

**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 )**

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**APPLICATION FOR REHEARING OF SIERRA CLUB**

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Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code 4906-2-32, Sierra Club files this application for rehearing of the September 17, 2020 Ohio Power Siting Board *Opinion, Order, and Certificate* in Case No. 19-1641-EL-BGN (“Order”). The Order approved the construction, operation, and maintenance of a proposed combined heat and power facility, subject to certain conditions, by The Ohio State University (“OSU”). The Order finds 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, along with other pertinent considerations.” Order ¶ 73. This conclusion is based on numerous findings which are unsupported or contradicted by the record before the Ohio Power Siting Board (the “Board”) and is thus unreasonable. Moreover, the Order is accompanied by a Concurring Opinion by Chairman Randazzo that mischaracterizes the procedural history of this matter in inflammatory terms, and expresses hostility to intervention that is both at odds with Ohio law and regulations governing procedures before the Board and evinces inappropriate bias by a member of a purportedly impartial administrative body.

Sierra Club objects to the Board's decision to grant a certificate of environmental compatibility and public need to The Ohio State University for the construction, operation, and maintenance of its proposed combined heat and power facility for the reasons explained more fully in the accompanying Memorandum of Support. The Board should reconsider its Order and Decision, deny The Ohio State University's Application, and strike Chairman Randazzo's Concurring Opinion from the record.

Dated: October 16, 2020

Respectfully Submitted,

/s/ Megan Wachspress

Megan Wachspress  
Associate Attorney  
Sierra Club Environmental Law Program  
2101 Webster St. Suite 1300  
Oakland, CA 94612  
(773) 704-9310  
megan.wachspress@sierraclub.org

Tony Mendoza  
Senior Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster St., 13th Floor  
Oakland, CA 94612  
(415) 977-5589  
tony.mendoza@sierraclub.org

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

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**CASE NO. 19-1641-EL-BGN**

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**MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING OF  
SIERRA CLUB**

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The Ohio Power Siting Board (“Board”)’s finding that the proposed combined heat and power facility “represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations” is unreasonable and unfounded in the record. *See* Order ¶73, R.C. 4906.10(A)(3). Despite The Ohio State University’s Feasibility Study’s conclusions that a heated hot water system is superior to the steam-based system with a combined heat and power facility in the abstract, the Board rejected a heated hot water system as a “viable solution” to the University’s heating needs based on a series of findings that either have no support in the record or that are plainly contradicted by record evidence. Simply put, despite having concluded that a heated hot water system is superior to its proposed steam-and-CHP-system, The Ohio State University failed to then adequately study its energy needs and the logistics, including land needs, to determine whether it could cost effectively install a heated hot water system to meet its needs. The Board should reconsider its decision and order The Ohio State University to consider

the viability of a heated hot water system in a serious way such that the Board can assure compliance with Ohio law.

### **I. Procedural History**

The Ohio State University (“OSU” or “Applicant”) filed its Application for a Certificate of Environmental Compatibility and Public Need to construct a combined heat and power (“CHP”) facility on November 6, 2019. The proposed 105.5 megawatt (“MW”) gas-burning facility would serve as the OSU campus’s primary source of heating and electricity. OSU filed supplemental material in support of its Application on November 27, 2019 and the Board found OSU’s Application complete on January 6, 2020.

On March 6, 2020, Sierra Club timely intervened in this proceeding. Sierra Club propounded two sets of discovery requests on OSU, to which OSU objected in part. After engaging in efforts to resolve OSU’s objections, Sierra Club filed a Motion to Compel Discovery on June 16, 2020. This Motion was granted in part and the ALJ ordered OSU to produce responsive documents on July 7, 2020. Sierra Club filed Direct Testimony by its expert, Dr. Ranajit (Ron) Sahu on July 9, 2020. Staff filed its Report on June 15, 2020. The Staff Report supported Board approval of the proposed facility, subject to ten conditions.

A public hearing regarding the Application was held on June 30, 2020, at which more than 20 members of the public gave comments relating to the proposed facility. The adjudicatory hearing was held on July 14 and 15, 2020. After the adjudicatory hearing and in response to comments offered at the initial public hearing, the ALJ ordered a second public hearing for August 4, 2020, at which approximately fifty people provided comments.

Both Sierra Club and OSU filed simultaneous initial and reply post-hearing briefs, on August 7 and August 19, 2020, respectively. The primary contested issue was whether the proposed CHP facility represents the minimum adverse environmental impact, as required for

approval by R.C. 4906.10(A)(3). Sierra Club argued that evidence presented by Dr. Sahu and OSU's own Feasibility Study showed that an alternative technology—a heated hot water system utilizing geothermal wells and heat exchangers—is currently used by other universities with similar heating needs, including Ball State in Indiana, and has none of the adverse emission impacts (including several hundred thousand tons of greenhouse gases and 40 tons each of nitrogen oxide and particulates per year) of the proposed gas-fired CHP facility. When asked at the hearing why OSU did not pursue alternative technology that its own Feasibility Study described as preferable, OSU's witnesses averred (without any documentary evidence) that it would be infeasible to convert the steam system to heated hot water and of installing sufficient renewable resources, such as geothermal wells or solar panels, to meet campus energy needs.

Subsequent to the cross-briefing by the parties, on August 25 2020, Sierra Club filed a motion to strike (or, in the alternative, leave to file surreply in response to) portions of OSU's Reply brief, including OSU's reference to and misrepresentation of a document outside the adjudicatory hearing's record. OSU filed a partial opposition to the Motion to Strike on September 1, 2020; as part of its Opinion and Order the Board denied Sierra Club's Motion to Strike except to allow Sierra Club a surreply to address OSU's mischaracterization of the challenged document. Order ¶¶146.

On September 17, 2020, the Board found that OSU had met the requirements established by Chapter 4906 and granted OSU a certificate of environmental compatibility and public need subject to ten conditions. Order ¶¶107-108.

**II. The Board’s Finding that OSU Met the “Minimum Adverse Environmental Impact” Requirement of R.C. 4906.10(A)(3) Lacks Support in the Evidentiary Record.**

The Board concluded that OSU’s proposed gas-burning CHP facility represents the minimum adverse environmental impact because non-emitting alternatives adopted by other major universities were not viable at OSU. But this conclusion was not based on any study conducted by OSU prior to its choice of CHP; instead, it was pieced together *post facto* from off-the-cuff estimates of land use requirements and conversion costs that OSU’s own witnesses admitted lacked any basis in system-wide thermal load studies or discussions with other universities that had successfully performed such a conversion. The record evidence does not support the Board’s findings that the use of a heated hot water system is not a viable alternative to the proposed CHP facility, that OSU reasonably considered and rejected this alternative, and that the adverse emission impacts of the CHP facility are “negligible.” As these findings were the basis of the Board’s conclusion that the proposed facility represents the minimum adverse environmental impacts as required by R.C. 4906.10(A)(3), that conclusion must be reversed as well.

**A. The Order’s rejection of heated hot water as a “viable solution” to Ohio’s heating needs is not founded in the record.**

There is no reliable evidence in the record to support the Board’s finding that a heated hot water system utilizing geothermal wells and heat exchangers is not “an alternative to the CHP facility.” Order ¶71. The Board’s finding is based on five erroneous factual inferences: (1) that OSU lacks sufficient land to construct the necessary geothermal wells; (2) that certain buildings on OSU’s campus are incompatible with heat recovery; (3) that the CHP is somehow a precursor to heated hot water conversion; (4) that conversion to a heated hot water system would exceed OSU’s budget constraints; and (5) that renewable electricity generation cannot meet OSU’s

heating needs. None of these inferences are supported by credible evidence in the record and some are contradicted by OSU witness testimony. Neither OSU nor its concessionaire, Ohio State Energy Partners (“OSEP”), ever conducted a system-wide net thermal needs study, a necessary precursor to any credible estimate of the total geothermal need and land use. Instead, OSU’s witness offered off-the-cuff estimates of both land use and cost based on passing familiarity with other projects that were contradicted by OSEP’s more formal Feasibility Study and which failed to distinguish between building-by-building and system-wide conversions. The Board’s finding is not supported by the record and should be reconsidered.

First, the Board, relying solely on Mr. Tufekci’s testimony, cites the supposed “lack of available land on campus and the scale of heating required” as a reason to conclude the alternative cannot meet OSU’s needs based. Order ¶71. The record does not support this finding. Mr. Tufekci testified that he did not know the amount of land required for geothermal generation, admitted that neither OSU nor OSEP produced any documentation relating to land use estimates, and relied solely on a hearsay statement by an unnamed individual to support his assertion that insufficient land existed.<sup>1</sup>

Crucially, Mr. Tufekci also testified that OSU failed to conduct a system-wide analysis of OSU’s net heating needs.<sup>2</sup> While OSU conducted a *partial* building-by-building analysis, which assessed an individual building’s simultaneous heating and cooling load and net thermal

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<sup>1</sup> Transcript of Proceedings Before the Ohio Power Siting Board in Case No. 19-1641-EL-BGN July 14, 2020, Volume I (henceforth “Tr.”) at 67:15-68:2, 70:21-24.

<sup>2</sup> Tr. 84:5-10. Mr. Tufekci’s explanation for OSU and OSEP’s failure to conduct such a study of system-wide needs, it should be noted, is entirely circular: Such a study has not been conducted because the conversion “cannot be implemented with the existing steam network on Main Campus.” Tr. 84:8-10. But the whole reason for conducting such a study is to assess whether that steam network can be replaced, that is, whether the *net* heating and cooling needs of campus can be met *by another technology*. This system-wide study was the predicate of both Stanford and Ball State’s conversions. See Direct Testimony of Dr. Ranajit (Ron) Sahu, Sierra Club Exhibit F (henceforth “Sahu Testimony”) at 28-29.

requirement, it failed to analyze the possibility of balancing heating and cooling loads *at different buildings* within a single system. As described in Dr. Sahu’s testimony, Stanford University’s CHC system provides heated hot water to 300 buildings over a total area of 12 million square feet with only three centralized hot water generators and three heat recovery chillers.<sup>3</sup> Ball State’s system relies on two centralized energy stations with six total chillers.<sup>4</sup> To determine OSU campus’s *net* heating needs—the total thermal energy required at a given time above what can be met through the use of heat exchangers—the operator of a district heating system must conduct an hour-by-hour analysis of heating *and cooling* needs.<sup>5</sup> OSU indisputably failed to conduct this analysis at a system-wide level.<sup>6</sup> Without such a study, there is no evidence in the record that OSU or OSEP actually knows how much geothermal heating energy the campus requires, and any claim by OSU or its witnesses about how much land is required—based on this unknown *energy* need—is not credible. The Board’s conclusion that geothermal resources cannot meet this unknown energy requirement is therefore unsupported by the record and unreasonable.

Second, the Board’s reliance on Mr. Tufekci’s testimony that “chillers are not a feasible or cost-effective option for every building” is similarly misplaced. As both the Stanford and Ball State projects show, chillers need not be located on every building, and the impossibility of use at *some* buildings does not show that use of *system-wide* heat exchangers is impossible.<sup>7</sup>

Third, the Order states, based on the CHP Feasibility Study, that “it appears that a steam to hot water conversion is essentially dependent upon the construction and operation of the CHP

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<sup>3</sup> Sahu Testimony, Exhibit RS-J.

<sup>4</sup> *See* Sahu Testimony, Exhibit RS-I.

<sup>5</sup> Sahu Testimony at 7:8-25.

<sup>6</sup> Tr. at 84:5-10.

<sup>7</sup> Sahu Testimony, Exhibits RS-J and RS-I.

facility.” Order ¶71. Not so. OSU’s witness expressly repudiated that interpretation of the Feasibility Study on cross-examination.<sup>8</sup> Moreover, although OSU’s witness at one point characterized the CHP facility as “provid[ing] hot water,” upon further examination Mr. Tufekci clarified that the CHP facility produces steam, and that energy *from that steam* is used to heat a separate, closed hot water system to be installed as part of OSU’s Midwest and West Campus expansion.<sup>9</sup> The energy used to heat this water need not come from steam. Indeed, the Stanford conversion project entailed the *replacement* of its CHP facility with other forms of energy exchange and storage to heat the hot water system.<sup>10</sup>

Fourth, the Board’s finding that cost considerations preclude the use of heated hot water as a viable alternative is not supported in the record. That finding is based solely and unreasonably on OSU’s witness’s off-the-cuff estimate of the cost of conversion, an estimate which the witness admitted was undocumented and not founded on any research, and which is contradicted by OSU’s own Feasibility Study. In concluding that transition to a heated hot water system is economically infeasible, the Board adopts the “project[ion] of OSU’s witness Tufekci,” who estimated such a conversion would cost “a few hundred million dollars.” Order ¶71. This projection has no basis in any formal study. When asked on what basis Mr. Tufekci made this projection, he conceded it was not based on a “full formal feasibility study,” and did not attempt to provide further detail as to the components of such a total, referring only to “logistics” and the need for “temporary systems” while the conversion is being performed.<sup>11</sup> Moreover, the estimate for converting steam to hot water piping *actually included* in OSEP’s Feasibility Study

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<sup>8</sup> Tr. 65:1-3.

<sup>9</sup> Tr. 52:11-53:5.

<sup>10</sup> See Sahu Testimony at 26:3-10.

<sup>11</sup> Tr. 76:11-17.

is a full order of magnitude less than Mr. Tufekci's estimate: \$42 million.<sup>12</sup> When asked about this published \$42 million figure, Mr. Tufekci demurred, insisting the estimate was based on certain unstated and undocumented "assumptions" about steam network use in the future.<sup>13</sup> Mr. Tufekci's testimony as to the total cost of a heated hot water system is not credible, and should not have been relied on by the Board.

The Order also found that heated-hot water conversion is "outside of Ohio State's current budget constraints." Order ¶71. This finding is unreasonable as the proposed CHP facility will cost well in excess of OSU's annual energy budget: \$197 million.<sup>14</sup> If the *annual* budget were a real constraint on the one-time costs associated with conversion, they would similarly preclude construction of OSU's proposed CHP. Of course OSU does not intend to pay the full costs of the proposed facility in a single year. OSU's Concession Agreement with OSEP provides that OSEP, not OSU, will be responsible for the upfront cost of approved capital construction, and that OSU will pay the costs associated with such construction (plus a return on investment and the cost of OSEP's debt) over a fixed term of 25 years.<sup>15</sup> The Board's invocation of OSU's *annual* budget as somehow constraining the *total* cost of new facilities is both beside the point and inconsistent with the proposed facility itself. *Cf.* Order at ¶55 (citing OSU as describing its "budget constraints" as "an annual allocation of approximately \$110 to \$135 million for comprehensive energy management). Moreover, there was conflicting evidence presented as to whether the proposed facility or geothermal alternative would entail greater annualized costs over their respective lifespans. Stanford's published account reported that the its analysis

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<sup>12</sup> Tr. 74:12-16; Feasibility Study (Exhibit 4 to Direct Testimony of Serdar Tufekci), at 6-6.

<sup>13</sup> Tr. 76:18-77:9.

<sup>14</sup> Application at 37; *cf.* Tr. 199: 15-19 (citing the *total* annual budget for OSU as historically ranging between \$110 and \$135 million).

<sup>15</sup> Tr. at 44:5-10.

concluded that conversion *from* CHP heat was “anticipated to save the university hundreds of millions of dollars over the next three decades compared to other options.”<sup>16</sup>

Fifth, the Board found that renewable energy could not fulfill the electrical needs OSU intends to meet through the proposed CHP facility. But as Mr. Tufekci stated on cross-examination, “[t]he primary driver for the proposed facility is to meet the heating demand of campus,” *not* electricity supply.<sup>17</sup> Indeed, the Order implicitly acknowledges that, if OSU’s heating needs are met, renewable electrical generation may be a viable alternative: “[A] renewable energy generating resource...would not meet Ohio State’s heating needs, *unless used in conjunction with geothermal heating*,” which the Order has already wrongly concluded is not feasible. Order ¶71. For the reasons described above, the conclusion that a geothermal heating system is infeasible lacks evidentiary support. If heating needs can be met through zero-emissions system, as they are at Ball State and Stanford, the Board’s (and OSU’s) primary reason for rejecting renewable electrical generation is no longer valid.

Finally, and contrary to the Board’s findings, the record evidence shows that OSU did *not* “reasonably consider[] and reject various alternatives to the CHP facility proposed in the application.” Order ¶70. In support of this finding, the Board cites Mr. Tufekci’s testimony that “as a general matter,” OSU considered all “commercially available” technology, that OSU considered “different options with respect to facility layout and site design,” turbine configurations and models, and the comparison of “multiple CHP cases” in the CHP Feasibility Study. Order ¶70. Notably absent from this list is the alternative that OSU’s Feasibility Study identified as superior: a heated hot water system utilizing geothermal wells and heat exchangers. OSU’s witnesses admitted that neither OSU nor OSEP formally considered this alternative—

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<sup>16</sup> Sahu Testimony 26:8-11.

<sup>17</sup> Tr. at 92:23.

even though the Feasibility Study used to justify the proposed CHP facility identified this alternative, described its implementation at other universities, and characterized it as preferable to CHP technology in almost all respects.<sup>18</sup> OSU did not reasonably reject heated hot water systems as an alternative to the proposed facility, and the Board's finding to the contrary is at odds with the record and should be reversed on rehearing.

**B. The Order improperly ignores the full extent of adverse environmental impacts associated with the proposed facility.**

The Board is required under R.C. § 4906.10(A)(3), to consider evidence relating to carbon dioxide emissions and how a proposed facility's "fuel selection" impacts these emissions. In its Order on Sierra Club's motion to compel, the Board reaffirmed that "evidence relating to global warming, carbon dioxide emissions, potential costs for control and regulation of carbon dioxide emissions, the potential regulation of carbon dioxide emissions, fuel selection and the basic design of [the] proposed generation facility" were all relevant to the proceeding, and would be considered by the Board in making its decision.<sup>19</sup> Despite extensive evidence relating to the magnitude of carbon emissions associated with the proposed CHP facility and with the production of fuel for that facility, the Board entirely ignored these adverse environmental

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<sup>18</sup> Tr. at 81:11-13 (neither OSU nor OSEP conducted a study as to the feasibility of geothermal energy as a campus-wide solution to OSU's heating needs); Tr. at 82:2-5 (OSEP did not assess the feasibility of the use of heat recovery chillers, or heat exchangers, as a means of meeting OSU's heating needs); Tr. at 77:20-78:11, 74:2-77:9 (OSU did not investigate the cost of the steam-to-heated hot water conversion projects at other universities that have completed or initiated such projects); Potter Cross-Exam at 191:10-20 (OSU did not reach out to other universities that had successfully completed a conversion to learn more about their projects); Sahu Testimony at 29:13-19 and Feasibility Study (Exhibit 4 to Direct Testimony of Serdar Tufekci), Appendix N (matrix showing comparison between heated hot water and current steam system); Tr. at 48:13-17, 60:23-61:19 (conceding heated hot water is preferable to steam with respect to its ability to facilitate heat recovery and generation efficiency, and can (unlike steam) be used in conjunction with heat storage, and is the "clear choice" for new construction).

<sup>19</sup> Entry re: Motion to Compel (July 7, 2020) (quoting Order re: Motion in Limine, *In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, Entry (December 4, 2007), at p. 5); *see also In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, Entry (Mar. 3, 2008).

consequences in concluding that the proposed facility represented the minimum adverse environmental impact. Without so much as mentioning carbon dioxide or methane emissions, the Board concluded that “the impact from emissions will be negligible,” and denied—contrary to its prior Order on Sierra Club’s Motion to Compel—that “emissions associated with the extraction of the natural gas that would power the CHP facility” were relevant to whether the proposed facility met the standard set forth at R.C. § 4906.10(A)(3). Order ¶72. Both conclusions were wrong and should be reversed on rehearing.

The uncontroverted record evidence establishes that the proposed facility would be a “major stationary source” of particulate matter with a diameter of less than 2.5 microns and greenhouse gases.<sup>20</sup> OSU’s witness testified that the operation of the proposed facility is anticipated to emit 314,750 tons per year of greenhouse gas equivalents, although OSU’s Title V permit would allow the proposed facility to emit up to 464,278 tons of greenhouse gases per year if campus demand increased.<sup>21</sup> These emissions—totaling more than 7.5 million tons of greenhouse gas over the anticipated lifespan of 25 years—cannot reasonably be characterized as “negligible.”<sup>22</sup> Nor are the impacts of such emissions: OSU’s own Climate Action Plan recognizes—acknowledging factual reality as experienced by all people—that continued increases in greenhouse gases “threaten our living conditions” and there is a “need for Ohio State

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<sup>20</sup> Application at p. 53.

<sup>21</sup> Tr. at 142:8-143:9, 140:22-142:4. Mr. Tufekci testified that this total accounted for emissions from both the proposed facility and OSU’s existing McCracken facility, and that the proposed CHP facility will be the primary source of heating on campus, but could not identify what portion of these anticipated emissions would be from operation of McCracken. Tr. at 142:8-143:9.

<sup>22</sup> See Feasibility Study at 3-16 (planned lifespan of proposed facility is 25 years); see also Tr. 121:10-12.

to take urgent action” to reduce its carbon emissions to avoid contributing to this threat.<sup>23</sup> But the Order ignores the climate impacts of the proposed facility entirely; the term “climate” never appears in its discussion of adverse environmental impacts.

Second, the Board’s conclusion as a matter of law that “nothing in R.C. 4906.10(A)(3) or the Board’s rules requires an analysis of the environmental impact associated with the production of the fuel” to be used in the proposed CHP facility is contrary to its past precedent and law of this case. As discussed above, the Board has twice held—in an Order compelling production of documents in this case, and an Order denying a motion *in limine* in *In Re Am. Mun. Power-Ohio, Inc.*, No. 06-1358-EL-BGN, that “evidence relating to global warming, carbon dioxide emissions, potential costs for control and regulation of carbon dioxide emissions, the potential regulation of carbon dioxide emissions, *fuel selection* and the basic design of [the] proposed generation facility” (emphasis added) are relevant to the Board’s determination as to whether the proposed facility represents the minimum adverse environmental impact under R.C. 4906.10(A)(3).

The fuel selected for the proposed CHP facility is part of OSU’s Application, which describes this fuel (“pipeline quality natural gas”) and the anticipated supplier.<sup>24</sup> The environmental impacts associated with the extraction of natural gas (including methane emissions, water usage, and runoff) are neither incidental nor unforeseeable to the CHP’s operation, and Sierra Club introduced evidence describing these effects, which OSU did not dispute.<sup>25</sup> Far from a contingent or possible consequence of the facility’s construction and

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<sup>23</sup> Path to Carbon Neutrality Ohio State Climate Action Plan (Sierra Club Exhibit C and attached as Exhibit RS-C to Sahu Testimony, Sierra Club Exhibit F) at pp. 6, 41.

<sup>24</sup> Application at p. 10.

<sup>25</sup> Sahu Testimony 17:22-18:2.

operation, the adverse impacts associated with supplying the proposed facility with its chosen fuel source are both intrinsic to its operation and knowable.

In sum, the Order's dismissal of the magnitude of the proposed facility's environmental impacts as "negligible" is at odds with the record and the Board's mandate to document the nature of environmental impacts under R.C. §4906.10(A)(2), and should be reversed on rehearing.

### **III. The Concurring Opinion of Chairman Randazzo is Improper and Should be Struck.**

In addition to approving the Board's Order and Opinion, Chairman Randazzo filed a separate Concurring Opinion. This Opinion includes inaccurate and inappropriate characterizations of Sierra Club's intervention in the proceeding and expounds on the Chairman's personal opinion of the parties and project, untethered to Ohio law or the facts of the case. The Concurring Opinion evinces bias on the part of the Chairman with respect to the proposed project, animus toward Sierra Club as an intervening party, and improperly uses the Journal as a forum for the expression of Chairman Randazzo's personal policy preferences. The Board should strike this Opinion.

Sierra Club timely filed for intervention in this proceeding, which was unopposed and granted by the ALJ after finding Sierra Club met the requisite criteria.<sup>26</sup> Sierra Club propounded two sets of discovery requests; when OSU objected to these requests, Sierra Club sought and successfully obtained an order compelling discovery from the Board that concurred with Sierra Club's position on the core legal dispute at issue.<sup>27</sup> And, as discussed above, the Board reaffirmed that holding—that consideration of alternative technologies are relevant to the

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<sup>26</sup> Entry (June 23, 2020), 19-1641-EL-BGN at ¶13.

<sup>27</sup> Entry (July 7, 2020), 19-1641-EL-BGN.

Board’s evaluation of proposed facilities under Ohio law—in its Order and Opinion. Order ¶¶68. Sierra Club timely filed expert testimony in the proceeding that described recent projects by similar institutions, Ball State and Stanford Universities, to install heated hot water systems both Universities concluded were both environmentally and economically preferable to existing fossil-fuel heating infrastructure—in Stanford’s case, to replace precisely the CHP technology proposed by OSU.<sup>28</sup> Indeed, OSU’s *own feasibility study* noted this project and acknowledged that the proposed facility should eventually be replaced by a heated hot water system.<sup>29</sup> Sierra Club cross-examined OSU and Staff witnesses at an evidentiary hearing, during which time most of the questions were focused on materials produced by OSU as part of its own Application and case-in-chief. In short, Sierra Club’s intervention was substantively relevant, grounded in OSU’s own materials, conformed to Board regulations and rulings, and time-limited.

Despite this, Chairman Randazzo’s Opinion suggests that Sierra Club, through its timely and lawful intervention, somehow “bullied” OSU with respect to its proposed project and accuses Sierra Club of “demean[ing] CHP technology” and “diminish[ing] the quantity and quality of the evaluation homework that was completed by OSU.” This language is at odds with Ohio law, which expressly authorizes intervention in Board proceedings upon “good cause” shown and for intervenors to seek discovery from the filing of notice or petition to intervene; and with the Board’s own rulings granting Sierra Club’s motions to intervene and to compel discovery.<sup>30</sup> Chairman Randazzo’s unnecessary comments are not those of an impartial decision-maker whose role is to evaluate a project according to the criteria set forth by Ohio law, but of a partisan of the Applicant or the project itself. OSU’s CHP project will cost more than

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<sup>28</sup> See, generally, Sahu Testimony at 24-35.

<sup>29</sup> Feasibility Study (Exhibit 4 to Direct Testimony of Serdar Tufekci), Appendix N (matrix showing comparison between heated hot water and current steam system)

<sup>30</sup> See R.C. 4903.221; Ohio Admin. Code 4906-2-12, 4906-2-14(H).

\$197 million dollars in public funds and will emit significant quantities of greenhouse gases and other air pollutants; it is unreasonable and irresponsible for the Chairman to suggest that lawful intervention by organizations or individuals to test the justifications for such a project is “bullying.” The Chairman’s Concurrence also casts doubt on the fairness of the Board’s decision-making in exhibiting such personal identification with a particular type of technology (in this case, gas-fired CHP) as to be apparently offended by evidence—including evidence from OSU itself—raising doubts about that technology’s environmental sustainability or future usefulness.

Chairman Randazzo’s Concurring Opinion is unfounded in the procedural history of the case, contrary to Ohio law governing intervention in OPSB procedures, and suggests inappropriate bias on his part in favor of the proposed project and against Sierra Club as an intervenor. The Opinion raises questions as to whether Chairman Randazzo was capable of providing a fair hearing in this proceeding and should have recused himself and, at minimum, should be stricken from the record.

#### **IV. Conclusion**

OSU’s own Feasibility Study found that a heated hot water system utilizing geothermal wells and heat exchangers is superior to a CHP-and-steam-system under every measure considered and yet OSU failed to adequately develop a record to determine if it could cost-effectively install such a heated hot water system on campus. In finding that the proposed CHP facility represents the “minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives” the Board incorrectly found that a heated hot water system is an infeasible alternative. That finding lacks adequate support in the record and should be reconsidered. In addition, the Board’s decision to ignore the greenhouse gas emissions associated with the proposed gas-fired CHP is contrary to

Ohio law. Finally, the concurring opinion of Chairman Randazzo should be struck, as it gives the impression to the public that the Board is run by a partisan of CHP technology, not an impartial adjudicator interested in applying Ohio law.

For the foregoing reasons, Sierra Club respectfully requests that the Board reconsider its decision, vacate its erroneous findings, and reverse its approval of the proposed CHP facility.

Dated: October 16, 2020

Respectfully Submitted,

/s/ Megan Wachspress

Megan Wachspress  
Associate Attorney  
Sierra Club Environmental Law Program  
2101 Webster St. Suite 1300  
Oakland, CA 94612  
(773) 704-9310  
megan.wachspress@sierraclub.org

Tony Mendoza  
Senior Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster St., 13th Floor  
Oakland, CA 94612  
(415) 977-5589  
tony.mendoza@sierraclub.org

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

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail this

16th day of October, 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

Kimberly Naeder  
AGO  
30 E. Broad St.  
Columbus, OH 43215  
Ph: (614) 466-4397  
kimberly.naeder@ohioattorneygeneral.gov

Heather A. Chilcote  
Public Utilities Commission of Ohio  
180 E. Broad St.  
Columbus, OH 43215  
Ph: (614) 466-0407

Brian A. Ball  
Environmental Enforcement Office of the Ohio  
Attorney General  
2045 Morse Road, Building A-3  
Columbus, Ohio 43229  
Ph: 614.265.6804  
brian.ball@ohioattorneygeneral.gov

Thomas G. Lindgren  
Werner L. Margard III  
Attorney General of Ohio Public Utilities  
Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215-3414  
Ph; 614.644.8768  
thomas.lindgren@ohioattorneygeneral.gov  
werner.margard@ohioattorneygeneral.gov

/s/ Megan Wachspress  
megan.wachspress@sierraclub.org

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