

# THE OHIO POWER SITING BOARD

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

CASE NO. 20-1605-EL-BGN

## ORDER ON REHEARING

Entered in the Journal on June 15, 2023

### I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the applications for rehearing filed by Birch Solar, LLC and jointly filed by intervenors Allen Auglaize Coalition for Reasonable Energy and the International Brotherhood of Electrical Workers, Local Union 32.

### II. PROCEDURAL HISTORY

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

{¶ 3} Birch Solar, LLC (Birch) is a person as defined in R.C. 4906.01(A).

{¶ 4} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Board.

{¶ 5} On February 12, 2021, Birch filed its application for a certificate to construct a solar-powered electric generation facility in Allen and Auglaize Counties, Ohio, which it described as an up to 300 megawatt (MW) solar-powered electric generation facility on approximately 1,410 acres in Shawnee Township. Thereafter, the application was supplemented on March 25, 2021, March 31, 2021, April 5, 2021, October 5, 2021, February 17, 2022, and May 4, 2022.

{¶ 6} On October 20, 2021, Staff filed its report of investigation (Staff Report).

{¶ 7} On November 2, 2021, the administrative law judge ordered that the Board of County Commissioners of Auglaize County (Auglaize County), the Board of Township Trustees of Logan Township (Logan Township), Ohio Farm Bureau Federation (OFBF), Allen Auglaize Coalition for Reasonable Energy (AACRE), the International Brotherhood of Electrical Workers, Local Union 32 (IBEW), and the Shawnee Township Trustees (Shawnee Township) be granted intervention.

{¶ 8} On May 16, 2022, Birch, Auglaize County, Logan Township, AACRE, OFBF, and IBEW filed a joint stipulation and recommendation (Stipulation). In the Stipulation, Birch, AACRE, and IBEW (Stipulating Parties) recommend that the Board issue a certificate approving the Project. Auglaize County, Logan Township, and OFBF (Partial Stipulating Parties) take no position on whether the Project should be certificated by the Board, though they request that conditions of the Stipulation be adopted if the Board issues a certificate. Further, Auglaize County and Logan Township indicated that the Project would be restricted from approval if Substitute Senate Bill 52 (SB 52), which gives local governments authority to restrict unincorporated areas from large wind and solar projects, was effective as of Birch's application. Shawnee Township did not join in the Stipulation.

{¶ 9} By Opinion and Order dated October 20, 2022 (Order), the Board denied Birch's application for a certificate.

{¶ 10} R.C. 4906.12 provides that R.C. 4903.02 to 4903.16 and R.C. 4903.20 to 4903.23 apply to any proceeding or order of the Board, as if the Board were the Public Utilities Commission of Ohio (Commission).

{¶ 11} Ohio Adm.Code 4906-2-32(A) states, in relevant part, that any party or affected person may file an application for rehearing, within 30 days after the issuance of a Board order, in the manner, form, and circumstances set forth in R.C. 4903.10. R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. R.C. 4903.10(B) also requires that applications for rehearing

be in writing and must set forth specifically the ground or grounds on which the party seeking rehearing considers an order to be unreasonable or unlawful.

{¶ 12} On November 21, 2022, Birch filed an application for rehearing of the October 20, 2022 Opinion and Order. Also on November 21, 2022, intervenors AACRE and IBEW (collectively, AACRE/IBEW) filed a joint application for rehearing. Birch's application assigns four points of error to the Board's Order; the alleged errors are focused on the Board's reliance on the evidence provided by the local legislative authorities to determine that the Project did not satisfy R.C. 4906.10(A)(6). The claims advanced by AACRE/IBEW, as discussed below, largely overlap with Birch's assignments of error where they focus on the Board's findings as concerned to R.C. 4906.10(A)(6).

{¶ 13} On November 30, 2022, Shawnee Township filed a reply to Birch's application for rehearing, stating that it believes the Board considered all record evidence before it and that, contrary to Birch's statements otherwise, the local populace of Shawnee Township, the Allen County Commissioners (Allen County), and many others were opposed to the project.

{¶ 14} By Entry issued December 13, 2022, pursuant to the authority set forth in Ohio Adm.Code 4906-2-32(E), the administrative law judge granted rehearing for the limited purpose of affording the Board additional time to consider the issues and arguments raised in the applications for rehearing.

### III. DISCUSSION

{¶ 15} In its Order, the Board denied Birch a certificate for the construction, operation, and maintenance of the proposed project. The Board determined that, considering the recommendation from Staff, and with opposition from Auglaize County, Shawnee Township, Allen County, and Logan Township, all of which filed resolutions or correspondence stating said opposition, the Project does not serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

{¶ 16} The applications for rehearing filed by Birch and AACRE/IBEW claim that the Board erred in denying the certificate primarily on grounds that the proposed project did not satisfy R.C. 4906.10(A)(6) and that, further, the Board erred in relying on non-evidentiary public comments made by the local legislative authorities in Shawnee Township, Logan Township, Allen County, and Auglaize County.

{¶ 17} The Board has reviewed and considered all of the claims and arguments contained in the applications for rehearing. Any claim or argument contained in the applications for rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Board and is, unless otherwise specifically stated, denied.

{¶ 18} Birch's first assignment of error contends that the Order is against the manifest weight of the evidence because the Board did not consider the public interest, convenience, and necessity of the project through a broad lens, which Birch contends is inconsistent with both Board precedent and Supreme Court of Ohio precedent. Birch argues that the Order is contradictory where it states that the determination under R.C. 4906.10(A)(6) must be viewed through a broad lens, but considers only one factor, which was the opposition of local government entities. Birch asserts that the Board did not consider the projected benefits of the proposed project, thus performing a one-sided analysis of R.C. 4906.10(A)(6). Specifically, Birch contends that the Board's Order disregarded the local economic development opportunities offered by the proposed project. Birch states that in over thirty prior cases, the Board and its Staff have acknowledged that a solar facility would have an overall positive impact on the local economy. Birch further argues that various economic factors, including Payment in Lieu of Taxes (PILOT) revenue, local temporary and permanent jobs and their associated wages, and its Neighboring Landowner Financial Benefit were all factors the Board did not consider in determining if the proposed project satisfied R.C. 4906.10(A)(6). Next, Birch avers that the regional economic benefits of the proposed project would have benefitted the State of Ohio as a whole, but that these benefits were not broadly considered by the Board in its Order. Particularly, Birch cites to public comments filed in the case docket by both the Lima/Allen County Chamber of Commerce

and the Ohio Chamber of Commerce about both the proposed project and renewable energy projects broadly as benefitting the State of Ohio economically. Next, Birch argues that the proposed project's positive impact to local agriculture was disregarded by the Board in its Order. Elaborating, Birch states that in other cases, the Board recognized that solar projects are "consistent with agricultural industry support, in that the facility would provide supplemental income to farmers and the land could be returned to agricultural production upon decommissioning." See *In re the Application of Hardin Solar Energy LLC*, 17-773-EL-BGN, Staff Report of Investigation, at 12 (November 21, 2017). Birch argues that the proposed project would variously have beneficial effects to land within the project area and would align with at least one local jurisdiction's land use plan. Birch puts forth that in the Order, the Board disregarded that the proposed project benefits Ohio through a diversified energy supply. Specifically, Birch calls to prior cases before the Board in which Staff recognized that solar projects can serve the public interest by providing additional electrical generation to the regional transmission grid, among other things. Birch concludes its first assignment of error by arguing that it was unreasonable for the Board to disregard that the proposed project provides a beneficial use for property containing abandoned oil and gas wells. Citing to the Staff Report, Birch avers that while Staff initially found issue with the proposed project area based on its preliminary investigation, Birch was able to work with the Ohio Department of Natural Resources to create a comprehensive Engineering Constructability Report, eventually resolving Staff's concerns.

{¶ 19} Similarly, AACRE/IBEW's first assignment of error contends that the Board unlawfully and unreasonably denied the proposed project a certificate against the manifest weight of the evidence presented in the case, violating R.C. 4903.09, through application of R.C. 4906.13(B). AACRE/IBEW contest the Board's reliance upon the local opposition to the project in its Order, citing to polling conducted by Birch concerning local support for solar farms and clean energy. Additionally, AACRE/IBEW, like Birch, find fault with the Board's Order giving weight to the public commentary filed in the case docket, the value of which AACRE/IBEW question.

{¶ 20} Concerning Birch and AACRE/IBEW's first assignments of error, the Board finds the arguments lack merit. Initially, contrasting with the claims made in Birch and AACRE/IBEW's first assignments of error, the Board did indeed consider in its Order the proponents of the proposed project. Our initial discussion of R.C. 4906.10(A)(6) specifically noted the benefits of the proposed project, including: the economic benefits of the project, such as PILOT revenues; air quality and climate impact improvements; protecting landowner rights; and preserving agricultural land use. Order at ¶68. However, as explained in the Order, the project was contemplated by the Board through a broad lens and those benefits were compared to the impact of the project on those individuals who would be most impacted. The Board also acknowledged that the project satisfied each requirement of R.C. 4906.10(A) but for (A)(6), and that, despite the noted benefits, given the universal opposition from local governments and residents, the Board could not determine that the proposed project was in the public interest, convenience, and necessity. Order at ¶¶ 67-73. Additionally, we observe that, despite Birch's contentions, such findings are not unprecedented. In previous cases the Board has found that a project was not in the public interest, convenience, and necessity where there was substantial local opposition. *See In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Transmission Line in Mahoning County, Ohio*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022), and *In the Matter of the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, Case No. 17-2295-EL-BGN, Opinion, Order and Certificate (June 24, 2021). In this case, the Board determined that, despite the benefits of this project and solar energy projects in general, the substantial and persistent opposition by local government and the public, especially residents of the project area, outweigh those potential benefits. Order at ¶ 68. The Board disagrees with Birch and AACRE/IBEW concerning its consideration of the evidence presented with respect to both the benefits of the proposed project and the opposition through public hearing testimony, public comments, and the activity of the various local governments.

{¶ 21} For its second assignment of error, Birch submits that the Board's Order is against the manifest weight of the evidence because it relied on unsupported, unsworn, and disproven claims of adverse impact of the proposed project. Particularly, Birch cites the Order where it states that the Board did not address the suitability of the proposed project outside of R.C. 4906.10(A)(6) and the public interest, convenience, and necessity factor. Order at ¶ 45. Birch claims that the Board unreasonably relied upon allegations of harm that were unsupported or disproven in the record. Birch states that the Board identified concerns raised by Auglaize County regarding potential impacts on users and property owners. Order at ¶ 64. Further, Birch points to the Board having mentioned various concerns of Allen County concerning the project, including its lack of dedicated power, impacts to land use, property values, and drinking and ground water, among other things. Order at ¶ 63. Birch then states that neither Allen County nor Auglaize County provided supporting evidence of the truth of the impacts about which they were concerned. Birch cites to Auglaize County having signed the Stipulation and the Board's statement in its Order that Auglaize County took no position as to the certification of the proposed project in the Stipulation. Next, Birch asserts that the Board was unreasonable and unlawful where it weighed the quantum of the positive and negative public commentary filed in the case docket. Specifically, Birch avers that the only party representing local residents that provided pre-filed testimony and participated in the adjudicatory hearing was AACRE, which is in favor of the proposed project. Continuing, Birch states that where the Board's Order states that public comments are relevant to its consideration of the proposed project, despite not being admitted evidence, it has departed from its own precedent by "turning a merit-based siting process into a popularity contest divorced from the merits of the Application." Further, Birch states that, in other cases, regardless of the number or proportion of negative comments, the Board made its determination based on the merits of the Application, which Birch contends did not happen here. Adding to this alleged error, Birch argues that it was unreasonable and unlawful for the Board to refuse consideration of conditions on any certificate granted that would serve to mitigate negative impacts on local jurisdictions. Supporting its claim that the Board could and should have utilized conditions

on any certificate granting the proposed project, Birch cites the Ohio Supreme Court's holding that R.C. 4906.10(A) "expressly allows the Board to issue a certificate subject to such conditions as it considers appropriate." *In re the Application of Icebreaker Windpower, Inc.*, 2022-Ohio-2742, ¶ 40. Birch then argues that the Board has addressed a similar situation to the instant case, where the Board noted general opposition and "concerns raised by the public relative to the proposed project" and summarily imposed various conditions on the certificate that were calculated to mitigate the concerns related to the public opposition to the proposed project. *In re the Application of Dodson Creek Solar LLC*, 20-1814-EL-BGN, Opinion, Order, and Certificate, at ¶ 114 (September 15, 2022) (*Dodson Creek*). Contrasting the instant case with *Dodson Creek*, Birch argues that the Board simply rejected consideration of any mitigating conditions on a certificate granting the proposed project, despite two of the four local jurisdictions having agreed to 40 draft conditions by way of the partial stipulation. Birch opines that the Board's refusal to consider mitigating conditions represents an unreasonable departure from past precedent.

{¶ 22} Concerning Birch and AACRE/IBEW's second assignments of error, the Board finds the applications should be denied. The universal opposition to the project by local governing bodies is uncontroverted. As discussed in the Order, the constituents of these entities are the ones most impacted by the project and the ones best able to express whether a project will serve the public interest, convenience, and necessity. While Birch contends local issues can be addressed through conditions, the conditions in the Staff Report and in the Stipulation did not reverse the local governments' opposition to the project. As described in the Order, many of the resolutions and comments opposed to the project were submitted after the Staff Report was filed. The Board thus found that the proposed conditions did not resolve the issue of the uniform, manifest opposition to the proposed project. Order at ¶ 69, 70. Additionally, the Board gave the public commentary proper weight. We initially observe that testimony at the local public hearing is sworn testimony subject to cross examination. As to the filed comments submitted to the docket, we expressed in the Order that, while relevant in affirming the local governments' views, the



Board considered such statements less reliable than admitted evidence. In the Order, we found that the large number of one-sided comments validated that the government entities were representing the views of their constituents. Order at ¶ 70. Further, the Board did not depart from precedent by considering the public commentary in making its decision with respect to the public interest, convenience, and necessity. As stated above, the Board has previously acknowledged the significant negative sentiment in the public commentary and the volume of public comments filed in the docket.<sup>1</sup> The Board invites public commentary regarding proposed utility scale projects to assist it in determining if a project satisfies the requirement that it be in the public interest, convenience, and necessity, and that commentary is given the weight it is due when the Board renders its decision.

{¶ 23} Birch's third assignment of error alleges that the Board's Order is unreasonable because the Board improperly abrogated its sole and plenary authority to determine the environmental compatibility and public need of the project. Birch contends that the Board delegated its authority to the public sentiment in the local jurisdictions in which the proposed project would be sited, citing the Board's Order where it states "based on the unanimous and consistent opposition to the Project by the government entities whose constituents are impacted by the Project, the Board finds that the Project fails to serve the public interest, convenience, and necessity," Order at ¶ 72. Birch avers that the Board's decision was an unreasonable departure from past precedent and in violation of Ohio public policy, among other things.

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<sup>1</sup> In the time since its decision in this case, the Board has consistently applied this reasoning to two other projects, both of which had substantial public commentary that was largely opposed to the respective projects. See *In the Matter of the Application of Cepheus Energy Project, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar Powered Electric Generation Facility in Defiance County, Ohio*, Case No. 21-293-EL-BGN, Opinion, Order, and Certificate (January 19, 2023), and *In the Matter of the Kingwood Solar for a Certificate of Environmental Compatibility and Public Need to Construct Solar Powered Electric Generation Facility in Greene County, Ohio*, Case No. 21-117-EL-BGN, Opinion, Order, and Certificate (December 15, 2022).

{¶ 24} Birch initially argues that the Board violated public policy with respect to large scale energy generation by denying the certificate. Birch argues that the Board's action runs counter to the purpose of the Board's existence, which is to provide a consortium of Ohio agencies to consider large energy projects on their merits. Birch cites several polling efforts seeking opinions of Ohioans concerning the importance of new sources of clean energy in Ohio. Birch claims that the Board simply rejected the positive sentiment toward renewable energy from these polls and instead deferred to the local voters, who were not in support of the project being located "in their own backyard" according to Birch. Further, Birch cites two other cases as examples of situations where the Board considered, and ultimately approved, projects where "a project's larger benefits to the state, the public, and the grid outweigh local disapproval." *In re Duke Energy Ohio, Inc.*, 16-253-GA-BTX, Opinion, Order, and Certificate (November 21, 2019) (*Duke*) and *In the Matter of the Application of Champaign Wind, LLC*, 12-160-EL-BGN, Opinion, Order, and Certificate, at 3 (May 28, 2013) (*Champaign Wind*). Birch avers that in *Duke*, the Board approved a project despite receiving "thousands of comments from members of the general public, local organizations, and local officials," along with intervention from multiple local governments who opposed the project. *Duke* at 82-83. In the same line of argument, Birch cites *Champaign Wind*, arguing that the Board found the project benefitted the public despite opposition from multiple local government intervenors, who collectively presented nine witnesses at the adjudicatory hearing. *Champaign Wind* at 3. Further, Birch states that in the same case, the Board took a broad view and ruled "that, in considering whether the proposed project is in the public interest, convenience, and necessity, we have taken into account that the renewable energy generation by the proposed facility will benefit the environment and consumers." *Id.* at 72. Finally, Birch concludes that the Board's denial of a certificate for the proposed project in this case is an abrogation of its authority where the best interests of Ohioans, as a whole, were not represented or considered, which is unreasonable and unlawful.

{¶ 25} Birch next submits that the Board's dependence on public sentiment is a violation of the Constitutional nondelegation doctrine. Birch avers that under this doctrine,

it is a violation of due process for state government to empower a few citizens to deny an individual use of their property. Going further, Birch opines that the nondelegation doctrine is as applicable to the Board as it is to the state legislature. Specifically, Birch's argument is that the Board delegated its authority to local residents and jurisdictions without placing safeguards or doing any independent analysis or fact-finding tests to the allegations and complaints made by those groups. Similarly, AACRE/IBEW argue that the Board may not delegate certificate approval to local governments, but here relied on the opposition of the local governments involved in the case. Like Birch, AACRE/IBEW argue that the Board, in its Order, abrogates its authority given by the General Assembly for siting major power projects and instead delegates to local governments.

{¶ 26} Birch's final point under this assignment of error is that the Board's approach to this proposed project is a violation of Chapter 4906 of the Revised Code, including R.C. 4906.13(B), as well as Chapter 4906 of the Administrative Code. Specifically, Birch alleges that the Board's total reliance on opinions of the local jurisdictions is a violation of Ohio law where R.C. 4906 confers authority on only the Board to determine the permissibility of large-scale solar projects. Birch elaborates that R.C. 4906.13(B) makes explicit the Board's plenary and exclusive authority where it states that "[n]o public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906 of the Revised Code." Birch concludes that the Board violated these statutes by considering only the presence or absence of local subdivision approval.

{¶ 27} Birch's third assignment of error alleges that the Board abrogated its sole and plenary authority to determine the environmental compatibility and public need of a proposed project. Birch's argument is that the Board delegated this authority to the local governments by denying the proposed project a certificate while citing the heavy opposition of local government and public commenters. Birch argues that the Board violated Ohio public policy, the Constitutional nondelegation doctrine, and both R.C. 4906, and Ohio

Adm.Code Chapter 4906. All of these allegations find a common thread in that they claim the Board, as the sole entity with the ability to approve or deny authority to construct and maintain utility scale projects, handed off its authority to local governments in this case.

{¶ 28} Birch further asserts that the Board failed to consider the factors in R.C. 4906.10(A) and instead impermissibly relied on a single criterion not enumerated in or permitted by this statute. Birch opines that, instead of considering all eight factors listed in R.C. 4906.10(A), the Board relied solely on (A)(6), effectively creating a “single-factor standard.”

{¶ 29} The Board disagrees with Birch regarding this claim. The Board made its decision based upon the evidence presented and exercised its authority and obligations in accordance with R.C. 4906.10(A), which the Board reiterates, provides that it must find that all requirements are met or it cannot issue a certificate. Among those requirements is that the Board must find, consistent with R.C. 4906.10(A)(6), that the project would serve the public interest, convenience, and necessity. The Order described the various considerations the Board made in assessing this factor. The Board weighed the numerous benefits of the project to the public with the large public opposition to the project and determined that the project would not serve the public interest, convenience, and necessity. At no point did the Board pass off its authority to the local governments. Rather, the Board found the opposition of the local governments to be representative of the public’s interest in the project, and thus a determining component as to whether the proposed project satisfied R.C. 4906.10(A)(6). While the Board acknowledged in its Order that the driving factor in its decision was the uniform and overwhelming opposition to the project by local governments and members of the public, including largely those residing in the footprint of the project, it considered all requirements of R.C. 4906.10(A), and stated that it shall not issue a certificate unless it finds all factors outlined in the statute. Order at ¶ 69, 73.

{¶ 30} In its fourth and final assignment of error, Birch claims that the Board violated and purported to administratively amend the text and public policy of SB 52. Birch argues

that the Order is unreasonable and unlawful where it attempts to impermissibly legislate in place of the General Assembly. Birch states that the Board attempted to amend SB 52 through its Order. Birch describes the various effects of SB 52 on power siting projects, concluding that, despite the proposed project pre-dating when SB 52 was signed into law, the Board effectively subjected the application to SB 52 in its Order. Elaborating, Birch avers that the Board's Order applies SB 52 to the proposed project by "stretching to the extreme" the powers conferred by the General Assembly on local governments with respect to utility scale renewable energy projects. Birch's argument is that by making its decision solely on the public interest factor, the Board applied SB 52 retroactively to the proposed project and in a manner that gives far more power than the General Assembly intended to give local governments in such cases.

{¶ 31} In a similar argument, AACRE/IBEW's third and final assignment of error alleges that the Board retroactively applied SB 52 to this project, in violation of Article II, Section 28 of the Ohio Constitution. AACRE/IBEW allege that by denying the certificate on grounds based in the local government opposition, the Board has effectively applied SB 52 retroactively where Allen County, for example, filed Allen County's Resolution No. 238-22 stating that if SB 52 had not "grandfathered" Birch's application for the proposed project, it would have been ineligible for consideration in Allen County. AACRE/IBEW construe this resolution as a plea by Allen County to the Board to apply SB 52 retroactively, and the Board, by denying the certificate on grounds of local government opposition, including that of Allen County, effectively acquiesced to that request.

{¶ 32} With respect to Birch's fourth and AACRE/IBEW's third and final assignments of error, the Board rejects the argument that it retroactively applied SB 52 to this project in its Order. This argument fails where the Board specifically noted that this project was not impacted by SB 52 and that the Board's decision was independent of any SB 52 parameters. Order at ¶ 69, footnote 9. Consistent with R.C. 4906.10(A)(10), the Board is required to make findings regarding each of the enumerated factors before the Board can issue a certificate. Among those factors, as discussed, is whether the project would serve

the public interest, convenience, and necessity. In our determination regarding the public interest, we must consider, separate from SB 52, the matter and degree of opposition of the local governments impacted by the project. Further, the Board did not deny a certificate to the proposed project solely on the basis that it was opposed by Allen County and Auglaize County. The Board reiterates that, as discussed above, both the local government opposition (that of Allen County, Auglaize County, Shawnee Township, and Logan Township) and the public opposition from public commenters and local residents who testified at the public hearing, factored into the Board's decision. Order ¶¶ 69-72. Our denial of the certificate was based on the required considerations of R.C. 4906.10(A) and the obligation to consider how the project would serve the public interest.

{¶ 33} In summary, the Board finds that Birch's and AACRE/IBEW's applications for rehearing should be denied, as discussed above. Having found all other arguments to be without merit, the Board finds that the applications for rehearing filed by Birch and AACRE/IBEW should be denied.

#### IV. ORDER

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the applications for rehearing filed by Birch and AACRE/IBEW be denied. It is, further,

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

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

Dan Bucci, Designee for Lydia Mihalik, Director  
Ohio Department of Development

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

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

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

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

Gregory Slone  
Public Member

JMD/mef

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