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**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of :
Circleville Solar, LLC. for a Certificate of : Case No. 21-1090-EL-BGN
Environmental Compatibility and Public :
Need for a Solar Facility. :
:
:

**INITIAL BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The authority of the Ohio Power Siting Board (“Board” or “OPSB”) is prescribed by Ohio Revised Code (“R.C.”) Chapter 4906. R.C. 4906.10 specifies that 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 eight specified criteria. Staff investigated the application presented by Circleville Solar, LLC (“Applicant”) and recommends that the Board deny the Applicant’s request for a certificate of environmental compatibility and public need, due to its inability to establish one of the eight statutory criteria.

Specifically, Staff recommends the Board find that the Applicant has failed to establish that the facility will serve the public interest, convenience and necessity as required under R.C. 4906.10(A)(6). Staff also recommends the Board find that the joint stipulation and recommendation filed on April 4, 2023, thus, fails two prongs of the

Board’s test for approval of stipulations for the Applicant’s failure to fulfill R.C. 4906.10 (A)(6).

Although not recommended, in the event the Board determines that a certificate should be granted, Staff has proposed conditions for the Board’s consideration in its Staff Report of Investigation (hereinafter “Staff Report”), as modified by Staff testimony.

BACKGROUND

I. Senate Bill 52

The passage of Ohio Senate Bill 52 (hereinafter “S.B. 52”) provides new opportunities for county commissioners and township trustees to participate in the siting of solar projects in their community.¹ The Circleville Solar Facility is partially impacted by the new legislation; it is grandfathered under S.B. 52 except for the ad hoc board member provision.² County commissioners may choose one commissioner, or a designee, to serve as an ad hoc board member.³ In addition, township trustees may choose one trustee, or a designee, to serve as their ad hoc board member representative.⁴ Local government boards must designate ad hoc members within 30 days of notice of application completion.⁵

¹ Staff Report at p. 42.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

The Board of Pickaway County Commissioners appointed Commissioner Jay Wippel, and the boards of trustees of Jackson and Wayne townships appointed Jackson Township Trustee Ian Fausnaugh, as the ad hoc board members for this project.⁶

II. Public Comments

As of the filing date of this report, 40 document records have been filed in the public comments of the case record.⁷ Each document record may include one or more public comments. Public comments include:

- Filed April 19, 2022, a resolution from the Pickaway County Board of Commissioners expressing the County's opposition to the project.
- Filed May 18, 2022, resolutions from the Jackson and Wayne township trustees expressing their opposition to the project.
- Filed April 19, 2022, a memorandum from the Pickaway County Emergency Management Agency Director to the Pickaway County Board of Commissioners sharing concerns regarding the development of solar projects in the county.
- Filed May 24, 2022, a memorandum from the Pickaway County Fire Chiefs Association to the Pickaway County Board of Commissioners expressing their conditional opposition to solar projects in the county.
- Filed June 1, 2022, a letter from the Ohio Environmental Council expressing support for the project and its environmental and economic benefits.
- Letters from local residents and others opposed to and supportive of the project.

Commenters opposed to the proposed project expressed concerns about issues including impacts to agricultural land use, farmland preservation, and agricultural production and livestock; fire hazard; impacts to wildlife; impacts to drinking water;

⁶ *Id.*

⁷ All public comments are available for Board members and the public to view online in the case record at <http://dis.puc.state.oh.us>.

erosion and flooding; runoff and drainage; construction traffic, noise, and dust; operational noise; property values; cultural resources; decommissioning; public health; aesthetics; recreation; and fencing. Those in support emphasized potential benefits to the local economy and Ohio's electric grid.

III. Case History

On June 10, 2022, Staff filed its Staff Report recommending denial of the application for the Applicant's failure to satisfy R.C. 4906.10 (A)(2), (A)(3) and (A)(6). Included in the Staff Report, in the event that the Board approved the application, Staff recommends conditions to be adopted by the Board. On October 28, 2022, the Applicant filed a supplemental geotechnical report. On October 28, 2022, the Applicant also filed a summary of its extensive efforts to investigate subsurface infrastructure related to the oil and gas well operation. Due to the filing of this additional information, Staff updated its Staff Report recommendations via testimony - no longer recommending the Board find that the Applicant did not fulfill the requirements of R.C. 4906.10 (A)(2) and (A)(3).⁸ Staff also updated its Staff Report via testimony to no longer recommend the Board adopt Conditions 8, 10, 37 or 38 of the Staff Report.⁹ Further, given the updated information supplied by the Applicant, Staff recommends that Condition 6 of the Staff Report be modified to read as follows:

Additional geotechnical borings as outlined in the Applicant's October 28, 2022 Additional Geotechnical Studies Report submittal shall be conducted and those results presented with the final geotechnical report. The

⁸ Prefiled Testimony of Jess Stottsberry, pp. 5-6, *See* also Prefiled Testimony of Mark Bellamy at p. 4.

⁹ *Id.* at 4.

additional geotechnical evaluation shall also include pile load testing throughout the project area where pile foundations are proposed.¹⁰

On April 4, 2023, a joint stipulation and recommendation (“Joint Stipulation”) was filed including the Applicant Circleville Solar, LLC (“Circleville Solar” or “Applicant”), the Ohio Farm Bureau Federation (“OFBF”), and Northeast Ohio Public Energy Council (“NOPEC”) (collectively, the “Signatory Parties”) for adoption by the Board. The Joint Stipulation proposes modifications to the following Conditions presented in the Staff Report of Investigation: removal of Condition Nos. 6, 8, 10, 37 and 38; and modification of Condition Nos. 12, 16; 17; 21; and 33.¹¹

On April 10-11, 2023, the evidentiary hearing was held. Reply Briefs were ordered to be filed on June 23, 2023. Staff filed this Reply Brief with the Board on June 23, 2023.

ARGUMENT

I. Standard of Review

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 criteria listed in R.C. 4906.10 (A). The criteria relevant to Staff’s recommendation for denial of the application is found in R.C. 4906.10 (A)(6), which states, “that the facility will serve the public interest, convenience, and necessity.”

¹⁰ *Id.* at 3-4.

¹¹ Supplemental Direct Testimony of Zachary Melda, p.1, line 14-26.

The ultimate issue for the Board’s consideration when presented a stipulation is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has followed its long-standing test comprised of the three following prongs: 1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? 2) Does the settlement, as a package, benefit customers and the public interest? and 3) Does the settlement package violate any important regulatory principle or practice? *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126.

Accordingly, R.C. 4906.10 (A)(6) is determinative as to whether the stipulation meets prongs 2 and 3 of the aforementioned test.

II. Staff’s recommendation that the Project be denied, as stipulated, is completely in keeping with Board precedent.

A. Overwhelming local governmental opposition to a project by the governmental entities whose constituents are impacted by the project can cause the Board to deny a project.

In general, the Board reviews projects for compliance with R.C. 4906.10(A)(6) (which requires the project to serve the public interest) from a “broad lens” approach considering the statewide benefits of a project.¹² “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.”¹³ “As part of the

¹² *In the Matter of the Application of Republic Wind, LLC*, No. 17-2295, Opinion and Order (June 24, 2021) at ¶91.

¹³ *Id.*

Board’s responsibility under R.C. 4906.10(A)(6), the Board balances projected benefits against the magnitude of potential negative impacts on the local community.”¹⁴

In analyzing the benefits against the negative local impacts, if there is unanimous and consistent¹⁵ or majority¹⁶ (hereinafter “overwhelming”) local opposition to a project by the government entities whose constituents are impacted by the Project, the Board has denied the project application for failure to comply with R.C. 4906.10(A)(6). For this same reason, the Board has denied a stipulation for a project for failure to meet the second prong of the stipulation test (which requires the stipulation to benefit the public interest) and the third prong (which requires the stipulation not violate any important regulatory principle or practice).¹⁷ It is axiomatic that the Board decides each matter that comes before it on a case-by-case basis, but there are examples where overwhelming local governmental opposition is decisive of whether or not a project is approved.¹⁸

Board precedent has already established some of the kinds of actions that demonstrate overwhelming opposition by local governmental entities.¹⁹ One way overwhelming opposition can be demonstrated is through the passage of resolutions by an overwhelming amount of the townships and counties that have citizens impacted by a

¹⁴ *Id.*

¹⁵ *In re Birch Solar 1*, No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022) at ¶72.

¹⁶ *In the Matter of the Application of Republic Wind, LLC*, No. 22-2295, Opinion and Order (June 24, 2021) at ¶3. It should be noted the *Republic Wind* involved a facility that was not impacted by House Bill 32.

¹⁷ *In re Birch Solar 1*, No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022) at ¶78.

¹⁸ *Id.*, and also see *In the Matter of the Application of Republic Wind, LLC*, No. 22-2295.

¹⁹ *Id.* at ¶64.

project.²⁰ A second way is through local governmental entities filing notices with the Board opposing a project.²¹

Once overwhelming opposition by local governmental entities is established, it is possible that even substantial project related benefits to the public will be outweighed by the overwhelming governmental opposition.²² The balancing of statewide benefits against negative local impacts is only tilted more in the favor of local governmental opposition for a facility impacted by House Bill 32 (i.e. projects partially grandfathered or not grandfathered at all from the provisions of House Bill 32).²³

B. Staff appropriately applied Board precedent to reach its recommendation for the Board to deny the Stipulation.

Staff's recommendation for denial of the Stipulation is partially based on overwhelming local governmental opposition.²⁴ The only county and townships affected by this project are Pickaway County, Jackson Township, and Wayne Township.²⁵ All three have passed resolutions against the project.²⁶ A memorandum from the Pickaway County Emergency Management Agency Director to the Pickaway County Board of Commissioners was filed with the Commission sharing concerns regarding the

²⁰ *Id.* at ¶65.

²¹ *Id.* at ¶65.

²² *Id.* at ¶53 – In the *Birch Solar 1* matter, substantial benefits to the public such as, increased funding to schools and local governments; the benefits of renewable energy and energy independence; increased investment in the local economy through job creation and lease payments; increasing the state's ability to attract business investments; and protecting the rights of individual landowners were not enough to overcome unanimous and consistent local governmental opposition even for a facility not impacted by House Bill 32.

²³ *Id.* at ¶69, footnote 9.

²⁴ Staff weighed the local governmental opposition against the benefits of the project before reaching its recommendation for denial. So, Staff's review was two-fold, despite the Applicant's assertions that Staff only considered the local governmental opposition.

²⁵ Staff Report at p. 7.

²⁶ Staff Report at p. 42.

development of solar projects in the county.²⁷ Also, a memorandum was docketed with from the Pickaway County Fire Chiefs Association to the Pickaway County Board of Commissioners expressing their conditional opposition to solar projects in the county.²⁸ A letter was docketed from the Ohio Environmental Council expressing support for the project and its environmental and economic benefits.²⁹ Also docketed was letters from local residents and others opposed to and supportive of the project.³⁰ In Staff's opinion, the local governmental opposition is overwhelming.

Staff also reviewed and categorized the various kinds of concerns docketed with the Commission. Specifically, Staff noted some of the concerns of the public including impacts to agricultural land use, farmland preservation, and agricultural production and livestock; fire hazard; impacts to wildlife; impacts to drinking water; erosion and flooding; runoff and drainage; construction traffic, noise, and dust; operational noise; property values; cultural resources; decommissioning; public health; aesthetics; recreation; and fencing.³¹ The Staff also considered the public opposition to the Project at the local public informational meetings.³² So the concerns of the public and governmental entities were legitimate concerns about a variety of potential impacts to the local community.

²⁷ *Id.*
²⁸ *Id.*
²⁹ *Id.*
³⁰ *Id.*
³¹ *Id.*
³² *Id.* at 43.

Staff also considered that those in support of the project emphasized potential benefits to the local economy and Ohio's electric grid.³³

After considering the level of local governmental opposition, verifying that the public opposition had legitimate concerns, and considering the benefits of the project, Staff appropriately weighed the benefits against the overwhelming governmental opposition and concluded that the project should be denied.

Exacerbating things, since Staff reached its recommendation for denial in the Staff Report, the Signatory Parties entered into a stipulation that does not adopted Staff's recommended conditions concerning agricultural productivity and pile load testing³⁴ and adds no local governmental entities as signatory parties. Staff's conditions were recommended to the Board in the event that the Project was approved despite Staff's finding that the Project does not serve the public interest as required by R.C. 4906.10 (A). Thus, Staff's recommendations were meant to address deficiencies in the application related to R.C. 4906.10 beyond 4906.10 (A). Given the continued local governmental opposition and the conditions adopted in the Stipulation, Staff recommendation for denial of the Stipulation remains as resilient, if not more resilient, than its recommendation for denial of the Application.

³³ *Id.*

³⁴ *See* Staff's Initial Brief at p. 8-9 -Staff's main concerns with the Stipulation's conditions is the Stipulation's failure to adopt Staff recommended conditions 6 and 16, as modified by Staff Testimony. Correcting Staff's Initial Brief, the Stipulation does not recommend the removal of Staff condition 24. Further, the Stipulation's modifications to Staff recommended conditions 12,17, 21, and 33 are acceptable.

CONCLUSION

Staff's recommendation for the denial of the Stipulation based on its failure to satisfy R.C. 4906.10(A) is in keeping with Board precedent.

Respectfully Submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, Power Siting Department, was served via electronic mail, upon the following parties of record, this 26th day of June 2023.

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