

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Clear )  
Mountain Energy Center, LLC for a )  
Certificate of Environmental )  
Compatibility and Public Need to ) Case No. 23-0045-EL-BGN  
develop, Construct, a 100 megawatt )  
Solar-Powered Electric Facility located )  
in Clermont County, Ohio )

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**JOINT STIPULATION AND RECOMMENDATION**

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**A. INTRODUCTION**

Applicant Clear Mountain Energy Center, LLC (“Clear Mountain” or “Applicant”), International Brotherhood of Electrical Workers, Local Union 212 (“IBEW”), Gregory Bruns, Gregory Vestring, and the Vestring Family Preservation Trust, and Staff of the Ohio Power Siting Board (“OPSB Staff”) who represent the parties to this proceeding (collectively “Parties”), submit this Joint Stipulation and Recommendation (“Joint Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“O.A.C.” or “Ohio Adm. Code”) 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below and to recommend that the Board approve and adopt this Joint Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters raised by the OPSB Staff pertinent to the approval and construction of

Clear Mountain Solar Energy Center, of an up to 100-megawatt (“MW”) alternating current solar-powered electric generation facility with a 52.2-MW battery energy storage system (“BESS”) and a generation interconnection (gen-tie) electric transmission line in Batavia, Jackson, and Williamsburg townships in Clermont County and its associated facilities (“Project” or “Facility”).

This Joint Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Parties have engaged in settlement discussions related to the topics raised in this proceeding. This Joint Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

## **B. JOINT STIPULATION AND RECOMMENDATION**

### **1. Recommended Conditions**

The Parties recommend that the Board approve Clear Mountain’s Application subject to the conditions listed below.

#### **GENERAL CONDITIONS**

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests,

and recommendations in this Staff Report of Investigation. Post-certification changes to specified equipment, construction practices, mitigation measures, or facility layout shall be coordinated with Staff. Staff cannot approve changes but may provide confirmation that they do not object to changes that are consistent with a Board certificate. The Applicant shall make Staff aware of the changes prior to the applicable construction by providing mapping, and a narrative of nature of the change(s) and impact quantifications associated with the change. Changes which do not constitute an amendment to the certificate shall be documented on the case docket and shall include applicable mapping and an explanation of how the change conforms with the terms of the certificate. Nothing in this condition supersedes the Board's authority as to amendment applications.

- (2) Prior to the preconstruction conference, the Applicant shall provide to Staff the primary address of the facility.
- (3) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (4) As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (5) 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.
- (6) 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.

#### PRECONSTRUCTION CONDITIONS

- (7) At least 30 days prior to the preconstruction conference, the Applicant shall demonstrate that it has a complete copy of the solar panel and inverter manufacturer's safety manual or similar document and has incorporated any recommended setbacks from those manufacturers into its final design site plan.
- (8) The Applicant shall only use solar panel modules that do not exhibit the characteristic of toxicity verified through analysis or documentation with the USEPA's Toxicity Characteristics Leaching Procedure test. Prior to the preconstruction conference, the Applicant shall file confirmation that panels were analyzed through the USEPA's Toxicity Characteristics Leaching Procedure test.

- (9) At least 30 days prior to the preconstruction conference, the Applicant shall submit the minimum resting angles that eliminate predicted glare at Clearwater airpark.
- (10) At least seven days before the preconstruction conference, the Applicant shall submit to Staff, for review, a copy of all NPDES permits including its approved SWPPP, and approved Spill Prevention, Control, and Countermeasure procedures. The Applicant must address any erosion related issues through proper design and adherence to Ohio EPA best management practices related to erosion and sedimentation control.
- (11) The Applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC000006 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (12) Prior to commencement of construction, the Applicant shall coordinate with the USACE to determine if any portion of the project is within a flowage easement. If any portion of the project is within such an easement, the Applicant shall obtain prior written approval as required for construction of this project. For any areas that are subject to a flowage easement, the Applicant shall provide a copy of such approval and supporting documentation on the case docket prior to commencement of construction.
- (13) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. The Applicant may conduct separate preconstruction conferences for each stage of construction. Notice of the date and location of the preconstruction conference shall be provided to Staff at least 30 days in advance. Staff, the 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 planned phase of construction and the conditions of the certificate, measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, discussion of the procedures for on-site investigations by Staff during construction, summary of additional studies and surveys not specified by conditions, and a summary of work done for previous phases of construction. At least 30 days prior to the conference, the Applicant shall provide Staff with a summary of the status of deliverables required within the conditions, and if the conference is for a phase of construction, the Applicant shall provide Staff with a list of the conditions which would apply to that phase. 14 days prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket.
- (14) The Applicant shall provide the Board's Staff a copy of any road use agreement(s) and maintenance agreements 30 days prior to the initial preconstruction conference.

- (15) The Applicant shall coordinate with the appropriate authorities regarding traffic and transportation requirements necessary for construction and operation of the proposed facility. To assure compliance with this condition, prior to the preconstruction conference, the Applicant shall file a final transportation management plan, this plan shall include (but not be limited to) the following:
- (a) A summary of coordination with appropriate authorities regarding traffic and transportation requirements, including 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.
  - (b) Documentation of this coordination, with copies of applicable permits or authorizations, or schedule for obtaining permits or authorizations not yet applicable.
  - (c) A description of best management practices that would be implemented to maintain clean roads free of construction debris and excess mud.
  - (d) Details summarizing signage and other best management practices that would ensure construction vehicles only use designated transportation routes.
  - (e) Mapping of roads to be used for construction. This shall include identifying any anticipated permitting/authorization requirements in their respective locations.
- (16) Prior to the commencement of construction activities in areas that require permits or authorizations by federal, state, or local laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference(s). Any permit violation received by the Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
- (17) The Applicant shall not commence any construction of the facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

- (18) Prior to commencement of construction, the Applicant shall file 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. The plan shall ensure that vegetative screening, designed by a landscape architect, be incorporated for any adjacent, non-participating parcel which contains a residence with a direct line of sight of the above-ground components of the facility, unless alternative mitigation measures are agreed to with the property owner. Alternative mitigation measures would include items such as alternative fencing or vegetative screening, or good neighbor agreements. The plan shall also incorporate plantings or design features or measures to address aesthetic impacts to the traveling public, nearby communities, sensitive institutional land uses and recreationalists. Plantings described in the plan shall be installed within 6 months of completion of construction of the facility. The Applicant shall maintain vegetative screening for the life of the facility. The Applicant shall promptly replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. 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. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.
- (19) At least 30 days prior to the preconstruction conference, the Applicant shall file on the docket for Staff's review and acceptance the emergency services and response plan, which it shall develop in consultation with the local fire and emergency services.
- (20) The Applicant shall provide documentation to Staff, and file on the docket in this case, the fire protection engineering review of the BESS facility at least 30 days prior to the preconstruction conference for the BESS. This documentation shall address at least, but is not limited to, the following: source or supply of water for perimeter protection defensive firefighting coordinated with the local fire and emergency response departments, compliance with current Ohio Fire Code, BESS specific guidance of the International Fire Code 2021 (Chapter 12), the National Fire Protection Association ("NFPA") 855 (2023), NFPA 70, 70E, Underwriters Laboratory ("UL") test methods 1642, UL 1973, UL 9540, and UL 9540A. The documentation shall also include a list of the firefighting and rescue equipment necessary to respond to emergencies or extinguish a fire at the BESS.
- (21) Prior to construction of the BESS, the Applicant shall provide the fire and emergency responders with training and proper firefighting equipment as reasonably required to enable them to respond to emergency situations at the BESS.
- (22) At least 30 days prior to the preconstruction conference, the Applicant shall file on the docket its plan to address issues relating to high wind velocity, including the ability of the trackers to move to the stow position when needed. The plan

shall include a post-installation check plan and annual testing of wind velocity sensors.

- (23) Prior to the preconstruction conference, the Applicant shall file drawings with dimensions of the solar panel perimeter fence type. Fencing shall be both small-wildlife permeable and aesthetically fitting for a rural location. Fencing around panels should incorporate gaps or spaces of at least six inches by six inches to allow passage of small mammals. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. Barbed wire shall not be utilized for the perimeter fence. This condition shall not apply to substation or battery fencing.
- (24) The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems resulting from the construction, operation, and/or maintenance of the facility. To assure that impacts are minimized, 30 days prior to the preconstruction conference, the Applicant shall docket a field tile avoidance and repair plan including the following:
  - (a) Documentation of benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county-maintained ditches.
  - (b) The Applicant shall review and consult with the following to request locations of drainage systems:
    - (i) publicly accessible county records.
    - (ii) the County Engineer.
    - (iii) the local soil and water conservation district.
    - (iv) owners of all parcels adjacent to the property.
    - (v) any other sources known to the Applicant to have this information.
  - (c) Results of this consultation shall be mapped in the plan and avoided to the extent practicable.
  - (d) Damaged field tile systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at the Applicant's expense to ensure proper drainage. In areas of pile installation, drain tile repair shall occur as damaged. If damage is not known immediately, repairs shall occur upon signs of flooding within the area. Documentation of repairs shall be maintained by the Applicant. However, if the affected landowner(s) agrees to not having the damaged field tile system repaired, they may do so only if:
    - (i) the field tile systems of adjacent landowners 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. The Applicant shall design the project to ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the project.
  - (e) Mapping of discovered and repaired or rerouted drain tile systems shall be filed in the case docket once construction is complete. This mapping shall also be provided to Staff in the form of georeferenced electronic data.
  - (f) Avoid installing new drain tile systems that may drain or impede replenishment of nearby wetlands or significantly increase drainage into adjacent waterways during precipitation events.
- (25) At least 60 days prior to the preconstruction conference, the Applicant shall file an agricultural protection plan that is designed to minimize impacts to agricultural land use during construction, operation, maintenance, and decommissioning. The plan shall be comprised of a narrative and detailed mapping that includes, but is not limited to, the following:
- (a) Implements a program for the collection of baseline data establishing pre-construction soil conditions for the production of row crops for the agricultural areas within the project area. The program shall establish the relevant characteristics of both topsoil (defined as the upper most part of the soil commonly referred to as the plow layer, the A layer, or the A horizon, which typically is 5 to 10 inches in depth in Ohio) and subsoil (defined as the soil material that starts at the bottom of the topsoil, which typically is approximately 36 inches in depth in Ohio, unless fractured or hard bedrock is encountered first). The baseline data shall be derived from field and laboratory testing of soil conditions, including depth, density, and quality from representative locations. Laboratory testing shall be conducted by an accredited laboratory. Parameters for assessing soil quality shall include, at a minimum, the following: infiltration rate, bulk density, water holding capacity, pH, percent organic matter, cation exchange capacity, Phosphorous/Phosphate (P), Nitrogen (N), and Potassium/Potash (K). After 30 years of operation and again after 35 years of operation, soil conditions shall be determined for the same sampling locations using the same parameters and the results used to plan soil restoration activities. After equipment is removed as part of decommissioning, soil conditions shall be determined for the same sampling locations using the same parameters. Soil restoration activities shall be performed as necessary to return soil conditions to at least baseline conditions. Staff will be provided with data on soil conditions within 30 days after the receipt of results.
  - (b) The Applicant shall seek to achieve a goal of grading no more than 5 percent, but firmly limits grading to no more than 20 percent, of the agricultural lands within the project area, as defined in the application.



The plan shall minimize grading to the extent practicable and economically feasible, specify the percentage of agricultural lands within the project area for which grading is anticipated and, if applicable, provide the reason(s) that the 5-percent goal is not practicable or economically feasible for the project area. For purposes of this condition only, grading is defined as earth-moving activities incidental to building roads, equipment pads, substations, and laydown yards, installing buried electric lines and excavating stormwater basins, performing soil removal activities, soil filling activities, and cut-and-fill activities, but shall not include routine ground disturbance incidental to installing piles, drain tile, fences, poles for electric lines, vegetation, landscaping, and temporary erosion and sediment controls, performing soil sampling, geotechnical investigations, and archeological investigations, disking topsoil to promote the growth of vegetation, and raking, smoothing ruts, or otherwise creating a smooth and safe work surface.

- (c) Map(s) and geospatially referenced electronic data including the following:
  - (i) Planned areas of grading.
  - (ii) Agricultural lands within the project area.
  - (iii) Planned locations for topsoil storage or stockpile areas.
- (d) Follows best management practices for preserving agricultural land that include, but may not be limited to, the following:
  - (i) Prior to starting grading in a particular location, topsoil shall be removed and stockpiled separately from subsoil.
  - (ii) No stockpiles shall be located in or near drainage ways. Stockpiles shall be stabilized in accordance with the Ohio EPA's NPDES Construction Storm Water General Permit.
  - (iii) Topsoil shall remain in the project area.
  - (iv) Topsoil shall not be re-applied to the surface in excessively wet/moist conditions.
  - (v) For cut-and-fill activities, a profile of the depth and density of the topsoil and subsoil for each area shall be established using representative sampling locations prior to the start of the activity, and a similar profile shall be re-established upon completion of such activity. Topsoil will be removed from the area for which activity is to be performed and separately stockpiled, the subsoil will be excavated and redistributed to lessen the slope, the subsoils will be de-compacted, and then the topsoil will be redistributed over the area.

- (vi) Existing grassed waterways shall be preserved to the extent practicable. In instances where grassed waterways are to be significantly altered, the Applicant shall submit an analysis that demonstrates how the alteration will not adversely affect drainage of both the project area and neighboring parcels.
  - (vii) Shall sequence construction such that access roads are constructed prior to other grading activities.
  - (viii) Shall instruct construction workers to utilize established access roads and laydown areas for equipment and vehicular traffic, rather than agricultural land, unless installing equipment in the immediate area or as necessary to safely pass other equipment or vehicles.
- (26) At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket 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 Ohio Power Siting 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 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. The Applicant shall implement and comply with the decommissioning plan as approved by Staff.
- (27) Prior to commencement of any construction, the Applicant shall prepare an updated vegetation management plan in consultation with the ODNR. The goals of the plan shall include planting a minimum of 70 percent of the impacted project area in beneficial vegetation, utilizing plant species listed in Attachment A of ODNR Recommended Requirements for Proposed Solar Energy Facilities in Ohio, or other suitable species as approved by the ODNR and shall follow the Ohio Solar Site Pollinator Habitat Planning and Assessment Form with a minimum score of 80 points. The plan shall include a narrative on how the project proposes to establish and maintain beneficial vegetation and pollinator habitat in accordance with the guidelines provided above. The plan shall include mapping of the areas where pollinator habitat would be established and

maintained. The plan shall include that routine mowing occur a minimum of three times a year except in areas of pollinator habitat, which would be limited to fall/spring seasons, as needed, to allow for natural reseeding of plantings and reduce impacts to ground-nesting birds. The above requirements would not be applicable while the project is implementing alternative agricultural uses across the site to control vegetation, as described in the vegetation management plan.

- (28) At least 30 days prior to the preconstruction conference, the Applicant shall file a copy of the general agrivoltaics plan (e.g., grazing and/or crop plan) on the public docket for Staff review and acceptance. The agrivoltaics plan shall generally include: (a) a map of the area to be utilized for agrivoltaics, including ingress/egress points, fencing, staging areas for agricultural equipment, and an indication and explanation of sufficient placing and spacing to allow for the safe passage and navigation of farm equipment; (b) seed mix and/or cropping pattern selected for the site; (c) times of year when the agrivoltaics would occur; (d) livestock stocking rate; (e) how manure and deceased livestock would be managed, if applicable; (f) and the Applicant's plan to comply with Condition 5 in relation to agrivoltaics (e.g., sheep grazing and/or cropping). In relation to grazing plans, the Applicant shall, prior to implementation, file an amendment application that details the number, locations, and herd management expectations of any grazing plan.
- (29) At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for Staff records, detailed engineering drawings of the final project design for the applicable phase of construction. The engineering drawings shall be provided electronically, and on a USB drive. The engineering drawings shall 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. The Applicant shall also submit to Staff geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings, for Staff records. A PDF map of the final layout based on the engineering drawings shall be filed on the docket of this case prior to construction. 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. All applicable geotechnical study results shall be included in the submission of the final project design to Staff. The engineering drawings shall 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.
- (30) The 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 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.

- (31) At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan for construction and operation of the project on the public docket.
- (32) At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail all affected property owners and tenants who were provided notice of the public informational meeting and OPSB hearings; local officials who received a copy of the application; residences located within one mile of the certificated boundary; schools, libraries, and emergency responders that serve residents in the project area; and any other person who has requested 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 the Applicant has complied with all preconstruction-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 the Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket.
- (33) The Applicant shall provide a detailed geotechnical and engineering constructability workplan to Staff for review and concurrence at least 90 days prior to the initial preconstruction conference. This plan shall outline steps the Applicant intends to pursue in order to confirm geologic suitability with a focus on the current and future Batavia Mine operations in addition to the remainder of the project area. Specifically, the plan should be developed in concert with a structural engineer and other appropriate professionals to determine the current extent of the mining operation, and the potential future extent of the mining operation as it relates to the proposed footprint of the Clear Mountain Solar project. The plan shall address specific safety and subsidence concerns with respect to the ongoing mining operations, as well as with respect to the operation of the facility in the vicinity of active and future mining expectations.
- (34) At least 60 days prior to the initial preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical and engineering constructability report. This report shall also include the results and analyses of additional geotechnical investigation studies including analyses of the Batavia Mine, conducting full-scale pile load testing, additional borings,

test pits, a karst survey assessment, and any other testing deemed necessary to confirm geologic suitability and compatibility. The report shall include access road, inverter pad, battery component, and collector substation foundation final design recommendations. This report shall also include a final summary statement addressing the geologic and soil suitability addressing any inadequacies found and proposed remedies, including recommended setbacks, if applicable.

- (35) At least 30 days prior to the initial preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final Unanticipated Discovery Plan.
- (36) The Applicant shall confirm the precise locations of all water wells within the project area prior to initiation of construction. The Applicant's final site layout shall include a setback of 50 feet from water wells and all project infrastructure.
- (37) The Applicant shall retain the services of a corrosion engineer for consultation in developing the final project design with regard to construction materials that may be exposed to potentially corrosive soils.
- (38) The Applicant shall develop and implement a Spill Prevention Control and Countermeasures Plan or comparable plan that will address prevention of, response to, and notification to the appropriate authorities in the event of any spills.
- (39) The Applicant shall avoid the four archaeological sites recommended for avoidance, document photographic evidence of the avoidance both before construction and at the completion of construction and submit the photographic evidence to Staff and OHPO.
- (40) At least 30 days prior to the preconstruction conference, the Applicant shall provide proof that the solar panels used for the project utilize an anti-reflective coating.

#### CONSTRUCTION CONDITIONS

- (41) The Applicant shall prepare a quarterly complaint summary report about the nature and resolution of all complaints received in that quarter and file these reports on the public docket during the first five years of operation. The Applicant shall file on the public docket a complaint summary report by the last 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 the 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.
- (42) The Applicant shall not utilize blasting to construct the facility.

- (43) The Applicant shall implement a minimum setback from the project's solar modules of at least 120 feet from Category 1 and 2 wetlands as well as all streams, and 300 feet from Category 3 wetlands, unless coordination with the ODNR reflects a different course of action, which shall be filed on the docket.
- (44) Except as provided in conditions 33 and 34, the Applicant shall avoid construction over any existing mine features or any mining boundaries otherwise defined or authorized by the appropriate jurisdiction(s).
- (45) If the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.
- (46) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to listed bat species, unless coordination with the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, the Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (47) The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the Ohio Department of Natural Resources allows a different course of action.
- (48) The Applicant shall contact Staff, the ODNR, and the 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 the Applicant, Staff, and the appropriate agencies.
- (49) The Applicant shall coordinate with the ODNR and USFWS regarding potential disturbance to bat hibernacula such as caves or abandoned mines to determine if fall or spring portal surveys are warranted.
- (50) Unvegetated soils shall be stabilized within seven days of reaching final grade, and prior to construction activities in that area (excluding, construction of access roads and laydown areas). Stabilization shall include temporary seeding, permanent seeding, and/or mulching.
- (51) The Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 and invasive plant species identified in Ohio Adm.Code 901:5-30-01, during construction, operation, and decommissioning. This would be achieved through appropriate seed selection, and a minimum of annual vegetative surveys

throughout the project area during the growing season. If noxious weeds and/or invasive plants are found to be present, the Applicant shall remove or treat them with herbicide pursuant to Ohio Revised Code ("R.C.") Section 921.06 as necessary and shall follow all applicable state laws regarding noxious weeds and invasive plant species. For both construction and maintenance, the Applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides should only be used where no other options exist, and with prior approval from the Ohio EPA and Staff. The Applicant shall provide annual documentation of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation.

- (52) Following commencement of construction, the Applicant shall file on the case docket a quarterly report containing the following information:
- (a) Any modifications to the facility, equipment, construction practices, and 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 of Investigation.
  - (b) A list of state and/or federal listed species encountered during construction and documentation of coordination with the appropriate agencies as needed.
  - (c) Any notifications sent to 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.
- (53) This report shall be filed quarterly on the public docket by the 15th day of April, July, October, and January of each year during construction. 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., Monday through Friday. 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 or light pollution at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (54) The Applicant shall implement a minimum setback from the project's solar modules of at least 150 feet from non-participating parcel boundaries, at least 300 feet from non-participating residences, and at least 150 feet from the edge of any state, county, or township road within or adjacent to the project area.

## POST CONSTRUCTION/OPERATION CONDITIONS

- (55) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility in both hard copy and as geographically referenced electronic data. The as-built specifications shall be provided electronically and on a USB drive. If the 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.
- (56) 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.
- (57) The Applicant shall operate a facility that limits sound levels emitted to nonparticipating receptors to no higher than the Representative Ambient Level (dBA) daytime and nighttime, respectively, plus five dBA, as listed in Exhibit Q, filed January 8, 2024, the Acoustic Assessment Report Table A-1. If the facility is found to be above these limits, the Applicant shall install additional noise mitigation measures to maintain compliance with this provision.
- (58) The facility shall be operated in such a way as to assure that no more than 152.2 megawatts will be injected into the Bulk Power System at any time.
- (59) The Applicant shall file an annual operational compliance report for at least 5 years following completion of construction. Annual reports shall contain the following information:
  - (a) Any modifications to the facility, equipment, construction practices, and 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 of Investigation.
  - (b) A list of any wildlife mortality or entrapment discovered within the facility fence during operation.
  - (c) Documentation of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation.
  - (d) Documentation of compliance with the landscape and lighting plan, including efforts to maintain vegetative screening to at least a 90 percent vegetation survival rate.



- (e) If the facility is found to be above the daytime ambient Leq sound level limit level plus five dBA, what additional noise mitigation measures were implemented to maintain compliance with the certificate.

## 2. Exhibits

Subject to the terms and conditions of this Joint Stipulation, the Applicant, OPSB Staff, and other Parties agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

- (1) Applicant Exhibit 1, Application filed January 8, 2024; *Erratum* filed January 26, 2024; and Clarification to Application filed March 19, 2024 (collectively “Application”);
- (2) Applicant Exhibit 2, Responses to Staff’s data requests filed to docket on:
  - March 3, 2024 Response to Staff’s Data Request dated March 12, 2024;
  - April 4, 2024 Response to Staff’s Data Request dated March 25, 2024;
  - May 17, 2024 Response to Staff’s Data Request dated May 6, 2024;
  - June 10, 2024 Response to Staff’s Data Request dated May 29, 2024; and
  - July 12, 2024 Response to Staff’s Data Request dated June 12, 2024 and Exhibit A thereto;
- (3) Applicant Exhibit 3, Proof of Service of the Application on local public officials and libraries as filed on March 27, 2024;
- (4) Applicant Exhibit 4, Copy of the letter sent to property owners and tenants within the plan site or contiguous to the plan site on February 2, 2023 announcing that the first Public Informational Meeting would be held on March 17, 2023, filed to the docket on March 6, 2023;
- (5) Applicant Exhibit 5, Proof of Publication filed to the docket on March 17, 2023 (for the first public informational meeting) in accordance with O.A.C. 4906-3-03(B) published on February 16, 2023 in *The Clermont Sun*;
- (6) Applicant Exhibit 6, Copy of the letter sent to property owners and tenants within the plan site or contiguous to the plan site on September

15, 2023 announcing the second Public Informational Meeting would be held on October 11, 2023 filed to the docket on September 27, 2023;

- (7) Applicant Exhibit 7, Proof of Publication filed to the docket on September 27, 2023 (for the second public informational meeting) published on September 21, 2023 in *The Clermont Sun*;
- (8) Applicant Exhibit 8, Proofs of Publication in accordance with the administrative law judge entry on May 6, 2024 for first publication of the description of the application and hearing dates published in *The Clermont Sun* on May 23, 2024 (filed on May 29, 2024); and the second publication of the description of the application and hearing dates published in *The Clermont Sun* on July 11, 2024 (filed July 16, 2024);
- (9) Applicant Exhibit 9, Direct Testimony of Sean Flannery on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (10) Applicant Exhibit 10, Direct Testimony of Shelley Hornstein on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (11) Applicant Exhibit 11, Direct Testimony of Dr. David G. Loomis on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (12) Applicant Exhibit 12, Drew Pierson on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (13) Applicant Exhibit 13, Yogesh S. Rege, P.E. on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (14) Applicant Exhibit 14, Stanley J. Vinton on behalf of Clear Mountain Energy Center, LLC filed August 23, 2024;
- (15) OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued July 15, 2024; and
- (16) Joint Exhibit 1, this document “Joint Stipulation and Recommendation” signed on behalf of the Parties.

### **3. Other Terms and Conditions**

This Stipulation is conditioned upon adoption of the Stipulation by the Board in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board’s approval of this Stipulation constitutes a “material modification” thereof. If the Board rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to

apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdraw"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Board review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after a hearing if necessary.

### **C. FINDINGS**

The Parties agree that the record in this case, provided the Board approves the conditions in this Joint Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

**(1) Findings of Fact**

1. The Facility qualifies as a “major utility facility” defined in R.C. 4906.01(B)(1)(a).
2. Applicant formally submitted its Application on January 8, 2024; an *Erratum* on January 26, 2024; and Clarification to Application on March 19, 2024 (collectively “Application”).
3. On March 27, 2024, Applicant filed a copy of the Proof of Service of the accepted complete application on local public officials and libraries.
4. On May 29, 2024 (first publication of the description of the application and hearing dates); and July 16, 2024 (second publication of the description of the application and hearing dates) Applicant filed Proofs of Publication in accordance with Ohio Revised Code (“R.C.”) 4906.06(C) and O.A.C. 4906-3-10(B) for the first and second publications of the description of the application and the hearing dates, published on May 23, 2024 and July 11, 2024 in *The Clermont Sun*.
5. The Staff Report was filed on July 15, 2024.
6. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
7. Adequate data on the project has been provided to determine that the Facility described in the Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3).
8. Adequate data on the project has been provided to determine 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, as required by R.C. 4906.10(A)(4).
9. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
10. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
11. Adequate data on the project has been provided to determine what the Facility’s impact will be on the viability as agricultural land of any land

in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. 4906.10(A)(7).

12. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
13. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

**B. Conclusions of Law**

- (1) Clear Mountain Energy Center, LLC is a “person” under R.C. 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in R.C. 4906.01(B)(1).
- (3) The Application complies with the requirements of O.A.C. Chapter 4906-4.
- (4) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
- (5) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
- (6) The record establishes, as required by R.C. 4906.10(A)(4), 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.
- (7) The record establishes, as required by R.C. 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
- (8) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
- (9) The Facility’s impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
- (10) The record establishes that the Facility incorporates maximum feasible water conservation practices, as determined by the Board, considering available

technology and the nature and economics of the various alternatives consistent with R.C. 4906.10(A)(8).

- (11) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility which includes the conditions in the Staff Report of Investigation, as presented and modified, by the Joint Stipulation and Recommendation.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**STAFF OF THE OHIO POWER SITING BOARD**

*/s/ Janet Gregory*

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**GREGORY BRUNS, GREGORY VESTRING, AND THE VESTRING FAMILY PRESERVATION TRUST**

*/s/ Matthew B. Eisenson*

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*/s/ Robert Dove*

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Summary: Text Joint Stipulation and Recommendation electronically filed by Teresa Orahod on behalf of Herrnstein, Kara.