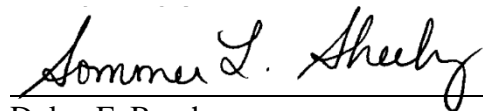


**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **South Branch**)
Solar, LLC for a Certificate of Environmental) Case No. 21-0669-EL-BGN
Compatibility and Public Need for a Solar Facility)
Located in Hancock County, Ohio.)

**APPLICANT SOUTH BRANCH SOLAR, LLC'S MEMORANDUM CONTRA
APPLICATION FOR REHEARING OF TRAVIS BOHN**

Respectfully submitted on behalf of
SOUTH BRANCH SOLAR, LLC



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I. INTRODUCTION

The Application for Rehearing (“Application for Rehearing”) from Intervenor Travis Bohn includes no factual arguments, no new legal arguments, and instead relies on his unsuccessful Initial Post-Hearing Brief. These arguments continue to be based on conjecture with no facts or evidence to back up the claims. Because the Application for Rehearing is simply a restatement of the arguments raised by Mr. Bohn in his initial brief, these arguments were fully addressed in post-hearing briefs filed by South Branch Solar, LLC (“South Branch”) and the Staff of the Ohio Power Siting Board (“Staff”).¹ Accordingly, these arguments have already been fully reviewed and were all rightly rejected by the Ohio Power Siting Board (“Board”). There is no need to go through each again on rehearing. The Board, in its Opinion, Order and Certificate (“Order”), reviewed the record and made all necessary findings and conclusions of law in approving South Branch’s Application and the Joint Stipulation.² As the Board explained:

We adopt the findings of the Staff Report, as modified by the Stipulation, finding that Staff’s review of the Application, as supplemented, was sufficient to evaluate the criteria within R.C. 4906.10.

(Order, ¶ 107.) These findings, as set forth in South Branch’s and Staff’s post-hearing briefs and in the Board’s Order itself, were more than sufficient to support the approval of the South Branch Project and the Joint Stipulation.

¹ Initial post-hearing briefs were filed by South Branch and Staff on August 5, 2022, followed by reply briefs filed August 26, 2022.

² Joint Stipulation and Recommendation, filed May 31, 2022.

II. LAW AND ARGUMENT

A. Throughout the Order, the Board makes and adopts findings supporting its conclusions (Responsive to First Ground for Rehearing).

The First Ground for Rehearing is not a standalone argument. Instead, Mr. Bohn merely makes the blanket assertion that the Board failed to set forth its reasoning “with regard to many of the issues it has decided,” and then promises he will provide examples sometime later in the Application for Rehearing. (Application for Rehearing, at 4.)

Despite Mr. Bohn failing to provide a single example in this section of his Application for Rehearing, South Branch is able to respond because the premise of the argument itself is faulty. What Mr. Bohn ignores is that the Board, in addition to explicitly setting forth many findings of fact and law in the Order, *also* expressly adopts the findings set forth in the Staff Report, as modified by the Stipulation and its 50 negotiated conditions: “We adopt the findings of the Staff Report, as modified by the Stipulation.” (Order, ¶ 107.)

Mr. Bohn never acknowledges this express adoption and incorporation of the Staff Report into the Order. Accordingly, Mr. Bohn’s argument, which underpins most of his Application for Rehearing, is flawed at its core. The First Ground for Rehearing should be rejected.

B. The Board properly found that the Project serves the public interest under R.C. 4906.10(A)(6) (Responsive to Second, Third, and Fifth³ Grounds for Rehearing).

1. The Board considered public opposition.

In both the Second and Third Grounds for Rehearing, Mr. Bohn restates his argument that the Board should have deferred to public opposition to the Project. (Application for Rehearing, at 4-9.) Mr. Bohn concedes that other local governments and citizens supported the Project but, he

³ This section is also responsive to the Ninth Ground, but that ground was withdrawn by Mr. Bohn on March 24, 2023.

argues, the Board made “very little, if any, mention” of the opponents. (*Id.* at 5.) In essence, he argues that, where the community sentiment is split, the opposition must be given greater consideration or the Order is unlawful.

Putting aside this unworkable suggestion, Mr. Bohn mischaracterizes the Order. The Board *did* consider the opposition. The Order details the Local Public Hearing testimony over multiple pages, providing the very same breakdown of opponent and proponent testimony that Mr. Bohn advances in his Application for Rehearing. (Order ¶ 37, et seq.) The Order summarizes the Public Comments and the reasons for oppositions set forth therein. (*Id.* at ¶ 42.) The Order specifically notes that opposition comments were filed by the Washington Township Fiscal Officer and the Hancock County Public Health Director. (*Id.* at ¶ 85.) Further, the Order explains that Mr. Bohn himself filed testimony against the Project and participated in the evidentiary hearing by cross-examining the Project’s supporting witnesses. (*Id.* at ¶¶ 98-99.) In fact, the Order specifically references Mr. Bohn’s argument that “public opposition refutes a determination that it is in the public interest, convenience, and necessity.” (*Id.* at ¶ 104.) Notably, Mr. Bohn continues to assert that the Hancock County Commissioners are opposed to the Project. Both South Branch and Board Staff, through their reply briefs, specifically corrected this point. And yet the Application for Rehearing continues to double-down on something that simply is not true.

Therefore, contrary to Mr. Bohn’s argument, the Board addresses the public opposition to the Project throughout its Order. More than that, the Board addresses *this very argument* in its Order. Nonetheless, it found that “[t]he record establishes that the Project, subject to the conditions set forth in the Stipulation and consistent with this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).” (Order ¶ 133.)

Nothing has changed. The Second and Third Grounds for Rehearing should be rejected.

2. The Board considered economic impact.

The Fifth Ground for Rehearing is yet another direct repeat from Mr. Bohn's Post-Hearing Brief. Mr. Bohn, based solely on his own speculation, argues that the Board failed to conduct a thorough economic impact analysis of the Project. (Application for Rehearing, at 12.) He faults the Board for not conducting an analysis of any potential negative impacts—ignoring, of course, that he offered no competent evidence into the record regarding this topic himself.

Mr. Bohn argues, for example, that the Board should have considered that the Project's proposed location "restricts the growth potential of Arcadia" and its future "hangs in the balance" as a result. (*Id.* at 12.) He does not and cannot, however, point to credible evidence in the record supporting the truth of this claim. Mr. Bohn also argues that the Board should have considered the "likelihood" that the Project, despite creating up to 757 construction-related jobs and 11 long-term jobs, would "create a net loss of jobs." (Application for Rehearing, at 13-14.) He does not say what jobs would be lost and points to no evidence in support of this assertion.

Besides statements based on nothing but speculation from Mr. Bohn, there is simply nothing for the Board to review on this issue. But, despite the lack of evidence in support of Mr. Bohn's alarmist claim, the Board *did* consider it. The Order notes that this issue was raised at the Local Public Hearing and that Mr. Bohn raised an economic loss argument at the evidentiary hearing. (Order at ¶¶ 38, 99). The *evidence* that the Project provided, including unrefuted and expert-supported statistics in terms of jobs created both during construction and long-term operational jobs, was more compelling. Staff specifically investigated and reported its findings on the economic impact of the Project, and the Board expressly adopted those findings in its Order. (Order at ¶¶ 52, 107).

The Fifth Ground for Rehearing should be rejected.

C. The Board reviewed a complete and proper Application and record (Responsive to the Seventh⁴ and Eighth Grounds for Rehearing).

In the Seventh and Eighth Grounds for Rehearing, Mr. Bohn argues that the Board (and its Staff) erred by accepting and reviewing South Branch's Application for a Certificate at all. (Application for Rehearing, at 9-12, 19-21.) Despite having the opportunity to participate in the hearing process and seek discovery from South Branch, Mr. Bohn argues that he and the Board were denied access to critical information regarding the Project. As set forth below, these grounds for rehearing are based on arguments that have already been rejected by the Board and must fail again.

1. The Application's literature and field surveys were complete, and the potential presence of bald eagles was provided to the Board.

In the Seventh Ground for Rehearing, Mr. Bohn argues that South Branch's Application was incomplete because it did not discuss bald eagles as being present in the Project Area. (Application for Rehearing, at 17.) It is worth noting that neither bald eagles nor their nesting were observed at the time of South Branch's field efforts, and neither USFWS nor ODNR identified bald eagles as a particular species of interest for the Project and did not indicate that the Project Area was in proximity to known eagle nesting (although this issue has been tracked closely by ODNR).

However, the potential presence of bald eagles in the Project Area, contrary to Mr. Bohn's suggestion, was discussed at length in the record as set forth in South Branch's Reply.⁵ Whatever Mr. Bohn's opinion of the Application and the studies contained therein, the issue was well before the Board at the time it issued its Order.

⁴ This section is also responsive to the Fourth Ground, but that ground was withdrawn by Mr. Bohn on March 24, 2023.

⁵ Reply Brief of South Branch, filed August 26, 2022, at 20.

The Seventh Ground for Rehearing should be denied.

2. **The Application properly provided information regarding drainage and flooding impacts.**

In the Eighth Ground for Rehearing, Mr. Bohn argues that South Branch has not shown that it “achieves the minimum adverse environmental impact with respect to issues associated with stormwater, drain tile, and flooding.” (Application for Rehearing, at 19.) He argues that “both Applicant and the Board have done virtually nothing to analyze the prospects of flooding inside and near the Project area.” (*Id.* at 21.)

Mr. Bohn made this argument nearly verbatim in his post-hearing brief. It was incorrect then, and it is incorrect now. South Branch’s Stormwater Management Report specifically considered the area and concluded that the Project will have no adverse impact in terms of runoff or flooding.⁶ In fact, perennial vegetation with deeper root systems year-round will be planted beneath the solar panels will provide better groundcover, keep soil in place more effectively, and if anything, abate runoff and flooding.⁷

South Branch developed a drainage tile mitigation plan (“Mitigation Plan”) to avoid adverse impacts to existing tile during construction.⁸ Included in the Mitigation Plan are techniques South Branch is committed to using to identify damaged drain tile during construction.⁹ The Mitigation Plan also provides protocols that will be implemented if broken drain tile is identified.¹⁰ Furthermore, all repairs will be completed by a qualified contractor.¹¹

⁶ App. Ex. 1 at Appendix E and Updated Appendix E at 11.

⁷ App. Ex. 10 at 3-5.

⁸ App. Ex. 1, Modification at Updated Appendix F at 1.

⁹ App. Ex. 1, Modification at Updated Appendix F at 2

¹⁰ *Id.*

¹¹ *Id.*

In addition, South Branch hired local drain tile expert and consultant, Boes Quality Drainage, to help identify existing drain tile.¹² Mapping of existing drain tile was developed based on expertise from Boes Quality Drainage, coordination with county engineer, desktop aerial photography, and coordination with landowners.¹³ South Branch is committed to implementing avoidance measures prior to construction and avoiding drain tile “to the greatest extent possible.”¹⁴ Avoidance measures include implementing a 50 foot no-build corridor (25 feet of centerline) to protect the outlets and two sanitary lines during construction.¹⁵

All of this was set forth at the Application, at the Evidentiary Hearing, and in the briefing before the Board. What’s more, the Board adopted Condition 45 in its Order, which ensures coordination with the county engineer and the county soil and water conservation district and prompt repair of damaged tiles. (Order, at Condition 45.)

The Eighth Ground for Rehearing should be rejected.

D. The Board properly found that the Project minimizes adverse environmental impacts (Responsive to Sixth Ground for Rehearing).

In the Sixth Ground for Rehearing, Mr. Bohn argues that South Branch’s setbacks should not have been accepted by the Board because they are “so minimal as to offer no meaningful isolation from the Project’s harmful impacts.” (Application for Rehearing, at 15.)

This is, once again, precisely the argument Mr. Bohn unsuccessfully made in his post-hearing brief. And South Branch’s response is likewise the same.

Mr. Bohn makes a bold assertion regarding the impact to neighbors without citing to any evidence in the record. In fact, the evidentiary record supports a finding that the neighbors will

¹² Tr. at 43, 51; App. Ex. 1, Modification at Updated Appendix F at 1.

¹³ App. Ex. 1, Modification at Updated Appendix F at 1.

¹⁴ Tr. at 34; App. Ex. 1, Modification at Updated Appendix F at 2.

¹⁵ Tr. at 33; App. Ex. 1, Modification at Updated Appendix F at 2.

experience minimal visual impacts.¹⁶ South Branch will implement landscaping in strategic locations to offset visual impacts for local viewers from individual non-participating residences and travelers along local roadways.¹⁷ Additionally, the use of fencing compatible with the agricultural character of the surrounding area and the implementation of a landscaping plan will provide for softening of the horizontal lines to lessen potential impacts associated with near-foreground views.¹⁸

Additionally, South Branch's Noise Evaluation provided detailed information that the noise impacts of the Project would be minimal, as also found in the Staff Report and the Order.¹⁹

Accordingly, the Order adopts Staff's findings that the visual and noise impacts of the Project will be minimal. (Order ¶¶ 49, 51.) Mr. Bohn's rehash of his prior briefing has done nothing to call the Board's finding into question.

The Sixth Ground for Rehearing should be rejected.

E. The Board properly accepted the Stipulation (Responsive to Tenth Ground for Rehearing).

In the Tenth Ground for Rehearing, Mr. Bohn argues that the Board misapplied its three-part test for evaluating the reasonableness of a stipulated settlement. (Application for Rehearing, at 23.) The three-part test is as follows: (1) whether the settlement is the product of serious bargaining among knowledgeable and capable parties; (2) whether the stipulation benefits the public interest; and (3) whether the stipulation violates any important regulatory principles or practices. *In the Matter of the Application of Angelina Solar I, LLC for a Certificate of Env't*

¹⁶ App. Ex. 1, Modification at Updated Appendix R at 11.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ App. Ex. 1, at Appendix N and Modification at Updated Appendix N; Staff Report at 13.

Compatibility & Pub. Need, Case No. 18-1579-EL-BGN, Opinion, Order, and Certificate at ¶ 315 (June 24, 2021).

Mr. Bohn argues that the Stipulation here fails every part. However, as set forth below, his arguments all boil down to the same thing: the Stipulation *must* be flawed because he did not agree to it and he does not like South Branch. That is not the standard.

1. ***The Stipulation is the product of serious bargaining among knowledgeable and capable parties.***

Mr. Bohn argues that the Stipulation fails this prong because he chose not to participate in the negotiations. (Application for Rehearing, at 24-25.) While he claims he is *not* arguing that his “his lack of participation in the Stipulation somehow invalidates the Stipulation in itself,” that is precisely what he argues. He does not point to any other reason the Stipulation should fail under this prong.

As the Order correctly notes, Mr. Bohn was invited to the negotiations and chose not to participate. (Order ¶ 106.) He cannot use his nonparticipation as a reason to object now. (*See id.*) (“Finding otherwise would permit any party to refuse to participate in negotiations in a manner that would give that party the ability to thwart any settlement, which is clearly not what is intended by this test.”) The Board correctly found that the Stipulation met this part of the test.

2. ***The Stipulation benefits the public interest and does not violate any regulatory principles.***

Mr. Bohn argues that the Stipulation fails under the second and third prongs for all of the same reasons he argues above that the Order should be subject to rehearing. (Application for Rehearing, at 25-26.)

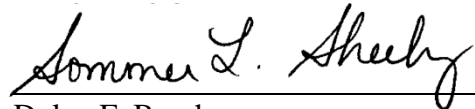
However, also as set forth above, Mr. Bohn has not identified a single weakness in the Order or a single grounds for rehearing. The Board correctly found that the Stipulation met these two parts of the test.

The Tenth Ground for Rehearing should be rejected.

III. CONCLUSION

As set forth herein, each and every criterion in R.C. 4906.10 was addressed and met by South Branch and the Stipulating Parties in the Stipulation, and the Board appropriately adopted the Stipulation in its Order. In addition, all three prongs of the test used by the Board in considering a stipulation have been met. Therefore, the Board properly adopted the Stipulation and issued a Certificate to South Branch. The Application for Rehearing should be denied.

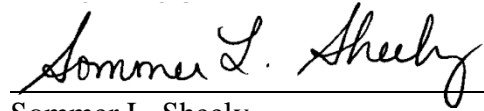
Respectfully submitted on behalf of
SOUTH BRANCH SOLAR, LLC

A handwritten signature in black ink, reading "Sommer L. Sheely", written over a horizontal line.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served by both the Ohio Power Siting Board's e-filing system and electronic mail this 24th day of March, 2023 upon the following:


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Summary: Text South Branch Solar, LLC's Memorandum Contra Application of Rehearing of Travis Bohn electronically filed by Teresa Orahood on behalf of Sommer Sheely.