

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of :
Harvey Solar I, LLC for a Certificate of : Case No. 21-164-EL-BGN
Environmental Compatibility and Public :
Need. :

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

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BACKGROUND AND PROCEDURAL HISTORY

On August 6, 2021, Harvey Solar I, LLC (“Harvey Solar” or “Applicant”) filed this application to construct and operate a commercial solar farm in Licking County, Ohio. Prior to filing the application, Harvey Solar engaged in certain public outreach activities, including filing a project descriptive pre-application letter on June 24, 2021 and holding public informational meetings on July 14, 2021, and July 15, 2021.

The application proposed to construct arrays of ground-mounted photovoltaic (PV) modules, commonly known as solar panels, in Hartford Township and Bennington Township in Licking County, Ohio. The project would also include associated support facilities, such as access roads, up to ten meteorological stations, as well as pyranometers, buried electrical collection lines, inverters, and a substation. The above-ground project

components would occupy approximately 2,630 acres and is projected to generate up to 350 megawatts (MW). The Staff completed its investigation and issued its Report of Investigation (Staff Report) on February 25, 2022. Staff Ex. 1.

On April 4, 2022, a Joint Stipulation and Recommendation was filed by a number of parties. Joint Ex. 1. The signatory parties, in addition to the Applicant, included Staff, the Ohio Farm Bureau Federation, the Village of Hartford, Licking County Soil and Water Conservation District, Licking County Engineer, Board of Trustees of Hartford Township, Board of Trustees of Bennington Township, and James and Carol Clever. Intervenor Save Hartford Township, LLC, including individual citizens Janeen Bladridge, Edward and Mary Bauman, Anthony Caito, John Johnson, Daniel Adam Lanthorn, Gary O'Neil, Jr., the Martin Family Trust, and the Richard J. Bernard and Julie A. Bernard Family Trust (collectively "Save Hartford"), also intervened and actively participated in the case, opposing the Project.

An adjudicatory hearing commenced on April 6, 2022 and concluded on April 8, 2022. Testimony was provided by eleven (11) Applicant witnesses, six (6) intervenor witnesses, and eleven (11) Staff witnesses as the Applicant, intervening parties (both supporting and opposing) and the Staff all received a full and fair opportunity to be heard on the merits.

The law requires the Board's Staff to investigate an application to assess likely impacts and to recommend conditions to the Board to mitigate or minimize impacts to the project environment. The law does not require a finding that the project be totally free of potential safety or other risks, or even minor annoyances to the public, as a precondition

to Board approval. The Staff has proposed comprehensive recommendations for the Board's consideration in order to address and reduce Project impacts to reasonably acceptable levels. A number of those conditions were expanded throughout the negotiations that resulted in the Joint Stipulation. Staff submits that, if implemented, these conditions, as modified by the Joint Stipulation, will allow this project to satisfy the requisite statutory criteria. Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

DISCUSSION

I. The Board should determine the Project, with conditions as recommended in the Staff Report as modified by the Joint Stipulation and Recommendation, satisfies the criteria of R.C. 4906.10.

The proposed facility has minimal environmental impacts. Once operational, it will produce electricity without polluting the air and water. This stands in stark contrast to the environmental issues posed by coal or natural gas fueled electric generating units. When operational, this facility promises a negligible environmental impact and, certainly, minimum adverse environmental impact as is required by Ohio law.

Nevertheless, Staff conducted a comprehensive review scrutinizing nearly two dozen areas including: socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered factors such as demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters and drainage systems, threatened and endangered species, vegetation, roads and bridges, public and private

water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 requirements in greater detail.

Staff also recommended conditions to reasonably minimize impacts and risks. Staff believes that its recommended conditions will sufficiently mitigate any such impacts and allow the Board to find overall minimal adverse environmental impact. Through negotiations, the parties have agreed to develop the conditions proposed in the Staff Report that further minimize environmental impact. The Staff Report provides the Board with a sound, objective, evidentiary basis for determining the existence of all R.C. 4906.10 criteria, and, the Staff submits, supports Board issuance of a certificate conditioned as the Joint Stipulation has recommended.

A. R.C. 4906.10(A)(1) – Basis of Need

Because the proposed facility is neither an electric transmission line nor a gas pipeline, R.C. 4906.10(A)(1) does not apply to this Project. Staff recommends that the Board find that this requirement is not applicable to this facility.

B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact

The Board must determine that nature of the probable environmental impact of the facility. Staff's evaluation, set forth in its Report of Investigation, Staff Ex. 1 at 11-28, is adopted by the Joint Stipulation.

The Staff Report found that three recreational areas would be within five miles of the Project area, with the closest (P.E. Grubb Lake) being approximately 1.51 miles

away. Staff determined that, based on review of the Applicant's viewshed analysis, significant adverse aesthetic impacts to recreational areas are not likely. Landscape and vegetative screening would be used to minimize visual impacts at sensitive sites throughout the project area, and the Applicant is required to consult with a landscape architect in development of the vegetative screening plan. The panels would be installed with anti-glare coating. Staff found that, subject to the Applicant developing and implementing a memorandum of understanding with the Ohio Historical Preservation Office, minimal adverse environmental impacts to cultural resources would be achieved.

Staff found the Applicant's economic analysis to be reasonable. The economic impacts, in terms of jobs, earnings, and output, both locally and to the State of Ohio, were all reasonably determined to be positive.

The Project is estimated to generate between \$2.45 million and \$3.15 million annually for Licking County taxing districts. This estimate is based on a proposed Payment in Lieu of Taxes (PILOT) plan in which the Applicant would pay between \$7,000/MW and \$9000/MW annually for a total of 350MW.

The Applicant conducted a glare analysis and found that no glare (i.e., no minutes of either green, yellow, or red type) from the project is predicted to vehicles using the roadways or nearby residences. Staff agrees with the study results. Staff notes that aesthetic impact mitigation measures that include vegetative plantings may also further reduce potential impacts as part of a landscape and lighting plan, which Staff has recommended for this project.

The Applicant has committed to developing a decommissioning plan to restore the project area, and will provide financial security to ensure that funds are available for decommissioning and land restoration.

The Project will not adversely impact public or private water supplies. There are no geological features that would restrict construction of the facility. No wetlands, ponds or lakes would be affected. The only identified threatened or endangered species that might be impacted are the Indiana and northern long-eared bat. Staff has recommended and the Joint Stipulation adopted seasonal tree cutting to ameliorate any impacts to roosting habitat.

Traffic would be affected, although almost exclusively during the construction phase. While that impact may be inconvenient, there is no evidence that it would be any greater than that caused by current farming operations, or any effect at all once construction was complete. The agreed-upon conditions require the Applicant to develop a transportation plan in conjunction with the county engineer.

Staff found that the operational noise impacts for the Project would be relatively minor and occur only during the day. Operational noise sources include inverters and tracking motors. The step-up transformer at the new substation may operate at day or night but the noise impact would also be relatively minor.

Condition 35 of the Stipulation and Recommendation addresses noise from inverters and transformers and provides that:

If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, the Applicant shall show

that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and will be submitted at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed on a sunny day between 10 a.m. and 2 p.m. in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level plus five dBA additional noise mitigation will be required. This condition is complied with if the test shows the operational noise level is equal or less than project area ambient Leq level plus five dBA. The Applicant shall file a report on the public docket that shows either 1) for the chosen inverter and substation transformer that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor or 2) results of the operational noise test showing that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor.

At the hearing, Staff witness Bellamy provided further clarity regarding this condition by stating that “[s]o in this case this condition should be corrected to say that the operational noise level is equal to or less than the representative ambient Leq of the location plus 5 dBA.” Tr. Vol. III at p. 435, lines 10-13.

In conclusion, Staff reported that it believed that the Applicant had determined the nature of the probable environmental impact and had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff’s recommended conditions as modified by the Joint

Stipulation when issuing any certificate. Staff reiterates that conclusion in light of the modifications to those conditions contained in the Joint Stipulation.

C. R.C. 4906.10(A)(3) – Minimum Adverse Impact

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact. Those conditions have been further modified by the Joint Stipulation, even further minimizing any potential impacts.

D. R.C. 4906.10(A)(4) – Electric Grid

The Project must be 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 facilities will serve the interests of electric system economy and reliability. Staff found that the Project, as conditioned, would satisfy that requirement. The record contains no evidence to the contrary, and Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(4).

E. R.C. 4906.10(A)(5) – Air, Water, Solid Waste and Aviation

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. The Applicant will control temporary and localized fugitive dust by using best management practices (BMP) such as using water to wet soil and/or dust suppressants on unpaved roads as needed to minimize dust. Nor will construction nor operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary permits for construction and operation sufficient to comply with the requirements of R.C. Chapter 6111. The record reveals no dispute on these points.

Staff also believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff believes this also is not disputed.

According to the Applicant, there is one public use airport within five miles of the project area and no heliports within that distance. Staff confirmed through the FAA that the closest public-use airport is the Chapman Memorial Field (6CM) airport which is approximately 1.6 miles north of the proposed solar facility project collector substation. The Applicant indicated that it has written to and reached out to the owner of the airport to inform them about the project. In accordance with R.C. 4906.10(A)(5), Staff contacted the ODOT Office of Aviation during the review of this application in order to coordinate review of potential impacts of the facility on local airports. As of the date of this filing, no such concerns have been identified.

Staff recommends that the Board find that the proposed facility complies, subject to the agreed-upon conditions as modified by the Joint Stipulation, with the requirements specified in R.C. 4906.10(A)(5).

F. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity

In evaluating R.C. 4906.10(A)(6), Staff considers both the impact that the Project may have on public safety, and the opportunities for public participation in the siting process.

The Applicant has committed to complying with applicable safety standards set by the Occupational Safety and Health Administration and National Fire Protection Association. It will use warning signs, fencing, and locked gates to restrict access to the Project, and will work with local emergency responders to provide training for response to emergencies related to a solar farm.

Harvey held a public information meeting and provided copies of its application to all relevant local officials. Many of those, including the Licking County Engineer, Hartford Township Board of Trustees, the Village of Hartford, and the Licking County Soil & Water Conservation District have intervened in this proceeding. With the exception of Hartford Township, all are signatories to the Stipulation.

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

G. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land

The Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction and operation of the proposed facility would disturb the existing soil and could lead to broken drainage tiles.

The Applicant has committed to take steps to address potential impacts to farmland, including repairing drainage tiles damaged during construction and restoring temporarily impacted land to its original use. Excavated topsoil will be used to establish vegetative cover for the project. Disturbed areas upon decommissioning will be restored for agricultural use

Condition 36 of the Stipulation and Recommendation provides that:

The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired or rerouted to at least original conditions or modern equivalent at the Applicant's expense to ensure proper drainage. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if the field tile systems of adjacent landowners remain unaffected by the nonrepair of the landowner's field tile system.

On decommissioning, the Applicant will return the land to original or similar conditions. This specifically includes repairing any drainage tiles and the de-compaction of the soil. Staff Ex. 1 at 41.

Staff 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, with the requirements specified in R.C. 4906.10(A)(7).

H. R.C. 4906.10(A)(8) – Water Conservation Practice

Other than for dust control as needed, construction of the proposed facility would not require the use of significant amounts of water. Nor would facility operations require a significant use of water, and nearly no water or wastewater discharge is expected. The Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

II. The Board should determine that the Joint Stipulation meets the three-part test for reasonableness.

Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of

a stipulation has been discussed in a number of prior Board proceedings. See, *e.g.*, *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361- EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

Staff respectfully submits that the Joint Stipulation here satisfies these reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Result of Serious Bargaining

The Joint Stipulation is the product of an open process in which all intervenors were given an opportunity to participate. All parties were represented by experienced and

competent counsel. While not all have participated in regulatory proceedings before the Board, all have extensive experience in regulatory matters and managing complex litigation. There were extensive negotiations¹ among the parties and the Joint Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests. Accordingly, the Joint Stipulation is a product of serious bargaining among capable, knowledgeable parties.

B. Benefits the Public Interest

Staff respectfully submits that the Project satisfies the public interest standard of R.C. 4906.10, along with the Board's criteria for evaluating stipulations, as more fully described below. In addition, Applicant witness Herling testified that the Project would create 1,371 direct and indirect jobs during construction, and 13 jobs during the operation of the facility. Harvey Ex. 20 at 12. He also testified that the Company anticipated making payments, in addition to wages and other services, in lieu of taxes in excess of \$3.1 million per annum. *Id.* Mr. Herling also testified that the Project would generate clean and quiet renewable electricity and provide on peak power. *Id.* at 6-7.

In addition, negotiations significantly enhanced the protections recommended by the conditions recommended by the Staff in its Report of Investigation. The Joint Stipulation improved provisions for security of the facility, minimization of visual impacts, increased cooperation and involvement by local officials, and training and

equipment for first responders. Accordingly, the Joint Stipulation benefits the public interest.

C. Does not violate any important regulatory principle or practice

Applicant witness Herling testified that the Project would not violate any important regulatory principle or practice. Harvey Ex. 20A at 6. Staff submits that there is no evidence of record to the contrary, and supports Mr. Herling's position.

CONCLUSION

Based upon the foregoing, the Staff respectfully requests that the Board adopt the Joint Stipulation and Recommendation. Staff further specifically requests that the Board condition any certificate issued in this case by adopting the conditions set forth in that Joint Stipulation and Recommendation.

Respectfully submitted,

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**On behalf of the Staff of
The Ohio Power Siting Board**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 31st day of May, 2022.

/s/ Thomas G. Lindgren

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Summary: Brief Post Hearing Brief electronically filed by Mrs. Tonnetta Y. Scott on
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