BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of )
Champaign Wind, LLC, for a Certificate to )
Construct a Wind-Powered Electric ) Case No. 12-160-EL-BGN
Generating Facility in Champaign County, )
Ohio. )

ENTRY ON REHEARING

The Board finds:

(1) On May 15, 2012, Champaign Wind, LLC (Champaign or Applicant), filed, with the Ohio Power Siting Board (Board), an application pursuant to the provisions of Chapter 4906-17, Ohio Administrative Code (O.A.C.), for a certificate to construct a wind-powered electric generation facility in Champaign County, Ohio.

(2) On May 28, 2013, the Board issued its opinion, order, and certificate approving the application, with modifications, and ordering that a certificate be issued, subject to 72 conditions set forth in the opinion, order, and certificate.

(3) Section 4906.12, Revised Code, states, in pertinent part, that Sections 4903.02 to 4903.16 and 4903.20 to 4903.23, Revised Code, apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).

(4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(5) Rule 4906-7-17(D), O.A.C., 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 and form and circumstances set forth in Section 4903.10, Revised Code.
(6) On June 27, 2013, timely applications for rehearing of the May 28, 2013, opinion, order, and certificate were filed by Diane McConnell, Robert McConnell, Julia Johnson, and Union Neighbors United, Inc. (collectively, UNU), and the Board of Commissioners of Champaign County, Ohio, with the Boards of Trustees of the Townships of Union, Urbana, and Goshen (collectively, County/Townships).

(7) By entry issued July 25, 2013, in accordance with Rule 4906-7-17(I), O.A.C., the administrative law judge (ALJ) granted the timely applications for rehearing filed by UNU and the County/Townships solely for the purpose of affording the Board additional time to consider the issues raised in these applications for rehearing.

(8) The Board has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically addressed herein have been thoroughly and adequately considered by the Board and are being denied. In considering the arguments raised, the Board will address the merits of the assignments of error by party and in the order in which they were addressed in the opinion, order, and certificate.

The City of Urbana’s Filing

(9) The Board notes that the city of Urbana (Urbana) filed a document purporting to be an application for rehearing on June 28, 2013.

(10) Thereafter, on July 8, 2013, Champaign filed a motion to strike the document filed by Urbana, noting that the purported application for rehearing was filed 31 days after the issuance of the Board’s opinion, order, and certificate. Consequently, Champaign argues that the Board has no jurisdiction to entertain an application for rehearing that is filed subsequent to the statutory deadline, citing Dover v. Pub. Util. Comm. of Ohio, 126 Ohio St. 438, 185 N.E. 833 (1933), Pollitz v. Pub. Util. Comm. of Ohio, 98 Ohio St. 445, 121 N.E. 902 (1918). (Co. Motion to Strike at 3-4.)

(11) On July 11, 2013, Urbana filed a response to Champaign’s motion to strike. In its response, Urbana initially argues that
the deadline for applications for rehearing was July 1, 2013, and not June 27, 2013. In support, Urbana cites Rule 4901-1-07, O.A.C., which provides that three days shall be added to a prescribed period of time where service is made by mail. Urbana argues that this rule requires that three days be added to the statutory 30-day rehearing period set forth in Section 4903.10, Revised Code. In the alternative, Urbana argues that any delay in filing its application for rehearing was excusable because: no service by hand delivery was made on Urbana on May 28, 2013, despite the fact that Board Staff member Matt Butler indicated a press release would be issued later in the day; the order was not electronically filed in the Board’s docket until 3:55 p.m. on May 28, 2013, which was only five minutes before the close of Urbana’s business day; the service notice was not docketed until 4:48 p.m., when Urbana’s offices were closed, and was not served upon Staff Attorney Breanne Parcels, despite her designation as trial attorney, in accordance with Rule 4906-7-11, O.A.C.; Urbana was not served with the order via email; and Urbana was not served with a hard copy by mail until May 30, 2013. (Urbana Response at 2-3.)

(12) On July 15, 2013, Champaign filed a reply to Urbana’s response. In its reply, Champaign reiterates that the Board cannot exercise jurisdiction over an application for rehearing unless the appeal has been perfected in accordance with the statute. Champaign adds that nothing within Section 4903.10, Revised Code, permits an application for rehearing to be filed within 30 days of the service of the order (emphasis added). (Co. Response at 1-2.)

(13) Section 4906.12, Revised Code, notes that certain sections, including Section 4903.10, Revised Code, shall apply to any proceeding or order of the Board under Chapter 4906. Section 4903.10, Revised Code, explicitly provides that applications for rehearing must be filed within 30 days after the entry of the order upon the journal of the Board (emphasis added). Upon review of Urbana’s application for rehearing, we find that it was not filed within the 30-day time requirement and, therefore, it is untimely filed. Accordingly, the Board has no jurisdiction to consider Urbana’s application for rehearing. See Greer v. Pub. Util.

Although Urbana correctly points out that the date of the event shall not be included, the thirtieth day after the entry of the order into the Board’s journal is June 27, 2013. In addition, the Board notes that Urbana’s reliance on Commission Rule 4901-1-07, O.A.C., is misguided, as Board Rule 4906-1-04, O.A.C., dictates the computation of time for Board proceedings. Even if the Board could rely on Rule 4901-1-07, O.A.C., the rule unambiguously applies only to pleadings or other papers served by a party to a proceeding, not an opinion and order issued by the Board or Commission (emphasis added). Therefore, as the Board has no jurisdiction to even consider Urbana’s late-filed application for rehearing, the Board finds Champaign’s motion to strike is moot and need not be considered.

The County/Townships’ Application for Rehearing

Procedural Matters

(14) In their application for rehearing, the County/Townships allege that the Board failed to afford the County/Townships due process during the adjudicatory hearing. In support of this assignment of error, the County/Townships provide that Champaign witnesses Speerschneider and Crowell were unable to answer some of the questions posed by counsel for the County/Townships. The County/Townships believe that this demonstrates that Champaign’s witnesses were not qualified to testify and, therefore, the County/Townships were deprived of the opportunity to cross-examine experts on the application. Consequently, the County/Townships conclude that the Board’s admission of the application as evidence was improper. (County/Townships App. at 11-12.)

In its memorandum contra, Champaign explains that it is longstanding practice to allow an application and its
corresponding exhibits through witness testimony of an officer or experienced employee of an applicant. Champaign points out that Champaign witness Speerschneider is an officer with Applicant and has extensive experience in the industry. Champaign adds that Champaign witness Crowell was the senior project manager in ecological matters and, as such, an expert, the admission of his testimony into the record was appropriate. (Co. Memo Contra at 5-7.)

As noted in the opinion, order, and certificate, Board precedent allows for the introduction of an application or study by a sponsoring witness who had significant responsibility in the production of an exhibit. The County/Townships fail to present any justification for the Board to depart from its past precedent, and the record reflects that Champaign witnesses Crowell and Speerschneider had significant roles in compiling the application and its exhibits, as well as extensive industry experience. The Board also finds the County/Townships' due process arguments to be without merit. We note that not only did the County/Townships cross examine these witnesses, nothing precluded the County/Townships from conducting depositions of Champaign witnesses Crowell and Speerschneider prior to the hearing in order to determine whether either of the witnesses was familiar with the County/Townships' areas of concern within the application. Further, nothing prevented the County/Townships from subpoenaing other individuals who may have contributed to the items that were compiled by Champaign witnesses Crowell and Speerschneider. In fact, the County/Townships requested a subpoena during the adjudicatory hearing, which the ALJs granted, in order to call a Staff witness to testify on a specific area of the Staff Report on which the County/Townships had questions. (Order at 12-13; Tr. at 2435-2443.) Accordingly, as the County/Townships fail to show that their due process rights were in any way violated, the County/Townships' application for rehearing should be denied.

Setbacks - Blade Shear and Fire

(15) In their application for rehearing, the County/Townships argue that the opinion, order, and certificate is unreasonable
unless the Board requires that setbacks from the turbines to nonparticipating landowners' property lines conform to manufacturers' setback recommendations. More specifically, the County/Townships argue that multiple turbine safety manuals set forth greater setback recommendations than those required by the opinion, order, and certificate, including a Gamesa safety manual that the County/Townships claim is uncontroverted evidence of a recommended setback greater than the minimum statutory setback. (County/Townships App. at 9-11.)

In its memorandum contra the County/Townships' application for rehearing, Champaign notes that the County/Townships have cited turbine safety manuals' temporary clearance recommendations in the event of fire or overspeed, arguing that these distances ought to be used as a permanent setback. Champaign points out that the Board specifically found in the opinion, order, and certificate that the County/Townships confuse the temporary clearance recommendations in the event of temporary safety situations, which are akin to temporary evacuations that might take place during a gas leak, with the actual manufacturer setback recommendations. Further, Champaign notes that Staff witness Conway testified that he contacted all potential turbine manufacturers in this case and, with Staff's recommendations, confirmed that the project will exceed all manufacturer setback recommendations. (Co. Memo Contra at 4-5.)

The Board declines to grant the County/Townships' application for rehearing on the issue of blade shear and setbacks. Initially, the Board emphasizes that the County/Townships have raised no new arguments that were not raised at hearing and discussed in the opinion, order, and certificate. As the Board explained in the opinion, order, and certificate, the County/Townships misunderstood the cited provisions from the turbine safety manuals, as these were not minimum setback recommendations, but recommended temporary clearance areas in the event of temporary safety situations, such as fire or overspeed, akin to temporary evacuations during a gas leak from a gas pipeline. Further, contrary to the
County/Townships' argument, the safety manuals are not uncontroverted evidence of manufacturer setback recommendations. In fact, as discussed in the opinion, order, and certificate, Staff witness Conway testified that he contacted all potential turbine manufacturers in this case and confirmed that, with Staff's conditions, the project will exceed all manufacturer setback recommendations. (Order at 41-42.) Consequently, the Board finds that the County/Townships' application for rehearing on this issue should be denied.

Decommissioning

In their application for rehearing, the County/Townships argue that the opinion, order, and certificate is unreasonable and unlawful unless the Board revises Condition (52)(h) to require financial assurance for decommissioning in an amount sufficient to cover the total costs of decommissioning (County/Townships App. at 7-8).

In its memorandum contra the County/Townships' application for rehearing, Champaign argues that the County/Townships' request is unreasonable and reflects a misunderstanding of the project. Champaign points out that, pursuant to the opinion, order, and certificate, no more than 52 turbines will actually be constructed, depending on the turbine model selected. Under the County/Townships' request, Champaign asserts, financial assurance would be required for turbines that may never be built. Further, Champaign points out that the County/Townships' witness Knauth never provided a substantive reason why the County/Townships' requested approach was necessary, other than it was "preferable" in his opinion. (Co. Memo Contra at 3-4.)

The Board finds that the County/Townships have presented no new arguments that were not raised at hearing and addressed in the opinion, order, and certificate. As the Board found in the opinion, order, and certificate, the County/Townships' proposed condition would require Champaign to post financial assurance without considering the number of turbines actually constructed or under construction, and would require a revised decommissioning
plan every three years, which is too short to be practical and
does not align with the Board’s most recent decisions on
decommissioning (Order at 72). Consequently, the Board
finds that the County/Townships’ application for rehearing
on this issue should be denied.

Conditions

(17) In their application for rehearing, the County/Townships
argue that the order is unreasonable and unlawful unless the
Board revises Condition (29) to include the Boards of
Township Trustees as additional holders of the bonds or
financial assurance. The County/Townships point out that
the County Engineer has no authority over township roads
and would not be the entity responsible for the roads if
Champaign fails to repair them after the project. Further,
the County/Townships point out that the Board has found
that Champaign can enter into agreements with the Boards
of Township Trustees for any township roads utilized in the
plan. Consequently, the County/Townships state that they
believe the failure to include the township trustees as to
bonds/financial assurance was merely an oversight. The
County/Townships request that the Board revise Condition
(29) to include the relevant boards of township trustees.
(County/Townships App. at 6-7.)

In its memorandum contra the County/Townships’
application for rehearing, Champaign argues that the Board
should reject the request for rehearing on this point.
Champaign argues that the “appropriate public authority”
referred to in the Board’s Condition (29) is the county
engineer, because Section 5543.01, Revised Code, gives the
county engineer general charge of the construction,
reconstruction, resurfacing, or improvements of roads by
boards of township trustees. Further, Champaign argues
that a county engineer, and not the boards of township
trustees, would have the appropriate experience to
determine the condition of a road and that it was
appropriate for the Board to leave this issue to the county
engineer. Finally, Champaign argues that the Board is not
required by law to provide financial assurance for pre- and
post-construction roadwork for a major utility and, although
the Board elected to require it for the county in this case, it
was not unreasonable or unlawful for the Board to decline to require it for each township. (Co. Memo Contra at 1-3.)

In the opinion, order, and certificate, the Board included Condition (29), which requires Applicant to promptly repair any damaged public roads and bridges to their preconstruction state under the guidance of the appropriate public authority. Nevertheless, Condition (29) requires Champaign to provide financial assurance to the Board of Commissioners of Champaign County that it would restore the public county and township roads to their preconstruction condition. The Board finds, as the condition expressly provides, that repairs must be made "under the guidance of the appropriate public authority." Therefore, it is logical that financial assurance should be made to the public official or body possessing the appropriate statutory authority. Consequently, the Board grants the County/Townships' application for rehearing to the extent necessary in order to clarify this language. The Board finds that Condition (29) should be modified as follows:

Applicant must repair damage to government-maintained (public) roads and bridges caused by construction activity. Any damaged public roads and bridges must be repaired promptly to their preconstruction state by Applicant under the guidance of the appropriate public authority. Any temporary improvements must be removed, unless the public official or body possessing the appropriate statutory authority requests that they remain. Applicant must provide financial assurance to the public official or body possessing the appropriate statutory authority that it will restore the public county and township roads in Champaign County it uses to their preconstruction condition. Applicant must also enter into a road use agreement with the public official or body possessing the appropriate statutory authority prior to construction and subject to Staff review and confirmation that it complies with this
condition. The road use agreement must contain provisions for the following:

(a) A preconstruction survey of the conditions of the roads.

(b) A post-construction survey of the condition of the roads.

(c) An objective standard of repair that obligates Applicant to restore the roads to the same or better condition as they were prior to the construction.

(d) A timetable for posting of the construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.

(Order at 84.)

UNU's Application for Rehearing

Procedural Process

(18) In its application for rehearing, UNU argues that the opinion, order, and certificate suggests that the certificate amends the previously issued certificate to Buckeye Wind, LLC, in In re Application of Buckeye Wind, LLC, Case No. 08-666-EL-BGN (Buckeye Wind I), Opinion, Order, and Certificate (Mar. 22, 2010). UNU argues that, if the opinion, order, and certificate was intended as an amendment of the certificate issued in Buckeye Wind I, the order is unlawful. (UNU App. at 3-4.)

In its memorandum contra UNU's application for rehearing, Champaign asserts that its application in this case was not an amendment application and nothing in the opinion, order, and certificate implies that the Board was approving an amendment application. Champaign points out that the Board merely discussed the Board's procedural process for certificates and amendment applications and, additionally,
clearly articulated that Champaign was applying for a certificate in this case. (Co. Memo Contra at 1-2.)

The Board affirms that the application in this proceeding was not an amendment application and the Board did not approve an amendment application as part of its opinion, order, and certificate. The portions cited by UNU are taken from Section III, Procedural Process, of the opinion, order, and certificate, in which the Board gave an overview of its procedural process, including its process for amendment applications. The Board provided this information to clarify its amendment process because UNU's posthearing brief exhibited confusion regarding whether any modifications of the certificate sought by a party after the certificate was issued would be subject to any process (UNU Reply Br. at 30, 39-40). Accordingly, the Board finds that UNU's application for rehearing on this issue should be denied.

Evidentiary Rulings

In its application for rehearing, UNU argues that the Board should allow discovery and testimony about the drafts of the application and the Staff Report. (UNU App. at 87-89.)

Champaign responds that the ALJs denied the motion to compel the production of application drafts on the ground that it was not relevant to the current application and not reasonably calculated to lead to admissible evidence. Champaign points out that UNU was still able to ask Staff witness Conway several questions about a draft version of the Staff Report. (Co. Memo Contra at 56-57.)

The Board finds that UNU raises, verbatim, the same argument in its application for rehearing that it presented to the Board in its initial brief in this matter. The Board notes that UNU was given the opportunity to question Staff's witness on matters relating to the Staff Report, including how staff members arrived at their conclusions in the Staff Report. Accordingly, as we have already addressed the arguments UNU raised in its initial brief in the opinion, order, and certificate, we find that UNU's assignment of error should be denied. (Order at 11-12; Tr. at 2555-2558; UNU Br. at 66.)
In its next assignment of error, UNU claims that records related to turbine sites sold to Champaign are germane to the certificate. UNU requests that the Board order Champaign to produce these records and its witness should be recalled to answer questions about the records. (UNU App. at 89-90.)

Champaign responds that these records are not relevant, and the request for these records was overly broad and overly burdensome. Champaign further points out that UNU has not presented any new arguments to justify reversal of the Board’s ruling. (Co. Memo Contra at 57-58.)

The Board finds that UNU’s recitation of its arguments raised in its initial brief fails to present anything new for the Board’s consideration. (Order at 13-14; UNU Br. at 67.) Therefore, UNU’s assignment of error should be denied.

UNU requests the Board reopen discovery and the hearing to find, admit, and consider evidence about environmental and safety hazards caused by turbine models other than those listed in Champaign’s application. In support of its request, UNU states that Champaign’s witness, as well as Champaign’s counsel and the ALJs, admitted that information about noise at other wind farms, even those with different turbine models, is relevant to this application. UNU contends that the order relies heavily on Champaign’s representations about other turbine models’ environmental and safety records as support for the Board’s findings. (UNU App. at 90-91.)

Champaign replies that UNU does not make any specific arguments as to any specific evidentiary ruling and, thus, should not be considered by the Board. (Co. Memo Contra at 58.)

The Board is unclear on what UNU is seeking in its request to reopen discovery and the adjudicatory hearing in order to consider evidence about information not included in the application at hand. It is difficult for the Board to address UNU when it broadly requests that we consider all rulings, including our final order. Further, we find that UNU’s credibility in this matter is undermined by its false assertion
that the ALJs admitted that noise complaints at other wind projects are pertinent to the matter at hand. To the contrary, UNU’s citation relates to admission of Champaign witness testimony, over UNU’s objections, in which the ALJ determined that the admission of witness testimony was consistent with the previous ruling in which the ALJ, at UNU’s urging, denied Champaign’s motion in limine, stating that parties, including UNU, should be able to present evidence on a broad range of issues that relate to the application in this matter. UNU is essentially seeking a double standard for considering evidence that the Board declines to adopt. Nonetheless, we find that the ALJs’ rulings were consistent by allowing for all parties in this matter to present evidence that was relevant to the application in this proceeding. (UNU App. at 91; Tr. at 248-249, 943-944.) Accordingly, we find UNU’s assignment of error should be rejected.

(22) UNU contends that the Board should reopen discovery in order to reissue UNU’s subpoenas that were quashed, as well as reopen the hearing to admit the evidence produced pursuant to the subpoenas. UNU claims that GE did not object to the subpoena and was in the process of complying with it when the ALJ quashed it, thus, the ALJ’s ruling was erroneous. UNU reiterates that the subpoenas were not in any way overbroad and notes that subpoena requesting information on the Vestas turbine model would have provided information germane to Champaign’s application. (UNU App. at 92-95.)

Further, UNU believes that subpoenas limited to turbine models listed in Champaign’s application would have been meaningless, as the turbine models are often new and have a limited operational history. UNU adds that it offered to narrow the scope of the subpoenas, as stated in its memorandum, but the subpoenaed companies had no interest in producing any records and declined to cooperate with UNU. UNU offers that it did not file for amended or revised subpoenas because the subpoenaed companies refused to tell UNU’s counsel what was necessary to refine them. In addition, UNU states that it could not obtain the subpoenaed blade throw evidence from other sources
outside of the subpoenas, and the ALJs suppressed UNU’s attempts to question Staff on blade throw incidents throughout the adjudicatory hearing. (UNU App. at 92-95.)

Champaign responds that the ALJs correctly ruled that the subpoenas sought a host of information unrelated to the specific matter at hand and were overly broad and unduly burdensome. Champaign also points out that UNU was allowed to ask Staff witness Conway about the blade throw incident at a wind project certificated by the Board in In the Matter of Paulding Wind Farm II, LLC, Case No. 10-369-EL-BGN (Timber Road II), Opinion and Order (Nov. 18, 2010). (Co. Memo Contra at 58-59.)

Initially, the Board notes that there is nothing within the record indicating that General Electric Company, LLC (GE) did not object to UNU’s subpoena or was in the process of complying with it. Assuming, arguendo, that UNU’s allegation is correct, the Board finds it puzzling that UNU did not make any reference to its assertion in its memorandum contra the various motions to quash. This assertion is contradicted by its own application for rehearing, in which UNU explained that “[a]s revealed by the subpoenaed companies’ continued pursuit of the motions to quash, and their lack of response to UNU’s offer, the subpoenaed companies had no interest in producing any records and declined to cooperate with UNU’s attempts to work for them.” (UNU App. at 94.) Further, nothing precluded UNU from exercising its right to file an interlocutory appeal of the ALJ’s entry granting various motions to quash, or filing a new or amended subpoena. In fact, UNU did file amended subpoenas after it initially filed defective subpoenas on September 24, 2012, that it ultimately cured and refiled on September 28, 2012.

Furthermore, as UNU repeats similar arguments raised in its initial brief, we find no merit in its request to reopen the evidentiary hearing in this matter. In an exercise of gamesmanship, UNU failed to formally object to the ALJ’s October 22, 2012, entry granting the motions to quash, in part, until it filed in its initial brief in this matter on January 16, 2013, almost three months after the entry was issued and over a month after the adjudicatory hearing in this matter.
had concluded. If UNU truly believed that it was without the means to obtain information that it alleged was "being hidden by the subpoenaed companies," it appears suspect that no formal objections were raised until well after the hearing concluded. While we understand that Rule 4906-7-15, O.A.C., permits any party electing not to file an interlocutory appeal to raise the propriety of any ruling in its initial brief, but are concerned that, assuming arguendo, had this information been germane to UNU's presentation of its case, UNU had several avenues available to remedy this alleged error that it chose to decline. Again, UNU had the opportunity to file an interlocutory appeal of the October 22, 2012, ALJ entry, as well as new subpoenas that were more narrowly tailored to the documents UNU was seeking to obtain. We find UNU's argument that it declined to file amended or revised subpoenas because the subpoenaed companies refused to tell UNU's counsel what was necessary to refine their request to be without merit. (Order at 7-9.)

Finally, we again note the mischaracterization of UNU's assertion that it was not permitted to question any witnesses on blade throw incidents. To the contrary, as indicated in the opinion, order, and certificate, UNU, as well as other interveners and the ALJ, cross examined both Staff and UNU's witness on the incident at Timber Road II (Timber Road II incident). (Order at 9; Tr. at 1300-1303, 1315-1316, 1318-1320, 1328-1332, 2485-2486, 2550-2553, 2566-2572.) Accordingly, the Board finds that UNU's assignment of error on this issue is without merit and should be denied.

(23) In its application for rehearing, UNU argues that the evidence presented by Champaign and Staff on shadow flicker is entirely based on inadmissible hearsay. UNU claims that Champaign and Staff utilized lay witnesses to render expert opinions on shadow flicker that they were not qualified to give. UNU opines that Champaign's shadow flicker report is highly technical and detailed and contains multiple modeling scenarios with WindPRO inputs and outputs. UNU contends that it was improper for the Board to allow for the admission of this exhibit because the witness sponsoring the application did not have any first hand-
knowledge of the shadow flicker modeling analysis. UNU provides that the fact that a witness may be qualified to testify as an expert in one discipline does not make the expert qualified in a related discipline or subdiscipline. (UNU App. at 95-98.)

Champaign counters that UNU ignores the experience of Champaign's witnesses. Champaign asserts that both witnesses were able to sufficiently answer questions about the shadow flicker report, the methodology used, and the assumptions and inputs. Champaign further replies that calculating shadow flicker is a basic physics problem and UNU's claim that it is "highly technical" is unfounded. (Co. Memo Contra at 60-61.)

The Board finds that UNU's assignment of error should be rejected. As indicated in the opinion, order, and certificate, the record reflects that Champaign witnesses Poore and Speerschneider, along with Staff witness Strom, were qualified to testify on shadow flicker based on their educational backgrounds and experience in the industry. Further, the record reflects that the software referred to in the application is regularly relied upon in the industry. There is no evidence within the record to support UNU's repeated claims that the shadow flicker reports or corresponding testimony are in any way unreliable; accordingly, we find that UNU's assignment of error should be rejected. (Order at 51-52.)

(24) In a similar assignment of error, UNU asserts that Champaign's witnesses should not have been able to sponsor portions of the application for which they were not qualified as an expert because their testimony constituted hearsay. UNU accuses the Board of liberally bending the hearsay rule and evidentiary principles applicable to expert testimony for Champaign, while applying a more stringent standard on UNU's witnesses, including UNU witnesses Palmer and McCann. UNU believes that the ALJs erred by striking portions of the testimony of witnesses Palmer and McCann. Specifically, UNU states that the ALJs struck portions of UNU witness McCann's testimony on the basis that it was outside his area of expertise, indicating that the ALJs applied a double standard. UNU believes that portions
of the testimony of UNU witness Palmer, likewise, should have been admitted, as he is an undisputed safety expert. (UNU App. at 98-100.)

Champaign asks the Board to reject these arguments. Champaign notes that the admission of the application was consistent with the Board's long-standing practice to allow an applicant to sponsor an application and exhibits through the testimony of a witness that is an officer or experienced employee of the applicant. Champaign further asserts that the ALJ and Board decisions did not result in one standard for Champaign and a different evidentiary standard for UNU. Champaign claims that its witnesses were adequately qualified and expressed a deep understanding for the application contents. On the other hand, Champaign claims that UNU witness Palmer had no experience in the wind industry and sought to testify on information that he was not responsible for compiling. (Co. Memo Contra at 62-63.)

The Board finds that UNU's arguments should be rejected. UNU fails to provide any justifiable reason for the Board to admit items that are hearsay and do not fall within any of the hearsay exceptions. As noted in the opinion, order, and certificate, Board precedent allows for the introduction of an application or study by a sponsoring witness who had significant responsibility in the production of an exhibit. We see no reason to depart from Board precedent, particularly in light of the fact that Champaign's witnesses have considerable experience in the industry. Further, not only did UNU cross examine these witnesses, but UNU also had the opportunity to conduct depositions and engage in discovery on matters related to their testimony. Moreover, nothing precluded UNU from subpoenaing other individuals that assisted in the compilation of Champaign's application. We note that the County/Townships chose to exercise their right to subpoena during the course of the adjudicatory hearing. UNU's choice to not avail itself of all of the tools available to parties in Board proceedings does not justify reversal of the Board's order. (Tr. at 2435-2443.)

Nor are we convinced that the Board created an evidentiary double standard between Champaign and UNU. While UNU deceptively asserts that UNU witness McCann's
testimony was struck on the basis that it was outside his area of expertise, the record actually indicates that a portion of his testimony was struck because it was admittedly a quotation copied from Wikipedia, which is undeniably hearsay (Tr. at 1010). Likewise, while UNU witness Palmer does have experience as an engineer, he has no experience in the wind industry and it would have been unreasonable for the Board to admit testimony about the wind industry from an internet website that consists entirely of third-party information. Accordingly, the Board does not see any inconsistency between Board rulings admitting exhibits that were compiled under the direction of witnesses with extensive industry experience, as opposed to testimony derived from internet websites where any third party can post information or data. (Order at 9-10, 12-13; Tr. at 1020-1021.) Accordingly, UNU’s request for rehearing on this issue should be denied.

(25) In its application for rehearing, UNU argues that the Board wrongfully denied UNU’s motion to reopen the record in this proceeding. UNU opines that the Board’s assertion that the evidence UNU sought to introduce was cumulative is improper. UNU alleges that the evidence contradicts the testimony and evidence previously offered by Champaign. (UNU App. at 55-56.)

Champaign responds that UNU did not meet its burden to reopen the proceeding under Rule 4906-7-17(C), O.A.C. Champaign asserts that UNU attempted to present cumulative evidence that did not relate to new and distinct facts. Given that UNU presented evidence from its witnesses on infrasound measurements and cross-examined Champaign’s witnesses on low frequency noise (LFN), Champaign concludes that the Board correctly denied UNU’s request to reopen the record to submit additional evidence on LFN and infrasound. (Co. Memo Contra at 36-38.)

Consistent with the opinion, order, and certificate, the Board finds that UNU’s request to reopen the record should be denied. While UNU believes that the information it sought to introduce would not be cumulative, as required by Rule 4906-7-17(C), O.A.C., the record reflects that UNU actually
presented two witnesses who alleged that LFN exists from wind turbines and leads to adverse health effects. Nothing within the report UNU now seeks to introduce contradicts the testimony of UNU's witnesses. Not only was the information that UNU was seeking to supplement into the record cumulative in nature, but we point out that UNU cross-examined Champaign witness Hessler on his conclusions from the Wisconsin proceeding. Although UNU could have requested to admit the report as a late-filed exhibit, UNU instead chose to file its request to reopen the record 24 days after the report was issued. Accordingly, as the information UNU sought to introduce is cumulative to the evidence UNU previously submitted in the record, UNU's assignment of error should be denied. (Order at 14-15; UNU Ex. 19 at 8 and 29; UNU Ex. 23 at 8-12, 15-16, 25; Tr. at 818, 865-866.)

Socioeconomic Impacts

(26) In its application for rehearing, UNU claims that the project does not serve the public interest, convenience, and necessity because there are socioeconomic and environmental detriments that outweigh the project's economic benefits. In support of its claim, UNU argues that: Champaign failed to produce a witness with knowledge of the socioeconomic benefits; the benefits of the project are negligible; the project's socioeconomic detriments far outweigh any socioeconomic benefits; and the Board's reliance on Section 4928.64(B), Revised Code, is improper because it forces Ohio utilities to purchase alternative energy generated in Ohio, thus, violating the federal commerce clause. UNU maintains that the opinion, order, and certificate fails to analyze any of these deficiencies. (UNU App. at 14-16.)

In its memorandum contra UNU's application for rehearing, Champaign counters that the facility does represent the minimum adverse environmental impact and that the facility will serve the public interest, convenience, and necessity. Regarding UNU's arguments that Ohio's renewable energy standards are unconstitutional, Champaign provides that the standards remain in place regardless of any future rulings on the constitutionality of the renewable energy statute. (Co. Memo Contra at 6-7.)
The Board finds that, with the exception of its argument that Section 4928.64(B), Revised Code, is unconstitutional, UNU fails to raise any new arguments for the Board's consideration. While UNU accuses the Board of accepting misrepresentations from Staff and Champaign, UNU fails to provide any meaningful economic analysis, study, or research to rebut Champaign's reports that were included with its application. We agree with UNU's assertion that the burden of proof is on Champaign; however, Champaign sustained its burden of proof of showing that the facility will serve the public interest, convenience, and necessity, to which UNU failed to rebut with any meaningful or persuasive evidence. Further, we find UNU's repeated allegation that the project will cause widespread damage throughout the county to be meritless as well. The Board emphasizes that, in addition to ensuring the project has a positive economic impact, we find it extremely important to preserve the nature and scenery when considering whether a proposed project benefits the public interest. The record in this proceeding reflects that this project will not alter the scenery in Champaign County as it will blend with the previously certificated wind-powered energy project and, as a representative of the Ohio Farm Bureau Federation explained, it will protect the agricultural landscape that is prevalent throughout Champaign County. (Order at 23-24.)

Next, we turn to UNU's argument that the Board improperly relied upon Section 4928.64(B), Revised Code, in approving the application, on the basis that it violates the federal commerce clause. The Board finds that this question of constitutionality of a statute extends beyond the scope of the Board's designated authority and is only appropriate for determination by the Court. Consequently, the Board must continue to follow the statute until directed otherwise by the Court, as it lacks the jurisdiction to adjudicate whether Section 4928.64(B), Revised Code, violates the federal commerce clause. See Panhandle E. Pipeline Co. v. Pub. Util. Comm. of Ohio, 56 Ohio St.2d 334, 346, 383 N.E.2d 1163 (1978), citing The East Ohio Gas Co. v. Pub. Util. Comm. of Ohio, 137 Ohio St. 225, 238-239, 28 N.E.2d 599 (1940). Nevertheless, even if Section 4928.64(B), Revised Code, were not at issue, the Board finds that the project serves the
purpose of delivering energy to Ohio’s bulk power transmission system in order to serve the generation needs of electric utilities and their customers, as discussed in the application. (Co. Ex. 1 at 2.) Accordingly, the Board finds that UNU’s application for rehearing regarding the socioeconomic impacts should be denied.

Aviation

(27) In its application for rehearing, UNU contends that the Board failed to require Champaign to fully comply with Section 4906.10, Revised Code, in order to ensure that none of the turbines pose an aviation hazard. UNU acknowledges that the Staff Report represents that Staff engaged in the required consultation with the Ohio Department of Transportation’s Office of Aviation (ODOT-OA) and received clearances for all turbines. Nevertheless, UNU argues that the Board should disregard Staff’s representation in the Staff Report because correspondence included in the application from ODOT-OA only pertains to 28 out of the 56 turbine sites that were reviewed. Further, UNU states that the correspondence included in the application provides that the clearance expired on November 1, 2012, prior to the Board’s hearing. UNU contends that the order fails to address this deficiency and that the Board may not issue a certificate until ODOT-OA issues valid, unexpired clearances to ensure that none of the turbines will pose an aviation hazard. (UNU App. at 83-84.)

In its memorandum contra UNU’s application for rehearing, Champaign asserts that, as confirmed by Staff, ODOT-OA has approved all turbine locations, although UNU continues to imply that this did not occur. Champaign points out that the Staff Report makes clear that all turbines associated with this case were cleared by ODOT-OA after being contacted by Staff, in accordance with Section 4561.32, Revised Code. (Co. Memo Contra at 51-52.)

The Board points out that, as set forth in the opinion, order, and certificate, the Staff Report notes that a determination of no hazard has been issued by the Federal Aviation Administration (FAA) for all 56 turbine locations in the proposed project and that Staff contacted ODOT-OA and
received notices of clearance for all turbines associated with the proposed project. Although the application may have only included correspondence regarding 28 out of the 56 turbine site clearances, and the correspondence reflecting ODOT-OA’s approval included a date prior to the adjudicatory hearing, the Board stresses that Staff confirmed in the Staff Report that all 56 sites were cleared by ODOT-OA, and UNU has pointed to no requirement that the application must contain written correspondence reflecting ODOT-OA’s approval in addition to Staff’s unrefuted confirmation in the Staff Report that all sites were approved. Although UNU may choose not to believe Staff’s representation that all 56 sites were cleared by ODOT-OA, it is apparent from the opinion, order, and certificate that the Board determined that the Staff Report was credible on this issue and that Staff’s affirmation meets the requirement that Staff consult with ODOT-OA. (Order at 33-34.) Further, the Board notes that UNU had the opportunity to cross-examine the Staff witness responsible for authoring the aviation portion of the Staff Report, but UNU did not question that witness on the assertion in the Staff Report that all turbine sites were cleared by the ODOT-OA (Tr. at 2036, 2094). Consequently, the Board finds that UNU’s application for rehearing on this issue should be denied.

Setbacks - Blade Shear and Fire

(28) In its application for rehearing, UNU argues that turbine blades pose a threat to public safety and that a person struck by a blade is likely to die or be seriously injured. Further, UNU contends that the Timber Road II incident, as well as other worldwide incidents, reveals that blade shear occurs regularly in the wind industry. Initially, regarding the Timber Road II incident, UNU contends that the Board erred in finding UNU witness Schaffner’s testimony to be unreliable. Further, UNU argues that the Board erred in speculating that children had carried turbine pieces into their yard because no one would logically clutter their own yard, and that the Board erred in determining that wind could have lifted up pieces of turbine blade after they fell and deposited them away from the turbine tower. UNU continues that Champaign, Staff, and the ALJs engaged in
"subterfuge" to block UNU's questions about the blade piece travel distances and other information relating to the Timber Road II incident. UNU also contends that, although the Board's order relied on safety precautions against blade shear that were generally referred to in the application, the Board failed to include a condition requiring these safety precautions, including independent braking systems, automatic shutdown under certain conditions, certification under international standards, pitch controls, sensors, speed controls, third-party oversight in manufacturing, quality assurance process, inspections, maintenance, limits on remote fault access, and training. Finally, UNU argues that the Board erred in concluding that blade failure rarely occurs, citing evidence from the Caithness Database that was not admitted into the record. (UNU App. at 59-73, 76-78.)

In addition, UNU argues that the Board erred in finding that turbine manufacturer safety manuals are not relevant in determining setbacks. Although UNU concedes that the Board determined the safety manuals only referred to temporary clearance areas during emergency situations, UNU contends that turbine manufacturers have developed the clearance areas because their experiences have shown them that turbine blades can fly that distance. Further, UNU asserts that UNU's members will be threatened if turbines are installed within 1,000 feet of any public road, and contends that Staff witness Conway testified that Staff failed to measure the distances between the turbine sites and public roads. (UNU App. at 73-75.)

In its memorandum contra UNU's application for rehearing, Champaign argues that UNU has mischaracterized the evidence in the record in its assertion that the hazards of blade shear are prevalent in the wind industry. Specifically, Champaign points out that UNU ignores the fact that none of its witnesses could point to a member of the general public that has been injured due to blade shear, despite the fact that hundreds of thousands of turbines operate throughout the world. Further, Champaign points to the testimony of Champaign witness Speerschneider and Staff witness Conway for the position that blade shear events are extremely rare. Champaign goes on to argue that UNU was
permitted to introduce testimony on the Timber Road II incident, but mischaracterizes that evidence by claiming that pieces of the blade landed in a yard near a public road, when testimony by Staff witness Conway tended to show that smaller, lighter pieces of the fiberglass blade were blown around the site, which was actually acknowledged by UNU witness Schaffner. Further, Champaign points out that UNU witness Schaffner traveled to the site days after the blade shear incident; unlike Staff witness Conway, who visited the site the day after the incident. (Co. Memo Contra at 41-43.)

Champaign next argues that, in its application for rehearing, UNU inappropriately relied on a database spreadsheet that was not admitted into evidence. Champaign further points out that, although UNU claims that the manufacturer safety manuals support UNU witness Palmer’s setback proposal, these distances in the turbine safety manuals refer to temporary clearance recommendations during emergency situations, such as measures that would be taken in the event of a gas leak. Champaign further contends that the alleged distances set forth in the page allegedly taken from a Vestas manual produced at hearing by UNU witness Johnson are irrelevant because they cannot be found in the entire Vestas safety manual, which was included in the application. Further, Champaign points out that Staff witness Conway testified at hearing that he contacted Vestas and confirmed that the setbacks proposed in the application exceed Vestas’ minimum setback recommendations. Champaign notes that Staff witness Conway testified that Staff’s recommended setbacks in this case exceed the setbacks required by GE. Consequently, Champaign states that the setbacks approved by the Board are sufficient to protect the public from the already low risk of blade throw, and the Board did not err in rejecting UNU’s request for a 1,640 foot setback from property lines and 1,000 foot setback from public roads. (Co. Memo Contra at 46-47.)

The Board declines to grant rehearing on the issue of setbacks due to the risk of blade shear. More specifically, the Board notes that UNU raises no new arguments on rehearing, and the Board specifically rejected in the opinion, order, and certificate UNU’s assertion that blade shear is
prevalent in the wind industry. In so finding, the Board determined that no evidence was presented that any member of the general public has ever been injured due to blade shear, and that the occasions of blade shear in Sandusky, Ohio, cited by UNU did not involve commercial grade wind turbines such as those at issue in the application. (Order at 41.)

Next, the Board finds that UNU misrepresents the record by asserting that Champaign, Staff, and the ALJs engaged in “subterfuge” to block UNU’s questions about blade piece travel distances and other information relating to the Timber Road II incident. To the contrary, the record contains numerous questions and answers concerning the Timber Road II incident that the ALJs found were relevant to the application at issue in this case, which were asked by UNU, other interveners, and the ALJs, and were answered by Staff witness Conway and UNU witness Schaffner (Tr. at 1300-1303, 1315-1316, 1318-1320, 1328-1332, 2485-2486, 2550-2553, 2566-2572). Further, the Board specifically enumerated the reasons that it found more credibility with the official report of the Timber Road II incident, which was moved into evidence by UNU and admitted by the Board, than UNU witness Schaffner’s testimony, including that: he did not view the pieces until days after the incident; he did not measure the pieces until four to five days after the incident; he acknowledged that the small pieces of fiberglass may have blown further away from their original landing spots; he acknowledged that he did not know whether the pieces had been moved; and children in the area were picking up the pieces. Further, although UNU argues that a Paulding County family experienced a near hit on their home, nothing UNU cites in the record supports this statement. (Order at 41.)

As discussed in the order, the Board found that the rare occurrence of blade shear would be reduced by the certification of turbines according to international engineering standards, independent braking systems, pitch controls, sensors, speed controls, monitoring systems that provide automatic shut down at certain wind speeds, vibrations, or rotor stress, third-party oversight in the
manufacturing process, quality assurance processes, inspections, proper maintenance practices, limitations on remote fault resets, and training. Although UNU believes the Board erred in not specifically requiring these precautions as part of the certificate, UNU's argument is misguided. Initially, the Board notes that it provided, in the opinion, order, and certificate that, if Champaign should wish to use a turbine model not considered in the order, Champaign would be required to file an amendment application pursuant to Section 4906.06, Revised Code (Order at 42). As set forth in the Staff Report, all of the turbine models under consideration for the project are certified to international engineering standards, have two independent braking systems, pitch controls, lightning protection system, monitoring systems that provide automatic shut down at excessive wind speeds, vibrations, and stress (Staff Report at 31). Further, the application provides that all turbine models under consideration are independently certified as meeting international design standards by independent product safety organizations (Co. Ex. 1 at 48). At hearing, Champaign witness Speerschneider testified that these international entities provide standards for the manufacturing process and quality control (Tr. at 308-309). In addition, Champaign witness Speerschneider testified that Everpower regularly inspects and repairs minor defects in turbine blades (Tr. at 318). The application also states that the most common cause of blade failure is human error in interfacing with control systems and that, consequently, manufacturers have reduced that risk by limiting human adjustments that can be made in the field. In addition, the application states that Applicant will provide annual training for its personnel, as well as local first responders (Co. Ex. 1 at 83).

Moreover, as stated in the opinion, order, and certificate, the Board found that UNU misunderstood the cited provisions taken from the turbine safety manuals, as these were not minimum setback recommendations, but temporary clearance areas in the event of temporary safety situations, akin to evacuations during a gas leak. (Order at 42.)
Finally, the Board notes that, in its posthearing briefs, UNU contended that Staff failed to measure the distances between the turbine sites and public roads. UNU repeats this falsity in its application for rehearing, alleging that Staff witness Conway testified Staff failed to measure the distances between the turbine sites and the public roads. In fact, the testimony selectively cited by UNU in support is the testimony of Staff witness Burgener where he stated that he did not personally measure the setbacks to roadways in his review of the project (Tr. at 2455-2456). Staff witness Conway testified that he did measure the distances between turbine sites and arterial roadways (Tr. 2488-2489, 2491).

For the reasons stated above, the Board finds that the issues raised by UNU were thoroughly addressed in the opinion, order, and certificate, that UNU raises no new additional arguments, and that rehearing should be denied on these issues.

Setbacks - Ice Throw

(29) In its application for rehearing, UNU alleges that the Board should reexamine and expand setbacks to prevent ice from entering roads or nonparticipants' lands. Initially, UNU acknowledges that the Board found in the opinion, order, and certificate that the clearance areas discussed in the turbine safety manuals only pertain to temporary clearance areas during emergencies. UNU surmises, however, that turbine manufacturers must have developed these emergency evacuation zones because their experiences demonstrate that turbines throw ice that distance. UNU further criticizes the Staff Report and the opinion, order, and certificate, for requiring greater setback distances from heavily traveled roads than from lesser traveled roads, because UNU contends this ignores the safety of motorists on less traveled roads. UNU asserts that four turbines approved by the Board are located too close to roads that are heavily traveled, citing the testimony of UNU witness Johnson that these roads are heavily traveled. UNU goes on to argue that the safety of its members will be threatened if turbines are installed within 1,000 feet of any public road. Further, UNU argues that the Board unfairly found UNU witness Palmer's testimony that ice detectors do not work to
be unreliable because he had never worked in the wind industry or operated a wind turbine and contends that GE's safety manual states that ice may form on rotor blades more quickly than on the ice sensor. (UNU App. at 78-80.)

In its memorandum contra UNU's application for rehearing, Champaign argues that UNU's justification for public road setbacks of 1,000 feet is based solely on the testimony of UNU witness Palmer, and lacked any justification for this proposed setback and failed to perform any calculations on ice throw distances or risk due to ice throw. Further, Champaign points out that UNU does not cite any turbine safety manual that mandates a 1,000 foot setback for ice throw, and that only GE recommends a setback for ice throw in the event ice detectors are not used. Champaign further notes that all of Champaign's turbines will use ice detectors and that the Board's recommendation for setbacks was more conservative than GE's recommendations. Regarding public roads, Champaign points out that no evidence supports UNU's claim that some turbines are sited too close to public roads other than UNU witness Johnson's testimony. Champaign again stresses that no evidence was heard that a member of the general public has been killed or injured by ice from a turbine. Finally, Champaign contends that the risk of ice throw will be further minimized by Conditions (41) and (42) as set forth in the opinion, order, and certificate, requiring worker instruction and ice warning systems. (Co. Memo Contra at 47-49.)

The Board finds that UNU has provided no new arguments that were not raised at hearing and addressed in the opinion, order, and certificate. The Board specifically stated that it found UNU witness Palmer's testimony that ice detectors do not work to have minimal credibility, as he admitted he had never worked in the wind industry or operated a wind turbine. Further, the Board specifically addressed UNU's issue regarding the turbine safety manuals, finding that the manuals "all refer to recommended clearance in the event of temporary safety circumstances, not permanent setback recommendations." The record indicated that Staff witness Conway contacted all of the potential turbine manufacturers and found that, with Staff's conditions, the project exceeds
all manufacturer setback recommendations. The Board adds that, although UNU asserts turbine manufacturers' experiences have shown them that turbines throw ice a particular distance, UNU has not pointed to any record evidence to support this assumption about manufacturer experiences. Further, the Board points out that, per Staff's recommendation, two turbines proposed in the application were not approved due to their proximity to arterial roads and/or occupied structures. (Order at 44-45.) Accordingly, the Board affirms its decision that, with these conditions, the minimal risk of ice throw was not such as to render the proposed project contrary to the public interest, and, therefore, the Board finds that UNU's application for rehearing on this issue should be denied.

Aesthetics

(30) In its application for rehearing, UNU next argues, as it did at adjudicatory hearing, that the height of the turbines will destroy the community landscape with spinning, blinking turbines. UNU argues that the opinion, order, and certificate was not credible when it discussed the aesthetic impact of the proposed project. In support, UNU repeats the argument set forth in its post-hearing brief that the turbines will be visible during the daytime from 84 percent of the 242 square-mile area. Further, UNU reiterates its argument that UNU member Julie Johnson will be able to see all 56 of the proposed turbines from her property and the red aviation lights will obliterate her view of the sky. UNU also repeats its argument that studies show the appearance of a wind turbine can be perceived as intrusive. (UNU App. at 58-59.)

In its memorandum contra UNU's application for rehearing, Champaign asserts that the record does not support a finding that the visual impacts of the facility will degrade the surrounding area. Champaign contends that UNU witness Johnson's personal opinions supporting UNU's argument were unfounded and incorrect, and that UNU's assertion about the study that wind turbine appearances can be perceived as intrusive was incorrect and UNU has mischaracterized the text of the article. Finally, Champaign asserts that there is no basis for UNU's conclusion that the turbines will destroy the community's landscape, and that
the application demonstrated that Champaign County is a working agricultural landscape that will be compatible with the proposed facility. (Co. Memo Contra at 40-41.)

The Board initially notes that, in the opinion, order, and certificate, it recognized that some portion of the project would be visible in 84.4 percent of the area. However, the Board clarifies that, although UNU witness Johnson testified that she would be able to see all 56 of the proposed turbines from her property and that pulsing red aviation lights would obliterate her view of the sky, evidence was admitted into the record that a significant number of the turbines will be at least partially screened by trees and structures, and a cellular tower with red warning lights already exists near UNU witness Johnson's property. Further, as discussed in the opinion, order, and certificate, the Board also considered evidence that FAA warning lights are typically only installed on one-third to one-half of turbines in a project; that actual visibility of the turbines will be more limited due to slender blade profiles, distance, and screening from hedgerows, street trees, and structures; and that the collection system will be primarily buried. The Board found that, considering all of the factors, the aesthetic impact would not be so negative as to make the facility contrary to the public interest, convenience, or necessity. Here, the Board finds that UNU has raised no matters that were not thoroughly discussed and decided in the opinion, order, and certificate. (Order at 46-47.) Accordingly, the Board finds that UNU's application for rehearing on this issue should be denied.

**Shadow Flicker**

(31) In its application for rehearing, UNU repeats the argument from its posthearing briefs that Champaign failed to demonstrate compliance with the 30-hour per year shadow flicker standard. More specifically, UNU argues that the shadow flicker model used by Champaign was fundamentally flawed because it failed to consider the actual size of houses for which flicker exposure was being modeled. UNU opines that the model had the effect of overestimating the impact of obstacles in mitigating shadow flicker on receptors. UNU continues that, even if the shadow flicker model was not flawed, the report predicts
that as many as 11 nonparticipating residences are expected
to experience shadow flicker levels beyond the 30-hour per
year standard. Further, UNU contends that the Board
should require modeling to evaluate flicker over the entirety
of a nonparticipating parcel, not just the residence. Next,
UNU argues that the Board should include in the certificate
a statement that, if a particular form of mitigation is
unacceptable to an affected landowner, Champaign is
responsible for proposing and implementing alternative
mitigation measures, so that it is not incumbent on an
affected landowner to alter his property. UNU further states
that Condition (47) of the opinion, order, and certificate is
unenforceable because Staff or an affected neighbor will be
unable to predict shadow flicker to the minute because, as
UNU asserts, the shadow flicker model is flawed. (UNU
App. at 81-82.)

In its memorandum contra UNU's application for rehearing,
Champaign argues that the record does not support UNU's
contention that the shadow flicker model was fundamentally
flawed because the actual house size allegedly was not
considered in the analysis. Champaign points out that the
model used very conservative assumptions, including that
the turbines would operate during all daylight hours and
that a receptor would be exposed to light on all sides.
Further, Champaign argues that UNU fails to give any
examples of receptors where the size of the hypothetical
receptor would be affected and, further, that UNU fails to
quantify or explain how the alleged overestimation of
topographical shadowing outweighs the conservative
assumptions in the model. (Co. Memo Contra at 50.)

Next, Champaign posits that the record does not support
UNU's contention that shadow flicker should be limited for
an entire parcel, not just the residence. Champaign points
out that, as Champaign witness Speerschneider testified, the
30-hour per year threshold is typical in the industry and has
resulted in few complaints at wind projects. Champaign
argues that, logically, if these levels applied to residential
structures have been found to cause few complaints, then
shadow flicker on other parts of properties will not be an
issue. (Co. Memo Contra at 50.)
Finally, Champaign addresses UNU's arguments regarding Condition (47), arguing that they are unfounded. Champaign emphasizes that this condition ensures that nonparticipating residential structures are limited to less than 30 hours of shadow flicker per year and allows Staff to enforce this level, contrary to UNU's assertion that this condition defers important siting issues. Further, Champaign points out that this condition includes requirements of additional analysis and mitigation of complaints through the established complaint process. Champaign also argues that, read in its entirety, this condition does not require residents to undertake unwanted mitigation, as claimed by UNU, but provides adequate assurance that the project represents the minimum environmental impact. Champaign notes that, absent an agreement with a landowner, Champaign cannot force unwanted mitigation measures on a landowner and Condition (47) requires Champaign to conduct a review of the impact of all project-related shadow flicker complaints, which provides individual analysis and further review of complaint situations. (Co. Memo Contra at 50-51.)

In the opinion, order, and certificate, the Board stressed that Champaign's shadow flicker analysis used: software commonly used and relied upon in the industry in order to model projected shadow flicker; and very conservative assumptions that the turbines would operate during all daylight hours and that the receptor will be exposed to light on all sides (Order at 51-52). Further, as pointed out by Champaign, UNU fails to give any examples where the size of the receptor would affect the shadow flicker analysis and failed to present any testimony to refute Champaign's shadow flicker analysis. Although the burden of proof is on Champaign, the Board finds that Champaign sustained its burden of proof in showing that the facility represents the minimum environmental impact as far as shadow flicker, and UNU has failed to rebut this showing with meaningful and persuasive evidence. Additionally, the Board notes that the complaint resolution process established in the opinion, order, and certificate allows for nonparticipating individuals to raise any and all concerns about shadow flicker (Order at 52). Consequently, the Board declines to find that the
shadow flicker model was fundamentally flawed by allegedly not using the specific measurements of each receptor.

The Board also declines to find merit to UNU’s argument that shadow flicker should have been modeled for the entire nonparticipating property, not just the residence, on the basis that Champaign witness Speerschneider testified that the 30-hour shadow flicker threshold, which has applied to residences, has resulted in few complaints at wind projects (Tr. at 265). Consequently, the Board does not find that the risk of shadow flicker on an entire nonparticipating parcel renders the project contrary to the public interest, particularly given that any complaints about shadow flicker on another part of a nonparticipating parcel would still be subject to the complaint resolution process (Order at 52).

Additionally, in the opinion, order, and certificate, the Board emphasized that Condition (47) does not defer issues to Staff, but gives Staff the ability to enforce the Board’s determination of appropriate shadow flicker against Champaign after the facility is constructed. Further, the Board found that Champaign’s proposed mitigation measures did not constitute a requirement that nonparticipating homeowners take unwanted mitigation measures, but merely enumerated a list of possible methods to mitigate excess shadow flicker. The list of possible mitigation methods included curtailment of operation during select times, which would require no changes to the property of nonparticipating individuals not wishing to implement another mitigation measure. (Order at 51-52.) Consequently, the Board finds that UNU’s application for rehearing on this issue should be denied.

**Property Values**

(32) In its application for rehearing, UNU argues that the Board erred in finding that concerns about property values did not render the project contrary to the public interest, convenience, and necessity. In support, UNU cites the testimony of UNU witness McCann that the project will reduce the market value of properties in the immediate area by 25 to 40 percent. Further, UNU claims that Champaign
witness Thayer’s testimony diluted property value impacts associated with wind turbines by considering a vast data set and was, therefore, less reliable. UNU concludes that, consequently, the project does not serve the public interest and should not have been approved or, alternatively, that the Board should condition its approval on inclusion of a property value protection agreement. (UNU App. at 84-87.)

In its memorandum contra UNU’s application for rehearing, Champaign contends that the record supports the Board’s finding that concerns with property values do not render the project contrary to the public interest, convenience, and necessity. In support, Champaign notes that UNU relies solely on the testimony of UNU witness McCann who, Champaign points out, failed to control his real estate price comparison for the many variables that can affect prices; failed to include any analysis tying the isolated studies he relied on; used a very small sample size that was not tested for statistical significance; and lacked the formal education and field experience to conduct a true statistical study. (Co. Memo Contra at 52-55.)

In its opinion, order, and certificate, the Board noted that five studies were presented by Champaign witness Thayer concluding that similar wind projects in other locations did not affect property values in those areas, and two studies were presented by UNU witness McCann concluding that wind projects in other locations reduced the market value of properties in the immediate areas. As the Board explained in the opinion, order, and certificate, however, the studies presented by Champaign were more reliable than the studies presented by UNU, as the Lawrence Berkley National Laboratory Study in particular was a peer-reviewed, comprehensive statistical study that considered a much larger number of property transactions near 24 wind farms, and included a control group. Further, the Board noted the lack of a control group in UNU witness McCann’s study, small sample size, and lack of testimony on statistical significance that lessened the credibility of that study. (Order at 53-54.) As UNU has presented no new arguments that have not been discussed and decided in the opinion, order, and certificate, the Board declines to reverse its
finding that Champaign's studies proved more reliable, and finds that UNU's application for rehearing on this issue should be denied.

Setbacks - Operational Noise

(33) In its application for rehearing, UNU alleges that Champaign's proposed sound limits for audible noise will cause widespread discomfort, annoyance, and sleep deprivation. UNU reiterates that both audible and inaudible sound waves from wind turbines can cause health disorders for those living too close to wind turbines, and the Board should not allow Champaign to increase noise levels imposed on nonparticipating neighbors to anything higher than five decibels (dBA) above the background sound level. (UNU App. at 20-25.)

In its memorandum contra, Champaign argues that the record reflects that audible sound from turbines will be at acceptable levels, with UNU repeating the same arguments made in its initial brief in both this proceeding and in Buckeye Wind I. Champaign points to the testimony of Champaign witness Hessler confirming that a project with mean sound levels under 45 dBA would result in few complaints. (Co. Memo Contra at 7-13.)

The Board finds that UNU fails to raise any new arguments for our consideration. UNU's allegations are, verbatim, the same arguments it raised in its initial brief. While UNU claims that the order dismissively ignores the risk of health disorders, the record reflects that there is no causal connection between health disorders and turbine noise. (UNU Br. at 10-15; UNU App. at 20-25; Order at 57, 62.) Accordingly, the Board finds UNU's assignment of error should be rejected.

(34) In its assignment of error, UNU repeats its request that all turbines be located at least 0.87 miles from the properties of all nonparticipating neighbors. Based on negative health effects associated with wind turbine noise, UNU argues that setbacks for the proposed project should be at least 0.87 miles in order to protect neighboring residences from health disorders. (UNU App. at 25-29.)
Champaign responds that, given the lack of evidence that turbines may cause health issues, UNU's proposed setback distance should be rejected. Champaign argues that it has presented sufficient evidence to support that the project, as sited, will not lead to adverse health effects. (Co. Memo Contra at 13-15.)

Similar to its previous assignment of error, the Board finds that UNU has not raised any new arguments for the Board's consideration but again recites the same argument, word for word, raised in its initial brief. (UNU Br. at 15-18; UNU App. at 25-29; Order at 57, 62-63.) Therefore, we find that UNU's assignment of error requesting a setback of 0.87 miles should be denied.

UNU argues that a 35 dBA limit is justified regardless of whether or not turbine operation causes health problems. UNU opines that the opinion, order, and certificate fails to prevent annoyance and sleep disturbance and does not take steps to prevent Champaign from breaching its obligation to use its leases without harming its neighbors. (UNU App. at 29-32.)

Champaign replies that UNU is repeating its arguments from its initial brief in this proceeding, with the exception of its new argument that no one has a right to annoy or disturb their neighbors. Champaign argues that the record supports the Board's finding that operational noise levels are reasonable and, in the event neighbors are upset with the operational noise level, the complaint resolution process will protect the public interest. (Co. Memo Contra at 15-19.)

Although UNU notes that a noise limitation of 35 dBA is necessary regardless of whether there are any adverse health effects associated with wind turbine operation, UNU fails to provide any additional rationale in support of its request. Contrary to UNU's argument that the order fails to take steps to ensure nonleaseholders will not be harmed by the operation of wind turbines, we point out that an entire condition to Champaign's certificate is devoted to ensuring that nonleaseholders who allege annoyance or disturbance will receive due process through a complaint resolution process. The complaint resolution process allows for
nonleaseholders to raise any and all concerns about unacceptable noise levels. Further, we note that the order's condition incorporated a short-term deviation specification, at UNU's request, which we find not only makes the standard easy to reliably enforce, but also removes the uncertainty associated with the complaint resolution process that UNU raised concerns about. Therefore, the Board finds that UNU's assignment of error should be denied.

UNU believes that the Board's opinion, order, and certificate wrongfully determined that Champaign witness Hessler's sound measurements were reliable. UNU argues that Champaign witness Hessler's background sound levels were 4 dBA higher than they were in the previous noise study in *Buckeye Wind I*. Specifically, UNU suggests that the opinion, order, and certificate fails to recognize that Champaign witness Hessler's background sound readings were inconsistent between stations and exposed to significant noise sources that elevated sound levels at all sites. UNU adds that Champaign witness Hessler's noise study also found unusually high noises at Station 7, which caused him to discard this station's test data. Further, UNU accuses the Board of missing the entire objective of a background noise study. (UNU App. at 32-36.)

Champaign contends that UNU's arguments are without merit and, regardless of what UNU claims, the ambient sound levels recorded by UNU's own witness are similar to those measured by Champaign's witness. Champaign asserts that the fact that Champaign's witness's measurements were almost identical to UNU's witness's measurements refutes UNU's criticisms of the background noise study work, as well as the claim that Champaign's witness had differing results between this proceeding and *Buckeye Wind I*. (Co. Memo Contra at 19-22.)

The Board finds UNU's assignment of error should be denied. Initially, we note that UNU relies exclusively on similar arguments previously made in this proceeding. Regarding UNU's first assertion, we find that Champaign witness Hessler's background noise levels are consistent with UNU witness James's noise levels. Specifically, Champaign witness Hessler testified that he measured a L90
background level of 33 dBA with a wind speed of six meters per second, which he explained is the typical critical wind speed. UNU witness James testified that, when he measured the background sound level, the wind speed was less than 0.2 meters per second, which in Champaign witness Hessler’s study, would correlate to three meters per second, resulting in a mean nighttime dBa of 26. UNU witness James explained that this figure was very comparable to his numbers. UNU witness James confirmed, Champaign witness Hessler’s mean daytime and nighttime L90 sound levels, as a function of wind speed, were reliable at 3 meters per second; therefore, the Board sees no reason why we should find the rest of Champaign witness Hessler’s figures should be disregarded merely because the numbers were slightly different than the sound levels in Buckeye Wind I, particularly in light of the fact that the background noise level’s validity was confirmed by UNU’s own witness. (Tr. at 793, 1185-1186; Co. Ex. 1, Ex. O at 28.)

Similarly, we find UNU’s assertions that Champaign’s noise readings are inconsistent to be without merit. The variations in noise readings amongst the monitoring stations reflects Champaign witness Hessler’s testimony that Applicant looks for a diversity of places to put the monitors and, subsequently, had the distribution of readings throughout the project area. Further, we are not persuaded that the nighttime reading at Station 7 correlates to all stations being exposed to contaminating noise, as the measurements reflected within the application, with the exception of the spiked periods, show that Station 7’s readings are consistent with those of other monitors. (Co. Ex. 1, Ex. O at 20-25.)

Finally, UNU fails to persuade us that Champaign witness Hessler’s background noise calculations were deceptive and skewed by noise from farm machinery and the surrounding vegetation. As we explained in the opinion, order, and certificate, it is inevitable that the noise stations may pick up on outdoor noise from sources, as even UNU’s own witness testified. Contrary to UNU’s assertions, the record does not reflect that Champaign witness Hessler made the conscious choice to include deciduous leaf rustle in his measurements in order to inaccurately portray background sound levels,
but rather, indicates that Champaign chose to put monitors in open areas away from woods and trees. (Order at 61; Tr. at 775.) The Board finds that UNU’s misleading accusations on rehearing are meritless and should be rejected.

(37) UNU reiterates its belief that Champaign did not accurately measure background noise and claims that calculation of the background sound level should utilize the L90 metric, which measures the quietest 10 percent interval, not the average sound level (Leq) metric, which UNU posits is contrary to all prior practices of Champaign’s noise consultant. UNU claims that the opinion, order, and certificate disregards the admission of Champaign’s own witness that the Leq is an inappropriate measurement of background sound. Further, UNU suggests that the Board cannot utilize past Board orders that adopted Leq measurements as precedent because the use of the Leq was not contested by any opposition in those proceedings. (UNU App. at 37-42.)

Champaign points out that its witness took background measurements that utilized both the L90 metric and the Leq metric and still determined that a design goal of 44 dBA was appropriate. Champaign explains that very few complaints are recorded at project sound levels below 45 dBA and, regardless of whether L90 or Leq is presented as a site background level, the fact remains that the project is subject to a noise condition. Champaign reiterates that the Board has accepted similar noise conditions for two other wind farm projects in Ohio. (Co. Memo Contra at 22-25.)

The Board finds that UNU fails to provide any new arguments for the Board’s consideration. While UNU alleges that Champaign witness Hessler admitted that the Leq is an inappropriate measurement of background sound, the Board finds that UNU again mischaracterizes the record in this matter. Champaign witness Hessler did testify that he has not utilized the Leq prior to this proceeding, however, he explained that the Leq is still the actual average level that is recorded over every 10-minute measurement period, and the poorest sound measurement is not the Leq but rather the LMax. In addition, while UNU may believe that Board precedent should be disregarded because no parties contested the use of the Leq in two other Board
proceedings, we disagree and find that UNU fails to provide any rationale for us to depart from past Board precedent. Contrary to UNU's position, we find it relevant that, of the two wind farms currently certificated in Ohio that have similar Leq noise conditions, only two noise complaints have been received. As the record reflects, one of the complaints was determined to be unrelated to wind turbine operation, but rather a pool pump. Accordingly, as set forth in our order, the record supports Champaign's use of the Leq metric for setting noise limits, and we find UNU's assignment of error should be rejected. (Order at 61-62; Tr. at 793-794, 2798-2799, 2821, 2831.)

(38) In its next assignment of error, UNU asserts that, if Champaign ultimately selects the Gamesa turbine model, it will not be able to comply with a noise standard of 45 dBA. (UNU App. at 42-43.)

Champaign responds that UNU fails to raise a new argument for the Board's consideration and, regardless of which turbine model is selected, operating sound levels cannot exceed 44 dBA at nighttime in accordance with Condition (46). (Co. Memo Contra at 26.)

The Board notes that UNU previously raised this argument in its initial brief and the Board subsequently found that the condition to the application considers the worst-case scenario noise limits that will be strictly enforced, regardless of the turbine model selected (Order at 62-63; UNU Br. at 30). Accordingly, as there are no new arguments for the Board's consideration, UNU's assignment of error should be rejected.

(39) UNU claims the Board erred by failing to conclude that no nonparticipating landowner should be exposed to more than 35 dBA of noise at any time. UNU argues that the opinion, order, and certificate places too much weight on Champaign witness Hessler's testimony that only two percent of all persons living within 2,000 feet of a wind turbine expressed complaints about turbine noise. Further, UNU provides that there is no credible evidence to support Staff witness Strom's testimony that there have been few noise complaints that have occurred at Ohio's two operating wind farms.
Furthermore, UNU suggests that the Board adopt a 40 dBA standard, as the Board acknowledges in its order that the World Health Organization (WHO) determined that 40 dBA is the threshold at which sound becomes intrusive and annoying. UNU opines that the Board approved a complaint resolution process that will not do anything to fix the noise problems that may arise with this project. (UNU App. at 43-50.)

Champaign responds that there is no support in the record for a 35 dBA limitation. Champaign points out that this recommendation is contrary to the 2009 WHO Night Noise guidelines which note that there is no sufficient evidence that the biological effects observed at a level below 40 dBA are harmful to health. Champaign explains that UNU mischaracterizes the WHO’s noise guidelines, as they actually provide that the outside noise level of 40 dBA is equivalent to the lowest observed adverse effect. Champaign notes that the WHO study concluded that adverse effects were observed in the range of 40 to 55 dBA, meaning that Champaign’s worst case modeling levels that kept all residences below 44 dBA, with the majority of residences actually under 40 dBA, are consistent with the lowest observed adverse effect levels. (Co. Memo Contra at 26-31.)

The Board notes that UNU fails to raise any new arguments for the Board’s consideration. Regarding UNU’s assertion that we overvalued Champaign witness Hessler’s testimony regarding noise complaints of only two percent of the population living within 2,000 feet of wind turbines, we note that the testimony of Champaign witness Mundt corroborates Champaign witness Hessler’s two percent figure. While UNU is quick to point out that Champaign witness Mundt responded to testimony read into the record indicating that 20 percent of the population exposed to turbine noise levels of 37.5 to 40 dBA were very annoyed and 36 percent of the population is very annoyed at levels above 40 dBA, UNU selectively ignores several key components of the study. In fact, the record reflects that only 20 percent of 40 respondents expressed annoyance at noise levels of 37.5 to 40 dBA, and 36 percent of
25 respondents indicated annoyance at levels above 40 dBA. By the Board's calculation, these statistics amount to 17 respondents being annoyed by turbine noise levels. Another important figure left out of UNU's arguments was the fact that this study consisted of 351 subjects, meaning only 4.8 percent of participants experienced annoyance at sound levels above 37.5 dBA. We note that this figure is much more closely aligned with Champaign witness Hessler's two percent figure than UNU's deceptive statistics. Accordingly, we are not persuaded that Champaign witness Hessler's testimony on noise complaints is unreliable. (Co. Ex. 29 at 34-35; Tr. at 2946-2947.)

Further, there is no evidence within the record that contradicts Staff witness Strom's testimony that there have only been two turbine noise complaints, of which only one was credible. Although UNU complains that the Board struck testimony from UNU witness Schaffner indicating that 14 families complained about noise from an Ohio wind farm, this testimony was clearly hearsay and was appropriately struck by the ALJs. Nothing precluded UNU from calling any witness in addition to UNU witness Schaffner to testify in regards to turbine noise complaints. (Tr. at 2798-2799.)

Turning to UNU's arguments on the WHO noise standards, we disagree with UNU's new request to impose a 40 dBA noise limitation. The record reflects that the WHO study did not adopt 40 dBA as a threshold, but rather that the WHO study concluded that adverse effects were observed within the range of 40 dBA to 55 dBA. We affirm our order, as the 44 dBA standard, which does reflect a worst-case noise modeling scenario, is consistent with the lower end of the WHO study's recommended noise threshold. (Tr. at 1736-1738.)

Finally, as we noted above, the complaint process condition required in the opinion, order, and certificate will ensure resolution of any turbine noise complaints from the public. We reiterate that the Board condition has clear guidelines, including provisions that UNU recommended, which Champaign must comply with in accordance with its
certificate. Therefore, we find that UNU’s assignment of error should be rejected.

(40) UNU argues that the Board must require Champaign to include modeling or similar data identifying the level of LFN at neighboring property lines in order to comply with Rule 4906-17-08(A)(2)(b), O.A.C. UNU provides that LFN modeling is necessary, as it may be pervasive, invasive, and unpleasant, to which the Board should not allow the project’s LFN to exceed 50 dbA. UNU believes that Champaign’s noise study is bereft of the data necessary under Board rules. (UNU App. at 50-53, 56-57.)

Champaign responds that the application is complete and in compliance with Rule 4906-17-08(A)(2)(d), O.A.C. Champaign points out it offered testimony that modeling for the project covered the octave band frequency spectrum of the turbine sound power level down to 31 hertz. Champaign also asserts that the application included a discussion of the modeling effort for the low end of the frequency spectrum, as well as a detailed discussion on low frequency levels from wind turbines. Champaign explains that the application included a noise study of actual field measurements in dBC to show the lack of any significant low frequency noise levels as a result of wind turbine operation. (Co. Memo Contra at 31-32.)

The Board finds that UNU fails to raise any new arguments for our consideration. Accordingly, as UNU’s allegations regarding LFN have been adequately addressed and dismissed in the opinion, order, and certificate, we find UNU’s application for rehearing on this matter should be denied. (Order at 63-64; UNU Br. at 35-38.)

(41) In its application for rehearing, UNU posits that noise standards at the property lines of nonparticipating landowners should be implemented, not just noise limitations at nonparticipating landowners residences. UNU claims the Board has authorized Champaign to emit noise pollution of nonparticipating landowners properties that will deprive landowners their rights to enjoy their land. UNU argues that the Board should not sacrifice thousands of
citizens’ land just so a single developer can make money from publicly subsidized energy. (UNU App. at 56-57.)

Champaign responds that worst-case scenario modeling set forth in the application shows the design goal of 50 dBA will be met in all but a handful of instances where sound levels would be in the 52 dBA range. Champaign asserts any small overages at nonparticipating properties will be negligible. Champaign also dismisses the argument that nonparticipating landowners will be deprived of their right to enjoy their land, as sound levels in the existing environment often exceed 50 dBA, such as 60 dBA levels created by birds chirping in the morning. (Co. Memo Contra at 38-39.)

The Board finds that UNU’s application for rehearing should be denied on this issue. As the record reflects, the intent of a noise regulation is to control noise where people spend the majority of their time, particularly at night. Outside of a few speculative arguments, UNU fails to cite to any record evidence supporting its assertion that nonparticipating landowners’ rights to fully use their properties will be eliminated but for a noise limitation. In addition, we note that the complaint resolution process is available to all nonparticipating landowners in the event there are any turbine noise disputes. (Tr. at 736.)

Conditions

(42) In its application for rehearing, UNU argues that the Board erred by finding that the vegetation management plan initially recommended in the Staff Report was unnecessary. In support of its assertion, UNU explains that aerial photographs in the application show that the project will cross streams and wooded areas, which UNU believes necessitates a vegetation management plan. (UNU App. at 101.)

In its memorandum contra UNU’s application for rehearing, Champaign opines that, as noted in Champaign witness Speerschneider’s testimony, this condition was initially recommended in the Staff Report and appears to have been copied from a transmission line report relating to
transmission right-of-way. Champaign argues that such a condition is not applicable to this facility, which will have primarily buried collection lines and turbines located in open fields, as confirmed by a Staff witness. Further, Champaign points out that various mitigation measures for streams and conditions regarding environmentally sensitive areas are included in the opinion, order, and certificate and are sufficient to cover UNU’s concerns. (Co. Memo Contra at 64.)

The Board declined to include the condition initially recommended in the Staff Report regarding vegetation management for the reasons clearly set forth in the opinion, order, and certificate. UNU provides no justification in the record for the inclusion of a vegetation management program and the record indicates that the facility will utilize primarily buried collection lines and turbines in open fields, making the condition unnecessary. (Order at 26.) As UNU has provided no other argument or justification, the Board finds that UNU’s application for rehearing should be denied.

(43) Next, UNU argues that the Board erred in only requiring Champaign to post bond for road repair with the county engineer, and not the township trustees, which UNU argues has resulted in “disastrous” consequences in other counties. In support, UNU cites testimony from County/Townships witness Wendel, Van Wert County Engineer, indicating that the county roads have patches, despite the fact that County/Townships witness Wendel filed a letter with the Board in September 2012 indicating that the roads were fully restored to their preconstruction condition. UNU states that this testimony demonstrates that County/Townships witness Wendel only filed the letter to “wash his hands” of the issue, resulting in road repair problems within Van Wert County. (UNU App. at 101-102.)

In its memorandum contra UNU’s application for rehearing, Champaign argues that the Board is under no obligation to require financial assurance for pre- and post-construction roadwork for a major utility facility and, therefore, even though the Board chose in this case to require financial assurance, the Board did not err in requiring Champaign to provide financial assurance to only the Board of
Commissioners of Champaign County and not the townships. Champaign contends that, under Condition (29), Champaign will only have to provide financial assurance to one entity and, thus, will not be required to provide financial assurance to each township in the project area. (Co. Memo Contra at 64-65.)

Initially, the Board notes that it made no finding in the opinion, order, and certificate that there was any evidence of "disastrous" consequences regarding road repairs in other counties in conjunction with wind projects, and, the Board declines to make such a finding now. Further, the Board notes that there is no testimony in the record demonstrating that the Van Wert County Engineer filed untrue information with the Board, only UNU's bare speculation. Nevertheless, as discussed above in the Board's consideration of the County/Townships' application for rehearing in Finding (17), the Board has modified Condition (29) to require Champaign to provide financial assurance to the public official or body possessing the appropriate statutory authority. Consequently, the Board also finds merit to this portion of UNU's application for rehearing solely for the reasons articulated in Finding (17), and modifies Condition (29) accordingly as set forth in Finding (17).

(44) UNU provides in its application for rehearing that the Board erred in failing to include a condition that Champaign pay for monthly television subscription fees that neighbors would not have incurred but for turbine interference with television reception. UNU argues that the Board should amend its conditions to include this requirement. (UNU App. at 102-103.)

In its memorandum contra UNU's application for rehearing, Champaign argues that UNU's proposed modification is unnecessary. Champaign contends that UNU's request for a blanket requirement that Champaign pay for monthly television package fees ignores the fact that each complaint will be handled on an individual basis pursuant to Condition (5) in the opinion, order, and certificate. Further, Champaign points out that television charges are package dependent and vary. (Co. Memo Contra at 65-66.)
The Board initially notes that the opinion, order, and certificate noted that a study showed that, based on the low number of channels available and the distance of the closest full-power station, it was unlikely that off-air television stations were the primary mode of television service for the local communities. Nevertheless, Champaign’s application indicated that, if the facility resulted in impacts to existing off-air television coverage, Champaign would address and resolve each problem individually by offering cable television hookups or direct broadcast reception systems. Further, the Board points out that Condition (5) of the opinion, order, and certificate requires that Champaign have in place a complaint resolution procedure to address any public grievances resulting from the project construction and operation, and that Champaign must work to mitigate or resolve any issues and forward any complaints to Staff. The opinion, order, and certificate requires Staff to review and confirm that the complaint resolution procedure complies with the requirements in Condition (5). The Board finds that, in light of this condition, in the unlikely event that television reception impacts occur and complaints are submitted to Champaign, the complaints would be handled under the approved complaint resolution procedure. (Order at 65-66.) In addition, the Board does not find it necessary, prior to any complaints, to enumerate specific television packages and prices to which members of the community experiencing reception issues may be entitled. We find that these issues are better handled on an individual basis through the approved complaint resolution process. Consequently, the Board finds that UNU’s application for rehearing on this issue should be denied.

Finally, in its application for rehearing, UNU reiterates its argument regarding good neighbor agreements that it initially raised in its posthearing brief. UNU argues that wind developers insist that nonparticipating neighbors experiencing wind farm damage sign “good neighbor agreements,” as a precondition for the developers’ mitigation of damage. UNU contends that the Board should add a condition to the opinion, order, and certificate prohibiting Champaign from entering into this type of
agreement relating to the proposed project. (UNU App. at 103.)

In its memorandum contra UNU’s application for rehearing, Champaign contends that its right to enter into agreements with neighboring landowners in the project area is not subject to the Board’s overview and that UNU’s request is merely an attempt to interfere with Champaign’s development of the proposed project. (Co. Memo Contra at 65-66.)

Initially, the Board notes that Champaign is required to follow the complaint process set forth in Condition (5) of the opinion, order, and certificate. Further, we emphasize that the Board is the final decision maker in any complaint proceeding and the Board encourages Champaign to work with constituents to informally resolve complaints. To the extent Champaign and an individual with a complaint have resolved the issue, they are free to enter into an agreement memorializing their resolution. However, the Board emphasizes that nothing in the opinion, order, and certificate permits Champaign to contract away the requirement that it comply with the conditions in the certificate. Consequently, the Board finds that UNU’s application for rehearing on this issue should be denied.

It is, therefore,

ORDERED, That, as set forth in Finding (13), Champaign’s motion to strike is moot. It is, further,

ORDERED, That the applications for rehearing filed by the County/Townships and UNU are granted only to the extent set forth in Findings (17) and (43), and in all other respects they are denied. It is, further,
ORDERED, That a copy of this entry on rehearing be served upon each party of record and any other interested persons of record.

THE OHIO POWER SITING BOARD

[Signatures of members]

David Goodman, Board Member
and Director of the Ohio Development Services Agency

Theodore Wymyslo, Board Member
and Director of the Ohio Department of Health

David Daniels, Board Member
and Director of the Ohio Department of Agriculture

James Zehringer, Board Member
and Director of the Ohio Department of Natural Resources

Scott Nally, Board Member
and Director of the Ohio Environmental Protection Agency

Jeffrey J. Lechak, Board Member
and Public Member

Barcy F. McNeal
Secretary