

## 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

### OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on October 20, 2022

#### I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Harvey Solar I, LLC, the Ohio Farm Bureau Federation, James and Carol Clever, the village of Hartford, the Licking County Engineer, the Licking County Soil and Water Conservation District, the Board of Trustees of Bennington Township, and the Board Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion, Order, and Certificate, a certificate of environmental compatibility and public need be issued to Harvey Solar I, LLC for the construction, operation, and maintenance of a 350 megawatt solar-powered electric generation facility in Hartford and Bennington townships in Licking 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} Harvey Solar I, LLC (Harvey or Applicant) is a person defined in R.C. 4906.01. Applicant is owned by Clean Planet Renewables Energy, LLC, which in turn is a joint venture partnership between Eolian, L.P. (Eolian) and Open Road Renewables, LLC (Open Road). Open Road's principals were involved in the Hilcrest Solar Project that was approved in Case No. 17-1152-EL-BGN, *In re the Application OF Hillcrest Solar I, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Green Township, Brown County, Ohio*, and is developing a number of solar projects

throughout the multi-state regional transmission area served by PJM Interconnection, LLC (PJM). Eolian is an experienced private renewable investor with successful investments in thousands of megawatts (MW) of operating energy projects. (Applic. at 4.)

{¶ 4} 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 MW of electric generating capacity (Project or Facility).

{¶ 5} On July 14, 2021, and July 15, 2021, respectively, Applicant held an in-person and a virtual public informational meeting for the Project. The in-person public informational meeting was held at the Hartford Fairgrounds 4-H Building. On July 26, 2021, Harvey filed proof of its compliance with Ohio Adm.Code 4906-3-03(B), requiring that notice of the public informational meeting be sent to each property owner and affected tenant and be published in a newspaper of general circulation in the project area.

{¶ 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} Also on August 6, 2021, Harvey filed a motion for a waiver in part from Ohio Adm.Code 4906-4-08(D)(2)-(4) to allow for a reduced study area regarding the review of cultural resources, landmarks, and visual impacts. Specifically, Harvey requested a focused study area of two miles for cultural resources and landmarks, and five miles for recreation and scenic areas and visual impacts. The motion was granted pursuant to the administrative law judge (ALJ) Entry of January 4, 2022.

{¶ 8} 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's Executive Director notified Harvey that its application, as supplemented, was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's October 4, 2021 letter directed Harvey 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 Harvey to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On October 8, 2021, Harvey filed proof of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. Applicant also filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 10} By Entry issued January 4, 2022, as amended on January 7, 2022, the ALJ established the effective date of the application as December 14, 2021. The Entry also set forth a procedural schedule directing Staff to file a Report of Investigation by February 25, 2022, scheduling a local public hearing for March 14, 2022 at Northridge High School in Johnstown, Ohio and setting a virtual adjudicatory hearing to begin on April 6, 2022. The ALJ further directed Harvey to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-09 indicating that petitions to intervene would be accepted by the Board up to 30 days following service of the notice or by February 18, 2022, whichever was later. Finally, the Entry provided deadlines for all parties to file testimony, as well as for the filing of any stipulation, and indicated that the adjudicatory hearing would be held using remote access technology that facilitates participation by telephone and/or live video on the Internet.

{¶ 11} On November 5, 2021, the Engineer of Licking County filed a notice of intervention.

{¶ 12} On November 5, 2021, Save Hartford Twp., LLC; Janeen Baldridge; 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) filed a joint petition for leave to intervene. The motion was granted pursuant to the Entry of January 4, 2022. Robert Hoenie and Edward Rahde ultimately withdrew from this case pursuant to the filing of March 25, 2022.

{¶ 13} On December 3, 2021, the Licking County Soil & Water Conservation District filed a notice of intervention. Intervention was granted pursuant to the Entry of January 4, 2022.

{¶ 14} The Board of Trustees of Hartford Township (Hartford Township) and the Board of Trustees of Bennington Township (Bennington Township) each filed a notice to intervene on February 10, 2022, and February 17, 2022, respectively. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 15} On February 14, 2022, the village of Hartford filed a motion to intervene in this case. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 16} On February 18, 2022, the Ohio Farm Bureau Federation (Farm Bureau) filed a motion to intervene. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 17} On February 18, 2022, James and Carol Clever (Clevers) filed a joint motion to intervene. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 18} On February 18, 2022, the Curry Farm Historic District; Five Roots LLC; and Edward, Susan, Kelly, and Matthew Jaeger jointly filed a motion to intervene. Intervention was granted pursuant to the Entry of March 9, 2022. These intervenors ultimately withdrew from the case pursuant to the filing of March 24, 2022.

{¶ 19} On February 25, 2022, as amended on March 14, 2021, Staff filed its Report of Investigation (Staff Report) pursuant to R.C. 4906.07(C).

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

{¶ 21} On April 4, 2022, a joint stipulation (Stipulation) was filed between Harvey, the Farm Bureau, 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.)

{¶ 22} 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.

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

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

### III. PROJECT DESCRIPTION

{¶ 25} Harvey intends to construct a 350 MW solar-powered electric generating facility in Hartford and Bennington townships in Licking County. The Project will consist of large arrays of photovoltaic modules (solar panels), ground-mounted on a tracking rack system. The Project will occupy approximately 1,880 acres within an approximate 2,630-acre Project area comprised of private land secured by Harvey through agreements with landowners. The Project will include associated facilities such as access roads, an operations and maintenance building, underground and aboveground electric collection lines, weather stations, inverters and transformers, a collection substation, and a 138 kilovolt (kV) gen-tie electric transmission line. The Project will be secured by perimeter fencing which will be

seven-feet tall with no barbed wire and accessed through gated entrances. Applicant will ensure that solar modules are setback a minimum of 100 feet from adjacent non-participating property lines. (Staff Ex. 1 at 6.)

{¶ 26} The solar panels will be attached to metal racking, which will include steel piles driven approximately 10 feet into the ground. The solar panel modules have not yet been procured for the Project. Applicant anticipates that the Facility will be comprised of approximately 809,018 to 1,390,500 panels. Applicant anticipates using either crystalline or thin-film solar panel technology. Depending on the module selected, the Facility would include approximately 809,018 to 1,390,500 panels. The solar panel arrays will be grouped in large clusters that would be fenced in with gated entrances and electronic security systems. The highest point of each module will be approximately 15 feet, and the fence will not exceed seven feet. The Project's arrays will be mounted on a single-axis tracking system that will track the sun as it moves through the sky each day. Applicant estimates that approximately 1,880 acres of land will be converted for the proposed solar Facility, including 1,868 acres of agricultural land (Staff Ex. 1 at 6-7, 11.)

{¶ 27} Harvey will install an underground collector system consisting of a network of electric and communication lines that would transmit the electric power from the solar arrays to a central location. Most portions of the collector system will be buried while some will be above ground. The below grade portion of the collector system will be buried at least 36 inches. The electricity will be generated in direct current (DC) and will be ultimately transmitted to a DC-to-alternating current (AC) inverter. (Staff Ex. 1 at 7.)

{¶ 28} The underground lines would be installed by direct burial method or horizontal directional drilling (HDD). Installation of the cable will require an approximate 15-foot-wide temporary work area along its entire length. The below grade portion of the collector system would be buried at least 36 inches. (Staff Ex. 1 at 7.)

{¶ 29} The Facility substation will occupy approximately 1.15 acres of land adjacent to the existing American Electric Power (AEP) Centerburg Substation. The major

components of Applicant's substation will include all components necessary to step up the collection line voltage of 34.5 kV to the transmission voltage of 138 kV. The collection substation will be located in the northern part of the Project area on Clover Valley Road near the Licking-Knox county line. An approximate 1,900-foot, 138 kV electric transmission gen-tie line will connect the Project substation to the AEP Centerburg Substation. (Staff Ex. 1 at 7.)

{¶ 30} Applicant proposes to construct new access roads for construction, operation, and maintenance of the solar Facility. The access roads will be surfaced with gravel and be up to 16 feet in width. (Staff Ex. 1 at 7.)

{¶ 31} Applicant proposes to use approximately 23 construction laydown areas, consisting of 1-5 acres and collectively occupy up to a maximum of 30.19 acres. The Project will also include 10 pyranometer stations that will be mounted to a maximum height of 15 feet and will be used to measure solar irradiance. These stations will also contain communications equipment. (Staff Ex. 1 at 7.)

{¶ 32} Applicant proposes to construct one operations and maintenance building. The building will not include water or sewer service. The operations and maintenance building will serve as a workspace for operations personnel. (Staff Ex. 1 at 7.)

{¶ 33} Lighting will be installed at the operations and maintenance building. The lighting will be motion-activated. It will be minimal, downlit, and face toward the Facility to the extent practicable. (Staff Ex. 1 at 8.)

{¶ 34} If approved, construction is anticipated to begin in the fourth quarter of 2022 and be completed by the fourth quarter of 2023 with an in-service date of the first quarter of 2024. According to Applicant, delays could impact project financing. (Staff Ex. 1 at 8.)

#### IV. SUMMARY OF EVIDENCE

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

##### A. *Public Participation/Public Input*

{¶ 36} 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 to the record.

{¶ 37} Sixty-four individuals testified at the local public hearing that was held on March 14, 2022. Thirty of the witnesses expressed their support for the proposed Project and thirty-four opposed the Project. Sixteen of the witnesses in support of the Project are participating landowners and have lease agreements with Applicant. The landowners emphasized the importance of being able to decide how to utilize their land and derive additional income from their land (Pub. Tr. at 39, 49, 87, 91, 93, 108, 111, 131, 148, 150, 152, 154, 174, 175). Those in favor of the proposed Project recognized the importance of solar energy as an alternative, renewable energy source (Pub. Tr. 42, 46, 88, 91, 108, 154, 174). They also noted the environmental and economic benefits to the community relative to roads, bridges, emergency services, and to schools (Pub. Tr. at 42, 45, 46, 48, 49, 56, 72, 78, 79, 83, 87, 108, 111, 133, 144, 147, 177, 179, 190, 228, 245). Supporting witnesses also highlighted the anticipated jobs to result from the proposed Project (Pub. Tr. at 57, 59, 60, 62, 63, 109, 128, 135, 136, 190).

{¶ 38} Other supporting witnesses described the feasibility of the Project area being concurrently utilized for the generation of solar energy and agriculture (Pub. Tr. at 41, 80, 152, 156, 202). Some witnesses referenced the benefits of Denison University's solar array. Although it was noted that none of the original concerns raised regarding that project came to fruition, it was also recognized that it is smaller than the Project proposed in this case and



distinguishable from the current case since Dennison University is a participating member of the community in which that project was developed (Pub. Tr. at 188-190, 210, 248). One witness testified that improved health would result from approval of the Project due to the reduction in the use of agricultural chemicals (Pub. Tr. at 133). Some witnesses disputed concerns regarding drainage and flooding issues and indicated that the repair of drainage tiles and the addition of vegetation would address these concerns (Pub. Tr. at 41, 48, 49, 112). Other witnesses questioned concerns regarding the toxicity of the solar panels (Pub. Tr. at 39). One witness disputed the alleged adverse aesthetic impacts and contended that the proposed setbacks are sufficient to mitigate view impacts (Pub. Tr. at 87).

{¶ 39} Objecting witnesses raised concerns related to the negative impacts of the Project on the health of residents and farm animals, including the adverse effects resulting from the glare, toxicity of the solar panels, and exposure to electromagnetic fields (EMF) (Pub. Tr. at 19, 35, 54, 75, 76, 117, 118, 122, 164, 194, 205, 206, 219, 224, 225). 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 35, 123, 141, 232, 237, 238). Witnesses also stated concern regarding the potential negative impact on property values in and around the Project area (Pub. Tr. at 19, 68, 100, 117, 158, 167, 169, 194, 195, 205, 227). Some witnesses expressed concern regarding water and soil contamination and decommissioning issues resulting from the Project (Pub. Tr. at 19, 35, 118, 158, 160, 161, 164, 194, 219, 238). Concerns were also expressed specific to solar fires, flooding, erosion, and drainage tile issues that may result from the Project (Pub. Tr. at 25, 35, 64-66, 70, 99, 100, 212, 213). Witnesses also were concerned that the Project would result in the loss of prime agricultural land (Pub. Tr. at 53, 69, 75, 103, 170, 205). Instead, one witness proposed that it would be more appropriate to locate the Project in warehouses, brownfields, and on rooftops (Pub. Tr. at 75, 209, 233). One witness disputed the claim that the Project would result in the creation of jobs. Instead, the witness contended that the created jobs would only be temporary in nature. (Pub. Tr. at 126.)

{¶ 40} Some witnesses questioned the lack of timely notice regarding the proposed Project (Pub. Tr. at 15, 29, 113, 162, 223, 249). Other witnesses do not believe that Ohio is an appropriate location for a solar project due to an insufficient amount of sunshine (Pub. Tr. at 75, 103, 126, 147). Witnesses questioned the appropriateness of the proposed Project location because the area does not have a shortage of power and that the power to be generated will be sent out of state (Pub. Tr. at 144, 214, 217, 250).

{¶ 41} Concerns were also raised regarding the negative aesthetic and noise impact resulting from the proposed Project. Witnesses also stated concerns regarding theft and destruction of property related to the construction of a solar project. (Pub. Tr. at 30, 165, 167, 194.) Opposing witnesses also noted that Harvey is not part of the community and will eventually return to Texas (Pub. Tr. at 17, 18, 25, 248). Finally, witnesses questioned the ramifications if Harvey was to declare bankruptcy (Pub. Tr. at 18, 66, 141-143).

{¶ 42} In addition to testimony provided at the local public hearing, 377 filings have been made in the case docket from citizens expressing comments regarding the proposed Facility. These public comment filings generally mirror the statements made at the local public hearing.

## **B. Staff Report**

{¶ 43} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The Staff Report, filed on February 25, 2022, and amended on March 14, 2022, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

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

{¶ 44} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. In its review of the application under R.C. 4906.10(A)(1), Staff notes that the Project is a proposed electric

generation facility, not a transmission line or gas pipeline. Accordingly, Staff recommends that the Board find that this consideration is inapplicable. (Staff Ex. 1 at 8.)

## 2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 45} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed Facility. As a part of its investigation, Staff reviewed the nature of the probable impact of the solar Facility and the following is a summary of Staff's findings:

### a. *Community Impacts*

{¶ 46} The predominant land use within the Project area is agriculture. There are some residences in the Project area and some varied commercial and institutional uses within one mile of the Project area. Applicant states that 1,868 acres of agricultural land, 10 acres of residential land, 1.8 acres each of deciduous forest and herbaceous land would be impacted, totaling approximately 1,880 acres of land to be converted for the proposed solar Facility. Impacts from construction would be temporary in nature and contained to the properties of the participating landowners. Significant impacts to residential, commercial, industrial, recreational, and institutional land uses are not anticipated and surrounding agricultural land use would continue with minimal disruption. (Staff Ex. 1 at 11.)

{¶ 47} In the Project area, Hartford Township has put forth a comprehensive land use plan that includes goals to guide land use in the township. The plan lists preserving a rural character, supporting and strengthening agriculture, and keeping future development with a rural character as the top priorities. Applicant states that the Project will help support these goals by preserving the land from residential development for the life of the Project. Applicant also states that the Project is not expected to have any significant adverse effect on regional development, including housing, commercial and industrial development, schools, transportation system development, or other public services or facilities. (Staff Ex. 1 at 11, 12.)

{¶ 48} The construction and operation of the proposed Facility will not physically impact any recreational facilities. Applicant identified three recreational areas within five miles of the Project area. The nearest recreational area to the Project footprint is P.E. Grubb Lake, which is located about 1.51 miles away from the closest solar panels. Hartford fairgrounds is located approximately 650 feet away from the closest solar panels, which will be partially visible from the fairgrounds. All other recreational facilities are at distances that exceed likely visibility. Staff's review of Applicant's viewshed analysis indicates that significant adverse aesthetic impacts are not likely. (Staff Ex. 1 at 12.)

{¶ 49} The Project area predominantly consists of agricultural land. The rural nature of the Project vicinity limits the number of potential viewers. Existing woodlots also provide additional natural screening. Traffic volume on roads throughout the Project area is typically light, thus abating the potential number of viewers. The solar panels will be installed no higher than 15 feet above ground level. Based on the results of Applicant's two-mile visual resources report, the solar panels would not be meaningfully visible at locations more than two miles away from the Project area, nor from most areas within two miles of the Project area. (Staff Ex. 1 at 12.)

{¶ 50} In addition to setbacks exceeding 300 feet from non-participating residences, Applicant proposes mitigation in the form of vegetative screening at selected sensitive areas around the Project site. Applicant's landscape plan proposes the installation of planting modules, categorized into tiers based on levels of aesthetic impact along the Facility's fence line. Applicant's landscape plan increases overall vegetation density in relation to the potentially greater aesthetic impacts, with the goal of softening viewshed impacts and blending the Facility into the existing vegetation. (Staff Ex. 1 at 12, 13.)

{¶ 51} Staff recommends that Applicant consult with a certified professional landscape architect. In order to address impacts to the traveling public, nearby communities, and recreationalists, Staff also recommends that Applicant adjust its

landscape and lighting plan to incorporate appropriate planting measures such as shrub and tree planting or enhanced pollinator plantings. (Staff Ex. 1 at 13.)

{¶ 52} Staff recommends that Applicant's landscape and lighting plan incorporate design features to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project's infrastructure. Staff recommends that aesthetic impact mitigation include native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners and subject to Staff review. (Staff Ex. 1 at 13.)

{¶ 53} Applicant intends to construct a fence that will be an agricultural-style metal fence that will be seven feet high with no barbed wire. Staff believes that it is important that the perimeter fence incorporate wildlife friendly features into its design and that the fence be small-wildlife permeable. According to Staff, consistent with Staff's landscape, lighting, and fencing conditions, the overall expected aesthetic impact would be minimal. (Staff Ex. 1 at 13.)

{¶ 54} Applicant's consultant, Cardno, completed a Phase I cultural archaeological reconnaissance survey, which was submitted to the Ohio Historic Preservation Office (OHPO) for review in November 2020 and May through July 2021. Based on the archaeological reconnaissance survey report, a total of 323 archaeological sites were newly identified and nine sites were re-identified within the Project area. All but 12 sites were recommended by Cardno as being ineligible for listing in the National Register of Historic Places (NRHP). OHPO agrees with the 12 sites recommended as potentially eligible for listing in the NRHP but also recommends that an additional three sites are potentially eligible for listing in the NRHP. OHPO recommends that the Applicant either avoid or conduct Phase II studies for the 15 sites identified as potentially eligible for listing in the NRHP. OHPO also recommends that the Project avoid the suspected location of the Potter Cemetery. (Staff Ex. 1 at 13, 14.)

{¶ 55} Cardno also conducted a historic architecture survey of the Project area to determine if an undertaking may directly or indirectly cause change in the character or use of a cultural property. As stated above, the survey recorded 323 properties of which 12 were recommended as eligible for listing on the NRHP. One property is already listed in the NRHP. Of the 13 total properties, six were recommended to have a potential adverse effect from the Project. OHPO concurred with these findings. OHPO and Applicant are developing a memorandum of understanding (MOU) to mitigate for and/or avoid cultural resources with potential adverse effects due to the Project. Staff recommends that Applicant finalize and execute the MOU with OHPO. Staff believes that with the implementation of the MOU and avoidance of the suspected location of the Potter Cemetery, minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 14.)

{¶ 56} Applicant would own the proposed Project but hire a third party to construct, operate, and maintain it. Applicant currently owns the development rights for all land within the Project area. (Staff Ex. 1 at 14.)

{¶ 57} The total capital and intangible costs of the proposed Facility are expected to range between \$850/kW to \$950/kW, depending on the models of solar panel, racking, and inverters. Total cost comparisons between the proposed Facility and other comparable facilities were provided in the application. Staff verified Applicant's assertion that the reported average cost of similar facilities is not substantially different from Applicant's estimated costs for the proposed Facility. (Staff Ex. 1 at 14.)

{¶ 58} Applicant estimated the cost of delays in permitting and construction of the proposed Facility could be \$3 million per month. Applicant stated that delays could prevent the Project from meeting Federal Investment Tax Credit deadline, which could result in the loss of those benefits to Applicant. Applicant also stated that delays could result in losses associated with the time value of money. Staff found Applicant's characterization of its estimated cost of delays to be reasonable. (Staff Ex. 1 at 15.)

{¶ 59} Applicant retained the services of Kent State University and the University of Akron to evaluate the potential economic impacts of the construction and operation of the Facility. The expected impacts include 1,372 construction related jobs and 10 long-term operational jobs. Local earnings during construction were estimated at \$91 million with \$879,000 in annual earnings estimated during Facility operations. The Project is estimated to generate between \$2.45 million and \$3.15 million annually for Licking County taxing districts. This estimate is based on a proposed, but not agreed to, Payments in Lieu of Taxes (PILOT) plan in which Applicant would annually pay between \$7,000 and \$9,000 per MW for a total of 350 MW. (Staff Ex. 1 at 15.)

{¶ 60} Potential impacts of glare from the solar panels could be a brief reduction in visibility, afterimage, a safety risk to pilots, or a perceived nuisance to neighbors. Applicant considered the potential impacts of glint and glare in the design of the solar array layout and how the panels would be operated. (Staff Ex. 1 at 15, 16.)

{¶ 61} Harvey holds land rights to and estimates that the solar Facility can operate for 40 years or more. It has created a decommissioning plan with a total decommissioning cost estimate of \$18,480,000 Staff states in its report that it reviewed the decommissioning plan. In accordance with the plan, at the end of the useful life of the Facility, it would be decommissioned and the land returned to its current use as agricultural land. Prior to the start of any decommissioning activities, Applicant would apply for and obtain applicable federal, state, and local permits, which may take approximately 1.5 months. At the request of the landowner, Applicant may leave access roads in place. Applicant would also contact the appropriate local agency to coordinate the repair of any public roads if damaged or modified during decommissioning. Applicant would restore the land significantly to its original topography to allow for resumption of pre-construction agricultural land use. Applicant anticipates that the decommissioning and restoration activities will occur over an eight-month period. Staff recommends that the updated decommissioning plan include a requirement to monitor the site to ensure successful revegetation and rehabilitation. Staff

also recommends that a timeframe be included in the final decommissioning plan where the equipment is removed. (Staff Ex. 1 at 16, 17.)

{¶ 62} Applicant would repurpose, salvage, recycle, or haul offsite to a licensed solid waste disposal facility all solar components. Some of the components should have a resale or salvage value and would be sold to offset the decommissioning cost. Disposal would occur in compliance with federal, state, and local laws and regulations. Applicant would provide for financial security to ensure that funds are available for decommissioning /land restoration. It will periodically review the decommissioning plan and costs and provide an updated report to the Board every five years after the commercial operations date. The reports would be prepared by an independent, registered professional engineer, licensed to practice engineering in the state of Ohio, to estimate the total cost of decommissioning the Facility, salvage value, and appropriateness of any contingency amount or percentage. In the event that the owner of the solar Facility becomes insolvent, Applicant surmised sufficient funds would be in place to remove the Facility as a condition of Board approval. (Staff Ex. 1 at 17.)

{¶ 63} Staff recommends that at least 30 days prior to the preconstruction conference, Applicant submit an updated decommissioning plan and total decommissioning cost estimate on the docket without regard to salvage value (Staff Ex. 1 at 17).

{¶ 64} Applicant has indicated that the Facility would be designed to withstand and minimize potential damage from high-wind occurrences. The support piles for racking will be made of galvanized steel and installed based on the site-specific soil sampling and after further geotechnical pull testing, at sufficient depths to prevent the movement of the associated equipment from wind. Applicant would select racking and solar panels with specific wind ratings from the manufacturers in order to ensure performance during high wind speeds. (Staff Ex. 1 at 18.)



{¶ 65} Applicant has yet to finalize its delivery route, although it is expected that deliveries to the Project site would be by way of I-71 to US36 to Meredith State Road. The main transportation routes to access the Project site would be County Line Road, Meredith State Road, School Lane Road, Croton Road, Lovers Lane Road, Fairgrounds Road, Rhodeback Road, Briar Road, Sinkey Road, Clover Valley Road, Downing Road, Freas Road, Foundation Road, Tagg Road, Roberts Road, Westly Chapel Road, and Bethel Road. Applicant conducted a route evaluation study to identify viable means of accessing the Project area. Traffic patterns, bridge conditions, culvert conditions, road surface conditions, and potential obstructions were identified and analyzed. Road surface conditions are adequate for construction purposes, but Lovers Lane Road, Clover Valley Road, Croton Road, Foundation Road, and Tagg Road will all likely need repair once the Facility is completed. No overhead obstructions were identified along the proposed delivery route. No rail systems exist within the transportation study area. (Staff Ex. 1 at 18.)

{¶ 66} Conventional heavy equipment which does not require special permitting would make up the majority of construction traffic. The electrical transformer is likely to be overweight and would require special permitting and route coordination for delivery. Although an increase in truck traffic would be anticipated during construction for the purpose of Project area equipment access and equipment and material deliveries, significant changes in traffic patterns are not expected. No road closures are expected. Applicant expects to enter into a Road Use Maintenance Agreement (RUMA) with Licking County. Post construction and operation of the solar Facility, Applicant does not anticipate any additional traffic for the Project beyond routine maintenance. (Staff Ex. 1 at 18.) Any damaged public roads and bridges would be repaired promptly to their previous or better condition by Applicant under the guidance of the applicable regulatory authority. Any temporary improvements would be removed unless the appropriate regulatory authority requests that they remain in place. (Staff Ex. 1 at 18-19.)

{¶ 67} Noise impacts from construction activities would include site clearing, installation of mechanical and electrical equipment, and the commissioning and testing of

equipment. While construction activities would generate significant noise levels during the construction period, the noise would be temporary and intermittent, would be limited to daytime working hours, and would occur away from most residential structures. Applicant would establish a complaint resolution process. Operational noise impacts for a solar generation facility would be relatively minor and occur only during the day. Operational noise sources include inverters and tracking motors. The step-up transformer at the new substation may operate at day or night but the noise impact would be relatively minor. Based on the conducted ambient noise level study, no non-participating receptors were modeled to receive noise impacts greater than the daytime ambient level plus five A-weighted decibels (dBA). Therefore, the Project would be expected to have minimal adverse noise impacts on the adjacent community. (Staff Ex. 1 at 19.)

*b. Geology*

{¶ 68} The Project area lies within the glaciated margin of the state and includes several Wisconsin-age glacial features. The Project area is covered by the silty loam of the Centerburg Till. The southwestern portion of the Project area is covered by flat to gently undulating ground moraine. The eastern portion of the Project area is covered by end moraine ridges, hummocky moraine, and poorly sorted kame deposits. Glacial drift throughout most of the study area is between 19 and 391 feet thick and is relatively thin through much of the Project area. (Staff Ex. 1 at 19.)

{¶ 69} The uppermost bedrock unit throughout the Project area is Maxville Limestone, Logan Formation, and Cuyahoga Formations Undivided, all consisting of limestone overlying interbedded shale and sandstone. It is very unlikely that bedrock will be encountered during the construction of the proposed Facility. Conditions typically necessary for the formation of karst geology features do not exist within the Project area and, therefore, are not expected to be a factor in construction. The nearest documented karst feature is approximately six miles southwest of the Project area. (Staff Report at 20-21.)

{¶ 70} Ohio Department of Natural Resources' (ODNR) records indicate that 18 oil and gas wells are within one mile of the Project area. Four oil and gas wells are located within 500 feet of the Project area and one well would be within the Project area. The well will be identified and clearly marked prior to any construction activity to ensure that it is not disturbed. No Class II injection well activity occurs within several miles of the Project area. ODNR does not have record of any mining operations within several miles of the Project area. (Staff Ex. 1 at 21.)

{¶ 71} Recent geologic history shows that the Project area and the associated region of the state to be at low risk for seismicity caused by earthquakes. The Project will be designed in conformance with the most current Ohio Building Code, which requires that the structural design account for seismic activity, as well as local building codes, as appropriate. Applicant will carry commercial casualty insurance to cover risks should any seismic activity affect the structural design. Applicant has indicated that no blasting activities are anticipated for the construction or operation of the proposed solar Facility. (Staff Ex. 1 at 21, 22.)

{¶ 72} The Project area consists primarily of soils derived from glacial till and alluvium. Applicant's geotechnical review indicates that it appears that there are favorable subsurface conditions for the design and construction of the solar arrays, access roads, and site development and that the soils are expected to be suitable for grading, compaction, and drainage for the solar arrays. Applicant's Geology and Hydrogeology Report identified near-surface soils in the Project area that are softer and poorly drained. Additional stabilization measures such as installation of a geotextile fabric and/or chemical stabilization may be necessary at the gravel access roads and equipment pads. No pile load testing has been performed to date. However, pile load testing and additional geotechnical explorations is recommended in the Geology and Hydrogeology Report for purposes of determining the final design for foundation systems and access road design and construction. (Staff Ex. 1 at 22, 23.)

{¶ 73} Based on the data and considerations provided within the application and relying on its proposed conditions, Staff concluded that there are no geological features within the Project area that are incompatible with the construction and operation of the proposed solar Facility. Staff noted that additional geotechnical testing is necessary to confirm this conclusion. (Staff Ex. 1 at 23.)

{¶ 74} Staff recommended that the final detailed engineering drawings of the final design shall account for geological features and include the identity of the registered professional engineer(s) licensed to practice engineering in the state of Ohio who reviewed and approved the designs. Staff also recommended that Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference. Additionally, Staff recommended that at least 30 days prior to the preconstruction conference, Applicant should provide a final Unanticipated Discovery Plan that would address the processes that would be followed if undocumented or unanticipated contaminated material or other potential hazards were encountered during construction. Further, Staff recommended a 25-foot setback from a specified plugged oil and gas well identified in the Project area. (Staff Ex. 1 at 23.)

*c. Ecological Impacts*

{¶ 75} Groundwater resources are plentiful throughout the Project area. ODNR has record of 692 water wells drilled within one mile of the Project area. The wells range in depth from 25 to 400 feet deep. No public drinking source water protection areas occur within the Project area. According to Applicant, ODNR records reflect several private water wells within a 500-foot buffer of the Project area. Applicant has committed to decommissioning one private water well located within the southwestern portion of the Project area. The well's former surface location will be clearly marked to ensure subsurface work is avoided in that area. According to Applicant's Geologic and Hydrogeology Report, it is highly unlikely that the construction and operation of the solar Project will impact local public and private water supplies. Staff concurred with this conclusion and states there

appears to be no unreasonable risk to public or private drinking supplies by construction or operation of the proposed solar Facility. (Staff Ex. 1 at 23, 24.)

{¶ 76} According to Applicant's consultant, 27 streams are located within the Project area, including 11 perennial streams, 12 intermittent streams and 4 ephemeral streams. Harvey anticipates 35 crossings in total for the installation of collection lines and the installation of access roads, totaling approximately 836 square feet of temporary impacts and 83 square feet of permanent impacts to streams. To minimize impacts to higher quality perennial streams, Harvey has committed to no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species unless further coordination with ODNR and United States Fish and Wildlife Services (USFWS) occurs. Harvey has prepared a Frac-Out Contingency Plan as part of the application that would be implemented at any stream or wetland crossing utilizing HDD for the installation of collection lines. (Staff Ex. 1 at 24.)

{¶ 77} According to Applicant's consultant, 42 wetlands were delineated within the Project area. Harvey anticipates 0.464 acres of temporary impacts and 0.01 acres of permanent impacts to wetlands from the installation of collection lines and access roads within the Project area. All wetland impacts would occur within Category I wetlands. Direct impacts to streams and wetlands would be covered under the U.S. Army Corps of Engineers Clean Water Act Section 404 Nationwide permit. Applicant would obtain an Ohio National Pollutant Discharge (NPDES) construction stormwater general permit through the Ohio Environmental Protection Agency (OEPA) prior to the start of construction. Applicant's Stormwater Pollution Prevention Plan (SWPPP), which is required as part of the NPDES, would detail the specifics about how surface waters would be protected from indirect construction stormwater impacts. Staff recommends that Applicant apply OEPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to Project construction and operation. (Staff Ex. 1 at 24, 25.)

{¶ 78} Based on a review of the Federal Emergency Management Agency (FEMA) 100-year floodplain mapping, the Project overlaps with approximately 41.5 acres of the FEMA 100-year floodplain. Applicant has contacted the Licking County Floodplain Administrator regarding any floodplain permitting required for the Project. (Staff Ex. 1 at 25.)

{¶ 79} Staff notes that Applicant requested information from ODNR and the USFWS concerning listed threatened or endangered plant and animal species known to be located in the historical range of the Project area. Staff gathered additional information through field assessments and review of published ecological information. Based on the Staff Report, ODNR and USFWS did not identify any concerns regarding impacts to listed plant species. The Project area is within the range of several listed bird species, including the state endangered Upland Sandpiper, the state endangered Northern Harrier, the state threatened Sandhill Crane, and the state threatened Least Bittern. These listed species were identified as having potentially suitable wintering habitat within the Project area. However, due to the highly mobile nature of these species and the availability of wintering habitat in the area, it is not anticipated that the Project would result in adverse impacts to these species. Specific to the state and federal endangered Indiana bat and the state endangered and federal threatened northern long-eared bat, the federally endangered Little Brown Bat, and the federally endangered Tricolored bat, Staff indicates that the Project area is within the range of these species and that they are tree roosting species in the summer months. Applicant anticipates approximately 28.71 acres of tree clearing for construction of the Project. Therefore, Staff recommends that Applicant adhere to seasonal tree cutting dates of October 1 through March 31 for all trees three inches or greater in diameter, unless coordination efforts with the ODNR and the USFWS reflect a different course of action. (Staff Ex. 1 at 27.)

{¶ 80} The Project is within the range of the state threatened Fawnsfoot mussels. Although no live or dead mussels were observed within the Project area, Applicant has committed to adhere to the ODNR and USFWS recommendations of no in-water work

occurring in the perennial streams from April 15 through June 30 in order to minimize impacts to indigenous species. (Staff Ex. 1 at 27.)

{¶ 81} Permanent vegetative impacts would occur primarily in agricultural fields. Applicant has developed a vegetation management plan in which it would incorporate pollinator-friendly habitat around the perimeter of the Project (approximately 55 acres of pollinator habitat). Applicant states that this will enhance visual appeal, enrich local wildlife habitat, benefit the local farming, increase plant diversity, and discourage invasive species. The vegetation management plan details low-growing grasses to be planted around, between, and under solar panels promptly following construction of the Project. Additionally, Applicant commits a portion of the Project specifically located on the northeast intersection of Foundation Road and Clover Valley Road to be established in pollinator plantings and beneficial vegetation. Staff recommends that Applicant prepare an updated vegetation management plan in consultation with ODNR and consistent with the recommendations in the Staff Report. Staff also recommends that Harvey take steps to prevent the establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:1-5-37 during the implementation of any pollinator-friendly plantings. (Staff Ex. 1 at 27-28.)

{¶ 82} Staff recommends that the Board find that Applicant has determined the nature of the probable environmental impact of the proposed Facility and, therefore, complies with the requirements of R.C. 4906.10(A)(2) provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 28).

### 3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 83} 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.

{¶ 84} Applicant's site selection process focused on the availability and quality of solar resources, proximity to the bulk power transmission system, topography, and identification of willing contiguous land participants. Other factors considered in the site selection process included the accessibility, geologic suitability, limited residential development, limited ecological resources, and the lack of impact to cultural resources. (Staff Ex. 1 at 29.)

{¶ 85} During site selection efforts, Applicant engaged with both the public and local government officials to explain the proposed Project and answer questions and concerns within the community. The proposed site possesses adequate solar resources, manageable access to the bulk power transmission system, sufficiently low population density, positive feedback from landowners and local officials, highly compatible land use characteristics, and few environmentally sensitive areas. (Staff Ex. 1 at 29.)

{¶ 86} A Phase I cultural archaeological reconnaissance survey was completed and submitted to the OHPO for review in November 2020 and May through July 2021. It was determined that there were nine previously discovered archaeological sites in the Project area and a total of 323 archaeological sites were newly identified within the Project area. 15 sites were recommended as potentially eligible for listing in the NRHP. OHPO also recommended that the Project avoid the suspected location of the Potter Cemetery and either avoid or conduct Phase II studies for the fifteen sites identified as potentially eligible for listing in the NRHP. (Staff Ex. 1 at 29.)

{¶ 87} OHPO and Applicant are developing a MOU to mitigate for and/or avoid cultural resources with potential adverse effects due to the Project. With the implementation of the MOU and avoidance of the suspected location of the Potter Cemetery, Staff has determined that minimal adverse environmental impacts to cultural resources would be achieved. According to Staff, the geology of the Project site in Licking County does not appear to present conditions that would limit or negatively impact the construction and operation of the proposed Facility. (Staff Ex. 1 at 29.)



{¶ 88} No significant impacts are proposed to stream or wetlands. 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. Applicant did not identify any listed plant species during field surveys. (Staff Ex. 1 at 30.)

{¶ 89} Noise impacts are expected to be limited to construction activities. The adverse impact of construction noise would be temporary and intermittent and would occur away from most residential structures. Staff recommends that Applicant limit the hours of construction to address potential construction-related concerns from nearby residents. Staff recommends that Applicant submit an updated noise study to confirm that sound levels would not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor to assure that operational noise impacts are minimal. A complaint resolution plan would be implemented during construction and operation. (Staff Ex. 1 at 30.)

{¶ 90} During construction, local, state, and county roads would experience a temporary increase in truck traffic due to deliveries of equipment and materials. It is anticipated that most components would be delivered by using flatbed or tractor-trailer vehicles and multi-axle dump trucks. The transportation management plan would be finalized once the final engineering layout is determined. (Staff Ex. 1 at 30.)

{¶ 91} In order to reduce impacts in areas where an adjacent, non-participating parcel contains a residence with a direct line of sight to the Project, Staff has recommended a condition requiring a final landscape and lighting plan that addresses the potential impacts of the Facility. Staff also recommended that Applicant adjust its landscape and lighting plan to address the potential impacts to the traveling public, nearby communities, and recreationalists. With respect to perimeter fencing, Staff recommends that Harvey take steps to further minimize overall aesthetic concerns and to provide more wildlife friendly access for small animals. (Staff Ex. 1 at 30.)

{¶ 92} Applicant has committed to take steps to address potential impacts to farmland, including repairing all drainage tiles damaged during construction and restoring

temporarily impacted land to its original use. Applicant would locate drain tiles as accurately as possible prior to construction. Applicant has committed to promptly repair drain tiles found to be damaged by the Project during the operational life of the Project. Following decommissioning of the Project, land can be restored for agricultural use. (Staff Ex. 1 at 30.) Applicant has prepared a decommissioning plan to decommission the solar Facility and would provide the financial security to ensure that funds are available for decommissioning and restoration. Applicant has committed to use panels that have been certified to comply with the United States Environmental Protection Agency's (U.S. EPA) Toxicity Characteristic Leaching Procedure test and meet the U.S. EPA's definition of nonhazardous waste. (Staff Ex. 1 at 31.)

{¶ 93} Staff determined that the Project would be unlikely to pose significant adverse impacts to existing land use, cultural resources, recreational resources, or wildlife. Therefore, Staff recommends that the Board find that the proposed Facility represents the minimum adverse environmental impact and complies with the requirements set forth in R.C. 4906.10(A)(3), provided that any certificate include the conditions set forth in the Staff Report. (Staff Ex. 1 at 31.)

#### 4. ELECTRIC POWER GRID

{¶ 94} 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.

{¶ 95} Applicant proposes to construct a solar-powered electric generation facility, capable of producing up to 350 MW. The Facility would interconnect from the Project substation to a newly proposed gen-tie connection to the existing AEP Centerburg 138 kV Substation. The Centerburg Substation would be expanded to create a three-breaker ring bus to accommodate the new solar-powered electric generation Facility. (Staff Ex. 1 at 32.)

{¶ 96} 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 bulk power system (BPS). As an owner, operator, and/or user of the BPS, Applicant is subject to compliance with various NERC reliability standards. NERC reliability standards are included as part of the system evaluations conducted by PJM. PJM is the regional transmission organization charged with planning for upgrades and administrating the generation queue for the regional transmission system in Ohio. PJM reviews applications for expansions and upgrades of the PJM transmission system to ensure compliance with reliability criteria. (Staff Ex. 1 at 32.)

{¶ 97} Applicant submitted four generation interconnection requests for the proposed Facility to PJM, which analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that no new system reinforcements would be needed due to the addition of the Project and that no overloading or network impacts on earlier projects in the PJM queue would result from the addition of the proposed Facility. Additionally, PJM determined that upgrades to mitigate any future operational restrictions are not required for the Facility to be operational and are at the discretion of Applicant. The short circuit analysis identified no circuit breaker problems resulting from the proposed generation addition. (Staff Ex. 1 at 32-34.)

{¶ 98} Based on these determinations, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4) provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report (Staff Ex. 1 at 34).

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

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

### *a. Air*

{¶ 100} Air quality permits are not required for construction or operation of the proposed Facility because it will not use fuel and will not emit any air pollution. Fugitive dust rules, adopted under R.C. Chapter 3704, may be applicable to the construction of the Facility. Applicant expects the amount of dust to be low because little topsoil will be moved and there will be minimal grading and earth work activities. Applicant would control temporary and localized fugitive dust by using best management practices such as using water to wet soil and/or dust suppressants on unpaved roads as needed to minimize dust. This method of dust control is typically used to comply with fugitive dust rules. The Project would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 35.)

### *b. Water*

{¶ 101} With respect to water quality impacts, Applicant anticipates obtaining environmental permits if and where necessary. Applicant would mitigate potential water quality impacts associated with aquatic discharges by obtaining a NPDES construction storm water general permit (OHC00005) from the OEPA with submittal of a notice of intent for coverage under that permit. The OHC00005 also requires development of a SWPPP to direct the implementation of construction-related storm water best management practices for soil erosion control. Staff recommends that Applicant construct the Facility in a manner that incorporates post-construction stormwater management under OHC00005 in accordance with the OEPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays. If required, Applicant would obtain the following permits: (a) U.S. Army Corps of Engineers Section 404 or nationwide permit for stream crossing and wetland

impacts, (b) OEPA Water Quality Certification under Section 401 of the Clean Water Act; and (c) Ohio Isolated Wetland Permit in accordance with R.C. 6111.03(J) and R.C. 6111.021. According to Staff, with these measures, construction and operation of the Facility would comply with the requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter. (Staff Ex. 1 at 35, 36.)

*c. Solid Waste*

{¶ 102} Debris generated from construction activities would include items such as damaged/unusable parts or materials, crates, nails, boxes, containers, packing/packaging materials, construction scrap, and general refuse. All construction-related debris that was not reused or recycled would be disposed of at an authorized solid waste disposal facility. During operation of the Project, Applicant anticipates only very small amounts of solid waste, which would be reused, recycled, or properly disposed of in accordance with applicable solid waste regulations at a local landfill. The nature of the solid waste would be comparable to that during the construction phase. According to Staff, Applicant's solid waste disposal plan would comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 36.)

*d. Aviation*

{¶ 103} The tallest above-ground structures would be the overhead-underground riser pole structures at the collector substation, which would be approximately 80 feet tall. That height is under the height requirement from the Federal Aviation Administration (FAA), pursuant to 14 C.F.R. Part 77.9(a), for filing a Form 7460-1. (Staff Ex. 1 at 36.)

{¶ 104} There is one public use airport within five miles of the Project area and no heliports within that distance. Staff confirmed that the closest public-use airport is Chapman Memorial Field, which is approximately 1.6 miles north of the proposed collector substation. Applicant has written and reached out to the owner of the airport to inform them about the Project. Staff contacted the Ohio Department of Transportation (ODOT) Office of Aviation during its review of the application in order to coordinate review of

potential impacts of the Facility on local airports. As of the date of the Staff Report, no such concerns have been identified. (Staff Ex. 1 at 36-37.)

{¶ 105} 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 include the conditions specified in the Staff Report (Staff Ex. 1 at 37).

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

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

{¶ 107} Applicant stated that it will use reliable equipment. The current equipment under consideration is compliant with the applicable Underwriters Laboratories and Institute of Electrical and Electronics Engineers standards. Applicant intends to select leading suppliers and all the primary components of the Facility will have standard industry warranties. Applicant has also planned for the expenses of operations and maintenance for the Facility. Specifically, it would consist of monitoring and supervision, grid regulation, corrective maintenance, preventative maintenance, and site maintenance. (Staff Ex. 1 at 38.)

{¶ 108} Applicant intends to use warning signs, fencing, and gates to restrict access to the potential hazards within the Project area. Additionally, Applicant intends to design its Facility with setbacks to non-participating sensitive receptors, non-participating properties, and public roads. Specifically, Applicant would implement the following setbacks: (a) 25 feet to the public road right-of-way edge, (b) 25 feet from the property line of any non-participating parcel, (c) 25 feet to any waterbody or wetland, (d) 300 feet to a non-participating home, and (e) 500 feet between a central inverter and a non-participating home. These are minimum setbacks and the actual setbacks would be much greater. Applicant would also incorporate any manufacturer recommended setbacks into its final site plan. Based on consultation with ODOT, Staff recommends that Applicant implement a setback of at least 30 feet from the solar Facility fence line to the public roads edge line or

demonstrate that the solar fence is outside the clear zone of the nearest public road. (Staff Ex. 1 at 38.)

{¶ 109} Applicant intends to restrict public access to the Facility by enclosing the Project area with an agricultural-style metal fence that is seven-feet tall and would comply with National Electric Safety Code requirements. Applicant intends that the fencing around the substation would be a six-foot tall chain link fence topped with a one-foot tall barbed wire strand. Staff has recommended that, except for the substation fencing, the solar panel perimeter fence type be both wildlife permeable and aesthetically fitting for a rural location. Prior to construction, Applicant also intends to develop and implement an emergency response plan in further consultation with potentially affected emergency response personnel. Staff has reviewed an example emergency response plan provided by Applicant. (Staff Ex. 1 at 38, 39.)

{¶ 110} When energized, electric transmission lines generate EMFs. There have been concerns that EMFs may have impacts on human health. The gen-tie transmission line is not within 100 feet of an occupied structure. Therefore, calculation of the production of an EMF during the operation of the proposed gen-tie transmission line is not warranted per Ohio Adm.Code 4906-5-07(A)(2). (Staff Ex. 1 at 39.)

{¶ 111} Applicant has drafted a complaint resolution plan to handle complaints during the construction and operation of the Facility. Staff recommends that a final version of the plan be filed in the docket no later than 30 days prior to the start of construction. Applicant committed to notifying affected property owners, tenants, and residences located within a quarter of a mile of the perimeter of the Project area regarding the Project and the complaint resolution plan prior to the start of construction and prior to the start of commercial operations. Staff recommends that these notices be mailed to all residences, airports, schools, and libraries located within one mile of the Project area, parties to this case, county commissioners, township trustees, emergency responders, and any other person who requests updates regarding the Project. Applicant has committed to provide a

quarterly complaint summary report about the nature and resolution of all complaints received in that quarter and submit the report to Staff during construction and for the first five years of operation. Staff recommends that these reports be filed on the public docket. (Staff Ex. 1 at 39.)

{¶ 112} Based on the public informational meeting comments summarized in the Staff Report, commenters expressed concern that solar is not viable or cost-effective for large-scale electric generation. Commenters also stated that the Project should be developed in another location and that additional setbacks, especially from homes, and perimeter landscaping should be incorporated into its design. (Staff Ex. 1 at 39.) According to Staff, as of the date of the Staff Report, the Board had received 248 public comments filed in this case. Commenters expressed concerns or opposition to the proposed Project, expressed concerns about issues including disruptions to the local economy, impacts to roadways, agricultural land use, wildlife, surface water, drinking water, drainage, property values, public health, aesthetics, and viewshed. Those supportive of the Project emphasized benefits to the local economy, clean energy and the environment, tax revenue, and job creation. (Staff Ex. 1 at 40.)

{¶ 113} In conclusion, 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), provided that any certificate issued include the conditions specified in the Staff Report (Staff Ex. 1 at 40).

## 7. AGRICULTURAL DISTRICTS

{¶ 114} Pursuant to R.C. 4906.10(A)(7), the Board must determine the Facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility. Agricultural district land is exempt from sewer, water, or electrical service tax assessments (Staff Ex. 1 at 41).



{¶ 115} Agricultural land can be classified as an agricultural district through an application and approval process that is administered through the local county auditor's office. Eligible land must be devoted exclusively to agricultural production or be qualified for compensation under a land conservation program for the preceding three years. Furthermore, eligible land must be at least 10 acres or produce a minimum average gross annual income of \$2,500. Approximately 2,610 acres of agricultural land will be disturbed by the proposed Project, of which 316 of those acres are currently enrolled in the Agricultural District program. No agricultural structures will be removed due to the Project. The repurposed land could be restored for agricultural use when the Project is decommissioned. (Staff Ex. 1 at 41.)

{¶ 116} The construction and operation of the proposed Facility would disturb the existing soil and could lead to broken drain tiles. The locating and avoidance of damaging drain tile mains can help prevent the pooling of water on Project parcels and adjacent parcels. Applicant utilized aerial imagery, the records of landowners, the Licking County Soil and Water Conservation District, and the Licking County Engineer to identify the locations of existing drain tiles within the Project area. Applicant provided a Drainage Tile Mitigation Plan with its application. The report discusses avoidance, repair, and mitigation details of all known drain tile locations as well as a detailed map showing the location of all identified drain tiles. Applicant has committed to repair any drainage tile found to be damaged by the Project during the operational life of the Project. Applicant has also committed to take steps to address potential impacts to farmland, including repairing drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Excavated topsoil will be used to establish vegetative cover for the Project. Disturbed areas upon decommissioning will be restored for agricultural use. (Staff Ex. 1 at 41.)

{¶ 117} 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 specified in the Staff Report (Staff Ex. 1 at 41).

#### 8. WATER CONSERVATION PRACTICE

{¶ 118} 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.

{¶ 119} Construction of the proposed Facility would 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. (Staff Ex. 1 at 42.) Similarly, operation of the proposed Facility will not require the use of significant amounts of water. Additionally, Applicant states that it does not anticipate the need to clean the solar panels with water because of sufficient rainfall in the area. If cleaning is needed, Applicant estimates that a single instance of 5,000,000 gallons of water would be used. Applicant intends to obtain that water from local subsurface resources, truck in water, or both. (Staff Ex. 1 at 42.)

{¶ 120} Staff recommends that the Board find that the proposed Facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the certification of the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 42.)

#### 9. RECOMMENDATIONS

{¶ 121} In addition to making various findings throughout its report, Staff recommended various conditions set forth in Staff Ex. 1 be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 43-49). Many of the recommended conditions found in the Staff Report, some with modifications, are adopted in the Stipulation. The Stipulation and conditions are subsequently discussed in this Order.

## V. ADJUDICATORY HEARING

{¶ 122} As detailed below, Harvey presented 10 witnesses, Save Hartford presented 6 witnesses, and Staff presented 10 witnesses.

{¶ 123} Harvey presented the testimony of Douglas Herling in support of the Stipulation filed in this case. Mr. Herling also provided background concerning the application, sponsored parts of the application including those related to the Project overview, components, public outreach, schedule, socioeconomic, complaint resolution, interconnection, and financial information. Mr. Herling also identified the other Applicant witnesses and supported Applicant's commitments addressed in the application, responses to data requests from Staff, and conditions in the Staff Report filed on February 25, 2022, as supplemented on March 14, 2022. (App. Exs. 20; 20A.)

{¶ 124} Harvey presented the testimony of Andrew Lines for the purpose of addressing the impact of the Project on the value of neighboring property (App. Ex. 30).

{¶ 125} Harvey presented the testimony of Mark Bonifas for the purpose of addressing the issues of transportation, decommissioning, HDD frac-out, and drain tiles related to the Project (App. Ex. 21).

{¶ 126} Harvey presented the testimony of A.J. Smith for the purpose of addressing the issues of geology and hydrogeology related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 24, 24A).

{¶ 127} Harvey presented the testimony of Jordan Rofkar for the purpose of addressing the issue of vegetation management related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 22, 22A).

{¶ 128} Harvey presented the testimony of Amanda Spencer for the purpose of addressing the issue of stormwater impacts related to the Project, and that the proposed

Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 23, 23A).

{¶ 129} Harvey presented the testimony of Ryan Rupperecht for the purpose of addressing the issues of water delineation, wildlife, ecology impact and visual impacts related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 26, 26A).

{¶ 130} Harvey presented the testimony of Robert O’Neal for the purpose of addressing the issues of sound impacts related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 25, 25A).

{¶ 131} Harvey presented the testimony of John Woods for the purpose of addressing landscaping impacts related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Exs. 28, 28A).

{¶ 132} Harvey presented the testimony of Tom Braman for the purpose of addressing glare impacts related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Ex. 29, 29A).

{¶ 133} Harvey presented the testimony of Ryan Peterson for the purpose of addressing cultural, architecture, archaeology, and related agency coordination related to the Project, and that the proposed Project and Stipulation represent the minimum adverse environmental impact (App. Ex. 27, 27A).

{¶ 134} Save Hartford presented the testimony of Mary Bauman on behalf of Save Hartford and its specific individual members who were granted intervention. Through her testimony, Ms. Bauman attempted to show the locations of the residences and land owned by Save Hartford’s members that are adjacent to or near the Project area. Ms. Bauman also described the views of the Project area from her property and the occurrences of flooding in the Project area. (Save Hartford Ex. 2 at 1-7.)

{¶ 135} Save Hartford presented the testimony of Anthony Caito on behalf of Save Hartford and its specific individual members who were granted intervention. Through his testimony, Mr. Caito attempted to show the locations of the residences and land owned by Save Hartford's members that are adjacent to or near the Project area. Mr. Caito also described the views of the Project area from his property and the occurrences of flooding in the Project area. (Save Hartford Ex. 4 at 1-5.)

{¶ 136} Save Hartford presented the testimony of Richard Bernard on behalf of Save Hartford and its specific individual members who were granted intervention. Through his testimony, Mr. Bernard described the view of the adjoining Project area from his property. Based on his education and experience with landscaping, Mr. Bernard considers Harvey's proposed landscape screening between the Project area and the properties of nonparticipating adjacent landowners to be deficient. First, Mr. Bernard notes that the application only provides for a preliminary landscape plan that is subject to change after a certificate is issued for the Project. Additionally, Mr. Bernard believes that the preliminary landscape plan is deficient because it does not state the percent of screening or how opaque it will be. The witness points out that perennial plantings will die back to the ground in the fall and will not provide screening at that time. Further, Mr. Bernard does not believe that the plans provide enough detail as to the number of plantings and distance between them in order to know if they will provide adequate screening. Mr. Bernard is also concerned that the proposed vegetation will be adversely affected by the small wildlife surrounding the Project area. He believes that in order to provide effective screening, trees should be of a minimum size at installation and their trunks should be of a minimum caliper. (Save Hartford Ex. 3 at 1-7.)

{¶ 137} Save Hartford presented the testimony of Nancy Martin, on behalf of Save Hartford and its specific individual members who were granted intervention. Ms. Martin's family owns farmland that is adjacent to the Project area. Ms. Martin indicated that this farmland has drainage tiles that are connected to drainage tiles in the Project area. She is

concerned that the proposed Project might adversely affect any plans to build homes due to the presence of a substation and gen-tie line for the Project. (Save Hartford Ex. 5 at 1-4.)

{¶ 138} Save Hartford presented the testimony of Gary O’Neil, Jr., on behalf of Save Hartford and its specific individual members who were granted intervention. Mr. O’Neil and his wife own land and a house on a parcel of almost two acres located adjacent to the Project area. According to Mr. O’Neil, the Project area is adjacent to his property on three sides and can be seen from all three sides of his yard and from the windows of his house. Mr. O’Neil operates a construction company. He would prefer to be surrounded by residential communities rather than an industrial solar farm. Additionally, he believes that a solar facility would reduce job opportunities and construction income. (Save Hartford Ex. 6 at 2-4.)

{¶ 139} Save Hartford presented the testimony of Janeen Baldrige on behalf of herself and Save Hartford, Edward and Mary Bauman, Julie and Richard Bernard, Anthony Caito, John Johnson, Daniel Adam Lanthorn, Nancy and Paul Martin, and Gary O’Neil, Jr. She and her husband own land, a house, a barn, and other farm buildings on a parcel of about 2.5 acres that is adjacent to the Project area. According to Ms. Baldrige, they would not have purchased the property if they were aware of the potential siting of the proposed solar Project. The proposed Project area is visible from the yard, deck, gardens, and the first and second floors of the house. She believes that many of the activities that she engages in on her property take place in areas from which the Project area can be easily seen. (Save Hartford Ex. 1 at 2-5.)

{¶ 140} Staff presented the testimony of Robert Holderbaum, the Staff project lead in this case. Witness Holderbaum managed the investigation that resulted in Staff Ex. 1. (Staff Exs. 8 and 9.)

{¶ 141} Staff presented the testimony of Tyler Conklin for the purpose of sponsoring portions of the Staff Report pertaining to the economic impacts of the Project (Staff Ex. 2).

{¶ 142} Staff presented the testimony of Jess Stottsberry for the purpose of sponsoring the ecological impacts section of the Staff Report pertaining to geology and private water supplies (Staff Ex. 3).

{¶ 143} Staff presented the testimony of Matthew Butler for the purpose of sponsoring portions of the Staff Report pertaining to public comments and public interaction (Staff Ex. 4).

{¶ 144} Staff presented the testimony of Eric Morrison for the purpose of sponsoring portions of the Staff Report related to agricultural land, roads, and bridges (Staff Ex. 5).

{¶ 145} Staff presented the testimony of Jason Cross for the purpose of sponsoring portions of the Staff Report related to whether the Project is consistent with regional plans for expansion of the electric power grid (Staff Ex. 6).

{¶ 146} Staff presented the testimony of James O'Dell for the purpose of sponsoring portions of the Staff Report related to aesthetics (Staff Ex. 13).

{¶ 147} Staff presented the testimony of Andrew Conway for the purpose of sponsoring portions of the Staff Report related to glare, decommissioning, wind velocity, air, water, solid waste, aviation, safety, EMFs, and water conservation practice (Staff Ex. 11).

{¶ 148} Staff presented the testimony of Theodore November for the purpose of sponsoring portions of the Staff Report related to surface waters, threatened and endangered species, and vegetation (Staff Ex. 12).

{¶ 149} Staff presented the testimony of Mark Bellamy for the purpose of sponsoring portions of the Staff Report related to land use, recreation, cultural resources, and noise (Staff Ex. 10).

{¶ 150} Staff presented the testimony of Allison DeLong for the purpose of sponsoring portions of the Staff Report related to the regional planning as discussed in the nature of probable environmental impact section (Staff Ex. 7).

## VI. STIPULATION AND CONDITIONS

{¶ 151} At the April 6, 2022, adjudicatory hearing, Harvey presented the Stipulation entered into by Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed solar farm (Jt. Ex. 1 at 1; Tr. I at 28, 29). The village of Hartford took no position as to whether a certificate should be issued for the Facility but requests the inclusion of the conditions in the Stipulation in any certificate issued by the Board. (Jt. Ex. 1 at 2-3; Tr. I at 9, 10, Tr. III at 498.) Save Hartford opposed the Stipulation.

{¶ 152} The following is a summary of the 39 conditions agreed to by the Signatory Parties and is not intended to replace or supersede the actual Stipulation:

- (1) Applicant shall install the Facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (2) Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. The conference shall include a presentation of the measures to be taken by Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Applicant may conduct separate



preconstruction conferences for different phases of civil construction and equipment installation.

- (3) Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the as-built specifications of the entire Facility. If Applicant demonstrates good cause that prevents it from submitting the required as-built specifications within the allotted timeframe, it may request an extension. Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.
- (4) Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to the preconstruction conference, Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design and mapping in the form of PDF, which Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from siting detailed in the application. The detailed engineering drawings of the final Project design shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to

practice engineering in the state of Ohio, who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final Project design to Staff.

- (5) At least 30 days prior to each preconstruction conference, Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final Project design for that phase of construction and mapping and geographically referenced data based on final engineering drawings to confirm that the design is in conformance with the certificate. Applicant shall also provide for review and acceptance, the final geotechnical engineering report, including a summary statement addressing the geologic and soil suitability, and recommendation for the final foundation systems and access road design and construction.
- (6) At least 30 days prior to the preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final Unanticipated Discovery Plan.
- (7) At least 30 days prior to the preconstruction conference, Applicant shall provide the results of the pile load testing and the final engineering recommendations based on those results. The testing shall be conducted as outlined in the recommendations of the Geology and Hydrogeology Report included in the application.
- (8) Applicant shall take all reasonable measures necessary to determine the exact location of well API #34089256670000. Applicant shall ensure that the well location is clearly marked

prior to the initiation of construction so as to ensure this area is avoided by the construction equipment.

- (9) Applicant shall observe a minimum solar equipment setback of 25 feet from plugged and abandoned oil and gas wells within the Project footprint.
- (10) If any changes are made to the Facility layout after submission of final engineering drawings, Applicant shall provide all such changes to Staff. All changes are subject to Staff review for compliance with all conditions of the certificate prior to construction in those areas.
- (11) The certificate shall become invalid if Applicant has not commenced a continuous course of construction of the proposed Facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (12) As the information becomes known, Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the Facility begins commercial operation.
- (13) Applicant shall obtain transportation permits prior to the commencement of construction activities that require them. Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed Facility.

- (14) Prior to the commencement of construction activities in areas that require permits or authorization by federal or state laws and regulations, Applicant shall obtain and comply with such permits or authorizations. Applicant shall provide copies of permits and authorizations to Staff within seven days of issuance or receipt by Applicant and shall file such permits or authorizations on the public docket. Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference(s).
- (15) The certificate authority provided in this case shall neither 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 their supervision or control.
- (16) Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM. Applicant shall docket a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.
- (17) The Facility shall be operated in such a way as to assure that no more than 350 megawatts would at any time be injected into the BPS.

- (18) Prior to commencement of construction, Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area. Consistent with the conditions set forth in the Stipulation, the plan shall include measures such as fencing, vegetative screening or good neighbor agreements.
- (19) Prior to commencement of construction, Applicant shall submit to Staff for approval a solar panel perimeter fence type that is both small wildlife permeable and aesthetically fitting for a rural location. This condition shall not apply to substation fencing.
- (20) Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by Applicant, Staff, and the appropriate agencies.
- (21) If Applicant encounters a new listed plant or animal species or suitable habitat of these species prior to construction, Applicant shall include the location in the final engineering drawings and associated mapping. Applicant shall avoid

impacts to these species and explain how impacts would be avoided during construction.

- (22) Applicant shall construct the Facility in a manner that incorporates post-construction stormwater management under OHC00005 (Part III.G.2.e, pp.19-27) in accordance with the OEPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays. Applicant shall design and construct the Facility's post-construction stormwater controls in accordance with the substantive requirements of the Licking County Soil Erosion & Stormwater Regulations.
- (23) Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. The specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. The specialist shall have the authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.
- (24) 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 ODNR and USFWS allows a different course of action. If coordination with these agencies

allows clearing between April 1 and September 30, Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.

- (25) Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat unless coordination efforts with ODNR allows a different course of action. If coordination with ODNR allows in-water work in perennial streams between April 15 and June 30, Applicant shall docket proof of completed coordination with ODNR on the case docket prior to conducting such work.
- (26) Prior to commencement of construction, Applicant shall prepare an updated vegetation management plan in consultation with ODNR as specified in the Stipulation. The plan shall include that routine mowing would be limited to fall/spring seasons, as need, to allow for natural reseeding of plantings and reduce impacts to ground-nesting birds.
- (27) Applicant shall take steps to prevent establishment and/or further propagation of noxious weed identified in Ohio Adm.Code 901:5-30-01 during implementation of any pollinator-friendly plantings, as well as during construction, operation, and decommissioning. If noxious weeds and/or invasive plant species are found to be present, Applicant shall remove and treat them with herbicide pursuant to R.C. 921.06, as necessary, and shall follow all applicable state laws regarding noxious weeds and invasive plant species.

- (28) Any construction within the Federal Emergency Management Agency delineated 100-year floodplain shall be coordinated with the local floodplain administrator. All permitting or other documents authorizing construction in the floodplain shall be filed in the case docket.
- (29) 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 the 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. until dusk when sunset occurs after 6:00 p.m., Applicant shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Applicant shall notify property owners or affected tenants of upcoming construction activities, including the potential for nighttime construction.
- (30) In accordance with the conditions set forth in the Stipulation, at least 30 days prior to the preconstruction conference, Applicant shall submit an updated decommissioning plan



and decommissioning cost estimate without regard to salvage value on the public docket.

- (31) 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.
- (32) At least 30 days prior to the preconstruction conference, Applicant shall demonstrate that it has implemented a setback of at least 30 feet from the solar Facility fence line to the public roads edge line. Alternatively, Applicant may demonstrate that its solar fence is outside the clear zone width of the nearest public road.
- (33) Consistent with the terms of the Stipulation, Applicant, with landowner consent, shall decommission water well (ID 98002) and any associated equipment prior to the initiation of construction.
- (34) If any previously unidentified water wells are discovered prior to or during construction, the wells shall be either decommissioned consistent with the Stipulation or a minimum of a 50-foot setback shall be observed.
- (35) If the inverter or substation transformer chosen for the Project has a higher sound power output than the models used in the noise model, Applicant shall show that sound levels will not

exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available, an operational noise test may be performed consistent with the Stipulation conditions. If the test shows the operational noise level is greater than the Project area ambient Leq level plus five dBA, additional noise mitigation will be required. Applicant must file a report on the public docket that shows compliance with the noise parameters set forth in the Stipulation.

- (36) Applicant shall avoid, where possible, or minimize to the extent applicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the Facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions or modern equivalent or rerouted at Applicant's expense to ensure proper drainage. If the affected landowner agrees to not have 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.
- (37) Applicant shall take steps specified in the Stipulation to protect adjacent parcels from unwanted drainage problems due to construction and operation of the Project.
- (38) Prior to the commencement of construction, Applicant shall finalize a MOU with the OHPO to mitigate for and/or avoid cultural resources with potential adverse effects due to the

Project. Applicant shall submit the MOU to Staff and file the MOU on the docket in this case.

- (39) At least 30 days prior to the start of construction, Applicant shall file a copy of the final complaint resolution plan for the construction and operation of the Project on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of the Facility operations, Applicant shall notify, via mail, affected property owners and tenants consisting of all residents, airports, schools, and libraries located within one mile of the Project area; parties to this case; county commissioners; township trustees; emergency responders; and any other person who requests updates regarding the Project. The notices should include information delineated in the Stipulation. Applicant shall file a copy of these notices on the public docket. During construction and operation of the Facility, Applicant shall submit to Staff a complaint summary report consistent with the conditions set forth in the Stipulation. A copy of the complaint summaries shall be filed on the public docket.

(Jt. Ex. 1 at 3-10.)

## VII. INTERLOCUTORY APPEAL

{¶ 153} Following the adjournment of the adjudicatory hearing on April 8, 2022, Harvey, James and Carol Clever, Save Hartford, and Staff filed initial briefs on May 31, 2022, and reply briefs on June 15, 2022.

{¶ 154} As a preliminary matter, consistent with Ohio Adm.Code 4906-2-29(F), Harvey seeks an interlocutory appeal of the ALJ's denial of its motion to strike a portion of

prefiled direct testimony of Save Hartford witness Mary Bauman. Citing *Haley v. Ohio State Dental Bd.*, 7 Ohio App.3d 1, 6 (2d Dist. 1982); *In re Application of Milton Hardware Co.*, 19 Ohio App.2d 157, 162 (10<sup>th</sup> Dist. 1969); *In re State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.*, 39 Ohio App.3d 15, 16 (10<sup>th</sup> Dist. 1987), Harvey contends that the Ohio Rules of Evidence may be considered in an advisory capacity in relation to an administrative hearing. Additionally, Harvey states that administrative agencies have a duty to base their conclusions on competent evidence and that they should not act on evidence that is clearly not admissible, competent, or probative of facts that the agency is to determine.

{¶ 155} Specific to Ms. Bauman's testimony, Harvey references the witness' claim that the information in Exhibits O through R of her testimony reflects the opinions and positions of numerous other individuals in Hartford Township where the Project is to be located, as well as individuals that reside outside of Hartford Township. According to Harvey, the vast majority of the information contained in the Exhibits is a typed list of names and addresses of people who allegedly signed a document indicating opposition to the Project. Harvey notes that the referenced individuals were not present at the adjudicatory hearing to give their own testimony or to be subject to cross-examination. Harvey argues that Ms. Bauman should not have been allowed to testify and make unauthenticated assertions on behalf of the individuals referenced in her testimony. *State v. May*, 2011-Ohio-6637, 970 N.E.2d 1029, (7<sup>th</sup> Dist.). Harvey asserts that the ALJ's allowance of the testimony is barred by the rule against hearsay. Further, Harvey argues that the statements and exhibits that were the subject of the motion to strike are unreliable, prejudicial, and inadmissible. In support of its interlocutory appeal, Harvey points out that the numerous individuals who purportedly signed the alleged petitions were not even identified by actual name but, instead by fictitious references. Therefore, Harvey requests that the following portions of the Hartford Solar Ex. 2 be stricken: Page 7 Line 7 (the "s" in Exhibits and "through R"), Lines 8 and 9, Line 10 (through "...to the Harvey Project"), Line 12 beginning with "Exhibit O . . .", Lines 13 through 23, Page 8 Lines 1 through 2, and Exhibits O, P, Q, and R. (Harvey Initial Br. at 10, 11.)

{¶ 156} Citing *Bivins v. Ohio State Bd of Emergency Med. Servs.*, 2005-Ohio-5999, 165 Ohio App.3d 390, 399 (6<sup>th</sup> Dis. 2005); *Fox v. Parma Cnty. Gen. Hosp.*, 2005-Ohio-1665, 160 Ohio App. 3d 409, 420 (8<sup>th</sup> Dist. 2005); *Haley v. Ohio St. Dental Bd.*, 7 Ohio App.3d 1 (2<sup>nd</sup> Dist. 1982), Save Hartford responds that the admission of hearsay is permitted in administrative hearings as long as an agency does not exercise its discretion to consider hearsay evidence in an arbitrary manner. According to Save Hartford, to allow one party to introduce hearsay while barring another party from similarly doing so would be arbitrary. Specifically, Save Hartford submits that Harvey's testimony was dominated by hearsay and the vast majority of the information in Harvey's application is hearsay. For example, Save Hartford submits that witness Herling was allowed to introduce Applicant's economic impact report at the hearing even though he was not the individual involved in its preparation. Further, Save Hartford contends that, similar to the testimony that is the subject of the interlocutory appeal, witness Herling testified as to his interpretation of the public comments submitted in support or opposition of the application. *See* Harvey Ex. 20 at 10, 11. According to Save Hartford, the fact that the public comments relied upon by witness Herling were uploaded to the case docket does not take them out of the hearsay category. Save Hartford also submits that witness Smith was allowed to testify about the geotechnical report even though he did not prepare it. (Save Hartford Reply Br. 4, 5.)

{¶ 157} Specific to Harvey's attempt to strike Ms. Bauman's spreadsheet of names of persons who have electronically signed a petition on Save Hartford's website opposing the Project, as well as a limited additional number of people who signed a paper version of the same petition, Save Hartford emphasizes that in her capacity as President of Save Hartford, Ms. Bauman supervised the creation of the online and paper petitions. Save Hartford also posits that anyone who signed the petition clearly opposes the solar Project. With the respect to the online petitions, while recognizing that an insignificant number of the more than 760 signatures of the online petition may have been false, Save Hartford avers that this does not discredit the vast majority of the 760 opponents who provided accurate information. Finally, Save Hartford highlights that Harvey is focused on excluding the

identities of local residents who oppose the Project, as set forth in Exs. P and Q of Ms. Bauman's testimony. According to Save Hartford, Ms. Bauman personally verified that every one of the 239 members and non-members of Save Hartford in Ex. P of Ms. Bauman's testimony and 191 non-members in Ex. Q are local residents. Referencing Ms. Bauman's efforts to cull out the few imposters and persons who do not live in the area, Save Hartford submits that there is a lack of grounds for excluding Exs. P and Q. (Save Hartford Reply Br. at 6 citing Tr. III at 1-22.)

{¶ 158} With respect to the Harvey's interlocutory appeal concerning the admission of the identified narrative portions of Save Hartford witness Bauman's testimony and the corresponding Exs. O, P, Q, and R of her testimony, the Board finds that the reliance on petitions for which the identity of the denoted individuals cannot be confirmed is not appropriate for consideration relative to the ultimate determination in this case. Therefore, Page 7 Line 7 (the "s" in Exhibits and "through R"), Lines 8 and 9, Line 10 (through ". . .to the Harvey Project"), Line 12 beginning with "Exhibit O . . .", Lines 13 through 23, Page 8 Lines 1 through 2, and Exhibits O, P, Q, and R of Ms. Bauman's testimony will not be afforded any weight as part of the Board's determination in this case. For similar reasons, the Board will not afford any weight to Applicant Ex. 20 (witness Herling Direct Testimony) at Page 10, Line 20 to Page 11, line 2.

### VIII. CERTIFICATE CRITERIA

{¶ 159} 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.

#### **IX. CONSIDERATION OF CERTIFICATE CRITERIA**

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

{¶ 161} As a general matter, Save Hartford argues that Harvey'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, Save Hartford represents that the Board lacks the authority to approve the application and issue a certificate. To that end, the Board has attempted to address Save Hartford's concerns with Harvey's application and the requirements of Ohio Adm.Code 4906-1, et seq., by addressing these concerns within the Board's specific analysis of the requirements of R.C. 4906.10.

{¶ 162} The Board additionally notes that many of Save Hartford's arguments concerning the impacts of the Project overlap such that Save Hartford simultaneously argues noncompliance with R.C. 4906.10(A)(2), R.C. 4906.10(A)(3), and R.C. 4906.10(A)(6), without distinctions between individual criterion. In this Opinion, the Board addresses similar arguments that reference several certification criteria under the criterion deemed most appropriate. To the extent an argument made by Save Hartford, or any party, under R.C. 4906.10(A)(2), R.C. 4906.10(A)(3), and R.C. 4906.10(A)(6) 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**

{¶ 163} 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.

{¶ 164} Staff concluded that R.C. 4906.10(A)(1) is not applicable to this proceeding, given that the Facility is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 11). The Signatory Parties agree that this criterion is not applicable to this proceeding, and Save Hartford raises no issue as to this finding (Jt. Ex. 1 at 16).

{¶ 165} Because the Facility is not a gas pipeline and does not include approval of an electric transmission line, the Board finds that R.C. 4906.10(A)(1) is not applicable in this proceeding (Staff Ex. 1 at 11; Jt. Ex. 2 at 17).



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

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

{¶ 167} Harvey 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 public/safety, land use, geological and hydrogeology, cultural, and ecological impacts. According to Harvey, the application includes detailed and extensive surveys, assessments, and reports related to the probable impacts of the Facility. Additionally, Harvey believes that each of these topics are supported by the testimony of expert witnesses. (App. Initial Br. at 13.) According to Harvey, the Stipulation and record in this proceeding enables the Board to determine the nature of the probable environmental impact. Therefore, Harvey opines that the application and Stipulation comply with R.C. 4906.10(A)(2). (App. Initial Br. at 13.)

{¶ 168} 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. COMMUNITY IMPACTS**

{¶ 169} According to Harvey, a five-mile radius study area around the Project area was used to evaluate the visual impact to recreational and scenic resources from the Facility and to complete a Visual Resource Assessment (VRA) and that visually sensitive resources out to 10 miles were also evaluated (App. Ex. 1, Ex. W; App. Ex. 26 at 9). According to Harvey, the VRA digital surface model (DSM) analysis conservatively demonstrated that the Project, generally, will not be visible in any meaningful way at locations that are two miles or more away from the Project area. Harvey also submits that the DSM analysis reflects that the Project will not be visible from the vast majority of areas even within two

miles of the Project area due to the extremely low profile of the panels and the significant vegetation in the area. (App. Ex. 1 at 76, Ex. W.)

{¶ 170} Specifically, Harvey states that the VRA revealed that solar panels will be screened from view by intervening landforms, vegetation, and structures in approximately 89.7 percent of the five-mile radius study area. Harvey represents that visibility is concentrated within the Project area and adjacent open fields and is largely restricted to areas adjacent to where public roads are bordered by agricultural fields. Harvey believes that the combination of relatively low panel height along with the existing hedgerows, gently rolling topographic relief, the atmospheric effects of distance, and the landscape screen committed to by Harvey, will significantly limit visibility of the Project from the majority of the study area and the background viewshed at greater distances. Further, Harvey indicates that Project visibility and potential visual impact will diminish rapidly at greater distances. Therefore, it is anticipated that the impacts will be localized to a limited number of areas adjacent to the Project. Since the Project has been sited within a lower density population area, there are fewer visually sensitive resources than in more populated areas. (App. Ex. 1, Ex. W; App. Ex. 26 at 14-17.)

{¶ 171} With respect to construction, although the Project will intermittently generate the types and levels of sound common at large construction sites, it will not feature many of the most significant sound-generating activities found during construction of non-solar facilities. Pile driving will be avoided during early and late hours and will involve smaller machines than the large pile drivers associated with major construction projects. (App. Ex. 1 at 50.) The generation equipment will operate with virtually no off-site sound. Operation will generate only very small amounts of sound because it entails no fuel movement, no combustion, no waste movement, and very few moving parts. The only components that could cause any discernable sound off-site are the transformer at the substation and the inverters. These sounds will rapidly dissipate to background sound levels over short distances. (App. Ex. 1 at 50.) The daytime sound contribution will not result in sound levels at any nonparticipating sensitive receptor within one mile of the

Project boundary that exceeds the daytime ambient American National Standard Institute weighted sound levels by more than five dBA. (App. Ex. 1, Ex. L; App. Ex. 7; App. Ex. 25 at 6.)

{¶ 172} Harvey asserts that the solar panels will result in no glare to any of the residential receptors. The glare analysis predicted the possibility of a small amount of glare on a single segment of Tagg Road during December and January (App. Ex. 6, Att. 1; App. Ex. 11, Att. 3; App. Ex. 29 at 4.)

{¶ 173} Based on the transportation assessment, sufficient infrastructure exists by way of the interstate, state, and local roads to construct the Project. However, there are five roads that may require repair after construction due to their current poor condition. (App. Ex. 1, Ex. I; App. Ex. 21 at 4.) Roads with aggregate may require improvements prior to use and will likely require additional maintenance compared to the other roads with asphalt pavement. In the event that oversize/overweight vehicles are needed for the Project, Harvey will obtain special hauling permits from the ODOT or from the applicable local authority. (App. Ex. 1 at 33; App. Ex. 21 at 4; Jt. Ex. 1 at 5.) The traveling public may experience minor delays and inconveniences during construction (App. Ex. 1, Ex. I; App. Ex. 21 at 4). Harvey will work closely with the townships and county officials to assess the state of the roads as construction approaches and will continue to collaborate on a RUMA for the Project in order to ensure that any construction-related damages to roads will be expeditiously repaired (App. Ex. 1 at 32). Applicant will post a road bond or similar surety to ensure the repair of any roads damaged by construction of the Project (App. Ex. 1 at 31).

{¶ 174} Structural design for the Project will be approved by a licensed professional engineer. Adverse consequences resulting from wind velocity are highly unlikely due to the Project's inherently stable design. Equipment for the Project will be structurally engineered to account for high wind gust speeds as specified by consensus industry standards. (App. Ex. 4.)

{¶ 175} Harvey submits that the Project is not expected to have any adverse impact on radar systems and microwave communication paths. The Project is not expected to have any material impact on radio or television reception because it lacks all structures and exposed moving parts. The Project will generate only very weak EMFs that will occur almost entirely during the day and will dissipate rapidly along short distances. (App. Ex. 1 at 57, 58.)

{¶ 176} Based on the Real Estate Adjacent Property Value Impact Report included as App. Ex. 30, Att. ARL-2, Harvey asserts that in a prior study of solar farms comparable to the one in this case, it was determined that “no consistent and measurable negative impact had occurred to adjacent property that could be attributed to the proximity to the commercial scale, solar energy use, with regard to unit sale prices or other influential market indicators.” Harvey also contends that interviews with local real estate assessors and brokers reaffirmed that there was no difference in price, marketing periods, or demand for property directly adjacent to existing solar energy uses when compared to similar properties locationally removed from any solar energy use’s influence. (App. Ex. 30, Att. ARL-2, Att. ARL-3; App. Initial Br. at 17.)

{¶ 177} The Project is expected to have a useful life of approximately 40 years (App. Ex. 1 at 14; App. Ex. 21 at 5). Decommissioning is expected to take 8 months, consisting of 1.5 months for permitting activities and 6.5 months of demolition and restoration activities. Based on the results of the cost evaluation for decommissioning, excluding the salvage value, the estimated cost is \$18,480,000. (App. Ex. 1, Ex. J; App. Ex. 21 at 5-6.)

{¶ 178} It is anticipated that during the construction phase, the Project’s impact to various types of land uses in the Project area will include: approximately 2,582.08 acres of cultivated crops; 20.54 acres of pasture/hay; 13.36 acres of deciduous forest; 6.96 acres of developed open space; 5.27 acres of developed, low intensity; 0.92 acres of mixed forest; 0.77 acres of developed, medium intensity; 0.04 acres of shrub/scrub, and 0.03 acres of grassland/herbaceous. (App. Ex. 3.)

{¶ 179} Applicant performed a Preliminary Drain Tile Assessment (App. Ex. 1, Ex. Y; App. Ex. 21 at 8). Although drain tiles will likely be encountered during construction due to the historic agricultural use of the Project area, the Project has been designed to avoid all main tiles and as many lateral tiles as possible (App. Ex. 21 at 9).

{¶ 180} According to Applicant, no direct impacts to known cultural resources were identified. An archeological investigation of the Project area identified 15 archaeological sites spanning approximately 35 acres within the direct area of potential effects that are potentially eligible for listing on the NRHP. Of these sites, 4 will be avoided by all Project activities, and a 50-foot -wide buffer will be established surrounding each site; 11 will be avoided with a 50-foot-wide buffer, unless the OHPO agrees otherwise. Additionally, a potential cemetery (Potter Cemetery) was not identified in the historical documents' investigation, but local residents indicated that it may exist within a 200-foot-wide strip of land along the perimeter of the Project area. Applicant has committed to conduct subsurface testing at the potential cemetery site prior to construction in order to avoid any potential human remains associated with artifacts. In the event of an unanticipated discovery of any human remains or artifacts, there will be a pause of construction in the area and Harvey will consult with OHPO. (App. Ex. 4, Att. Att. 1; App. Ex. 8, Att. 3; App. Ex. 27 at 5-7; App. Ex. 27A, Att. RP-Supp-1.)

{¶ 181} With regard to indirect impact, Applicant identified 13 architectural resources within the area of potential effect that have been determined to be individually eligible for listing in the NRHP. Of these, seven were preliminarily identified as potentially experiencing indirect effects due to visual impacts from the Project. Upon a review of these seven resources, it was subsequently determined that two are not anticipated to have any adverse impacts; two are owned by participants in the Project; the effects upon three will be mitigated by implementation of Harvey's proposed Preliminary Landscape Plan; and one (Curry Farm) will have substantial setbacks and robust screening. (App. Ex. 8, Atts 1-2; App. Ex. 27 at 6, 7.)

{¶ 182} Staff reported 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 8, 9; Staff Ex. 1 at 28). Staff points out that three recreational areas would be within five miles of the Project area. Staff determined that based on the review of Applicant's viewshed analysis, significant adverse aesthetic impacts to recreational areas are not likely. Staff highlights that landscape and vegetative screening would be used to minimize visual impacts at sensitive sites throughout the Project area and that, pursuant to the Stipulation, Applicant is required to consult with a landscape architect in development of the vegetative screening and the solar panels would be installed with anti-glare coating. Staff points out that, subject to Applicant developing and implementing a MOU with OHPO, minimum adverse environmental impacts to cultural resources would be achieved. (Staff Initial Br. at 5, 6; Staff Ex. 1 at 12, 14.)

{¶ 183} Staff found Applicant's economic analysis, both on a local and statewide basis to be reasonable, including the economic impacts relative to jobs, earnings, and output. In support of its position, Staff relies on a proposed PILOT plan that is estimated to generate between \$2.45 million and \$3.15 million annually for Licking County taxing districts. (Staff Initial Br. at 5; Staff Ex. 1 at 14-15.)

{¶ 184} Staff notes that Applicant conducted a glare analysis and found that no glare resulting from the Project should adversely impact vehicles using roadways or nearby residences. Staff posits that aesthetic impact mitigation measures, including vegetative plantings, may also further reduce potential impacts as part of a landscape and lighting plan, which Staff has recommended for this Project. Staff also relies on Harvey's commitment to developing a decommissioning plan to restore the Project area and provide financial security to ensure that funds are available for decommissioning and land restoration. (Staff Initial Br. at 6-7; Staff Ex. 1 at 15-17.)

{¶ 185} Although Staff recognizes that traffic will be impacted by the Project, it believes that there is no evidence that it would be any greater than that caused by current

farming operations or that there will be any effect at all once construction is completed. Staff notes that the Stipulation includes a condition requiring Applicant to develop a final transportation management plan after coordinating with appropriate authorities as to any necessary road closures, road use agreements, permitting, and other logistics. (Staff Initial Br. At 7; Jt. Ex. 1 at 5, Condition 13.)

{¶ 186} With respect to noise levels generated by the Project, Staff concludes that operational noise impacts for the Project would be relatively minor and occur only during the daytime. Specific to the issue of noise, Staff focuses on Condition 35 of the Stipulation, which requires that the selected inverter or substation transformer not have sound levels that exceed the daytime ambient level plus five dBA at any nonparticipating sensitive receptor. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. If the test shows an operational noise level greater than the Project area ambient Leq level plus five dBA, additional noise mitigation will be required. (Staff Initial Br. at 7, 8; Staff Ex. 1 at 19; Jt. Ex. 1 at 9, Condition 35.)

{¶ 187} According to Save Hartford, the Board may not issue 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) regarding the Project's visual impacts. Save Hartford contends that Harvey's application and testimony does not accurately describe the visibility of the Project by focusing on views from long distances away and not analyzing the severe impacts on the residences located close to the Project. Specifically, Save Hartford contends that although Harvey witness Rupprecht stated that the Project will be screened from the view of 89.7 percent of the surrounding five-mile area, he did not identify the percentage of the viewing area within a half mile from which the Project will be screened from view. (Save Hartford Initial Br. at 8 citing App. Ex. 1, Ex. W at 3-1; App. Ex. 26, at 14; Tr. II at 281). Save Hartford also argues that Harvey failed to identify how many and which neighbors will have unobstructed views of the Project or the number of residences within a half mile of the Project area, which represents the majority of where the Project visibility is concentrated (Tr.

II at 283; App. Ex. 1, Ex. W at 3-1; Tr. III at 489-491). Save Hartford asserts that Staff similarly focused on the Project visibility from a two-mile area rather than focusing on nearby neighbors that will be most affected (Staff Ex. 1 at 12; Tr. III at 487-489). Although Save Hartford recognizes that Harvey provided a viewshed map reflecting the views within a half mile of the Project, the map fails to provide details such as public roads and locations of residences necessary to determine the scope of neighbors that will be impacted (Save Hartford Initial Br. citing App. Ex. 1, Ex. W at 3-2). Additionally, Save Hartford argues that Harvey failed to comply with Ohio Adm.Code 4906-4-08(D)(4)(e) by not providing simulations that accurately portray the views of neighbors with the closest view of the Project. Specifically, Save Hartford contends that Harvey's simulations were based on views of the solar facilities from persons on public roads. (Tr. II at 268-270, 272-274.) Save Hartford also argues that if Harvey wishes to argue that vegetation will block neighbors' views, it must provide data to support such an assertion. (Save Hartford Reply Br. at 7.)

{¶ 188} Save Hartford submits that the solar panels will be eight to 14 feet tall and as high as 15 feet during maintenance, resulting in unsightly industrial equipment that will be highly visible to the neighbors that live nearby (Save Hartford Initial Br. at 7 citing Tr. I at 60, 61, App. Ex. 26 at 9.) Additionally, Save Hartford contends that the riser poles will be about 80 feet high, the substation components will be between 10 to 30 feet high, and the lighting masts will be up to 70 feet high. (Save Hartford Initial Br. at 7 citing App. Ex. 6, Suppl. Responses to Second Data Request, Sept. 24, 2021 at 3.)

{¶ 189} Save Hartford asserts that the Board cannot issue a certificate to Harvey without receiving the information required by Ohio Adm.Code 4906-4-08(A)(3)(b) and R.C. 4906.10(A)(2) and (3) concerning the Project's potential noise impacts (Save Hartford Initial Br. at 25). According to Save Hartford, despite the Project area being in a quiet residential area, all background sound measurement stations were sited adjacent to public roads. (Save Hartford Initial Br. at 25 citing Tr. II at 300, 303, 304). With respect to Harvey's modeling, Save Hartford asserts that Applicant modeled the expected noise levels based on the distances shown in the preliminary site plan rather than modeling based on the 500-foot



setback between inverters and homes provided for in the Stipulation. (Tr. II at 319, 320). Save Hartford also asserts that Harvey did not model the amount of noise coming from the inverters at night (Tr. II at 313, 314, 317; April 6, 2022 Tr. at 76, 78). Based on these omissions, Save Hartford contends that Harvey violated the requirement of Ohio Adm.Code 4906-4-08(A)(3)(b) to describe the operational noise levels expected at the nearest property boundary (Save Hartford Initial Br. at 26). Save Hartford also asserts that Condition 35 is misworded since the Project was modeled on a location-by-location basis instead of on a Project-wide basis. (Save Hartford Initial Br. at 26 citing Tr. III at 454, 455.)

{¶ 190} Save Hartford contends that the Board cannot issue a certificate to Harvey without receiving information regarding 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 the rule requires Harvey to evaluate glare from the Facility. Save Hartford avers that although Harvey assumed as part of its glare analysis that the solar panels would have an anti-reflective coating to reduce glare, not all panels are sold with the coating and the Stipulation does not require such a coating. (Tr. III at 464 to 468.) Similarly, although the performed modeling assumed a resting angle of five degrees in order to reduce the amount of glare, Save Hartford identifies that neither the application nor the Stipulation require Harvey to utilize a resting angle of five degrees (Save Hartford Initial Br. at 34 citing Tr. III at 469, 470). Therefore, Save Hartford posits that absent these performance guarantees, Harvey's modeling does not accurately predict the amount of glare from Applicant's panels (Save Hartford Initial Br. at 34).

{¶ 191} Save Hartford argues that because the evidentiary record does not contain specifics about the visual impacts of Project lighting and mitigation measures required by Ohio Adm.Code 4906-4-08(D)(4), the Board lacks the necessary information regarding the nature of probable environmental impact and R.C. 4906.10(A)(2) has no basis to find that the Project represents the minimum adverse environmental impact R.C. 4906.10(A)(3). Specifically, Save Hartford states that the application only provides preliminary locations

for lights and, therefore, precludes any assessment of the lights' visual impacts on the public. (Save Hartford Initial Br. at 28 citing Tr. I at 65.)

{¶ 192} In response to Save Hartford's arguments that Applicant failed to provide accurate information about the Project's views to its closest neighbors, Harvey responds that the studies and surveys provided in its application satisfied this purpose. Specifically, Harvey references its VRA, which intended to model the study area. Based on the VRA, Applicant concluded that the Project will not be visible in any meaningful way at locations that are two miles or more away from the Project area. According to Applicant, the VRA indicated that the Project will not be visible from the vast majority of the Project area even within two miles of the Project area, due to the extremely low profile of the panels and the significant vegetation in the area. (App. Ex. 1 at 76, Ex. W.) Harvey represents that the combination of relatively low panel height, along with existing hedgerows, gently rolling topographic relief, the atmospheric effects of distance, and the landscape screening committed to by Harvey will significantly limit visibility of the Project from the majority of the area and Project visibility and potential visual impact will diminish rapidly at greater distances. (App. Reply Br. at 21 citing App. Ex. 1 at 76, Ex. W; App. Ex. 26 at 14-16.). Harvey also points out that the Project has been sited within a lower density population area and, therefore, there are fewer visually sensitive areas. While recognizing that the simulations were not taken from the backyards or residences of Save Hartford members, Harvey states that the simulations were taken from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area as required by Ohio Adm.Code 4906-4-08(D)(4)(e). (App. Reply Br. at 22 citing App. Ex. 1, Ex. W; App. Ex. 26.)

{¶ 193} Harvey denies Save Hartford's contention that the record does not provide adequate information to determine that the probable environmental impact of the sound from the Facility and that the sound level represents the minimum adverse environmental impact. According to Harvey, the application clearly sets forth the information required pursuant to Ohio Adm.Code 4906-4-08(A)(3)(b), describing the operational noise levels

expected at the nearest property boundary. (App. Reply Br. at 31 citing App. Ex. 1, Ex. L; App. Ex. 7.) Harvey submits that the rule does not require applicants to model sound levels at every hour of the day and night. Harvey emphasizes that the primary operational time for a solar facility is during the daytime, and a separate analysis of potential nighttime sound is not necessary under the rule, due to the fact that inverters do not produce electricity at night. Therefore, the inverter sound is zero or insignificant. (Tr. I at 76-80; Tr. II at 313-318.) Harvey also emphasizes that it has committed to remodel the sound study if it constructs an inverter closer to any property line than depicted in the Preliminary Maximum Site Plan (App. Ex. 1 at 51; Jt. Ex. 1 at 3). Additionally, Harvey will remodel the sound study if it uses an inverter with a sound power level higher than the inverter used in the modeling submitted with the application (Jt. Ex. 1 at 9). Finally, Harvey references the Staff Report determination that no nonparticipating receptors were modeled to receive noise impacts greater than the daytime ambient noise level plus five dBA (Staff Ex. 1 at 19).

{¶ 194} In response to Save Hartford's contention that the application does not satisfy R.C. 4906.10(A)(2) and (3) because the evidentiary record does not contain enough information to determine the probable environmental impact from lighting of the Facility and that the Facility lighting represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(2) and (3), Harvey states that the record contains the information required by Ohio Adm.Code 4906-4-08(D)(4). Although Harvey recognizes that some of the submitted plans are identified as preliminary, it points out that it has made specific commitments to ensure minimal impact from the Facility's light (App. Reply Br. at 35; Jt. Ex. 1 at 5, Condition 18.)

{¶ 195} Harvey disagrees with Save Hartford's contention that Applicant's glare analysis cannot be utilized to determine compliance with R.C. 4906.10(A)(2) and (3) because the rest angle to be utilized has not been determined. In support of its position, Harvey references its commitment to ensure that the glare from the Project will be no greater than the glare studied, reported, and investigated by Staff, which utilized a rest angle of five degrees. Further, Harvey highlights its commitment to use solar panels with an anti-

reflective coating or similar anti-reflective property. (App. Reply Br. at 43 citing Tr. II at 358, 359.)

{¶ 196} Consistent with the Staff Report, the Board finds that the Facility's probable community impacts have been properly evaluated and determined. The Board first notes that the planned construction and operation of the Facility is unlikely to conflict with the comprehensive land use plan of Hartford Township, which prioritizes future development of a rural character. As pointed out by Harvey and Staff, the Project will support this goal by preserving land from residential development for the duration of the Project and then allowing the land to be returned to agricultural use after decommissioning. (Staff Ex. 1 at 11-12; App. Ex. 20 at 13, 17.) Similarly, the Board agrees with Staff's assessment that the Facility will cause minimal adverse environmental impacts to known cultural resources in the vicinity of the Project (Staff Ex. 1 at 14). To the extent that any impacts to cultural, historical, or archaeological resources are discovered during construction, the Board is satisfied that the Stipulation, which requires an MOU and consultation with the OHPO, provides adequate protections to minimize such impacts (Jt. Ex. 1 at 10, Condition 38). In addition, indirect impacts on cultural or recreational areas will be mitigated by implementation of Harvey's landscape plan and vegetative screening (App. Ex. 8, Atts 1-2; App. Ex. 27 at 6, 7).

{¶ 197} The Board is satisfied that Harvey outlined a decommissioning plan that will assist in returning the land to agricultural use. Harvey identifies that decommissioning is expected to take approximately eight months and evaluated the costs that will be needed to accomplish all demolition and restoration activities. The Stipulation further ensures that decommissioning is achieved in timely manner by requiring Harvey to submit an updated decommissioning plan and to provide financial security to guarantee the availability of funds to decommission the Facility (Jt. Ex. 1 at 8, Condition 30). Upon decommissioning, the land can be returned to agricultural use or other purposes desired by landowners.

{¶ 198} With respect to the visual impacts of the Project, the VRA sufficiently demonstrated that the Facility will not be visible in any meaningful fashion at locations that are two miles or more away from the Project area. Even within a two-mile radius, the VRA indicates that the Facility will not be visible to the vast majority of areas because of the Facility's low profile and surrounding vegetation. The Board notes that the VRA showed that intervening landforms, vegetation, and structures within a five-mile radius of the Project will serve to screen approximately 89.7 percent of the five-mile radius study area. (App. Ex. 1, Ex. W; App. Ex. 26 at 14-17.) Save Hartford's contention that Harvey failed to provide accurate information about views of the Project are unfounded. While the simulations used for the VRA may not have been taken from the residences of specific Save Hartford members, they were taken from a range of landscapes and vantage points within the study area, as required by Ohio Adm.Code 4906-4-08(D)(4)(e). The Board similarly agrees with Staff and Harvey with respect to lighting at the Facility. The Board is satisfied that the record contains the information required by Ohio Adm.Code 4906-4-08(D)(4)(e) with respect to any adverse visual impacts created by lighting. Further, Stipulation Condition 18 contains specific commitments from Applicant to ensure that minimal impact from the Facility's lighting is achieved (Jt. Ex. 1 at 9, Condition 36).

{¶ 199} The Board agrees with Staff and Harvey that the record provides adequate information to determine the probable environmental impact of sound from the Facility. Save Hartford's expectation that sound measurements would be measured from specific locations or sites that may not have even been accessible to Applicant is unwarranted. Ohio Adm.Code 4906-4-08(A)(3)(a)-(b) requires an applicant to describe the construction and operational noise levels expected at the nearest property boundary. The application meets this requirement with the sound report submitted as part of the application – a sound level assessment by Epsilon Associates, an environmental engineering company retained by Harvey, models and depicts both the operational and construction noise levels expected at the nearest property boundary to the Project. (App. Ex. 1, Ex. L at 69, 119.) Witness O'Neal, who conducted the sound level assessment, testified that he was able to determine the

probable environmental impact of the Facility with respect to sound and that the sound levels predicted were within acceptable limits (App. Ex. 25 at 5-6; App. Ex. 1 at Ex. L). Save Hartford questioned Mr. O'Neal's methods but did not offer evidence to contradict his findings. Further, the Board notes that the Stipulation contains provisions that will ensure that noise levels generated at the Project site during construction are limited to times and situations that will minimize how disruptive they are to surrounding properties. Specifically, Condition 29 memorializes the commitment to limit general construction activities to between 7:00 a.m. and 7:00 p.m. and to notify certain residents of upcoming construction. Additionally, more noise intensive activities are even further limited by Condition 29 than general construction activity. (Jt. Ex. 1 at 8, Condition 29.)

{¶ 200} The traffic assessment conducted by Harvey demonstrates that the infrastructure of the interstate, state, and local roads is sufficient to handle the construction and operation of the Project. Harvey's analysis identified five roads in poor condition that may require repair after construction, but Applicant has committed to work closely with township and county officials to assess the state of roads prior to commencing construction of the Facility. Harvey acknowledges that the public could experience minor delays or inconveniences during construction, but such delays are unavoidable. Harvey's commitment to work with local authorities to ensure that any construction-related damages are promptly repaired will minimize disruptions. Additionally, Condition 13 of the Stipulation requires that a final transportation management plan be submitted for Staff review and confirmation prior to the preconstruction conference obligates Staff to further coordinate with appropriate parties to manage traffic-related issues (Jt. Ex. 1 at 5, Condition 13).

{¶ 201} The economic impact generated by the construction and operation of the Facility is projected to be significant for the local community. Harvey's economic analysis in the application projects that 1,372 construction related jobs will be created by the Project and that upon completion, 10 long-term jobs will be maintained to operate the Facility. The payrolls associated with these jobs, \$91 million during construction and \$879,000 annual

earnings during operations, are meaningful and will positively impact local citizens. Further, the Facility generating new economic output of \$281.1 million during construction and \$4.7 million in annual output during operations will be a boon to the local and statewide economy. Staff found Harvey's economic analysis to be reasonable, and the Board agrees. (Staff. Ex. 1 at 15; App. Ex. 20 at 12.)

## 2. GEOLOGY

{¶ 202} Only limited earthwork and grading will be necessary to construct the Project and will be primarily for access roads and the substation (App. Ex. 23 at 3). Temporary laydown yards that will be created for construction will be removed once construction is complete (App. Ex. 1 at 14; App. Ex. 23 at 3).

{¶ 203} Harvey states that neither the construction nor operation of the Project is expected to have any impact on public or private water supplies. The potable water supply for homes in the vicinity of the Project area is by private well. According to Applicant, construction of the Project will have no impact on the groundwater resources that the wells access due to the depth of wells and the thick layer of impermeable clay above the water-bearing zones. The Project also does not pose a risk to the small Source Water Protection Areas associated with the nearby commercial operations. (App. Ex. 1 at 53, Ex. M.) The Preliminary Stormwater Assessment indicated that the Project will likely reduce erosion and runoff compared to the current farming use (App. Ex. 1 at 43, Ex. K; App. Ex. 23 at 5, 6). The Geology and Hydrogeology Report that analyzed the Project area reflects that the local geology and hydrology will not be an obstacle for construction of the Facility (App. Ex. 1 at 55, Ex. M; App. Ex. 24 at 4). Based on the results of the Preliminary Geotechnical Exploration Report, Harvey submits that the geology of the Project area is suitable for construction of the Project (App. Ex. 1, Ex. N; App. Ex. 24 at 4, 5).

{¶ 204} There are no historical earthquake epicenters within the Project area and any potential seismic event poses only a minimal risk to the operation of the Project. (App. Ex. 1, Ex. N; App. Ex. 24 at 4-5). According to Applicant, there are no hazardous or petroleum-

based substances introduced by the Project, no known active oil and gas wells or injection wells in the Project area, and no mapped underground or surface mines within the Project area (App. Ex. 1, Ex. M; App. Ex. 24 at 4, 5). Facility construction will be relatively shallow and, therefore, will not likely encounter or have any negative impact on local groundwater (App. Ex. 1, Ex. M; App. Ex. 24 at 4, 5).

{¶ 205} In its Staff Report, as fully outlined above, Staff reviewed Harvey's submissions relative to glacial features, bedrock, karst, oil and gas mining, seismic activity, and soils (Staff Ex. 1 at 20-23). Based upon this review, Staff concurs with Applicant that there are no geological features within the Project area that are incompatible with the construction and operation of the proposed Facility (Staff Ex. 1 at 23; Staff Initial Br. at 7).

{¶ 206} Consistent with the Staff Report, the Board finds that the Facility's probable geological impacts have been properly evaluated and determined. The Board, therefore, finds that the geological impacts have been sufficiently identified, as required under R.C. 4906.10(A)(2).

### 3. ECOLOGICAL IMPACTS

{¶ 207} According to Applicant, the Project has been designed to avoid and minimize impacts to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species where possible. Wetland surveys were completed showing minimal wetland impacts anticipated from the Project. A total of 42 wetlands and one pond were delineated during field surveys, for a total of 20.53 acres within the 4,263 acres that were evaluated in the broad study area. Applicant represents that by siting the Project in currently active agricultural lands, avoiding contiguous woodlots, and maintaining setbacks from quality streams and riparian boundaries, the Project will have limited environmental impacts. (App. Ex. 1, Ex. Q; App. Ex. 26 at 4-5.) Additionally, Applicant submits that it is unlikely that the habitats in the Project area are well developed due to the constant disturbance from cultivation and fragmentation. Due to the fact that the solar fields will have low growing vegetation between and underneath the solar panels, the Project is not expected to cause



significant loss of vegetation in the open area. (App. Ex. 1, Ex. Q; App. Ex. 26 at 6; Jt. Ex. 1 at 7, Condition 26.)

{¶ 208} Harvey states that impacts within the approximate 2,360 acres of fenced area will occur as a result of upland soil disturbance from construction of supporting infrastructure with an approximate 229.3 acres of temporary impacts (App. Ex. 1, Ex. Q; App. Ex. 26 at 6). Harvey points out that there could also be approximately 40.2 acres of permanent impacts (App. Ex. 26 at 5, 6). The Project is not expected to significantly impact wildlife or wildlife habitat. Harvey represents that the typical construction-related impacts to wildlife include incidental injury and mortality of juvenile and/or slow-moving animals; silt and sedimentation impacts to aquatic organisms; habitat disturbances/loss associated with vegetation clearing and earthmoving activities; and displacement of wildlife due to increased noise and human activities. (App. Ex. 26 at 7.)

{¶ 209} According to Staff, the Project will not adversely impact public or private water supplies and there are no geological features that would restrict construction of the Facility. Staff also avers that no wetlands, ponds, or lakes will be affected. Staff points out that the only threatened or endangered species that may be affected are the Indiana and northern long-eared bat. Staff believes that seasonal tree cutting conditions will ameliorate any impacts to roosting habitat. (Staff Initial Br. at 7; Staff Ex. 1 at 23-24.)

{¶ 210} Save Hartford argues that the Board cannot issue 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 (A)(3) concerning the Project's potential impacts on wildlife and plants. According to Save Hartford, pursuant to Ohio Adm.Code 4906-4-08(B), an applicant must conduct surveys of the plant and animal species in the project area to assess and mitigate the Project's potential ecosystem impacts. Save Hartford submits that absent this information, the Board can neither determine the nature of the probable environmental impact under R.C. 4906.10(A)(2) nor find that a project represents the minimum adverse environmental impact under 4906.10(A)(3). (Save Hartford Initial Br. at 22, 23.) Specifically,

Save Hartford focuses on Ohio Adm.Code 4906-4-08(B)(1)(c) and (d) that requires an applicant to 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 conduct and provide the results of field surveys of the plant and animal species identified in the literature survey. Save Hartford submits that in order to identify and avoid Project harm to plants and wildlife, it is first necessary to find out what species of plants and wildlife exist in and near the Project area and then analyze them. (Save Hartford Initial Br. at 23, 24.) Save Hartford contends that Harvey did not conduct a literature search for plants (Tr. II at 252). Further, Save Hartford avers that Harvey did not conduct field surveys for plants as required by Ohio Adm.Code 4906-4-08(B)(1)(d) (Tr. II 254, 255). Similarly, Save Hartford argues that Harvey did not bother to conduct a literature review of wildlife or the requisite field studies (Tr. II at 255). Save Hartford contends that such a review would have denoted the birds observed by witness Bernard (Save Hartford Initial Br. at 24 citing Save Hartford Ex. 3 at 4 and Ex. A; Tr. III at 438).

{¶ 211} Save Hartford contends that a certificate cannot be issued to Harvey without requiring an adequate analysis of the prospects of floods in the area and without requiring the mitigation of adverse consequences from floods as mandated by Ohio Adm.Code 4906-4-08(A)(4)(e), R.C. 4906.10(A)(2), and (A)(3) (Save Hartford Initial Br. at 19). In support of its position, Save Hartford asserts that flooding is a major problem in the Project area and the surrounding area (Save Hartford Initial Br. at 20 citing Save Hartford Ex. 1 at 5, Save Hartford Ex. 2 at 4, Save Hartford 4 at 3, Save Hartford Ex. 5 at 3, Save Hartford Ex. 6 at 4). Additionally, Save Hartford believes that Applicant has failed to provide adequate information in the record regarding flooding in the Project area despite the recognition that the Project area should be dry for the purpose of constructing foundations (Save Hartford Initial Br. at 20 citing Tr. I at 70). Further, Save Hartford states that in its application and testimony, Harvey has contradicted itself as to whether solar panels will be constructed in the floodplain. Save Hartford contends that despite the existence of the 100-year floodplains in the Project area, Harvey has done nothing to analyze the issue of potential flooding

related to the Project. To the extent Harvey believes that that the Project can be designed to reduce downstream impacts from increased volumes of runoff, Save Hartford submits that the application contains no such designs. Save Harford submits that it is inappropriate to simply delegate flooding concerns related to this application to Licking County. (Save Hartford Initial Br. at 21, 22.)

{¶ 212} Save Hartford states that the evidentiary record does not provide water conservation measures for the Project as required by Ohio Adm.Code 4906-4-07(C)(3)(e). As a result, Save Hartford contends that the Board lacks the necessary information on the nature of the probable environmental impact as required by R.C. 4906.10(A)(2). In support of its position, Save Hartford relies on the fact that although Harvey could use as much as five million gallons of water in a single washing of the panels, Applicant has not committed to limit the number of washings and has not performed a hydrogeologic study to determine how its water use will affect the aquifer (Tr. I at 67, 68). Save Hartford asserts that Harvey could withdraw a significant amount of water from the aquifer supplying the nearby residents and deplete their water supplies. Save Hartford also submits that Harvey has not performed a hydrogeologic study to find out how its water use will affect the aquifer (Save Hartford Initial Br. at 29 citing Tr. I at 67, 68). Finally, Save Hartford argues that Harvey has acknowledged that it has done nothing to plan for any water conservation related to solar panel washings despite the fact that technology and techniques are available for that purpose (Tr. I at 81, 82).

{¶ 213} Save Hartford argues that because the evidentiary record does not estimate the volume or disposal destinations of solid waste and debris generated during construction and operation as required by Ohio Adm.Code 4906-4-07(D), the Board lacks the necessary information regarding the nature of the probable environmental impact and has no basis to find that the Project represents the minimum adverse environmental impact. Save Hartford points out that Harvey acknowledges that the Project will generate waste during construction and operation. However, Save Hartford argues that the application does not provide the estimate of the amounts of debris and solid waste that will be generated during

construction or operation, or the destinations of disposal. (Save Hartford Initial Br. at 27 citing App. Ex. 1 at 44, 45; Tr. I at 74.)

{¶ 214} Save Hartford contends that the Board cannot issue a certificate for the Project without receiving the information required by Ohio Adm.Code 4906-4-07(C) and R.C. 4906.10(A)(2) and (3) concerning the Project's pollution impacts and associated mitigation. Save Hartford contends that Ohio Adm.Code 4906-4-07(C)(1)(d) and Ohio Adm.Code 4906-4-07(C)(2)(b), (c), (d), and (e) require Harvey to provide the Board with water quality data. Citing the testimony of Applicant witness Spencer, Save Hartford submits that Harvey has failed to provide the necessary information required pursuant to Ohio Adm.Code 4906-4-07(C)(1)(d), 4906-4-07(C)(2)(b) or 4906-4-07(C)(2)(d). (Save Hartford Initial Br. at 31, 32.)

{¶ 215} In support of its position, Save Hartford states that Project construction will disturb the soil on about 229.3 acres for temporary impacts and about 44.4 acres for permanent impacts. (Save Hartford Initial Br. at 30 citing App. Ex. 1, Ex. Q at 6.3, 6.4; Tr. II at 240). Construction will destroy 28.7 acres of woodland; soil disturbances will result in erosion of soil into streams; and collection lines and access roads will be constructed across streams (App. Ex. 1, Ex. Q at 6-4; Tr. II at 245-247). Notwithstanding the testimony of Applicant witness Spencer to the contrary, Save Hartford asserts that bulldozers and dump trucks will be used in construction and graders, excavators, and dump trucks will be used for site clearing and surface preparation. (Save Hartford Initial Br. at 30 citing App. Ex. 1 at 13). Save Hartford references Applicant's inability to quantify the amount of required earthmoving during construction due to the absence of a final design (Tr. II at 204). According to Save Hartford, the earthmoving activities will result in discharges of soil into the area's streams (App. Ex. 1 at 40).

{¶ 216} In response to Save Hartford's contention that it did not comply with Ohio Adm.Code 4906-4-08(D)(4)(e) by not providing enough information to determine the probable environmental impact related to flooding, Harvey states that the Stipulation and

record enable the Board to determine the probable environmental impacts from the Facility regarding flooding and that the Facility represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(2) and (A)(3) and that the record contains the information required by Ohio Adm.Code 4906-4-08(D)(4)(e). (App. Reply Br. at 27.)

{¶ 217} With regard to floodplains, Harvey responds that the prospects for floods related to the floodplain in the Project area are extremely low as there are virtually no 100-year floodplains in the Project area. (App. Reply Br. at 28 citing App. Ex. I at 54; Tr. I at 83). Harvey identifies that numerous reports and assessments included with the application reflect the precise area of the floodplain and that Applicant may construct in the floodplain (App. Ex. 1, Ex. K, Ex. M, Ex. N. and Ex. Q). Harvey does recognize that several exhibits in the application incorrectly stated that Applicant would not construct in the floodplain (App. Reply Br. at 28). Additionally, Harvey states that only 41.5 acres (1.6 percent) of the 2,600 acres of the Project area are located in the floodplain (App. Ex. 1, Ex. K at 4.2, Ex. M at 4.4, Ex. N at 4.3.4). Further, Harvey contends that even if modules were located in these areas, it should not be a problem as it has committed to adhere to the thorough substantive floodplain rules maintained by Licking County and will coordinate with the Licking County floodplain program coordinator (App. Reply Br. at 28 citing App. Ex. 1 at 54, Ex. A; App. Exs. 3, 9; Jt. Ex. 1 at 8, Conditions 28; Tr. I at 85, 86).

{¶ 218} Responding to the photographs referenced by Save Hartford in its initial brief, Harvey states that the locations of the photographs generally are not in the mapped floodplain of the Project area. Harvey argues that flooding depicted in the photographs are typically not related to water bodies overflowing their banks but result in areas that do not drain well during a typical rain event and, therefore, do not drain into the subsurface and back into the water bodies quickly enough. According to Harvey, once the Project area is constructed and operational, drainage in the area should be greatly improved compared to the current drainage from the farm fields since post-construction stormwater runoff will be less than pre-construction and stormwater runoff quality will not be affected by construction of the Project. (App. Ex. 1, Ex. K; App. Ex. 23 at 5, 6.)

{¶ 219} Harvey denies Save Hartford's allegations that Applicant failed to conduct the required plant and wildlife surveys and requisite information. According to Harvey, the Stipulation and the record enable the Board to determine the probable environmental impact on wildlife and plants and that the Facility represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(2) and (3). Harvey asserts that the record clearly reflects that it has fully complied with Ohio Adm.Code 4906-4-08(B) pertaining to plants and wildlife. (Save Hartford Initial Br. at 29.) Specifically, Harvey states that the information and documentation found in the application at Ex. P (Wildlife Report), Ex. O (Water Delineation Report) and Q (Ecology Impact Assessment) and the associated supporting testimony provides all of the requisite information in compliance with Ohio Adm.Code 4906-4-08(B) (App. Reply Br. at 30, 31 citing Tr. II at 255; App. Ex. 26 at 7).

{¶ 220} In response to Save Hartford's concern that the application does not satisfy R.C. 4906.10(A)(2) and (3) because the evidentiary record does not estimate the volume or disposal destinations of solid waste and debris generated during construction and operation as required by Ohio Adm.Code 4906-4-07(D), Harvey responds that the rules contained in Ohio Adm.Code 4906-4-07(D)(2) and (3) apply to all types of generation facilities, including nuclear, coal, combined cycle gas, solar, and wind and not all information is applicable to all types of facilities. For example, Harvey points out that solar facilities do not generate hazardous waste. With respect to the production of solid waste, Harvey notes that the Facility components will generate the types of solid waste materials typically found during construction, including "package-related materials such as crates, nails, boxes, containers, and package materials, unusable parts or materials, and occasional litter and miscellaneous debris." (App. Reply Br. at 33 citing App. Ex. 1 at 44.) Harvey also notes that the Staff Report verifies that Applicant's solid waste disposal plans would comply with the solid waste disposal requirements set forth in R.C. Chapter 3734 (Staff Ex. 1 at 36). Additionally, Harvey avers that the Board's rules do not require that an application include the volume of waste or a numerical estimate of waste. Rather, Harvey contends that its description of "limited, very modest, or small amounts of solid waste" is sufficient. (App. Reply Br. at 34.)

{¶ 221} In response to Save Hartford's contention that the Commission should consider maximum water conservation measures in the context of its review under R.C. 4906.10(A)(2) and (A)(3), Harvey responds that nowhere in its initial brief or in the record in this case does Save Hartford contest the fact that Applicant has complied with R.C. 4906.10(A)(8), the statutory section addressing water conservation measures. Harvey submits that it is inappropriate for the Board to consider maximum conservation measures under R.C. 4906.10(A)(2) and (3). Therefore, Harvey believes that the Commission can make the determination under R.C. 4906.10(A)(8) that the Project incorporates the maximum feasible water conservation practices. Additionally, Harvey submits that the application fully complies with the requirements of Ohio Adm.Code 4906-4-07(C)(3)(e), which requires Applicant to describe how the Facility incorporates the maximum feasible water conservation practices. In support of its position, Harvey states that solar photovoltaic is one of the least water intensive electric generation technologies available. According to Harvey, while the need for solar panel cleaning is unlikely, in the event of a cleaning of the entire Facility, Applicant believes that the equivalent of less than 0.1 of an inch of rain fall is a reasonable estimate of the maximum amount of water that would be used. (App. Reply Br. at 38 citing App. Ex. 11; App. Ex. 20 at 17; App. Ex. 6; App. Ex. 20 at 17; App. Ex. 11; Tr. I at 68.)

{¶ 222} In response to Save Hartford's contention that the Board cannot issue a certificate without certain information set forth in Ohio Adm.Code 4906-4-07(C) regarding the Project's compliance with water quality regulations, Harvey states that the application included the information relative to the applicable water quality requirements in accordance with the requirements of Ohio Adm.Code 4906-4-07. In particular, Harvey contends that it specifically identified the permits its needs for the Project in order to demonstrate compliance with water quality issues, including nationwide and general permits issued pursuant to state and federal water quality regulations. According to Harvey, the applicable certificates/permits include the Clean Water Act for Section 404 nationwide permits, a Section 401 water quality certification from the OEPA, and a general construction storm

water permit from the OEPA. Harvey posits that the categories of information identified in Ohio Adm.Code 4906-4-07(C) are not required to be submitted to the environmental agencies tasked with evaluating compliance with water quality regulations as they are not required to be included in the applications for coverage under the permits. Harvey submits that any applications that it submits to meet federal, state, or local regulations would not have included any of the information that Save Hartford is seeking. Harvey asserts that because Applicant has identified all permit requirements applicable to water quality compliance in its application, has confirmed that it will timely file all associated permit applications, and has demonstrated that those applications do not require the submission of the information sought by Save Hartford, the absence of such information does not prohibit the Board from issuing a certificate. Additionally, Harvey points out that the Ohio Administrative Code permits the Board to waive any applicable requirement. (App. Reply Br. at 38-41; App. Ex. 1 at 40-41, Ex. K.)

{¶ 223} Upon review of the record, the Board finds that the Facility's probable ecological impacts have been properly evaluated and determined. Harvey conducted a literature review and field surveys of animal species in the Project area, as required by the Board's rules. It is undisputed that Harvey requested information from ODNR and USFWS regarding state and federal listed threatened or endangered animal species. Based upon this information and further analysis performed by Applicant's consultants, Harvey included documentation of its ecological assessments in the Water Delineation Report, Wildlife Report, and Ecology Impact Assessment that were part of the application. (Staff Ex. 1 at 25; App. Ex. 1 at Exs. O, P, Q.). Applicant witness Rupprecht, of SWCA Environmental Consultants, testified that the information contained in these documents was obtained from a variety of sources, including on-site surveys, and included coordination with federal and state agencies (App. Ex. 26 at 7). The Wildlife Report and Ecology Impact Assessment both include information regarding rare, threatened, and endangered species, as well as a discussion of non-threatened wildlife resources. The Ecological Impact Assessment also examines the impacts on habitat, vegetation, surface water delineations, and aquatic



environments. (App. Ex. 1, Ex. P at 5-9 to 5-16; App. 1, Ex. Q at 4-1 to 6-8.) The documentation submitted with the application is voluminous and consistent with what the Board has traditionally required from an Applicant in assessing ecological impacts.

{¶ 224} With respect to Save Hartford’s additional arguments that the record does not contain information sufficient to determine the probable environmental impact of the Project related to flooding, solid waste disposal, water conservation measures, and water quality, the Board is equally unpersuaded. As an initial matter, Harvey does provide information relative each of these issues. Relative to flooding, Harvey includes multiple assessments depicting the area of the floodplain and where construction may occur relative to it (App. Ex. 1 at Exs. K, M, N, Q). The information regarding solid waste and water conservation measures are discussed further below in relation to R.C. 4906.10(A)(5) and (A)(8), respectively, but the Board notes here that adequate information on both issues is in the record. Whether the interpretation of this information and Harvey’s plans to account for these or any adverse effects are sufficient is an analysis conducted with respect to R.C. 4906.10(A)(3). This criterion requires only those impacts be identified, which has been accomplished in this case.

{¶ 225} As discussed in the Staff Report, the findings and recommendations set forth by Staff were a result of coordination with the OEPA, the ODH, the Ohio Department of Development, ODNR, and the Ohio Department of Agriculture (Staff Ex. 1 at ii). Based on its review of the record, Staff found that it could properly determine the probable environmental impacts of the Project, and the Board agrees with this assessment.

{¶ 226} 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***

{¶ 227} R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent conditions.

{¶ 228} Signatory parties state 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 economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).

{¶ 229} Harvey highlights 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 Project (App. Initial Br. at 23 citing App. Ex. 20 at 14). With respect to public and safety, Harvey represents that it employed several important constraints in determining the locations and configurations of the solar panels within the Preliminary-Maximum Site Plan, including observing minimum setbacks, avoiding existing vegetative screening, and minimizing ecological impacts in the restricted areas. Harvey states that of the 4,000 acres under lease, 1,400 acres are designated as restricted areas which it will avoid when constructing and operating the Facility. As a result, of the 214 residences that are within 1,500 feet of the nearest Project component, 84 percent of these residences are at least 500 feet from the nearest Project component. (App. Ex. 20 at 6.) Each solar field and substation will, at a minimum, incorporate the following setbacks from the fence: (a) 30- feet from the edge of the right-of-way of any public road, (b) 25 feet from the property line of any parcel whose owner is not participating in the Project, (c) 25 feet from the edge of any waterbody or wetland, and (d) 300 feet from any home on a parcel whose owner is not participating in the Project. Additionally, there will be a minimum of 500 feet between any central inverter and any home on a parcel whose owner is not participating in the Project. (App. Initial Br. at 24 citing App. Ex. 1 at 9.) Visual impacts will be mitigated by the presence of seasonal crops in actively farmed fields and the landscape screening committed to by Applicant (App. Ex. 1, Ex. W; App. Ex. 26 at 14, 16). Applicant has committed to screening vegetation along the perimeter of the Project fence line (App. Ex. 26 at 17).

{¶ 230} The solar panels will be fenced with a seven-foot agricultural style, wire fence that will not include barbed wire. (App. Ex. 20 at 5; Jt. Ex. 1 at 6, Condition 19). Between the surrounding fence and the neighboring properties, Harvey plans to work with MKSK, a landscaping architect firm, to design robust and regionally appropriate landscaping (App. Ex. 20 at 6; Jt. Ex. 1 at 5, 6, Condition 18). The hours of construction activities and permitted noise levels are identified in the discussion of R.C. 4906.10(A)(2) above. Applicant points out that it has committed to provide a traffic control plan to Staff prior to construction. All roads will be monitored during construction for deterioration to ensure that that they are safe for local traffic. (App. Ex. 21 at 4-5; Jt. Ex. 1 at 5; App. Ex. 1, Ex. I; App. Ex. 21 at 5). As discussed above, prior to construction, Applicant will implement an emergency response plan and will offer initial and refresher training to local responders regarding solar energy and its associated electrical systems (App. Ex. 1 at 48).

{¶ 231} With respect to land use/agriculture relative to R.C. 4906.10(A)(3), Harvey states that it seeks locations that avoid potential impacts to sensitive ecological resources (App. Ex. 20 at 14). Harvey has committed to implement a vegetation management plan and included a Preliminary Vegetative Management Plan with its application, representing the minimum commitments to be employed. The Final Vegetative Management Plan will be finalized in consultation with ODNR and be submitted prior to construction. (Jt. Ex. 1 at 3, Conditions 1, 7, and 26.) According to Harvey the Preliminary Vegetative Management Plan includes steps that Harvey will take to preserve existing vegetation; preserve topsoil; install native and pollinator-friendly plants; control noxious and invasive weeds; help control stormwater and minimize erosions; and maintain the vegetated cover of the site (App. Ex. 1, Ex. C; App. Ex. 22 at 3; App. Ex. 23 at 4). Additionally, the plan provides that temporary vegetation will be planted as part of the best management practices for soil and erosion control. The plan will also describe site preparation practices and seed selection for long-term vegetation that will be planted and maintained for the duration of the Facility's operation. (App. Ex. 1, Ex. C; App. Ex. 22 at 3.)

{¶ 232} Applicant has committed to implement a robust landscape plan that will mitigate visual impacts associated with the Facility (App. Ex. 1 Ex. X; Jt. Ex. 1 at 5, 6, Condition 18). The Preliminary Landscape Plan complements the existing hedgerows, augments fragmentary hedgerows, and strategically plants new hedgerows that help to diffuse views of the solar panels (App. Ex. 1, Ex. X; App. Ex. 28 at 3). It features a tiered set of landscape treatments just outside of the fence that are tailored to specific locations and views extending from low- to high-density depending on the proximity of the arrays to roads and residences (App. Ex. 1 at 78; App. Ex. 1, Ex. X; App. Ex. 28 at 3-5).

{¶ 233} Prior to construction, Harvey has committed to prepare a final landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Architects Board that addresses the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent nonparticipating parcel contains a residence with a direct line of sight of the Project area. The plan will include measures such as fencing, vegetative screening, and good neighbor agreements. (App. Initial Br. at 28 citing Jt. Ex. 1 at 5, 6, Condition 18.) Applicant commits to maintain vegetative screening for the life of the Facility and Applicant will substitute or replace any failed plantings so that after five years, at least 90 percent of the vegetation has survived. Applicant will maintain all fencing along the perimeter of the Project in good repair for the term of the Project and promptly repair any significant damage as needed. All lights for the Project will be motion-activated and designed to narrowly focus light inward toward the Facility. (Jt. Ex. 1 at 6, Condition 18.)

{¶ 234} Harvey submits that its commitment to ensure functional drain tiles both on and off the Project, control stormwater runoff, and install beneficial vegetation for the Project will ensure that neighboring residences and farm operations experience no adverse impacts due to the operation of the Project (App. Ex. 20 at 13). Additionally, Harvey references its commitment to, at a minimum, employ the construction considerations set forth in the Preliminary Drain Tile Assessment, which are intended to minimize impacts to the field drainage system during construction, operation, and maintenance of the Facility (App. Ex. 21 at 9). Further, Harvey focuses on its commitment to promptly repair drain tiles

to at least the original conditions or modern equivalent or reroute at its expense in order to ensure proper drainage (App. Ex. 21 at 9; Jt. Ex. 1 at 9, Condition 36). Harvey also identifies the Complaint Resolution Plan, which will be in place during construction and operation of the Facility to address any landowner complaints that may be made about the Project's effect on drain tiles (App. Ex. 21 at 9).

{¶ 235} In regard to geological and hydrogeology impacts, Harvey states that it has minimized the crossings of waterways. Although Harvey contends that there are virtually no floodplains in the Project area in the event that construction occurs within a FEMA-delineated 100-year floodplain, it has committed to coordinate with the Licking County floodplain administrator (App. Ex. 20 at 14; App. Ex. 1, Ex. A; App. Ex. 3; Jt. Ex. 1 at 8, Condition 28; Tr. I at 84-86). Harvey commits to comply with the OEPA's Construction General Permit and the implementation of a SWPPP, as well as best management practices relative to both construction and post-construction activities as discussed above.

{¶ 236} Harvey points out that it entered into a MOU with OHPO, which defines the roles and responsibilities of it and OHPO with respect to addressing potential impacts to cultural resources from the Project. According to Harvey, the MOU ensures that it will continue consultation with OHPO and mitigate for and/or avoid potential adverse effects upon cultural resources due to the Project. (App. Ex. 27 at 7, 8; App. Ex. 27A at 2, Att. RP Supp-1.)

{¶ 237} Harvey states that it has avoided impacts to forested areas (App. Ex. 20 at 14). Although relatively minor tree removal will occur, Applicant will adhere to seasonal cutting dates of October 1 through March 31, unless coordination with ODNR and USFWS allows a different course of action (Jt. Ex. 1 at 7, Condition 24). The Project infrastructure will be located on actively managed agricultural land, which provides habitat for only a limited number of wildlife species. The few birds and mammals located within the farm fields should be able to temporarily vacate the areas disturbed by construction. (App. Ex. 26 at 7.) Harvey represents that the Project was designed to avoid and/or minimize impacts

to wetlands, waterbodies, woodlots, and aquatic and terrestrial wildlife species (App. Ex. 1, Figure 11; App. Ex. 26 at 6-8). Harvey will have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. The environmental specialist will have authority to stop construction to ensure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. (App. Ex. 1, Ex. R; App. Ex. 21 at 7.) The Project's operation will be highly protective of ecological resources. Operation of the Project will have essentially no impact on streams, wetlands, and vegetation, including mature trees, wetland vegetation, and woody vegetation in riparian areas. (App. Ex. 1 at 64.)

{¶ 238} According to Save Hartford, the Project does not satisfy R.C. 4906.10(A)(3) because Harvey has not provided a design that represents the "minimum" adverse environmental impact with regard to visual impairment considering the state of available technology and the nature and economics of the various alternatives, and other considerations (Save Hartford Initial Br. at 18).<sup>1</sup>

{¶ 239} Save Hartford alleges that the application requests a certificate without offering the setbacks necessary to minimize the Project's adverse environmental impact under R.C. 4906.10(A)(3). In support of its position, Save Hartford contends that the Board should not accept unreasonably narrow setbacks between Harvey's industrial Facility and its neighbors' land and homes. Save Hartford also asserts that Harvey provides no justification for the proposed narrow setbacks. Specifically, Save Hartford asserts that the proposed setbacks between the Project and the community are so minimal as to offer no meaningful isolation from the Project's harmful impacts. (Save Hartford Initial Br. at 5.) In particular, Save Hartford focuses on the fact that where no other setback applies, the setback from nonparticipating property line is only 25 feet (Save Hartford Initial Br. at 6 citing App.

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<sup>1</sup> As alluded to in the introduction to Section IX of this decision, the Board is addressing similar arguments made under several certification criteria under the criterion deemed most appropriate. To the extent an argument made by any party under R.C. 4906.10(A)(2), R.C. 4906.10(A)(3), and R.C. 4906.10(A)(6) 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.

Ex. 1 at 9; Tr. I at 61; Save Hartford Reply Br. at 6). Due to this limited setback, Save Hartford posits that neighbors will not be able to escape the Project's presence. Save Hartford expresses concern for the proposed 300-foot setback between the Project and the neighboring homes. According to Save Hartford, based on the proposed short setbacks, and the limited proposed vegetative screening, neighbors will be constantly exposed to unwanted and unpleasant views from their yards and houses for 40 years (Save Hartford Initial Br. at 6.) In support of its position, Save Hartford submits its witnesses' testimony and photographs depicting the potential views of the solar panels (Save Hartford Reply Br. at 9 citing Save Hartford Exs. 1, 3, 5, and 6). Save Hartford argues that pursuant to R.C. 4906.10(A)(3) and the dictionary definition of "minimum," Harvey must prove that the Project's impacts are the "least possible" considering the state of available technology and the nature and economies of the various alternatives, and other pertinent considerations. Save Hartford posits that Harvey has not satisfied this mandate but, at best, has proposed to reduce the visual impacts by a little amount. (Save Hartford Initial Br. at 7, 19.)

{¶ 240} Save Hartford submits that the Board may not issue a certificate without requiring mitigation of adverse visual impacts as required by Ohio Adm.Code 4906-4-08(D)(4)(f) and R.C. 4906.10(A)(3). Specifically, Save Hartford focuses on the requirement that an applicant must describe the measures that will be taken to minimize any adverse visual impact created by the Facility. The measures to be described include, but are not limited to project location, lighting, turbine layout, visual screening, and facility coloration. According to Save Hartford, Applicant and Staff have limited their focus to measures that might be taken pursuant to a Preliminary Landscape Plan. (Save Hartford Initial Br. at 12 citing App. Ex. 1, Ex. X; Tr. II at 330-332.) Specifically, Save Hartford believes that a preliminary landscape plan is meaningless as it will be replaced by a final landscape plan pursuant to Condition 18 of the Joint Stipulation and provides neighbors with no assurances as to the vegetation that will be planted and where to screen the affected properties (Save Hartford Initial Br. at 12, 19). Save Hartford expresses concern that although the final landscape plan will be developed in consultation with a licensed landscape architect, it will

not be in consultation with the neighbors who will actually be affected by the plan. Additionally, Save Hartford avers that the final plan is not subject to the current adjudicatory process, but is left to the discretion of Harvey and Staff. (Safe Hartford Initial Br. at 13.) Additionally, Save Hartford questions the practical knowledge of John Woods, Harvey's project manager responsible for drafting the landscape plan. Specifically, Save Hartford expresses concern regarding witness Woods' practical experience with planting landscapes and the wildlife impacts of such landscapes. (Save Hartford Initial Br. at 13, 14 citing Tr. II at 346, 347.)

{¶ 241} Specific to Harvey's preliminary landscape plan, Save Hartford believes that the proposal contains the following flaws: (a) the listed trees and shrubs will be too small at planting time and, therefore, it will take years for them to provide a meaningful shield against the neighbors' views of the solar panels. In support of its position, Save Hartford states that the trees are only expected to be 1.5 to 4 feet at planting and the shrubs will be 1.5 to 2 feet at planting. At the same time, the solar panels will be 8 to 14 feet tall. Based on expected growth rates, Save Hartford opines that it would take the trees 10-14 years to grow as high as the solar panels in three modules, and no trees will be planted in the fourth module. With respect to the shrubs to be utilized, it would take 12-14 years to grow that tall. (App. Ex. 1, Ex. X at L-20, 21; Save Hartford Ex. 3 at 4, 6; Tr. I at 60, 61; Tr. II at 338, 340.)

{¶ 242} Save Hartford also believes that none of the vegetation modules are actually designed to screen the solar equipment from public view but, rather, to diffuse the view (Tr. II at 339). According to Save Hartford, the resulting gaps between the trees and shrubs will allow the solar equipment to be easily visible to the public (Tr. II at 344). Save Hartford represents that deer and rabbits are situated in the proposed Project area and that the preliminary landscape plan calls for the planting of trees and shrubs at heights that are optimal for consumption by these animals (Save Hartford Ex. 3 at 5-7). Save Hartford also believes that the preliminary landscape plan will result in Harvey building fences that will allow large populations of rabbits and groundhogs to consume the vegetative screening while not allowing for predators to enter (Save Hartford Ex. 3 at 7). Save Hartford contends



that the Stipulation, Condition 19, is similarly flawed by not requiring a small-wildlife permeable fence with no specifications that the openings be large enough to provide access to predators.

{¶ 243} Save Hartford argues that the preliminary landscape plan fails to require any of the following for the purpose of discouraging deer and rabbits from eating the plants: (a) planting inside fences, (b) encircling tree trunks with shields, (c) applying animal repellents, (d) planting larger plants, and (d) placing predator-sized openings in the fences (Save Hartford Initial Br. At 17 citing Save Hartford Ex. 3 at 8; Tr. III at 442, 443). Save Hartford questions why some of the trees selected to be used in areas of bright sunlight are species that will not tolerate heat or baking sun in the fields (Save Hartford Ex. 3 at 6). Save Hartford also questions why white pine trees are proposed in the preliminary plan for high density screening since they will struggle to survive in the heavy clay soils of central Ohio and deer and rabbits love to eat them at the size that they are proposed to be planted (Save Hartford Ex. 3 at 7, 8).

{¶ 244} Save Hartford is critical of the fact that Applicant and Staff have failed to provide a mechanism for affected neighbors of the Project to contribute to the decision-making process for designing vegetative screening. Save Hartford believes that the situation has been exacerbated by the fact that a binding final landscape plan has not been included as part of the record in this case as required by Ohio Adm.Code 4906-4-08(D)(4)(f) so that neighbors could adjudicate the details and adequacy of the vegetative designs chosen for their homes and land. (Save Hartford Initial Br. at 18.)

{¶ 245} Save Hartford states that the Project will not represent the minimum adverse environmental impact under R.C. 4906.10(A)(3) unless the Board sets a deadline for decommissioning. Safe Hartford believes that issuing a certificate without specified deadlines will allow the Facility to lie idle and decay while indefinitely awaiting decommissioning. In support of its position, Save Hartford notes that the eight-month decommissioning estimate referenced in the application is an estimate and not a

commitment to finish the tasks in the specified amount of time. (Save Hartford Initial Br. at 35, 36 citing App. Ex. 1, Ex. J at 10; Tr. I at 133, 134; Jt. Ex. 1 at 8). Additionally, Save Hartford states that Condition 30 of the Stipulation only requires Applicant to inform Staff at later point in time as to the removal of equipment and does not address other decommissioning tasks such as access road removal, soil decompaction, drainage tile restoration and other site reclamation activities necessary to restore the soil's viability for crop production (Save Hartford Initial Br. at 35 citing App. Ex. 1, Ex. J at 6, 8).

{¶ 246} Harvey disputes Save Hartford's claim that the identification of some of the submitted plans as being "preliminary" prevents the Board from determining that the proposed mitigation measures represent the minimum adverse environmental impact. Specifically, Harvey states that, while the preliminary plans will be updated prior to construction, they can only be changed by increased and more robust commitments. According to Harvey, it will not be permitted to decrease any of the commitments already made and the mitigation measures in the final landscape plan can be more, but not less, than those presented in the preliminary landscape plan. (Jt. Ex. 1 at 3, Condition 1; App. Ex. 1 at 78, Ex. X.)

{¶ 247} Harvey rejects Save Hartford's position that "minimum" means the "least possible impact," that all gaps must be covered, and visual impacts must be zero. Harvey submits that neither the statute nor legal precedent requires such a result. (App. Reply Br. at 23.) Harvey believes that Save Hartford is convinced that the fence line around the Project cannot be adequately landscaped. Notwithstanding Save Hartford's perceived position, Harvey believes that Save Hartford witness Bernard recognizes that the landscaping concerns are solvable with the proper landscape plan. (App. Reply Br. at 25, 26 citing Save Hartford Ex. 3 at 5-8.) Harvey highlights that it has entered into Project Participation Agreements PPAs with 62 households near the Project and that the agreements address and resolve any issues for those landowners with regard to perimeter fencing and vegetative landscape (App. Reply Br. at 26 citing App. Ex. 20 at 9). Harvey avers that in accordance with the application and the Stipulation, the Project can be effectively landscaped to provide

the appropriate species of plants that will minimize the potential for the vegetation being destroyed by animals or the sun (App. Reply Br. at 26). Finally, Harvey references the Staff Report determination that “[w]ith the implementation of Staff’s landscape-lighting and fencing conditions, the overall expected aesthetic impact would be minimal” (App. Reply Br. at 27 citing Staff Ex. 1 at 13).

{¶ 248} Harvey states that the Stipulation and the record allow the Board to determine that the setbacks comply with R.C. 4906.10(A)(3) and allow the Board to determine the minimum environmental impact of the Project. Harvey rejects Save Hartford’s contention that, based on the dictionary definition of “minimal,” an applicant must prove that a project’s impacts are “the least quantity assignable, admissible, or possible.” Specifically, Harvey believes that based on Save Hartford’s position, it would be impossible to quantify “minimal” at anything less than zero or no impact whatsoever. (App. Reply Br. at 18). Additionally, Harvey responds that in many locations along the perimeter of the Project, the setbacks will be considerably larger than the minimum (App. Reply Br. at 18 citing App. Ex. 1 at 9, 10; Jt. Ex. 1 at 3; App Ex. 1, Ex. L; App. Ex. 25 at 6). Further, Applicant dismisses Save Hartford’s contention that a minimum 300-foot setback from homes is short, inasmuch as it is the equivalent length of a football field and views of the solar panels will be softened by a line of trees and shrubs (App. Reply Br. at 19 citing App. Ex. 1, Exs. W and X).

{¶ 249} Harvey rejects Save Hartford’s argument that the Board cannot determine that the Project will represent the minimum adverse environmental impact if the Board does not impose a decommissioning completion deadline in order to avoid the Facility lying idle and decaying while awaiting decommissioning. In support of its position, Harvey relies on Condition 30 of the Stipulation which requires it to submit a final decommissioning plan prior to construction. Harvey notes that the final plan must include a financial assurance mechanism that requires a performance bond issued by an insurance company, with the Board as the obligee, that covers the total cost of decommissioning; and a timeline for the removal of the equipment. The bond must be recalculated every five years. (Jt. Ex. 1 at 8,

Condition 30.) Harvey submits that the Board has issued numerous certificates for solar facilities without the establishment of decommissioning dates (App. Reply Br. at 44); citing *In re Madison Fields Solar Project, LLC*, Case No. 20-1881-EL-BGN, Order (Jan. 21, 2021); *In re Wheatsborough Solar, LLC*, Case No. 20-1529-EL-BGN, Order (Sept. 16, 2021); *In re Clearview Solar I, LLC*, Case No. 20-1362-EL-BGN, Order (Oct. 21, 2021). Harvey recognizes that it estimates that it will take approximately eight months to decommission the Facility. To the extent that the Board believes that a decommissioning completion deadline is necessary, Harvey requests that a one-year period be established in order to account for uncertainties regarding an event that will not occur for some time in the future. (App. Reply Br. at 44 citing App. Ex. 1, Ex. J at 2.)

{¶ 250} The Clevers reject Save Hartford’s argument that the Board cannot approve the Project since the application contains certain preliminary plans. According to the Clevers, similar arguments have been previously rejected by the Ohio Supreme Court, which allowed for the further flushing out of certain conditions post-certificate issuance. *In re the Application of Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878; *In re Application of Am. Transm. Sys, Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, 928 N.E.2d 427, ¶¶ 20, 21. Specifically, the Clevers assert that the Court affirmed the Board’s certificate conditions requiring post-certificate submittals of various plans, including a transportation routing plan, electrical system collection plan, tree clearing plan, fire protection and medical emergency plan, noise complaint resolution procedure, and other post-certificate submittals. *Buckeye Wind*, 2012-Ohio-878 at ¶28. The Clevers point out the Court’s recognition that “simply because certain matters are left for further review and possible comment does not mean that they have been improperly delegated to staff.” *Buckeye Wind*, 2012-Ohio-878, at ¶¶13, 14.

{¶ 251} According to the Clevers, Save Hartford argues for an overly restrictive interpretation of the Board’s statutory duties that will likely result in the inability to ever construct a major utility facility given the need for flexibility in order for the developer to adapt and address issues as they arise. The Clevers believe that the requirements of

Stipulation Condition 18 regarding the landscape and lighting plan and related vegetative screening provide for such flexibility. (Clevers Reply Br. at 5, 6.)

{¶ 252} In response to Save Hartford's contention that "minimum adverse environmental impact" should be defined as "the least quantity assignable, admissible, or possible," the Clevers note that R.C. 4906.10(A)(3) qualifies that minimum adverse environmental impact should be determined considering the state of available technology, and the nature and economies of the various alternatives and other pertinent considerations. The Clevers contend that Save Hartford is attempting to interpret the statute in a manner that is so restrictive that it could never be satisfied. (Clevers Reply Br. at 7.) The Clevers emphasize that after an exhaustive review of the Project's ecological, cultural, residential, geological, aesthetic, noise, financial, and cultural resource impacts, as well a review of the impacts to agricultural land, bridges, roads, and commercial properties, Staff recommended that the Board make a determination as to the nature of the probable environmental impact and that the Project will have a minimum adverse environmental impact, subject to the 38 conditions set forth in the Staff Report, as modified by the Stipulation (Clevers Reply Br. citing Staff Ex. 1 at 28, 31; Staff Ex. 8 at 1-4, 17-22).

{¶ 253} According to Staff, the Staff Report identified the various efforts that Applicant will undertake to ensure that both temporary and permanent impacts will be reasonably minimized. Staff concludes that these efforts, together with the recommended conditions to further mitigate those impacts, represent the minimum adverse impact. Staff believes that those conditions have been further modified by the Stipulation, even further minimizing any potential impacts. (Staff Initial Br. at 9.)

{¶ 254} Staff asserts that in order to pass legal muster, the Project need not be impact-free or without risk. According to Staff, the Board's adjudicatory role is to identify expected impacts and adopt measures that reasonably address and mitigate those impacts to the Project area and the environment. With respect to the analysis of R.C. 4906.10(A)(3), Staff states that improvements and maintenance to local roads will be made where necessary and

aesthetics and other impacts will be addressed and minimized where possible. (Staff Reply Br. at 1, 3.) In response to Save Hartford's argument that the proposed setbacks are insufficient to minimize the Project's adverse environmental impact, Staff states that presently there are no minimum setbacks prescribed by either statute or Board rule but, instead are left to the Board's discretion. Specifically, Staff believes that the planned setbacks, in conjunction with the vegetative screening, are more than sufficient to protect adjacent landowners. (Staff Reply Br. at 6.)

{¶ 255} Specific to Save Hartford's contention that Applicant has failed to describe the precise types of vegetation that will be planted, Staff references Condition 18 of the Stipulation, which requires the preparation of a landscape and lighting plan in consultation with an Ohio licensed landscape architect for the purpose of planting vegetative screening in order to enhance the view from a non-participating residence and the traveling public, nearby communities, and recreationalists and to be in harmony with the existing vegetation and viewshed in the area. Staff also points out that it will review the plan in order to ensure that it fully complies with the Stipulation condition. According to Staff, the process of post-certificate submission is commonly used in Board cases for various areas of compliance. With respect to Save Hartford's concern regarding Applicant's reliance on a preliminary plan, Staff notes that while the plan is subject to revision, it is committed to ensuring that the final plan fully complies with the Stipulation and mitigates the Project's impact. (Staff Reply Br. at 8; Jt. Ex. 1 at 5-6, Condition 18.)

{¶ 256} In response to Save Hartford's contention that the certificate should be denied due to the potential for flooding in the area, Staff contends that pursuant to Condition 28 of the Stipulation, no construction will occur within the floodplain unless approved by the floodplain program administrator. Additionally, Staff references the Condition 22 requirement that the Project incorporate construction stormwater management in accordance with guidance from the OEPA. (Staff Reply Br. at 9; Jt. Ex. 1 at 6, 8, Conditions 22 and 28.) With regard to Save Hartford's concerns about the Project's impact on plants and wildlife, Staff notes that the possible impact to the Indiana and

northern long-eared bat are mitigated by the Stipulation. If any other threatened or endangered species are encountered during construction, Staff opines that the necessary mitigation is addressed in the Stipulation, Condition 20. Staff also posits that the environmental concerns are further addressed by the Stipulation, Condition 23, which requires Applicant to have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. (Staff Reply Br. at 9, 10; Jt. Ex. 1 at 6-7.) In response to Save Hartford's concerns regarding excessive noise coming from the Project area, Staff opines that the Stipulation limits the construction activities to daylight hours and further limits the hours for pile driving and establishes a limit as to the permitted noise level resulting from the operation of the Project. (Staff Reply Br. at 10, 11; Jt. Ex. 1 at 8-9, Conditions 29 and 35.) With respect to Save Hartford's concerns regarding the impact on cultural resources, Staff responds that the Stipulation addresses this concern through the requirement of the MOU with OHPO to mitigate the potential for adverse effects due to the Project (Jt. Ex. 1 at 10, Condition 38).

{¶ 257} Based on our review of the record, the Board is satisfied that Harvey has demonstrated that the Facility will represent the minimum adverse environmental impact. The Board first notes its rejection of Save Hartford's assertion that this criterion requires the minimum adverse environmental impact to be "the least quantity assignable, admissible, or possible" (Save Hartford Initial Br. at 2). As pointed out by Harvey and the Clevers, this interpretation fails to account for R.C. 4906.10(A)(3) in its entirety, which states that this analysis should be made by considering the state of available technology and the nature and the economics of various alternatives, as well as other pertinent considerations. Taken to its extreme, the only Project that could satisfy Save Hartford's restrictive 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.

{¶ 258} The record in this case demonstrates that Harvey has made a number of commitments that will minimize the adverse environmental impact, among them:

minimizing crossings of waterways; avoiding impacts to forested areas; increasing beneficial vegetation and pollinator habitat within the Project area; committing to the installation of wildlife-friendly fencing; adding over 50 acres of new trees, shrubs, and other vegetation on the perimeter of the Project; minimizing the creation of impermeable surfaces; and the construction and operation of electricity generation technology that does not produce harmful emissions or introduce harmful chemicals into the environment, and can exist in harmony with area flora and fauna (App. Ex. 20 at 14.). Even more significant, the Stipulation memorializes many of these commitments and binds Harvey to taking actions to minimize adverse environmental impacts. For instance, Condition 24 requires Harvey to adhere to seasonal tree cutting dates to avoid impacts to forested areas (Jt. Ex. 1 at 7, Condition 24). To monitor impacts to sensitive areas such as wetlands and streams or locations of threatened or endangered species, the Stipulation requires Harvey to have a Staff-approved environmental specialist on site during construction activities in these areas, and the specialist will have authority to halt construction if necessary (Jt. Ex. 1 at 7, Condition 23). Condition 26 requires Harvey to prepare a vegetation management plan, in consultation with ODNR, and then plant a minimum of 70 percent of the Project area in beneficial vegetation, thus adding to plant diversity in the area and further screening views from surrounding properties (Jt. Ex. 1 at 7, Condition 26). These are only a handful of specific examples, but a review of the terms of the Stipulation outlined above reveals conditions that obligate Applicant to prevent the propagation of noxious weeds, conduct no in-water work in perennial streams within certain time periods, utilize a perimeter fence type that is both aesthetically fitting and wildlife permeable, and more. These and similar terms in the Stipulation conditions support a conclusion of the Facility resulting in the minimum adverse environmental impact, when considering the Project in terms of the state of available technology and the nature and the economics of various alternatives, as well as other pertinent considerations.

{¶ 259} While Save Hartford argues that the setbacks are too “narrow,” the Board finds that, when analyzed in conjunction with other mitigation measures and as further



discussed in Paragraph 313 below, they will result in the minimum adverse impact on the community. The Board must conclude that adverse impacts are minimal within the context of the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations, not in a vacuum as to one feature. Through the landscaping plan required by Condition 18 of the Stipulation, the Staff-endorsed setbacks will work in concert with over 50 acres of new perimeter landscape. (App. Ex. 1 at Ex. X; Jt. Ex. 1 at 5-6, Condition 18.)

{¶ 260} Likewise, Save Hartford's contention that the Board lacks information in the record to determine that Harvey's plan to address any flooding related to the Project represents the minimum adverse environmental impact is also without merit. Harvey introduced a number of documents addressing flooding, as well as testimony from multiple experts that touched on flooding or the impacts of waterflow resulting from the Project. (See App. Ex. 1, Exs. K, M, N, O, Q; App. Exs. 23, 24, 26.) Further, the Stipulation restricts the ability of Harvey to undertake construction activities within the 100-year floodplain without coordination with the local floodplain administrator (Jt. Ex. 1 at 8, Condition 28).

{¶ 261} Finally, Save Hartford's contention that the Board cannot determine that the Project represents the minimum adverse environmental impact because a number of plans submitted with the application are labeled "preliminary" is also without merit. The Board agrees with Harvey's contention that the Stipulation obligates Applicant to construct the Facility "as described in the application" and that failing to honor commitments or studies included with the application will be a violation of the terms of the Stipulation (Jt. Ex. 1 at 3, Condition 1). Further, the ability of the Board to condition certificates upon the submission and approval of final plans or studies has been affirmed by the Ohio Supreme Court (*In re Application of Buckeye Wind, L.L.C.*, 2012-Ohio-878, ¶¶ 13-14, 16).

{¶ 262} As described above in the discussion of R.C. 4906.10(A)(2), Staff conducted a thorough investigation into the community, geological, and ecological impacts of the Project. 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 31). Harvey offered the testimonies of numerous expert witnesses that supported this conclusion (*See App. Exs. 21, 22, 22A, 23, 23A, 24, 24A, 25, 25A, 26, 26A, 27, 27A, 28, 28A, 29, 29A*). The Stipulation incorporates Staff's recommended conditions and expands them to further minimize potential adverse environmental impacts resulting from the Project. Based on the evidence presented in this case, the Board agrees with Staff's assessment and concludes that the Project represents the minimum adverse environmental impact.

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

{¶ 263} 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.

{¶ 264} 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, Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM. PJM is the regional transmission organization charged with planning for upgrades and administering the generation queue for the regional transmission system in Ohio. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area must submit an interconnection application for review by PJM. (Staff Ex. 1 at 32.)

{¶ 265} PJM analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that no new system reinforcements would be needed due to the addition of Applicant's Project and that no overloading or network impacts on earlier

projects in the PJM Queue would result from the addition of the proposed Facility. Additionally, PJM determined that upgrades to mitigate any future operational restrictions are not required for the Facility to be operational and are at the discretion of Applicant. The short circuit analysis identified no circuit breaker problems resulting from the proposed generation addition. (Staff Ex. 1 at 34.)

{¶ 266} 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 would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4), provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 25.)

{¶ 267} Harvey echoes Staff's recommendation, submitting that the Facility is consistent with plans for expansion of the regional power system and will serve the interests of the electric system economy and reliability (Harvey Initial Br. at 33 citing App. Ex. 20 at 15). Harvey further points out that the results of PJM's reports together with Applicant's own transmission analysis shows that the 350 MW Project can be constructed and operated without requiring costly upgrades to the regional system. Harvey also submits that the record reflects that the Facility will connect to the regional electric grid through AEP's existing Centerburg Station and that the power will be supplied, in part, to the service territory of AEP, which covers substantial portions of Ohio. (Harvey Initial Br. at 33-34 citing App Ex. 1 at 2, 22, 23.)

{¶ 268} The evidence provided by Staff and Harvey regarding this criterion is compelling and unrefuted. The Board therefore finds that the Project 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*

{¶ 269} 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.

1. AIR

{¶ 270} Harvey states that solar facilities generate electricity without releasing pollutants into the atmosphere; therefore, state and federal air pollution permits are not required for the Project. Harvey contends that the Project will not produce any air pollution, with the exception of controllable dust emissions during construction. Harvey contrasts this with traditional electric generation methods such as combusting coal and natural gas, which emit air pollutants. Harvey asserts that the Project will provide electricity to the surrounding region without exacerbating ozone issues created by pollution. Over time, according to Harvey, a transition to clean energy sources such as solar facilities like the Project, could help all of Ohio attain and maintain air quality standards. (App. Initial Br. at 34; App. Ex. 1 at 37-39.)

{¶ 271} Staff's analysis aligns with that of Harvey. According to Staff, air quality permits are not required for construction or operation of the proposed Facility because the Facility will not use fuel and will not emit any air pollution. Fugitive dust rules, adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed Facility. Applicant expects the amount of dust to be low because little topsoil will be moved and there will be minimal grading and earth work activities. Applicant would control temporary and localized fugitive dust by using best management practices such as using water to wet soil and/or dust suppressants on unpaved roads as needed to minimize dust. This method of dust control is typically used to comply with fugitive dust rules. The Project would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 35.) According to Staff, there is no dispute on this point (Staff Initial Br. at 10).

{¶ 272} 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 the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted thereunder.

## 2. WATER

{¶ 273} Harvey submits that the Project will use relatively little water, particularly in comparison with conventional methods of electric generation. As discussed above, Harvey states that the Project will generate no point-source wastewater and will observe federal and Ohio law to properly manage stormwater flows. Further, Harvey has committed to adhere to the OEPA's Guidance on Post-Construction Storm Water Controls of Solar Panel Arrays. Harvey states that the Project's post-construction stormwater controls will be designed and constructed in accordance with the substantive requirements of the Licking County Soil Erosion & Stormwater Regulations. (App. Initial Br. at 34; App. Ex. 1 at 44-45; App. Ex. 20 at 15-16; Jt. Ex. 1 at 6, Condition 22.)

{¶ 274} Staff agrees that Harvey will mitigate potential water quality impacts associated with aquatic discharges by obtaining an NPDES construction storm water general permit from the OEPA. Staff also notes that the OEPA has developed guidance on post-construction storm water controls for solar panel arrays and recommends that Harvey construct the Facility in such a manner that incorporates the OEPA guidance. Staff agrees with Harvey's assessment that the Project will not require significant amounts of water.

{¶ 275} Upon review of the record, the Board finds that the Project will comply with Ohio law regarding water pollution control. As noted by Applicant, potential water quality impacts are unlikely and, to the extent they occur, will be mitigated through compliance with applicable required permits. The Board further notes that there is no record evidence submitted to dispute this conclusion.

### 3. SOLID WASTE

{¶ 276} Harvey submits that the Project will produce only modest amounts of solid waste and is not expected to generate any hazardous waste. Applicant states that the limited amounts of solid waste generated during construction – such as package-related material, crates, nails, boxes, containers, and other construction-related materials – will be reused, recycled, or disposed of in accordance with applicable law. During operation, solid waste is expected to be of the same general nature as those generated from construction, but in far smaller quantities. Waste generated during operation will also be reused, recycled, or disposed of in accordance with applicable law. Further, at the end of a solar panel’s useful life, Harvey has committed to send any retired panel material that is not recycled to an engineered landfill with various barriers or another appropriate disposal location at the time of decommissioning. (App. Initial Br. at 34-35; App. Ex. 1 at 44-45; Jt. Ex. 1 at 6, Condition 31.)

{¶ 277} Staff agrees with Harvey’s description of the solid waste that might be generated at the Facility. Staff approves of Harvey’s solid waste disposal plans and states that the plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 36.)

{¶ 278} As discussed above in the analysis of R.C. 4906.10(A)(2), Save Hartford contends that the application does not estimate the volume or disposal destinations of solid waste generated during construction and operation of the Project as required by Ohio Adm.Code 4906-4-07(D)<sup>2</sup>. Save Hartford states that Harvey acknowledges that the Project will generate waste during construction and operation. (Save Hartford Initial Br. at 27 citing App. Ex. 1 at 44, 45; Tr. I at 74.) Save Hartford does not reference R.C. 4906.10(A)(5) in these arguments, which Harvey points out in reply. Harvey notes that nowhere in its initial brief, or in the record in this case, does Save Hartford contend that Applicant has not

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<sup>2</sup> See Section IX(B)(3), concerning R.C. 4906.10(A)(2), for a full description of these arguments.

complied with R.C. 4906.10(A)(5), or that the Board cannot make a determination that the Project meets this criterion. (App. Reply Br. at 5.)

{¶ 279} Regardless of the section under which Save Hartford made the arguments, based upon a review of the record in this case, the Board finds that Harvey has properly demonstrated that the Project will comply with R.C. Chapter 3734 and all rules and standards adopted thereunder. This criterion and associated rules do not require specificity as to volume of solid waste or a specific destination for disposal locations. The application provides estimates of the amount of solid waste to be generated and a description of Harvey's plans to manage and dispose of such waste. The Board, therefore, agrees with Harvey and Staff that plans outlined by Harvey are reasonable and finds that the Project complies with criterion.

#### 4. AVIATION

{¶ 280} Regarding compliance with the requirements of R.C. 4561.32, Harvey states that there are no public use airports or public use helicopter pads within five miles of the Project area. Harvey does state, however, that there is one public use landing strip, Chapman Memorial Field, within 5 miles of the Project area. Harvey reached out to the owners of the landing strip to provide them information concerning the Project and to answer any questions they may have. According to Harvey, there are no private use landing strips or property used for aviation within or adjacent to the Project area. (App. Ex. 1 at 45-46.)

{¶ 281} Staff's investigation revealed that the tallest above ground structure would be the overhead-underground riser pole structures at the collector substation and would be approximately 80 feet tall. Those heights are under the height requirement from the FAA, pursuant to 14 C.F.R. Part 77.9(a), for filing a Form 7460-1. Staff states that there is one public use airport within five miles of the Project area, referring to Chapman Memorial Field, which Applicant classified as a "landing strip." Regardless of designation, Staff contacted the ODOT Office of Aviation, in accordance with R.C. 4906.10(A)(5), to coordinate

a review of potential impacts of the Project on local airports. No concerns were identified by ODOT. Staff, therefore, recommends that the Board find that the Project complies with the requirements of R.C. 4906.10(A)(5) with respect to aviation. (Staff Ex. 1 at 45-46; Staff Initial Br. at 10-11.)

{¶ 282} In summary, the Board finds that the Project will comply with R.C. Chapters 3704, 3734, and 6111, as well as rules and standards adopted under those chapters and under R.C. 4561.32. 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*

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

{¶ 284} The Signatory Parties represent that the record establishes that the Facility, if conditioned in the certificate as recommended in the Stipulation, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6) (Jt. Ex. 1 at 17).

{¶ 285} Harvey 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). Harvey submits that the public interest is served by the Project because it: enables farmland to be reserved for future generations; results in positive ecological benefits of year round ground cover; provides energy security and clean air resulting from the transition from fossil fuels to renewable energy sources; mitigates climate change results in minimal consumption of community services; provides financial benefits to landowner families; and supports private property rights (App. Initial Br. at 35 citing App. Ex. 20 at 10). Harvey believes that the Project will provide positive socioeconomic impacts to the local community and greater community in numerous ways (App. Initial Br. at 35 citing App. Ex. 1, Ex. F; App. Ex. 20 at 11, 16). Due to the fact that the Project is certified as a Qualified Energy Project under R.C. 5727.75, Harvey represents that the resulting payments that will be distributed to the taxing units will be approximately \$3.1



million annually over the estimated 40-year life span of the Project (App. Initial Br. at 35 citing App. Ex. 1 at 29; App. Ex. 20 at 12).

{¶ 286} Landowners participating in the Project will receive annual lease payments for hosting the Facility resulting in revenue that will further stimulate the local economy. The expected direct, indirect, and induced labor impact is 1,271 jobs and \$91 million in income during the construction of the Project. Because the Project is certified as a Qualified Energy Project, at least 80 percent of the full-time equivalent employees who are employed for construction or installation of the Project will be domiciled in Ohio. (App. Initial Br. at 36 citing App. Ex. 1 at 29.) Harvey believes that the Project will enable the area to maintain its rural character, supports farmers, and will preserve farmland for future cultivation following the decommissioning of the Project (App. Initial Br. at 36 citing App. Ex. 20 at 13; App. Ex. 1 at 69-70).

{¶ 287} Applicant describes its extensive public engagement efforts throughout the development of the Project and its entering into PPAs with 62 households representing over 100 individuals. It has committed to securing commercial insurance and obtaining a performance bond for decommissioning of the Project at the end of the useful life. (App. Ex. 20 at 16; App. Ex. 21 at 6; Jt. Ex. 1 at 8, Condition 30.) A Complaint Resolution Program has been developed and will be implemented during the construction and operation of the Project (App. Ex. 1 at 30, Ex. H). Prior to the commencement of construction and operation, Harvey will provide notices, along with a copy of the Complaint Resolution Program to affected property owners and tenants; all residents, airports, schools, and libraries located within one mile of the Project area; all parties to the case; Licking County Commissioners; Hartford and Bennington Township Trustees; emergency responders; and any other person who requests updates regarding the Project (Jt. Ex. 1 at 10, Condition 39).

{¶ 288} Referencing the Staff Report, the Clevers assert that the Project benefits both the local community and the general public due to the PILOT payments that represent millions of dollars benefitting the community and the creation of jobs (Clevers Initial Br. at

7, 8 citing Staff Ex. 1 at 15). The Clevers consider the Project to represent the ability of members of the community to monetize their land for a period of time for a new source of production without losing the agricultural character of the land on a permanent basis. The Clevers contend that the Project will serve as a suppressor for statewide energy prices (Clevers Initial Br. at 8). The Clevers reference Harvey's commitments regarding perimeter fencing and the filing of a final complaint resolution process prior to the commencement of construction (Clevers Initial Br. at 8, 9 citing Jt. Ex. 1).

{¶ 289} Staff recommends that the Board find that the proposed Facility will serve the public interest, convenience, and necessity. In reaching its recommendation, Staff references Harvey's commitment to complying with applicable safety standards set by the Occupational Safety and Health Administration and the National Fire Protection Association and the use of warning signs, fencing, and locked gates to restrict access to the Project. Staff also references Harvey's commitment to work with local emergency responders to provide training for response to emergencies related to a solar farm. (Staff Initial Br. at 11.)

{¶ 290} Citing the Board's decision in *In re the Application of Republic Wind*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021), Save Hartford asserts that the determination of public interest, convenience, and necessity must be examined through a broad lens that balances a project's projected benefits against the magnitude of potential negative impacts on the local community. Save Hartford submits that, as reflected by the testimony of witnesses, there is pervasive opposition to the Project among local residents. In support of its position, Save Hartford highlights that as of March 26, 2022, it had 120 members, of which 91 members own or live on property adjacent to or near the Project area. Another 11 members live along a road that will serve as the primary route for the Project construction. An additional 18 members live nearby in 4 counties that either host or are near the Project area. (Save Hartford Initial Br. at 4 citing Save Hartford Ex. 2 at 2-4.)

{¶ 291} Save Hartford contends that the Board cannot issue a certificate to Harvey without evaluating the Project's negative economic impacts, in addition to the economic benefits, as required by Ohio Adm.Code 4906.10(A)(6) and Ohio Adm. Code 4906-4-06(E)(4). Specifically, Save Hartford states that Harvey failed to evaluate the economic losses to local businesses and individuals, such as Save Hartford witness Gary O'Neil, whose construction business may lose considerable opportunities for building structures and components for homes and farms if solar panels occupy land otherwise available for housing (Save Hartford Ex. 6 at 4). Additionally, Save Hartford argues that in addition to 2,610 acres being removed from food production, Harvey has not studied the value of the agricultural products that will be lost from shutting down farm production for the approximate 40-year probable lifetime of the Project (Save Hartford Initial Br. at 33 citing Tr. I at 98, 100, 101, 112). Save Hartford also submits that Harvey failed to evaluate the economic losses to the farmers who have been renting and farming the fields that will become a solar farm or the economic losses to vendors of these farmers (Tr. I at 96, 101).

{¶ 292} Save Hartford alleges that issuing a certificate to Harvey for a project that impairs numerous cultural resources would not serve the public interest, convenience, and necessity. In support of its position, Save Hartford submits that Harvey's archeological survey encountered 323 new archeological sites and 9 previously known sites. Additionally, 15 sites inside the Project area are potentially eligible for listing on the NRHP. (Save Hartford Initial Br. at 28 citing App. Ex. 27 at 5; Tr. II at 376-378.) According to Save Hartford, construction of the Project as proposed will occur as close as 50 feet from those sites (App. Ex. 27 at 5). Save Hartford also references the proximity of the historic Curry Farm and the potential that a Native American burial site may be in the vicinity of the Project (Tr. II at 377, 381).

{¶ 293} In response to Save Hartford's concerns regarding the Project's potential impacts to cultural resources, Harvey states that, based on the record, cultural resources have been fully analyzed and the Board has a sufficient basis to determine that the Facility is in the public interest in compliance with R.C. 4906.10(A)(6). In support of its position,

Harvey relies on the terms of the MOU entered into with OHPO, which it believes defines the roles and responsibilities with respect to addressing potential impacts to cultural resources resulting from the Project. Pursuant to the MOU, Harvey states it will continue to consult with OHPO and will mitigate for and/or avoid potential effects upon cultural resources due to the Project. (App. Reply Br. at 36 citing App. Ex. 27 and 27A.) With respect to the potential existence of a Native American burial site, Harvey contends that there is no factual support for such an occurrence. To the extent that one does exist, Harvey submits that it can be addressed in accordance with the MOU. Further, Harvey relies on the terms to address any potential adverse impacts relative to the Curry Farm. (App. Reply Br. at 37 citing App. Ex. 27.)

{¶ 294} Harvey rejects Save Hartford's contention that the Stipulation and application do not enable the Board to properly determine the economic impact of the Project in the context of assessing if the Project satisfies the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). Specifically, Harvey responds that there is no requirement that a party specifically investigate every possible negative economic impact of a project. Rather, consistent with Ohio Adm.Code 4906-4-06(E)(4), Harvey believes that an applicant is only required to study and report on economic impacts by providing an estimate of the economic impact of the proposed Facility on local commercial and industrial activities. According to Harvey, the Socioeconomic Report submitted with the application satisfies this requirement. (App. Reply Br. at 41 citing App. Ex. 1, Ex. F.) Harvey submits that although Save Hartford does not agree with the conclusions of the Socioeconomic Report, such opposition does not equate to true measurable facts. Additionally, Harvey avers that the Board has previously determined that unsubstantiated worries expressed by members in the community are not sufficient to determine that a Project is against the public interest. [Harvey Reply Br. at 42 citing *In re Alamo Solar I, LLC*, Case No. 18-1578-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at 105-106; *In re Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36.]

{¶ 295} Based on our review of the record, the Board finds 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 the need to determine that the Facility will serve the public interest, convenience, and necessity and that this criterion should be examined through a broad lens. For example, this factor should consider the public's interest in a power siting project that ensures continued utility services and the prosperity of the state of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, 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 Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36.

{¶ 296} Specific to this case, the Board has reviewed the Stipulation and the record and finds that the Project will serve the public interest, convenience, and necessity. As part of this determination, the Board considered the commitments made regarding setbacks and the fencing discussed above. While Save Hartford submits that the Project may have some adverse economic impact due to the potential loss of some agricultural activity, no testimony was presented to quantify the alleged monetary loss. "The Commission must rely squarely on the evidence presented in this case and not on speculation or [conjecture]." *In re Complaint of Buckeye Energy Brokers, Inc.*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at ¶ 40. The evidence presented, as discussed above, reflects the creation of both construction and operational jobs as well as the associated earnings and corresponding local economic output (Staff Ex. 1 at 14, 15). In regard to Save Hartford's assertion that cultural resources will be adversely affected by the Project, the Board agrees with Harvey that the Project's impact on cultural resources have been fully considered. In support of this

determination, the Board recognizes the MOU entered into between Harvey and OHPO to address potential impacts to cultural resources. (Staff Ex. 1 at 14.)

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

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

{¶ 298} Harvey contends that the presence of the solar Facility will help preserve agricultural land and support future generations of families having the option to return the land to agricultural use following decommissioning of the Project. Harvey acknowledges that 316 acres of land in the Project area is currently located within agricultural districts but avers that the impacts to this acreage will be temporary, because after decommissioning the land will be returned to substantially preconstruction condition. Further, Harvey has committed to measures which it believes will avoid impacts to the viability of agricultural lands, including, but not limited to: maintaining functioning drain tile systems; avoiding the use of concrete for most Project components; minimizing impermeable surfaces; decompacting soils after construction; planting substantial beneficial vegetation; and implementing erosion and sediment controls during construction. (App. Initial Br. at 38 citing App. Ex. 20 at 13, 17.) According to Harvey, there is no dispute that, based on the evidence in the record, the Board can determine the impact of the Project on agricultural land (App. Reply Br. at 5).

{¶ 299} Staff points out the commitments made by Harvey to address potential impacts to farmlands, including repairing drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Further, Staff highlights that excavated topsoil will be used to establish vegetative cover for the Project and that, upon decommissioning, disturbed areas will be restored to agricultural use. Staff points to Condition 36 of the Stipulation, which provides that Harvey shall avoid, where possible, or minimize to the extent practicable, any damage to functioning drain tile drainage systems

and soils. Condition 36 also provides that any damaged field tile systems will be promptly repaired to at least original conditions or modern equivalent or rerouted at Harvey's expense. Staff, therefore, recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions in the Stipulation, with the requirements of R.C. 4906.10(A)(7). (Staff Initial Br. at 12-13; Staff Ex. 1 at 41; Jt. Ex. 1 at 9, Condition 36.)

{¶ 300} Based on the record, the Board concludes that the Project 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*

{¶ 301} 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.

{¶ 302} The signatory parties state that the record establishes that the Facility will incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).

{¶ 303} Harvey states that the Stipulation and record in this proceeding support the finding and determination that the Facility incorporates the maximum feasible water conservation practices under the statute. In support of its position, Harvey submits that photovoltaic panels are one of the least water-intensive electric generation technologies available. (Harvey Initial Br. at 38 citing App. Ex. 11; App. Ex. 20 at 17.) Additionally, Harvey contends that due to the amount of natural precipitation in the Project area, the need for cleaning the solar panels even once a year is highly unlikely. To the extent that panel cleaning is necessary, it would be completed in phases and the amount of water utilized would be minimal. (Harvey Initial Br. at 38, 39 citing App. Ex. 11; Tr. I at 68.)

{¶ 304} Staff notes that in the rare event that cleaning is needed, Applicant estimates that a single instance of 5,000,000 gallons of water would be used, and that Applicant intends

to obtain the water from local subsurface resources, truck in water, or both. Staff recommends that the Board find that the Project would incorporate maximum feasible water conservation practices and, therefore, complies with this criterion. (Staff Ex. 1 at 42.)

{¶ 305} As summarized in the context of the discussion of R.C. 4906.10(A)(3) above, Save Hartford contends that Harvey failed to address how the proposed Facility incorporated maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives (Harvey Initial Br. at 28, 29).

{¶ 306} Harvey responds that nowhere in its initial brief or anywhere in the record does Save Hartford contest the Project's compliance with R.C. 4906.10(A)(8). Instead, Harvey contends that Save Hartford incorrectly attempts to have the Board consider the issue of maximum water conservation under the analysis of R.C. 4906.10(A)(2)-(3). Notwithstanding the manner in which the Save Hartford has raised the issue of water conservation, Harvey submits that the Project incorporates maximum water feasible conservation practices as discussed in its initial brief summarized above. (App. Reply Br. at 37-38.)

{¶ 307} Upon a review of the record, the Board finds that the Facility 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. In making this determination, the Board recognizes the representation that construction and operation of the Facility will not require the use of significant amounts of water and that nearly no water or wastewater discharge is expected (Staff Ex. 1 at 42).

## X. CONSIDERATION OF STIPULATION

{¶ 308} 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 (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

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

{¶ 309} Harvey witness Herling 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. Harvey highlights that the Project will generate clean and quiet renewable electricity, providing the electricity when it is needed most during daytime peak periods of demand. Harvey submits that the Project will benefit the local and regional economy through jobs created during construction and operation in addition to new sources of tax revenue. Harvey contends that the Stipulation further benefits the public interest by requiring the Project to meet certain requirements during construction and operation of the Project in order to minimize impacts of the Project. Harvey emphasizes that the Stipulation revises several of the Staff recommended conditions in order to ensure post-construction

stormwater management measures that address quality and quantity of runoff (Condition 22); additional protections against the establishment and propagation of noxious and invasive species (Condition 27); and providing additional assurances that field tile drainage systems will be accounted for in the design and construction of the Project and that adjacent landowners' drainage remains unaffected by the presence of the Project (Condition 37). (App. Ex. 20A at 4, 5; Jt. Ex. 1 at 6-10.) Witness Herling opined that the Stipulation does not violate any regulatory principle or practice (Applicant Ex. 20A at 6).

{¶ 310} 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 the proposed electric generation Facility will produce solar-powered electricity that will maximize energy production from solar resources in the project area in order to deliver clean renewable electricity to the Ohio bulk power transmission system to serve the needs of electric utilities and their customers (Applicant Ex. 20A at 5). Additionally, the Project will have a positive effect on the Ohio economy through the creation of jobs and a significant positive impact on the local tax base (Applicant Ex. 20A at 6). Further, the Stipulation requires the Applicant to take steps and meet certain requirements during the construction and operation in order to minimize the impacts of the Project.

{¶ 311} The Applicant must provide various updates during the construction process and file numerous plans for Staff's review. These include a landscape and lighting plan, a decommissioning plan, and a complaint resolution plan (Jt. Ex. 1 at 5, 7, 8, 10). In particular, the Board highlights that the landscape and lighting plan will include measures, such as the planting of vegetative screening designed to enhance the view from a nonparticipating parcel, and to address potential aesthetic impacts to the traveling public, nearby communities, and recreationalists. The Stipulation reached in this case sets forth provisions for the Applicant to continue to maintain the vegetative screening and the fencing around the perimeter of the Project (Jt. Ex. 1 at Conditions 18 and 19). The Board finds that the Stipulation does not violate any important regulatory principle or practice.

{¶ 312} Additionally, in order to address concerns raised by the public relative to the proposed Project, the Board finds that the Facility design is to incorporate a minimum setback from the Project's solar modules of (a) at least 50 feet from non-participating parcel boundaries, (b) at least 300 feet from non-participating residences existing as of the application date, and (c) at least 150 feet from the edge of pavement of any state, county, or township road within or adjacent to the Project area.

{¶ 313} 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, Order, and Certificate. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as amended, and hereby issues a certificate to Harvey in accordance with R.C. Chapter 4906.

## XI. CONCLUSION

{¶ 314} 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 Harvey's application, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate. The Board thus approves and adopts the Stipulation and hereby issues a certificate to Harvey in accordance with R.C. Chapter 4906.

## XII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

{¶ 317} On June 24, 2021, Harvey filed a pre-application notification letter regarding its proposed Project.

{¶ 318} On July 26, 2021, in accordance with Ohio Adm.Code 4906-3-03, Harvey filed proof that legal notice was published in the *Delaware Gazette*, *Mount Vernon News*, and *Newark Advocate*, newspapers of general circulation in the Project area, regarding the public informational meeting on its application.

{¶ 319} Applicant held in-person and virtual public information meetings on July 14, 2021, and July 15, 2021, respectively, to discuss the Project with interested persons and landowners.

{¶ 320} On August 6, 2021, as supplemented on September 17, 2021, Harvey filed an application to construct and operate a new solar-powered electric generation facility and a motion for a waiver, in part, from Ohio Adm.Code 4906-4-08(D)(2)-(4). The motion for a partial waiver was granted pursuant to the Entry of January 4, 2022.

{¶ 321} On October 8, 2021, Applicant filed correspondence indicating that the application fee was paid and a proof of service, indicating that a copy of its accepted, complete application was served upon the appropriate government officials and local libraries in accordance with Ohio Adm.Code 4906-3-07.

{¶ 322} On November 1, 2021, Harvey filed correspondence in the case docket requesting that the Board postpone establishing a procedural schedule while Applicant investigated whether to propose certain adjustments to the Project layout and the application.

{¶ 323} On November 5, 2021, the Engineer of Licking County filed a notice of intervention.

{¶ 324} On November 5, 2021, Save Hartford filed a joint petition for leave to intervene. The motion was granted pursuant to the Entry of January 4, 2022. Robert Hoenie

and Edward Rahde ultimately withdrew from this case pursuant to the filing of March 25, 2022.

{¶ 325} On December 3, 2021, the Licking County Soil & Water Conservation District filed a notice of intervention. Intervention was granted pursuant to the Entry of January 4, 2022.

{¶ 326} On December 3, 2021, Harvey notified Staff that it was prepared to move forward with the proposed Project layout and requested that a procedural schedule be established.

{¶ 327} On January 4, 2022, as amended on January 7, 2022, the ALJ issued procedural Entries that scheduled a local public hearing for March 14, 2022, and a virtual adjudicatory hearing for April 6, 2022, and found the effective date of the filing of the application to be December 14, 2021.

{¶ 328} Hartford Township and Bennington Township filed a notice of intervention on February 10, 2022, and February 17, 2022, respectively. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 329} On February 14, 2022, the village of Hartford filed a motion to intervene in this case. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 330} On February 18, 2022, the Farm Bureau filed a motion to intervene. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 331} On February 18, 2022, the Clevers filed a motion to intervene. Intervention was granted pursuant to the Entry of March 9, 2022.

{¶ 332} On February 18, 2022, the Curry Farm Historic District; Five Roots LLC; and Edward, Susan, Kelly, and Matthew Jaeger jointly filed a motion to intervene. Intervention

was granted pursuant to the Entry of March 9, 2022. The intervenors ultimately withdrew from the case pursuant to the filing of March 24, 2022.

{¶ 333} On February 25, 2022, as amended on March 14, 2022, Staff filed a Report of Investigation of the Project proposed in the application.

{¶ 334} A local public hearing was held on March 14, 2022, at which 64 witnesses testified.

{¶ 335} On March 21, 2022, and April 4, 2022, Harvey filed the direct and supplemental direct testimonies of its witnesses.

{¶ 336} On March 28, 2022, Save Hartford and Staff filed the direct testimonies of their respective witnesses.

{¶ 337} On April 4, 2022, Staff filed supplemental direct testimony.

{¶ 338} On April 4, 2022, Harvey, the Farm Bureau, the Clevers, the village of Hartford, the Licking County Engineer, the Licking County Soil & Water Conservation District, Bennington Township, and Staff filed a Stipulation resolving the issues in this proceeding.

{¶ 339} Beginning on April 6, 2022, an adjudicatory hearing was held at which witnesses for Harvey, Save Hartford, and Staff offered testimony.

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

{¶ 341} 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).

{¶ 342} The record establishes that the Facility, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, represents the

minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).

{¶ 343} 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).

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

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

{¶ 346} 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).

{¶ 347} 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).

{¶ 348} 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, Order, and Certificate.

{¶ 349} Based on the record, the Board finds that Harvey's application should be approved, and a certificate should 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, Order, and Certificate.

### XIII. ORDER

{¶ 350} It is, therefore,

{¶ 351} ORDERED, That the evidentiary weight afforded to portions of the direct testimonies of Applicant witness Herling and Save Hartford witness Bauman be addressed as set forth above in Paragraph 158. It is, further,

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

{¶ 353} ORDERED, That a certificate be issued to Harvey 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, Order, and Certificate. It is, further,

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



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

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

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

Brittney Colvin, 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 Laurie Stevenson, Director  
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director  
Ohio Department of Agriculture

Gregory Slone  
Public Member

JSA/DMH/mef

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**in**

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

Summary: Opinion & Order approving and adopting the stipulation and recommendation between Harvey Solar I, LLC, the Ohio Farm Bureau Federation, James and Carol Clever, the village of Hartford, the Licking County Engineer, the Licking County Soil and Water Conservation District, the Board of Trustees of Bennington Township, and the Board Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion, Order, and Certificate, a certificate of environmental compatibility and public need be issued to Harvey Solar I, LLC for the construction, operation, and maintenance of a 350 megawatt solar-powered electric generation facility in Hartford and Bennington townships in Licking County, Ohio. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board