

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application)	
of Yellow Wood Solar Energy LLC,)	
for a Certificate of Environmental)	Case No. 20-1680-EL-BGN
Compatibility and Public Need for)	
The Construction of a Solar-Powered)	
Electric Generation Facility in)	
Clinton County, Ohio)	

**APPLICATION FOR REHEARING OF INTERVENORS BRAD
COCHRAN, BRAD COCHRAN FARMS LLC, JWP FAMILY
FARMS LLC, DIANE RHONEMUS, AND CHARLES THOMPSON**

Jack A. Van Kley (0016961)
Counsel of Record
Van Kley Law, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankley.law

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Intervenors Brad Cochran, Brad Cochran Farms LLC, JWP Family Farms LLC, Diane Rhonemus, and Charles Thompson (collectively, the “Residents”) hereby file their Application for Rehearing pursuant to R.C. 4903.10¹. As their grounds for rehearing, the Residents submit that the Opinion and Order (“Opinion”) of the Ohio Power Siting Board (“Board”) dated June 15, 2023 granting a certificate to Yellow Wood Solar Energy LLC (“Yellow Wood”) is unlawful and unreasonable for the reasons expressed in the following grounds for rehearing.

1. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Finding That The Project Serves The Public Interest, Convenience, Or Necessity Under R.C. 4906.10(A)(6) Despite Overwhelming Public Opposition To The Project.
2. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To Yellow Wood Solar Without Evaluating The Project’s Negative Economic Impacts As Required By OAC 4906-4-06(E)(4) And R.C. 4906.10(A)(6).

¹ This brief uses the following abbreviations for citations to the evidentiary record: (1) “Application” refers to Applicant’s Exhibit 1, the Application submitted by Yellow Wood on February 24, 2021; (2) “Application Narrative” refers to the narrative portion of the Application; (3) “Application Exh.” refers to the exhibits attached to the Application; (4) “Applicant’s Exh.” refers to the Applicant’s exhibits introduced at the hearing; (5) “Tr.” refers to the transcript of the hearing, which is preceded by the name of the witness and followed by the transcript’s volume, page numbers, and line numbers (*e.g.*, “Barnes, Tr. II 115:19-24” refers to Raleigh Barnes’ testimony at lines 19 to 24 on page 115 of transcript volume II); (6) “OAC” refers to the Ohio Administrative Code; (7) “Project Area” refers to the project area for the Project as defined in the Application; (8) “Stipulation” refers to the Joint Stipulation and Recommendation of Yellow Wood Solar, the Staff, and the Ohio Farm Bureau Federation marked as Jt. Exh. 1; and (9) “Conditions” refer to the conditions in the Stipulation.

3. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving The Project Despite Its Incapacitation Of Thousands Of Acres Of Good Farmland For Agricultural Production For 50 Years Instead Of Denying Approval Pursuant To R.C. 4906.10(A)(6).
4. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Failing To Protect The Public's Viewshed With Longer Setbacks And Effective Screening Between The Project And The Community Pursuant to OAC 4906-4-08(D)(4)(f) In Order To Satisfy The Criteria In R.C. 4906.10(A)(3) and (6).
5. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate For The Project Without Receiving The Information Required By OAC 4906-4-08(A)(4)(a) And R.C. 4906.10(A)(2) & (3) Concerning The Project's Potential Impacts On Groundwater Supplies And Without Preventing The Loss Of Water Supplies Pursuant To R.C. 4906.10(A)(3).
6. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate For The Project Despite Its Predicted Unreasonably Loud And Pervasive Construction Noise Uncontrolled By Mitigation Measures Required By OAC 4906-4-08(A)(3)(d) And R.C. 4906.10(A)(2), (3), And (6).
7. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving The Project Despite Yellow Wood Solar's Refusal To Provide Estimates Of The Volume Of Solid Waste And Debris Generated During Construction And Operation As Required By OAC 4906-4-07(D) And R.C. 4906.10(A)(2), (3) and (5).
8. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving A Project That Will Disrupt Traffic And Destroy The Local Public Roads During Construction Without Identifying And Requiring Mitigation Measures To Make The Project Comply With R.C. 4906.10(A)(3) And R.C. 4906.10(A)(6).
9. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving A Project That Will Damage Drainage Tiles And Surface Waterways In Violation Of R.C. 4906.10(A)(3) And R.C. 4906.10(A)(6).
10. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving the Project Without Requiring Yellow Wood Solar To Provide The Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2), (3), (5), And (6) About The Project's Drainage Impacts And Associated Mitigation To Prevent Flooding.
11. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Failing To Require Yellow Wood Solar To Provide The Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2), (3), (5), And (6) About The Project's Pollution Impacts And Associated Mitigation.

12. The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Finding That Yellow Wood Solar Has Provided The Information About The Project's Potential Impacts On Wildlife Required By OAC 4906-4-08(B) And R.C. 4906.10(A)(2), (3), And (6).

The bases for this Application for Rehearing and more detailed descriptions of the Board's errors are set forth in the Memorandum in Support below, which is incorporated in its entirety as part of this Application for Rehearing.

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. Standards For Certification Of Major Utility Facilities

No person may construct a major utility facility without first obtaining a certificate for the facility. R.C. 4906.04. Yellow Wood's Project would be a "major utility facility" as defined by R.C. 4906.01(B)(1)(a), because it is designed to generate in excess of 50 megawatts (MW) of electricity. For OPSB to issue a certificate for a major utility facility, OPSB must hold a hearing on the application. R.C. 4906.07. The Board must render a decision on the record either granting or denying the certificate based on the application as filed, or granting it on such terms, conditions, or modifications as the Board considers appropriate. R.C. 4906.10(A). The Board may not grant a certificate unless it finds and determines, *inter alia*, the following:

- (a) "The nature of the probable environmental impact." R.C. 4906.10(A)(2);
- (b) "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." R.C. 4906.10(A)(3).
- (c) "That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters...." R.C. 4906.10(A)(5).
- (d) "That the facility will serve the public interest, convenience, and necessity." R.C. 4906.10(A)(6).

R.C. 4906.10(A)(3) prohibits OPSB from issuing a certificate unless “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.” Emphasis added. The dictionary meaning of “minimum” is “the least quantity assignable, admissible, or possible.” The Merriam-Webster Dictionary, “Minimum,” <https://www.merriam-webster.com/dictionary/minimum> (last accessed July 10, 2023). That is, R.C. 4906.10(A)(3) prohibits OPSB from issuing a certificate unless the facility poses the least quantity assignable, admissible, or possible adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.

Yellow Wood and the Board’s decision (Opinion, p. 70, ¶ 170) have mischaracterized the Residents’ interpretation of this standard on Page 2 of the Residents’ initial brief. The Opinion states that the Residents interpret R.C. 4906.10(A)(3) to allow only an environmental impact that is “the least quantity assignable, admissible, or possible.” *Id.* Actually, the Residents’ initial brief framed the standard as follows:

That is, R.C. 4906.10(A)(3) prohibits OPSB from issuing a certificate unless the facility poses the least quantity assignable, admissible, or possible adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.

Residents’ Post-Hearing Brief, p. 2. Yellow Wood goes so far as to falsely state in its post-hearing reply brief (at 16) that the Residents have ignored the language underlined in the above-quoted passage, which the passage quoted above specifically proves to be incorrect. Yellow Wood and the Board have misrepresented the Residents’ interpretation by ignoring their reference to the “state of available technology and the nature and economics of the various

alternatives, and other pertinent considerations.” The Board made the same mischaracterization of the citizen intervenors’ position in *Harvey Solar*, an error that the Board perpetuates by citing that decision as precedent. Opinion, p. 70, ¶ 170. Whether R.C. 4906.10(A)(3) requires zero impact or allows some adverse impact depends on how much community damage is the least quantity assignable, admissible, or possible adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations. Although the proper application of this standard could result in zero impact in some situations, the Residents have not actually sought that result in any of their arguments, nor have Yellow Wood or the Board identified any instances in which the Residents have taken that position. Moreover, Yellow Wood’s widespread failures to provide rule-required information leaves the Board and the public in the dark about how much adverse environmental impact can be reasonably prevented. Yellow Wood’s representation that the Residents contend that “minimum means zero or no impact” is false, and the Board should not have been misled by this ploy.² Yellow Wood post-hearing reply brief, p. 18. As explained below, Yellow Wood has not demonstrated that its Project achieves the standard in R.C. 4906.10(A)(3) with respect to the many harms that the Project will cause.

Yellow Wood also has not provided the information required by the Board’s rules that is necessary for the Board to determine the nature of the Project’s probable adverse impact under R.C. 4906.10(A)(2), (5), and (6).

² The Residents’ post-hearing reply brief cautioned the Board that Yellow Wood’s counsel had misled the Board with the same ploy in *Harvey Solar* and warned that they might try the same trick in their reply brief herein, which they did. See footnote 3 on Page 3 of the Residents’ post-hearing reply brief.

II. An Administrative Agency Such As The Ohio Power Siting Board Is Required To Comply With Its Own Rules.

Administrative regulations issued pursuant to statutory authority have the force and effect of law, so an administrative agency such as OPSB is required to follow its own rules. *State ex rel. Cuyahoga Cty. Hosp. v. Ohio Bureau of Workers' Comp.*, 27 Ohio St.3d 25, 27–28, 500 N.E.2d 1370, 1372–73 (1986); *Parfitt v. Columbus Corr. Facility*, 62 Ohio St.2d 434, 436, 437, 406 N.E.2d 528, 530 (1980); *Clark v. Ohio Dep't of Mental Retardation and Developmental Disabilities*, 55 Ohio App.3d 40, 42 (6th Dist. 1988). A citizen is entitled to enforce such an agency's rule against the agency if the citizen is a member of the class which the rule was intended to benefit. *Parfitt*, 62 Ohio St.2d at 436.

R.C. 4906.03(C) requires OPSB to “[a]dopt rules establishing criteria for evaluating the effects on environmental values of proposed and alternative sites.” R.C. 4906.06(A)(6) provides:

(A) An applicant for a certificate shall file with the office of the chairperson of the power siting board an application, in such form as the board prescribes, containing the following information: ... (6) Such other information ... as the board by rule or order may require.

This statutory mandate requires an applicant to submit the information required by OPSB's rules. OPSB has no discretion to allow an applicant to get away with not complying with the rules. OPSB has promulgated OAC Chapter 4906-4 to implement R.C. 4906.03(C) and R.C. 4906.06. Consistent with R.C. 4906.06(A)(6), OAC 4906-2-04(B) requires an application to include the information required by OAC Chapter 4906-4. Notably, OAC 4906-4-01(B) provides that “[t]he board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.” This rule allows OPSB to waive a requirement in that chapter only if a party has filed an application or motion justifying such a waiver.

OAC 4906-3-06(A) requires OPSB's chairperson to determine whether an application is complete and complies with the content requirements of the Board's rules, including OAC Chapter 4906-4, before the application can be processed. OAC 4906-4-01(B) allows an applicant to apply for waivers of rule requirements that are unnecessary to protect the public from a specific project. Yellow Wood has not obtained any waivers of the rule requirements at issue in this Application for Rehearing pursuant to OAC 4906-4-01(B). OPSB cannot allow an applicant to ignore a rule requirement unless the Board follows the procedure in its waiver rule.

Neither R.C. 4906.10(A) nor OAC Chapter 4906-4 allows OPSB to pick and choose which rule requirements it will consider in deciding whether the criteria in R.C. 4906.10(A) are met. Just because an application contains thousands of pages of information on some potential Project impacts does not mean that the applicant or OPSB is allowed to ignore or gloss over other harmful impacts. In this case, the gaps in rule-required information are myriad and substantial.

OAC Chapter 4906-4 is an integral component of the process set up by R.C. 4906.06 and R.C. 4906.07 to provide members of the public with the information they need to provide the Board with informed input on a project that could impact them. The applicant is required to publish public notices notifying the public about the application and where to find a copy of the application for review. R.C. 4906.06(C); OAC 4906-3-06(C)(4) & (5), 4906-3-07, & 4906-3-09. R.C. 4906.07(A) instructs OPSB to schedule the hearing only after receiving a complete application "complying with section 4906.06 of the Revised Code." Thereafter, the Board must conduct a hearing to obtain evidence from the parties and the public, including intervenors. R.C. 4906.07(A). The fairness and accuracy of this process depend on the applicant's provision of rule-compliant information.

An intervenor's right to conduct discovery cannot compensate for an applicant's failure to comply with OAC Chapter 4906-4. Many of the studies required by these rules do not exist until an applicant generates them, so intervenors are unable to obtain this information through discovery. For example, the field surveys for plants and wildlife in the Project Area required by OAC 4906-4-08(B) ordinarily do not exist unless the applicant conducts them. Citizen intervenors have no access to the participating landowners' land, so they cannot conduct these surveys themselves. That is why the rules require the applicants, not the Staff or intervenors, to produce the necessary information. Moreover, it is only fair to require applicants to produce the information necessary to prove that the developments from which they will benefit financially will not harm the public.

In this case, the evidentiary record lacks much of the information required by OAC Chapter 4906-4. The Board may not issue a certificate without this information. The missing information is necessary for the Residents to participate meaningfully in the hearing process. This information is also needed for the Board to make sound decisions under the R.C. 4906.10(A) criteria, namely, whether to approve the Project, and if so, how it should be designed to minimize the Project's impacts on the Residents. OPSB's failures to follow these rules will increase the damage from this Project to the Residents by harming their properties and quality of life. Therefore, the Residents are prejudiced by OPSB's failure to comply with these rules, and they have standing to seek OPSB's compliance with its rules.

The Board's Opinion inaccurately states that the Residents have argued only that the Application lacks the information required by the Board's rules. Opinion, pp. 41-42, ¶ 94. However, the Residents actually pointed out that the entire evidentiary record, not just the

Application, lacks this information. See the last paragraph of the Residents' Post-Hearing Brief, which states:

In this case, the evidentiary record lacks much of the information required by OAC Chapter 4906-4. The Board may not issue a certificate without this information. The missing information is necessary for the Residents to participate meaningfully in the hearing process. This information is also needed for the Board to make sound decisions under the R.C. 4906.10(A) criteria, namely, whether to approve the Project, and if so, how it should be designed to minimize the Project's impacts on the Residents. The Residents would be prejudiced by OPSB's failure to comply with these rules, and they have standing to seek OPSB's compliance with its rules.

Emphasis added. The Residents' post-hearing briefs necessarily discuss the Application at length, because the Application is the most important component of the evidentiary record and contained the only information germane to most topics of interest to the Residents. Nevertheless, the Residents emphasized in its prior briefs and continue to emphasize that the entire record lacks the information required by the Board's rules.

OPSB's Opinion also asserts that a Staff letter of April 23, 2021 found the Application to be complete but the Residents have not "directly challenged" this finding. Opinion, pp. 41-42, ¶ 94. Although this letter in question stated that the Application "has been found to comply with Chapters 4906-01, et seq.," the letter hedged on this conclusion as follows:

This means the Board's staff (Staff) has received sufficient information to begin its review of this application. During the course of its investigation, the Staff may request additional information to ensure Staff can continue to conduct its review of the application, including but not limited to:

- Results of the technical report detailing the findings of cultural resources surveys completed to date and in the Spring of 2021 including implementation of the programmatic agreement between Yellow Wood Solar Energy, LLC and Ohio Historic Preservation Office dated February 8, 2021.

Letter of April 23, 2021. Thus, the Staff did not actually determine that the Application was complete, since they had only just started reviewing it. In fact, the letter reveals that the

Application is not complete, since it requires the belated submission of the cultural resources surveys required by OAC 4906-4-08(D)(1) for mapping cultural and archaeological resources.

Notably, the Residents' counsel filed a motion asking the Board to order the applicant to supplement its application to supply missing rule-required information prior to the evidentiary hearing in *Oak Run Solar*, Case Nos. 22-549-EL-BGN and 22-550-EL-BTX. OPSB denied that motion, ruling:

Next concerning the Townships' motion filed on April 6 requesting that the Board order the Applicant to supplement the Application, we do deny the motion. We find this motion to be premature as parties are not precluded from raising the issues discussed in the motion during the hearing and during party briefs.

See the motion filed in *Oak Run Solar* on April 6, 2023 and the excerpt from the hearing transcript in that case, Vol. I, p. 12, lines 5-11 (copies attached).

The Board's Opinion herein also states:

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.

Opinion, p. 42, ¶ 94. The Residents agree that OPSB must determine whether an energy project complies with the criteria in R.C. 4906.10(A). However, as explained above, the purpose for submitting the information required by the rules is to enable the Board to figure out whether the project complies with the criteria in R.C. 4906.10(A). Moreover, as also explained above, an applicant must supply the rule-required information to enable the informed participation of the public whom the project will impact.

Many of Yellow Wood's rule violations stem from its failure to provide definitive designs and mitigation plans for the various types of damage its Project can cause. Yellow Wood's widespread lack of commitments stem from its failure to include final design plans in

the Application for the public to review and test and for the Board to act on. OPSB's tolerance for this strategy eviscerates the public's right to meaningful input into the Board's decision-making on this Application.

Few, if any, other government entities approve building projects without first reviewing final design plans. This procedure is all the more egregious given that the OPSB process supplants local zoning that most certainly would have required design plans so that the approving authority, with public input, could tell what it is approving. In this case, Yellow Wood's disregard for the Board's rule requirements has produced a Project design that should not have been approved.

III. GROUNDS FOR REHEARING

The contents of Section I and IV of this memorandum are incorporated by reference into all of the grounds for rehearing below. The contents of Section II above are incorporated by reference into Grounds for Rehearing 2, 4, 5, 6, 7, 10, 11, and 12 below.

Ground for Rehearing No. 1:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Finding That The Project Serves The Public Interest, Convenience, Or Necessity Under R.C. 4906.10(A)(6) Despite Overwhelming Public Opposition To The Project.

The OPSB has recognized that its determination of public interest, convenience, and necessity under R.C. 4906.10(A)(6) 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. *In re Application of Republic Wind*, Ohio Power Siting Board Case No. 17-2295-EL-BGN, Opinion and Order, ¶ 91, 2021 WL 2667132, at *1, *18 (June 24, 2021). In that case, the "especially prominent and one-sided" local opposition to the disapproved wind project was an important factor in OPSB's determination that the Republic Wind project did not serve the

public interest, convenience, and necessity under R.C. 4906.10(A)(6). *Id.*, at *18, ¶ 91. OPSB has denied certificates for solar facilities in several other cases on the same basis. See *In re Cepheus Energy Project, LLC*, OPSB Case No. 21-293-EL-BGN, 2023 WL 370719, at *30-*34, ¶¶ 121-131 (Jan. 19, 2023); *In re Kingwood Solar I LLC.*, OPSB Case No. 21-117-EL-BGN, 2022 WL 17850954, at *36-39, ¶¶ 142-152 (Dec. 15, 2022); *In re Birch Solar I, LLC*, OPSB Case No. 20-1605-EL-BGN, 2022 WL 15476256, at *12–15, ¶¶ 68-72 (Oct. 20, 2022). In these cases, the Board has concluded that the “unanimous opposition of every local government representing the area in which the Project is to be located is controlling as to whether the Project is in the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6),” taking into account the vigor and rationale of the local government opposition. *Cepheus*, 2023 WL 370719, at *32, ¶124, citing *Birch* and *Kingwood*.

In this case, the Clinton County Board of Commissioners formally expressed its unanimous opposition to the Project by passing Resolution ## 22-645 and 22-686. Exhibits A and B of Clinton Cty. Exh. 1.³ The Commissioners’ press release accompanying the resolution noted that among their concerns with the Project was the Project’s displacement of more than 2,000 acres of farmland. Since the Commissioners govern Clinton County, they have made firsthand observations of the views of their constituents about the Project.

Recognizing this fact, Yellow Wood conducted what its pollster, Raleigh Barnes of Calvert Street Group, LLC (“Calvert”), characterized as an “opinion poll” of Clinton County residents about their views on the Project. Barnes, Tr. II 115:19-24; Applicant’s Exh. 25, p. 5, lines 18-30. Yellow Wood grossly skewed this “opinion poll” to provide the false conclusion that the county’s residents favor this Project. Prior to conducting this poll, Calvert’s pollsters

³ The documents in Clinton County Exhibits A and B were certified copies of official government records and were admissible as non-hearsay under Evid.R. 803 and as self-authenticating documents under Evid.R. 902.

had done another poll to find out who supported and opposed renewable energy projects. Barnes, Tr. II 119:17 – 121:6. In the follow-up poll, Calvert called 608 households who during the first poll had expressed support for renewable energy and excluded those who had concerns or questions about the Project. Barnes, Tr. II 119:16 to 121:6. From both polls, Calvert excluded Republicans over 40 years old, because this metric tends not to support renewable energy projects. Barnes, Tr. II 117:19 to 119:3, 120:14-15. Only 71 of the 608 households targeted in the second poll responded to Calvert's calls. Barnes, Tr. II 121:11-20. Calvert did not ask those 71 households whether they were familiar with the Project, but just asked whether they supported solar energy farms in Clinton County in general. Barnes, Tr. II 116:8-11; Applicant's Exh. 25, p. 5, lines 19-23. Only 43 of these 71 households indicated that they supported solar projects. Applicant's Exh. 25, p. 5, lines 29-30. Calvert then urged these 43 households to leave voicemails for the Commissioners to express their support for the Yellow Wood Project. After all of Calvert's efforts to prequalify the respondents as supportive, only 14 households indicated they were willing to leave such a voice message for the Commissioners. Applicant's Exh. 25, p. 6, lines 1-2. Mr. Barnes did not know how many, if any, of the 14 households actually left any voice messages for the Commissioners. Barnes, Tr. II 122:6-17. To its credit, OPSB has decided to afford little weight to this poll. Opinion, p. 89, ¶ 226.

This "poll" did nothing to demonstrate any public support for Yellow Wood's Project. Despite Yellow Wood's underhanded attempt to pressure the Commissioners, they still oppose the Project as contrary to their constituents' best interests. The Board should defer to the Commissioners' judgment and deny the certificate pursuant to R.C. 4906.10(A)(6).

Ground for Rehearing No. 2:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate To Yellow Wood Solar Without Evaluating The Project's Negative Economic Impacts As Required By OAC 4906-4-06(E)(4) And R.C. 4906.10(A)(6).

OPSB's decision to issue the certificate relies in large part on its belief that the Project will provide economic benefits for the public. However, the Board has no way of knowing whether the Project will provide a net benefit, or a net detriment, to the economy, because Yellow Wood deceptively omitted to identify or evaluate the Project's economic damage. This misleading strategy violates OAC 4906-4-06(E)(4), which requires applicants to analyze the entire economic impact of their energy projects:

(E) The applicant shall provide information regarding the economic impact of the project.

(4) The applicant shall provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities.

Emphasis added. This rule assigns the responsibility to the applicant, not other parties, to identify and quantify the Project's economic impact on local commercial and industrial activities. Importantly, the rule requires an analysis of the entire "economic impact," not just the positive impact.

In defiance to this requirement, Yellow Wood has produced a "rose-colored glasses" economic impact study that considers the Project's economic benefits, but not its adverse economic impacts. Yellow Wood did not evaluate the economic losses to local businesses and individuals that will result from its project.

The Application touts the Project's economic benefits, but it does not evaluate negative impacts. Application Narrative, pp. 29-30. While the Project will provide construction jobs, that employment is temporary and fleeting. In contrast, during operation the entire Project will

employ only 1.8 new jobs in Clinton County and another 1.8 jobs in the rest of Ohio. Loomis, Tr. II 128:4 – 129:5; Application Exh. F, p. 35. However, the solar project will remove 2,448 acres or 3,250 acres from food production, depending on which part of the Application is to be believed. Yet Yellow Wood has not studied the number of jobs and income that the Project may extinguish by displacing farm income, farm employees, seed and fertilizer sales, and custom applicator fees. Loomis, Tr. II 131:3 – 133:15. In fact, Yellow Wood did nothing to determine whether the Project will harm anyone economically. Loomis, Tr. II 133:16-18. Application Exhibit F represents that indirect and induced jobs also will be created, but these numbers are meaningless due to Yellow Wood's failure to determine the number of indirect and induced jobs that will be lost due to loss of agricultural production.

Seeking to excuse its failure to provide a complete economic analysis, Yellow Wood argued in its post-hearing reply that OPSB should defer to the participating landowners to decide whether the Project provides them with a net economic benefit. If that were the applicable standard, then an applicant would not need to provide an analysis of a project's benefits either, since the participating landowners can determine a project's benefits to them. However, more is at stake than just the participating landowners' narrow self-interest. Removing land from agriculture has economic consequences that reverberate through the economy for the county and the state.

Yellow Wood's consultant, David Loomis of Strategic Economic Research, described this concept in his report submitted in the Application. Application Exh. F, Economic Impact and Land Use Analysis, p. 32. To illustrate this concept, Mr. Loomis explained that a project's purchase of a solar module does not benefit just the seller:

The purchase of a module not only increases demand for manufactured components and raw materials, but also supports labor to build and install a

module. When a module is purchased from a manufacturing facility, the manufacturer uses some of that money to pay employees. _The employees use a portion of their compensation to purchase goods and services within their community. Likewise, when a developer pays workers to install the systems, those workers spend money in the local economy that boosts economic activity and employment in other sectors. The goal of economic impact analysis is to quantify all of those reverberations throughout the local and state economy.

Id. (emphasis added). Mr. Loomis’ report goes on to explain that he analyzed the “indirect impacts” (also known as “supply chain impacts”) and “induced impacts” from Project construction, including benefits to vendors for the Project and income for local suppliers of goods and services to solar employees. *Id.*, p. 34. He concluded that, although Project operation would produce only 3.6 jobs in the state, the indirect and induced impacts of Project operation would produce 34.1 new jobs in the state. *Id.*, p. 35.

This principle applies equally to agricultural production. The economic benefits of agricultural production are not limited to just a farmer’s income from selling the crops. To grow crops, a farmer must purchase machinery, seed, fertilizer, pesticides, and other products. The landowner may pay employees to farm the land, contract with vendors to apply fertilizer or pesticides, and/or rent the land to a farmer who grows the crops. Truckers and railroads are paid to transport the crops to market. Crops sold to customers spawn a host of additional industries, and their employees, that create food products. Yellow Wood’s post-hearing reply brief (at Page 43) notes that one-third of Ohio’s corn crop is used to produce ethanol, which provides fuel for vehicles. Yellow Wood’s Project will wipe out these direct and induced economic benefits from farm production on thousands of acres. Yet Yellow Wood has not evaluated or quantified the direct, indirect, or induced losses from destroying this agricultural production. Loomis, Tr. II 131:3 – 133:15. In fact, Yellow Wood did nothing to determine whether the Project will harm

anyone economically. Loomis, Tr. II 133:16-18. Instead, Yellow Wood seeks to conceal this economic carnage in order to make its Project look beneficial.

Yellow Wood also argued that its economic analysis showed the “net economic impact on the local community will be overwhelmingly positive.” Yellow Wood post-hearing reply brief, p. 45. Of course, any study that examines only a project’s positive economic impacts will conclude that the impacts are positive. And, while Yellow Wood contends that not every negative economic impact need be considered, the company has not evaluated any potential negative impacts.

The Board’s response to Yellow Wood’s failure to analyze the Project’s negative economic impacts is to flip that burden to the Residents. Opinion, p. 88, ¶ 224. The Opinion ignores Yellow Wood’s responsibility to perform this analysis, stating that the Residents presented no testimony to “quantify the alleged monetary loss” from suspending agriculture in the Project Area and “[n]othing presented by Residents suggests that any negative impacts would outweigh the significant economic benefits in the record.” *Id.* However, OAC 4906-4-06(E) provides that “[t]he applicant shall provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities,” not the Residents. Emphasis added. Placing this burden of proof on the applicant makes good sense, because the applicant is in a better position to obtain this information than anyone else. Yellow Wood could have obtained information from its participating landowners about their agricultural income and expenses, including their payments for goods and services, and then modeled that data to quantify the indirect and induced benefits. The Board’s decision to impose this duty on the Residents is impractical and contrary to its own rule.

The Opinion also states:

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.

As this language indicates, Yellow Wood has provided some information about the economic benefits of its Project. However, without analyzing the economic damage from the loss of agricultural production, Yellow Wood has presented an incomplete picture of the Project's economic impact. For example, how many direct, indirect, and induced jobs will be lost by removing this land from farm production? How many dollars of economic output will be lost? How much will be lost in taxes paid to local and state governments throughout the state due to the loss of income from direct, indirect, and induced activities no longer supported by the idled agricultural production? These economic losses do not, contrary to OPSB's statement, result just from the "mere removal of acreage from farm production." As explained above, the losses of indirect and induced economic benefits likely far exceed the loss of direct benefits to the participating landowners. Without identifying the economic losses from energy projects, every project will look economically beneficial and there would be no purpose for OAC 4906-4-06(E). By sanctioning a one-sided economic analysis, the Opinion makes a mockery out of its procedure in OAC 4906-4-06(E) for calculating a project's economic impact.

The Opinion also states that the "Residents have not cited any previous applications which were denied on this basis or raised any original argument on this point." Opinion, p. 88, ¶ 224. The meaning of the latter point is unclear. With respect to the former point, OPSB has not denied any projects for their negative economic impacts because the Board never requires applicants to evaluate the negative impacts. This is a systemic failure to enforce OAC 4906-4-06(E).

The Opinion also asserts that the participating landowners are not required to continue their farming activities if the Project is denied. However, Yellow Wood has the responsibility to find out whether the land would likely stay agricultural in the Project's absence or whether the participating landowners would use the land for another purpose, since an applicant must calculate the losses from displacing the planned use with solar facilities. To find out what use is planned, Yellow Wood could have simply asked the participating landowners for this information. In the absence of that information, there is no reason to believe that agriculture would be discontinued in the Project Area if the Project does not proceed.

A one-sided economic analysis does not comply with the mandate in OAC 4906-4-06(E)(4) to "provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities." Nor can the Board find that the Project "will serve the public interest, convenience, and necessity" as required by R.C. 4906.10(A)(6) without examining the Project's negative economic impacts. The Board should not have issued the certificate due to Yellow Wood's failure to conduct a complete economic analysis as required by R.C. 4906.10(A)(6) and OAC 4906-4-06(E)(4).

Ground for Rehearing No. 3:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving The Project Despite Its Incapacitation Of Thousands Of Acres Of Good Farmland For Agricultural Production For 50 Years Instead Of Denying Approval Pursuant To R.C. 4906.10(A)(6).

The Project will be located on 3,850.6 acres of leased land, most of which is cultivated land. Application Narrative, pp. 2, 5; Applicant's Exh. 4, Third Suppl. to Application, Attachment 1, Table 1. The Application provides inconsistent totals of how much agricultural land will be converted to industrial use, with Exhibit F stating that 3,250 agricultural acres will be lost, while Table 7 on Page 66 of the Application's Narrative lists the loss of 2,448 acres of

cropland and pasture. Either way, the loss of farmland will be substantial and damaging to agricultural production.

The Project Area contains about 1,400 acres of agricultural district land, with about 770 acres being replaced by industrial solar facilities. Application Narrative, p. 95. An agricultural district is farmland that has been set aside exclusively for agricultural purposes, in exchange for tax benefits and other protections to encourage farmland preservation. R.C. Chapter 929. Yellow Wood's plan to destroy this land's agricultural use for 50 years is contrary to the legislative policy embodied in this law.

Clinton County is already experiencing an alarming loss of farmland. In just 15 years, the number of farms in Clinton County has decreased by 64 farms from 811 farms in 2002 to 747 farms in 2017, a loss of 9%. Application Exh. F, p. 17; Loomis, Tr. II 127:2 – 128:24. In just 15 years, the amount of agricultural acreage has decreased by 26,036 acres from 238,805 acres in 2002 to 212,769 acres in 2017, a loss of 10.9%. Application Exh. F, pp. 17-19; Loomis, Tr. II 127:2 – 128:24. Yellow Wood's planned conversion of 3,250 additional acres from agriculture to solar facilities will reduce the existing farm land by 1.5%, all by itself. Application Exh. F, p. 19.⁴

Yellow Wood, improperly relying on an internet article not in the record, contends that the farmland acreage displaced by this Project is small compared to the total farmland acreage in the entire state of Ohio. Yellow Wood post-hearing brief, p. 43. This age-old tactic, employed over many decades by land developers seeking to excuse their destruction of farmland, tries to disguise the reality that every development project of every size is incrementally contributing to

⁴ Exhibit F states that 3,250 agricultural acres will be lost, while Table 7 on Page 66 of the Application's Narrative lists the loss of 2,448 acres of cropland and pasture. Even with the latter acreage, Yellow Wood's Project would destroy another 1% of the county's farmland.

a massive cumulative total of lost farmland. In Yellow Wood's case, the conversion of 3,250 acres over 50 years would be a large increment in the overall loss of farmland.

Yellow Wood's Application attempts to disguise the adverse impacts of this farmland conversion by contending that the total of farmland in the entire country "has remained steady." Application Exh. F, p. 20. In the same paragraph, however, Yellow Wood admits that the country's farmland has decreased from 257.4 million acres in 2012 to 249.8 million acres in 2017. *Id.* This amounts to a loss of 7,600,000 acres of farmland, a reduction of 3% of the nation's agricultural land in just five years. Yellow Wood points out that the world's agricultural acreage has increased by 1.3% from 1961 to 2015, but it is hardly reassuring to climate control enthusiasts to learn that the conversion of rain forests and other natural resources into farm fields is occurring in other parts of the world.

Yellow Wood seeks to defuse the negative impacts of industrial solar development on agriculture in Ohio by stating that the OPSB-approved solar projects listed in Table 1 of Application Exhibit F will displace a small percentage of Ohio's farmland. Application Exh. F, pp. 6, 22. However, Table 1 is a grossly outdated list of seven approved solar projects, which pales in comparison to the combined total of projects approved in the interim and pending for approval.

Even if the owners of the Project Area wish to return to farming after facility decommissioning, the site may no longer be suitable for that purpose. Site grading for the Project may require excavation, soil redistribution, and soil compaction to achieve desired grades and elevations. Application Narrative, p. 16. The Application indicates that fertile topsoil will be "displaced due to grading and excavation." Application Narrative, p. 97. This topsoil will be moved to fill lower grades in the Project or even moved to other farms. Application Narrative, p.

97. The soil with the highest organic content, that is, the most fertile soil, may be moved from solar equipment areas to the landscaped areas. Applicant's Exh. 6, p. 9, Answer 29. Although Yellow Wood states that it will restore the land to its current state through decommissioning, its expectation that the Project Area will return to its current fertility appears naïve given how it plans to mess up the soil. At any rate, while Yellow Wood contends that the Project's land will be available for agricultural use after the Project's useful life has expired, this life is expected to be 50 years. Hreha, Tr. I 20:8-10. Five decades is an extremely long time to deprive society of agricultural production on thousands of acres. OPSB should not have approved such a large waste of good farmland, and the Residents request that the Board reconsider its decision to do so.

Ground for Rehearing No. 4:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Failing To Protect The Public's Viewshed With Longer Setbacks And Effective Screening Between The Project And The Community Pursuant to OAC 4906-4-08(D)(4)(f) In Order To Satisfy The Criteria In R.C. 4906.10(A)(3) and (6).

R.C. 4906.13(B) preempts the application of local zoning to utilities subject to OPSB authority. As a substitute for local zoning, R.C. 4906.10 entrusts the OPSB with the authority and responsibility to require regulated utilities to responsibly site and design their facilities.

To implement this mandate, the Board should not accept the unreasonably narrow setbacks between Yellow Wood's industrial facility and its neighbors' land and homes requested by Yellow Wood. The original Application provides for setbacks of 100 feet from property lines, 300 feet from residences, and 100 feet from road rights-of-way. Application Narrative, pp. 24, 78. Yellow Wood's Response to the Staff's Sixth Data Request slightly expanded the proposed setbacks from property lines and public roads by 50 feet. Applicant's Exh. 18, Hreha Direct Testimony, p. 6, lines 24-31; Applicant's Exh. 12, Response to the Staff's Sixth Data Request, p. 1.

For perspective, the 300-foot setback from nonparticipating neighbors' houses is equivalent to the length of a football field. The 150-foot setbacks are equivalent to half of that length. Installing high solar fences and imposing 15-foot solar panels that are more than twice the height of a human adult so close to the neighbors' residential properties and public roads will expose nearby residents and motorists to the unavoidable and unsightly views of the solar equipment and reduce their pleasure of living there.

Although the Board's Opinion represents that the setbacks are large enough given Yellow Wood's plans for vegetative screening (Opinion, p. 71, ¶ 172), Yellow Wood has provided scant detail about the screens. Application Exhs. M and N. The Application's descriptions of its screening modules states that Module 1 will have native grasses, Module 2 will have small to medium shrubs, and Module 3 will have large trees and shrubs. Application Exh. N, p. 2-3. These unhelpful descriptions provide no detail about the spacing between the plants or their growth rates. Yellow Wood's vegetation plan provides additional descriptions of the modules, but it still lacks commitments as to which plant species will be planted at which locations. Application Exh. M. The scarce vegetation depicted in Yellow Wood's visual simulations of its screens demonstrates that Yellow Wood has no intent to provide any meaningful blockage of the public's views of its ugly facilities. *Id.*, p. 7-1; Application Exh. N, pp. 3-10, 3-12, 3-14, 3-16.

Yellow Wood promises to provide additional detail in a landscape plan to be submitted to the Staff after certification pursuant to Condition 17. However, this plan should have been included in the Application to provide the neighbors with meaningful input into the plan's contents during the adjudicatory process. This is required by OAC 4906-4-08(D)(4)(f), which directs an applicant to do the following:

Describe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location,

lighting, turbine layout, visual screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.

Emphasis added. This provision requires the applicant to describe the measures such as visual screening that will be taken to minimize a project's adverse visual impacts, not what measures might be taken. This provision is a vital component in ensuring that the Project poses the least quantity assignable, admissible, or possible adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3). In a strategy calculated to avoid public review of its final landscape plan, Yellow Wood is trying to evade its duty to provide a complete landscape plan during the adjudicatory process.

Leaving the actual screening details to be decided after certification under Condition 17 entrusts this plan to the unfettered discretion of Yellow Wood and the Staff after certification. This strategy does not satisfy Yellow Wood's duty to demonstrate prior to certification that the Project will comply with the R.C. 4906.10(A) criteria. At this point, the effectiveness of vegetation screening to conceal solar equipment at such close distances has not been determined. Since the Project's expected life is 50 years (Hreha, Tr. I 20:8-10), neighboring residents will be stuck with these views with long lasting damage to the community. In this regard, the Residents recognize that the presence of every industrial scale solar project will cause some harm to the public, and the Residents do not presume that this Project can be designed with zero impact to the public's viewshed. However, Yellow Wood's short setbacks will unnecessarily augment the Project's damage by exposing nearby residents to close and unavoidable views of these unsightly facilities. In addition, Yellow Wood has missed its opportunity to demonstrate that its vegetative screening will satisfactorily reduce the impacts of those awful views, because its failure to produce a final vegetative screening plan has deprived the Board and the Residents of the

information necessary to figure that out. Consequently, the Board should have denied the certificate for the failure to comply with the requirement in R.C. 4906.10(A)(3) to demonstrate that the Project represents the minimum environmental adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

Ground for Rehearing No. 5:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate For The Project Without Receiving The Information Required By OAC 4906-4-08(A)(4)(a) And R.C. 4906.10(A)(2) & (3) Concerning The Project's Potential Impacts On Groundwater Supplies And Without Preventing The Loss Of Water Supplies Pursuant To R.C. 4906.10(A)(3).

OAC 4906-4-08(A)(4)(a) provides:

- (4) Water impacts. The applicant shall provide information regarding water impacts
 - (a) Provide an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility.

This rule requires Yellow Wood to conduct a groundwater impact study prior to certification in order to identify threats to the community's water supplies. However, no such study was performed, and no hydrogeologists testified for Yellow Wood at the hearing. Hreha, Tr. I 27:16-18; Singh, Tr. I 62:2-8.

Yellow Wood denies that its Project will affect nearby private wells, but admits that Project construction could "result in certain localized impacts to groundwater." Application Narrative, p. 38. Yet Yellow Wood provided no analysis of those impacts or any mitigation for them, thus violating OAC 4906-4-08(A)(4)(a). However, the record contains evidence indicating that Yellow Wood's plans could threaten nearby water supplies. As described below, the use of

grout or other impermeable substances to fill karst voids under solar racking could interrupt groundwater flow to shallow wells used by nearby landowners.

The first indication of this potential threat lies in the shallowness of the area's groundwater, whose underground flow could be interrupted by the Project's subsurface construction. Yellow Wood found that the static water levels of the wells inside the Project Area range from 12 to 30 feet below surface. Applicant's Exh. 6, p. 9, Answer 30. However, Yellow Wood failed to identify the depths of the wells used by nonparticipating neighbors. This is critical information for determining whether Project construction will interrupt the flow of groundwater between the Project Area and the neighbors' wells.

While a typical post for solar racks typically is driven down to six feet below grade, the racking posts (piles) for this Project may be installed 5.5 to 9.9.5 feet below grade or 10 to 15 feet below grade due to the area's loose soils and freeze thaw, depending on which of the conflicting statements in the Application are to be believed. Application Narrative, pp. 6, 55; Singh, Tr. I 56:8 – 58:12. The Application represents that impacts to water supplies are not anticipated at these depths. Application Narrative, p. 55. However, the Application also admits that the depth of the groundwater found in Yellow Wood's soil borings was as shallow as five feet. Application Narrative, pp. 57, 58; Singh, Tr. I 54:12-24; Applicant's Exh. 28A, Singh Suppl. Direct Testimony, Attachment RS-1, p. 6. At times, the groundwater levels in the Project Area can be even more shallow, approaching the surface. *Id.*, p. 12; Application Narrative, p. 58; Application Exh. L, p. 9. "[G]roundwater is expected to be encountered in excavations" during construction, and dewatering will be necessary during construction. Application Narrative, p. 58.

In evaluating the risk that Project construction could block groundwater flow to neighboring wells, it is important to know the proximity between the wells and the subsurface Project equipment. Nevertheless, Yellow Wood did not figure out where or how close the nonparticipating wells are located relative to the Project. Yellow Wood identified only the distances between the Project and the wells inside the Project Area, and not the wells of nearby nonparticipating landowners. Hreha, Tr. I 28:13 – 30:5. Yellow Wood’s Third Supplement to the Application provides a table of distances between solar farm equipment and the wells inside the Project Area, but inexplicably neglects to identify the distances from off-site wells. Applicant’s Exh. 4, Attachment 1, Table 3. This table shows that the nearest well inside the Project Area is only 230 feet from solar equipment. *Id.* Given the proximity of solar equipment to that well, Mr. Hreha’s statement that solar equipment would be farther from off-site wells than on-site wells provides no assurance that the on-site disruption of groundwater flow will not interrupt the groundwater flow to off-site wells. Hreha, Tr. I 37:21 – 38:15.

Moreover, Yellow Wood provided no data to demonstrate the accuracy of Mr. Hreha’s statement that off-site wells are farther from solar equipment. There is no evidence that Yellow Wood even tried to find out where the off-site wells are located. In fact, Terracon’s Geotechnical Engineering Report in the Application does not address the issue, nor does the supplemental report attached to Mr. Singh’s direct testimony. Application Exh. L; Applicant’s Exh. 28A, Singh Suppl. Direct Testimony, Attachment RS-1. Moreover, the Application provides for setbacks of only 100 feet from property lines and 300 feet from residences, so the off-site wells could be as close as 100 to 300 feet from solar equipment. Application Narrative, pp. 24, 78.

The Board's Opinion unlawfully shifts the burden of producing this information on the Residents, even though OAC 4906-4-08(A)(4)(a) entrusts Yellow Wood with this responsibility. Opinion, pp. 71-72, ¶ 173. Contrary to the Board's position, Yellow Wood did not sustain its burden for providing "an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility" as required by OAC 4906-4-08(A)(4)(a) when it had not even adduced the basic data necessary to identify the locations and depths of nearby wells. Neighboring residents do not increase the burden of proof for an applicant by insisting that the applicant do no more and no less than what the rules require. The precedent set by this ill-advised Board ruling would allow every applicant to ignore rule requirements for collecting information just because some other stakeholder has the information.

Mapping prepared by the Ohio Department of Natural Resources depicts the Project Area as a karst area with carbonate rocks at or near the land surface. Applicant's Exh. 28A, Singh Suppl. Direct Testimony, Attachment RS-1, Karst Survey and Assessment Report, p. 1.⁵ Karst contains surface depressions, voids, sinkholes, caves, sinking and losing underground streams, and subsurface drainage that may develop from the dissolution and erosion of carbonate rocks. *Id.* Yellow Wood's field study found these features in the Project Area. *Id.* Terracon warned that construction activities increase sinkhole development concerns due to the removal of ground cover during grading, modifications to existing drainage paths, and other factors during construction. *Id.*, Design level Geotechnical Engineering Report, p. 13.⁶

Terracon set out a numeric ranking system of 0 for "very low risk," 1-2 for "low risk," 3-4 for "moderate risk," 5-6 for "high risk," and 7-9 for "very high risk" to quantify the relative

⁵ The Karst Survey and Assessment Report starts on pdf page 160 of Part Two of Singh Suppl. Testimony, Applicant's Exh. 28A.

⁶ This report starts on pdf page 6 of Part One of Singh Suppl. Testimony, Applicant's Exh. 28A.

danger from installing solar facilities on karst features. *Id.*, Karst Survey and Assessment Report, p. 11. These risk factors are based on what karst characteristics are present, such as an open hole into the subsurface, drainage into the hole, and the presence of vegetation. *Id.*, pp. 9-11. Mr. Singh testified that “very low risk” karst areas could safely host solar facilities, but that no construction should be allowed within 150 feet of “low risk” karst features (and presumably also the higher risk karst features). Singh, Tr. I 69:25 – 71:2.

Yellow Wood’s response to the Staff’s Second Data Request stated that the company “will likely employ a remediation measure known as a ‘reverse filter’” to fill any karst openings in the ground when installing the foundations of solar structures. Applicant’s Exh. 7, p. 1. The response defines a “reverse filter” as aggregate that would allow water to pass through rather than changing hydrogeological conditions. Applicant’s Exh. 7, pp. 1-2. However, Mr. Singh contradicted this representation at the hearing, testifying that the aggregate in the filter would not allow the passage of water. Singh, Tr. I 62:9 – 64:1; 67:16 – 68:8. Consequently, the use of a reverse filter does not preserve the capacity of a karst opening to transmit groundwater to nearby wells, so only the prohibition of construction on karst will accomplish that purpose.

Nevertheless, the Application allows Yellow Wood to use a reverse filter to plug karst openings. In addition, the Application does not prohibit the use of grout to plug karst openings. Stottsberry, Tr. I 94:15-20. Grout can impede the hydrological flow of groundwater and could impair groundwater flow to water supply wells. *Id.*, 94:21 – 95:11. The Board’s Opinion does nothing to prevent this from occurring, choosing to ignore the threat. Opinion, p. 71, ¶ 173.

Mr. Hreha testified that Yellow Wood would not site solar equipment on karst and that a Terracon report in the Application committed Yellow Wood to avoiding karst, but a review of Terracon’s reports reveals no such commitment. Hreha, Tr. I 31:23 – 32:20; 38, lines 16-25;

40:25 -42:8. Mr. Hreha first testified that a Terracon report made such a commitment, but then admitted under cross-examination that neither a Terracon report nor anything else in the Application made any such commitment. Hreha, Tr. I 31:23 – 32:20; 38, lines 16-25; 40:25 - 42:8. As explained above, Terracon’s Karst Survey and Assessment Report expresses this goal as a recommendation, and not as a commitment. Mr. Hreha testified that a witness, presumably Rohit Singh, promised to follow Terracon’s recommendation to keep solar equipment off of karst, and that Yellow Wood would follow that recommendation. Hreha, Tr. I 41:18 – 42:3. Indeed, Mr. Singh recommended in his testimony that no construction be conducted on karst areas, except for “very low risk” areas. Singh, Tr. I 61:3-13; 66:25 – 67:5, 69:25 -71:2. If OPSB issues a certificate, the Board should hold Yellow Wood to its promise by adding to the certificate a prohibition against siting solar equipment on karst formations unless they are of “very low risk” as classified in Terracon’s Karst Survey and Assessment Report.

Despite the recommendation of Yellow Wood’s own consultant, the Board’s Opinion fails to incorporate this necessary precaution into the certificate. Instead, the Board relies on the statement in Condition 9 that construction will be avoided on karst “when possible,” whatever that means. Opinion, p. 71, ¶ 173; Stipulation, p. 4. This language simply gives Yellow Wood the opportunity to argue that it cannot avoid karst in any situation it chooses. The Board should delete from this condition the words “when possible” and the next two sentences.

Without the information required by OAC 4906-4-08(A)(4)(a), the Project does not comply with R.C. 4906.10(A)(3) or (6). Nor does the Project comply with these criteria as long as Yellow Wood is authorized to place solar equipment on karst. The Board should reconsider its decision to issue a certificate for this Project and should deny the Application.

Ground for Rehearing No. 6:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Issuing A Certificate For The Project Despite Its Predicted Unreasonably Loud And Pervasive Construction Noise Uncontrolled By Mitigation Measures Required By OAC 4906-4-08(A)(3)(d) And R.C. 4906.10(A)(2), (3), And (6).

The Application reveals that construction noise will be common and loud, including the following:

operation of heavy earthmoving equipment such as bulldozers, trenchers, and graders;

irregular engine revs;

back-up alarms;

gravel dumping;

clanking metal tracks of equipment;

crane operation;

pile driving;

rock breaking or hammering;

horizontal directional drilling;

6200 deliveries by tractor trailers; and

deliveries and unloading of 400 truckloads of concrete.

Application Narrative, pp. 14, 48, 49,

Yellow Wood attempts to conceal the misery the nearby residents will experience.

Yellow Wood announces that truck traffic noises will “occur infrequently and over a short duration at each location,” and that they will be “negligible in magnitude” compared to existing traffic noise. Application Narrative, p. 52. These statements ignore the Application’s estimates of almost 7,000 truck deliveries during construction (400 concrete deliveries, 364 box truck

deliveries, and 6,200 equipment deliveries by tractor trailers). Application Narrative, p. 14.

While Yellow Wood may argue that these deliveries will supply a large Project Area, most of them will bring the materials to just five acres of laydown areas over and over on the same roads. Application Exh. S, p. 6-2, Table 6-1 (showing that the laydown areas will occupy up to five acres). In fact, the Application reveals that all component delivery is expected to occur via Lynchburg Road through the main portion of the Project Area. Application Narrative, p. 52.

This means that much of this noise will be concentrated in these areas.

Continuing with its deception, the Application represents that “the maximum potential sound impact at any single residence might be analogous from a few days to a few weeks of repair or repaving work occurring on a nearby road or to the sound of machinery operating on a nearby farm.” Application Narrative, p. 48. Incredibly, the narrative even states that “construction activity at the site ... will produce sounds that are already familiar to the community, including sounds from farming activity, and home and other mid-size building construction,” so the noise’s impact “is not expected to be significant.” Application Narrative, p. 50. The narrative represents that the sharp noises of pile driving and rock breaking “should not pose undue quality of life concerns for residents” just because they will not last forever. Application Narrative, p. 51.

Yellow Wood’s acoustic consultant, Michael Hankard, doubled down on these deceptive statements, stating that almost all of the Project’s construction activities are no different than contractors work on a house, sewer pipe installation, or farm equipment operation. Hankard, Tr. II 109:5-24. However, the community around the Project Area has few of these activities. In fact, Mr. Hankard noticed little construction on the day he drove all around and through the

Project Area, with only road re-graveling and a tractor tilling soil occurring. Hankard, Tr. II 110:22 – 112:4.

Moreover, Mr. Hankard admitted that pile driving is not similar to any existing sounds in the community, since pile driving “is not perhaps something that everybody has experienced.” Hankard, Tr. II 109:25 – 110:2. Pile driving is among the most long lasting and prominent activities during solar facility construction. Mr. Hankard could not say how long the noisy construction activities will last during the 18-month construction period. Hankard, Tr. II 110:4-21. However, Yellow Wood estimates that the Project may contain as many as 740,000 solar modules, so the pilings will be numerous and will take a long time to install. Application Narrative, p. 3. Thus, pile driving is obnoxious and bothersome, and this noise will be heard for a long time.

Mr. Hankard’s direct testimony revealed that the combined noise level from all construction equipment during pile driving will be as high as 93 decibels at the Project boundary. Applicant’s Exh. 27, Answer 9, 5th page, lines 2-4; Applicant’s Exh. 6, Attachment 5, Appx. B, p. B2. Worst case noise levels at the Project boundary will be between 80 dBA and 93 dBA for the entire construction period. *Id.* Construction noise levels will be as high as 81-82 dBA at nonparticipating residences. *Id.*, p. B4, B5, B6, B7 (see R-080, R-136, R-137, R-154, R-182, R-185, R-190). These loud noise levels are in stark contrast to the average daytime Leq sound levels in the Project Area of 42 dBA. Applicant’s Exh. 6, Attachment 5, p. 10, Table 4-3. Yellow Wood’s pretense that construction noise will not be painful for the community is not credible. Thus, the Application’s statement that “construction activity at the site ... will produce sounds that are already familiar to the community” is false. Application Narrative, p. 50. Consequently, the Project does not comply with R.C. 4906.10(A)(3) or R.C. 4906.10(A)(6).

Yellow Wood promises to follow several practices that it says will alleviate any concerns regarding sound at the Project site, which are to use broadband backup alarms, maintain equipment such as mufflers, maintain communications with neighbors (i.e., warn them when loud noises are imminent), and restrict construction activity to daylight hours. Application Narrative, p. 48; Applicant's Exh. 6, Attachment 5, p. 18. These token actions will do little to reduce the annoyance to the community. No mitigation is planned for reducing the decibel levels for pile driving, which will be the most aggravating noise in the Project.

Condition 28 allows "general construction" activities to occur between 7:00 a.m. and 7 p.m. or until dusk when sunset occurs after 7:00 p.m. Stipulation, p. 9. Impact pile driving is allowed between 9:00 a.m. and 6:00 p.m. *Id.* OPSB can take judicial notice of the fact that dusk in southern Ohio occurs as late as 9:30 p.m. during the summer. See <https://www.gaisma.com/en/location/chillicothe-ohio.html>. The "general construction" activities allowed by Condition 28 during those long hours include the operation of such heavy equipment as bulldozers, dump trucks, excavators, cranes, backhoes, and graders. Applicant's Exh. 6, Attachment 5, p. 16. Thus, the certificate allows Project construction to destroy the neighbors' quality of life for up to 12 to 14.5 hours per day during summertime. Condition 28 would allow impact pile driving between 9 a.m. and 6 p.m. without noise level restrictions. Condition 28 would even allow Oak Run Solar to conduct these intrusive construction activities during weekends and holidays. Enabling loud noise lasting up to 12 to 14.5 hours for seven days per week is not a noise mitigation measure. In reality, the Application's promises and Condition 28 would give nearby residents little relief from this noise.

OAC 4906-4-08(A)(3)(d) requires Oak Run Solar to "[d]escribe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during

construction and operation, including limits on the time of day at which construction activities may occur.” OPSB should not approve the Project under R.C. 4906.10(A)(2), (3), and (6) without requiring meaningful mitigation to address these construction noise impacts as required by OAC 4906-4-08(A)(3)(d).

OPSB’s Opinion only repeats the Yellow Wood arguments that have been discredited as explained above. Opinion, pp. 70, 88-89, ¶¶ 171, 225. The Board should deny the certificate pursuant to R.C. 4906.10(A)(3) or R.C. 4906.10(A)(6).

Ground for Rehearing No. 7:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving The Project Despite Yellow Wood Solar’s Refusal To Provide Estimates Of The Volume Of Solid Waste And Debris Generated During Construction And Operation As Required By OAC 4906-4-07(D) And R.C. 4906.10(A)(2), (3) and (5).

OAC 4906-4-07(D) provides:

The applicant shall provide information on compliance with solid waste regulations.

(2) The applicant shall provide information regarding solid waste during construction.

(a) Provide an estimate of the nature and amounts of debris and other solid waste generated during construction.

Emphasis added. The Application does not provide an estimate of the amounts of debris and solid waste that will be generated during construction or operation.

The Application states that Project construction will “generate some solid waste, primarily plastic, wood, cardboard and metal packing/packaging materials, construction scrap, and general refuse.” Application Exh. S, p. 6-7, § 6.6. Mr. Hreha admitted that the Application contains no estimates of the quantity of solid waste that will be produced by Project construction. Hreha, Tr. I 33:1-11. Instead, the Application represents that both construction waste and

operations waste will be “minimal.” Application Narrative, p. 43; Application Exh. S, p. 6-7, § 6.6. This is not an estimate of the quantity of waste, just as Mr. Hreha admitted. OPSB cannot issue a certificate with this gap in information.

The Board’s Opinion mischaracterizes the Residents’ position, incorrectly stating that the Residents request “specificity ... regarding the volume of solid waste” and “the exact numerical weight or volume of solid waste.” Opinion, pp. 76-77, ¶ 191. The Residents never requested a statement about the exact amount of the anticipated waste. They request an “estimate,” just as the rule does. An “estimate” is “a rough or approximate calculation.” Merriam-Webster Dictionary, “Estimate,” <https://www.merriam-webster.com/dictionary/estimate> (last accessed on July 11, 2023). Stating that waste is “minimal” is not a calculation of any sort, whether exact or approximate. Using that term is just being evasive and unresponsive to the rule.

The Board’s Opinion also notes that the Project will not generate hazardous waste. However, the scope of OAC 4906-4-07(D)(2) is not limited to hazardous waste; it requires estimates of solid waste and debris. Ohio’s solid waste law defines “solid waste” as follows:

(E) “Solid wastes” means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, nontoxic, nonhazardous, unwanted fired and unfired, glazed and unglazed, structural products made from shale and clay products, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. “Solid wastes” does not include any material that is an infectious waste or a hazardous waste.

R.C. 3734.01(E) (emphasis added). This definition excludes hazardous waste from the definition of “solid waste.” The term “debris” as used in OAC 4906-4-07(D)(2) could be interpreted to

include but not be limited to hazardous waste, but the point remains that the rule requires estimates of all solid waste and debris, not just hazardous waste. Yellow Wood has not provided those estimates, and OPSB's issuance of a certificate without this information violates OAC 4906-4-07(D)(2) and R.C. 4906.10(A)(2), (3), and (5).

Ground for Rehearing No. 8:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving A Project That Will Disrupt Traffic And Destroy The Local Public Roads During Construction Without Identifying And Requiring Mitigation Measures To Make The Project Comply With R.C. 4906.10(A)(3) And R.C. 4906.10(A)(6).

Yellow Wood projects that construction will involve 400 concrete truck deliveries, 364 box truck deliveries, 1300 vehicle deliveries of workers, and 6200 equipment deliveries by tractor trailers. Application Narrative, p. 14. These vehicles will clog the public roads during construction, making it difficult for motorists to navigate and complicating farmers' efforts to move their machinery between fields. The Project's heavy construction traffic will seriously damage the roads, a problem that the Conceptual Construction Route Study in Application Exhibit B fails to adequately acknowledge or analyze.

The Board's Opinion does nothing to solve these problems. Instead, OPSB punts the problems to local authorities, stating that Yellow Wood is expected to work out a transportation management plan and RUMA to "account for" construction traffic. Opinion, pp. 70, 89, ¶¶ 171, 225. The Board should not approve a Project that causes these problems. The Residents request that OPSB reconsider its decision to grant Yellow Wood's certificate without requiring the company to address these issues.

Ground for Rehearing No. 9:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving A Project That Will Damage Drainage Tiles And Surface Waterways In Violation Of R.C. 4906.10(A)(3) And R.C. 4906.10(A)(6).

The Residents are farmers whose livelihoods depend on the ability to drain their fields in order prevent crop damage and destruction. Although the Application contains generic promises to repair tiles and surface waterways that will be damaged by construction, the Application does not identify the locations of the Residents' tiles nor describe specific measures that will be taken to avoid damage to the Project Area tiles that are connected upstream or downstream from the Residents' tiles. Application Narrative, p. 96. Merely stating that Yellow Wood will avoid or repair drain tiles, as the Board has done (Opinion, pp. 70, 72, ¶¶ 171, 174), lacks the specificity necessary to address these issues. The Board should not issue a certificate without providing sufficient information about how the Residents' tiles will be protected. The Residents request that OPSB reconsider its decision to grant Yellow Wood's certificate without requiring the company to provide this information.

Ground for Rehearing No. 10:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Approving the Project Without Requiring Yellow Wood Solar To Provide The Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2), (3), (5), And (6) About The Project's Drainage Impacts And Associated Mitigation To Prevent Flooding.

OAC 4906-4-07(C) requires the Board to obtain data about a project's potential for surface water runoff from an applicant prior to approving a project, so that potential drainage problems can be diagnosed prior to construction. Rather than making uninformed guesses about whether the Project's design and construction will increase the runoff of stormwater from a site by altering the terrain, the Board has promulgated this rule to answer this question ahead of construction rather than finding out after flooding has damaged the community.

OAC 4906-4-07(C) provides:

(C) The applicant shall provide information on compliance with water quality regulations.

(2) The applicant shall provide information regarding water quality during construction.

(b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.

(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.

(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.

(3) The applicant shall provide information on water quality during operation of the facility.

(d) Provide a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including:

(vii) Run-off from soil and other surfaces.

(Emphasis added.) The underlined language requires Yellow Wood to quantify the amount of water that will flow off the Project Area during construction and operation. For construction, OAC 4906-4-07(C)(2)(b) requires “an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations.” (Emphasis added.) For operation, OAC 4906-4-07(C)(3)(d) requires “a quantitative flow diagram or description for water ... through the proposed facility.” (Emphasis added.) These water flow estimates are necessary to determine whether site clearing and the existence of impervious solar panels will increase stormwater runoff that could flood downstream properties and to identify mitigation measures to prevent flooding.

Yet the record contains no numeric data on the quantity of water runoff during construction or operation of the Project. The section of the Application that was supposed to provide this data just ignores these requirements. Application Narrative, pp. 37-42. At hearing, Yellow Wood's project manager admitted that Yellow Wood did not calculate the amount of water that will flow from the Project Area during construction or operation:

Q. Does the Application include any estimates of the quantity of aquatic discharges from the facility?

A. I don't believe so.

Hreha, Tr. I 25:24 – 26:2.

The company also has not submitted a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing run-off from soil and other surfaces as required by OAC 4906-4-07(C)(3)(d). Application Narrative, p. 42, § 4906-4-07(C)(3)(d). Instead, the Application falsely claims that OAC 4906-4-07(C)(3)(d) does not apply. *Id.*

The Board's Opinion acknowledges that OAC 4906-4-07(C)(2)(b) requires "an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations" and that OAC 4906-4-07(C)(3)(d) requires "a quantitative flow diagram or description for water ... through the proposed facility." Opinion, p. 59, ¶ 140. Nevertheless, the Opinion asserts that Yellow Wood has not violated these requirements based on four findings. Opinion, pp. 59, 74-75, ¶¶ 140, 185-186.

First, the Opinion concludes that Yellow Wood need not supply the required data during this case, because OAC 4906-4-07(A) allows the company to "substitute all or portions of documents filed to meet federal, state, or local regulations" for this data. Opinion, p. 59, ¶ 140.

The Opinion reasons that, after certification, Yellow Wood will obtain the necessary permits and develop a Stormwater Pollution Prevention Plan (SWPPP) to address runoff issues. *Id.*

This rationale misapplies OAC 4906-4-07(A) and ignores OPSB's duty to vet the Project. The statement in OAC 4906-4-07(A) allows an applicant to submit the data required by OAC 4906-4-07 by submitting copies of documents prepared for other regulatory agencies that contain this data. For example, an applicant could submit a copy of a SWPPP to OPSB if it contains the data required by OAC 4906-4-07, instead of rewriting the same data into the text of the application. OAC 4906-4-07(A) does not allow an applicant to omit rule-required data from its application just because the applicant plans to submit the data to another government agency after certification. Such a scheme allows an applicant to bypass the public involvement procedures in OAC Chapter 4906-4 set up by R.C. 4906.06 and R.C. 4906.07 to provide members of the public with the information they need to provide the Board with informed input on a project that could impact them. This scheme also deprives the Board members of the information necessary to determine whether a project complies with the R.C. 4906.10(A) criteria.

The second reason given by the Board's Opinion for ignoring Yellow Wood's refusal to supply the data required by OAC 4906-4-07 is that dust control during construction is the main use of water during construction and that all water for that purpose will be brought in by 3,500-gallon water trucks. Opinion, p. 59, ¶ 140. This point has nothing whatsoever to do with Yellow Wood's obligations to provide "an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations" under OAC 4906-4-07(C)(2)(b) and to provide "a quantitative flow diagram or description for water ... through the proposed facility" during operation under OAC 4906-4-07(C)(3)(d). In this case, the required data is necessary to figure out how much water will be discharged during construction and to learn about water flows

during operation. The concern addressed by OAC 4906-4-07(C)(2)(b) is the discharge of stormwater from the construction site during construction. The concern addressed by OAC 4906-4-07(C)(3)(d) is the movement of water through a project during operation. Stating that water trucks bring in water for dust control does not provide either of these sets of data.

The third reason given by the Board's Opinion for ignoring Yellow Wood's refusal to supply the data required by OAC 4906-4-07 is that, "[u]nlike other generation facility types, solar facility operation does not result in aquatic discharge or pollution." Opinion, p. 59, ¶ 140 (emphasis added). This statement ignores the obvious fact that stormwater runoff occurs during solar facility construction. Because Project construction will disturb soils, an Ohio National Pollutant Discharge Elimination System ("NPDES") permit will be required to regulate construction. Application Narrative, p. 37; Hreha, Tr. I 21:21 – 22:5. This is a discharge permit designed to regulate discharges of soil particles from construction activities. Hreha, Tr. I 22:7-22. Soils bare of vegetation during construction will be "susceptible to erosion." Applicant's Exh. 28A, Singh Suppl. Direct Testimony, Attachment RS-1, p. 48. The Application states that the SWPPP will include specific methods to "direct how stormwater is handled during construction." Application Narrative, p. 73. Thus, Yellow Wood has admitted that stormwater runoff will occur during construction, and the company must provide the rule-required data about these discharges.

Moreover, with regards to the Project's operation, OAC 4906-4-07(C)(3)(d) requires "a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including ... [r]unoff from soil and other surfaces." Yellow Wood cannot credibly claim that no stormwater will run off the land in the Project Area into receiving streams during operation, and stormwater runoff carries eroded

soil into a stream. Consequently, the express language of OAC 4906-4-07(C)(3)(d) requires Yellow Wood to quantify these stormwater discharges.

The fourth reason given by the Board's Opinion for ignoring Yellow Wood's refusal to supply the data required by OAC 4906-4-07 is that the Stipulation requires Yellow Wood to comply with all Board rules regarding surface water runoff. Opinion, p. 59, ¶ 140. The Opinion's reference to Page 7 of the Stipulation presumably refers to Condition 21. Because Condition 21 refers to the stormwater construction requirements of other agencies, not OPSB's rules, the reference in the Opinion to compliance with the Board's rules is unclear. At any rate, Yellow Wood is not free to ignore the data production mandates of OAC 4906-4-07 just because it promises to comply with pollution runoff requirements in the future. The rule requires this data prior to certification so that the Board, with the public's input, can identify potential runoff problems and can identify preventative measures to address these problems.

Yellow Wood's post-hearing reply brief (at Page 35) offered one additional argument attempting to justify its failure to produce the required data, stating that the data sought by the Residents are not relevant to other agencies' determination of compliance with applicable water quality regulations. The Board did not accept this argument in its Opinion, and for good reasons. First, the evidentiary record provides no proof for this assertion. More importantly, OAC 4906-4-07(C)(2)(b) specifically requires "an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations" and OAC 4906-4-07(C)(3)(d) specifically requires "a quantitative flow diagram or description for water ... through the proposed facility" during operation. If these data were not relevant to compliance with the water pollution regulations, the rule would not have requested these data. An applicant is not free to ignore the specific data production requirements of the rule as Yellow Wood did in this case.

OPSB should find that Yellow Wood's failures to provide this data violate OAC 4906-4-07(C) and R.C. 4906.10(A)(2), (3), (5), and (6). The Board should not have issued a certificate without this data. The Residents request that OPSB reconsider its decision to grant Yellow Wood's certificate without requiring the company to comply with these requirements.

Ground for Rehearing No. 11:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Failing To Require Yellow Wood Solar To Provide The Information Required By OAC 4906-4-07(C) And R.C. 4906.10(A)(2), (3), (5), And (6) About The Project's Pollution Impacts And Associated Mitigation.

OAC 4906-4-07(C) requires the Board to obtain data about a project's potential for water pollution from an applicant prior to approving a project, so that potential pollution problems can be diagnosed prior to construction. Rather than making uninformed guesses about whether the Project's disturbance of the soil will increase the runoff of soil-laden water into streams, the Board has promulgated this rule to answer this question ahead of construction rather than finding out after water pollution damages the streams and the community.

OAC 4906-4-07(C)(1)(d) and 4906-4-07(C)(2)(b), (c), (d), and (e) require Yellow Wood to provide water quality data so the Board can evaluate these discharges' impacts:

(C) The applicant shall provide information on compliance with water quality regulations.

(1) The applicant shall provide information regarding preconstruction water quality and permits.

(d) Describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio environmental protection agency reporting requirements.

(2) The applicant shall provide information regarding water quality during construction.

(b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.

(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.

(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.

(e) Describe the equipment proposed for control of effluents discharged into bodies of water and receiving streams.

(Emphasis added.) The emphasized language requires an applicant to submit information about the quality of surface water flows from the Project Area during construction and operation, such as sediment from erosion carried into the streams.

The Application contains plenty of information indicating that Project construction will disturb soils that will be washed by precipitation into streams. Site grading will likely be conducted to remove slopes greater than 5% to flatten the land. Application Narrative, pp. 15-16. Grading will change the Project Area's elevations by as much as three feet by filling and excavation. Singh, Tr. I 65:5 – 66:11. Soil with a high organic content (i.e., the most fertile soil) may be moved from the solar equipment areas to the landscaped areas. Applicant's Exh. 6, p. 9, Answer 29. Grading may require excavation, soil redistribution, and soil compaction to achieve desired grades and elevations. Application Narrative, p. 16. Temporary stockpiling and grading will require backhoes, graders, and rollers/compactors. *Id.*

Because Project construction will disturb soils, an Ohio National Pollutant Discharge Elimination System ("NPDES") permit will be required to regulate construction. Application Narrative, p. 37; Hreha, Tr. I 21:21 – 22:5. This is a discharge permit designed to regulate discharges of soil particles from construction activities. Hreha, Tr. I 22:7-22. Soils bare of vegetation during construction will be "susceptible to erosion." Applicant's Exh. 28A, Singh

Suppl. Direct Testimony, Attachment RS-1, p. 48. The Application states that the SWPPP will include specific methods to “direct how stormwater is handled during construction,” thus admitting that stormwater runoff will occur. Application Narrative, p. 73. The Application states that a SWPPP will be developed to identify potential pollution sources that may affect the quality of stormwater discharges associated with construction activities. Application Narrative, p. 40.

Despite the Application’s admissions about soil pollution, Yellow Wood’s project manager admitted at the hearing that Yellow Wood did not calculate the soil pollution in the water that will flow from the Project Area during construction or operation:

Q. Does the Application include any estimates of the quality of aquatic discharges from the facility?

A. I don’t believe so.

Hreha, Tr. I 25:20-23. This failure violates OAC 4906-4-07(C)(2)(b). The company also has not submitted one year of monitoring data for the existing water quality of the receiving streams as required by OAC 4906-4-07(C)(1)(d). Application Narrative, p. 38, § 4906-4-07(C)(1)(d). Instead, the Application falsely claims that OAC 4906-4-07(C)(1)(d) does not apply. *Id.* Nor did the company describe the equipment proposed for controlling effluents discharged into bodies of water and receiving streams as required by OAC 4906-4-07(C)(2)(e), instead incorrectly asserting that this provision does not apply. Application Narrative, p. 41, § 4906-4-07(C)(2)(e).

The Board’s Opinion acknowledges that OAC 4906-4-07(C) contains the data production requirements described above. Opinion, pp. 59-60, ¶ 141. Nevertheless, the Opinion asserts that Yellow Wood need not supply the required data during this case, because OAC 4906-4-07(A) allows the company to “substitute all or portions of documents filed to meet federal, state, or

local regulations” for this data. *Id.* The Opinion reasons that, after certification, Yellow Wood will obtain the necessary permits and develop a SWPPP to address water quality issues. *Id.* This rationale is faulty for the reasons described above in Ground for Rehearing No. 10.

OPSB should find that Yellow Wood’s failure to provide this data violates OAC 4906-4-07(C) and R.C. 4906.10(A)(2), (3), (5), and (6). The Board cannot issue a certificate without this information, including the identification of mitigation measures designed to prevent any pollution threats revealed by the water quality data that should have been provided. The Residents request that OPSB reconsider its decision to grant Yellow Wood’s certificate without requiring the company to comply with these requirements.

Ground for Rehearing No. 12:

The Ohio Power Siting Board Acted Unlawfully And Unreasonably By Finding That Yellow Wood Solar Has Provided The Information About The Project’s Potential Impacts On Wildlife Required By OAC 4906-4-08(B) And R.C. 4906.10(A)(2), (3), And (6).

Yellow Wood admits that “[w]ildlife within the Project Area could potentially use the area for foraging, migratory stopover, breeding and/or shelter.” Application Exh. S, p. 4-4. The report from Cardno, Yellow Wood’s natural resources consultant, acknowledged that wildlife “species present in the Project vicinity are primarily associated with agricultural fields, pasture grasslands, isolated wooded lots, and wetland areas.” Application Exh. S, p. 6-6. The Project will disturb 2,397 acres of crop fields, one acre of forest, and 51 acres of pasture.⁷ Application Narrative, p. 66, Table 7. This means that the Project will destroy thousands of acres of habitat that is presently being used by wildlife for foraging, migratory stopover, breeding and/or shelter.

⁷ Table 7 of the Application states that the Project will impact 51 acres of hay/pasture even though Table 6 states that a lesser amount of hay/pasture, 44 acres, exists in the Project Area. Application Narrative, p. 66. Either way, the Project will destroy a substantial amount of pasture used by wildlife that favor grasslands.

To evaluate the seriousness of such a threat, OAC 4906-4-08(B) requires an applicant to conduct surveys of the animal species in the Project Area to assess and mitigate a project's potential ecosystem impacts:

(B) The applicant shall provide information on ecological resources.

(1) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

(c) Provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary. The literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened.

(d) Conduct and provide the results of field surveys of the plant and animal species identified in the literature survey.

(Emphasis added.) Without this information, OPSB 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 R.C. 4906.10(A)(3).

Yellow Wood failed to fulfill these requirements. The Application's literature identification of animal species is limited to species that are rare, endangered, or threatened. Application Narrative, pp. 67-68; Application Exh. S, Appx. C (titled "RTE Information"); Rupprecht, Tr. I 80:19 -81:21. Yellow Wood wildlife witness Ryan Rupprecht of Cardno specifically admitted that the literature search was conducted only for these species. *Id.* The first sentence of OAC 4906-4-08(B)(1)(c) requires a complete literature review for all species, not just the rare ones. The second sentence of OAC 4906-4-08(B)(1)(c) provides that "[t]he literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened." Emphasis added. In violation of the first sentence of OAC 4906-4-08(B)(1)(c), Yellow Wood did no

literature search for wildlife species other than rare, endangered and threatened species. In violation of the second sentence of OAC 4906-4-08(B)(1)(c), Yellow Wood did not search for literature on wildlife species of commercial or recreational value, including game species and birds, which are of recreational value to birdwatchers and landowners who watch them.

The Board's Opinion does not correct Yellow Wood's failure to conduct a complete literature search. Opinion, p. 58, ¶ 139. For instance, the Opinion recounts that Yellow Wood consulted with the wildlife agencies regarding listed threatened and endangered species, but the Board failed to mention that Yellow Wood consulted with no one about species of recreational or commercial value or other unlisted species. *Id.*

The Application admits that “[n]o species specific field surveys were conducted for the Project Area; however, special attention was paid to identifying endangered and threatened species during field surveys.” Application Narrative, 69. That sentence appears to be internally inconsistent until one finds out that Yellow Wood did no field surveys for animals but just recorded the existence of rare, endangered, or threatened (RTE) species in the Project Area that Cardno happened to see while engaged in the wetland and waterbody surveys. Rupprecht, Tr. I 84:15 -85:5, 86:3-10; Application Narrative, p. 69; Application Exh. S, p. 5-1, ¶ 5.1.2. That is why the Application admits that only “[i]ncidental wildlife observations were recorded.” Application Narrative, p. 65. Yellow Wood admitted that Cardno's employees saw deer, common game species, migratory shorebirds, game species, waterfowl, and songbirds in the Project Area. Application Narrative, p. 69; Application Exh. S, p. 6-6, ¶ 6.4. That is, Cardno saw species of commercial and recreational value, but, except for deer, Cardno inexplicably failed to identify them by species in the Application. Instead, it recorded its incidental sightings solely for RTE species.

The Board's Opinion glosses over these blatant rule violations, stating:

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).

Opinion, p. 58, ¶ 139. A reading of the Application proves that this purposely vague language in Mr. Rupprecht's written testimony is meant to disguise Yellow Wood's failure to "[c]onduct and provide the results of field surveys of the ... animal species identified in the literature survey" as required by OAC 4906-4-08(B) (1)(d).

Q. Okay. Are there any lists of wildlife species found within the project area that are included in the Application?

A. I believe there are.

Q. Okay. Would you point them out, please? And I assume you're going to go back to Exhibit S; is that right?

A. That is correct. So again, Table 4-5 would have a list of species that were to potentially be found in the project area, but direct observations are in Section 5.1.2, Wildlife Observations.

Rupprecht, Tr. I 85:21 (emphasis added). Table 4-5, which is titled "Federal- and State-Listed Species with Ranges in the Yellow Wood Solar Project Study Area, Clinton County, Ohio," is a list of RTE species obtained in the literature search. Applicant's Exh. S, pp. 4-9 to 4-10. The full text of Section 5.1.2 that lists the wildlife species observed in the Project Area states:

5.1.2 Wildlife Observations

The habitats surveyed during field efforts appear to lack significant or obvious evidence of RTE species. Visual reconnaissance surveys were conducted during the wetland and waterbody delineations and biologists did not observe any federal RTE species. A pair of state-endangered northern harriers were observed within the Project Area, although further investigation found no evidence of nesting activities. The delineated waterbodies could potentially provide RTE species habitat, but at reduced quality due to agricultural disturbance and the

surrounding land use impacting the water chemistry (i.e., high sediment loading during storms and fertilizer in runoff).

Application Exh. S, p. 5-1. This paragraph, which according to Mr. Rupprecht contains the entire list of wildlife species observed in the Project Area, identifies just one species found in the Project Area, the northern harrier. This paragraph confirms Mr. Rupprecht's testimony that Yellow Wood has identified only RTE wildlife species in the field and has conducted no field surveys for wildlife species of recreational or commercial value or other unlisted wildlife species present in the Project Area.

Yellow Wood plans to continue its pattern for not looking for wildlife by stating that it is not proposing to conduct any post-construction monitoring to find out whether the solar equipment is killing or injuring wildlife species. Application Narrative, p. 75. Instead, Yellow Wood proposes a weak procedure that would just report injured or deceased wildlife that its employees happen to notice while performing their everyday tasks. Application Narrative, pp. 76-77.

The Board's Opinion asserts that the certificate conditions contain some procedures to protect wildlife during Project construction. Opinion, pp. 57-58, ¶¶ 138, 139. These conditions are designed primarily to protect only RTE wildlife species. Stipulation, pp. 6-8, Conditions 18, 19, 20, 22, 23, 24. If Yellow Wood had searched for wildlife species of commercial and recreational value or other wildlife species as required by rule, the Board may have been able to identify additional conditions necessary to protect them as well. Without knowing which species are present, OPSB is blindly assuming that no additional procedures are necessary to comply with the mandates in OAC 4906-4-08(B)(2) to mitigate the effects of Project construction and operation on wildlife.

Thus, while Yellow Wood contends its Project will not seriously harm wildlife or cause the wildlife to harm the community, it has no data to support those claims. The half-hearted effort to search for just some wildlife species, combined with the failure to report the sighted species, leaves the Board with little information about the wildlife in the Project Area. Granting a certificate without the information necessary to determine the Project's effects on wildlife and to identify mitigation measures necessary to address those effects violates OAC 4906-4-08(B)(1), (2), and (3), R.C. 4906.10(A)(2), and R.C. 4906.10(A)(3). The Residents request that OPSB reconsider its decision to grant Yellow Wood's certificate without requiring the company to comply with these requirements.

IV. Stipulations That Do Not Settle Anything Are Not Entitled To Deference.

The Board's Opinion accepts the Joint Stipulation and Recommendation filed by Yellow Wood, Staff, and the Ohio Farm Bureau Federation ("OFBF"). Opinion, pp. 94-96, ¶¶ 241-245. However, the Clinton County Board of Commissioners and the Residents did not agree to this unsatisfactory Stipulation. The Stipulation is not the product of serious bargaining and is entitled to no weight, because it does not settle anything. It only states the litigation positions of three parties.

In addition, the Stipulation does nothing to promote the public interest, convenience, and necessity, as explained above in this memorandum. The Stipulation also violates important regulatory principles and practices, because the Project violates R.C. 4906.10(A) and OPSB's rules as described in the Residents' and the County Commissioners' briefs. OPSB should not pay any deference to the Stipulation and should deny the certificate.

V. Conclusion

As explained above, there are a multitude of important reasons to deny the certificate sought by Yellow Wood Solar. Yellow Wood has failed to provide the information on the Project's adverse impacts and mitigation measurements necessary to minimize them that is required by the Board's rules. The Board cannot violate its own rules by approving the Project without this information, and it should rehear this case for the purpose of obtaining this information. Nor do the criteria in R.C. 4906.10(A)(2), (3), (5), and (6) authorize the issuance of this certificate. Thus, the Stipulation and the Board's Opinion violate important regulatory principles and practices. The Board should reconsider its decision, rehear the issues briefed in this memorandum above, and deny Yellow Wood's application for a certificate.

Respectfully submitted,

/s/ Jack A. Van Kley
Jack A. Van Kley (0016961)
Van Kley Law, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankley.law
(Willing to accept service by email)

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, I hereby certify that, on July 17, 2023, a copy of the foregoing document also is being served by electronic mail on the following: Christine M.T. Pirik at cpirik@dickinsonwright.com; Jonathan Secrest at jsecrest@dickinsonwright.com; David Lockshaw at dlockshaw@dickinsonwright.com; Matthew C. McDonnell at

mmcdonnell@dickinsonwright.com; Jodi Bair at jodi.bair@ohioAGO.gov; Thaddeus M. Boggs at tboggs@fbtlaw.com; Chad A. Endsley at cendsley@ofbf.org; Leah F. Curtis at lcurtis@ofbf.org; Jesse Shamp at jshamp@fbtlaw.com; and Emmett Kelly at ekelly@fbtlaw.com.

/s/ Jack A. Van Kley
Jack A. Van Kley

BEFORE THE OHIO POWER SITING BOARD

- - -

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

- - -

In the Matter of the :
Application of Oak Run :
Solar Project, LLC for a :
Certificate of :
Environmental : Case No. 22-550-EL-BTX
Compatibility and Public :
Need to Construct a :
Transmission Line in :
Madison County, Ohio. :

- - -

PROCEEDINGS

before Mr. David Hicks and Ms. Isabel Marcelletti,
Administrative Law Judges, at the Ohio Power Siting
Board, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:04 a.m. on Monday, May 15, 2023.

- - -

VOLUME I

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481

- - -

1 contra to the Townships' April 7 motion, we do grant.
2 We find that the late filing of the response didn't
3 prejudice any other party or impact our decision on
4 the pending motion.

5 Next concerning the Townships' motion
6 filed on April 6 requesting that the Board order the
7 Applicant to supplement the Application, we do deny
8 the motion. We find this motion to be premature as
9 parties are not precluded from raising the issues
10 discussed in the motion during the hearing and during
11 party briefs.

12 Relatedly we will also deny the
13 Townships' second motion filed on April 7 for similar
14 reasons. We find that the issue of grandfathering
15 under SB52 is a matter that can be raised during this
16 hearing or in party briefs.

17 With that, are there any further
18 questions from counsel?

19 Seeing none, I just also want to note as
20 we just discussed, we do have a working witness list
21 for this week's hearing, so with that we will jump
22 right in. ALJ Hicks.

23 ALJ HICKS: We will turn it over to the
24 Applicant to call their first witness.

25 MR. LOCKSHAW: Thank you, your Honors.

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in

Case No(s). 22-0549-EL-BGN, 22-0550-EL-BTX

Summary: Transcript of the Oak Run Solar Project, LLC hearing held on 05/15/23 -
Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey,
Inc. and Gibson, Karen Sue Mrs..

BEFORE
THE OHIO POWER SITING BOARD

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

In the Matter of the Application of Oak)	
Run Solar Project, LLC for a Certificate)	
of Environmental Compatibility and)	Case No. 22-550-EL-BTX
Public Need to Construct a Transmission)	
Line)	

**MOTION OF INTERVENORS BOARD OF TRUSTEES OF DEERCREEK
TOWNSHIP, BOARD OF TRUSTEES OF MONROE TOWNSHIP, AND BOARD
OF TRUSTEES OF SOMERFORD TOWNSHIP FOR AN ORDER DIRECTING
OAK RUN SOLAR PROJECT, LLC TO SUPPLEMENT THE APPLICATION**

Intervenors Board of Trustees of Deercreek Township, Board of Trustees of Monroe Township, and Board of Trustees of Somerford Township (collectively, the “Townships”) hereby move for an order directing Oak Run Solar Project, LLC (“Oak Run”) to supplement its Application. The grounds for this motion are explained in the memorandum below.

MEMORANDUM IN SUPPORT

On November 1, 2022, the Staff filed a letter stating that Oak Run’s Application “has been found to comply with Chapters 4906-01, et seq. of the Ohio Administrative Code.” However, the letter cautioned that “[t]his means the Board’s staff (Staff) has received sufficient information to begin its review of this application.” The letter further advised that “[d]uring the course of its investigation, the Staff may request additional information to ensure Staff can continue to conduct its review of the application,” and listed four categories of information

missing from the Application. This letter does not satisfy the Staff's mandate in OAC 4906-3-06(A) to require a complete application prior to proceeding with the investigation and hearing.

OAC Chapter 4906-4 is an integral component of the process set up by R.C. 4906.06 and R.C. 4906.07 to provide members of the public with the information they need to provide the Ohio Power Siting Board ("OPSB" or "Board") with informed input on a project that could impact them. OAC Chapter 4906-4 was promulgated pursuant to the mandate in R.C. 4906.03(C) that OPSB "[a]dopt rules establishing criteria for evaluating the effects on environmental values of proposed and alternative sites." Thus, these rules describe the information that OPSB needs in order to determine whether the applicant has demonstrated compliance with the criteria in R.C. 4906.10(A).

Under R.C. 4906.06(A), an application must contain all of the information required by OAC Chapter 4906-4, which provides:

(A) An applicant for a certificate shall file with the office of the chairperson of the power siting board an application, in such form as the board prescribes, containing the following information:

(6) Such other information as the applicant may consider relevant or as the board by rule or order may require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the chairperson, if ordered, and shall be available for public inspection.

Emphasis added. Nevertheless, as discussed in further detail below, Oak Run has not supplied much of the information required by OAC Chapter 4906-4.

Oak Run has been provided with ample opportunities to complete its Application. The Staff has served Oak Run with multiple data requests seeking to supplement the incomplete information in the Application. Oak Run also can supplement the Application without the

Staff's prompting. Nevertheless, Oak Run has failed to complete its Application, in some instances even declining to provide information requested by the Staff in its data requests.

R.C. 4906.07(A)'s requirement for a complete application "complying with section 4906.06 of the Revised Code" is designed to provide the public with the information necessary to meaningfully participate in the evidentiary hearing. An applicant is required to publish public notices notifying the public about its application and where to find a copy of the application for review. R.C. 4906.06(C); OAC 4906-3-06(C)(4) & (5), 4906-3-07, & 4906-3-09. The information that OAC Chapter 4906-4 requires in the Application is vital to the intervenors' meaningful participation in the evidentiary hearing. The fairness and accuracy of this process depend on the applicant's provision of rule-compliant information.

An intervenor's right to conduct discovery cannot compensate for an applicant's failure to comply with OAC Chapter 4906-4. Many of the studies required by these rules do not exist until an applicant generates them, so intervenors are unable to obtain this information through discovery. For example, the field surveys for plants and wildlife in the Project Area required by OAC 4906-4-08(B) ordinarily do not exist unless the applicant conducts them. Citizen intervenors have no access to the participating landowners' land, so they cannot conduct these surveys themselves. That is why the rules require the applicants, not the Staff or intervenors, to produce the necessary information. Moreover, it is only fair to require applicants to produce the information necessary to prove that the developments from which they will benefit financially will not harm the public.

In this case, the Application lacks much of the information required by OAC Chapter 4906-4, including the information outlined in Paragraphs 1 through 9 below.

1. OAC 4906-4-08(D)(4)(e) requires “photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area.” The Application provides no simulations or sketches of any of the substations. Nor does the Application provide simulations or sketches to depict views of solar panels from nonparticipating residences, nonparticipating property lines, or public roads at distances closer than one-tenth of a mile (528 feet), even though the proposed Project setbacks are 300 feet for nonparticipating residences, 150 feet for nonparticipants’ property lines, and 150 feet for public roads. See Application Exh. X.

2. OAC 4906-4-08(D)(4)(f) requires an applicant to describe the measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to lighting, and visual screening. Oak Run has not provided a landscape plan or lighting plan that complies with this requirement despite multiple Staff requests for this information.

3. For construction, OAC 4906-4-07(C)(2)(b) requires “an estimate of the ... quantity of aquatic discharges from the site clearing and construction operations.” Emphasis added. For construction, OAC 4906-4-07(C)(2)(d) requires descriptions of any “changes in flow patterns and erosion due to site clearing and grading operations.” Emphasis added. For operation, OAC 4906-4-07(C)(3)(d) requires “a quantitative flow diagram or description for water ... through the proposed facility.” Emphasis added. These water flow estimates and flow patterns are necessary to determine whether site clearing and the existence of impervious solar panels will increase stormwater runoff that could flood downstream properties during and after construction, but this information is missing from the Application. The Application does not identify any mitigation measures that may be necessary to protect neighbors from flooding and drainage problems caused by Oak Run’s activities as required by OAC 4906-4-07(C)(2)(c).

4. The Application does not contain the water quality data and mitigation measures required by OAC 4906-4-07(C)(1)(d), OAC 4906-4-07(C)(2)(b) and (e), and OAC 4906-4-08(B)(2)(b).

5. The Application does not contain the complete literature searches and wildlife surveys required by OAC 4906-4-08(B)(1)(c) and (d) for the project area and within a quarter mile of the project area. Instead, the Application only provides some limited discussion about listed species inside the project area.

6. The Application does not provide the maximum water conservation measures required by R.C. 4906.10(A)(8) and OAC 4906-4-07(C)(3)(e) for solar panel cleaning.

7. The Application fails to establish whether the Project's inverters will produce noise at night. The Application assumes without evidence that they will produce no sound at night, and does not identify the nighttime operational noise levels from the inverters at the property lines or habitable residences pursuant to OAC 4906-4-08(A)(3).

8. The Application does not describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation as required by OAC 4906-4-08(A)(3)(d).

9. The Application does not provide a complete estimate of the Project's economic impacts on local commercial and industrial activities as required by OAC 4906-4-06(E)(4), because it fails to identify and evaluate the project's negative economic consequences.

The missing information is necessary for the Townships to participate meaningfully in the hearing process. This information is also needed for the Board to make sound decisions under the R.C. 4906.10(A) criteria, namely, whether to approve the Project, and if so, how it should be designed to minimize the project's impacts on the Townships and their residents.

Therefore, the Townships request an order directing Oak Run to file a supplement to the Application supplying the missing information by April 28, 2023 to provide the Townships with enough time to review the information prior to the hearing starting on May 15, 2023.

Respectfully submitted,

/s/ Jack A. Van Kley
Jack A. Van Kley (0016961)
Counsel of Record
Van Kley Law, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankley.law
(Counsel willing to accept service by email)

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, I hereby certify that, on April 6, 2023, a courtesy copy of the foregoing document also is being served by electronic mail on the following:

Nicholas Adkins at Nick.Adkins@madison.oh.gov
Leah Curtis at lcurtis@ofbf.org
Trent Dougherty at trent@hubaydougherty.com
Robert Dove at rdove@keglerbrown.com
Matthew Eisenson at matthew.eisenson@law.columbia.edu
Chad Endsley at cendsley@ofbf.org
Michael Gerrard at michael.gerrard@arnoldporter.com
Leah Hetrick at lhetrick@ofbf.org
Daniel Loud at danielloud@quinnemanuel.com
Werner Margard at werner.margard@OhioAGO.gov
Matthew C. McDonnell at mmcdonnell@dickinsonwright.com
Karin Nordstrom at knordstrom@theoec.org
Terrence O'Donnell at todonnell@dickinsonwright.com
Christine M.T. Pirik at cpirik@dickinsonwright.com

Chris Tavenor at ctavenor@theoec.org
Ambrosia Wilson at ambrosia.wilson@OhioAGO.gov

/s/ Jack A. Van Kley
Jack A. Van Kley

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Case No(s). 22-0549-EL-BGN

Summary: Motion for Order to Supplement Application electronically filed by Mr. Jack A. Van Kley on behalf of Deercreek Township Trustees and Monroe Township Trustees and Somerford Township Trustees.

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in

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

Summary: App for Rehearing electronically filed by Mr. Jack A. Van Kley on behalf of Cochran, Brad and Cochran Farms and JWP Family Farms and Rhonemus, Diane and Thompson, Charles.