

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE APPLICATION OF :
FOUNTAIN POINT SOLAR ENERGY LLC FOR : CASE No. 2025-0075
A CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED TO : APPEAL FROM THE OHIO POWER
CONSTRUCT A SOLAR-POWERED ELECTRIC : SITING BOARD, CASE No. 21-1231-EL-
GENERATION FACILITY IN LOGAN COUNTY, : BGN
OHIO. :

MERIT BRIEF OF APPELLEE OHIO POWER SITING BOARD

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MERIT BRIEF OF APPELLEE OHIO POWER SITING BOARD

INTRODUCTION

The General Assembly recognized the need to balance private rights and public interests when it created the Ohio Power Siting Board (“Board”). The General Assembly has, over time, refined some of the guidelines that the Board must follow, but the basic criteria for granting a certificate of environmental compatibility and public need (“Certificate”) contained in R.C. 4906.10(A) (Appellant’s App. at 0154-0155) remain largely unchanged.¹

Those criteria have also remained general in nature, deferring to the Board’s expertise to determine such matters as “minimum adverse environmental impact” and what is in the “public interest.” The Board has adopted, and over time modified, rules to allow it to gather sufficient information to decide when a proposed project will have a minimum adverse environmental impact. The statutory scheme also authorizes the Board to impose conditions to mitigate potential impacts. But it is not the goal in the siting

¹ References to Appellants’ appendix are denoted “Appellant’s App. at ____,” References to Appellee’s appendix attached hereto are denoted “OPSB App. at ____,”.

process, nor does the law require, that all potentially negative impacts be *eliminated*. That would be impossible. Rather the Board endeavors to *minimize* them.

The Board's responsibilities do not end there. The issuance of a certificate does not represent the conclusion of an effort to determine every exact detail of a project's environmental impact. In *Buckeye Wind*, this Court specifically noted that "[t]he statutes authorize a dynamic process that does not end with the issuance of a construction certificate. The General Assembly vested the Board with authority to allow its staff to monitor. . . compliance with conditions that the board has set. . . ." *In re Application of Buckeye Wind, LLC*, 2012-Ohio-878, ¶ 16 ("*Buckeye Wind*").

The Board found that Fountain Point Solar Energy LLC ("Fountain Point") provided sufficient information in its Application to permit the Board to properly evaluate this Project. The Board is vested with considerable discretion to find that a Project serves the public interest after reviewing the record to determine what weight to give expert and lay witness testimony and public support and opposition. The amount of weight to be assigned to testimony and comments is within the province of the Board as the trier of fact. The Board properly used its discretion to weigh the evidence, and merely disagreeing with its decision on issues regarding the Board's weight afforded to certain testimony or evidence, finding no conflicts, and that local government opposition was not overwhelming or unanimous in this case, does not constitute reversible error. As a result of its investigation, the Board Staff recommended 44 conditions to mitigate impacts from the Project, and the Certificate granted to Fountain Point requires compliance with all the conditions in the Stipulation.

All these factors are present in this appeal. The Board's decision issuing a certificate of environmental compatibility and public need to Fountain Point, subject to conditions set forth in the stipulation, was reasonable, lawful, and should be affirmed.

STATEMENT OF THE FACTS AND CASE

On April 11, 2022, Fountain Point filed its Application for a certificate to construct a 280-megawatt solar-powered electric generation facility in Bokescreek, Perry, and Rushcreek Townships in Logan County, Ohio ("Project" or "Facility"). The Application was later amended on May 16, 2022, and August 23, 2022 ("Amended Application"). In the Amended Application, Fountain Point sought approval to construct its electric generation facility in Bokescreek and Rushcreek Townships (excluding all of Perry Township) that would occupy approximately 2,141 acres within an approximately 2,768-acre project area (as opposed to 3,860 acres) comprised of private land secured by Applicant through agreements with landowners. The Amended Application stated that the Project would consist of access roads, electric collection lines, photovoltaic panels, inverters and transformers, a collection substation, a laydown area for construction staging, an operation and maintenance building, and pyranometers.

On June 10, 2022, the Board found Fountain Point's Application to be sufficiently in compliance with the requirements of Adm.Code 4906-01, *et seq.*, and that it provided sufficient information for Staff to commence its review and investigation. On November 29, 2022, Staff filed a Staff Report of Investigation ("Staff Report"). In their Staff Report, Staff recommended the Board approve Fountain Point's request for a Certificate subject to 42 conditions. A local public hearing was held on December 14, 2022.

Following two extensions of the evidentiary hearing at the request of Fountain Point, on July 24, 2023, Fountain Point and the Ohio Farm Bureau Federation (“OFBF”) filed a Joint Stipulation and Recommendation (“Stipulation”) for the Project. The Stipulation incorporated all the recommendations and conditions outlined in the Staff Report. Two additional conditions were later added, for a total of 44 conditions. The other parties to the proceeding—Logan County Board of Commissioners (“Commissioners”), Rushcreek Township Board of Trustees (“Rushcreek Township”), and Kara M. Slonecker, Paul William Schaller, Jeny Hammer, Jocelyn Kavanagh, Brent Vermillion, Jim Culp, Alyssa Rice, Cliff Cronkelton, Anthony Cogossi and Citizens Against Fountain Point LLC (“Citizens” or “Appellants”)—did not sign the Stipulation. Staff also did not sign the Stipulation.

The hearing in this proceeding was held, as scheduled, on August 15, 2023. At the hearing, Fountain Point orally amended the Project, stating that the Project would not be constructed in Rushcreek Township. Tr. at 24, Appellants’ Supp. at 24. At the conclusion of the hearing, the Administrative Law Judges instructed the parties to file initial and reply briefs, which were filed on September 18, 2023, and October 16, 2023, respectively.

On September 19, 2024, the Board issued its 92-page Opinion and Order, which found that Fountain Point’s Amended Application would be approved and a Certificate would be issued, pursuant to R.C. Chapter 4906, for the construction, operation and maintenance of the Project, subject to the 44 conditions (two were added to Staff’s original conditions) set forth in the Stipulation and consistent with the Opinion and Order.

In the Matter of the Application of Fountain Point Solar Energy LLC for a Certificate of Environmental Compatibility and Public Need, Case No. 21-1231-EL-BGN, Opinion and Order, (Sept. 19, 2024) (“Order”) at ¶ 239, Appellant App. at 94.

On October 21, 2024, Citizens filed an Application for Rehearing. Fountain Point filed a memorandum contra to Citizens’ Application for Rehearing on October 31, 2024. On November 20, 2024, the Board filed an Entry on Rehearing, denying Citizens’ Application for Rehearing. *In the Matter of the Application of Fountain Point Solar Energy LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-1231-EL-BGN, Entry on Rehearing (Nov. 20, 2024) (“Entry on Rehearing”) at ¶ 41, Appellants’ App. at 110. The Board reviewed and considered all claims and arguments contained in Citizens’ Application for Rehearing and found that the application was without merit. Entry on Rehearing at ¶ 37, Appellants’ App. at 110.

On December 13, 2024, Citizens filed a Second Application for Rehearing. On December 23, 2024, Fountain Point filed a memorandum contra Citizens’ Second Application for Rehearing. On January 16, 2025, Citizens filed a Notice of Appeal with the Court. Fountain Point motioned to intervene as an appellee on February 24, 2025, and that motion was granted by the Court on March 12, 2025. Citizens filed their Merit Brief on March 26, 2025. Appellees filed a Stipulation Extension of Time to file their merit briefs on March 28, 2025, from April 25, 2025, to May 15, 2025.

Appellants’ claims of error in this appeal are without merit, were properly evaluated and denied on rehearing by the Board and should be denied by this Court.

STANDARD OF REVIEW

Pursuant to R.C. 4906.12 (Appellants App. at 0156), this Court applies the same standard of review to Board determinations that it applies to orders of the Public Utilities Commission of Ohio. *Buckeye Wind*, ¶ 26. An order of the Board shall be reversed, vacated, or modified by the Court only when, upon consideration of the record, the Court finds the order to be unlawful or unreasonable. *Id.*

In adjudicating whether a Board decision is unreasonable, the Court will not reweigh evidence or second guess the Board on questions of fact. *In re Firelands Wind, LLC*, 2023-Ohio-2555, ¶ 17 (“*Firelands Wind*”); citing, *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35. The Court will not reverse or modify a decision of the Board as to questions of fact “when the record contains sufficient probative evidence to show that the board’s decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.” *Firelands Wind*, ¶ 17 citing *In re Application of Champaign Wind, LLC*, 2016-Ohio-1513, ¶ 7; *In re Complaint of Reynoldsburg*, 2012-Ohio-5270, ¶ 18 citing *Monongahela Power Co. v. Pub. Util. Comm.*, 2004-Ohio-6896, ¶ 29. The Board’s factual determinations are entitled to deference. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 1996-Ohio-296.

The Court has very recently confirmed that it will only reverse, modify, or vacate a Board order when, after considering the record, the Court concludes that the order “was unlawful or unreasonable.” R.C. 4903.13. *In re Application of Harvey Solar I, L.L.C.*, Slip Opinion No. 2025-Ohio-1503. Challengers to a Board order bear the burden of

establishing that the order is unlawful or unreasonable. *Harvey Solar* ¶ 11 citing *In re Application of Alamo Solar I, LLC*, 2023-Ohio-3778, ¶ 10. “Unlawful” refers to the Court’s review of legal questions, such as the proper interpretation of a statute or whether the board followed its own administrative rules. *Harvey Solar* at ¶ 12 citing *Alamo Solar* at ¶ 11. The Court’s review of questions of law is de novo. *Id.* See also, *In re Application of Firelands Wind, L.L.C.*, 2023- Ohio-2555, ¶ 12.

The Court has “complete and independent power of review as to all questions of law” in appeals from the Board. *In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, 2014-Ohio-3764, ¶ 23 citing *Ohio Edison Co. v. Pub. Util. Comm.*, 1997-Ohio-196, 469 (“*Fuel Adjustment Clauses*”). The *Harvey Solar* Court clarified that the “unreasonable” part of the standard of review is relevant when it examines the Board’s determinations under R.C. 4906.10(A), which requires the Board to determine a project’s compliance with broad statutory criteria. *Harvey Solar* at ¶ 13 citing *Firelands Wind* at ¶ 14-15. The *Harvey Solar* Court confirmed that the statute gives the Board—not the Court—the authority to make these determinations, and the “open-textured nature of the terms at issue inherently vests a degree of discretion in the administrative agency.” *Id.* The Court reviews whether the Board’s exercise of its statutory authority was reasonable. *Harvey Solar* at ¶ 13 citing *Alamo Solar* at ¶ 16.

The Court customarily relies on the expertise of a state agency as to their interpretation of a law where “highly specialized issues” are involved and “where agency expertise would, therefore, be of assistance in discerning the presumed intent of our

General Assembly.” *Id.* at ¶ 23, citing *Consumers’ Counsel v. Pub. Util. Comm.*, 58 Ohio St.2d 108, 110 (1979).

The Court has explained that the governing statutes vest the Board with considerable discretion as to their interpretation. *Firelands Wind*, ¶ 15. The Court reviews the Board’s determinations on such matters as minimum adverse environmental impact and whether a project is in the public interest by looking at whether the Board’s decision falls within the zone of reasonableness. *Id.*; see also, *Alamo Solar* ¶ 16 (“We review the board’s exercise of its implementation authority in making these determinations for reasonableness.”) In other words, the *Harvey Solar* court recently concluded, “we look at what the statute requires the board to do and determine whether the determinations that the board made in complying with the statute were reasonable.” *Harvey Solar* at ¶ 14.

Here, the Board issued a Certificate to Fountain Point for the construction, operation, and maintenance of the Facility, subject to 44 conditions identified in the Stipulation signed by Fountain Point and the OFBF, which was adopted by the Board. The Board, in making its decision in this case, applied the proper meaning to the rules to ensure that Fountain Point provided all the information necessary for the Board to make its decision and issue the Certificate. Appellants attempt to second-guess the Board’s factual determinations and discount the investigative work done in this case. This Court should not accept Appellant’s invitation to reweigh those factual determinations. The Board followed the statute and its rules and used its discretion and judgment regarding the facts in a reasoned manner, relying on the record, and its decision should be affirmed.

ARGUMENT

PROPOSITION OF LAW NO. I:

The Board lawfully and reasonably considered and weighed Bokescreek Township Trustee Larry Mouser’s testimony and the letter submitted by Benjamin Logan School District Superintendent John Scheu when determining that the facility will serve the public interest, convenience, and necessity in accordance with R.C. 4906.10(A)(6).

- a. The Board gave Bokescreek Township Trustee Larry Mouser’s testimony its proper weight based on its discretion and judgment.**

Appellants’ claim that the Board acted unlawfully and unreasonably by improperly attributing greater weight to Bokescreek Trustee Larry Mouser’s testimony than that of any other affected citizen. Appellants’ Brief at 13. Appellants’ claim should be rejected because it is within the province and discretion of the Board to determine what weight to give a witness’s testimony in a Board proceeding. The Board stated, “[a]lthough Trustee Mouser alone cannot pass a resolution in support of a solar facility, his testimony need not be given equal weight to any other private citizen.” Order at ¶ 175, Appellants’ App. at 75. Trustee Mouser stated that he believes the Facility will be beneficial, both personally and as a trustee. *Id.* Trustee Mouser testified to the benefits to the community, including revenue to the school district, county, and township. *Id.* Trustee Mouser also clarified that he is not speaking on behalf of Bokescreek Township because the other trustees have not authorized him to do so. *Id.*

The Board recognized that Mr. Mouser was testifying in his individual capacity and used his testimony to indicate that local governmental opposition is not overwhelming or unanimous in this case. See Order at ¶¶ 187-188, Tr. I at 17-18, Appellants’ App. at 83-84, Appellants’ Supp. at 17-18. Specifically, the Board stated that

“in reaching our decision, we have considered Trustee Mouser’s testimony in support of the Project from his perspective as an individual and as a trustee who does not represent Bokescreek Township’s overall position on the Project.” Order at ¶ 175, Appellants’ App. at 75.

The finder of fact has the power to make reasonable rulings as to the competency, admissibility, and scope of expert testimony and to determine the weight to be accorded that testimony. *Chester Twp. v. Power Siting Comm’n* (1977), 49 Ohio St. 2d 231, 237, citing *Railroad Co. v. Defiance* (1895), 52 Ohio St. 262, paragraph nine of the syllabus. In a R.C. Chapter 4906 proceeding, the General Assembly has granted the commission the discretion in its fact-finding role, to require such information, conduct such studies and adopt such rules of evidence as it deems necessary. R.C. 4906.10, 4906.03 (OPSB App. at 1), and 4906.09 (OPSB App. at 3). *Id.* at 237. A reviewing court will defer to the Public Utilities Commission of Ohio [Board] credibility determinations in its role as finder of fact. *Harris Design Servs. v. Columbia Gas of Ohio, Inc.*, 2018-Ohio-2395. Credibility is always an issue, and it is for the factfinder to impartially determine if a witness is credible and the amount of weight to be afforded to that particular witness’ testimony. *Johnson v. Pierce*, 2017-Ohio-6234 at ¶ 12 citing *State v. Bayer* (1995), 102 Ohio App. 3d 172, 182.

The amount of weight to be given to witness testimony by the factfinder here is a matter within the sound discretion of the Board. The Board’s judgment on the weight it assigns to witness testimony will not be reversed on appeal unless the Board abused its discretion. An abuse of discretion constitutes more than an error of law or judgment and

implies that the trial court [Board] acted unreasonably, arbitrarily, or unconscionably.

Johnson, supra at ¶ 7 citing *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219.

When applying the abuse of discretion standard, a reviewing court may not simply substitute its judgment for that of the trial court [Board]. *Id.* Here, Appellants did not raise an abuse of discretion claim in their appeal and therefore have waived it.

Nonetheless, there is sufficient probative evidence in the record cited by the Board to support its decision.

The Court should decline Appellants' invitation to reweigh record evidence of public support or opposition to the Project. In reviewing the Board's determinations, the court's function on appeal is not to reweigh or second-guess the Board on questions of fact. *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.* 2017-Ohio-7566 ¶ 35. This Court has held that it will not reverse or modify a Board decision as to questions of fact where the record contains sufficient probative evidence to show that the Board's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.

Monongahela Power Co., supra at ¶ 29. The Court also recently observed that the governing statutes vest the Board with considerable discretion as to their implementation.

Firelands Wind, supra, at ¶ 15. The Court stated that the Board's "exercise of its implementation authority must fall within the zone of permissible statutory construction."

Id. The Court reviews the Board's determinations on whether a project satisfies the public interest criteria by looking at whether the Board's decision falls within the zone of reasonableness. *Id.*; see also, *Alamo Solar, supra*, at ¶ 16.

The Board has the discretion to find that a Project serves the public interest after reviewing the record and determining what weight to give expert and lay witnesses testimony and public comments. The Board decides what weight to assign the testimony and comments. The Board has previously considered feedback from individuals from local entities without requiring a full resolution or requiring that all leadership sign it to be considered. *See In re Oak Run Solar Project, LLC*, Case No. 22-549-EL-BGN et. al. (*Oak Run*), Opinion and Order (March 21, 2024) (OPSB App. at 4) at ¶ 226 (the Board weighed a local county commissioner’s testimony based on their individual capacity).

Here, the Board appropriately assigned more weight to Mr. Mouser’s testimony given his perspective as an individual and a trustee, while acknowledging that he was not speaking on behalf of Bokescreek Township. Order at ¶ 175, Appellants’ App. at 75. The determination of weight to be assigned to testimony is within the province of the Board as the trier of fact. The Board addressed public support and opposition to the Project. The Board was persuaded that the evidence supports that the proposed Facility, subject to Applicant’s proposal that the Project only be constructed within Bokescreek Township, complies with R.C. 4906.10(A)(6). *Id.* at ¶ 185. After applying the Board’s case precedent to this proceeding, it noted that there was not overwhelming or unanimous opposition to the proposed Facility. *See Id.* at ¶ 187-188. Furthermore, after weighing public input and local governmental authorities’ positions in support of and against the Project, the Board determined the Project served the public interest, convenience, and necessity under R.C. 4906.10(A)(6). *Id.* at ¶ 188, Appellants’ App. at 154.

For the foregoing reasons, the Court should defer to the Board's findings of fact and reject Appellants' claim.

b. The Board gave the letter submitted by Benjamin Logan School District Superintendent John Scheu its proper weight based on its discretion and judgment.

Appellants' claim that the Board also gave unwarranted weight to Benjamin Logan Local School District Superintendent's, John Scheu, letter in support of the Project because it was not an official action or vote by the school board. Appellants' Brief at 14. This argument, as well, lacks merit.

Contrary to the Appellants' claim, the letter from Superintendent John Scheu clarifies that it is on behalf of the Benjamin Logan School Board members and Superintendent. It also states that "all 5 board members have given me the directive to send this letter of support on their behalf." Thus, the Board did consider this letter on "behalf of the school board as a whole" rather than an official board action or from just a single member. Order at ¶ 176 FN 4, Appellants' App. at 76. As stated above, the determination of weight to be assigned to testimony is within the province of the Board as the trier of fact. As such, the Board gave appropriate weight to Superintendent Scheu's letter in support of the Project. Consequently, the Board ultimately determined that the local government opposition in this case is not overwhelming or unanimous.

Further, contrary to the Appellants' claim, the Board acted lawfully and reasonably when the Board partially granted Fountain Point's motion to strike portions of Citizens Intervenors' (Appellants) Post Hearing Reply Brief regarding the retraction statement

issued by Superintendent Scheu. Appellants' Brief at 15. Here, the Board found that the retraction statement was not filed in the case docket but only found in the Citizens Intervenor's Reply Brief. Furthermore, it was in violation of Evid.R. 901 as it was not properly authenticated and it was not introduced during hearing, such that parties did not have the opportunity to challenge the substance of the alleged retraction letter during hearing or in written briefs. Order at ¶ 27, Appellants' App. at 11. As such, the Board lawfully and reasonably granted Fountain Point's motion to strike Citizen Intervenor's Reply Brief statement from Superintendent Scheu, as had it been let in, it would have caused prejudice to parties in this case. Thus, the Board lawfully and reasonably weighed Superintendent Scheu's letter in support of the Project.

For the foregoing reasons, as a matter of discretion, the Court should reject Appellants' arguments and claims regarding the proper weight to be applied by the Board, as the finder of fact, to the Trustee's testimony and school district letter.

PROPOSITION OF LAW NO. II:

The Board lawfully, reasonably, and without prejudice considered public safety in ordering Fountain Point to coordinate with and enter into an agreement with local first responders.

Appellants argue that the Board issued the Certificate to Fountain Point without addressing public safety concerns, which result from a conflict of interest and inability to enter into a first responder agreement. Appellants' Brief at 16-17. Appellants' claim, however, is improper and should not be considered as the Appellants failed to raise this

allegation in their initial brief or reply brief to the Board. Entry on Rehearing at ¶ 35, Appellants' App. at 107.

The Board has routinely held it is improper for a party to raise an issue for the first time on rehearing. *In re Application of Border Basin Solar I, LLC*, Case No 21-277-EL-BGN (*Border Basin*), Order on Rehearing (Sept. 21, 2023) (OPSB App. at 139) at ¶¶ 33, 64 and 78, citing *In re Application of Harvey Solar, LLC*, Case No. 21-164-EL-BGN (*Harvey*), Order on Rehearing (Apr. 20, 2023) (OPSB App. at 181) at ¶ 59. For that reason alone, the assignment of error can be denied. *Border Basin*, Order on Rehearing (Sept. 21, 2023) at ¶ 78, citing *Harvey*, Order on Rehearing (Apr. 20, 2023) at ¶ 59. This Court has noted that the availability of the “[rehearing] process does not mean that a party may sit idly and withhold all objections before and during a board hearing and then belatedly raise them in a rehearing application.” *Border Basin*, Order on Rehearing (Sept. 21, 2023) at ¶ 33, citing *In re Application of Buckeye Wind, LLC*, 2016-Ohio-5664, ¶ 18. Here, despite Appellants' arguments to the contrary, the Application for Rehearing is the first time that the Appellants raised an argument relating to Fountain Point's requirement, outlined in the Stipulation, to enter into certain safety agreements. Entry on Rehearing at ¶ 35-36, Appellants' App. at 108-109.

Notwithstanding Appellants' waiver to raise this issue at the Board hearing, the Board disagreed with Appellants' opinion that there is a conflict of interest at issue, such that Bokescreek Township cannot participate during first responder agreement negotiations. *Id.* at ¶ 36. In *Tuttle v. Collins*, 2020-Ohio-4062 at FN4, it states that a “[c]onflict of Interest' is a term used regularly within the legal context and has been

defined as ‘a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.’” *Id.* at HN4. Applying this definition, there is no conflict between two of three Bokescreek Township Trustees from having a leasehold interest in the Facility while, at the same time, executing their public duties negotiating and entering into a local first responder agreement with Fountain Point to provide emergency response and safety services to the Facility. The agreement can be with any local emergency responders, but there is no requirement that all local emergency responders must be signatories to the agreement.

Fountain Point addressed public safety measures in the Stipulation by agreeing to include conditions requiring it to enter into an agreement with local first responders and have an emergency response plan, which the Board adopted and approved as part of the overall package. In its Order approving the Stipulation, the Board directed Fountain Point to follow through on its commitment to coordinate with and enter into an agreement with local first responders to provide the necessary equipment and training plan throughout the life of the Project. Entry on Rehearing at ¶ 36. Specifically, Fountain Point agreed to perform its due diligence regarding safety measures, including entering into a first responder agreement pursuant to Condition 44 in the Stipulation and submitting an emergency response plan prior to construction under Condition 12. Entry on Rehearing at ¶ 36; Order at ¶ 186, Appellants’ App. at 42, 52, 82-83. These two conditions were not new to the proceeding because Fountain Point provided witnesses at the evidentiary hearing to support the two conditions, and those witnesses were available for cross-examination by Appellants. Moreover, Stipulation Conditions 12 and 44 were available

for argument and challenge in the Appellants' initial brief and reply brief after the evidentiary hearing. However, the Appellants did not take advantage of the opportunity to cross-examine the witnesses who sponsored the conditions and, more importantly, did not contest the conditions in either their initial brief or reply brief.

Furthermore, despite Appellants' claims to the contrary, there is no conflict of interest that would prohibit Bokescreek from participating in the negotiations or consummation of any first responder agreement with Fountain Point. Condition 44 specifically requires Fountain Point to "coordinate with and *enter into an agreement with local first responders*." (Emphasis added) Joint Stipulation at Condition 44, Appellant's App. at 52. The Board correctly acknowledged that the condition does not require Fountain Point to enter into the first responder agreement with specific townships. It should be noted that nowhere in the Stipulation or Order are Bokescreek Township or Rushcreek Township named or required to enter into a first responder agreement with Fountain Point. Entry on Rehearing at ¶ 36, Appellants' App. at 109. Rather, Fountain Point is committed to working with local government officials and first responders in the area to provide support, as required by the Certificate.

In addition, the Board correctly refused to speculate on the potential conflict of interest, emphasizing that the first responder agreement is due prior to the Project's construction. Entry on Rehearing at ¶ 36, Appellants' App. at 109. Fountain Point must enter into a first responder agreement pursuant to Condition 44 in the Stipulation and submit an emergency response plan prior to construction under Condition 12. Order at ¶ 186, Appellants' App. at 82-83. By the time the first responder agreement is discussed, a

potential conflict of interest involving Bokescreek Township could resolve itself. Entry on Rehearing at ¶ 36.

For the foregoing reasons, the Appellants' arguments regarding a conflict of interest lack merit. Appellants have failed to show how they are harmed by the implementation and enforcement of conditions 12 and 44 of the Board's orders. Accordingly, the Board's decision should be affirmed.

PROPOSITION OF LAW NO. III:

The Board lawfully and reasonably followed its standard of review and complied with R.C. 4906.10(A)(6) when it considered the public comments and testimony and the opinion of the local government officials.

Appellants argue that the Board failed to follow its own rules in finding that the Project is in the public interest, convenience, and necessity pursuant to R.C. 4906.10(A)(6) given the "unanimous government opposition" and "overwhelmingly one-sided public sentiment in opposition" to the Project. Appellants' Brief at 24. Appellants' argument is without merit. The Board acted lawfully and reasonably in determining that the facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).

Appellants' assertion that the Board did not properly assess public opposition to the Project is wrong. In fact, the Board's Order thoroughly considered and addressed opposition to the Project. Order at ¶ 176-188, Appellants' App. at 76-84. The Board summarized government opposition as well as local public hearing testimony and public comments that opposed the Project and the reasons for their opposition. The reasons for

opposition included aesthetics, negative impact on adjacent property values, noise, destruction of ecosystems, and others. *Id.*

Contrary to Appellants' argument, the Board properly found that record evidence demonstrated that there was not overwhelming or unanimous local governmental opposition to the Project. See Order at ¶ 187-188, Appellants' App. at 83-84. The only township that the Project will be built in, Bokescreek Township, included testimony in support from Bokescreek Township Trustee Mouser, who supports the Project based on its anticipated revenue benefits for the school district, county, and township. Order at ¶ 188, Appellants' App. at 83-84. In addition, the Project also received support from Benjamin Logan Public School Superintendent John Scheu on behalf of the Benjamin Logan School District's five elected board members.² *Id.* Other support included the OFBF, State Representative William Seitz, and Ohio Chamber of Commerce President Stivers. Order at ¶ 182, Appellants' App. at 79-80. The Board reasonably found that local governmental opposition is not overwhelming or unanimous in this case.

The Board's Order specifically recognized that Trustee Mouser alone cannot pass a resolution in support of a solar facility. Order at ¶ 175, Appellants' App. at 75. But the Board's Order also explained that it has consistently indicated that government officials testifying in their own capacity should not be given equal weight to any other private citizen. Rather, the Board has previously considered feedback from individuals from local entities without requiring a full resolution or requiring that all leadership sign it to be

² Moreover, the Board acknowledged in its Entry on Rehearing that in the Order at ¶ 176 FN 4, that the letter was from Superintendent Scheu and stated that "all 5 board members have given me the directive to send this letter of support on their behalf." Entry on Rehearing ¶ 26, Appellants' App. at 103.

considered. *Id.*; See *Oak Run*, Case No. 22-549-EL-BGN et. al., Opinion and Order (March 21, 2024) at ¶ 226 (the Board weighed a local county commissioner’s testimony based on their individual capacity). The Board’s Order noted that also in *Oak Run*, the Board was particularly swayed by explicit support from the local schools, as is the case here for Fountain Point. See *Oak Run*, Opinion and Order (March 21, 2024) at ¶ 226.

The Board recognized that Rushcreek Township’s arguments in opposition should be weighed proportionally as a neighboring township now that none of the facility will be built within Rushcreek Township. Order at ¶ 186; Appellants’ App. at 82-83. The Board noted that in Rushcreek Township Trustee Lyons’ testimony and Rushcreek Township Trustee Shafer’s testimony, they both specifically asked the Board to “deny the application in its entirety, or to remove Rushcreek Township from the Project area.” *Id.* In fact, when Fountain Point committed not to construct any portion of the Facility in Rushcreek Township, Rushcreek Township already received the relief it sought. *Id.* The Board’s Order only approved the Project to the extent that the Facility would be built exclusively in Bokescreek Township. Order at ¶ 185-186, Appellants’ App. at 82-83.

The Board properly found that the evidence supports that the proposed Project, subject to Fountain Point’s proposal that the Project only be constructed within Bokescreek Township, complies with R.C. 4906.10(A)(6). The Board explained:

In reaching this decision, we recognize that this criterion should be examined through a broad lens. We find that this criterion should consider the public’s interest in a power siting project that ensures continued utility services and the prosperity of the state of Ohio. However, at the same time, this statutory criterion must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. Order at ¶ 185, Appellants’ App. at 82.

Appellants' assertion that the Board did not consider public record opposition to the Project is wrong. The Board explained in its Order that it reviewed the public participation and noted that although the majority of entities, individuals, and officials submitting comments or testimony are in opposition to the Project, there were approximately 869 filings in the public comments section of the case docket (approximately 463 non-duplicated filings), expressing a number of varying viewpoints both in favor of and against the Project, such that the Board did not find the feedback in opposition to be one-sided, as argued by Appellants. *Id.* at ¶ 188; Appellants' App. at 84.

On rehearing, the Board further explained that it "considered the extensive record and determined that local opposition was not as overwhelming as represented by Citizen Intervenors." Entry on Rehearing at ¶ 31, Appellants' App. at 106. Moreover, the Board rejected Appellants' attempt to portray the number of public comments filed in the case as the only indicator of local concern in Board proceedings. *Id.* The Board reviewed the comments filed in the docket and noted that while comments in opposition were the majority, the Board determined that not all comments in opposition content-wise, were one-sided or compelling. *Id.*

The Board recognized that as part of its responsibility under R.C. 4906.10(A)(6) to determine that all approved Projects will serve the public interest, convenience, and necessity, it must balance projected benefits against the magnitude of potential negative impacts on the local community. Order at ¶ 185, Appellants' App. at 81-82. These impacts include aesthetics, negative impact on adjacent property values, noise, damage to

ecosystems, and others. *Id.* at ¶¶ 187, 188, and 201. Weighing the totality of the evidence, the Board found the opposition evidence was outweighed by the public comments and testimony supporting the Project, which included job creation and clean energy generation. *Id.* The record demonstrates that the Board considered both positive and negative impacts in reaching its determination that the facility “will serve the public interest, convenience, and necessity,” consistent with R.C. 4906.10(A)(6). Order at ¶ 188, Appellants’ App. at 83-84.

The Board properly noted that its review of the public comments was in the context of the entire evidentiary record:

[W]e emphasize that the certificate process involves an evaluation of the entire evidentiary record. For instance, during the local hearing held on December 14, 2022, witnesses in opposition cited several reasons for opposing the Project, just as witnesses in support highlighted multiple reasons why the Project should be approved. The Board also reiterates that the Stipulation adopted in this case adequately addressed and incorporated public concerns. Entry on Rehearing ¶ 31; Appellants’ App. at 106.

The Board has discretion to find that a Project serves the public interest after reviewing the record and determining what weight to give to expert and lay witnesses testimony and public comments. The Board decides what weight to assign the testimony and comments. The Board 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. The Board 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.

The determination of weight to be assigned to testimony is within the province of the Board as the trier of fact. The Board's Order thoroughly addressed public opposition to the Project. After weighing public input and local governmental authorities' positions in support of and against the Project, the Board determined the Project served the public interest, convenience, and necessity under R.C. 4906.10(A)(6).

The Court should defer to the Board's findings of fact and decline Appellants' invitation to reweigh record evidence of public support or opposition to the Project. The Court has recently observed that the governing statutes vest the Board with considerable discretion as to their implementation. *Firelands Wind, supra*, at ¶ 15. The Court stated that the Board's "exercise of its implementation authority must fall within the zone of permissible statutory construction." *Id.* The Court reviews the Board's determinations on whether a project satisfies the public interest criteria by looking at whether the Board's decision falls within the zone of reasonableness. *Id.*; see also, *Alamo Solar, supra*, at ¶ 16.

CONCLUSION

In granting Fountain Point a Certificate below for this Facility, the Court should find that the Board lawfully and reasonably found that the Project complied with the criteria in R.C. 4906.10(A). The Board complied with its standard of review, statute, and rules in making its decision, which found there was sufficient probative evidence provided by Fountain Point's Application and Amended Application, together with the conditions enumerated in the Stipulation, to grant Fountain Point a Certificate. The Board's finding that the Project satisfied the criteria in R.C. 4906.10(A) was reasonable

and lawful. Appellants' characterization that the Board acted unreasonably and unlawfully by not properly considering public opposition is without merit and should be rejected. The Board's decision falls within the zone of reasonableness, as required in *Firelands*. The Court should affirm the Board's decision.

For the foregoing reasons, the Board respectfully requests that the Court affirm its decision in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Ohio Revised Code

Section 4906.10 Basis for decision granting or denying certificate.

Effective: October 11, 2021

Legislation: Senate Bill 52

(A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be subject to sections 4906.101, 4906.102, and 4906.103 of the Revised Code and conditioned upon the facility being in compliance with standards and rules adopted under section 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application.

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 gas pipeline;
- (2) The nature of the probable environmental impact;
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In



determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.



Ohio Revised Code

Section 4906.09 Record of hearing.

Effective: November 15, 1981

Legislation: House Bill 694 - 114th General Assembly

A record shall be made of the hearing and of all testimony taken. Rules of evidence, as specified by the power siting board, shall apply to the proceeding. The board may provide for the consolidation of the representation of parties having similar interests.

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
OAK RUN SOLAR PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A SOLAR-POWERED
ELECTRIC GENERATION FACILITY.**

CASE NO. 22-549-EL-BGN

**IN THE MATTER OF THE APPLICATION OF
OAK RUN SOLAR PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A TRANSMISSION LINE.**

CASE NO. 22-550-EL-BTX

OPINION AND ORDER

Entered in the Journal on March 21, 2024

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I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Oak Run Solar Project, LLC, the Ohio Farm Bureau Federation, Ohio Partners for Affordable Energy, Dr. John Boeckl, International Brotherhood of Electrical Workers, Local Union 683, Ohio Environmental Council, and the Board Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Oak Run Solar Project, LLC for the construction, operation, and maintenance of an 800 megawatt solar-powered electric generation facility, two 230 kilovolt transmission lines, and a 300 megawatt battery energy storage facility in Monroe, Somerford, and Deercreek Townships in Madison County, Ohio.

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} Oak Run Solar Project, LLC (Applicant or Oak Run) is a person as defined in R.C. 4906.01. The Applicant is a subsidiary of Savion, LLC (Savion), a part of the Shell Group. Savion has developed more than approximately 2.5 gigawatts of solar and energy storage projects across the United States. (Staff Ex. 1 at 5.)

{¶ 4} On May 26, 2022, Applicant filed a motion for waiver and request to file a joint generation and transmission application. Applicant stated in the accompanying memorandum in support that it intended to file an application with the Board for a certificate to construct a solar-powered electric generation facility with a generating capacity of up to 800 megawatts (MW) alternating current, up to 300 MW of battery storage facilities, substations, and associated 230 kilovolt (kV) transmission lines of approximately 3.5 miles

(collectively, the Project or Facility) in Monroe, Somerford, and Deercreek Townships, Madison County, Ohio.

{¶ 5} On June 7, 2022, Applicant filed a preapplication notification letter for the Project.

{¶ 6} By Entry issued June 24, 2022, the administrative law judge (ALJ) granted the motion for waiver to allow the standard generation and associated electric transmission certificate applications to be filed jointly.

{¶ 7} On July 18, 2022, Applicant filed a second preapplication notification letter for the Project.

{¶ 8} On September 2, 2022, as later supplemented on March 22, 2023, Applicant filed an application (Application) for a certificate of environmental compatibility and public need to develop, construct, and operate the Facility.

{¶ 9} Also on September 2, 2022, Applicant filed three separate motions (1) a motion for protective order; (2) a motion for waiver from Ohio Adm.Code 4906-4-08(D)(2)-(4); and (3) a motion for waiver from certain requirements.

{¶ 10} By letter dated November 1, 2022, Staff notified Applicant that its application 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 November 1, 2022, letter directed Applicant 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 Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 11} On November 14, 2022, Applicant filed a certificate of service of its accepted and complete Application and notice that it submitted its Application fee to the Treasurer of the State of Ohio.

{¶ 12} On November 21, 2022, Applicant filed a supplement to the Application to attach its Phase I archaeology survey to the Application.

{¶ 13} On December 7, 2022, the Board of Trustees of Somerford Township (Somerford Township); Board of Trustees of Deercreek Township (Deercreek Township); and Board of Trustees of Monroe Township (Monroe Township) filed motions to intervene (collectively, the Townships). On April 7, 2023, the ALJ issued an Entry granting the motions to intervene.

{¶ 14} On January 20, 2023, the Madison County Board of Commissioners (Madison County) filed a motion to intervene. By Entry on April 7, 2023, the ALJ granted the motion to intervene.

{¶ 15} By Entry issued on January 20, 2023, the effective date of the Application was established as January 20, 2023. In the same Entry, the local public hearing in this matter was scheduled to be held on April 11, 2023, and the adjudicatory hearing was scheduled to commence on May 15, 2023. The Entry also set forth additional deadlines, including that petitions to intervene in this proceeding would be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by March 7, 2023, whichever was later. Further, the Entry granted Oak Run's motion for protective order and motions for waivers.

{¶ 16} On March 6, 2023, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene. On April 7, 2023, the ALJ issued an Entry granting the motion to intervene.

{¶ 17} On March 7, 2023, the International Brotherhood of Electrical Workers, Local Union 683 (IBEW), Dr. John Boeckl (Dr. Boeckl), the Ohio Environmental Council (OEC),

and the Ohio Partners for Affordable Energy (OPAE) filed motions to intervene. On April 7, 2023, the ALJ issued an Entry granting the motions to intervene.

{¶ 18} Additionally, on March 7, 2023 and March 15, 2023, a motion to appear pro hac vice and certificate of pro hac vice registration were filed on behalf of Daniel Loud to represent IBEW and Michael Gerrard to represent Dr. Boeckl. By Entry on April 7, 2023, the ALJ granted these motions.

{¶ 19} On March 28, 2023, Staff filed its report of investigation (Staff Report) and filed a motion to late-file the Staff Report. By Entry on April 7, 2023, the ALJ granted the motion, citing that the late filing did not harm any parties.

{¶ 20} On April 6, 2023, the Townships filed a motion requesting that the Board require the Applicant to file supplemental information regarding an alleged insufficiency of filed Application information that would hinder the Townships' ability to participate meaningfully in the hearing process. On April 7, 2023, the Townships filed an additional motion requesting that the Board require the Applicant to file supplemental information concerning an alleged discrepancy in Senate Bill 52 (SB 52) grandfathering eligibility. In response, the Applicant filed a memorandum contra to both of the Townships' motions on April 21, 2023.

{¶ 21} On April 11, 2023, the local public hearing was held, as scheduled, at the Jonathan Alder High School, 9200 US-42, Plain City, Ohio 43064. During the local public hearing, 47 individuals provided testimony.

{¶ 22} On May 11, 2023, Applicant, Dr. John Boeckl, OFBF, OPAE, IBEW, and OEC (Signatory Parties) filed a joint stipulation and recommendation (Stipulation) which the Signatory Parties contend is supported by adequate data and information, represents a just and reasonable resolution of the issues in this proceeding, violates no regulatory principle or precedent, and is the product of serious bargaining among knowledgeable and capable

parties in a cooperative process to resolve all issues in this proceeding. The Signatory Parties recommend that the Board issue a certificate of environmental compatibility and public Need for the Facility, subject to 46 conditions within the Stipulation.

{¶ 23} The adjudicatory hearing was held, as scheduled, on May 15, 2023, and was completed on May 17, 2023. At the adjudicatory hearing, the Stipulation was presented for the Board's consideration. Oak Run, Staff, the Townships, OEC, Dr. Boeckl, and IBEW presented hearing testimony and/or hearing exhibits.

{¶ 24} By Entry on May 25, 2023, a briefing scheduling was established. On July 10, 2023, Staff, Applicant, the Townships, Dr. Boeckl, IBEW, OP&E, and OEC timely filed post-hearing briefs. On July 31, 2023, Staff, Applicant, the Townships, Dr. Boeckl, IBEW, OP&E, and OEC timely filed post-hearing reply briefs.

III. PROJECT DESCRIPTION

{¶ 25} As noted, Applicant intends to construct, own, operate, and maintain the Project, an 800 MW solar-powered generating facility, a 300 MW alternating current (AC) battery energy storage system (BESS), and two 3.45 mile-long transmission lines in Monroe, Somerford, and Deercreek Townships in Madison County. Additionally, Applicant proposes to implement an agrivoltaic program for planting crops and grazing livestock in the rows between solar panels and on the perimeter of the Project. The Facility will consist of large arrays of photovoltaic (PV) modules, commonly referred to as solar panels, ground-mounted on a tracking rack system, battery energy storage containers, and two 3.45 mile-long transmission lines. The Facility will occupy approximately 4,400 acres within an approximate 6,050-acre Project area comprised of private land that Applicant secured by executed purchase options or pending sale contracts with the landowners. The Facility will consist of associated facilities such as access roads, underground and overhead electric collection lines, weather stations, inverters and transformers, collector substations, a point of interconnection at a 765 kV switchyard substation and accompanying 765 kV

transmission lines, and 230 kV electric transmission lines. The Facility will be secured by seven-foot tall perimeter fencing and accessed through gated entrances. The Applicant will ensure that solar modules are set back a minimum of 300 feet from non-participating sensitive receptors and 150 feet from non-participating property boundaries and roads. The Facility will include associated facilities such as access roads, an operations and maintenance (O&M) building, underground and overhead electric collection lines, weather stations, inverters and transformers, collection substations, step-up substation, and construction laydown area. (Staff Ex. 1 at 6-9.)

{¶ 26} The solar panels will be attached to metal racking that will include steel piles driven into the ground to a depth of approximately 10 feet. Oak Run will only utilize solar modules that are nonhazardous and pass the U.S. Environmental Protection Agency's (USEPA) Toxicity Characteristics Leaching Procedure (TCLP) testing protocol. Further, the Applicant will choose panel manufacturers that qualify as a Bloomberg New Energy Finance tier 1 supplier, and at the time of the Staff Report, the panel models under consideration were mono-crystalline or thin-film modules. Depending on the chosen module, the Facility will include approximately 1,553,000 to 2,391,000 panels, where the solar arrays will be grouped in large clusters that will be fenced with gated entrances. The highest point of each solar module will be approximately 9 to 12 feet, where the fence will not exceed 7 feet. The Facility's arrays will be mounted on a single-axis tracking system that will rotate east-west to track the sun as it moves through the sky each day. Moreover, Oak Run estimates the solar field will occupy approximately 3,532 acres of the Project area. (Staff Ex. 1 at 6-7.)

{¶ 27} The Applicant proposes to construct and install a 300 MW BESS consisting of approximately 328 battery containers, as well as 82 inverters and 82 transformers. Oak Run's current layout design proposes that the BESS will consist of two BESS equipment areas of 150 MW each that occupy approximately 11 acres within the Project area. Further, the Applicant intends to use lithium-ion battery technology for the Facility. At the time of

the Staff Report, the Applicant was considering the Tesla Megapack model, but the final technology supplier and model selection will depend on product availability and pricing closer to the commencement of construction. The battery containers will be approximately 29 feet long by 5.5 feet wide by 9 feet high and will be connected to an inverter and then to switchgear, a medium voltage transformer, inverter cabinets, and a heating and cooling system. Ultimately, the BESS will then connect to the collector substations, in which the BESS will remain within the proposed 22-acre total footprint included in the Application. Further, the BESS Facility will be able to discharge 300 MW over four hours and deliver 1,200 megawatt-hours (MWh) of energy within that timeframe. After the 1,200 MWh is fully discharged, the BESS will then need to be recharged. (Staff Ex. 1 at 7-8.)

{¶ 28} The Applicant will also install two 230 kV transmission lines, approximately 3.45 miles-long, to transfer the power from each collector substation to the Facility's step-up substation. The lines will consist of a single and double circuit conductor supporter on monopoles, approximately 120 feet tall. Oak Run provided a preferred (Preferred Route) and alternate (Alternate Route) route, and states that the Preferred Route has the most landowner support, while offering the least social, economic, and environmental impacts. The Preferred Route includes 2.4 less acres of tree clearing. (Staff Ex. 1 at 8.)

{¶ 29} The Applicant's proposed agrivoltaics program would be the nation's largest agrivoltaics project and first of its kind utility-scale solar energy agrivoltaics plan for livestock grazing and row crops. A subsidiary of Savion, Between the Rows, LLC, was formed to collaborate with The Ohio State University (OSU) College of Food, Agricultural, and Environmental Sciences on researching the feasibility of agricultural production at utility-scale solar facilities. The Applicant asserts it would develop a combination of farming options for the Facility, including ground cover plantings and sheep grazing. (Staff Ex. 1 at 14.)

IV. SUMMARY OF EVIDENCE

{¶ 30} The Board will review the evidence presented regarding each of the eight criteria by which we are required to evaluate this Application. Evidence that is not specifically addressed herein has, nevertheless, been considered and weighed by the Board in reaching its final determination.

{¶ 31} SB 52 was recently passed and modified certain requirements for this application process. Specifically, it requires review of a project at the county level before an applicant can apply to the Board.

A. *Public Participation/Public Input*

{¶ 32} Before reviewing the evidence presented at the adjudicatory hearing regarding the statutory certification criteria, the Board will address the testimony provided during the local public hearing and the public comments filed in the record.

{¶ 33} At the local public hearing held on April 11, 2023, 47 individuals testified. Of those witnesses, 19 expressed their support for the proposed Facility and 28 opposed the Facility. Some witnesses discussed the importance of being able to decide how to utilize their land and derive additional income from it (Pub. Tr. at 91, 208-209). Those in favor of the proposed Facility stated that solar energy is important as an alternative, renewable energy source (Pub. Tr. at 39, 62, 123-125, 209). Some supporters emphasized that the Applicant's commitment to agrivoltaics was critical for this Project (Pub. Tr. at 22-28, 87, 110-115, 146). They also noted the public health, environmental, and economic benefits to the community relative to job creation, emergency services, and roads, vocational training, and schools (Pub. Tr. at 41, 46, 58-59, 62, 85-88, 91-92, 99, 108, 122, 143-145, 153). Specifically, some individuals testified in support of the Payment in Lieu of Taxes (PILOT) payments the local community will receive from the Facility (Pub. Tr. at 41, 86-87, 108, 122, 144). Other witnesses were in support of the proposed decommissioning conditions to maintain and

preserve farmland (Pub. Tr. at 92, 123). A witness testified that an additional benefit of the Facility will be the reduction in the use of agricultural chemicals (Pub. Tr. at 122).

{¶ 34} Witnesses in opposition to the Facility raised concerns related to the loss of valuable farmland (Pub. Tr. at 20-21, 75-76, 105, 135-136, 169-170, 190, 212, 214, 233-34). One opposing witness voiced concern that the Project involves components that the Applicant has not been able to finalize or are anticipated to be studied upon approval (Pub. Tr. at 70). Other witnesses in opposition testified about the negative impacts of the Facility on the health of residents, including toxicity of the solar panels (Pub. Tr. at 71, 229). Environmental concerns were also expressed due to the contention that the solar panels are not recyclable and will end up in landfills (Pub. Tr. at 18, 71-72, 185-186). Witnesses also noted the potential negative impact on property values in and around the Project area (Pub. Tr. at 66-67, 214). Some witnesses expressed concern regarding water and soil contamination issues resulting from the Facility (Pub. Tr. at 104, 128, 223, 229, 233-234). Another witness does not believe that Ohio is an appropriate location for a solar project due to an insufficient amount of sunshine (Pub. Tr. at 222). Concerns were also raised regarding the negative aesthetic and noise impact resulting from the proposed Facility (Pub. Tr. at 175).

{¶ 35} In addition to testimony provided at the local public hearing, over 890 filings have been made in the case docket from individuals and organizations expressing opinions regarding the proposed Facility. The concerns and advantages of the Facility identified in the public comment filings generally mirror those made at the local public hearing.

B. Staff Report

{¶ 36} Pursuant to R.C. 4906.07, Staff completed an investigation into the Application, which included recommended findings regarding R.C. 4906.10(A). The Staff Report, filed on March 27, 2023, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 37} R.C. 4906.10(A)(1) requires an application for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Regarding the proposed solar-powered electric generation facility and BESS, Staff recommends that the Board find these components of the Application inapplicable for this criterion (Staff Ex. 1 at 11).

{¶ 38} Addressing the basis of need for the Facility's transmission lines, Staff notes that the Applicant proposes to construct two 3.45 mile-long 230 kV transmission lines in Madison County, Ohio. The proposed tie lines will assist with connecting the Facility to the bulk power system (BPS) through American Electric Power's (AEP) existing Marysville-Flatlick 765 kV transmission line. Staff determines that the PJM Interconnection, LLC (PJM) impact studies indicate that the Facility can be safely connected to the PJM regional system, provided the upgrades and contingency overloads identified in the studies are addressed. In addition, Oak Run is neither an owner nor an operator of a "Major Utility Facility," as defined by the Ohio Revised Code. Consequently, Staff did not require the Applicant to file a Long-Term Forecast Report with the Commission. Staff recommends the Board determine that the basis of need for the transmission line component of the Facility has been demonstrated, and therefore complies with the requirements specified in R.C. 4906.10(A)(1), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 11-12.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 39} 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 facility and the following is a summary of Staff's findings:

a. Community Impacts

{¶ 40} *Land Use.* The primary land use within the Project area is agricultural, at 93 percent. Staff notes that the remaining seven percent is comprised of forest, grassed swales/lawns, scrub shrub, wetlands, and industrial and existing roadway land uses. The Applicant states that 4,293 acres of agricultural land will be impacted. The Applicant designed the layout to include setbacks from the Project fence line of 300 feet from non-participating residences, 150 feet from non-participating parcel boundaries, and 150 feet from the edge of adjacent roads. Further, Staff finds that the land will be able to be returned to agricultural use at the end of the Facility's life and after decommissioning. Impacts on land use will be contained within the Facility's footprint. Moreover, Staff observes that the Applicant designed the Facility such that there will be no disturbance of or impacts to the wetlands and streams within the Project area during both Facility construction and operation. Oak Run states that if impacts to these land features become unavoidable due to changes to the final design of the Project, it will obtain the required permits to impact wetlands and streams. (Staff Ex. 1 at 13-14.)

{¶ 41} Lastly, Staff highlights that, at the time of the Staff Report, Oak Run was investigating the possibility of implementing an agrivoltaic program for vegetation of crops to be planted in the rows between solar panels. A subsidiary of Savion, Between the Rows, LLC, was formed to collaborate with The Ohio State University (OSU) College of Food, Agricultural, and Environmental Sciences on researching the feasibility of agricultural production at utility-scale solar facilities. The Applicant states it will use a combination of options for the Facility, which could include bee keeping with native pollinator plantings, sheep grazing, and ground cover plantings. Staff notes that Oak Run is aware of the community concern regarding the loss of prime farmland and agricultural use of the land as a factor in choosing to utilize agrivoltaics. (Staff Ex. 1 at 14.)

{¶ 42} *Regional Planning.* Staff agrees this Project will not directly conflict with local land use plans and will be likely to align with goals set forth in the county's land use plan.

Staff finds that the Facility will contribute to the goal of improving the quality of the living environment through an assortment of land uses that are compatible. Staff notes that the Madison County 2014 Land Use Plan does not put forth any proposed changes to the land the Facility will be located on, which is currently zoned for agriculture. The Applicant states that Project development will not hinder any potential future development in adjacent areas. The proposed solar Facility will be expected to support the local economy by providing local farmers/landowners supplemental income for their leased land and increasing local tax revenues through the PILOT program, which will contribute to the local county school districts of Deercreek, Monroe, and Somerford Townships. Staff finds that the Facility is consistent with the protection and preservation of the agricultural industry where the Project will provide supplemental income to farmers and landowners; the land will be protected from permanent industrial or residential development; and the land use could return to agricultural land use upon decommissioning. Further, Staff notes that the Project will contribute to local municipal tax revenues without increasing permanent demand for public resources including water and sewage, roads, and schools. (Staff Ex. 1 at 14.)

{¶ 43} *Recreation.* Staff observes that Oak Run identified 14 recreational areas within five miles of the Facility. These areas include five wetland reserve programs, two preserves, three Clean Ohio Farmland locations, a scenic river, a lake, a metro park, and scenic byway. Staff notes that the Facility's visibility is limited to seven of the eight recreational resources that will be located within 1.6 miles of the Facility. Staff finds that these resources will experience partial (75-25 percent) or limited (less than 25 percent) visibility of the Facility. Staff affirms that any visibility of the Facility from recreational activities will be unlikely to negatively affect recreational land use or the ability to use any of these recreational resources. (Staff Ex. 1 at 14-15.)

{¶ 44} *Aesthetics.* Staff notes that based on the results of the Applicant's visual analysis of the Facility, there are four view categories. Regarding encounter views along

adjacent roads, there will be setbacks of 150 feet for solar panels; viewers will experience visibility of panels from 0.1 to 0.4 miles away. Staff finds that first encounter and residential view types will experience views of panels in a majority of the farmland within the foreground (0.25 mile), adding a more mechanized visual character to the rural agricultural landscape. Staff determines that the gen-tie lines will be visible to all four view types, though primarily within the gen-tie view type in the central and eastern areas of the Project area along Highways 29 and 38 which already have existing overhead utility infrastructure populating the visual landscapes. However, there are areas that do not have this existing overhead infrastructure and therefore will be the dominant features in those visual landscapes. Staff notes that distant views of the Facility beyond a mile will be indistinguishable from the surrounding agricultural landscape, and factors including flat topography, intervening structures and vegetation, and visual decay of human sight contribute to this limited visibility. The Project area is spotted with woodlots and windrows that the Applicant has designed in the Project layout to largely avoid clearing to preserve their natural screening function. Staff states that Oak Run designed the Facility to include setbacks from the Project fence line of 300 feet from non-participating residences, 150 feet from non-participating parcel boundaries, and 150 feet from the edge of adjacent roads. (Staff Ex. 1 at 15.)

{¶ 45} In response to a Staff data request, Oak Run stated that it has and continues to work with adjacent residences on individualized plans for visual screening (location, vegetation types, height, and spacing) and good neighbor agreements. Oak Run stated that this correspondence and engagement is ongoing, and that it is still working on acquiring feedback from adjacent residences, and therefore a draft landscaping mitigation plan has not been developed yet. (Staff Ex. 1 at 15-16.)

{¶ 46} Staff states that the lighting onsite will be minimal and designed to minimize light pollution impacts outside of the Facility, such as being downward facing and pointed away from roads and residences when possible. Staff finds that Applicant plans to utilize a

seven-foot-tall agricultural style fence that is aesthetically fitting for a rural location and allows for the passage of small mammals. Staff recommends that this fencing has gaps of at least six inches by six inches. Staff's proposed landscaping condition requires Oak Run to consult with a certified professional landscape architect in development of its landscaping mitigation plan. Further, Staff recommends that Applicant's landscape and lighting plans incorporate design features to reduce visual impacts of the Facility and associated infrastructure in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project's infrastructure, as well as the travelling public, nearby communities, and recreationalists. Staff recommends that aesthetic impact mitigation include good neighbor agreements or other methods in consultation with affected landowners such as what the Applicant has already been engaging in, and subject to Staff review. With implementation of Staff's landscape-lighting and fencing condition, the overall expected aesthetic impact of the Facility will be minimal. (Staff Ex. 1 at 16.)

{¶ 47} *Cultural Resources.* The Applicant's consultant performed a literature review and Phase 1 cultural resource management investigation in two phases that was submitted to the Ohio Historic Preservation Office (OHPO). The first phase was surveyed in May 2022, covering approximately 5,850 acres; and the second phase took place in December 2022, covering approximately 204 acres. The report of the first phase was created and filed in November 2022. The report of the second phase was filed on March 22, 2023, but at the time of the Staff Report, OHPO did not comment on the filing of this report. From the investigation, Applicant identified four National Register of Historic Places (NRHP) archaeological districts, 31 NRHP sites, and 6 sites eligible for listing on the NRHP. During the first Phase I survey, the consultant identified 488 new archaeological sites within the Facility area. The consultant recommended that out of the 488 sites, 15 require avoidance or further study due to potential eligibility for listing on the NRHP. An additional cemetery is also recommended for avoidance and additional screening. From the first report, Oak Run's consultant recommended that out of the 488 identified archaeological sites identified, no sites are eligible for listing in the NRHP. Staff notes that the OHPO, in a letter dated

December 9, 2022, concurred with the consultant's recommendation. Regarding the second survey of 204 acres, the consultant identified 14 new archaeological sites within the 204 acres. The consultant recommended that out of the 14 sites, none require avoidance or further study due to potential eligibility for listing on the NRHP. Staff states that Oak Run committed to avoid or further study any archaeological resources recommended by the consultant or OHPO to be eligible for listing on the NRHP. Staff recommends that the Applicant implement the work plan included in the Supplement to Application-Addendum to Phase I Archaeology Survey and Phase II Archaeology Work Plan filed on March 22, 2023 to avoid or further study the 15 potentially eligible sites and any sites recommended by OHPO if the agency does not concur with the consultant's second survey recommendations. With the incorporation of the recommendation regarding the second survey, Staff determines that minimal adverse environmental impacts to archaeological cultural resources will be achieved. (Staff Ex. 1 at 16-17.)

{¶ 48} Oak Run's consultant also gathered background information and completed historical/architectural cultural resources studies for the Facility, which included a historic architecture survey of the area of potential effect. Staff finds that four previously identified resources, which are cemeteries, were reidentified. These four cemeteries require additional research to determine eligibility for listing in the NRHP. Additionally, Oak Run identified that 221 properties are 50 years or older within the area of potential effect. Of the 221 properties surveyed, five properties are recommended as eligible for listing on the NRHP, and three are recommended as needing additional research. Staff finds that the identified cemeteries and other eight resources recommended as eligible or in need of further research, have no potential effect because they have a limited or non-existing view of the Project. In addition, one of the four cemeteries located within the Project boundary will be avoided and has a 100-foot buffer created during construction. With this avoidance and buffer, Staff determined that minimal adverse environmental impacts to historical/architectural cultural resources will be achieved. (Staff Ex. 1 at 17.)

{¶ 49} *Economic Impact.* Staff notes that the Applicant assumes responsibility for the construction of the proposed Project and ownership of all structures and affiliated equipment. The Applicant intends to acquire all necessary permissions, permits, and voluntary lease agreements. Staff reports that Oak Run filed its estimated capital and intangible costs, estimated O&M expenses, and estimated delay costs under seal. Staff reports that total cost comparisons between the proposed Facility and other comparable facilities are to be provided in the Application. Staff confirms that the Applicant's proposed capital costs are consistent with those reported by the Lawrence Berkeley National Laboratory in a 2021 publication. Further, Staff states that O&M expense comparisons between the Facility and other comparable facilities are to be provided in the Application. Staff also confirms that Applicant's costs are below the National Renewable Energy Laboratory's (NREL) 2021 updated utility-scale solar costs. Applicant provided its estimates of the costs of delays in permitting and construction of the Facility under seal, and such delays could result in idle construction crews and equipment. Staff deems this characterization of delays reasonable. (Staff Ex. 1 at 17-18.)

{¶ 50} Applicant retained a consultant to estimate the economic impact of the construction and operation of the solar Facility, which Staff verified. Based on the results of that analysis, the Facility is expected to create 3,033 construction-related jobs and 63 long-term operational jobs, resulting in \$209 million in annual earnings during construction and \$3.3 million in annual earnings during Facility operations. The Facility will result in \$421 million in local output during construction and \$8.3 million in local annual output during Facility operation. Staff reports that the Project is estimated to generate \$7.2 million annually for the Madison County taxing district. This estimate is based on a proposed PILOT plan in which Applicant will pay \$9,000/MW annually for a total of 800 MW. At the time of the Staff Report, the Applicant had not entered into a PILOT agreement with Madison County. (Staff Ex. 1 at 18.)

{¶ 51} *Communications.* Staff finds that radio interference can be experienced in the AM broadcast band and FM band, caused by transmission line gap-type discharge. Staff notes that gap-type discharge is localized and can be readily detected and corrected. Also, Staff highlights that there are additional mitigation measures that can be applied to eliminate the interference source. Oak Run performed an electromagnetic transient study to evaluate potential AM, FM, and television interference. Based on the results of that study, Applicant does not anticipate any television or radio interference from the 230 kV electric transmission lines. (Staff Ex. 1 at 19.)

{¶ 52} *Glare.* Staff states that glare is the phenomenon where sunlight reflects from a surface to create a duration of bright light. Glare also encompasses glint, which is a momentary flash of bright light. Potential impacts of this reflection from solar panel(s) could be a brief reduction in visibility, an afterimage, a safety risk to pilots, or a perceived nuisance to neighbors. The Applicant told Staff that it conducted a glint and glare analysis to identify any potential impacts along local roads, airports within 10 miles of the Project area, and at nearby residences. Oak Run found that no glare from the Facility is predicted to vehicles using the roadways or nearby residences. Staff confirms that the Applicant found that the Facility does not have predicted glare for local flightpaths for Madison County Airport and Darby Airport nor for a helicopter hovering at the Madison Health Center helipad. Staff notes that the results are contingent on Oak Run's use of an anti-reflective coating. The Applicant stated that when the module is selected, the front glass will include an anti-reflective coating. Staff further recommends that the solar panel model utilized for the Facility chosen must have an anti-reflective coating. Staff advises that aesthetic impact mitigation measures that include vegetative plantings may also further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 19-20.)

{¶ 53} *Decommissioning.* Oak Run holds land rights for the Project area. Staff notes that the Applicant estimates the Facility can operate for 30 years or more. The Applicant prepared a decommissioning plan and total decommissioning cost estimate of \$33,334,643

for the Facility plus an additional \$11,260,228 to decommission the BESS Facility. According to the Applicant's plan, at the end of the useful life of the Facility, the Facility will be decommissioned, and the land will be returned to its current use as agricultural land. Prior to the start of any decommissioning activities, the Applicant will apply for and obtain applicable federal, state, and local permits. At this time, Applicant has identified that during decommissioning, it may need to obtain an Ohio Environmental Protection Agency (Ohio EPA) Construction Storm Water General Permit including implementation of a stormwater pollution prevention plan, U.S. Army Corps of Engineers (USACE) water quality permits, and a road use maintenance agreement (RUMA). At the time of decommissioning, panels will be reused, recycled, or properly disposed of in accord with regulations in effect at that time. The decommissioning sequence consists of, but is not limited to, reinforcing access roads for component removal, disconnecting and de-energizing of solar and BESS facilities from the bulk electric system, dismantling panels and racking, removing inverters and transformers, removing electrical cables to a depth of at least 36 inches, removing BESS components, removing fencing, removing access and internal roads, grading the site, removing the substations if decommissioned, and revegetating disturbed land to pre-construction conditions, to the extent practicable. Oak Run committed to completely remove vertical steel support piles. At the request of the landowner, the Applicant may leave access roads or fencing in place. Further, Oak Run committed to coordinate with the appropriate local agency to coordinate repair of any public roads if damaged or modified during decommissioning likely via a RUMA. Oak Run will restore the land significantly to its original topography to allow for resumption of the preconstruction agricultural land use. Further, the Applicant stated that it anticipates decommissioning activities and restoration to occur over and be completed in a 12 to 18-month period. Staff notes that equipment removal will take approximately 12 to 18 months and additional time may be necessary for seasonal restoration and revegetation activities. Due to the weather dependent nature of site restoration, Staff recommends that Oak Run will monitor the site to ensure successful revegetation and rehabilitation. (Staff Ex. 1 at 20.)

{¶ 54} The Applicant intends to remove underground solar and BESS Facility infrastructure to a minimum depth of 36 inches below ground surface, except that all vertical steel support piles will be completely removed. Oak Run commits to repairing the drain tile network, such that the new drain tile design will be built to function for whatever layout is required to return the tile to current drainage capacity or better. Staff agrees with these commitments and recommends that underground equipment be removed to the extent that allows for future drain tile repairs and installation to be completed after the site has been decommissioned. Oak Run states it will repurpose, salvage, recycle, or haul offsite to a licensed solid waste disposal facility all solar and BESS components. Staff notes that some of the solar and BESS components are anticipated to have a resale or salvage value that may be sold to offset decommissioning costs. (Staff Ex. 1 at 20-21.)

{¶ 55} Staff confirms that Oak Run will manage the battery containers that are intact with no leaks or damage according to Ohio's equivalent of USEPA universal waste regulations. The universal waste regulation framework streamlines the hazardous waste management standards for certain categories of hazardous waste, such as batteries, to encourage recycling of those waste materials. For those battery containers that are not intact, Staff notes that Oak Run will likely need to evaluate and manage the batteries as hazardous waste in order to properly collect, treat, recycle, or dispose of them. This will entail removal, transportation to a recycle station, use of a skilled workforce required to handle the system, recordkeeping, testing/sampling, and basic remediation and contingency for minor contamination. If the batteries could not be recycled or returned to the manufacturer, Oak Run will need to dispose of the batteries at a Resource Conservation and Recovery Act permitted treatment, storage, and disposal facility. (Staff Ex. 1 at 21.)

{¶ 56} Concerning solar modules, Applicant intends to comply with federal, state, and local laws and regulations during disposal. Staff notes that Oak Run intends to use only panels that have been certified or analyzed with the USEPA's TCLP test protocol and meet the USEPA definition of non-hazardous waste. Staff recommends that 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. (Staff Ex. 1 at 21.)

{¶ 57} Staff notes that during construction, Oak Run will perform minimal grading and will ensure that topsoil and subsoil are appropriately segregated during excavation activities. After grading, the original topsoil will be replaced and reseeded with a seed mix to stabilize exposed soils in accordance with Applicant's vegetation management plan. Staff recommends that Oak Run submit a final agricultural protection plan which demonstrates that the Facility will minimize impacts to future agricultural land use. Staff recommends as part of the plan that grading will be limited to the extent practicable and will not exceed more than five percent of the surface area of agricultural land within the Project area. Also, Staff states that the plan will include mapping and best management practices (BMP) for graded soils. (Staff Ex. 1 at 21-22.)

{¶ 58} Oak Run committed to providing financial security to ensure that funds are available for decommissioning/land-restoration. Staff states that Applicant will employ a performance surety bond active during the Facility's life. Applicant states it will provide an updated report to the Board every five years after the commercial operations date to be prepared by an independent, registered professional engineer to estimate the total cost of decommissioning the Facility, and appropriateness of any contingency amount or percentage. Further, Staff recommends that at least 45 days prior to the preconstruction conference, the Applicant submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket. Lastly, Staff advises that Oak Run implement and comply with the decommissioning plan as approved by Staff. (Staff Ex. 1 at 22.)

{¶ 59} *Wind Velocity.* The Applicant has provided a tabulation of ranges of wind speeds and the frequency or probabilities of daily occurrences in Columbus, Ohio for the 2021 calendar year. The Applicant states that the Facility will be designed in accordance with the standards set forth by the American Society of Civil Engineers (ACSE), Standard 7-16, and will include wind speeds based on the building code wind speed maps for the Project area. Accordingly, the three-second gust, and the sustained wind speed for which the Facility will be designed for is 100 mph and 80 mph, respectively. Staff notes that the Facility will be designed using the wind speeds for Risk Category I buildings with exposure Category C, in compliance with ASCE 7-16. The Applicant also stated that there will be an Ohio-licensed structural engineer as the engineer of record for the development, review, and approval of any design, and structural drawings for the Project. Further, Oak Run states that the design of a single-axis active tracker, including terrain following trackers, will be the base-case design for the Project. Staff finds that systems under consideration will have an intelligent stow mode that can be activated during occurrences of high winds to provide maximum array stability and sufficient protection to avoid adverse consequences and damage to the panels. (Staff Ex. 1 at 22-23.)

{¶ 60} *Roads and Bridges.* Staff notes that Oak Run has yet to finalize its delivery route, although it is expected that deliveries to the Project site will be by way of Interstate 70 to State Route 29. Applicant conducted an evaluation of transportation infrastructure to identify any possible restrictions to accessing the Project site. Staff states that according to Oak Run's evaluation, the transportation infrastructure is in sufficient condition to carry the necessary construction traffic. However, Staff notes that the bridge on Green Lane at the south end of the Project area has posted reduced load limits and will be avoided during construction. Applicant reported that it expected minimal negative impact on roadway surfaces. Staff finds that conventional heavy equipment that does not require special permitting will make up the majority of construction traffic, excluding some substation gear that will be likely overweight and require special permitting and route coordination for delivery. Further, Staff notes that an increase in truck traffic will be anticipated during

construction for the purpose of Project area equipment access and equipment and material deliveries but does not anticipate significant changes to traffic patterns. Post-construction and operation of the Facility, Staff does not anticipate any additional traffic for the Project beyond routine maintenance. Applicant expects to enter into a RUMA with Franklin County and Madison County. Any damaged public roads and bridges will be repaired by the Applicant under the guidance of the appropriate regulatory authority. (Staff Ex. 1 at 23-24.)

{¶ 61} *Noise.* Construction activities will generate significant noise levels during the construction period. However, the construction noise will be temporary and intermittent, will occur away from most residential structures, and will be limited to daytime working hours. The Applicant will use mitigation practices such as limiting construction activities to daylight hours and establishing a complaint resolution process. Noise during operation of the solar Facility components will be relatively minor and occur only during the day due to inverters and tracking motors. Also, the step-up transformer at the new substation and the inverters may operate at night but the noise impact will also be relatively minor. Regarding the operational noise impacts for the battery generation facility, Staff finds that the effects will be relatively minor. Operational noise sources include transformers, battery storage and cooling systems, and inverters. Oak Run conducted an ambient noise level study and found that operational noise impacts will be less than ambient noise levels plus five decibels (dbA). Staff believes the Project will be expected to have minimal adverse noise impacts on the adjacent community. If an inverter, transformer, or battery storage model with a higher sound power level than the proposed inverter, transformer, or battery storage model is chosen, Oak Run will submit a noise report confirming that no non-participating receptors were modeled to receive noise impacts greater than the daytime and nighttime ambient noise level, respectively, plus five dBA. (Staff Ex. 1 at 24-25.)

b. Geology

{¶ 62} The uppermost bedrock unit throughout the Project area is the Salina Undifferentiated, a predominantly dolomite unit that also contains anhydrite/gypsum zones and is known to be susceptible to karst features development. However, Staff states that no known karst features have been identified within 10 miles of the Project area. Staff notes that bedrock is not unlikely to be encountered during any portions of the proposed construction due to the glacially deposited overburden depth thickness of 18 to 224 feet, and the drift deposits throughout the Project site makes the formation of sinkholes unlikely. (Staff Ex. 1 at 25.)

{¶ 63} Staff states that the Project area's native soils pose identified limitations. Although the geotechnical engineering report indicates the soils are suitable, a large portion of the Project area includes hydric soil, as it is frequently ponded from December through May which may inhibit construction. Staff states that in addition, the soil has been identified as corrosive to steel and concrete. Staff reports that the mitigation measures Oak Run should use for corrosion potential will galvanize or increase steel thickness. The Application indicates the soils are not recommended to be used as engineered fill due to the high plasticity soils located onsite. Further, the geotechnical engineering report states that the addition of lime will increase soil pH to +12 and decrease the soil electrical resistivity. Staff notes that the Applicant does not expect the lime treated soil to impact adjacent soil areas more than a few feet laterally. Also, Oak Run completed both a preliminary and interim level geotechnical investigation. Further geotechnical studies that were initially planned for the fall of 2022 were postponed due to lack of access. These studies were then planned to occur in April 2023. At the time of the Staff Report, Staff expects the study methodology to parallel that of the geotechnical evaluation conducted as of the date of the Staff Report. (Staff Ex. 1 at 25-26.)

{¶ 64} Staff recommends that the final detailed engineering drawings of the final Facility design account for geological features and include the identity of the registered

professionals who reviewed and approved the designs. Staff recommends that Oak Run provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference that study areas including, but are not limited to, the following Project features: proposed switchyard, point of interconnection substation, Project substation locations, the two BESS locations, and along the proposed transmission line route. In addition, Staff recommends a final Unanticipated Discovery Plan (UDP) be submitted prior to the pre-construction meeting. Based on the data and considerations provided within the Application submitted since the Staff Report, Staff states that there appears to be no geological features within the Project area that are incompatible with construction and operation of the proposed solar Facility. (Staff Ex. 1 at 26.)

c. Ecological Impacts.

{¶ 65} *Public and Private Water Supplies.* The Ohio Department of Natural Resources (ODNR) has recorded 118 water wells within one mile of the Project area, and 12 of those wells exist within the Project area. A total of five source water protection areas (SWPA), which supply water to a public water supply, occur within one mile of the Project area. Two of the SWPAs are within the Project area, but they do not overlap with any of the proposed infrastructure for the Project. Staff recommends that at least 30 days prior to the preconstruction conference, Oak Run provide the status of each water well within the Project fenced-in area. As such, the Applicant will indicate to Staff whether the nearest solar components to any uncapped water well within the Project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-07. Further, Staff notes that the Applicant shall relocate the solar equipment at least 50 feet from that water well or demonstrate that the well is for non-potable use and relocate solar equipment at least 10 feet from that well, or seal and abandon the water well. (Staff Ex. 1 at 27.) The Applicant also indicated that it planned to construct two O&M buildings which will potentially be serviced by onsite water wells and septic systems. One of the O&M buildings will primarily be utilized as an additional storage space. Staff highlights that to ensure

compliance with Ohio Adm.Code 3745-34-07(A), no waste other than sanitary waste may be disposed of through the septic system. Moreover, Staff states that given the limited amount of excavation and the planned controls on discharges, no adverse impact to public and private water supplies due to construction and operation of the proposed Project are anticipated. (Staff Ex. 1 at 28.)

{¶ 66} *Surface Waters.* There are three ephemeral streams, four intermittent streams, and six perennial streams within the Project area. Staff notes that Oak Run has designed the Project to avoid all streams during and after construction. The Applicant states that stream crossings by underground collection lines will be accomplished via horizontal directional drilling (HDD), though there is a risk of a frac-out, which occurs when the drilling lubricant, typically water or a non-toxic fine clay bentonite slurry, is forced through cracks in bedrock and/or surface soils. The Applicant included a frac-out contingency plan as part of the Application. Staff also recommends that Oak Run have an environmental specialist on site during construction activities where HDD activities may impact surface waters. The environmental specialist will have authority to stop HDD activities to ensure that any impacts related to a frac-out are addressed. No impacts to streams are anticipated. Further, Staff notes that the Applicant identified 16 wetlands in the Project area that are all Category 1 or Category 2 wetlands. Staff reports that the Applicant designed the Project area to avoid all wetlands during and after construction. Staff states that no impacts to wetlands will occur. (Staff Ex. 1 at 28-29.)

{¶ 67} Oak Run committed to several BMPs to minimize impacts to wildlife and surface water resources throughout the Facility. Staff notes that the Applicant committed to abiding by the ODNR's recommended 120-foot buffer to all surface waters where practical, finalizing potential voluntary conservation easements around Spring Fork Creek and other streams in the Project area, installing lighting during construction and Facility operation that minimizes light pollution impacts on wildlife, and installing wildlife permeable fencing with 6 inches by 6 inches spacing. Specifics about how surface waters

will be further protected from indirect construction stormwater impacts using erosion and sedimentation controls will be outlined in the Applicant's storm water pollution protection plan (SWPPP). The Applicant promises to obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio EPA prior to the start of construction. Moreover, Applicant will implement Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to Project construction and operation. A small portion of the Project area falls within a 100-year floodplain; however, no infrastructure will be placed within the floodplain. Staff finds that the Project will not impact a 100-year floodplain. Staff also recommends that streams and wetlands within and immediately adjacent to the construction limits of disturbance be flagged, staked, or fenced prior to construction, and such sensitive areas will also be depicted on construction drawings. Staff advises that all contractors and subcontractors will be provided with training to understand the significance of the types of flagging used and the importance of staying within defined limits of work areas. (Staff Ex. 1 at 29.)

{¶ 68} *Threatened and Endangered Species.* The Project area is within the range of the endangered Indiana bat, threatened northern long-eared bat, endangered little brown bat, and the endangered tricolored bat. To avoid impacts to listed bat species, the Applicant committed to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter. Oak Run stated in a data request response docketed on February 6, 2022, that tree clearing will be reduced to a total of 2.2 acres for the solar generation Project, with either an additional 0.8 acre of tree clearing for the Preferred Route for the tie-in transmission line, or 3.2 acres total for the Alternate Route. As such, Staff does not anticipate any impacts to threatened species. Staff notes that this Project is within range of several other listed species. Due to lack of in-water work, the avoidance of surface waters, and lack of suitable habitat, impacts to these species are not anticipated. (Staff Ex. 1 at 32.)

{¶ 69} *Wildlife.* Staff highlights that the current land use of the Project area is mainly agricultural, where permanent vegetative impacts will occur primarily within agricultural

lands. Moreover, Applicant states minimal tree clearing will be necessary. Further, Staff notes that Oak Run developed a vegetation management plan that will incorporate pollinator-friendly habitats, aligned with the recommendations of the Ohio Pollinator Habitat Initiative. The Applicant has committed to prepare an updated vegetation management plan in consultation with the ODNR. Additionally, Staff recommends that the Applicant take steps to prevent establishment and/or further propagation of noxious weeds as identified in Ohio Adm.Code 901:5-37 and invasive plant species identified in Ohio Adm.Code 901:5-30-01 during implementation of any pollinator-friendly plantings. Staff also notes that Oak Run is coordinating with the Darby Creek Association, the Madison County Soil and Water Conservation District (SWCD), and the ODNR Scenic Rivers Office in order to implement the recommendations the entities have given to protect the Darby Creek Watershed. (Staff Ex. 1 at 33-34.)

{¶ 70} In sum, Staff recommends that the Board find that the Applicant complies with the requirements specified in R.C. 4905.10(A)(2), provided that any certificate issued by the Board include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 34).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 71} 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.

a. Site Selection.

{¶ 72} According to Staff, Applicant's site selection focused on the following criteria: solar resources, access to the bulk power transmission system, area topography and geology, land use characteristics, population density, and landowner interest. Additionally, Applicant engaged local officials and the public. (Staff Ex. 1 at 35.)

b. Minimizing Impacts

{¶ 73} As previously discussed, the Applicant agreed to avoid or further study all potentially NRHP eligible sites. Staff notes that so long as Oak Run adopts Staff's recommendation, the Project is not expected to have any adverse effect on historic or archaeological properties. (Staff Ex. 1 at 35.)

{¶ 74} Staff finds that the Facility will impact the state and local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, increased tax revenues and potential PILOT revenue (Staff Ex. 1 at 35).

{¶ 75} Additionally, Staff reiterates that the geology of the Facility site does not present conditions that will limit or negatively impact the Facility's construction and future operation. Staff advises that Oak Run submit a final geotechnical engineering report prior to construction. Also, Staff recommends that the detailed engineering drawings of the final Project design include geological features and that Oak Run develop a final UDP to account for any previously unknown conditions or features discovered during the proposed construction. Staff determines that the proposed solar facility, BESS, and accompanying transmission line construction or operation will not adversely impact public or private drinking water supplies. Staff notes that no impacts to wetlands or streams are expected. Impacts to any state or federal listed species can be avoided by following seasonal restrictions for construction in certain habitat types, as detailed by the USFWS and the ODNR. Moreover, Staff reports that Oak Run did not identify any listed plant or animal species during field surveys. (Staff Ex. 1 at 35.)

{¶ 76} Noise impacts are expected to be limited to construction activities, which will be temporary and intermittent and will occur away from most residential structures. Staff reiterates that the Applicant should limit the hours of construction. No non-participating receptors were modeled to receive noise impacts greater than the daytime

ambient noise level plus five dBA during Facility operation. Further, Oak Run has developed a complaint resolution plan which will be implemented throughout construction and operation. During the construction period, local, state, and county roads will experience a temporary increase in truck traffic due to deliveries of equipment and materials. A transportation management plan will be finalized once the engineering layout is determined and finalized. Staff raises that Oak Run may enter into a RUMA with the county, and any damaged public roads and bridges will be repaired by Oak Run in compliance with the appropriate regulatory authority. Due to the low profile of the Facility, combined with existing vegetation in the area, the visual impacts will be mostly limited to landowners in the immediate vicinity. To reduce impacts, Staff recommends a condition requiring a final landscape and lighting plan that addresses the potential impacts of the Facility. (Staff Ex. 1 at 35-36.)

{¶ 77} Staff reports that Oak Run committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and operation and restoring temporarily impacted land to its original use. The Applicant consulted landowners and county records to determine the locations of drain tile mains. To avoid impacts to drain tiles, Oak Run stated that it will locate drain tiles as accurately as possible prior to construction. Even so, the Applicant promised to ensure that adverse impacts to drain tile systems will not extend outside the Project area. Staff reports that following decommissioning of the Facility, land can be restored for agricultural use. Applicant has prepared a draft plan to decommission the solar and BESS facilities. Oak Run will provide financial security to ensure that funds are available for decommissioning/land restoration. Staff recommends a condition requiring that the draft decommissioning plan be updated to include financial assurance and a decommissioning cost estimate, among other things. Additionally, Oak Run committed to use panels that have been certified to comply with the USEPA's TCLP test and meet the USEPA definition of non-hazardous waste. (Staff Ex. 1 at 36.)

{¶ 78} In sum, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact, and therefore complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 36).

4. ELECTRIC POWER GRID

{¶ 79} 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.

{¶ 80} The Applicant proposed to construct a solar-powered electric generation Facility, capable of producing 800 MW. Staff notes that Applicant also proposed a BESS capable of storing electrical energy available to the PJM capacity market of up to 300 MW. The Facility will not inject more than 800 MW of electricity at any one time into the grid. The Project will connect to the regional transmission grid from the Facility substation through a gen-tie line to a new point of interconnection switching station to the AEP Marysville-Flatlick 765 kV transmission line. The new switching station will be a three-breaker ring bus configuration and will be located approximately 22 miles from the Marysville Substation and approximately 87 miles from the Flatlick Substation. Staff notes that the 765 kV extension line will also be needed to connect the solar facility to the new 765 kV switching station. (Staff Ex. 1 at 37.)

{¶ 81} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the BPS. As an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various NERC

reliability standards. NERC reliability standards are included as part of the system evaluations conducted by PJM. (Staff Ex. 1 at 37.)

{¶ 82} Oak Run submitted two generation interconnection requests for the proposed Facility to PJM. PJM completed and issued the Feasibility Study Reports for both requests in January 2021, and issued the System Impact Study reports for both requests in August 2021. The Applicant also submitted two additional requests for storage and PJM capacity on January 29, 2021, but the feasibility studies were not completed at the time of the Staff Report. Staff notes that although Oak Run may have a 300 MW storage facility, which will increase the PJM capacity of the Facility, the power output from the Facility will not exceed 800 MW. (Staff Ex. 1 at 37-38.)

{¶ 83} PJM analyzed the proposed Facility interconnected to the BPS. Staff states that PJM used the 2024 summer peak power flow model to evaluate regional reliability impacts for each requested interconnection as 400 MW into the Marysville-Flatlick 765 kV line in the AEP Ohio area with a commercial probability of 100 percent. The PJM studies identified overload concerns in the contribution to previously identified overloads and also in the contribution due to local energy deliverability. Staff notes that PJM requires mitigation of contingencies that cause reliability violations which are initially caused by the addition of the Applicant's Project. The 2024 summer peak power flow model was used by PJM to evaluate regional reliability impacts for the proposed interconnections, and no problems were identified for either request. Further, PJM studied the Facility for possible overloading where the Project may affect earlier generation or transmission projects in the PJM queue. Staff observes that PJM identified an increase in the contribution to previously identified overloads for both the requested interconnections. PJM also studied the delivery of the energy portion of this interconnection request. Staff finds that problems identified here will likely result in operational restrictions for the Project. Staff notes that network upgrades will allow for the delivery of energy with operational restrictions. PJM's studies revealed operational restrictions or contingencies for both proposed interconnections. A

subsequent analysis will be performed on the severely overloaded conditions identified, which will study all overload conditions associated with the overloaded elements, following the transmission interconnection request. (Staff Ex. 1 at 38-39.)

{¶ 84} Staff notes PJM requires mitigation of contingencies that cause reliability violations, which would initially be caused by the addition of the Facility. The injection into the BPS for the two proposed interconnections will require the replacement of two 345 kV circuit breakers at the Marysville Substation to provide protection to the Marysville 765 kV to Marysville 345 kV circuit number 2. PJM performed a short circuit analysis for the proposed interconnections, and no additional problems were identified for either queue position. (Staff Ex. 1 at 39-40.)

{¶ 85} Staff determines 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, and that the Facility will serve the interests of electric system economy and reliability. Therefore, Staff recommends that the Board find that the Facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report. (Staff Ex. 1 at 40.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

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

a. Air

{¶ 87} Staff notes that air quality permits are not required for construction or operation of the proposed Facility. However, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the Facility. Oak Run will control temporary and localized fugitive dust by using BMPs, such as the use of water or other dust

suppressants, containment of excavated material, and the implementation of rock pads at construction exits. Staff determines that this Project will not include any stationary sources of air emissions and, therefore, will not require air pollution control equipment. (Staff Ex. 1 at 41.)

b. Water

{¶ 88} Staff states that stream and wetland impacts are not anticipated. These impacts will be covered by a Nationwide Permit (NWP) under Section 404 of the Clean Water Act from the USACE. An NWP is a general permit which authorizes a wide variety of activities that may impact waters of the United States. Oak Run will submit a Notice of Intent for coverage under the Ohio NPDES construction stormwater general permit, Ohio EPA Permit No. OHC000005, which is required by the Ohio EPA for facilities that wish to discharge water to a surface water of the State, including construction stormwater runoff. All construction sites which result in ground disturbance of one acre or more are required to obtain coverage under an NPDES Construction Storm Water general permit. The permit regulates wastewater discharges by limiting the quantities of pollutants to be discharged and imposing monitoring requirements or conditions. Coverage under the NPDES construction general permit also requires the development of an SWPPP, which outlines BMP for soil erosion control. Further, Applicant will also apply and obtain the Madison County Erosion, Sediment, and Stormwater Control Permit pursuant to R.C. 307.79 from the Madison County Engineer's office. Staff notes that with these measures, the construction and operation of this Facility will comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 41-42.)

c. Solid Waste

{¶ 89} Staff states that debris generated from construction activities will include items such as wood, cardboard, metal, packaging materials, replaced parts, used oil, general refuse, universal waste, and used antifreeze. Additionally, there are two residential structures, three barns, and six silos on property owned by Oak Run that may be removed

to facilitate construction within the Project area. The Applicant stated that all waste will be handled, managed, and disposed of in accordance with federal, state, and local regulations. During operation of the Facility, the O&M building will generate small amounts of waste in the form of paper products and used office supplies. As such, Staff states that Oak Run's solid waste disposal plans will comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 42-43.)

d. Aviation

{¶ 90} Staff states that the tallest above ground structures will be the 230 kV electric transmission line support structures at approximately 120 feet tall. Oak Run currently estimates that the substation lightning mast(s) and dead-end support structures located at those substations may be from 85 to 115 feet tall. These heights are under the height requirement from the Federal Aviation Administration (FAA), pursuant to 14 CFR Part 77.9(a), for filing a Form 7460-1. According to the Applicant, there are no public use airports or heliports within five miles of the Project area. Staff confirms that the closest public-use airport is the Madison County airport which is approximately 2.5 miles south of the proposed solar Project area. In accordance with R.C. 4906.10(A)(5), Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation during the review of this Application in order to coordinate review of potential impacts of the Facility on local airports, and no such concerns have been identified. (Staff Ex. 1 at 43.)

{¶ 91} Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 43).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 92} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the proposed facility will serve the public interest, convenience, and necessity.

{¶ 93} As part of the Board’s responsibility to determine that all approved projects will serve the public interest, convenience, and necessity, it must balance project benefits against the magnitude of potential negative impacts on the local community.

{¶ 94} *Safety.* Oak Run stated that it will use reliable and certified equipment compliant with applicable codes and standards, including the Underwriters Laboratories (UL) and Institute of Electrical and Electronics Engineers (IEEE) standards. Oak Run also planned for the expenses of O&M for the solar facility to keep the Facility in a safe and reliable status. However, at the time of the Staff Report, the Applicant admitted that these costs are below the national average and has not presented information about O&M of the BESS in its preliminary estimates. Staff recommends that the Applicant provide a budget for O&M for the BESS facility prior to its construction so that it is also properly maintained safely and reliably. Further, Applicant will have several systems and controls in place to prevent electric damage and overloading during the charging cycle to the BESS. Staff determines that specifically, the collector substations will have circuit breakers to protect the Project from a grid fault and the grid from a fault at the Project. The inverters will meet UL 1741 protection requirements and the batteries will have a battery management system with alarms for operation personnel. (Staff Ex. 1 at 44.)

{¶ 95} Oak Run intends to use warning signs, fencing, and gates to restrict access to the potential hazards within the solar facility, substations, and BESS Project area. Oak Run promised to identify any applicable manufacturer recommended setbacks into consideration for its final site plan. Staff recommends that the Applicant adhere to and implement any applicable equipment manufacturer recommended setbacks into its final site plan. (Staff Ex. 1 at 44.)

{¶ 96} Staff confirmed that the BESS will conform to the National Fire Protection Association’s (NFPA) Standard for the Installation of Stationary Energy Storage Systems. Oak Run will incorporate several fire protections into the design and a fire protection

engineer will review the fire protection design of the Facility. Staff recommends that the Applicant provide the documentation of the fire protection engineering review and compliance with the current Ohio Fire Code at least 30 days prior to the preconstruction conference for the BESS. Staff further recommends that prior to construction of the BESS, Oak Run provide the fire and emergency responders with proper firefighting equipment as reasonably required to enable them to respond to emergency situations at the BESS. (Staff Ex. 1 at 44-45.)

{¶ 97} Oak Run intends to restrict public access to the Facility by enclosing the Project area with a perimeter fence. Staff finds that the Applicant has proposed an approximately seven-foot-tall woven wire agricultural fence for the solar panel array area. Oak Run presents that fencing around the collector substations, step-up substation, and BESS will be eight-foot-tall fence. Staff notes that these perimeter fences will comply with applicable electrical code requirements. Staff has recommended that, except for the collector substations, step-up substation, and BESS fencing, the solar panel perimeter fence type should be both wildlife permeable and aesthetically fitting for a rural location. (Staff Ex. 1 at 45.)

{¶ 98} Prior to construction, Oak Run also intends to develop and implement an emergency services and response plan in further consultation with potentially affected emergency response personnel. Staff reviewed an example of what will be in the emergency services and response plan which included site overview mapping, access location, types of equipment and Facility specific fire protection and safety protocols, as well as BESS fire suppression and protocols, contact information, potential construction and operation hazards, detailed provisions for site security and access, and emergency response recommendations. Staff recommends that Oak Run submit the final emergency services and response plan, which incorporates a local emergency responder's consultation, at least 30 days prior to the preconstruction conference. (Staff Ex. 1 at 45.)

{¶ 99} *Electromagnetic Fields.* Electric transmission lines, when energized, generate electromagnetic fields (EMFs). Laboratory studies have failed to establish a strong correlation between exposure to EMFs and its effects on human health. There have been concerns, however, that EMFs may have impacts on human health. Staff notes that the proposed 230 kV transmission lines are not within 100 feet of an occupied residence or institution; therefore, calculation of the production of EMFs during operation of the proposed gen-tie transmission lines is not warranted per Ohio Adm.Code 4906-5-07(A)(2). Oak Run asserts that the equipment including transmission facilities will be designed and installed according to best utility practices and standards of PJM, National Electric Code (NEC), National Electric Safety Code (NESC), and the IEEE. Further, Applicant states that the electrical system design, including the 230 kV transmission lines, will be certified by a professional engineer. (Staff Ex. 1 at 45-46.)

{¶ 100} Staff recommends that the Board find that the proposed Facility will serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed Facility include the conditions recommended by Staff as specified in the Staff Report (Staff Ex. 1 at 47).

7. AGRICULTURAL DISTRICTS

{¶ 101} 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 Facility. The agricultural district program is established under R.C. Chapter 929.

{¶ 102} Agricultural land can be classified as an agricultural district through an application and approval process that is administered through local county auditors' offices. Approximately 4,320 acres of agricultural land will be disturbed by the proposed Facility, and none of those acres within the Project area are currently enrolled in the agricultural

district program. Staff notes that the repurposed land could be restored for agricultural use when the Facility is decommissioned. However, topsoil once disturbed and/or removed is unlikely to retain its productivity. For such a reason, Staff recommends a condition that will limit the amount of grading that could be done during construction. Further, Staff observes that Oak Run may continue to use part of the Project area for agricultural purposes, as the Applicant proposed, including the possibility of planting crops between the rows of solar panels, using sheep to control vegetation, and the establishment of bee keeping. (Staff Ex. 1 at 48.)

{¶ 103} The construction and operation of the proposed Facility will disturb the existing soil and could lead to broken drainage tiles. Staff emphasizes that main lines can allow water to flow into or out of one parcel to another. Locating and avoiding damage to drain tile mains can help prevent the pooling of water on Project parcels and adjacent parcels. Oak Run coordinated with landowners and county officials to identify the locations of existing drain tiles within the Project area. Oak Run supplied a Drainage Tile Assessment and Construction Impact Report with its Application, which discusses avoidance, repair, and mitigation details of all known drain tile locations. The Applicant created a map of possible drain tile locations, as it continued to procure drain tile location data. Further, Oak Run outlined a drain tile repair protocol in the Drainage Tile Assessment and Construction Impact Report. Oak Run committed to take steps to address potential impacts to farmland, including repairing drainage tiles damaged during construction and operation and restoring temporarily impacted land to its original use. Staff states that excavated topsoil will be separated during construction and returned as topsoil after construction unless otherwise specified by landowners. Moreover, disturbed areas upon decommissioning will be restored for agricultural use. (Staff Ex. 1 at 48.)

{¶ 104} 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, complies with the requirements specified in R.C. 4906.10(A)(7),

provided that any certificate issued by the Board for the proposed Facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 49).

8. WATER CONSERVATION PRACTICE

{¶ 105} 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.

{¶ 106} Construction and operation of the proposed Facility will not require the use of significant amounts of water. Water may be utilized for dust suppression and control on open soil surfaces such as construction access roads as needed. Oak Run stated the two O&M buildings will require and include an on-site well, water storage, and septic system. Staff notes that Applicant intends to install and properly maintain modern, efficient water fixtures. As such, water or wastewater will be generated from the Project during operations similar in quantity to small offices. Oak Run submitted that the area's precipitation will sufficiently clean the panels and no panel washing is anticipated. However, if it were necessary to clean certain solar modules, the Applicant anticipated that only targeted arrays will receive cleaning and not a significant onsite water use at any one time. Staff notes that Oak Run expected that water will be obtained from one of the existing onsite wells or from an offsite source where no more than one liter per module will be used. (Staff Ex. 1 at 50.)

{¶ 107} Staff recommends that the Board find that the proposed Facility will incorporate maximum feasible water conservation practices, and therefore complies with the requirements specified in R.C. 4906.10(A)(8), provided that any certificate issued by the Board for the proposed Facility include the conditions elaborated in the Staff Report (Staff Ex. 1 at 50).

9. RECOMMENDATIONS

{¶ 108} In addition to making various findings throughout its report, Staff recommended that 46 conditions be made part of any certificate issued by the Board for the

proposed Facility (Staff Ex. 1 at 51-63). The recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' May 11, 2023 Stipulation (Jt. Ex. 1). The conditions are discussed below.

V. ADJUDICATORY HEARING

{¶ 109} As detailed below, Oak Run presented 11 witnesses during hearing and pre-filed testimony from 14 witnesses, including Madison County Commissioner Mark Forrest, who testified, in his personal capacity, in favor of the Project. The Townships presented five witnesses during the hearing. Staff presented two witnesses at the hearing, Andrew Conway and Matt Butler, who provided testimony concerning their prefiled testimony, marked as Staff Ex. 4 (Tr. II at 274-282) and Staff Ex. 8, respectively (Tr. III at 412-415). Additionally, Staff presented a total of 10 exhibits which were admitted into the record, without objection. These included the Staff Report (Staff Ex. 1), and the prefiled testimony of nine Staff witnesses (Tr. I at 138). OEC presented one witness, Dr. Jeffery Reutter, who provided testimony regarding his prefiled testimony (Tr. III at 295). IBEW presented two witnesses, Mr. Patrick Hook and Mr. Trent Parker, during the hearing (Tr. III at 323, 335). Madison County did not appear or participate during the evidentiary hearing.

VI. STIPULATION AND CONDITIONS

{¶ 110} At the adjudicatory hearing, Applicant presented the Stipulation entered into by the Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed Facility (Jt. Ex. 1 at 1; Tr. I at 37). Pursuant to the Stipulation, the Signatory Parties recommend that the Board issue the certificate requested by the Applicant, subject to 46 conditions. Madison County and the Townships oppose Board adoption of the Stipulation.

{¶ 111} The following is a summary of the conditions agreed to by the Signatory Parties and is not intended to replace or supersede the actual Stipulation. The Signatory Parties stipulate that:

- 1) The Applicant shall install the Facility, including the Preferred Route of the transmission line, 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) 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.
- 3) 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.
- 4) 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.
- 5) The Applicant shall only use solar panel modules that do not exhibit the characteristic of toxicity verified through analysis or documentation with the USEPA TCLP test. Prior to the preconstruction conference, the Applicant shall file confirmation that panels were analyzed through the USEPA's TCLP test.

- 6) The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the Project shall attend the preconstruction conference. The Applicant may conduct separate preconstruction conferences for each stage of construction.
- 7) In the event that the federal requirements for a Spill Prevention, Control and Countermeasure (SPCC) does not apply to the proposed Facility, the Applicant shall develop and implement a Spill Prevention Plan or comparable plan that will address prevention of, response to, and notification to the appropriate authorities in the event of any spills. This plan shall be filed prior to the preconstruction conference.
- 8) 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 BMPs that will be implemented to maintain clean roads free of construction debris and excess mud.
 - d. Details summarizing signage and other BMPs that will 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.
 - f. A plan to either avoid or have an engineer evaluate the use of the bridge on Green Lane at the south end of the Project with posted reduced load limits.
- 9) 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 to Staff within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. Any permit violation received by the Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
 - 10) The Applicant shall not commence any construction of the solar-powered electric generation Facility until it has as executed an Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ICSA) with PJM. The Applicant shall docket in the case record a letter stating that the ISA has been signed or a copy of the executed ISA and ICSA.
 - 11) Prior to construction, the Applicant shall docket in the case record the System Impact Study for queue positions AG2-106 and AG2-107.

- 12) The Applicant shall upgrade the bulk power system if PJM generation interconnection studies identify that the capacity portion is not fully deliverable for queue positions AG2-106 and AG2-107 absent upgrades.
- 13) The Applicant shall not commence commercial operation of the BESS until it has executed an ISA and ISCA with PJM. The Applicant shall docket in the case record a letter stating that the ISA and ISCA have been signed or a copy of the executed agreements for queue positions AG2-106 and AG2-107.
- 14) Prior to commencement of construction, the Applicant shall file a landscape and lighting plan in consultation with a licensed landscape architect to address 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 Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.
- 15) 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.
- 16) At least 30 days prior to the preconstruction conference, the Applicant shall demonstrate that it has a complete copy of the solar panel, inverter, and BESS manufacturer's safety manual or similar document and has incorporated any recommended setbacks from those manufacturers into its final design site plan.
- 17) 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, and the SWCD.

- 18) 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 be in the form of a BESS emergency response plan.
- 19) 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.
- 20) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff for its acceptance the annual O&M budget for the BESS.
- 21) Prior to the preconstruction conference, the Applicant shall file drawings with dimensions of the solar panel perimeter fence type. 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. This condition shall not apply to substation or BESS fencing.
- 22) 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 consult with the following to request locations of drainage systems:
 - i. 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. 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 (PDF and georeferenced electronic data) of discovered and repaired drain tile systems shall be filed in the case docket once construction is complete.

- 23) 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 preconstruction soil conditions for the production of row crops for the agricultural areas within the Project area. 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 five 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 five percent goal is not practicable or economically feasible for the Project area.
 - c. The Applicant will have a qualified environmental inspector on site during grading and restoration activities. Following completion of construction

in each area, the environmental inspector is responsible for monitoring the implementation of any soil reclamation activities consistent with the inspector's recommendations and the agricultural protection plan.

- d. 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.
- e. Follows BMPs 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 separate from subsoil.
 - ii. No stockpiles shall be located in or near drainage ways. Stockpiles shall be stabilized in accordance with the Ohio EPA 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.
- 24) At least 45 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. The Applicant shall implement and comply with the decommissioning plan as approved by Staff.
- 25) Prior to commencement of any construction, the Applicant shall prepare an updated vegetation management plan in consultation with the ODNR and the SWCD.
- 26) At least 45 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design for the applicable phase of construction

and mapping in the form of PDF, which the 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.

- 27) At least 30 days prior to the preconstruction conference, the Applicant shall file the final geotechnical engineering report.
- 28) If any changes are made to the Facility layout after the submission of final engineering drawings, the Applicant shall provide all such changes on the case docket and provide 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.
- 29) At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final UDP.
- 30) The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. A map shall be provided to Staff showing sensitive areas, which will be impacted during construction with information on when the environmental specialist will be present.
- 31) At least 30 days prior to the preconstruction conference, the Applicant shall file a copy of the agrivoltaics plan (e.g., grazing and/or crop plan) on the public docket for Staff review and acceptance.
- 32) 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.

- 33) 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 Board 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. The Applicant shall file a copy of these notices on the public docket.
- 34) 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.
- 35) If the Project scope changes or newly identified cultural resources are discovered during construction, the Applicant shall notify the OHPO and Staff concerning the need for mitigation or avoidance. The Applicant shall implement the Phase II cultural resources work plan included in the Supplement to Application-Addendum to Phase I Archaeology Survey and Phase II Archaeology Work Plan filed on March 22, 2023. The Applicant shall also follow any recommendations from OHPO in its letter of review of the Supplement to Application-Addendum to Phase I Archaeology Survey and Phase II Archaeology Work Plan.
- 36) The Applicant shall construct the Facility in a manner that incorporates post-construction stormwater management under OHC000005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio EPA's Guidance on Post-Construction

Storm Water Controls for Solar Panel Arrays, and in consultation with the SWCD.

- 37) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. The Applicant shall also keep a running list of and notify Staff and the ODNR Division of Wildlife if any wildlife mortality or entrapment is discovered in the Facility during operation.
- 38) 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 ODNR and the USFWS 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.
- 39) 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. If noxious weeds and/or invasive plants are found to be present, the Applicant shall remove or treat them with herbicide pursuant to R.C. Section 921.06 as necessary and shall follow all applicable state laws regarding noxious weeds and invasive plant species. 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.
- 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., the 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 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.

- 41) Following commencement of construction, the Applicant shall file on the case docket a bi-annual 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.
 - b. A list of state and/or federal listed species encountered during construction and documentation of coordination with the appropriate agencies as needed.
 - c. Dates and noise monitor results when impact pile driving was 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.

- d. 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.
 - e. If the Facility is found to be above the daytime ambient Leq sound level limit plus five dBA, what additional noise mitigation measures were implemented to maintain compliance with the certificate.
 - f. The Applicant shall file a final report within 60 days of completion of construction and cease any further reporting in accordance with this condition.
- 42) Within 60 days of commencement of commercial operation of the solar Facility and BESS, the Applicant shall submit to Staff a copy of the as-built specifications for that Facility.
- 43) The Applicant shall operate a Facility that limits sound levels emitted to non-participating receptors to no higher than the daytime ambient Leq sound level limit plus five dBA. If the Facility is found to be above these limits, the Applicant shall install additional noise mitigation measures to maintain compliance with this provision.
- 44) 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.
- 45) The Facility shall be operated in such a way as to assure that no more than 800 MW will be injected into the bulk power system at any time.

- 46) The Applicant shall file an annual operational compliance report for at least five 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.
 - 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.

(Jt. Ex. 1 at 3-15.)

VII. CERTIFICATE CRITERIA

{¶ 112} 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.

VIII. CONSIDERATION OF CERTIFICATE CRITERIA

{¶ 113} Consistent with R.C. 4906.10(A), the Board has reviewed the record and made determinations regarding each of the statutory criterion.

{¶ 114} As a general matter, the Townships argue that Oak Run's Application is incomplete and lacks the information required by the Board's rules detailed in Ohio Adm.Code 4906-1, et seq. Without this information, the Townships represent that the Board lacks the authority to approve the Application and issue a certificate. To that end, the Board has attempted to address the Townships' concerns with Oak Run's Application and the requirements of Ohio Adm.Code 4906-1, et seq., by discussing these concerns within the Board's specific analysis of the requirements of R.C. 4906.10.

{¶ 115} However, some of the Townships' arguments do not fit in the confines of the R.C. 4906.10 analysis, and we will address those arguments here. The Townships state that the Board cannot issue the certificate without complying with its own rules and the Ohio Revised Code. Here, the Townships assert that the Applicant did not provide sufficient information as required by Ohio Adm.Code Chapter 4906-4, namely information concerning the Project's potential visual impacts and impacts on wildlife. The Townships argue that the alleged missing information was critical for the Townships to participate meaningfully during the hearing process. Specifically, the Townships assert that Oak Run has not provided the required sketches or simulations of the proposed Facility pursuant to Ohio Adm.Code 4906-4-08(D)(4)(e) and R.C. 4906.10(A)(2), (3), and (6). The Townships state that Oak Run was required to provide sketches or simulations of the substations under Ohio Adm.Code 4906-4-08(D)(4)(e), which requires simulations or sketches from points that "cover the range of landscapes, viewers groups." Here, the Townships allege that the Applicant must simulate or sketch each component of the entire Facility, rather than hiding its worst features. (Townships Initial Br. at 21-22.) The Townships further argue that Oak Run did not provide the proper literature reviews and studies for potential impacts on plants and wildlife pursuant to Ohio Adm.Code 4906-4-08(B) and R.C. 4906.10(A)(2), (3), and (6). The Townships represent that Oak Run provided an incomplete literature search and performed no field surveys other than to look for the endangered bats (Townships Initial Br. at 39-40). The Townships claim that Oak Run must have performed a literature review for evidence of species with commercial recreational value or any other plant or

animal species that might inhabit the Project area or the surrounding quarter mile as required by rule. Further, the Townships emphasize that Oak Run did not seek any waivers of rule requirements that will allow the Applicant to ignore any rule requirements (Townships Initial Br. at 4, 40).

{¶ 116} In reply, Oak Run argues that it properly and comprehensively responded to and addressed every requirement set forth in the Board's rules. Oak Run states that if the Townships believed Applicant had information supporting the Townships' position, they had the opportunity to serve discovery on Oak Run to obtain such information. However, Oak Run points out that the Townships only served one set of discovery on Oak Run, and it did not include queries regarding any of these Application completeness allegations. The Applicant contends that if the Townships believe that there is expert information that contradicts the expert information provided by the Applicant, it is the Townships' burden to present that information during the evidentiary hearing. Moreover, Oak Run claims that the Townships misrepresent their inability to participate meaningfully in the hearing and that, instead, the Townships sought to objectively weigh the Project's benefits against rumors the Township relies upon to make these arguments. (App. Reply Br. at 17.) Moreover, Oak Run disputes that it needed to submit a request for waiver of filing requirements because it provided all necessary and required information under the applicable provisions of the Ohio Administrative Code for Staff to make its recommendations and for the Board to make its ultimate determination (App. Reply Br. at 19-20). Relatedly, OPAE points out that because the Project's design is not finalized, it is impossible to provide the requested visual simulations (OPAE Reply Br. at 7).

{¶ 117} Oak Run also asserts that the Townships cited inapplicable cases in support of its opposition to the Facility. The Applicant states that the Townships narrowly construe the purpose of the Board's rules regarding certificate applications and does not present a comprehensive understanding that the Board's rules are promulgated in conformity with the Board's duty to issue certificates to applicants that can demonstrate that the documents

and information submitted on the record in a given case, as a package, satisfy the R.C. 4906.10(A) requirements. Oak Run emphasizes that the information is not interpreted in a vacuum, nor on a piecemeal basis. Further, the Applicant contends that the Townships overlook the fact that the Board considers an application and case record as a package, and that the Applicant commits to implement robust safeguards to manage the Facility, which requires close coordination and interaction with Madison County. (App. Reply Br. at 20-21.)

{¶ 118} OP&E adds that the Townships' requests as they relate to the Application completeness would lead to the end of energy generation development in the state because it would be cost prohibitive and too rigid to allow developers to adapt to community needs. Further, OP&E contends that the Ohio Supreme Court in *In re Buckeye Wind L.L.C. (Buckeye Wind LLC)*, 131 Ohio St.3d 449, 2012-Ohio-878 at ¶ 18 clarified that the Board did not improperly delegate its certification responsibility when it allowed for the developer to further "flesh out" certain conditions in the certificate. OP&E points out that the Supreme Court of Ohio affirmed the Board's certificate conditions that required some post-certificate submissions of various plans. *See Buckeye Wind LLC*, 2012-Ohio-878 at ¶ 28. (OP&E Reply Br. at 5.) O&E agrees with this distinction and concludes that *Buckeye Wind LLC* determines that R.C. 4906.10(A) authorizes a dynamic process that does not end with the construction certificate's issuance (O&E Reply Br. at 3).

{¶ 119} We are not persuaded by the Townships' arguments regarding the completeness of the Application. Although the Townships argue that the Application is not complete as required by Ohio Adm.Code 4906-3-06, the Board notes that its determination of completeness was issued on November 1, 2022. The November 1, 2022 letter signified that the Board had received sufficient information to begin its review of the Application, although additional information could be requested to ensure a full and fair assessment of the Facility. We note that on April 6, 2023, the Townships filed a motion to supplement the Application, alleging similar completeness arguments. During hearing, the ALJ denied this

motion, stating that the motion was premature and that parties were not precluded during the hearing to raise any of the alleged issues and to further articulate them in briefs (Tr. I at 12). As noted by the Applicant, the Townships had an opportunity to request further information during discovery and to raise these issues with expert witnesses during the evidentiary hearing. We agree that if the Townships represent that the Application was incomplete and prejudicial to its participation in the proceedings, the Townships needed to provide compelling evidence in support of such allegations. However, we find that no arguments were raised by the Townships involving other sections of the Ohio Administrative Code or Revised Code to convince us to abandon or modify the R.C. 4906.10(A)(1)-(8) framework for evaluating a solar application. Further, the Board notes that the Supreme Court of Ohio weighed in on this issue, holding that the Board did not fail to comply with its own regulations when determinations such as these were made in other solar cases, essentially finding that the Board is the entity best situated to interpret the intent of its regulations. See *In re Application of Alamo Solar I, L.L.C.*, Slip Opinion No. 2023-Ohio-3778.

{¶ 120} The Board additionally notes that many of the Townships' arguments concerning the impacts of the Facility overlap such that the Townships simultaneously argue noncompliance with multiple subsections of R.C. 4906.10(A). In this Opinion, the Board addresses arguments that reference several certification criteria under the criterion deemed most appropriate. To the extent an argument made by the Townships, or any party, that purports to relate to multiple subsections of R.C. 4906.10(A) is primarily discussed under one criterion but not all, the Board has nevertheless given the argument full and careful consideration and that argument is denied as to the remaining criteria.

A. R.C. 4906.10(A)(1): Basis of Need for Electric, Gas, or Natural Gas Transmission Lines

{¶ 121} R.C. 4906.10(A)(1) requires that the Board consider the basis of the need for the facility if the facility is a gas pipeline or an electric transmission line.

{¶ 122} Oak Run states that the Facility, if conditioned in the certificate as recommended in the Stipulation, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economies of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(1).

{¶ 123} Oak Run presents that it submitted interconnection requests to PJM to determine that the Facility can be safely connected to the interconnection without creating negative network impacts. The System Impact Studies identified limited contributions to previously identified overloads and potential congestion due to local energy deliverability, and contribution to previously identified reinforcements(App. Initial Br. at 58, citing App. Ex. 1 at 12, Ex. B; App. Ex. 27 at 4). The PJM system impact studies showed that the Facility can be safely connected to the PJM regional system, provided the upgrades and contingency overloads identified in the submitted studies are addressed. (Staff Ex. 1 at 11; App. Initial Br. at 58, citing App. Ex. 1 at 12, Ex. B.) Staff recommends that the Board find that the basis of need as specified under R.C. 4906.10(A)(1) is not applicable to the solar electric generation and BESS parts of the Facility, because these parts are neither an electric transmission line nor a gas pipeline. However, Staff did find that the basis of need is applicable to the two proposed 3.45 mile-long transmission lines in Madison County, Ohio. Staff notes that these lines will assist with connecting the Facility to the bulk power system through AEP's existing Marysville-Flatlick 765 kV transmission line. (Staff Br. at 10.)

{¶ 124} The Board finds that R.C. 4906.10(A)(1) is inapplicable to the BESS or solar electric generation components of the Facility. The Board determines that the basis of need for transmission line components of the Project has been demonstrated, and therefore complies with the requirements specified in R.C. 4906.10(A)(1), subject to the conditions adopted in the Stipulation. (Staff Ex. 1 at 11; Jt. Ex. 1 at Conditions 10, 12, 13.)

B. R.C. 4906.10(A)(2): Nature of the Probable Environmental Impact

{¶ 125} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility.

{¶ 126} Oak Run contends that the record in this proceeding provides an abundant amount of information and documentation to enable the Board to determine the nature of the probable environmental impact of the Facility, including the Project impacts on the public and safety, land use, geology and hydrogeology, culture, and ecology. According to Oak Run, the Application includes detailed and extensive surveys, assessments, and reports related to the probable impacts of the Facility. Additionally, Oak Run believes that each of these topics are supported by the testimony of expert witnesses. (App. Initial Br. at 18.) According to Oak Run, the Stipulation and record in this proceeding enable the Board to determine the nature of the probable environmental impact. Oak Run opines that because it made many commitments, including, but not limited to, agrivoltaics, enhanced setbacks and vegetative screening, utilization of farm fencing, and implementation of native grasses, any perceived impact will be greatly reduced compared to the industrial agricultural operations that are currently occurring in the Project area. (App. Initial Br. at 19.) Therefore, Oak Run asserts that the Application and Stipulation comply with R.C. 4906.10(A)(2).

{¶ 127} To the extent intervenors have raised an issue regarding the nature of the probable environmental impact, the Board will address only the more significant issues in this Order. Where a party has raised an issue as to the nature of the environmental impact and the Board does not specifically address the issue in this decision, it is hereby denied.

1. PUBLIC AND SAFETY

{¶ 128} Based on a market impact analysis of the Project, Oak Run presents that the Project will not have a negative impact on rural residential or agricultural property values in the area surrounding the proposed Project area. Further, Applicant contends that the market data supports the finding that the additional income from the solar lease could increase the value and marketability of the properties. (App. Initial Br. at 19, citing App. Ex.

36 at 5-6.) The Applicant's glare analysis evaluated any potential impacts to residents, drivers, pilots, and airport operators in the Project's vicinity. Oak Run states that based on that analysis, there are no predicted impacts from glare, and it was confirmed that the Project does not exceed a height that required filing with the FAA. (App. Initial Br. at 20, citing App. Ex. 1 at 76, 95, Ex. Q.) Relatedly, the Applicant indicates that there will be no interference with radio and television reception, radar, and microwave communication because the Project lacks tall structures and exposed moving parts (App. Initial Br. at 20, citing App. Ex. 1 at 95-96; App. Ex. 9). Concerning the transmission line component of the Project, Oak Run's study revealed no estimated television interference from the transmission line facilities. (App. Initial Br. at 20, citing App. Ex. 13).

{¶ 129} Regarding EMF levels, the Applicant represents that the minimal amount of EMFs created by the generation Facility component of the Project is comparable to the amount generated by household appliances, cell phones, and computers. Oak Run notes that EMFs from the gen-tie lines can vary based on the line voltage. Notably, Oak Run explains that the strength of a magnetic field decreases exponentially with increasing distance from the source. The Applicant asserts that as part of the final site layout, the nearest non-participating residence will be more than 500 feet from the Preferred Route's transmission line by more than 300 feet from the nearest solar module or inverter, negating any EMF exposure to residents. Further, Oak Run reassures that O&M staff will not be exposed to significant levels of EMF because they will not be continuously working under the gen-tie line during O&M efforts. (App. Initial Br. at 23-24, citing App. Ex. 1 at 77-78.)

{¶ 130} Oak Run notes that the construction phase could take up to 48 months and that large and heavy vehicles will be utilized. However, the Applicant presents that the day-to-day operation of the Project will not require large volumes or heavy traffic, utilizing typical vehicles like pick-up trucks, vans, and small to mid-sized tractors for solar maintenance and site work. The Applicant determined that permanent access drives can be constructed on the nearest public roadway without creating significant safety hazards (App.

Initial Br. at 22, citing App. Ex. 1 at 59; App. Ex. 24 at 6). The Applicant opines that the traffic expected in the Project area are mainly personal vehicles and large agricultural equipment or smaller all-terrain vehicles on the public right-of-ways (ROWs). Concerning other safety or health risks to the community, the Applicant commits to implementing measures during construction and operation to prevent unauthorized site entry and unsafe activities (App. Initial Br. at 23). Relatedly, the Applicant points out that there are no point-source air emissions from the Project and no point-source water discharge from the Project that would affect public safety (App. Initial Br. at 23, citing App. Ex. 1 at 76-77).

{¶ 131} Staff reports that Applicant satisfies R.C. 4906.10(A)(2), provided that the Board includes Staff's recommended conditions as modified by the Stipulation (Staff Initial Br. at 13). Staff notes that traffic will be affected, although almost exclusively during the construction phase. Staff presents that the assessed impact may be inconvenient, but there is no evidence that it will be any greater than that caused by current farming operations, or any effect at all once construction is completed. (Staff Initial Br. at 12.) Staff also notes that its proposed conditions will require the Applicant to develop a transportation plan in conjunction with the county engineer (Staff Ex. 1 at 24).

{¶ 132} *Construction and Operation Noise Impacts.* Regarding the noise level during construction and operation, Oak Run represents that a sound level assessment was conducted to establish existing sound levels in the Project area and evaluate potential impacts from construction on nearby residences and other sensitive receptors. The Applicant explains that the study reflects the worst-case scenario sound levels for each phase. The resulting sound levels for each phase were: phase 1, equivalent sound level (Leq), the time average of fluctuating sound pressure, was 69 A-weighted dBA with an anticipated maximum sound level (Lmax) of 71 dBA at a distance of 170 feet and the Leq is estimated to be 63 dBA with an Lmax of 65 dBA at a distance of 360 feet; phase 2, Leq of 84 dBA with an Lmax of 91 dBA at a distance of 170 feet and the Leq is estimated to be 77 dBA with an Lmax of 84 dBA at a distance of 360 feet; and phase 3, Leq of 64 dBA with an Lmax

of 70 dBA at a distance of 170 feet and the Leq is estimated to be 57 dBA with an Lmax of 63 dBA at a distance of 360 feet. The Applicant points out that construction sounds will be temporary and will occur during the daytime. (App. Initial Br. at 20-21, citing App. Ex. 1 at 82-83, Ex. R.)

{¶ 133} Concerning operational sound levels, field studies and modeling software was used to predict the sound levels that will result from the operation of the Project (App. Initial Br. at 21, citing App. Ex. 1 at 84, Ex. R.). Oak Run notes that while there are no existing federal, state, or local regulations applicable to the Project, predicted operational sound was conservatively evaluated against the L50 sound level the Board adopted in its most recent rulemaking (App. Initial Br. at 21, citing App. Ex. 32 at 3). *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023). The studies revealed that: the average daytime ambient L50 sound levels in the Project area range from 36 to 44 dBA, resulting in daytime limits of 41 to 49 dBA; and the average nighttime ambient L50 sound levels in the Project area range from 29 to 41 dBA, resulting in nighttime limits of 40 (greater of 34 dBA L50 or 40 Leq) to 46 dBA (App. Initial Br. at 21, citing App. 32 at 6). Sound from Facility operation during the daytime was modeled to represent the worst-case future sound levels produced by the PV inverters, the BESS, and the transformers at the Project substations all operating together. During the nighttime, the inverters were excluded from the model as they do not operate at night when there is no sun to produce electricity by the modules. (App. Initial Br. at 21-22, citing App. Ex. 1 at 85.)

{¶ 134} Oak Run asserts that with the incorporating of the concrete barrier near the Project step-up substation, which is a fire protection and sound mitigation inclusive commitment, all modeled receptor locations sound levels were below the sound level adopted in the recent Board rulemaking (App. Initial Br. at 22, citing App. Ex. 1 at 25, 85). Moreso, the Applicant states that even though there are no nighttime sound level limits applicable to the Project, Oak Run examined nonetheless, and the worst-case scenario for

nighttime sound levels meets the sound threshold for the specific receptors (App. Initial Br. at 22, citing App. Ex. 1 at 85).

{¶ 135} The Townships contend that Oak Run’s construction will produce long-lasting noises in extreme volumes involving the operation of heavy equipment such as excavators, graders, dump trucks, cranes, and pile drivers (Townships Initial Br. at 27, citing App. Ex. 1 at 81-82). The Townships explain that the identified maximum noise levels from earthmoving and pile driving will be as loud as 71 dBA and 91 dBA at a distance of 170 feet, which are levels far louder than the average ambient sound level of 41 to 50 dBA. The Townships assert that because there will be approximately 261,800 piles hammered 10 feet into the ground, the resulting noise will be pervasive and long lasting for the estimated four-year construction period. (Townships Initial Br. at 21, 27-29, citing App. Ex. 1 at 82, Ex. R.)

{¶ 136} Similar to its Application completeness arguments addressed above, the Townships assert that the Board cannot find that a Facility complies with R.C. 4906.10(A)(2) or (3) if an applicant has neglected to demonstrate, pursuant to Ohio Adm.Code 4906-4-08(A)(3), that the Project will not cause a noise nuisance, even if the Applicant has shown that no other types of harm are of concern (Townships Initial Br. at 5). Furthermore, the Townships argue that the 7 a.m. and 7 p.m. or until dusk construction hours are insufficient because dusk in central Ohio occurs as late as 9:35 p.m. during the summer, in contradiction with the Ohio Adm.Code 4906-4-08(A)(3)(d) requirements. Further, the Townships contend that Condition 40 will allow Applicant to conduct instructive construction activities during weekends and holidays. According to the Townships, Condition 40 will result in the Project construction destroying neighbors’ quality of life for up to 12 to 14.5 hours per day during the summer and impact driving could occur between 9 a.m. and 6 p.m. without noise level restrictions. (Townships Initial Br. at 28-29.)

{¶ 137} In response, Oak Run disputes that the construction process will involve long-lasting noises in extreme volumes for four years, and that the Project construction will

create noise like construction of any other building or Project. The Applicant notes that any potential construction concerns will be mitigated by the use of BMPs that include phased construction, which means phased disturbance. Moreover, Oak Run contends that pile driving is not a constant activity and that it will be limited, and with any construction activity, there will be some additional sound during the daytime hours, but it will be limited to the area directly adjacent to the location where the activity is occurring and not during the full construction period. The Applicant represents that sounds from construction will decrease as the construction activities move farther away from the receptor and that a receptor may hear construction sound during parts of the first phase of construction but will not hear sound during subsequent phases. (App. Reply Br. at 40.)

{¶ 138} Oak Run asserts that it provided all of the information stated under Ohio Adm.Code Rule 4906-4-08(A)(3) regarding noise, and that it went beyond the rule's requirements. The Applicant states that all of the required and necessary information on potential noise impacts of the Project is in the record. Further, the Applicant claims that the Townships misconstrue the Board's rule and there is no requirement that the Project does not cause a noise nuisance. (App. Reply Br. at 16.) Oak Run disputes the Townships' claims regarding the duration of the construction noise and that Stipulation Condition 40 places the necessary limits on construction. The Applicant states that while the full Project may not be operational for up to four years, the actual physical construction of any portion of the Project will take about two years. (App. Reply Br. at 41; Jt. Ex. 1 at Condition 40.) The Applicant notes that it developed a complaint resolution procedure plan to address how complaints will be handled and potential mitigation techniques to be implemented (App. Reply Br. at 41, citing App. Ex. 1 at 86-87, Ex. J). The Applicant opines that if the Board determines that Oak Run is not properly addressing any legitimate and reasonable concerns, the Board has enforcement authority under R.C. 4906.97 and 4906.99 (App. Reply Br. at 42).

{¶ 139} Staff points out that its Staff Report determined that operational noise will be relatively minor and will occur during the daytime hours (Staff Initial Br. at 13, citing

Staff Ex. 1 at 24-25). Staff emphasizes that Oak Run's noise expert, Robert O'Neal, testified that sound from the Facility will be a general "humming sound" (Staff Initial Br. at 13, citing Tr. II at 266). Further, Staff highlights that Mr. O'Neal indicated that the inverters to be used in the Project create sound so minimal that the manufacturer did not provide sound data to the Applicant (Staff Initial Br. at 13, citing Tr. II at 269).

{¶ 140} *Conclusion.* Upon review of the record, the Board finds that the Facility's probable public and safety impacts have been properly assessed and determined. We note that the Applicant provided a property value impact study that indicates the Project should not have a negative impact on nearby property values, and even suggests that the Project's construction could increase property values (App. Ex. 36 at 5-6). Further, Oak Run conducted a glare analysis, which indicated that there will be no potential impacts to residents, drivers, pilots, and airport operators in the Project's vicinity. Relatedly, we find that the Applicant confirmed with the FAA that the Facility would not exceed a height that required filing with the FAA. (App. Ex. 1 at 76, 95, Ex. Q; Staff Ex. 1 at 19-20.) The solar generation and BESS components should not pose impacts to radio and television reception, radar, and microwave communication. Even with the transmission line components of the Project, the Applicant presented that its EMT study concludes that there is no estimated radio or television interference from these components. (App. Ex. 1 at 95-96; App. Ex. 9; App. Ex. 13; Staff Ex. 1 at 19.) We find that the Applicant also studied potential EMF levels and indicates that a minimal amount of EMFs is generated by the Facility, comparable to the amount generated by household appliances or cell phones. We observe that the gen-tie lines' EMF amount may vary by line voltage, but Oak Run sufficiently explains that the nearest non-participating residence would be more than 500 feet from the Preferred Route, where the strength of the magnetic field significantly decreases as distance increases from the source. (App. Ex. 1 at 77-78.) The Applicant also conducted a transportation assessment and identified transportation routes to be used for access to the Facility. Although traffic is expected to increase during construction, Oak Run notes that permanent drives can be constructed on the nearest public roadway without creating significant safety hazards and

that it would either avoid or evaluate the option of using the bridge on Green Lane near the Project site. We also recognize that the Applicant would also repair any damaged public roads or bridges and plans to enter into a RUMA with the Madison County Engineer. (App. Ex. 1 at 57, Ex. L; App. Ex. 24 at 6; Jt. Ex. 1 at 4, Condition 8; Staff Ex. 1 at 23-24.)

{¶ 141} Regarding the Townships' arguments that the Project's noise generation will produce long-lasting noises in extreme volumes, the record does not support such a conclusion. With respect to the Townships' arguments that the record does not contain information sufficient to determine the probable environmental impact of the Facility related to operational noise limits and related nuisance, the Board is unpersuaded. Oak Run provides information pertinent to both points. First, the Application included estimates for the worst-case scenario for each Project construction phase and operational sound levels (App. Ex. 1 at 82-83, 85, Ex. R.). Oak Run represents that field studies and modeling studies were used to predict operational sound levels, where the predicted operational sound was conservatively evaluated against the L50 sound level the Board adopted in its most recent rulemaking (App. Ex. 1 at 84, Ex. R; App. Ex. 32 at 3). *See In the Matter of the Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023).* Further, we note that Project construction should be temporary and the Applicant sufficiently estimated noise levels in the Application, contrary to the Townships' contentions. In addition, we recognize that Oak Run commits to incorporating a concrete barrier near the Project's step-up substation, which further impacts the modeled sound levels (App. Ex. 1 at 25, 85). Further, we agree that the Townships mischaracterize the requirement under Ohio Adm.Code 4906-4-08(A)(3), as the rule does not state that projects cannot cause any noise nuisances. We determine that specifically, Stipulation Conditions 34 and 40 provide adequate protection by setting parameters for construction noise and providing means for the complaint resolution procedure plan to address complaints as they are reported (Jt. Ex. 1 at Conditions 34 and 40).

2. LAND USE/AGRICULTURE

{¶ 142} Oak Run states that the Project is consistent with the overall goals of the Madison County 2014 Comprehensive Plan and that the Project will not significantly impact schools, housing, and transportation while increasing local tax revenues and contributing to the local economy (App. Initial Br. at 24, citing App. Ex. 1 at 78, 120). Oak Run asserts that the Project's layout has been optimized to use available land and still provide environmental and visual setbacks to achieve minimal impact to natural resources and adjacent residents' viewshed (App. Initial Br. at 24, citing App. Ex. 1 at 38). The Applicant presents that all of its proposed setbacks were proactively made by Oak Run to limit Project impacts (App. Initial Br. at 25, citing App. Ex. 1 at 38). There are no structures within 250 feet of the Project infrastructure, and there are 7 residences between 355 and 493 feet of Project equipment and 22 residences between 506 and 1,500 feet of Project equipment. The Applicant states that the final Project design affects approximately 4,400 acres of land, which is a conservative estimate that considers all disturbance as permanent impact. (App. Initial Br. at 25, citing App. Ex. 1 at 114-116.) Further, Oak Run represents that it continues to coordinate with neighbors to the Project to incorporate neighbor-specific requests (App. initial Br. at 25, citing App. Ex. 23 at 12-13).

{¶ 143} Oak Run represents that only minimal clearing and grading will be required (App. Initial Br. at 25, citing App. Ex. 1 at 71). It is estimated that about 8.2 percent of the total Project area will need to be graded, and the Applicant committed to implement a grading plan that will minimize grading to the greatest extent possible (App. Initial Br. at 25, citing Apps. Ex. 4, 6, 12; Jt. Ex. 1 at 8-10, Condition 23). Concerning the Preferred and Alternate Transmission Line ROWs, Oak Run states that they are largely similar due to their shorter distances, proximity to each other, and minimum number of development and natural resource constraints within the vicinity (App. Initial Br. at 25). The total ROW acreage for the Preferred Route is 98.2 acres and the Alternate Route is 96.3 acres, where the Preferred Route avoids several acres of habitat clearing. Oak Run notes that the largest

difference between the two routes' land use is that more upland forest will be needed to be cleared for the Preferred Route. (App. Initial Br. at 25-26.)

{¶ 144} Oak Run's recreational area study indicated that within five miles of the Project area there are nine protected recreational easements and an additional three recreational features. Oak Run presents that there are no national forests, national wildlife refuges, or national natural landmarks located within the five-mile radius of the Project area. Oak Run does not expect that the Project will have any effects on the identified recreational areas, based on their distance from the Project area and the presence of existing vegetation that will screen the Project, coupled with the type of recreational use. Further, Oak Run states that it is engaging with the Darby Creek Association and ODNR Office of Scenic Rivers to consider Project plans to avoid effects on recreational resources. (App. Initial Br. at 26-27, citing App. Ex. 1 at 124-125.)

{¶ 145} In terms of viewshed, Oak Run presents that as a result of factors including vegetation, structures, atmospheric conditions, and distance decay associated with the declining visibility of the Facility over long distances, and the results of the simulations at distances of approximately two miles, it is unlikely that the Project will be visible at distances. Moreso, at distances of approximately 0.4 miles, Oak Run's photo simulations show that the Project visibility decreases and is mostly absorbed into agricultural landscape. (App. Initial Br. at 27, citing App. Ex. 1 at 126, 129, Ex. X.; App. Ex. 24 at 14.) Oak Run states that visibility of the Project will decrease over relatively short distances and the Project will become less noticeable in views greater than one mile at which point the individual modules will not be distinguishable and appear contained within the existing agricultural setting (App. Initial Br. at 27-28). Oak Run indicates that the Project view from one mile away will be further limited by the topography of the Project area, surrounding vegetation, and crops on adjacent lands during the growing season (App. Initial Br. 28 at App. Ex. 1, 128, Ex. X; App. Ex. 24 at 15).

{¶ 146} Staff determined that any visibility of the Project from recreational resources will be unlikely to negatively impact recreational land use or one's ability to use any of these resources (Staff Initial Br. at 10-11, citing Staff Ex. 1 at 14-15). Staff argues that the Project will be consistent with the protection and preservation of the agricultural industry since it will provide supplemental income to farmers/landowners; the land will be protected from permanent industrial or residential development; and the land could be returned to agricultural land use upon decommissioning (Staff Initial Br. at 11). Staff agrees that the Project will not directly conflict with local land use plans and will be likely to align with goals set forth in the county's land use plan. (Staff Initial Br. at 11, citing Staff Ex. 1 at 14). Staff notes that landscape and vegetative screening will be used to minimize visual impacts (Staff Initial Br. at 11). Staff also recommends that the Applicant's landscape and lighting plans include design features to reduce visual impacts of the Facility and infrastructure where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project, as well as the travelling public, nearby communities, and recreationalists (Staff Initial Br. at 11, citing Staff Ex. 1 at 16). Lastly, with respect to potentially impacted resources, the Staff Report found no evidence to contradict that, with proposed avoidance and buffers, there will be minimal adverse environmental impact (Staff Initial Br. at 11, citing Staff Ex. 1 at 17).

{¶ 147} *Drainage Impacts and Flooding Mitigation.* Oak Run's drain tile study revealed that the majority of the drain tiles within the Project area are lateral tiles that provide localized drainage and that damage to these lateral tiles will rarely impact adjacent landowners (App. Initial Br. at 28, citing App. Ex. 1 at 133-134, Ex. Z). Such damage could be caused if a main tile, which is fed by the smaller lateral tiles, becomes damaged. Oak Run states that spacing between lateral tiles within the Project area does not impose significant constraint on the Project design, as the components can be placed between the drain tiles. However, Oak Run points out that there is potential for impacts to the drain tile system from steel posts and transmission line poles driven into the ground and cutting trenches to install underground collection systems. (App. Initial Br. at 28.) The Applicant

states that the final site layout will be completed taking the drain tile locations into consideration to minimize potential impacts, and main tiles and lateral tiles will be avoided to the extent practicable (App. Initial Br. at 28, citing App. Ex. 1 at 133-134). Lastly, Oak Run raises that it committed to conduct an extensive drain tile assessment and field tile avoidance and repair plan for the Project area prior to construction, to ensure the Project maintains the existing drainage regime throughout the site (App. Initial Br. at 28, citing App. Ex. 1 at 74; Jt. Ex. 1 at 7-8, Condition 22).

{¶ 148} The Townships contend that Ohio Adm.Code 4906-4-07(C)(2)(b) and (d) require that Oak Run quantify the water flow amount that will result from the Project area during construction and operation. The Townships state that these water flow estimates are necessary to determine whether site clearing will increase stormwater runoff that could flood downstream properties during construction. (Townships Initial Br. at 30.) The Townships argue that witness Ivy confirmed these calculations were possible to calculate, indicating that the Applicant recognized the calculations are feasible and necessary but chose not to provide them (Township Initial Br. at 31, citing Tr. I at 110). The Townships present that most of the soil types in the Project area are subject to flooding (Townships Initial Br. at 30). The Townships argue that based on the Application's soil maps, 96 percent of the land in the Project area contains soils prone to flooding (Townships Initial Br. at 30, citing Tr. I at 134-136; App. Ex. 1 at 15, Ex. O, Table 4.1). Further, the Townships state that the Project area contains streams that already flood their banks during 100-year storm events, and that solar equipment will be built in areas experiencing up to two feet of flood water (Tr. I at 93, 96). Township witness Kathy Little testified that water from the Project area drains into a tile flowing into the roadside ditch on her yard and floods a portion of her yard, as well as her mother's yard during heavy rainfalls (Township Initial Br. at 31, citing Township Ex. 5 at 3). The Townships allege that the Applicant is refusing to provide these calculations deprives the public and the Board of the opportunity to vet these calculations and to determine what water pollutions will be addressed (Township Initial Br. at 31).

{¶ 149} In response, Oak Run argues that the Townships misrepresent the requirements under Ohio Adm.Code 4906-4-07(C)(2)(b) and (C)(3)(d), whereby the Board requires information regarding an applicant's compliance with the water quality standards, not the potential for stormwater runoff and downstream flooding. The Applicant states that contrary to the Townships' allegations, the Application properly responds to Ohio Adm.Code 4906-4-07(C) that there will be no point-source water/aquatic discharge into streams or waterbodies from the Project during construction or operation. (App. Reply Br. at 42.) As a result, Oak Run states that there will be no receiving stream and no water discharge permit will be required (App. Reply Br. at 42-43, citing App. Ex. 1 at 66). Moreover, Oak Run asserts that during operation, no water or water-borne waste discharge will occur through the Facility (App. Reply Br. at 43, citing App. Ex. 1 at 73). Furthermore, Oak Run highlights that the information the Townships request is contained in the Application and Stipulation commitments, which address concerns regarding stormwater runoff and downstream flooding. The Applicant asserts that the Facility will include features that mitigate potential for flooding or increased stormwater runoff. (App. Reply Br. at 43.) OEC supports this position and argues that Oak Run's planned setbacks and vegetation are likely to reduce runoff. OEC also emphasizes that Oak Run's current plans are taking steps to improve water runoff during the Project's operation phase because it committed to setbacks above the existing setbacks on the agricultural fields (OEC Reply Br. at 4-5, citing OEC Ex. 1 at 14). Relatedly, Oak Run emphasizes its commitment to 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 Project (App. Reply Br. at 44). Oak Run opines that in Stipulation Condition 22 it committed to properly avoid tiles, repair, and to work with parcel owners and Madison County officials and that the Project's design will ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation (App. Reply Br. at 44, citing Jt. Ex. 1 at 7, Condition 22).

{¶ 150} Staff represents that the Application satisfies the Board's requirements regarding these issues. Staff disagrees with the Townships' interpretation of the requirements, pointing out that Ohio Adm.Code 4906-4-07(C)(3) requires that "[the A]pplicant shall provide information on water quality during operation of the facility." Therefore, it is not required to do so before the issuance of a certificate. (Staff Reply Br. at 15.) Oak Run outlined the steps that it is taking to identify all tile drainage systems that could be impacted, both to avoid impacts and to be able to identify where damage may have occurred, which it will be doing in conjunction with the County Engineer, the SWCD, landowners, and on-site inspections. (Staff Reply Br. at 15, citing Jt. Ex. 1 at Condition 22.) Staff explains that the Stipulation incorporates Staff's related recommendations from its Staff Report (Staff Reply Br. at 16, citing Jt. Ex. 1 at Condition 22, Staff Ex. 1 at 54). Staff further notes that Madison County Commissioner Forrest, the County's ad hoc representative at the time, testified that local services are successfully managing drainage issues (Staff Reply Br. at 16, citing Tr. I at 25). Staff asserts that the Applicant has adequately described the reasonable measures that it is taking to identify existing systems to avoid or minimize any impacts from construction or operations. Staff asserts that the Application, as modified by the Stipulation, satisfies the Board's rules with respect to drainage tiles. (Staff Reply Br. at 16.)

{¶ 151} *Pollution Impacts and Associated Mitigation.* The Townships contend that Ohio Adm.Code 4906-4-07(C)(1)(d) and (C)(2)(b), (c), and (e) require the Applicant to provide water quality data so the Board can evaluate discharge impacts. The Townships claim that Oak Run's plans for earthmoving will create substantial opportunities for soil-laden stormwater to flow into the area's streams. The Townships assert that Stipulation Condition 23 will do nothing to prevent the alleged damage, since it will allow 20 percent of all agricultural land in the Project area to be graded (Townships Initial Br. at 33, citing Staff Ex. 1 at 56, Tr. II at 279-281; App. Ex. 1 at 131). Further, the Townships allege that Oak Run's omission of a year's worth of monitoring data for the existing water quality of the receiving streams violates Ohio Adm.Code 4906-4-07(C)(1)(d). Accordingly, the Townships contend

that nothing in the rule suggests that this data is limited to point sources, as Oak Run presents. The Townships argue that the water quality calculations necessary for the SWPPP and NPDES permits entail “information regarding preconstruction water quality and permits,” as required by Ohio Adm.Code 4906-4-07(C)(1) prior to certification. In addition, the Townships state that Oak Run violates the Board’s rules by providing no estimate of the quality of aquatic discharges from site clearing and construction operations (Townships Initial Br. at 33-34, Tr. I at 102). Similar to its other arguments, the Townships claim that Oak Run admits these calculations are feasible and necessary, but nonetheless refuses to provide them prior to certification. The Townships state that as a result, Oak Run deprives the Board and the public the opportunity to evaluate these calculations and to determine what water pollution problems must be addressed. (Townships Initial Br. at 34-35.) Furthermore, the Townships claim that water quality data is essential in light of the fact that the Project area drains into a watershed with a significant number of endangered and threatened species (Townships Initial Br. at 35). The Townships point out that eroded soil from stormwater runoff can smother mussels with as little as less than one centimeter of sedimentation (Townships Initial Br. at 35, citing Tr. I at 145). The Townships argue that the Board should not allow Oak Run to take shortcuts in water quality and impact the area’s ecological resources (Townships Initial Br. at 35-36).

{¶ 152} In response, the Applicant points out that the rules do not require an applicant to obtain an NPDES general permit prior to certification and that it will be obtained closer to completion of the Project’s final design and prior to the start of construction. The Applicant asserts that the Townships seem to be confusing the Ohio EPA’s review of the NPDES General Permit application with the Board’s review of the Application for certification. (App. Reply Br. at 45.) Oak Run asserts that the Board has the necessary information to make determinations under R.C. 4906.10(A)(2), (3), (5), and (6). (App. Reply Br. at 46.) Further, OEC asserts that Stipulation Condition 23 goes above and beyond to preserve the agricultural soil in the Project area, by preserving soil nutrient levels as well as density at decommissioning (OEC Initial Br. at 15, citing Jt. Ex. 1 at Condition 23).

{¶ 153} Staff adds that the water quality data is not required prior to approval, and neither are preconstruction permits (Staff Reply Br. at 17, citing Staff Ex. 1 at Condition 23). Staff notes that there is no requirement by law or by the Board's rules that require this kind of data before certification and that the Townships are trying to insert language into the law to align with their position. Staff clarifies that the law and rules only require information regarding preconstruction water quality and permits. Staff concludes that the Board should reject the Townships' related requests. (Staff Reply Br. at 17.)

{¶ 154} *Conclusion.* The Board finds that the extensive record establishes that the Facility's probable impacts on land use and agriculture have been assessed and determined to meet R.C. 4906.10(A)(2). First, we acknowledge that Oak Run represents that the Project's design has been optimized to use available land while providing environmental and visual setbacks to achieve minimal impact to natural resources and nearby residents' viewshed (App. Ex. 1 at 38). With that being said, we note that there are seven residences between 355 and 493 feet of Project equipment and 29 residences between 250 and 1,500 feet of Project equipment (App. Ex. at 1 at 114-116). Oak Run commits to continuing coordination with Project neighbors to incorporate neighbor-specific requests (App. Ex. 23 at 12-13). Ninety-three percent of the land use within the Project area is agricultural and about 8.2 percent of the total area should need to be graded (Staff Ex. 1 at 13). The Board observes that Oak Run promises to implement a grading plan that will minimize grading to the greatest extent possible See Jt. Ex. 1 at 8-10, Condition 23; Staff Ex. 1 at 21-22. Staff's findings indicate that the land will be protected from permanent industrial or residential development, and that it could be returned to agricultural use upon decommissioning. Additionally, we recognize that the proposed agrivoltaic program will help minimize the impact on agricultural land, as it is expected that at a minimum, 70 percent of the Project area should remain farmland (Jt. Ex. 1 at Condition 25). Regarding the transmission line components of the Project, the total ROW acreage for the Preferred Route is 98.2 acres and the Alternate Route is 96.3 acres, where the Preferred Route avoids several acres of further upland forest habitat clearing (App. Ex. 1 at 37-38.) Further, there are nine protected recreational easements and three

recreational features within five miles of the Project area. We note that there are no national forests, wildlife refuges, or natural landmarks within that five-mile radius. Oak Run represents that it is communicating with the Darby Creek Association and ODNR to consider plans to avoid impacts on nearby recreational resources (App. Ex. 1 at 124-125.) The Board finds that, as a result of components incorporated into the Project design, including vegetation, proposed Project structures, atmospheric conditions, landscape and lighting plans and Oak Run's provided distance decay estimates and simulations, viewshed of the Project should be mostly absorbed into the landscape. See App. Ex. 1 at 126, 129, 130 Ex. X; App. Ex. 24 at 14-15; Staff Ex. 1 at 15.

{¶ 155} The Board determines that the record does not support the Townships' contention that the Applicant has not adequately quantified possible water flow during construction and operation in violation of Ohio Adm.Code 4906-4-07(C)(2)(b) and (d). Similar to their previous Application completeness arguments, the Townships assert that these water flow estimates are required for the Board to determine whether site clearing will increase runoff that could flow downstream to properties during construction. However, we determine that the record indicates that the Townships' concern is addressed in the Application and by various Stipulation commitments. To this point, we find OEC's position persuasive that Oak Run's current plans take sufficient steps to improve water runoff during the Project's operation by committing to setbacks greater than existing agricultural setbacks (OEC Reply Br. at 4-5). Further, Oak Run iterates that another example of how it will avoid downstream flooding is its commitment to avoid, where possible, or minimize, to the extent practicable, any damage to functioning field tile drainage systems during the Project's life. We agree with Staff that Oak Run properly identified the steps that it will take to identify all tile drainage systems that could be impacted, and that Oak Run has incorporated Staff Condition 22 as presented in the Staff Report (Jt. Ex. 1 at Condition 22; Staff Ex. 1 at 54, Condition 22).

{¶ 156} Further, we do not find that the record supports the Townships' related argument that the Applicant has not provided sufficient water quality data pursuant to Ohio Adm.Code 4906-4-07(C)(1)(d) and (C)(3)(b), (c), and (e). We agree with Oak Run's point that the Ohio EPA evaluates water quality pollution issues for projects, and in terms of the certificate process, the Board is reassured that Oak Run will obtain an NPDES general permit prior to its certification, closer to the completion of the final design, before construction commences. We also agree with OEC's position that Stipulation Condition 23 goes beyond Staff's Condition 23 in order to protect the agricultural soil in the Project area, by accounting for nutrient levels and density at decommissioning. Finally, we concur with Staff's point that contrary to the Townships' request, water quality data is not required prior to approval, and neither are preconstruction permits. We find that the Applicant has sufficiently informed the Board of the information regarding the preconstruction water quality and permits that will be obtained.

3. CULTURAL

{¶ 157} Oak Run states that its historic resources review identified four known archaeological sites, one cemetery, and no history/architecture resources located within the Project area (App. Initial Br. at 31-32, citing App. Ex. 1 at 122; Ex. V). Oak Run explains that the survey concluded that the Project will not have any direct or indirect impacts on the recorded resources that needed to be resurveyed and ones that were newly recorded historic resources because they have a limited or nonexistent view of the Project (App. Initial Br. at 32, citing App. Ex. 1 at 128, Ex. V; App. Ex. 33 at 4). Oak Run confirmed that it received concurrences on these findings from the OHPO on August 26, 2022 (App. Initial Br. at 32, citing App. Ex. 33 at 5). Relatedly, Oak Run represents that the initial Phase 1 Archaeological Survey was completed in the fall of 2022 and surveyed 5,850 acres of the Project area (App. Initial Br. at 32, citing App. Ex. 1 at 123, Ex. W; App. Ex. 2; App. Ex. 33 at 6). Oak Run highlights that OHPO accepted the findings of the Phase 1 Archaeological Survey but requested additional investigation of 15 sites to gather information (App. Initial Br. at 33,

citing App. Ex. 12, Att. 2; App. Ex. 33 at 6). The addendum resulted in the identification of 14 additional archaeological sites, which were recommended ineligible for the NRHP listing (App. Initial Br. at 33, citing App. Ex. 3; App. Ex. 33 at 7). OHPO concurred with the addendum's findings (App. Initial Br. at 33, citing App. Ex. 33 at Att. ABL-2). Oak Run confirms that OHPO approved its Work Plan for Phase II Archaeological National Register Eligibility Evaluations for the identified 15 sites that require additional examination (App. Initial Br. at 33, citing App. Ex. 33 at 7-8, Att. ABL-3). Moreover, in accordance with Stipulation Condition 35, Oak Run agreed to notify OHPO of changes and new discoveries (App. Initial Br. at 33, citing App. Ex. 33 at 8; Jt. Ex. 1 at 13, Condition 35).

{¶ 158} Staff notes that Applicant's studies found a fairly significant number of archaeological cultural resources within the Project area. Apart from a small handful of sites, Staff found that there will be no potential effect from the Project because the resources will have a limited or non-existing view of the Project. (Staff Initial Br. at 11.)

{¶ 159} *Conclusion.* Consistent with the Staff Report, the Board finds that the Facility's probable impacts on cultural aspects have been properly evaluated and determined. As such, the Applicant complied with OHPO's request for additional investigation of 15 sites once the Phase 1 Archeological Survey was completed. We note that Stipulation Condition 35 appropriately addresses the findings that the Project may or may not have a direct impact on 15 archaeological sites that may be eligible for NRHP listing and that the Applicant committed to mitigate the impacts through avoidance or additional data recovery (Jt. Ex. 1 at Condition 35; App. Ex. 33 at 7). The Board, therefore, finds that the cultural impacts have been sufficiently identified, as required under R.C. 4906.10(A)(2).

4. ECOLOGICAL

{¶ 160} Oak Run represents that the Application and the record confirm that the Board can determine the probable impacts of the Facility with regard to the ecological considerations. The Applicant asserts that the Project has been designed to avoid and

minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species wherever possible (App. Initial Br. at 33, citing App. Ex. 1 at 96-97, 106, Exs. S, T). Oak Run identifies that there are 10 locations where the Project's collection lines (six crossings), gen-tie lines (one crossing), or security fencing (three locations) cross a stream; however, Oak Run clarifies that these locations will either be directionally bored using HDD in the case of the collection line or the crossing will be spanned by the gen-tie line and fencing so that there is no disturbance to the stream bed (App. Initial Br. at 33-34, citing App. Ex. 1 at 65, 70, 106; App. Ex. 11). Oak Run concedes that while there are three locations where the Project fencing will span a stream, there will be no impacts anticipated as the fence posts will be placed at the top of the stream bank and the fencing will not impede water flow (App. Initial Br. at 34, citing App. Ex. 11; App. Ex. 24 at 8). Oak Run presents that there will be no point-source water/aquatic discharge into streams or waterbodies from the Project during construction or operation and as a result, there will be no related permits required (App. Initial Br. at 34, citing App. Ex. 1 at 66). As previously discussed, Oak Run states that it will implement a SWPPP, which is required by the Ohio EPA as part of the NPDES General Permit, including the requirements of Appendix A of the NPDES General Permit which pertains to the Darby Creek Watershed.

{¶ 161} Oak Run argues the Project's development will not result in significant impacts to ecological resources that may potentially occur within the Project area or surrounding vicinity as a result of the Applicant's micro-siting efforts to minimize and avoid impacts to potentially suitable habitat or construction outside of critical periods (App. Initial Br. at 35). Habitat within the Project area is composed of cultivated agricultural cropland; upland forest including second growth deciduous forest, fence rows, and early successional forest; grassland areas; scrub shrub of approximately 37 acres; open water and wetland areas; and industrial land and existing roadway (App. Initial Br. at 34, citing App. Ex. 1 at 97, Ex. T; App. Ex. 24 at 8-9). Of the approximately 154 acres of upland forest, the Applicant confirms that clearing for the Project will total approximately 3 acres for the generation facility and the transmission line Preferred Route (App. Initial Br. at 36, citing App. Ex. 1 at

105; App. Ex. 11). Oak Run asserts that the remainder of the Project will be constructed exclusively in agricultural or developed land, which provides minimal habitat for wildlife and is not preferred habitat for any of the identified federal or state-listed species (App. Initial Br. at 36, citing App. Ex. 1 at 106). Also, Oak Run committed to avoiding tree clearing within the Project area between April 1 and September 30 (App. Initial Br. at 35, citing App. Ex. 24 at 9-10; Jt. Ex. 1, Condition 38). The Applicant represents that its species review indicates that the Project is not anticipated to result in impacts to non-listed wildlife (App. Initial Br. at 36, citing App. Ex. 24 at 10). Oak Run further notes that after coordination with the ODNR Office of Scenic Rivers and the Darby Creek Association, Oak Run minimized the amount of proposed tree clearing from 41.9 acres to only three acres of tree clearing (App. Initial Br. at 36, citing App. Ex. 11).

{¶ 162} Staff states that the Project will not adversely impact public or private water supplies. Staff states that there are no geological features that will restrict construction of the Facility. No wetlands, ponds or lakes will be affected (Staff Initial Br. at 12, citing Staff Ex. 1 at 28-29). While the Project area is within the known range of a number of endangered and threatened bird species, the Staff Report determined that there was no potentially suitable nesting habitat in the Project area for any of those species. Staff also notes that the Project area is within the known range of several endangered and threatened fish and mussel species. Staff represents that impacts to those identified species are not expected, due to Oak Run's lack of in-water work, avoidance of surface waters, and lack of suitable habitat. (Staff Initial Br. at 12, citing Staff Ex. 1 at 30-33.)

{¶ 163} *Conclusion.* Upon review of the record, the Board notes that Staff has found that the Project will not adversely impact public or private water supplies. We recognize that while there are three locations where the Project fencing will span a stream, there should be no impacts anticipated as the fence posts will be placed at the top of the stream bank and the fencing will not impede water flow (App. Ex. 11 at 2; App. Ex. 24 at 8). Relatedly, there will be no wetlands or streams that will be impacted by the Project (Staff

Ex. 1 at 35). The Applicant will also obtain an NPDES general permit through the Ohio EPA prior to the start of construction (App. Ex. 1 at 65; Staff Ex. 1 at 42). Additionally, the Applicant will adhere to seasonal tree cutting dates between April 1 and September 30 to avoid impacts to endangered bats (App. Ex. 24 at 9-10; Jt. Ex. 1, Condition 38). We note that while the Project area is within the known range of a number of endangered and threatened bird species, the Staff Report determined that there was no potentially suitable nesting habitat in the Project area for any of those species (Staff Ex. 1 at 30-31). If the Applicant encounters any listed plant or animal species prior to construction, the Applicant will include the location and how impacts would be avoided in a final access plan to be provided to Staff (Jt. Ex. 1 at Condition 30). We also recognize that the Applicant minimized the amount of proposed tree clearing from 41.9 acres to only three acres of tree clearing (App. Ex. 11). The documentation submitted with the Application and analyzed by Staff in the Staff Report is extensive and consistent with what the Board has traditionally required from an Applicant in assessing the nature of the ecological impacts.

{¶ 164} In summary, the Board finds that the record establishes that the nature of the probable environmental impact from construction, operation, and maintenance of the Facility has been established by Applicant, as required under R.C. 4906.10(A)(2).

C. R.C. 4906.10(A)(3): *Minimum Adverse Environmental Impact*

{¶ 165} R.C. 4906.10(A)(3) requires that a 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 conditions.

{¶ 166} “*Minimum*” Definition. The Townships assert that, under R.C. 4906.10(A)(3), the Facility must represent the minimum adverse environmental impact. Residents define “minimum” to mean “the least quantity assignable, admissible, or possible,” citing the Merriam-Webster Dictionary. Based on that definition, the Townships assert that Oak Run has not met this standard. (Townships Initial Br. at 3.)

{¶ 167} In response, Oak Run asserts that Ohio courts have been clear that minimum does not mean zero. The Applicant emphasizes that the Ohio Supreme Court clarified that minimum adverse impact does not require a showing of no impact at all, citing *Ohio Edison Co. v. Power Siting Comm.*, 56 Ohio St.2d 212, 383 N.E.2d 588 (1978). In another Ohio Supreme Court case, Applicant states the Court explained that the Board must balance the concerns raised regarding the R.C. 4906.10(A)(3) criterion, citing *In re Application of Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210 at ¶ 26. The Applicant also points out that this criterion requires the Board to consider the state of technology; the nature and economics of various alternatives; and, importantly, other pertinent considerations. Oak Run states that the Facility will not produce harmful emissions; will not introduce harmful chemicals; has no water pollutants; will not impact public or private wells or water supplies; and provides energy security and clean air. (App. Reply Br. at 11, citing App. Ex. 1; App. Ex. 14; App. Ex. 26 at 13, SM-E.) Furthermore, Applicant argues that the Board will consider positive impacts of the Facility, such as payments to the taxing units in the Project area of approximately \$8.2 million annually (App. Reply Br. at 12). Oak Run also contends that the Board is required to contemplate “other pertinent considerations,” including its agrivoltaics program, installation of the BESS to support grid reliability and resiliency, implementation of community requests, coordination with the county, and the creation of jobs (App. Reply Br. at 12-15).

{¶ 168} The Board rejects the Townships’ argument that this statutory criterion requires the minimum adverse environmental impact to be “the least quantity assignable, admissible, or possible” (Townships Initial Br. at 3). We agree with Oak Run, that taken to its extreme, the only Facility that could satisfy the Townships’ limited interpretation would be one that is not built, as the least quantity of adverse environmental impact possible would be zero. This interpretation of the language crafted by the General Assembly would be illogical. Additionally, the Board has already rejected this interpretation of the definition of “minimum.” See *In re Yellow Wood Solar Energy LLC*, Case No. 20-1680-EL-BGN, Opinion

and Order (June 15, 2023) at ¶ 170; *In re Harvey Solar I, LLC*, Case No. 21-164-EL-BGN, Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 257.

{¶ 169} Oak Run states that the Facility, if conditioned in the certificate as recommended in the Stipulation, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economies of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3). Furthermore, OPAE agrees with Staff and Oak Run's assessment that the Project, as modified in the Stipulation, represents the minimum environmental impact under R.C. 4906.10(A)(3) (OPAE Initial Br. at 6).

1. PUBLIC AND SAFETY

{¶ 170} Oak Run states that it has committed to a number of measures through the Application and Stipulation in order to ensure the minimum adverse environmental impact of the Facility related to the public and safety concerns. The Applicant represents that the Project equipment will be compliant with applicable Underwriters Laboratory, IEEE, NEC, NESC, and American National Standards Institute listings (App. Initial Br. at 37, citing App. Ex. 1 at 17-18, 76). Oak Run notes that concerning the step-up substation part of the Facility, between each single-phase transformer and around the northern perimeter of the substation, a concrete barrier 22-feet tall and 210-feet long will be constructed for fire protection and sound mitigation (App. Initial Br. at 37, citing App. Ex. 1 at 25, 87). Oak Run explains that the solar array will be surrounded by a fence that will be agricultural and wildlife friendly in accordance with the Stipulation (Jt. Ex. 1 at Condition 21; App. Initial Br. at 38, citing App. Ex. 1 at 27, 112). The Applicant states that the Project substations, BESS facilities, and step-up substation will be secured with a chain link fence in accordance with the NEC and NESC, where the fences will have lockable gates to restrict access and safety signs (App. Initial Br. at 38, citing App. Ex. 1 at 27, 80). Relatedly, the Applicant asserts that it maximized Project setbacks from property lines to the extent practical to minimize impact to adjacent residences. Oak Run notes that because it intends to construct the Project in

stages, each tranche of the Project will be managed as a separate construction effort. Oak Run believes that this construction process will minimize the amount of ground disturbance, noise impacts, and traffic ongoing at the site at once. (App. Initial Br. at 38, citing App. Ex. 1 at 31.)

{¶ 171} The Applicant emphasizes that in addition to the setbacks and sound barriers, Stipulation Condition 40 restricts construction activities to particular timeframes. In addition, Oak Run posits that Stipulation Conditions 41, 43, and 46 will ensure that the Applicant operates the Facility so that sound levels emitted to non-participating receptors will be no higher than the daytime ambient Leq sound level limit level plus five dBA, and if the Facility is found to be above these limits, Oak Run will install additional noise mitigation measures. (App. Initial Br. at 39, citing App. Ex. 1, Ex. L, Appendix C; App. Ex. 32 at 8; Jt. Ex. 1 at 14-16, Conditions 40, 41(d), 43, and 46(c).) Oak Run also commits to using modules from a Tier I manufacturer that passed the TCLP test (App. Initial Br. at 39, citing App. Ex. 1 at 18; App. Ex. 9; Jt. Ex. 1 at 5, Condition 5). Moreover, Oak Run presents that the ODH concluded that when operating under normal conditions, it is not expected for the BESS' batteries to cause any public health burden, as there is unlikely to be an exposure pathway from the lithium-ion chemistries (App. Initial Br. at 39-40, citing App. Ex. 1 at 78-79; ODH. 2022b. Ohio Dep't of Health Battery Energy Storage Summary and Assessments).

{¶ 172} Oak Run believes that Stipulation Condition 14 adequately addresses the aesthetic and lighting impacts, which involves consultation with an Ohio-licensed architect (App. Initial Br. at 40, citing App. Ex. 1, Ex. Y; App. Ex. 1, Ex. X; App. Ex. 24 at 17; Jt. Ex. 1 at 5-6, Condition 14). The Applicant states that it will maintain the vegetative screening for the Facility's life and will substitute or replace any failed plantings, so that after five years, at least 90 percent of the vegetation will have survived (App. Initial Br. at 40, citing App. Ex. 1, Ex. Y; Jt. Ex. 1 at 6, Condition 14; App. Ex. 7). Oak Run presents that the Facility lights will be motion-activated and designed to narrowly focus light inward towards the Facility, and per Stipulation Condition 15, Oak Run will only use solar panels that have anti-

reflecting coating (App. Initial Br. at 40, citing Jt. Ex. 1 at 6, Condition 15). Furthermore, Oak Run emphasizes Stipulation Conditions 8 and 9, where in addition to entering into a RUMA with the Madison County Engineer, Oak Run will coordinate with entities regarding traffic and transportation requirements and obtain any necessary permits (App. Initial Br. at 40, citing App. Ex. 1 at 57; Jt. Ex. 1 at 4-5, Conditions 8, 9). The Applicant posits that it will maintain the local roads in a similar or better condition during and at the conclusion of construction and decommissioning (App. Initial Br. at 40, citing App. Ex. 1 at 57). The Applicant also commits to minimize the load impact on public roadways during the cold winter months (App. Initial Br. at 40-41, citing App. Ex. 1 at 59).

{¶ 173} Oak Run represents that at the end of the estimated 30-year life of the Project, all equipment and infrastructure will be decommissioned as required by Stipulation Condition 24 (App. Initial Br. at 41, citing App. Ex. 1 at 17, 60, Ex. D; App. Ex. 23 at 20; App. Ex. 23A at 4; App. Ex. 24 at 24; Jt. Ex. 1 at 10, Condition 24). The Applicant states that pursuant to Stipulation Condition 17, an emergency response plan will also be prepared for the Project, construction and maintenance personnel, and local emergency responders to deal with potential emergency situations at the Project site. This plan will be developed in consultation with the local fire and emergency services, and the SWCD. (App. Initial Br. at 41, citing App. Ex. 1 at 80; App. Ex. 23A at 3; Jt. Ex. 1 at 6, Condition 17.) In addition, the Applicant explains that the Project's supervisory control and data acquisition system is designed to allow the arrays to be isolated from the grid and shut down remotely in case of fires or other incidences (App. Initial Br. at 42, citing App. Ex. 1 at 80). Oak Run explains that the BESS is designed to self-extinguish and it will be located and designed so as not to allow for fire propagation from one BESS enclosure to another enclosure (App. Initial Br. at 42, citing App. Ex. 9; App. Ex. 35 at 5). Oak Run highlights that in accordance with Stipulation Condition 18, it will provide a BESS response plan to Staff that will ensure compliance with the latest industry standards (App. Initial Br. at 42-43, citing App. Ex. 23A at 3; App. Ex. 35 at 4; Jt. Ex. 1 at 6, Condition 18).

{¶ 174} *Conclusion.* The Board finds that the record in this case indicates that Oak Run has made several commitments that will sufficiently minimize the Facility's adverse environmental impact concerning the public and safety concerns. As such, the Applicant commits to being compliant with various industry safety codes, including the NEC, NESC, and American National Standards Institute listing (App. Ex. 1 at 17-18, 76). The Board observes that Oak Run will construct the Project in phases over a potential 48-month construction period. We note that Oak Run commits to maximized setbacks from property lines including a minimum of 300 feet from non-participating residences; 150 feet from non-participating parcels and public roadways; and 120 feet from streams and wetlands (App. Ex. 1 at 39, 130). Relatedly, Oak Run will prepare a landscape and lighting plan to address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists, including the maintaining of vegetative screening for the Facility's life and will substitute or replace any failed plantings, so that after five years, at least 90 percent of the vegetation will have survived (App. Ex. 1, Exs. X, Y; App. Ex. 24 at 17; Jt. Ex. 1 at 5-6, Condition 14; App. Ex. 7). The Applicant also committed to limit noise to certain levels and limit construction to daytime hours and will finalize a transportation management plan and RUMA to account for construction traffic (App. Ex. 1 at 57, Ex. L, Appendix C; App. Ex. 32 at 8; Jt. Ex. 1 at 4-5, 14-16, Conditions 8, 9, 40, 41(d), 43, and 46(c)). Further, Oak Run will prepare an emergency plan for the Project, construction and maintenance employees, and local emergency responders to deal with potential emergency situations at the Project site, including the BESS components (Jt. Ex. 1 at Conditions 17, 18). Also, Oak Run will avoid or repair drain tiles, and has prepared a decommissioning plan to restore the land back to agricultural use at the end of the Facility life (App. Ex. 1 at 17, 60-61, Ex. D; App. Ex. 23 at 20; App. Ex. 23A at 4; Jt. Ex. 1 at 10, Condition 24).

2. LAND USE/AGRICULTURE

{¶ 175} Oak Run's construction process will include installation of stormwater retention basins and other erosion control plans, clearing vegetation, and grading, in which

the Applicant anticipates minimal clearing (App. Initial Br. at 43, citing App. Ex. 1 at 21). As portions of the Project near completion, the associated temporary laydown areas will be vacated, and disturbed areas will be reseeded and re-vegetated (App. Initial Br. at 43, citing App. Ex. 1 at 32, Ex. F). Oak Run presents that pursuant to Stipulation Condition 23, prior to construction, the Applicant will implement an Agricultural Protection Plan that is designed to minimize impacts to agricultural land use during construction, operation, maintenance, and decommissioning (App. Initial Br. at 43-44, citing App. Ex. 1 at 107-108, Jt. Ex. 1 at 8-10, Condition 23). Applicant also commits to updating the Vegetation Management Plan, in consultation with the ODNr and the SWCD (App. Initial Br. at 45, citing App. Ex. 23A at 3; Jt. Ex. 1 at 10-11, Condition 25).

{¶ 176} Further, the Applicant states that it engaged with local residents to seek feedback on the visual impact of the Project. (App. Initial Br. at 46, citing App. Ex. 1 at 130-131, Ex. Y). Oak Run notes that it is committed to working with local residents to develop and implement a vegetative screening plan for the Project (App. Initial Br. at 46, citing App. Ex. 1 at 130-131; App. Ex. 23 at 12-13). Oak Run asserts that engagement with neighbors is an ongoing process that began long before the Application was filed with the Board and will continue up through construction as the final design is crafted and completed (App. Initial Br. at 46, citing App. Ex. 4; App. Ex. 23 at 12-13). The Applicant also commits to retaining existing trees within the Project area to help screen the Project and reduce visual impacts. Oak Run emphasizes its commitment to implementing vegetative screening and agrivoltaic programs within the Project area that will have the objective of minimizing any potential viewshed impacts (App. Initial Br. at 46, citing App. Ex. 1 at 127).

{¶ 177} Oak Run represents that under Stipulation Condition 22, it will 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 Project. Oak Run commits to implementing a field tile avoidance and repair plan. (App. Initial Br. at 47, citing App. Ex. 1 at 72; Jt. Ex. 1 at 7, Condition 22.) Oak Run notes that the Stipulation further

requires that, if an affected landowner(s) agrees to not having the damaged field tile system repaired, they may do so only if: the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system; and the damaged field tile does not route directly onto or into an adjacent parcel. The Applicant committed to design the Project to ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the Project. (App. Initial Br. at 47, citing Jt. Ex. 1 at 7, Condition 22.) The Applicant states that during operations, Facility personnel will monitor the site for signs of damaged tile. A local contractor who specializes in the installation and repair of agricultural drain tiles will be hired to perform any necessary repairs during or after construction. (App. Initial Br. at 48, citing App. Ex. 1 at 72, 133-134.)

{¶ 178} Before construction, the Applicant will implement an Erosion, Sediment, and Stormwater Control Plan in accordance with Madison County and the State of Ohio. Oak Run states that it will utilize this plan across the site to accomplish soil stabilization, which is the most effective way to minimize erosion and off-site sediment from leaving the site. Oak Run discusses that it will design and implement rock construction entrances that will be monitored, cleaned, and replaced periodically during construction to reduce the movement of mud and sediment to existing streets. Additionally, Oak Run commits to implementing BMPs during construction to control erosion and sediment that may result from site clearing and grading will also control water flow and erosion will a drain tile be damaged during construction. (App. Initial Br. at 48, citing App. Ex. 12).

{¶ 179} *Conclusion.* Upon review of the record, the Board finds that the record establishes that Oak Run has sufficiently incorporated Staff's recommendations to ensure that adverse impacts on land use and agriculture will be minimal. As such, Oak Run's Vegetation Management Plan, in coordination with the ODNR and the SWCD, will ensure that associated temporary construction laydown area will be vacated and any disturbed areas will be reseeded and revegetated (App. Ex. 1 at 108). Further, pursuant to Stipulation Condition 23, the Applicant's Agricultural Plan should minimize impacts to agricultural

land use during all stages of the Project's life including construction, operation, maintenance, and decommissioning (Jt. Ex. 1 at 8-10, Condition 23). Moreover, we note that Oak Run addresses visual impact minimization by committing to use agricultural, wildlife impermeable fencing instead of chain-link fencing on the perimeter of the Project's solar array (Jt. Ex. 1 at 6-7, Condition 21). The Applicant has also promised to continue working with local residents on the development and implementation of the final vegetative screening plan for the Project (App. Ex. 1 at 127, 130-131; App. Ex. 23 at 12-13). We note that Oak Run will address concerns regarding drain tile impacts by executing Stipulation Condition 22 which will minimize, to the extent practicable, any damage to field tile drainage and implement a field tile avoidance and repair plan (App. Ex. 1 at 72; Jt. Ex. 1 at 7, Condition 22). Lastly, we recognize that Oak Run will implement an Erosion, Sediment, and Stormwater Control Plan in accordance with Madison County and the State of Ohio. Oak Run indicates that it will use this plan across the Facility site to accomplish soil stabilization and the Applicant will commit to implementing BMPs during construction to address related concerns. (App. Ex. 1 at 72; App. Ex. 12.) The Board, therefore, finds that the land use and agricultural impacts will be sufficiently minimal, as required under R.C. 4906.10(A)(3).

3. GEOLOGY AND HYDROGEOLOGY

{¶ 180} Oak Run asserts that there will be no fuel, waste, water, or other processing facilities associated with the Project. Under Stipulation Condition 7, the Applicant will implement an SPCC Plan to ensure contractors maintain equipment so that it will not leak oil, hydraulic fluids, petroleum fuels, greases, cutting oils, anti-freeze, or other chemicals. If leaks or spills of these or other similar materials occur, contractors will promptly clean up the spill and notify the Applicant's site manager of the incident. Furthermore, because solar modules do not contain hazardous materials, Oak Run does not expect impacts to runoff. Oak Run notes that fuel storage and dispensing of liquid fuels, if any are required, will

comply with applicable law and other applicable regulations. (App. Initial Br. at 49-50, citing App. Ex. 1 at 22, 66-67, 69; Jt. Ex. 1 at 4, Condition 7.)

{¶ 181} Concerning the 11 water wells that are located in the Project area, if it is necessary in the future, the Applicant committed to cap and close the wells in accordance with Madison County and Ohio EPA requirements to ensure that groundwater resources are not affected by the Project. With regard to the source water protection areas, once the Applicant has achieved final design, Oak Run will coordinate with the Ohio EPA's Division of Drinking and Groundwater to identify any potential notification requirements and additional measures that might need to be implemented during construction. (App. Initial Br. at 50, citing App. Ex. 1 at 87, 89.)

{¶ 182} Oak Run's geotechnical reports concluded that the site is suitable for the construction of the Project and set forth several recommendations that the Applicant will implement for the Project. In accordance with Stipulation Conditions 26 and 27, prior to the preconstruction conference, the Applicant will submit the detailed engineering drawings and the final geotechnical engineering report. (App. Initial Br. at 50-51, citing App. Ex. 29 at 10-11; Jt. Ex. 1 at 11, Conditions 26, 27.) Oak Run asserts that the Vegetation Management Plan in Stipulation Condition 25 allows vegetation to grow within the drainage-ways and provides ground cover throughout the Project area, which will address potential scour occurrences within the Project area (App. Initial Br. at 51, citing App. Ex. 1 at 90, Ex. F; Jt. Ex. 1 at 10-11, Condition 25).

{¶ 183} The Applicant notes that the solar panels are designed and tested to withstand high wind velocity and hail and are constructed with tempered glass to resist breakage. The final Project design will identify the necessary pile type and pile depth across the Project area to account for site-specific structural loading requirements and inputs, including wind. Oak Run posits that the Project site will be designed to meet ASCE standards for Minimum Design Loads and Associated Criteria for Buildings and Other

Structures and will factor in wind speeds based on building code wind speed maps for the area. (App. Initial Br. at 51.)

{¶ 184} Oak Run also prepared a UDP in the event there are unidentified hazards/features discovered in the Project area that were not uncovered in the preconstruction studies. The Applicant states that if any below-grade metal piping, well casing, or other structure indicative of an oil and gas well is discovered, the UDP will be implemented onsite, and work in that area will immediately stop. The Applicant's representative will then lead a coordinated onsite inspection of the structure to determine the potential danger and the path forward with additional notifications. Oak Run explains that construction will not resume in the area around the structure without approval from ODNR. Lastly, during the operational phase of the Project, the Applicant will continue to monitor the site for indications of leaking wells and will have an operational UDP, should a leak be detected. (App. Initial Br. at 52, citing App. Ex. 10; App. Ex. 24 at 17-18.)

{¶ 185} *Conclusion.* The Board finds that the record supports Staff's findings that the Applicant has committed to ensure that the Project's geological and hydrogeological impacts, both temporary and permanent, will be reasonably minimized. Oak Run will implement an SPCC Plan to ensure that its contractors will avoid spilling or leaking fuels or other chemicals, and in the event of such a leak or spill, the contractors shall clean up the spill and promptly notify Oak Run's site manager of the incident. Relatedly, Oak Run will comply with applicable law and regulations concerning any fuel storage and liquid fuel dispensing. We note that the Applicant's proposed solar modules do not contain hazardous materials, which should not affect runoff. (App. Ex. 1 at 22, 67-69; Jt. Ex. 1 at 4, Condition 7.) The Applicant indicates that it committed to cap and close the identified 11 wells located in the Project area, so as not to impact groundwater resources. Further, once the final design is completed, Oak Run will coordinate with the Ohio EPA to identify any further measures to be implemented during construction. (App. Ex. 1 at 87, 89.) Moreover, the Applicant commits to Stipulation Conditions 25, 26, and 27, aligned with the geotechnical report's

conclusions, which includes submitting the engineering drawings and final geotechnical engineering report to Staff and allowing vegetation to grow within drainage-ways and provide ground cover throughout the Project area. (App. Ex. 1 at 90, Ex. F; Jt. Ex. 1 at 10-11, Conditions 25-27.) Lastly, Oak Run will submit to Staff and maintain a UDP in the event there are any unidentified hazards/features discovered in the Project area that were not identified during preconstruction (Jt. Ex. 1 at Condition 29). The Board, therefore, finds that the geological and hydrogeological impacts will be sufficiently minimal, as required under R.C. 4906.10(A)(3).

4. CULTURAL

{¶ 186} As previously discussed, Oak Run concluded both a Phase I History/Architecture Reconnaissance Survey and a Phase I Archaeological Survey for the Project, and the results of those studies were submitted to OHPO. OHPO responded by concurring with the conclusions. Consistent with the Staff Report, the Board finds that the Applicant has made sufficient commitments that will minimize the Facility's cultural environmental impacts. As discussed above, Oak Run cooperated with the OHPO's request for further investigation and Stipulation Condition 35 requires Oak Run to either mitigate undiscovered impacts via avoidance or additional data recovery (Jt. Ex. 1 at Condition 35; App. Ex. 33 at 7). The Board, therefore, finds that the cultural impacts on the environment will be sufficiently minimal, as required under R.C. 4906.10(A)(3).

5. ECOLOGICAL

{¶ 187} Oak Run represents that the Project was designed to avoid permanent impacts to streams and wetlands from all Project infrastructure. As committed to in the Application and memorialized in the Stipulation, Oak Run will implement several measures to ensure surface water quality protection, including a SWPPP, SPCC Plan, and an HDD Inadvertent Release Contingency Plan. (App. Initial Br. at 53, citing App. Ex. 1 at 65, 67, 109, Ex. M; Jt. Ex. 1 at 3-4, 13, Conditions 1, 7, 36.) Moreover, Oak Run notes that while no NPDES permit is needed for operation of the Project, Oak Run committed to implement the Ohio

EPA Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays to minimize storm water runoff during operation of the Project (App. Initial Br. at 54, citing App. Ex. 1 at 73; OHIO EPA. 2022a. "Guidance on Post-Construction Stormwater Management for Solar Panel Fields, Division of Surface Water," April 2022).

{¶ 188} Further, Oak Run commits to using permanent and temporary runoff control practices, sediment control practices, soil stabilization practices, and post-construction stormwater management practices as listed in the Rainwater and Land Development Manual as issued by the Ohio EPA for construction (App. Initial Br. at 54, citing OHIO EPA Rainwater and Land Development Guidance). Concerning the possibility of stream and wetland crossings by the Project, if the final site design changes and avoidance of stream and wetland impacts cannot be accommodated, then the Applicant will work to obtain any applicable permits (App. Initial Br. at 55, citing App. Ex. 1 at 65, 69). Oak Run also committed to placing an environmental supervisor at the locations near streams and wetlands when construction is occurring in that portion of the Project to monitor and limit the potential for inadvertent impacts to these sensitive resources. (App. Initial Br. at 55, citing App. Ex. 1 at 109-110.) The Applicant notes that while there will be some surface water runoff from the Project area during operations, the volume and water quality of that runoff will be an improvement from the current state of the site. Post-construction runoff control will be implemented with BMPs, as required, in order to ensure that the Project does not generate more stormwater runoff than existed during preconstruction conditions. (App. Initial Br. at 55, citing App. Ex. 23 at 17.)

{¶ 189} Oak Run presents that there will be very limited tree clearing necessary for the Project (App. Initial Br. at 56). Once the Project is in operation and site restoration of the Project area is complete, the Applicant does not expect any additional impacts to wetlands and streams, trees, or natural habitats (App. Initial Br. at 56, citing App. Ex. 1 at 113). To eliminate wildlife concerns during operation and maintenance, the Applicant will develop wildlife corridors that will allow wildlife to move through the Project area to key natural

landscape features in the vicinity of the Project area (App. Initial Br. at 56). In addition, the Applicant will use fencing around the solar panel perimeter that is both small-wildlife permeable and aesthetically fitting for a rural location to incorporate gaps or spaces of at least six inches by six inches to allow passage of small mammals (App. Initial Br. at 56, citing App. Ex. 1 at 112-113; App. Ex. 7; App. Ex. 24 at 10; Jt. Ex. 1 at 6-7, Condition 21). The vegetation within the Project area, including pollinator friendly plants and row crops, will provide cover for small mammals, rodents, and birds, attracting them to the Project area rather than excluding (App. Initial Br. at 56, citing App. Ex. 1 at 113; App. Ex. 24 at 10). Lastly, in accordance with Stipulation Condition 37, the Applicant will contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities (App. Initial Br. at 57, citing Jt. Ex. 1 at Condition 37).

{¶ 190} *Conclusion.* Upon review of the record, the Board finds that Oak Run has sufficiently incorporated Staff's recommendations to ensure that the Project's ecological adverse impacts will be minimal. As previously discussed, the Applicant will obtain an SWPPP, SPCC Plan, and an HDD Inadvertent Release Contingency Plan. (App. Ex. 1 at 65, 67, 109, Ex. M; Jt. Ex. 1 at 3-4, 13, Conditions 1, 7, 36.) Oak Run assures that prior to construction, wetlands and streams within the Project area will be flagged to ensure that construction teams are aware of their location, and the riparian setbacks required under the Ohio EPA's NPDES General Permit for construction activities due to the Project being located within the Big Darby Watershed (App. Ex. 1 at 109-110). We note that the Applicant states that the volume and water quality of the runoff will be an improvement from the current state of the site, where post-construction runoff control will be implemented with BMPs, as required. Further, Oak Run has represented that the proposed tree clearing was decreased in the Application and does not expect any additional impacts to wetlands or streams, trees, or natural habitats (App. Ex. 1 at 113). We find that Oak Run will also develop and maintain wildlife corridors to allow wildlife to move through the Project area, as to maintain the integrity of the natural landscape features in proximity (App. Ex. 1 at 112-113; App. Ex. 7; App. Ex. 24 at 10; Jt. Ex. 1 at 6-7, Condition 21). Relatedly, the vegetation in the

Project area will include pollinator friendly plants and row crops to provide cover for smaller animals that should attract, rather than deter, them from the area (App. Ex. 1 at 113; App. Ex. 24 at 10). And finally, we note that Oak Run will be required to contact Staff, ODNR, and USFWS pursuant to Stipulation Condition 37, should any listed species be encountered during construction (Jt. Ex. 1 at 13, Condition 37).

{¶ 191} Staff points out that the Staff Report identified the various efforts that the Applicant will undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concludes that those efforts, together with its recommended conditions to further mitigate those impacts, represent the minimum adverse impact. (Staff Initial Br. at 13, citing Staff Ex. 1 at 35-36).

{¶ 192} As described above in the discussion of R.C. 4906.10(A)(2), Staff conducted a thorough investigation into the Facility's public and safety, geological, land use and agriculture, and ecological impacts. After this review, Staff concluded that, if certificated with Staff's recommended conditions, the Facility represents the minimum adverse environmental impact as required under this criterion (Staff Ex. 1 at 36). Oak Run offered the testimonies of numerous expert witnesses that supported this conclusion. (See App. Exs. 23A, 24 A, 28A, 29A, 30A, 31A, 32A, 33A, 34A, 35A). The Stipulation incorporates Staff's recommended conditions, and we find that Oak Run expands them to further minimize potential adverse environmental impacts resulting from the Facility. Based on the evidence presented in this case, the Board agrees with Staff's assessment and concludes that the Facility represents the minimum adverse environmental impact.

D. R.C. 4906.10(A)(4): Consistency with Regional Plans

{¶ 193} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such 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 such facility will serve the interests of electric system economy and reliability.

{¶ 194} Oak Run represents that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems and that the Facility will service the interests of electric system economy and reliability. The Applicant submitted two 400 MW solar energy generation interconnection requests to PJM for power generation in August 2020 (App. Initial Br. at 57 citing App. Ex. 1 at 42, App. Ex. 23 at 16; App. Ex. 27 at 4). Queue positions for the BESS associated with the Project were also initiated with PJM and filed in January 2021 (App. Initial Br. at 57 citing App. Ex. 1 at 42). Oak Run presents that based on the information contained in the System Impact Studies, the Project can be safely interconnected to the PJM regional grid provided the identified interconnection upgrades are completed and contingency overloads are addressed by AEP and Oak Run (App. Initial Br. at 58, citing App. Ex. 1 at 12, Ex. B). Further, the Applicant identifies that Stipulation Conditions 10 and 13 accordingly require that Oak Run cannot commence any construction until it has executed ISAs and ICSAs with PJM for the respective Project components (App. Initial Br. at 58, citing App. Ex. 27 at 5; Jt. Ex. 1 at 5, Conditions 10,13).

{¶ 195} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the 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. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4). (Staff Initial Br. at 13-14.) Additionally, OPAE asserts that Oak Run adopted all of Staff's proposed conditions and no evidence to the contrary was introduced in the proceeding (OPAE Initial Br. at 6-7, citing Jt. Ex. 1). OPAE respectfully requests that the Board adopt Staff's findings as they pertain to the requirements of R.C. 4906.10(A)(4).

{¶ 196} The evidence provided by Staff and Oak Run regarding this criterion is compelling and undisputed by any of the parties. The Board therefore finds that the Facility will serve the interest of electric system economy and reliability and is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems in accordance with R.C. 4906.10(A)(4).

E. R.C. 4906.10(A)(5): Air, Water, Solid Waste, and Aviation

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

{¶ 198} Oak Run asserts that the Project will be constructed and operated in compliance with all federal, state, and local regulations for air and water pollution, solid and hazardous wastes, and aviation (App. Initial Br. at 58, citing App. Ex. 1 at 61). Moreover, the Applicant presents that the Project will generate electricity using virtually no fuels or water and with effectively zero air emissions and operational waste generation (App. Initial Br. at 58, citing App. Ex. 1 at 4). During construction, the operation of heavy construction equipment and vehicles will produce some particulate emissions from engine exhaust and fugitive dust generation during travel on unpaved roads and construction activities; however, Oak Run presents that these operations will be temporary and limited to active areas of construction and, therefore, will not result in significant impacts on air quality (App. Initial Br. at 59). The Applicant notes that demolition and site clearing and grubbing activities may be required, which Applicant commits to appropriate disposal measures (App. Initial Br. at 59, citing App. Ex. 2 at 73-74). In addition, per Stipulation Condition 44, at the end of the Project's life, any retired panel material that is not recycled and that is marked for disposal, will be sent to an engineered landfill to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approved by Staff (App. Initial Br. at 60, citing App. Ex. 23 at 17; Jt. Ex. 1 at 15, Condition 44).

{¶ 199} According to Staff, air quality permits are not required for construction or operation of the proposed Facility. Staff notes that fugitive dust rules adopted pursuant to R.C. Chapter 3704 may, however, be applicable. Staff notes that Oak Run will hire a licensed construction firm with knowledge and experience in dust minimization to comply with those rules. Moreover, neither construction nor operation of the proposed Facility will require the use of significant amounts of water. Staff recognizes that the Applicant will obtain the necessary permits for construction and operation sufficient to comply with the requirements of R.C. Chapter 6111. Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Furthermore, there are no public use airports, helicopter pads, or landing strips within five miles of the Project, and no aeronautical study regarding glare was needed for this Project. The ODOT Office of Aviation identified no impacts on local airports. Staff recommends that the Board find that the proposed Facility complies, subject to the conditions proposed in the Staff Report, with the requirements specified in R.C. 4906.10(A)(5). (Staff Initial Br. at 14-15.) OPAE also requests that the Board adopt Staff's findings as they pertain to the requirements under R.C. 4906.10(A)(5) (OPAE Initial Br. at 6-7).

{¶ 200} Based on the record in this case, the Board finds that both the construction and operation of the Project, subject to the conditions set forth in the Stipulation, will be in compliance with R.C. Chapters 3704, 3734, and 6111, as well as rules and standards adopted under those chapters and under R.C. 4561.32 and the rules and laws adopted thereunder. As we have already addressed the Townships' concerns regarding water quality above, we determine that there is no record evidence that has been unaddressed by the Board to dispute this finding. Accordingly, the certification criteria found in R.C. 4906.10(A)(5) has been met.

F. R.C. 4906.10(A)(6): Public Interest, Convenience, and Necessity

{¶ 201} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 202} Oak Run submits that the Stipulation and record in this proceeding support the finding and determination that the Facility will serve the public interest, convenience, and necessity in compliance with R.C. 4906.10(A)(6).

{¶ 203} Oak Run opines that the public interest is served by the Facility because there are two components that make this Project essential for certification: the opportunity and perceived benefits associated with its proposed agrivoltaics program and the installation of the 300 MW BESS, which will store energy in times of excess production and discharge that energy when it is needed. The Applicant states that in addition to these two features, the Project offers significant economic and environmental benefits on a local and statewide level. The Applicant notes that its economic impact assessment is a conservative estimate of the Project's full economic impact, given that the original calculus in the Application did not include the BESS and nor does it account for the potential impact from the agrivoltaics (App. Initial Br. at 63, citing App. Ex. 1 at 50, Ex. I; App. Ex. 28 at 5). Oak Run emphasizes that its studies conclude that the land use value of solar far exceeds the value of stand-alone crop production over the Project's projected 30-year life (App. Initial Br. at 63, citing App. Ex. 1 at 51, Ex. I; App. Ex. 28.)

{¶ 204} Additionally, other Signatory Parties support the Project's projected economic benefits. OPAE points out that the Staff Report determines that the local government and school revenues associated with the Project should be about \$8.2 million annually (OPAE Initial Br. at 7, citing Staff Ex. 7 at 3). OPAE states that the projected amount benefits the community, resulting in a substantial increase in community residents putting a corresponding strain on the services funded by the Project (OPAE Initial Br. at 7-8). IBEW asserts that the Project will create hundreds of jobs and training opportunities for electrical workers in and around Madison County, producing economic benefits for the county,

surrounding counties, and the entire state of Ohio (IBEW Br. at 5). IBEW witness Hook testified that 500 or more electrical workers would be required for the construction and 63 would be required for long-term maintenance (IBEW Br. at 5, citing IBEW Ex. 1 at 5-6). IBEW explains that the Project should have long-term benefits, as the growth of its apprenticeship programs over the last five years demonstrates the demand for skilled labor on solar infrastructure like Oak Run and that there will be consistent job opportunities for decades to come (IBEW Br. at 6, citing IBEW Ex. 2 at 3-4). Relatedly in brief, Dr. Boeckl asserts that the Townships overlook the benefits of economic output from the Project during construction and the revenue that Madison County and the Townships would derive from the Project. Dr. Boeckl and the IBEW argue that the economic output resulting from the Project's construction is not temporary and, rather, it offers permanent benefits from Applicant's commitment to continue the site's exclusive agricultural use and that the Project will generate revenue via taxes on the Project or the PILOT program. (Dr. Boeckl Initial Br. at 6, 15; IBEW Reply Br. at 7.)

{¶ 205} Regarding environmental benefits, Oak Run presents that construction and operation of the Project will limit development of the land for industrial or residential developments, which competes for community resources and eliminates the ability to return the land to cultivated cropland upon decommissioning of the Project (App. Initial Br. 66, App. Ex. 1 at 120). The Applicant also points out that construction on cultivated land with vegetated ground cover—planted under the solar modules and in other portions of the Project without infrastructure—allows the soil to rest during the Project' life. The Applicant notes that the plants will provide an increase in nutrients to the soils (App. Initial Br. at 66-67, App Ex. 1 at 132).

{¶ 206} OEC and Dr. Boeckl also assert that Oak Run benefits the public interest as a mitigation to climate change. OEC points out that the Supreme Court of Ohio has approached the public interest analysis by balancing the likelihood of risks against the potential benefits, referring to *Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 166

Ohio St.3d 438, 187 N.E.3d 472 (2021). OEC and Dr. Boeckl agree that the consequences of climate change threaten Ohio's economy and, unlike other generation facilities, the Project would not require any burning of fossil fuels and does not require large amounts of cooling water. (OEC Initial Br. at 11, 13, citing to OEC Ex. 1; Dr. Boeckl Reply Br. at 12.)

{¶ 207} Oak Run emphasizes the history of this development, including the intentionality of developing the Project in close proximity to the Marysville–Flatlick 765 kV transmission line, which had available capacity to support the 800-MW Generating Facility; the increasing demand for energy in Ohio; landowners interested in signing purchase options for the land; and Madison County's approval of an Alternative Energy Zone for the County in accordance with R.C. 5727.75 (App. Initial Br. at 67-68, citing App. Ex. 1 at 34). At the outset of the process, Oak Run's representatives conducted meetings with the local government and the general public to provide information and to gather support for the Project and assure that, to the extent possible, their comments and suggestions were incorporated into the construction and design of the Project (App. Initial Br. at 68, citing App. Ex. 1 at 54). The Applicant represents that it engaged in extensive public outreach efforts prior to filing its Application. Oak Run states that its public information meetings were well attended by the public and Oak Run received feedback regarding various elements of the Project and the feedback was incorporated into the Application (App. Initial Br. at 68-69, citing App. Ex. 23 at 8-9). Further, Oak Run commits to keep interacting with the community stakeholders and incorporate the feedback received into Project design (App. Initial Br. at 69, citing App. Ex. 1 at 41; App. Ex. 23 at 16). The Applicant states that it has been in contact with numerous environmental stakeholders in Madison County as far back as 2019 when development activities were underway for the Madison Fields Solar Project, including, but not limited to, the Darby Creek Association, the SWCD, and the ODNR Office of Scenic Rivers (App. Initial Br. at 69, citing App. Ex. 23 at 10). The Applicant presents that stakeholder comments have been incorporated into numerous plans and commitments from the Project (App. Initial Br. at 69). To further partner with the community, Oak Run initiated the Residential Solar Program, which is an opportunity for

neighbors of the Project to receive residential solar systems (App. Initial Br. at 69, citing App. Ex. 1 at 55; App. Ex. 23 at 13). The Applicant clarifies that if a resident does not wish to install solar or solar may not be suitable for their property, the Applicant will offer other benefits such as roof repairs, energy efficiency, tree planting, or even direct financial payments (App. Initial Br. at 69-70, citing App. Ex. 1 at 55-56).

{¶ 208} Oak Run represents that Savion proceeded with and put forth more than \$13 million in development and land purchase investment in Madison County for the Oak Run Project relying in good faith, in large part, upon the support and encouragement of the Board of Madison County Commissioners (App. Initial Br. at 70, citing App. Ex. 23 at 8-13). The Applicant recalls that it first approached the County Commission in June 2021 and Oak Run also began reaching out to the Townships involved in the Project as early as October 2021 (App. Initial Br. at 70, citing App. Ex. 26 at 7-8). Oak Run presents that the Commissioners remained supportive through 2021 and 2022, and that it made significant land purchases relying in good faith on the support of Madison County throughout 2021 and 2022 (App. Initial Br. at 71). Oak Run explains that in an effort to address developing commissioner concerns, at the March 7, 2023 meeting, it presented the commissioners with a memorandum of understanding (MOU), in which Oak Run committed to a number of additional obligations, including but not limited to: an increase in annual tax payments from \$9,000/MW to \$10,300/MW; potentially converting a portion of annual payments to an upfront lump sum payment; working with OSU to expand the Molly Caren Agricultural Center located in Madison County, including an Agrivoltaics Center; increased job commitments; implementation of agrivoltaics at the Project, with specific commitments included; working with the Madison County Engineer prior to construction and provide for feedback; during operation, incorporation of design and construction lessons learned from the Madison Fields Solar Project; and continued collaboration with local stakeholders (App. Initial Br. at 72-74, citing App. Ex. 26 at 13, Ex. SM-3; App. Ex. 29 at 14; App. Ex. 34 at 7).

{¶ 209} During the hearing, Madison County Commissioner Forrest recalled that there was sentiment that the MOU addressed everything Madison County requested. Further, the Applicant presents that despite the commissioners' unwillingness to execute the MOU, it promises to execute its commitments, as it was incorporated into the Stipulation and submitted as part of the Application (App. Initial Br. at 74, citing App. Ex. 26 at 14).

{¶ 210} Oak Run notes that Savion conducted continuous outreach efforts in Madison County to educate the community about the Project, foster a dialogue about community benefits from the Project, build relationships with key stakeholders and organizations, and answer questions/concerns from community members (App Initial Br. at 74-75, citing App. Ex. 25 at 5). As detailed by Applicant witness Guinty, since May 2021, Oak Run engaged in a significant number of additional public outreach efforts, including an unofficial public information meeting in December 2021. Savion also hosted a Solar Symposium on November 2, 2022, which was managed by a third-party professional moderator. (App. Initial Br. at 75-76, citing App. Ex. 25 at 10-11, Att. JG-5.) Also, Oak Run explains that it will implement a hotline for emergency and complaint notices, in which site staff will be qualified to attend to requests and complaints with the necessary corporate support and surrounding landowners will be provided with contact information for site staff (App. Initial Br. at 67, citing App. Ex. 1 at 56). Oak Run also developed a complaint resolution plan to address how complaints will be handled and potential mitigation techniques to be implemented for the Project (App. Initial Br. at 67, citing App. Ex. 1 at 56-57, Ex. J).

{¶ 211} Staff recommends that the Board find that the proposed Facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6) (Staff Initial Br. at 19-20). Regarding public safety, Staff notes that Oak Run committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and NFP. Staff recommends that the Applicant provide fire and emergency first responders with proper firefighting

equipment as reasonably required to enable them to respond to emergency situations at the BESS (Staff Initial Br. at 15, citing Staff Ex. 1 at 45).

{¶ 212} Staff opines that since there is no litmus test for defining “public interest, convenience, and necessity,” no single factor or set of factors may determine that R.C. 4906.10(A)(6) is met. Staff notes that the Board has examined R.C. 4906.10(A)(6) with a broad lens and balances projected benefits against the magnitude of potential impacts on the local community. Staff Initial Br. at 17, citing *In re Republic Wind, LLC*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶91. Staff recognizes that there is opposition to the Project from local governmental bodies but emphasizes that the Board has granted greater weight to such opposition when it is unanimous. Here, Staff points out that opposition from local government entities was not unanimous. Staff highlights that Madison County Commissioner Forrest testified, in his individual capacity, that Savion had been responsive and cooperating in resolving issues and complaints, and has been a good partner in the community for the Madison Fields Solar Project in Madison County (Staff Initial Br. at 19, citing Tr. I at 33). Staff also points out that Commissioner Forrest consistently voted no on the memorandum and resolution in opposition to the Project. . (Staff Initial Br. at 18-19.)

{¶ 213} OPAE contends that the record clearly demonstrates that the Project is grandfathered under SB 52 and, therefore, local opposition is not completely determinative of whether the Project meets R.C. 4906.10(A)(6). (OPAE Reply Br. at 2.) Other signatories, including Dr. Boeckl and OEC, dispute the Townships’ assertions that opposition to the Project is overwhelming or unanimous. Specifically, Dr. Boeckl contends that the Townships downplay the support of union members and other individuals from outside of Madison County, even though these individuals are those who are likely to work on the construction. Dr. Boeckl argues that the Townships failed to substantiate their opposition to the Project, including that their witnesses testified they had not reviewed the Application and were unaware of conditions applicable to Oak Run. (Dr. Boeckl Reply Br. at 2-3, 7-8.)

OEC asserts that local opposition is clearly unanimous when it is unwavering since a Project's inception, as distinguished in *Kingwood Solar I*, Opinion and Order (Dec. 15, 2022) at ¶ 143; but that is not the case here, where local elected officials' positions are not unanimous (OEC Reply Br. at 8). Furthermore, OEC raises that some of the Townships' elected officials testified that they did not read the Application; attended little to no public meetings; and did not hold their own public meeting on the Project to hear public sentiment before voting on the resolution against the Project (OEC Reply Br. at 10, citing Tr. III at 384). IBEW claims that the Townships failed to enter meaningful evidence in the record and instead solely relies on the three townships' general opposition to solar. IBEW emphasizes that not only did the Townships' three hearing witnesses testify that they did not read the Application, but also, the three townships approved resolutions in opposition to the Project two or three months before the Application was filed. (IBEW Initial Br. at 8-9, citing Townships Ex. 1 at Att. A; Townships Ex. 2 at Att. A; Townships' Ex. 3 at Att. A.)

{¶ 214} *BESS Fire and Toxicity*. The Townships argue that the risks associated with the BESS are far greater than the benefits Oak Run presents. According to the Townships, battery exposure could involve fire, mechanical shocks, decomposition, or added electric stress by misuse. However, the Townships concede that public exposure to lithium is unlikely but only if the battery systems are properly maintained, monitored, and secured. Further, the Townships point out that lithium can cause bodily harm. (Townships Initial Br. at 37, citing Townships Ex. 6 at 4.) Moreover, the Townships are concerned that Oak Run has not planned a fire suppression system and that the only recourse if a fire begins is to prevent the fire from spreading to other battery containers and the surrounding community (Townships Initial Br. at 38, citing App. Ex. 9 at 3-4; Townships Ex. 1 at 4; Townships Ex. 2 at 4; Townships Ex. 3 at 4). Furthermore, the Townships claim that Oak Run has not ascertained whether the local fire department has enough water to prevent a fire's spread at the BESS (Townships Initial Br. at 38, citing Tr. I at 57-58).

{¶ 215} In response, Oak Run emphasizes that the Townships admitted that lithium exposure is not likely, so long as the BESS is well maintained, monitored, and secured and that a battery fire is not a normal condition (App. Reply Br. at 46-47). The Applicant disputes the Townships' claims that Oak Run has not made sufficient commitments to address concerns over the BESS. Oak Run points out that it commits to: comply with all government regulations, industry requirements and BMPs for safe operation; locate and design the BESS facilities to not allow for fire propagation from one enclosure to another enclosure; provide the fire and emergency responders with proper equipment and annual training; and place the BESS approximately one mile away from the nearest neighbors (App. Reply Br. at 47, citing App. Ex. 1 at 22-24; App. Ex. 4; App. Ex. 9; App. Ex. 11, Figure 3-2; App. Ex. 15; App. Ex. 23 at 5, 15; App. Ex. 23A at 4-5; App. Ex. 35 at 3, 5; App. Ex. 35A at 4; Jt. Ex. 1 at 6, Condition 19; Staff Ex. 4 at 5). Further, Oak Run notes that it will provide a BESS emergency response plan to Staff to ensure that the BESS complies with the latest industry standards and that Oak Run collaborates with the local authority to ensure there are sufficient water resources and a long-term supply for water for any firefighting needs in accordance with the applicable fire code (App. Reply Br. at 47-48, citing App. Ex. 23A at 3; App. Ex. 35 at 4; Jt. Ex. 1 at 6, Condition 18). Moreover, Oak Run argues that the BESS will provide a real-time balance of power supply and demand, creating a more reliable, stable and productive power grid, in alignment with R.C. 4906.10(A)(6). Further, the Applicant contends that the BESS represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternative, and other pertinent considerations in accordance with R.C. 4906.10(A)(3). (App. Reply Br. at 48.)

{¶ 216} *Conclusion.* In its determination, the Board has reviewed the Stipulation and the extensive record to find that the Facility will serve the public interest, convenience, and necessity.

{¶ 217} While the Townships argue the contrary, the Board is persuaded that the evidence supports that the proposed Facility, subject to the conditions specified in the

Stipulation, complies with the requirements specified in R.C. 4906.10(A)(6). In reaching this decision, we recognize that this criterion should be examined through a broad lens. We find that this criterion should consider the public's interest in a power siting project that ensures continued utility services and the prosperity of the state of Ohio. However, at the same time, this statutory criterion must also encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved Projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. See *In re Yellow Wood Solar Energy LLC*, Case No. 20-1680-EL-BGN, Opinion and Order (June 15, 2023) at 80; see also *In re Ross County Solar LLC*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36. Furthermore, the Supreme Court of Ohio has approached the public interest analysis by balancing the likelihood of risks against the potential benefits, referring to *Waltz v. Power Siting Bd.* (*In re Duke Energy Ohio, Inc.*), 166 Ohio St.3d 438, 187 N.E.3d 472 (2021).

{¶ 218} The Board finds that the Facility would serve the public interest, convenience, and necessity. The Board first recognizes that the Project has involved significant initial investment on Savion's part, in terms of extensive public engagement, as well as a financial commitment. As summarized above, Oak Run demonstrated its commitment to the area through its attention to detail during the initial stages of development. At the outset of development, the Applicant chose the Project area based on various positive attributes in both the community and in the locations. These characteristics include: to be in close proximity to the Marysville-Flatlick 765 kV transmission line, which had available capacity to support the 800 MW generating facility; the increasing demand for energy in Ohio; landowners interested in signing purchase options for the land; and Madison County's approval of an Alternative Energy Zone for the County in accordance with R.C. 5727.75 (App. Initial Br. at 67-68). Further, during the beginning stages of development, Oak Run's representatives held meetings with the local government and

public to provide information and to solicit support for the Project and assure that, to the extent possible, their comments and suggestions were incorporated into the construction and design of the Project (App. Initial Br. at 68, citing App. Ex. 1 at 54). Oak Run approached the County Commission in June 2021, and Oak Run was already contacting impacted townships as early as October 2021 (App. Initial Br. at 70, citing App. Ex. 26 at 7-8). Prior to its filing of the Application, Oak Run's public information meetings were well-attended by the public and Oak Run received feedback regarding various elements of the Project that were incorporated into the Application (App. Initial Br. at 68-69, citing App. Ex. 23 at 8-9). Additionally, Savion proceeded with and put forth more than \$13 million in development and land purchase investment in Madison County for the Project relying in good faith, in large part, upon the initial support and encouragement from the Board of Madison County Commissioners (App. Initial Br. at 70, citing App. Ex. 23 at 8-13). We also find that Oak Run has been engaging since 2019 in development activities with key environmental stakeholders, including the Darby Creek Association, the SWCD, and the ODNR Office of Scenic Rivers, and has incorporated such stakeholder comments into numerous plans and commitments (App. Ex. 23 at 10). Oak Run also established a Residential Solar Program for neighbors to receive residential solar systems and alternative benefits for neighbors who would be ineligible or do not wish to install residential solar (App. Ex. 1 at 55-56).

{¶ 219} Furthermore, even though the Madison County Commissioners did not execute the MOU, Oak Run remains committed to implementing the terms of the MOU. To this end, the MOU was submitted as part of the Application and Oak Run considers the terms of the MOU to be included in the requirements set forth in the Stipulation (App. Initial Br. at 74, citing App. Ex. 26 at 14). The MOU commits Oak Run to a number of heightened obligations that further demonstrate the company's commitment to working with local entities and ensuring that voiced concerns are addressed (App. Ex. 26 at 13, Attch. SM-3). Some notable terms in the document include: an increase in annual tax payments from \$9,000/MW to \$10,300/MW; potentially converting a portion of annual payments to an upfront lump sum payment; working with OSU to expand the Molly Caren Agricultural

Center located in Madison County, including an Agrivoltaics Center; increased job commitments; implementation of agrivoltaics at the Project, with specific commitments included; working with the Madison County Engineer prior to construction and provide for feedback; during operation, incorporation of design and construction lessons learned from the Madison Fields Solar Project; and continued collaboration with local stakeholders (App. Ex. 26 at Ex. SM-3). To solidify this commitment, the Board accordingly modifies the Stipulation to add the condition that where the MOU's terms have not already been explicitly adopted in the Stipulation, Oak Run shall comply with all express terms and conditions articulated in the MOU.

{¶ 220} We also take into account the unique proposal concerning the Applicant's agrivoltaics program that would be the nation's largest agrivoltaics project and first of its kind utility-scale solar energy agrivoltaics plan for livestock grazing and row crops (App. Initial Br. at 5, citing Jt. Ex. 1 at 12, Condition 31; App. Ex. 23 at 6-7; App. Ex. 23A at 4; App. Ex. 26 at 5, 14-15; App. Ex. 26A at 3). This is a new, innovative approach to farming and renewable energy production at which Madison County and the state of Ohio will be at the forefront. The benefits anticipated from agrivoltaics during Facility operations include contracts with local farmers and business for anything land-related, which will allow new income and entrepreneurial opportunities for local farmers and tenants. Further, the dual-land use potential that agrivoltaics unlocks addresses a primary concern of Project skeptics: the conversion of land to a use other than agriculture. By implementing practices such as farming areas around fencing, farming between rows of panels, livestock grazing, and bee keeping within the Project area, the site can remain productive agriculturally while generating renewable energy. (App. Ex. 26 at 6-7.) The collaboration between Oak Run's sister company and OSU will not only improve the effectiveness of agrivoltaics at this Facility, but it will help to establish BMPs for the cultivation of crops alongside utility-scale solar operations, which will further benefit future projects in the state of Ohio and around the world (App. Ex. 1 at 119).

{¶ 221} The Board recognizes that opposition to the Facility has raised concerns over the loss of valuable farmland, associated with the size of the Project Area (Staff Ex. 1 at 14; Pub. Tr. at 20-21, 75-76, 105, 135-136, 169-170, 190, 212, 214, 233-34). However, Oak Run's strong commitment to agrivoltaics is additional evidence of Oak Run's responsiveness to feedback from the local community. The Board finds that Oak Run's Vegetation Management Plan will ensure that, throughout the life of the Project, a mix of native and pollinator seeding will increase biodiversity and soil nutrients and has the potential to increase pollinators on adjacent farmed parcels (App. Ex. 1, Att. F; App. Ex. 23 at 19; Jt. Ex. 1 at 10-11, Condition 25). The Vegetation Management Plan conditioned in the Stipulation states that a minimum of 70 percent of the Project Area land should be used for agrivoltaics (Jt. Ex. 1 at 10-11, Condition 25). To ensure that the agrivoltaics component of the Facility is successfully integrated as planned, the Board modifies the Stipulation such that Condition 25 shall require certain agrivoltaic benchmarks. After the first year of operation, Oak Run should have 1,000 sheep and 2,000 crop acres, which is consistent with the first-year expectations described by Applicant witness Moser (*see* App. Ex. 26A, Supp. Att. SM-1 at 22). Thereafter, within eight years of the Project going into operation, at least 70 percent of the farmable Project Area, or 4,000 crop acres, shall contain agrivoltaics. The Board agrees this particular project land is optimal for a solar facility because, contrary to local concern that prime farmland would be wasted, Oak Run's Application, Stipulation, and MOU commit to preserving and coexisting with farmland within the community (App. Ex. 23 at 19-20). Accordingly, in the Stipulation and MOU, the Applicant committed to implementing an agrivoltaics plan that will ensure throughout the Project's life that agricultural practices will be integrated with the Project's operation and maintain the agricultural viability of the Project Area during operation and after decommissioning (App. Ex. 23 at 19; Ex. 23A at 4; Jt. Ex. 1 at 12, Condition 31). To reiterate, the Applicant's agrivoltaics plan shall include: a map of the area to be utilized for agrivoltaics, including ingress/egress points, 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; seed mix and/or cropping pattern selected for the site; times of year when the agrivoltaics will occur; livestock stocking rate; how manure and deceased livestock will be managed, if applicable; and the Applicant's plan to comply with Condition 9 in relation to any applicable permit requirements related to agrivoltaics (App. Ex. 26 at 14-15; App. Ex. 26A at 3; Jt. Ex. 1 at 4-5, 12, Conditions 9, 31). Furthermore, the Applicant has presented evidence that preliminary efforts at agrivoltaics show great promise based on comparative studies. The Board notes that in one of its studies, adding solar panels to a farm demonstrated improved productivity by 60-70 percent and generated revenue per acre for the farmer (App. Ex. 26 at 17, citing Majumdar & Pasqualetti (2018)). We also understand that Oak Run's parent company, Savion, is looking at cover crops that will decompact the soils. Oak Run also committed to consult with the SWCD regarding implementation of generally accepted and beneficial conservation practices and location of such practices (App. Ex. 26 at 15; App. Ex. 26A at 3). Accordingly, the Board finds that the Applicant demonstrates its willingness to respond to the local community's needs and concerns through its agrivoltaics facility component.

{¶ 222} Additionally, the related economic benefits entail approximately \$8.2-million in annual revenue for the local government and school (Staff Ex. 7 at 3). The Project will create hundreds of jobs and training opportunities for electrical workers in and around Madison County, as the Project is projected to create 500 or more electrical construction jobs and 63 long-term maintenance positions, in addition to long-term jobs that will be created by the agrivoltaics program (IBEW Br. at 5, citing IBEW Ex. 1 at 5-6; App. Ex. 26 at SM-3 at 2). In addition to the projected economic benefits in terms of annual tax revenue and significant job creation, Oak Run presents two distinct opportunities in its proposed agrivoltaics program and the installation of the 300 MW BESS, which will store energy in times of excess production and discharge such energy in the local grid when it is needed.

{¶ 223} As we balance the Project's public interest, convenience, and necessity, we highlight some other aspects of the Project discussed under our R.C. 4906.10(A)(2) and (3)

sections of this Order that demonstrate Oak Run's commitment to address the public's concerns. First, the Facility is compatible with the Madison County 2014 Land Use Plan and does not propose any changes to the zoning designation of the Project area. We find that the Facility is consistent with the protection and preservation of the agricultural industry since the Project will provide supplemental income to farmers and landowners via leases with the Applicant; at least 70 percent of the Project area land will be used for an agricultural purpose via the agrivoltaics program; the land within the Project area will be protected from permanent industrial or residential development; and the remainder of the Project area could return to agricultural land use per Applicant's decommissioning plan. (Staff Ex. 1 at 14; Jt. Ex. 1 at Condition 10-11, 25.) In response to local residents' concern over the Project's aesthetics, Oak Run designed the Project layout to largely avoid vegetation clearing to preserve their natural screening function (App. Initial Br. at 24, citing App. Ex. 1 at 38). Furthermore, Oak Run will adhere to setbacks from the Project fence line of 300 feet from non-participating residences and 150 feet from the edge of adjacent roads, which is consistent with the minimum facility setbacks proposed in the Board's rules and current industry practice. Further, Oak Run will maintain setbacks of 150 feet from non-participating parcel boundaries, , which notably is 100 feet further than those proposed in the rules. *See In Re The Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023). Even so, at distances of approximately 0.4 miles, Oak Run's photo simulations show that the Project visibility decreases and is mostly absorbed into agricultural landscape. Moreover, we determine that the Project's remaining visibility will decrease over relatively short distances and the Project will become less noticeable in views greater than one mile at which point the individual modules will not be distinguishable and appear contained within the existing agricultural setting. (Staff Ex. 1 at 15; App. Initial Br. at 27-28, citing App. Ex. 1 at 126, 129, Ex. X.; App. Ex. 24 at 14.) Furthermore, Oak Run committed to work with local residents to develop and implement a vegetative screening

plan for the Project that will maintain the purpose of minimizing any potential viewshed impacts (App. Initial Br. at 46, citing App. Ex. 1 at 127, 130-131; App. Ex. 23 at 12-13).

{¶ 224} Additionally, Oak Run's Application used projected noise impacts for a worst-case scenario and all predictions were within Board standards and expectations (App. Ex. 1 at 84, Ex. R; App. Ex. 32 at 3). *See In Re The Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023).* Also, because the Applicant will manage each tranche of the Project as a separate construction effort, such a process will overall minimize the amount of ground disturbance, noise impacts, and traffic ongoing at the site at once (App. Initial Br. at 38, citing App. Ex. 1 at 31). The Applicant also responded to concerns regarding drain tiles, such that its setback commitments go above the existing setbacks on the agricultural fields in the Project area (OEC Reply Br. at 4-5, citing OEC Ex. 1 at 14). Further, Stipulation Condition 22 iterates the Applicant's commitments to properly avoid tiles, repair, and to work with parcel owners and Madison County officials and that the Project's design will ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation (App. Reply Br. at 44, citing Jt. Ex. 1 at 7, Condition 22).

{¶ 225} Also, should the Applicant encounter any listed plant or animal species prior to construction, the Applicant will report its findings to Staff (Jt. Ex. 1 at 12, Condition 30). Oak Run will place an environmental supervisor at the locations near streams and wetlands when construction is occurring in that portion of the Project to monitor and limit the potential for inadvertent impacts to such sensitive resources (App. Initial Br. at 55, citing App. Ex. 1 at 109-110). Relatedly, Oak Run has already minimized its amount of proposed tree clearing from 41.9 acres to only 3 acres of tree clearing (App. Initial Br. at 36, citing App. Ex. 11). Additionally, Oak Run will prepare a landscape and lighting plan to address potential aesthetic impacts on nearby communities, the travelling public, and recreationalists. Accordingly, the Applicant will maintain the vegetative screening for the

Facility's life and will substitute or replace any failed plantings, so that after five years, at least 90 percent of the vegetation will have survived (App. Initial Br. at 40). We reiterate that Oak Run's Vegetation Management Plan, in coordination with ODNR and the SWCD, will ensure that any associated temporary construction laydown area will be vacated and any disturbed areas will be reseeded and revegetated (App. Ex. 1 at 32). Also, the Applicant will maintain a hot line for emergency and complaint notices in which responding personnel will be qualified to address these requests and complaints with proper support (App. Ex. 1 at 56).

{¶ 226} We further determine that the record establishes that local opposition to the Project was not unanimous as the Townships represent. The Madison County Board of Commissioners were consistently not unanimous in its resolution, as Commissioner Forrest voted no on the County's memorandum and opposing resolution. Further, Commissioner Forrest testified that, in his opinion, Oak Run's parent company Savion has been responsive and cooperative in resolving issues and complaints and is a good partner in the community regarding another project in the county (Tr. 1 at 33). Importantly, through public comments, the Project also received support from the elected President of the London City School Board, the Superintendent of London City Schools, the Treasurer and Chief Financial Officer of the Jefferson Local School District, the Superintendent of the Jefferson Local School District, and the Superintendent of Benjamin Logan Local School District. The Board finds these filings from the nearby schools' locally elected and appointed officials, in addition to Commissioner Forrest's individual testimony, indicate that local governmental opposition is not unanimous in this case. The Board also notes that there were over 890 filings in the public comments section of the case docket, expressing a number of varying viewpoints both in favor of and against the Project, which reinforces that public opinion on the Project is not overwhelming either in support of or in opposition to the Project. The public comment filings in support of the Project also include the full endorsement of figures and entities such as representatives from the local school

districts, as discussed above, as well as the Ohio Chamber of Commerce and state representatives.

{¶ 227} Lastly, the Board does not find evidence to support the Townships' contention that the proposed BESS's associated risks outweigh the benefits it presents. The Townships claim that public exposure could cause bodily harm and that Oak Run has not sufficiently planned a fire suppression system. However, the Townships concede that public exposure to lithium is unlikely if the battery systems are properly maintained, monitored, and secured (Townships Ex. 6 at 4). The Board notes Oak Run's commitments to comply with all applicable government regulations, industry requirements, and BMPs for safe operation. Further, the Applicant commits to providing fire and emergency responders with proper equipment and annual training in the event of an emergency. As such, Oak Run is required to submit all related plans to Staff to ensure that the BESS complies with the latest industry standards and that Oak Run collaborates with the local authority to ensure there are sufficient water resources and a long-term supply for water for any firefighting needs in accordance with the applicable fire code. (App. Ex. 1 at 22-24; App. Ex. 4; App. Ex. 9; App. Ex. 11, Figure 3-2; App. Ex. 15; App. Ex. 23 at 5, 15; App. Ex. 23A at 3-5; App. Ex. 35 at 3-5; App. Ex. 35A at 4; Jt. Ex. 1 at 6, Conditions 18, 19; Staff Ex. 4 at 5.)

{¶ 228} As described above, Staff conducted a thorough investigation into the associated economic benefits and local support for the Project. As it has been discussed, the Board does not find that there is a litmus test associated with this criterion. However, as a total package, we find that Oak Run presents unique opportunities that would provide significant benefits to the state, which outweighs opposition that is nonunanimous on a local government level and some local opposition that may not be fully aware of the commitments agreed to in the Stipulation and Application. Based on the evidence presented in this case, the Board agrees with Staff's assessment and concludes that the Project will serve the public interest, convenience, and necessity.

G. R.C. 4906.10(A)(7): Agricultural Districts

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

{¶ 230} Oak Run states that none of its 44 parcels that comprise the Project area are enrolled in the Agricultural District Program based on information provided by the Madison County Auditor's Office (App. Initial Br. at 76, citing App. Ex. 1 at 131). The Applicant anticipates that the disturbed soils that will be restored post-construction, and at decommissioning, will contain the same organic content or more as compared to current conditions (App. Initial Br. at 77, citing App. Ex. 4). Oak Run explains that construction on cultivated land – with vegetated ground cover planted under the solar modules and in other portions of the Project without infrastructure – allows the soil to “rest” during the life of the Project and the plants will increase nutrients in the soils (App. Initial Br. at 77, citing App. Ex. 1 at 132). Oak Run states that during operation, when the land is left to rest and recover, organic content will remain consistent or increase (App. Initial Br. at 77). Oak Run presents that its Vegetation Management Plan will ensure that throughout the Project's life, the mix of native and pollinator seeding will increase biodiversity and soil nutrients and has the potential to increase pollinators on adjacent farmed parcels (App. Initial Br. at 77, citing App. Ex. 1 at Att. F; App. Ex. 23 at 19; Jt. Ex. 1 at 10-11, Condition 25). Further, Oak Run states that its agrivoltaics plan will ensure that during the Project's life, the agricultural practices deployed will be successfully integrated with the Project's operation and maintain the agricultural viability of the Project area during operation and after decommissioning (App. Initial Br. at 77, citing App. Ex. 23 at 19; App. Ex. 23A at 4; Jt. Ex. 1 at 12, Condition 31). Oak Run asserts that once the Project is decommissioned, the area could be used again entirely for row crops or other agricultural projects, as the impacts of the Project will be temporary. The Applicant claims that the use of the land for solar is optimal because of its ability to preserve and coexist with farmland within the community. (App. Initial Br. at 77-78, citing App. Ex. 23 at 19-20.) Oak Run emphasizes that the agrivoltaics program, as entailed under Stipulation Conditions 9 and 31, are supported by various reports that state

the implementation of agrivoltaics will offset any unintended changes to the agribusiness industry (App. Initial Br. at 78, citing App. Ex. 26A at 3, Supp. Att. SM-1; Jt. Ex. 1 at 4-5, 12, Conditions 9, 31; App. Ex. 26 at 17).

{¶ 231} Staff notes that although construction and operation of the Facility will disturb the soil and could lead to broken drainage tiles, Oak Run has committed to avoiding damaging drainage tiles. Staff notes that Oak Run witness Pursifull testified that Oak Run will be working with government officials, records, and local property owners to document and map the existing conditions of surface and subsurface drainage systems and will develop a plan to avoid and repair field tile as needed (Staff Initial Br. at 20, citing App. Ex. 31 at 2-5; Staff Ex. 1 at 48). Staff also highlights the potential benefits related to Applicant's Agrivoltaics Plan in terms of research and dual-purpose farming opportunities (Staff Initial Br. at 20-21, citing App. Ex. 26, Tr. II at 213-214). Staff recommends that the Board find the Applicant has complied with the requirements of R.C. 4906.10(A)(7) (Staff Initial Br. at 21).

{¶ 232} Based on the record, the Board concludes that the Facility satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable provisions of the Stipulation and consistent with this Order.

H. R.C. 4906.10(A)(8): Water Conservation Practice

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

{¶ 234} Oak Run presents that the record establishes that the Facility will incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8). The Applicant states that the Project will not require any cooling water during operation, and therefore will not need to treat or discharge water, so it is not expected to impact water quality (App. Initial Br. at 79, citing App. Ex. 1 at 21, 113; App. Ex. 23 at 20). Oak Run notes that during construction, the Project will include O&M facilities that could potentially

require a water source and restroom facilities. Oak Run states that the Project will obtain proper permits if a well and septic system are included in the final design (App. Initial Br. at 79, citing App. Ex. 1 at 21, 73). Additionally, the Applicant points out that during operation of the BESS and collector substation components, no water will be used. And for the solar panels, it is anticipated that rain will be sufficient to keep them clean (App. Initial Br. at 80, citing App. Ex. 1 at 73). Oak Run states that in the event that the modules require occasional cleaning, it will occur only on a targeted area of the Project where needed, and it will not require a significant amount of on-site water (App. Initial Br. at 80, citing App. Ex. 1 at 21, 73; App. Ex. 9; App. Ex. 23 at 20). Oak Run anticipates that any water for cleaning will be obtained from one of the existing on-site wells or trucked in from off-site and it is expected to utilize no more than one liter of water per module (App. Initial Br. at 80, citing App. Ex. 1 at 21, 73; App. Ex. 9).

{¶ 235} During construction, temporary water will be needed for construction trailers, the O&M facilities, and potentially dust control (App. Initial Br. at 79, citing App. Ex. 1 at 21, 23; App. Ex. 24 at 14). Oak Run notes that water use could come from existing water wells onsite, new water wells could be drilled, or water could be trucked to the site (App. Initial Br. at 79, citing App. Ex. 1 at 21, 23). Oak Run also notes that the site mixes for permanent vegetation will be coordinated with the ODNR, the Darby Creek Association, and the SWCD to include appropriate species of native grasses and plants that will not need irrigation to thrive (App. Initial Br. at 79, citing App. Ex. 23 at 20).

{¶ 236} Staff finds that neither construction nor operation of the Facility will require the use of significant amounts of water. Staff observes that other than dust control as needed, construction of the proposed Facility will not require a significant use of water and nearly no water or wastewater discharge is anticipated. Staff asserts that the proposed Facility will incorporate maximum feasible water conservation practices, and subject to the agreed conditions, complies with the requirements specified in R.C. 4906(A)(8). (Staff Initial Br. at 21.)

{¶ 237} Upon a review of the record, the Board finds that Oak Run incorporates the maximum feasible water conservation practices, and, therefore, satisfies the requirements of R.C. 4906.10(A)(8), provided that the certificate issued incorporates the applicable provisions of the Stipulation involving water conservation coordination with the appropriate entities. In making this determination, the Board recognizes the representation that construction and operation of the Project will not require the use of significant amounts of water (Staff Ex. 1 at 50).

IX. CONSIDERATION OF STIPULATION

{¶ 238} 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 may afford 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, Opinion, Order, and Certificate (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN, Opinion, Order, and Certificate (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB, Opinion, Order, and Certificate (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA, Order on Certificate Amendment (May 1, 2013); *In re American Transm. Systems, Inc.*, Case No. 12-1727-EL-BSB, Opinion, Order, and Certificate (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 will 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?

{¶ 239} Oak Run witness Sean Flannery testified that the Stipulation meets the criteria for Board approval. The witness testified that the Stipulation is a good faith settlement that resulted from serious negotiations among capable, knowledgeable parties and that it will benefit the public interest. (App. Ex. 23A at 8-9.)

{¶ 240} Witness Flannery confirmed that counsel, representing each of the parties, was invited to all settlement negotiations. Oak Run presents that during the deliberations leading up to the Stipulation, representatives of all the parties were aware of and knowledgeable about the issues addressed in the Stipulation and were kept informed on the progress of the deliberations. (App. Initial Br. at 80, App. Ex. 23A at 8.)

{¶ 241} Upon review, the Board finds that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board recognizes that counsel for parties and all intervenors were invited to all settlement conversations. Furthermore, party representatives involved in deliberations were aware of and knowledgeable about the issues addressed in the Stipulation. Additionally, we find that the record reflects the Applicant's efforts to address and incorporate solutions addressing public concerns in the Stipulation. Thus, the Board observes that the Applicant participated in good faith negotiations with all parties to address and resolve all concerns.

{¶ 242} Regarding the second prong of the Stipulation test, Oak Run contends that the record reflects that the construction and operation of the Facility benefits the public interest, convenience, and necessity. The Applicant opines that the record evidence, together with the commitments in the Stipulation, ensures that the Project will represent the minimum adverse environmental impact for both construction and operations. Oak Run posits that its Application, supported by expert testimony and the Stipulation, addresses

public interest, convenience, and necessity through the discussion and assessment of topics including supportive community members and government officials; positive socioeconomic impacts; potential of agrivoltaics; guarantee for liability insurance; complaint resolution process; implementation of community requests and feedback; implementation of environmental conservation measures; and contribution to grid reliability from local generation via the installation of the BESS, among others. Moreover, Oak Run claims that as a package, the Stipulation ensures that the construction and operation of the Facility provides benefits to the public interest. Oak Run asserts that since the beginning of development, the Project has encouraged feedback, discourse and engagement from the local community. The Applicant states that feedback during settlement led to improvements and enhancements to the Project, including, but not limited to, site design and layout changes based on feedback from the ODNR, the Darby Creek Association, the SWCD, County officials, and community members; commitments from Oak Run contained in the MOU presented to the County and elsewhere in the record to hire local workers for the construction and operation of the Project; and commitment to involve local officials, including the Madison County Board of County Commissioners, Madison County Engineer, the OFBF, and the SWCD to coordinate on Project design and required plans prior to Project construction, including the Vegetation Management Plan, Agrivoltaics Plan, grading plan, and RUMA, as detailed in the conditions of the Stipulation. (App. Initial Br. at 80-82; App. Ex. 23A at 9; App. Ex. 25 at 13-15.)

{¶ 243} The Board determines that, as a package, the Stipulation appears to benefit the public interest. As fully discussed above in the Board's analysis of the Project's compliance with R.C. 4906.10(A)(6), the Facility will generate significant positive impacts on the local economy and community. The Facility will add low-cost electricity to the state of Ohio's supply of energy for decades to come. Further, the Board finds that the installation of the BESS component will support local grid resiliency. We are encouraged that in addressing concerns raised by the public, the Applicant made adjustments to its site design and layout and commits to involve local officials to coordinate on Project

designs and required plans prior to construction. Additionally, the Board finds value in the positive socioeconomic impacts, including commitment to create local and statewide employment opportunities and the estimated \$8.2-million annual tax revenue, among other benefits the Project poses. We also find that Oak Run commits to multiple conditions in its Application and the Stipulation that were not required, such as providing fire and emergency responders with annual training to enable them to respond to emergency situations at the BESS and expanding the proposed agrivoltaics program. We determine that Oak Run has committed to several promises that go above and beyond standard practices including, but not limited to, its proposed setbacks, which are further than the setback minimums approved in the Board's most recent rules proceeding; implementation of a new, innovative agrivoltaics program that would be the nation's largest utility-scale project of its kind, which addresses concerns over potential loss of farmland; and MOU terms requiring collaboration with local entities during final stages of development. *See In Re The Ohio Power Siting Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7, Case No. 21-902-GE-BRO, Finding and Order (July 20, 2023).* And lastly, we highlight our modification to the Stipulation raised under our R.C. 4906.10(A)(6) discussion, in which Oak Run shall comply with all aspects of the MOU where the Stipulation has not already explicitly adopted such commitments (Jt. Ex. 1 at 6, 12, Conditions 19, 31).

{¶ 244} Finally, with respect to the third prong of the test, Oak Run argues that the record reflects that it has complied with every requirement, both statutory and regulatory, that is necessary in proceedings requesting a certificate to site a generation facility in Ohio. The Applicant presents that it is well-documented that all the important regulatory principles and practices – both substantive and procedural – have been met and, in some situations, exceeded. Oak Run asserts that no regulatory principle will be violated, as evidenced by the extensive record before the Board. (App. Initial Br. at 82-83.)

{¶ 245} Furthermore, the Board is convinced that the Stipulation does not violate any important regulatory principle or practice. The Board has reviewed the Facility under the eight R.C. 4906.10(A) criteria for certificate eligibility, in addition to the Board's three-prong Stipulation test. In essence, as we have already addressed Oak Run's compliance under the R.C. 4906.10(A) criteria, we determine that the Townships' arguments in opposition to the Facility approval are not persuasive here. Further, we find that the record demonstrates that Applicant has complied with every requirement necessary for requesting a certificate to site a solar generation facility, transmission lines, and BESS facility in Ohio.

{¶ 246} In conclusion, and based upon the record in these proceedings, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the Facility as described in the Application filed in this case, subject to the conditions set forth in the Stipulation, as amended, and this Opinion and Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as amended, and hereby issues a certificate to Oak Run in accordance with R.C. Chapter 4906.

X. CONCLUSION

{¶ 247} Accordingly, based on the record in this proceeding, the Board concludes that all the required elements of R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the solar-powered electric generation Facility described in Oak Run's Application, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order. The Board thus approves and adopts the Stipulation and hereby issues a certificate to Oak Run in accordance with R.C. Chapter 4906.

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 248} Oak Run is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

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

{¶ 250} On May 26, 2022, Applicant filed a motion for waiver and request to file a joint generation and transmission application.

{¶ 251} On June 7, 2022, Oak Run filed a preapplication notification letter regarding the proposed Facility.

{¶ 252} On June 17, 2022, Oak Run filed with the Board proof of publication regarding its public information meeting held on June 22, 2022.

{¶ 253} By Entry issued June 24, 2022, the ALJ granted the motion for waiver to allow the standard generation and associated electric transmission certificate applications to be filed jointly.

{¶ 254} On July 18, 2022, Applicant filed a second preapplication notification letter for the Project.

{¶ 255} On August 1, 2022, Oak Run filed a second proof of publication regarding its public information meeting held on August 2, 2022.

{¶ 256} On September 2, 2022, as later supplemented on March 22, 2023, Applicant filed the Application for a certificate of environmental compatibility and public need to develop, construct, and operate the Facility.

{¶ 257} By letter dated November 1, 2022, the Board notified Oak Run that its Application had been found to be sufficiently complete pursuant to Ohio Adm. Code Chapter 4906-1, et seq.

{¶ 258} On November 14, 2022, Applicant filed proof of service of its accepted and as required by Ohio Adm.Code 4906-3-07 and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm. Code 4906-3-07.

{¶ 259} On January 20, 2023, the ALJ established the effective date of the Application as January 20, 2023, and adopted a procedural schedule, which included the date of the local public hearing and the adjudicatory hearing. Further, the Entry granted Oak Run's motion for protective order and motions for waivers.

{¶ 260} On March 28, 2023, Staff filed its Staff Report.

{¶ 261} On April 7, 2023, intervention was granted to the Townships, Madison County, SWCD, OFBF, IBEW, OEC, Dr. Boeckl, and OPAE.

{¶ 262} On April 11, 2023, the local public hearing was held, as scheduled, at the Jonathan Alder High School, 9200 US-42, Plain City, Ohio 43064. During the local public hearing, 47 individuals provided testimony.

{¶ 263} On May 2, 2023, Oak Run filed the direct testimonies of their respective witnesses. And on May 11, 2023, Applicant filed the supplemental direct testimonies of their respective witnesses.

{¶ 264} On May 10, 2023, Staff, IBEW, Dr. Boeckl, IBEW, and the Townships filed the direct testimonies of their respective witnesses.

{¶ 265} On May 11, 2023, Applicant filed a stipulation signed by Applicant, OFBF, OEC, OPAE, IBEW, and Dr. Boeckl.

{¶ 266} The adjudicatory hearing was held, as scheduled, on May 15, 2023 and was completed on May 17, 2023. At the adjudicatory hearing, the Stipulation was presented for the Board's consideration. Applicant, Staff, the Townships, IBEW, and OEC presented witnesses who offered hearing testimony and/or hearing exhibits.

{¶ 267} On July 10, 2023, Applicant, Staff, IBEW, Dr. Boeckl, OP&E, OEC, and the Townships filed initial post-hearing briefs.

{¶ 268} On July 31, 2023, Applicant, Staff, IBEW, Dr. Boeckl, OP&E, OEC, and the Townships filed post-hearing reply briefs.

{¶ 269} The record establishes the need for the Project, consistent with R.C. 4906.10(A)(1).

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

{¶ 271} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order, 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).

{¶ 272} The record establishes that the Facility, 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 Facility will serve the interests of electric system economy and reliability consistent with R.C. 4906.10(A)(4).

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

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

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

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

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

{¶ 278} Based on the record, the Board finds that Oak Run's Application will be approved, and a certificate will be issued, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the electric generation Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion and Order.

XII. ORDER

{¶ 279} It is, therefore,

{¶ 280} ORDERED, That the Stipulation, as amended by this Opinion and Order, be approved and adopted. It is, further,

{¶ 281} ORDERED, That a certificate be issued to Oak Run for the construction, operation, and maintenance of the solar-powered electric generation Facility subject to the conditions set forth in the Stipulation, as amended, and consistent with this Opinion and Order. It is, further,

{¶ 282} ORDERED, That a certificate be issued to Oak Run for the construction, operation, and maintenance of the two gen-tie transmission lines facilities subject to the

conditions set forth in the Stipulation, as amended, and consistent with this Opinion and Order. It is, further,

{¶ 283} ORDERED, That a certificate be issued to Oak Run for the construction, operation, and maintenance of the BESS facility subject to the conditions set forth in the Stipulation, as amended, and consistent with this Opinion and Order. It is, further,

{¶ 284} ORDERED, That all required submissions to be provided to Staff shall also be filed on the docket in this case. It is, further,

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, 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

Kelly McCloud, Designee for Brian Baldrige, Director
Ohio Department of Agriculture

Gregory Slone
Public Member

Dissenting:

Jim Moran, Ad Hoc Member
Somerford Township Trustees

Chris Wallace, Ad Hoc Member
Madison County Commissioners

IMM/DMH/dr

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in

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

Summary: Opinion & Order that the Ohio Power Siting Board approves and adopts the stipulation and recommendation between Oak Run Solar Project, LLC, the Ohio Farm Bureau Federation, Ohio Partners for Affordable Energy, Dr. John Boeckl, International Brotherhood of Electrical Workers, Local Union 683, Ohio Environmental Council, and the Board Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Oak Run Solar Project, LLC for the construction, operation, and maintenance of an 800 megawatt solar-powered electric generation facility, two 230 kilovolt transmission lines, and a 300 megawatt battery energy storage facility in Monroe, Somerford, and Deercreek Townships in Madison County, Ohio. electronically filed by Ms. Donielle M. Hunter on behalf of Ohio Power Siting Board.

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
BORDER BASIN I, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-277-EL-BGN

ORDER ON REHEARING

Entered in the Journal on September 21, 2023

I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the application for rehearing filed by Robin L. Gardner, Michael J. Gardner 2011 Marital Trust #1, Gardner Brothers, LLC, Richard Scott Lewis, Sarah Lewis, The Richard S. Lewis Revocable Trust, Deidra L. Noel, Jeff Overmyer, and Shirley Overmyer.

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} Border Basin I, LLC (Border Basin or Applicant) 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. 4906.06, as well as Ohio Adm.Code Chapters 4906-2 and 4906-4.

{¶ 5} On June 15, 2021—as supplemented on July 21, 2021, August 31, 2021, September 29, 2021, and November 12, 2021—Border Basin filed an application with the Board for a certificate of environmental compatibility and public need to construct an up to

120 megawatt solar-powered electric generation facility in Cass Township, Hancock County, Ohio (Facility or Project).

{¶ 6} Through the course of this proceeding, the administrative law judge (ALJ) granted intervention to the Board of County Commissioners of Hancock County (the County), the Cass Township Board of Trustees (the Township), the Ohio Farm Bureau Federation (OFBF), and Steven and Tonya Miller. The ALJ also granted intervention to Robin L. Gardner, the Michael J. Gardner 2011 Marital Trust #1, Gardner Brothers, LLC, The Richard S. Lewis Revocable Trust, Richard Scott Lewis, Sarah Lewis, Deidra Noel, Jeff Overmyer, and Shirley Overmyer (collectively, Resident Intervenor or the Residents).

{¶ 7} Subsequently, the ALJ established the effective date of the application as January 7, 2022, and issued a procedural schedule instituting various filing deadlines and hearing dates.

{¶ 8} On March 16, 2022, Staff filed a report of investigation (Staff Report).

{¶ 9} Applicant, Staff, and Resident Intervenor Deidra Noel, Sarah Lewis, Richard S. Lewis, Jeff Overmyer, and Robin L. Gardner filed direct testimony. Supplemental testimony was later filed by Applicant and Jeff and Shirley Overmyer (the Overmyers).

{¶ 10} On April 13, 2022, Border Basin filed a joint stipulation and recommendation (Stipulation), which was agreed to by Border Basin, Staff, OFBF, the County, and the Township (Signatory Parties). In the Stipulation, Signatory Parties recommended that the Board approve Border Basin's application subject to 44 conditions.

{¶ 11} The evidentiary hearing commenced on April 19, 2022, and concluded the next day. At the hearing, Border Basin and Staff presented the testimony of 23 witnesses in support of the Stipulation. Resident Intervenor Jeff Overmyer, Sarah Lewis, Richard S. Lewis, Robin L. Gardner, and Deidra Noel testified in opposition to the Project.

{¶ 12} On June 9, 2022, and June 10, 2022, Robin L. Gardner, individually, and as trustee on behalf of the Gardner Brothers, LLC (the Gardners) and Border Basin filed timely initial post-hearing briefs. Also on June 10, 2022, the other Resident Intervenors and Steven and Tonya Miller filed a document entitled “Joinder to Merits Brief,” in which they expressed their intent to join in and incorporate by reference the brief filed by the Gardners. Subsequently, on July 1, 2022, reply briefs were filed by Border Basin, the Gardners, and Staff. The Gardners’ reply brief was, again, the subject of a “Joinder to Reply Brief” indicating other individual intervenors supported and joined in those arguments.

{¶ 13} On February 16, 2023, the Board issued an Opinion, Order, and Certificate (Order) that granted a certificate of environmental compatibility and public need to Border Basin for the construction, operation, and maintenance of the Facility, subject to the conditions set forth in the Stipulation and otherwise consistent with the Order.

{¶ 14} R.C. 4903.10 provides that any party to a proceeding before the Public Utilities Commission of Ohio (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. The statute further directs that an application for rehearing shall set forth specifically the ground or grounds upon which the party seeking rehearing considers an order to be unreasonable or unlawful.

{¶ 15} R.C. 4906.12 states, in part, that R.C. 4903.02 to 4903.16 apply to a proceeding or order of the Board in the same manner as if the Board were 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.

{¶ 16} On March 20, 2023, Resident Intervenors filed an application for rehearing of the Board’s February 16, 2023 Order.

{¶ 17} On March 30, 2023, Border Basin filed a memorandum contra the Residents' application for rehearing.

{¶ 18} By Entry dated April 12, 2023, pursuant to the authority set forth in Ohio Adm.Code 4906-2-32(E), the ALJ granted Resident Intervenors' application for rehearing for the sole purpose of affording the Board more time to consider the issues raised in the application for rehearing.

III. DISCUSSION

{¶ 19} Resident Intervenors assert that the Board's Order is unlawful and unreasonable for a variety of reasons argued under ten assignments of error. In introduction to their specific assignments of error, Resident Intervenors assert several general arguments. Resident Intervenors allege that the Board erred in granting a certificate where Border Basin failed to demonstrate that the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3) where "minimum" should be interpreted to mean "the least quantity assignable, admissible, or possible." The Residents also allege that Applicant has not provided the information required by Board rules and R.C. 4906.10(A)(2) necessary to determine the nature of the Project's probable environmental impact under R.C. 4906.10(A)(3). Nor do Resident Intervenors believe that Border Basin provided the information required by Board rules necessary to determine compliance with R.C. 4906.10(A)(5), (A)(6), and (A)(8). Subsumed in all these arguments, Resident Intervenors allege that the evidentiary record lacks information required by Board rules, such as definitive design and mitigation plans for the various types of damage the Facility could cause, rendering the approval of the Facility unlawful and unreasonable. Finally, the Residents assert that the proceeding was marred by procedural flaws.

{¶ 20} Border Basin submits that Resident Intervenors' arguments on rehearing were not previously offered for review during the adjudicatory stage of the proceeding but are instead being presented for the first time on rehearing. As such, Applicant asserts the arguments should be denied as untimely. Notwithstanding Applicant's assertion that

Resident Intervenor's arguments are procedurally late, Border Basin states that the Order reflects that the Board properly determined, based on record evidence, that the Facility satisfies all statutory criteria for issuance of a certificate. Border Basin emphasizes that the Residents' interpretation of what must be demonstrated under R.C. 4906.10(A)(3) is faulty and has previously been rejected by the Board. Border Basin additionally contests the Residents' assertions that the record does not support the Board's findings of compliance with various statutory criteria and that Applicant failed to comply with Board rules in seeking the certificate granted by the Board's Order. Similarly, Border Basin denies that any procedural error prevented the Residents from fully participating in this proceeding. Finally, Applicant submits that each of Resident Intervenor's assignments of error raise issues that were thoroughly considered by the Board in its Order and are otherwise without merit.

{¶ 21} With this general background, the Board turns to the parties' preliminary arguments and then to Resident Intervenor's specific assignments of error.

A. Preliminary Arguments

{¶ 22} Although not raised as specific assignments of error, Resident Intervenor makes several general challenges to the Board's Order. Similarly, Applicant contests the Residents' application on rehearing to the extent it takes exception to the state of the record and raises new arguments for the Board's consideration for the first time on rehearing.

1. THE MEANING OF MINIMUM

{¶ 23} Resident Intervenor alleges that the Board erred in granting a certificate where Border Basin failed to demonstrate that the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3) where "minimum" should be interpreted to mean "the least quantity assignable, admissible, or possible." Border Basin on the other hand submits that the Board previously addressed and dismissed this statutory interpretation. Specifically, the Board found that Resident Intervenor's interpretation is

extreme, where the “only Project that could satisfy [the] restrictive interpretation would be one that is not built, as the least quantity of adverse environmental impact possible would be zero.” *In re Application of Harvey Solar I, LLC*, Case No. 21-164-EL-BGN (*Harvey*), Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 257. Indeed, Applicant stresses that cases addressing the jurisdiction and authority of the Board demonstrate that R.C. 4906.10(A)(3) authorizes the Board to grant certification where the proposed facility does not have greater than a minimum adverse environmental impact. Border Basin urges the Board to reach the same conclusion here, as it did in the underlying Order.

{¶ 24} As noted by Applicant, the Board previously considered and rejected the exact argument regarding the interpretation of the word “minimum” in R.C. 4906.10(A)(3) in *Harvey*. *Harvey*, Opinion and Order (Oct. 20, 2022) ¶ 248, 257. We hold to that conclusion now. The Board further notes that the Ohio Supreme Court has affirmed that R.C. 4906.10(A)(3) “does not require the board to conclude that the facility will have no adverse environmental impact—only that the adverse environmental impact is minimal in light of the constraints.” *In re Application of Firelands Wind, LLC.*, Slip Opinion No. 2023-Ohio-2555, ¶ 27.

2. ALLEGED PROCEDURAL FLAW

{¶ 25} Resident Intervenors also aver that procedural flaws marred this proceeding. Specifically, the Residents state that Border Basin’s notice of the first public information meeting (PIM) was not sent to all requisite neighbors. And, although Applicant did hold a second PIM in August 2022 to ensure those who did not receive the first notice had an opportunity to participate, the Residents argue that Border Basin’s faulty notice deprived some Resident Intervenors of the time necessary to obtain counsel. For example, Resident Intervenors state that Ms. Gardner found an attorney who helped her by filing her petition to intervene and written testimony but said counsel did not actually represent her in the case. Resident Intervenors state that, as a result of the delay in Ms. Gardner receiving notice, her written direct testimony was excluded from admission at hearing upon Border

Basin's objection due to the fact that the testimony was filed on behalf Ms. Garder and the Michael J. Gardner 2011 Marital Trust #1, which could not proceed without representation of counsel. In short, Resident Intervenor submit that the faulty first notice adversely impacted the Residents' ability to find counsel in time for hearing and impaired their testimony and cross-examination at the hearing.

{¶ 26} Border Basin disputes the Residents' contention. Border Basin notes that Ohio Adm.Code requires an applicant to hold a PIM, to send letters to specified landowners within or contiguous to the planned facility providing notice of the PIM and other information, and to publish notice of the PIM in a newspaper of general circulation in the area. *See* Ohio Adm.Code 4906-3-03. While conceding that not all specified landowners received the required notice for the first PIM, Border Basin contends the error was corrected by way of a second PIM. Specifically, Border Basin scheduled a second PIM, filed a motion to extend the proceeding in light of the second PIM, which would be held in person, sent the requisite letters to all intended landowners containing all required information, and published notice of the second PIM. Moreover, states Border Basin, a review of the procedural history and filed documents reveals ample time existed for the Residents to obtain counsel. For example, the intervention deadline set by the Board was February 18, 2022, which was more than six months after notification of the second PIM was sent to all Resident Intervenor. Applicant notes that all Resident Intervenor were able to timely intervene in the proceeding and, in fact, the Gardners did so through counsel. Border Basin observes that no party requested a continuance or additional time to obtain counsel. Further, Resident Intervenor Gardner was able to, and did, retain counsel to submit post-hearing briefs, neither of which alleged or argued that lack of notice of the first PIM caused harm. Finally, Border Basin notes that Ohio Adm.Code 4906-3-03(B)(2) provides that an inadvertent failure to notify all persons described in the rule does not constitute failure to provide public notice, provided there is substantial compliance with the rules. Similarly, R.C. 4906.06(D) allows a party to cure inadvertent failure of service by Board order designed to provide adequate notice enabling effective participation. Border Basin submits any error

in notice associated with the first PIM was cured by holding and properly noticing the second PIM, all of which was done such that Resident Intervenor had more than sufficient time to engage counsel prior to hearing.

{¶ 27} The Board notes that, in post-hearing briefing, Resident Intervenor previously argued that the error in notice of the first PIM precluded a finding that the Stipulation served the public interest or that the Facility would serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6). In the Order, the Board concluded otherwise. We noted that the inadvertent failure to notify all persons described in Ohio Adm.Code 4906-3-03(B)(2) does not constitute a failure to give notice. We further noted that Border Basin took steps to alleviate its error by holding a second PIM for which separate notice was issued, which was received by the Residents. Finally, the Board concluded that the original failure in notice did not prevent Resident Intervenor's participation in the proceeding (Order at ¶ 137). While the ability to retain counsel is important, simply rephrasing the alleged result of the initial error in notice (impediment to retaining counsel instead of evidence that the Facility is not in the public interest) does not change the Board's determination that the error did not amount to a failure to give notice. Nor did the error prevent meaningful participation in this matter.¹

3. SUFFICIENCY OF INFORMATION PROVIDED

{¶ 28} The Residents also allege that Applicant has not provided the information required by Board rules and R.C. 4906.10(A)(2) necessary to determine the nature of the Project's probable environmental impact under R.C. 4906.10(A)(3). Nor do Resident Intervenor believe that Border Basin provided the information required by Board rules necessary to determine compliance with R.C. 4906.10(A)(5), (A)(6), and (A)(8). Inexorably

¹ The Board further notes that Resident Intervenor, whether individually or as a group, have been represented by no less than three different law firms: one for intervention and the filing of testimony, one for the submission of briefs, and one for the submission of this application for rehearing.

entwined in these assertions is Resident Intervenor's claim that Applicant failed to provide all information required by the Board's rules, which prejudiced the Residents and destroyed the public's right to information and to meaningful input.

{¶ 29} Border Basin disagrees and submits that the Order provides sufficient measures in compliance with the standards for certification under R.C. 4906.10(A)(2), (A)(3), (A)(5), (A)(6), and (A)(8). Initially, Border Basin observes that Resident Intervenor's initial and reply post-hearing briefs argued only that Border Basin did not satisfy R.C. 4906.10(A)(2) and (3), a position that the Board reviewed and rejected based on record evidence. Continuing, Border Basin states that, because the Residents raise objections to R.C. 4906.10(A)(5), (A)(6), and (A)(8) for the first time on rehearing, they have waived their right to assert these new arguments. Notwithstanding that waiver, Applicant argues that the Board properly considered the record evidence and correctly found that the Facility, as presented and subject to conditions in the Stipulation and Order, will comply with R.C. 4906.10(A)(5), (A)(6), and (A)(8).

{¶ 30} Border Basin further states that the Residents' supposition that the Board erred by failing to follow its own rules in granting a certificate where the applicant allegedly failed to provide definitive designs, plans, and other information is procedurally improper and otherwise without merit. Applicant represents that it provided and filed in the record all information that is required under both the statute and the Ohio Administrative Code and further supported that information with extensive expert witness testimony. Border Basin asserts that Resident Intervenor acknowledges the thousands of pages of studies and information provided and included in the record, while simultaneously disregarding their import and Staff's expertise and exhaustive investigation. Applicant contends that the Board's Order applied the proper meaning to the rules to ensure that Border Basin provided all the information necessary for the Board to make its ultimate determination. Applicant maintains that the Board had at its disposal all information required by rule to reach the statutory conclusions necessary to issue a certificate. In short, Border Basin submits that

Resident Intervenor's arguments, improperly raised for the first time on rehearing, elevate form over function and should be rejected.

{¶ 31} The Board acknowledges the arguments made by both parties regarding the sufficiency of the information provided vis-à-vis the Board's determinations under the statutory criteria for the issuance of a certificate for the construction, operation, and maintenance of a major utility facility. Because the sufficiency of information provided, i.e., the sufficiency of the evidentiary record, is inevitably connected to our ultimate conclusions on rehearing, the Board addresses these arguments under Resident Intervenor's specific assignments of error.

4. ARGUMENTS NEWLY RAISED ON REHEARING

{¶ 32} Expounding on its critique of the application for rehearing generally, Border Basin asserts that the Intervenor's improperly challenge the Order based on arguments never raised during the merits phase and before the Board adjudicated the matter. Applicant submits that nine of the ten assignments of error are brand new arguments that were never raised during post-hearing briefing while the tenth has been expanded upon sufficiently to be considered new. Border Basin explains that Resident Intervenor's arguments in both initial and reply post-hearing briefs specifically focused on the location of the substation, not the overall Facility or location of the solar modules, and argued only that the Application and Stipulation did not comply with R.C. 4906.10(A)(2) and (A)(3). Border Basin objects to Resident Intervenor's now expanding on their contentions to add arguments regarding the location of the solar modules and regarding the Board's determinations under R.C. 4906.10(A)(5), (A)(6), and (A)(8). Similarly, Border Basin objects to Resident Intervenor's newly arguing that Applicant failed to comply with Board rules in seeking the certificate. Border Basin submits that, because Resident Intervenor's failed to raise these new arguments, or to adequately develop or support them, during the merit stage of the proceeding, the arguments are waived.

{¶ 33} The Board finds that it is improper for a party to raise an issue for the first time on rehearing. *Harvey*, Order on Rehearing (Apr. 20, 2023) at ¶ 59 citing R.C. 4903.10; 4906.12. This is particularly true where the arguing party had the opportunity to bring the issue to light throughout the proceeding. *Id.* The Board reaffirms that conclusion here. The Supreme Court of Ohio has noted that the availability of the “[rehearing] process does not mean that a party may sit idly and withhold all objections before and during a board hearing and then belatedly raise them in a rehearing application.” *In re Application of Buckeye Wind, LLC*, 148 Ohio St.3d 69, 2016-Ohio-5664, 68 N.E.3d 786, ¶ 18. While the *Buckeye Wind* case addressed a procedural issue regarding the appearance of witnesses at hearing, something that is more obviously curable before an order on certificate is issued, the Board concludes that similar treatment is necessary and appropriate where a party had the opportunity to raise certain challenges to the state of the record, i.e., whether required studies are present, or to the merits of an application for the Board’s review and failed to do so. Otherwise, a party could continuously raise new arguments on a piecemeal basis to challenge an Order.

{¶ 34} Notwithstanding these conclusions, the Board makes no overall finding as to the propriety of all the Residents’ arguments raised on rehearing. Some of the issues raised can be fairly interpreted to have been broached, or at least tangentially identified, during this proceeding leading up to the Board’s February Order. Some cannot. Accordingly, and similar to our position regarding the preliminary arguments on the sufficiency of information in the record, the Board will address Applicant’s arguments regarding the propriety of any assignment of error below.

B. Assignments of Error

1. ASSIGNMENTS OF ERROR NO. 1 AND NO. 2

{¶ 35} In the first assignment of error, Resident Intervenors argue that the Board acted unlawfully and unreasonably by issuing a certificate without receiving information required by Ohio Adm.Code 4906-4-08(D)(4)(a) and (e) and R.C. 4906.10(A)(2), (A)(3), and (A)(6) regarding the Project’s visual impacts. In the second, the Residents argue that the

Board acted unlawfully and unreasonably by issuing a certificate without requiring mitigation of the adverse visual impacts as mandated by Ohio Adm.Code 4906-4-08(D)(4)(f) and R.C. 4906.10(A)(2), (A)(3), and (A)(6). In the narrative, Resident Intervenor state the first assignment of error pertains to the substation's visual impact, while the second deals with aesthetic problems from both the solar arrays and the substation. Because both assignments of error hinge on the Project's visual impacts, the Board addresses them together.

{¶ 36} Resident Intervenor state that eight non-participating residences are in close proximity to the substation site, one of which is the Overmyers' residence. The Residents observe that, although Applicant's acoustics consultant identified the Overmyers' residence as a noise sensitive receptor, Border Basin failed to include the Overmyers' home in the original project constraints map until the Overmyers brought the oversight to Applicant's attention. Additionally, despite the Overmyers' requests that the substation be moved farther away from their home, Applicant moved the substation 300 feet further away for a total distance of 660 feet. Resident Intervenor contend that the substation will impair the Overmyers' enjoyment of their property and injure other nearby non-participating residents. In short, Resident Intervenor submit that the substation is too close to these homes and, therefore, the Project should not have been approved.

{¶ 37} Resident Intervenor claim that Border Basin has not provided sufficient information regarding the appearance of the substation in violation of Board rules. Specifically, Resident Intervenor state that Ohio Adm.Code 4906-4-08(D)(4)(e), in part, requires an applicant to provide photographic simulations or artist's pictorial sketches of the proposed facility. Resident Intervenor stress that the rule does not except any part of the facility from its requirements and it is not enough for an applicant to provide portrayals of certain, less impactful aspects of the facility while hiding the worst. Yet, states the Residents, Border Basin's application provides only scant details on the appearance of the substation and otherwise failed to provide details regarding its dimensions despite its occupying 2.7 acres. Resident Intervenor critique the Board's conclusion on this issue as

allowing an applicant to pick and choose what Project features it will portray. They condemn the Visual Impact Analysis (VIA) for containing only five simulations of the Project's appearance, none of which portray the substation. Without this information required by Ohio Adm.Code 4906-4-08(D)(4)(e), Resident Intervenor state that the Board cannot assess the substation's visual impacts on nearby residents, motorists, or the public. And, in the absence of the information, the Residents submit that the Board erred by finding the Project complied with R.C. 4906.10(A)(2), (A)(3), or (A)(6).

{¶ 38} Responding, Border Basin submits that, as explained in detail in its reply brief, Applicant completed a VIA of the entire Facility to evaluate the potential visual effects of the proposed Project, including solar panels and an onsite substation. Border Basin states that the VIA conservatively modeled the area and recognized that the visual impacts would vary depending on factors such as the distance of the viewer, whether views were unobstructed or screened by vegetation, terrain, or development, and the attitudes of the viewer towards solar energy. Applicant contends that the Residents simultaneously accuse Border Basin of concealing the appearance of the substation while also providing record details of its siting, potential appearance, and impacts, which belies their assertion that the record is lacking. Similarly, Resident Intervenor cite to evidence depicting the visibility of the substation site from the Overmyers' property while complaining that there is insufficient representation of views from nonparticipating residences in close proximity to the Facility. Border Basin submits that the Board properly acknowledged that the VIA, as submitted and supported by expert testimony, provides sufficient information to determine the potential visual impacts of the Project, including the panels and substation. Applicant further submits that the Board correctly concluded that Border Basin submitted all that was required under Ohio Adm.Code 4906-4-08(D)(4)(a) and (e) for Board review and consideration. And that information, combined with all commitments made by Applicant in the application, subsequent supporting documents, and the Stipulation, support the Board's determination of the probable visual impact of the Facility under R.C. 4906.10(A)(2).

{¶ 39} Continuing to the second assignment of error, Resident Intervenor also assert that the Board unlawfully and unreasonably failed to require mitigation of adverse visual impacts as mandated by rule and statute. The Residents argue that, although the Board accurately observes that the Project will likely be visible in the immediate vicinity and that viewers in close proximity may have unobstructed or partially screened views, the Board failed to require mitigation of such adverse impacts. The Residents stress the Overmyers' nearness to and currently unobstructed view of the substation site, as well as all residents' and motorists' views of solar arrays, in arguing that the Project will ruin nearby residents' enjoyment of their properties. Resident Intervenor contend that the setbacks approved for the Project are insufficient to protect the community's aesthetic values and guarantee exposure to unavoidable views of the solar arrays and other Project components.

{¶ 40} Resident Intervenor assert that Ohio Adm.Code 4906-4-08(D)(4)(f) requires an applicant to describe the measures that will be taken to minimize any adverse visual impacts created by the facility, including visual screening, which is a vital component in assuring minimum adverse impacts as required by R.C. 4906.10(A)(3) and the public interest, convenience, and necessity under R.C. 4906.10(A)(6). Yet, they say, the Board's Order allowed Applicant to skirt this requirement. Resident Intervenor characterize Border Basin's best management practices and commitment to vegetative screening as disappointing. Furthermore, Resident Intervenor state that Applicant failed to provide the Board with a landscape plan depicting the locations and species of vegetation to be used at each location until after certification and final design. The Residents submit that Condition 23 of the Stipulation does not sufficiently satisfy Ohio Adm.Code 4906-4-08(D)(4)(f)'s directive because the condition is vague and provides no objective standards to ensure that Border Basin's plan will satisfactorily mitigate the visual impacts of the Project. Leaving the final plan to the discretion of the Applicant and Staff through Condition 23 is not enough; instead, Resident Intervenor assert that the Board should have required the inclusion of a binding landscape plan in the record. Resident Intervenor state that the Board's failure to do so is inexcusable and constitutes a failure to comply with R.C. 4906.10(A)(2), (A)(3), or

(A)(6). As such, the Residents contend that the Board should rehear and correct this issue or deny the certificate where effective mitigation cannot be accomplished.

{¶ 41} As to Resident Intervenor's arguments regarding mitigation of the identified visual impacts, Border Basin submits that the record contains the information required by Ohio Adm.Code 4906-4-08(D)(4)(f) and, with the Stipulation, provides for proper mitigation of any adverse visual impacts such that R.C. 4906.10(A)(2), (A)(3), and (A)(6) are satisfied. Border Basin disagrees with Resident Intervenor's arguments that unfinalized mitigation plans cannot support the Board's decision, observing that the plans can be changed only to increase commitments made to make them more robust; Applicant cannot decrease or reduce the commitments regarding mitigation measures. Border Basin explains that this is clear in Stipulation Condition 1, which includes extensive and significant commitments and conditions by which Border Basin must construct, operate, and decommission the Facility, including measures to mitigate visual impacts. Border Basin further states that the Residents' complaint that the landscape plan is insufficient because it will not fully screen the solar equipment from view goes beyond what is required by statute or rule. Applicant reiterates that the final landscape plan mandated by Condition 23 will provide for the visual screening required for the Facility to represent the minimum adverse environmental impact bearing in mind all pertinent considerations. Border Basin asserts that record evidence demonstrates that Applicant provided the information required by Board rules regarding visual impacts and that the Board appropriately determined that the Facility is in compliance with statutory requirements for certification. Therefore, Border Basin submits that Resident Intervenor's position on rehearing regarding mitigation of identified adverse visual impacts is without merit and should be denied.

{¶ 42} The Board finds Resident Intervenor's first two assignments of error unavailing. Though somewhat rephrased and entirely broadened to encompass the entire Facility rather than just the substation, the arguments raised in the assignments of error were thoroughly addressed in the February 16, 2023 Order. We affirm our findings here.

{¶ 43} The Board previously noted that, in initial and post-hearing briefs, the Residents challenged the Project's compliance with R.C. 4906.10(A)(2), in part, due to the application's alleged failure to evaluate visual impacts of the substation, especially from the vantage point of nearby residences. The Residents further complained that the VIA focused on the potential visual effects of the solar panels while ignoring the substation. Citing Ohio Adm.Code 4906-4-08(D)(4)(e) and (D)(4)(f), Resident Intervenors additionally argued that the VIA was deficient. The Residents took issue with the photographic simulations and vantage points chosen for the VIA, asserting that they were either from too great a distance or were non-representative of nonparticipating properties adjacent to the Project. Additionally, to the degree any impacts were identified, the Residents argued that the record does not definitively describe measures that will be taken to minimize adverse impacts (*See* Order at ¶ 141-143). Resident Intervenors also argued that the Stipulation was not in the public interest due to lack of an aesthetic mitigation plan for the substation (*Id.* at ¶ 127).

{¶ 44} The Board, however, found that the nature of the Facility's probable visual impacts had been properly evaluated and determined under R.C. 4906.10(A)(2) (Order at ¶ 152, 155.) The Board specifically found that the VIA evaluated the potential effects of the Project, "including solar panels *and an onsite substation * * **" and demonstrated the potential visibility of the Project in the surrounding area, noting that the VIA included the local residents within the represented viewer groups ((Emphasis sic.) Order at ¶ 152).

{¶ 45} The Board further found that the Stipulation required mitigation of the adverse aesthetic impacts of the substation, as it is part of the Project as a whole (Order at ¶ 136). As such, the Board has already found that the Stipulation adequately requires that the adverse visual impacts of the Facility as a whole, and not just the substation, be mitigated such that the Project represents the minimum adverse impact (Order at ¶ 136, 153). In reaching that decision, the Board also previously rejected the Residents' argument regarding vegetative screening (Order at ¶ 153).

{¶ 46} Nothing in Resident Intervenor’s application for rehearing causes us to revise our previous conclusions. Moreover, the Residents’ complaint that leaving the final mitigation plan to the discretion of Staff through Condition 23 is insufficient has been consistently rebuffed by the Board and affirmed by the Supreme Court of Ohio. *Harvey*, Opinion, Order, and Certificate (Oct. 20, 2022) at ¶ 261; Order on Rehearing (Apr. 20, 2023) at ¶ 35; *In re Application of Angelina Solar I, LLC*, Case No. 18-1579-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶ 360; *In re Application of Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, ¶ 17. The Board denies the first two assignments of error.

2. ASSIGNMENT OF ERROR NO. 3

{¶ 47} In their third assignment of error, Resident Intervenor’s assert that the Board acted unlawfully and unreasonably by approving the Project without requiring Border Basin to provide the information required by Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (A)(3), (A)(5), and (A)(6) regarding the Project’s drainage impacts and associated mitigation to prevent flooding.

{¶ 48} Regarding flooding, Resident Intervenor’s restate record evidence from Border Basin’s hydrologic report indicating that certain parts of the project area may be subject to occasional flooding. They also point to testimony discussing and photographs demonstrating flooding in the area near the proposed substation site. Additionally, Resident Intervenor’s explain that, although the project area contains no streams large enough to be classified by the Federal Emergency Management Agency (FEMA), Applicant’s consultant performed an analysis to delineate floodplains in the area; the consultant recommended against constructing solar arrays and associated infrastructure in those floodplains and, where avoidance could not be achieved, identified mitigation measures. The Residents relate that the consultant’s report shows that solar arrays are located within the consultant’s created floodplain.

{¶ 49} Resident Intervenor argue that the Board's Order ignores record evidence indicating future flooding and drainage problems and, instead, makes uninformed guesses about whether the Project's design and construction will increase the runoff of stormwater from the site by altering terrain. Resident Intervenor assert that, rather than doing so, the Board should have required Applicant to provide the information listed in Ohio Adm.Code 4906-4-07(C). This information would include an estimate of the quality and quantity of aquatic discharges from site clearing and operations; a description of any plans to mitigate the above effects; a description of any changes in flow patterns; and a quantitative flow diagram or description for water showing potential sources of pollution including run-off. Resident Intervenor assert that Border Basin's application does not provide any of this data and was thus deficient. The Residents contend that the rule requires numeric and volumetric calculations of drainage volumes and stormwater so that the Board can made an independent assessment of whether the Project will cause flooding and identify any mitigation measures necessary to prevent the same. Without this information, the Residents maintain that the record does not and cannot identify any mitigation measures that may be necessary to protect neighbors from flooding and drainage problems that will be caused by the Project.

{¶ 50} Resident Intervenor further contend that the conditions in the Stipulation do not change this result. The Residents state that Condition 34, directing that construction within the FEMA delineated 100-year floodplain shall be coordinated with the local floodplain program administrator, is pointless window dressing in the absence of a designated FEMA floodplain. Resident Intervenor additionally maintain that Applicant's commitments to continue to extensively study hydrology and drainage and to follow the Ohio EPA's stormwater permit and guidance on post-construction stormwater management—as well as to work with the county engineer and Soil and Water Conservation District to benchmark conditions for drainage tiles, streams, and ditches—are meaningless without specific measures in place to avoid flooding.

{¶ 51} Initially, Border Basin observes that Resident Intervenor again expand their arguments, this time regarding flooding and drainage, beyond the substation and to the entirety of the Project for the first time on rehearing. Applicant asserts that the Residents ignore facts in the record, as argued on brief and accepted by the Board in its Order, to contend Applicant's alleged noncompliance with Ohio Adm.Code 4906-4-07(C) left the Board without the information it needed to determine the Facility's probable environmental impact related to flooding and/or whether mitigation plans to address any flooding will represent the minimum adverse environmental impact.

{¶ 52} Border Basin states that, to support their arguments, the Residents selectively cite only a portion of Stipulation Condition 34 and completely ignore Condition 42. Applicant states that, the existence of a FEMA floodplain aside, Condition 34 obligates Applicant to coordinate with the local floodplain administrator and obtain any required permit before commencing construction, which is an important commitment for regulatory compliance. Here, Applicant also posits that Resident Intervenor's application for rehearing confuses the 100-year floodplain with stormwater management and drainage in the project area. Thus, it is not the floodplain condition they complain about, it is the flow of water over and away from the project area. The FEMA mapping of the 100-year floodplain, which the Project is not located in, is different than the study of water flowing over the project area, which was thoroughly assessed by Applicant's experts and reported in the hydrology study attached to the application. Notwithstanding that confusion, Applicant submits that through Condition 28 Border Basin made, and the Order mandates, extensive commitments to ensure that the Project and surrounding areas are protected. Yet the Residents ignore those commitments in their application for rehearing.

{¶ 53} Border Basin states that the Residents further ignore Condition 42, which addresses any drainage issues and potential flooding caused or exacerbated by construction of the Project. Among others made in Condition 42, Border Basin highlights commitments to avoid or minimize to the extent practicable any damage to functioning field tile drainage systems and soils, to promptly repair damaged field tile systems at Applicant's expense,

and to design the Project to ensure nearby parcels are protected from unwanted drainage problems due to construction and operation of the Project. Border Basin stresses that the record is replete with information regarding the prospects for flooding and what mitigation measures have been and will be put into place to ensure minimal adverse impacts are realized.

{¶ 54} The Board finds Resident Intervenor's third assignment of error to be without merit. Once again, on rehearing the Residents expand their arguments regarding drainage and flooding from the area immediately surrounding the substation to the entirety of the project area. And, once again, this expansion does not prompt the Board to reconsider our findings and conclusions expressed in the Order.

{¶ 55} The Board has already considered and declined Resident Intervenor's arguments regarding any alleged failure to account for ponding and flooding hazards near the substation (Order at ¶ 128, 136). The same is true regarding mitigation measures in place to ensure compliance with R.C. 4906.10(A)(3) (Order at ¶ 153). Even though the Board addressed these issues in the context of the substation per the Residents' previous arguments, the Board's conclusions are applicable to the entirety of the project area. That is always the focus of the Board's inquiry when considering an application: the Board must find and determine whether the proposed facility meets the statutory requirements of R.C. 4906.10, not whether an individual aspect of the facility does so. Furthermore, the Residents must look beyond the confines of the application and consider the record as a whole. It is from the evidentiary record as whole, and not just the application, that the Board gleans the pertinent information needed to identify a Project's probable environmental impacts, to determine whether those impacts constitute the minimum adverse impacts, and whether the Facility will serve the public interest, convenience, and necessity. For example, although not specifically challenged before rehearing and, therefore, not specifically discussed in the Order, the record provides ample evidence from which the Board determined drainage impacts and whether the Facility would represent the minimum adverse environmental impacts regarding the same (*See, e.g.,* App. Ex. 1, Ex. O; Staff Ex. 1; Jt. Ex. 1 at 8-10; Tr. I at

34-35, 57-59; 260-263). Finally, while Resident Intervenor announce a challenge to R.C. 4906.10(A)(5), they present no argument or explanation as to how the Board's Order is deficient in our finding that the record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with the Order, will comply with R.C. Chapters 3704, 3734, 6111, and R.C. 4561.32 and all rules and regulations promulgated thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5) (Order at ¶ 184). Resident Intervenor's third assignment of error is denied.

3. ASSIGNMENT OF ERROR NO. 4

{¶ 56} For their fourth assignment of error, Resident Intervenor argue that the Board acted unlawfully and unreasonably by failing to require Border Basin to provide the information required by Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (A)(3), (A)(5), and (A)(6) regarding the Project's pollution impacts and associated mitigation.

{¶ 57} Similar to an aspect of their third assignment of error, the Residents state that Ohio Adm.Code 4906-4-07(C) requires the Board to obtain data about a project's potential for water pollution from an applicant prior to approval so that potential pollution problems can be diagnosed prior to construction. The Residents maintain that the rule requires an applicant to submit information about the quality of surface water flows from the project area during construction and operation, such as sediment from erosion. This is because Project construction will expose the soils to precipitation and stormwater runoff and will include stripping soils of vegetation, grading the site, and moving dirt (App. Ex. 1, Ex. L, at 9-10).

{¶ 58} Despite this, according to the Residents, Border Basin failed to provide any of this data. Instead, the Residents allege that Applicant evaded the information by claiming that there would be no receiving streams and, therefore, provided no information regarding water quality of receiving streams. The Residents state that the purpose of the needed baseline water quality data is to enable an applicant and government officials to compare the water quality of streams in and around the project area prior to construction with water

quality during construction and operation. Without the data, the Residents indicate it is impossible to know whether the Project has impaired existing water quality. Resident Intervenor's allege the same is true of information on the quality and quantity data for aquatic discharges from site clearing and construction.

{¶ 59} The Residents maintain that Border Basin's commitment to follow best management practices pursuant to a Storm Water Pollution Prevention Plan (SWPPP) to reduce any soil erosion and sedimentation into receiving streams is not a sufficient data point for the Board to make necessary determinations regarding whether the Project will harm receiving streams and water quality; nor is that commitment a sufficient replacement for the desired data. Resident Intervenor's state that the Board's reliance on a SWPPP that does not yet exist is a default of its statutory duty to ascertain the nature of the probable environmental impact and/or what mitigation measures will be required to ensure such impacts are minimized. Resident Intervenor's point to similar alleged deficiencies regarding the description of any equipment to be used for controlling stormwater discharges. The Residents say that Border Basin cannot merely pronounce that the Project will not harm water quality, they must prove that assertion by providing water quality data. Resident Intervenor's state that the Board should have found Applicant's failure to provide the data fatal to the application and seek to have the Board rehear the matter to obtain the data or deny the certificate.

{¶ 60} Initially, Border Basin argues that Resident Intervenor's waived any argument under assignment of error number four due to their failure to address potential pollution impacts or associated mitigation prior to rehearing. Nevertheless, Border Basin submits that a review of the application and record supports a finding that Border Basin provided the requisite information in response to items requested in Ohio Adm.Code 4906-4-07(C). Border Basin notes that Ohio Adm.Code 4906-4-07 expressly allows an applicant to substitute all or portions of documents filed to meet federal, state, or local regulations, and the application specifically identified the permits, issued pursuant to state and federal water quality regulations, Applicant needs to demonstrate the Project will

comply with water quality issues. Applicant explains that the permit applications, which will be reviewed by state and federal agencies charged with determining compliance with water quality regulation, do not require some of the specific categories of information Resident Intervenors are seeking, but are permissible substitutions under the rule.

{¶ 61} Border Basin relates that Ohio Adm.Code 4906-4-07(C) requires an applicant to “provide information on compliance with water quality regulations,” and it has done so. Border Basin observes that the rule is applicable to any type of generation facility seeking certification, whether solar, wind, natural gas, coal-fired, or nuclear, and that many of Resident Intervenors’ complaints fail to recognize that not every data point is relevant to every type of generation facility. For example, unlike other generation facilities that discharge into a receiving stream, there will be no discharges from the Project into any of the four streams identified in the project area. Thus, where it requires a description of the water quality of “the receiving stream,” Border Basin correctly responded that because there is no point source water discharge into streams and no waterbodies associated with the Facility, there will be no receiving streams. Similarly, asked to provide an estimate of the quality and quantity of aquatic discharges during construction, Applicant explained that no point source aquatic discharge to streams and wetlands will occur during construction. Additionally, Border Basin clarifies that, in the case of solar-powered generation facilities such as the Project, there are no pollutants discharged by the Facility into waterbodies. Still, although no discharges are anticipated during construction, Applicant has committed to implement a Spill Prevention, Control, and Countermeasure (SPCC) Plan to mitigate against accidental spills during construction. Similarly, Applicant states that it is taking additional measure to ensure water quality protection consistent with state and federal requirements by developing a SWPPP and Horizontal Directional Drilling Inadvertant Release Contingency Plan.

{¶ 62} Moreover, Border Basin asserts that the Residents overlook the importance of commitments made outside the confines of the application with regard to mitigation measures. For example, in Stipulation Conditions 28 and 39, Applicant commits, and is

required, to adhere to the Ohio EPA's Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays and to coordinate with the Ohio EPA's Division of Drinking and Groundwater to identify any additional measure needed during construction to ensure public water supplies are not impacted. Additionally, under Condition 34, Applicant has committed that post-construction runoff control will be implemented with best management practices to ensure that the Project does not generate more storm water runoff than existed preconstruction.

{¶ 63} In short, given the robust evidentiary record, Border Basin states that Resident Intervenor's position on rehearing with regard to the provision of information applicable to water quality compliance under Ohio Adm.Code 4906-4-07—as well as the Board's related findings regarding the Project's pollution impacts and associated mitigation under R.C. 4906.10(A)(2), (A)(3), (A)(5), and (A)(6)—is without merit and should be denied.

{¶ 64} The Board concurs with Applicant that the arguments raised under this assignment of error are procedurally improper as being raised for the first time on rehearing. At no time prior to rehearing did the Residents question the quality of surface water flows or the alleged lack of information regarding water quality of receiving streams. Nor did the Residents challenge the information regarding these issues as presented within the record.

{¶ 65} Regardless, the Board concludes that the record contains the information needed to identify the Project's potential water pollution impacts and any associated mitigation measures. As noted in the Order, the Board is required to either accept an application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code 4906-1 through 4906-7 or to reject the application as incomplete. In this case, the Board, through Staff, issued correspondence finding that the application, as supplemented, complied with Chapters 4906-01, et seq., and Staff had received sufficient information to conduct its review. (Order at ¶ 12, 15.) As the case progressed, additional information was provided through supplemental responses to data requests. Using this information and institutional expertise, Staff completed an investigation of the application

pursuant to R.C. 4906.07(C). The Board acknowledged and discussed the Staff Report at length and noted the Staff Report's recommended findings regarding R.C. 4906.10(A) (Order at ¶ 37). Later, the Stipulation and witness testimony augmented the record. All of this information combined provided a sufficient record from which the Board made its determinations pursuant to R.C. 4906.10(A).

{¶ 66} Furthermore, although not specifically discussed within the Order, as the issue was not raised in brief, the Board did cite several points of discussion within the Staff Report and witness testimony (Order at ¶ 69, 77, 111, 113). The Board further noted that "[a]ny evidence not specifically addressed [was] nevertheless considered and weighed by the Board in reaching its final determination" (Order at ¶ 32). Evidence regarding surface water flows and information regarding water quality and permits is provided within the application and its supplements, expounded on in the Stipulation, and explained in the transcript. In short, there is sufficient evidence to support the Board's findings that the Facility satisfies the statutory criteria under R.C. 4906.10(A)(2), (A)(3), (A)(5), and (A)(6); the fourth assignment of error is denied.

4. ASSIGNMENT OF ERROR NO. 5

{¶ 67} Next, Resident Intervenor assert that the Board acted unlawfully and unreasonably by finding that Border Basin has provided the information about the Project's potential impacts on wildlife and plants required by Ohio Adm.Code 4906-4-08(B) and R.C. 4906.10(A)(2), (A)(3), and (A)(6). Resident Intervenor remark that Ohio Adm.Code 4906-4-08(B) requires an applicant to provide the results of a literature survey of plant and animal life within a quarter mile of the project area boundary and to conduct and provide the results of field surveys of the plant and animal species identified in the literature survey. The Residents state that, without this information, the Board can neither determine the nature of the probable environmental impact under R.C. 4906.10(A)(2) nor find that the Project represents the minimum adverse environmental impact under R.C. 4906.10(A)(3).

{¶ 68} Resident Intervenor challenge the Board's findings regarding plant or animal species listed on field surveys. The Residents believe that the Board's findings suffer from an inaccurate assumption that a field survey was actually done for birds and other animals. The Residents aver that Applicant found no listed species because it did not look for them; Border Basin did no field survey. Instead, Resident Intervenor state that Applicant and Staff relied on letters to Applicant's consultant from the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS), which letters warn that there are areas in Ohio that have not been completely surveyed. Resident Intervenor submit that reliance on ODNR and USFWS correspondence is not an adequate substitute for Applicant performing its own field surveys. Additionally, the Residents allege that Border Basin mischaracterizes the study it did perform in the application section labeled "Literature Survey of Plant and Animal Life." According to the Residents, Applicant searched only for a list of threatened and endangered species from ODNR and USFWS and did not conduct a literature search for all species.

{¶ 69} Resident Intervenor state that Border Basin did not provide a literature survey for all plant and animal life in and near the project area as required by the first sentence of Ohio Adm.Code 4906-4-08(B)(1)(c); it obtained literature only for rare plant and animal species as required by the second sentence. Resident Intervenor contend that it is erroneous to interpret the rule such that the second sentence is a limitation on the first, as it would render the first sentence superfluous. Moreover, argue Resident Intervenor, Border Basin's literature failed to list any species of commercial and recreational value. Worse, the Residents claim that Applicant looked only for habitat suitable for species identified in the surveys that were performed rather than look for the actual species. Resident Intervenor surmise that one will not notice listed species if one is looking only for their habitat, which is why no eagles were noted even though the Residents presented evidence of their presence.

{¶ 70} The Residents assert that Border Basin's failure to catalogue and evaluate all species in the area leaves too large a gap in the record about information regarding

ecological resources in the project area. Without the necessary data, the Residents submit that the Board has no basis to conclude that the Project will not harm wildlife. And without knowing what wildlife is present, the Board cannot ascertain whether mitigation measures are necessary to ensure minimum adverse environmental impacts. Thus, the Residents request that the Board rehear the matter or deny the certificate.

{¶ 71} Border Basin responds that the Resident's fifth assignment of error is without merit, as the record demonstrates that the Applicant fully complied with Ohio Adm.Code 4906-4-08(B) by providing the Board with all requisite information pertaining to plants and wildlife. Applicant asserts that the rule requires that Border Basin provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary and to provide the results of field surveys of the plant and animal species identified in the literature survey. Border Basin submits it did both and provided all information as part of its application. Border Basin states that the Board acknowledged that a literature review and field surveys were conducted and included information from ODNR and USFWS. Contrary to the Residents' unsupported assertions, Border Basin avers that the record shows it did conduct studies and the data collected was found to be generally consistent with the results of the desktop review.

{¶ 72} Continuing, Border Basin states that Resident Intervenors continue to ignore the totality of the evidentiary record and base their assumptions on single sentences in an attempt to discredit the Board's Order. In addition to the documentation provided within the application, Border Basin highlights that the Stipulation requires Border Basin to comply with numerous safeguards for plants and animals. For example, Condition 25 requires Applicant to have a Staff-approved environmentalist on site during construction activities that might affect sensitive areas, including locations of threatened or endangered species, while Condition 27 obligates Applicant to include the location of any new listed plant or animal species or suitable habitat of these species, if encountered, in the final engineering drawings and explain how impacts to these species will be avoided during construction. Additionally, Conditions 29 and 30 provide limitations on construction activities to avoid

impacts to listed bats as well as indigenous aquatic species and their habitat, while Condition 31 obliges Applicant to contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities and lists further steps to take to avoid impacts to those species.

{¶ 73} Applicant submits that the Board correctly concluded that the information and documentation found in the record provides all information necessary for compliance with Ohio Adm.Code 4906-4-08(B). Furthermore, Applicant avers that the probable ecological impacts of the Facility on wildlife and plants were thoroughly evaluated and determined. As such, Applicant requests that the Board deny Resident Intervenor's argument on rehearing.

{¶ 74} The Board finds that the record contains adequate information regarding the Project's potential impacts on wildlife and plants as required by Ohio Adm.Code 4906-4-08(B) and R.C. 4906.10(A)(2), (A)(3), and (A)(6) and, therefore, denies the fifth assignment of error. There is no dispute that Border Basin prepared and submitted a literature survey; Resident Intervenor is simply dissatisfied with the survey's contents and conclusions. Contrary to the Residents' position, Ohio Adm.Code 4906-4-08(B) requires a literature survey to "include aquatic and terrestrial plant and animal species *that are of commercial or recreational value, or species designated as endangered or threatened.*" (Emphasis added.) There is no requirement to identify birds and other animals if they do not fall within the specified categories. See *In re Application of South Branch Solar, LLC*, Case No. 21-669-EL-BGN, Order on Rehearing (June 15, 2023) at ¶ 26. It would be unduly burdensome to require an applicant to conduct a literature survey of each and every possible living thing – flora or fauna – within a quarter mile of a project area. Furthermore, the Board finds that the record fully supports our previous statutory determinations regarding plants and wildlife. As stated in the Order, "the Stipulation makes mandatory all commitments to mitigating measures, whether made in the application, supplemental materials, data requests, or in the Stipulation" (Order at ¶ 135). In addition to the information supplied with the application and reviewed by Staff, the Stipulation adds further steps for

identification and protections in mitigation of any adverse impacts (Jt. Ex. 1 at 6-7). In short, the Residents' arguments regarding the sufficiency of information on impacts to plants and wildlife is unsupported by the record and is denied.

5. ASSIGNMENT OF ERROR NO. 6

{¶ 75} For their sixth ground for rehearing, Resident Intervenors assert that the Board acted unlawfully and unreasonably by erroneously finding that the Project provides for water conservation measures as required by Ohio Adm.Code 4906-4-07(C)(3)(e) and R.C. 4906.10(A)(2), (A)(3), (A)(6), and (A)(8).

{¶ 76} The Residents claim that Ohio Adm.Code 4906-4-07(C)(3)(e) requires an applicant to describe how a facility incorporates maximum feasible water conservation practices in order to meet the requirements of R.C. 4906.10(A)(8), as well as to achieve satisfaction of R.C. 4906.10(A)(2), (A)(3), and (A)(6), but that the application contains no such measures. Resident Intervenors observe that, if rain does not keep solar panels clean, Border Basin could use upwards of 299,000 gallons of water in a single cycle to clean the panels (App. Ex. 1, at 36). Yet, the application disclaims any intent to implement water conservation practices. The Residents remark that this refusal renders the application in violation of statutory requirements.

{¶ 77} Border Basin states that the Residents' claims regarding water conservation measures are erroneous. Applicant asserts that the record reflects that there will be no onsite operations facility, so there will be no regular onsite water use during operations. Further, the only water used during operation would be for limited cleaning of the solar modules, which is likely unnecessary because rain will be sufficient to keep the modules clean. Given the disclosed, yet unlikely, use of water in the manner complained of by Resident Intervenors, Applicant contends it is unclear what more the Residents expect by way of information. Applicant further argues that Resident Intervenors unnecessarily expand the necessity of the Board's determination regarding water conservation by requiring the Board to make duplicative findings under R.C. 4906.10(A)(2), (A)(3), (A)(6), and (A)(8) where only

R.C. 4906.10(A)(8) directs the Board to find that the facility will incorporate maximum feasible water conservation practices. Border Basin submits that the Facility's minimal to zero approach to water utilization represents Applicant's commitment to implement and maximize water conservation practices, as described in information provided by Border Basin as required by Ohio Adm.Code 4906-4-07(C)(3)(e). Applicant further submits that the Board's determination that the record establishes that the Project meets the requirements of R.C. 4906.10(A)(8) should remain undisturbed.

{¶ 78} The Board finds that the sixth assignment of error, like the fourth, is procedurally improper because it raises a challenge to the sufficiency of the record with regard to the Facility's incorporation of maximum feasible water conservation practices for the first time on rehearing. For that reason alone, the assignment of error can be denied. *Harvey*, Order on Rehearing (Apr. 20, 2023) at ¶ 59.

{¶ 79} Nevertheless, the Board reaffirms our above summation of the completeness of the record as a whole. And, as to this assignment of error, we specifically note that the evidence supports the conclusion that the Project incorporates maximum feasible water conservation practices under R.C. 4906.10(A)(8). (Order at ¶ 108-109, 187; *See also* App. Ex. 25 at 15; App. Ex. 1 at 36.) The Residents' sixth assignment of error is denied.

6. ASSIGNMENT OF ERROR NO. 7

{¶ 80} For their seventh assignment of error, Resident Intervenors argue that the Board acted unlawfully and unreasonably by issuing a certificate without obtaining the information required by Ohio Adm.Code 4906-4-08(A)(3) and R.C. 4906.10(A)(2) and (A)(3) regarding the Project's potential operational noise impacts.

{¶ 81} The Residents believe that solar facilities are noisy and observe that the Project is expected to contain 54 noise generating inverter stations and a substation, with the inverters as close as 326 feet from the nonparticipating residences. The Residents state that Border Basin is required by Ohio Adm.Code 4906-4-08(A)(3) to identify operational noise

levels expected at the nearest property boundary and indicate the operational noise level at each habitable residence under both day and nighttime operations so the Board can determine whether the Project complies with R.C. 4906.10(A)(3). Resident Intervenor contend that the application does not contain all required information. Specifically, they state that Border Basin failed to identify the amount of noise coming from the Project at its property boundaries or at neighboring habitable residences. Instead, Border Basin measured only the community's ambient sound levels using five short-term attended and one long-term unattended monitoring stations. According to the Residents, the measurements revealed that nighttime ambient sound levels are consistently and substantially lower than the daytime ambient sounds, which means the same volume of Project noise can exceed the nighttime ambient level by more than five dBA even if the noise is less than five dBA above daytime ambient level. Resident Intervenor state that this difference makes it vital for the Board to know nighttime noise levels for the Project. The Residents reject the notion that nighttime noise levels for the solar facility will be inherently lower such that no nighttime noise information need be provided. They argue instead that, because the record indicates some equipment will remain operational at night, that noise must be measured. Resident Intervenor insist that the Board may not issue a certificate without this data. As such, they maintain that the Board should reopen the record to require Border Basin to submit information about the Project's nighttime noise levels.

{¶ 82} Border Basin responds that Resident Intervenor's assertion that an applicant must identify the amount of sound coming from the Facility at night is not supported by Ohio Adm.Code 4906-4-08(A)(3), which does not require sound modeling for every hour of a 24-hour day. Instead, the rule requires an applicant to describe operational noise levels. Applicant states that, for each type of generation facility, operational hours may vary; but for a solar-powered facility that captures the power of the sun, the operational hours are during the day. Thus, unlike generation facilities that may run 24-hours in a day, an analysis of nighttime sound is not required by the rules. Border Basin contends that the Residents' allegation that there is insufficient evidence to conclude that nighttime noise will be minor

is contrary to record evidence establishing that no noise producing equipment would operate at nighttime. In short, Border Basin submits that the Board properly concluded the application sets forth the information required under Ohio Adm.Code 4906-4-08(A)(3) describing the operational noise levels expected at the nearest property boundary through the sound report.

{¶ 83} The Board finds the Residents' seventh assignment of error to be without merit. Although Resident Intervenor's cross-examined Applicant's acoustic expert regarding potential noise impacts resulting from the substation, including during construction, the Residents raised no further challenge to the information in the record regarding noise impacts, whether during the day or night (Tr. I at 112-117). Thus, once again, the assignment of error is procedurally improper in raising a new argument for the first time on rehearing.

{¶ 84} Furthermore, in pursuing the argument, Resident Intervenor's ignore record evidence. The acoustic report submitted with the application indicates that ambient sound measurements were taken to characterize the existing acoustic environment in the project area during both daytime and nighttime periods (App. Ex. 1, Ex. N). The record additionally indicates that operational noise impacts will occur only during the day (Order at ¶ 56). The Board rejects Resident Intervenor's contention that Border Basin must measure operational noise impacts that will not exist. It is sufficient to indicate the operational noise level under nighttime operations, which is all that is required by Ohio Adm.Code 4906-4-08(A), is expected to be zero. Moreover, Stipulation Condition 41 mandates that operational sound levels shall not exceed ambient sound levels plus five dBA at non-participating receptors (Order at ¶ 119; Jt. Ex. 1 at 9). As such, even if nighttime operations of the Facility do produce sound, the Board is assured that the Facility will represent the minimum adverse environmental noise impact in accordance with R.C. 4906.10(A)(3). Resident Intervenor's seventh assignment of error is denied.

7. ASSIGNMENT OF ERROR NO. 8

{¶ 85} Next, Resident Intervenor argue that the Board acted unlawfully and unreasonably by issuing a certificate without identifying mitigation measures for construction noise as required by Ohio Adm.Code 4906-4-08(A)(3)(d) and R.C. 4906.10(A)(2), (A)(3), and (A)(6).

{¶ 86} Resident Intervenor declare that the Project's construction will produce long-lasting noises in extreme volumes involving the operation of pile drivers, dump trucks, forklifts, scrapers, compactors, excavators, loaders, backhoes, and graders. And, although the application admits that construction noise will rise up to 20 dBA above moderate levels, it provides no description of the "equipment and procedures [it will use] to mitigate the effects of noise emissions from the proposed facility during construction and operation, including limits on the time of day at which construction activities may occur" as required by Ohio Adm.Code 4906-4-08(A)(3)(d).

{¶ 87} The Residents argue that Border Basin sought to disguise the actual impact of construction noise in contending that construction hours will be limited, which Staff characterized the noise as temporary and intermittent. Resident Intervenor assert that Condition 35 of the Stipulation accepted by the Board provides little relief as nonparticipating residents will still be subjected to the noise from general construction activities for 12 hours each day, if not longer, including weekends and holidays, for approximately 15 months. As such, Condition 35 does nothing to protect them from prolonged exposure to machinery generating noise up to 44 dBA higher than daytime ambient levels for a prolonged, not limited or infrequent, duration of time. Further, the Residents state that the setbacks between the edges of the project area and nonparticipating residences are insufficient to provide mitigation. They similarly dismiss any possible effectiveness of the noise control measures (mufflers, daytime construction, good maintenance of tools and equipment, and closed housing doors or noise-insulation on combustion engines) as empty promises to contain construction noise to typical construction

levels. In short, the Residents state that the Board should not have approved the Project under R.C. 4906.10(A)(2) and (A)(3) without requiring meaningful mitigation to address construction noise impacts.

{¶ 88} Border Basin contends that the Board, based on the evidentiary record, correctly determined both the nature of the probable environmental impacts of construction noise and that the mitigation measures identified in the record demonstrate that the Facility represents the minimum adverse environmental impact under the terms of R.C. 4906.10(A)(2) and (A)(3). Applicant argues that the Board correctly found that noise impacts from construction will be temporary and intermittent, taking place over a number of months and not during the lifetime of the Project. Border Basin asserts that the Residents continue to ignore that the record must be viewed in its entirety and, instead, isolate and manipulate minute points to support their arguments. Border Basin disputes any attempt to disguise construction noise impacts, stating there is no hiding that the Facility will be under construction for a number of months and noise associated with that period will be equivalent to any large construction project. To counter the obvious impacts, Border Basin submits that the record contains numerous measures that Applicant must observe to mitigate any adverse impacts from construction noise, such as setbacks and hourly limitations on noise-intense construction activities. In addition, and as acknowledged by the Residents, Applicant explains that the complaint resolution plan will be in place during construction and operation of the Facility to address any complaints that may be lodged against the Project.

{¶ 89} For the reasons stated above regarding operational noise impacts, the Board also denies the Residents' eighth assignment of error. Again, beyond cross-examination of Applicant's acoustic expert, Resident Intervenors did not raise any issues regarding construction noise impacts prior to their application for rehearing. No aspect of the noise expected to be produced by the Facility during construction was identified as a potential issue for cross-examination by the Residents nor discussed in their post-hearing briefs. Use

of an application for rehearing to raise an issue for the first time is not proper and serves as a basis to deny the assignment of error. *Harvey*, Order on Rehearing (Apr. 20, 2023) at ¶ 59.

{¶ 90} Notwithstanding the procedural posture, the Board further finds that the record is replete with information regarding construction noise, its impacts, and the measures in place to ensure minimum adverse environmental impacts (App. Ex. 1, Ex. N; App. Ex. 25; App. Ex. 29; App. Ex. 29A; Staff Ex. 6; Jt. Ex. 1 at 8; Tr. I at 113-118). The Residents' disagreement and dissatisfaction with the information and, more specifically, the Board's Order, does not make the former insufficient or the latter unlawful and unreasonable. The eighth assignment of error is overruled.

8. ASSIGNMENT OF ERROR NO. 9

{¶ 91} In the ninth assignment of error, Resident Intervenors argue that the Board acted unlawfully and unreasonably by issuing a certificate without evaluating the Project's negative economic impacts as required by Ohio Adm.Code 4906-4-06(E)(4) and R.C. 4906.10(A)(6).

{¶ 92} Resident Intervenors state that Ohio Adm.Code 4906-4-06(E)(4) requires an applicant to "provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities," which they assert is necessary for the Board to determine whether "the facility will serve the public interest, convenience, and necessity" under R.C. 4906.10(A)(6). The Residents state that Applicant provided information on only the Project's anticipated economic benefits and ignored the potential adverse economic impacts, such as the economic losses to local businesses and individuals. In fact, say the Residents, the economic report submitted with the application does not attempt to estimate job losses or even net gains, it merely presents total jobs that would be supported by development of the Project.

{¶ 93} Resident Intervenors surmise that the estimated economic impacts presented by Applicant are fleeting, in the case of construction jobs, and speculative. They

further observe that Applicant makes no effort to calculate the number of jobs destroyed by the Project, including the loss of direct, indirect, or induced jobs. For example, the Project will remove 953 acres of farmland from production, but Border Basin did not study the value of the loss of 30 years of agricultural production or the economic losses to the farmers who have been farming those acres. Nor has Applicant studied financial losses to vendors who would otherwise be supplying agricultural products necessary to farm the land.

{¶ 94} The Residents submit that the incomplete, one-sided economic analysis does not present a true estimate of economic impacts and thus fails to satisfy Ohio Adm.Code 4906-4-06(E)(4). Without a full understanding of the economic impact of the Project on local commercial and industrial activities, the Board cannot find that the Project “will serve the public interest, convenience, and necessity” under R.C. 4906.10(A)(6). As such, the Residents submit that it was error for the Board to issue the certificate.

{¶ 95} Border Basin avers that the Residents’ argument that the Board cannot make a determination as to the Facility’s compliance with R.C. 4906.10(A)(6) without a negative economic impact study is without merit. Border Basin states that there is no requirement in rule or statute that an applicant specifically investigate every possible facet of economic impact. Ohio Adm.Code 4906-4-06(E)(4) requires only that an applicant provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities, which Border Basin contends was done through the economic and fiscal impact assessment report submitted with the application. Border Basin asserts that the report used standard economic models and reflects the facts as they were discovered by the experts in an objective and nonbiased manner as to the socioeconomic impacts associated with the Project. Additionally, testimony supporting the report addressed local impacts of the Project.

{¶ 96} Border Basin maintains that the Residents’ opposition on this point is simply negative opinions by opponents, none of which are based on measurable facts. Applicant asserts that the alleged lost value of agricultural products that will not be produced if the Project proceeds will accrue to the landowners who want to participate in the Project.

Regardless, neither the Board nor the socioeconomic study are required to address what is in the best economic interest of these landowners. Border Basin similarly rejects Resident Intervenor's criticism of the economic report's lack of consideration of lost agricultural sales from taking the land out of production or the possibility that tenant farmers will lose their livelihood. Applicant contends that such losses are speculative and are greatly outweighed by the enormous positive local economic benefits identified in the socioeconomic report and supporting testimony. Border Basin advocates that the Board follow its past precedent in determining that unsubstantiated worries expressed by local opponents are not sufficient to conclude that a Project is contrary to the public interest under R.C. 4906.10(A)(6). As such, Border Basin declares that the Board rightfully determined, based on record evidence, that the Project will serve the public interest, convenience, and necessity as required by statute and, accordingly, the Residents' argument on rehearing should be denied.

{¶ 97} The Board finds Resident Intervenor's tenth assignment of error to be without merit. Although rephrased from the Residents' arguments in their post-hearing reply brief, the gist remains the same: Applicant and the Board give too much weight to the anticipated positive impacts to the local economy while ignoring or failing to evaluate negative economic impacts, thus undermining any determination that the Project will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6). The Board considered the Residents' concern that too much weight was being given the positive economic impacts, specifically the potential PILOT funds, in comparison to potential negative impacts and found that, notwithstanding those concerns, there could be no dispute that the Project will bring additional revenues to local taxing districts and impart beneficial impacts on the community (Order at ¶ 134, 136). No claim made in the application for rehearing alters that conclusion. While it is possible that the Project may result in some economic losses, those losses are entirely speculative. Furthermore, it is not incumbent upon an applicant to speculate as to whether cropland will be productive in any given year, what crops may or may not thrive, or what vendors may or may not experience losses as opposed to gains. As argued by Resident Intervenor, the applicant is expected to provide

an estimate of the economic impact of the proposed facility on local commercial and industrial activities. Ohio Adm.Code 4906-4-06(E)(4). Applicant did so, and the record supports the conclusion that an evaluation of the expected economic impacts help demonstrate that the Project will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6) (App. Ex. 1; App. Ex. 1, Ex. G; App. Ex. 25; Order at ¶ 138). Resident Intervenor’s ninth assignment of error is denied.

9. ASSIGNMENT OF ERROR NO. 10

{¶ 98} Finally, Resident Intervenor’s argue that the Board acted unlawfully and unreasonably by issuing a certificate lacking a deadline for decommissioning where such a deadline is necessary to comply with R.C. 4906.10(A)(3).

{¶ 99} Resident Intervenor’s note that the application contains no deadline for finishing decommissioning after the Project stops operating and neither the Stipulation nor the Board’s Order fill that void. According to the Residents, although Condition 36 requires an updated decommissioning plan before construction, that plan is not required to include a deadline for completion of all decommissioning—only a timeframe for removal of equipment. The amount of time to complete other decommissioning activity (road removal, soil decompaction, soil grading, and soil restoration) is not identified and, thus, is at best vaguely defined. Resident Intervenor’s state that this scenario does not represent the minimum adverse environmental impact required under R.C. 4906.10(A)(3). To remedy the situation, the Residents request that the Board modify the Stipulation by replacing the phrase “for removal of the equipment” with “for finishing decommissioning activities” in Stipulation Condition 36.

{¶ 100} Border Basin responds that Resident Intervenor’s assertions regarding decommissioning are baseless, arguing that the Residents once again dismiss the entirety of a Stipulation condition to focus on a single phrase. Applicant states that the Residents fail to account for language in Condition 36 that requires Border Basin to submit a final decommissioning plan to Staff prior to construction. Further, that final plan must meet the

minimum requirements listed in the Stipulation, including the removal of all equipment within a year. Border Basin additionally relates that the substantial total decommissioning cost for the Project provides incentive to complete decommissioning in a reasonable amount of time; otherwise, Applicant will have to pay premiums to maintain the performance bond, which terminates only upon satisfactory completion of decommissioning activities. Moreover, should Applicant fail to timely decommission the Facility, the Board as obligee to the bond could pursue a non-performance claim and use the proceeds to decommission the Project. In short, Border Basin submits that Resident Intervenors' assignment of error regarding the decommissioning timeline is without merit and should be denied.

{¶ 101} The Board has never concluded that R.C. 4906.10(A)(3) mandates a specified deadline for all decommissioning activities. In fact, when presented with the same argument in *Harvey*, the Board specifically noted that “[w]hile there is not a date certain included in the Order, the Board is satisfied that adequate protections are in place to ensure that decommissioning occurs in a reasonable timeframe * * *.” *Harvey*, Order on Rehearing at ¶ 62. We reach the same decision here. Although not presented with a challenge to the decommissioning plan before rendering our February 16, 2023 Order, that Order did address Applicant’s decommissioning plan as discussed in the application, by the Staff Report, and refined with the Stipulation (Order at ¶ 51-53, 81-82, 119). All record evidence supports the conclusion that decommissioning will occur over a reasonable amount of time allowing land to be restored to prior use. Applicant’s updated decommissioning plan indicates that decommissioning and restoration activities will occur over a 12-month period, with restoration activities including topsoil replacement, seeding, and overall restoration of the land (App. Ex. 5 at 3-4). The commitments made within the application and solidified within the Stipulation, including Stipulation Condition 36, represent the minimal elements of any final decommissioning plan submitted to Staff (Jt. Ex. 1, Condition 36; Staff Ex. 6 at 3). The Board is satisfied that, when finalized and submitted to Staff in accordance with all commitments adopted and approved by the Board’s Order, the final decommissioning plan will represent the minimum adverse environmental impact, in light of all statutory

considerations, under R.C. 4906.10(A)(3). Accordingly, Resident Intervenors' tenth assignment of error is denied.

IV. CONCLUSION

{¶ 102} The Board has reviewed and considered all arguments made by Resident Intervenors in the application for rehearing, including those posed for the first time on rehearing. Based on that review, the Board concludes that Resident Intervenors failed to bring to our attention any error demonstrating that our prior consideration of this matter was inadequate nor raise any argument signifying that our Order was unlawful or unreasonable. Accordingly, we deny each assignment of error and affirm the determinations made in our February 16, 2023 Order.

V. ORDER

{¶ 103} It is, therefore,

{¶ 104} ORDERED, That Resident Intervenors' application for rehearing be denied.
It is, further,

{¶ 105} 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

Jack Christopher, 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

PAS/dr

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Case No(s). 21-0277-EL-BGN

Summary: Opinion & Order on Rehearing denying the application for rehearing filed by Robin L. Gardner, Michael J. Gardner 2011 Marital Trust #1, Gardner Brothers, LLC, Richard Scott Lewis, Sarah Lewis, The Richard S. Lewis Revocable Trust, Deidra L. Noel, Jeff Overmyer, and Shirley Overmyer 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
HARVEY SOLAR I, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-164-EL-BGN

ORDER ON REHEARING

Entered in the Journal on April 20, 2023

I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the application for rehearing filed by Save Hartford Twp., LLC; Janeen Baldrige; Edward and Mary Bauman; Julie and Richard Bernard; Anthony Caito; John Johnson; Daniel Adam Lanthorn; Nancy and Paul Martin; and Gary O'Neil, Jr.

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} Harvey Solar I, LLC (Harvey or the Company) 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.

{¶ 5} On June 24, 2021, Harvey filed a pre-application notification letter with the Board regarding its proposed solar-powered electric generation facility in Bennington and Hartford Townships, Licking County, Ohio with a capacity of up to 350 megawatts (MW) of electric generating capacity (Project or Facility).

{¶ 6} On August 6, 2021, as supplemented on September 17, 2021, Harvey filed an application with the Board for a certificate of environmental compatibility and public need

to construct and operate a solar-powered electric generation facility of up to 350 MW in Licking County, Ohio.

{¶ 7} 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. By letter dated October 4, 2021, the Board notified Harvey that its application was compliant and provided sufficient information to permit Board Staff (Staff) to commence its review and investigation.

{¶ 8} On January 4, 2022, the administrative law judge (ALJ) established an effective date for the application of December 14, 2021, and issued a procedural schedule.

{¶ 9} On February 25, 2022, Staff filed its report of investigation (Staff Report).

{¶ 10} At various times, the following parties timely filed notices of intervention or motions to intervene: the Engineer of Licking County; Save Hartford Twp., LLC, Janeen Baldrige, Edward and Mary Bauman, Julie and Richard Bernard in their personal capacity and as trustees for the Richard J. Bernard and Julie A. Bernard Family Trust, Anthony Cato, Robert Hoenie, John Johnson, Daniel Adam Lanthorn, Nancy and Paul Martin in their personal capacity and as trustees for the Martin Family Trust, Gary O'Neil, Jr., and Edward Rahde (collectively, Save Hartford); Licking County Soil & Water Conservation District; the Board of Trustees of Hartford Township (Hartford Township); the Board of Trustees of Bennington Township (Bennington Township); Village of Hartford; Ohio Farm Bureau Federation (OFBF); James and Carol Clever (Clevers); the Curry Farm Historic District; Five Roots LLC; Edward, Susan, Kelly, and Matthew Jaeger. Each party that filed for

intervention was granted intervenor status via entries issued on January 4, 2022, or March 9, 2022.¹

{¶ 11} The local public hearing was conducted as scheduled on March 14, 2022.

{¶ 12} On April 4, 2022, a joint stipulation and recommendation (Stipulation) was filed between Harvey, OFBF, the Clevers, the Village of Hartford, the Licking County Engineer, the Licking County Soil and Water Conservation District, Bennington Township, Hartford Township, and Staff. The Village of Hartford took no position on whether a certificate should be issued for the Facility but requested the inclusion of the stipulated conditions in any certificate issued by the Board. (Jt. Ex. 1 at 2 at 5.) Hartford Township subsequently modified its position regarding the Stipulation and indicated that it was taking no position on the Stipulation. (Tr. I at 10; Tr. III at 498.)

{¶ 13} Beginning on April 6, 2022, the ALJs commenced the adjudicatory hearing where the Stipulation was presented for the Board's consideration. The adjudicatory hearing was completed on April 8, 2022.

{¶ 14} On May 31, 2022, Harvey, Staff, the Clevers, and Save Hartford filed initial post-hearing briefs.

{¶ 15} On June 15, 2022, Harvey, Staff, the Clevers, and Save Hartford filed post-hearing reply briefs.

{¶ 16} On October 20, 2022, the Board issued an Opinion, Order, and Certificate (Order) that granted a certificate of environmental compatibility and public need to Harvey for the construction, operation, and maintenance of an up to 350 MW solar-powered electric

¹ The Curry Farm District, Five Roots, LLC, and the Jaegers ultimately withdrew from this case pursuant to a March 24, 2022 filing. Robert Hoenie and Edward Rahde withdrew from this case pursuant to a filing on March 25, 2022.

generation facility, subject to the conditions set forth in the Stipulation, as amended by the Board in the Order.

{¶ 17} R.C. 4906.12 provides that R.C. 4903.02 to 4903.16 apply to any 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 entry of the order upon the journal of the Commission. The statute further directs that applications for rehearing be in writing and set forth specifically the ground or grounds on which the party seeking rehearing considers an order unreasonable or unlawful. Additionally, 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.

{¶ 18} On November 18, 2022, intervenors Save Hartford filed an application for rehearing (Application for Rehearing) from the Order.

{¶ 19} On November 23, 2022, the ALJ granted Harvey's motion for extension of time to file a memorandum contra Save Hartford's application for rehearing.

{¶ 20} On November 30, 2022, Harvey filed a memorandum contra Save Hartford's application for rehearing (Memo Contra).

{¶ 21} By Entry issued December 16, 2022, the ALJ granted Save Hartford's application for rehearing for the express purpose of affording the Board more time to consider the issues raised in the application pursuant to Ohio Adm.Code 4906-2-32(E).

III. DISCUSSION

{¶ 22} The application for rehearing filed by Save Hartford submits that the Order is unlawful and unreasonable based upon twelve assignments of error, which the Board will address individually herein. Overall, Save Hartford argues that Harvey failed to

demonstrate that the Project meets the standards set in R.C. 4906.10(A)(2), (3), (5), and (6) for the issuance of a certificate of environmental compatibility and public need. In addition, Save Hartford believes that the Order is unlawful and unreasonable because Harvey failed to submit documents and information required under various Ohio Administrative Code rules, which Save Hartford asserts the Board failed to enforce. (App. For Rehearing at 3-8.)

{¶ 23} In its Memo Contra, Harvey responds to each assignment of error alleged by Save Hartford, as outlined below. In response to Save Hartford's general assertions that Harvey failed to meet the requirements of R.C. 4906.10(A)(3) or various Ohio Administrative Code provisions, Harvey disagrees. Harvey states that the Order sufficiently demonstrates that the Project met the standards under R.C. 4906.10(A)(2), (3), (5), and (6). Harvey also believes that the Board correctly determined that Harvey complied with all applicable Ohio Administrative Code sections. (Memo Contra at 5-10.) Harvey argues that virtually all of Save Hartford's arguments on rehearing are reiterations of the same arguments Save Hartford made in its initial post-hearing brief and that, with a single exception, each of these issues have been responded to and addressed in Harvey's reply brief and/or the Board's Order. Thus, to the extent that Harvey repeats reasoning from its own initial brief or reply brief, Harvey states it must do so because it is responding to identical arguments previously made and addressed. (Memo Contra at 4-5.)

{¶ 24} The Board does agree that, as pointed out by Harvey, large sections of Save Hartford's Application for Rehearing are verbatim recitations of arguments raised in either its initial brief or reply brief. This, in turn, resulted in Harvey repeating certain arguments or sections from its post-hearing briefs in order to respond to the Application for Rehearing. Consequently, and as was the case in our original analysis and determination reflected in the Order, any claim or argument raised by the application for rehearing not specifically discussed herein was, nevertheless, thoroughly and adequately considered by the Board and is denied.

A. Assignment of Error No. 1

{¶ 25} In the first assignment of error, Save Hartford asserts that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without requiring setbacks necessary to minimize the Project's adverse environmental impact under R.C. 4906.10(A)(3). Save Hartford believes that the Project's setbacks are so minimal that they offer no meaningful isolation from the "harmful impacts" of the Project. In support of this assertion, Save Hartford points to: the 300-foot setback from nonparticipants' houses; the 500-foot setback between a central inverter and a nonparticipants' house; the 25-foot setback from the edge of the right-of-way of a public road; the 25-foot setback from the edge of a waterbody or wetland; the default 25-foot setback from a nonparticipant's property line if no other setback applies. Save Hartford takes particular exception to the 25-foot setback from a nonparticipating landowners' yard and public roads, arguing that these nearby residents will be unable to "escape" the Project. Save Hartford states that at these distances, neighbors will constantly be exposed to undesirable views from their homes and land. Save Hartford argues that Harvey's offer to exceed these minimum setbacks in some places offers no relief to neighbors in places where no such expansion occurs. Save Hartford also finds little comfort in Harvey's vegetative screening plan, which it deems inadequate. In summary, Save Hartford asserts that Harvey has the burden to prove compliance with R.C. 4906.10(A)(3) and that the Company made no demonstration that larger setbacks are impractical for this Project. (App. for Rehearing at 9-11.)

{¶ 26} Harvey begins its response by pointing out that the arguments made by Save Hartford for this assignment of error are identical to the arguments made by Save Hartford in its initial brief. Further responding, Harvey states that there is no statute or rule that mandates a given setback requirement. Rather, the Board must determine appropriate setbacks for a proposed project based on the totality of the record. As there is no actual requirement to meet, Save Hartford's disagreement as to the Board's determinations does not indicate error by the Board. Harvey points to evidence in the record that it asserts Save Hartford continues to ignore. For instance, the setback that Save Hartford referred to as the

“most egregious” is the setback from property lines of neighbors not participating in the Project. Save Hartford references a proposed 25-foot setback, but Harvey points out that in its Order the Board actually doubled that setback to 50 feet. Harvey argues that rather than looking at setback requirements in isolation, the Board reviewed them in conjunction with other commitments made by the Company that will minimize the environmental impact of the Project, such as Harvey’s landscape plan and a number of other design features. Harvey also notes that the Board addressed certain concerns from the public by mandating particular setback requirements beyond those proposed by the Company. Harvey states that the Board already thoroughly considered the arguments raised by Save Hartford in the application for rehearing and found that the totality of Harvey’s commitments complied with R.C. 4906.10(A)(3). As such, Harvey submits that Save Hartford’s first assignment of error is without merit and should be denied. (Memo Contra at 11-14.)

{¶ 27} The Board finds Save Hartford’s first assignment of error to be without merit. As pointed out by Harvey and confirmed by our own review of the pleadings in this case docket, the arguments presented by Save Hartford relative to this assignment of error were previously raised during post-hearing briefing—in fact, large swaths are word-for-word reproductions of the arguments raised in Save Hartford’s initial brief (*Compare* Save Hartford Initial Br. at 5-7 *with* App. for Rehearing at 9-11). The Board already thoroughly considered Save Hartford’s setback arguments when they were first raised in the initial brief. The Board found that the setbacks, when analyzed in conjunction with other mitigation measures, will result in the minimum adverse impact on the community. We highlighted in the Order, and reiterate here, that the Board must 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, not in a vacuum. (Order at ¶ 259 citing App. Ex. 1 at Ex. X; Jt. Ex. 1 at 5-6, Condition 18.) Further, as Harvey highlights, the Board expanded some of the setbacks proposed by Harvey based upon input from the public (Order at ¶ 312). Save Hartford fails to present any new argument regarding the required statutory findings. These findings were made by this Board in full

consideration of the record evidence. Save Hartford's disagreement with our determinations as to the setbacks does not merit rehearing (*See In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2021-Ohio-3301, at ¶ 50). The Board, therefore, declines to reweigh the evidence and supports the initial findings regarding setbacks as outlined in the Order. Accordingly, Save Hartford's first assignment of error is denied.

B. Assignment of Error No. 2

{¶ 28} In its second assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by R.C. 4906.10(A)(2) and Ohio Adm.Code 4906-4-08(D)(4)(a) and (e) regarding the Project's visual impacts. Save Hartford feels that Harvey's application does not meet the requirements of Ohio Adm.Code 4906-4-08(D)(4)(a) and (e), which require, in part, that an application describe the visibility of the project and provide photographic simulations or artist's pictorial sketches of a proposed facility, respectively. Rather than accurately describing the visibility of the Project, as required under Ohio Adm.Code 4906-4-08(D)(4)(a), Save Hartford alleges that the application disguises the Project's true visual impacts by focusing on views from long distances away rather than acknowledging severe impacts for nearer residences. In support of this contention, Save Hartford argues that the application discussed the visual screening for viewers from two and five miles away from the Project, but downplays the views from neighboring properties. As was argued in its initial post-hearing brief, Save Hartford disagrees with the Board's finding that due to the low profile of the panels and significant vegetative screening, the Project will not be visible from the majority of areas even within two miles of the Project area. Save Hartford believes that the testimonies offered by its member witnesses demonstrate that the Project will have significant adverse impacts on those living close to the Facility and that the Board should have given more weight to such testimony. (App. for Rehearing at 11-20.)

{¶ 29} With respect to the photographic simulations required under Ohio Adm.Code 4906-4-08(D)(4)(e), Save Hartford argues that Harvey failed to provide simulations to meet this requirement. Save Hartford states that the simulations are not

representative of a view from an adjacent landowner because the simulations are actually based on views seen from public roads. The submitted simulations are, according to Save Hartford, far afield from the actual view that many bordering neighbors would have of the Facility. Save Hartford believes that these simulations do not represent views that “cover the range of landscapes, viewer groups, and types of scenic resources found within the study area,” as required under the Ohio Adm.Code 4906-4-08(D)(4)(e) and that Board was wrong to find that they did meet the requirement. According to Save Hartford, the rule requires that simulations cover the *entire* range of landscapes and viewer groups. (App. for Rehearing at 20-21.)

{¶ 30} Harvey believes that the Board properly concluded that the Project will not be meaningfully visible at locations that are more than two miles away from the Facility and that even within the two-mile radius, the visual resources assessment submitted in the application indicates that the Facility will not be visible to the vast majority of viewers. In response to Save Hartford’s criticism of the simulations provided in the application, Harvey argues that Save Hartford is the party attempting to mislead the Board. Harvey concedes that none of the simulations were taken from the yards of Save Hartford members (as they chose not to trespass on a citizen’s property), but agrees with the Board’s finding that they were taken from public vantage points that are demonstrative of the range of landscapes, viewer groups, and types of scenic resources in the study, which is what Ohio Adm.Code 4906-4-08(D)(e) requires. (Memo Contra at 14-17.)

{¶ 31} The Board finds Save Hartford’s second assignment of error to be without merit. As with other assignments of error alleged in the Application for Rehearing, the corresponding section of Save Hartford’s initial post-hearing brief has been reproduced word-for-word into the Application for Rehearing. Save Hartford does add lengthy summaries of the testimonies of their member witnesses, but this testimony was already a part of the record in this case and was thoroughly considered by the Board before issuing the Order. (*Compare* Save Hartford Initial Br. at 7-11 *with* App. for Rehearing at 11-21.) Save Hartford does point to areas in which it takes exception with the Board’s finding as to the

simulations, but beyond disagreement as to the weight given certain testimonies, makes no new argument as to how the Board erred (App. for Rehearing at 13, 16-19, 20-21 citing Order at ¶ 189). The Board affirms its finding that the while the simulations provided as part of the visual resources assessment were not taken from specific properties or locations, they were taken from a range of landscapes and vantage points within the Project area, which is what is required under the Board's rules. The Board remains satisfied that the admitted evidence and expert testimonies show that Harvey submitted all information required under Ohio Adm.Code 4906-4-08(D)(4)(a) and (e) and adequately described the visibility of the Facility in the surrounding area. (Order at ¶ 198 citing App. Ex. 1, Ex. W; App. Ex. 26 at 14-17.) Based on this, Save Hartford's second assignment of error is denied.

C. Assignment of Error No. 3

{¶ 32} In its third assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without requiring mitigation of adverse visual impacts as mandated by Ohio Adm.Code 4906-4-08(D)(4)(f) and R.C. 490.10(A)(3). Ohio Adm.Code 4906-4-08(D)(4)(f) requires an applicant to describe measures that will be taken to minimize any adverse visual impacts. Save Hartford emphasizes that this rule requires an applicant to describe measures, such as visual screening, that *will* be taken to minimize adverse visual impacts, not measures that *might* be taken. Save Hartford submits that the Preliminary Landscape Plan, attached to the application as Exhibit X, does not satisfy this requirement as it is not a final plan and is subject to change. While it acknowledges that Condition 18 of the Stipulation makes the Preliminary Landscape Plan binding on the Company as a starting point, Save Hartford believes that the plan itself is already "woefully deficient." Save Hartford asserts that the testimonies of both Harvey witness John Woods and Save Hartford witness Richard Bernard highlight such deficiencies. Save Hartford then re-lists the alleged deficiencies as they were outlined in its initial post-hearing brief. Further, Save Hartford argues that the final landscape plan should be adjudicated during the OPSB hearing process in order for neighbors to provide meaningful input on the final version. (App. for Rehearing at 22-27.)

{¶ 33} Based on this, Save Hartford feels that the Project does not satisfy R.C. 4906.10(A)(3) because the design does not represent the minimum adverse environmental impact regarding visual impairment considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations. Save Hartford argues that it is unacceptable for a project to reduce visual impacts “by just a little” when other forms of mitigation are practical. According to Save Hartford, Harvey “cannot seriously contend” that it cannot afford to plant larger trees, closer together, in order to further obscure views of the Facility. Save Hartford does not believe that Condition 18 of the Stipulation addresses the deficiencies inherent in the Preliminary Landscape Plan and the condition does not allow public input as to the final landscape plan that will be submitted to Staff. In summary, Save Hartford states that the Board cannot assume a mitigation of adverse impact based on future actions to be taken. (App. For Rehearing at 28-31.)

{¶ 34} Harvey responds by reiterating points made in its reply brief—namely, that while the Preliminary Landscape plan is not final and will be updated prior to construction, the plan can only be changed by increasing the commitments outlined therein and elsewhere in the application. Harvey believes that Save Hartford’s interpretation of “minimum” has no basis in the statute or Board precedent, as nowhere in Ohio Adm.Code 4906-4-08(D)(4)(f) or R.C. 490.10(A)(3) is there a requirement that an applicant provide for 100-percent screening from certain public views. Responding to the alleged deficiencies outlined by Save Hartford, Harvey asserts that the Preliminary Landscape Plan sets forth a plan that ensures visual screening of the Facility and provisions in the application and Stipulation only enhance Harvey’s commitments to mitigate adverse visual impacts. (Memo Contra at 17-22.)

{¶ 35} The Board finds Save Hartford’s third assignment of error to be without merit. The Board was unpersuaded by these arguments when it issued the Order, and we remain unpersuaded by them now. The Board already considered the alleged deficiencies of the Preliminary Landscape Plan, as they were outlined verbatim in Save Hartford’s initial

post-hearing brief. Likewise, the bulk of the remaining arguments in this section are word-for-word reproductions of arguments made in Save Hartford’s initial post-hearing brief (*Compare* Save Hartford Initial Br. at 12-19 *with* App. for Rehearing at 22-30). We also addressed Save Hartford’s contention that the Board cannot determine that the Project represents the minimum adverse environmental impact because plans such as the Preliminary Landscape Plan are labeled “preliminary” and are subject to change. First, as pointed out by Harvey, the Stipulation obligates Harvey to construct the Facility “as described in the application” and that failing to do so will be a violation of the terms of the Stipulation (Order at ¶ 261 citing Jt. Ex. 1 at 3, Condition 1). Thus, the Preliminary Landscape Plan functions as a minimum as to the actions to be taken by Harvey and any deviations from commitments made in the application or other materials can only be strengthened. The Board also disagrees with Save Hartford’s implication that Harvey and Staff have set up a scheme to deny citizens from commenting on and participating in the final landscape design. Here, Save Hartford and its members have been able to fully participate in this proceeding and the public was included throughout the process via public information meetings, local hearings, and the ability to post public comments to the docket. The ability of the Board to condition approval of a project upon the submission and approval of final post-certificate plans or studies has been affirmed by the Ohio Supreme Court and the findings made in the Order are within the Board’s power (Order at ¶ 261 citing *In re Application of Buckeye Wind, L.L.C.*, 2012-Ohio-878, ¶¶ 13-14, 16). Accordingly, Save Hartford’s third assignment of error is denied.

D. Assignment of Error No. 4

{¶ 36} In its fourth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without requiring an adequate analysis of the prospects of floods in the area as mandated by Ohio Adm.Code 4906-4-08(D)(4)(e), R.C. 4906.10(A)(2), and R.C. 4906.10(A)(3), and without requiring the mitigation of adverse consequences from floods as mandated by Ohio Adm.Code 4906-4-08(D)(4)(e) and R.C. 4906.10(A)(3). Save Hartford asserts that flooding is a major issue in

the Project area and that the application contains only abbreviated discussions about the 100-year floodplain in the area. Save Hartford points to the testimony of Harvey witness Doug Herling, who it says admitted that the Company could construct panels in the floodplain and that this contradicts some sections of the application. Save Hartford concedes that data request responses from the Company indicate that Harvey will voluntarily follow Licking County's guidelines for construction in a floodplain, but the specific precautions to be taken are not disclosed. Save Hartford asserts that the Stipulation adds no safeguards beyond requiring coordination with the Licking County floodplain program administrator, which itself is improper as it allows Staff to shift its oversight authority to another entity. Without this more specific information, Save Hartford states that the Board cannot issue a certificate without violating its duties under Ohio Adm.Code 4906-4-08(D)(4)(e), R.C. 4906.10(A)(2), R.C. 4906.10(A)(3). (App. for Rehearing at 30-33.)

{¶ 37} Harvey responds that the record is replete with evidence that provides the required information as to hydrogeology and the potential for flooding. As outlined in its reply brief, Harvey reiterates that Save Hartford is confusing construction within designated floodplains, where exceptional storms may result in an actual "flood" where waterbodies overflow banks, and typical flooding that may occur in some fields and roads with slow or poor drainage. With respect to mapped floodplains, Harvey states that only 1.6-percent of the Project area is within a 100-year floodplain and that the likelihood of an extreme hydrologic event causing a flood in the area is extremely low. Harvey states that it has committed to adhere to floodplain rules adopted by Licking County and to coordinate with the Licking County floodplain program administrator. Thus, as required under Ohio Adm.Code 4906-4-08(D)(4)(e), Harvey submits that it has provided both an analysis of the prospects for floods and its plan to mitigate adverse consequences. With regard to local flooding due to poor drainage in the area, Harvey points to its Stormwater Assessment which indicates that drainage in the surrounding area may actually be improved once the Facility and is built and operating. (Memo Contra at 20-22.)

{¶ 38} The Board finds Save Hartford's fourth assignment of error to be without merit. While some of the paragraphs have been rearranged and select wording tweaked, this argument section is again a near verbatim recitation of the same section in Save Hartford's initial post-hearing brief (*Compare* Save Hartford Initial Br. at 19-22 *with* App. for Rehearing at 30-33). The Board found these arguments meritless in the Order and sees no new arguments advanced to point out any error committed in making this determination. The Order identifies a number of documents submitted by Harvey in the application which address flooding. Further, Harvey presented testimony from multiple experts that touched on flooding impacts of waterflow resulting from the construction and operation of the Project. (Order at ¶ 260 citing App. Ex. 1, Exs. K, M, N, O, Q; App. Exs. 23, 24, 26.) The Order also highlights that the Stipulation restricts the ability of Harvey to commence construction activities within the 100-year floodplain without coordination with the local floodplain administrator, which is the appropriate governmental entity with the expertise to oversee activities within the floodplain (Order at ¶ 260 citing Jt. Ex. 1 at 8, Condition 28). The Board supports the findings made in the Order and denies Save Hartford's fourth assignment of error.

E. Assignment of Error No. 5

{¶ 39} In its fifth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by Ohio Adm.Code 4906-4-08(B) and R.C. 4906.10(A)(2) and (3) concerning the Project's potential impacts on wildlife. Save Hartford points out that the Order indicates that the Board found that Harvey performed a literature review and field surveys of animal species in the Project area but does not comment on whether required studies were performed for plants. According to Save Hartford, Harvey witness Rupprecht admitted in his testimony that the Company did not conduct field surveys for plants as required by Board rules. Save Hartford also disagrees that any literature review for wildlife was actually conducted, contrary to the Board's finding. (App. for Rehearing at 33-35.)

{¶ 40} Harvey responds that the Board properly found that Harvey conducted a literature review and field surveys as required by Ohio Adm.Code 4906-4-08(B), including requesting information from the Ohio Department of Natural Resources (ODNR) and the United States Fish and Wildlife Service (USFWS) regarding state and federal listed threatened and endangered species. Harvey asserts that the record supports the Board's findings that the Company fully complied with and provided the requisite information for both wildlife and plants in accordance with Ohio Adm.Code 4906-4-08(B). Harvey states that the only support for Save Hartford's accusations are out-of-context cross examination responses from Mr. Rupprecht. Harvey points to multiple exhibits admitted into the record which support its contention that literature reviews were properly conducted for both wildlife and plant species. Harvey concurs with the Board that information and documentation found in Exhibit P (Wildlife Report), Exhibit O (Water Delineation Report) and Exhibit Q (Ecology Impact Assessment Report) attached to the application, along with the supporting testimony thereto, provides all of the information required under Ohio Adm.Code 4906-4- 08(B). (Memo Contra at 22-24.)

{¶ 41} The Board finds Save Hartford's fifth assignment of error to be without merit. Again, the majority of this argument section is lifted directly from Save Hartford's initial post-hearing brief (*Compare* Save Hartford Initial Br at 22-25 *with* App. for Rehearing at 33-35). Save Hartford continues to maintain that Harvey failed to conduct the literature reviews and field studies required under Ohio Adm.Code 4906-4-08(B). The Board considered these arguments in making its findings in the Order and declines to reverse those findings. As stated in the Order, the documentation submitted with the application regarding the ecological impacts of the Project was voluminous. Among these submissions were a Wildlife Report, Water Delineation Report, and Ecological Impact Assessment Report, which investigated the effects of the Project on wildlife, habitat, vegetation, and aquatic environments, among other things. Harvey coordinated with ODNR and USFWS concerning impacts on both protected animal and plant species. Harvey witness Rupprecht testified that information contained in those documents came from a variety of sources,

including on-site field surveys. The information and documents submitted by Harvey concerning the Project's impacts on plants and animals was based on both literature reviews and field surveys, and is consistent with what has traditionally been required by the Board in assessing ecological impacts. (Order at ¶ 223 citing Staff Ex. 1 at 25; App. Ex. 1 at Exs. O, P, Q; App. Ex. 26 at 7; App. Ex. 1, Ex. P at 5-9 to 5-16; App. 1, Ex. Q at 4-1 to 6-8.) The Board, therefore, denies Save Hartford's fifth assignment of error.

F. Assignment of Error No. 6

{¶ 42} In its sixth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by Ohio Adm.Code 4906-4-08(A)(3), R.C. 4906.10(A)(2), and R.C. 4906.10(A)(3) concerning the Project's potential noise impacts. Save Hartford asserts that the application contains errors that violate Ohio Adm.Code 4906-4-08(A)(3) which preclude the issuance of a certificate without additional data. First, Save Hartford states that Harvey did not model the amount of noise generated by the inverters at night to predict noise levels at the Project area boundaries or at neighboring residences. Instead, Harvey's consultant "just assumed" that the noise levels at night will be minimal without any confirmation from testing or information from inverter manufacturers. Second, Save Hartford believes that Condition 35 in the Stipulation has a mistake because the Project area was modeled on a location-by-location basis rather than a Project-wide basis. Save Hartford states that this was acknowledged by Staff witness Bellamy but was not corrected in the Order. Save Hartford also alleges that the Order makes misstatements in an attempt by the Board to excuse violations of administrative rules. Save Hartford takes exception with the characterization that it suggested that certain sound measurements should have been taken from specific locations—Save Hartford contends that it simply pointed out that modeling for these locations should have been performed. Save Hartford also believes that the Board incorrectly stated that Save Hartford should provide certain evidence regarding noise levels when the burden to comply with applicable rules rests with Harvey. Save Hartford states

that the Board cannot comply with Ohio Adm.Code 4906-4-08(A)(3)(b) or R.C. 4906.10(A)(2) and (3) without requiring Harvey to correct these errors. (App. for Rehearing at 36-38.)

{¶ 43} Harvey states that the Board properly concluded that the application met the requirements of Ohio Adm.Code 4906-4-08(A)(3)(b) by setting forth operational noise levels expected at the nearest property boundary in the sound report attached to the application. Harvey asserts that Save Hartford incorrectly reads requirements into the rule requiring that sound level measurements must be taken at particular times or places. The sound measurements were taken during the daytime because the primary operational time for a solar facility is during the day and, as Harvey's expert testified, any reactive operation of the inverters at night would be insignificant compared to daytime levels. Harvey highlights that it has committed to re-model the sound study (a) if an inverter is constructed closer to any property line than depicted in the Preliminary-Maximum Site Plan, and (b) pursuant to Condition 35 of the Stipulation, if the Company chooses an inverter model with a sound power level higher than the one used in its modeling. With respect to Save Hartford's contention that Condition 35 contains an error, Harvey dismisses the argument by pointing out that its sound modeling was performed using several monitors throughout the Project area, such that re-modeling from these locations would still comply with the language of this condition and, thus, there was no need to revise the condition. (Memo Contra at 24-26.)

{¶ 44} The Board finds Save Hartford's sixth assignment of error to be without merit. The requirement of Ohio Adm.Code 4906-4-08(A)(3)(b) is for an applicant to describe the operational noise level at the nearest property boundary. The Board found that the sound report submitted as part of the application satisfied this requirement and Save Hartford presents no evidence not already considered on this issue to cause the Board to reconsider this finding. Save Hartford asserts that it never argued that sound measurements from particular locations should have been performed, only sound modeling for these locations, but even mispresents the requirement in the rule. Harvey submitted a sound level assessment performed by an environmental engineering company to model and depict the operational noise levels expected at the nearest property boundary to the Project. (Order at

¶ 199 citing App. Ex. 1, Ex. L at 69, 119; App. Ex. 25 at 5-6; App. Ex. 1 at Ex. L.) Save Hartford did not model sound levels at night, as inverters primarily operate while the sun is out. To answer questions on this, Harvey presented a witness to confirm that inverters do not produce electricity at night and that any sound that may be generated would be slight compared to daytime sounds. (Tr. I at 76-80.) The Board considered this evidence and found that Save Hartford complied with Ohio Adm.Code 4906-4-08(A)(3)(b) and that the record provided evidence sufficient to determine the probable environmental impact of sound from the Facility and that it would represent the minimum adverse environmental impact. With respect to Save Hartford's contention that Condition 35 contains an error, the Board again declines to amend the language of the condition, as any re-modeling done at locations throughout the Project area will comply with the spirit of this condition. Accordingly, Save Hartford's sixth assignment of error is denied.

G. Assignment of Error No. 7

{¶ 45} In its seventh assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving an estimate of the volume of solid waste and debris generated during construction and operation as required by Ohio Adm.Code 4906-4-07(D) and R.C. 4906.10(A)(2), (3), and (5). Save Hartford takes issue with the Order stating that volumes of solid waste need not be provided with specificity, arguing that the definition for "estimate" is a rough or approximate calculation. Save Hartford states that the application acknowledges the types of waste materials that will be generated but does not provide any estimate of the amount as required by Ohio Adm.Code 4906-4-07(D); instead, the application references "limited amounts" or "very small amounts" of waste. Save Hartford submits that the Board has a duty under Ohio Adm.Code 4906-4-07(D) and R.C. 4906.10(A)(2), (3), and (5) to obtain actual waste estimates before issuing a certificate. (App. for Rehearing at 38-40.)

{¶ 46} Harvey states that the Board correctly determined that the requirements of Ohio Adm.Code 4906-4-07(D) were met and that there was sufficient evidence in the record

to make a decision as to the volume of waste and debris at the Project site. Harvey believes that Save Hartford is again misinterpreting a rule, this time to require a numerical value or volume of waste to be stated. Harvey submits that the application, reviewed in total, lays out the types of components that will be used at the Project site and the types of waste that will be generated during both construction and operation of the Facility. Harvey estimated the amounts of solid waste to be limited, very modest, or small amounts. Thus, the Board was able to properly conclude that Harvey met the certification criteria required under R.C. 4906.10(A)(2), (3), and (5). (Memo Contra at 26-27.)

{¶ 47} The Board finds Save Hartford’s seventh assignment of error to be without merit. Save Hartford’s argument in semantics regarding solid waste and debris is as unconvincing in the Application for Rehearing as it is in post-hearing briefs. As stated in the Order, a review of the record demonstrates that the Project will comply with R.C. Chapter 3734 and all rules and standards adopted thereunder. The application provides a rough calculation or judgment of the extent of the solid waste and debris to be generated – in other words, an estimate. The application also describes how Harvey plans to manage and dispose of this waste. (Order at ¶¶ 224, 279.) Harvey, therefore, satisfies the requirement of Ohio Adm.Code 4906-4-07(D), R.C. Chapter 3734, and contributes to satisfying R.C. 4906.10(A)(2), (3), and (5). Based on this, Save Hartford’s seventh assignment of error is denied.

H. Assignment of Error No. 8

{¶ 48} In its eighth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (3), and (5) concerning the Project’s pollution impacts and associated mitigation. Save Hartford argues that construction of the Facility will result in significant soil disturbance which will cause the erosion of soil into streams and onto adjoining land owned by its members. Based on this assumption, Save Hartford states that the Ohio Adm.Code 4906-4-07(C)(1)(d) and 4906-

4-07(C)(2)(b), (c), (d), and (e) require Harvey to provide water quality data to allow the Board to evaluate the impacts of certain discharges outlined in those rules. In particular, Save Hartford argues Harvey has not provided any of the required information about the quality of surface water flows from the Project area, such as sediment from erosion carried into nearby streams. Further, Save Hartford states that the Order contains no analysis as to whether Harvey submitted this water quality information, which violates the Board's duty to detail its conclusions. (App. for Rehearing at 40-43.)

{¶ 49} Harvey responds that it provided the information required under Ohio Adm.Code 4906-4-07(C) and that the Board did set forth sufficient facts to support such a determination. Harvey points out that the rule expressly allows an applicant, for purposes of compliance with the rule, to substitute all or portions of documents filed to meet federal, state, or local regulations. Accordingly, the application identified the permits that it needs for the Project in order to demonstrate compliance with water quality issues. Harvey states that these include nationwide and general permits in accordance with state and federal water regulations and that these will be reviewed by state and federal agencies charged with determining water quality compliance. Harvey confirmed that these applications will be submitted to applicable statutory agencies prior to the Company commencing any construction activities. Harvey believes that the Board properly concluded that the application identified all permit requirements applicable to water quality in compliance with Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2), (3), and (5). (Memo Contra at 28-31.)

{¶ 50} The Board finds Save Hartford's eighth assignment of error to be without merit. This section of the Application for Rehearing is a direct repetition of the similar argument section in Save Hartford's initial post-hearing brief, with the addition of one paragraph at the end (*Compare* Save Hartford Initial Br. at 30-32 *with* App. for Rehearing at 40-43). Thus, the arguments raised in this section were already fully considered prior to issuance of the Order. Save Hartford's contention that the Order contains no analysis as to the Board's conclusions is also unfounded, as the Order clearly states that the Board found

that the potential for water quality impacts is unlikely and, to the extent that they do occur, such impacts will be mitigated by obtaining and complying with applicable permits. Harvey in its post-hearing briefs and the Memo Contra, Staff in its Staff Report, and the Board in multiple locations in the Order, highlight the permits that Harvey will obtain to mitigate water quality impacts. (Order at ¶¶ 101, 222, 275; App. Reply Br. at 38-41; App. Ex. 1 at 40-41, Ex. K; Staff Ex. 1 at 24-25) This is in compliance with Ohio Adm.Code 4906-4-07(C) and provided information sufficient for the Board to make determinations as to R.C. 4906.10(A)(2), (3), and (5) with respect to water quality issues. Based upon this, the Board supports the findings outlined in the Order and denies Save Hartford's eight assignment of error.

I. Assignment of Error No. 9

{¶ 51} In its ninth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without evaluating the Project's negative economic impacts as required by Ohio Adm.Code 4906-4-06(E)(4) and R.C. 4906.10(A)(6). Save Hartford argues that the economic impact study submitted by Harvey views the Project with "rose-colored glasses" by considering the Project's economic benefits but not its adverse consequences. Save Hartford asserts that this study did not evaluate the potential economic losses to local businesses and individuals that will result from the construction and operation of the Facility. For example, Save Hartford believes that one of its members who runs a construction company will lose opportunities for building projects on local farms if the Project takes over local farmland. Similarly, Save Hartford submits that the removal of 2,610 acres from food production will detrimentally impact local farmers who will no longer be able to work this land, as well as local suppliers that provide materials to those working this land. Save Hartford asserts that the Order recognizes the economic benefits submitted by Harvey but fails to analyze any economic detriments. Save Hartford stresses that it is not its burden to provide evidence of negative economic impacts, but that Harvey is required by the rules to provide both sides of the economic impact. Save Hartford believes that it elicited sufficient testimony from its

witnesses to show that economic losses will occur. Without such information from the Company, Save Hartford argues that the Board cannot find that the Project will be in the public interest, convenience, and necessity, as required under R.C. 4906.10(A)(6). (App. for Rehearing at 43-45)

{¶ 52} Harvey counters that the applicable rule contains no requirement as to specific economic facets that must be investigated, only that the impacts be studied and reported. Harvey states that the Socioeconomic Report attached to the application was prepared by qualified personnel at renowned universities and conducted according to standard practice for such studies. Harvey believes that the report thoroughly addresses the local impacts of the Project, both during construction and operation, and includes forecasted impacts on a number of local commercial activities. Further, Harvey responds that there is no evidence in the record of the detrimental economic losses in agriculturally related local businesses; rather, this is merely speculation from a witness opposed to the Project. Harvey agrees with the Board's findings and feels that the Board properly determined that unsubstantiated concerns of individuals are not sufficient to negate the positive economic impacts that were quantified by the experts that produced the Socioeconomic Report. Accordingly, Harvey states that it met the requirements of both Ohio Adm.Code 4906-4-06(E)(4) and R.C. 4906.10(A)(6) and that Save Hartford's position on rehearing on this issue should be denied. (Memo Contra at 31-33.)

{¶ 53} The Board finds Save Hartford's ninth assignment of error to be without merit. Like the other assignments of error in the Application for Rehearing, the bulk of the argument is lifted wholesale from the corresponding section of Save Hartford's initial post-hearing brief (*Compare* Save Hartford Initial Br. at 32-33 *with* App. for Rehearing at 43-45). Thus, the Board fully reviewed and considered these arguments, including the testimony of Save Hartford witnesses as to economic harm that may befall some local residents. However, as pointed out by Harvey, the Board must consider the record as a package to determine whether the Project will serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). This review and consideration were conducted by the Board

and the determination was made that the Project meets this criterion. Evidence submitted by Save Hartford as to any potential economic harm was considered by the Board in making this determination. However, based on the evidence presented, the Board determined that the projected creation of both construction and operational jobs, as well as associated earnings and corresponding local economic output, provided quantifiable benefits to the public. (Order at ¶¶ 296, 310 citing Applicant Ex. 20A at 6; Staff Ex. 1 at 14, 15.) Based on this, Save Hartford's ninth assignment of error is denied.

J. Assignment of Error No. 10

{¶ 54} In its tenth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by Ohio Adm.Code 4906-4-08(D)(4)(c) and R.C. 4906.10(A)(2) and (3) concerning the impacts and mitigation of the Project's glare. Save Hartford argues that Harvey performed a glare modeling analysis that assumed, as an input, that the solar panels to be used at the Facility will have an anti-reflective coating to reduce glare. However, Save Hartford states that not all solar panel models have an anti-reflective coating. Further, Save Hartford points out that nothing in the application or Stipulation requires Harvey's solar panels to have anti-reflective coating. Similarly, Save Hartford argues that the glare modeling assumed a resting angle of five degrees for the panels, which reduces the amount of glare to which neighboring residences would be exposed, but nothing in the application of Stipulation requires Harvey to utilize a fivedegree resting angle.

{¶ 55} Harvey notes that Save Hartford again repeats, verbatim, the argument section on this topic from its initial post-hearing brief. Harvey reiterates that it has committed to ensure that glare from the Project will be no greater than the glare studies, reported, and investigated by Staff, which was studied with a five-degree resting angle. Further, Harvey states that it has committed to use solar panels that have an anti-reflective coating or similar anti-reflective property. Harvey states that both of these commitments are firm and binding and that the Board acknowledged this in the Order. Accordingly,

Harvey states that Save Hartford's claims regarding glare at the Facility are erroneous and that Harvey complied with Ohio Adm.Code 4906-4-08(D)(4)(c) and R.C. 4906.10(A)(2) and (3) relative to glare. (Memo Contra at 33-34.)

{¶ 56} The Board finds Save Hartford's tenth assignment of error to be without merit. Harvey correctly points out that this section is a verbatim reproduction from Save Hartford's initial post-hearing brief (*Compare* Save Hartford Initial Br. at 33-34 *with* App. for Rehearing at 45-46). Thus, these exact arguments have already been considered by the Board and no additional arguments are put forth in the Application for Rehearing. The Board pointed out Harvey's commitment to ensure that glare from the Project will be no greater than the glare studied, reported, and investigated by Staff, which did utilize a resting angle of five degrees. The Board also acknowledged Harvey's commitment to install solar panels that have an anti-reflective coating or similar anti-reflective property. Based on the submitted glare modeling analysis, and the additional commitments made by Harvey as part of the record in this case, the Board rightly found that the probable community impacts of the Project concerning glare were properly evaluated and determined and that they represent the minimum adverse environmental impact. (Order at ¶¶ 195, 196 citing App. Reply Br. at 43; Tr. II at 358, 359.) Additionally, the Board will again highlight Condition 1 of the Stipulation, which obligates Harvey to construct the Facility as described in the application as modified and/or clarified in supplement filings. The commitments made by Harvey regarding glare were made in testimony submitted to the record in this case and confirmed by Harvey in their own pleadings. (Jt. Ex. 1 at 3, Condition 1.) Based on the foregoing, Save Hartford's tenth assignment of error is denied.

K. Assignment of Error No. 11

{¶ 57} In its eleventh assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without receiving the information required by R.C. 4906.10(A)(3) and (6) concerning the Project's electromagnetic fields (EMFs). Save Hartford submits that Harvey's leases with participating landowners

emphasize that the Facility will produce EMFs that are hazardous to humans. Save Hartford asserts that neither the application nor the Order address this risk and that the Board cannot find that the Project complies with R.C. 4906.10(A)(3) and (6) without investigating this issue. (App. for Rehearing at 46-47.)

{¶ 58} Harvey first notes that this is the first time that Save Hartford has raised any argument relating to EMFs—this matter was not raised in Save Hartford’s initial or reply briefs. Harvey states that it is improper to now raise this issue in an application for rehearing. Further, contrary to Save Hartford’s characterization of the lease language, Hartford counters that the leases do not state that there “is” a risk of EMFs. Harvey states that this is merely a liability provision between contracting parties. Harvey points out that Staff investigated EMFs as part of its report of investigation and that Exhibit G attached to the application addresses EMFs extensively and concludes that threats for EMFs produced at solar farms are extremely low. (Memo Contra at 34-35.)

{¶ 59} The Board finds Save Hartford’s eleventh assignment of error to be without merit. As an initial matter, Harvey correctly points out that this is the first time that Save Hartford has raised any argument concerning EMFs—it was not raised at hearing or in any of Save Hartford’s post-hearing briefs. It is improper for a party to use an application for rehearing to raise an issue for the first time, particularly when it had numerous opportunities to do so throughout this proceeding. On this basis alone, the assignment of error can be denied. (R.C. 4903.10; R.C. 4906.12; *see also Nussle v. AEP Ohio*, Case No. 14-1659-EL-CSS, Second Entry on Rehearing, (May 6, 2020).) Setting aside the procedural impropriety, the argument is without merit. Harvey submitted information regarding EMFs as part of its application and Staff reviewed this information as part of its investigation. Staff ultimately stated that calculation of the production of EMFs during operation of the proposed gen-tie transmission line is not warranted under Ohio Adm.Code 4906-5-07(A)(2). (App. Ex. 1 at 57; App. Ex. 1, Ex. G; Staff Ex. 1 at 39.) Contrary to Save Hartford’s assertion, language from a limitation of liability provision in a contract is not an admission of harmful EMFs to be produced at the Project site. The Board stands by Staff’s

findings, included in the Order, that potential risk from EMFs is extremely low. Save Hartford's eleventh assignment of error, to the extent it deserves consideration after its improper submission, is denied.

L. Assignment of Error No. 12

{¶ 60} In its twelfth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey that lacked a deadline for decommissioning because such a deadline is necessary to comply with R.C. 4906.10(A)(3). Save Hartford states that while the application states that decommissioning should take eight months, nothing in the application or Stipulation contains a commitment from Harvey to finishing decommissioning within eight months or any specified timeframe. Condition 30 in the Stipulation requires an updated decommissioning plan, but without a deadline for the completion of all decommissioning tasks, the bulk of decommissioning can be done at the whim of Harvey. Save Hartford argues that issuing a certificate that could allow the Facility to lay idle and decay indefinitely, without a deadline for decommissioning, does not represent the minimum adverse environmental impact required under R.C. 4906.10(A)(3). Save Hartford requests that, at a minimum, the Board amend the Order to accept the offer made by Harvey in its reply brief to commit to completing decommissioning in one year. (App. for Rehearing at 47-48.)

{¶ 61} Harvey believes that Save Hartford is ignoring the import of Condition 30 in the Stipulation. This condition requires Harvey to submit the final decommissioning plan to Staff prior to commencing construction, and the plan must contain a financial assurance instrument such as a performance bond naming the Board as the obligee and include a timeline for removal of equipment. Harvey also points to the substantial costs of total decommissioning, submitting that it will be beneficial to the Company to complete decommissioning in a reasonable timeframe. Delays in completing decommissioning will result in Harvey having to continue to pay premiums to maintain the performance bond that is required under Condition 30. Harvey submits that if it decided to let the Facility lay

idle and decay, as Save Hartford is concerned, the Board could then make a non-performance claim on the bond. Based upon the protections in Condition 30, Harvey believes there is no justifiable reason for needing a decommissioning completion deadline in the certificate. Save Hartford's assignment of error is, according to Harvey, without merit and should be denied. (Memo Contra at 35-36.)

{¶ 62} The Board finds Save Hartford's twelfth assignment of error to be without merit. While not identical to the argument section in Save Hartford's initial post-hearing brief, the arguments in the Application for Rehearing concerning decommissioning largely mirror those previously submitted and considered (*Compare* Save Hartford Initial Br. at 34-36 *with* App. for Rehearing at 47-48). The Board finds no new argument submitted to undercut the finding made in the Order that Harvey outlined a decommissioning plan that will assist in returning the land to agricultural use and that the Stipulation further ensures that decommissioning will be achieved in a timely manner. As pointed out by Harvey, not only does Condition 30 in the Stipulation require submission of an updated decommissioning plan to Staff prior to the preconstruction conference, but it also requires the Company to provide a performance bond listing the Board as obligee. These controls will allow Staff review of the updated decommissioning plan and, at the appropriate time, urge Harvey to complete decommissioning activities in a timely manner. (Order at ¶ 197; Jt. Ex. 1 at 3, Condition 30.) While there is not a date certain included in the Order, the Board is satisfied that adequate protections are in place to ensure that decommissioning occurs in a reasonable timeframe and allows the land to then be returned to agricultural or other productive use. Accordingly, Save Hartford's twelfth assignment of error is denied.

M. Board Conclusion

{¶ 63} The Board has reviewed and considered all claims and arguments contained in the Application for Rehearing and, based on the foregoing, finds that Save Hartford's Application for Rehearing is without merit. The Board finds that the bulk of Save Hartford's arguments are identical to those raised in post-hearing briefing and that the Application for

Rehearing does not identify any error demonstrating that our prior consideration of this matter was inadequate, against the manifest weight of the evidence, or otherwise unlawful and unreasonable. Accordingly, as to each of the claimed errors, we affirm the determinations made in the Order and deny each assignment of error.

IV. ORDER

{¶ 64} It is, therefore,

{¶ 65} ORDERED, That the Application for Rehearing filed by Save Hartford be denied. It is, further,

{¶ 66} 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

Jack Christopher, 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

DMH/dmh

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Case No(s). 21-0164-EL-BGN

Summary: Opinion & Order on Rehearing denying the application for rehearing filed by Save Hartford Twp., LLC; Janeen Baldrige; Edward and Mary Bauman; Julie and Richard Bernard; Anthony Caito; John Johnson; Daniel Adam Lanthorn; Nancy and Paul Martin; and Gary O'Neil, Jr. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board.