

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of an Application of to the :  
Ohio State University for a Certificate : Case No. 19-1641-EL-BGN  
of Environmental Compatibility and :  
Public Need to Construct a Combined :  
Heat and Power Facility in Franklin :  
County, Ohio :

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE OHIO POWER SITING BOARD**

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**On Behalf of the Ohio Department of  
Natural Resources**

**August 7, 2020**

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**INTRODUCTION**

The purpose of the review by the Ohio Power Siting Board is to weigh the project proposed by the applicant against the criteria established by R.C. 4096.10 (A). This includes considering whether conditions will reduce the adverse impacts of the proposed project so that the statutory criteria are met. Ultimately the Board has to determine whether the proposed project and associated conditions meet the applicable criteria. In this case, Staff recommends that the project be approved with specified conditions.

All projects impose burdens. Those burdens will be borne by some more than others. That is inherent in siting any energy infrastructure. Those in the vicinity will feel more effects than those further removed. Those affected are afforded the opportunity to be heard, and the Board should address those concerns. Neither the goal in this process nor the law requires that all negative impacts be eliminated, for that would be impossible. Rather the Board should endeavor to reduce them. The Staff's recommended conditions

set forth in the Staff Report of Investigation are comprehensive and a proper means to do this. The Board should approve the proposed wind project with the recommended conditions.

## **PROCEDURAL HISTORY**

On September 26, 2019, The Ohio State University (OSU or Applicant) held a public informational meeting in regarding the proposed facility.

OSU filed its application for a certificate to construct the proposed project on November 6, 2019.<sup>1</sup> The Applicant filed a supplement to the application on November 27, 2019. The Chairman accepted the application on January 6, 2020, as being in compliance with the requirements of Chapter 4906-01, et seq., OAC.

Under to a schedule issued by the Administrative Law Judge, local public hearings were held on June 30, 2020 and August 4, 2020 using remote access technology. Numerous individuals provided testimony.

The adjudicatory hearing began on July 14, 2020. Testimony was provided by the applicant, intervenors, and Staff. The Administrative Law Judge directed the parties to file initial briefs on August 7, 2020, and reply briefs on August 17, 2020.

This initial post-hearing brief is timely submitted on behalf of the Board's Staff.

## **PROJECT DESCRIPTION**

The Applicant proposes to construct a natural gas fired CHP plant with a net plant output capacity of 105.5 MW and 285,000 pounds per hour (lbs/hr) of superheated steam

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<sup>1</sup> Applicant Ex. 1, incorporated by reference into Direct Testimony of Serdar Tufecki, Applicant Ex. A, at 4.

in Columbus, Franklin County, Ohio. The proposed location of the facility is on the grounds of the Ohio State University, within the City of Columbus, Ohio.<sup>2</sup>

The facility, as proposed, would consist of a single building. The generators would be connected to the existing University Buckeye substation through three feeder lines of approximately 4,000 feet in length each. The power generated at the CHP facility would serve the load on the existing 13.8 kV campus electrical distribution system that powers campus facilities. Natural gas supply would come from an existing regulator and metering building via a new pipeline 12 inches in diameter approximately 3,500 feet in length with a maximum allowable operating pressure of 75 pounds per square inch gauge (psig).

## **ARGUMENT/STAFF CONDITIONS**

### **A. The Law**

The governing law is straightforward. The Ohio Power Siting Board is created by statute and its powers and duties are delineated under Chapter 4906 of the Ohio Revised Code. Simply, the Board must approve applications for certificates, either as filed or with conditions, or deny the application.<sup>3</sup> Thus, the role of the Board is to evaluate and decide whether the applicant's proposal in its application, with any supplemental information, meets the statutory criteria. Again, the Board must render a decision based upon the record either granting or denying the application, as filed, or granting it upon such terms,

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<sup>2</sup> Staff Report of Investigation, Staff Ex. A, at 6.

<sup>3</sup> Ohio Rev. Code Ann. § 4906.03(D).

conditions, and modifications as it deems appropriate.<sup>4</sup> R.C. 4906.10 requires that the Board must make each of the following findings to grant a certificate:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) 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;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information,

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<sup>4</sup> Ohio Rev. Code Ann. § 4906.10(A).

document, or other data pertaining to land not located within the site and alternative site.

- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

The Board is asked to apply its judgment and expertise to evaluate the merits of the application. It must interpret the criteria of R.C. 4906.10 in the context of current law and regulations. The sufficiency of the evidence is a matter for the Board's judgment.

Based upon the detailed information contained in the application and supplements, the Staff's interrogatories and investigation of that information, intervenor discovery, and the evidentiary record, the Staff recommends that the Board find that each criterion enumerated in R.C. 4906.10 has been met.

## **B. Staff Report of Investigation**

The Staff's Report of Investigation ("Staff Report") must be filed not less than 15 days before the date that the application is set for public hearing.<sup>5</sup> The Staff Report in this case was filed on June 15, 2020.<sup>6</sup> As it is required to by R.C. 4906.7(C), the Staff evaluated the application in light of the factual findings that the Board must make.<sup>7</sup> Staff's analysis and comprehensive recommendations are intended to assist the Board in its deliberations. It is part, but only part, of the evidentiary record in a case. The Staff's report reflects its investigation of the application and its findings up to the date of its submittal, that being two weeks or more prior to the time both Applicant and Intervenor

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<sup>5</sup> Ohio Rev. Code Ann. § 4906.07(C); Ohio Admin. Code § 4906-5-05(D).

<sup>6</sup> Staff Report, Staff Ex. A.

<sup>7</sup> Ohio Rev. Code Ann. § 4906.10.

testimony was filed. It was not intended to represent a consensus reflecting the views of all intervenors to the case. The Report was not required, intended, or able to represent a consensus reflecting the views of the parties to the case. Rather, the Staff Report is just that – a report compiled by Staff that summarizes Staff positions, at the time of publication of the report, on topics specifically addressed in R.C. 4906.10. The Staff Report is just one piece of the record in a siting proceeding before the Board. The Board will review and weigh all evidence in the record. This would include, but not be limited to, testimony provided at the public hearing, as well as materials related to the adjudicatory hearing, such as pre-filed testimony, hearing transcripts, and exhibits.

Because Staff is required to submit its Staff Report prior to the public and adjudicatory hearings, it is conceivable that positions articulated in the Staff Report could evolve as a result of additional information presented throughout the hearing process. While Staff is not obligated to alter its findings and recommendations based on information provided in the hearings, neither is it precluded from doing so.

Staff’s findings and recommendations are not static. The Staff Report itself makes this clear when it stated that the “recommended conditions may be modified as a result of public or other input provided subsequent to issuance of this report.”<sup>8</sup> In other words, all parties were on notice that Staff was willing to consider modifications to its recommendations based on evidence provided after the report was published.

The Staff carefully fulfilled its statutory and Board defined role in this case. It fully evaluated the application, analyzed it in light of the statutory criteria and it

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<sup>8</sup> Staff Ex. A, at 35.

developed recommendations and conditions that it believes will ameliorate project impacts. The Staff performed its role in a fair and balanced manner. The role of the Applicant is to defend its application. Finally, the role of the opposing parties is to challenge the application with their own guidance. A brief discussion of Staff’s analysis and conclusions on each statutory criterion follows.

**1. R.C. 4906.10(A)(1) – Basis of Need<sup>9</sup>**

The basis of need as specified under R.C. 4906.10(A)(1) is not applicable to this electric generating project. R.C. 4906.10(A)(1) only applies “if the facility is an electric transmission line or gas or natural gas transmission line.” The proposed project is neither. Therefore, Staff recommends that the Board find that R.C. 4906.10(A)(1) is not applicable to this wind-powered electric generating facility project.

**2. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact<sup>10</sup>**

This section of the Staff Report addresses environmental and other information submitted by the Applicant and reviewed by the Staff. Based upon its review, Staff made numerous findings regarding the nature of the probable environmental impacts in its report. Staff’s comprehensive findings address such varied subjects as air emissions, wetland and stream impacts, threatened and endangered species, agricultural impacts, identification of sensitive land uses within proximity of the facility, cultural resources, and noise impacts.

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<sup>9</sup> Staff Report, Staff Ex. A, at 11.

<sup>10</sup> Staff Report, Staff Ex. A, at 12-20.

Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility. Based upon its evaluation of information on these and other matters, and subject to the Staff's recommended conditions in Staff Exhibit A, Staff recommends a Board finding that this criterion has been met. Specifically, Staff recommended that the following conditions be adopted to address the probable environmental impacts:

- (8) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of any trees greater than or equal to three inches in diameter, unless coordination efforts with the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service allow a different course of action.
- (9) The Applicant shall submit to Staff the final traffic plan that provides details of coordination with the pertinent government authorities, prior to the preconstruction conference for Staff's review and confirmation that it complies with the requirements of the certificate. The Applicant shall also file a copy of the final traffic plan on the docket of this case.
- (10) The Applicant shall not have a physical or electrical interconnection with the Transmission System pursuant to the PJM Open Access Transmission Tariff (OATT), Part IV or OATT Part VI.

**3. R.C. 4906.10(A)(3) – Minimum Adverse Environmental Impact<sup>11</sup>**

As stated in the Staff Report, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and therefore complies with R.C. 4906.10(A)(3).

As explained in the Staff Report, the CHP facility was designed to minimize potential adverse impacts. The project will not disturb any known cultural resources and will not directly impact any waterways or wetlands. Impacts to endangered species will

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<sup>11</sup> Staff Report, Staff Ex. A, at 21-22.

be minimized by following seasonal restrictions for tree clearing. Further, the Applicant has committed to mitigation measures to minimize the project's impacts on noise, traffic, and aesthetics.

Based on the low potential for adverse impacts, along with Staff's recommended conditions, Staff concluded that the project represents the minimum adverse environmental impact. The Board should find that this criterion has been satisfied.

**4. R.C. 4906.10(A)(4) – Electric Grid<sup>12</sup>**

The Board must determine that the proposed electric facilities are consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facilities would serve the interests of electric system economy and reliability.

The proposed facility would not be connected to the regional grid and would instead entirely serve the load of the university's campus facilities. Because the proposed facility is behind-the-meter, it is not subject to the regulations of the PJM Interconnection, LLC (PJM). Nor will any energy be exported to the bulk power system. A study conducted by American Electric Power (AEP) revealed no reliability issues.<sup>13</sup>

Based upon its analysis and subject to the Staff's Recommended Conditions, Staff recommends a Board finding that this criterion has been met.

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<sup>12</sup> Staff Report, Staff Ex. A, at 23-24.

<sup>13</sup> Staff Report, Staff Ex. A, at 23.

**5. R.C. 4906.10(A)(5) – Air, Water, and Solid Waste, and Aviation<sup>14</sup>**

Staff recommends a Board finding that this criterion has been met.

**Air<sup>15</sup>**

Air pollution controls are proposed for the facility in order to minimize emissions. To control particulate matter and SO<sub>2</sub> emissions, the facility will utilize measures to efficiently burn pipeline quality natural gas, which the Ohio EPA air permit-to-install (PTI) defines as the best available technology. The applicant will also install dry low nitrogen oxide (DLN) burners to control the formation of NO<sub>x</sub>.

The Ohio EPA has issued a PTI for the project that will be valid for twelve months after start-up. The Applicant will have to apply for a Title V permit and demonstrate compliance with emission limits within that period.

With these measures, construction and operation of the facility would comply with the requirements of R.C. Chapter 3704 and the rules adopted under that chapter.

**Water<sup>16</sup>**

Construction of the proposed facility will not require the use of significant amounts of water. Its operation, however, would.

Water would be obtained through the university's existing domestic water distribution system and ultimately supplied from the City of Columbus. Staff has reviewed and found acceptable the Applicant's proposed conceptual quantitative flow diagram, which indicates the water balance and water consumption for the facility's

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<sup>14</sup> Staff Report, Staff Ex. A, at 25-29.

<sup>15</sup> Staff Report, Staff Ex. A, at 25-27.

<sup>16</sup> Staff Report, Staff Ex. A, at 27-28.

operation. Effluent wastewater from the CHP process will be of a quality to be able to be discharged into the university's existing wastewater system.

Applicant has committed to obtaining / providing all applicable and necessary permit and plans. Staff respectfully submits that the construction and operation of this facility would comply with requirements of R.C. Chapter 6111, and the rules and laws adopted under that chapter.

### **Solid Waste<sup>17</sup>**

Staff also believes that Applicant's solid waste disposal plans would comply with solid waste disposal requirements in ORC Chapter 3734, and the rules and laws adopted under this chapter.

### **Aviation<sup>18</sup>**

Applicant has committed to obtaining all applicable and necessary construction permits. Staff consulted with the ODOT Office of Aviation and found that none of the proposed structures meet notification criteria or require Federal Aviation Administration filings.

## **6. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity<sup>19</sup>**

The Board must determine that the facility will serve the public interest, convenience, and necessity. The public interest, convenience and necessity will be served

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<sup>17</sup> Staff Report, Staff Ex. A, at 28.

<sup>18</sup> Staff Report, Staff Ex. A, at 28-29.

<sup>19</sup> Staff Report, Staff Ex. A, at 30-31.

by Ohio State's proposed project. Consistent with the Staff's analysis and recommended conditions, the Staff recommends a Board finding that this criterion is met.

### **Public Safety<sup>20</sup>**

The project is to be designed in accordance with applicable safety regulations. Applicant has committed to operating the facility in accordance with all applicable environmental and safety regulations. Staff has reviewed the Applicant's emergency plan for construction and operation, and OSU has committed to develop an emergency response program.

### **Fire Protection System<sup>21</sup>**

The fire protection system will be designed and installed in accordance with National Fire Protection Association standards and insurer's recommendations. OSU has further committed to work with local emergency responders in the development of its emergency response program.

### **Public Interaction and Participation<sup>22</sup>**

Applicant provided information to allow the public to be informed about and to actively participate in this process. It has committed to provide notice to affected property owners and tenants prior to both construction and operation.

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<sup>20</sup> Staff Report, Staff Ex. A, at 30.

<sup>21</sup> *Id.*

<sup>22</sup> Staff Report, Staff Ex. A, at 30-31.

**7. R.C. 4906.10(A)(7) – Agricultural Districts<sup>23</sup>**

The Board must determine the facility’s impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed facility. No impacts to field operations, drainage or irrigation systems would occur to agricultural or agricultural district land as a result of this project.

Staff recommends a Board finding that this criterion is met.

**8. R.C. 4906.10(A)(8) – Water Conservation Practice<sup>24</sup>**

The proposed facility must incorporate maximum feasible water conservation practices.

Staff found that the proposed facility design incorporates significant water conservation measures, and would incorporate maximum feasible water conservation practices. Staff recommends a Board finding that this criterion is met.

**C. Staff Conditions**

In addition to discussing each of the criteria enumerated in R. C. 4906.10, the Staff Report of Investigation contains a number of conditions recommended by the Staff. These recommended conditions are supported by the record of evidence in this case. The Staff’s overall recommendation is that if the Board finds sufficient evidence to support each statutory finding required under the statute, it should require compliance with all of Staff’s recommended conditions to ensure that project impacts are minimized.

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<sup>23</sup> Staff Report, Staff Ex. A, at 32.

<sup>24</sup> Staff Report, Staff Ex. A, at 33.

#### **D. Complaint Procedure**

A major utility facility, like Applicant's proposed project, must be constructed, operated, and maintained in conformity with a OPSB certificate and any terms, conditions, and modifications contained therein.<sup>25</sup> If a certificate is issued by the Board in this case, then the Staff has the responsibility of monitoring the construction, operation, and maintenance, of the facility.

A recommended condition in the Staff Report, condition 7, would require the Applicant to submit to the Staff a quarterly complaint summary report each year. The report is to include a list of all complaints received through the Applicant's complaint resolution program, a description of the actions taken toward a resolution of each complaint, and a status update if the complaint has yet to be resolved.

This is the only Staff-recommended condition to which the Applicant objected. Ohio State witness Potter testified that the Applicant had no objection to the reporting requirement, but requested modification of the period over which reports should be made.<sup>26</sup> He further requested that complaints reported be limited to only those from neighboring property owners or residents.<sup>27</sup>

Staff witness Matt Butler addressed the Applicant's concerns. As Mr. Butler testified, this condition has become standard after Staff recommendation in recent electric generation cases.<sup>28</sup> The reports, he testified, "provide useful information that allows Staff to monitor the responsiveness and effectiveness of applicants' complaint resolution

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<sup>25</sup> Ohio Rev. Code § 4906.04.

<sup>26</sup> Direct Testimony of Scott Potter, Company Ex. D, at 14.

<sup>27</sup> *Id.*

<sup>28</sup> Direct Testimony of Matt Butler, Staff Ex. G, at 2.

processes.”<sup>29</sup> Staff respectfully submits that this condition is reasonable to ensure that concerns of those who may be affected by operation of the facility are appropriately and adequately addressed.

Accordingly, recommended condition 7 is reasonable and Staff recommends that it be adopted by the Board as a condition to any certificate it may issue to the Applicant.

## **CONCLUSION**

Staff has concluded that the proposed project would introduce both temporary and permanent impacts on the surrounding community. After an exhaustive investigation, the Staff has developed a number of conditions that, if adopted by the Board would minimize environmental and other impacts to the project area. Additionally, Ohio State’s proposal faces close scrutiny in related permitting cases before various federal and state agencies. It is expected that, if granted, these permits would result in additional conditions and requirements upon the Applicant.

Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the criteria in R.C. 4906.10. The Staff recommends that, if a certificate is issued to applicant for this project, the Board require applicant to comply with all of Staff’s recommended conditions.

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<sup>29</sup> *Id.*

Respectfully submitted,

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*/s/ Thomas G. Lindgren*

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**On Behalf of the Ohio Department of  
Natural Resources**

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served by electronic mail, upon the following parties of record, this 7th day of August, 2020.

*/s/ Thomas G. Lindgren*

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