

**BEFORE
THE OHIO POWER SITING BOARD**

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

**INITIAL POST-HEARING BRIEF OF DR. JOHN BOECKL IN SUPPORT OF THE
JOINT STIPULATION AND RECOMMENDATION**

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PRELIMINARY STATEMENT

This brief is filed on behalf of intervenor Dr. John Boeckl, a resident of Monroe Township, who resides approximately 1,000 feet from the proposed Oak Run Solar Project (the “Project”). Several years ago, Dr. Boeckl was deeply concerned about a proposal to house a large-scale dairy farm at the site, which he feared would cause foul odors to waft onto his property and release pollutants that would contaminate the Little Darby Creek and Spring Fork. He was pleased when he learned of plans to build a relatively quiet, non-polluting, low-traffic solar farm instead.

Dr. Boeckl urges the Ohio Power Siting Board (“Board”) to adopt the Joint Stipulation and Recommendation (“Stipulation”), dated May 11, 2023, and issue a certificate of environmental compatibility and public need (“Certificate”) for the facility. The evidence on record confirms that the Project offers major benefits with relatively minimal risk of adverse impacts. Chief among the Project’s environmental impacts are the substantial economic benefits that it offers to Madison County and the State of Ohio. The Project will create thousands of construction jobs, sustain dozens of long-term jobs, and generate hundreds of millions of dollars of local tax revenue over its lifetime. In addition, the Project will establish Ohio as a leader in a major growth field—renewable energy—and provide a critical opportunity to train the skilled workforce that will be needed to attract other economically important projects in the future. This is a cutting-edge project along several dimensions, including generation capacity, battery storage capacity, and the Applicant’s commitment to devote a record-setting 2,000 acres of the Project area to agrivoltaics. The Project also offers many other types of environmental benefits, including that it will mitigate climate change impacts, which are already causing harm to the State of Ohio, and will reduce air and water pollution.

These benefits far outweigh any harms. As the Staff of the Public Utilities Commission of Ohio (“Staff”) found, the Project is unlikely to pose a significant adverse impact to the State’s

environmental resources. To the extent there any adverse environmental impacts, those impacts are mitigated by the conditions set out in the Stipulation. Because the Stipulation is reasonable, it should be given substantial weight, and the Project should be approved.

FACTS AND PROCEDURAL HISTORY

A. Oak Run Solar Submits an Application for a Solar Energy and Battery Storage Facility with Associated Transmission Line Facilities

Oak Run Solar LLC (“Applicant”) filed an application (the “Application”) for the Oak Run Solar Project (the “Project”) on September 2, 2022 after holding two public informational meetings in June and August of that year. *See* Applicant Ex. 1, Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility and Public Need for the Oak Run Solar Project, LLC (“Application”), at 6. The Application proposes the construction of an 800-megawatt (MW) solar energy generation facility and 300-MW battery energy storage system with associated transmission line facilities on approximately 6,000 acres of land in Madison County. *Id.* at 1.

B. The Applicant Makes a Commitment to Agrivoltaics and Other Matters of Local Importance

After submitting the Application, the Applicant made extensive outreach to the local community and local government officials. *See* Applicant Ex. 26, Pre-Filed Direct Testimony of Sarah Moser dated May 2, 2023 (“Moser Tr.”), at 10-14. On March 7, 2023, as part of that effort, the Applicant presented a memorandum of understanding (the “MOU”) to the Madison County Commissioners. *Id.* at 13-14. In the MOU, the Applicant made a commitment to, among other things: (1) increase payments to the Madison County General Revenue Fund and other taxing units, from \$7.2 million per year to \$8.24 million per year; (2) provide the County with an option to convert a portion of annual payments to an upfront lump sum amount; (3) work with Ohio State University to create a state-of-the-art agrivoltaics center, workforce development center,

and regional hub to serve other solar projects; (4) create thousands of construction jobs; (5) contract with local farmers to continue farming on the Project area; and (6) devote at least 2,000 acres of the Project area to farming between rows of solar panels (*i.e.*, agrivoltaics). *Id.*, Attachment SM-3, Proposed Memorandum of Understanding, at 2. Although the MOU has not been executed, the Applicant confirmed in sworn testimony that it “stands by the commitments set out in the MOU presented to the County Commissioners” and “will abide by those commitments as part of its Certificate conditions.” *See Moser Tr. 14:10-13.*

C. Dr. Boeckl Intervenes in Support of the Project

On March 7, 2023, Dr. John Boeckl filed a motion to intervene in this proceeding as a community member who lives near the Project and as someone with professional expertise in solar cell technology. On April 7, 2023, the Administrative Law Judges presiding over this proceeding granted all of the pending motions to intervene, including Dr. Boeckl’s motion.

D. Staff Recommends Approval of the Project

On March 27, 2023, Staff issued a Report of Investigation (the “Staff Report” or “Report”), which “recommend[ed] that the Board approve the Applicant’s request for a certificate of environmental compatibility and public need subject to certain proposed conditions.” *See Staff Ex. 1, Staff Report of Investigation dated March 27, 2023 (“Staff Report”), at 1.*

Staff recommended that the Board find that the Applicant has “determined the nature of the probable environmental impact” as required by R.C. 4906.10(A)(2). As part of that analysis, Staff considered various community impacts, including economic impacts. Staff determined that construction of the Project will create an estimated 3,033 jobs in the State of Ohio,¹ which, in

¹ These job totals were calculated on a “full time equivalent (FTE) basis” such that “1 job = 1 FTE = 2,080 hours worked in a year.” *See Application, Ex. I, Economic Impact and Land Use Analysis, at 25-26.*

turn, will generate \$209 million in local earnings and stimulate \$421 million in economic output statewide. *Id.* at 18. Staff further determined that, once operational, the project will sustain an estimated 63 long-term jobs in Ohio, which, in turn, will generate \$3.3 million in local earnings and stimulate \$8.3 million in economic output statewide every year. *Id.* In addition, Staff noted that the Madison County taxing district is expected to receive \$7.2 million per year from the Project. *Id.*

Staff also concluded that the Project is “unlikely to pose a significant impact to existing land use, cultural resources, recreational resources, or wildlife.” *Id.* at 36. Staff noted, for example, that “solar facilities are an unlikely potential source of [water] contamination.” *Id.* at 27. In the interest of caution, however, Staff recommended certain conditions to “further mitigate potential impacts.” *Id.* With these conditions in place, Staff recommended that the Board find the Project “represents the minimum adverse environmental impact.” *Id.* at 36.

Additionally, Staff recommended that the Board find the Project “would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).” *Id.* at 47. In reaching that conclusion, Staff evaluated the Applicant’s safety plans and public engagement. Staff noted that the Applicant had drafted a complaint resolution plan and had committed to documenting any complaints received. *Id.* at 46. Staff further noted that the Applicant “would select only solar modules that do not exhibit the characteristic of toxicity through analysis with USEPA’s TCLP test.” *Id.* at 44.

E. Dr. Boeckl Files Testimony in Support of the Project

On May 10, 2023, Dr. Boeckl filed testimony in support of the Project. *See* Boeckl Ex. 1, Pre-Filed Direct Testimony of Dr. John Boeckl dated May 10, 2023 (“Boeckl Tr.”). Dr. Boeckl testified, by way of background, that he has been an Ohio resident for his entire life, and that he has lived 1,000 feet from the Project site for 23 years. *Id.* at 2:8-12. For the last 33 years, Dr.

Boeckl has served as a civilian employee of the U.S. Air Force, where he is now the Senior Focal Point for the Materials and Manufacturing Directorate of the U.S. Air Force Research Laboratory. *Id.* at 2:2-17. Dr. Boeckl's Ph.D. research and doctoral thesis were focused on solar cell materials. *Id.* at 2:20-22. After receiving his Ph.D., Dr. Boeckl continued to study solar cell materials and other solid-state materials for another 18 years as a Research Scientist. *Id.* at 2:21-22, 3:1.

Dr. Boeckl testified that he supports the Project because of its environmental and economic benefits. *Id.* at 3-4. With respect to environmental impacts, Dr. Boeckl testified that, "as a scientist who understands the causes and impacts of climate change, as well as conventional air and water pollution," he understands that "replacing conventional fossil fuel power plants such as coal-fired power plants, with renewable energy sources, such as solar energy projects, will help to mitigate climate change while improving local air quality and reducing the risk of water pollution." *Id.* at 4:1-6. Dr. Boeckl further testified that, as someone who lives close to the Project site, "the construction and operation of a solar farm at the site would be far less disruptive" than other possible land uses, such as a large-scale dairy farm (*i.e.*, mega-dairy) or a housing development. *Id.* at 4:7-11. He explained, by way of example, that the previous owner of the site submitted an application in 2007 for a facility that would have housed 5,428 dairy cattle. *Id.* at 4:11-14. He noted that he lives "approximately 1,000 feet downwind of the site" and that he was "deeply concerned about the odors that would have wafted onto [his] property." *Id.* at 4:14-15. He further testified that he was concerned about the "vast quantities of manure that would have been generated at the site, which could [have] leaked into the water and harmed the fragile ecosystems of the Little Darby Creek and Spring Fork." *Id.* at 4:15-18. Considering the alternatives, Dr. Boeckl testified that he "would be thrilled to live near a

relatively quiet, non-polluting, low-traffic solar farm instead.” *Id.* at 4:18-19.

With respect to economic benefits, Dr. Boeckl testified that “the surrounding region has a serious opportunity to benefit from the boost of economic activity and tax revenue that the Project will deliver.” *Id.* at 4:20-21. He explained that the project will deliver “hundreds of millions of dollars in revenue to the local school districts and tens of millions of dollars to the fire department, ambulance, and other services,” which he believes “will increase the quality of services in the town or help to offset my own tax burden or both.” *Id.* at 4:21-23, 5:1-3. In addition, Dr. Boeckl testified that the developer has agreed to provide his household with a residential rooftop solar energy system upon completion of the project, as a part of a Good Neighbor Agreement to mitigate impacts to those who live closest to the site. *Id.* at 3:19-22.

Beyond these immediate benefits, Dr. Boeckl testified that, in his capacity as a “professional who develops international research partnerships,” he believes the Project is an “opportunity for Ohio to become a focal point as the U.S. leader in the global transition to renewables.” *Id.* at 5:4-7. Dr. Boeckl further testified that the Project is “at the cutting edge on at least three dimensions, including total generation capacity, total battery storage capacity, and commitment to agrivoltaics.” *Id.* at 5:7-9. Finally, Dr. Boeckl specifically testified that the Applicant’s commitment to employ agrivoltaics on 2,000 acres of the Project area would “truly distinguish Ohio as a leader,” given the fact that the largest agrivoltaics project in the country, as of May 2, 2023, was less than 5 acres. *Id.* at 5:9-12.

F. The Applicant and Five Intervenors Enter into a Stipulation Adopting Staff’s Conditions for Approval

On May 11, 2023, the Applicant filed a Stipulation for approval of the Project, subject to certain conditions. *See* Joint Exhibit 1 (“Stipulation”). The Stipulation was signed by the

Applicant, Dr. Boeckl, the Ohio Farm Bureau Federation,² the Ohio Environmental Council, Ohio Partners for Affordable Energy, and the International Brotherhood of Electrical Workers Local Union 683 (“IBEW”). The conditions were essentially the same as those set out in the Staff Report, with minor modifications.

G. Witnesses Testify at Evidentiary Hearing

At an evidentiary hearing held from May 15, 2023, to May 17, 2023, the Administrative Law Judges heard testimony and cross-examination by the Applicant, Staff, and various intervenors who support the Stipulation, including a labor organization, an environmental organization, and advocates for low- and moderate-income Ohioans. Following the close of the hearing, the Administrative Law Judges ordered that post-hearing briefs arguing for and against the issuance of a Certificate based on information in the record be filed by July 10, 2023.

STANDARD OF REVIEW

To grant a Certificate pursuant to R.C. 4906.10(A), the Board must find and determine 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

² The Ohio Farm Bureau Federation endorsed the conditions set out in the Stipulation but took no position on statutory findings of fact and conclusions of law contained Part III of the Stipulation. *See* Stipulation at 2 n.1.

4561.32 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. . . . ;
- (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.

Where, as here, the Board is reviewing a contested stipulation, the Board may place substantial weight on the terms of the stipulation, provided the stipulation is reasonable. O.A.C. Rule 4906-2-24(D); *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). To determine whether a stipulation is reasonable, the Board considers: (1) whether the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) whether the settlement, as a package, benefits customers and the public interest; and (3) whether the settlement package violates any important regulatory principle or practice. *Consumers' Counsel*, 64 Ohio St.3d at 126.

ARGUMENT

The record provides ample evidence that the Project meets the criteria for granting a Certificate. Consistent with Dr. Boeckl's interests and priorities, this brief will focus on explaining (I) why the Project represents the minimum adverse environmental impact within the meaning of the Revised Code and (II) why the Stipulation meets the Board's reasonableness test.

I. The Project Represents the Minimum Adverse Environmental Impact

The Board should adopt Staff's recommended finding that "the proposed facility represents the minimum adverse impact," pursuant to R.C. 4906.10(A)(3). Staff Ex. 1 at 36. In their Report, Staff concluded that "the project is unlikely to pose a significant adverse impact to

existing land use, cultural resources, recreational resources, or wildlife.” *Id.* Staff further concluded that the Project will have positive impacts on the state and local economy. *Id.* at 35. As set out below, Staff’s conclusions are well founded: the Project offers major benefits with minimal risk of adverse impacts, and it will be far less disruptive to local residents, such as Dr. Boeckl, than other uses of land, such as the mega-dairy that was previously proposed for the site.

A. The Project Offers Significant Environmental Benefits, Including Economic Benefits

1. Economic benefits

When evaluating the environmental impacts of a proposed facility, the Board considers the facility’s anticipated economic impacts. *See, e.g.,* Opinion and Order, *In re Application of Palomino Solar, LLC*, No. 21-41-EL-BGN (O.P.S.B. Apr. 20, 2023) ¶ 46 (evaluating economic benefits to determine the nature of the probable environmental impact); ¶ 65 (evaluating economic benefits to determine whether a project represents the minimum adverse environmental impact). Here, the Project offers significant economic benefits, which fall into two categories: (a) project-specific benefits, including jobs, economic output, and tax revenues; and (b) benefits that extend beyond the scope of the Project, including establishing the State of Ohio as a leader in a growing industry and training a skilled workforce that will attract other major projects in the future.

a. Jobs, earnings, economic output, and tax revenue

The Project will create jobs, boost state and local earnings, stimulate economic output, and increase local tax revenues, all at a very large scale, and with immense benefits for the local community. Staff found that construction of the Project will create an estimated 3,033 jobs in the State of Ohio. Staff Report at 18. These 3,033 new jobs were calculated on a full time equivalent (FTE) basis, such that one job is equal to one FTE working 2,080 hours in one year. *See*

Application, Ex. I, at 25-26. Approximately 1,487 of these new jobs will be in based in Madison County during the construction period, which typically lasts 12 to 18 months. *Id.* For comparison, an estimated 15,740 people—in total—were employed by businesses in Madison County in 2021.³

These new construction jobs will generate substantial earnings across the State and County. Staff found that construction-related jobs will generate \$209 million in new earnings statewide. Staff Report at 18. In Madison County alone, construction-related jobs will generate \$83 million in new earnings. Application, Ex. I, at 26-28. For comparison, the total payroll of “employer establishments” in Madison County was less than \$800 million in 2021.⁴ Staff found that these incremental earnings will, in turn, stimulate \$421 million of increased economic output across the State during the construction phase. Staff Report at 18. In Madison County alone, construction-related earnings will stimulate increased economic output of \$151 million. Application, Ex. I, at 28.

The benefits do not end, however, with the completion of construction. Staff found that, once operational, the project will sustain an estimated 63 long-term jobs in the State. Staff Report at 18. These long-term jobs will generate \$3.3 million in earnings and stimulate \$8.3 million in economic output statewide every year. *Id.* Approximately half of these benefits will accrue directly to Madison County. *See* Application, Ex. I, Economic Impact and Land Use Analysis, at 25-28 (finding that the Project will create 35 long-term jobs in Madison County, which will generate \$1.6 million of annual earnings in Madison County, and stimulate \$3.1 million of economic output in Madison County on a yearly basis).

³ U.S. Census Bureau, Quick Facts: Madison County, Ohio, <https://www.census.gov/quickfacts/madisoncountyohio> (last visited July 10, 2023).

⁴ *Id.*

In addition to creating jobs and stimulating the local economy, Staff found that the Madison County taxing district is expected to receive \$7.2 million per year in new tax revenues from the Project. *Id.* These direct payments will add up to \$252 million if the Project lasts for 35 years. The actual payments, however, could be even higher. On March 7, 2023, the Applicant offered to increase annual payments from \$7.2 million to \$8.24 million as part of a proposed MOU that it presented to the Madison County Commissioners. *See Moser Tr.* at 10-14; *see also id.* at 14:10-13 (confirming that the Applicant “stands by the commitments set out in the MOU presented to the County Commissioners” and “will abide by those commitments as part of its Certificate conditions”).

These direct payments will benefit Madison County residents by improving local services, offsetting local taxes, or both. *See Boeckl Tr.* at 4:21-23, 5:1-3 (testifying that the “hundreds of millions of dollars in revenue to the local school districts and tens of millions of dollars to the fire department, ambulance, and other services” from the Project “will increase the quality of services in the town or help to offset my own tax burden or both”). In addition, the revenue is urgently needed. As Madison County Commissioner Mark Forrest testified, the County currently has insufficient funding to maintain roads and bridges. *See Evidentiary Hearing Tr. Vol. I (“Tr. Vol. I”)* at 16:19-25 (“[O]ur engineer has terrible times funding his road and bridge funds. They are down \$2 million.”).

b. Opportunity to establish Ohio as a leader and to train a highly-skilled workforce

The Project also offers a critical opportunity to (1) distinguish the State of Ohio as a leader in the renewable energy industry and (2) build the highly skilled workforce that the State will need to attract the biggest and most economically important projects of the next few decades. *See Boeckl Tr.* at 5:4-7 (testifying that the project is an “opportunity for Ohio to

become a focal point as the U.S. leader in the global transition to renewables”).

First, the Project is uniquely positioned to distinguish Ohio as a leader in the renewable energy industry because it is “at the cutting edge on at least three dimensions, including total generation capacity, total battery storage capacity, and commitment to agrivoltaics.” *Id.* at 5:7-9. There are very few solar farms that generate 800 MW, very few battery storage systems that generate 300 MW, and no agrivoltaic project that spans 2,000 acres. *See, e.g.*, IBEW Ex. 2, Pre-Filed Direct Testimony of Trent Parker filed May 10, 2023 (“Parker Tr.”), at 5-6 (explaining that the Project’s generation and storage capacity are exceptional). As of May 2, 2023, when the Applicant filed its direct testimony, the largest agrivoltaic project in the country was less than 5 acres. *See Moser Tr.* 5:8-9 (“Currently, the largest agrivoltaic project in the United States is 4 acres”). By May 15, however, there was a new record-holder: Savion’s own Madison Fields project, which includes 150 acres of soybeans planted on May 12. *See Evidentiary Hearing Tr. Vol. II (“Tr. Vol. II”)* at 205-206. If approved, this Project, with at least 2,000 acres of agrivoltaics, will shatter that new record.

Second, the Project also offers a critical opportunity for workforce development that will help the State of Ohio attract—and successfully execute—other critically important projects in the future. As IBEW member Trent Parker testified, “A workforce that has experience” with the type of work that the Project offers “will attract more PV and battery storage investment to Ohio, ensuring that the state stays on the cutting edge.” *Parker Tr.* at 5:4-15. Inversely, the State of Ohio will lose these projects if it does not provide workers the opportunity to develop the skills necessary to build them. Importantly, these opportunities are not limited to electrical workers. As Commissioner Forrest testified, the agrivoltaics component of the Project will “give young generations” a “historic” opportunity “to move forward in a more productive way” with respect

to farming. Tr. Vol. I at 17:18-21.

2. *Other environmental benefits*

In addition to immense economic benefits, the Project will have other “significant environmental benefits.” Boeckl Tr. at 4:3. In particular, “replacing conventional fossil fuel power plants, such as coal-fired power plants, with renewable energy projects, will help to mitigate climate change while improving local air quality and reducing the risk of water pollution” from coal ash spills and other hazards. *Id.* at 4:3-6; *see also In re Application of American Municipal Power-Ohio Inc.*, 06-1358-EL-BGN, 2008 WL 596099 at *8 (Ohio P.U.C. Mar. 3, 2008) (explaining that assessing carbon dioxide emissions was a necessary part of determining the nature of the probable environmental impact).

Importantly, climate change is already having a negative impact on the State of Ohio. As Dr. Reutter testified, “[c]limate change is one of the major causes of harmful algal blooms (HABs) on Lake Erie.” Ohio Environmental Council Ex. 1, Pre-Filed Direct Testimony of Dr. Jeffery Reutter dated May 10, 2023 (“Reutter Tr.”), at 10:208-209. Dr. Reutter explained that a harmful algal bloom in 2014 left 400,000 people “unable to drink or bathe in water from their taps for about 55 hours.” *Id.* at 10:208-213. Another harmful algal bloom in 2015 on the Ohio River was 650 miles long. *Id.* at 11:223-224. Dr. Reutter further testified that “[c]limate change also causes more severe storms,” which “increase the runoff of fertilizer and manure from agricultural fields.” *Id.* at 10:215-216. Mitigating climate change by approving projects such as this one will help the State of Ohio avoid the risk of greater harm in the future.

B. The Project Will Not Cause Significant Adverse Environmental Impacts

The Staff Report and witness testimony confirm that any adverse impacts are comparatively small. The Staff Report found, *inter alia*: (a) that it is “unlikely” that construction or operation would adversely impact drinking water supplies; (b) that there would be “[n]o

impacts” to wetlands or streams; (c) that no listed species were identified during field surveys; (d) that any impacts to listed species “can be avoided by following seasonal restrictions”; (e) that any impacts from construction noise would be “temporary and occur away from most residential structures” and can be mitigated by time-of-day restrictions; (f) that any impacts to roads during construction can be mitigated by a road use agreement; (g) that visual impacts to landowners in the immediate vicinity of the area can be mitigated by setbacks and landscaping plans; (h) that the Applicant has “committed” to mitigating impacts to farmland, including by restoring farmland temporarily affected during construction and “ensur[ing] that adverse impacts to drain tile systems will not extend outside the project area”; and (i) that the Applicant has committed to use solar panels that are not hazardous or toxic. Staff Ex. 1 at 35-36.

Witness testimony provided further evidence that any adverse impacts from the Project would be minimal. Take, for example, impacts to tree cover and the viewshed. The Applicant’s witness Courtney Dohoney testified that less than 3 acres of trees would be cleared for the Project and that none of those areas would be associated with forested streams. Tr. Vol. I at 138:12-22. Indeed, while the original Application would have required clearing 41.7 acres of upland forest, the record shows that the Applicant met with the Ohio Department of Natural Resources and the Darby Creek Association, listened to their concerns, and adopted their recommendations to limit tree clearing in the Project area. *See* Applicant Ex. 11, Response to Seventh Data Request Filed on February 6, 2023, at 2. Accordingly, the Applicant revised the Project layout so that only 2.2 acres would need to be cleared for the generation facility. *Id.* at 3. The Applicant’s preferred alternative for the transmission facility will require clearing only 0.8 acres of trees. *Id.*

The witness testimony also made clear that viewshed impacts will be limited, as very few

households will be anywhere close to the Project infrastructure. In particular, as Sean Flannery testified, the two battery storage facilities and substations are “a little over 4,800 feet away, so just over 9/10ths of a mile” from the nearest residences. *Id.* at 78:9-17. As Flannery further testified, because of how consolidated the Project area is, there are “only 8 homes within 500 feet of our fenceline.” *Id.* at 79:12.

To the extent there are any adverse viewshed impacts on the very small number of households within close range of the Project, the Stipulation ensures that those impacts would be greatly mitigated. For example, Condition 14 of the Stipulation provides for a “landscape and lighting plan” that “addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of site to the project area.” Condition 14 further provides that “the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area.”

C. Any Adverse Impacts Are Minimal Compared to Alternative Land Uses

While the anticipated adverse environmental impacts of the Project are extremely limited, the same cannot be said of other possible land uses, such as a large-scale dairy-farm (i.e. mega-dairy) or housing subdivision. As Dr. Boeckl testified, “the construction and operation of a solar farm at the site would be far less disruptive to [his] lifestyle” than the mega-dairy that was previously proposed for the site. Boeckl Tr. at 4:7-9. Dr. Boeckl explained:

In 2007, the previous owner of the site, Orleton Farms, LLC, submitted a permit application to the Ohio Department of Agriculture for a dairy facility that would have housed 5,428 dairy cows at the site. I live approximately 1,000 feet downwind of the site and was deeply concerned about the odors that would have wafted onto my property. I was also concerned about the vast quantities of manure that would have been generated at the site, which could [have] leaked into the water and harmed the fragile ecosystems of the Little Darby Creek and Spring Fork. I would be

thrilled to live near a relatively quiet, non-polluting, low-traffic solar farm instead.”

Id. at 4:11-19.

Whereas Dr. Boeckl reasonably feared that the proposed mega-dairy would pollute the Little Darby Creek and Spring Fork ecosystems, the record evidence shows that a solar farm does not present such a threat. Staff found that “[s]tream and wetland impacts are not anticipated” from the Project. Staff Report at 41. Staff further found that “solar facilities are an unlikely potential source of contamination” in general. *Id.* at 27. Nonetheless, the Stipulation further mitigates any water quality impacts by limiting grading, which can lead to runoff. In particular, the Stipulation adopts a condition recommended by Staff to limit grading to less than 20 percent of the farmland, with the goal of grading no more than 5 percent. Compare Condition 23(b) at page 56 of the Staff Report with Condition 23(b) at page 8 of the Stipulation. This measure will not only reduce runoff but also help to preserve agricultural soils for ongoing and future use.

II. The Stipulation Meets the Board’s Reasonableness Test

When reviewing a contested stipulation, the Board “may place substantial weight on the terms of the stipulation.” *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). To determine whether a stipulation is reasonable and should be given substantial weight, the Board considers: (1) whether the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) whether the settlement, as a package, benefits customers and the public interest; and (3) whether the settlement package violates any important regulatory principle or practice. *Id.*

Here, the Stipulation meets the Board’s reasonableness test. First, it is the product of multiple meetings among capable, knowledgeable parties, including the Applicant, Staff, the

Madison County Soil and Water Conservation District, IBEW, the Ohio Environmental Council, Ohio Partners for Affordable Energy, the Ohio Farm Bureau Federation, and Dr. Boeckl. All of the parties were represented by counsel throughout the process. Second, for the reasons discussed in this brief, the Stipulation will benefit customers and the public interest. It will bring immense economic benefits to Madison County and allow the State of Ohio to train and develop a workforce that will attract other economically important projects. It will also help the State of Ohio to mitigate climate change and conventional air and water pollution by displacing fossil fuel production. While every development has some adverse environmental impacts, any adverse environmental impacts of this Project will be minimal, and the conditions set out in the Stipulation will mitigate them. Third, the Stipulation does not violate any important regulatory principle or practice. It simply adopts Staff's recommendations with minor modifications.

CONCLUSION

The Project will provide major economic and environmental benefits with minimal adverse impacts. Moreover, any adverse impacts will be mitigated by the conditions set out in the Stipulation and are negligible compared to those that would result from allowing the Project site to be used instead for a mega-dairy, such as the one proposed in 2007, or a housing subdivision. In addition, the Stipulation recommending approval of the project is reasonable and should be given substantial weight. For these reasons, the Board should adopt the Stipulation and grant the Project a Certificate of Environmental Compatibility and Public Need.

Dated: July 10, 2023

Respectfully submitted,

/s/ Matthew Eisenson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Ohio Power Siting Board's e-filing system and via electronic mail on all parties referenced in the service list of the docket.

Dated: July 10, 2023

/s/ Matthew Eisenson _____

Matthew Eisenson

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