

**IN THE SUPREME COURT OF OHIO**

<b>In the Matter of the Application of South Branch Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Hancock County, Ohio</b>	) ) ) ) ) ) )	<b>Case No. _____</b>  <b>On Appeal from the Ohio Power Siting Board, Case No. 21-0669-EL-BGN</b>
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**NOTICE OF APPEAL OF APPELLANT TRAVIS BOHN**

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Appellant Travis Bohn (“Appellant”) hereby gives notice of his appeal pursuant to R.C. 4903.11, 4903.13, and 4906.12 to the Supreme Court of Ohio from the following attached orders of the Ohio Power Siting Board (the “Board”) in *In the Matter of the Application of South Branch Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Hancock County, Ohio*, Case No. 21-0669-EL-BGN (collectively, the “Orders”): (1) Opinion, Order, and Certificate, entered on February 16, 2023 (the “Certificate Order”); and (2) Order on Rehearing, entered on June 15, 2023 (the “Rehearing Order”). Appellant was and is a party of record in Case No. 21-0669-EL-BGN and timely filed, on March 17, 2023, his Application for Rehearing of the Board’s Certificate Order pursuant to R.C. 4903.10. On April 13, 2023, the Administrative Law Judge assigned to the case granted Appellant’s Application for Rehearing pursuant to Ohio Adm.Code 4906-2-32(E) to afford the Board more time to consider the Application for Rehearing. The Board then denied the Application for Rehearing on June 15, 2023.

The Orders granted Applicant South Branch Solar, LLC (“South Branch”) a Certificate of Environmental Compatibility and Public Need (a “Certificate”) to construct and operate a new solar-powered electric generation facility in Hancock County, Ohio (the “Project”). The Orders are in error and are unlawful and unreasonable for the reasons stated in Paragraphs 1 through 8 below:

1. The Board acted unlawfully and unreasonably by failing to identify the facts and reasoning supporting many of its conclusions. Certificate Order *in general*; Application for Rehearing, Memorandum in Support, Section II.B, pages 3–4; Rehearing Order, ¶¶ 35–37.

2. The Board’s consideration of only certain local governmental authorities’ positions on the Project to determine whether the Project will serve the public interest, convenience, and

necessity under R.C. 4906.10(A)(6), and in turn whether the Joint Stipulation and Recommendation (the “Stipulation”) benefits the public interest, exceeded the Board’s statutory authority and therefore was unlawful and unreasonable. Certificate Order, ¶¶ 37, 85, 107; Application for Rehearing, Memorandum in Support, Section II.C, pages 4–6; Rehearing Order, ¶¶ 14–17.

3. The Board’s failure to fully evaluate public comments filed in the case docket and extensive public opposition expressed at the local public hearing to determine whether the Project is in the public interest, convenience, and necessity under R.C. 4906.10(A)(6) was unlawful and unreasonable. Certificate Order, ¶¶ 37, 41–43, 85; Application for Rehearing, Memorandum in Support, Section II.D, pages 6–9; Rehearing Order, ¶¶ 15–17.

4. The Board acted unlawfully and unreasonably by failing to find that South Branch has not evaluated the Project’s negative economic impacts as required by Ohio Adm.Code 4906-4-06(E)(4) and, in turn, by failing to evaluate the available data and other evidence that shows that the Project fails to comply with R.C. 4906.10(A)(6). Application for Rehearing, Memorandum in Support, Section II.F, pages 12–14; Rehearing Order, ¶¶ 18–20.

5. The Board acted unlawfully and unreasonably by failing to find that the Project does not minimize the adverse environmental impact under R.C. 4906.10(A)(3) and does not serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6) due to its short setbacks. Application for Rehearing, Memorandum in Support, Section II.G, pages 15–16; Rehearing Order, ¶¶ 21–23.

6. The Board acted unlawfully and unreasonably by finding that the Project satisfies R.C. 4906.10(A)(2) and (3) when South Branch did not submit wildlife literature searches and



field surveys required by those laws and Ohio Adm.Code 4906-4-08(B). Application for Rehearing, Memorandum in Support, Section II.H, pages 16–19; Rehearing Order, ¶¶ 24–26.

7. The Board acted unlawfully and unreasonably by finding that the Project satisfied R.C. 4906.10(A)(2) and (3) despite South Branch’s failure to provide information related to the Project’s drainage and flooding impacts as required by the Board’s own regulations. Application for Rehearing, Memorandum in Support, Section II.I, 19–21; Rehearing Order, ¶¶ 27–29.

8. The Board acted unlawfully and unreasonably by finding the Stipulation to be in the public interest and by approving it. Certificate Order, ¶ 107; Application for Rehearing, Memorandum in Support, Section II.K.2, pages 23, 24–26; Rehearing Order, ¶¶ 30–34.

Accordingly, Appellant requests that the Court remand the Orders to the Ohio Power Siting Board with instructions to correct the errors identified herein.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on August 14, 2023, a copy of the foregoing Notice of Appeal was served upon the Chairperson of the Ohio Power Siting Board, Jenifer French, by leaving a copy at her office at 180 East Broad Street, Columbus, Ohio 43215, and upon the following counsel and/or parties of record by regular U.S. mail, postage prepaid, and by electronic mail:

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**CERTIFICATE OF FILING**

Pursuant to S.Ct.Prac.R. 3.11(D)(2) and 10.02(A)(2), the undersigned certifies that, on August 14, 2023, a copy of the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission of Ohio and the Ohio Power Siting Board at 180 East Broad Street, Columbus, Ohio 43215 pursuant to R.C. 4903.13 and 4906.12 and Ohio Adm.Code 4901-1-02(A), 4901-1-36, 4906-2-02, and 4906-2-33.

/s Janica Pierce Tucker

Janica Pierce Tucker (#0075074)

## THE OHIO POWER SITING BOARD

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

CASE NO. 21-669-EL-BGN

### OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on February 16, 2023

#### I. SUMMARY

{¶ 1} The Ohio Power Siting Board issues a certificate of environmental compatibility and public need to South Branch Solar, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Joint Stipulation filed May 31, 2022, and consistent with this Opinion, Order, and Certificate.

#### II. PROCEDURAL BACKGROUND

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

{¶ 3} South Branch Solar, LLC (South Branch or Applicant), a wholly owned subsidiary of Leeward Renewables Energy, LLC (Leeward Energy) with headquarters in Dallas, Texas, is a person as defined in R.C. 4906.01.

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

{¶ 5} On June 8, 2021, South Branch filed its preapplication notice informing the Board of a to-be-proposed 205 megawatt (MW) solar-powered electric generation facility to be constructed in Washington Township, Hancock County, Ohio (Project or Facility). Further, the notice stated that South Branch would be hosting a public information meeting on June 24, 2021, in Arcadia, Ohio.

{¶ 6} Ohio Adm. Code 4906-3-03(B)(2) directs that the applicant notify each property owner and affected tenant of the public information meeting and provide other pertinent information about the proposed project and Board process.

{¶ 7} On June 17, 2021, South Branch filed its notice of compliance with Ohio Adm.Code 4906-3-03(B)(1), which requires Applicant to publish notice of the public information meeting in a newspaper of general circulation in the project area. Notice of the public information meeting was published on June 12, 2021, in *The Courier*, a daily newspaper of general circulation in Hancock County.

{¶ 8} On July 22, 2021, as amended and supplemented on February 25, 2022, and March 21, 2022, South Branch filed its application for a certificate to construct the Project.

{¶ 9} On July 22, 2021, as amended on December 17, 2021, South Branch also filed a motion for protective order. In the original motion, Applicant seeks trade secret protection of economic impact information, including its (1) investment and estimated capital and intangible costs, and (2) estimated operation and maintenance (O&M) costs of the Project. In its amended filing, Applicant requests that the same protections apply to the application modification that it filed on December 17, 2021. In response to the motions, Staff filed responses on September 29, 2021, and December 29, 2021, in which Staff indicated that it did not oppose the protective treatment being requested. Upon review of Applicant's motions and the information at issue, the Board finds that, pursuant to Ohio Adm.Code 4906-2-21(D), the information at issue is properly subject to trade secret protection from public disclosure. Further, consistent with Ohio Adm.Code 4906-2-21(F), the protective treatment of this

information shall expire 24 months after the date of this Opinion, Order, and Certificate unless extended by Applicant pursuant to a timely-filed motion for extension.

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

{¶ 11} On September 20, 2021, the Board notified South Branch that its application, including data request responses, was found to be sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's letter instructed South Branch to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed the Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12. Staff also identified additional information that would be requested in the course of its investigation to ensure that Staff would be able to conduct its review of the application, including but not limited to, an updated decommissioning plan, a concurrence from Ohio Environmental Protection Agency (OEPA) regarding the Arcadia Village Dump, identification of any proposed electric transmission lines and associated facilities to be constructed by South Branch within the project area and an Engineering Constructability Report (ECR).

{¶ 12} On September 24, 2021, South Branch filed proof of service of its accepted and complete application on local officials and the main public library as required by Ohio Adm.Code 4906-3-07(A). Further, South Branch stated that it maintains a copy of its accepted complete application on its website. On September 24, 2021, South Branch also filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 13} On October 12, 2021, the Board of County Commissioners of Hancock County (County Commissioners) filed a notice of intervention.

{¶ 14} On October 20, 2021, a petition to intervene was filed on behalf of: Lanny and Mary Jo Boes; Randy and Amy Boes; Marvin Kelbley; Brett O'Connor; Allen and Kathy Reinhart; Kenneth and Brenda Smith; Scott and Stephanie Suman; and David and Mary Tong. By Entry issued on January 7, 2022, the aforementioned petitioners' request for intervention was granted. Subsequently, on March 25, 2022, the above-noted intervenors filed a notice of withdrawal and their request for withdrawal was granted by Entry issued May 9, 2022.

{¶ 15} Separate petitions and motions to intervene were also timely filed by Travis Bohn, Audra Deuble, and Ohio Farm Bureau Federation (OFBF). Intervention was granted to these parties pursuant to the same Entry dated January 7, 2022.

{¶ 16} By Entry issued November 1, 2021, the effective date of the application was established as November 1, 2021, the local public hearing was scheduled for January 26, 2022, in Findlay, Ohio, and the evidentiary hearing was scheduled to commence on February 14, 2022, via remote access technology. The November 1, 2021 Entry further directed Applicant to publish notice of the hearings. Additionally, the Entry (1) advised that the Board would accept petitions to intervene up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by December 17, 2021, whichever is later, (2) directed Staff to file its report of investigation (Staff Report) on or before January 11, 2022, (3) directed the parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing by January 31, 2022, (4) directed South Branch to file all expert and factual testimony by February 2, 2022, (5) directed Staff and intervenors to file all expert and factual testimony by February 7, 2022, and (6) directed that any stipulation entered into by the parties be filed by noon on February 11, 2022, along with the associated testimony supporting the stipulation.

{¶ 17} On November 22, 2021, pursuant to Ohio Adm.Code 4906-3-09(A)(1), South Branch filed its first notice and proof of publication in *The Courier* on November 12, 2021. Further, South Branch stated that on November 4, 2021, pursuant to Ohio Adm.Code 4906-03-09(A)(1), affected property owners were provided written notice of the application.

{¶ 18} On December 20, 2021, South Branch filed a 739-page amendment to its application. South Branch stated that the amended application reduces the Project capacity from 205 MW to 129.6 MW and as a result of the reduced capacity, the project area is reduced from approximately 1,000 acres to approximately 700 acres. Applicant asserted that the reduction in the project area reduced the number of impacts with no additional adverse impacts to non-participating property owners.

{¶ 19} On December 28, 2021, South Branch filed an unopposed motion to suspend and modify the procedural schedule, by approximately 60 days from the schedule dates, along with a request for expedited ruling.

{¶ 20} The Ohio Historic Preservation Office (OHPO) provided South Branch a response to Applicant's Phase I archaeological survey which South Branch filed on January 4, 2022.

{¶ 21} By Entry issued January 7, 2022, Applicant's request to suspend and modify the procedural schedule was granted. Accordingly, South Branch was directed to publish notice of the revised hearing dates and procedural schedule as follows (1) the local public hearing was rescheduled to April 27, 2022, in Findlay, Ohio, (2) the evidentiary hearing was scheduled to commence on June 1, 2022, at 10:00 a.m., EST, via remote access technology, (3) the Staff Report was due on or before April 11, 2022, (4) the parties were directed to file their respective list of issues or concerns about which they may wish to pursue cross-examination of witnesses on or before May 4, 2022, (5) South Branch was to file all expert and factual testimony by May 18, 2022, (6) Staff and intervenors were to file all expert and factual testimony by May 25, 2022, and (7) any stipulation entered into by the parties to be



filed by noon on May 31, 2022, along with the associated testimony supporting the stipulation.

{¶ 22} South Branch filed its proof of publication of the rescheduled hearings on January 28, 2022. The notice was published in *The Courier* on January 24, 2022, and written notice was sent to affected property owners on January 19, 2022.

{¶ 23} The Staff Report was filed on April 11, 2022.

{¶ 24} On April 18, 2022, Applicant filed its proof of publication of the second public notice, in *The Courier* on April 8, 2022, in compliance with Ohio Adm.Code 4906-3-09(A)(2). In addition, South Branch indicates written notice was mailed on April 6, 2022.

{¶ 25} The local public hearing was held, as rescheduled, on April 27, 2022, in Findlay, Ohio, where 37 members of the public offered testimony.

{¶ 26} Issues lists were timely filed separately by Applicant, County Commissioners, Audra Deuble, and Travis Bohn on May 4, 2022.

{¶ 27} Testimony was timely filed on behalf of witnesses for Applicant, Staff, and Mr. Bohn consistent with the revised procedural schedule.

{¶ 28} On May 31, 2022, a joint stipulation and recommendation (Stipulation), executed by South Branch, Staff, County Commissioners, and OFBF (Signatory Parties), was filed with the Board. The Stipulation purportedly resolves all matters pertinent to the certification and construction of the proposed Project. Additionally, in support of the application and Stipulation, South Branch filed the supplemental testimony of Robert Kalbouss.

{¶ 29} Also on May 31, 2022, Applicant filed motions to strike the direct testimony of witnesses Mary Jo and Lanny Boes, David Tong, Travis Bohn, and Rachelle Harmon. No

memoranda contra the motions were filed, and the administrative law judges (ALJs) ruled on the motions to strike during the course of the evidentiary hearing as discussed herein.

{¶ 30} Consistent with the above referenced Entry issued on May 9, 2022, the evidentiary hearing was held in-person on June 1, 2022, at the offices of the Commission where the following documents were admitted into evidence:

<b>Exhibit</b>	<b>Date filed</b>	<b>Description</b>
Appl. Ex. 1	July 22, 2021	South Branch Application as modified on December 20, 2021, and amended February 25, 2022, including all appendices
Appl. Ex. 2	September 15, 17, 20, 24, 2021, and October 15, 2021, January 21, 2022, and March 21, 2022	Compilation of Applicant Responses to Data Requests and Supplements
Appl. Ex. 3	September 24, 2021	Certificate of Service of the accepted, complete application on local public officials and libraries
Appl. Ex. 4	June 21, 2021	Notice to Property Owners and Tenants of June 24, 2021 Public Information Meeting
Appl. Ex. 5	November 22, 2021; January 28, 2022, April 18, 2022	Compilation of the Proofs of Publication
Appl. Ex. 6	January 4, 2022	Phase I Archaeological Reconnaissance
Appl. Ex. 7	May 18, 2022	Direct Testimony of Robert Kalbouss
Appl. Ex. 8	May 18, 2022	Direct Testimony of Derek Cunningham
Appl. Ex. 9	May 18, 2022	Direct Testimony of Lynn Gresock
Appl. Ex. 10	May 18, 2022	Direct Testimony of Matthew Hildreth
Appl. Ex. 11	May 18, 2022	Direct Testimony of Alex Odom

<b>Exhibit</b>	<b>Date filed</b>	<b>Description</b>
Appl. Ex. 12	May 18, 2022	Direct Testimony of Erin Bowen
Appl. Ex. 13	May 31, 2022	Supplemental Direct Testimony of Robert Kalbouss
Bohn Ex. 1	May 25, 2022	Direct Testimony of Travis Bohn
Bohn Ex. 2	May 25, 2022	Direct Testimony of Megan Grau
Bohn Ex. 2A	June 21, 2022	Map of Keller Bison Pastures
Bohn Ex. 2B	June 21, 2022	Map of Keller Bison Hayfields
Staff Ex. 1	April 11, 2022	Staff Report of Investigation
Staff Ex. 2	May 25, 2022	Direct Testimony of Mark Bellamy
Staff Ex. 3	May 25, 2022	Direct Testimony of Jason A. Cross
Staff Ex. 4	May 25, 2022	Direct Testimony of Andrew Conway
Staff Ex. 5	May 25, 2022	Direct Testimony of Tyler Conklin
Staff Ex. 6	May 25, 2022	Direct Testimony of Allison DeLong
Staff Ex. 7	May 25, 2022	Direct Testimony of Matthew Butler
Staff Ex. 8	May 25, 2022	Direct Testimony of Thomas J. Crawford, PhD, PE
Staff Ex. 9	May 25, 2022	Direct Testimony of Jess Stottsberry
Staff Ex. 10	May 25, 2022	Direct Testimony of Eric Morrison
Staff Ex. 11	May 25, 2022	Direct Testimony of Allison Renick
Staff Ex. 12	May 25, 2022	Direct Testimony of James S. O'Dell
Joint Ex. 1	May 31, 2022	Joint Stipulation and Recommendation

{¶ 31} Consistent with the briefing schedule established at the evidentiary hearing, briefs and reply briefs were filed by South Branch, Staff, and Travis Bohn on August 5, 2022, and August 26, 2022, respectively.

{¶ 32} Also on August 26, 2022, Applicant filed a motion to strike portions of intervenor Travis Bohn's initial post hearing brief. Intervenor Bohn filed a memorandum contra on September 9, 2022. Applicant filed a reply in support of its motion on September 16, 2022.

{¶ 33} On January 3, 2023, Applicant filed a notice of modification to project layout to increase setback distances as follows: 300 feet, instead of 160 feet, from non-participating residences; 150 feet, rather than 60 feet, from public roads; and 50 feet from non-participating property lines. Applicant submits that these enhanced setbacks were adjusted in order to conform with the Board's recent decision in *In re Harvey Solar*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022).

### III. PROJECT DESCRIPTION

{¶ 34} As amended, South Branch seeks certification to build a 129.6 MW solar-powered electric generation facility in Washington Township, Hancock County, Ohio. The Project would consist of large arrays of ground-mounted photovoltaic (PV) modules, commonly referred to as solar panels, on a tracking rack system on approximately 610 acres within a 712-acre project area. The Project would also include associated facilities including access roads, underground and overhead electric collection lines, weather stations, inverters and transformers, a collection substation, and a 138 kilovolt (kV) generation interconnection (gen-tie) electric transmission line. The Project would be secured by perimeter fencing, at least 7 feet tall, with access through gated entrances. (Appl. Ex 1; Staff Ex. 1 at 6.)

### IV. CERTIFICATION CRITERIA

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

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;

- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

## V. SUMMARY OF EVIDENCE

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

### A. *Public Input*

{¶ 37} At the April 27, 2022 local public hearing held in Findlay, Ohio, 37 witnesses provided testimony, 10 in support of and the remainder in opposition to the Project. The witnesses that testified in opposition to the Project, including two Washington Township Trustees, cited several reasons for opposing the solar facility. Various witnesses offered that agriculture is the foundation of the United States and Ohio economies, and the farmland should be protected as a limited resource including statements that: (1) soil health is critical to surrounding farmers of the Project and the removal of the topsoil during construction and the disturbance of the topsoil at decommissioning is detrimental to the health of the soil and will result in reduced production yield (Pub. Tr. at 162-163, 198, 200-201); (2) drain tiles are extremely important and the project area includes land that floods, including where the substation is to be constructed, and also includes a 24-inch community tile responsible for draining several hundred acres (Pub. Tr. at 162); (3) ensuring the drain tile is not damaged and working properly, as damaged tiles impact surrounding farms and properties, flooding land causing the destruction of crops, reducing earnings, and causing farmers to incur additional expenses, as well as damaging other property including driveways and septic systems (Pub. Tr. at 17-20, 28, 32, 78, 96, 100, 126-127, 167, 171); (4) the impact of stray voltage on animals in fields and pastures adjacent to the Project (Pub. Tr. at 87-88); (5) weed concerns, such as if perennial, noxious weeds are allowed to grow on the Project property, they can travel to adjacent properties and cause the farmer to incur expenses to control the weeds, and there are alternatives to controlling the growth of weeds in the project area but the details of the plan need to be developed; (6) at the conclusion of the solar facility, the

land won't be able to return to farming; and (7) the Project is detrimental to the farming culture of the community and should not be installed on farmland. (Pub. Tr. at 113-117, 25, 55, 58, 63, 75, 77, 126, 160, 205). Area farmers recommend that South Branch be required to hire a soil health consult to select and establish adequate ground cover to suppress and treat weeds and mow before noxious weeds can produce seeds. If South Branch fails to mow, South Branch should compensate neighboring farms for weed control. (Pub. Tr. at 79, 163-164, 186, 201, 202.)

{¶ 38} Opposition witnesses also offered the following reasons for denying the Project: (1) aesthetics - South Branch will destroy the beautiful countryside and the view of nearby residents (Pub. Tr. at 75, 85-86); (2) the limited setbacks from surrounding properties (Pub. Tr. at 15, 85); (3) the adverse impact to residential property values and the inability for the town to expand which inhibits the community's future economic development; (4) land will become more expensive for farmers to buy or rent (Pub. Tr. at 33-34, 63, 78, 124, 206.); (5) the Project will destroy the ecosystems of area wildlife, including the eagles, osprey, falcons and other birds, as well as deer in the area (Pub. Tr. at 20, 22, 28, 76, 78, 82, 87, 108, 128, 193-194); (6) noise from the construction and operation and increased traffic (Pub. Tr. at 76, 94, 127); and (7) solar is an intermittent, inefficient source of energy (Pub. Tr. at 159).

{¶ 39} A few witnesses cited health concerns regarding toxins leaching out of the PV panels and into their wells, waterways, and the fields that serve their homes, pastures, and bison. Other witnesses took issue with the accuracy of the water consumption estimates contained in the Staff Report and the source of the water supply for the Project, particularly if South Branch uses local wells. (Pub. Tr. at 81, 86-87, 129, 196-197, 198-199). Some witnesses described potential health impacts from the operation of the Facility, given the proximity to the electromagnetic radiation of area residents (Pub. Tr. at 88-89, 129-130, 133).

{¶ 40} One witness, manager and part-owner of a bison farm located immediately adjacent to South Branch, expressed concern that the water flow, noise, and weeds in the

project area will adversely impact their hay fields and pastures and the health and meat production of the bison (Pub. Tr. at 185-186, 187, 190-191).

{¶ 41} The public witnesses who offered testimony in support of the Project offered several reasons for their support. Among the reasons cited were: (1) the jobs created, including jobs for local members of the construction trades unions; (2) the associated economic impact for the community, including the school district, and the solar apprenticeship programs (Pub. Tr. at 35, 137, 139, 141, 166); (3) the Project would be a source of revenue for the Arcadia school district benefiting future generations and without costing residents (Pub. Tr. at 42-43); (4) solar provides unlimited energy to the community for the foreseeable future and supports business that want to go green attracting other businesses to Hancock County and the state (Pub. Tr. at 47); (5) solar PV systems are safe (Pub. Tr. at 47-48); (6) solar systems can be installed to avoid damage to the drain tiles if they know where the tile is located (Pub. Tr. at 48); (7) the Findlay Hancock County Economic Development office, a private not-for-profit agency, testified in support of the Project noting many corporations and manufacturers have set policies for energy consumption increasing the attraction for renewable energy; (8) Hancock County Commissioners have approved a payment in lieu of taxes (PILOT) for the South Branch Facility resulting in \$1.2 million annually to be distributed locally; (9) the PILOT resolution executed by the Hancock County Commissioners also requires that South Branch hire local workers for the construction of the Facility; (10) the Project is not subject to the exclusion zone implemented by the County Commissioners on April 9, 2022 (Pub. Tr. at 67-70); (11) the Applicant has responded to the community's concerns and reduced the size of the Facility; and (12) South Branch has also provided support, financially and otherwise, to local non-profit organizations including youth programs, community activities, and a parade (Pub. Tr. at 174-175).

{¶ 42} In addition to the testimony provided at the public hearing, the Board has received more than 285 public comments and documents, including petitions for and against the Project. The public comments expressing opposition to the Project listed many of the same reasons offered by witnesses at the public hearing and, in addition, cited the



adverse impact to the ecosystem to mine minerals and ship the parts necessary to construct solar panels and batteries, construction noise less than one mile from a school, and the Project's impact on area temperatures and the amount of rain fall as the reasons for their opposition to the Project.

{¶ 43} In addition to the reasons offered at the local public hearing by supporters of the Project, the public comments and documents offer the following reasons for constructing the Project; no air pollution, no water pollution, no emissions, the Project will produce significantly more revenue for the community than under Current Agricultural Use Value tax and reduce the need for increased levies, support for businesses seeking renewable energy, and economic development and noting that Leeward Energy will be the long-term owner of the Facility.

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

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

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

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

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

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

*a. Community Impacts*

**i. Land Use and Regional Planning**

{¶ 47} Staff describes that the Project's expected impact would be nearly all to agricultural land. Further, Applicant has established internal practices that enable the land to resume its prior use at the close of the Project. Staff also assesses the Project's setbacks, noting that 21 non-participating residences are expected to be within 250 feet of the Project. In terms of setbacks, Staff describes that they were 160 feet from non-participating residences. In terms of regional planning, Staff notes that both government entities that are impacted by the Project have developed land use planning documents. Staff reasons that the intended siting of the Project on agricultural land is not inconsistent with these plans. (Staff Ex. 1 at 10-11.)

**ii. Recreation**

{¶ 48} Staff reviewed Applicant's five-mile recreation area study, which identified 18 areas in proximity to the Project. Only three of these areas would potentially have views of the Project. Applicant notes that each of these areas is at least 2.4 miles away from the Project and that Applicant does not expect the Project to impact the existing visual landscape because of the existing vegetation and topography. (Staff Ex. 1 at 11.)

**iii. Aesthetics**

{¶ 49} Staff describes that aesthetic concerns from the Project are mitigated by the rural nature of its siting, which lessens the number of persons who will encounter the Project. Further, Staff reviewed the Project's five-mile visual resources study, which concluded that panel visibility is substantially diminished between 0.5 and 1.5 miles and is minimal beyond 1.5 miles. Staff also notes that Applicant's visual impact assessment indicates that approximately 88 percent of potential viewers' viewsheds will be screened due to existing vegetation, structures, and topography. Further, Staff references Applicant's

use of setbacks, vegetative screening, lighting, and fencing conditions in concluding that the Project's overall aesthetic impact would be minimal. (Staff Ex. 1 at 11-12.)

#### **iv. Cultural Resources**

{¶ 50} Staff reviewed cultural resources studies prepared by Applicant's consultant, which included both a Phase I cultural archaeological reconnaissance survey and a historical/cultural resources study of the Project. In the archaeological survey report, it was determined that 21 new archaeological sites were identified, but that none of the newly identified sites were recommended for inclusion in the National Register of Historic Places (NRHP). In the historical/cultural resources study, it was determined that two resources were potentially eligible for NRHP listing, but that neither site was adversely impacted by the Project due to their distances from the Project and the existence of intervening vegetation and structures. As to each study, Staff notes that OHPO reviewed the study's findings and concurred in its conclusion. (Staff Ex. 1 at 12-13.)

#### **v. Noise**

{¶ 51} Staff reviewed noise issues in terms of both construction and operation activities. As for construction activities, Staff acknowledged that construction activity noise levels would be significant, but that adverse impacts are mitigated by (1) the noise would be temporary and intermittent, (2) the construction would occur during daytime hours and occur away from most residential structures, and (3) Applicant's commitment to using proper equipment and establishing a complaint resolution process. Similarly, Staff concluded, based on Applicant's ambient noise level study, that the Project's noise impacts to non-participating receptors would be less than ambient noise plus five dBA such that the Project would be expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 13.)

**vi. Economic Impact**

{¶ 52} Economically, Staff notes its review of Applicant's estimated capital and intangible costs, estimated O&M expense, and estimated delay costs. Staff notes that cost comparisons for the Project are consistent with those of similar facilities, and that Applicant's estimate that the cost of delays in constructing the Project could exceed \$1 million per month is also reasonable. Further, Staff reviewed and accepted Applicant's economic impact report, which was prepared on Applicant's behalf by a consultant from the Ohio University School of Leadership and Public Affairs. In the report, the consultant determined that the Project is expected to create 757 construction and 11 long-term operational jobs. Further, local earnings during construction of the Project are estimated to be \$51.1 million and annual operational earnings are estimated to be \$1.1 million, which results in the combined annual impact of \$75 million and \$1.9 million, respectively. Further, the consultant determined that the Project is estimated to generate between \$907,200 and \$1.166 million in annual payments to Hancock County taxing districts. (Staff Ex. 1 at 13-15.)

**vii. Glare**

{¶ 53} Staff reviewed and accepted Applicant's glare report, which concluded that the Project is not expected to produce glare that will impact roadways. Further, Staff notes that any aesthetic impacts from glare will be impacted by vegetation modifications that are part of the recommended landscape and lighting plan for the Project. (Staff Ex. 1 at 15.)

**viii. Existing Natural Gas Pipelines**

{¶ 54} Staff notes that there are two existing pipelines in proximity to the Project. While Applicant has not yet engaged the pipeline owners about the Project, Applicant does describe its intention to coordinate with the owners as to necessary safe-construction procedures. Staff recommends that Applicant submit a refined solar facility layout plan at least 60 days prior to construction that shows the pipeline easement and right-of-way, Applicant's setback of solar panels and inverters to that pipeline easement and right-of-way,

the access roads to avoid crossing the pipeline easement, and the method for installing the underground electric collection system within the pipeline easement. Additionally, Staff recommends that Applicant submit a document addressing its plan for compliance with the pipeline owner's written safety guidelines or, if such a written plan does not exist, that Applicant's submission include at least (1) an encroachment agreement, (2) proof of insurance, (3) an engineering study for crossing pipelines with equipment, (4) a plan for the use of protective material when crossing the pipeline, (5) a plan for horizontal directional drilling (HDD) clearance of at least 60 inches from the pipeline, (6) confirmation of non-interference with the pipeline's cathodic protection system, (7) a plan for properly shielding underground electric cables, and (8) the use of a blast plan analysis if blasting is to occur. Further, Staff recommends that Applicant denote pipeline easements on its final engineering drawings and install construction fence along the pipeline easement so that it is avoided during construction. (Staff Ex. 1 at 15-16.)

#### **ix. Decommissioning**

{¶ 55} Applicant expects to operate the Facility for 35 years or more and has prepared a decommissioning plan that estimates decommissioning costs at \$9,174,010. Applicant's plan details the actions that are necessary to return the Project site to its current agricultural use, which includes coordination with government regulators as to the removal of the Project over a 12-month period. Removed Project materials will be repurposed, salvaged, recycled, or disposed of at a licensed solid waste facility. (Staff Ex. 1 at 17.)

{¶ 56} Staff recommends that Applicant submit, at least 30 days before the preconstruction conference, an updated decommissioning plan that is prepared by a professional engineer and a total cost estimate exclusive of salvage value. Further, Staff recommends that Applicant provide a performance bond for the decommissioning cost estimate, without offset for salvage, where Applicant is the principal, the insurer is the surety, and the Board is the obligee, and that the bond amount be revisited every five years based on the evaluation of a professional engineer. (Staff Ex. 1 at 17-18.)

**x. Wind Velocity**

{¶ 57} Staff describes that the Project will be designed by an Ohio Professional Engineer as a Risk Category I structure in accordance with the safety requirements provided by the American Society of Civil Engineers (Staff Ex. 1 at 18).

**xi. Roads and Bridges**

{¶ 58} Staff reviewed Applicant's transportation infrastructure evaluation, which concluded that the transportation infrastructure is sufficient to support the necessary construction traffic. Further, Staff notes that Applicant is expected to enter into a Road Use Maintenance Agreement with Hancock County as to repairing any damaged public roads or bridges. (Staff Ex. 1 at 19.)

**xii. Adjacent to Former Village of Arcadia Landfill**

{¶ 59} Staff describes that Applicant's current plan results in the installation of a perimeter fence and one row of solar array within 300 feet of the former Village of Arcadia historic landfill, which ceased accepting waste prior to 1970. Staff describes that the current construction plan requires that Applicant gain approval from the OEPA, which regulates construction in proximity to landfills. Should Applicant's final design involve construction within 300 feet of the Arcadia Landfill, Staff recommends that Applicant submit a copy of approval from the OEPA at least 30 days prior to the preconstruction conference. Further, Staff describes that any unexpected encounters with the landfill will be addressed in accordance with the unanticipated discovery plan (UDP), which is more fully described below in the ECR analysis. (Staff Ex. 1 at 19-20, 23-24.)

**b. Geology**

**i. Soil types**

{¶ 60} Staff describes that the majority of the Project is covered by lake-planed moraine soil with an average glacial drift thickness in excess of 50 feet. As a result of the

glacial drift thickness, the Project is not expected to encounter bedrock or karst features. Further, Staff notes that the nearest documented karst feature (sinkhole) is 7.6 miles outside of the project area, and that Applicant's geotechnical explorations did not observe any karst features. As a result, Staff concludes that the risk of encountering karst is considered low. Staff further describes that the area soils are associated with a moderate risk of shrink-swell potential. Based on these findings, Applicant has determined that the subsurface conditions and soils are suitable for the proposed Project. (Staff Ex. 1 at 20-22.)

**ii. Oil and Gas Mining**

{¶ 61} Staff describes that oil and gas records maintained by the Ohio Department of Natural Resources (ODNR) identified three oil and gas wells within the original project area, and an additional 76 wells within one mile of the original project area. Staff also describes that there is no active mining within the project area, and that the nearest limestone mine is 6.3 miles away. Given the potential for latent oil and gas wells that results from historic development of resources in the region, Applicant complied with Staff's request for the production of an ECR, which was provided to Staff on February 25, 2022. The results of the ECR are more fully discussed below. (Staff Ex. 1 at 21.)

**iii. Seismic Activity**

{¶ 62} Staff describes that records from the ODNR document a history of five relatively low magnitude earthquakes within ten miles of the project area. Further, the United States Geological Survey seismic hazard map from 2018 indicates that the project area has a low risk of seismic activity. Staff also describes that, according to the 2017 Ohio Building Code, the area is recommended for Site Class D seismic design parameters. (Staff Ex. 1 at 22.)

**iv. Geotechnical Report**

{¶ 63} Staff reviewed Applicant's geotechnical report and noted that soil borings did not encounter bedrock or groundwater. Staff describes that Applicant should develop

a final geotechnical report that analyzes the Project's final design phase, and that Applicant comply with the conclusions of its geotechnical consultant as to the Project's access road construction. (Staff Ex. 1 at 22-23.).

**v. Engineering Constructability Report**

{¶ 64} As described above, Applicant provided an ECR to address the potential for latent oil and gas well infrastructure that could interfere with the safe construction and operation of the Project. According to the Staff Report, the ECR discovered one latent oil and gas well that was deemed to be of low risk according to the ODNR orphan well risk evaluation matrix. Additionally, the ECR included a preliminary UDP that addresses the response to any wells or landfill solid waste that may be encountered by the Project.

{¶ 65} Staff concludes that, based on the ECR and UDP that includes the protocols for managing any unexpected encounters with oil and gas wells, the Project's orphan well risk is likely low. Further, Staff recommends that the Project's final engineering drawings account for geological features and that Applicant submit a final geotechnical and UDP report at least 30 days prior to the preconstruction conference. Subject to these recommendations, Staff concludes that there do not appear to be any particular geological features within the project area that are incompatible with the construction and operation of the Project. (Staff Ex. 1 at 23-24.)

**c. Ecological Impact**

**i. Public and Private Water Supplies**

{¶ 66} Staff reviews the well location information that Applicant provided in conjunction with records maintained by OEPA and ODNR. These confirm that groundwater resources are plentiful in the project area. While there are no recorded water wells within the project area, Applicant's ECR did confirm the existence of a former livestock well that Applicant intends to plug and protect from construction disturbance via a 10-foot setback requirement. Further, Applicant will be required to plug and observe



setback requirements for any additional wells that may be discovered during the final planning or construction phases of the Project. Staff further describes that the Project's water use requirements are not expected to significantly impact water resources in the area. (Staff. Ex. 1 at 24-25.)

{¶ 67} Staff concludes that the Project is unlikely to adversely impact public or private drinking water supplies provided that Applicant commits to ensuring proper plugging and setbacks from suspected water wells, and developing and implementing: a Spill Prevention, Control and Countermeasures plan, a Storm Water Pollution Prevention Plan (SWPPP), and a UDP (Staff. Ex. 1 at 24-25).

## **ii. Surface Waters**

{¶ 68} Staff notes that there are five known streams and two known Category 2 wetlands within the project area. Applicant indicates that it plans to avoid both wetlands. Further, while up to three stream crossings are being proposed for underground collection lines, Applicant intends to employ HDD for such crossings, and has developed an HDD Contingency Plan to address any complications that might arise during construction. Staff adds that an on-site environmental specialist should be required during HDD activities, and that Applicant should comply with United States Army Core of Engineers Nationwide Permit 57 – Electric Utility Lines and Telecommunications Activities, Applicant's SWPPP, an Ohio National Pollutant Discharge Elimination System (NPDES) permit from the OEPA, and OEPA's published Guidelines for Post-Construction Storm Water Control for Solar Panel Arrays. (Staff Ex. 1 at 26-27.)

## **iii. Threatened and Endangered Species**

{¶ 69} Staff reviewed Applicant's information as to potential impacts to threatened and endangered species, which included information from ODNR and the United States Fish and Wildlife Service (USFWS), field assessments, and document reviews. Within the project area, Staff identifies the following species as either threatened or endangered; four

mammals, five invertebrates, one fish, one reptile, and three birds. Staff notes that ODNR and USFWS did not identify any Project impact concerns as to these species. Nevertheless, Staff recommends that Applicant commit to the following as part of the Project: if Applicant encounters any threatened or endangered species before or during construction, Applicant must coordinate with Staff, ODNR, and USFWS to obtain approval for avoiding such impacts; and Applicant shall adhere to seasonal tree cutting dates as recommended by ODNR and USFWS. (Staff Ex. 1 at 28-29.)

#### **iv. Vegetation**

{¶ 70} Staff describes that vegetation within the project area includes primarily cropland (703.83 acres), though it also includes upland forest (7.37 acres), developed land (.67 acres), and scrub shrub (.28 acres). Staff notes that permanent vegetative impacts will occur primarily within agricultural land, but that two acres of forestland will also be impacted. Staff further notes that Applicant's vegetation management plan incorporates pollinator-friendly habitat per the recommendations of the Ohio Pollinator Habitat Initiative, and that the habitat will enhance the visual appeal of the Project, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. Conditioned upon Applicant acting to mitigating noxious weed propagation as identified in Ohio Adm.Code 901:5-37, Staff concludes that the Project would represent a reduced environmental impact when compared to the current agricultural land use, due to reducing the erosion and sedimentation caused by frequent tilling and reducing the application of fertilizers and pesticides. (Staff Ex. 1 at 29.)

#### **d. Conclusion**

{¶ 71} Based on the above review and analysis, Staff recommends that the Board find that Applicant has determined the nature of the probable environmental impact for the proposed Facility and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 29).

### 3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

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

{¶ 73} Staff describes Applicant's rationale for the Project's site selection and measures for mitigating its potential environmental impacts. Staff notes that OHPO agrees that the Project will not adversely affect architectural and archaeological resources, and that Staff has determined that minimizing adverse cultural resource impacts would be achieved. Further, Staff notes the Project's overall positive financial impact on the state and local economies. Staff also describes Applicant's above-referenced plans for environmental impact avoidance or mitigation, which include: avoiding impacts to latent oil and gas wells; protecting public or private drinking water supplies; and mitigating surface water, threatened or endangered species, noise, visual, agricultural, and road use impacts. Further, Staff emphasizes Applicant's plan for decommissioning, which is bolstered by Staff's recommended conditions as to updating the plan to account for possible changing environmental and financial conditions during the Project's operations. Upon review of these factors, Staff concludes that, while the Project will result in temporary and permanent environmental impacts, those impacts are unlikely to be significantly adverse such that the Project represents the minimum adverse environmental impact. (Staff Ex. 1 at 30-32.)

{¶ 74} Based on its review of the application and investigation, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 32).

#### 4. ELECTRIC POWER GRID

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

{¶ 76} Staff evaluated the impact of integrating the proposed Facility into the existing regional electric transmission grid. As proposed, the Project is capable of producing up to 129.6 MW with two proposed Point of Interconnection (POI) options; an on-site option that would require construction of a new 138 kV switching station that would inject energy into the AEP Fostoria Central-Ebersole 138 kV circuit, and an off-site POI that involves a direct connection to AEP's existing Fostoria Central Substation, which would require a separate Board filing. Staff also describes that the Project is required to comply with North American Electric Reliability Corporation reliability standards and PJM Interconnection, LLC (PJM) standards. Regarding PJM compliance, Applicant has submitted four generation interconnection requests, and PJM has determined that: (1) the Project's Bulk Power System is not to exceed 129.6 MW, (2) the Project does not create reliability violations for either the proposed onsite or offsite POIs, (3) the Project does not cause any reliability criteria violations as to current system operations, and any system upgrades that may be necessary due to overloads identified in earlier PJM queue projects would not be Applicant's responsibility, (4) local energy delivery upgrades are not required, and (5) the Project does not create any circuit breaker problems. (Staff Ex. 1 at 33-35.)

{¶ 77} Staff concludes that the Facility would be consistent with plans for expansion of the regional power system and would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided that any certificate issued

for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 35.)

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

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

{¶ 79} This Project will not require air quality permits for construction nor operation, and, as the Project will not include a source of air emissions, no air pollution control equipment is needed. Although the Project will not require any air quality permits, fugitive dust rules may be applicable during the construction of the Project. Therefore, Staff recommends that Applicant comply with best management practices as outlined in ODNR's *Ohio Rainwater and Land Development Manual* for dust mitigation. Further, as described above, Staff describes Applicant's intention to develop a SWPPP in connection with its OEPA NPDES construction storm water permit. Staff further notes that Applicant will obtain, if required, a Section 404 Clean Water Act permit as well as an Ohio Isolated Wetland Permit. Further, Staff indicates that Applicant's solid waste management complies with R.C. Chapter 3734 in that Applicant will properly recycle or dispose of Project materials, including the proper disposition of equipment as associated with Applicant's decommissioning plan. Further, Staff assessed the Project's potential impact on aviation, describing that the Project has been evaluated by the Federal Aviation Association and Ohio Department of Transportation Office of Aviation, and that neither agency indicates that the Project will adversely affect local aviation. (Staff Report at 36-38.)

{¶ 80} Staff concludes that the Facility complies with the requirements of R.C. 4906.10(A)(5) provided that any certificate issued for the proposed Facility includes the conditions specified in the Staff Report (Staff Ex. 1 at 38).

## **6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY**

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

### ***a. Safety***

{¶ 82} Staff's review included Applicant's plan to use a Tier 1 solar panel manufacturer and to implement specific O&M activities to maintain safety and reliability. Further, Applicant will secure the Facility via approved fencing that preserves setbacks, included those recommended by equipment manufacturers. Further, Applicant will develop a preconstruction emergency action plan that is consistent with an example that Staff has previously reviewed. (Staff Ex. 1 at 39.)

### ***b. Electromagnetic Fields***

{¶ 83} Staff describes that electromagnetic field health concerns are not expected because the gen-tie transmission line is more than 100 feet from any occupied structure and Applicant's intended equipment is expected to meet the requirements of the National Electric Safety Code (Staff Ex. 1 at 39).

### ***c. Public Interaction and Participation***

{¶ 84} Staff describes that Applicant has acted to engage the public as to the Project, including (1) hosting a public information meeting that was used to incorporate community engagement into the application, (2) maintaining a Project website, (3) drafting a complaint resolution procedure, which includes plans for filing complaint summaries on the public docket, (4) committing to preconstruction and pre-operation public notices, and (5) participating in the local public and evidentiary hearings in the case. (Staff Ex. 1 at 40.)

{¶ 85} Staff further describes participation by intervenors, including the County Commissioners, the OFBF, and various local landowners. Further, Staff indicates that 187 public comments were filed in the case docket as of the date of the Staff Report, which included: opposition comments filed by the Washington Township Fiscal Officer and the Hancock County Public Health Director; and supporting comments filed by the Findlay-Hancock Economic Development Agency, the Findlay-Hancock County Chamber of Commerce, and the Ohio Chamber of Commerce. Staff further notes that comments filed in the case were consistent with those that are generally expressed in support of and in opposition to solar projects, such as the one at issue in this case. (Staff Ex. 1 at 40-41.)

{¶ 86} In all, Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity and, therefore, complies with the enumerated requirements of R.C. 4906.10(A)(6), provided that any certificate issued by the Board includes the conditions specified in the Staff Report (Staff Ex. 1 at 41).

## **7. AGRICULTURAL DISTRICTS**

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

{¶ 88} Staff notes that while the Project will disturb approximately 712 acres of agricultural land, the repurposed land is capable of being returned to agricultural uses when the Project is decommissioned. Further, Staff describes that the Project may impact drain tiles, but such impacts are reduced by Applicant's mitigation plan, which addresses plans for construction avoidance and repair of any impacted drain tiles. (Staff Ex. 1 at 42.)

{¶ 89} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, the requirements of R.C. 4906.10(A)(7) are satisfied, provided

any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 42).

## **8. WATER CONSERVATION PRACTICE**

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

{¶ 91} Applicant expects the Project will require 20,000 gallons of water per day during construction for dust suppression and vegetative watering activities. Operation of the Facility would not require significant amounts of water, as Applicant does not anticipate the need to clean the PV panels. Further, Applicant describes that it anticipates the O&M building will have water and wastewater discharge of approximately 200 gallons per day. (Staff Ex. 1 at 43).

{¶ 92} Accordingly, Staff recommends the Board find that the Facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8), provided any certificate issued include the conditions specified in the Staff Report (Staff Ex. 1 at 43).

## **9. RECOMMENDATIONS**

{¶ 93} In addition to making various findings throughout its report, Staff recommended that 50 conditions be made part of any certificate issued by the Board for the proposed Project. The recommended conditions found in the Staff Report were substantially incorporated into the Stipulation filed on May 31, 2022. (Staff Ex. 1 at 44-51; Joint Ex. 1 at 2-10). The conditions are discussed below.

## **VI. STIPULATION AND CONDITIONS**

{¶ 94} As previously noted, a Stipulation entered into by several of the parties to the case was filed on May 31, 2022, and admitted into the record at the evidentiary hearing



(Joint Ex. 1; Tr. at 25, 52). Pursuant to the Stipulation, the Signatory Parties recommend that the Board issue the certificate requested by Applicant, subject to 50 conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) Applicant shall install the Facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (2) Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. Applicant may conduct separate preconstruction conferences for each stage of construction.
- (3) Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the as-built specifications for the entire Facility. If Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Facility

within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.

- (4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design for that phase of construction and mapping in the form of PDF, which Applicant shall also file on the docket of this case, and geographically-referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings of the final Project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final Project design to Staff.

- (5) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This shall include a summary statement addressing the geologic and soil suitability.
- (6) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final UDP. This plan shall include specific considerations toward encountering oil and gas well related features and incident notification procedures as outlined by the Ohio One-Call Emergency Notification System for oil and gas related occurrences.
- (7) All Facility components shall be set back a minimum of 50 feet from any oil and gas well or oil and gas well related features.
- (8) Any oil and gas well identified as an unplugged idle or orphan within the project area shall be managed in accordance with the applicable laws established by ODNR Division of Oil and Gas. Construction at an unplugged idle or orphan well site must include setback considerations that would allow well access and be at least 14 feet wide leading to the well with the setback established in Condition 7.
- (9) Applicant shall visually monitor identified historical oil and gas well locations within the project area at least once every ninety days during Project construction, operation, and maintenance for the duration of the Project term. Any observations that may be indicative of an oil and gas well

related release shall be reported as outlined by the Ohio One Call Emergency Notification System.

- (10) If any changes are made to the Facility layout after the submission of final engineering drawings, Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are subject to Staff review for compliance with all conditions of the certificate, prior to construction in those areas.
- (11) If the final engineering design proposes solar equipment including but not limited to perimeter fencing, inverter, solar array, inverters, access roads, or electric collection system within 300 feet of the former Village of Arcadia Dump site property, then at least 30 days prior to the preconstruction conference associated with such activities, Applicant shall submit a copy to Staff of its application to the OEPA for authorization of activities pursuant to Ohio Adm.Code 3745-513.
- (12) Additional geotechnical borings and test pits shall be conducted, and those results presented with the final geotechnical report. This shall include, but not be limited to borings at the substation location. Soil samples shall be analyzed per the recommendations of the preliminary geotechnical engineering report.
- (13) Soil corrosion testing shall be conducted at varying depths to further identify corrosion potential for consideration in the final engineering design.

- (14) The additional geotechnical evaluation required in Condition 12 shall include pile load testing throughout the project area.
- (15) Applicant shall use engineering methods and materials such as geotextile fabric to ensure the integrity of soil subgrade surfaces of access roads prior to gravel aggregate placement.
- (16) Applicant shall definitively confirm that the well-like feature identified as GL-1 in the ECR is a water well and not an historic oil and gas well prior to plugging and abandoning the well.
- (17) The exact locations of all water wells within the project area shall be mapped prior to construction. Applicant shall adhere to a minimum Project infrastructure setback of 50 feet from any existing domestic use water supply well. Applicant shall adhere to a minimum setback of ten feet between the Project infrastructure and agricultural use wells or any plugged and abandoned water wells.
- (18) Applicant shall obtain concurrence from the applicable landowner prior to the plugging and abandonment of any water wells within the project area. Documentation of that concurrence shall be filed on the case docket.
- (19) Applicant shall notify Staff regarding any recommended plugging and abandonment of water wells within the project area prior to construction.
- (20) The certificate shall become invalid if Applicant has not commenced a continuous course of construction of the

proposed Facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.

- (21) As the information becomes known, Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the Facility begins commercial operation.
- (22) Applicant shall obtain transportation permits or authorizations prior to the commencement of construction activities that require them. Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed Facility. Applicant shall detail this coordination as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.
- (23) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, Applicant shall obtain and comply with such permits or authorizations. Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by Applicant and shall file such permits or authorizations on the public docket. Applicant shall provide a schedule of construction activities and acquisition

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

- (24) To the extent permitted by R.C. 4906.13(B), the certificate authority provided in this case shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (25) Applicant shall not commence any construction of the Facility until Applicant has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. Applicant shall docket in the case record a letter stating that the Agreements have been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.
- (26) Applicant shall not commence any construction of the Facility until the POI. Applicant shall file a letter in the case record stating which POI would be selected.
- (27) The Facility shall be operated in such a way as to assure that no more than 129.6 MW would at any time be injected into the Bulk Power System.

- (28) Applicant shall file a separate application for the off-site electrical interconnection with the Board if the off-site POI is selected.
- (29) Prior to commencement of construction, Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. The plan shall include measures such as fencing, vegetative screening or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the Facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The plan shall incorporate planting design features or measures to address aesthetic impacts to the traveling public, nearby communities, sensitive institutional land uses and recreationalists. Consistent with Appendix D of the Application and Updated Appendix D of Applicant's December 20, 2021 Modification, Applicant shall maintain the vegetative screening for the life of the Facility and Applicant shall substitute or replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Applicant shall maintain all



fencing along the perimeter of the Project specified in the application in good repair for the term of the Project and shall promptly repair any significant damage as needed. Lights shall be motion-activated and designed to narrowly focus light inward toward the Facility, such as being downward-facing and/or fitted with side shields. Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.

- (30) Prior to commencement of construction, Applicant shall submit to Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location. This condition shall not apply to substation fencing.
- (31) Applicant shall apply the setback it established of solar arrays 160 feet from non-participating sensitive receptors to all above grade Facility components, including fencing.
- (32) Applicant shall construct the Facility in a manner that incorporates post-construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the OEPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (33) Consistent with the Vegetation Management Plan at Appendix D of the application and updated Appendix D of Applicant's December 20, 2021 modification, Applicant shall include mapping of the areas where pollinator habitat would be established and maintained, and provide that routine mowing would be limited to fall/spring seasons, as needed,

to allow for natural reseeding of plantings and to reduce impacts to ground nesting birds; provided, however that more regular mowing shall be performed, as necessary, to prevent noxious weeds, as described below.

- (34) Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37 in the project area during construction, operation, and decommissioning via procedures and processes specified and required by the Project's Vegetation Management Plan and shall follow all applicable state laws regarding noxious weeds. The Project shall provide annual proof of weed control for the first four years of operations, with the goal of weed eradication significantly completed by year three of operation.
- (35) Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by Applicant, Staff, and the appropriate agencies.
- (36) Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to listed bat species, unless coordination with the ODNR and the USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30,

Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.

- (37) Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas may include, but are not limited to, wetlands, county ditches, and streams, and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during Project construction. The environmental specialist shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.
- (38) Applicant shall not cross streams or ditches by fording for construction access and shall instead, in consultation with the county engineer, employ timber matting or other methods that avoid or minimize streambed disturbance.
- (39) Should construction be delayed beyond five years of the date of the certificate, certain wildlife surveys may be required to be updated as determined by Staff and the ODNR.
- (40) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the

hours between 9:00 a.m. and 6:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., and after 6:00 p.m. or until dusk when sunset occurs after 6:00 p.m., Applicant shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.

- (41) At least 30 days prior to the preconstruction conference, Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket that includes:
  - (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Board is the obligee;
  - (b) a timeline for removal of the equipment;

- (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation;
  - (d) a provision where the performance bond is posted prior to the commencement of construction;
  - (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value;
  - (f) a provision for road use agreements to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process;
  - (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors;
  - (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by the Applicant; and
  - (i) a provision that underground equipment will be removed to the extent that allows for future drain tile repairs and installation to be completed.
- (42) At the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approved by Staff.

- (43) At least 30 days prior to the preconstruction conference, the Applicant shall demonstrate that it has a complete copy of the manufacturer's safety manual or similar document and has incorporated any recommended setbacks from the manufacturer into its final design site plan.
- (44) Operational sound levels shall not exceed ambient sound levels plus five dBA, as listed in table 4 of the Noise Evaluation as set forth in the application at Updated Appendix N, at non-participating receptors. If the inverters and/or substation transformer chosen for the Project have a higher sound power level than the representative inverter and transformer used in the Noise Evaluation, Applicant shall submit an updated noise study, at least 30 days prior to construction, using noise data from the inverter and substation transformer chosen for the Project. The updated noise study shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed on a sunny day in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level as set forth in the application at Updated Appendix N, table 4, plus five dBA, additional noise mitigation will be required. This condition is complied with

if the test shows the operational noise level is less than project area ambient Leq level plus five dBA.

- (45) Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems or compaction to soils resulting from the construction, operation, and/or maintenance of the Facility in agricultural areas. Damaged field tile systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at Applicant's expense to ensure proper drainage. The affected landowner(s) may agree to not having the damaged field tile system repaired, but they may do so only if: (i) the field tile systems of nearby parcels remain unaffected by the non-repair of the landowner's field tile system; and (ii) the damaged field tile does not route directly onto or into an adjacent parcel. Applicant shall design the Project to ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the Project. Applicant shall document benchmark conditions of surface and subsurface drainage systems on Project parcels prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches. Applicant, together with an independent tile and drainage consultant retained by Applicant, shall consult with owners of all parcels adjacent to the Project parcels, the county soil and water conservation district, and the county engineer to request drainage system information over those parcels. Applicant shall consult with the county engineer and the county soil and water

conservation district for tile located in a county maintenance/repair ditch, and Applicant shall consult with the county engineer for tile, storm sewers, and ditches located in a county or township right-of-way. A map of discovered drain tile systems shall be filed in the case docket once construction is complete.

- (46) At least 30 days prior to the start of construction, Applicant shall file a copy of the final complaint resolution plan for construction and operation of the Project on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of Facility operations, Applicant shall notify via mail affected property owners and tenants; all residents, airports, schools, and libraries located within one mile of the project area; parties to this case; county commissioners, township trustees, and emergency responders; and any other person who requests updates regarding the Project. These notices shall provide information about the Project, including contact information and a copy of the complaint resolution program. The start of construction notice shall include written confirmation that Applicant has complied with all pre-construction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of Facility operations notice shall include written confirmation that Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. Applicant shall file a copy of these notices on the public docket. During the construction and operation of



the Facility, Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year during construction and through the first five years of operation. The report shall include a list of all complaints received through Applicant's complaint resolution program, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved. Applicant shall file a copy of these complaint summaries on the public docket.

- (47) Applicant shall not utilize blasting to construct the solar Facility.
- (48) At least 30 days prior to the preconstruction conference, Applicant shall submit a refined solar facility layout that shows the pipeline easement and right-of-way, Applicant's setback of solar panels and inverters to that pipeline easement and right-of-way, the access roads necessary to avoid crossing the pipeline easement, the location of the underground electric collection system within the pipeline easement, and the method for installing the underground electric collection system within the pipeline easement.
- (49) At least 30 days prior to the preconstruction conference, Applicant shall submit a document indicating that it has met or addressed notable points from the pipeline owner's written guidelines for third party construction or maintenance activities within the pipeline's easement. If written guidelines are unavailable, Applicant shall at least include and address the following specific notable points in

its document but are not limited to at least the following: obtain an encroachment agreement; insurance coverage; conduct an engineering study for crossing of pipelines with equipment; use of timber mats, bridges, or other protective material to cross the pipeline during construction; meet or exceed minimum HDD pipeline clearance of 60 inches from the pipeline; establish noninterference with the pipeline's cathodic protection system; utilize proper shielding of the underground electric cable; comply with setbacks for blasting near the pipeline, due to its compliance with Staff's recommended condition that it not utilize blasting for the Project; and conduct a prior blast plan impact analysis.

- (50) Applicant shall denote the pipeline easement on the final engineering drawings and install construction fence along the pipeline easement so that the pipeline easement is avoided during construction,

(Joint Ex. 1 at 2-10.)

{¶ 95} Further, by amendment filed on January 3, 2023, South Branch committed to increase, as attached in preliminary drawings, the setback and buffer distances agreed to as part the Stipulation to (a) 300 feet from non-participating residences; (b) 150 feet from public roads; and (c) 50 feet from non-participating property lines. The revised setbacks and buffer distances will be incorporated into the final engineering designs submitted to Staff as part of the preconstruction compliance process. South Branch asserts that these setbacks and buffers are consistent with the Board's decision in another recent case<sup>1</sup> and although not yet

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<sup>1</sup> *In re Harvey Solar I, LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022).

effective, the distances also reflect the setback reference points stated in the Board's pending rulemaking case (Case No. 21-902-GE-BRO).

## VII. EVIDENTIARY HEARING AND POST HEARING FILINGS

{¶ 96} Applicant presented the testimony of six witnesses at the evidentiary hearing whose testimony supplemented the documentary evidence in the case, including the Stipulation. These witnesses testified about the Project which, as modified, involves a 129.6 MW facility that will be constructed on a footprint of approximately 700 acres. The witnesses further described that, in response to local community feedback, the Project's scope has been reduced from the original application, which sought approval for a 1,000-acre site that would produce up to 205 MW. Applicant's evidence also included information concerning integrating the Project with the surrounding landscape and uses, including noise control and setback provisions that address neighboring residence concerns. Further, Applicant provided information as to the Project's benefits, such as promoting zero emission energy, promoting investment and economic benefits locally and at the state level, and increasing employment opportunities. (Appl. Exs. 1-13; Joint Ex. 1.) Further, specific to the local communities, Applicant emphasized that the Project would generate \$1.165 million in annual PILOT payments, which will significantly benefit Arcadia Schools, as well as Washington Township, and Hancock County residents. Further, Applicant witness Kalbouss testified concerning the criteria the Board uses to evaluate stipulations, including the nature of negotiations, the Project's benefits to ratepayers and the public, and his position that the Stipulation does not violate any important regulatory principle or practice. (Tr. at 26-52; Appl. Exs. 1, 7, 13.)

{¶ 97} Staff presented the testimony of 11 witnesses, who testified concerning their assessment of the Project as evidenced in the Staff Report, as well as their position regarding whether the Stipulation meets the criteria for adoption by the Board. Staff's witnesses describe their collective position that the Project, subject to the conditions enumerated in the Stipulation, satisfies the requisite criteria in R.C. 4906.10 such that the Board should grant

Applicant's certification request. (Staff Exs. 1-12; Joint Ex. 1.) Staff affirms this position in its post-hearing briefing, wherein it notes that the intervening County Commissioners joined in the Stipulation (Staff Br. at 10).

{¶ 98} Travis Bohn was the lone intervenor who participated in the evidentiary hearing in opposition to the Project. In accordance with the prehearing scheduling order, Mr. Bohn prefiled testimony on his own behalf, as well as from eight additional proposed witnesses. In response to Applicant's motion to exclude evidentiary hearing testimony from persons who previously testified under oath at the local public hearing, the ALJs excluded the duplicative evidentiary hearing testimony of six of Mr. Bohn's witnesses. Further, another witness who prefiled testimony did not appear at the evidentiary hearing and, as a result, his testimony was also not admitted into the record. As a result, only witness Mary Grau and Mr. Bohn himself testified at the evidentiary hearing. (Tr. at 91-123; Bohn Exs. 1, 2, 2A, 2B.) In addition to this testimony, Mr. Bohn was permitted to cross-examine multiple Applicant and Staff witnesses.

{¶ 99} In testifying against the Project, Mr. Bohn describes concerns as to property values, fire resource management, the siting of the Project in relation to viewsheds and future community growth, wildlife impacts, surface water management, and the lack of local community engagement. Further, Ms. Grau, who operates a commercial bison farm with a herd size of 50-65, testified as to the Project's potential impacts from noise, stray voltage, setbacks, and possible disease to her herd caused by introducing sheep into the area for vegetation management. (Tr. at 91-123; Bohn Exs. 1, 2, 2A, 2B.)

{¶ 100} As described earlier herein, at the close of the evidentiary hearing, the ALJs established a briefing schedule. Initial and reply briefs were timely filed by Applicant, Staff, and Mr. Bohn on August 5, 2022, and August 26, 2022, respectively.

{¶ 101} Further, Applicant filed a motion to strike portions of Mr. Bohn's initial brief on August 26, 2022. Mr. Bohn thereafter filed a memorandum contra on September 9, 2022, and Applicant filed a reply in support of its motion on September 16, 2022. The essence of

Applicant's motion surrounds Mr. Bohn's reliance upon the local public hearing testimony of lay witness Pamela Young, including articles that were admitted into the record at the local public hearing, in regard to the health impact of noise. The Board has reviewed the arguments of the parties and finds that Applicant's motion to strike is granted, as Ms. Young's exhibits from the local public hearing were admitted solely as to informing the basis for her layperson testimony at that hearing, and not as to the noise issues that Mr. Bohn argues in his post hearing brief. As the information regarding the noise issues in question involves matters that require expert, rather than layperson testimony, we find that Mr. Bohn's reliance upon these exhibits beyond their informing of Ms. Young's layperson testimony is improper. Accordingly, with respect to portions in Mr. Bohn's brief that are described in Exhibit A to Applicant's motion to dismiss, we find that this information is stricken and will not be considered by the Board as to the determination of this case.

### VIII. CONCLUSION

{¶ 102} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. *See, e.g. In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

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

{¶ 103} As described above, Applicant and Staff witnesses testified in support of the Project, including the Stipulation and its negotiated conditions. Applicant witness Kalbouss testified that the Stipulation meets the criteria for Board approval, describing that the Stipulation is a product of serious bargaining that resulted from negotiations among capable, knowledgeable parties and that it will benefit the public interest by resulting in the minimum adverse environmental impact relative to its construction and operation considering the state of available technology and the nature and economics of the various alternatives, as well as other pertinent considerations. Further, Staff witness O'Dell joined in supporting the adoption of the Stipulation based on Staff's evaluation of the Project as described in the Staff Report, as well as in consideration of the negotiations that preceded Staff's decision to join in the Stipulation. (Joint Ex. 1; Appl. Ex. 13; Staff Ex. 12; Tr at 44-45, 119.)

{¶ 104} Intervenor Mr. Bohn argues against the Project claiming that (1) the Board lacks the record evidence it needs to consider this matter, (2) public opposition refutes a determination that it is in the public interest, convenience, and necessity, (3) the Project unreasonably impacts farmland, (4) economic impacts have not been properly considered, (5) proposed setbacks are deficient, (6) wildlife impacts have not been properly considered, (7) noise impacts have not been properly considered, (8) drainage impacts have not been properly considered, (9) the developer's lack of experience has not been properly considered, (10) the Stipulation is improper because it was not joined by intervenors Bohn and Deuble, and (11) the Stipulation fails all three parts of the Board's test for review and approval (Bohn Br. and Bohn Reply Br.).

{¶ 105} Upon review, the Board finds that the Stipulation meets the criteria used by the Board to evaluate and adopt a stipulation.

{¶ 106} Initially, we find that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. As described by Applicant witness Kalbouss, the Stipulation was the result of weeks of negotiations among parties that were represented by counsel. We also note that the negotiations were impactful in shaping the Stipulation, as several of the conditions that Staff recommended for adoption were, in fact, enhanced to further the public interest as a result of the negotiation process. (Appl. Br. at 46-48.) Further, while intervenors Mr. Bohn and Ms. Deuble were not represented by counsel and did not participate in these negotiations, the record indicates that they were invited into those discussions and chose not to participate (Tr. at 44-45, 88-91; Appl. Ex. 12). The Board rejects the claims of the non-signatory intervenors that their lack of participation or agreement as to the negotiations that resulted in the Stipulation somehow invalidates the Stipulation. Finding otherwise would permit any party to refuse to participate in negotiations in a manner that would give that party the ability to thwart any settlement, which is clearly not what is intended by this test.

{¶ 107} The Board also concludes that the settlement, as a package, benefits ratepayers and the public interest and does not violate any important regulatory principal or practice. We note that the Stipulation supports the application in this case, which results in the construction and operation of a project that (1) benefits the public interest, convenience, and necessity, (2) represents the minimum adverse environmental impact, (3) increases local revenues and enhances the state and local economy, and (4) generates additional zero emission energy. We adopt the findings of the Staff Report, as modified by the Stipulation, finding that Staff's review of the Application, as supplemented, was sufficient to evaluate the criteria within R.C. 4906.10. In reaching this conclusion, we reject the arguments of intervenor Mr. Bohn as to sufficiency of the evidence in support of the Stipulation, as well as the manner in which Staff conducted its review and investigation of the Application, as supplemented. Further, we stress that the joinder in the Stipulation by

County Commissioners, a local public entity that participated in the negotiation of the Stipulation, is strong evidence of the Project's beneficial impacts to the local community. (Joint Ex. 1; Appl. Ex. 1, 2, 12; Staff Ex. 1; Tr. at 119.)

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

#### **IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 109} South Branch is a person under R.C. 4906.01(A).

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

{¶ 111} On June 8, 2021, South Branch filed its preapplication notice indicating its intention to host a public information meeting as to the Project.

{¶ 112} On June 17, 2021, South Branch filed its confirmation of notification to property owners and affected tenants of the date of the public informational meeting.

{¶ 113} On July 22, 2021, South Branch filed a motion for protective order regarding information included in its application. The motion for protective order is granted, as discussed above in Paragraph 9 of this Opinion, Order, and Certificate.

{¶ 114} By letter dated September 20, 2021, the Board notified South Branch that its application was sufficiently complete to permit Staff to commence its review and



investigation pursuant to Ohio Adm.Code Chapter 4906-1, et seq. Further, the letter identified additional information that would be required by Staff.

{¶ 115} On September 24, 2021, Applicant filed (1) proof of service that copies of the application had been served upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B); and (2) notice that the application fee had been submitted to the Board pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 116} During the course of the case, petitions, notices, and motions to intervene were timely filed by and intervention was granted to Travis Bohn, Audra Deuble, OFBF, and County Commissioners.

{¶ 117} By Entry issued on November 1, 2021, the effective date of the application was established as November 1, 2021, and a procedural schedule established, which included scheduling the local public hearing on January 8, 2022, and the evidentiary hearing on February 14, 2022.

{¶ 118} On November 22, 2021, South Branch filed its first notice and proof of publication in *The Courier* on November 12, 2021. Further, South Branch stated that on November 4, 2021, pursuant to Ohio Adm.Code 4906-03-09(A)(1), affected property owners were provided written notice of the application.

{¶ 119} On December 20, 2021, South Branch filed a 739-page amendment to its application that described a reduction in Project (1) capacity from 205 MW to 129.6 MW and (2) footprint from approximately 1,000 acres to approximately 700 acres.

{¶ 120} On December 28, 2021, South Branch filed an unopposed motion to suspend and modify the procedural schedule, by approximately 60 days from the schedule dates, along with a request for expedited ruling. By Entry issued January 7, 2022, Applicant's motion was granted, and a new procedural schedule was established.

{¶ 121} South Branch filed its proof of publication of the rescheduled hearings on January 28, 2022. The notice was published in *The Courier* on January 24, 2022, and written notice was sent to affected property owners on January 19, 2022.

{¶ 122} The Staff Report was filed on April 11, 2022.

{¶ 123} On April 18, 2022, Applicant filed its proof of publication of the second public notice, in *The Courier* on April 8, 2022, in compliance with Ohio Adm.Code 4906-3-09(A)(2). In addition, South Branch indicates written notice was mailed on April 6, 2022.

{¶ 124} The local public hearing was held, as rescheduled, on April 27, 2022, in Findlay, Ohio, where 37 members of the public offered testimony.

{¶ 125} On May 31, 2022, the Stipulation executed by Signatory Parties was filed with the Board. The Stipulation purportedly resolves all matters pertinent to the certification and construction of the proposed Project. Additionally, in support of the application and Stipulation, South Branch filed the supplemental testimony of Robert Kalbouss.

{¶ 126} On June 1, 2022, the evidentiary hearing was conducted, where the Stipulation was presented for the Board's consideration. South Branch and Staff presented witness testimony in support of the Application and Stipulation. In opposing the Stipulation, Intervenor Mr. Bohn and another witness offered testimony, and Mr. Bohn cross-examined several Applicant and Staff witnesses.

{¶ 127} Adequate data on the proposed generation Facility has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

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

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

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

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

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

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

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

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

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

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

## **X. ORDER**

{¶ 138} It is, therefore,

{¶ 139} ORDERED, That South Branch's motion for protective order be granted consistent with Paragraph 9. It is, further,

{¶ 140} ORDERED, That the Stipulation filed on May 31, 2022, be approved and adopted. It is, further,

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

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

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

Markee Osborne, Designee for Lydia Mihalik, Director  
Ohio Department of Development

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

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

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

Gregory Slone  
Public Member

GNS/mef

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**in**

**Case No(s). 21-0669-EL-BGN**

Summary: Opinion & Order issuing a certificate of environmental compatibility and public need to South Branch Solar, LLC for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Joint Stipulation filed May 31, 2022, and consistent with this Opinion, Order, and Certificate electronically filed by Debbie S Ryan on behalf of Ohio Power Siting Board

## THE OHIO POWER SITING BOARD

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

CASE NO. 21-669-EL-BGN

### ORDER ON REHEARING

Entered in the Journal on June 15, 2023

#### I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the application for rehearing filed by Travis Bohn.

#### II. LAW AND PROCEDURAL BACKGROUND

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

{¶ 3} South Branch Solar, LLC (South Branch), a wholly owned subsidiary of Leeward Renewables Energy, LLC, is a person as defined in R.C. 4906.01.

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

{¶ 5} On July 22, 2021, as amended and supplemented on December 20, 2021, February 25, 2022, and March 21, 2022, South Branch filed its application for a certificate to construct a 205-megawatt solar-powered electric generation facility in Washington Township, Hancock County, Ohio (Facility or Project).

{¶ 6} On October 12, 2021, the Board of County Commissioners of Hancock County (County Commissioners) filed a notice of intervention. Petitions and motions to intervene were timely filed by Travis Bohn, Audra Deuble, and Ohio Farm Bureau Federation (OFBF). Intervention was granted to Mr. Bohn, Ms. Deuble, and OFBF pursuant to Entry issued on January 7, 2022.

{¶ 7} On May 31, 2022, a joint stipulation and recommendation (Stipulation), executed by South Branch, Staff, County Commissioners, and OFBF (Signatory Parties) was filed with the Board. According to the Signatory Parties, the Stipulation resolves all matters pertinent to the approval of South Branch's application for a certificate and construction of the proposed Facility.

{¶ 8} By Opinion, Order, and Certificate dated February 16, 2023, the Board approved the application, as amended and supplemented in response to data requests, and issued a certificate of environmental compatibility and public need to South Branch for the construction, operation, and maintenance of the solar-powered electric generation facility, subject to the conditions set forth in the Stipulation, and consistent with the Opinion, Order, and Certificate.

{¶ 9} R.C. 4906.12 states, in part, that R.C. 4903.02 to 4906.16 apply to a proceeding or order of the Board in the same manner as if the Board were the Public Utilities Commission of Ohio (Commission). R.C. 4903.10 provides that any party to a proceeding before the Commission may apply for rehearing with respect to any matter determined in that proceeding within 30 days after the entry of the order upon the journal of the Commission. Similarly, Ohio Adm.Code 4906-2-32 provides that any party may file an application for rehearing within 30 days after an order has been journalized by the Board in the manner, form, and circumstances set forth in R.C. 4903.10.



{¶ 10} On March 17, 2023, as amended on March 24, 2023, Travis Bohn filed an application for rehearing of the Board's February 16, 2023 Opinion, Order, and Certificate asserting eight assignments of error.<sup>1</sup>

{¶ 11} On March 27, 2023, South Branch filed a memorandum contra the application for rehearing.

{¶ 12} By Entry issued April 13, 2023, Mr. Bohn's application for rehearing was granted for the sole purpose of affording the Board more time to consider the issues raised in the application for rehearing. In this Order on Rehearing, the Board addresses the merits of the grounds for rehearing raised by Mr. Bohn below.

### III. DISCUSSION

{¶ 13} Below, the Board will address each of the assignments of error asserted by Mr. Bohn. The assignments of error will be considered slightly out of order, in that the first assignment of error is not addressed until the conclusion of our discussion. Additionally, we note that Mr. Bohn withdrew his fourth and ninth assignments of error.

{¶ 14} In the second assignment of error, Mr. Bohn claims the Board failed to evaluate the comments offered by local government officials opposing the Project and inappropriately elevated non-governmental agencies to government agency status. Mr. Bohn notes that several local officials offered testimony at the public hearing opposing the Project and the Opinion, Order, and Certificate unfairly relies on the participation of the County Commissioners' participation in the negotiation of the Stipulation.

{¶ 15} The third assignment of error expands upon the arguments presented in the second assignment of error to allege the Board failed to properly analyze the comments and public testimony presented in opposition to the Facility which Mr. Bohn argues demonstrates that the Facility will not serve the public interest, convenience, and necessity,

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<sup>1</sup> On March 24, 2023, Mr. Bohn filed notice that he was withdrawing two claims asserted in the application for rehearing, the fourth and ninth grounds for rehearing.

as the Board is required to determine under R.C. 4906.10(A)(6). Mr. Bohn notes most of the testimony offered at the public hearing, 70 percent of affiants, including two Washington Township Trustees, oppose the solar facility. According to Mr. Bohn, the village of Arcadia, Washington Township Trustees, the local fire department, and the County Commissioners oppose the South Branch Solar Facility.

{¶ 16} South Branch, in its memorandum contra, notes that Mr. Bohn's application for rehearing, at assignments of error two and three, repeats the arguments presented by Mr. Bohn in briefs. Namely, Mr. Bohn again argues that the Board should have deferred to public opposition emphasized by Mr. Bohn in his briefs. South Branch contends these claims overlook the Board's consideration of the local public hearing testimony, and acknowledgement of comments filed by the fiscal officer for Washington Township and the public health director for Hancock County, as reflected in the Opinion, Order, and Certificate. South Branch emphasizes that Mr. Bohn continues to argue, incorrectly, that Hancock County Commissioners oppose the Project.

{¶ 17} The Board finds that the second and third assignments of error duplicate arguments raised in Mr. Bohn's briefs. As specifically noted, evidence not specifically addressed in the Opinion, Order, and Certificate has nevertheless been considered and weighed by the Board in reaching its final determination. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 36. In this instance, the Board considered the testimony cited by Mr. Bohn, evaluated and weighed that testimony, as well as all the other testimony and record evidence offered, to reach the decision set forth in the Opinion, Order, and Certificate, including the intervention and active participation of the County Commissioners, in support of the Stipulation. We are not inclined to reweigh the record evidence, which is essentially what Mr. Bohn proposes in his application for rehearing, as to whether the Project benefits the public interest, convenience, and necessity in accordance with R.C. 4906.10(A)(6). The Board finds that Mr. Bohn has not presented any new argument for the Board's consideration which persuades the Board to reverse its Opinion, Order, and

Certificate of February 16, 2023. Mr. Bohn's second and third assignments of error are denied.

{¶ 18} In the fifth assignment of error, the application for rehearing asserts neither South Branch, Staff nor the Board considered the potential negative economic impacts the solar facility may have on the surrounding community. Mr. Bohn submits the Board's order on the economic impact analysis is one-sided and relies on Staff's summary of the Applicant's analysis. The application for rehearing cites testimony at the public hearing that the Facility will limit the growth of Arcadia, particularly at its northern boundary and notes that Staff did not have an estimate of the agricultural jobs potentially lost as a result of the Facility (Public Tr. at 124, Tr. at 131). Mr. Bohn argues the construction jobs created are temporary and the eleven permanent jobs are not guaranteed for citizens of Washington Township or Hancock County. Further, Mr. Bohn contends the economic analysis does not account for jobs lost with the agricultural land absorbed by the Facility and alleges the positive aspects of job creation are ambiguous. For these reasons, Mr. Bohn states the application did not comply with Ohio Adm.Code 4906-4-06(E)(4) and, therefore, the Board did not fully evaluate the Project's compliance with R.C. 4906.10(A)(6) and unreasonably and unlawfully approved South Branch's application for a certificate.

{¶ 19} South Branch notes that the fifth ground for rehearing is also a direct repeat of Mr. Bohn's post-hearing briefs. South Branch notes that the evidence presented regarding the positive economic impacts of the Project is compelling, unrefuted, expert-supported statistics as to the construction and operational jobs to be created. In South Branch's opinion, Mr. Bohn did not offer any competent, credible evidence of the alleged negative economic impacts of the Project or potential job losses. Nonetheless, South Branch notes the Board acknowledged and considered the statements of negative economic impacts. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶¶ 38, 99. South Branch notes that Staff investigated and reported its findings on the economic impact of the Project and the Board expressly adopted those findings. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶¶ 52, 107. For these reasons, South Branch requests that Mr. Bohn's fifth assignment of error be denied.

{¶ 20} We note that in accordance with R.C. 4906.06, by letter dated September 20, 2021, the Board advised that sufficient information had been set forth in South Branch's application to permit Staff to commence its investigation of the application, including the economic impact study (Appl. Ex. 1 at Appendix I). The Staff reviews, evaluates and verifies the information provided in an application and submits its investigative report to the Board. The Board considered the testimony of purported negative economic impacts of the Project and after thorough consideration of the record evidence, adopted the findings of the Staff Report of Investigation (Staff Report). Mr. Bohn relies on unsubstantiated layperson testimony to support the claim the Project will inhibit development of Arcadia, particularly to the north (Public Tr. at 124) and unsubstantiated layperson allegations of job losses due to the Project. The Board recognizes that the land used for the Project may result in some associated job losses because the land is removed from agricultural production; however, Mr. Bohn does not point to any record evidence which substantiates these claims. The Board evaluates the net economic impact of the Project from a broader perspective. The application for rehearing does not present any aspect of the record not previously considered by the Board. Further, the record evidence supports a finding of the net positive economic impact of the Project (Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 107; Staff Ex. 1 at 13-15.) For these reasons, the Board denies the fifth assignment of error.

{¶ 21} Next, in the sixth ground for rehearing, Mr. Bohn argues that the Board acted unlawfully and unreasonably to the extent that it did not find the Project fails to minimize the adverse environmental impacts as required pursuant to R.C. 4906.10(A)(3) and, therefore, the Facility will not serve the public interest, convenience, and necessity in accordance with R.C. 4906.10(A)(6). More specifically, Mr. Bohn argues the Project setbacks will make the solar panels and fence "intrusively visible" to the surrounding non-participating residents for the life of the Project. Recognizing that South Branch incorporated the increased setbacks in conformance with a decision by the Board, after the record closed in this case, Mr. Bohn argues that the setbacks deemed appropriate in *In the Matter of the Application of Harvey Solar I, LLC* are not appropriate here as the cases involve

different communities, landscapes, and procedural postures. *In the Matter of the Application of Harvey Solar I, LLC (Harvey Solar I)*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 312. Further, Mr. Bohn asserts the Board's acceptance of such reasoning is unlawful without accounting for the unique challenges of residents in Arcadia and Washington Township in association with the South Branch Facility.

{¶ 22} South Branch notes this is precisely the same argument offered, unsuccessfully, in Mr. Bohn's post-hearing briefs. South Branch states that Mr. Bohn makes a bold assertion without citing any record evidence, which South Branch asserts supports a minimal visual impact on neighbors of the Project. In accordance with the application, South Branch states landscaping will be strategically located to offset visual impacts for individual non-participating residences and travelers and the fencing will be compatible with the agricultural character of the area. South Branch also contends the record evidence supports that noise impacts of the Project will be minimal. (Appl. Ex. 1, Appendix R at 11, Appendix N; Staff Ex. 1 at 13.) In addition, South Branch notes that the Opinion, Order, and Certificate adopts Staff's finding that the visual and noise impacts of the Project will be minimal. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶¶ 49, 51. South Branch argues that Mr. Bohn's rehash of his briefs does not call into question the Board's findings, and, for these reasons, South Branch declares this ground for rehearing should be denied.

{¶ 23} Initially, the Board notes the Stipulation included setbacks of 160 feet from nonparticipating sensitive receptors to all above grade Facility components, including fencing (Joint Ex. 1 at 6). On January 3, 2023, South Branch filed a notice of the modification to the Project layout to increase setback distances from 160 feet to 300 feet from non-participating residences, 150 feet from module to public roads, and 50 feet from module to non-participating property lines in conformance with the setbacks implemented by the Board in *Harvey Solar I*, Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 312. While the increased setbacks were implemented by South Branch due to the Board's decision in another Board proceeding, the setbacks were expanded, and the Board evaluated the setbacks based on the record in this matter. We again note that significant portions of Mr.

Bohn's application for rehearing are repeats of the arguments presented in his briefs, evaluated by the Board, and denied. R.C. 4906.10(A)(3) requires the Board determine that adverse impacts are minimal, within the context of the state of available technology, the nature and economics of various alternatives, and other pertinent considerations. To that end, as noted in the Opinion, Order, and Certificate, the setbacks were considered in conjunction with the landscaping, and other mitigation measures, to minimize the visual impact of the Project on surrounding residences, particularly non-participating residents, and the community. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶¶ 47, 49, 72. Accordingly, the Board finds that the sixth assignment of error lacks merit and is, therefore, denied.

{¶ 24} The seventh assignment of error argues South Branch's literature and field surveys do not acknowledge the presence of bald eagles in the project area and, on that basis, Mr. Bohn submits that the application is incomplete and does not comply with the requirements of Ohio Adm.Code 4906-4-08(B). Intervenor Bohn reiterates, as he noted in his brief, that bald eagles are present as demonstrated by public testimony offered. Therefore, Mr. Bohn posits the Board cannot determine the nature of the probable environmental impact nor determine that the Project represents the minimum adverse environmental impact pursuant to R.C. 4906.10(A)(2) and (A)(3), respectively.

{¶ 25} South Branch contends that despite Mr. Bohn having the opportunity to participate in the hearing process, and to seek discovery from South Branch, Mr. Bohn argues that he and the Board were denied access to information regarding the Project. South Branch represents that no bald eagles nor their nesting were observed during South Branch's field observations; the United States Fish and Wildlife Service (USFWS) nor the Ohio Department of Natural Resources (ODNR) identify bald eagles as a particular species of interest for the project area and, despite that ODNR closely monitors eagle nests, ODNR did not indicate that the project area was in proximity to known eagle nests.

{¶ 26} The Board finds the seventh assignment of error to be without merit. The plain language of Ohio Adm.Code 4906-4-08(B)(1)(c) and (d), requires that the applicant's literature and field survey "include aquatic and terrestrial plants and animal species that are of commercial or recreational value, or species designated as endangered or threatened." At the time this application was filed, the bald eagle was not listed as threatened or endangered by USFWS or ODNR and has not been for several years (Staff Ex. 1 at 27, footnote 58). Accordingly, South Branch was not required to include bald eagles in the ecological impact analysis of the Project and Staff would not have determined it to be a deficiency of the application. On that basis, the Board finds the record evidence supports a finding that the nature of the ecological impact of the Project was properly evaluated, pursuant to R.C. 4906.10(A)(2), and the Project 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, pursuant to R.C. 4906.10(A)(3). Accordingly, we deny the seventh assignment of error.

{¶ 27} Ohio Adm.Code 4906-4-08(A)(4)(e) directs that the applicant provide information regarding water impacts of the proposed facility, including an analysis of the prospect of floods and plans to mitigate adverse consequences. While Mr. Bohn acknowledges that the area is prone to flooding, in the eighth assignment of error, he asserts South Branch failed to assure local residents of the drainage and flood management practices to be implemented and, therefore, the Board cannot determine the nature of the probable environmental impact nor determine that the Project represents the minimum adverse environmental impact pursuant to R.C. 4906.10(A)(2) and (A)(3), respectively. Mr. Bohn requests that the Board grant rehearing and provide an informed analysis of the potential impacts of the Project on stormwater, flooding, and drain tiles in and near the project area.

{¶ 28} South Branch replies that according to its Stormwater Management Report, the Facility will have no adverse impact as to runoff and flooding. South Branch notes it has committed to address runoff, flooding, and drainage by planting perennial vegetation

beneath the solar panels, implementing the drain tile mitigation plan to avoid damage to existing tile during construction, to identify and repair broken drain tile, hire a local drain tile expert, in coordination with the county engineer and area landowners. South Branch notes also that the Stipulation, at condition 45, specifically addresses the repair of damaged drain tile, in consultation with the county engineer and county soil and water conservation district. (Appl. Ex. 1, Appendix E and Updated Appendix E, at 11, Modification at Updated Appendix F at 1-2; Joint Ex. 1 at 9.) South Branch reiterates that its plans and conditions were presented in the application, at the evidentiary hearing, and in briefs. South Branch requests that the Board deny this aspect of the application for rehearing.

{¶ 29} The Board notes that this assignment of error, like most of the others, is largely restatements of arguments made by Mr. Bohn on brief, considered by the Board, and denied. The Board recognizes, as the public testimony supports and Mr. Bohn admits, the project area and the surrounding community already experience flooding. Further, the Board finds South Branch adequately considered and implemented mitigation plans, as reflected in the application and evaluated in the Staff Report, including measures to address stormwater runoff, flooding, and drainage tile issues associated with the construction, operation, and decommissioning of the Facility. Further, we note that recommendations in the Staff Report, particularly conditions 32 and 45, as amended by the Stipulation, specifically address these issues. (Appl. Ex. 1, Appendix E and Updated Appendix E, at 11, Modification at Updated Appendix F at 1-2; Stormwater Management Report, Staff Ex. 1 at 10, 26-27, 31; Pub. Tr. at 17-20, 28, 32, 78, 96, 100, 126-127, 162, 167, 171; Tr. at 33-34, 51, 80-81, 87-88; Joint Ex. 1 at 6, 47, 50.) Accordingly, we deny the eighth assignment of error presented in the application for rehearing.

{¶ 30} In the tenth assignment of error, Mr. Bohn contends that the Stipulation fails all three parts of the three-part test used to evaluate stipulations. In regard to part one of the test, whether the stipulation is a product of serious bargaining among capable, knowledgeable parties, Mr. Bohn alleges that (1) South Branch did not make all reasonable attempts to contact him or Ms. Deuble who, at that time, were not represented by counsel;



and (2) the Signatory Parties do not reflect a diversity of participants and interest, as no landowner intervenor is a signatory. As to part two of the test, does the stipulation, as a package, benefit the public interest, Mr. Bohn contends, as noted in the other assignments of error above, the Stipulation does not serve the public interest on the basis that there is a contingent of the community, including local government officials, that oppose the Project. As to part three of the test, which requires that the Stipulation not violate any important regulatory principle or practice, Mr. Bohn argues that the Opinion, Order, and Certificate does not provide the Board's rationale for its conclusion that the Stipulation meets this requirement. Indeed, Mr. Bohn argues there are deficiencies with the Project, which are not cured by the Stipulation, and it violates an important regulatory principle for the Board to approve the Project which does not meet the underlying statutory requirements. Accordingly, Mr. Bohn requests the Board grant rehearing and find that the Stipulation does not satisfy the three-part test for settlement agreements.

{¶ 31} South Branch submits, despite Mr. Bohn's claims to the contrary, he is arguing that his lack of participation in the negotiation of the settlement invalidates the Stipulation. As recognized by the Board, Mr. Bohn was invited to participate in negotiations and chose not to (Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 106). South Branch argues that he cannot now use his non-participation in the negotiations to object to the Stipulation. South Branch contends that the other assignments of error do not support Mr. Bohn's claims that the Stipulation does not comply with parts two and three of the test. Accordingly, South Branch reasons that the tenth assignment of error should also be denied.

{¶ 32} The Board notes, as Mr. Bohn admits, South Branch and Staff attempted to contact him several times (Applicant Ex. 13 at 5; Tr. at 44-50, 88-91).<sup>2</sup> Parties that are invited but elect not to participate in negotiations cannot then argue that the settlement does not meet the first part of the three-part test as a result of their refusal to participate in

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<sup>2</sup> Ms. Deuble was not present at the local public hearing nor the evidentiary hearing and did not file a brief or reply brief and since filing a motion to intervene has not participated in the proceedings (Pub. Tr. at 2, 8; Tr. at 11).

negotiations (Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 106). A party may participate in negotiations and not be a signatory to the agreement.

{¶ 33} Mr. Bohn also asserts that the three-part test used to evaluate stipulations includes a diversity of interest component. It does not. The three-part test recognized by the Ohio Supreme Court and utilized by the Board and the Commission does not incorporate a diversity of interest requirement and similar assertions and requests to revise the test have been repeatedly denied. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52; *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *In re Ohio Power Co.*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing (Feb. 1, 2017) at ¶ 14; *In re Ohio Edison Co.*, Case No. 12-1230-EL-SSO, Second Entry on Rehearing (Jan. 30, 2013) at 9. The Board, like the Commission, may acknowledge the diversity of interest among signatory parties to substantiate broad acceptance of an agreement where there are apparent competing interests among the signatory parties. Further, the Board finds that Mr. Bohn's refusal to participate in negotiations along with a diversity of interest component would essentially grant a single party the ability veto negotiations for a stipulation. The Commission has found that there is no requirement that any particular party must join a stipulation to comply with the first part of the three-part test. *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, et al., Opinion and Order (Sept. 26, 2019) at ¶ 90; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9. The Board finds this to be a sound policy.

{¶ 34} While the Board has clarified our rationale for approving the South Branch application, in each instance the Board has found the claims raised in the application for rehearing regarding the sufficiency of the application, investigation of the application, compliance with R.C. 4906.10, and the Board's consideration of the evidence, to be without merit. Accordingly, we conclude that the Stipulation complies with parts two and three of the three-part test to evaluate stipulations. Furthermore, after reviewing the record evidence, the Board specifically adopted the findings of the Staff Report, including Staff's

recommended conditions as amended and supplemented by the Stipulation. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 107. We relied on the experienced professionals on staff who thoroughly investigated the application, who presented testimony in this case, and are familiar with the requirements of R.C. 4906.10. We reiterate our determination as to the benefits of the Facility, including the generation of zero emission energy, increases in local revenues, including the local school district, and enhancements to the state and local economy. Further, the Stipulation informs the design, operation, and maintenance of the Facility to minimize adverse environmental and visual impacts, considering the state of available technology and the nature and economics of the mitigation measures to be implemented, which serve the public interest. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 107. The Board is not persuaded by the arguments in the application for rehearing that the Stipulation violates any aspect of R.C. 4906.10(A), is not in the public interest and violates an important regulatory principle or practice. Therefore, we decline to reverse the decision to adopt the findings in the Staff Report and the Stipulation, including the conditions, consistent with the February 16, 2023 Opinion, Order, and Certificate. The tenth assignment of error is denied.

{¶ 35} In the first assignment of error, relying on the claims made in its other assignments of error, Mr. Bohn claims the Board unlawfully and unreasonably failed to identify the facts and reasoning supporting many of its conclusions and, therefore, failed to comply with R.C. 4903.09.

{¶ 36} South Branch contends that the premise of Mr. Bohn's assertion of error is faulty, as he ignores that the Board, in addition to explicitly setting forth many findings of fact and law in the Order, also expressly adopted the findings set forth in the Staff Report, as modified by the Stipulation and its 50 negotiated conditions. Opinion, Order, and Certificate (Feb. 16, 2023) at ¶ 107. On that basis, South Branch argues the underlying premise of many of Mr. Bohn's arguments in his application for rehearing are flawed and this assignment of error should be denied by the Board.

{¶ 37} R.C. 4903.09 requires that the Board provide sufficient details to explain how it reached its decision to assist the Supreme Court of Ohio in determining the reasonableness of its order. *Allnet Commc'n Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). We find that with the clarifications presented in this Order on Rehearing, along with the Opinion, Order, and Certificate, the Board's rationale on the required factors in R.C. 4906.10(A) and the rationale for approving South Branch's application, has been thoroughly explained and meets the requirements of R.C. 4903.09. Accordingly, we deny Mr. Bohn's first assignment of error.

#### IV. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That the application for rehearing filed by Mr. Bohn be denied. It is, further,

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

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

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

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

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

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

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

Gregory Slone  
Public Member

GNS/dr

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**Case No(s). 21-0669-EL-BGN**

Summary: Opinion & Order on Rehearing denying the application for rehearing filed by Travis Bohn electronically filed by Debbie S. Ryan on behalf of Ohio Power Siting Board.

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**Case No(s). 21-0669-EL-BGN**

Summary: Supreme Court Appeal Supreme Court Notice of Appeal of Appellant  
Travis Bohn (S.C. Case # 2023-1020) electronically filed by Ms. Megan R. Luby on  
behalf of Bohn, Travis Mr. and Pierce Tucker, Janica and Vogel, Amy.