

FILE

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
CEPHEUS ENERGY PROJECT, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 21-293-EL-BGN

OPINION AND ORDER

Entered in the Journal on January 19, 2023

I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the request for a certificate of environmental compatibility and public need to Cepheus Energy Project, LLC for the construction, operation, and maintenance of a proposed major utility facility.

II. INTRODUCTION

{¶ 2} In this Opinion and Order, the Ohio Power Siting Board (Board), considering the record as developed by the parties, denies the application of Cepheus Energy Project, LLC (Cepheus or Applicant) to construct, maintain, and operate a major utility facility as proposed in Ohio. With all major electric generation applications, before issuing a certificate, the Board is required to make affirmative findings regarding each of the enumerated factors in R.C. 4906.10(A). When the Board issues a certificate to an applicant, we typically find that the application, as filed, only meets the statutory requirements if certain conditions are met. In these cases, while the Board issues the certificate, the applicant cannot construct and/or operate the facility until each of the conditions is satisfied. Here, however, the Board finds that the application does not satisfy the requirements of R.C. 4906.10(A)(6), requiring a project serve the public interest, convenience, and necessity, and that this deficiency cannot be remedied by additional conditions.

{¶ 3} As referenced in R.C. 4906.10(A)(6), "Public interest, convenience, and necessity" can be looked at through a broad lens. On the one hand, this factor considers the public's interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio. At the same time, this statutory criterion must also

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encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion and impact to natural resources. *In re the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, Case No. 17-2295-EL-BGN (*Republic Wind*), Opinion and Order (June 24, 2021) at ¶ 3; *In re the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-117-EL-BGN (*Kingwood Solar*), Opinion and Order (Dec. 15, 2022) at ¶ 141. Ultimately, the Board finds the application should be denied.

III. BACKGROUND AND PROCEDURAL PROCESS

{¶ 4} All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 5} Pursuant to R.C. 4906.04, a certificate issued by the Board is required prior to the commencement of construction of a major utility facility. R.C. 4906.04 further provides that a certificate may only be issued pursuant to R.C. Chapter 4906. Pursuant to R.C. 4906.06(B), an application for a certificate is required to be filed with the Board and a copy of the application must be served on the chief executive officer of each municipal corporation and county, as well as the head of each public agency charged with environmental protection or land use planning in the area in which the facility is proposed to be located. Further, pursuant to R.C. 4906.06(C), public notice of such application by newspaper publication is required to be given to persons residing in the municipal corporations and counties in which the facility is proposed to be located.

{¶ 6} Upon receipt of an application in compliance with R.C. 4906.06, the Board is required to schedule a public hearing within a certain time frame and the chairperson is required to cause the application to be investigated and a report submitted to the Board, Applicant, and any person upon request, in accordance with R.C. 4906.07(A) and 4906.07(C).

{¶ 7} Cepheus is a person as defined in R.C. 4906.01. Cepheus is a limited liability company that is a wholly owned subsidiary of BP Solar SHH, LLC, which is in turn a wholly owned subsidiary of BP Solar Holding LLC, which is in turn a wholly owned subsidiary of BP Alternative Energy North America Inc. (BPAENA). The Applicant was formed specifically for the purpose of developing the project. Initially developed by 7X Energy, Inc., Cepheus and the majority of 7X Energy's solar project portfolio were acquired in July 2021 by BPAENA, which is a part of the BP group. BP is a global energy company which has announced an interest in being the long-term owner and operator of solar projects in the United States. The same development team that developed the project at 7X Energy will continue to advance project development activities, now as employees of Lightsource Renewable Energy US, LLC (Lightsource bp). Lightsource bp is a fully integrated solar asset company that operates and invests across the full solar project lifecycle and performs all activities in-house and operates 1,291 megawatt (MW) of assets worldwide. Lightsource bp is the developer of approximately 8,900 MW in solar projects currently in development with the North American headquarters in San Francisco and development offices in Denver and Philadelphia. The project will be developed by Lightsource bp under a Development Services Agreement with BPAENA. The project will be constructed, operated, and maintained by the Applicant. (Staff Ex. 1 at 5.)

{¶ 8} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-2 and 4906-4.

{¶ 9} On May 17, 2021, Cepheus filed a pre-application letter with the Board regarding its proposed solar-powered electric generating facility with up to 68-MW electric generating capacity in Defiance County, Ohio (Project or Facility).

{¶ 10} On June 2, 2021, the Applicant held web-based and telephone-based public informational meetings for the Project (Staff Ex. 1 at 5).

{¶ 11} On July 30, 2021, as supplemented on August 2, 2021, September 10, 2021, September 17, 2021, September 21, 2021, and September 27, 2021, Cepheus filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project. Cepheus also filed motions for protective order on July 30, 2021 and September 27, 2021, regarding various portions of the application. Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 12} On September 28, 2021, the Board notified Cepheus that its application was found to be 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 Cepheus 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.

{¶ 13} On October 5, 2021, Cepheus filed proof of service of its accepted and complete application on local officials and the main public library as required by Ohio Adm.Code 4906-3-07(A).

{¶ 14} On October 8, 2021, Cepheus filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 15} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the administrative law judge (ALJ) shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for

public hearings. R.C. 4906.07(A) directs that the public hearing be held not less than 60 nor more than 90 days after the effective date.

{¶ 16} By Entry issued October 19, 2021, the effective date of the application was established as October 15, 2021, the local public hearing scheduled for December 16, 2021, and the adjudicatory hearing scheduled to commence on January 11, 2022. The Entry also granted the motions for protective order filed by Applicant on May 23, 2021, and September 27, 2021. Finally, the October 19, 2021 Entry advised that the Board would accept petitions to intervene up to November 29, 2021, and established a procedural schedule directing Staff to file its report of investigation (Staff Report) on or before December 1, 2021; Cepheus to file all expert and factual testimony by December 30, 2021; Staff and intervenors to file all expert and factual testimony by January 6, 2022; parties to file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing by December 28, 2021; and, parties to file any stipulation no later than 12:00 p.m. on January 10, 2022, along with associated testimony supporting the stipulation.

{¶ 17} On November 24, 2021, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding.

{¶ 18} On December 1, 2021, Staff filed its Report of Investigation (Staff Report), pursuant to R.C. 4906.07(C), which recommends denial of a certificate of environmental compatibility and public need to construct the Project. Among other recommendations, Staff recommends that the Board find that the proposed Project would not serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).

{¶ 19} On December 2, 2021, Cepheus and OFBF filed a joint motion to suspend the procedural schedule and a request for expedited treatment.

{¶ 20} By Entry issued December 9, 2021, the ALJ granted the joint motion, in part, and denied it, in part. The ALJ denied the joint motion with respect to suspending the local

public hearing scheduled for December 16, 2021, and noted that doing so would be an inconvenience to those in the community who had planned to attend and present testimony. Further, the ALJ suspended the remaining procedural deadlines; however, instead of cancelling the January 11, 2022 adjudicatory hearing, the ALJ converted this hearing to a call-and-continue hearing after which the parties would remain on Webex to discuss future procedural scheduling.

{¶ 21} On December 16, 2021, the local public hearing was held as scheduled.

{¶ 22} The call-and-continue hearing was held via Webex, as scheduled, on January 11, 2022. The record in the case was opened, counsel for attending parties entered appearances, and then discussions were had concerning the setting of a new procedural schedule and hearing date. The hearing then adjourned to reconvene at a later date.

{¶ 23} By Entry issued January 19, 2022, the ALJ established a new procedural schedule.

{¶ 24} On March 25, 2022, Applicant and OFBF filed a joint motion to suspend the procedural schedule and a request for expedited treatment. In support of their motion, the joint movants argued that a short suspension of the procedural schedule would allow the Applicant time to coordinate with the community, leaders, officials, and organizations. Therefore, the joint movants requested that the procedural schedule be suspended and that the April 11, 2022 adjudicatory hearing be converted to a status and scheduling conference.

{¶ 25} By Entry issued March 25, 2022, the ALJ granted Applicant and OFBF's joint motion to suspend the procedural schedule, directing that the April 11, 2022 adjudicatory hearing be converted to a status conference.

{¶ 26} On April 11, 2022, the status conference was conducted, as scheduled, via Webex, during which the parties came to an agreement regarding a new hearing date.

{¶ 27} By Entry issued April 12, 2022, and consistent with the discussion between the parties during the status conference, the adjudicatory hearing was scheduled to reconvene on June 6, 2022, at the offices of the Public Utilities Commission of Ohio.

{¶ 28} By Entry issued June 1, 2022, the adjudicatory hearing was converted to a virtual hearing to be held via Webex.

{¶ 29} The adjudicatory hearing was held, as scheduled, on June 6, 2022. Due to scheduling conflicts with counsel and witnesses, the adjudicatory hearing later reconvened and ended on June 30, 2022. During the hearing, the ALJ granted OFBF's motion to intervene, as well as Applicant's May 24, 2022 motion for leave to file the direct testimony of Evan Nichols and May 23, 2022 motion for protective order (Tr. Vol. I at 11).

{¶ 30} Staff and Cepheus filed timely initial post-hearing briefs and reply briefs on August 4, 2022, and August 25, 2022, respectively.

IV. PROJECT DESCRIPTION

{¶ 31} Cepheus proposes to construct a 68-MW solar-powered electric generating facility in Delaware Township and Sherwood Village, Defiance County, Ohio. The Project will occupy approximately 350 acres within an approximate 649-acre project area comprised of private land secured through agreements with the landowners. No local government holds any lease, option, right of first refusal, or ownership interest in the private land, and no local government has sought to obtain such an interest. The Project is being developed by Lightsource bp. The Project will be located on rural, previously-disturbed land that has been mostly cleared for agriculture and is generally flat. The Project will consist of large arrays of photovoltaic (PV) panels, which will be ground-mounted on a single-axis tracking rack system. The racking includes steel posts driven five to ten feet into the ground. The solar panel arrays will be fenced with gated entrances. The Project also includes access roads, electric collection lines, a collection substation, an approximately 300-foot 138 kV generation interconnection line, a laydown area for construction staging, an operation and

maintenance (O&M) building, and pyranometers. The Project will be secured by perimeter fencing which will be six-feet tall and accessed through gated entrances. Applicant will ensure that solar modules are located a minimum of 100 feet from adjacent non-participating property lines. Further, according to Applicant, the original design for the Project included an additional 50-acre area for solar panels; however, after receiving feedback from the community, Applicant removed the placement of these panels from the Project layout, leaving this land available for alternative future development, if desirable, for the private landowner. As such, only a small portion of the Project is within the Village of Sherwood.

{¶ 32} The proposed fenceline of the Project occupies approximately 24.2 acres within the Village of Sherwood, or approximately four percent of the undeveloped land within the Village (Applicant Ex. 1, Appx. D at 5). The energy generated by the Project will deliver power to the AEP Ohio Transmission Company, Inc.'s Lockwood Road Substation located near the planned Facility and will be transferred to the transmission grid operated by PJM Interconnection, LLC (PJM) for sale at wholesale to the grid or under a power purchase agreement.

{¶ 33} Following Board approval of the application, Cepheus notes that it expects to finalize the Project design in the third quarter of 2022. Construction would start no sooner than the fourth quarter 2022 and is estimated to be completed by the third quarter of 2023, with the Facility expected to be placed in service no sooner than the third quarter of 2023. However, Applicant states that delays to this timeline could impact project financing, including Applicant's ability to procure PV modules and Facility components.

V. CERTIFICATION CRITERIA

{¶ 34} 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 or 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 various alternatives.

VI. SUMMARY OF LOCAL PUBLIC HEARING TESTIMONY, PUBLIC COMMENTS, AND STAFF REPORT

A. *Public Participation/Public Input*

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

{¶ 36} As noted above, the Board held a local public hearing in this matter on December 16, 2021, at the Stroede Center for the Arts in Defiance, Ohio. Other individuals attending the local public hearing submitted written statements for the Board's consideration. In addition, for those who did not wish to testify, the ALJs offered petitions for people to sign, either for or against the Project. Additionally, since the opening of this docket, there have been over 600 pages of public comments filed in the case docket. Witnesses at the local public hearing testified both in support of the Project and in opposition, although a narrow majority of those testifying were opposed to the Project. Specifically, the ALJs heard sworn testimony from 34 witnesses with 18 witnesses expressing opposition to the Project and 16 witnesses expressing support.

{¶ 37} Those in favor of the Project argued generally regarding (1) the importance of landowner rights and autonomy over their land (Public Hearing Tr. at 23, 25, 40, 53, 72), (2) the potential income and stability that Project participation will bring local farmers (Public Hearing Tr. at 26-28, 39), (3) the preservation of farmland for future generations (Public Hearing Tr. at 20, 26-30, 34), (4) the benefits of solar energy as a renewable, clean energy source (Public Hearing Tr. at 21, 23, 28-29, 34-35, 37-38, 40-41, 46, 52, 63, 67-68, 86, 152-153, 160-161, 165-166), and (5) the economic benefits to the community, such as revenue going to local schools and government entities and employment opportunities created by the Project (Public Hearing Tr. at 9-10, 16, 21, 26-28, 42-44, 55, 61-65, 86-87, 152-153, 167). Further, some witnesses pointed out that less chemical usage at the Project site and the planting of pollinator friendly vegetation, in addition to resting the land during the life of the Project,

could also improve the land and mitigate any negative side effects. (Public Hearing Tr. 17, 20-21, 28-29, 167.) Participating landowners providing testimony stressed that the income they would derive from leasing land to the Project will ensure that their land can be maintained and passed on to future generations. Without this reliable income stream, some witnesses indicated they may need to consider the difficult decision to sell their land rather than pass it on to descendants. (Public Hearing Tr. at 26, 28, 30-34, 39-40). Additionally, some commenters noted that the Project would have no negative impact to surrounding property values (Public Hearing Tr. at 17, 86).

[¶ 38] The overarching issue from Project opponents was a concern that the Project is incompatible with local land use plans and would unalterably change the rural nature of the community (Public Hearing Tr. at 91, 108-109, 113, 119). Related to this concern, numerous community members disagree with the Project's plan to remove so much land currently used in agriculture and worry about the implications that such development could have on food supplies and drainage issues already prevalent in the area (Public Hearing Tr. at 48, 131-133, 158-159). Opponents of the Project also spoke about the potential for chemicals and other toxins to be released into the surrounding area. In particular, witnesses voiced concern that released chemicals could contaminate wells and drinking water sources used by local residents, as well as damage the local watershed. (Public Hearing Tr. at 20, 49 73-74, 95-96, 119, 136-139, 141-142.) Similarly, numerous witnesses also voiced concern that released chemicals and other side effects from construction at the Project site, along with exposure to electromagnetic fields during operation, could create public health issues for nearby residents (Public Hearing Tr. at 49, 70-71, 136-141, 92-93, 95).

[¶ 39] Witnesses asserted that the proposed Project, and the division between participating and non-participating residents, was creating tension in the community, some even blaming Cepheus' tactics in the community for the division (Public Hearing Tr. at 17, 44-45, 54-55, 104-105, 114-116, 127, 143-144). Some witnesses even testified that public comments or petitions had been submitted in the record under false pretenses and individuals that purportedly made these comments had to later contact the Board about the

unauthorized filing (Public Hearing Tr. at 16-17, 94-95, 144). Opponents of the Project responded to property rights arguments made by supporters by countering that a landowner's property rights are not unlimited (Public Hearing Tr. at 21-23, 40-41, 80, 112-113, 149). Witnesses were also unconvinced about the alleged benefits that the Project would bring to the community, questioning the amount of money that would flow to local schools and governments and other economic benefits that will allegedly be created. Some of these witnesses argued that not only were the alleged benefits below the level claimed by Cepheus, but that the Project would harm local agricultural-related businesses. (Public Hearing Tr. at 13-14, 47-50, 96-97, 103-106, 133-135, 137.) Witnesses also expressed concern about a decrease in property values following construction and operation of the proposed Project (Public Hearing Tr. at 12, 50, 73, 80, 108, 119-120, 126, 137-140, 154).

{¶ 40} Most opposing witnesses also expressed much concern with negative aesthetics and noise impacts that they anticipate will result from the Project (Public Hearing Tr. at 49, 54-55, 112-113, 119-120, 155). Finally, witnesses also worried about the negative impact that the Project, and a change to the environment, would have on local wildlife such as deer, bats, and numerous birds (Public Hearing Tr. at 12, 20, 49-50, 73-74, 95).

{¶ 41} In addition to testimony provided at the local public hearing, there have been 234 filings in the public comments of the case docket as of December 21, 2022.¹ Within these filings, the arguments for and against the Project generally mirror the statements made at the local public hearing. Further, the filings reflect that opposition to the Project exceeds support for it at a ratio of approximately 70 percent to 30 percent. Notably, public comments and letters have been filed by the Defiance County Board of Commissioners, the Delaware Township Trustees, and the Sherwood Village Council, all of which recommend denial of the application. In addition to the opposition of these elected officials, these same concerns have been repeated by economic development representatives from the Sherwood Area

¹ We note that the actual positions of the commenters are closer to 260 in number as the 21 individuals who signed opposition (and the 6 who signed support) rosters at the local public hearing were also included as singular comments when filed on the case docket on February 22, 2022.

Economic Development Corp. (SAED) and the Defiance County Economic Development Office, as described in more detail in this Order.

B. Staff Report

[¶ 42] Consistent with R.C. 4906.07, Staff completed its investigation of the application, which included recommended findings regarding R.C. 4906.10(A). The Staff Report, filed on December 1, 2021, was admitted into evidence as Staff Exhibit 1. The following is a summary of Staff's findings.

1. BASIS OF NEED

[¶ 43] R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility. In its review of the application under R.C. 4906.10(A)(1), Staff notes that the Project is a proposed electric generation facility, not a transmission line or gas pipeline. Accordingly, Staff recommends that the Board find that this consideration is inapplicable. (Staff Ex. 1 at 10.)

2. NATURE OF ENVIRONMENTAL IMPACT

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

a. Community Impacts

[¶ 45] Staff's review of community impacts from the Project focused on land use, regional planning, recreation, aesthetics, cultural resources, economic impacts, glare, decommissioning, safety concerns regarding wind velocity, road and bridge impacts, and noise concerns. While Staff cited to concerns as to the Project's regional planning compliance and aesthetics, Staff did not find that these concerns warrant denying the application. The nearest non-participating residential structure to PV panel is 195 feet away. The Applicant

states a total of 431.8 acres would be impacted by converting the land to the proposed solar facility. Of these 431.8 acres, 333.4 acres would be occupied by PV panels. Impacts from construction would be temporary in nature and contained to the properties of participating landowners. Significant impacts to residential, commercial, industrial, recreational, and institutional land uses are not anticipated, and surrounding agricultural land use would continue with minimal disruption. Moreover, Staff highlighted the significant economic impacts including job creation, local employment earnings, and annual revenue to the state and Defiance County taxing districts during the construction and operation of the Facility.

{¶ 46} Staff, however, notes that, while the Project would preserve farmland for future use, result in short-term job creation, and ensure the installation of renewable energy, the Defiance County Economic Development Office filed a public comment in this case stating “this project’s location will halt economic-community development for 40 years to come in our small village of Sherwood,” and other local governmental entities filed similar public comments.

{¶ 47} According to the Staff Report, construction and operation of the Facility would not physically impact any recreational areas. The Applicant identified seven recreation areas within five miles of the Project area. It is Staff’s opinion, however, that the Project would have minimal impacts on recreational land uses, as those resources are still able to be utilized although with potential views to the Facility, if approved by the Board. Further, Staff notes that the rural nature of the project vicinity limits the number of potential viewers. The solar panels would be installed no higher than 15 feet above ground level. Based on the results of Applicant’s visual resources report, Staff states that the solar panels would not likely be visible at any location beyond five miles of the perimeter of the Project. Applicant’s viewshed analysis encompassed a total area of 113.3 square miles. Staff notes that existing vegetation, landscape features, and landforms limit likely concentration of viewshed impacts to less than 6.07 percent of the Project area, adding that Applicant’s landscape mitigation plan proposes the installation of planting modules along the fence line

to soften viewshed impacts. Further, Staff confirms that Applicant will apply anti-glare coating to the solar panels to maximize the capture of solar energy.

[¶ 48] In the event the Board determines that a certificate should be granted, Staff further recommends that the Applicant's landscape and lighting plans incorporate design features to reduce impacts in areas where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project's infrastructure. Staff recommends that aesthetic impact mitigation include native vegetative plantings, alternate fencing, good neighbor agreements, or other methods in consultation with affected landowners and subject to Staff review and Applicant has stated that it is willing to commit to an agricultural style perimeter fencing, which would meet National Electric Safety Code (NESC) recommendations. In the event the Board determines that a certificate should be granted, Staff recommends incorporating wildlife friendly features (i.e., small-wildlife permeable) into the overall fencing design. With implementation of Staff's landscape/lighting and fencing conditions, Staff suggests the overall expected aesthetic impact would be minimal.

[¶ 49] Staff also notes Applicant's cultural resource consultant conducted a historic architecture survey of the project area and an area within a two-mile radius of the Project in July 2021, which recorded 249 properties of which six are recommended as eligible for listing on the National Register of Historic Places (NRHP). The consultant concluded that for each of the six sites that no adverse effect to these structures is expected from the Project. Staff states that the Ohio Historic Preservation Office (OHPO) concurs with these findings. The OHPO has recommended, and Cepheus has committed, to coordinate with OHPO and Staff if the scope of work changes or new/additional archaeological remains are discovered during the course of construction. With OHPO's concurrence of no adverse effects from the Project and the applicant's commitments regarding project changes and/or the discovery of new/additional archaeological remains Staff has determined that minimal adverse environmental impacts to cultural resources would be achieved. (Staff Ex. 1 at 11-21.)

b. Geology

{¶ 50} Staff's review of geologic impacts from the Project focused on soil types, oil and gas mining, seismic activity, and construction geotechnical and engineering analyses. Staff highlighted significant aspects of the Project including (1) Applicant worked with the Ohio Department of Natural Resources (ODNR) in compliance with Staff's request to procure an engineering constructability report (ECR) in response to concerns of latent oil and gas wells that could be negatively impacted by the Project, (2) the Project is in an area of low-risk for seismic hazard, (3) Applicant intends to implement a soils management plan to account for potentially encountering soil that has been contaminated by historic oil and gas activity, and (4) Applicant's geotechnical soil analysis, subject to ongoing testing, supports that the Project can be safely constructed and operated. Per the geology and hydrology report, "based on the information reviewed and the field reconnaissance, it appears that there are favorable subsurface conditions for design and construction of the solar arrays, access roads, and site development." (Applicant Ex. 1, Appx. C at 8).

{¶ 51} In the event the Board grants a certificate to Applicant, Staff recommends: that the final detailed engineering drawings of the final project design shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs; Applicant provide a final geotechnical engineering report to Staff at least 30 days prior to the preconstruction conference;. Applicant provide an Unanticipated Discovery Plan that would address the processes that would be followed by Applicant in the event undocumented or unanticipated contaminated material or other potential hazards were encountered during construction. Ultimately, Staff finds that, in the event the Board grants a certificate to Cepheus, based on Staff assessment (with consideration and input from ODNR), and implementation of the recommended conditions, there appears to be no particular geological features within the Project area that are incompatible with construction and operation of the proposed Facility. However, Staff

notes that additional geotechnical testing as further discussed in the proposed conditions is necessary to confirm this finding. (Staff Ex. 1 at 21-23.)

c. Ecological Impacts

[¶ 52] Staff's review of the ecological impacts from the Project focused on public and private water supplies, surface waters, threatened and endangered species, and vegetation. Of the total 647.6 acres within the Project area, 5.4 are forestland, 28.7 are developed, and the remaining 613.5 are considered agricultural lands.

[¶ 53] Relative to water supplies, Staff recommends installation distancing from potable water wells, and that spill prevention and response measures be implemented with respect to source water protection areas. Staff also acknowledges that, based on the data provided by Applicant, including the Spill Prevention, Control, and Countermeasure (SPCC) Plan, there appears to be no unreasonable risk posed to public or private drinking water suppliers by construction or operation of the proposed solar facility. (Staff Ex. 1 at 25.)

[¶ 54] Staff also notes that specifics about how surface waters would be further protected from indirect construction stormwater impacts using erosion and sedimentation controls would be outlined in the Applicant's Storm Water Pollution Protection Plan (SWPPP). Further, according to Staff, Applicant would obtain an Ohio National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit through the Ohio Environmental Protection Agency (Ohio EPA) prior to the start of construction and would implement Ohio EPA published Guidance on Post-Construction Storm Water Control for Solar Panel Arrays to both construction and operation of the Project. Additionally, based on the data provided, Staff notes that no portion of the Project area falls within the 100-year floodplain (Applicant Ex. 1 at 64).

[¶ 55] Based on Cepheus' analysis, Staff recommends that Cepheus be required to interact with Staff, USFWS, and the ODNR if listed plant and animal species are unexpectedly encountered during the Project's construction. Relative to vegetation, Staff

concludes that the Project, subject to Applicant's pollinator-friendly habitat installation plan, would be expected to reduce the environmental impact as compared to the current agricultural plant production, given the elimination of frequent tilling leading to erosion and sedimentation, and reduced fertilizer and pesticide application.

{¶ 56} In summary, Staff determines that Applicant has (1) committed to construction and operation planning, in coordination with the Ohio EPA, such that there is a low risk of any adverse impact to (a) public and private drinking water supplies and (b) surface water management, and (2) committed to management practices in consultation with ODNR, Ohio EPA, and the USFWS to sufficiently evaluate potential impacts to (a) threatened and endangered species and (b) vegetation. (Staff Ex. 1 at 24-29.) Based on its review of the community, geology, and ecological considerations, Staff recommends that the Board find that Applicant has determined the nature of the probable environmental impact of the Project and, therefore, the Project complies with the requirements of R.C. 4906.10(A)(2) provided that any certificate issued by the Board includes the conditions set forth in the Staff Report (Staff Ex. 1 at 29).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 57} 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.

{¶ 58} As a part of its investigation, Staff reviewed minimum adverse impact considerations with respect to existing land use, as well as cultural, recreational, and wildlife resources. Staff noted that the Project reasonably (1) aligns with cultural resources, (2) avoids impacts to (a) oil and gas and (b) public and private drinking water supplies, (3) limits impacts to (a) surface waters, (b) threatened and endangered species, and (c) vegetation, (4) limits noise impacts, (5) addresses transportation and road maintenance concerns, (6) reduces visual impacts upon nonparticipating landowner through the required

use of landscape and lighting plans, and (7) mitigates farmland impacts through drain tile repair and decommissioning planning. (Staff Ex. 1 at 30-32.)

{¶ 59} Based on its review of the Project's expected impact to (1) existing land use and (2) cultural, recreational, and wildlife resources, Staff recommends that the Board find that the Project represents the minimum adverse environmental impact and, therefore, complies with the requirements of R.C. 4906.10(A)(3) provided that any certificate issued by the Board includes the conditions set forth in the Staff Report (Staff Ex. 1 at 32).

4. ELECTRIC POWER GRID

{¶ 60} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed Facility will serve the interest of the electric system economy and reliability.

{¶ 61} As a part of its investigation of the Project, Staff reviewed electric power grid considerations with respect to planning by (1) the North American Electric Reliability Corporation (NERC), and (2) PJM. Staff noted that Applicant has obtained PJM review as to (1) a Feasibility Study Report and (2) a System Impact Study Report. Based on PJM's review, the Project is not expected to cause deliverability concerns that cannot be mitigated by Cepheus through system upgrades or operational limitations. (Staff Ex. 1 at 33-35.)

{¶ 62} Based on these determinations, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4), provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report (Staff Ex. 1 at 35).

5. AIR, WATER, SOLID WASTE, AND AVIATION

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

{¶ 64} As part of its investigation of the Project, Staff reviewed the Project's impacts to air quality, water quality, solid waste, and aviation. Staff concluded that, outside of minimal dust impacts during construction, which would be mitigated by utilizing dust suppressants, the Project is not expected to cause any air quality impacts. Similarly, Staff reviewed the Project's water quality impacts and determined that the Project was subject to United States Army Corps of Engineers and Ohio EPA guidance, including the requirement of complying with a stormwater pollution prevention plan, such that the Project would comply with state water quality regulations. Relative to solid waste considerations, Staff notes that the Project is expected to primarily generate only construction-related solid waste, and that Cepheus has committed to solid waste recycling and disposal plans that conform with state regulations. Further, relative to aviation considerations, Staff reviewed potential aviation impacts from the Project in coordination with the Ohio Department of Transportation Office of Aviation (ODOT), concluding that there are no expected impacts to local aviation. (Staff Ex. 1 at 36-38.)

{¶ 65} Staff recommends that the Board find that the proposed Facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued include the conditions specified in the Staff Report (Staff Ex. 1 at 38).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 66} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the Facility will serve the public interest, convenience, and necessity. In assessing the Project's compliance with this determination, Staff reviewed the application in terms of the Project's

safety, electromagnetic fields (EMF), public interaction and participation, and public comments. (Staff Ex. 1 at 39-42.)

{¶ 67} Relative to safety and EMF considerations, Staff describes that the Project would be (1) constructed using reliable equipment that is certified by recognized standards entities; and (2) subject to specific fencing, gate, signage, and setback requirements that are, as applicable, (a) compliant with recommendations of ODOT, (b) conforming with the NESC, and (c) consistent with fencing that the Board has approved as to other solar projects, including that it be wildlife permeable. Further, Staff describes that, prior to construction, Applicant also intends to finalize development and implementation of an emergency response plan and further consult with potentially affected local and regional emergency response personnel, specifically the Defiance County Emergency Management Agency. Further, Staff describes that the Project does not create EMF concerns because (1) the proposed generation interconnection transmission line is not within 100 feet of an occupied residence, and (2) the transmission facilities would be designed and installed according to NESC requirements. (Staff Ex. 1 at 39.)

{¶ 68} Relative to public interaction and participation, Staff describes that Cepheus (1) acted to educate the public about the Project by hosting virtual and in-person informational meetings to address issues such as noise, decommissioning, visual screening, participation in the Board's process, wildlife, public health, property values, and drainage; (2) prepared a preliminary complaint resolution program; (3) committed to notify affected local residents prior to the start of the Project's construction and operation; and (4) committed to providing Staff with quarterly complaint summary reports. In spite of these commitments, Staff describes that several public comments from local governmental entities were submitted in the docket. In these public comments, Staff notes that (1) the Defiance Soil and Water Conservation District expressed concerns with the Project, including soil erosion and water runoff, vegetative ground cover, and noxious weeds; (2) Delaware Township Board of Trustees included Resolution #5-21-2021 in opposition to the solar

Project;² (3) a letter from the newly elected Sherwood Township trustee expressing his opposition to the Project; (4) statements from the Defiance County Economic Development Office indicating that the Project's location would halt economic development in the Village of Sherwood; (5) a letter signed by the Defiance County Board of Commissioners concluding the Project lacks "service to the public interest, convenience, and necessity"; (6) a letter from the President of the Sherwood Area Economic Development Corporation stating that the Project will have a potentially negative impact on the village; (7) a letter from the Chief of the Delaware Township Fire Department expressing support for the Project and the resulting tax revenue; and (8) several comments expressing concern that certain comments filed in the case record may have been filed by someone other than the named commenter and, therefore, should be considered invalid. (Staff Ex. 1 at 40-41.)

{¶ 69} In consideration of the public interaction and participation surrounding the Project, Staff concludes that it does not serve the public interest, convenience, and necessity due to the general opposition from local citizens and governmental bodies. Staff emphasizes that the interests of the impacted local governmental bodies were "especially compelling" given the responsibility those entities bear for preserving the health, safety, and welfare of their citizenry. Accordingly, Staff concludes that the Project will create negative local community impacts that outweigh its benefits. (Staff Ex. 1 at 41-42.)

7. AGRICULTURAL DISTRICTS

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

{¶ 71} Staff's review of the Project describes that it would remove approximately 425 acres of agricultural land, including 310 acres of agricultural district land, from service

² Staff notes that one township trustee later rescinded his support for the resolution in a public comment, but the resolution remained in place at the time of the filing of the Staff Report.

during its operational lifespan. Further, the Project will temporarily disturb existing soil and may result in drain tile damage. Though Staff describes that drain tile and soil impacts are temporary and will be restored for agricultural use by Applicant. (Staff Ex. 1 at 43.)

{¶ 72} Staff recommends that the Board find that the impact of the proposed Facility on the viability of existing agricultural land in an agricultural district has been determined and, therefore, complies with the requirements specified in R.C. 4906.10(A)(7), provided that any certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report (Staff Ex. 1 at 43).

8. WATER CONSERVATION PRACTICE

{¶ 73} 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.

{¶ 74} According to Staff, construction of the proposed Facility would not require the use of significant amounts of water. Water may be utilized for dust suppression and control on construction access roads and unpaved surfaces, as needed. Similarly, operation of the proposed Facility will not require the use of significant amounts of water. The O&M building is the only component of the Facility that would require a water source, which Applicant projects to be at a rate comparable to a typical small business or office. Further, Applicant states that the solar panels will be adequately cleaned by natural precipitation; however, in unexpected circumstances such as severe drought, water may be needed to clean panels. If such cleaning is needed, Applicant estimates the maximum amount of water required would not exceed 300,000 gallons per event. (Staff Ex. 1 at 44; Applicant Ex. 1 at 49-50.)

{¶ 75} Staff recommends that the Board find that the proposed Facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any

certificate issued by the Board for the proposed Facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 44.)

9. RECOMMENDATIONS

{¶ 76} As noted above, Staff recommends a finding that the Project be determined not to be in the public interest, convenience, and necessity. Though should the Board not accept that recommendation, Staff recommends that various conditions set forth in the Staff Report be made part of any certificate issued by the Board for the proposed Facility. These 31 total conditions, relating to general, socioeconomic, ecological, public service, facilities, safety, air, water, and solid waste issues, are discussed in detail in the Staff Report (Staff Ex. 1 at 45-51.). Staff reiterates in its briefs that any certificate issued by the Board to Cepheus should be conditioned by adopting all of the conditions set forth in the Staff Report and Staff's supporting testimony (Staff Initial Br. at 7).

VII. ADJUDICATORY HEARING

{¶ 77} At the adjudicatory hearing, Cepheus presented testimony from its sponsoring witness, Cliff Scher, and 21 expert witnesses who testified in support of the application as to environmental and ecological impacts, property valuation, agricultural mitigation and dual use policies/commitments, noise assessments, toxicity, geology, groundwater impacts, landscaping mitigation measures, transportation, public opinion polling, financial analyses, and architectural and cultural resources impacts (Applicant Ex. 7-28).

{¶ 78} Staff initially presented ten witnesses who testified in support of their conclusions as described in the Staff Report (Staff Ex. 2-11).

VIII. CONSIDERATION OF CERTIFICATE CRITERIA

{¶ 79} As discussed, in order for the Board to issue a certificate to construct a major utility facility, the Board must make findings and determinations regarding each of the

relevant factors outlined in R.C. 4906.10(A). The Board has reviewed all of the evidence presented in this case. This includes evidence presented by the parties at the adjudicatory hearing as well as testimony from the local public hearing and comments submitted to the docket. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination. Based on its review of the application and the record in this case, the Board ultimately determines that Cepheus has not met its burden of proof relative to the requirements of R.C. 4906.10(A)(6) for the reasons set forth below and finds the application should be denied.

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

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

{¶ 81} Staff concluded that R.C. 4906.10(A)(1) is not applicable to this proceeding, given that the Facility is not a gas pipeline or an electric transmission line (Staff Ex. 1 at 10). Moreover, no party raised any concern as to this issue. Accordingly, the Board finds that R.C. 4906.10(A)(1) is not applicable in this proceeding.

***B. R.C. 4906.10(A)(2): Nature of the Probable Environmental Impact, and
R.C. 4906.10(A)(3): Minimum Adverse Environmental Impact***

{¶ 82} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed Facility. Further, R.C. 4906.10(A)(3) requires that the Facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other pertinent conditions. As arguments of the parties generally address these considerations in an overlapping manner, the Board will consider these arguments collectively.

{¶ 83} The Board generally considers these two criteria together. First, the Board determines the probable environmental impact under R.C. 4906.10(A)(2) by considering the

Project's socioeconomic impact, the ecological impact, and the impact on public services, facilities, and safety. *See, e.g., In re Alamo Solar*, Case No. 18-1578-EL-BGN, (Opinion, Order, and Certificate June 24, 2021 at ¶¶ 135-38). The Board then considers whether these impacts represent the minimum adverse environmental impact and, therefore, comply with R.C. 4906.10(A)(3). *Id.* at ¶ 246. With respect to these criteria, Cepheus is in agreement with the summary and conclusion set forth in the Staff Report, including the incorporation of Staff's proposed conditions. (Staff Ex. 1 at 29, 32.) Further, given its non-opposition to Staff's conditions, Cepheus asserts that it has provided sufficient evidence to demonstrate satisfaction of these two criteria, including direct testimony supporting various aspects of the application, including, but not limited to: geology and hydrogeology reports showing the Project will not negatively impact groundwater (Applicant Ex. 8); geotechnical studies showing the Project is suitable for development and will not negatively impact the bedrock or groundwater (Applicant Ex. 9); a socioeconomic report demonstrating local, regional, and state economic benefits (Applicant Ex. 10); a cultural resources work plan and historic architecture survey showing the Project will not negatively impact Ohio's cultural or historic resources (Applicant Ex. 11); the noise assessment demonstrating the construction noise will be reasonable and temporary (Applicant Ex. 12); the erosion best practices which, if implemented, will adequately address runoff and erosion concerns (Applicant Ex. 13); the Project's agricultural mitigation practices (Applicant Ex. 15); the Project's benefits to the Lake Erie watershed and long-term soil health (Applicant Ex. 16); the route evaluation study demonstrating the Project will not negatively impact the area's existing roads and traffic patterns (Applicant Ex. 25); and the ecological assessment, erosion best management practices, visual landscape study, demonstrating the Project will not create an aesthetic or environmental burden (Applicant Ex. 26). (Applicant Br. at 55-57.)

¶ 84 As discussed in the Staff Report, after its thorough investigation into the community, geological, and ecological impacts of the Project, Staff concluded that the Project meets the requirements in R.C. 4906.10(A)(2) and (A)(3) (Staff Ex. 1 at 29, 32). Staff's recommendation is further supported by Cepheus' evidence regarding the Project's limited

impacts to (1) land use, cultural resources, and viewshed, (2) surface waters, threatened and endangered species, other wildlife, vegetation, and soil and water, and (3) traffic, noise, EMF, decommissioning liabilities, and surface water management.

{¶ 85} The uncontested evidence provided by Applicant to demonstrate satisfaction of these two criteria is substantial and persuasive. Upon review of the record, the Board finds that (1) the nature of the probable environmental impact from construction, operation, and maintenance of the Project has been established by Applicant, as required under R.C. 4906.10(A)(2); and (2) the environmental impacts from the Project are, subject to the certificate conditions recommended in the Staff Report, and minimally adverse when considering the state of available technology and the nature and economies of the various alternatives as required under R.C. 4906.10(A)(3). Further, we note that the ability of the Board to condition certificates upon the submission and approval of final plans or studies, as required by some of the conditions recommended by Staff, has been affirmed by the Supreme Court of Ohio. *In re Application of Buckeye Wind, L.L.C.*, 2012-Ohio-878, ¶¶ 13-14, 16).

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

{¶ 86} R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that such facility will serve the interests of electric system economy and reliability.

{¶ 87} NERC is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, Applicant is subject to compliance with various NERC reliability standards. These standards are included as part of the system evaluations conducted by PJM. PJM is the regional transmission organization charged with planning for upgrades and administering the

generation queue for the regional transmission system in Ohio. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area must submit an interconnection application for review by PJM. (Staff Ex. 1 at 33.)

{¶ 88} Applicant submitted two generation interconnection requests for the proposed facility to PJM. According to Staff, PJM analyzed the bulk electric system, with the Facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that no new system reinforcements would be needed due to the addition of Applicant's Project and that no overloading or network impacts on earlier projects in the PJM Queue would result from the addition of the proposed Facility. Additionally, when evaluating potential congestion due to local energy deliverability, PJM determined two potential overloaded lines could be mitigated to allow for the delivery of energy with operational restrictions. The short circuit analysis identified no circuit breaker problems resulting from the proposed generation addition. (Staff Ex. 1 at 35-36.)

{¶ 89} Staff recommends that the Board find that the proposed Facility is consistent with regional plans for the expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the Facility would serve the interests of electric system economy and reliability. Accordingly, Staff recommends that the Board find that the Facility complies with the requirements of R.C. 4906.10(A)(4), provided any certificate issued for the proposed Facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 35.)

{¶ 90} Cepheus agrees with Staff's recommendation, submitting that the Facility is consistent with plans for expansion of the regional power system and will serve the interests of the electric system economy and reliability. Cepheus notes that, for general deliverability, no overloads or restrictions were identified for the Project, adding that, while two potential overloaded lines were identified for the peak summer flow model, PJM concluded that they

could be mitigated through system upgrades or agreement with the local utility. (Applicant Br. at 57-58; Applicant Ex. 1 at 28-29, Appx. I.)

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

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

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

1. AIR

{¶ 93} Cepheus states that solar facilities generate electricity without releasing pollutants into the atmosphere; therefore, state and federal air pollution permits are not required for the Project. Cepheus further contends that the Project will not produce any air pollution, with the exception of controllable dust emissions during construction. Cepheus states that exposed/disturbed areas will be minimized at any one time to the extent practicable and restored/stabilized per the requirements of Ohio EPA Permit No. OHC000005. During construction activities, Cepheus notes that water or a dust suppressant such as calcium carbonate will be applied on an as needed basis to suppress dust on Facility access roads and on unpaved transportation routes, adding that any unanticipated construction related dust problems will be identified and immediately reported to the construction manager and contractor. Applicant avers to address any complaints regarding dust generation as quickly as practicable. Over time, according to Cepheus, the Facility may lead to improvements in air quality by reducing the need for traditional systems that negatively contribute to air pollution. (Applicant Ex. 1 at 44; Applicant Br. at 58.)

{¶ 94} According to Staff, air quality permits are not required for construction or operation of the proposed Facility. However, Staff notes that fugitive dust rules adopted under R.C. Chapter 3704 may be applicable to the construction of the proposed facility, agreeing with Applicant's plan to control temporary and localized fugitive dust by using best management practices, such as using dust suppressants including calcium carbonate or water to wet soil to minimize dust as needed. Staff recognizes that these methods are outlined in the ODNR's *Ohio Rainwater and Land Development Manual*. Staff also notes Applicant's commitment to address, as promptly as possible, any dust generation complaints if received through the complaint resolution process. Further, Staff concludes the Project would not include any stationary sources of air emissions and, therefore, would not require air pollution control equipment. (Staff Ex. 1 at 36.)

{¶ 95} Based on the record in this case, the Board finds that both the construction and operation of the Project, subject to the conditions set forth in the Staff Report, will comply with the air emission regulations in R.C. Chapter 3704, and the rules and laws adopted thereunder.

2. WATER

{¶ 96} Cepheus ultimately agrees with Staff's findings and conclusions set forth in the Staff Report. Applicant asserts that the Project will use relatively little water, particularly in comparison with conventional methods of electric generation and construction of the Facility would not require the use of significant amounts of water. Water may be utilized for dust control on construction access roads or unpaved surfaces as needed. Modern, efficient fixtures will be installed and will be maintained in proper working order. Applicant expects solar panels will be adequately cleaned by natural precipitation. However, in unexpected circumstances such as severe drought, water may be needed to clean panels, with the maximum amount of water required for the cleaning to not exceed 300,000 gallons. In addition, post-construction runoff control will be implemented with BMPs, in order to ensure that the Project does not generate more storm water runoff and erosion than existed

during preconstruction conditions. (Applicant Ex. 1 at 45-50; Applicant Ex. 13; Applicant Ex. 26.)

{¶ 97} Staff agrees that Cepheus will mitigate potential water quality impacts associated with aquatic discharges by obtaining an NPDES construction storm water general permit from the Ohio EPA. Staff also notes that the Ohio EPA has developed guidance on post-construction storm water controls for solar panel arrays and recommends that Cepheus construct the Facility in such a manner that incorporates the Ohio EPA guidance. Staff agrees with Cepheus' assessment that the Project will not require significant amounts of water. (Staff Ex. 1 at 36-38.)

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

3. SOLID WASTE

{¶ 99} Cepheus submits that the Project is not expected to generate any hazardous waste, adding that the limited amounts of solid waste generated during construction and operation will be reused, recycled, or disposed of in accordance with applicable law. Further, at the end of a solar panel's useful life, Cepheus has committed to send any retired panel material that is not recycled to an engineered landfill with various barriers or another appropriate disposal location at the time of decommissioning. (Applicant Br. at 58-59; Applicant Ex. 1 at 50-51.)

{¶ 100} Staff agrees with Cepheus' description of the solid waste that might be generated at the Facility. Staff approves of Applicant's solid waste disposal plans and states that the plans comply with the requirements set forth in R.C. Chapter 3734. (Staff Ex. 1 at 37-38.)

{¶ 101} Based upon a review of the record in this case, the Board finds that Applicant has properly demonstrated that the Project will comply with R.C. Chapter 3734 and all rules and standards adopted thereunder. The application provides estimates of the amount of solid waste to be generated and a description of Cepheus' plans to manage and dispose of such waste. The Board, therefore, agrees with Applicant and Staff that plans outlined by Cepheus are reasonable and finds that the Project complies with the statutory criterion.

4. AVIATION

{¶ 102} Regarding compliance with the requirements of R.C. 4561.32, Cepheus states that there are no public use airports or public use helicopter pads within five miles of the Project area. The proposed Facility, according to Applicant, is approximately 5.7 miles from the nearest public airport, Defiance Memorial Airport. Although one private airport, Rogers Private Airport, is mapped at some airport databases at 0.7 miles from the Project site, Cepheus claims a search of FAA registered airports did not list the airport as active since 2013 and contact information for the airport is no longer in service. As such, Cepheus notes there are no active private use landing strips or property used for aviation within or adjacent to the Project area. (Applicant Ex. 1 at 52-53; Applicant Br. at 58.)

{¶ 103} Staff's investigation revealed that the tallest above ground structure would be the generation interconnection transmission line support structures at approximately 100 feet tall, which is below the height requirement from the FAA, pursuant to 14 C.F.R. Part 77.9(a), for filing a Form 7460-1 (Applicant Ex. 1 at 69). Staff contacted ODOT, in accordance with R.C. 4906.10(A)(5), to coordinate a review of potential impacts of the Project on local airports. No concerns were identified by ODOT. Staff, therefore, recommends that the Board find that the Project complies with the requirements of R.C. 4906.10(A)(5) with respect to aviation. (Staff Ex. 1 at 38.)

{¶ 104} Based on our review of the record, we find that Applicant has proven that the Project will not unreasonably impair aviation.

{¶ 105} In summary, the Board finds that the Project will comply with R.C. Chapters 3704, 3734, and 6111, as well as rules and standards adopted under those chapters and under R.C. 4561.32. Accordingly, the certification criteria found in R.C. 4906.10(A)(5) have been met.

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

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

{¶ 107} As indicated above, Staff recommends that the Board find that the proposed Facility does not serve the public interest, convenience, and necessity. In reaching its recommendation, Staff cites that there is general opposition to the Project from local governmental bodies, in addition to active disagreement on the Project between local citizenry. At the time of the filing of the Staff Report, local governmental bodies, including the Delaware Township Board of Trustees, Village of Sherwood, Defiance County Economic Development Office, and the Defiance County Board of Commissioners filed comments in opposition to the Project, and the Defiance Soil and Water Conservation District also expressed its concerns. As these governmental bodies are local elected officials charged with representing and serving their respective communities, Staff notes that many of these entities have responsibility for preserving the health, safety, and welfare within their respective communities (Staff Ex. 11 at 5.) Therefore, Staff maintains that their interest in and, in this case strong opposition to, the Project is especially compelling. Acknowledging that no one factor, or set of factors, defines “public interest, convenience, and necessity”, Staff asserts that this criterion should be examined through a broad lens which encompasses “the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion” and requires the Board to “balance projected benefits against the magnitude of potential negative impacts on the local community (Staff Br. at 2-3, citing *Republic Wind*, Opinion and Order (June 24, 2021) at ¶ 91). Similar to local government opposition in *Republic Wind*, Staff notes that the Defiance County

Commissioners, the Delaware Township Trustees, and the Sherwood Village Council all oppose the Project. In fact, citing to a letter submitted to the Board dated November 22, 2021, by the Defiance County Board of Commissioners, Staff emphasizes the Commissioners indicated that the area the Project is proposed to be sited in has been experiencing expansion and raised concerns that several million dollars of grants for infrastructure updates on upgrades may go to waste if the Project is approved. Staff also cites to an undated letter submitted to the Board by the Village of Sherwood Village Council on October 21, 2021, in which council members expressed their opposition to the Project, particularly noting concerns that the Project “will hinder our ability to grow due to its proposed location being where virtually all of the new growth has occurred”, further adding that developers have informed the Village that they “will no longer invest” if the Project is approved. (Staff Br. at 3-4.) Staff believes that the public opposition to the Project will create negative impacts on the local community and served as the basis for its recommendation. Staff believes that any benefits to the local community are outweighed by this overwhelming public opposition and, therefore, the Project would not serve the public interest, convenience, and necessity. However, should the Board determine Applicant has met the requirements specified in R.C. 4906.10(A)(6) subject to modification, Staff recommends that any certificate issued by the Board for the proposed Facility include the applicable conditions specified in the Staff Report. (Staff Ex. 1 at 40-42.)

{¶ 108} Additionally, Staff argues that the Board has recently recognized the importance of local opposition to such projects, especially where opposition from local governmental entities is unanimous (Staff Br. at 6-7, citing *In re the Application of American Transmission Systems, Incorporated for a certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Transmission Line in Mahoning County, Ohio*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) at ¶ 81 (where the Board concluded that “[i]n consideration of the significant number of public comments received and the issues raised in the public comments *** the Board finds that the requirements of R.C. 4906.10(A)(6) (that the facility will serve the public interest,

convenience, and necessity) * * *[has] not been met. The local community has, post hearing, raised universal local opposition * * *.”)

{¶ 109} Contrarily, in arguing that the Project serves the public interest, convenience, and necessity, Cepheus emphasizes the Project would provide benefits to: local economic development; regional and statewide economic development; the local agricultural industry and culture; the greater Lake Erie watershed; Ohio’s air quality and public health; and reliability, affordability, and diversification of Ohio’s electric supply.

{¶ 110} Initially, Cepheus argues that the Project would provide the best, if not the only, available opportunity for local economic development. In fact, Cepheus cites to over 30 prior instances in which Staff and/or the Board acknowledged that a solar facility would have an overall positive impact on the local economy due to the increase in construction spending, wages, purchasing of goods and services, annual lease payments to the local landowners, and PILOT revenue. (Applicant Br. at 19-20, citing, e.g., *In re Hillcrest Solar Farm*, Case No. 17-1152-EL-BGN, Opinion, Order, and Certificate (Feb. 15, 2018) at ¶ 44, Staff Report (Feb. 4, 2019) at 23; *In re Highland Solar Farm*, Case No. 18-1334-EL-BGN, Opinion, Order, and Certificate (May 16, 2019) at ¶ 36, Staff Report (Mar. 4, 2019) at 19; *In re Union Solar*, Case No. 20-1405-EL-BGN, Opinion, Order, and Certificate (Feb. 17, 2022) at ¶ 67, Staff Report (May 19, 2021) at 24.) Cepheus claims the same types of recognized benefits are present in this application. Applicant’s evidence supports that the Project will create 587 Ohio jobs during the construction period, and eight permanent jobs over the life of the Project. The overall economic activity in the state from the construction of the Project is expected to be \$104.9 million. Increased taxes and PILOT from the Project’s economic impact, much of which will be dedicated to local government and schools, including Delaware Township, the Village of Sherwood, Central Local School District, Four County Joint Vocational School, Defiance Public Library System, and Defiance County, are estimated at \$578,000 per year over the Project’s lifespan. Further, Cepheus indicates that the Project will result in annual lease payments to participating landowners and Applicant has committed to donating approximately \$375,000 to the local community to support

economic development. (Applicant Br. at 20-21; Applicant Ex. 7 at 11; Applicant Ex. 10 at 3-4.) These benefits were further supported by a representative of the Toledo Regional Chamber of Commerce (Applicant Ex. 19 at 2). Moreover, according to Cepheus, the communities surrounding the Project have experienced prolonged population decline over the last 40 years, including between 2019 and 2020, which has been accompanied by a scarcity of investment and development interest (Applicant Ex. 1 at Appx. D; Applicant Ex. 14 at 1-2). Cepheus notes this lack of investment opportunity was emphasized during the local hearing (Local Hearing Tr. at 55). However, even if there was alternative means of investment or development for the area in question, Cepheus argues the Project represents the best economic outcome available, citing tax modeling performed by Magnum Economics. Pursuant to the modeling conducted, which compared the fiscal impact of the Project with other hypothetical uses, even if the area was developed with 100 homes valued at over \$300,000 each, the Project would provide an estimated \$21.5 million more local revenue over 40 years than the area would with the hypothetical residential use. (Applicant Ex. 23 at 3.)

{¶ 111} Cepheus also contends that the Project would provide economic benefits regionally and statewide. Cepheus emphasizes the testimony in the record from the Toledo Regional Chamber of Commerce and Ohio Partners for Affordable Energy, as well as letters from the Ohio Chamber of Commerce and two state legislators representing the Northwest Ohio area, all of which highlight the direct economic benefits associated with the Project and the opportunity for this Project, as well as other solar projects, to help Ohio ensure renewable energy supply is available for companies considering investment in the region. (Applicant Ex. 19 at 1-3; Applicant Ex. 24 at 4; Public comment of Ohio State Representative Michael P. Sheehy, 46th Dist. (June 6, 2022); Public comment of Ohio State Representative Lisa Sobecki, 45th Dist. (May 27, 2022); Applicant Reply Br. at 5-7.) Additionally, a public comment was submitted by the Ohio Chamber of Commerce, indicating the importance of solar projects as more and more companies, such as Intel, consider investing in Ohio and require access to renewable energy; thus, approving projects like the one at issue in this

proceeding will enhance Ohio's competitiveness in attracting new investment (Public comment of Stephanie Kromer, Director of Energy and Environmental Policy, Ohio Chamber of Commerce (May 25, 2022)). Cepheus also points to the Project's relationship on First Solar, Inc. (First Solar), further fostering economic development and the availability of renewable energy throughout Northwest Ohio. Specifically, in addition to First Solar actively considering taking energy from the Project to achieve its own renewable energy commitment, the Project has committed to using First Solar's locally-developed technology, giving First Solar the ability to further expand its manufacturing operations in Northwest Ohio. (Applicant Br. at 26-27; Applicant Ex. 28 at 2.)

{¶ 112} Further, Cepheus claims that the Project would positively impact local agriculture. Similar to its arguments regarding the recognized economic benefits commensurate with previously-approved solar projects, Cepheus observes that Staff has indicated in numerous other projects that solar projects are "consistent with agricultural industry support, in that the facility would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning." (Applicant Br. at 28-29, citing, e.g., *In re the Application of Hardin Solar Energy Facility*, Case No. 17-773-EL-BGN, Staff Report (Nov. 21, 2017) at 12; *In re the Application of Willowbrook Solar Farm*, Case No. 18-1024-EL-BGN, Staff Report (Feb. 4, 2019) at 12; *In re the Application of Highland Solar Farm*, Case No. 18-1334-EL-BGN, Staff Report (Mar. 4, 2019) at 10; *In re the Application of Hardin Solar Energy II*, Case No. 18-1360-EL-BGN, Opinion, Order, and Certificate (May 16, 2019) at ¶24, Staff Report (Feb. 26, 2019) at 11; *In re the Application of Nestlewood Solar Facility*, Case No. 18-1546-EL-BGN, Opinion, Order, and Certificate (Apr. 16, 2020) at ¶28, Staff Report (May 15, 2019) at 12.) In fact, notes Cepheus, OFBF is the only intervening party in this case and does not oppose the Project. According to Cepheus, the Project would preserve and enhance farmland over the long-term, provide critical income to farmers participating in or contracting with the Project, and diversify the local agricultural opportunities, including utilizing commercial sheep grazing at the Project site (Applicant Br. at 30-35; Applicant Ex. 16 at 3; Applicant Ex. 15 at 3; Applicant Ex. 21 at 1-2; Applicant

Ex. 18 at 2; Applicant Ex. 20 at 1). These benefits were also heavily stressed during the local public hearing (Public Hearing Tr. at 20, 26, 28, 34, 39).

{¶ 113} Finally, Cepheus notes that the Project provides ample other benefits, including improving the Lake Erie watershed, improving public health and promoting environmental justice, and creating a more diversified, affordable energy supply for the state of Ohio. As to the Lake Erie watershed, Cepheus contends that, by having the land under conservation plantings, the Project would essentially provide the “same conservation benefit” as Ohio’s government-run clean water initiatives, “but through the private sector.” (Applicant Ex. 16 at 2). Unfortunately, states Cepheus, Staff failed to consider this benefit as part of its analysis; instead, the Staff Report was limited to noting that the Project was not expected to harm groundwater or drinking water supply (Tr. Vol. II at 17; Staff Ex. 1 at 25). Along those same lines, Cepheus argues Staff should have incorporated the specific benefits associated with the reduced environmental impact resulting from the Project, including air quality and, consequently, public health (Applicant Ex. 24 at 4-5; Applicant Reply Br. at 12-13). Cepheus acknowledges that this benefit was raised at the local public hearing (Public Hearing Tr. at 68). Despite these noted benefits, Cepheus alleges Staff failed to consider public health in its analysis, noting Staff witness Stottsberry could not recall whether Staff had considered the public health benefits associated with increased emissions-free generation (Tr. Vol. II at 16-17, 19). Further, despite prior Board proceedings in which the provision of an additional, sustainable source of electric generation was noted as a benefit, as well as the potential cost savings attributable to these types of generation sources, and Staff witness Stottsberry confirming these public benefits should be considered by Staff, Cepheus argues the Staff Report lacks any mention of these benefits. (Tr. Vol. II at 15-16, 20; Applicant Ex. 24 at 6).

{¶ 114} Cepheus notes that Board precedent has previously indicated that a project’s larger benefits to the state, the public, and the grid may outweigh local disapproval, even if there are “thousands of comments from members of the general public, local organizations, and local officials” and opposing intervention from multiple local governments. (Applicant

Br. at 16-17, citing *In re Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX (*Duke Corridor Project*), Opinion, Order, and Certificate (Nov. 21, 2019) at 82-83). Cepheus alleges that, while Staff indicates that a broad lens analyzing statewide, regional, and local impacts of a project should be utilized to determine whether the facility will serve the public interest, convenience, and necessity, it was not the standard used by Staff when evaluating the proposed Project, and ultimately, recommending that the application fails to satisfy R.C. 4906.10(A)(6). (Tr. Vol. II at 12-13.) Instead, Cepheus claims that Staff limited its consideration to “(1) negative statements from nonparties setting forth unsupported and disproven factual allegations; and (2) a one-sentence township resolution in opposition that does not state an actual reason for opposing the Project.” (Applicant Br. at 16-17.) Further, upon admitting that certain benefits were not considered, such as the supplemental income to farmers, Cepheus notes that Staff reiterated its position in the Staff Report during the adjudicatory hearing, disregarding evidence of public interest submitted after the Staff Report had been filed (Tr. Vol. II at 14, 20-21).

{¶ 115} Cepheus also takes issue with Staff’s apparent deference to certain disproven allegations made in the public comments and statements from public officials, specifically noting that many of these allegations are even refuted by other findings in the Staff Report. For instance, in response to public comments regarding the concerns over limited local economic growth in the Village of Sherwood, including housing, Cepheus points to various elements of the application, including: the decision to remove panel installation in the 50-acre parcel bordering the Village of Sherwood (Applicant Ex. 7 at 17); the fact that there are no alternative development plans for the Project area, including residential development (Applicant Ex. 14 at 1); the noted economic benefits, including the estimated \$104.9 million in economic output and 587 full-time jobs during construction of the Project (Applicant Ex. 1 at Appx. D; Applicant Ex. 10); the significant amount of undeveloped space in the Village of Sherwood (Applicant Ex. 1, Appx. D at 5); the direct benefits to local businesses, schools, and landowners (Applicant Ex. 19 at 2); the fact the Project represents the best available fiscal outcome for the community (Applicant Ex. 23); and the strength of regional economic

benefits associated with the Project, evidenced by submitted testimony and the numerous public comments in support of the Project discussed above (Applicant Ex. 19 at 1; Applicant Ex. 24 at 4). Cepheus also disputes statements provided by the Village of Sherwood, upon which Staff relied, that indicate millions of dollars of grants may go to waste if the Project is approved; rather, Cepheus notes that, even if these grants could somehow be affected by decisions regarding the use of privately-owned land, the Project would only develop four percent of the undeveloped land within the Village of Sherwood, thereby, leaving plenty of undeveloped land for the other development purposes (Applicant Reply Br. at 4-5).

[¶ 116] Further, in contradiction to the decommissioning concerns noted by Staff, Applicant asserts that it has agreed to a decommissioning plan consistent with HB52, at Staff's request (Applicant Ex. 7 at 7-8). In fact, the Staff Report notes that there were no problems identified with the decommissioning plan, as long as the recommended conditions proposed by Staff were included on the certificate, with which Applicant has agreed (Staff Ex. 1 at 31-32). As to public comments raising concerns as to any negative impacts to local agriculture, Cepheus reiterates its earlier arguments, notably that the Project would prevent the permanent loss of farmland, improve the overall health of the soil, provide supplemental income to farmers, and provide an opportunity to diversify the local agricultural industry (Applicant Ex. 18 at 2; Applicant Ex. 20 at 1; Applicant Ex. 21 at 1). Similar to the decommissioning concerns, Cepheus also points to the Staff Report's finding the Project would benefit the local farming community and preserve farmland for future use (Staff Ex. 1 at 12, 29). Cepheus also disputes the comments indicating that there may be negative impacts to wildlife, noting that it has agreed to agricultural-style fencing to reduce impacts and the Staff Report indicated that the Project would, in fact, "enrich local wildlife habitat." (Staff Ex. 1 at 29, 32). Similarly, Cepheus claims concerns raised in the public comments regarding negative impacts to water, aesthetics, including glare, inadequate setbacks, and property values, have also been refuted by the evidence of record, including

the findings (or failure to raise the concern)³ in the Staff Report (Staff Ex. 1 at 13, 25; Applicant Ex. 7 at 14; Applicant Ex. 16 at 2-3, Applicant Ex. 17). Accordingly, Cepheus argues there is no basis for Staff to rely on the unsupported allegations contained in the public comments as they relate to impacts on local economic growth, the decommissioning plan, the impacts on agricultural land use and the local industry, impacts on wildlife, impacts on drinking water and the Lake Erie watershed, issues related to aesthetics and the viewshed, setbacks, or the impact on property values, and request that the Board disregard them in its consideration of the application.

[¶ 117] In addition to questioning the reliance of Staff upon various public comments, Cepheus similarly criticizes Staff's reliance on various statements made by public officials by noting that the opposition from local government bodies is "especially compelling" in this case (Staff Ex. 1 at 41; Tr. Vol. II at 14). However, Cepheus notes that none of these local governmental bodies moved to intervene in this proceeding, representing a stark contrast from the opposing intervention from multiple local governments that were present in the *Duke Corridor Project*. Instead, posits Cepheus, the local governmental bodies cited by Staff in this case offer only unsupported statements and a one-sentence "flip-flopping" resolution. (Applicant Br. at 49.) Cepheus argues several of these statements lacked the proper authorization or process necessary to submit comments on behalf of the governmental entity. For instance, Cepheus states that Brian Miller, a former member of the Sherwood Area Economic Development Corporation (SAED), testified that the letter submitted by the SAED was improperly submitted by the then-serving president to express his personal views and did not represent the opinion of the organization's executive board, of which Mr. Miller was a member at the time. Further, Mr. Miller testified that the letter from the Defiance County Economic Development Office was submitted without seeking any input from its membership. (Applicant Ex. 27 at 2-3.) While Staff relied

³ Cepheus asserts that Staff did not express any concerns related to the proposed setbacks of the Project, which were actually increased for non-participating residences to 200 feet from the PV panel area fence line.

on the latter when considering growth and economic development of the area, Cepheus notes that Staff completed no due diligence to determine the validity of these statements or underwent any investigation to address the issues raised by Mr. Miller (Applicant Br. at 50-51; Applicant Reply Br. at 2). Similarly, Cepheus argues the official position of Delaware Township has changed three times throughout the pendency of this case, “flip-flopping” between opposition and neutrality and back again all in the course of a single month. [Applicant Br. at 51, citing Public Comment of Isaac Ankney on behalf of Delaware Township Trustee John Fifer (Jan. 10, 2022) (which rescinds the resolution in opposition to the Project); Public Comment of Delaware Township, Defiance County, Ohio (Feb. 11, 2021) (which reinstates opposition to the Project)]. However, even under the current negative resolution, Cepheus notes the position of Delaware Township is, in its entirety, “to have opposition to the solar project planned for Delaware Township.” Cepheus adds that one of the two voting trustees, John Fifer, filed a public comment the same day the resolution passed, stating “since all the fighting and name calling going on I have decided to change my mind and not support it”, but did not raise any issues with the Project itself (Applicant Br. at 51, citing Public Comment of John Fifer (Feb. 7, 2022)). Further, the Defiance Soil & Water Conservation District indicated that its concerns with the Project have been adequately addressed (Applicant Br. at 52, citing Public Comment of Cliff Scher (May 23, 2022)). Overall, Cepheus argues that Staff’s reliance on the alleged opposition from local officials should not be considered “compelling” evidence in this case, as any concerns regarding the Project’s impact on “other potential opportunities for the community to grow” have been dispelled by the record evidence (Tr. Vol. II at 14; Staff Ex. 1 at 40-41; Applicant Ex. 27 at 2-3). Finally, Cepheus asserts that Staff’s position in this case, i.e., finding that a proposed solar project is not in the public interest because there is a vocal minority of local opponents, will only encourage intimidation and misinformation tactics in future proceedings and may have a chilling effect on investment in Ohio (Applicant Br. at 53-54; Applicant Ex. 22 at 1-2; Public Hearing Tr. at 15-16). Cepheus also notes this type of approach will ultimately undermine the authority of the Board and will run counter to the mission of the Board, which is to “support sound energy policies that provide for the

installation of energy capacity and transmission infrastructure for the benefit of the Ohio citizens, promoting the state's economic interests, and protecting the environment and land use" (Applicant Br. at 54, citing Public Comment of Stephanie Kromer, Director of Energy & Environmental Policy, Ohio Chamber of Commerce (July 15, 2022) at 3; Applicant Reply Br. at 2-3).

{¶ 118} In response to Cepheus' arguments that it has agreed to exceed the commitments made in prior cases to address and mitigate concerns about the Project, Staff notes that Applicant does not address the Board's findings in *Republic Wind* and *ATSI*. In *ATSI*, Staff asserts that the Board recognized that the local community, post hearing, expressed universal opposition to the *ATSI*'s proposed project. Similar to *ATSI*, Staff maintains that the docket in this case shows that numerous public comments have been filed post hearing that voice strong opposition to the proposed Project, including all of the comments submitted by local residents. Additionally, Staff notes that there are claims within those submitted comments that fraudulent comments in support of the Project were purportedly elicited and submitted on behalf of individuals who later denied having made the comments, and request that they be removed. Staff also takes issue with a comment that a local official who at one time expressed support for the Project did so without disclosing that he was a participating landowner. Staff cautions the Board to consider these allegations carefully. Staff asserts that Board precedent clearly recognizes that the Board can and does afford great consideration to public comments, as in *ATSI*, where the Board's denial of a certificate focused on these public comments. Further, Staff explains that the Village of Sherwood Council, Delaware Township Board of Trustees, and Defiance County Board of Commissioners all voiced opposition to the Project. Despite acknowledging various benefits of the Project, Staff claims that, "[w]here the local officials elected by the citizenry believe that a project should not be built in their community, particularly where that opposition is unanimous, the Board has been willing to find that the 'public interest standard' has not been met." (Staff Reply Br. at 3-6.) Furthermore, while Staff was concerned about the extent of local opposition, and those opinions were a factor in Staff's

recommendation, Staff recognizes the positions expressed by the elected representatives of the affected communities, all opposed to the Project, weighed particularly heavily. The local governmental entities in this case, the municipality, the township, and the county, all oppose the Project. As acknowledged by Cepheus, Staff notes the tension in the community arising from as a result of the Project and note that this discord is evidence of actual harm. (Staff Reply Br. at 7-8, citing Public Comment of John Fifer (Feb. 7, 2022); Public Hearing Tr. at 114-116, 160-161). Staff argues that the local public opposition demonstrated in this case can create negative impacts to the community, adding that any benefits to the local community are outweighed by the overwhelming public opposition.

{¶ 119} Furthermore, in response to Cepheus' claims that Staff's findings will encourage "intimidation and misinformation," Staff explains that the certification process mandated by the General Assembly and implemented by the Board, are designed to inform the public and those impacted of pending projects, and to provide opportunities to have input into the process. According to Staff, the Board has long recognized comments by concerned citizens and entities, from both those who have formally intervened and who have preferred, instead, to comment at local hearings or within the public docket. Staff notes this process encourages engagement and participation, not intimidation and misinformation. Furthermore, Staff recognizes that allegations of these types of tactics have been made by proponents and opponents in this case (Public Hearing Tr. at 117, 143-144, 156). Staff reiterates the importance of its reliance the positions taken by local elected officials. In fact, Staff notes Sherwood Village Council and the Defiance County Board of Commissioners have both indicated they generally support green energy alternatives; yet, the representatives of these entities have opposed this Project. According to Staff, there has been a clear demonstration of general opposition to the Project from local government bodies and disagreement among the local citizenry. (Staff Reply Br. at 9-10.)

{¶ 120} Finally, Staff argues that the Board should accord significant weight to Staff's recommendation. While acknowledging that the Staff Report did not describe all of the possible statewide impacts, Staff argues that the Staff Report and Staff witness Conklin did

describe the potential economic impacts, at both the local and state levels, and recognized there would be negative impacts, as well. Staff concluded that the negative impact on the local community, supported by the opposition of its elected representatives, were sufficiently significant to justify recommending that the Board deny a certificate in this case. Furthermore, Staff contends that various opposing viewpoints submitted in this case should not be discounted merely because the entities or individuals expressing those viewpoints did not file for formal intervention. Staff also claims it is disingenuous for Cepheus to criticize Staff's reliance on the public comments or letters from local governmental entities, because Cepheus itself relies on such letters in attempting to refute claims of possible negative impacts, such as one from the Ohio Chamber of Commerce and those from state legislators who did not represent the affected area. Staff concludes that the underlying explanation of its investigation, and the basis for its recommendations, are valid and well documented in the record. (Staff Reply Br. at 10-12; Staff Ex. 1 at 14-16; Staff Ex. 3).

[¶ 121] As we have reinforced in recent decisions, and acknowledged by both Cepheus and Staff, the determination of public interest, convenience, and necessity must be examined through a broad lens and in consideration of impacts, local and otherwise, from the Project. *In re Birch Solar 1, LLC*, Case No. 20-1605-EL-BGN, Opinion and Order (Oct. 20, 2022) at ¶68; *In re Republic Wind*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶91; *ATSI*, Opinion, Order and Certificate (May 19, 2022) at ¶ 79; *Kingwood Solar* at ¶ 142. As we recently affirmed in *Birch Solar* and *Kingwood Solar*, the Board acknowledges that there are numerous public benefits as to all proposed solar facilities, including (1) the public's interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio; (2) economic benefits relative to increased employment, tax revenues, and PILOT; (3) air quality and climate impact improvements relative to transitioning from fossil fuels to renewable energy resources; (4) protecting landowner rights; and (5) preserving agricultural land use. Juxtaposed against these benefits is the need to fully consider the impact on individuals who are most directly affected by a proposed project, primarily residents living near the project. Assessing these sometimes-

competing interests is required in order to determine whether a project satisfies the requirement of R.C. 4906.10(A)(6). *Birch Solar* at ¶ 68; *Kingwood Solar* at ¶ 142.

[¶ 122] As in *Birch Solar* and *Kingwood Solar*, the primary concern surrounding the Project results from the general public opposition expressed by the local government entities whose constituents are impacted by the Project.⁴ As described above, the Village of Sherwood, the Defiance County Board of Commissioners, and the Delaware Township Trustees, all of the affected governmental entities in the area in which the Project is proposed to be located, acted to oppose its certification.

[¶ 123] Based on our review of the record, the Board finds that the proposed Facility, subject to the conditions specified in the Staff Report, does not comply with the requirements specified in R.C. 4906.10(A)(6). In reaching this decision, we recognize that the need to determine whether the Facility will serve the public interest, convenience, and necessity should be examined through broad lens. For example, this factor should consider the public's interest in a power siting project that ensures continued utility services and the prosperity of the state of Ohio. At the same time, this statutory criterion regarding public interest, convenience, and necessity, must also encompass the local public interest, ensuring a process that allows for local citizen input and consideration of local government opinions that reflect the citizenry that is impacted by the Project. As part of the Board's responsibility under R.C. 4906.10(A)(6) to determine that all approved projects will serve the public interest, convenience, and necessity, we must balance projected benefits against the magnitude of potential negative impacts on the local community. See *Kingwood Solar* at ¶144;

⁴ The Board acknowledges that this case is not impacted by SB 52, which subjects solar projects that are filed after October 11, 2021, to increased county-level and township-level review and participation in the Board's certification process. Still, as in *Birch Solar* and *Kingwood Solar*, the Board stresses its continuing obligation to determine a project's compliance with the public interest, convenience, and necessity. R.C. 4906.10(A)(6). Accordingly, the Board must consider, independent of SB 52, the manner and degree of opposition of the local governments impacted by the Project as it relates to whether the Project is in the public interest, convenience, and necessity.

Birch Solar at ¶ 68; *In re Ross County Solar*, Case No. 20-1380-EL-BGN, Opinion, Order, and Certificate (Oct. 21, 2021) at 36.

{¶ 124} As in *Kingwood Solar* and *Birch Solar*, we conclude that the unanimous opposition of every local government entity representing the area in which the Project is to be located is controlling as to whether the Project is in the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). In reaching this conclusion, our focus goes beyond merely counting local government resolutions to determine whether a certificate is warranted. Instead, we focus on the vigor and rationale of the local government opposition, which clearly serves as an indicator of this Project's lack of public support. *Kingwood Solar* at ¶ 145.

{¶ 125} It is clear from a review of the record that local governmental entities exerted considerable effort in gauging, and filing comments reflecting, the public perception of their constituents during the course of this proceeding. As noted above, the Delaware Township Board of Trustees, Village of Sherwood, Defiance County Economic Development Office, and the Defiance County Board of Commissioners filed comments in opposition to the Project. In a letter dated November 22, 2021, the Defiance County Board of Commissioners, indicated that the area the Project is proposed to be sited in has been experiencing expansion and raised concerns that several million dollars of grants for infrastructure updates and upgrades may go to waste if the Project is approved. Further, as noted by Staff, an undated letter submitted to the Board by the Village of Sherwood Village Council on October 21, 2021, expressed council members' opposition to the Project, particularly noting concerns that the Project will hinder potential economic growth, further adding that developers have informed the Village that they "will no longer invest" if the Project is approved. Staff believes that the public opposition to the Project will create negative impacts on the local community and served as the basis for its recommendation. Staff believes that any benefits to the local community are outweighed by this overwhelming public opposition and, therefore, the Project would not serve the public interest, convenience, and necessity. Again, all local governmental entities unanimously oppose the Project and have primarily

expressed concern on the impacts the Project may have on future economic opportunities in the area. (Staff Ex. 1 at 40-42.)

{¶ 126} In addition to the unanimous opposition expressed by local government entities whose constituents are impacted by the Project, we find that the public comments in the case docket and expressed at the local public hearing refute Cepheus' contention that the Project is in the public interest, convenience, and necessity. As noted above, approximately 70 percent of the public comments received were in opposition of the Project.

{¶ 127} While Cepheus points to the *Duke Corridor Project* to support its argument that the Board has previously ruled that a project's larger benefits to the state, the public, and the grid outweigh local disapproval, even if there are "thousands of comments from members of the general public, local organizations, and local officials" and opposing intervention from multiple local governments, we note that case is not directly applicable to our consideration here, as it involved the siting of a proposed pipeline. Instead, we find more persuasive the directly applicable, and more recent, Board precedent involving other proposed solar electric generation facilities in Ohio, such as *Birch Solar* and *Kingwood Solar*, as referenced throughout this Order. Furthermore, the citation referenced by Cepheus from *Duke Corridor Project* merely notes that the public comment process had been extensively utilized, and when combined with the other public participation options, confirmed that intervenors and the public had been afforded a full and fair opportunity to participate in the proceeding. *Duke Corridor Project*, Order, Opinion, and Certificate (Nov. 21, 2019) at 82-83. Furthermore, although Cepheus argues that the viewpoints of some governmental entities were inconsistent during the course of this proceeding, we recognize that the Board's process invites some level of reevaluation as new information presents itself or the circumstances surrounding a project change, including a subsequent overwhelming demonstration of opposition by the public. Local governmental entities are permitted to reevaluate their decision to either support or oppose a project, based on the circumstances at hand and the opinions of the constituents they represent. We must respect their process, as well as their overall recommendations, and agree with Staff that such decisions serve as

compelling evidence of whether a project will serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6). Furthermore, we cannot disregard the opposition of local governmental entities like Delaware Township simply because they showed support to the Project at one time, just as we give weight to those entities that raised initial concerns with the Project, but were ultimately satisfied with commitments from Applicant, such as the Defiance Soil & Water Conservation District.⁵ Moreover, we note that the positions of the Defiance County Board of Commissioners and the Village of Sherwood have been unwavering in their opposition to the Project for the duration of this proceeding.

{¶ 128} With respect to R.C. 4906.10(A)(6), the Board finds that the Project does not serve the public interest, convenience, and necessity. Consistent with our prior decisions, we acknowledge the general public benefits of solar facilities, which include (1) the public's interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio; (2) economic benefits relative to increased employment, tax revenues, and PILOT; (3) air quality and climate impact improvements from transitioning toward renewable energy and away from fossil fuels; (4) protecting landowner rights; and (5) preserving long-term agricultural land use. And again, we note that these Project benefits must be considered with respect to the impact of the Project on individuals who are most directly affected by the Project, primarily those who live near it.

{¶ 129} The primary concern surrounding the Project, consistent with those raised in *Birch Solar* and *Kingwood Solar*, is the uniform public opposition expressed by the local government entities whose constituents are impacted by the Project. The Project is opposed

⁵ This is especially true as it appears from the record that the decision to rescind the initial resolution in opposition to the Project was voted upon by an outgoing trustee who failed to disclose that he was a participating landowner in the Project. We find the final resolution opposing the Project is an accurate representation of the stance of the Delaware Township Trustees.

by all three government entities with physical contact to it. *Birch Solar* at ¶ 69; *Kingwood Solar* at ¶ 143.

{¶ 130} Additionally, the Board notes the overwhelming number of public comments filed in the case, which largely disfavor the Project. Consistent with our analysis in *Birch Solar* and *Kingwood Solar*, we again find that these comments reinforce, rather than contradict, the conclusions of the government bodies that were formally considered at the local level, as well as those who testified at the local public hearing. Further, while we recognize that the public comments fall short of being admitted evidence in the case, we continue to find that they add value to the Board's consideration of the local perception of the Project. *Kingwood Solar* at ¶ 151. As described above, the public comments filed in the case certainly reinforce the outcomes of the local government opposition resolutions, which reinforces the level of community opposition to the Project.

{¶ 131} Based on the overwhelming opposition to the Project by the government entities whose constituents are impacted by the Project, the Board finds that the Project fails to serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6) and that the deficiencies cannot be remedied by additional conditions.

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

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

{¶ 133} Cepheus generally agrees with the findings of Staff and contends that the presence of the Facility will help preserve agricultural land and support future generations of families having the option to return the land to agricultural use following decommissioning of the Project. Cepheus acknowledges that the agricultural land will be temporarily impacted during the Facility's operation, but notes that the land will be returned to substantially preconstruction condition following decommissioning. However,

Cepheus explains that it has committed to taking steps to address potential impacts to farmland, such as repairing drainage tiles damaged during construction. (Applicant Br. at 59-60.)

{¶ 134} Staff emphasizes the commitments made by Cepheus to address potential impacts to farmlands, including repairing drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Further, Staff highlights that excavated topsoil will be used to establish vegetative cover for the Project and that, upon decommissioning, disturbed areas will be restored to agricultural use. Staff, therefore, recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions in the Staff Report, with the requirements of R.C. 4906.10(A)(7). (Staff Ex. 1 at 43, 47.)

{¶ 135} Based on the record, the Board concludes that the Project satisfies the requirements specified in R.C. 4906.10(A)(7), provided the certificate issued incorporates the applicable conditions recommended by Staff, and consistent with this Order.

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

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

{¶ 137} Cepheus agrees with Staff's findings relating to this criterion and states that the record establishes that the Facility will incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of various alternatives, in compliance with R.C. 4906.10(A)(8). In support of its position, Applicant submits that the Project will use minimal water in construction and operation. Further, Applicant notes that the Project will help preserve and improve the health of the Lake Erie Watershed. (Applicant Br. at 60; Applicant Ex. 16.)

{¶ 138} Staff notes that in the event that cleaning is needed, Applicant estimates that a single instance of no more than 300,000 gallons of water would be used, and that Applicant intends to obtain the water from local subsurface resources, truck in water, or both. Staff recommends that the Board find that the Project would incorporate maximum feasible water conservation practices and, therefore, complies with this criterion. (Staff Ex. 1 at 44.)

{¶ 139} Upon a review of the record, the Board finds that the Facility incorporates the maximum feasible water conservation practices, and, therefore, satisfies the requirements of R.C. 4906.10(A)(8), subject to the recommendations of Staff. In making this determination, the Board recognizes the representation that construction and operation of the Facility will not require the use of significant amounts of water and that nearly no water or wastewater discharge is expected.

IX. CONCLUSION

{¶ 140} Based on its review of the application and the record in this case, the Board has determined that Cepheus has not met its burden of proof relative to the requirements of R.C. 4906.10(A)(6), for the reasons set forth above. Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility unless it finds and determines R.C. 4906.10(A)(1) through (8). Based on the denial of R.C. 4906.10(A)(6) and the determination that the concerns could not be addressed through the inclusion of conditions, the application should be denied.

X. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 142} The proposed solar-powered electric generation facility is a major utility facility under R.C. 4906.01(B).

{¶ 143} On May 17, 2021, Cepheus filed a pre-application letter with the Board regarding its proposed solar-powered electric generating facility with up to 68-MW electric generating capacity in Defiance County, Ohio.

{¶ 144} On July 30, 2021, as supplemented on August 2, 2021, September 10, 2021, September 17, 2021, September 21, 2022, and September 27, 2021, Cepheus filed an application with the Board for a certificate of environmental compatibility and public need to construct the Project.

{¶ 145} On September 28, 2021, the Board notified Cepheus that its application was found to be 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.

{¶ 146} On October 5, 2021, Cepheus filed proof of service of its accepted and complete application on local officials and the main public library as required by Ohio Adm.Code 4906-3-07(A).

{¶ 147} On October 8, 2021, Cepheus filed, pursuant to Ohio Adm.Code 4906-3-07(A)(5), proof of submission of its application fee.

{¶ 148} By Entry issued October 19, 2021, the effective date of the application was established as October 15, 2021, the local public hearing scheduled for December 16, 2021, and the adjudicatory hearing scheduled to commence on January 11, 2022.

{¶ 149} On November 24, 2021, the OFBF filed a motion to intervene in this proceeding.

{¶ 150} On December 1, 2021, Staff filed the Staff Report, pursuant to R.C. 4906.07(C).

{¶ 151} On December 2, 2021, Cepheus and OFBF filed a joint motion to suspend the procedural schedule and a request for expedited treatment.

{¶ 152} By Entry issued December 9, 2021, the ALJ granted the joint motion, in part, and denied it, in part. The ALJ denied the joint motion with respect to suspending the local public hearing scheduled for December 16, 2021. Further, the ALJ suspended the remaining procedural deadlines; however, instead of cancelling the January 11, 2022 adjudicatory hearing, the ALJ converted this hearing to a call-and-continue hearing after which the parties would remain on Webex to discuss future procedural scheduling.

{¶ 153} On December 16, 2021, the local public hearing was held as scheduled.

{¶ 154} The call-and-continue hearing was held via Webex, as scheduled, on January 11, 2022.

{¶ 155} By Entry issued January 19, 2022, the ALJ established a new procedural schedule.

{¶ 156} On March 25, 2022, Applicant and OFBF filed a joint motion to suspend the procedural schedule and a request for expedited treatment.

{¶ 157} By Entry issued March 25, 2022, the ALJ granted Applicant and OFBF's joint motion to suspend the procedural schedule, directing that the April 11, 2022 adjudicatory hearing be converted to a status conference.

{¶ 158} On April 11, 2022, the status conference was conducted, as scheduled, via Webex, during which the parties came to an agreement regarding a new hearing date.

{¶ 159} By Entry issued April 12, 2022, and consistent with the discussion between the parties during the status conference, the adjudicatory hearing was scheduled to reconvene on June 6, 2022, at the offices of the Public Utilities Commission of Ohio.

{¶ 160} By Entry issued June 1, 2022, the adjudicatory hearing was converted to a virtual hearing to be held via Webex.

{¶ 161} The adjudicatory hearing was held, as scheduled, on June 6, 2022. During the hearing, the ALJ granted OFBF's motion to intervene, as well as Applicant's May 24, 2022 motion for leave to file the direct testimony of Evan Nichols and May 23, 2022 motion for protective order.

{¶ 162} The adjudicatory hearing later reconvened and ended on June 30, 2022.

{¶ 163} Staff and Cepheus filed timely initial post-hearing briefs and reply briefs on August 4, 2022, and August 25, 2022, respectively.

{¶ 164} Staff and Cepheus filed reply briefs on August 25, 2022.

{¶ 165} Adequate data on the proposed Facility has been provided to make the applicable determinations required by R.C. Chapter 4906, and the record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

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

{¶ 167} 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).

{¶ 168} The record establishes that the Facility, subject to the conditions set forth in the Staff Report, 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).

{¶ 169} 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).

{¶ 170} The record establishes that the Facility, subject to the recommendations by Staff, 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).

{¶ 171} The record fails to establish that the Facility will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 172} 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).

{¶ 173} 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).

{¶ 174} The evidence supports a finding that the criteria in R.C. 4906.10(A) for the construction, operation, and maintenance of the Facility as proposed by Applicant are not satisfied.

{¶ 175} Based on the record, the Board finds that Cepheus' application for a certificate, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of an electric generation facility is denied, consistent with this Opinion and Order.

{¶ 176} Based on the record, the Board denies the application for the issuance of a Certificate of Environmental Compatibility to construct, operate, and maintain the proposed solar-powered electric generation facility in Defiance County, Ohio.

XI. ORDER

{¶ 177} It is, therefore,

{¶ 178} ORDERED, That Cepheus' application be denied as set forth in this Order.
It is, further,

{¶ 179} ORDERED, That a copy of this Order be served upon each party of record
and any other interested persons of record.

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

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

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

Drew Bergman, Designee for Anne Vogel, Director
Ohio Environmental Protection Agency

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

Gregory Slone
Public Member

MJA/mef