

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Power Siting Board's	)	
Review of Chapters 4906-1, 4906-5, 4906-7,	)	Case No. 08-581-GE-ORD
4906-9, 4906-11, 4906-13, and 4906-15 of the	)	
Ohio Administrative Code.	)	

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**COMMENTS OF OHIO ENVIRONMENTAL COUNCIL REGARDING PROPOSED  
RULE CHANGES OF THE OHIO POWER SITING BOARD**

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On June 2, 2008 the Ohio Power Siting Board ("Board") issued its initial Entry in this proceeding ("Entry") as required by law. The Entry invited interested parties to comment on the proposed rule changes, and required that comments be filed by June 24, 2008, and reply comments be filed by July 15, 2008. The Ohio Environmental Council ("OEC"), on behalf of its over 100 member environmental and conservation organizations and thousands of individual members throughout the State of Ohio, submits its comments to the proposed rule changes.

OEC agrees with and supports most of the proposed changes to the rules, and believes many contribute to open and just adjudication of environmental impacts and support public participation. Nevertheless, there are several proposed rule changes which OEC believes are not clear, should be amended, or should be eliminated entirely as they may hinder the ability of impacted communities to have a full and effective voice in Board proceedings.

**I. 4906-5-02(A)(4) & 4906-5-02(B)(4)**

OEC strongly supports the added language that requires continuous course of construct be commenced within two years of the letter of notification/construction notice or face the automatic expiration of board approval. OEC feels that applicants should not be allowed to hold rights to construct indefinitely, and that a two year window is more than adequate for

construction to begin. If construction is not possible within that two year window, the applicants should not have applied for approval that early to begin with. Additionally, OEC does not feel that “continuous course of construct” is too vague of a term and needs further clarification.

Times and conditions can and do change. Encroachment of other land uses, or more importantly, implications of environmental or conservation laws/rules/policies impacting siting should not hang in the balance for an indeterminate amount of time dependent upon the whims of the applicant. Two years is a reasonable time frame for beginning of and continuance of construction.

## **II. 4906-5-08(A) & 4906-5-08(C)(3)**

OEC supports the requirement of a pre-application notification letter 15 days prior to the date of any public information meeting. This requirement will allow the Board to better prepare for the task ahead without unreasonably burdening the applicants. The applicants will have the available information already gathered for their own use just 15 days before the meeting, and they can share it with the Board.

Transparency in government has been the hallmark of much of the initiatives of Governor Strickland’s Administration. To adequately and justly regulate, impacted communities and individuals must be fully informed and given the ability to participate in the process and adjudication of regulatory matters. Such notice, to be fully transparent needs to be beyond the pages of the ‘Notice’ sections of your daily or weekly papers. Individuals receive their news from diverse outlets – not just the back pages of a newspaper. The Board, the State, and applicants, should be required to make an effort to fully notify the public and educate the public beyond the traditional newspaper publication. OEC believes that such efforts are fully consistent with streamlined permitting and regulation as well as the theme of transparent governance.

As a recognized effort to promote transparency and full public participation, OEC also supports the additional requirement that residents affected by potential and alternative routes also be notified by the applicants. If the Board were to recommend additional or alternative routes, and these parties have already been notified, additional burdens of time and/or resources, either on the applicant, the Board, or other parties would be alleviated. These residents should also have a chance to voice their concerns as affected parties, and notification will give them just such a chance.

### **III. 4906-5-11(A)**

OEC supports the additional upfront \$2,000 expedited application fee. As noted in the proposed changes, an expedited review increases expenses related to analysis, processing, and monitoring of applications. There is no logical reason why this mere \$2,000 additional fee should not be paid upfront considering the thousands of dollars applicants already have to pay for the process. Despite what some parties have claimed, OEC does not believe that the additional charges are little more than revenue raising measures meant to circumvent the approval of the General Assembly. The provisions of Ohio Rev. Code §4906.03 clearly allows for the Board to set reasonable fees, and for an expedited filing, such an amount surely does not tip the balance of reasonableness.

### **IV. 4906-7-04(A)(2)(b)**

OEC objects to the proposed requirement that leave to intervene be filed within thirty days after the date of publication of the notice as required in 4906-5-08(C)(1), absent the ability of the Board to permit an extension of time upon its discretion.

OEC would also recommend adoption of a rule that requires the Board to file in a centralized Ohio notice database as proposed by Governor Strickland in Executive Order 2008-04S titled "Implementing Common Sense Business Regulation" referenced in the Entry for this case. Specifically, in section 5(h), the Executive Order seeks to create a centralized

notice system administered by the State Chief Information Officer that all interested parties can access. OEC would like to see language that requires participation in such database once it is up and functional.

**V. 4906-7-09**

OEC is concerned by the removal of the rules of evidence from the code section. It is unclear why such a drastic step needed to be taken, and OEC believes that an obvious unintended result would be a rash of unnecessary litigation and appeals on evidentiary findings. If admission and exclusion of evidence is solely under the discretion of the Board and its appointed ALJ's, one would be hard pressed not to find an assignment of error for appeal in **every** evidentiary decision. OEC is also concerned by the delay this will cause for the first few cases to go in front of the Board after these deletions are adopted. There will be a time of confusion and adjusting while new, non code section evidentiary rules are sorted out and informally adopted by the Board.

Since the Board has chosen a wholesale waiver of its rules in proposed amendment to Ohio Administrative Code §4906-7-19 (B) (or in the alternative proposed by OEC and other commentators to limit waiver to procedural requirements and rules), the necessity of deleting these rules of evidence is completely unnecessary. The Board and its ALJ's will still have the ability to liberally construe and apply the rules of evidence to case specific situations that necessitate such discretion for a full and just decision.

**VI. 4906-7-17(D)**

OEC commends the Board for allowing for greater public participation by adding this section to allow for affected persons, firms, or corporations to file an application for rehearing rather than just parties already participating in the hearing. By adding this section the Board gives voice to those affected groups who are impacted from a decision of the Board who previously had no objection and thus chose not to participate previously. A

decision by the Board that alters, even slightly, the operation or environmental footprint of a facility or line, could affect parties originally experiencing little if any impact. The Board still retains the same discretion as always to deny the application, so the remaining parties will not be adversely affected by this additional right.

#### **VII. 4906-7-19(B)**

OEC is concerned with the wholesale waiver of any *requirement, standard, or rule* as being extremely overbroad. Where the waiver would be to allow more full public participation and toward a just outcome to the proceedings, OEC is fully supportive. At times, certain procedural rules may have to be applied liberally to maintain the right of impacted communities and individuals to fully and meaningfully participate. However where the waiver would affect more substantive procedural rules, OEC would object. Therefore, OEC would propose that if the Board desires the ability to waive specific requirements that they include such language in those sections so that the proposed rule changes can be debated more fully rather than a broad ability to waive such as is proposed here. In the alternative OEC would recommend, as other commentators have, to amend that section as noted below:

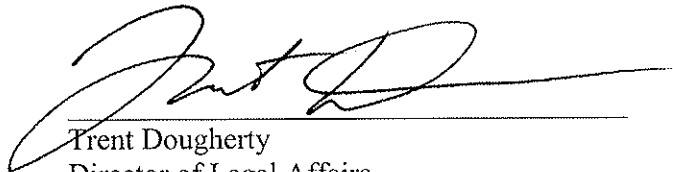
The Board may, upon its own motion or for good cause shown, and after reasonable prior notice to all parties to a proceeding and an opportunity to comment, waive any procedural requirement, standard, or rule set forth in this Chapter, or prescribe different practices or procedures to be followed in a case.

#### **VIII. 4906-15-04(D)**

OEC fully supports the additional requirement for environmental and aviation compliance information included in this section. It is the Board's responsibility and charge to gather all necessary information and consider it before making any decisions and this section will help to develop a fuller picture of the proposals. Such a requirement is fully consistent with the Governor's Executive Order 2008-04S titled "Implementing Common Sense

Business Regulation” referenced in the Entry for this case. Providing a description of environmental and aviation control systems does not constitute duality or redundancy to permitting, and should pose little if any burden on the applicant since in many cases this information would have been developed for other agencies. OEC would also like to note its support for section (6) relating to excessively dusty or muddy soil conditions due to their impact on air emissions and runoffs from construction. Such impacts need to be carefully considered by the Board before granting an application, and are, to their fullest extent, rarely if ever considered in other permits or proceedings.

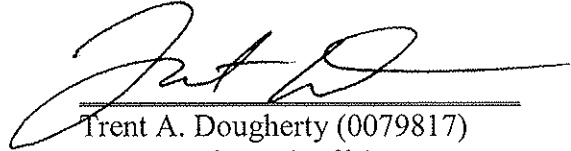
Respectfully submitted on behalf of,  
THE OHIO ENVIRONMENTAL COUNCIL

A handwritten signature in black ink, appearing to read "Trent Dougherty", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments of Ohio Environmental Council  
Regarding Proposed Rule Changes of the Ohio Power Siting Board were served on the  
persons listed below via first class U.S. Mail, postage prepaid, this 15<sup>th</sup> day of July,  
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Summary: Comments Comments on OPSB Rules electronically filed by Mr. Trent A Dougherty  
on behalf of Ohio Environmental Council