

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of) Case No. 2025-1364
Frasier Solar, LLC for a Certificate of)
Environmental Compatibility and Public) On Appeal from the Ohio Power Siting Board,
Need to Construct a Solar-Powered) Case No. 23-796-EL-BGN
Electronic Facility)

**BRIEF OF AMICUS CURIAE OHIO ENVIRONMENTAL COUNCIL
IN SUPPORT OF APPELLEE**

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INTRODUCTION

In 2025, the Ohio Power Siting Board (hereinafter the “Board”) approved Frasier Solar LLC (hereinafter “Frasier Solar” or the “Project”). Frasier Solar represents the potential for continued investment in renewable energy in Ohio, a necessary step given the threats posed by climate change. As a state that still generates nearly 60.5% of its electricity from coal-fired and natural gas power plants and only 5% of its electricity from renewable resources, Frasier Solar will be a significant contribution against climate change in Ohio’s utility-scale energy sector. Solar energy provides a zero emissions source of electricity; it also helps reduce the amount of water consumption attributable to the electric sector (i.e. water used in coal and nuclear resources) since no water is used to create electricity from solar panels. The new facility will provide roughly 120 MW of renewable solar energy. This proposed project represents a significant step toward diversifying Ohio’s electric portfolio.

The legal questions the Court must consider in this appeal are not new. The Appellant continues to put forth positions long rejected by this Court in appeal after appeal of Board decisions. The Appellant asks this Court to second-guess factual determinations of the Board in its review of Applications; but this Court has repeatedly emphasized it plays a different role in overseeing the broad, statutory discretion the General Assembly affords the Board through R.C. 4906.10(A).

The reality is, in addition to bringing innovation to Ohio, Frasier Solar meets or exceeds all of the statutory siting requirements. Frasier Solar has provided the necessary information to satisfy Ohio's legal requirements for the siting of renewable energy in Ohio. Like many solar projects recently approved in Ohio, Frasier Solar is an important step toward developing new, safe approaches to generating electricity in Ohio, the Midwest, and across the United States. The Joint Stipulation's terms, which the Board incorporated into its Opinion & Order ("Opinion"), will ensure the project's development and operations will have the minimum adverse environmental impact possible. For the reasons outlined below, the Ohio Environmental Council ("OEC") asks this Court to approve the Board's decision to grant Frasier a certificate to build its facility.

INTERESTS OF AMICUS CURAIE

The OEC is a statewide non-profit, non-partisan environmental and conservation organization, composed of thousands of individual members across Ohio and nearly one hundred affiliated organizations. Over the past five decades, the OEC has advocated to protect the environment and health of all Ohio communities through legal and policy advocacy, decision-maker accountability, and civic engagement. The OEC also has members in Knox County, home to the Frasier Solar project. The organization advocates strongly for more renewable energy development in order to meet Ohio's growing demand for energy while mitigating the causes of climate change. The OEC also advocates strongly for the protection of water resources as well as critical habitats for native and migratory species.

The OEC has followed the development of renewable energy generation in Ohio for many years, directly intervening in cases before the Board, including this case on appeal now before this Court. *See, e.g., Petition to Intervene and Memorandum in Support electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council, 16-1871-EL-BGN, Ohio Power*

Siting Board, October 13, 2017; *See also Petition to Intervene and Memorandum in Support electronically filed by Ms. Karin Nordstrom on behalf of Ohio Environmental Council, 22-0549-EL-BGN*, Ohio Power Siting Board, March 7, 2023. In this case, the OEC intervened at the Ohio Power Siting Board, joined the Joint Stipulation and Recommendation (the “Stipulation”) at issue here, participated in the evidentiary hearing, and filed expert testimony in support of the Stipulation. Based on the OEC’s review of Frasier Solar, its environmental considerations, and its Stipulation, the project presents a significant public interest benefit to the community, Ohio, and the energy grid itself. The OEC submits this brief as amicus curiae in support of the Board’s lawful approval of Frasier Solar’s application, as well as to support the Conditions from the Stipulation approved by the Board.

STATEMENT OF THE FACTS AND CASE

Amicus Curiae adopts and incorporates by reference the Statement of the Facts and Case delineated by the Appellee, the Ohio Power Siting Board, and the intervening Appellee, Frasier Solar.

STANDARD OF REVIEW

The Ohio Supreme Court’s authority in reviewing decisions of the Board centers on questions of law, with broad discretion given to the Board’s review of evidence in determining whether to grant a Certificate to an energy generation facility. When considering whether to approve an application for a certificate to construct Frasier Solar, the Board makes its determination pursuant to R.C. 4906.10(A). To grant a certificate of construction, operation, and maintenance of a major utility facility, the Board must find the project meets all eight statutory criteria. *Id.*

When reviewing decisions of the Board, the Ohio Supreme Court only reverses, modifies, or vacates an order when, after consideration of the record, the Court finds “the order was unlawful or unreasonable.” *In re Application of S. Branch Solar, L.L.C.*, Slip Opinion No. 2025-Ohio-5679 ¶ 18. The “challengers to a board order bear the burden of establishing that the order is unlawful or unreasonable.” *In re Application of Harvey Solar I, L.L.C.*, 2025-Ohio-1503 ¶ 11 (citing *In re Application of Alamo Solar I, L.L.C.*, 2023-Ohio-3778, ¶ 10).

This Court reviews questions of law de novo. *S. Branch Solar* at ¶ 18 (citing *In re Application of Icebreaker Windpower, Inc.*, 2022-Ohio-2742 ¶ 12.) As for questions of fact, this Court does not reverse or modify the Board’s decisions “when the record contains sufficient probative evidence to show that the board’s decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty.” *S. Branch Solar* at ¶ 18 (citing *In re Application of Champaign Wind, L.L.C.*, 2016-Ohio-1513, ¶ 7.)

In 2025, this Court remarked that “the statute gives the board—not [the Ohio Supreme Court]—the authority to make [factual] determinations, and the ‘open-textured nature of the terms at issue inherently vests a degree of discretion in the administrative agency.’” *Harvey Solar I* at ¶ 13 (citing *In re Application of Firelands Wind, L.L.C.*, 2023-Ohio-2555 ¶ 14-15). When reviewing the Board’s findings, this Court does not “reweigh the evidence or second-guess [the board] on questions of fact.” *Harvey Solar I* at ¶ 15 (citing *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35.)

ARGUMENT

R.C. 4906.10(A) outlines the broad statutory criteria created by the General Assembly for the Board to utilize in reviewing applications for utility-scale electric generation projects.

Ultimately, all projects approved by the Ohio Power Siting Board must be in the service of the “public interest, convenience, and necessity.” *Id.* at (A)(6). The Board interprets public interest to require a broad balancing of benefits against negative impacts, and this Court has repeatedly affirmed the Board’s standard. A project serving the “public interest, convenience, and necessity” must consider multiple issues, such as the need for the facility, the environmental impact, the impact to the nearby community, the benefits to the nearby community and the state, and more. For the Board to make its determinations on any given project, it must consider the question holistically, through a broad lens, rather than any given issue in isolation. *S. Branch Solar* at ¶ 58.

With these principles in mind, the OEC provides the following arguments regarding why the Court should affirm the Board’s decision to grant Frasier Solar’s application. The Appellant’s arguments ultimately fail because they disregard essential elements of precedent governing both the Board’s review of applications and this Court’s review of Board decisions. The Appellant asserts four propositions of law. Each proposition argues that the Board acted unlawfully and unreasonably in granting Fraiser Solar’s application due to issues of fact. Additionally, the Appellant argues that the Project violates R.C. 4906.10(A)(6) because it does not serve the public interest. However, as the argument below will detail, the Appellant (1) misunderstands the “unlawful or unreasonable” legal standard and, (2) disregards this Court’s repeatedly held notion that no factor is dispositive of the public interest determination.

Fraiser Solar not only provides Ohio with another opportunity for renewable energy, but it will support Ohio’s growing electricity needs and stabilize the grid. Frasier Solar’s Application met the requirements of R.C. 4906.10(A). Therefore, the OEC respectfully urges this Court to uphold the law as it currently stands and affirm the Board’s decision to grant Frasier Solar’s application.

I. The Appellant advocates for a standard of review that is unsupported by law and misconstrues the meaning of “unlawful or unreasonable.”

The Appellant’s merit brief omits this Court’s jurisprudence declaring that it does not reweigh evidence or the Board’s factual findings. This Court has explained that it shows deference to the Board’s specialized expertise on factual matters. *Champaign Wind*, 2016-Ohio-1513, at ¶ 7. Unless the Board exercises its authority outside the “zone of permissible statutory construction” or its “decision is manifestly contrary to” or substantially unsupported by the evidence in the record, this Court will not disturb the Board’s factual findings. *Firelands Wind*, 2023-Ohio-2555, at ¶ 15.

The Appellant disregards that it bears the burden of showing that the “board’s decision is against the manifest weight of the evidence or is clearly unsupported by the record.” *Champaign Wind*, 2016-Ohio-1513, at ¶ 7. To carry this burden, the Appellant must support its contentions with more than conclusory statements. *S. Branch Solar*, Slip Opinion No. 2025-Ohio-5679, at ¶ 46. Appellant only refers to the Board’s determinations in this case as unlawful or unreasonable in its headings. The body of its merit brief merely discusses how the Board’s determinations are not sufficient to protect the community’s interests. This is not enough to carry its burden.

The Appellant’s attempt to show that the Board acted unlawfully or unreasonably simply recounts the facts and alleges they are inadequate to support the Board’s findings. However, the appellant fails to demonstrate how the Board’s findings are manifestly contrary to the evidence in the record or “so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty.” *S. Branch Solar* at ¶ 18. The Appellant portrays the Order and Stipulations’ alleged deficiencies as being enough for this Court to reverse, modify, or vacate the Board’s Order. For example, the Appellant criticizes Stipulation condition 16 and its plan to mitigate adverse visual impacts; Appellant contends that because neighbors will “have to endure these unsightly views all day long,” the project goes against the public interest and is insufficient to satisfy R.C.

4906.10(A)(6). (PKCO Merit Br. at 30–31). However, the Appellant references no case law supporting this legal conclusion. In fact, this Court has twice held that an applicant is not required to completely screen all the views of a facility from neighboring properties. *Harvey Solar I*, 2025-Ohio-1503, at ¶ 21; *Alamo Solar I*, 2023-Ohio-3778, at ¶ 43. The relaxed standard of review that the Appellant advocates for is inconsistent with this Court’s precedent. Rather, the Appellant is asking this Court to put subjective viewshed preferences of a subset of nearby residents over the Board’s thoroughly-vetted, visual mitigating Conditions.

II. Contrary to the Appellant’s Propositions of Law, Frasier Solar is in the Public Interest.

To satisfy R.C. 4906.10(A)(6), the Board must find that a proposed facility will serve the public interest, convenience, and necessity. In this case, the Board’s review was comprehensive, and it acted lawfully and reasonably in balancing all of the facts before it in issuing a Certificate for this project. The Board’s public interest analysis considers local impacts as one factor in its balancing of many other factors—from economic considerations and safety risks to issues like climate change and Ohio’s energy grid. The Board “balanced projected benefits against the magnitude of potential negative impacts on the local community.” (Opinion, ¶ 184). However, this balancing is not just counting the number of benefits against the risks; the Ohio Supreme Court heavily favors economic benefits and energy access, even in the face of significant local opposition. *Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 166 Ohio St. 3d 438, 187 N.E.3d 472 (2021).

Frasier Solar’s ability to mitigate climate change delivers critical public interest benefits. Renewable energy projects like Frasier Solar combat of the root causes of climate change. Frasier Solar uses minimal water and does not pollute the atmosphere with carbon dioxide or other

greenhouse gasses. Frasier Solar fundamentally benefits the public interest because it mitigates climate change and its negative impacts.

As described in Frasier Solar's Application and testimony, it intends to implement an agrivoltaic project on the same land as the solar panels. Company Exhibit 18, Direct *Testimony of Camren Maierle* (August 5, 2024). Specifically, they plan to contract with New Slate Land Management, a company focused on using sheep to act as a vegetative management strategy for solar projects. *Id.* Frasier Solar's commitment to using sheep grazing for vegetation management will ensure the agricultural land and soil within the project site are maintained and healthy, even after decommissioning.

Frasier Solar will also help Ohio keep up with its energy needs. The Board correctly found that the Project will meet Ohio's growing energy demand, increasing around 20% every year, and enhancing grid resiliency. (Opinion, ¶ 157). The Project sits near Columbus, Toledo, Akron, and Cleveland; this location is optimal because it can respond to the growing regional demand for electricity. (Opinion, ¶ 157). Frasier Solar is projected to provide approximately 120 MWs of renewable energy to the Ohio market. This Project represents yet another opportunity to expand Ohio's access to renewable energy and combat climate change.

Additionally, the Project is expected to generate \$43 million to Knox County, including \$18 million to Mount Vernon City Schools, over \$3 million to the career center, and over \$700,000 to the public library and county children's services. (Opinion, ¶ 158). The Board reviewed all the relevant considerations and correctly determined the Project would benefit the public interest.

a. The Appellant advocates for a public interest calculation contrary to the Ohio Supreme Court’s jurisprudence.

To satisfy R.C. 4906.10(A)(6), the Board must find that a proposed facility will serve the public interest, convenience, and necessity. As recently provided by the Ohio Supreme Court, “while local-government and public input regarding the project are informative, [such factors] are not determinative of whether the proposed facility will serve the ‘public interest, convenience, and necessity’ under R.C. 4906.10(A)(6).” *S. Branch Solar*, Slip Opinion No. 2025-Ohio-5679, at ¶ 52.

The Board’s broad balancing of benefits against negative impacts has been repeatedly affirmed by the Ohio Supreme Court. *See Harvey Solar I*, 2025-Ohio-1503, at ¶ 67 (“Because the record demonstrates that the board considered both positive and negative impacts in reaching its determination that the facility ‘will serve the public interest, convenience, and necessity,’ we reject the residents’ sixth proposition of law.”). In *Firelands Wind*, a case regarding a utility-scale wind facility, the Board balanced “projected benefits with the potential negative impacts . . . [finding] that the project ‘will serve the public interest, convenience, and necessity’ as required by R.C. 4906.10(A)(6).” *Firelands Wind*, 2023-Ohio-2555, at ¶ 55. Similarly, the Court affirmed the Board’s approval in *In re Application of Champaign Wind, L.L.C.*, noting how the Board did not make its public interest finding based on one factor and included several factors in its conclusion, including “benefit [to] the environment and consumers” and “minimal aesthetic impact on the local community.” *Champaign Wind*, 2016-Ohio-1513, at ¶ 47.

The Board employs “experienced staff professionals” who thoroughly investigate these applications. *S. Branch Solar* at ¶ 47. The staff professionals weigh all the factors when deciding if a project will have a net benefit for a community. The Appellant advocates for this Court to overturn the Board’s fact-intensive analysis because they are unhappy with the result. However,

that is not the standard that the law prescribes. In *Harvey Solar*, this Court refused to overturn the Board’s findings because the record showed that the Board “considered both positive and negative” impacts when reaching its finding regarding R.C. 4906.10(A)(6). *Harvey Solar I* at ¶ 67. The same is true here. (Opinion & Order ¶ 184). As this Court held in *Harvey Solar*, the relevant question is whether the Board acted reasonably in determining whether a facility serves the public interest, not to reweigh the facts or substitute the Court’s judgement for that of the Board and its staff. *Id.* ¶ 66.

The Appellant wants this Court to overturn the Board’s determination under R.C. 4906.10(A)(6) because it claims certain facts go against the public interest. The Appellant harps on four facts that it contends should be determinative of the public interest inquiry. It first claims that the visual impacts of the Project are contrary to the public interest because neighbors find the Project “unsightly.” (PKCO Merit Br. at 31). Second, the Appellant claims the Project is contrary to the public interests because of the risk of draining and flooding problems. (*Id.* at 33). Third, the Appellant argues that construction activities may damage roads and thus make the Project contrary to the public interest. (*Id.* at 35–36). Fourth, the Appellant argues that the possibility of impacts on wildlife outside of the project area makes this Project contrary to the public interest. (*Id.* at 36).

However, this Court rejected the idea that any factor is determinative of the outcome under R.C. 4906.10(A)(6). *S. Branch Solar* at ¶ 52 (“local-government and public input regarding the project are informative, they are not determinative of whether the proposed facility will serve the “public interest, convenience, and necessity” under R.C. 4906.10(A)(6)”). The Appellant refuses to heed the public interest standard that this Court set out.

When viewed through the broad, balanced lens required by R.C. 4906.10(A)(6), Fraiser Solar serves the public interest, convenience, and necessity. The Board and its staff reached that

conclusion based on a full evaluation of the evidentiary record. Appellant provides no persuasive case law to support its position.

b. Contrary to the Appellant’s Propositions of Law, the Board’s Opinion & Order, including the Conditions from the Stipulation, satisfy the requirements of R.C. 4906.10(A) and are part of the “dynamic process” overseen by the Board.

The Appellant’s propositions of law all fail for the same reason: they require a narrow view of the Board’s statutory authority contrary to this Court’s precedent. See *Icebreaker Windpower*, 2022-Ohio-2742, at ¶ 50. The siting process is dynamic and collaborative beyond the initial application, both between the Board, local governmental entities, and other parties in the case—a reality both the Board and the Ohio Supreme Court have reiterated consistently. This dynamic oversight process, authorized by R.C. Ch. 4906, “confers authority in the board to impose conditions on the issuance of a certificate so that the board may monitor compliance with those conditions.... includ[ing] ensuring the mitigation of potential negative impacts of the project.” *S. Branch Solar* at ¶ 11.

This Court has emphasized how R.C. 4906.10(A) “empowers the board to grant a siting certificate ‘upon such terms, conditions, or modifications of the construction, operation, or maintenance’ of the facility as the board deems appropriate.” *Alamo Solar I*, 2023-Ohio-3778, at ¶ 41. In *Alamo Solar I*, the Court reviewed the Board’s numerous factual determinations and other decisions, ultimately upholding the “board’s authority to impose conditions that are subject to monitoring for compliance by board staff.” *Id.*, quoting *In re Application of Buckeye Wind, L.L.C.*, 2012-Ohio-878, ¶ 13-18. Further, “the statutes authorize a dynamic process that does not end with the issuance of a construction certificate.” *Id.* at ¶ 16.

What the Appellant proposes, in its Propositions of Law, is an approach to the Board’s process that this Court has never adopted. The Appellant does not apply the rules established by

this Court in those cases regarding what constitutes an unlawful or unreasonable decision by the Board; the Appellants do not even reference these cases in their arguments.¹

For example, Proposition of Law 4 claims that Frasier Solar did not submit enough information about wildlife outside of the project area to meet R.C. 4906.10(A)(2) and, because the Project could hurt certain species, it does not satisfy R.C. 4906.10(A)(6). (PKCO Merit Br. at 36). However, the Appellant ignores the dynamic oversight that the Board requires in its Opinion. Specifically, the Board instructs Frasier Solar to work with ODNR and USFWS to determine any unanticipated impacts to nearby plant and animal species and, if any state or federal listed species are encountered during construction activities, the Applicant must contact Staff, the ODNR, and the USFWS within 24 hours. (Opinion, ¶ 131). If construction poses a threat to any of these species, it will be immediately halted until a prudent course of action is agreed upon by the agencies. (Opinion, ¶ 131). This continued supervision of the Project and its impacts have been repeatedly authorized by this Court. The Appellant does not want to acknowledge this reality and instead chooses to ignore it.

The clearest example of Appellant ignoring the existence and repeated authorization of the Board's dynamic process can be seen in the Appellant's Fourth Proposition of Law. When arguing that construction activities are contrary to the public interest, the Appellant claims that R.C. 4906.10(A)(6) commands the Board to "figure out how the Project will affect the public interest and convenience before the certificate is issued." (PKCO Merit Br. at 36). The Appellant's emphasis on the word "before" showcases its misunderstanding of the Board's duties. Although the Board must do its weighing of the facts to decide whether a project is in the public interest, it

¹ In fact, Propositions of Law 1 through 4 of the Appellant's arguments in its merit brief do not reference a single Ohio Supreme Court opinion, ignoring the Court's consistent interpretation of the Board's authority as granting it broad discretion in the application of its statutory criteria for granting certificates to electric generation facilities. The only cases Appellant cites are in the Standard of Review section of its merit brief. (PKCO Merit Br. at 23)

need not cease all oversight and control when it issues a certificate. The Appellant’s contention that the Board loses the ability to oversee the project as it develops directly contradicts the Board’s dynamic oversight process. As the Ohio Supreme Court affirmed last year, R.C. 4906 authorizes a “dynamic process” which “confers authority on the board to impose conditions on the issuance of a certificate so that the board may monitor compliance with those conditions.” See *S. Branch Solar*, Slip Opinion No. 2025-Ohio-5679, at ¶ 11 (quoting *Buckeye Wind*, 2012-Ohio-878, at ¶ 16).

The Appellant’s disregard of the existence of this dynamic process distorts the law and the facts of this case. The Appellant frames this approval as an all-or-nothing ordeal. In actuality, the approval process does not end when the Board grants a certificate. The Board retains the power to command and oversee the Project at every stage of development. The Ohio Supreme Court has correctly affirmed this process and the Board’s dynamic oversight as the proper legal framework for reviewing applications for the new electric generation Ohio needs, including renewable energy projects like Frasier Solar.

CONCLUSION

The OEC urges the Court to affirm the Board’s decision, granting Frasier Solar its certificate. By doing so, the Court helps Ohio increase in-state renewable energy generation at a time where Ohio’s electric grid needs both more generation *and* carbon-free generation. This Court has long relied upon the Board’s expertise in implementing its complex application process for electric generation facilities, and it need not change that approach with Frasier Solar. This appeal represents, instead, the Appellant’s refusal to accept the Conditions in the Stipulation as approved by the Board as sufficient to meet the statutory criteria provided by the Ohio General Assembly.

The Board thoroughly vetted Frasier Solar through a comprehensive application process. It balanced its numerous benefits against its limited risks. That work need not be disturbed.

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