

**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 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

SIERRA CLUB'S PETITION TO INTERVENE AND MEMORANDUM IN SUPPORT

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

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SIERRA CLUB’S PETITION TO INTERVENE

The Ohio State University’s (“OSU” or “the University”) Application before the Ohio Power Siting Board for a certificate of environmental compatibility and public need for a combined heat and power major unit facility would, if granted, allow the University to build a major new gas-burning plant in the heart of OSU’s campus and central Columbus. The plant would increase both particulate and greenhouse gas emissions and have significant impacts on the environmental quality of life in a dense urban area, while committing the University to drawing a significant proportion of its energy from fossil fuels for the useful life of the plant. Pursuant to OAC §4906-2-12, the Power Siting Board (“Board”) should grant Sierra Club’s Petition because the organization and its 22,600 Ohio members have a substantial interest in the outcome of this case, Sierra Club’s interests are separate from those of the already existing parties (which, as of March 5, 2020, include the Applicant alone), and Sierra Club will contribute to the development of the record in this proceeding and assist the Board with the just and expeditious resolution of the issues involved in the proceeding without causing undue delay. This Petition is timely; pursuant to ALJ Parrot’s Entry in this case ordering that intervention may be accepted up to 30 days following publication of the initial notice required by Ohio Adm. Code

4906-3-09(A)(1), “or by March 16, 2020, whichever is later.” *Entry*, Case No. 19-1641-EL-BGN (January 29, 2020). The initial notice was served on February 7, 2020. *Entry*, Case No. 19-1641-EL-BGN (February 18, 2020).

Sierra Club is a not-for-profit organization devoted to promoting clean energy, reducing reliance on coal-burning and natural-gas generation, and encouraging energy efficiency. Below, Sierra Club has provided a more detailed explanation of its interests in this case, its reasons for intervention, and arguments why the Board should grant its Petition in the accompanying Memorandum in Support.

Dated: March 6, 2020

Respectfully Submitted,

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

Attorney for the Sierra Club

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MEMORANDUM IN SUPPORT

I. Ohio law permits intervention of parties in cases before the Ohio Power Siting Board.

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. §4903.221. The Commission has four factors for consideration of such petitions for intervention:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. R.C. §4903.221(B).¹

Further, O.A.C. §4906-2-12(B) provides additional criteria to be considered when determining whether to grant a petition to intervention, and the Board may grant petitions to intervene “only upon a showing of good cause.” O.A.C. §4906-2-12(B). The Administrative Code mirrors the statutory factors, and requires that the Board consider the following four prong test:

- (1) The nature and extent of the person’s interest.

¹ Under Ohio law, R.C. 4903.221(B) must be applied to any proceeding or order of the Board. R.C. 4906.12.

- (2) The extent to which the person's interest is represented by existing parties.
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. O.A.C. §4906-2-12(B)(1).

II. The Ohio Power Siting Board should grant Sierra Club's Petition to Intervene.

Sierra Club respectfully requests the Board to grant its Petition to Intervene in the Board's review of The Ohio State University's Application for a Certificate of Environmental Compatibility and Public Need for a CHP Major Unit Facility for good cause shown. The Sierra Club's interest in this case is fundamental to its mission of promoting clean energy, reducing reliance on coal-burning and natural-gas generation, and encouraging energy efficiency. Sierra Club's intervention will assist the Board in its decision regarding the OSU CHP Project, as Sierra Club has much expertise, developed in regulatory proceedings around the country, in issues related to the environmental impacts of and renewable alternatives to natural-gas generation. Further, the Supreme Court of Ohio has emphasized that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission,]" which includes hearings before the Board. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

a. The Sierra Club has a real and substantial interest in the OSU CHP Project.

The Sierra Club is a not-for-profit organization with its Ohio office located at 503 S. Front St., Suite 210, Columbus Ohio 43215. Sierra Club's Central Ohio Group is based in Columbus, and has more than 4,000 members. The Sierra Club's main advocacy goals, in Ohio and nationwide, are to promote clean-energy resources and reduce reliance on coal-burning and natural gas-burning generation. Sierra Club has a long history of participating in Ohio regulatory

proceedings related to coal, natural-gas, and renewable generation, including recent electric security plan cases at the Public Utilities Commission of Ohio, as well as recent Board proceedings such as the Icebreaker wind proceeding. Sierra Club has maintained a full time staff office in Columbus for many years and undertaken numerous campaigns focused on public health, energy, and the environment in the area and Ohio as a whole. Recent campaign work in Columbus has organized opposition to local utility efforts to increase customer bills to subsidize uneconomic coal-fired plants, support for AEP Ohio's proposed 900 MW clean energy development plan, and efforts to commit the City of Columbus to receive 100% of the City's energy needs from renewable energy, a commitment Columbus Mayor Ginther stated recently he hopes to fulfill by 2022. There is also a student Sierra Club group at OSU, which has worked with the Central Ohio Group and Ohio Chapter on past campaigns.

Because the OSU CHP Project represents a significant financial commitment by a public entity to ongoing and future emissions of greenhouse gases through natural-gas electricity generation, and will have significant consequences for levels of air pollution in central Columbus, Sierra Club and its members have a substantial interest in assuring that all applicable requirements for this Project are met, including appropriate consideration of alternatives. The proposed CHP plant will be constructed in a centrally-located, heavily populated urban area, in close proximity to a hospital and major campus buildings. The plant will also be a major emitter of particulate matter, nitrogen oxides, and greenhouse gases, contributing to pollution in a county that was, until recently, out of compliance with National Ambient Air Quality Standard for ground-level ozone.² The Sierra Club has an interest in assuring that the University's construction of new power generation facilities does not come at the expense of the health of its

² See https://www3.epa.gov/airquality/greenbook/anayo_oh.html.

neighbors. Moreover, Sierra Club's has a well-established interest in clean and renewable energy resources and ensuring that entities such as OSU, which seek to construct new power generating facilities, adequately consider clean energy options.

Both the environmental impact of the proposed CHP facility and its comparative impact relative to other available technologies must be squarely addressed by the Board before authorizing construction. *See* R.C. § 4906.10(A). As a result, Sierra Club has a real and substantial interest in the ultimate outcome of the Board's consideration of the OSU CHP project. The Sierra Club satisfies the first prong of the Administrative Code's four prong balancing test for permissive intervention before the Board and the Commission.

b. The Sierra Club has different interests than those of the existing parties.

The Sierra Club's interests differ from either those of OSU, or the Board itself (as of March 5, 2020, no other entity has appeared in this proceeding). The interests of OSU center on minimizing the cost of power generation for the University and promoting the University's own energy grid; notably, the proposed facility will not be connected to the PJM Interconnection and will thus not be used for electricity generation to benefit individuals not on the OSU campus. The interests of Ohio State Energy Partners ("OSEP"), the contractor and consortium of two for-profit entities that will construct and manage the facility, are focused on maximizing the benefits and minimizing the liabilities of OSEP's concessionary agreement with OSU. The Board's important purpose is to ensure that the application submitted by OSU, satisfies all applicable laws and regulations, especially that applicants satisfy the regulatory requirements found at O.A.C. §4906-4.

While both OSU's and the Board's interests in the case are important, and may, in some instances align with the interests of Sierra Club, neither of these parties will approach the project

from the perspective of potential environmental impacts, making Sierra Club's goals for intervention quite distinct from existing parties. Moreover, because Sierra Club represents members in Franklin County and throughout central Ohio who will not benefit from the energy generation at OSU's campus but may face the pollution effects of that generation, Sierra Club has a unique interest in protecting these members from the negative externalities of OSU's generation choices.

c. The Sierra Club will contribute to a just and expeditious resolution of the issues involved in the proceeding.

The Sierra Club will contribute to a just and expeditious resolution of the issues involved in the proceeding because it can provide expert analyses, assist the Board with the development of an adequate record for decision, and ensure that the Application is given a fair and adequate hearing before the Board. Sierra Club has experience in the feasibility and relative economic viability of generation resource selection and air pollution issues, and can bring this expertise to bear in aiding the Board's consideration of this Application. In addition, Sierra Club's perspective and expertise will ensure that the environmental concerns of Ohioans are heard by the Board and adequately protected.

d. The Sierra Club's intervention will not cause undue delay of the Board's review of the OSU CHP Project.

If the Board grants Sierra Club's Petition to Intervene in the case regarding the OSU CHP Project, Sierra Club's involvement will not cause undue delay of the Board's review of the case. Sierra Club is prepared to comply with all deadlines in this proceeding.

III. Conclusion

The Board should grant Sierra Club's Petition to Intervene in the Board's review of OSU's petition for a certificate of environmental compatibility and public need for a combined

heat and power major unit facility on the campus of The Ohio State University. Sierra Club has a real and substantial interest in the OSU CHP Project; Sierra Club has different interests than those of the existing parties, and it will represent those interests more effectively than the existing parties; Sierra Club can contribute to a just and expeditious resolution of the issues involved in the proceeding; and Sierra Club's intervention will not cause undue delay of the Board's review of the project. Therefore, for the reasons stated in this Memorandum in Support, Sierra Club respectfully requests that the Board grant its Petition to Intervene in this proceeding.

Dated: March 6, 2020

Respectfully Submitted,

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

Attorney for the Sierra Club

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this 6th day of March, 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
Calfee, Halter & Griswold, LLP
21 E. State St., Suite 1100
Columbus, OH
Ph: (614) 621-1500
Fax: (614) 621-0010
Email: talexander@calfee.com

Matt Butler
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215
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
(Will Accept Email Service)

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Summary: Petition to Intervene and Memorandum in Support of Sierra Club electronically filed by Mr. Richard C. Sahli on behalf of Sierra Club