

OHIO POWER SITING BOARD

IN THE MATTER OF THE) APPLICATION OF THE OHIO STATE) UNIVERSITY FOR A CERTIFICATE OF) ENVIRONMENTAL COMPATIBILITY) AND PUBLIC NEED FOR A COMBINED) HEAT AND POWER MAJOR UNIT) FACILITY IN FRANKLIN COUNTY,) OHIO ON THE CAMPUS OF THE OHIO) STATE UNIVERSITY)	CASE NO. 19-1641-EL-BGN
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**INTERVENOR SIERRA CLUB’S MOTION TO COMPEL DISCOVERY FROM
APPLICANT THE OHIO STATE UNIVERSITY**

Pursuant to OAC §4906-2-22, Intervenor Sierra Club respectfully moves the Administrative Law Judge for an order compelling the Applicant, The Ohio State University (“OSU”), to produce documents in response to Sierra Club’s request for documents relating to any feasibility studies of solar or wind generation alternatives conducted by OSU or its contractors (that is, Requests for Production 1.10, 1.11, 1.12), and any requests for proposals for generation construction in the past five years (Request for Production 2.06), which were served on Applicant on April 9 and April 27, 2020, respectively. As described in the attached Memorandum of Support and affidavit of counsel, the information at issue goes to the heart of a key legal issue before the Siting Board in this proceeding: Whether the proposed facility represents the minimum adverse environmental impact, considering the alternatives. *See* Rev. Code §4906.10(A)(3).

Sierra Club has exhausted all other reasonable means of resolving its differences with OSU with respect to these requests. Intervenor Sierra Club therefore requests that the Administrative Law Judge issue an order directing OSU to respond fully to Requests for Production 1.10, 1.11, 1.12, and 2.06. In accordance with Ohio Admin. Code §4906-2-22(C), an

affidavit of counsel is attached, as are copies of Intervenor's requests which are the subject of this Motion to Compel and of Applicant's responses to those requests, as Exhibits A through D.

Respectfully Submitted,

/s/ Richard C. Sahli

Richard C. Sahli (0007360)

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Phone: 530-598-6638

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Memorandum in Support of Motion to Compel

Under Ohio law, the Power Siting Board “shall not grant a certificate for the construction, operation, and maintenance of a major utility facility...unless it finds and determines...[t]hat the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.” Rev. Code §4906.10(A)(3). In this proceeding, The Ohio State University (“OSU”) is proposing the construction of a 105.5 megawatt gas-fired combined heat and power facility to serve its campus energy needs. The availability, nature, economics, and environmental impacts of alternative forms of generation that could provide the same generation capacity are directly relevant to whether this proposed gas facility represents the “minimum adverse environmental impact.” *See* R.C. §4906.10(A)(3). The Board cannot determine whether OSU’s choice of gas generation represents “the minimum adverse environmental impact, considering the state of available technology” without evidence about these “various alternatives” and their relative cost, capacity, and environmental impacts. Accordingly, Sierra Club has requested documents relating to OSU’s consideration of alternatives, namely, solar and wind generation, that could tend to show (or lead to evidence tending to show) that the nature and economics of available technology could allow OSU to construct a facility with less adverse environmental impact.

Specifically, Requests 1.10, 1.11, and 1.12, included among Sierra Club’s First Set of Document Requests, sought documents relating to the any studies OSU or its contractors have conducted regarding the feasibility, economics, and capacity of solar, wind, and storage resources to meet OSU’s energy needs:

- 1.10 Please produce all documents relating to possible construction or use of solar electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO,

including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.

- 1.11 Please produce all documents relating to possible construction or use of wind electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.
- 1.12 Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE North America, Axium Infrastructure, or EBO, on the other, relating to the construction or use of solar or wind electricity generating facilities, including storage.

OSU did not produce documents in response to these requests and instead objected to each in its entirety on the grounds that the requested documents “are not reasonably likely to lead to the discovery of admissible evidence.” *See* Exhibit C.

Request 2.06, included in Sierra Club’s Second Set of Document Requests, sought documents as follows:

- 2.06 Please produce any all requests for proposals relating to the construction of new energy generation resources to provide energy to any OSU campus issued between January 1, 2015 and March 31, 2020, inclusive.

OSU did not produce documents in response to this request and instead objected to this request in its entirety on the grounds that the requested documents “are not reasonably likely to lead to the discovery of admissible evidence.” *See* Exhibit D.

OSU’s objections are improper and should be overruled. Whether and what “alternatives” OSU considered, and any information OSU obtained regarding these alternatives, their economics, and environmental impacts, are directly relevant to whether the proposed gas facility represents the “minimum adverse environmental impact.” *See* R.C. §4906.10(A)(3). For this statutory standard to have meaning, the Board must be able to consider, as part of the record, evidence tending to show whether OSU could achieve the same generation goals or some part of

them with less environmental harm. If OSU is in possession of such evidence, it must be produced pursuant to Ohio Admin. Code §4906-2-14.

1. The Requested Documents are Directly Relevant to the Subject Matter of this Proceeding

OSU objects to each of these requests solely on the grounds that they are not relevant and not likely to lead to admissible evidence. This objection is meritless. Ohio Admin. Code §4906-2-14 provides that “any party to a board proceeding may obtain discovery of any matter...which is relevant to the subject matter of that proceeding. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Ohio Admin. Code 4906-2-14. The text of this rule is similar to that of Civil Rule 26(B),¹ which “has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 856 N.E.2d 213, 234 (Ohio 2006). The subject matter of the pending proceeding is OSU’s request for a certificate for construction of a major utility facility; before it can grant such a certificate, the Board must “find[] and determine[],” as pertinent here, that OSU’s proposed “facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.” Rev. Code Ann. § 4906.10(A)(3). Each of the disputed requests is directly relevant to this issue:

- **Request 1.10 (Solar Studies).** This request seeks documents relating to feasibility studies of solar electricity generating facilities. This request is relevant to and will

¹ Effective July 1, 2020 the text of Civil Rule 26(B) has been revised by enacted legislation; these changes, however, are not relevant to the discovery standard before the Power Siting Board or to the case law cited, which relies on and construes language from the current version of Civil Rule 26(B) that is nearly identical to that of §4906-2-14.

likely lead to admissible evidence regarding whether solar generation facilities can provide equivalent energy and/or heating capacity to the proposed facility with a smaller adverse environmental impact meeting at least some of OSU's needs.

- **Request 1.11 (Wind Studies).** This request seeks documents relating to feasibility studies of wind electricity generating facilities. This request is relevant to and will likely lead to admissible evidence regarding whether wind generation facilities can provide equivalent energy and/or heating capacity to the proposed facility with a smaller adverse environmental impact meeting at least some of OSU's needs.
- **Request 1.12 (Correspondence about wind and solar generation).** This request seeks correspondence between OSU and the contractors responsible for the design and construction of the proposed facility regarding solar and wind generation. This request is relevant to and will likely lead to admissible evidence regarding wind and solar alternatives to the proposed gas generation.
- **Request 2.06 (Requests for proposals).** This request seeks any requests for proposals issued by OSU in the past five years relating to the construction of new generation resources for the OSU campus. This request is likely to lead to admissible evidence regarding OSU's consideration of generation alternatives with less adverse environmental impacts as well as evidence as to OSU's constraints and requirements for generation against which available technology can be compared for purposes of assessing the relative environmental impact of OSU's proposed facility.

OSU's arguments for the irrelevance of these documents are unavailing. Initially, OSU took the position that the Board's consideration is limited to the "application before it," and so "any information regarding considerations made [] but not ultimately included in the application"

is not discoverable. *See* May 13, 2020 Letter to Sierra Club (Exhibit F), at p. 2. But this position is inconsistent with the Board’s obligation to make certain statutory findings—even if the Applicant chooses not to include those considerations in its application. Moreover, the order on which OSU purports to rely in fact undermines its position. In that order, the Administrative Law Judge (“ALJ”) found that “information relating to any alternative site analysis performed by” the Applicant and any “documents relating or referring to the environmental and socioeconomic considerations of the preferred and alternative sites” to be relevant and ordered the Applicant to produce any responsive documents.² The ALJ *did* conclude that Applicant’s analysis of the environmental impact of alternatives was relevant to the proceeding.

In contrast, the request the ALJ rejected as “overbroad” did not concern environmental impacts at all. Rather, an intervenor sought all documents “relating or referring” to the Applicant’s selection of turbines—in addition to manuals for the three turbines the Applicant included in its Application, which had already been produced. *See* Exhibit G at p. 6. Intervenor Sierra Club does not seek—as did the Intervenor in *Application of Buckeye Wind*—drafts of OSU’s application or information about every piece of equipment considered and rejected for the proposal. To the contrary, Sierra Club’s request is narrowly tailored to a core question before this Board, namely, whether the choice of gas generation in fact presents the “the minimum environmental impact,” and seeks those documents in OSU’s possession that provide evidence as to the alternatives that must be considered in making this assessment. An ALJ order denying discovery as to equipment choices is therefore inapposite.

² *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities*, Case No. 08-666-EL-BGN, Entry (Oct. 30, 2009) (attached as Exhibit G).

In response to OSU's objections, Sierra Club referred OSU to *In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, Entry (Mar. 3, 2008) ("*AMP-Ohio*"). There, the Board explicitly considered, and entered into the record, evidence relating to the "nature and economics" of alternative coal combustion technologies, the availability of carbon capture technology, and whether "any feasible combination of energy efficiency measures and generation resources based upon renewable resources could serve as an alternative to the proposed...facility as a base load generation resource," although ultimately concluding that the proposed facility *did* meet the standard set forth in §4906.10(A)(3).³

OSU, in its response to Sierra Club, conflated the Commission's ultimate *determination* as to the feasibility of alternatives in *AMP-Ohio* with the *relevance* of those alternatives to that determination. As OSU correctly points out, the Commission found on the evidentiary record before it that the Applicant's selection of pulverized coal generation was reasonable given the limitations and economics of the alternative technologies available at the time. (Limitations and economics that have, as Sierra Club intends to show, changed significantly in the 12 years since *AMP-Ohio*.) But the Commission reached this conclusion on the basis of extensive evidence as to what alternatives AMP-Ohio considered *and* as to what alternatives intervenors argued it *should* have considered—including wind and hydroelectricity. The extent of the record regarding the economics and nature of these alternatives before the Commission, and its explicit and detailed consideration of alternatives not included in the original Application are entirely inconsistent with OSU's position that such alternatives are not *relevant*.⁴ To the contrary, the

³ *In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN (F.E.D.A.P.J.P. Mar. 3, 2008)

⁴ OSU also cites the decision by the Power Siting Board denying rehearing. But the Board just reached the same *factual* determination—"there is no feasible combination of energy efficiency measures and generation resources based upon renewable resources which could serve as an

holding cited by OSU could only have been reached on the basis of precisely the type of evidence OSU is now refusing to produce.

OSU's position would render §4906.10(A)(3) meaningless. Whether a facility represents the *minimum* environmental impact necessarily entails comparison. The Board cannot “consider[] the state of available technology and the nature and economics of the various alternatives” without evidence as to the feasibility of those alternatives. Requests 1.10, 1.11, and 1.12 seek documents from OSU describing what—if any—information they have obtained regarding alternative forms of electricity generation to serve the OSU campus, the stated purpose of the proposed facility. Request 2.06 seek documents from OSU describing the economic and other constraints relevant to making this comparison, as well as any efforts OSU may have made to solicit possible alternatives. These documents are “relevant to the subject matter of the proceeding” and must be produced.

2. Sierra Club has Exhausted All Other Reasonable Means of Resolving its Differences with The Ohio State University With Respect to this Request

On April 9, 2020, Sierra Club served OSU with Sierra Club's First Set of Document Requests (attached as Exhibit A). On April 29, 2020, OSU served responses and objections to Sierra Club's First Set of Document Requests (attached as Exhibit C).

On April 27, 2020, Sierra Club served OSU with Sierra Club's Second Set of Document Requests (attached as Exhibit B). On May 18, 2020, OSU served responses and objections to Sierra Club's Second Set of Document Requests (attached as Exhibit D).

On May 7, counsel for Sierra Club sent electronic mail to counsel for OSU stating Intervenor's position that OSU's objection to Requests 1.10, 1.11, and 1.12 on relevancy grounds

alternative to the proposed AMPGS facility”—that depends on precisely the evidentiary record of the feasibility of alternative resources OSU is refusing to produce.

was inconsistent with the Board's obligation, under Rev. Code §4906.10(A)(3), to determine whether a proposed facility "represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations." *See* Exhibit E. On May 13, counsel for OSU responded via letter to Sierra Club, wherein OSU took the position that the Board "only considers the application before it," and thus any alternatives "that may have been considered by OSU, but ultimately not included in its Application" were not relevant to the instant proceeding. *See* Exhibit F.

Counsel for Sierra Club and OSU then met and conferred via telephone, on May 20, 2020, to discuss the dispute regarding Requests 1.10, 1.11, and 1.12. Following the conference, via letter dated May 28, 2020, Sierra Club offered, without concession and in an attempt to resolve the dispute, revised versions of Requests 1.10, 1.11, and 1.12. *See* Exhibit H. On June 3, 2020, OSU responded via letter, maintaining its position that the requested documents "are not likely to lead to the discovery of admissible evidence." *See* Exhibit I. On June 11, 2020 counsel for Sierra Club sought confirmation, via electronic mail, that OSU considered further efforts to resolve the parties' dispute with respect to Request 2.06 futile; counsel for OSU confirmed that the meet and confer process had been exhausted on June 15, 2020. *See* Exhibit J.

Ohio Administrative Code §4906-2-22(C) requires that before filing a motion to compel, the party seeking discovery must "have exhausted all other reasonable means of resolving any differences with the party...from who discovery is sought." Sierra Club has clarified its position, met and conferred with counsel for OSU, and offered narrower requests in an attempt to avoid litigation. OSU continues to stand on its comprehensive objection. Given the short time period before the evidentiary hearing in this matter, Sierra Club would be prejudiced by further delay

and discussion, and therefore seeks an order so that it can obtain the evidence to which it is entitled.

3. Conclusion

For the foregoing reasons, Intervenor Sierra Club respectfully requests that the Administrative Law Judge enter an order directing OSU to respond fully to Sierra Club's Requests for Production of Documents 1.10, 1.11, 1.12, and 2.06 by producing all responsive documents in OSU's possession, custody, or control.

Respectfully Submitted,

/s/ Richard C. Sahli
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OHIO POWER SITING BOARD

IN THE MATTER OF THE)
APPLICATION OF THE OHIO STATE)
UNIVERSITY FOR A CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED FOR A COMBINED)
HEAT AND POWER MAJOR UNIT)
FACILITY IN FRANKLIN COUNTY,) CASE NO. 19-1641-EL-BGN
OHIO ON THE CAMPUS OF THE OHIO)
STATE UNIVERSITY)

**AFFIDAVIT OF MEGAN WACHSPRESS IN SUPPORT OF MOTION OF
INTERVENOR SIERRA CLUB TO COMPEL DISCOVERY FROM APPLICANT THE
OHIO STATE UNIVERSITY**

I, Megan Wachspress, hereby affirm as follows:

1. I am counsel of record for Intervenor Sierra Club, in the case captioned In the Matter of the Application of the Ohio State University, Ohio Power Siting Board Case No. 19-1641-EL-BGN.
2. I offer this affidavit in support of Intervenor Sierra Club's Motion to Compel Discovery from Applicant The Ohio State University ("OSU"), pursuant to Ohio Admin. Code §4906-2-22(C)(3).
3. To my knowledge, Section 2 of the Memorandum in Support of Intervenor Sierra Club's Motion to Compel is a true and accurate statement of the efforts which have been made to resolve differences between Sierra Club and OSU concerning the discovery sought in said Motion to Compel, and the Exhibits attached to the Motion are true and correct copies of the correspondence described therein.

Affiant states nothing further.

Megan Wachspress 6/13/20
Megan Wachspress

Please See attached
Notary Certificate
MANDEEP KAUR, NOTARY PUBLIC / 06/13/2020

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

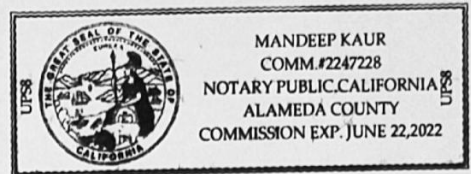
On JUNE, 13, 2020 before me, MANDEEP KAUR, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared MEGAN WACHSPRESS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mandeep Kaur (Seal)



Affidavit

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this
15th day of June, 2020, to the following:

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/s/ Richard C. Sahli
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Phone: 530-598-6638
ricksahli@outlook.com

Exhibit A

OHIO POWER SITING BOARD

IN THE MATTER OF THE)
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OHIO ON THE CAMPUS OF THE OHIO)
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SIERRA CLUB'S FIRST SET OF DISCOVERY REQUESTS TO THE OHIO STATE UNIVERSITY

Sierra Club hereby submits this First Set of Data Requests to The Ohio State University ("OSU"). Please provide responses to these data requests below to the undersigned counsel by the time prescribed by Ohio Power Siting Board requirements.

GENERAL INSTRUCTIONS

- 1) **Definitions:** For the purposes of these data requests, the following definitions shall apply:
 - a) "OPSB" means the Ohio Power Siting Board.
 - b) "OSU" means and includes The Ohio State University, its agents, consultants, and witnesses in this proceeding.
 - c) "OSEP" means the Ohio State Energy Partners, its parent company or companies (e.g., ENGIE North America and Axium Infrastructure), and any and all affiliates and/or subsidiaries, successors, predecessors, agents, consultants, and witnesses in this proceeding, and any and all of their affiliates, subsidiaries, or predecessors.
 - d) "EBO" means Engie Buckeye Operations LLC, its parent company or companies and any and all affiliates and/or subsidiaries, successors, predecessors, agents, consultants, and witnesses in this proceeding, and any and all of their affiliates, subsidiaries, or predecessors.
 - e) "OSU CHP Project" means the proposed combined heat and power major unit facility in Franklin, Ohio, described in OPSB Case No. 19-1641-EL-BGN.

- f) “Application” means the Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility and Public Need, dated November 4, 2019, filed in OPSB Case No. 19-1641-EL-BGN on November 6, 2019, including supplemental information submitted after this date.
- g) “You” or “your” means OSU, OSEP, and EBO.
- h) “Document” means all written, recorded or graphic matters, however produced or reproduced, pertaining in any manner to the subject of this proceeding, whether or not now in existence, without limiting the generality of the foregoing, all originals, copies and drafts of all writings, correspondence, telegrams, notes or sound recordings of any type of personal or telephone communication, or of meetings or conferences, minutes of directors or committee meetings, memoranda, inter-office communications, studies, analyses, reports, results of investigations, reviews, contracts, agreements, working papers, statistical records, ledgers, books of account, vouchers, bank checks, x-ray prints, photographs, films, videotapes, invoices, receipts, computer printouts or other products of computers, computer files, stenographer’s notebooks, desk calendars, appointment books, diaries, or other papers or objects similar to any of the foregoing, however denominated. If a document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or which, by reasons of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non-identical copy is a separate “document.”
- i) “And” or “or” shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.
- j) The term “person” means any natural person, corporation, corporate division, partnership, limited liability company, other unincorporated association, trust, government agency, or entity.
- k) The terms “regarding” or “relating to” mean consisting of, containing, mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.
- l) The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.
- m) “Identify” or “identifying” or “identification” when used in reference to a person that is a natural person means to state: the full name of the person and any names under which he conducts business; the current employer of the person, the person’s job title and classification, the present or last known work address of the person; and, the present or last known telephone number of the person.

- n) “Identify” or “identifying” or “identification” when used in reference to a person other than a natural person means to state: the full name of the person and any names under which it conducts business; the present or last known address of the person; and, the present or last known telephone number of the person.
- o) “Identify” or “identifying” or “identification” when used in reference to a document means to provide with respect to each document requested to be identified by these discovery requests a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:
 - (a) the type of document (e.g., letter, memorandum, etc.);
 - (b) the date of the document;
 - (c) the title or label of the document;
 - (d) the Bates stamp number or other identifier used to number the document for use in litigation;
 - (e) the identity of the originator;
 - (f) the identity of each person to whom it was sent;
 - (g) the identity of each person to whom a copy or copies were sent;
 - (h) a summary of the contents of the document;
 - (i) the name and last known address of each person who presently has possession, custody or control of the document; and,
 - (j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.
- p) “Identify” or “identifying” or “identification” when used in reference to communications means to state the date of the communication, whether the communication was written or oral, the identity of all parties and witnesses to the communication, the substance of what was said and/or transpired and, if written, identify the document(s) containing or referring to the communication.
- q) “Current” when used in reference to time means in the present time of this data request.
- r) “Communications” includes, without limitation, all letters, electronic mail, faxes, and telephonic text messages.

2) OTHER INSTRUCTIONS

- a) Responses are to be provided in electronic format (e.g., text documents should be in the original word processor file format or PDF, data files should be in Excel, modeling files should be in their respective native formats).
- b) If you contend that any response to any data request may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:
 - (a) The privilege asserted and its basis;
 - (b) The nature of the information withheld; and,
 - (c) The subject matter of the document, except to the extent that you claim it is privileged.
- c) For any document or set of documents OSU objects to providing to Sierra Club on the grounds it is burdensome or voluminous, please identify the specific document (see instruction 1(o) above).
- d) These data requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These data requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession, custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.
- e) If any data request cannot be responded to or answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.
- f) These data requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these data requests subsequently become known.
- g) Please produce the requested documents in electronic format to the following individuals:

Precious Onuohah
precious.onuohah@sierraclub.org

Richard C. Sahli
ricksahli@outlook.com

- h) Wherever the response to an interrogatory or request consists of a statement that the requested information is already available to the Sierra Club, provide a detailed citation to the document that contains the information. This citation shall include the title of the

document, relevant page number(s), and to the extent possible paragraph number(s) and/or chart/table/figure number(s).

- i) In the event that any document referred to in response to any request for information has been destroyed, specify the date and the manner of such destruction, the reason for such destruction, the person authorizing the destruction and the custodian of the document at the time of its destruction.
- j) Sierra Club reserves the right to serve supplemental, revised, or additional discovery requests as permitted in this proceeding.

Respectfully submitted,

s/Richard C. Sahli

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(530) 598-6638
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(Will Accept Email Service)

Attorney for the Sierra Club

(Specific requests begin on next page)

Document Requests

- 1.1 Please produce all correspondence between OSU, OSEP, or EBO, on the one hand, and the Ohio Environmental Protection Agency, on the other, regarding the OSU CHP Project.
- 1.2 Please produce all documents relating to any permit application prepared for, required by, or sent to the Ohio Environmental Protection Agency regarding the OSU CHP Project.
- 1.3 Please produce all correspondence between OSU, OSEP, or EBO, on the one hand, and the United States Environmental Protection Agency, on the other, regarding the OSU CHP Project.
- 1.4 Please produce all documents relating to any permit application prepared for, required by, or sent to the United States Environmental Protection Agency regarding the OSU CHP Project.
- 1.5 Please produce all documents, including any work papers, data, dispersion modeling analyses or studies, on which you relied in drafting or authoring:
 - a. Table 3, on p. 10 of the Application
 - b. Table 4, on p. 11 of the Application
 - c. Table 5, on p. 12 of the Application
 - d. Table 6, on p. 12 of the Application
 - e. Table 16, at p. 54 of the Application
 - f. Table 18, at p. 66 of the Application
- 1.6 Please produce all documents, including any work papers, data, or studies, on which you relied on in producing the estimates of the size (Process Steam Load and Plant Net Output) of the OSU CHP Project, as shown in Table 3, on page 10 of the Application.
- 1.7 Please produce all documents, including any work papers, data, or studies, on which you relied on in producing the estimate of the cost of operation and maintenance at the OSU CHP Project, as described on page 41 of the Application.
- 1.8 Please produce all documents regarding any air quality major stationary source determination, including any application materials prepared in the course of such a determination and any correspondence with the Ohio or U.S. EPA, relating to such a determination, as to:
 - a. The Ohio State University
 - b. McCracken Power Plant
 - c. OSU CHP Project

- 1.9 Please produce all documents relating to plans for the retirement of or cessation of steam generation at the McCracken Power Plant.
- 1.10 Please produce all documents relating to possible construction or use of solar electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.
- 1.11 Please produce all documents relating to possible construction or use of wind electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.
- 1.12 Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE North America, Axium Infrastructure, or EBO, on the other, relating to the construction or use of solar or wind electricity generating facilities, including storage.
- 1.13 Please produce all contracts, term letters, or other agreements relating to the operation or management of the OSU CHP Project between any two or among any combination of the following entities: OSU, OSEP, ENGIE North America, Axium Infrastructure, and EBO.
- 1.14 Please produce all studies, analyses, reports, assessments, and other documents purporting to describe or evaluate the current reliability of power provided to the OSU campus.
- 1.15 Please produce all term sheets, or contracts, between OSU, OSEP, Engie, or EBO, on the one hand, and Columbia Gas, on the other.
- 1.16 Please produce all communications between OSU, OSEP, or EBO, on the one hand, and Columbia Gas, on the other, relating to the OSU CHP Project.
- 1.17 Please produce all communications between OSU, OSEP, or EBO, on the one hand, and AEP Ohio, on the other, relating to the interconnection or lack thereof between the OSU CHP Project and AEP Ohio's local grid.
- 1.18 Please produce any documents, including but not limited to any notes or memoranda, relating to the planning meeting with AEP Ohio described on page 35 of the Application.

- 1.19 Please produce all documents and communications that support your contention, as stated at the website <https://buildingthefuture.osu.edu/combined-heat-and-power-plant> [accessed 4/6/2020], that the proposed facility will “cut[] carbon emissions by 35% in the first full year of operations.”

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this 9th day of April, 2020, to the following:

Kari D. Hehmeyer
Calfee, Halter & Griswold LLP
1200 Huntington Center
41 South High Street
Columbus OH 43216
Ph: (614) 621-7786
Fax: (614) 621-0010
Email: khehmeyer@calfee.com

Trevor Alexander
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21 E. State St., Suite 1100
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Matt Butler
Public Utilities Commission of Ohio
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Ph: (614) 644-7670
Email: Matthew.Butler@puc.state.oh.us

Mary E. Fischer
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215
Ph: (614) 466-0469
Email: mary.fischer@puco.ohio.gov

/s/ Richard C. Sahli
Richard C. Sahli (0007360)
334 Evergreen Lane
Yreka, CA. 96097
Phone: 530-598-6638
ricksahli@outlook.com

Exhibit B

OHIO POWER SITING BOARD

IN THE MATTER OF THE)
APPLICATION OF THE OHIO STATE)
UNIVERSITY FOR A CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED FOR A COMBINED)
HEAT AND POWER MAJOR UNIT)
FACILITY IN FRANKLIN COUNTY,) CASE NO. 19-1641-EL-BGN
OHIO ON THE CAMPUS OF THE OHIO)
STATE UNIVERSITY)

SIERRA CLUB'S SECOND SET OF DISCOVERY REQUESTS TO THE OHIO STATE UNIVERSITY

Sierra Club hereby submits this First Set of Data Requests to The Ohio State University ("OSU"). Please provide responses to these data requests below to the undersigned counsel by the time prescribed by Ohio Power Siting Board requirements.

GENERAL INSTRUCTIONS

- 1) **Definitions:** For the purposes of these data requests, the following definitions shall apply:
 - a) "OPSB" means the Ohio Power Siting Board.
 - b) "OSU" means and includes The Ohio State University, its Trustees, agents, consultants, and witnesses in this proceeding.
 - c) "OSEP" means the Ohio State Energy Partners, its parent company or companies (e.g., ENGIE North America and Axium Infrastructure), and any and all affiliates and/or subsidiaries, successors, predecessors, agents, consultants, and witnesses in this proceeding, and any and all of their affiliates, subsidiaries, or predecessors.
 - d) "EBO" means Engie Buckeye Operations LLC, its parent company or companies and any and all affiliates and/or subsidiaries, successors, predecessors, agents, consultants, and witnesses in this proceeding, and any and all of their affiliates, subsidiaries, or predecessors.
 - e) "OSU CHP Project" means the proposed combined heat and power major unit facility in Franklin, Ohio, described in OPSB Case No. 19-1641-EL-BGN.

- f) “Application” means the Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility and Public Need, dated November 4, 2019, filed in OPSB Case No. 19-1641-EL-BGN on November 6, 2019, including supplemental information submitted after this date.
- g) “You” or “your” means OSU, OSEP, and EBO.
- h) “Document” means all written, recorded or graphic matters, however produced or reproduced, pertaining in any manner to the subject of this proceeding, whether or not now in existence, without limiting the generality of the foregoing, all originals, copies and drafts of all writings, correspondence, telegrams, notes or sound recordings of any type of personal or telephone communication, or of meetings or conferences, minutes of directors or committee meetings, memoranda, inter-office communications, studies, analyses, reports, results of investigations, reviews, contracts, agreements, working papers, statistical records, ledgers, books of account, vouchers, bank checks, x-ray prints, photographs, films, videotapes, invoices, receipts, computer printouts or other products of computers, computer files, stenographer’s notebooks, desk calendars, appointment books, diaries, or other papers or objects similar to any of the foregoing, however denominated. If a document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or which, by reasons of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non-identical copy is a separate “document.”
- i) “And” or “or” shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.
- j) The term “person” means any natural person, corporation, corporate division, partnership, limited liability company, other unincorporated association, trust, government agency, or entity.
- k) The terms “regarding” or “relating to” mean consisting of, containing, mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.
- l) The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.
- m) “Identify” or “identifying” or “identification” when used in reference to a person that is a natural person means to state: the full name of the person and any names under which he conducts business; the current employer of the person, the person’s job title and classification, the present or last known work address of the person; and, the present or last known telephone number of the person.

- n) “Identify” or “identifying” or “identification” when used in reference to a person other than a natural person means to state: the full name of the person and any names under which it conducts business; the present or last known address of the person; and, the present or last known telephone number of the person.
- o) “Identify” or “identifying” or “identification” when used in reference to a document means to provide with respect to each document requested to be identified by these discovery requests a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:
 - (a) the type of document (e.g., letter, memorandum, etc.);
 - (b) the date of the document;
 - (c) the title or label of the document;
 - (d) the Bates stamp number or other identifier used to number the document for use in litigation;
 - (e) the identity of the originator;
 - (f) the identity of each person to whom it was sent;
 - (g) the identity of each person to whom a copy or copies were sent;
 - (h) a summary of the contents of the document;
 - (i) the name and last known address of each person who presently has possession, custody or control of the document; and,
 - (j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.
- p) “Identify” or “identifying” or “identification” when used in reference to communications means to state the date of the communication, whether the communication was written or oral, the identity of all parties and witnesses to the communication, the substance of what was said and/or transpired and, if written, identify the document(s) containing or referring to the communication.
- q) “Current” when used in reference to time means in the present time of this data request.
- r) “Communications” includes, without limitation, all letters, electronic mail, faxes, and telephonic text messages.

2) OTHER INSTRUCTIONS

- a) Responses are to be provided in electronic format (e.g., text documents should be in the original word processor file format or PDF, data files should be in Excel, modeling files should be in their respective native formats).
- b) If you contend that any response to any data request may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:
 - (a) The privilege asserted and its basis;
 - (b) The nature of the information withheld; and,
 - (c) The subject matter of the document, except to the extent that you claim it is privileged.
- c) For any document or set of documents OSU objects to providing to Sierra Club on the grounds it is burdensome or voluminous, please identify the specific document (see instruction 1(o) above).
- d) These data requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These data requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession, custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.
- e) If any data request cannot be responded to or answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.
- f) These data requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these data requests subsequently become known.
- g) Please produce the requested documents in electronic format to the following individuals:

Precious Onuohah
precious.onuohah@sierraclub.org

Richard C. Sahli
ricksahli@outlook.com

- h) Wherever the response to an interrogatory or request consists of a statement that the requested information is already available to the Sierra Club, provide a detailed citation to the document that contains the information. This citation shall include the title of the

document, relevant page number(s), and to the extent possible paragraph number(s) and/or chart/table/figure number(s).

- i) In the event that any document referred to in response to any request for information has been destroyed, specify the date and the manner of such destruction, the reason for such destruction, the person authorizing the destruction and the custodian of the document at the time of its destruction.
- j) Sierra Club reserves the right to serve supplemental, revised, or additional discovery requests as permitted in this proceeding.

Respectfully submitted,

s/Richard Sahli_____

Richard C. Sahli (#0007360)
334 Evergreen Lane
Yreka, CA 96097
(530) 598-6638
ricksahli@outlook.com
(Will Accept Email Service)

Attorney for the Sierra Club

(Specific requests begin on next page)

Document Requests

- 2.1 Please produce All feasibility studies conducted by OSEP, EBO, or their parent companies (e.g. ENGIE North America and Axium Infrastructure) relating to the OSU CHP Project.
- 2.2 Please produce all notes from any meeting of the Board of the Trustees or any other governance body of OSU where any feasibility study relating to the OSU CHP Project was presented, listed in the agenda, or discussed.
- 2.3 Please produce all communications between the OSU Board of Trustees or any subcommittee thereof and OSEP, EBO, or their parent companies (e.g. ENGIE North American and Axium Infrastructure) regarding the CHP facility.
- 2.4 Please produce all communications between Kate Bartter or anyone within her office and OSEP, EBO, or their parent companies (e.g. ENGIE North American and Axium Infrastructure) relating to the CHP facility.
- 2.5 Please produce all reports, analyses, or studies on which you relied in stating, on p. 24 of OSU's April 2020 Climate Action Plan (available at https://si.osu.edu/sites/default/files/CAP_Final_04082020.pdf), that solar generation at the OSU campuses is likely limited to “the order of 10 megawatts.”
- 2.6 Please produce any all requests for proposals relating to the construction of new energy generation resources to provide energy to any OSU campus issued between January 1, 2015 and March 31, 2020, inclusive.
- 2.7 Please produce all communications between OSU and AEP relating to the use of renewable generation resources for campus energy purchases.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this
27th day of April, 2020, to the following:

Kari D. Hehmeyer
Calfee, Halter & Griswold LLP
1200 Huntington Center
41 South High Street
Columbus OH 43216
Ph: (614) 621-7786
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Email: talexander@calfee.com

Matt Butler
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Columbus, OH 43215
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Email: Matthew.Butler@puc.state.oh.us

Mary E. Fischer
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215
Ph: (614) 466-0469
Email: mary.fischer@puco.ohio.gov

/s/ Richard C. Sahli
Richard C. Sahli (0007360)
334 Evergreen Lane
Yreka, CA. 96097
Phone: 530-598-6638
ricksahli@outlook.com

Exhibit C

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of The Ohio State)	
University for a Certificate of Environmental)	
Compatibility and Public Need for Combined Heat)	
and Power Major Unit Facility in Franklin County,)	Case No. 19-1641-EL-BGN
Ohio on the Campus of The Ohio State University.)	

RESPONSE TO SIERRA CLUB’S FIRST SET OF DISCOVERY REQUESTS

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, The Ohio State University (“OSU”) objects, answers, and responds to Sierra Club’s First Set of Interrogatories and Requests for Production of Documents (collectively, the “Requests”) as follows:

GENERAL OBJECTIONS

1. These General Objections are incorporated by reference into OSU’s responses made with respect to each Request. The inclusion of any specific objection to a Request in a response below is not intended, nor shall in any way be deemed, as a waiver of any General Objection or any specific objection made herein or that may be asserted at another date.

2. OSU objects to each Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable statutory or common law privilege, prohibition, limitation, or immunity from disclosure. Nothing contained in the responses below is intended as a waiver of this objection.

3. OSU objects to each Request to the extent that it seeks information not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. OSU objects to each Request to the extent that it seeks production of information that is confidential business, commercial, or proprietary information belonging to OSU or third parties.

5. OSU objects to each Request, definition, or instruction to the extent that it purports to impose upon OSU obligations greater than, or different from, those contained in the Ohio Administrative Code.

6. OSU objects to each Request to the extent it seeks documents or information not in OSU's possession, custody, or control.

7. OSU objects to each Request that purports to require a detailed, narrative response. Under applicable Commission rules and the Ohio Rules of Civil Procedure, "[a]n interrogatory seeks an admission or seeks information of major significance in the trial or the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by the rules for deposition." *Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

8. Also, in responding to these Requests, OSU does not admit the truth, validity, completeness, or merit of any of Sierra Club's Definitions, Instructions for Answering, Requests, or any subparts thereof as set forth below.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all correspondence between OSU, OSEP, or EBO, on the one hand,
RPD-01 and the Ohio Environmental Protection Agency, on the other, regarding the OSU
CHP Project.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents relating to any permit application prepared for,
RPD-02 required by, or sent to the Ohio Environmental Protection Agency regarding the OSU
CHP Project.

Response: **Objection. Documents “relating to” any permits is vague and ambiguous. Subject to the foregoing objection, OSU will produce the Ohio Environmental Protection Agency permit applications filed for the OSU CHP Project.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all correspondence between OSU, OSEP, or EBO, on the one hand,
RPD-03 and the United States Environmental Protection Agency, on the other, regarding the OSU CHP Project.

Response: OSU has not identified any responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents relating to any permit application prepared for, required
RPD-04 by, or sent to the United States Environmental Protection Agency regarding the OSU
CHP Project.

Response: **Objection. Documents “relating to” any permits is vague and ambiguous. Subject to the foregoing objection, OSU has not identified any responsive documents.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents, including any work papers, data, dispersion modeling
RPD-05 analyses or studies, on which you relied in drafting or authoring:

- a. Table 3, on p. 10 of the Application
- b. Table 4, on p. 11 of the Application
- c. Table 5, on p. 12 of the Application
- d. Table 6, on p. 12 of the Application
- e. Table 16, at p. 54 of the Application
- f. Table 18, at p. 66 of the Application

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents, including any work papers, data, or studies, on which
RPD-06 you relied on in producing the estimates of the size (Process Steam Load and Plant Net Output) of the OSU CHP Project, as shown in Table 3, on page 10 of the Application.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents, including any work papers, data, or studies, on which
RPD-07 you relied on in producing the estimate of the cost of operation and maintenance at the OSU CHP Project, as described on page 41 of the Application.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 1–
RPD-08** Please produce all documents regarding any air quality major stationary source determination, including any application materials prepared in the course of such a determination and any correspondence with the Ohio or U.S. EPA, relating to such a determination, as to:

- a. The Ohio State University
- b. McCracken Power Plant
- c. OSU CHP Project

Response: **Objection. Documents “regarding any air quality major stationary source determination” is vague and ambiguous. Subject to the foregoing objection, OSU will provide the applications for each facility to the extent they exist, along with the correspondence still in its possession, custody, or control relating to operating as a major stationary source.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all documents relating to plans for the retirement of or cessation of
RPD-09 steam generation at the McCracken Power Plant.

Response: **Objection.** Documents “relating to” plans for retirement of or the cessation of steam generation is vague and ambiguous. Subject to the foregoing objection, there are no documents regarding specific plans for retirement or cessation of steam generation at the McCracken Power Plant. The addition of CHP would allow OSU to develop and/or consider plans for repurposing of the McCracken Power Plant.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 1–
RPD-10** Please produce all documents relating to possible construction or use of solar electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.

Response: **Objection.** The documents requested are not reasonably likely to lead to the discovery of admissible evidence.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 1–
RPD-11** Please produce all documents relating to possible construction or use of wind electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.

Response: **Objection.** The documents requested are not reasonably likely to lead to the discovery of admissible evidence.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE
RPD-12 North America, Axium Infrastructure, or EBO, on the other, relating to the construction or use of solar or wind electricity generating facilities, including storage.

Response: **Objection.** The documents requested are not reasonably likely to lead to the discovery of admissible evidence.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 1–
RPD-13** Please produce all contracts, term letters, or other agreements relating to the operation or management of the OSU CHP Project between any two or among any combination of the following entities: OSU, OSEP, ENGIE North America, Axium Infrastructure, and EBO.

Response: **OSU will provide responsive documents.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all studies, analyses, reports, assessments, and other documents
RPD-14 purporting to describe or evaluate the current reliability of power provided to the OSU campus.

Response: **Objection.** This request is vague, ambiguous, and overbroad because OSU receives power from multiple independent feeds from the local distribution utility company, including through two university owned high-voltage substations and these all have an impact on reliability. Subject to the foregoing, OSU tracks and reports on the reliability of power provided within the university's electricity utility system. OSU will therefore produce those annual reports for 2018 and 2019.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all term sheets, or contracts, between OSU, OSEP, Engie, or EBO, on
RPD-15 the one hand, and Columbia Gas, on the other.

Response: **Objection.** Not all contracts between OSU, OSEP, Engie, or EBO, on the one hand, and Columbia Gas, on the other, relate to this proceeding. Accordingly this request seeks information not reasonably likely to lead to the discovery of admissible evidence. Subject to the foregoing, OSU will provide responsive documents related to the OSU CHP Project.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all communications between OSU, OSEP, or EBO, on the one hand,
RPD-16 and Columbia Gas, on the other, relating to the OSU CHP Project.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce all communications between OSU, OSEP, or EBO, on the one hand,
RPD-17 and AEP Ohio, on the other, relating to the interconnection or lack thereof between the OSU CHP Project and AEP Ohio’s local grid.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 1– Please produce any documents, including but not limited to any notes or memoranda,
RPD-18 relating to the planning meeting with AEP Ohio described on page 35 of the
Application.

Response: OSU will provide responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 1–
RPD-19** Please produce all documents and communications that support your contention, as stated at the website <https://buildingthefuture.osu.edu/combined-heat-and-power-plant> [accessed 4/6/2020], that the proposed facility will “cut[] carbon emissions by 35% in the first full year of operations.”

Response: **OSU will provide responsive documents.**

Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)

Steven D. Lesser (0020242)

CALFEE, HALTER & GRISWOLD LLP

1200 Huntington Center

41 South High Street

Columbus, Ohio 43215

Tel: (614) 621-1500

Fax: (614) 621-0010

talexander@calfee.com

slesser@calfee.com

Attorneys for The Ohio State University

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Responses to Sierra Club's First Set of Data Requests, was served upon the persons listed below via electronic transmission this 29th day of April 2020.

/s/ N. Trevor Alexander
One of the Attorneys for The Ohio State University

Precious Onuohah
precious.onuohah@sierraclub.org

Richard C. Sahli
ricksahli@outlook.com

Exhibit D

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of The Ohio State)	
University for a Certificate of Environmental)	
Compatibility and Public Need for Combined Heat)	
and Power Major Unit Facility in Franklin County,)	Case No. 19-1641-EL-BGN
Ohio on the Campus of The Ohio State University.)	

RESPONSE TO SIERRA CLUB’S SECOND SET OF DISCOVERY REQUESTS

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, The Ohio State University (“OSU”) objects, answers, and responds to Sierra Club’s Second Set of Interrogatories and Requests for Production of Documents (collectively, the “Requests”) as follows:

GENERAL OBJECTIONS

1. These General Objections are incorporated by reference into OSU’s responses made with respect to each Request. The inclusion of any specific objection to a Request in a response below is not intended, nor shall in any way be deemed, as a waiver of any General Objection or any specific objection made herein or that may be asserted at another date.

2. OSU objects to each Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable statutory or common law privilege, prohibition, limitation, or immunity from disclosure. Nothing contained in the responses below is intended as a waiver of this objection.

3. OSU objects to each Request to the extent that it seeks information not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. OSU objects to each Request to the extent that it seeks production of information that is confidential business, commercial, or proprietary information belonging to OSU or third parties.

5. OSU objects to each Request, definition, or instruction to the extent that it purports to impose upon OSU obligations greater than, or different from, those contained in the Ohio Administrative Code.

6. OSU objects to each Request to the extent it seeks documents or information not in OSU's possession, custody, or control.

7. OSU objects to each Request that purports to require a detailed, narrative response. Under applicable Commission rules and the Ohio Rules of Civil Procedure, "[a]n interrogatory seeks an admission or seeks information of major significance in the trial or the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by the rules for deposition." *Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

8. Also, in responding to these Requests, OSU does not admit the truth, validity, completeness, or merit of any of Sierra Club's Definitions, Instructions for Answering, Requests, or any subparts thereof as set forth below.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 2— Please produce All feasibility studies conducted by OSEP, EBO, or their parent
RPD-01 companies (e.g. ENGIE North America and Axium Infrastructure) relating to the
OSU CHP Project.

Response: **Objection.** The request is overly broad, unduly burdensome, vague and ambiguous because the capitalized “All” and the term “feasibility studies” is undefined. OSU also objects because this request seeks confidential, proprietary, and trade secret information. Subject to the foregoing, OSU will produce the feasibility study conducted for the CHP Project. Certain documents previously marked as “confidential” will be produced only pursuant to an appropriate nondisclosure agreement or confidentiality order.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 2— Please produce all notes from any meeting of the Board of the Trustees or any other
RPD-02 governance body of OSU where any feasibility study relating to the OSU CHP Project was presented, listed in the agenda, or discussed.

Response: **Objection. The request is overbroad, vague and ambiguous because the term “feasibility studies” is undefined and because it is unclear what other “governance body of OSU” would be. Subject to the foregoing, OSU will produce the meeting minutes where the feasibility study was presented to the Board of Trustees.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 2– Please produce all communications between the OSU Board of Trustees or any
RPD-03 subcommittee thereof and OSEP, EBO, or their parent companies (e.g. ENGIE North American and Axium Infrastructure) regarding the CHP facility.

Response: OSU will produce responsive documents.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 2–
RPD-04** Please produce all communications between Kate Bartter or anyone within her office and OSEP, EBO, or their parent companies (e.g. ENGIE North American and Axium Infrastructure) relating to the CHP facility.

Response: **Objection.** The request is vague and ambiguous for failure to specifically identify the individuals within Ms. Bartter’s “office” and how those communications possibly relate to the CHP facility. The request is overbroad, unduly burdensome, and not likely to lead to the discovery of admissible evidence because it fails to identify how “all communications” regarding the CHP facility is likely to lead to admissible evidence in this proceeding. Indeed, such a broad request would encompass a huge amount of materials, including items such as a publication of OSU’s Sustainability Institute (an academic and research office) that mentions the CHP facility in its publications focusing on how the improvement of the carbon footprint on the Columbus Campus impacts the footprint of the entire university. This publication is wholly unrelated to OSU’s consideration of and decision-making process to approve the CHP facility. Finally, OSU objects to this request to the extent it seeks attorney client privileged or attorney work product communications. Subject to the foregoing, OSU will interpret this request to be for non-privileged communications with Ms. Bartter and those individuals reporting to her that were related to OSU’s consideration of and decision-making process leading to the university’s Board of Trustees’ approval of the proposed CHP facility.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

**SC Set 2–
RPD-05** Please produce all reports, analyses, or studies on which you relied in stating, on p. 24 of OSU's April 2020 Climate Action Plan (available at https://si.osu.edu/sites/default/files/CAP_Final_04082020.pdf), that solar generation at the OSU campuses is likely limited to “the order of 10 megawatts.”

Response: **Objection. The documents requested are not reasonably likely to lead to the discovery of admissible evidence.**

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 2– Please produce any all requests for proposals relating to the construction of new energy
RPD-06 generation resources to provide energy to any OSU campus issued between January 1, 2015 and March 31, 2020, inclusive.

Response: **Objection.** The documents requested are not reasonably likely to lead to the discovery of admissible evidence.

Case No. 19-1641-EL-BGN

In the Matter of the Application of The Ohio State University for a Certificate of Environmental Compatibility and Public Need for Combined Heat and Power Major Unit Facility in Franklin County, Ohio on the Campus of The Ohio State University.

REQUESTS FOR PRODUCTION OF DOCUMENTS

SC Set 2– Please produce all communications between OSU and AEP relating to the use of
RPD-07 renewable generation resources for campus energy purchases.

Response: **Objection.** The documents requested are not reasonably likely to lead to the discovery of admissible evidence.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Responses to Sierra Club's Second Set of Data Requests, was served upon the persons listed below via electronic transmission this 18th day of May 2020.

/s/ N. Trevor Alexander
One of the Attorneys for The Ohio State University

Precious Onuohah
precious.onuohah@sierraclub.org

Richard C. Sahli
ricksahli@outlook.com

Exhibit E



Megan Wachspress <megan.wachspress@sierraclub.org>

Clarification Requested on OSU's Discovery Responses; OPSB

Richard Sahli <ricksahli@outlook.com>

Thu, May 7, 2020 at 10:57 AM

To: "Alexander, Trevor" <TAlexander@calfee.com>

Cc: "khehmeyer@calfee.com" <khehmeyer@calfee.com>, Precious Onuohah <precious.onuohah@sierraclub.org>, Megan Wachspress <megan.wachspress@sierraclub.org>

Dear Trevor,

I write in regard to OSU's Response to Sierra Club's First Set of Discovery Requests. Sierra Club appreciates the timely production of documents. Please let us know if we should anticipate further production to the First Set of Requests, or if you believe (subject to any assertion of privilege or relevance) production is complete.

We note in this regard that OSU objects to the requests generally on the grounds of attorney-client privilege, the attorney product work doctrine, and "any other applicable statutory or common law privilege." However, OSU does not state whether, for each request, it is withholding documents on the basis of a privilege claim, the nature of the documents withheld, and the basis for asserting privilege. If OSU is withholding documents on privilege grounds, please identify this information. If OSU is not withholding any documents on privilege grounds, please confirm as much.

Similarly, OSU generally objects to the production of information that is "confidential business, commercial, or proprietary information belonging to OSU or third parties." Without conceding that such an objection is appropriate as applied to OSU, a public university, Sierra Club requests that OSU identify to which requests, if any, it is withholding responses on this basis and the nature of the documents so withheld.

With respect to Requests 1.10, 1.11, and 1.12, OSU objects on the grounds that the documents requested "are not reasonably likely to lead to the discovery of admissible evidence." This objection is improper on its face. The Board is explicitly required, prior to issuing a Certificate of Environmental Compatibility, to find and determine that the proposed facility "represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations." R.C. 4906.10(A)(3). As part of this determination, the Board must assess various *technological* alternatives that were considered or should have been considered by the applicant. Requests 1.10, 1.11, and 1.12 all relate directly to whether OSU considered alternative technologies for electricity generation prior to proposing the instant Application, and to any findings OSU may have made with regard to the feasibility of those alternatives. This information is directly relevant to the current proceeding and, absent any valid claim of privilege, must be produced. If OSU does not have any documents responsive to these requests, please say so.

I appreciate your willingness to engage on these issues despite the circumstances and hope that you and your family are well in these challenging times.

Best Regards,

Rick Sahli

Richard C. Sahli, Esq.

[334 Evergreen Lane](#)

[Yreka, CA 96097](#)

(530)-598-6638

ricksahli@outlook.com

PRIVILEGED AND CONFIDENTIALITY NOTICE

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Cc:

Megan Wachspress

Associate Attorney

Sierra Club Environmental Law Program

[2101 Webster St., 13th Floor](#)

Oakland, CA 94612

mobile: (773) 704-9310

megan.wachspress@sierraclub.org

Exhibit F

May 13, 2020

VIA EMAIL

Richard C. Sahli, Esq.
334 Evergreen Lane
Yreka, CA 96097
ricksahli@outlook.com

Re: Clarification Regarding OSU's Discovery Responses – Case No. 19-1641-EL-BGN.

Dear Mr. Sahli,

This letter is in response to your email dated May 7, 2020 addressing Sierra Club's claimed deficiencies with OSU's Response to Sierra Club's First Set of Discovery Requests that was served upon Sierra Club on April 29, 2020.

I. Attorney-Client Privilege, Attorney Work Product Doctrine, and Any Other Applicable Statutory or Common Law Privilege.

In your May 7, 2020 email, Sierra Club notes that OSU generally objects to Sierra Club's First Set of Requests "on the grounds of attorney-client privilege, the attorney work product doctrine, and 'any other applicable statutory or common law privilege.'" Sierra Club requests that "if OSU is withholding documents on privilege grounds, please identify this information," or "[i]f OSU is not withholding any documents on privilege grounds, please confirm as much." In response to Sierra Club's request, OSU states that it has not withheld any documents based on this general objection in response to the First Set of Requests.

II. Confidential Business, Commercial, or Proprietary Information Belonging to OSU or Third Parties.

Similarly, Sierra Club requests that OSU identify to which requests, if any, OSU is withholding responses based on OSU's general objection to the production of information that is "confidential business, commercial, or proprietary information belonging to OSU or third parties." In response, OSU states that it has not withheld any documents based on this general objection in response to the First Set of Requests.

III. Requests Not Likely to Lead to the Discovery of Admissible Evidence – RPD 1.10, 1.11, 1.12.

The proper scope of this matter is contained in R.C. 4906.10(A). Specifically, prior to issuing a certificate, the Board must find and determine, among other things, that "the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent

considerations.”¹ Contrary to Sierra Club’s assertion, R.C. 4906.10(A) does not require the Board to “assess various *technological* alternatives that were considered or should have been considered by the applicant.”²

It appears that Sierra Club is arguing there is an obligation for an applicant to present evidence regarding every other possible method of meeting its generation needs (i.e., constructing solar, wind, nuclear, coal, gas, geothermal, or purchasing from the grid.). After researching the issue we have been unable to find any authority supporting Sierra Club’s position. Instead, Ohio has examined the environmental impact of the facility actually proposed by the applicant instead of a hypothetical other generation source.

Likewise, Sierra Club’s claim that RPDs 1.10³, 1.11⁴, and 1.12⁵ “all relate directly to whether OSU considered alternative technologies for electricity generation prior to proposing the instant Application, and to any findings OSU may have made with regard to the feasibility of those alternatives” does not deem this information “directly relevant to the current proceeding” as Sierra Club contends. Instead, these requests seek documents that are not relevant and are not likely to lead to the discovery of admissible evidence because only the current Application is under review by the Board. The Board is not asked to consider any alternatives (such as solar or wind) that may have been considered by OSU, but ultimately not included in its Application.

This issue has been previously addressed in Ohio in the context of a discovery dispute. The Attorney Examiner in that case determined that because the Board only considers the application before it, any information regarding considerations made—but not ultimately included in the application—is simply irrelevant to the proceeding.⁶ As Sierra Club explicitly states its reason for seeking the information in RPDs 1.10, 1.11, and 1.12 is because it purportedly relates “directly to whether OSU considered alternative technologies for electricity generation prior to proposing the instant Application,” this information is not relevant to this proceeding. Accordingly, OSU stands by its previous objections to RPDs 1.10, 1.11, and 1.12.

¹ R.C. 4906.10(A)(3).

² May 7, 2020 Email.

³ RPD 1.10 states: “Please produce all documents relating to possible construction or use of solar electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.”

⁴ RPD 1.11 states: “Please produce all documents relating to possible construction or use of wind electricity generating facilities (including storage) as a means of providing energy for the OSU campus prepared by or at the direction of OSU, OSEP, or EBO, including but not limited to any proposals, studies, assessments, or reports regarding the feasibility, cost, or risks associated with such construction or generation.”

⁵ RPD 1.12 states: “Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE North America, Axium Infrastructure, or EBO, on the other, relating to the construction or use of solar or wind electricity generating facilities, including storage.”

⁶ See *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities*, Case No. 08-666-EL-BGN, Entry (Oct. 30, 2009).

As OSU has produced all responsive documents to Sierra Club's First Set of Requests, OSU's production is complete. If you would like to discuss this matter further, please feel free to contact me.

Sincerely,

/s/ N. Trevor Alexander

N. Trevor Alexander

Exhibit G

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye)
Wind LLC for a Certificate to Construct)
Wind-powered Electric Generation Facilities) Case No. 08-666-EL-BGN
in Champaign County, Ohio.)

ENTRY

The Administrative Law Judge finds:

- (1) On April 24, 2009, Buckeye Wind LLC (Buckeye) filed with the Ohio Power Siting Board (Board) an application pursuant to the provisions of Chapter 4906-13, Ohio Administrative Code (O.A.C.), for a certificate of environmental compatibility to construct a wind-powered electric generation facility. The proposed project consists of 70 wind turbine generators, other associated facilities, and access roads to be located on approximately 9,000 acres of land in Goshen, Rush, Salem, Union, Urbana, and Wayne Townships, Champaign County, Ohio.
- (2) On October 9, 2009, Champaign Telephone Company (Telephone Company) filed a motion to intervene in this case. In its motion to intervene, the Telephone Company expresses its concerns that the proposed location of wind turbines in Champaign County may interfere with broadband and point-to-point signals sent to provide digital subscriber line (DSL) service from the Telephone Company's tower. The Telephone Company further avers that it has an interest in this proceeding to ensure that the location of the turbines does not interfere with the signals from its tower and that no other party can adequately protect the Telephone Company's interest. Finally, the Telephone Company states that it will seek expeditious consideration of its interest and does not seek to unduly delay this proceeding. Buckeye did not file a motion in opposition to the Telephone Company's motion for intervention. The Administrative Law Judge (ALJ) finds that the Telephone Company has set forth reasonable grounds for intervention. Accordingly, the Telephone Company's motion to intervene should be granted.

- (3) On October 13, 2009, the Piqua Shawnee Tribe (Piqua Shawnee) filed a motion to intervene in this case. In the motion to intervene, the Piqua Shawnee state that a known Native American funeral mound (the mound) is located within the construction area of the proposed project. The Piqua Shawnee state that they have an interest in preserving their heritage through protection of the mound. The ALJ finds that the Piqua Shawnee have set forth reasonable grounds for intervention and that their motion to intervene should be granted. However, to participate in this proceeding the Piqua Shawnee are put on notice that, pursuant to Rule 4906-7-11, O.A.C, the Piqua Shawnee must be represented by an attorney authorized to practice before the courts of Ohio or admitted to practice in this proceeding *pro hac vice*.
- (4) On October 13, 2009, Union Neighbors United, Inc., Diane and Robert McConnell, and Julia F. Johnson (UNU), intervenors in this proceeding, filed a motion to compel discovery from Buckeye. Specifically, UNU asserts that Buckeye has failed to fully respond to Interrogatory Nos. 22 and 33, and Request for Production Nos. 10, 14-16, 27, 42, 45-48, 55, and 68. However, in its October 21, 2009, memorandum contra Buckeye's motion for a protective order, UNU, *inter alia*, withdrew Request for Production Nos. 48 and 55.
- (5) On October 16, 2009, Buckeye filed a memorandum in opposition to UNU's motion to compel, addressing each contested interrogatory and request for production.
- (6) In Request for Production No. 10, UNU requests all drafts and preliminary versions of Buckeye's application to the Board. In support of its request, UNU asserts that this request is relevant because it would allow UNU to compare any drafts with the final application, which, according to UNU, could lead to the discovery of the underlying rationale for the configuration of the project contained in the application.

Buckeye objects to this request on the grounds that it is overly broad and unduly burdensome. In addition, Buckeye asserts that studies and documentation related to the development of the application were attached to the application; therefore, drafts of prior applications are not relevant and are not likely to lead to the discovery of admissible evidence. Moreover,

Buckeye avers that various drafts required the editing and advice of Buckeye's legal counsel and, as such, are protected by the work product doctrine and under attorney-client privilege.

Upon reviewing the parties' assertions, the ALJ concludes that this request seeks documents not relevant to the proceeding. Only the current application is under review by the Board, not any alternatives that may have been included in drafts of the application. Moreover, Buckeye correctly states that any drafts of the application that were edited or modified under the advice of counsel would be protected by the work product doctrine and under attorney-client privilege. Accordingly, UNU's motion to compel is denied.

- (7) In Request for Production Nos. 14-16, UNU seeks to discover information relating to any alternative site analysis performed by Buckeye. Specifically, UNU seeks all documents relating or referring to any other site in the state of Ohio that could have been used as a site for Buckeye's current project, as well as all documents relating or referring to the environmental and socioeconomic considerations of the preferred and alternative sites for Buckeye's project. In addition, UNU seeks all documentation relating or referring to the reasons that Buckeye selected the current project site, instead of any alternative location. UNU states that the documents it seeks in Request for Production Nos. 14-16 may lead to the discovery of documents to support its argument that another site could be used for the project. Similarly, in Interrogatory No. 33, UNU first asks Buckeye to identify any other areas in Ohio that it considered for the project. UNU then posits a series of questions about the suitability of each contemplated site.

In response, Buckeye contends that Request for Production Nos. 14-16 and Interrogatory No. 33 are not reasonably calculated to lead to the discovery of admissible evidence because Buckeye was not required to conduct alternative site analysis, nor is it required to present any alternative sites to the Board for consideration. Specifically, in response to Interrogatory No. 33, Buckeye states, in its August 6, 2009 response, that "no site alternative analysis was performed." However, on October 20, 2009, Buckeye also requested a protective order for any information given to UNU in response to Interrogatory No. 33.

Upon consideration of the arguments of the parties, the ALJ finds that the information requested by UNU is subject to discovery in this case. However, the ALJ notes that Buckeye's assertion that no responsive information to these requests exists appears to contradict Buckeye's request for a protective order. Therefore, the ALJ concludes that, to the extent Buckeye's statement in its August 6, 2009 response is accurate that "no site alternative analysis was performed" and Buckeye has no documents responsive to Request for Production Nos. 14-16 and Interrogatory No. 33, Buckeye has fully responded to these requests and the motion to compel is denied. However, should Buckeye be in possession of responsive information, the motion to compel is granted and Buckeye is ordered to provide UNU with all responsive information by November 3, 2009.

- (8) In Request for Production No. 27, UNU seeks all analyses of the prospects for high winds in the project area, including the probability of occurrences and potential consequences of various wind velocities, and all plans to mitigate any likely adverse consequences. However, UNU states that, pursuant to a discussion with Buckeye's counsel, UNU expected Buckeye to supplement its response to Request for Production No. 27 with a statement that Buckeye did not have any documents responsive to this request, thus resolving this request. As expected, Buckeye stated in its memorandum that it did not possess any documents responsive to Request for Production No. 27. Therefore, the ALJ finds that this request has been resolved.
- (9) In Request for Production No. 42, UNU requests all reports, studies, and literature discussing or identifying the types of injuries, effects, or harm to human health, human comfort, or the environment that may result from wind turbines or wind energy projects. In support of this request, UNU asserts that human and environmental impacts of a proposed project are proper concerns for the Board when considering an application.

Buckeye objects to this request on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Moreover, Buckeye states that, although it maintains its objections to the request, it did provide UNU with documents related to blade throw, ice throw, and turbine safety.

In evaluating UNU's Request for Production No. 42, the ALJ is mindful that UNU is seeking an entire body of information that is not tailored to the proposed project. Moreover, UNU does not specifically seek information that was produced by Buckeye or is in the current possession of Buckeye. Accordingly, the ALJ finds that Request for Production No. 42 is overly broad. Therefore, UNU's motion to compel is denied.

- (10) Request for Production No. 45 requests all documents describing the manufacturer's health and safety specifications or recommendations for each turbine model that Buckeye considered for the facility. In support of its request, UNU asserts that, because Buckeye states in its application that it has not yet decided on a turbine model for the facility, it is appropriate to request information on any turbine that Buckeye has considered thus far.

In response to this request, Buckeye states that it has provided the safety manuals for the two Nordex wind turbines as Exhibit J to its application. Buckeye also states that it supplemented its response to Request for Production No. 45 on October 10, 2009, and provided the Installation Manual for the Repower MM92 Turbine and the Repower MM92 Product Description Manual. In addition, Buckeye states that it intends to further supplement this request with further documentation related to the Nordex turbines.

To the extent that UNU seeks information about turbines not considered in Buckeye's application, UNU's motion to compel is denied as overly broad. However, inasmuch as Buckeye intends to supplement this request with documentation related to the Nordex turbines, the motion to compel is granted and Buckeye is directed to provide the supplemental information by November 3, 2009.

- (11) In Request for Production No. 46, UNU also seeks all documents relating or referring to Buckeye's consideration, evaluation, or selection of turbines for the proposed facility. UNU claims that this information is relevant to potential facility impacts on the surrounding community.

In response, Buckeye states that this request is overly broad and unduly burdensome. Furthermore, Buckeye explains that

it has produced various manuals relating to the three turbines under consideration for the current project.

In reviewing the parties' assertions with respect to this request, the ALJ concludes that this request is overly broad, as it is not limited to the turbines actually being considered for this project. The ALJ is aware that Buckeye has provided, or will provide, all information relevant to the three turbines that are actually being considered as alternatives for the current project in response to Request for Production No. 45. Moreover, as previously stated, the Board is only considering the application before it. Therefore, any information regarding turbines that were considered but not selected for inclusion in the application is irrelevant to this proceeding. Accordingly, UNU's motion to compel is denied.

- (12) In Request for Production No. 47, UNU requests all documents stating the capacity factor achieved by any wind power facility in the United States. Similarly, in Interrogatory No. 22, UNU asks that Buckeye provide the name, owner, location, and capacity factor for each wind power facility in the United States for which Buckeye or any of its consultants know of the capacity factor that has been achieved for any period of time.

Buckeye objects to this request and interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome, vague and ambiguous, is seeking documents not in the possession of Buckeye, and seeks information of a confidential and proprietary nature. Moreover, Buckeye asserts that wind generation facilities located elsewhere have no bearing on the project that is currently under review.

Upon review of the parties' assertions, the ALJ concludes that this request is overly broad. Nothing in Request for Production No. 47 or Interrogatory No. 22 is limited to the project currently under consideration by the Board. Moreover, this request seeks information that one would not reasonably expect to be in the possession of Buckeye. Accordingly, UNU's motion to compel is denied.

- (13) In Request for Production No. 68, UNU seeks all field notes, noise measurements, and other documentation and data

pertaining to the Noise Impact Assessment or any other study or measurement of background, construction, or operational noise with regard to the project. UNU asserts that this information is relevant to assess the potential noise impact of the project.

In its response to UNU's motion to compel, Buckeye states that it will supplement its response to Request for Production No. 68 by noting that the Environmental Sound Survey and Noise Impact Assessment prepared by Hessler Associates, Inc., is attached as Exhibit K to the application, and that a noise manual and sound profile contours were provided in response to Request for Production Nos. 35 and 36. Buckeye also indicated that it would seek any responsive data from Hessler Associates, Inc., and provide that data to UNU.

It appears that Buckeye has provided, or will provide, all documents responsive to this request. However, to the extent that UNU has not received Buckeye's supplemental discovery containing any responsive data from Hessler Associates, Inc., UNU's motion to compel is granted. Further, Buckeye is directed to provide any responsive data from Hessler Associates, Inc., to UNU by November 3, 2009.

- (14) On October 20, 2009, Buckeye filed a motion for a protective order regarding information sought under Request for Production Nos. 48 and 55, and Interrogatory No. 33. In its request, Buckeye argues that the information and documents sought under those requests contain trade secret information; therefore, Buckeye seeks to protect information and documents that may fall under those requests. UNU filed a memorandum contra Buckeye's motion for a protective order on October 22, 2009. In its memorandum contra, UNU withdrew its Request for Production Nos. 48 and 55.

The ALJ notes that the protective order requested by Buckeye is only necessary if UNU's motion to compel discovery is granted with regard to Request for Production Nos. 48 and 55, and Interrogatory No. 33. Therefore, in light of the fact that UNU has withdrawn its Request for Production Nos. 48 and 55 Buckeye's request for a protective order with regard to Request for Production Nos. 48 and 55 is no longer necessary.

With respect to Interrogatory No. 33, if Buckeye has no responsive information, then Buckeye's request for a protective order is no longer necessary. However, to the extent Buckeye has responsive information, it would appear from the question posed that the information may be found to be appropriate for a protective order in this case; although, absent an *in camera* review of the information, it is impossible for the ALJ to make a definitive ruling as to how this information would be treated if it was submitted by a party in this proceeding. Therefore, in order to avoid the unnecessary sharing of any responsive information during the discovery phase of this proceeding, the ALJ directs that information responsive to Interrogatory No. 33, produced pursuant to finding (7), only be shared with UNU's counsel and be maintained as confidential by UNU's counsel. The ALJ emphasizes that this protective order is for the purpose of discovery only. In the event that any party wishes to request that information responsive to Interrogatory No. 33 be entered into the record in this proceeding, at that time, the ALJ will entertain a motion for protective order pertaining to the information, conduct an *in camera* review of the material, and issue a ruling on the motion for protective order. Accordingly, to the extent that information responsive to Interrogatory No. 33 is produced by Buckeye it is to be disclosed only to UNU's counsel and maintained by UNU's counsel as confidential.

- (15) During the October 21, 2009, conference call with the parties, the ALJ indicated that another conference call would be required to discuss a tentative witness schedule for the adjudicatory hearing. Accordingly, a telephone conference shall be scheduled for Tuesday, November 3, 2009, at 11:00 a.m. The parties will be notified by e-mail how to access the conference call. The ALJ encourages the parties to discuss witness availability to the fullest extent possible prior to the conference call.

It is, therefore,

ORDERED, That the motions to intervene filed by the Telephone Company and the Piqua Shawnee be granted. It is, further,

ORDERED, That UNU's motion to compel discovery be granted, in part, and denied, in part, as set forth in this entry. It is, further,

ORDERED, That Buckeye is directed to provide supplemental information relating to Request for Production Nos. 45 and 68 by November 3, 2009. It is, further,

ORDERED, That, in accordance with finding (7), should Buckeye be in possession of responsive information to Request for Production Nos. 14-16 and Interrogatory No. 33, the motion to compel is granted and Buckeye is ordered to provide UNU with all responsive information by November 3, 2009. It is, further,

ORDERED, That, in accordance with finding (14), to the extent that information responsive to Interrogatory No. 33 is produced by Buckeye it is to be disclosed only to UNU's counsel and maintained by UNU's counsel as confidential. It is, further,


ORDERED, That a telephone conference call, discussing the tentative witness schedule for the adjudicatory hearing, be held on November 3, 2009, at 11:00 a.m., in accordance with finding (15). It is, further,

ORDERED, That a copy of this entry be served upon Buckeye and its counsel, and all other interested persons of record.

THE OHIO POWER SITING BOARD

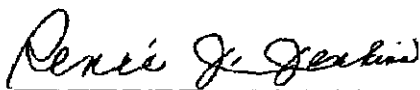


By: Katie L. Stenman
Administrative Law Judge

dah

Entered in the Journal

OCT 30 2009



Renee J. Jenkins
Secretary

Exhibit H



May 28, 2020

Via Email

N. Trevor Alexander
Calfee, Halter & Griswold LLP
1200 Huntington Center
41 South High Street
Columbus, Ohio 43215-3465
614.621.1500
TAlexander@calfee.com

Re: OSU's Discovery Responses – Case No. 19-1641-EL-BGN

Dear Mr. Alexander,

This letter is a follow-up to our phone conversation of May 20, 2020 discussing OSU's response to Sierra Club's first set of discovery requests in the above-captioned matter. Sierra Club appreciates OSU's willingness to discuss this matter and engage in the meet and confer process.

Sierra Club does not concede that OSU's objections to Requests 1.10, 1.11, or 1.12 are meritorious and maintains that the nature and economics of alternative forms of generation (including renewable energy technologies) and any analyses performed by an Applicant regarding such alternatives are directly relevant to this proceeding and the showing required by R.C. 4906.10(A)(3). *See In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, 2008 WL 596099 (F.E.D.A.P.J.P. Mar. 3, 2008). Nevertheless, as part of its good faith efforts to resolve the ongoing discovery dispute without litigation, Sierra Club proposes limiting the disputed discover requests, as follows:

1.10A Please produce all documents dated January 1, 2013 or later relating to possible construction or use of solar electricity generating facilities (including storage) authored or prepared by OSEP, EBO, or Burns & McDonnell as part of any analysis of the technological and/or economic feasibility or suitability of any potential technology to meet the power generation or steam production goals of Ohio State University.

1.11A Please produce all documents dated January 1, 2013 or later relating to possible construction or use of wind electricity generating facilities (including storage) authored or prepared by OSEP, EBO, or Burns & McDonnell, as part of any analysis of the technological and/or economic feasibility or suitability of any potential technology to meet the power generation or steam production goals of Ohio State University.

1.12A Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE North America, Axium Infrastructure, or EBO, on the other, regarding the analyses described in requests 1.10A and 1.11A.

Please advise at your earliest convenience whether OSU is prepared to produce documents in response to these more limited requests. Sierra Club remains prepared to move to compel production of responsive documents to its original requests if OSU maintains its objections.

Sincerely,

/s/ Megan Wachspress

Megan Wachspress
Associate Attorney
Sierra Club Environmental Law Program
2101 Webster St., 13th Floor
Oakland, CA 94612
mobile: (773) 704-9310
megan.wachspress@sierraclub.org

Exhibit I

June 3, 2020

VIA EMAIL

Megan Wachspress
Sierra Club Environmental Law Program
2101 Webster St., 13th Floor
Oakland, CA 94612
megan.wachspress@sierraclub.org

Re: OSU's Discovery Responses – Case No. 19-1641-EL-BGN.

Dear Ms. Wachspress,

This letter is in response to your letter dated May 28, 2020 addressing Sierra Club's proposed revisions to the disputed discovery requests.

I. Requests Not Likely to Lead to the Discovery of Admissible Evidence – RPD 1.10, 1.11, and 1.12.

As an initial matter, OSU stands by its previous objections to RPD 1.10, 1.11, and 1.12, as stated in its Response to Sierra Club's First Set of Discovery Requests that was served upon Sierra Club on April 29, 2020 and reiterated in its May 13, 2020 letter. These requests seek documents that are not relevant and are not likely to lead to the discovery of admissible evidence because only the current Application is under review by the Board. The Board is not asked to consider any alternatives (such as solar or wind) that may have been considered by OSU, but ultimately not included in its Application. As this issue has been previously addressed in Ohio and determined that because the Board only considers the application before it, any information regarding considerations made (but not ultimately included in the application) is simply irrelevant to the proceeding,¹ OSU stands by its previous objections to RPD 1.10, 1.11, and 1.12.

Although Sierra Club “does not concede” that OSU's objections are meritorious, Sierra Club fails to provide any relevant support for its claim that “the nature and economics of alternative forms of generation (including renewable energy technologies) and any analyses performed by an Applicant regarding such alternatives are directly relevant to this proceeding and the showing required by R.C. 4906.10(A)(3).”² Sierra Club's reliance on *In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, Entry (Mar. 3, 2008) (“AMP-Ohio”), is misplaced, as the case not only does not address the issue here—a discovery dispute concerning the relevancy of information not included in an application before the Board—but also fails to support Sierra Club's contention concerning R.C. 4906.10(A)(3) entirely.

¹ See *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities*, Case No. 08-666-EL-BGN, Entry (Oct. 30, 2009).

² May 28, 2020 Sierra Club letter.

AMP-Ohio involved an application for a certificate of environmental compatibility and public need to construct a 960 MW coal fired electric generation facility, consisting of two 480 MW electric generating units in Meigs County, Ohio. Several citizen groups, including Sierra Club, intervened and argued, among other things, that it was AMP-Ohio's burden to evaluate alternatives in combination, not just individually, and to justify any rejection of them. The Board rejected Sierra Club's position, finding that "there is no feasible combination of energy efficiency measures and generation resources based upon renewable resources which could serve as an alternative to the proposed 960 MW AMPGS facility as a baseload generation resource," and further rejected the citizen groups' argument that AMP-Ohio improperly rejected alternatives to the proposed facility.³

The Board's findings on rehearing are particularly relevant to Sierra Club's arguments here.⁴ The Board rejected Sierra Club's arguments regarding the failure to consider carbon dioxide impacts of the proposed facilities and strategies for minimizing same, that it was obligated to consider energy efficiency and renewable energy alternatives to the coal plant, or that it was obligated to consider a hypothetical gas plant. In pertinent part, the Rehearing Entry held "[t]he Citizen Groups have cited no legal precedent to support their contention that the Board should limit any certification for the proposed [coal plant] to the amount of needed generation that cannot be satisfied through alternatives based on the record of this case."⁵ Based on that lack of legal support the Board rejected all of Sierra Club's assignment of errors.

As Sierra Club has been unable to identify any authority supporting its legal position, and in fact the authority provided in your letter specifically rejects a similar attempt to force consideration of alternative sources of renewable generation, OSU stands by its objections to Sierra Club's requests.

³ *In the Matter of the Application of American Municipal Power-Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio*, Case No. 06-1358-EL-BGN, Opinion, Order and Certificate (Mar. 3, 2008).

⁴ *In the Matter of the Application of American Municipal Power-Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio*, Case No. 06-1358-EL-BGN, Entry on Rehearing (Apr. 28, 2008).

⁵ *Id.*, ¶ 7.

II. Sierra Club's Proposed Revisions to Discovery Requests – 1.10A, 1.11A, 1.12A.

Sierra Club's revised discovery requests 1.10A⁶, 1.11A⁷, and 1.12A⁸ also fail to address the lack of a basis under Ohio law to demand the requested information. The revised discovery requests still seek information not relevant to the current Application under review by the Board, as Sierra Club is still requesting "all documents" and "all correspondence" relating to possible construction or use of solar or wind generating facilities at OSU by the same entities in the original requests.⁹ Once again, these requests would encompass a wide array of information completely unrelated to the Application at issue in this case. For example, Sierra Club's requests would include any reports considering adding a single rooftop solar panel anywhere which would serve the "power generation" goals of OSU. A report addressing solar panels on a roof or an off-site wind farm has nothing to do with the legal standard in this case set forth in R.C. 4906.10(A) and accordingly the revisions do not correct the problems associated with these specific requests.

As Sierra Club's proposed revisions do not address the lack of a basis under Ohio law to demand the requested information, OSU stands by its previous objections. Accordingly, OSU's production is complete.

Sincerely,

/s/ N. Trevor Alexander

N. Trevor Alexander

⁶ 1.10A states: "Please produce all documents dated January 1, 2013 or later relating to possible construction or use of solar electricity generating facilities (including storage) authored or prepared by OSEP, EBO, or Burns & McDonnell as part of any analysis of the technological and/or economic feasibility or suitability of any potential technology to meet the power generation or steam production goals of Ohio State University."

⁷ 1.11A states: "Please produce all documents dated January 1, 2013 or later relating to possible construction or use of wind electricity generating facilities (including storage) authored or prepared by OSEP, EBO, or Burns & McDonnell as part of any analysis of the technological and/or economic feasibility or suitability of any potential technology to meet the power generation or steam production goals of Ohio State University."

⁸ 1.12A states: "Please produce all correspondence between OSU, on the one hand, and OSEP, ENGIE North America, Axiom Infrastructure, or EBO, on the other, regarding the analyses described in requests 1.10A and 1.11A."

⁹ May 28, 2020 Sierra Club letter.

Exhibit J



Megan Wachspress <megan.wachspress@sierraclub.org>

OSU's Discovery Responses – Case No. 19-1641-EL-BGN

Alexander, Trevor <TAlexander@calfee.com>

Mon, Jun 15, 2020 at 12:27 PM

To: Megan Wachspress <megan.wachspress@sierraclub.org>, "Hehmeyer, Kari" <KHehmeyer@calfee.com>, "Lesser, Steven" <SLesser@calfee.com>

Cc: Richard Sahli <ricksahli@outlook.com>, Tony Mendoza <tony.mendoza@sierraclub.org>, Precious Onuohah <precious.onuohah@sierraclub.org>

Megan,

OSU will not be objecting due to Sierra Club's failure to meet and confer on 2.06. I believe you understand OSU's position based on our prior discussions.

Thanks,

Trevor

N. Trevor Alexander

Attorney at Law

tallexander@calfee.com

614.621.7774 **Office**

614.917.7168 **Mobile**

614.621.0010 **Fax**

Calfee, Halter & Griswold LLP

1200 Huntington Center

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From: Megan Wachspress <megan.wachspress@sierraclub.org>

Sent: Thursday, June 11, 2020 9:06 PM

To: Alexander, Trevor <TAlexander@Calfee.com>; Hehmeyer, Kari <KHehmeyer@Calfee.com>; Lesser, Steven <SLesser@Calfee.com>

Cc: Richard Sahli <ricksahli@outlook.com>; Tony Mendoza <tony.mendoza@sierraclub.org>; Precious Onuohah <precious.onuohah@sierraclub.org>

Subject: OSU's Discovery Responses – Case No. 19-1641-EL-BGN

Dear Trevor,

Thank you for your responses of last week providing the unredacted version of the CHP feasibility study, the correct version of the August 31, 2018 minutes, and the fully executed version of the protective agreement.

With respect to the outstanding discovery disputes as to Requests 1.10, 1.11, and 1.12, the parties appear to have reached an impasse. Accordingly, Sierra Club intends to file a motion to compel.

Based on our prior communication regarding the above requests, it appears as if OSU's relevancy objection to Request 2.06 ("Please produce any all requests for proposals relating to the construction of new energy generation resources to provide energy to any OSU campus issued between January 1, 2015 and March 31, 2020, inclusive.") rests on the same grounds. Our position is that this Request is relevant for the same reasons as Requests 1.10, 1.11, and 1.12, namely, that the request is likely to lead to admissible evidence regarding whether OSU has met the requirements of Rev. Code 4906.10(A)(3).

In the interest of avoiding duplicate motions and unnecessary delay, Sierra Club would like to include Request 2.06 as part of our forthcoming motion to compel as to the other three requests. Before doing so, however, I wanted to reach out to confirm that OSU continues to stand on its objection and that OSU will not object to the inclusion of Request 2.06 as part of the motion on the grounds that Sierra Club has not adequately exhausted the meet and confer process.

All best wishes,

Megan Wachspress

--

Megan Wachspress

Associate Attorney

Sierra Club Environmental Law Program

2101 Webster St., 13th Floor
Oakland, CA 94612

mobile: (773) 704-9310

megan.wachspress@sierraclub.org

(she/her/hers)

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Case No(s). 19-1641-EL-BGN

Summary: Motion INTERVENOR SIERRA CLUB'S MOTION TO COMPEL DISCOVERY
FROM APPLICANT THE OHIO STATE UNIVERSITY electronically filed by Mr. Richard C.
Sahli on behalf of Sierra Club