

THE OHIO POWER SITING BOARD

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

CASE NO. 21-164-EL-BGN

ORDER ON REHEARING

Entered in the Journal on April 20, 2023

I. SUMMARY

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

II. PROCEDURAL BACKGROUND

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

{¶ 3} Harvey Solar I, LLC (Harvey or the Company) is a person as defined in R.C. 4906.01.

{¶ 4} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board.

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

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

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

{¶ 7} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Board Chair must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete. By letter dated October 4, 2021, the Board notified Harvey that its application was compliant and provided sufficient information to permit Board Staff (Staff) to commence its review and investigation.

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

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

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

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

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

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

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

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

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

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

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

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

{¶ 17} R.C. 4906.12 provides that R.C. 4903.02 to 4903.16 apply to any proceeding or order of the Board in the same manner as if the Board were the Public Utilities Commission of Ohio (Commission). R.C. 4903.10 provides that any party to a proceeding before the Commission may apply for rehearing with respect to any matter determined in that proceeding within 30 days after entry of the order upon the journal of the Commission. The statute further directs that applications for rehearing be in writing and set forth specifically the ground or grounds on which the party seeking rehearing considers an order unreasonable or unlawful. Additionally, Ohio Adm.Code 4906-2-32 provides that any party may file an application for rehearing within 30 days after an order has been journalized by the Board in the manner, form, and circumstances set forth in R.C. 4903.10.

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

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

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

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

III. DISCUSSION

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

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

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

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

A. *Assignment of Error No. 1*

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

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

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

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

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

B. Assignment of Error No. 2

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

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

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

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

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

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

C. Assignment of Error No. 3

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

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

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

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

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

D. Assignment of Error No. 4

{¶ 36} In its fourth assignment of error, Save Hartford alleges that the Board acted unlawfully and unreasonably by issuing a certificate to Harvey without requiring an adequate analysis of the prospects of floods in the area as mandated by Ohio Adm.Code 4906-4-08(D)(4)(e), R.C. 4906.10(A)(2), and R.C. 4906.10(A)(3), and without requiring the mitigation of adverse consequences from floods as mandated by Ohio Adm.Code 4906-4-08(D)(4)(e) and R.C. 4096.10(A)(3). Save Hartford asserts that flooding is a major issue in

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

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

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

E. Assignment of Error No. 5

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

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

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

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

F. Assignment of Error No. 6

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

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

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

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

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

G. Assignment of Error No. 7

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

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

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

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

H. Assignment of Error No. 8

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

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

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

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

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

I. Assignment of Error No. 9

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

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

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

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

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

J. Assignment of Error No. 10

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

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

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

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

K. *Assignment of Error No. 11*

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

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

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

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

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

L. Assignment of Error No. 12

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

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

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

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

M. Board Conclusion

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

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

IV. ORDER

{¶ 64} It is, therefore,

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

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

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director
Ohio Department of Development

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

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

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

Sarah Huffman, Designee for Brian Baldrige, Director
Ohio Department of Agriculture

Gregory Slone
Public Member

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

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