BEFORE
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 to Construct a Solar-Powered Electric Generation Facility in Licking County, Ohio.	)))))	Case No. 21-164-EL-BGN

HARVEY SOLAR I, LLC'S
MEMORANDUM CONTRA
APPLICATION FOR REHEARING
OF SAVE HARTFORD TWP., LLC, JANEEN BALDRIDGE,
EDWARD AND MARY BAUMAN, JULIE AND RICHARD BERNARD,
ANTHONY CAITO, JOHN JOHNSON, DANIEL ADAM LANTHORN,
NANCY AND PAUL MARTIN, AND GARD O'NEIL, JR.

/s/ *Christine M.T. Pirik*
Christine M.T. Pirik (0029759)
Matthew C. McDonnell (0090164)
Jonathan R. Secrest (0075445)
David A. Lockshaw, Jr. (0082403)
Dickinson Wright PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215
(614) 591-5461
cpirik@dickinsonwright.com
mmcdonnell@dickinsonwright.com
jsecrest@dickinsonwright.com
dlockshaw@dickinsonwright.com

Attorneys for Harvey Solar I, LLC

November 30, 2022

Table of Contents

I. INTRODUCTION

Pursuant to Ohio Administrative Code ("O.A.C.") 4906-2-32, Harvey Solar I, LLC ("Harvey" or "Applicant") submits this memorandum contra to the November 18, 2022 Application for Rehearing filed by intervenor Save Hartford Township, LLC., Janeen Baldridge, Edward and Mary Bauman, Julie and Richard Bernard, Anthony Caito, John Johnson, Daniel Adam Lanthorn, Nancy and Paul Martin, and Gary O'Neil, Jr. (jointly referred to herein as "Save Hartford").

On October 20, 2022, the Ohio Power Siting Board ("Board") issued its Opinion, Order, and Certificate ("Order") in the above-captioned matter adopting the Joint Stipulation and Recommendation ("Stipulation") filed by Harvey, the Board's Staff ("Staff"), the Ohio Farm Bureau Federation ("OFBF"), James and Carol Clever (the "Clevers"), the Village of Hartford,[1] the Licking County Engineer ("County Engineer"), the Licking County Soil and Water Conservation District ("Soil and Water District"), and the Board of Township Trustees of Bennington Township ("Bennington Township Trustees") (jointly referred to herein as "Signatory Parties"). The Order authorizes Harvey to construct a solar-powered electric generation facility on private land in Hartford and Bennington Townships, Licking County, Ohio ("Project") with a generating capacity of up to 350 megawatts ("MW") alternative current consistent with the Stipulation and the Order ("Certificate"). On November 18, 2022, Save Hartford filed an Application for Rehearing contending that the Board acted unreasonably and unlawfully by failing to address a litany of issues in determining that the Applicant's construction, operation, and decommissioning of the proposed generation Project would meet the requisite statutory criteria under Ohio Revised Code ("R.C.") 4906.10.

Save Hartford claims the Board committed 12 separate errors of fact and law in reaching its decision to issue a certificate for construction of the Project. With a single exception, each of these issues has something in common: it was thoroughly and appropriately addressed in the Board's Order, based on a detailed evidentiary record. In fact, Save Hartford's arguments on rehearing are merely a reiteration of the same arguments it made in its Initial Brief filed on May

[1] The Village of Hartford took no position on whether a certificate should be issued for the facility, but requested the inclusion of the conditions in the Stipulation in any certificate that is issued by the Board. The Village of Hartford joined only in Parts I and II of the Stipulation and was not considered to be a signatory with respect to Part III.

31, 2022 ("Save Hartford's Initial Brief").[2] Save Hartford simply seeks to rehash its failed arguments on each of these fronts on rehearing.

A review of Save Hartford's Application for Rehearing reveals that Save Hartford completely ignored the Applicant's factual responses set forth in Harvey's Reply Brief filed on June 15, 2022 ("Harvey's Reply Brief"). Had Save Hartford bothered to properly review the actual facts of the case, Harvey's Reply Brief, or, for that matter, even the Board's Order, Save Hartford would have known that the assertions set forth in the Application for Rehearing are unfounded and have been addressed. For example, Save Hartford continues throughout its Application for Rehearing to contend that the Board approved the proposed 25-foot minimum setback from the equipment to the property lines of nonparticipating parcels[3] – when the Order clearly amended the Stipulation and increased the setback to 50 feet.[4] In fact, Save Hartford merely just repeated the arguments in Save Hartford's Initial Brief and did not even attempt in the Application for Rehearing to rebut the facts in Harvey's Reply Brief, likely because there is no record evidence to support its claims. Thus, to the extent the Applicant's responses below sound familiar, that is because it has no choice but to restate the facts in Harvey's Reply Brief in the hopes that Save Hartford will take note of the true facts of the case and the Board's ultimate findings and conclusions. Therefore, Harvey respectfully requests that the Board deny Save Hartford's Application for Rehearing on the same robust grounds that justified granting a Certificate for the Project in the first place.

II. ARGUMENTS

A. The Order provides sufficient measures in compliance with the standards for certification under R.C. 4906.10(A)(2), (3), (5), and (6), including determining the probable environmental impact of the facility, ensuring minimum adverse environmental impact considering the state of available technology and the nature and economics of various alternative, and that the facility serves the public interest.

As in Save Hartford's Initial Brief, Save Hartford focuses its allegations in the Application for Rehearing on the criteria set forth in R.C. 4906.10(A)(2), (3), and (6). In its Application for

---

[2] The only exception to Save Hartford's almost verbatim reiteration of its Initial Brief is the argument regarding electromagnetic fields ("EMFs"), which is inappropriately brought up for the first time as Save Hartford's Assignment of Error No. 11.

[3] Rehearing App. at 10, 20, 21.

[4] Order at 115 ¶ 312.

Rehearing, Save Hartford, while not adding to its arguments in any factual way, also throws in R.C. 4906.10(A)(5). A review of the 120-plus page Order reflects that the Board thoroughly reviewed the record evidence, the Stipulation, as well as the assertions by Save Hartford in its Initial Brief when the Board concluded, that:

1. The probable impacts, including the community and ecological impacts, have been properly evaluated and determined in accordance with R.C. 4906.10(A)(2);[5]

2. The facility will represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations in accordance with R.C. 4906.10(A)(3);[6]

3. The facility will comply with the regulations for pollution control, solid and hazardous wastes, and air navigation in accordance with R.C. 4906.10(A)(5);[7] and

4. The facility will serve the public interest, convenience, and necessity in accordance with R.C. 4906.10(A)(6).[8]

Throughout its Application for Rehearing, Save Hartford alleges Harvey did not provide sufficient information required by the Board's rules to enable the Board to determine the probable environmental impact of the facility. As discussed in detail in Harvey's Reply Brief, and further set forth below, this allegation has no factual basis or support in the record.

Regardless of the Board's well-founded conclusions, Save Hartford continues to argue that "minimum adverse environmental impact" under R.C. 4906.10(A)(3) has not been met and the Board is prohibited from issuing a certificate unless it finds that the facility poses the least "quantity assignable, admissible, or possible" adverse environmental impact based on a dictionary definition of "minimum."[9] However, the Board correctly noted in its Order that "[t]aken to its extreme, the only Project that could satisfy Save Hartford's restrictive interpretation would be one that is not built, as the least quantity of adverse environmental impact possible would be zero."[10]

---

5 *Id.* at 68 ¶ 196, 80 ¶ 223.
6 *Id.* at 95 ¶ 257.
7 *Id.* at 103 ¶ 279, 103 ¶ 282.
8 *Id.* at 109 ¶ 295.
9 Rehearing App. at 4.
10 Order at 95 ¶ 257.

Thus, the Board justly concluded that Save Hartford's interpretation of the language adopted by the General Assembly would be illogical.[11]

Save Hartford's dictionary definition of the statute has no support under case law or Board precedent. As the Applicant explained in response to the identical argument from Save Hartford in its Initial Brief, the Ohio General Assembly does not define the term "minimum" or "minimum adverse environmental impact" in the context of R.C. 4906.10(A)(3). Contrary to Save Hartford's extreme theory, Ohio courts have made it abundantly clear that minimum is not synonymous with no impact – and minimum does not require that projects result in zero impact as Save Hartford suggests. Cases addressing the jurisdiction and authority of the Board further demonstrate that R.C. 4906.10(A)(3) authorizes the Board to grant certification as long as a project does not have greater than a minimum adverse environmental impact, not that that applicants must demonstrate no impact.[12]

The Ohio General Assembly enacted R.C. 4906.10 decades ago, during a time when coal was the primary source of energy for electric generation; however, it recognized that new and innovative technology would be forthcoming and reflected that foresight in the statute by directing the Board to consider the "state of available technology and the nature and economics of various alternative, and other pertinent considerations" when considering what constitutes minimum adverse environmental impacts from a facility. Although Save Hartford asserts in its Application for Rehearing that Save Hartford took the General Assembly's language regarding the future of generation facilities into consideration in expounding its theory, the plain reading of Save Hartford's arguments reveal that it did not.

As acknowledged by the Board in its Order, the record demonstrates that Harvey has made a number of commitments that will minimize the adverse environmental impact of the facility, including:

> minimizing crossings of waterways; avoiding impacts to forested areas; increasing beneficial vegetation and pollinator habitat within the Project area; committing to the installation of wildlife-friendly fencing; adding over 50 acres of new trees, shrubs, and other vegetation on the perimeter of the Project; minimizing the creation of impermeable surfaces; and the construction and operation of electricity generation technology that does

---

[11] *Id.*

[12] *Ohio Edison Co. v. Power Siting Commission*, 56 Ohio St.2d 212, 383 N.E.2d 588 (1978); *In re Application of Middletown Coke Co.*, 127 Ohio St.3d 348, 2010-Ohio-5725, 939 N.E.2d 1210, ¶ 26; *Culp v. Polytechnic Institute of New York*, 7 Ohio App.3d 352, 355, 455 N.E.2d 698, 701 (10th Dist.1982).

not produce harmful emissions or introduce harmful chemicals to the environment and can exist in harmony with area flora and fauna.[13]

Save Hartford's rehashed arguments throughout its Application for Rehearing about the meaning of R.C. 4906.10(A)(3) and the term "minimum" are erroneous and self-serving. Save Hartford's argument that minimum means zero or no impact is neither reasonable nor legally sustainable in light of the full context of R.C. 4906.10(A)(3) and all of the information the statute requires the Board to consider in reaching its decision. What is evident in the record of this case is that the manifest weight of the evidence supports the Board's Order, which approved the Stipulation, and issued the Certificate to Harvey.

The Applicant submits the arguments set forth in Section II.A. herein, and applies them equally to the arguments espoused below in Section II.C in response to Save Hartford's erroneous assignments of error 1 through 12.

B. The Board correctly determined that Harvey complied with all requirements in the Board's O.A.C. rules.

Save Hartford makes a number of claims throughout its Application for Rehearing that Harvey has not complied with various O.A.C. rules developed by the Board.[14] These allegations are without merit. Save Hartford ignores the thousands of pages of documentation responding to each and every subject posed by the Board's rules and Staff's data requests.[15] Save Hartford also disregards the Staff's expertise and its thorough and exhaustive investigation of all of the information provided in the Staff Report of Investigation ("Staff Report").[16] The requirements contested by Save Hartford are set forth in O.A.C. and not the statute. The rules illuminate the information the Board seeks to make its determinations under R.C. 4906.10(A), but the specific rules Save Hartford claims were not satisfied are not as proscriptive as Save Hartford asserts and cannot be viewed out of context of the entire rule and its purpose for the Board. The Board in making its decision in this case applied the proper meaning to the rules to ensure that Harvey provided all of the information necessary for the Board to make its decision and issue the

[13] Order at 95-96 ¶ 258.
[14] Rehearing App. at 5-8.
[15] App. Exs. 1-14.
[16] Staff Ex. 1, Staff Report (Feb. 25, 2022).

Certificate. There is no doubt that, as a package, the Application, responses to data requests, and the expert witness testimony provide all of the requisite information supporting the Board's Order.

Ignoring arguments to the contrary in Harvey's Reply Brief, Save Hartford insists on continuing to assert that case law supports its claim that the Board has not followed its own rules and, thus, should not have issued a Certificate to Harvey; however, as thoroughly explained in Harvey's Reply Brief, the case law cited by Save Hartford is inapplicable here.[17] The cases cited by Save Hartford address rights of employees or regulated entities that sought enforcement actions against administrative agencies for alleged violations of administrative agency rules and due process. These cases simply are not relevant to an administrative agency's determination of whether to grant a certificate to an applicant.[18]

The provisions in O.A.C. 4906-4 ensure that the Board and its Staff have the information needed to evaluate and determine whether a certificate should be issued to an applicant requesting to construct and operate a generation facility in Ohio. Save Hartford's myopic interpretation of the purpose of the Board's rules ignores that the Board promulgated the rules to fulfill its duty to evaluate an application for a certificate and determine whether the record, as a package, satisfies all requirements in R.C. 4906.10(A). As acknowledged by the Board in its Order, the information provided in the record is not interpreted by the Board in a vacuum on a piecemeal basis.[19] Rather, the Board evaluated all of the information and commitments in the record when issuing its Order approving the Stipulation.

---

17 Rehearing App. at 5.

18 *Parfitt v. Columbus Correctional Facility*, 62 Ohio St.2d 434, 406 N.E.2d 528 (1980) (Where the Supreme Court of Ohio ("Supreme Court") reversed a Franklin County Court of Appeals decision, holding that the termination of corrections officers would not be invalidated due to failure of an agency to follow its own administrative rules. The Supreme Court explained that "in the absence of prejudice, a public employee in challenging his removal from employment may not assert the employer-agency's procedural rules, unless that employee is a member of the class which the rule was intended to benefit.); *State ex rel. Cuyahoga Cty. Hosp. v. Ohio Bureau of Workers' Comp.*, 27 Ohio St.3d 25, 500 N.E.2d 1370 (1986) (Where the Supreme Court denied a writ of mandamus and motion for summary judgment, holding that a county hospital, which had treated an injured employee in a nonemergency situation, but which failed to show good cause for not obtaining prior approval for payment of bills from the Bureau of Workers' Compensation ("BWC"), was not entitled to payment of bills from BWC under the BWC's administrative rules.); *Clark v. Ohio Dep't of Mental Retardation and Developmental Disabilities*, 55 Ohio App.3d 40 (6th Dist. 1988) (Where the Sixth District Court of Appeals affirmed the trial court's holding that a state department's revocation of a license to operate a residential care facility was proper due to mismanagement as established by continuous failure of an operator to meet minimal standards set by the department's rules and where correction of the situation was not possible; thus, no warning letter was required to be sent prior to revocation of the license.). None of the three cases cited by Save Hartford are relevant for purposes of the Board's review of this matter.

19 Order at 97 ¶ 259.

Understanding that the Board has the responsibility under R.C. 4906.10(A) to make determinations, including the probable environmental impacts and that the facility will represent the minimum environmental impact considering the state of available technology, the nature and economics of various alternatives, and other pertinent considerations, Harvey is obligated to comply with all of the commitments in the Application as enhanced by the Stipulation. Harvey provided and filed in the record in this case all of the information that is required under both the statute and the rules, and the information is supported by extensive expert witness testimony. In reaching its decision, the Board fully considered all of this information.

Save Hartford does not like the results of the studies and surveys authenticated in the record or the fact that knowledgeable parties, which include representatives and members of the local community, entered into a Stipulation supporting the Project, but that opinion does not constitute evidence in the record. Consistent with the requirements in R.C. 4906.10(A), the manifest weight of the evidence, as detailed in the Harvey's Initial Brief filed on May 31, 2022 ("Harvey's Initial Brief"), and supported in Harvey's Reply Brief, as well as the briefs filed by the other Stipulating Parties, supports the Board's approval of the Stipulation and issuance of the Certificate.

Moreover, contrary to Save Hartford's incorrect statement,[20] the Order comprehensively sets forth the findings of fact in the record in accordance with R.C. 4903.09 (through application of R.C. 4906.12), and lawfully and reasonably approves the Stipulation. The Board provides its determinations and conclusions based on the facts on the record in an objective and straightforward manner. There is no doubt upon reading the 120-plus page of the Order, that the Board took great pains to meticulously recount the facts in the record and consider all arguments made by the parties on brief. Thus, it is disingenuous for Save Hartford to completely ignore the thoroughness of the Order and irrationally allege that the Board in any way abused its discretion by issuing the Certificate without record support and without setting forth the findings of fact. Save Hartford's argument in this vein is unfounded.

The Applicant submits the arguments set forth in Section II.B. herein, and applies them equally to the arguments espoused below in Section II.C in response to Save Hartford's assignments of error 1 through 12.

[20] Rehearing App. at 8.

C. The assignments of error alleged by Save Hartford reiterate the arguments set forth in Save Hartford's Initial Brief, have been thoroughly considered by the Board in its Order, and are without merit.

1. The Board properly determined that the approved setbacks comply with R.C. 4906.10(A)(3) and provide the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives.

The arguments Save Hartford makes in its Application for Rehearing that the Board should not have accepted the setbacks proposed by Harvey because they offer no meaningful isolation from the Project are the identical arguments Save Hartford made in its Initial Brief. [21] These arguments were thoroughly considered by the Board in its Order, are groundless, and should be rejected.

Save Hartford continues to argue that Harvey has the burden to prove compliance with R.C. 4906.10(A)(3) by demonstrating that the Project represents the minimum – by Save Hartford's standard "the least quantity assignable, admissible, or possible" – adverse environmental impact.[22] However, the Board agreed that Save Hartford's assertion is illogical and, [t]aken to its extreme, the only Project that could satisfy Save Hartford's restrictive interpretation would be one that is not built, as the least quantity of adverse environmental impact possible would be zero."[23]

Initially, it is important to note that, contrary to Save Hartford's ill-conceived reading of the regulations, there is no statute or rule that mandates a given setback. Rather, the Board may determine appropriate setbacks for a given project based on the totality of the record and the commitments made by the applicant. Thus, contrary to Save Hartford's assumption there legally can be no error regarding the Board's conclusions on this issue – because there is no actual requirement. Save Hartford can agree to disagree with the Board's expert determinations, but disagreement is not tantamount to an error by the Board.

Save Hartford continues to ignore the record evidence, the Stipulation, and the Order that require Harvey to not only ensure that equipment is setback at least 300 feet from nonparticipating residence, 150 feet from roadways, and 50 feet from nonparticipating property lines, but to

---

[21] *Id.*. at 9.
[22] *Id.*. at 4, 11.
[23] *Id.* at 11.

implement a robust landscape plan that will help to minimize and diffuse views of solar panels.[24] As noted in the Order, Harvey has made a number of commitments that will minimize the adverse environmental impact, among them:

- minimizing crossings of waterways;
- avoiding impacts to forested areas;
- increasing beneficial vegetation and pollinator habitat;
- using wildlife-friendly fencing;
- adding over 50 acres of new trees, shrubs, and other vegetation on the perimeter;
- minimizing the creation of impermeable surfaces;
- using electricity generation technology that does not produce harmful emissions or introduce harmful chemicals to the environment and can exist in harmony with area flora and fauna;
- using seasonal tree cutting to avoid impacts to rare bat species;
- monitoring impacts to sensitive ecological areas such as wetlands and streams, and locations of threatened and endangered species;
- having an environmental specialist on site during construction, with the authority to halt construction is necessary;
- implementing a vegetation management plan requiring a minimum of 70% of the Project Area in beneficial vegetation;
- taking steps to prevent the propagation of noxious weeds; and
- limiting in-water work in perennial streams.[25]

As the Board determined, these commitments and other similar terms and commitments in the Stipulation support the conclusion that the facility results in the "minimum adverse environmental impact, when considering the Project in terms of the state of available technology and the nature and economics of various alternative, as well as other pertinent considerations."[26]

---

[24] App. Ex. 1 at 78, Ex. X; App. Ex. 28 at 3-5; Order at 115 ¶ 312.
[25] *Id.* 95-96 ¶ 258; App. Ex. 20 at 14; Jt. Ex. 1 at 6-7, Conditions 23, 24, 26.
[26] Order at 96 ¶ 258.

Remarkably, the Application for Rehearing ignores the fact that the Board doubled the very setback that Save Hartford complains is the "most egregious."[27] The Applicant proposed a minimum setback of 25 feet from the property lines of neighbors not participating in the Project.[28] Apparently concluding that this was too narrow, the Board in its Order established the neighbor property line setback for the Project at 50 feet.[29] The Applicant accepts the Board's requirement of an increased minimum setback from the Project's equipment of 50 feet from nonparticipating parcel boundaries and commits to comply with this setback. The Board should not give credence to arguments on rehearing that are recycled wholesale from post-hearing briefs and do not even reflect a simple reading of the Board's Order.

Although Save Hartford continues to complain about the minimum setbacks approved by the Board in isolation, the Board fully considered this argument in its Order and concluded based on all the information taken in context that:

> when analyzed in conjunction with other mitigation measures and as further discussed in Paragraph 313 *[sic]* below, they will result in the minimum adverse impact on the community. The Board must conclude that adverse impacts are minimal within the context of the state of available technology, the nature and economics of the various alternatives, and other pertinent consideration, not in a vacuum as to one feature.[30]

Further, in order to address concerns raised by the public, the Board concluded that the facility design must incorporate minimum setbacks of: at least 50 feet from nonparticipating parcel boundaries; at least 300 feet from nonparticipating residences existing at the time of the application date; and at least 150 feet from the edge of the pavement for any road within the Project Area.[31] As the Board judiciously concluded, as a package, the setbacks coupled with all of the other pertinent considerations and commitments in the Application (*e.g.*, Landscape Plan, Vegetation Management Plan, wildlife-friendly fencing, stormwater control practices), as further enhanced by the Stipulation, ensure that the facility represents the minimum adverse environmental impact. The Board rightfully agreed that, combined with the extensive existing vegetation, as well as the landscaping plan required under Condition 18 of the Stipulation, the minimum setbacks will work

---

27 Rehearing App. at 10.
28 *Id.* at 9.
29 Order at 115 ¶ 312.
30 *Id.* 96 ¶ 259.
31 *Id.* 115 ¶ 312.

in concert with the over 50 acres of the new perimeter landscaping.[32] The Board correctly acknowledged that the landscape plan is an integral part of the Project and the plan together with the numerous commitments to setbacks and other safeguards required in the Stipulation will ensure the facility will result in the minimum adverse environmental impacts in accordance with R.C. 4906.10(A)(3).

Throughout the Application for Rehearing, Save Hartford merely reiterates the arguments from its Initial Brief, often verbatim, and ignores the totality of the commitments agreed to by Harvey and, instead, attempts to isolate specific topics for complaint. Contrary to Save Hartford's interpretation, R.C. 4906.10(A)(3) requires the Board to consider the Application and "the facility" as a whole, along with all pertinent considerations, including all the commitments made by Harvey.

Hence, Save Hartford's position on rehearing regarding the setbacks for the Project is without merit and should be denied. The record reflects that the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(3).

2. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2) and O.A.C. 4906-4-08(D)(4)(a) and (e) regarding visual impacts of the facility when issuing the Certificate to Harvey.

Save Hartford repeats its earlier allegation that the Applicant failed to provide accurate information about the Project's views to its closest neighbors and simulations that accurately portray the views of the closest neighbors in violation of O.A.C. 4906-4-08(D)(4)(a) and (e), respectively, in arguing that the Board should not have issued a Certificate to Harvey. Specifically, according to Save Hartford, Harvey failed to provide information for the Board to consider in accordance with O.A.C. 4906-4-08(D)(4)(a) and (e) describing the visibility of the Project, including the viewshed analysis and area of visual effect, as well as photographic simulations of the facility from the public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources.[33] The record, however, reflects that these are exactly the types of studies and surveys the Applicant employed and provided in its Application in support of the Project, which the Board thoroughly considered in issuing its Order.

---

[32] *Id.* 97 ¶ 259; App. Ex. 1, Ex. X; Jt. Ex. 1 at 5-6, Condition 18.
[33] Rehearing App. at 11-12

The Board properly concluded that the Visual Resources Assessment ("VRA") submitted on the record and supported by experts:

> sufficiently demonstrated that the Facility will not be visible in any meaningful fashion at locations that are two miles or more away from the Project area. Even within a two-mile radius, the VRA indicates that the Facility will not be visible to the vast majority of areas because of the Facility's low profile and surrounding vegetation.[34]

Further, as acknowledged by the Board, the VRA revealed that the solar panels will be screened from view by intervening landforms, vegetation, and structures in approximately 89.7% of the 5-mile radius area studied.[35] Save Hartford conveniently ignores that fact that panel visibility substantially diminishes beyond 0.5 miles and that the VRA reveals that, of the 157 identified visually sensitive resources ("VSRs") within the area studied, only 11 (7%) have potential visibility of the Project. The combination of relatively low panel height, along with existing hedgerows, gently rolling topographic relief, the atmospheric effects of distance, and the landscape screening committed to by Harvey, will significantly limit visibility of the Project from the majority of the area.[36]

Save Hartford continues to allege the Applicant and Staff misdirected and diverted the Board's attention from the visual impacts on the properties of the Save Hartford members, arguing that none of the simulations conducted for the viewshed analysis were taken from any of the members' yards or residences and stating that the Board played along with this misdirection.[37] The allegation is unfounded, and there is no subterfuge on the part of the Applicant or Staff here. As shown in the VRA, the record thoroughly and accurately set forth the probable impact of the facility related to the viewshed on the record. As the Board justly determined, although the simulations were not taken from the backyards or residences of Save Hartford members (which would have constituted trespassing), the simulations were taken from "public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area" as required by O.A.C. 4906-4-08(D)(4)(e).[38] Save Hartford offers pictures of views from certain of its members' homes that were not used for simulations, but ignores that the simulations used pictures representative of the views of a variety of locations in the area. Save Hartford also

---

[34] Order at 69 ¶ 312; App. Ex. 1 at 76, Ex. W.
[35] Order at 69 ¶ 198; App. Ex. 1 at 76, Ex. W.
[36] *Id.*; App. Ex. 26 at 14-16.
[37] Rehearing App. at 13.
[38] Order at 69 ¶ 198; App. Ex. 1 at 77, Ex. W.

ignores that Harvey's program of Project Participation Agreements ("PPAs") for the benefit of nearby property owners was entered into by 62 households.[39] Moreover, Save Hartford continues to discount that in many cases the Preliminary-Maximum Site Plan shows the closest visible component of the Project will be more than 1,000 feet away.[40]

Actually, it is Save Hartford that attempts to mislead the Board by initially focusing on the four 80-foot high riser poles,[41] rather than the much lower solar panels that the vast majority of the day will for be only 10 to 12 feet high. The facts reveal, however, that the riser poles will be located immediately adjacent to two large, existing transmission lines and an existing electric substation; therefore, any additional visual impact from these poles is minuscule. Moreover, the poles about which Save Hartford complains are long-standing and ubiquitous features of the modern landscape necessary to deliver power to Ohio homes and businesses.

Further, Save Hartford continues to criticize that the VRA included studies from farther away from the Project Area than the location of their members that live closer to the Project Area.[42] However, Save Hartford ignores the fact that the Board's rules require applicants to provide visual impact assessments out to those farther locations. So, on the one hand, Save Hartford complains Harvey did not follow the rules and the Board should not have issued the Certificate, but on the other hand, as with the visual assessment, when Harvey clearly does follow the rules Save Hartford still complains. Thus, Save Hartford's accusations on this issue cynically contradicts its approach elsewhere in the Application for Rehearing.

Contrary to Save Hartford's allegations, the Board correctly concluded that Harvey submitted record evidence and expert witness verification that all of the information required under O.A.C. 4906-4-08(D)(4)(a) and (e) has been submitted to Board for its review and consideration.[43] Save Hartford may not like the view, but it is clear that the visibility of the facility was described as required. This information, along with all of the commitments in the Application, as enhanced by the Stipulation, support the Board's determination of the probable visual impact of the facility in accordance with R.C. 4906.10(A)(2) and ultimate approval of the Stipulation.

Thus, Save Hartford's position on rehearing regarding the potential visual impacts of the Project is without merit and should be denied. The information on the record reflects that Harvey

---

39 *Id*. at 20-21, 30, Ex. C; App. Ex. 20 at 7, 9.
40 App. Ex. 1, Ex. L; App. Ex. 25 at 6.
41 Rehearing App. at 11.
42 *Id*. at 12.
43 *See e.g*., App. Ex. 1 at Ex. W and App. Ex. 26.

provided the information as required by O.A.C. 4906-4-08(D)(4)(a) and (e), and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2).

3. The Board lawfully and reasonable determined that the record contains the information required by O.A.C. 4906-4-08(D)(4)(f) and that the Stipulation and the record provides the proper mitigation of any visual impacts and represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(3).

Continuing to ignore facts to the contrary, Save Hartford reiterates its prior argument that the Board cannot determine whether the facility's mitigation measures for visual impact represent the minimum adverse environmental impact under R.C. 4906.10(A)(3) because some of the plans provided in the record are labeled "preliminary" plans and are subject to change.[44] However, Harvey's Reply Brief pointed out and the Board lawfully and properly found that, while the preliminary plans will be updated prior to construction, they can only be changed by increased and even more robust commitments – Harvey is not be permitted to decrease any of the commitments already made.[45]

Save Hartford again advances its theory that "minimum" in the statute means "the least possible" impact. According to Save Hartford, "[i]t is not enough for the certificate to reduce the visual impacts by just a little." Save Hartford wants all "gaps"[46] covered, meaning mitigation is only sufficient if the visual impact is zero and the facility cannot be seen by anyone, anytime, in any direction. As documented previously, that is not what the statute or legal precedent contemplated or require, nor does it comport with common sense.

As the Board acknowledges, the Stipulating Parties presented a strong and all-inclusive Stipulation that is supported by the record in this proceeding. Of particular importance is Condition 1 in the Stipulation, which requires that the Applicant:

> … install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the *Staff Report of Investigation*.[47]

---

44 Rehearing App. at 22.
45 Order at 97 ¶ 261; Jt. Ex. 1 at 3, Condition 1.
46 Rehearing App. at 28.
47 Jt. Ex. 1 at 3.

This condition in the Stipulation includes extensive and significant commitments and conditions by which Harvey must construct, operate and decommission the facility. Throughout the Application, the Applicant makes substantial commitments regarding all facets of the facility. These commitments are set in stone and cannot be decreased or reduced. In other words, the mitigation measures set forth in each "preliminary plan," and throughout the Application and Stipulation conditions represent the minimum that the Applicant must present and commit to in its final plans that will be provided prior to construction.[48] Thus, the mitigation measures in the final landscape plan can be more, but they cannot be less, than those presented in the Preliminary Landscape Plan. When issuing the Certificate to Harvey, the Board acknowledged that "the Stipulation obligates Applicant to construct the Facility 'as described in the application' and failing to honor commitments or studies included with the application will be a violation of the terms of the Stipulation."[49] Again, Save Hartford seems not to have read the Order prior to submitting its Application for Rehearing.

Save Hartford again complains that Harvey's landscape plan will not fully screen the solar equipment from public view and points to its witness's testimony for suggestions on how the plan should be implemented in order to ensure the Project is 100% screened.[50] However, nowhere in the statute or the rules are generation facilities required to provide 100% screening from all public views. The fact that Save Hartford suggests that there is such a requirement and its witness seems to support such a requirement brings to question the credibility and objectivity of the information provided by Save Hartford especially given that the witness is a staunch opponent of the Project.

Harvey has complied with the regulatory requirements in the O.A.C. and the record contains all of the information necessary for the Board to make its determination on the mitigation measures to be employed by Harvey. The Preliminary Landscape Plan submitted in the record sets forth a plan that ensures the visual screening for the facility represents minimum adverse environmental impact, prior to construction. Harvey has committed to: implement a robust landscape plan that will mitigate visual impacts associated with the facility;[51] complement the existing hedgerows, augments fragmentary hedgerows, and strategically plants new hedgerows

---

48 App. Ex. 1 at 78, Ex. X.
49 Order at 97 ¶ 261.
50 Rehearing App. at 25-26.
51 App. Ex. 1, Ex. X; App. Ex. 28 at 3; Jt. Ex. 1 at 5-6, Condition 18.

that help to diffuse views of the solar panels;[52] implement a tiered set of landscape treatments just outside of the fence that are tailored to specific locations and viewers;[53] and prepare a final landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight of the Project Area.[54] More specifically, the plan will:

- Include measures such as fencing, vegetative screening, or good neighbor agreements;

- Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. *In any event, the Applicant has committed to implementation of the Preliminary Landscape Plan as a minimum*;

- Incorporate planting design features or measures to address aesthetic impacts to the traveling public, nearby communities, and recreationalists;

- Provide for the maintenance of vegetative screening for the life of the facility and substitution or replacement of any failed plantings so that, after 5 years, at least 90% of the vegetation has survived;

- Provide for the maintenance of all fencing along the perimeter of the Project in good repair for the term of the Project and prompt repair any significant damage as needed; and

- Provide that all lights for the Project be motion-activated and designed to narrowly focus light inward toward the facility, such as being downward-facing and/or fitted with side shields.[55]

Moreover, the Stipulation in this matter enhances Harvey's commitments and requires, among other things, that: the final landscape plan be at least as rigorous as the Preliminary Landscape Plan; Harvey maintain the vegetative screening for the life of the Project; and that Harvey will

[52] App. Ex. 1, Ex. X; App. Ex. 28 at 3.
[53] App. Ex. 1 at 78.
[54] Jt. Ex. 1 at 5-6, Condition 18.
[55] *Id.* at 6.

substitute or replace any failed plantings so that, after 5 years, at least 90% of the vegetation has survived.[56]

Harvey has worked and continues to work closely with many neighbors of the Project to ensure that the Project and the final landscaping plan addresses all reasonable concerns. As reflected in the record, Harvey entered into PPAs with 62 households near the Project and those PPAs address and resolve any issues for those landowners with regard to the perimeter fencing and vegetative landscaping for the Project.[57] Moreover, the Stipulation contemplates that Harvey will continue to pursue additional good neighbor agreements with landowners in the area by providing adjacent, non-participating property owners the opportunity to work with Harvey to address their specific concerns outside of the final landscape plan. Importantly, Harvey is committed to prepare a final plan in consultation with a landscape architect[58] and that plan will take into consideration any issues that have been raised on the record and will improve the landscape plan to provide appropriate solutions for any legitimate concerns. Thus, contrary to the unsupported theories espoused by Save Hartford, the Stipulation, as approved by the Board, provides the proper mitigation of any potential visual impacts in accordance with the rules and the statute.

Therefore, Save Hartford's position on rehearing regarding the proper mitigation for potential visual impacts is without merit and should be denied. The information on the record reflects that Harvey provided the information as required by O.A.C. 4906-4-08(D)(4)(f) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(3).

4. The Board lawfully and reasonably concluded that the record contains the information necessary to analyze the prospects of floods in the area in accordance with R.C. 4906.10(A)(2) and O.A.C. 4906-4-08(D)(4)(e) and that the Stipulation and record provides the proper mitigation for flooding such that the facility represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(3).

Again, ignoring facts in the record pointed out by Applicant and accepted by the Board in its Order, Save Hartford reiterates verbatim its contention that Harvey's alleged non-compliance

[56] *Id.* 1 at 3, 6, Conditions 1, 18.
[57] App. Ex. 20 at 9.
[58] Jt. Ex. 1 at 6, Condition 18.

with O.A.C. 4906-4-08(D)(4)(e) left the Board without needed information to determine the facility's probable environmental impact related to flooding or to determine that the Applicant's plan to address any Project-related flooding represents the minimum environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(2) and (3).[59] To the contrary, as reviewed and summarized by the Board in its Order, the record is replete with exhibits and testimony from expert witnesses that provide the requisite information and data on the hydrogeology and potential for flooding in the Project Area.[60]

As explained in Harvey's Reply Brief, Save Hartford continues to ignore or confuse two types of flood topics: the question of whether the facility may include any construction within any floodplains in the area, which are mapped areas adjacent to existing water bodies (lakes, rivers, creeks, ditches, etc.) that during exceptionally severe storms may cause a "flood" because the water bodies overflow their banks; as distinguished from "flooding" of some fields and roads with slow or poor drainage that far more often occurs during a typical event.[61] Between its port-hearing briefs and the Application for Rehearing, Save Hartford refuses to confront the distinction since any confusion it can generate may assist its cause to stop the Project at all costs.

With regard to mapped floodplains, the record clearly reflects the prospects for floods in the Project Area by identifying the acreage in the Project Area that are within the 100-year floodplain, which means that the acreage has a less than 1% chance of experiencing an extreme hydrologic event resulting in a flood.[62] The Application contains numerous exhibits (i.e., Stormwater Assessment, Geology and Hydrology Report, Preliminary Geotechnical Exploration Report, Ecology Impact Assessment) that identify, discuss, and contain maps reflecting the precise area of this 100-year floodplain.[63] The record is clear that only 1.6% of the Project Area is located within this 100-year floodplain even and even if the final design of the facility call for solar panels to be located in that area, it should not be an issue.[64] In the event construction will occur within the 100-year floodplain, Harvey has committed to adhere to the substantive floodplain rules

---

59 Rehearing App. at 30-33.
60 Order at 22, 48, 74, 76-77, 81, 85, 94, 97; App. Ex. 1, Exs. K, M, N, O, Q; App. Exs. 23, 24, 26.
61 Rehearing App. at 31-33.
62 App. Ex. 1 at 54; Tr. I at 83.
63 *See* App. Ex. 1, Ex. K at 4.2 and Appendix A; *Id*., Ex. M at 4.4 and Figure 7; *Id*., Ex. N at 4.3.4; *Id*., Ex. Q at 4.5.3, 4.1.5, and Figure A-6.
64 App. Ex. 3; Tr. I at 152.

adopted by Licking County and will coordinate with the Licking County floodplain program administrator.[65] Thus, as required by O.A.C. 4906-4-08(D)(4)(e), Harvey has provided both an analysis of the prospects for floods and its plans to mitigate any adverse consequences.

With regard to flooding due to poor drainage in a particular area during a more typical rain event, that type of flooding is not related to water bodies over-flowing their banks, but can occur just about anywhere that does not drain well. As reflected in the Stormwater Assessment and supported on the record, once the Project is constructed and operational, drainage in the area should be *improved* compared to the current drainage from the farm fields. This is because, as the modeling in the Stormwater Assessment demonstrates and Save Hartford does not dispute, post-construction stormwater runoff from vegetated fields hosting rotating solar panels should be less than pre-construction run-off from annually disturbed farm fields.[66]

As the Board concluded, contrary to the unsubstantiated claims of Save Hartford, the record reflects that Harvey has complied with O.A.C. 4906-4-08(D)(4)(e) and the Board was able to determine the environmental impacts from the facility regarding flooding and that the facility represents the minimum adverse environmental impact in compliance with R.C. 4906.10(A)(2) and (3).[67]

Therefore, Save Hartford's position on rehearing regarding this the prospects for flooding and the proper mitigation factors is without merit and should be denied. The information on the record reflects that Harvey provided the information as required by O.A.C. 4906-4-08(D)(4)(e) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2) and (3).

5. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2) and (3), and by O.A.C. 4906-4-08(B) regarding wildlife and plants when issuing the Certificate to Harvey.

Save Hartford reiterates its contention that Harvey failed to conduct the requisite plant and wildlife literature review and field surveys and, by so doing, failed to provide the required information.[68] This argument continues to be without merit. The Board acknowledged that Harvey

---

[65] App. Ex. 1 at 54, Ex. A, Maximum Preliminary Site Plan; App. Exs. 3, 9; Jt. Ex. 1 at 8, Condition 28; Tr. 1 at 85-86; For the Licking County floodplain rules see https://lickingcounty.gov/depts/planning/planning/floodplain/default.htm

[66] App. Ex. 1, Ex. K; App. Ex. 23 at 5-6.

[67] Order at 97 ¶ 260.

[68] Rehearing App. at 33-35.

conducted a literature review and field surveys as required by the rules, which included requested 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.[69] The record indicates that the Applicant has fully complied and provided the above requisite information in accordance with O.A.C 4906-4-08(B) pertaining to plants and wildlife.[70]

The only support for Save Hartford's accusations are responses during cross examination of Applicant Witness Rupprecht to cleverly posed and out-of-context questions by counsel for Save Hartford.[71] But the obvious miscommunication between counsel and witness cannot change the fact that the literature survey itself and ample descriptions of the field surveys are in the record. As explained in Harvey's Reply Brief, had the questions been properly posed, the witness would have only had to reference his prefiled testimony in order to respond in the affirmative stating that the information in the Wildlife Report "on the existing wildlife in the Project Area was obtained from a variety of sources, including observations during on-site surveys, publicly available data, and correspondence with federal and state agencies."[72] The fact that the Applicant did conduct a literature review is proven by the record evidence in the Application itself and the numerous explanations of the surveys and studies conducted for the Project.[73] Similarly, Save Hartford provides no support for its general assertion that the Applicant did not conduct field studies for

---

69 Order at 80 ¶ 223.

70 *See e.g.,* App. Ex. 1, Exs. O, P, Q.

71 *See* Tr. II 252:2-7.

72 App. Ex. 1, Ex. P; App. Ex. 26 at 7.

73 App. Ex. 1 at 60 ("Cardno conducted a literature review of plant and animal life located within one-fourth mile of the Project Area boundary ['Wildlife Report'], which is attached as Exhibit P."); *Id*., Ex. P at Section 1 ("The Study Area was reviewed using county, state, and federal databases and resources to screen for potential wildlife habitat. Sources of the wildlife review included the ODNR State Listed Animals for Licking County, the ODNR State Listed Plant Species for Licking and Knox Counties, and the USFWS Information for Planning and Consulting (IPaC) tool for the potential occurrence of federally listed species. The habitat review also utilized the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey for Licking County, historic aerial photographs for farmed wetland maps from the USDA Farm Service Agency (FSA), National Wetland Inventory (NWI) maps, ODNR wetland maps, U.S. Geological Survey (USGS) topographic maps, the USGS National Hydrography Dataset (NHD), and recent aerial photographs."); *Id*., Ex. P at 5.3.1 (Cardno utilized "the USFWS Ohio County Distribution List of Federally Listed Threatened, Endangered and Candidate Species for Licking County, Ohio (USFWS 2018), the USFWS's IPaC tool (USFWS 2021a)."); *Id*., Ex. P at 5.3.2 (Cardno reviewed "the available ODNR Division of Wildlife (DOW) state species listings from two sources: ODNR DOW's Ohio's Listed Species Report, updated September 2019 (ODNR, 2019) and ODNR's State Listed Plant and Wildlife Species by County, updated June 2016 (ODNR, 2016a-b), for Licking and Knox Counties.").

plant species.[74] However, as evidenced on the record, the Applicant did conduct studies and the data collected was found to be generally consistent with the results of the desktop review.[75]

O.A.C. 4906-4-08(B) requires Harvey to, *inter alia*:

- provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary.

- provide the results of field surveys of the plant and animals species identified in the literature survey.

Harvey provided all of this information as part of its Application. Harvey's Reply Brief and the Board's Order expound upon the fact that the information required by O.A.C. 4906-4-08(B) is in the record. However, it appears that Save Hartford again ignored or did not read either Harvey's Reply Brief or the Order – otherwise Save Hartford would have realized that a repetition of this argument from its Initial Brief is futile because the record proves otherwise.

The Board correctly concluded that the information and documentation found in Application Exhibit P (Wildlife Report), along with the Application Exhibits O (Water Delineation Report) and Q (Ecology Impact Assessment) of the Application,[76] and the supporting testimony thereto, provides all of the requisite information and more in compliance with O.A.C 4906-4-08(B). Therefore, the Board properly concluded that the facility's probable ecological impacts were properly evaluated and determined.[77]

Accordingly, Save Hartford's position on rehearing regarding this issue is without merit and should be denied. The information on the record reflects that Harvey provided the information regarding potential impacts to wildlife and plant as required by O.A.C. 4906-4-08(B) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2) and (3).

6. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2) and (3), and O.A.C. 4906-4-08(A)(3)(b) regarding the sound level during operation when issuing the Certificate to Harvey.

The Board properly concluded that the Application sets forth the information required pursuant to O.A.C. 4906-4-08(A)(3)(b) describing the operational noise levels expected at the

[74] Rehearing App. at 34-35.
[75] App. Ex. 1, Ex. P, 5.1.
[76] *Id*., Exs. O, P; Tr. II at 250-256.
[77] Order at 80 ¶ 223.

nearest property boundary and the Application meets this requirement with the sound report submitted as part of the application.[78] Contrary to Save Hartford's unsubstantiated assumption, the rule does not require applicants to model sound levels at every hour of the day and night. As previously made clear by ignored by Save Hartford, the primary operational time for a solar facility is during the daytime, and a separate analysis of potential nighttime sound is not necessary to meet the requirements of the rule. As Harvey's operational expert testified, inverters do not produce electricity at night and any reactive power operation that could result in sound would represent a low fraction of the daytime operational sound resulting from the inverters, noting that the cooling fans for the inverters do not run at night.[79] The expert further explained that manufacturers of inverters generally do not provide data regarding sound from reactive power because such sound is zero or insignificant.[80]

Save Hartford continues to ignore that Harvey has made two important commitments regarding sound that Save Hartford has neglected to note. First, contrary to Save Hartford's repeated insistence to the contrary, Harvey in fact committed in the Application to re-model the sound study if an inverter is constructed closer to any property line than depicted in the Preliminary-Maximum Site Plan.[81] This remodeling plainly is required per Stipulation Condition 1, which requires the Applicant to comply with the commitment in the Application.[82] Second, pursuant to Stipulation Condition 35, Harvey must re-model the sound study if it uses an inverter with a sound power level higher than the one used in its modeling.[83] The Board should not countenance claims on rehearing that have previously been flatly contradicted by the written record in the case.

Further, Save Hartford complains that Condition 35 of the Stipulation contains an error because, in the event an operational noise test is required to determine compliance, the compliance benchmark of "Leq level plus five dBA" is not explicitly specified as being "on a location-by-location basis."[84] Applicant's sound modeling was performed using several monitors placed throughout the Project Area, with compliance for each receptor being conservatively demonstrated

78 *Id.* at 69 ¶ 199; App. Ex. 1, Ex. L; App. Ex. 7.
79 Tr. I at 76-80.
80 *Id*. at 313-318.
81 App. Ex. 1 at 51.
82 Jt. Ex. 1 at 3.
83 *Id*. at 9.
84 Rehearing App. at 37.

with reference to the daytime Leq plus 5 dBA derived from the monitor closest to that particular receptor.[85] This matches the understanding of Staff Witness Bellamy on the record in this case, who correctly testified that the Condition 35 phrase "project area" Leq should be "representative ambient Leq of the location . . . ."[86] This is the more conservative compliance approach, and one with which Applicant commits to comply, per the modeling in the record. Accordingly, there was no need for the Board to revise Condition 35 to make any clarifications.

Thus, Save Hartford's position on rehearing regarding the operational sound level is without merit and should be denied. The information on the record reflects that Harvey provided the information regarding operational sound as required by O.A.C. 4906-4-08(A)(3)(b) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2) and (3).

7. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2), (3), and (5), and O.A.C. 4906-4-07(D) regarding the volume of solid waste and debris during construction and operation.

Save Hartford repeats its assertion that Harvey has not provided sufficient information in response to the questions posed by O.A.C. 4906-4-07(D) for the Board to make a decision on the volume of waste and debris during construction and operation.[87] The rules complained of by Save Hartford request information estimating the amount of solid waste the Project will generate during construction and operation. However, contrary to Save Hartford's unfounded accusation, one has only to review the Application, as amply acknowledged in the findings of fact in the Order, to know that all of the essential information in response to this query is contained therein.

The Application reflects that the following components will be used for the Project: approximately 809,018 to 1,390,500 solar panels; metal racking for the panels; metal piles that will be mounted on the racking; several groups of electronic components, including inverters, step-up transformer, and a cabinet containing power control electronics.; up to 10 measuring stations; collection lines; and substation.[88] As also documented in the Application these facility components

[85] App. Ex. 1, Ex. L; App. Ex. 10.
[86] Tr. III 454-455.
[87] Rehearing App. at 38-40.
[88] App. Ex. 1 at 7-8.

will generate the types of solid waste materials typically found during construction, including "package-related materials, such as crates, nails, boxes, containers, and packing materials, damaged or otherwise unusable parts or materials, and occasional litter and miscellaneous debris."[89] The Application goes on to explain that the same materials, only in lesser quantities, will be generated during operation of the facility.[90] The rules simply do not require, as Save Hartford suggests, that the Application include the "volume" of waste or that its "estimate of the . . . amounts" of waste be numerical. The information in the record is more than sufficient for the Board to assess the Project's environmental implications with respect to waste. For example, Harvey estimated the amounts of solid waste construction would generate limited, very modest, or small amounts of solid waste.[91] Operation of the Project will generate only very small amounts.[92] The Application is a package and the information therein must be reviewed and read in total.

Thus, the Board's findings of fact properly conclude that Harvey met the certification criteria in R.C. 4906.10(A)(2), (3), and (5), including "demonstrate[ing] that the Project will comply with R.C. Chapter 3734 and all rules and regulations adopted thereunder."[93] Contrary to Save Hartford's preference, the Board reasonably concluded that "[t]his criterion and associated rules do not require specificity as to volume of solid waste . . . "[94] Rather, the Board correctly noted that "[t]he application provides estimates of the amount of solid waste to be generated and a description of Harvey's plans to manage and dispose of such wastes."[95]

Consequently, Save Hartford's position on rehearing is without merit and should be denied. The information on the record reflects that Harvey provided the information regarding solid waste and debris as required by O.A.C. 4906-4-07(D) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2), (3), and (5).

---

89 *Id*. at 44.
90 *Id*. at 45.
91 *Id.* at 44; App. Ex. 20 at 15-16; Tr. I at 74.
92 App. Ex. 1 at 45; Tr. I at 74.
93 Order at 98, 103 ¶¶ 262, 279.
94 *Id.* at 98, 103 ¶ 279.
95 *Id*.

8. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2), (3), and (5), and O.A.C. 4906-4-07(C) regarding probable pollution impacts and mitigation.

Save Hartford continues to claim that information enumerated in O.A.C. 4906-4-07(C) regarding the Project's compliance with water quality regulations is not present in the Application and now is arguing the Board did not set forth sufficient facts in the Order to substantiate its determinations under R.C. 4906.10(A)(2), (3), and (5).[96] On the contrary, the Application included and the Board's Order referenced the information relative to the applicable water quality requirements in accordance with the requirements of O.A.C. 4906-4-07, and acknowledged that the rule expressly allows an applicant to substitute all or portions of documents filed to meet federal, state, or local regulations. The Application specifically identified the permits it needs for the Project to demonstrate compliance with water quality issues.[97] Those are comprised of nationwide and general permits issued pursuant to state and federal water quality regulations. As discussed in detail in Harvey's Reply Brief, those permit applications, which will be reviewed by the state and federal agencies charged with determining compliance with water quality regulations, do not require submission of the categories of information that Save Hartford is seeking.

O.A.C. 4906-4-07 states that it is to be used to determine whether the facility will comply with regulations for, *inter alia*, water pollution and asks that the applicant provide information on compliance with water quality regulations. While the Project will not generate industrial wastewater from its operations, in accordance with this rule, the Application confirmed that:

- Harvey will apply under the Clean Water Act for Section 404 nationwide permits, a Section 401 water quality certification from the Ohio Environmental Protection Agency ("Ohio EPA"), and a general construction storm water permit from the Ohio EPA.[98] These are the applicable water quality permits for the Project; however, the categories of information identified by Save Hartford in O.A.C. 4906-4-07(C) are not required to be submitted to the environmental agencies under these permits.

- Three potential Section 404 nationwide permits ("NWPs") may be applicable to the Project: NWP 57 (Electric Utility Line and Telecommunications Activities); NWP 14 (Linear Transportation Projects); and NWP 51 (Land-Based Renewable Energy Generation Facilities). Each of these NWPs requires only the submission of a pre-construction notification to the U.S Army Corps of Engineering ("USACE") and adherence to established permit conditions. Pre-construction notifications are to be

[96] Rehearing App. at 40-42.
[97] App. Ex. 1 at 40-41, Ex. K.
[98] *Id*.

submitted using Form ENG 6082, but that form does not require water quality monitoring for these NWPs, nor the other categories of information sought by Save Hartford.

- Harvey will apply to the Ohio EPA for a general construction storm water permit, which imposes non-numeric effluent limitations, such as erosion and sediment controls, soil stabilization and post-construction storm water management controls. A storm water pollution prevention plan ("SWP3") is prepared and submitted along with a notice of intent to be covered by the general state permit. The SWP3 details these erosion and sediment controls and storm water management practices. No receiving water monitoring is required under the applications or for compliance with these general permits. The information deemed necessary by the environmental agencies issuing these permits to confirm compliance with water quality regulations simply does not include the information Save Hartford seeks.

As noted above, O.A.C. 4906-4-07(A) provides that "[w]here appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations." Had Harvey submitted the documents filed to meet the federal, state, and local water quality regulations, it would have consisted only of pre-construction notifications using Form ENG 6082, a notice of intent to be covered by the general construction storm water permit, and the SWP3 describing erosion and sediment controls to be implemented during construction activities. These applications would not have included any of the information Save Hartford seeks. This further confirms that the information Save Hartford is seeking is not required for the Board to evaluate the Project's compliance with water quality regulations. Rather, the Applicant has confirmed that these permit applications will be submitted to the applicable regulatory agencies prior to the commencement of construction with the Project, demonstrating compliance with the applicable water quality regulations.[99]

Initially, it should be emphasized that Save Hartford is attempting to manufacture a water quality issue where none exists. For instance, to set up its argument that needed data of existing water quality is missing (see below), Save Hartford posits, without evidence, that "[a]ll of this soil disturbance [needed to build the facility] will cause the erosion of soil into streams and onto adjoining land owned by the Residents."[100] Similarly, Save Hartford is sure that construction alone necessarily "will result in the discharges of soil into the area's streams."[101] But Save Hartford's

[99] *Id*.
[100] Rehearing App. at 40.
[101] *Id.* at 41.

only "evidence" to support this assertion is that "the Application admits as much, stating that the Project will be required to obtain a discharge permit from Ohio EPA."[102] Save Hartford conveniently neglects to mention that the water quality permit with which Harvey will comply, the Ohio EPA's "General Construction Permit," is not required because construction necessarily will result in any particular amount of runoff pollution, but because the permit is available to authorize runoff pollution that may occur during any construction activity that disturbs even a single acre of land.[103]

When it comes down to it, Save Hartford is essentially arguing that the record lacks information needed by the Board to perform its duties by pointing to rule provisions that do not apply to the Project. For instance, Save Hartford hones in on O.A.C. 4906-4-07(C)(1)(d) to decry the absence of "existing water quality data of the receiving stream based on at least one year of monitoring data."[104] But such data has no relevance to the Ohio EPA water quality permit to which the Project is subject. It is also telling that Save Hartford omits the context provided by the remainder of O.A.C. 4906-4-07(C)(1), which includes the requirement in O.A.C. 4906-4-07(C)(1)(a) to identify all such applicable water quality permits. Save Hartford's argument is akin to claiming that the Board could not fulfill its duties regarding air pollution because the Application does not describe the "probable impact to the population due to failures of air pollution control equipment" even though the Project neither needs nor features such equipment. *See* O.A.C. 4906-4-08(A)(2).

For these reasons, the Board properly concluded as follows:

> [u]pon 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.[105]

Thus, the Board correctly concluded that the Applicant has identified all permit requirements applicable to water quality compliance with R.C. 4906.10(A)(2), (3), and (5), and O.A.C. 4906-4-07(C). Therefore, Save Hartford's position on rehearing is without merit and should be denied. The information on the record reflects that Harvey provided the information required by

---

[102] *Id.*
[103] Ohio EPA General Construction Permit, Part I, B.
[104] Rehearing App. at 42.
[105] Order at 101 ¶ 275.

O.A.C. 4906-4-07(C) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(2). (3), and (5).

9. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(6) and O.A.C. 4906-4-06(E)(4) regarding the Project's economic impact.

Save Hartford reiterates its argument that the Board cannot make a determination of the public interest of the facility because Harvey did not conduct a negative economic impact study.[106] Save Hartford's argument is without merit because there is no requirement either in the statute or the rules that an applicant specifically investigate every possible facet of economic impact, only that the impacts be studied and reported. O.A.C. 4906-4-06(E)(4) requires applicants to "provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities." The Socioeconomic Report submitted with the Application, which was prepared by qualified personnel at two renowned universities, Kent State University and the University of Akron, using standard economic models, reflects the facts as they were discovered by the experts in an objective and nonbiased manner showing the socioeconomic impacts associated with the Project.[107] The report thoroughly addresses local impacts of the Project, both from construction and operation, as reflected in the section of the report entitled "Impact on Local Area."[108] This section includes reports of forecasted impacts of the Project on a number of local commercial activities, such as expenditures at restaurants and groceries.[109]

The Save Hartford witnesses, being opposed to the Project, obviously view the economics of the Project in a negative light. However, as noted in Harvey's Reply Brief, negative opinions by opponents do not amount to true measurable facts. For example, Save Hartford witness O'Neil expressed concerns about a possible loss of future income by his construction business if the existence of the Project prevents him from building homes on the Project site.[110] However, there is no evidence whatsoever in the record that supports the speculation that the Project's participating landowners would convert their farm fields to residential subdivisions if the Project does not come

[106] Rehearing App. at 43-45.
[107] App. Ex. 1, Ex. F.
[108] *Id*., Ex. F at III.C.
[109] *Id.*, Ex. C at 10.
[110] Rehearing App. at 19.

to fruition. There is also some irony in Save Hartford asking the Board to deny Ohio land owners a once-in-a-lifetime opportunity to host a profitable use on their land on the grounds that the Board did not consider the hypothetical profit one of its members might make one day building houses there instead.

Similarly, Save Hartford complains about the lost value of the agricultural products that will not be produced if the Project proceeds, but this value would accrue to the landowners who want to participate in the Project, and the socioeconomic study need not address what is in the best economic interest of those landowners, which they obviously are in the best position to judge. Likewise, Save Hartford criticizes the University experts because their methodology did not expressly consider lost agricultural input sales from taking land out of production or the speculative possibility that tenant farmers could not find other land to work.[111] But it is self-evident that the enormous positive local economic benefits would greatly outweigh any possible negatives such as these, and so the Board's conclusion would remain unchanged. It also is ironic that Save Hartford seems unconcerned about lost farm inputs and tenant farmers when it comes to its member's hope to build houses on the farm fields in the Project Area.

The Board has determined that unsubstantiated worries expressed by individuals in the local community are not sufficient to determine that a Project is against the public interest.[112] Thus, while the complaints of the Save Hartford members reflect their negative attitudes regarding the Project, their perspectives do not negate the fact that the methodology used by the universities to determine the economic impact of the Project as required by the rule, concluded that the Project's net economic impact on the local community will be overwhelmingly positive.

In the Order, the Board lawfully and reasonably agreed noting that, while Save Hartford submits "the Project may have some adverse economic impact due to the potential loss of some agricultural activity, no testimony was presented to quantify the alleged monetary loss."[113] The Board emphasized that is "must rely squarely on the evidence presented in this case and not on

---

111 *Id.* at 43.

112 *See e.g., In re Alamo Solar I, LLC*, Case No. 18-1578-EL-BGN, Order (June 24, 2021) at 105-106 ¶ 293. (Here the Board concluded that there was no evidence of record to support the opposition's contention that the project would lead to an increase in crime in the project area and the Board recognized the safeguards set forth by the application and the stipulation.); *In re Ross County Solar*, Case No. 20-1380-EL-BGN, Order (Oct. 21, 2021) at 36 ¶ 135 (Here the Board concluded that, despite concerns about reduced property values resulting from the project, the expert evidence on the record supported a finding that property values were not expected to decrease.).

113 Order at 109 ¶ 296.

speculation or [conjecture]."[114] The Board went on to note record evidence supporting its determination on this issue, including the creation of construction and operational jobs and the associated earnings and local economic output.[115]

The Board's duty is to determine whether the Project will serve the public interest, convenience and necessity as required by R.C. 4906.10(A)(6), a review and analysis of the complete record results in the determination that, as a package, the Application, as enhanced by the Stipulation, more than serves the public interest. Thus, this criteria has been met and the Board may determine the Project is in the public interest, convenience, and necessity.

Accordingly, Save Hartford's position on rehearing regarding the economic impact of the Project is without merit and should be denied. The information on the record reflects that Harvey provided the economic impact information required by O.A.C. 4906-4-06(E)(4) and the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(6).

10. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(2) and (3), and O.A.C. 4906-4-07(D)(4)(c) regarding glare.

Save Hartford again repeats verbatim its Initial Brief position that Harvey did not comply with O.A.C. 4906-4-07(D)(4)(c) regarding a glare analysis; thus, the Board could not lawfully and reasonably make a determination under R.C. 4906.10(A)(2) and (3).[116] Specifically, Save Hartford takes issue with the Applicant's Glare Analysis, claiming that the rest angle has not been determined and could be at a different angle, thus causing more glare than that studied.[117] However, such is not the case. Harvey has committed to ensure that the glare from the Project will be no greater than the glare studied, reported, and investigated by Staff, which utilized a rest angle of 5 degrees.[118] Further, the Applicant has committed to use solar panels with an anti-reflective coating or similar anti-reflective property. That these are both firm and enforceable commitments by Harvey was made clear in Harvey's Reply Brief and included as part of the Board's findings of

---

114 *Id.* Quoting *In re Complaint of Buckeye Energy Brokers, Inc*., Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012).
115 *Id.* at 109 ¶ 296.
116 Rehearing App. at 45-46
117 Save Hartford Br. at 34.
118 Tr. I at 358.

fact in the Order,[119] but Save Hartford simply choose to ignore that fact and in its Application for Rehearing propounds the same, erroneous claims.

Save Hartford's position on rehearing is without merit and should be denied. The information on the record reflects that Harvey complied with O.A.C. 4906-4-07(D)(4)(c) regarding a glare analysis; thus, the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in accordance with R.C. 4906.10(A)(2) and (3).

11. The Board lawfully and reasonably determined Harvey provided the information required by R.C. 4906.10(A)(3) and (6) regarding electromagnetic fields issuing the Certificate to Harvey.

Initially, the Applicant notes that Save Hartford raises this argument regarding EMFs for the first time in its Application for Rehearing and failed to properly state this as an argument in its Initial Brief.

Without any record support, Save Hartford alleges the Board erred by not examining information regarding electromagnetic fields EMFs that are referenced in leases Harvey entered into with participating landowners.[120] The Applicant points out however, that, though the leases mentioned by Save Hartford do mention EMFs, the leases do not state that there "is" risk of EMFs – rather, the statement is merely a liability provision between two contracting parties engaged in common enterprise.

Further, contrary to Save Hartford's misinformed argument, the Board properly reviewed the record and the information pertaining to EMFs when making its determination to issue the Certificate to Harvey. The facts of the case reveal that the potential for EMFs were fully considered and reported in the Application and it was found that:

> [t]he Project is not expected to have any material impact on radio or television reception because it lacks tall structures and exposed moving parts, and it will generate only very weak electromagnetic fields ('EMFs'), almost entirely during the day, that will dissipate rapidly within short distances. '[Photovoltaic] arrays generate EMF in the same extremely low frequency (ELF) range as electrical appliances and wiring found in most homes and buildings' (MDER, 2015). In a study of three solar arrays in Massachusetts, electric fields levels measured along the boundary were not elevated above background (Massachusetts Clean Energy Center, 2012).[121]

---

[119] Order at 67-68 ¶ 195.
[120] Rehearing App. at 46-47.
[121] App. Ex. 1 at 57.

This conclusion regarding EMFs is further supported through an expert report noted in Exhibit G to the Application, which addresses EMF extensively and concludes that "humans are all exposed to EMF throughout our daily lives without negative health impact. Someone outside the fenced perimeter of a solar facility is not exposed to significant EMF from the solar facility. Therefore, there is no negative health impact from the EMF produced in a solar farm."[122] Further, as noted by Staff:

> Electric transmission lines, when energized, generate electromagnetic fields (EMF). Laboratory studies have failed to establish a strong correlation between exposure to EMF and effects on human health. There have been concerns, however, that EMF may have impacts on human health. The gen-tie transmission line is not within 100 feet of an occupied structure, therefore calculation of the production of EMF during operation of the proposed gen-tie transmission line is not warranted per Ohio Adm.Code 4906-5-07(A)(2).80 The Applicant states that the transmission facilities would be designed and installed according to the requirements of the NESC.[123]

Moreover, as documented by the Ohio Department of Health, ("ODH"), the information on solar facilities "does not indicate a public health burden from EMFs generated by components, including poser lines, at solar farms."[124]

It is evident that Save Hartford is stretching to find arguments to discount the all-inclusive Application and thorough review exercised by the Board in this case. However, Save Hartford's position on rehearing regarding EMFs is without merit and should be denied. The information on the record reflects that the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(3) and (6).

12. The Board lawfully and reasonably determined the minimum environmental impact regarding decommissioning in compliance with R.C. 4906.10(A)(3) and found that Harvey provided a deadline for decommissioning when issuing the Certificate to Harvey.

Save Hartford continues to argue that it is not possible to the Board to determine that the Project will represent the minimum adverse environmental impact because the Stipulation does

---

122 *Id.*, Ex. G, Health and Safety Impacts of Solar Photovoltaics (May 2017) at 14.
123 Staff Ex. 1 at 39.
124 Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments (Apr. 2022) at 9; https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms

not does not impose a decommissioning completion deadline.[125] However, as pointed out in Harvey's Reply Brief, Save Hartford forgets to take into account that Stipulation Condition 30 requires Harvey to submit the final decommissioning plan to Staff prior to construction. This final plan must be prepared by a professional engineer and include, among other things, the following: a financial assurance mechanism requiring a performance bond issued by an insurance company with the Board as the obligee; the bond must cover the total cost of decommissioning the Project (i.e., not including any resale or salvage value); the bond must be recalculated every five years; and a timeline for removal of the equipment.[126]

It is estimated that the total decommissioning cost for the Project would be substantial, in excess of $18 million,[127] Thus, the Applicant has ample incentive to complete decommissioning in a reasonable amount of time, otherwise Harvey will have to pay premiums to maintain the performance bond and only satisfactory completion of decommissioning will result in the termination of the bond. However, if the Applicant were inclined instead to allow the facility to sit idle and not timely decommission, the Board would simply make a non-performance claim pursuant to the bond and use the proceeds to arrange for decommissioning of the Project.

Thus, while there is no justifiable need for a decommissioning completion deadline and Save Hartford's argument is without merit, as acknowledged by the Board, the Applicant estimated it would take approximately 8 months to decommission the facility,[128] Accordingly, Save Hartford's position on rehearing regarding decommissioning is without merit and should be denied. The information on the record reflects that the Board lawfully and reasonably approved the Stipulation issuing the Certificate to Harvey in compliance with R.C. 4906.10(A)(3).

III. CONCLUSION

The Board's Order rests on a robust evidentiary record and sound legal authority. In approving the Stipulation, the Board correctly determined that the Project would meet the applicable requirements of R.C. 4906.10, including representing the minimum adverse environmental impact taking into account pertinent considerations and serving the public interest, convenience, and necessity. The Board considered each of the arguments made by the Save

[125] Rehearing App. at 47-48.
[126] Jt. Ex. 1 at 8, Condition 30.
[127] App. Ex. 1, Ex. J, Appendix A.
[128] Order at 68 ¶ 197; App. Ex. 1, Ex. J at 2.

Hartford in its Initial and Reply Briefs, but ultimately rejected them based on extensive expert testimony from Harvey and other Signatory Parties. Although Save Hartford now recapitulates those same arguments at length in its Rehearing Application, it has not identified any flaws in the Board's reasoning that would merit a grant of rehearing in this case. Therefore, Save Hartford's Application for Rehearing should be denied and the Order reaffirmed.

Respectfully submitted,

/s/ *Christine M.T. Pirik*
Christine M.T. Pirik (0029759)
Matthew C. McDonnell (0090164)
Jonathan R. Secrest (0075445)
David A. Lockshaw, Jr. (0082403)
Dickinson Wright PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215
(614) 591-5461
cpirik@dickinsonwright.com
mmcdonnell@dickinsonwright.com
jsecrest@dickinsonwright.com
dlockshaw@dickinsonwright.com

Attorneys for Harvey Solar I, LLC

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 30th day of November, 2022.

/s/ Christine M.T. Pirik
Christine M.T. Pirik (0029759)

Counsel:

thomas.lindgren@ohioAGO.gov
ccarnes@lcounty.com
jvankley@vankley.law
mrmoran@mrmoran.com
RDove@keglerbrown.com
cendsley@ofbf.org
lcurtis@ofbf.org

Administrative Law Judges via email:

jay.agranoff@puco.ohio.gov
david.hicks@puco.ohio.gov

4884-0520-7105 v1 [85890-5]

Summary: Memorandum - MEMORANDUM CONTRA APPLICATION FOR REHEARING OF SAVE HARTFORD TWP., LLC, JANEEN BALDRIDGE, EDWARD AND MARY BAUMAN, JULIE AND RICHARD BERNARD,ANTHONY CAITO, JOHN JOHNSON, DANIEL ADAM LANTHORN, NANCY AND PAUL MARTIN, AND GARD O'NEIL, JR. electronically filed by Christine M.T. Pirik on behalf of Hardin Solar I, LLC