

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
CLEAR MOUNTAIN ENERGY CENTER,
LLC FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED TO CONSTRUCT A SOLAR-
POWERED ELECTRIC GENERATION
FACILITY IN CLERMONT COUNTY, OHIO.

CASE NO. 23-45-EL-BGN

OPINION AND ORDER

Entered in the Journal on January 16, 2025

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Clear Mountain Energy Center, LLC, International Brotherhood of Electrical Workers Local Union 212, Gregory Bruns, Gregory Vestring and the Vestring Family Preservation Trust, and Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Clear Mountain Energy Center, LLC for the construction, operation, and maintenance of a 100 megawatt solar-powered generation facility, a 52.2 megawatt alternating current battery energy storage system, and a generation interconnection electric transmission line in Batavia, Jackson, and Williamsburg townships in Clermont County, Ohio.

II. LAW

{¶ 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} Clear Mountain Energy Center, LLC (Clear Mountain or Applicant) is a person as defined in R.C. 4906.01.

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

{¶ 5} Under R.C. 4906.01(B)(1)(a), a “major utility facility” is defined as an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts (MW) or more.

{¶ 6} 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 gas pipeline;
- (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, 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 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 alternative site of the 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 the various alternatives.

III. PROJECT DESCRIPTION

{¶ 7} Clear Mountain intends to construct, own, operate, and maintain a 100-MW solar-powered electric generation facility, one less than 1,000-foot long 138 kilovolt (kV) electric gen-tie line, and a 52.2 MW battery energy storage system (BESS) facility in Clermont County, Ohio (Facility). The Facility would consist of large arrays of solar panels, ground-mounted on a tracking rack system, battery energy storage containers, and one electric gen-tie line to connect the Facility substation to the existing AEP Ohio Gunn Road substation. The Facility would occupy approximately 565 acres within an approximate 1,226-acre project area comprised of private land secured by Clear Mountain under lease or purchase options. The project would include associated facilities such as access roads, underground and overhead electric collection lines, 31 inverters and transformers, a BESS consisting of 114 batteries stored in outdoor enclosures, inverters, and switchgear, a collector substation,

an operation and maintenance storage container, laydown yards, and the 138 kV electric gen-tie line.

IV. PROCEDURAL HISTORY

{¶ 8} On February 16, 2023, Applicant filed a preapplication notification letter informing the Board of its proposed solar-powered electric generation facility in Clermont County, Ohio.

{¶ 9} On October 10, 2023, the Clermont County Board of Commissioners filed correspondence regarding the appointment of Ms. Corcoran as the ad hoc representative for the county. Relatedly, on February 26, 2024, the Jackson, Williamsburg, and Batavia Township Boards of Trustees filed their resolution regarding the appointment of Mr. Speeg as the ad hoc representative for the townships.

{¶ 10} On January 8, 2024, Clear Mountain filed its Application with the Board for a certificate of environmental compatibility and public need to construct the proposed Facility (Application). Also on January 8, 2024, Clear Mountain filed a motion seeking waiver from Ohio Adm.Code 4906-4-08(D)(2)-(4), which requires a 10-mile study area with respect to the impact on landmarks and cultural resources; and a motion for protective order to protect as confidential certain information filed in the Application.

{¶ 11} On January 23, 2024, Staff filed correspondence indicating it did not oppose the waiver requests as indicated in Applicant's filing on January 8, 2024.

{¶ 12} By letter dated March 8, 2024, the Board notified Clear Mountain that its Application was sufficiently compliant with the requirements of Ohio Adm.Code Chapters 4906-01, et seq., and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's letter instructed Clear Mountain to serve appropriate government officials and public agencies with copies of the complete, certified Application and to file proof of service with the Board. The letter further instructed Applicant to submit its application fee pursuant to R.C.

4906.06(F) and Ohio Adm.Code 4906-3-12. Staff also identified additional information that would be requested during its investigation.

{¶ 13} On March 27, 2024, and on April 2, 2024, Clear Mountain filed a certificate of service of its accepted and complete Application as required by Ohio Adm.Code 4906-3-07(A)(1)(d) and proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07(A)(1)(e), respectively.

{¶ 14} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing no less than 60 days nor more than 90 days after such receipt and shall conclude the proceeding as expeditiously as practicable.

{¶ 15} By Entry issued May 6, 2024, the administrative law judge (ALJ) established the effective date of the Application as May 6, 2024; scheduled the local public hearing for August 1, 2024; and scheduled the evidentiary hearing for September 10, 2024. Also in the Entry, the ALJ granted Applicant's motion for waiver and protective treatment.

{¶ 16} In accordance with the requirements of Ohio Adm.Code 4906-3-09(A)(1), Applicant filed its first proof of publication on May 29, 2024; and its second proof of publication, pursuant to Ohio Adm.Code 4906-03-09(A)(2), on July 16, 2024.

{¶ 17} On June 20, 2024, International Brotherhood of Electrical Workers, Local Union 212 (IBEW), filed a timely motion to intervene. Also on June 20, 2024, Gregory Bruns, Gregory Vestring, and the Vestring Family Preservation Trust (collectively, Vestring Intervenors) filed a timely motion to intervene. No memorandum contra to either motion to intervene was filed. At this time, the Board grants intervention to IBEW and Vestring Intervenors.

{¶ 18} On July 15, 2024, Staff filed its report of investigation (Staff Report).

{¶ 19} On August 1, 2024, the local public hearing was held in Williamsburg, Ohio, where 48 members of the public provided testimony.

{¶ 20} On August 15, 2024, counsel for Vestring Intervenors filed a motion for Matthew Eisenson to appear pro hac vice on behalf of Vestring Intervenors.

{¶ 21} On September 3, 2024, a Joint Stipulation and Recommendation (Stipulation) executed by Clear Mountain, IBEW, Vestring Intervenors, and Staff was filed for the Board's consideration.

{¶ 22} On September 10, 2024, the evidentiary hearing was held, as scheduled, at the Board's offices.

V. SUMMARY OF EVIDENCE

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

A. *Public Participation*

{¶ 24} At the August 1, 2024 hearing held in Williamsburg, Ohio, 48 individuals testified. Of those witnesses, 19 expressed support for the Project and 29 expressed opposition. Those in support discussed how the Project could create jobs for community members, including those for engineers and carpenters (Pub. Tr. at 15-16, 18-19). Other supportive witnesses emphasized Applicant's commitment to agrivoltaics and how beneficial this practice can be (Pub. Tr. at 25, 52-53, 156). Supporters also testified that property owners who wish to lease their land to the Project should have their property rights respected (Pub Tr. at 30, 55-57). Environmental benefits of solar compared to other generation sources were also discussed by supportive witnesses (Pub. Tr. at 29, 42). Other supportive witnesses emphasized the Project's economic benefits including, increased tax

revenue which could support school systems, more stable electric prices, and more attractive conditions for future development in the area (Pub. Tr. at 29, 50). One witness testified how the Project could protect soil from deterioration, enabling its preservation for future farming (Pub. Tr. at 22).

{¶ 25} Many of the witnesses in opposition to the Project raised concerns related to the Project's potential effects on prime farmland (Pub. Tr. at 56-57, 73, 89, 113, 138). Witnesses also expressed concern about the aesthetic impact of the Project (Pub. Tr. at 85-86, 121, 134). Witnesses testified that the Project would result in decreased property values (Pub. Tr. at 66, 93, 137). Some witnesses also expressed concerns that the jobs created by the Project will be temporary and could be given to out-of-state persons rather than local members of the community (Pub. Tr. at 93, 105). Further, some witnesses testified that the taxable revenue and other economic benefits expected from the Project would be less than those obtained if the Project were not approved (Pub. Tr. at 99-100, 122). Others also felt that subsidizing the Project with taxpayer money is not the best use of such funds (Pub. Tr. at 66). A final concern of those in opposition to the Project is whether Applicant will ensure that the Project is properly decommissioned at the end of its lifespan, including that the burden for decommissioning would fall upon taxpayers (Pub. Tr. at 81, 93, 96).

{¶ 26} In addition to testimony provided at the local hearing, 830 non-duplicate public comments responding to the Application were filed with the Board. Of those comments, 696 expressed support for the Project and 134 expressed opposition. Review of the comments demonstrates that the reasons for support or opposition generally mirror those raised during the local public hearing. Additional comments in opposition raised concerns over the Project's impact on road infrastructure. Doug Lefferson, on behalf of Williamsburg Township, submitted a comment in opposition to the Project, expressing concerns that the Project is economically undesirable. Some supporters highlighted economic benefits of diversified energy generation. We also note that Tony Long, on behalf of the Ohio Chamber of Commerce, and Joy Lytle, on behalf of the Clermont County Chamber of Commerce, filed comments in support of the Project.

B. Staff Report

{¶ 27} 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 was filed on July 15, 2024. The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 28} R.C. 4906.10(A)(1) requires an application for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. Staff recommends that the Board find that the basis of need as specified under R.C. 4906.10(A)(1) is not applicable to the solar and BESS components of the Facility, as those components are neither an electric transmission line nor a gas pipeline (Staff Ex. 1 at 10).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

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

3. COMMUNITY IMPACTS

{¶ 30} *Land Use.* The Project is in portions of Jackson, Williamsburg, and Batavia townships, in Clermont County. The Project area and surrounding land use are predominantly in active agricultural production with pockets of residential development and some commercial and industrial sites located throughout the project area. Staff reports that there are 39 parcels within 250 feet of the proposed project infrastructure and only three of those have a structure. Staff further notes that there are 458 parcels between 250 and 1,500 feet of the Facility equipment, of which 175 have a residence or place of business. The project

area would encompass approximately 1,226 acres of land entirely on private land secured under agreements with the landowners. Of the 1,226 acres of leased land for the Project, all components and infrastructure necessary for the project would occupy approximately 565 acres of land within the project area. Staff observes that the project area can return to cultivated cropland upon decommissioning of the Facility. Moreover, Staff notes that there are no parcels of land designated as Agricultural District Land located within the project area. No structures are proposed for removal or relocation during the construction of the Facility. (Staff Ex. 1 at 11.)

{¶ 31} Furthermore, Staff reports that Clear Mountain intends to implement an agrivoltaics program for vegetation or crops to be planted in the rows between solar panels. Staff notes that Applicant would utilize a combination of options for the Facility, which might include bee keeping, sheep grazing, and ground cover plantings. According to Staff, Applicant cites community concern over loss of prime farmland as a reason for implementing agrivoltaics. Staff concurs with Applicant's description that agrivoltaics may mitigate impacts to agricultural land. However, Staff maintains that Applicant should seek Board approval through an amendment application prior to implementing any grazing plans. (Staff Ex. 1 at 11-12.)

{¶ 32} *Regional Planning.* Clear Mountain has indicated to Staff that the Facility is consistent with the Clermont County 2014 Comprehensive Plan's overall goals. Staff notes that Applicant reports that the Facility has been sited to avoid and minimize impacts to the environmental resources. According to Staff, the project can also return to cultivated cropland upon decommissioning of the project which further aligns with the goal of minimizing adverse environmental impacts. Furthermore, Clear Mountain report to Staff that the introduction of the Facility would substantially augment the revenues of local taxing entities, satisfying the goal of minimizing adverse fiscal impacts. Moreover, Staff agrees that the Facility is not expected to negatively impact housing, transportation, or other public services and facilities. (Staff Ex.1 at 12.)

{¶ 33} *Aesthetics.* Staff reports that the rural nature of the project's vicinity limits the number of potential viewers. Staff confirms that Facility views from surrounding populated places would be screened by vegetation and structures associated with development. Given the relatively flat terrain, roadways and rural residential development located outside of built communities would have limited views. Staff also notes that existing woodlots may offer additional natural screening, and that existing development in the area would see the visible portions of the project as a co-dominant feature in the landscape. (Staff Ex. 1 at 12.)

{¶ 34} Further, Staff states that the solar panels would be installed no higher than 11 feet above ground level. The views are different from one location to another, and the visual effect is greatly diminished as distance between the view and the project increases. Based on the results of Applicant's five-mile visual resources report, the solar panels would not likely be visible at locations outside of the localized area. Staff reports that 11 recreational areas were identified within a five-mile radius of the project. Staff confirms that Facility construction and operation would not physically impact any recreational areas. Furthermore, Staff notes that of the 11 recreational areas identified, only one has visibility of the Facility. This one recreational area is low impact and only has visibility in limited areas. Staff also reports that major roads within the study area with limited visibility include State Route 32, U.S. Highway 50, State Route 276, U.S. Highway 68, State Route 132 and 133. Staff indicates that visual impacts are largely localized and would be most apparent to those living, working, or traveling in areas within proximity to the project area. Additionally, existing vegetation between the solar arrays and the residences would be left in place, to the extent practicable, to help screen the project and reduce visual impacts from the adjacent homes. Staff reports that Applicant has proposed visual mitigation in the form of vegetative screening at selected areas around the Project site. Applicant's proposed landscape mitigation plan calls for the installation of vegetative screening along parts of the Facility that lack natural screening between the project and adjacent residences to soften viewshed impacts and to blend the Facility into the existing vegetation. Staff also confirms that Clear

Mountain committed to using agricultural, wildlife friendly fencing, which is more consistent with the agricultural landscape surrounding the project area. (Staff Ex. 1 at 12-13.)

{¶ 35} Staff recommends that Clear Mountain adopt a landscape and lighting plan to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Facility's infrastructure. Staff further advises 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. Additionally, Staff recommends that Applicant also address additional aesthetic mitigation where necessary. With implementation of Staff's condition, Staff believes that the overall expected aesthetic impact would be minimal. (Staff Ex. 1 at 12-13.)

{¶ 36} *Cultural Resources.* Staff recognizes that Clear Mountain's consultant gathered background information and completed a cultural resources literature review for a two-mile radius around the Facility. This review was based on data provided by Ohio Historic Preservation Office (OHPO) online geographic information system mapping, Ohio Historic Inventory, the Ohio Archaeological Inventory, and National Register of Historic Places (NRHP) files. Reconnaissance level architectural history surveys were conducted for all structures greater than 50 years old, within a half-mile of the project area. Further assessment was done on NRHP eligible properties up to two miles from the Facility. From the literature review, the consultant identified no existing archaeological sites within the Project areas. (Staff Ex. 1 at 13.)

{¶ 37} Staff reports that Clear Mountain's Phase 1 assessment identified 150 new archaeological sites within the project area. Staff states that of the 150 sites identified, all but four sites were recommended as not being eligible for listing in the NRHP. Staff reports that Clear Mountain has committed to avoid these four sites. Additionally, Staff confirms that the findings were submitted to the OHPO. They agreed that this Facility would not affect

archaeological sites, and that no additional cultural resources studies are needed if the four sites recommended as potentially eligible for listing in the NRHP are avoided.

{¶ 38} Clear Mountain's historical survey identified 40 architectural/historical above-ground resources within two miles of the Facility. Five of these resources were deemed to be eligible for the NRHP. Clear Mountain stated that the five resources would not be adversely impacted by the Facility as currently designed as distance, intervening buildings, vegetative screening and potential views of the Facility would not negatively impact their historical integrity. Staff concludes that the project as proposed would not adversely affect cultural resources as concurred by the OHPO. Staff also agrees with OHPO's request that the avoidance of these sites be memorialized with photographic evidence. Staff notes that with this condition, there would be minimal adverse environmental impacts to archaeological cultural resources would be achieved. (Staff Ex. 1 at 13.)

{¶ 39} Applicant's cultural resource consultant also conducted a historic architecture survey of the project area and an area within the Facility's two-mile radius. The survey recorded 40 architectural resources. Five resources are recommended as eligible to be listed in the NRHP, however all five resources should not be impacted by the Facility, because they do not derive their significance from the built environment and have a limited or non-existing view of the Facility. Staff notes that OHPO concurs with these findings. And Staff thus reports that minimal adverse environmental impacts to historical/architectural cultural resources would be achieved. (Staff Ex. 1 at 13.)

{¶ 40} *Noise.* Staff states that noise impacts from construction activities would include site clearing, installation of mechanical and electrical equipment, and commissioning and testing of equipment. According to Staff, many of the construction activities would generate significant noise levels during the period of construction. However, Staff states that the adverse impact of construction noise would be temporary and intermittent, occur away from most residential structures, and be limited to daytime

working hours. Staff observes that Clear Mountain would use mitigation practices such as limiting construction activities to daylight hours, keeping equipment in good working condition, and establishing a complaint resolution process. Staff reports that operational noise impacts for a solar generation facility would be relatively minor and occur only during the day, where such noise sources include inverters and tracking motors. Also, Staff states that operational noise impacts for a battery generation facility would be relatively minor, and such noise sources include transformers, battery storage and cooling systems, and inverters. (Staff Ex. 1 at 13-14.)

{¶ 41} Staff also reports that Clear Mountain conducted an ambient noise level study in order to understand the existing noise levels near the Facility. Noise impacts to non-participating receptors were modeled using the proposed solar inverter, BESS inverter, BESS storage container and transformer models. Staff notes that the model showed that unmitigated operational noise impacts would be more than ambient noise levels plus five decibels (dBA) at a non-participating residence. Staff states that Applicant proposed noise mitigation around the BESS and the substation, such that operational noise impacts would be less than ambient noise levels plus five dBA at all non-participating receptors. (Staff Ex. 1 at 14.)

{¶ 42} *Economic Impact.* According to Staff, Applicant asserts that solar installations have numerous economic benefits and notes the creation of direct tax revenue, along with substantial short-term and long-term jobs for the local community and the state. Per Clear Mountain, these tax-related contributions would directly benefit schools and libraries, health care systems, emergency services, and other community services. Staff notes that Applicant believes the Facility would attract and retain a number of environmentally conscious businesses and industries interested in utilizing renewable facilities as their energy sources. There would also be economic transactions in the form of purchases of goods and services by workers during the construction phase, resulting in the generation of revenue. Staff reports that Clear Mountain retained a consultant to estimate the economic impact of the construction and operation of the Facility. Based on the results of the analysis,

the Facility is expected to create 377 construction related jobs and 14 long-term operational jobs in Ohio. Additionally, the model estimates that the Project would create \$21.6 million in local earnings during construction and \$752,000 in annual earnings during operations for the state of Ohio. Furthermore, Clear Mountain is anticipated to generate \$66.2 million in output during Facility construction and \$2.2 million in annual output during operation for the state. Lastly, the project is estimated to generate \$1,631,000 annually for the Clermont County taxing district. At the time of the Staff Report, Applicant had not entered into a PILOT agreement or compensation agreement but was in active discussions with relevant localities and school districts. (Staff Ex. 1 at 15.) Staff further clarifies that the Facility would have a direct impact through PILOT on the local tax base of Clermont County, including school districts and other taxing districts that serve the area where the facility would be located. These taxing districts also include the townships of Batavia, Jackson, and Williamsburg. Staff indicates that the local school districts of Clermont Northeastern and Williamsburg plus the joint vocational schools of Great Oaks and US Grant would also receive PILOT revenue. The Clermont County Public Library and the Central Joint Fire & EMS District would also benefit from PILOT. (Staff Ex. 1 at 16-17.)

{¶ 43} Staff also reports that in its response to a data request, Applicant stated that it would coordinate with labor unions, workforce development organizations, chambers of commerce, and other organizations to advertise employment, supplier, and contract bidding opportunities in an effort to maximize local, regional, and state employment participation in the Facility. Applicant has indicated to Staff that many of the positions can be filled with workers from the local labor force, and Applicant states that it intends to do that whenever possible. Staff reports that additional workers from outside the local area may be needed for specialized skills and experience not found in the local market, but these workers would still be expected to be found within the state. Relatedly, Staff reports that the ongoing operation and maintenance (O&M) activities are anticipated by Applicant to provide about one full-time equivalent position with the potential for an additional full time equivalent position with the agrivoltaics program. Applicant also anticipates no significant

impact to the local housing market and regional infrastructure through the use of local laborers and expects the need to be filled by local and regional hotels and hospitality options in the project vicinity and the broader Cincinnati area. (Staff Ex. 1 at 15-16.)

{¶ 44} Staff states that Clear Mountain provided its estimates of the cost of delays in permitting and construction of the proposed Facility, although the estimated costs were filed under seal. Moreover, Staff confirms that Applicant provided its estimates of the costs of delays in permitting and construction of the Facility, and that these estimated appeared reasonable. According to Staff, Clear Mountain expects final design to be completed before the start of construction, and anticipates construction to begin in the third quarter of 2025, and be completed by September of 2026. Construction is anticipated to take approximately one year, after which the Facility would be placed into service. (Staff Ex. 1 at 16.)

{¶ 45} *Liability Insurance.* Applicant indicated that insurance would be carried for all components of the Facility and its equipment. Staff reports that the Facility would execute various agreements which would include indemnities of the counterparty to the agreement for certain liabilities. Contractual liability and general liability insurance would be maintained to cover these indemnity obligations. Staff confirms that Clear Mountain would maintain insurance policies to ensure the proper indemnification for other third parties during development, construction, operation, and decommissioning of the project and has provided a 'Certificate of Liability Insurance' as Exhibit J to the Application. (Staff Ex. 1 at 17.)

{¶ 46} *Decommissioning.* Staff reports that Applicant holds land rights for the project area, and Clear Mountain estimates that the solar plus storage facility can operate for 35 years or more. Clear Mountain prepared a decommissioning plan and total decommissioning cost estimate of \$6,196,100 for the solar facility with approximately \$1,769,000 of that total to decommission the BESS. Staff reviewed Applicant's decommissioning plan. According to Applicant's plan, at the end of the useful life of the facility, the solar facility and BESS would be decommissioned, and the land be reclaimed or

restored to conditions as prior to the construction of the solar plus storage facility. Staff observes that prior to the start of any decommissioning activities, Applicant would apply for and obtain applicable federal, state, and local permits. (Staff Ex. 1 at 17.)

{¶ 47} Staff confirms that Clear Mountain may need to obtain an Ohio Environmental Protection Agency (Ohio EPA) Construction Storm Water General Permit including implementation of a stormwater pollution prevention plan and water quality permits, prior to starting decommissioning activities. Staff notes that at the time of decommissioning, solar panels and BESS components would be reused, salvaged, recycled, or properly disposed in accord with regulations in effect at that time. The decommissioning sequence includes staging equipment for component removal, disconnecting and de-energizing of solar and BESS facilities from the bulk electric system, dismantling panels and racking, removing inverters and transformers, removing electrical cables to a depth of at least three feet below ground, removing BESS components, draining fluids, removing power conversion systems, removing fencing, removing access and internal roads, grading the site, removing the substations if decommissioned, and revegetating disturbed land to pre-construction conditions, to the extent practicable. Staff states that Clear Mountain committed to completely remove vertical steel support piles. At the request of the landowner, Applicant may leave access roads or fencing in place. (Staff Ex. 1 at 17.)

{¶ 48} Staff confirms that Applicant would coordinate with Clermont County to repair any public roads if damaged or modified during decommissioning, probably via a road use maintenance agreement (RUMA). Per the Staff Report, Applicant would restore the land significantly to its original topography to allow for resumption of the preconstruction agricultural land use. Staff reports that Clear Mountain anticipates decommissioning activities and restoration to occur over and be completed in a 12-to-18-month period and additional time may be necessary for seasonal restoration and revegetation activities. (Staff Ex. 1 at 17-18.)

{¶ 49} Due to the weather dependent nature of site restoration, Staff recommends that Applicant monitor the site to ensure successful revegetation and rehabilitation. Further, Clear Mountain commits to repairing the drain tile network to preconstruction condition. Staff agrees and accordingly recommends that underground equipment be removed to the extent that allows for future drain tile repairs and installation to be completed after the site has been decommissioned. (Staff Ex. 1 at 18.)

{¶ 50} Staff also confirms that Applicant would repurpose, salvage, recycle or haul offsite to a licensed solid waste disposal facility all solar and BESS components. Staff states that specifically, the battery containers that are intact with no leaks or damage would be managed according to Ohio's equivalent of the U.S. Environmental Agency's (USEPA) universal waste regulations. For those battery containers that are not intact, Applicant would likely need to evaluate and manage the batteries as hazardous waste in order to properly collect, treat, recycle, or dispose of them. Staff states that if the batteries could not be recycled or returned to the manufacturer, Clear Mountain would need to dispose of the batteries at a Resource Conservation and Recovery Act permitted treatment, storage, and disposal facility. If solar modules are to be disposed, Applicant intends to conduct the disposal in compliance with federal, state, and local laws and regulations. Staff notes that Clear Mountain is considering panels and intends to use only panels that have been certified or analyzed with the USEPA's Toxicity Characteristic Leaching Procedure (TCLP) test protocol and meet the USEPA definition of non-hazardous waste. Staff recommends that at the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approved by Staff. (Staff Ex. 1 at 18.)

{¶ 51} Staff reports that during construction of the Facility, Applicant would perform minimal or localized site grading and would ensure that topsoil and subsoil are appropriately segregated during excavation activities. Specifically, Applicant intends that

where grading is necessary, existing topsoil would be temporarily stripped and stockpiled, then the grading would be performed. Staff states that after grading, the original topsoil would be reused and reseeded to stabilize exposed soils in accordance with Applicant's vegetation management plan. Staff also confirms that Applicant would adhere to an agricultural protection plan. Moreover, Staff recommends that Clear Mountain submit a final agricultural protection plan that demonstrates that the project would minimize impacts to future agricultural land use. Staff further recommends as part of the plan that grading would be limited and, to the extent practicable, would not exceed more than five percent of the surface area of agricultural land within the project area. Further, in no event would grading exceed 20 percent of the surface area of the project area's agricultural land. Additionally, Staff states that the plan should include mapping and best management practices for graded soils. (Staff Ex. 1 at 18-19.)

{¶ 52} Regarding land-restoration and decommissioning, Staff reports that Applicant would also provide for financial security to ensure that funds are available for such activities. Specifically, Applicant indicated to Staff that it would employ a performance surety bond active during the Facility's life. Staff reports that Clear Mountain would periodically review the decommissioning plan and costs and provide an updated report to the Board every five years after the commercial operations date. These 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, and appropriateness of any contingency amount or percentage. Staff thus recommends that at least 30 days prior to the preconstruction conference, Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket that includes: (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Board is the obligee; (b) a timeline for removal of the equipment; (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation; (d) a provision where the performance bond is

posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by Applicant; and (i) a provision that underground equipment would be removed to the extent that allows for future drain tile repairs and installation to be completed. Staff therefore recommends that Clear Mountain implement and comply with the decommissioning plan as approved by Staff. (Staff Ex. 1 at 19.)

{¶ 53} *Roads and Bridges.* According to Staff, Applicant estimates that almost 40,000 linear feet of new access roads would be constructed utilizing all-weather gravel, and they would be adequately built to accommodate the size and weight of expected vehicle traffic. Construction and the use of over-sized heavy vehicles would last approximately one year. Staff states that upon completion of construction, the day-to-day operation of the Facility would not require large volumes or heavy traffic. Staff notes that Clear Mountain would need to obtain a RUMA with Clermont County for use of roads that are within the jurisdiction of the county. The local Soil and Water Conservation District and the Ohio Department of Transportation may also be involved with the RUMA. Clear Mountain evaluated the culverts and bridges at the Facility. In some instances, the evaluations were limited because of the presence of high water, excessive sediment, and crushed inlets or outlets which prevented the visual inspection. Staff confirms that 22 of the 25 culverts inspected were in good condition, two others in fair condition, and one found in poor condition. Two bridges were evaluated by visual inspection, and no noteworthy defects were seen in either bridge. Clear Mountain has been advised that culverts in poor or fair condition should be repaired, replaced, protected, or closely monitored while the construction activities are in progress. (Staff Ex. 1 at 20-21.)

{¶ 54} *Wind Velocity.* Staff reports that Applicant provided a tabulation of ranges of wind speeds and the frequency or probabilities of daily occurrences for the 2023 calendar year. Applicant stated the design wind speed used for the Facility would be 105 mph. Additionally, Staff confirms that Applicant is performing a site-specific wind study for the Facility to optimize the structural design and would make the study available to Staff when completed. Staff confirms that Applicant's final design would account for potential high wind speeds within the project area. Staff reports that the final design would also identify the needed pile design or type and the pile depth across the project area to account for expected structural loadings, including gravitational and wind forces. The racking systems would be driven to depths of six to ten feet below the surface to ensure stability of the PV arrays during high wind events. According to Staff, Clear Mountain confirms that the solar PV panels would be designed and tested to withstand high wind speeds and hail anticipated for the project area and would utilize tempered glass in their fabrication to resist breakage. (Staff Ex. 1 at 21.)

{¶ 55} Applicant notes that Clermont County is at moderate risk of tornados, a similar rating for other counties in the southwest region of Ohio. Staff notes that tornado risk would be pronounced (moderate and above) in the flat central and western portions of the state and would be less pronounced (low to moderate) in the southern and eastern portions of the state. Staff reports that the Facility would be designed in accordance with the standards set forth by the American Society of Civil Engineers Standard 07-16 and would include wind speeds based on the building code wind speed maps for the project area. Staff recognizes Applicant's commitment that the Facility would be designed to withstand three-second wind gusts of 105 mph, 50-year maximum wind speed of 90 mph, and 100-year maximum wind speed of 96 mph. (Staff Ex. 1 at 21.)

{¶ 56} Applicant stated that an Ohio-licensed professional engineer would be the engineer of record and would seal all structural drawings for the Facility. Exact structural calculations would be done in the detailed design period after the final equipment has been selected. Similarly, the calculation of stresses on pilings, racking systems, and panels would

be determined after the final equipment selections have been made. According to Staff, NEXTracker is favored for the Facility. Staff states that this model would tilt the panels to face the morning sun and follow it through the day. Further, Staff notes that the Facility would be designed for forces on the panels, racking, pilings, and tracking mechanisms. (Staff Ex. 1 at 21.)

{¶ 57} *Glare.* Staff reports that glare is the phenomenon where sunlight reflects from a surface to create a duration of bright light. Glare also encompasses glint, which is a momentary flash of bright light. Applicant conducted a glint and glare analysis to identify any potential impacts along local roads, at nearby residences, and at Clearwater airpark, a private-use airport approximately 1.4 miles north of the proposed project area. (Staff Ex. 1 at 22.) Staff states that Applicant found that no glare from the Facility is predicted to affect vehicles using the roadways or nearby residences. Staff also reports that glare could impact one of the runways at Clearwater Airpark. According to Staff, if Clear Mountain avoids shallow backtracking angles in the late afternoon, it could eliminate the identified glare potential. Staff recommends that at least 30 days prior to the preconstruction conference that Applicant provide the angles necessary to eliminate glare potential to the Clearwater airpark. Staff also states that aesthetic impact mitigation measures that include vegetative plantings may further reduce potential impacts as part of a landscape and lighting plan. (Staff Ex. 1 at 22-23.)

4. ECOLOGICAL IMPACTS

{¶ 58} *Public and Private Water Supplies.* Staff notes that the Application indicates that no groundwater sourced public drinking water source water protection areas occur within a one-mile radius of the Facility. Staff reports that the nearest drinking water source protection area is approximately eight miles southwest of the Facility. Also, groundwater resources are limited throughout the project area. The Ohio Department of Natural Resources (ODNR) records indicate that 23 water wells are drilled within one mile of the Facility. Further, Staff notes that the nearest solar components to any water well within the

project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-07. Staff indicates that per the Application, the only hazardous material expected to be stored onsite is diesel fuel for construction trucks and equipment. Furthermore, the Staff reports that a Spill Prevention Control and Countermeasure (SPCC) Plan would be developed and would describe the proper methods to contain and mitigate a spill, and necessary agency notification procedures. A Storm Water Pollution Prevention Plan (SWPPP) would also be implemented by Clear Mountain. Overall, Staff does not expect that the construction and operation of the Facility would have any substantial negative impact on public and private water supplies. (Staff Ex. 1 at 23-24.)

{¶ 59} *Surface Waters.* Clear Mountain's consultant delineated 32 streams including 21 intermittent streams, 8 ephemeral stream, and 3 perennial streams. Staff reports that according to the Application and data requests, approximately 0.0077 acres of permanent impacts would be anticipated from the installation of an access road crossing to allow for equipment to safely cross over and minimize impacts to the stream. Furthermore, Staff notes that the stream crossing for the access road would be constructed using a horizontal directional drilling (HDD) method. According to Staff, Clear Mountain is anticipating the need for three crossings to delineated streams from the use of HDD for the installation of collection lines. The HDD process includes the risk of an inadvertent return, when the drilling lubricant, typically water or a non-toxic, fine clay bentonite slurry, is forced through cracks in bedrock and/or surface soils. Staff confirms that Clear Mountain included an HDD Inadvertent Return Control Plan as part of the Application. Staff recommends that Applicant have an environmental specialist on site during construction activities where HDD activities may impact surface waters. (Staff Ex. 1 at 24.)

{¶ 60} Staff reports that Clear Mountain's consultant delineated 46 wetlands totaling approximately 165 acres within the Project area. Of these delineated wetlands, 29 were classified as Category 1 wetlands, and 17 were classified as Category 2 wetlands. Approximately 0.0824 acres of permanent impacts to three wetlands would be anticipated from the installation of access road crossings. Some tree clearing is also proposed within

one wetland. According to the Application, Project infrastructure would have a 50-foot setback from the closest wetlands and waterbodies. Staff disputes the Application's proposed setback and instead recommends that Applicant adhere to either (1) the setback recommendations defined in the ODNR's Guidance for Proposed Solar Energy Facilities in Ohio, which includes 120 feet from Category 1 and 2 wetlands, 300 feet from Category 3 wetlands, and 120 feet along streams, retaining existing, non-invasive trees or shrubs; or (2) an alternate setback distance that is expressly acceptable to ODNR. (Staff Ex. 1 at 24-25.)

{¶ 61} Staff states that direct impacts to streams would be covered under the U.S. Army Corps of Engineers Clean Water Act Section 404 Nationwide permit. Staff reports that Applicant would also obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio EPA prior to the start of construction. Staff does not anticipate issues with Applicant's procurement of this permit. Further specifics about how surface waters would be protected from indirect construction stormwater impacts would be outlined in Applicant's SWPPP, which would be required as part of the NPDES General Permitting to be approved and docketed prior to Facility construction. Furthermore, Staff recommends that Clear Mountain apply Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to Facility construction and operation. Moreover, based on review of Federal Emergency Management Agency 100-year floodplain mapping, the Facility would not cross or overlap with any identified floodplains, and no floodplain permitting would be required for construction of the Project. (Staff Ex. 1 at 25.)

{¶ 62} *Threatened and Endangered Species.* Clear Mountain requested information from ODNR and the U.S. Fish and Wildlife Service (USFWS) regarding state and federally listed threatened or endangered plant and animal species within range of the Project area. Applicant gathered additional information through field assessments and review of published ecological information. ODNR and USFWS did not identify any concerns regarding impacts to listed plant species. Staff states that if Applicant encounters listed plant or animal species during construction, then it should contact Staff, ODNR, and

USFWS, as applicable. Staff also recommends that if Applicant encounters any listed plant or animal species prior to construction, then it should also include the location and how impacts would be avoided in a final access plan to be provided to Staff prior to the preconstruction conference. (Staff Ex. 1 at 25, 27.)

{¶ 63} The project area is within range of the federally endangered and state endangered northern long-eared bat, the federally endangered and state endangered Indiana bat, the state endangered little brown bat, and the state endangered tricolored bat. Staff notes that the Facility is within vicinity of records for the Indiana bat. Staff reports that the habitat of these bat species may be impacted by the Facility since Applicant anticipates approximately 8.34 acres of tree clearing for Facility construction. Staff further notes that Applicant committed to adhere to ODNR and USFWS recommended seasonal tree clearing dates of October 1 through March 31 for all trees three inches or greater in diameter, unless further coordination efforts with ODNR and USFWS allows a different course of action. Clear Mountain plans to conduct a hibernaculum field assessment and/or presence/absence survey. Staff further reports that the Facility is not expected to impact any bat hibernacula. Also, Staff states that the project area is within range of several aquatic species. Suitable habitat for these species may be present within perennial streams. Clear Mountain commits to not conduct in-water work within perennial streams from March 15 through June 30 to minimize impacts to these aquatic species. Additionally, the project area is within range of the state threatened Kirtland's snake. However, Staff notes that the ODNR determined that due to the location, the type of habitat within the project area, and the type of work proposed, this project is not likely to impact this species. Staff also reports that the project area is within the range of two state-listed avian species. However, no suitable habitat for these species was observed within the project area, and therefore Staff does not expect related impacts. (Staff Ex. 1 at 26-27.)

{¶ 64} *Vegetation.* Permanent impacts associated with this project would be less than the amount shown because the estimated vegetative impact includes the entire project area presented within the application. Staff notes that an approximate footprint of 565 acres

is anticipated, and Clear Mountain estimates approximately 8.3 acres of tree clearing for construction of the Facility. Staff confirms that Applicant would also avoid any impacts to the larger (approximately 200-acre) woodland in the north central portion of the project area, which would be unfenced and remain open to wildlife use. Staff reiterates that Applicant intends to consider a program of sheep grazing during its operational phase of the solar facility to provide vegetation management as well as consider bee keeping and traditional row crops in some areas. Staff reports that Clear Mountain developed a vegetation management plan in which it plans to incorporate pollinator plantings across disturbed areas of the Facility. Staff notes that the goals of the plan include planting a minimum of 70 percent of the developed project area in beneficial vegetation and shall follow the ODNR's Ohio Solar Site Pollinator Habitat Planning and Assessment Form. Staff states that this habitat would enhance the visual appeal of the Facility, enrich local wildlife habitat, benefit the local farming community, increase plant diversity, and discourage invasive species. To further assure that these benefits would be realized, Staff recommends that Applicant take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code 901:5-37. Staff notes that vegetation reestablishment and weed control may take several growing seasons. (Staff Ex. 1 at 28-29.)

5. GEOLOGY

{¶ 65} The uppermost bedrock units throughout the Project area include the Arnheim Formation in the far northern part of the project area, and the Grant Lake Formation and Grant Lake Formation Undifferentiated throughout the remainder of the project area. The entirety of the project area is designated as a karst geology area. However no known karst features have been identified within four miles of the project area and no suspected karst features have been identified within one mile of the proposed Facility. Staff indicates that although there are no documented sinkholes in the project area, the underlying bedrock is susceptible to the formation of sinkholes and other karst features. The geotechnical engineering report indicates that construction could increase sinkhole

development concerns in the event that undocumented karst features exist. However, Staff indicates that with proper facility design and implementation of engineering controls as they relate to site hydrology, the development of, and/or exacerbation of any potentially undocumented karst features is unlikely. Clear Mountain's geotechnical report recommends execution of a karst survey assessment during the design phase of the proposed Facility for the purpose of identifying and delineating existing karst features, evaluate site feasibility for development, assess karst risk, and recommend avoidance and mitigation measures. Staff states that bedrock is not unlikely to be encountered during any portions of the proposed construction. (Staff Ex. 1 at 29-30.)

{¶ 66} The ODNr has a record of one oil and gas well within one mile of the project area, but no oil and gas wells are located within the bounds of the proposed Facility. One mining operation is located within the project area. Staff reports that Arch Materials, LLC operates the Batavia Limestone Mine (Batavia Mine) near the centroid of the project area. The Geotechnical Engineering Report provided with the Application did not consider the presence of the Batavia Mine which the Facility would overlap. Preliminary indications are that approximately 10 percent of the Facility may be situated over a portion of the Batavia Mine. Clear Mountain provided a preliminary site suitability assessment technical memo that considered the presence of the mine. The preliminary suitability assessment concluded that given the depth and limited extraction height of the mine, the potential for sinkhole subsidence from roof failure at the mine is not feasible. Based on the current publicly available information on the Batavia Mine, due to the depth of mining and small surface facilities, the Facility will not be significantly impacted by blast vibrations, dust, or ground subsidence. Staff reports that, due to a lack of detailed geologic information at this time, the presence of large discontinuities within the pillars was not accounted for in the preliminary assessment. The report assumes the Batavia Mine pillars have most likely been designed properly and, as such, should provide proper protection against future subsidence into the foreseeable future. The assessment report recommends that Applicant install a seismograph at the proposed substation and battery area to monitor and document the vibrations from

the adjacent blasting activities that occur frequently at the mine. The report also recommends a lateral solar and battery equipment setback of 150 feet from active surface mining operations and 250 feet from any subjacent mining that may occur within 250 feet of the surface. Further information regarding the mines impact on the Facility would be obtained and analyzed within the final geotechnical engineering report with the objective being to confirm the overall geologic suitability. (Staff Ex. 1 at 30-31.)

{¶ 67} Staff states that the soil analyses indicate the Project area contains moderately to poorly drained soils which may result in ponding, where most borings contained silt, clay, and fine sands. Clear Mountain's geotechnical report stated that the project area soils are suitable for support of the proposed Facility infrastructure; however, any poor to marginal strength native cohesive soils may be difficult to work with without proper moisture conditioning and protection. Clear Mountain's geotechnical report indicates in the areas that will receive fill, as well as the proposed solar array, substation, and access road areas, will require stabilization which may include 1) discing, drying, and re-compaction; 2) undercutting and replacement with granular structural fill; or 3) chemical stabilization. The report also recommends California Bearing Ratio testing as part of the access road design in addition to placing a geotextile fabric on the subgrade and applying a 12-inch aggregate base. The construction access road design shall be addressed in the final geotechnical report. (Staff Ex. 1 at 31-32.)

{¶ 68} Overall, Staff recommends further design level geotechnical exploration to confirm the overall suitability including but not limited to, an engineering constructability study regarding the Batavia Mine in relation to the Facility infrastructure, performing additional geotechnical borings, and conducting full-scale pile load testing. Staff recommends that the final detailed engineering drawings of the final Facility 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. Staff recommends Clear Mountain provide a final geotechnical engineering report to Staff at least 30 days prior to

the preconstruction conference. In addition, Staff recommends Applicant retain the services of a corrosion engineer for consultation in the development of the final Facility design. Furthermore, Staff recommends Applicant provide a final Unanticipated Discovery Plan (UDP) to be submitted prior to the pre-construction meeting. Based on Staff's assessment of the available information and data, and implementation of the recommended conditions, Staff concludes that there are no particular geological features within the project area that are incompatible with construction and operation of the proposed Facility. (Staff Ex. 1 at 32-33.)

{¶ 69} Staff recommends that the Board find that Applicant determined the nature of the probable environmental impact for the proposed Facility, and therefore complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 33).

c. Minimum Adverse Environmental Impact

{¶ 70} 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.

6. SITE SELECTION

{¶ 71} Applicant's site selection process focused on the following criteria: solar resources, access to the bulk power transmission system, area topography and geology, land use characteristics, population density, and landowner interest. Staff states that prior to submitting the Application, Clear Mountain engaged local officials and the public. (Staff Ex. 1 at 34.)

7. MINIMIZING IMPACTS

{¶ 72} In its assessment of R.C. 4906.10(A)(3), the Staff Report highlights the information and Staff's recommendations discussed under the R.C. 4906.10(A)(2) section, including the analysis of economic, geologic, transportation, noise impact, decommissioning, and visual impact considerations, as summarized under the R.C. 4906.10(A)(2) section (Staff Ex. 1 at 34-35). Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact, and therefore complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 35-36).

8. ELECTRIC POWER GRID

{¶ 73} 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 would serve the interest of the electric system economy and reliability.

{¶ 74} Clear Mountain proposed to construct a solar-powered electric generation facility, capable of producing 100 MW and a BESS capable of providing 52.2 MW. Staff reports that the Project would connect to a new 138 kV switching station that would connect to the regional transmission grid utilizing a direct connection to the Duke Energy Ford-Cedarville 138-kV transmission line. Staff states that the new switching station will be constructed as a three-breaker ring bus configuration. Further, Staff notes that the Facility would contain an AC-coupled BESS, which is proposed as an associated component of the Facility and would be located adjacent to the collector substation. Staff states that the BESS would have the capability of energy storage from the solar facility and from the electric grid. The BESS would have the capacity to store up to 208.8 MW/hr and inject up to 52.2 MW

into the bulk power system (BPS). However, Staff states that the combined solar facility and the BESS would not inject more than 152.2 MW into the BPS at any time. Furthermore, Staff reports that the BESS would work with the solar facility to maintain an output consistent with the maximum allowable of 152.2 MW. (Staff Ex. 1 at 37.)

{¶ 75} Staff also notes that as an owner, operator, and/or user of the BPS, Applicant is subject to compliance with various North American Electric Reliability Corporation (NERC) reliability standards. Staff states that NERC reliability standards are included as part of the system evaluations conducted by PJM Interconnection, LLC (PJM). Applicant submitted two generation interconnection requests for the Facility to PJM. Staff reports that PJM completed and issued the Feasibility Study reports for both requests in March 2019 and June 2019. Also, PJM completed and issued the System Impact Study reports (SIS) for both requests in February 2020 and August 2020. Staff reports that PJM studied the interconnection as an injection into the BPS using the Ford-Cedarville 138 kV transmission line. Clear Mountain requested a total injection of 152.2 MW, of which 52.2 MW could be available in the PJM capacity market. (Staff Ex. 1 at 37-38.)

{¶ 76} Regarding PJM network impacts, the Project was evaluated for compliance with applicable reliability planning criteria (PJM, NERC, Transmission Operators, etc.). The 2023 summer peak power flow model was used by PJM to evaluate regional reliability impacts for queue project AE2-318 as a 100 MW injection into the AEP Ohio area as also for AF1-045 as a 52.2 MW injection into the AEP Ohio area, both with a commercial probability of 100 percent. PJM studies identified no potential congestion problems for either of the queue positions AE2-318 or AF1-045. Staff explains that PJM requires mitigation of contingencies that cause reliability violations which are initially caused by the addition of the Project. No problems were identified for either queue ID. Next, PJM reliability planning criteria requires that the system be tested for all bulk electric system single contingency outages and all common mode outages. The SISs revealed no problems in this area of planning. Staff reports that PJM studied the project for possible overloading where the Facility may affect earlier generation or transmission projects in the PJM queue. Staff

confirms that no problems were identified for either of the queue positions. PJM also studied the delivery of the energy portion of this interconnection request. PJM studies revealed no potential problems in this area. Furthermore, PJM requires mitigation of contingencies that cause reliability violations which are initially caused by the addition of the Facility. Staff states that no reinforcements were planned for either of the queue positions. Lastly, the Staff Report indicates that PJM performed a short circuit analysis, and no additional problems were identified for either queue position. (Staff Ex. 1 at 38-39.)

{¶ 77} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for expansion of the electrical 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. Therefore, Staff recommends that the Board find that the Facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facilities include the conditions specified in the Staff Report. (Staff Ex. 1 at 39.)

9. AIR, WATER, SOLID WASTE, AND AVIATION

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

{¶ 79} *Air.* Staff states that air quality permits are not required for construction or operation of the Facility. However, fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the Facility. Clear Mountain states that engine exhaust and fugitive dust generation resulting in small amounts of particulate emissions are expected from the operation of heavy construction equipment and travel of vehicles on unpaved roads during construction. Staff reports that Applicant would control temporary and localized fugitive dust by using BMPs including using water or other acceptable substances to disperse on bare soil surfaces as needed to reduce dust creation. Staff states

that this Facility would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 40.)

{¶ 80} *Water.* Staff states that Applicant anticipates obtaining environmental permits if and where necessary. Some stream impacts are anticipated due to construction of an access road crossing. Staff notes that the project would impact three streams and three wetlands, totaling an estimated 0.0077 acres of permanent impacts to streams and 0.0824 acres of permanent impacts to wetlands. Staff states that these impacts would be covered by a Nationwide Permit from the U.S. Army Corps of Engineers (USACE). Staff confirms that Applicant would obtain an Ohio EPA Water Quality Certification. Staff notes that all construction sites that result in ground disturbance of one acre or more are required to obtain coverage under an NPDES Construction Storm Water general permit. (Staff Ex. 1 at 40-41.)

{¶ 81} *Solid Waste.* Staff reports that debris generated from construction activities would include items such as plastic, wood, cardboard, metal packing/packaging materials, construction scrap, and general refuse. According to Staff, Applicant estimates that 1,000 cubic yards of waste will be generated during construction. Materials would be recycled if possible and contained in dumpsters on the premises. Clear Mountain stated that all construction-related debris would be disposed of by a contractor. Furthermore, during Facility operation, Applicant states that small amounts of non-hazardous wastes would be generated during typical O&M operations. Staff reports that solid waste during Facility operation would be stored on-site and then disposed of at an authorized solid waste disposal facility. Lastly, Staff notes that Applicant's solid waste disposal plans must comply with solid waste disposal requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 41.)

{¶ 82} *Aviation.* The tallest above ground structures would be the lightning mast(s) at approximately 120 feet tall. Staff states that these heights are under the height requirement from the Federal Aviation Administration (FAA). According to Applicant, the closest public-use airport is the Clermont County airport which is approximately 5.2 miles

west of the solar Facility Project area, while the closest private use airport, Clearwater Airpark, is approximately 1.85 miles north of the Facility. (Staff Ex. 1 at 42.)

{¶ 83} Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 42).

10. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 84} Pursuant to R.C. 4906.10(A)(6) the Board must find that the proposed Facility would serve the public interest, convenience, and necessity.

{¶ 85} *Safety.* Staff reports that Applicant would use reliable equipment. The current equipment under consideration is compliant with applicable Underwriters Laboratories and IEEE standards. Staff states that Clear Mountain intends to select from leading suppliers, particularly a Tier 1 level solar module manufacturer. Also, Applicant would select only solar modules that do not exhibit the characteristic of toxicity through analysis with the USEPA's TCLP test. Staff notes that Applicant intends to use warning signs, fencing, and gates to restrict access to the potential hazards within the solar Facility, substations, and BESS project area. According to Staff, Clear Mountain would implement the following setbacks: 150 feet from the property line of any non-participating property to the solar modules, 300 feet from any non-participating residences to the solar modules, and 150 feet from the public road. Moreover, Applicant should provide the applicable manufacturer recommended setbacks into consideration for its final site plan. As a result, Staff recommends that Clear Mountain adhere to and implement any applicable equipment manufacturer recommended setbacks into its final site plan. (Staff Ex. 1 at 43.)

{¶ 86} Staff reports that Applicant commits to the BESS conforming to National Fire Protection Association's (NFPA's) Standard for the Installation of Stationary Energy Storage Systems. Further, Staff recommends that Applicant provide the documentation of the fire

protection engineering review and compliance with the current Ohio Fire Code at least 30 days prior to the preconstruction conference for the BESS. Staff also advises that prior to the BESS construction, Clear Mountain should provide the fire and emergency responders with proper firefighting equipment as reasonably required to enable them to respond to emergency situations at the BESS. (Staff Ex. 1 at 43.)

{¶ 87} Staff further reports that Applicant intends to restrict public access to the Facility by enclosing the project area with a perimeter fence and proposed an approximately seven-foot-tall agricultural, wildlife-friendly fence for the solar panel array area. Staff confirms that Clear Mountain intends to have fencing around the collector substations and BESS would be eight-foot-tall fence. Staff reports that these perimeter fences would comply with applicable electrical code requirements. Further, Staff recommends that the solar panel perimeter fence type be both wildlife permeable and aesthetically fitting for a rural location, except for the collector substations and BESS fencing. Prior to construction, Applicant also intends to develop and implement an emergency services response plan in further consultation with potentially affected emergency response personnel. Staff thus recommends that Clear Mountain submit the final emergency services and response plan, which incorporates local emergency responder's consultation, at least 30 days prior to the preconstruction conference. (Staff Ex. 1 at 43-44.)

{¶ 88} *Electromagnetic Fields.* Staff notes that electric transmission lines, when energized, generate electromagnetic fields (EMF). Staff states that laboratory studies have failed to establish a strong correlation between exposure to EMF and effects on human health. Staff reports that the proposed 138 kV gen-tie electric transmission line is not within 100 feet of an occupied residence or institution, therefore calculation of the production of EMF during operation of the proposed gen-tie transmission lines is not warranted per Ohio Adm.Code 4906-5-07(A)(2). Clear Mountain states that the equipment including transmission facilities would be designed and installed according to best utility practices and standards of PJM, NEC, NESC, and the IEEE. (Staff Ex. 1 at 44.)

{¶ 89} *Public Interaction and Participation.* Effective October 11, 2021, Senate Bill 52 (S.B. 52) modified certain requirements for the application process for large solar facilities to provide local officials with more opportunity to participate in the siting of such projects in their communities. As such, the application process for the project is altered only by the requirement, pursuant to R.C. 4906.021, that the Board shall include two voting ad hoc members to represent the interests of the residents of the area in which the Facility is to be located. Clear Mountain is grandfathered under S.B. 52 except for the ad hoc board member provision. County commissioners may choose one commissioner, or a designee, to serve as an ad hoc board member, and township trustees may choose one trustee, or a designee, to serve as their ad hoc board member representative. Mr. Joe Speeg was selected as Batavia, Jackson, and Williamsburg Townships' ad hoc representative and Clermont County selected Ms. Claire B. Corcoran as the ad hoc representative.

{¶ 90} Clear Mountain hosted two public informational meetings for the Facility. Applicant maintains a project website at www.clearmountainenergycenter.com. Staff reports that Applicant drafted a complaint resolution plan to handle complaints regarding the Facility. Staff recommends that a final version of the complaint resolution plan be filed on the docket no later than 30 days prior to the start of construction. Also, Applicant committed to notify, by mail, residents, including those individuals who were provided notice of the public informational meetings, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the Facility at the start of construction and again prior to the start of operations. Furthermore, Applicant committed to submit quarterly complaint summary reports to the Board each year through the first five years of operation. (Staff Ex. 1 at 44.)

{¶ 91} 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 by the

Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 45).

11. AGRICULTURAL DISTRICTS

{¶ 92} Pursuant to R.C. 4906.10(A)(7), the Board must determine the Facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed Facility. The agricultural district program is established under R.C. Chapter 929.

{¶ 93} Staff reports that approximately 550 acres of agricultural land would be disturbed by the proposed Facility. Further, none of the parcels within the project area are currently enrolled in the Agricultural District program. Staff states that the repurposed land could be restored for agricultural use when the Facility is decommissioned. Staff states that Facility construction and operation would disturb the existing soil and could lead to broken drainage tiles. Staff further notes that the locating and avoiding of damaging drain tile mains can help prevent the pooling of water on Project parcels and adjacent parcels. Staff confirms that Clear Mountain coordinated with landowners and county officials to identify the locations of existing drain tiles within the project area. And Applicant supplied a Drainage Tile Assessment and Construction Impact Report with its Application. Staff also confirms that a map of possible drain tile locations has been created as Applicant continues to procure drain tile location data. Staff notes that Clear Mountain outlined a drain tile repair protocol in the Drainage Tile Assessment and Construction Impact Report. Staff reports that Applicant committed to take steps to address potential impacts to farmland. Excavated topsoil would be separated during construction and returned as topsoil after construction unless otherwise specified by landowners. Staff reports that accordingly, disturbed areas upon decommissioning would be restored for agricultural use. (Staff Ex. 1 at 46.)

{¶ 94} 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 section of the Staff Report (Staff Ex. 1 at 47).

12. WATER CONSERVATION PRACTICE

{¶ 95} 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.

{¶ 96} Staff reports that Facility construction 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 states that because Applicant anticipates natural cleaning of panels through rainfall and that very limited quantities of water may be used for the occasional cleaning of solar panels in the case of severe drought. One onsite O&M building is planned for the Facility. Water storage tanks would be used for water supply and septic tanks for disposal. Applicant would install modern, water efficient fixtures for all water usage and regularly maintain them to ensure they are in proper working order. (Staff Ex. 1 at 48.)

{¶ 97} The 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), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 48).

13. RECOMMENDATIONS

{¶ 98} In addition to making various findings throughout its report, Staff recommended that 59 conditions be made part of any certificate issued by the Board for the proposed Facility (Staff Ex. 1 at 49-61). The recommended conditions found within the Staff Report were adopted and re-enumerated in the Signatory Parties' Stipulation (Joint Ex. 1). The conditions are discussed below.

C. Stipulation and Conditions

{¶ 99} At the evidentiary hearing, Applicant presented the Stipulation entered into by the Signatory Parties that purports to resolve all matters pertinent to the certification and construction of the proposed Facility (Joint Ex. 1 at 1; Tr. at 12). Pursuant to the Stipulation, the Signatory Parties recommend that the Board issue the certificate requested by Applicant, subject to 59 conditions.

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

- (1) 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. Post-certification changes to specified equipment, construction practices, mitigation measures, or facility layout shall be coordinated with Staff. Staff cannot approve changes but may provide confirmation that it does not object to changes that are consistent with a Board certificate. Applicant shall make Staff aware of the changes prior to the applicable construction by providing mapping, and a narrative of nature of the change(s) and impact

quantifications associated with the change. Changes which do not constitute an amendment to the certificate shall be documented on the case docket and shall include applicable mapping and an explanation of how the change conforms with the terms of the certificate. Nothing in this condition supersedes the Board's authority as to amendment applications.

- (2) Prior to the preconstruction conference, Applicant shall provide to Staff the primary address of the Facility.
- (3) The certificate shall become invalid if Applicant has not commenced a continuous course of construction of the Facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
- (4) As the information becomes known, Applicant shall file on the public docket the date on which construction would begin, the date on which construction was completed, and the date on which the Facility begins commercial operation.
- (5) The certificate authority provided in this case shall not exempt the Facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (6) Should construction be delayed beyond five years of the date of the certificate, certain wildlife surveys may be required to be updated as determined by Staff and the ODNR.
- (7) At least 30 days prior to the preconstruction conference, Applicant shall demonstrate that it has a complete copy of the solar panel and inverter manufacturer's safety manual or similar document and has incorporated

any recommended setbacks from those manufacturers into its final design site plan.

- (8) Applicant shall only use solar panel modules that do not exhibit the characteristic of toxicity verified through analysis or documentation with the USEPA's TCLP test. Prior to the preconstruction conference, Applicant shall file confirmation that panels were analyzed through the USEPA's TCLP test.
- (9) At least 30 days prior to the preconstruction conference, Applicant shall submit the minimum resting angles that eliminate predicted glare at Clearwater Airpark.
- (10) At least seven days before the preconstruction conference, Applicant shall submit to Staff, for review, a copy of all NPDES permits including its approved SWPPP, and approved SPCC procedures. Applicant must address any erosion related issues through proper design and adherence to Ohio EPA best management practices related to erosion and sedimentation control.
- (11) Applicant shall construct the Facility in a manner that incorporates post construction stormwater management under OHC000006 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio EPA's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
- (12) Prior to commencement of construction, Applicant shall coordinate with the USACE to determine if any portion of the Facility is within a flowage easement. If any portion of the Facility is within such an easement, Applicant shall obtain prior written approval as required for construction of this Facility. For any areas that are subject to a flowage easement,

Applicant shall provide a copy of such approval and supporting documentation on the case docket prior to commencement of construction.

- (13) Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Applicant may conduct separate preconstruction conferences for each stage of construction. At least 30 days prior to the conference, Applicant shall provide Staff with a summary of the status of deliverables required within the conditions, and if the conference is for a phase of construction, Applicant shall provide Staff with a list of the conditions which would apply to that phase. Fourteen days prior to the conference, Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket.
- (14) Applicant shall provide the Board's Staff a copy of any road use agreement(s) and maintenance agreements 30 days prior to the initial preconstruction conference.
- (15) Applicant shall coordinate with the appropriate authorities regarding traffic and transportation requirements necessary for construction and operation of the proposed Facility. To assure compliance with this condition, prior to the preconstruction conference, Applicant shall file a final transportation management plan, this plan shall include (but not be limited to) the following:
 - (a) A summary of coordination with appropriate authorities regarding traffic and transportation requirements, including temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed Facility.

- (b) Documentation of this coordination, with copies of applicable permits or authorizations, or schedule for obtaining permits or authorizations not yet applicable.
 - (c) A description of best management practices that would be implemented to maintain clean roads free of construction debris and excess mud.
 - (d) Details summarizing signage and other best management practices that would ensure construction vehicles only use designated transportation routes.
 - (e) Mapping of roads to be used for construction. This shall include identifying any anticipated permitting/authorization requirements in their respective locations.
- (16) Prior to the commencement of construction activities in areas that require permits or authorizations by federal, state, or local laws and regulations, Applicant shall obtain and comply with such permits or authorizations. Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by Applicant and shall file such permits or authorizations on the public docket. Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference(s). Any permit violation received by Applicant from the permitting agency shall be provided on the case docket within seven days of receipt.
- (17) Applicant shall not commence any construction of the Facility until it has executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes

construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating Facility into the regional transmission system reliably and safely. Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

- (18) Prior to commencement of construction, Applicant shall file a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the Facility. The plan shall ensure that vegetative screening, designed by a landscape architect, be incorporated for any adjacent, non-participating parcel which contains a residence with a direct line of sight of the above-ground components of the Facility, unless alternative mitigation measures are agreed to with the property owner. The plan shall also incorporate plantings or design features or measures to address aesthetic impacts to the traveling public, nearby communities, sensitive institutional land uses and recreationalists. Plantings described in the plan shall be installed within 6 months of completion of construction of the Facility. Applicant shall maintain vegetative screening for the life of the Facility. Applicant shall promptly replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. Lights shall be motion-activated and designed to narrowly focus light inward toward the Facility, such as being downward-facing and/or fitted with side shields. Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.
- (19) At least 30 days prior to the preconstruction conference, Applicant shall file on the docket for Staff's review and acceptance the emergency services and

response plan, which it shall develop in consultation with the local fire and emergency services.

- (20) Applicant shall provide documentation to Staff, and file on the docket in this case, the fire protection engineering review of the BESS Facility at least 30 days prior to the preconstruction conference for the BESS. This documentation shall address at least, but is not limited to, the following: source or supply of water for perimeter protection defensive firefighting coordinated with the local fire and emergency response departments, compliance with current Ohio Fire Code, BESS specific guidance of the International Fire Code 2021 (Chapter 12), the NFPA 855 (2023), NFPA 70, 70E, Underwriters Laboratory (UL) test methods 1642, UL 1973, UL 9540, and UL 9540A. The documentation shall also include a list of the firefighting and rescue equipment necessary to respond to emergencies or extinguish a fire at the BESS.
- (21) Prior to construction of the BESS, Applicant shall provide the fire and emergency responders with training and proper firefighting equipment as reasonably required to enable them to respond to emergency situations at the BESS.
- (22) At least 30 days prior to the preconstruction conference, Applicant shall file on the docket its plan to address issues relating to high wind velocity, including the ability of the trackers to move to the stow position when needed. The plan shall include a post-installation check plan and annual testing of wind velocity sensors.
- (23) Prior to the preconstruction conference, Applicant shall file drawings with dimensions of the solar panel perimeter fence type. Fencing shall be both small-wildlife permeable and aesthetically fitting for a rural location. Fencing around panels should incorporate gaps or spaces of at least six

inches by six inches to allow passage of small mammals. Applicant shall maintain all fencing along the perimeter of the Project in good repair for the term of the Project and shall promptly repair any damage as needed. Barbed wire shall not be utilized for the perimeter fence. This condition shall not apply to substation or battery fencing.

- (24) Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems resulting from the construction, operation, and/or maintenance of the Facility. To assure that impacts are minimized, 30 days prior to the preconstruction conference, Applicant shall docket a field tile avoidance and repair plan including the following:
- (a) Documentation of benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county-maintained ditches.
 - (b) Applicant shall review and consult with the following to request locations of drainage systems:
 - (i) publicly accessible county records.
 - (ii) the County Engineer.
 - (iii) the local soil and water conservation district.
 - (iv) owners of all parcels adjacent to the property.
 - (v) any other sources known to Applicant to have this information.
 - (c) Results of this consultation shall be mapped in the plan and avoided to the extent practicable.

- (d) Damaged field tile systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at Applicant's expense to ensure proper drainage. In areas of pile installation, drain tile repair shall occur as damaged. If damage is not known immediately, repairs shall occur upon signs of flooding within the area. Documentation of repairs shall be maintained by Applicant. However, if the affected landowner(s) agrees to not having the damaged field tile system repaired, they may do so only if:
 - (i) the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system; and
 - (ii) the damaged field tile does not route directly onto or into an adjacent parcel. Applicant shall design the Facility to ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the Facility.
 - (e) Mapping of discovered and repaired or rerouted drain tile systems shall be filed in the case docket once construction is complete. This mapping shall also be provided to Staff in the form of georeferenced electronic data.
 - (f) Avoid installing new drain tile systems that may drain or impede replenishment of nearby wetlands or significantly increase drainage into adjacent waterways during precipitation events.
- (25) At least 60 days prior to the preconstruction conference, Applicant shall file an agricultural protection plan that is designed to minimize impacts to agricultural land use during construction, operation, maintenance, and decommissioning. The plan shall be comprised of a narrative and detailed mapping that includes, but is not limited to, the following:

- (a) Implements a program for the collection of baseline data establishing preconstruction soil conditions for the production of row crops for the agricultural areas within the Project area. The baseline data shall be derived from field and laboratory testing of soil conditions, including depth, density, and quality from representative locations. Laboratory testing shall be conducted by an accredited laboratory. Parameters for assessing soil quality shall include, at a minimum, the following: infiltration rate, bulk density, water holding capacity, pH, percent organic matter, cation exchange capacity, Phosphorous/Phosphate (P), Nitrogen (N), and Potassium/Potash (K). After 30 years of operation and again after 35 years of operation, soil conditions shall be determined for the same sampling locations using the same parameters and the results used to plan soil restoration activities. After equipment is removed as part of decommissioning, soil conditions shall be determined for the same sampling locations using the same parameters. Soil restoration activities shall be performed as necessary to return soil conditions to at least baseline conditions. Staff will be provided with data on soil conditions within 30 days after the receipt of results.
- (b) Applicant shall seek to achieve a goal of grading no more than 5 percent, but firmly limits grading to no more than 20 percent, of the agricultural lands within the project area, as defined in the application. The plan shall minimize grading to the extent practicable and economically feasible, specify the percentage of agricultural lands within the project area for which grading is anticipated and, if applicable, provide the reason(s) that the 5-percent goal is not practicable or economically feasible for the project area.

- (c) Map(s) and geospatially referenced electronic data including the following:
 - (i) Planned areas of grading.
 - (ii) Agricultural lands within the project area.
 - (iii) Planned locations for topsoil storage or stockpile areas.

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

- (vi) Existing grassed waterways shall be preserved to the extent practicable. In instances where grassed waterways are to be significantly altered, Applicant shall submit an analysis that demonstrates how the alteration will not adversely affect drainage of both the project area and neighboring parcels.
 - (vii) Shall sequence construction such that access roads are constructed prior to other grading activities.
 - (viii) Shall instruct construction workers to utilize established access roads and laydown areas for equipment and vehicular traffic, rather than agricultural land, unless installing equipment in the immediate area or as necessary to safely pass other equipment or vehicles.
- (26) At least 30 days prior to the preconstruction conference, Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket that includes:
- (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee;
 - (b) a timeline for removal of the equipment;
 - (c) a provision to monitor the site for at least one additional year to ensure successful revegetation and rehabilitation;
 - (d) a provision where the performance bond is posted prior to the commencement of construction;
 - (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value;
 - (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process;
 - (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for

professional engineers and surveyors; (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by Applicant; and (i) a provision that underground equipment will be removed to the extent that allows for future drain tile repairs and installation to be completed. Applicant shall implement and comply with the decommissioning plan as approved by Staff.

- (27) Prior to commencement of any construction, Applicant shall prepare an updated vegetation management plan in consultation with the ODNR. The goals of the plan shall include planting a minimum of 70 percent of the impacted project area in beneficial vegetation, utilizing plant species listed in Attachment A of ODNR Recommended Requirements for Proposed Solar Energy Facilities in Ohio, or other suitable species as approved by the ODNR and shall follow the Ohio Solar Site Pollinator Habitat Planning and Assessment Form with a minimum score of 80 points. The plan shall include mapping of the areas where pollinator habitat would be established and maintained. The plan shall include that routine mowing occur a minimum of three times a year except in areas of pollinator habitat, which would be limited to fall/spring seasons, as needed, to allow for natural reseeding of plantings and reduce impacts to ground-nesting birds. The above requirements would not be applicable while the Facility is implementing alternative agricultural uses across the site to control vegetation, as described in the vegetation management plan.
- (28) At least 30 days prior to the preconstruction conference, Applicant shall file a copy of the general agrivoltaics plan (e.g., grazing and/or crop plan) on the public docket for Staff review and acceptance. The agrivoltaics plan shall generally include: (a) a map of the area to be utilized for agrivoltaics, including ingress/egress points, fencing, staging areas for agricultural equipment, and an indication and explanation of sufficient placing and

spacing to allow for the safe passage and navigation of farm equipment; (b) seed mix and/or cropping pattern selected for the site; (c) times of year when the agrivoltaics would occur; (d) livestock stocking rate; (e) how manure and deceased livestock would be managed, if applicable; (f) and Applicant's plan to comply with Condition 5 in relation to agrivoltaics (e.g., sheep grazing and/or cropping). In relation to grazing plans, Applicant shall, prior to implementation, file an amendment application that details the number, locations, and herd management expectations of any grazing plan.

- (29) At least 30 days prior to each preconstruction conference, Applicant shall submit to Staff, for Staff records, detailed engineering drawings of the final Project design for the applicable phase of construction. The engineering drawings shall 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. Applicant shall also submit to Staff geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings, for Staff records. A PDF map of the final layout based on the engineering drawings shall be filed on the docket of this case prior to construction. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. All applicable geotechnical study results shall be included in the submission of the final project design to Staff. The engineering drawings shall include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs.

- (30) Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas may include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. The environmental specialist shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.
- (31) At least 30 days prior to the start of construction, Applicant shall file a copy of the final complaint resolution plan for construction and operation of the Facility on the public docket.
- (32) At least seven days prior to the start of construction and at least seven days prior to the start of Facility operations, Applicant shall notify via mail all affected property owners and tenants who were provided notice of the public informational meeting and Board hearings; local officials who received a copy of the application; residences located within one mile of the certificated boundary; schools, libraries, and emergency responders that serve residents in the project area; and any other person who has requested updates regarding the Facility. These notices shall provide information about the Project, including contact information and a copy of the complaint resolution program. The start of construction notice shall include written confirmation that Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of Facility operations notice shall include written confirmation that Applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. Applicant shall file a copy of these notices on the public docket.

- (33) Applicant shall provide a detailed geotechnical and engineering constructability workplan to Staff for review and concurrence at least 90 days prior to the initial preconstruction conference. This plan shall outline steps Applicant intends to pursue in order to confirm geologic suitability with a focus on the current and future Batavia Mine operations in addition to the remainder of the project area. Specifically, the plan should be developed in concert with a structural engineer and other appropriate professionals to determine the current extent of the mining operation, and the potential future extent of the mining operation as it relates to the proposed footprint of the Facility. The plan shall address specific safety and subsidence concerns with respect to the ongoing mining operations, as well as with respect to the operation of the Facility in the vicinity of active and future mining expectations.
- (34) At least 60 days prior to the initial preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final geotechnical and engineering constructability report. This report shall also include the results and analyses of additional geotechnical investigation studies including analyses of the Batavia Mine, conducting full-scale pile load testing, additional borings, test pits, a karst survey assessment, and any other testing deemed necessary to confirm geologic suitability and compatibility. The report shall include access road, inverter pad, battery component, and collector substation foundation final design recommendations. This report shall also include a final summary statement addressing the geologic and soil suitability addressing any inadequacies found and proposed remedies, including recommended setbacks, if applicable.
- (35) At least 30 days prior to the initial preconstruction conference, Applicant shall provide Staff, for review and acceptance, the final UDP.

- (36) Applicant shall confirm the precise locations of all water wells within the project area prior to initiation of construction. Applicant's final site layout shall include a setback of 50 feet from water wells and all Facility infrastructure.
- (37) Applicant shall retain the services of a corrosion engineer for consultation in developing the final project design with regard to construction materials that may be exposed to potentially corrosive soils.
- (38) Applicant shall develop and implement a SPCC Plan or comparable plan that will address prevention of, response to, and notification to the appropriate authorities in the event of any spills.
- (39) Applicant shall avoid the four archaeological sites recommended for avoidance, document photographic evidence of the avoidance both before construction and at the completion of construction and submit the photographic evidence to Staff and OHPO.
- (40) At least 30 days prior to the preconstruction conference, Applicant shall provide proof that the solar panels used for the Facility utilize an anti-reflective coating.
- (41) Applicant shall prepare a quarterly complaint summary report about the nature and resolution of all complaints received in that quarter and file these reports on the public docket during the first five years of operation. Applicant shall file on the public docket a complaint summary report by the last day of April, July, October, and January of each year during construction and through the first five years of operation. The report shall include a list of all complaints received through Applicant's complaint resolution program, a description of the actions taken toward the resolution

of each complaint, and a status update if the complaint has yet to be resolved.

- (42) Applicant shall not utilize blasting to construct the Facility.
- (43) Applicant shall implement a minimum setback from the Facility's solar modules of at least 120 feet from Category 1 and 2 wetlands as well as all streams, and 300 feet from Category 3 wetlands, unless coordination with the ODNR reflects a different course of action, which shall be filed on the docket.
- (44) Except as provided in conditions 33 and 34, Applicant shall avoid construction over any existing mine features, or any mining boundaries otherwise defined or authorized by the appropriate jurisdiction(s).
- (45) If Applicant encounters any 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.
- (46) Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for the removal of trees three inches or greater in diameter to avoid impacts to listed bat species, unless coordination with the ONDR and the USFWS allows a different course of action. If coordination with these agencies allows clearing between April 1 and September 30, Applicant shall docket proof of completed coordination on the case docket prior to clearing trees.
- (47) 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 ONDR allows a different course of action.

- (48) Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by Applicant, Staff, and the appropriate agencies.
- (49) Applicant shall coordinate with the ODNR and USFWS regarding potential disturbance to bat hibernacula such as caves or abandoned mines to determine if fall or spring portal surveys are warranted.
- (50) Unvegetated soils shall be stabilized within seven days of reaching final grade, and prior to construction activities in that area (excluding, construction of access roads and laydown areas). Stabilization shall include temporary seeding, permanent seeding, and/or mulching.
- (51) Applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 and invasive plant species identified in Ohio Adm.Code 901:5-30-01, during construction, operation, and decommissioning. This would be achieved through appropriate seed selection, and a minimum of annual vegetative surveys throughout the Project area during the growing season. If noxious weeds and/or invasive plants are found to be present, Applicant shall remove or treat them with herbicide pursuant to R.C. Section 921.06 as necessary and shall follow all applicable state laws regarding noxious weeds and invasive plant species. For both construction and maintenance, Applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides

should only be used where no other options exist, and with prior approval from the Ohio EPA and Staff. Applicant shall provide annual documentation of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation.

- (52) Following commencement of construction, Applicant shall file on the case docket a quarterly report containing the following information:
- (a) Any modifications to the Facility, equipment, construction practices, and mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
 - (b) A list of state and/or federal listed species encountered during construction and documentation of coordination with the appropriate agencies as needed.
 - (c) Any notifications sent to property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
- (53) This report shall be filed quarterly on the public docket by the 15th day of April, July, October, and January of each year during construction. General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 6:00 p.m., Monday through Friday. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels or light pollution at sensitive receptors are permitted outside of daylight hours when necessary. Applicant shall notify property owners or affected tenants

within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.

- (54) Applicant shall implement a minimum setback from the Project's solar modules of at least 150 feet from non-participating parcel boundaries, at least 300 feet from non-participating residences, and at least 150 feet from the edge of any state, county, or township road within or adjacent to the Project area.
- (55) Within 60 days after the commencement of commercial operation, Applicant shall submit to Staff a copy of the as-built specifications for the entire Facility in both hard copy and as geographically referenced electronic data. If Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications.
- (56) At the time of solar panel end of life disposal, any retired panel material that is not recycled and that is marked for disposal, shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater, or another appropriate disposal location at the time of decommissioning approved by Staff.
- (57) Applicant shall operate a facility that limits sound levels emitted to nonparticipating receptors to no higher than the representative ambient level dBA daytime and nighttime, respectively, plus five dBA, as listed in Exhibit Q, filed January 8, 2024, the Acoustic Assessment Report Table A-1. If the Facility is found to be above these limits, Applicant shall install additional noise mitigation measures to maintain compliance with this provision.

- (58) The Facility shall be operated in such a way as to assure that no more than 152.2 megawatts will be injected into the BPS at any time.
- (59) Applicant shall file an annual operational compliance report for at least 5 years following completion of construction. Annual reports shall contain the following information:
- (a) Any modifications to the Facility, equipment, construction practices, and mitigation measures as described in the Application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
 - (b) A list of any wildlife mortality or entrapment discovered within the Facility fence during operation.
 - (c) Documentation of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation.
 - (d) Documentation of compliance with the landscape and lighting plan, including efforts to maintain vegetative screening to at least a 90 percent vegetation survival rate.
 - (e) If the Facility is found to be above the daytime ambient Leq sound level limit level plus five dBA, what additional noise mitigation measures were implemented to maintain compliance with the certificate.

(Joint Ex. 1 at 2-17.)

VI. CONSIDERATION OF STIPULATION

{¶ 101} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents,

or the proposed resolution of some or all of the issues in a proceeding. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board may afford the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. See, e.g. *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN, Opinion, Order and Certificate (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN Opinion, Order, and Certificate (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB Opinion, Order and Certificate (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA Order on Certificate Amendment (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12- 1727-EL-BSB Opinion, Order, and Certificate (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and 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 principle or practice?

{¶ 102} Upon review, the Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The parties have agreed that the Stipulation is a product of lengthy, serious bargaining among capable and knowledgeable parties, including Staff, IBEW, and the Vestring Intervenors (Joint Ex. 1 at 1-2). Clear Mountain witness Sean Flannery offered testimony that the Stipulation was entered into by signatories that represented the parties in the proceeding (App. Ex. 15 at 2). According to Mr. Flannery, there were multiple calls and other communications between Applicant and Staff to ensure clarity of conditions and other aspects of the Staff Report. Mr. Flannery explained there were multiple opportunities for other parties to present alternative

positions and engage in negotiations and the resulting Stipulation is a product of this cooperative process (App. Ex. 15 at 2-3). Furthermore, the Board recognizes that the Stipulation is signed by all parties to this case, resolves all issues in this proceeding, and is unopposed (Joint Ex. 1 at 1-2). Thus, the first prong is satisfied.

{¶ 103} The Board also finds that the Stipulation, as a package, benefits ratepayers and the public interest. Mr. Flannery testified that the Stipulation adopts the conditions in the Staff Report, which were designed to benefit the public at large. Specifically, the Stipulation incorporates conditions for visual screening, soil preservation, drain tile management, and battery safety, all of which were adopted to protect the local community (App. Ex. 15 at 3; Joint Ex. 1 at Conditions 7, 18, 24). Additionally, Staff represents that the Facility would create economic benefits both for the local counties and the State of Ohio. Furthermore, the project is anticipated to generate \$21.6 million in local earnings during construction and \$752,000 in annual earnings during operations for the State of Ohio. And the Facility has an anticipated output of \$66.2 million during Facility construction and \$2.2 million in annual output during operation for the state of Ohio. (Staff Ex. 2 at 15.) The Board finds that this information as well as all exhibits admitted to the record satisfies the second prong of the stipulation test.

{¶ 104} Accordingly, the Board finds that the third prong of the test is also satisfied. Mr. Flannery testified that the Signatory Parties believe that all provisions in the Stipulation are in harmony with regulatory principles and practices and are consistent with the Board's conditions in previous generating facility proceedings (App. Ex. 15 at 3). The Board has reviewed the Facility under the eight R.C. 4906.10(A) criteria for certificate eligibility, in addition to the Board's three-prong Stipulation test, and is convinced that the Stipulation, as submitted by Applicant, Staff, IBEW, and Vestring Intervenors is reasonable and does not violate any important regulatory principle or practice.

{¶ 105} 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 and this Opinion and Order. Therefore, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Clear Mountain in accordance with R.C. Chapter 4906.

VII. CONCLUSION

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

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 108} The proposed solar-powered electric generation and BESS facility is a major utility facility as that term is defined in R.C. 4906.01(B)(1).

{¶ 109} On February 16, 2023, Applicant filed a preapplication notification letter regarding the proposed Facility.

{¶ 110} On March 17, 2023, Clear Mountain filed with the Board proof of publication regarding its public information meeting held on March 2, 2023.

{¶ 111} On October 10, 2023, the Clermont County Commissioners filed correspondence, indicating that Ms. Claire B. Corcoran was appointed as ad hoc Board member for the proceeding.

{¶ 112} On September 27, 2023, Clear Mountain filed with the Board proof of publication regarding its second public information meeting held on October 11, 2023.

{¶ 113} On January 8, 2024, Clear Mountain filed its application with the Board for a certificate of environmental compatibility and public need to construct the proposed Facility. Also on January 8, 2024, Clear Mountain filed a motion seeking waiver from Ohio Adm.Code 4906-4-08(D)(2)-(4) and a motion for protective order to protect as confidential certain information filed in the Application.

{¶ 114} On February 26, 2024, the Jackson, Williamsburg, and Batavia Township Boards of Trustees filed correspondence, indicating that Mr. Joe Speeg was appointed as ad hoc Board member for the proceeding.

{¶ 115} By letter dated March 8, 2024, the Board notified Clear Mountain that its Application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq. and provided sufficient information to permit Staff to commence its review and investigation.

{¶ 116} On March 27, 2024, Clear Mountain filed proof of service of its accepted and complete Application on local government officials and the main public library, as required by Ohio Adm.Code 4906-3-07 and proof that the application fee was paid.

{¶ 117} In accordance with the requirements of Ohio Adm.Code 4906-3-09(A)(1), Applicant filed its first proof of publication on May 29, 2024, and its second proof of publication, pursuant to Ohio Adm.Code 4906-03-09(A)(2) on July 16, 2024.

{¶ 118} By Entry issued May 6, 2024, the effective date of the Application was established as May 6, 2024, the public hearing was scheduled for August 1, 2024, and the evidentiary hearing was scheduled to commence on September 10, 2024.

{¶ 119} On June 20, 2024, IBEW and Vestring Intervenors filed timely requests to intervene, which were granted by this Order.

{¶ 120} On July 15, 2024, Staff filed its Staff Report.

{¶ 121} On August 1, 2024, the local public hearing was held in Williamsburg, Ohio, where 48 members of the public provided testimony.

{¶ 122} On September 3, 2024, Staff, Clear Mountain, IBEW, and Vestring Intervenors filed the Joint Stipulation and Recommendation.

{¶ 123} On September 10, 2024, the evidentiary hearing was held, as scheduled.

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

{¶ 125} 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).

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

{¶ 127} 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).

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

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

{¶ 130} 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).

{¶ 131} 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).

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

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

IX. ORDER

{¶ 134} It is, therefore,

{¶ 135} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 136} ORDERED, That intervention be granted to the Vestring Intervenors and IBEW. It is, further,

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

{¶ 138} ORDERED, That a certificate be issued to Clear Mountain for the construction, operation, and maintenance of one gen-tie transmission lines facility subject to the conditions set forth in the Stipulation, and consistent with this Opinion and Order. It is, further,

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

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

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Department of Development

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

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

Jessica Langdon, Designee for Anne Vogel, Director
Ohio Environmental Protection Agency

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

Gregory Slone
Public Member

Dissenting:

Claire Corcoran, representing the Clermont County Board of Commissioners

Bill Wiederhold, representing Batavia, Jackson, and Williamsburg Townships

CRW/js

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
CLEAR MOUNTAIN ENERGY CENTER,
LLC FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED TO CONSTRUCT A SOLAR-
POWERED ELECTRIC GENERATION
FACILITY IN CLERMONT COUNTY, OHIO.

CASE NO. 23-45-EL-BGN

CONCURRING OPINION

Entered in the Journal on January 16, 2025

After reviewing and evaluating the proposed project in Clermont County, along with the feedback from the public and local government officials, the Ohio Department of Agriculture believes the impact of viable agricultural land is a concern, but this land does not currently exist in an agricultural district, as required by Ohio Power Siting Board criteria included in Ohio Revised Code 4906.10, therefore my vote on this project is yes.

Brian Baldrige, Director
Ohio Department of Agriculture

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/16/2025 2:31:19 PM

in

Case No(s). 23-0045-EL-BGN

Summary: Opinion & Order that the Ohio Power Siting Board approves and adopts the stipulation and recommendation between Clear Mountain Energy Center, LLC, International Brotherhood of Electrical Workers Local Union 212, Gregory Bruns, Gregory Vestring and the Vestring Family Preservation Trust, and Staff, and directs that, subject to the conditions set forth in the stipulation and consistent with this Opinion and Order, a certificate of environmental compatibility and public need be issued to Clear Mountain Energy Center, LLC for the construction, operation, and maintenance of a 100 megawatt solar-powered generation facility, a 52.2 megawatt alternating current battery energy storage system, and a generation interconnection electric transmission line in Batavia, Jackson, and Williamsburg townships in Clermont County, Ohio; with concurring opinion by Brian Baldrige, Director, Ohio Department of Agriculture. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board.