wood has stated that there would be no water wells within the fence line of the Facility, and no impacts to public or private wells are expected (App. Ex. 6; App. Ex. 18 at 16). Furthermore, Staff determined that the Facility would not pose an unreasonable risk to public or private drinking water supplies (Staff Ex. 1 at 23-24). Applicant has also committed to avoid construction on karst formations and will submit remedial measures to Staff before implementing those measures (Jt. Ex. 1 at 4). Residents did not identify water wells of concern or the depth and location of those wells, but rather presented general and hypothetical concerns alleging that grout to fill karst voids and shallow groundwater depth could interrupt groundwater flow. No expert testimony was presented by Residents to demonstrate that this allegation is possible. Although Residents are correct that the Applicant bears the burden of proof, when an applicant has presented record evidence demonstrating it has met the applicable requirements, as Yellow

Wood has done here, intervenors cannot increase the burden of proof for an applicant by making unproven assertions.

{¶ 174} Residents also assert that Applicant has provided insufficient information for drainage tiles. However, Applicant has consulted with landowners and county records to determine the locations of drain tile mains and stated that it will locate drain tiles as accurately as possible prior to construction (Jt. Ex. 1 at 11; Staff Ex. 1 at 30). Yellow Wood has also committed to promptly repair drain tile that is damaged by the Facility during the life of the Facility (Jt. Ex. 1 at 10-11; Staff Ex. 1 at 30). Specifically, Applicant set aside \$50,000 to pay claims regarding drain tiles (Jt. Ex. 1 at 10-11). It is clear to the Board that Applicant has provided sufficient information and committed to protect and repair drain tiles in the project area.

{¶ 175} As described above in the discussion of R.C. 4906.10(A)(2), Staff conducted a thorough investigation into the community, geological, and ecological impacts of the Facility. After this review, Staff concluded that, if certificated with Staff's recommended conditions, the Facility represents the minimum adverse environmental impact as required under this criterion (Staff Ex. 1 at 30). Yellow Wood offered the testimonies of numerous expert witnesses that supported this conclusion. See App. Exs. 18, 18A, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 28A. The Stipulation incorporates Staff's recommended conditions and expands them to further minimize potential adverse environmental impacts resulting from the Facility. Based on the evidence presented in this case, the Board agrees with Staff's assessment and concludes that the Facility represents the minimum adverse environmental impact.

D. R.C. 4906.10(A)(4): Consistency with Regional Plans

{¶ 176} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such 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 such facility will serve the interests of electric system economy and reliability.

{¶ 177} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the Facility 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). (Staff Initial Br. at 9, citing Staff Ex. 1 at 34.)

{¶ 178} Yellow Wood echoes Staff's recommendation, submitting that the Facility is consistent with plans for expansion of the electric power grid. Yellow Wood submitted an interconnection request to PJM, and the subsequent SIS from PJM was received in April 2021. Yellow Wood has committed that it will not commence any construction of the Facility until it has executed an ISA and ICSA with PJM that includes the construction, operation, and maintenance of system upgrades necessary to integrate the proposed Facility into the regional transmission system reliably and safely. (App. Initial Br. at 38, citing App. Ex. 1 at 16-17, Ex. D; App. Ex. 18 at 15; Jt. Ex. 1 at 5.)

{¶ 179} The evidence provided by Staff and Yellow Wood regarding this criterion is compelling and unrefuted. The Board therefore finds that the Facility will serve the interest of electric system economy and reliability and is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems in accordance with R.C. 4906.10(A)(4).

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

{¶ 180} Pursuant to R.C. 4906.10(A)(5), the Facility must comply with Ohio law regarding air and water pollution control, solid and hazardous wastes, and air navigation.

{¶ 181} *Air.* Yellow Wood states that there are no pollutant emissions associated with the Facility, and no emissions are created by the operations of the Facility (App. Initial Br. at 39).

{¶ 182} According to Staff, neither air quality permits nor air pollution control are required for construction or operation of the proposed Facility. Fugitive dust rules, adopted under R.C. Chapter 3704, may be applicable to the construction of the proposed Facility. Applicant would control temporary and localized fugitive dust by using BMPs such as using water to wet soil and/or dust suppressants as needed to minimize dust. (Staff Initial Br. at 9, citing Staff Ex. 1 at 35.)

{¶ 183} Based on the record in this case, the Board finds that both the construction and operation of the Facility, subject to the conditions set forth in the Stipulation, will be in compliance with the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted thereunder.

{¶ 184} *Water.* Yellow Wood contends that there will be no water pollutants associated with the operations of the Facility, and no impacts to public or private wells or water supplies during the construction and operation of the Facility are expected. Rainwater will clean the panels, so Applicant will not have a well to obtain water for that purpose. (App. Initial Br. at 39, citing App. Ex. 1 at 33-37; App. Ex. 18 at 16.)

{¶ 185} Staff agrees that Yellow Wood will mitigate potential water quality impacts associated with aquatic discharges by obtaining an NPDES construction storm water general permit from the Ohio EPA. Staff also notes that Applicant would implement an SWPPP to control erosion, minimize sedimentation, and otherwise minimize runoff. (Staff Initial Br. at 10, citing Staff Ex. 1 at 35.)

{¶ 186} Upon review of the record, the Board finds that the Facility will comply with Ohio law regarding water pollution control. As noted by Applicant, there will be no water pollutants associated with the operations of the Facility, and no impacts to public or private

wells or water supplies during the construction and operation of the Facility are expected. The Board further notes that there is no record evidence submitted to dispute this conclusion.

{¶ 187} *Solid Waste.* Yellow Wood submits that the Facility will use Tier I equipment to ensure that the solar modules are not hazardous to people or the environment. At the time of decommissioning, retired panels will be either recycled or repurposed, or alternatively sent to an engineered landfill. (App. Initial Br. at 39, citing App. Ex. 1 at 55; Jt. Ex. 1 at 10-12.)

{¶ 188} According to Staff, the Applicant's solid waste disposal plans will comply with all applicable requirements. Additionally Yellow Wood will use only panels that pass the TCLP test, and retired panels that are not recycled will be sent to an engineered landfill with barriers to prevent leaching. (Staff Initial Br. at 10, citing Staff Ex. 1 at 36; Jt. Ex. 1 at 12.)

{¶ 189} Residents argue that because the evidentiary record does not estimate the volume or disposal destinations of solid waste and debris generated during construction and operation as required by Ohio Adm.Code 4906-4-07(D), the Board lacks the necessary information regarding the nature of the probable environmental impact and has no basis to find that the Facility represents the minimum adverse environmental impact. Residents point out that Yellow Wood acknowledges that the Facility will generate waste during construction and operation. However, Residents argue that the Application does not provide the estimate of the amounts of debris and solid waste that will be generated during construction or operation, or the destinations of disposal. For these reasons, Residents assert that the Board does not have enough information to determine Yellow Wood's compliance with R.C. 4906.10(A)(3) and (5). (Residents Initial Br. at 21, citing App. Ex. 1 at Ex. S p. 6-7, 45; Tr. I at 33.)

{¶ 190} Yellow Wood responds by noting that Ohio Adm.Code 4906-4-07(D) applies to all types of generation facilities, including nuclear, coal, combined cycle gas, solar, and

wind, and the type and extent of information required varies based on the type of generation facility proposed. Stating that Residents mistakenly assume that this Facility will generate hazardous waste, Yellow Wood clarifies that solar facilities do not generate hazardous waste. Noting that it will not generate hazardous waste, Yellow Wood states that the Application includes all information essential to comply with this requirement. For example, the Application lists the components that will be used for the Facility and the types of solid waste materials typically produced during construction, including primary plastic, wood, cardboard and metal packing/packaging materials, construction scrap, and general refuse. Yellow Wood also points out that its Application states that the O&M building will produce small amounts of non-hazardous waste, which will be disposed of in accordance with applicable regulations. Yellow Wood has also provided information that at the time of decommissioning, all retired panels that are not recycled or repurposed will be sent to an engineered landfill with various barriers. Applicant also states that Staff verified that Yellow Wood's solid waste disposal plans would comply with the solid waste disposal requirements of R.C. Chapter 3734. Additionally, Applicant argues that the "volume" of waste or an "estimate of the ... amounts" of waste do not have to be numerical, and the Board is fully capable to determine the Facility's probable impacts with respect to waste based on what has been presented in the record. (App. Reply Br. at 32-34, citing App. Ex. 1 at 5-10, 43; Jt. Ex. 1 at 12.)

{¶ 191} Based upon a review of the record in this case, the Board finds that Yellow Wood has properly demonstrated that the Facility will comply with R.C. 4906.10(A)(5) and all associated rules and standards. This criterion and associated rules do not require the specificity that Residents argue for regarding the volume of solid waste or a specific destination for disposal locations. Yellow Wood demonstrated that it is clear that the Facility would not generate any hazardous waste. Applicant also lists the types of waste typically produced during construction and states that the O&M building will produce minimal non-hazardous waste. (App. Ex. 1 at 42-43; Staff Ex. 1 at 36; App. Reply Br. at 32-34.) Applicant further states its plan for the decommissioning of the Facility, including

recycling, repurposing, or sending to an engineered landfill the retired panels (Jt. Ex. 1 at 12). It would be unreasonable to assume that an applicant in this stage of the certification process could predict the exact numerical weight or volume of solid waste that will be generated by a facility. This Application provides estimates of the amount of solid waste to be generated and a description of Yellow Wood's plans to manage and dispose of such waste. The Board, therefore, agrees with Yellow Wood and Staff that the plans outlined by Yellow Wood are reasonable and finds that the Application complies with the solid waste requirements.

{¶ 192} *Aviation.* Yellow Wood states that it received 14 determinations of no hazard from the FAA (App. Initial Br. at 39, citing App. Exs. 6 and 8). Staff states that the closest public-use airports are the Wilmington Air Park and Hollister Field, located approximately 10-12 miles from the Facility. The FAA determined that the Facility would not pose a hazard to air navigation. (Staff Initial Br. at 10, citing Staff Ex. 1 at 36.)

{¶ 193} Residents argue that the Applicant failed to demonstrate that it provided notice to local airports and heliport before filing its Application, as required by Ohio Adm.Code 4906-4-07(E). Instead, Residents assert that Applicant stated that it is engaging with the aviation facilities and merely promised to notify the aviation facilities at least 60 days before construction commences, which is not enough to meet the requirements of Ohio Adm.Code 4906-4-07(E). Because of this omission, Residents assert that the Application lacks the information necessary to determine compliance with R.C. 4906.10(A)(3), (5), and (6). (Residents Initial Br. at 20-21.)

{¶ 194} Responding, Applicant states that Ohio Adm.Code 4906-4-07(E) requires an applicant to provide "confirmation that the owners of [airports within five miles of the Facility] have been notified of the proposed Facility and any impacts it will have on airport operations." Yellow Wood states that it did inform two private airports, but that Residents have misinterpreted its data response because it also stated it will also notify those private airports 60 days before construction commences. Additionally, the FAA made 14

Determinations of No Hazard, which confirmed that the Facility would not be a hazard to aviation activities. Applicant explains that the FAA went through a public notification and comment period that provided stakeholders with the opportunity to comment on potential effects. For these reasons, Yellow Wood states that it did comply with Ohio Adm.Code 4906-4-07(E) and the applicable criteria of R.C. 4906.10(A). (App. Reply Br. at 31-32, citing App. Ex. 6 at 2.)

{¶ 195} Staff contends that Applicant has met the requirements of this criterion by contacting the FAA and receiving the feedback that the Facility would pose no hazard to air navigation. Furthermore, Yellow Wood contacted the ODOT Office of Aviation, which did not raise any concerns about the potential impacts of the Facility. Staff states that there is sufficient evidence to demonstrate that the Facility would not impact air traffic in the vicinity. (Staff Reply Br. at 9-10.)

{¶ 196} The Board finds that Residents' allegations on this issue are due to a misunderstanding of a data response. Residents assert that Applicant was required to notify the owners of airports within five miles of the Facility, and Applicant states that it already did so and worded that as "engaging with" the airports, citing App. Ex. 6 at 2. Applicant explains that it also noted its commitment to notify the airports again at least 60 days prior to construction beginning, which may have caused the misunderstanding. Additionally, we note that the FAA confirmed that the Facility would not be a hazard to aviation activities. (App. Ex. 6 at 2; Staff Ex. 1 at 37.) For the above reasons, we find that Yellow Wood has provided sufficient information for the Board to evaluate the Facility's impact on aviation, and we find that the Facility will comply with Ohio law regarding aviation.

{¶ 197} In summary, the Board finds that the Facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as rules and standards adopted under those chapters and under R.C. 4561.32. Accordingly, the certification criteria found in R.C. 4906.10(A)(5) has been met.

F. R.C. 4906.10(A)(6): Public Interest, Convenience, and Necessity

{¶ 198} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the Facility will serve the public interest, convenience, and necessity.

{¶ 199} The Signatory Parties represent that the record establishes that the Facility, if conditioned in the certificate as recommended in the Stipulation, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6) (Jt. Ex. 1 at 16).

{¶ 200} Yellow Wood submits that the Stipulation and record in this proceeding support the finding and determination that the Facility will serve the public interest, convenience, and necessity in compliance with R.C. 4906.10(A)(6). Yellow Wood submits that the public interest is served by the Facility because it: provides socioeconomic benefits, increases tax revenues, commits \$50,000 to drain tile repair as needed, commits a decommissioning bond to return the land to its current condition, implements community requests and feedback, coordinates with Clinton County on perceived concerns, and creates new jobs. (App. Initial Br. at 39-41.)

{¶ 201} Applicant states that the benefits to the community and state outweigh any possible negative impacts, and negative impacts have been resolved or mitigated through commitments in the Stipulation. Yellow Wood states that it has engaged with the community through numerous meetings, adding that noteworthy supporters of the Facility are Clinton County Trails Coalition and Wilmington-Clinton Chamber of Commerce. Applicant adds that comments submitted in the case are evenly split between those in support and opposition to the Facility, and at the local public hearing, most of those offering testimony were in support of the Facility. Applicant also responds to concerns that were raised at the local public hearing. Stating that it reached out to the community in numerous ways, Applicant states that it engaged adjacent landowners, met with landowners and local coalitions and organizations, attended township meetings, and completed a phone survey. (App. Initial Br. at 41-45, citing App. Ex. 18 at 8-9; Pub. Tr.)

{¶ 202} Applicant states that its complaint resolution plan will allow community members to voice concerns to Yellow Wood during construction and operation. Yellow

Wood commits to respond to complaints within 48 hours and to initiate reasonable action within 30 days. (App. Initial Br. at 46, citing App. Ex. 1, Exhibit G.) Yellow Wood points to other benefits the Facility would provide, including creating jobs during construction and operation, the provision of insurance to protect the landowners, and a performance bond for decommissioning the Facility at the end of its useful life. (App. Initial Br. at 46-48, citing App. Ex. 1 at 29, 31-32, Ex. F, Ex. I; App. Ex. 24 at 4; Jt. Ex. 1 at 11-12.)

{¶ 203} Staff recommends that the Board find that the proposed Facility will serve the public interest, convenience, and necessity. In reaching its recommendation, Staff references Yellow Wood's commitment to complying with applicable safety standards set by the Occupational Safety and Health Administration and the NESC. Staff also references Yellow Wood's commitment to work closely with local government officials, citing numerous conditions in the Stipulation. (Staff Initial Br. at 11-12, citing Jt. Ex. 1 at 6; Applicant Ex. 18 at 5.) In its reply brief, Staff adds that the Facility would not eliminate farming within the community, and any removal from farm production would be temporary because the Applicant must decommission the Facility at the end of its life. Staff adds that many community benefits would accrue if the certificate were granted, including increased tax revenues, a \$50,000 drain tile commitment, Clinton County's involvement in the construction process, pollinator friendly vegetation, and vegetative screening that will be maintained for the life of the Facility. (Staff Reply Br. at 3-4.)

{¶ 204} *Economic Impacts.* Residents contend that the Board cannot issue a certificate to Yellow Wood without evaluating the Facility's negative economic impacts, in addition to the economic benefits, as required by Ohio Adm.Code 4906.10(A)(6) and Ohio Adm. Code 4906-4-06(E)(4). Specifically, Residents state that Yellow Wood failed to evaluate the economic losses to local businesses and individuals. Residents suggest that removing the land from food production would displace farm income, farm employees, seed and fertilizer sales, and custom applicator fees (Tr. II at 131-133). Residents argue that the Board should not issue a certificate to Yellow Wood because of this omission. (Residents Initial Br. at 32-33; Residents Reply Br. at 14-15.)

{¶ 205} In response, Yellow Wood states that there is no requirement that an applicant investigate every possible negative economic impact. Ohio Adm. Code 4906-4-06(E)(4) requires applicants to “provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities,” which Yellow Wood states it has done. Applicant states that its expert created the economic impact and land use analysis socioeconomic report based objectively on the facts gathered regarding the socioeconomic impacts of the Facility. Yellow Wood argues that the report utilized widely accepted modeling systems, as well as data from the Ohio Department of Taxation. Staff confirmed that this information was appropriate and reasonable. Applicant also notes that these methodologies have been used by other applicants and accepted by the Board in rendering previous decisions and issuing certificates to solar developers, citing *In re Hecate Energy Highland LLC*, Case No. 18-1334-EL-BGN, Opinion, Order, and Certificate (May 16, 2019); *In re Hecate Energy Highland 4, LLC*, Case No. 20-1288-EL-BGN, Opinion, Order, and Certificate (Mar. 18, 2021). As for any lost value of agricultural products, Applicant notes that value would accrue to landowners who want to participate in the Facility, so that value comparison should be left up to the landowners. Yellow Wood argues that the Board must rely on the evidence presented in the case and not on speculation or conjecture of Facility opponents, citing *In re Harvey Solar I, LLC*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022); *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at ¶ 40. Yellow Wood asserts that the Facility would serve the public interest. (App. Reply Br. at 44-45, citing App. Ex. 1, Ex. F; Staff Ex. 1 at 15.)

{¶ 206} Staff responds that the applicable statute and rules do not require the Applicant to estimate the negative impact that the Facility may have on the local community. Rather, Yellow Wood was required to estimate the economic impact of the Facility on local commercial and industrial activities, which it did. Specifically, Staff found that the Facility would produce 1,235 construction jobs, 34 long-term operation jobs, create \$102.5 million in annual earnings during construction and \$1.9 million in annual earning

during operations, produce \$161.3 million in local output during construction and \$5.9 million in local output during operations, and generate \$2.1 million annually for local taxing districts. Staff adds that Residents have provided no evidence that there will not be a positive economic impact for the local communities. (Staff Reply Br. at 14-15, citing Staff Ex. 1 at 14-15.)

{¶ 207} *Food Production.* Residents argue that in addition to 2,448 to 3,250 acres being removed from food production for the Facility, approximately 770 acres of agricultural district land would be replaced by industrial solar facilities (App. Ex. 1 at Narrative at 66, 96). Residents argue that repurposing agricultural district land is contrary to the legislative purpose of establishing agricultural district land. Noting that the amount of farmland in Clinton County is decreasing, Residents argue that the land may not be viable for agriculture after decommissioning of the Facility because of topsoil loss (Tr. II at 127-128). Additionally, Residents submit that the expected 50-year life of the Facility would deprive society of food production for a significant period of time. (Residents Initial Br. at 30-32.) In reply, Residents assert that the comparison of the Facility's acreage compared to Ohio's total farmland acreage should not be considered, as it ignores the cumulative conversion of farmland to other uses (Residents Reply Br. at 14).

{¶ 208} Yellow Wood disputes Residents' claim that the Facility would contribute substantial damage to the food supply, stating that the Facility would affect 2,397 acres of land as compared to the 896,600,000 acres of farmland in Ohio, which is only 0.00027% of the total farm land in the state. Applicant adds that the Facility would not be located on an area that has been selected as Farmland of Statewide importance, as designated by the Natural Resources Conservation Service and the U.S. Department of Agriculture. Yellow Wood also notes that 33% of Ohio's corn crop goes to the production of ethanol rather than food production. In response to the claim that the land would not be suitable for farming after decommissioning, Yellow Wood responds that the assertion is without record support and asserts that the topsoil may be better at that time than when crops are harvested each

year. Yellow Wood argues that Residents' arguments about food production are without merit. (App. Reply Br. at 43-44, citing App. Ex. 18 at 12.)

{¶ 209} *Construction Noise.* Residents dispute Applicant's statements that construction noise will be infrequent and negligible. Residents state that almost 7,000 truck deliveries during construction will cause a noise impact for nearby residents. Residents also dispute the contention that the construction activity will produce sounds already familiar to the community, noting that Applicant's consultant noticed only minimal construction when he was in the project area (Residents Initial Br. at 15, citing Tr. II at 110-112). In particular, Residents note that pile driving noise could last a long time considering there may be as many as 740,000 solar modules. Residents also assert that the Facility would not comply with Ohio Adm.Code 4906.10(A)(3) or (A)(6) because noise at the Facility boundary could be as high as 93 dBA and as high as 81-82 dBA at nonparticipating residences. (Residents Initial Br. at 13-16.) In their reply, Residents take issue with the long hours that construction noises could bother neighbors, combined with the fact that there are no limitations for construction noises on weekends or holidays. Residents are unsatisfied by the mitigation measures proposed by Applicant and note that no mitigation has been proposed for pile driving activities. (Residents Reply Br. at 9-10.)

{¶ 210} Yellow Wood concedes that there will be construction noise for the 18-month period during construction. However, Yellow Wood states that noise may be heard by adjacent residents during some times during the construction period, but noise will not be continuous, as crews will be working throughout the 2,397-acre site. Additionally, Applicant commits to use BMPs for sound abatement and will limit general construction to the hours of 7:00 a.m. to 7:00 p.m. or dusk. Impact pile driving activities will be further limited to the hours between 9:00 a.m. and 6:00 p.m. (App. Reply Br. at 28-29, citing App Ex. 18 at 17; App. Ex. 27 at 5; Jt. Ex. 1 at 9.)

{¶ 211} Staff notes that Condition 28 of the Stipulation requires Yellow Wood to comply with Ohio Adm.Code 4906-4-08(3)(d). Furthermore, because the construction noise

will be temporary, intermittent, and limited to restricted hours, Staff contends that the Applicant will be in compliance with the rule. (Staff Reply Br. at 7-8, citing Jt. Ex. 1 at 9.)

{¶ 212} *Roads*. Residents argue that the many construction deliveries will clog the public roads and damage those roads, in violation of R.C. 4906.10(A)(3) and (6) (Residents Initial Br. at 29). In their reply, Residents assert that any agreement with the county should have been included in the Application (Residents Reply Br. at 13).

{¶ 213} Yellow Wood points out that Residents cite no authority for the assertion that the deliveries would clog or damage public roads. Further, Yellow Wood has committed to obtain all applicable transportation permits and to coordinate with the appropriate authority regarding any traffic control necessary for construction. Applicant also notes that it conducted a conceptual construction route study, submitted with the Application, which found no significant environmental concerns for use of the existing roads. Applicant also committed to develop a RUMA with Clinton County. Yellow Wood contends that the Application and Stipulation provide all required information regarding local roads. (App. Reply Br. at 40-41, citing Jt. Ex. 1 at 8; App. Ex. 1 at 32, Ex. B; App. Ex. 20 at 3.)

{¶ 214} Staff adds that Applicant is required to reach a RUMA with local agencies and to coordinate with ODOT, local law enforcement, and health and safety officials before commencing construction. Staff states that these actions are in full compliance with the applicable requirements. Staff adds that Residents did not provide evidence that Applicant fails to meet the requirements of R.C. 4906.10(A)(3) or (6). (Staff Reply Br. at 13, citing Jt. Ex. 1 at 8.)

{¶ 215} *Local Opposition*. Citing the Board's decision in *In re Republic Wind*, Case No. 17-2295-EL-BGN (*Republic*), Opinion, Order, and Certificate (June 24, 2021), Residents assert that the determination of public interest, convenience, and necessity must be examined through a broad lens that balances a project's projected benefits against the magnitude of potential negative impacts on the local community. Residents submit that, as reflected by

the testimony of witnesses, there is significant opposition to the Facility among local residents. In support of its position, Residents note that Clinton County expressed opposition to the Facility by passing a resolution. Residents also question Applicant's opinion poll, asserting that the poll is skewed and excluded those who tend to oppose renewable energy projects. (Residents Initial Br. at 6-7, citing Tr. II at 119-121; County Ex. 1 at Att. A, B.) In its reply brief, Residents assert that the *Republic* case set the precedent that the Board must consider county views on a project, even before the later SB 52 legislation was enacted. Residents argue that R.C. 4906.10(A)(6) requires the Board to reject a project that the local population opposes. Residents also contend that Yellow Wood's opinion poll selection bias represents fraud and is not evidence of local public support for the Facility. Residents also suggest that the Board should be skeptical of other Yellow Wood representations regarding public opinion, as well. (Residents Reply Br. at 5-6.)

{¶ 216} In response, Applicant notes that unlike in the *Republic* case, the record in this case does not reflect prominent or one-sided opposition. For example, Yellow Wood states that two-thirds of witnesses at the local public hearing testified in support of the Facility. Applicant also notes that *Republic* was a case for a wind facility, which utilizes different equipment and poses different community concerns. Responding to criticism about the survey, Yellow Wood clarifies that its purpose was to memorialize that opposition to the Facility is not unanimous. (App. Reply Br. at 23-24, citing Pub. Tr.)

{¶ 217} Clinton County argues that the Facility would not serve the public interest, convenience, and necessity. Clinton County states its opposition to the Facility, noting concerns about construction noise, effect on property values, prospects for the Facility's maintenance over time, and reduction of productive farmland. Citing a previous Board decision, Clinton County asserts that this criterion must be looked at through a broad lens, including the general public's interest in energy generation with the local public interest, and benefits must be considered along with potential negative impacts on the local community, citing *In re Birch Solar I, LLC*, Case No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022) at ¶ 68; *Republic*, Opinion, Order, and Certificate (June 24, 2021) at ¶ 91.

Clinton County asserts that the Board has received significant feedback in opposition to the Facility, and Applicant has not disproved those concerns. (County Initial Br. at 1, 3-5, citing County Ex. 1.)

{¶ 218} Clinton County asserts that the economic analysis submitted by the Applicant, Exhibit G to the Application, is insufficient to show that the Facility would satisfy the public interest, convenience, or necessity. Clinton County states that the analysis fails to account for the negative effects the Facility would have on the local economy, including removing agricultural production for decades. Clinton County also notes the expected PILOT payments do not overcome its opposition to the Facility, and it will oppose future steps the Applicant may take to qualify for PILOT payments. (County Initial Br. at 5-6, citing Tr. II at 131-133.)

{¶ 219} Clinton County also challenges Yellow Wood's public opinion survey, arguing that it is flawed and unreliable. Specifically, Clinton County asserts that the survey selected respondents to minimize the number of respondents who oppose the Facility by excluding Republicans over the age of 40. Clinton County adds that the general questions posed could not accurately demonstrate that respondents would support this solar Facility. (County Initial Br. at 6-7, citing App. Ex. 25 at 5; Tr. II at 114-125.)

{¶ 220} In response to Clinton County's assertion that the Application does not meet this criterion, Yellow Wood emphasizes that the Board is the proper body to determine if a certificate should be issued, not the county. Yellow Wood explains that SB 52 modified certain procedural requirements, including requiring county review and approval, but this Application is not subject to the SB 52 requirements. Yellow Wood asserts that Clinton County relies on its resolution (County Ex. 1), testimony at the local public hearing, and comments filed in the docket as evidence that the Facility is not in the public interest, convenience, and necessity. However, Applicant states that all of the concerns expressed in Clinton County's resolution have been addressed through the Application and Stipulation. Specifically, as to concerns regarding lack of accountability for other solar projects, Yellow

Wood states that it is not affiliated with other solar projects and has committed to more stringent requirements than those projects. As to concerns about noise, Yellow Wood states that it will limit hours for construction and maintain limited noise levels during construction. As for other concerns, Yellow Wood states that it has made commitments regarding drainage and provided studies and evidence regarding property values, oversight of the Facility, decommissioning, stormwater mitigation, increased setbacks, and farmland production. (App. Reply Br. at 5, 9-12.)

{¶ 221} Applicant further responds that the majority of individuals who testified at the local public hearing testified in support of the Facility. As for the public comments received, Yellow Wood notes that when all the electronically filed comments from a given household were combined with comments that were not filed electronically, 77 comments were in support of the Facility and 72 comments were in opposition to the Facility. Applicant also states that Clinton County presented only one exhibit at hearing, its resolution, and then left and did not participate in the remainder of the hearing. (App. Reply Br. at 12-14.)

{¶ 222} In reply, Clinton County asserts that the opinion of local government is a valid factor for the Board to consider when analyzing R.C. 4906.10(A)(6). Clinton County asserts that if the creation of jobs, local spending, and PILOT payments were sufficient to satisfy this criterion, it would be satisfied for every single project under the Board's consideration. Rather, Clinton County is concerned about noise, property values, upkeep, and decommissioning, which are also matters of public interest. Clinton County also states its opposition to PILOT payments and concern about the negative economic impact of the Facility, such as a hit to agribusiness. (County Reply Br. at 1-3.)

{¶ 223} Further, Clinton County states that the Stipulation does not address all of its concerns about the Facility. Although Applicant has agreed to consult with Clinton County on various matters, including during the pre-construction conference, Clinton County is concerned that Applicant will just disregard local input at that point. Clinton County asserts

that the Board should defer to the local officials, who have the greatest local knowledge of the areas that will be most affected by the Facility. (County Reply Br. at 3-5.)

{¶ 224} The Board has reviewed the Stipulation and the record and finds that the Facility will serve the public interest, convenience, and necessity. While Residents submit that the Facility may have some adverse economic impact due to the potential loss of some agricultural activity, no testimony was presented to quantify the alleged monetary loss. “The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture].” *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at ¶ 40. Nothing presented by Residents suggests that any negative impacts would outweigh the significant economic benefits in the record. The evidence presented, as discussed above, reflects the creation of both construction and operational jobs as well as the associated earnings and corresponding local economic output (Staff Ex. 1 at 13-15). Additionally, Residents have not demonstrated that the mere removal of acreage from farm production demonstrates that the Facility is not in the public interest, convenience, or necessity. Residents have not cited any previous applications which were denied on this basis or raised any original argument on this point. Additionally, if the Application is not approved, nothing requires the landowners to continue using the land for food production.

{¶ 225} Although Residents contend that the Facility will not comply with Ohio Adm.Code 4906.10(A)(3) and (6) because noise at the Facility will be too high, the Board does not agree. Applicant determined that construction noise would range from 37 to 75 dBA with up to 82 to 93 dBA when pile driving is taking place, which is to be expected only when construction equipment is nearby and operational (App. Ex. 6 at Att. 5; App. Ex. 27 at 5-6). The construction noise at the Facility will be temporary and intermittent, and Applicant has committed to use BMPs for sound abatement and limit the hours of construction to accommodate neighbors’ noise concerns (App. Ex. 27 at 4-5; Jt. Ex. 1 at 9-10). The mitigation measures and hour limitations to which Yellow Wood committed convince the Board that construction noise will not rise to a level to be a reason to deny the Facility

certificate. Residents also argue that construction deliveries will clog and damage local public roads. The Board determines that such issues were not demonstrated, noting that Applicant conducted a conceptual construction route study and committed to develop a RUMA with Clinton County. The Board also notes that special hauling permits are not expected for the Facility construction except for delivery of the transformer. (Jt. Ex. 1 at 8; App. Ex. 1 at 32, Ex. B; App. Ex. 20 at 3-4.) Residents' general allegations are unconvincing on this point considering the specific actions and commitments that Applicant has included in the record.

{¶ 226} Residents and Clinton County also argue that the Facility should not be certified because of local opposition² (County Ex. 1). Both intervenors also challenge Applicant's opinion poll. We will clarify that, for the reasons identified by Residents and Clinton County, we have determined to afford little weight to the opinion poll Applicant presented as evidence of local support. Residents have asserted that, based on the *Republic* case, the Board must consider county commissioner views on a proposed project. We agree that county commissioner views on a project should be considered, but we do not agree that those views should be determinative of the Board's ultimate decision. Although Clinton County opposes the Facility, as well as Residents and other local individuals, 26 of the 36 total witnesses at the local public hearing testified in support of the Facility (Pub. Tr). Additionally, the public comments were fairly evenly split between those in support of the Facility and those in opposition to the Facility when eliminating duplicative comments and comments from the same household. We also note that although Clinton County opposes the Facility, Clinton County Trails Coalition and Wilmington-Clinton Chamber of Commerce have offered comments in support of the Facility. As to Clinton County's concerns regarding the upkeep of other nearby solar facilities, Applicant has been clear that it is not affiliated with those facilities (App. Reply Br. at 10). Applicant also certifies that it has addressed all concerns raised in Clinton County's resolution in opposition to the

² Clinton County also identifies concerns about construction noise, property values, Facility maintenance, and reduced farmland. These concerns have been addressed elsewhere in this Order.

Facility, including increasing setbacks, setting up a \$50,000 fund for future drainage issues, limiting construction hours, and providing a study demonstrating that the Facility would not negatively affect property values (County Ex. 1; App. Reply Br. at 10-12; App. Ex. 1 at Ex. E; App. Ex. 12; App. Ex. 18 at 5-6; App. Ex. 23 at 5; Jt. Ex. 1 at 9-11). Further, Clinton County will be involved by consulting with the Applicant on various matters, including working with the sewer and water district for drain tile work (Jt. Ex. 1 at 10-11); submitting an updated decommissioning plan to Clinton County (Jt. Ex. 1 at 11); and coordinating with Clinton County regarding any public roads (Jt. Ex. 1 at 12). Although the Board recognizes that there is some local opposition to the Facility, the Board does not find that opposition to be overwhelming, and various individuals and entities have noted support and opposition to the Facility. The Board appreciates the concerns raised by Clinton County in this proceeding but is ultimately satisfied that Yellow Wood has made specific commitments to mitigate the issues raised by Clinton County.

{¶ 227} Based on our review of the record, the Board finds that the proposed Facility, subject to the conditions specified in the Stipulation, complies with the requirements specified in R.C. 4906.10(A)(6). In reaching this decision, we recognize the need to determine that the Facility will serve the public interest, convenience, and necessity and that this criterion should be examined through a broad lens. For example, this factor should consider the public's interest in a power siting project that ensures continued utility services and the prosperity of the state of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. *See In re Ross County Solar LLC*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36. Based

on the totality of evidence in this case, the Board finds that the Facility would serve the public interest, convenience, and necessity.

G. R.C. 4906.10(A)(7): Agricultural Districts

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

{¶ 229} Yellow Wood contends that approximately 2,397 acres that are currently being farmed would be converted to solar uses. During operation of the Facility, native and pollinator seeding will increase biodiversity and soil nutrients and has the potential to increase pollinators on adjacent farmed parcels. After the Facility is decommissioned, Applicant asserts that the land can again be used for row crops or other agricultural uses. (App. Initial Br. at 48, citing App. Ex. 18 at 17-18.)

{¶ 230} Staff notes that although construction and operation of the Facility would disturb the soil and could lead to broken drainage tiles, Yellow Wood has committed to repair any damaged drainage tile. Staff recommends that the Board find the Applicant has complied with the requirements of R.C. 4906.10(A)(7). (Staff Initial Br. at 12-13; Staff Ex. 1 at 41; Jt. Ex. 1 at 10.)

{¶ 231} Based on the record, the Board concludes that the Facility satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable provisions of the Stipulation and consistent with this Order.

H. R.C. 4906.10(A)(8): Water Conservation Practice

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

{¶ 233} The Signatory Parties state that the record establishes that the Facility will incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).

{¶ 234} Yellow Wood states that the Facility will not use water for cooling purposes and will not discharge water or waste into streams or other bodies of water, so it is not expected to impact water quality. During construction, water will be used for compaction and dust control, which will be brought in from off-site sources via water trucks. The only other use of water will be at the O&M building, which will have water use typical of a small business office. Applicant commits to use BMPs for stormwater pollution prevention, stormwater management, and erosion and sedimentation control. (App. Initial Br. at 48-49, citing App. Ex. 1 at 10-11, 37, 41-42.)

{¶ 235} Staff notes that neither construction nor operation of the Facility would require the use of significant amounts of water. Staff asserts that the proposed Facility would incorporate maximum feasible water conservation practices, and subject to the agreed conditions, complies with the requirements specified in R.C. 4906(A)(8). (Staff Initial Br. at 13, citing Staff Ex. 1 at 43.)

{¶ 236} Upon a review of the record, the Board finds that the Facility incorporates the maximum feasible water conservation practices, and, therefore, satisfies the requirements of R.C. 4906.10(A)(8), provided that the certificate issued incorporates the applicable provisions of the Stipulation. In making this determination, the Board recognizes the representation that construction and operation of the Facility will not require the use of significant amounts of water (Staff Ex. 1 at 43).

IX. CONSIDERATION OF STIPULATION

{¶ 237} 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

may afford 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, 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. 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?

{¶ 238} Yellow Wood witness Hreha testified that the Stipulation meets the criteria for Board approval. The witness testified that the Stipulation is a good faith settlement that resulted from serious negotiations among capable, knowledgeable parties and that it will benefit the public interest. (App. Ex. 18 at 18-19.)

{¶ 239} The Applicant highlights that the Stipulation incorporates concerns raised by Clinton County to ensure that Clinton County is involved during preconstruction meetings, receives construction and operation plans, specifications, reports, permits, agreements and engineering drawings, and may participate at preconstruction meetings (Jt. Ex. 1 at Conditions 2-5, 7, 11, 12, 21, 26, 30-32). The Applicant will also set aside \$50,000 to inspect perceived drainage issues, along with the commitment to fix any issues that are

found (Jt. Ex. 1 at Condition 32). However, the Applicant did not incorporate into the Application or Stipulation requests from intervening parties to provide design approval rights over the Facility, as this conflicts with state statute regarding the Board's authority. (App. Ex. 18 at 5, 7.)

{¶ 240} The Board recognizes Residents' opposition to the Stipulation. Residents argue that because Clinton County and Residents did not sign onto the provisions in the Stipulation, it should not be given any weight for consideration of the Facility. Residents also contend that because Clinton County and Residents are not Signatory Parties, the Stipulation is not the product of serious bargaining. We note that Residents raise similar arguments that were used to argue that the Facility should be not approved under R.C. 4906.10, in which Residents conclude that the Stipulation does not promote the public interest, convenience, and necessity. Residents also allege that the Stipulation violates important regulatory principles and practices, because the Facility is not in compliance with R.C. 4906.10(A) or the Board's rules. (Residents Reply Br. at 15.)

{¶ 241} Upon review, the Board finds that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board recognizes that counsel for parties and all intervenors were invited to all settlement conversations. Furthermore, party representatives involved in deliberations were aware of and knowledgeable about the issues addressed in the Stipulation. While we note that Residents and Clinton County are not Signatory Parties, a stipulation in which some but not all parties agree to its terms, may still be considered by the Board. In fact, for some cases in which stipulations have been agreed to by some but not all parties to the proceeding, the Board has noted that adoption of such agreements would aid in ensuring that projects would represent the minimal adverse environmental impact and would serve the public interest, convenience, and necessity. *See In re Harvey Solar I, LLC*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022); *In re Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN, Opinion, Order, and Certificate (June 24, 2021). Additionally, we find that the record reflects the Applicant's efforts to address and incorporate solutions addressing

Clinton County's concerns in the Stipulation. Thus, the Board observes that the Applicant participated in good faith negotiations with all parties to address and resolve all concerns. (App. Ex. 18 at 18.)

{¶ 242} The Board also determines that, as a package, the Stipulation appears to benefit the public interest. The Facility will add low-cost electricity to the State of Ohio's supply of energy for decades to come. Further, the Board finds that through the Facility's interconnection network upgrades, the Facility will improve components of the local PJM transmission grid, as well as contribute to the diversity of generation assets on the grid (App. Ex. 18 at 13). We are persuaded that the Facility will benefit the local and regional economy through jobs created during construction and operation, in addition to new sources of tax revenue (App. Ex. 18 at 18). In fact, the Facility will generate 1,235 jobs and \$102.5 million in annual earnings for the State of Ohio during construction, and Facility operation is estimated to provide \$2.1 million annually for the local taxing districts (Staff Ex. 1 at 14-15). We are encouraged that in addressing concerns raised by the public, the Applicant committed to 150 feet minimum setbacks from nonparticipating boundary lines and rights-of way; and 300 feet minimum setbacks from nonparticipating residences (App. Exs. 12; 18 at 6). We also find that Yellow Wood commits to multiple conditions in its Application and the Stipulation that were not required or common practices several years ago, including, but not limited to: extensive landscape screening; additional noise limitation provisions; deer fencing, which is not institutional chain link and barbed wire fencing; and a drain tile plan that includes funding for perceived drainage issues. (App. Ex. 18A at 4; Jt. Ex. 1.)

{¶ 243} Furthermore, the Board is convinced that the Stipulation does not violate any important regulatory principle or practice. We observe that the Facility's design and the Stipulation conditions comply with Clinton County's Renewable Energy System Installation Guidance (App. Ex. 18A at 6). Addressing Residents' concerns, the Board has reviewed the Facility under the eight R.C. 4906.10(A) criteria for certificate eligibility, in addition to the Board's three-prong Stipulation test. In essence, as we have already addressed Yellow Wood's compliance under the R.C. 4906.10(A) criteria, we determine that

Residents' arguments in opposition to the proposed Stipulation and Facility approval are not persuasive here.

{¶ 244} Further, we find that the record demonstrates that Applicant has complied with every requirement necessary for requesting a certificate to site a solar generation facility in Ohio. As we noted above, Yellow Wood committed to obligations that were in addition to existing statutory requirements and precedential practices, including but not limited to additional noise limitation provisions and a drain tile plan that includes funding for perceived drainage issues. (App. Ex. 18A at 4.).

{¶ 245} In conclusion, and based upon the record in these proceedings, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the Facility as described in the Application filed in this case, subject to the conditions set forth in the Stipulation, as amended, and this Opinion and Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as amended, and hereby issues a certificate to Yellow Wood in accordance with R.C. Chapter 4906.

X. CONCLUSION

{¶ 246} Accordingly, based on the record in this proceeding, the Board concludes that all the required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation facility described in Yellow Wood's Application, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order. The Board thus approves and adopts the Stipulation and hereby issues a certificate to Yellow Wood in accordance with R.C. Chapter 4906.

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 247} Yellow Wood is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

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

{¶ 249} On November 25, 2020, Yellow Wood filed a preapplication notification letter regarding the proposed Facility.

{¶ 250} On December 17, 2020, pursuant to authority granted by an ALJ Entry issued November 18, 2020, Applicant held a virtual public information meeting to discuss the Facility with interested persons and landowners. On December 10, 2020, Applicant filed with the Board proof of publication regarding the public information meeting.

{¶ 251} On February 24, 2021, as later supplemented on June 17, August 19, September 3, and October 8, 2021, Applicant filed with the Board its Application for a certificate of environmental compatibility and public need to construct, operate, and maintain the proposed Facility.

{¶ 252} On April 29, 2021, Applicant filed proof of service of its accepted, complete Application as required by Ohio Adm.Code 4906-3-07. On May 4, 2021, Applicant filed proof that the application fee was paid.

{¶ 253} On August 17, 2021, the ALJ issued an Entry that established the procedural schedule to be followed in this case. The Entry: (1) established the effective date of the Application to be August 16, 2021; (2) scheduled a local public hearing, in Wilmington, Ohio, for October 20, 2021; (3) scheduled an adjudicatory hearing to commence, in Columbus, Ohio, on November 17, 2021; and (4) directed that notices of intervention and petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09, or by September 30, 2021, whichever is later. On August 24, 2021, Yellow Wood filed attestation that, prior to September 30, 2021, notice of the Application and of the procedural schedule was published and served in accordance with Ohio Adm.Code 4906-3-09(A)(1).

Accordingly, September 30, 2021, became the effective deadline for the filing of notices of intervention or motions to intervene in this matter.

{¶ 254} On October 4, 2021, Staff filed its Staff Report.

{¶ 255} On October 18, 2021, Applicant filed proof of publication of the second public notice of the local and adjudicatory hearings, in compliance with Ohio Adm.Code 4906-3-09(A)(2).

{¶ 256} On October 18, 2021, intervention was granted to OFBF, Clinton County, and Residents.

{¶ 257} On October 20, 2021, the local public hearing was held, as scheduled, at the Clinton County Fairgrounds, Expo Center, 958 West Main Street, Wilmington, Ohio 45177. During the local public hearing, 36 individuals provided testimony.

{¶ 258} On November 2, 2021, the ALJ issued an Entry which directed that the November 17, 2021 adjudicatory hearing should be called and continued, and which extended the filing deadlines established in the August 17, 2021 Entry.

{¶ 259} On August 8, 2022, Applicant filed a stipulation signed by Applicant, Staff, and OBFB.

{¶ 260} On September 19, 2022, Yellow Wood and Residents filed the direct testimonies of their respective witnesses. On September 21, 2022, Staff filed the direct testimonies of its witnesses.

{¶ 261} The adjudicatory hearing was held, as scheduled, on September 26, 2022 and was completed on September 27, 2022. At the adjudicatory hearing, the Stipulation was presented for the Board's consideration. Applicant, Staff, and Residents presented witnesses who offered hearing testimony and/or hearing exhibits.

{¶ 262} On November 18, 2022, Yellow Wood, Staff, Residents, and Clinton County filed initial post-hearing briefs.

{¶ 263} On December 9, 2022, Yellow Wood, Staff, Residents, and Clinton County filed post-hearing reply briefs.

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

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

{¶ 266} The record establishes that the Facility, 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).

{¶ 267} The record establishes that the Facility, 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 Facility will serve the interests of electric system economy and reliability consistent with R.C. 4906.10(A)(4).

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

{¶ 269} The record establishes that the Facility, 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).

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

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

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

{¶ 273} Based on the record, the Board finds that Yellow Wood's Application should be approved, and a certificate should be issued, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the electric generation Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order

XII. ORDER

{¶ 274} It is, therefore,

{¶ 275} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 276} ORDERED, That a certificate be issued to Yellow Wood 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,

{¶ 277} ORDERED, That all required submissions to be provided to Staff shall also be filed on the docket in this case. It is, further,

{¶ 278} 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

JWS/DEF/IMM/dr

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Case No(s). 20-1680-EL-BGN

Summary: Opinion & Order approving and adopting the stipulation and recommendation between Yellow Wood Solar Energy LLC, the Ohio Farm Bureau Federation, and the Board Staff, and directing that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Yellow Wood Solar Energy LLC for the construction, operation, and maintenance of a 300 megawatt solar-powered electric generation facility in Clark and Jefferson Townships in Clinton County, Ohio electronically filed by Debbie S. Ryan on behalf of Ohio Power Siting Board.