

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Oak Run)	
Solar Project, LLC for a Certificate of)	Case No. 22-549-EL-BGN
Environmental Compatibility and Public Need)	
to Construct a Solar-Powered Generation Facility.)	
)	
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to Construct a Solar-Powered Generation Facility.)	

**INITIAL POST HEARING BRIEF
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. Procedural History

On June 7, 2022, Oak Run Solar Project, LLC (“Oak Run”) filed a Pre-Application Notification Letter proposing an 800 MW solar electric generating facility with potentially 300MW of battery storage in Madison County, Ohio (the “Project”). On September 2, 2022, Oak Run filed its application (the “Application”) and supporting documents. On May 11, 2023, a Joint Stipulation was filed by the Oak Run, Dr. John Boeckl (“Dr. Boeckl”), the Ohio Farm Bureau Federation (“OFBF”), the Ohio Environmental Council (“OEC”), Ohio Partners for Affordable Energy (“OPAE”), and the International Brotherhood of Electrical Workers Local Union 683 (“IBEW”) (collectively, the “Signatory Parties”).

The Signatory Parties presented the Joint Stipulation with conditions that addressed the concerns expressed in the Staff Report as well as the concerns of the Signatory Parties. The Signatory Parties agreed that the Joint Stipulation is supported by adequate data and information; represented a just and reasonable resolution of issues in this proceeding; violated no regulatory

principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all of the issues in this proceeding.

An evidentiary hearing began May 15, 2023, and concluded on May 17, 2023, with all parties being afforded the opportunity to present witnesses to support their positions.

OPAE respectfully requests that the Ohio Power Siting Board (the “Board”) adopt the Joint Stipulation and issue a certificate of environmental compatibility and public need to Oak Run for this project subject to the conditions set forth in the Joint Stipulation.

II. Legal Standard

A. Statutory Criteria

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 the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (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) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and

programs of the department of transportation under section 4561.341 of the Revised Code.

- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The evidentiary record in this matter supports a Board finding that the criteria under R.C. 4906.10(A) are either satisfied or, in certain cases, not applicable.

B. Stipulation Criteria

Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. See, e.g., *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the stipulation, 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:

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

The evidentiary record in this matter supports a Board finding that this three-prong test has been satisfied.

III. Law and Argument

A. The Board should determine that the Project, with the conditions recommended in the Staff Report and adopted by the Joint Stipulation, satisfies the criteria of R.C. 4906.10(A).

There is ample support in the record of this proceeding for the Board to find that all applicable statutory criteria under R.C. 4906.10(A) have been met. The testimony of Oak Run and Staff in support of approval demonstrate that the Project will have a minimal environmental impact; the Project will serve the interests of electric system economy and reliability; the Project will comply with air pollution, solid and hazardous waste, water pollution, aeronautics, and water consumption statutes; the Project will serve the public interest; the Project will have a minimal impact on the viability of agricultural district land; and the Project will incorporate maximum feasible water conservation practices. The record also includes sufficient evidence for the Board to find that the Joint Stipulation satisfies the Board's three-pronged test in that it (1) is the product of serious bargaining among capable parties; (2) is in the public interest; and (3) does not violate any important regulatory principle or practice.

B. The Project is not an electric transmission line or gas pipeline, and therefore the Board is not required to determine the basis for need pursuant to R.C. 4906.10(A)(1).

The Project is an electric generation facility, not an electric transmission line or gas pipeline. Therefore, this statutory criterion is inapplicable.

C. The Project represents the minimum adverse environmental impact as required by R.C. 4906.10(A)(2) and (A)(3).

Oak Run has considered community and Staff concerns and Oak Run has agreed to install perimeter fence, subject to the Staff's pre-approval, which is both small wildlife permeable and aesthetically fitting for the community. (Joint Exhibit 1 Condition 21.)

The Staff Report found that Oak Run has designed the Project to avoid all streams or wetlands both during and after construction. (Staff Ex. 1 p. 29.) The Staff Report found that Oak Run developed a plan approved by the Ohio Department of Natural Resources ("ODNR") and the United States Fish and Wildlife Service ("USFWS") to determine the presence or absences of various threatened or endangered bats within the project area. (Staff Ex. 1 p. 32.) Staff suggested, and Oak Run agreed, to adhere to season cutting dates to avoid impacts on the little brown bats discovered in the area unless through coordination with USFWS or ODNR another course of action was required. (Id.)

Further, the Oak Run committed to having a Staff-approved environmental specialist on site during construction activities that may impact sensitive areas including wetlands and streams, and the locations of threatened or endangered species. (Joint Ex. 1 Condition 23.) The specialist will have the authority to halt construction to assure unforeseen environmental impacts do not progress and to resolve any unforeseen negative impacts. (Id.)

Oak Run has agreed to plant a minimum of 70% of the project area with beneficial vegetation and to take steps to prevent the establishment or propagation of noxious weeds. (Joint Ex. 1 Conditions 25.)

Oak Run has agreed to limit construction activities to a timeframe consistent with the work hours of the surrounding community, which is a farming community. (Join Ex. 1 Condition 40). There is no evidence any inconvenience from construction activities would be greater than

that caused by the general farming operations occurring in the community. Further, any adverse impacts related to construction noise would be temporary and intermittent and would occur away from most residential buildings. (Staff Ex. 1 p. 24.)

Board Staff reviewed the Project's ecological impacts, residential impacts, cultural resources impacts, impacts to roads and bridges, impacts to agricultural lands, commercial properties, geological impacts, financial impacts, noise impacts, safety impacts, and the aesthetic impacts of the project. (Staff Ex. 1 pp. 13-36.) After this exhaustive review, Staff recommended to the Board that it make a finding of determination as to the nature of the probable environmental impact and that the Project will have a minimum adverse environmental impact, subject to Staff's recommended conditions and should be approved subject to the 46 conditions presented in the Staff Report as modified within the Joint Stipulation. (Staff Ex. 1 p. 34; Staff Ex. 1 p. 36.)

OPAE respectfully requests the Board adopt the Joint Stipulation and Staff's recommendation and find that Oak Run has determined the nature of the probable environmental impact and that the Project, as modified in the Joint Stipulation, represents the minimum adverse environmental impact.

D. The Project is consistent with regional plans for expansion of the electric power grid and will serve the interests of electric system economy and reliability as required by R.C. 4906.10(A)(4).

Staff found that the Project, subject to Staff's proposed conditions, is consistent with the regional plans for expansion of the electric power grid and will serve the interests of electric system economy and reliability. (Staff Ex. 1 p. 40.) No evidence to the contrary was introduced in the proceeding and Oak Run adopted all of Staff's proposed conditions. (Joint Ex. 1.) OPAE

respectfully requests that the Board adopt Staff's findings as they pertain to the requirements of R.C. 4906.10(A)(4).

E. The Project will comply with Chapters 3704, 3734, and 6111 of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code as required by R.C. 4906.10(A)(5).

Staff recommended that the Board find that the Project complies with the requirements of R.C. 4906.10(A)(5) subject to Staff proposed conditions. (Staff Ex. 1 p. 43.) Oak Run adopted all of Staff's proposed conditions. (Joint Ex. 1.) OPAE respectfully requests that the Board adopt the Staff's findings as they pertain to the requirements of R.C. 4906.10(A)(5).

F. The Project will serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

The Ohio Supreme Court has stated that R.C. 4906.10(A)(6) requires the Board to consider the interests of the public under the public interest, convenience, and necessity criterion. *Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 2021-Ohio-3301, ¶ 30 (Sept. 22, 2021) (citing *Power Siting Bd. No. 16-0253-GA-BTX*, Rehearing entry, at ¶ 35 (Feb. 20, 2020)). This Project benefits both the local community and the public in Ohio. For this Project, Staff found that the local government and school revenues which will be used to support local schools and public services are \$8.2 million per year. (Staff Ex. 7 p. 3 lines 17-20). That is millions of dollars benefiting the community without resulting in a substantial increase in residents in the community putting a corresponding strain on the services funded by the Project.

Additionally, the project will generate economic benefits for Ohioans by acting as a price suppressor for statewide energy prices. A basic principle of economics is the greater the supply the lower the price, absent an increase in demand. If this project is not approved, demand in the state will increase, as the end users of this Project's generation will be required to find another

source of generation. This will raise the price of energy in the state for all consumers. Further, the Project will generate 3,033 construction related jobs for the state and 63 long-term operational jobs. (Staff Ex. 1 p. 18.) These jobs will benefit both local and statewide trades alike. The Project has the support of community members, including the IBEW members, residents, economic and conservation groups as well as local school districts because of these economic impacts. The Project represents the ability for members of the community to monetize their land for a period for a new source of production without losing the agricultural character of the land permanently.

The Project, if approved, will include a partnership with The Ohio State University to study agrivoltaics at the Project for the purpose of exploring how to maximize dual-use land practices on site for both solar and agricultural production. (App. Ex. 26 p. 6 lines 19-24; p. 7 lines 5-11.) The Project received a Department of Energy FARMS grant for \$1.8 million to inform and provide data replicate and expand on agrivoltaic practices at the Oak Run location. (Id.) This partnership will strengthen Ohio and the local community by providing an additional 40.6 jobs tied to the agricultural activities conducted at the Project. (App. Ex. 26a Attachment SM-1 p. 27.) The Ohio State University Partnership with the Project will make the Project **the world's largest agrivoltaic campus in the world**. (App. Ex. 26 p. 7 lines 1-3.) Such a campus will bring educational, job, and agricultural benefits to the community but it will continue Ohio's, and particularly Ohio State University's, long and proud tradition of being leaders in the agricultural industry.

Finally, the Oak Run hosted multiple meetings with the local public to seek input. (Staff Ex. 1 p. 46.) Oak Run has addressed some of the concerns raised in these meetings, such as the nature of the perimeter landscaping, in the Joint Stipulation. Oak Run has also agreed to finalize

a copy of a final complaint resolution process and file it at least thirty days before construction starts and provide notice to affected landowners and tenants seven days before construction starts. (Joint Ex. 1 Condition 32.)

The Staff Report recommended that the Board find the Project, subject to the proposed conditions which have been adopted in the Joint Stipulation, will serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6). (Staff Ex. 1 p. 47.) OPAE respectfully requests that the Board adopt the Joint Stipulation and the Staff Report's recommendation and find that the Project satisfies the requirements of R.C. 4906.10(A)(6).

G. Oak Run has a plan to protect and restore the agricultural districts and agricultural land impacted by the Projects as required by R.C. 4906.10(A)(7).

The Project will impact approximately 4,320 acres of agricultural land, none of which are currently enrolled in the Agricultural District program. (Staff Ex. 1 p. 48.) Oak Run has worked with local agencies to identify existing drain tiles in the area and supplied the Board with a Drain Tile Mitigation Plan covering avoidance, repair, and mitigation details of all known tile locations. (Id.) Oak Run has committed to repairing any drain tile found to be damaged by the Project to at a minimum original condition or the modern equivalent. (Join Ex. 1 Condition 22(d).) Oak Run has committed to restoring disturbed areas to their agricultural use upon decommissioning the Project. (Staff Ex. 1 p. 48.) Finally, the partnership discussed above with the Ohio State University will create the world largest agrivoltaic campus dedicated to studying how to maximize the agricultural use of land that is simultaneously producing solar energy.

The Staff Report recommended that the Board find the impact of the Project, subject to the proposed conditions which have been adopted in the Joint Stipulation, 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). (Staff Ex. 1 p. 49.) OPAE respectfully requests that the Board adopt the Joint Stipulation and the Staff Report's recommendation and find that the Project satisfies the requirements of R.C. 4906.10(A)(7).

H. The Project incorporates maximum feasible water conservation practices as required by R.C. 4906.10(A)(8).

The Project is not expected to use significant amounts of water. Water may be used as needed for dust control during construction. (Staff Ex. 1 p. 50.) When in operation, the Project will rely on rainfall to clean panels but in the rare event rainfall is insufficient the Project would target specific arrays for cleaning and not a significant amount of onsite water would be required. (Id.) The Staff Report recommended that the Board find that the Project will incorporate maximum feasible water conservation practices, and therefore complies with the requirements specified in R.C. 4906.10(A)(8). (Joint Ex. 1 p. 50.) OPAE respectfully requests that the Board adopt the Joint Stipulation and the Staff Report's recommendation and find that the Project satisfies the requirements of R.C. 4906.10(A)(8).

I. The Board should determine that the Joint Stipulation meets the three-part test for reasonableness.

In addition to the statutory requirements set forth in R.C. 4906.10, the Joint Stipulation satisfies the Board's three-pronged test as it (1) is the product of serious bargaining among capable parties; (2) is in the public interest; and (3) does not violate any important regulatory principle or practice.

(1) The Joint Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Joint Stipulation is the product of an open process which included all intervenors through their counsel. There were extensive negotiations, and the Joint Stipulation represents a

compromise of the signatory parties' positions. OPAE respectfully requests the Board find that the Joint Stipulation is the product of serious bargaining among capable, knowledgeable parties.

(2) The Joint Stipulation is in the public interest.

The Joint Stipulation is in the public interest. As discussed above, the record reflects that the Project will bring major investment into the community; generate clean renewable energy during peak periods of demand; and will bring jobs to the area and the state. Additionally, the settlement process ensured the adoption of numerous conditions designed to protect the public and the environment. OPAE respectfully requests that the Board find that the Joint Stipulation is in the public interest.

(3) The Joint Stipulation does not violate any important regulatory principle or practice.

Oak Run witness Flannery testified that the Joint Stipulation does not violate any important regulatory principle or practice. (App. Ex. 23A p. 9 lines 16-18.) There is no evidence in the record to the contrary. OPAE respectfully requests that the Board find that the Joint Stipulation does not violate any important regulatory principle or practice.

III. Conclusion

For the foregoing reasons, OPAE respectfully requests that the Board adopt the Joint Stipulation and issue certificate of environmental compatibility to Oak Run for the Project, subject to the conditions in the Joint Stipulation.

[Signature Block on the next page.]

/s/Robert Dove
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CERTIFICATE OF SERVICE

I certify that The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. An electronic courtesy copy will be sent to the parties listed below on this 10th day of July 2023.

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/s/ Robert Dove
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Summary: Text Initial Brief electronically filed by Mr. Robert Dove on behalf of Ohio
Partners for Affordable Energy.