

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting)	
Board's Review of Ohio Admin .Code)	Case No: 21-902-GE-BRO
Chapters 4906-1, 4906-2, 4906-3, 4906-4,)	
4906-5, 4906- 4906-6, and 4906-7.)	

**INITIAL COMMENTS OF
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

I. INTRODUCTION

On June 16, 2022, the Ohio Power Siting Board ("Board") issued an entry requesting comments from interested persons on revisions to Ohio Admin. Code Chapters 4906-1 through 4906-7 proposed by the Board's Staff ("Staff"). Initial comments were originally due on July 22, 2022, and Reply comments were originally due on August 12, 2022. On July 14, 2022, the Board extended the deadline for Initial comments to August 5, 2022, and the deadline for Reply comments to September 2, 2022.

IBEW District 4 (IBEW) is the regional affiliate of the International Brotherhood of Electrical Workers, serving workers in Ohio, West Virginia, Kentucky, Virginia, Maryland and the District of Columbia. The IBEW represents approximately 775,000 active members and retirees who work in a wide variety of fields, including utilities, construction, telecommunications, broadcasting, manufacturing, railroads, and government. The IBEW has members in both the United States and Canada and is among the largest unions in the AFL-CIO.

IBEW has a direct interest in this rulemaking proceeding because decisions made by this Board directly affect the availability of jobs for current IBEW members and will directly affect future job creation and thus future growth in the union membership of IBEW. Both the

construction of new infrastructure in Ohio and the maintenance and upgrade of existing infrastructure in Ohio require a large, skilled labor force. The member unions and workers of IBEW provide that skilled workforce.

IBEW, pursuant to the July 14, 2022, Entry, hereby offers the following comments on the Staff's proposed revisions to Ohio Admin. Code Chapters 4906-1 through 4906-7.

II. GENERAL COMMENTS

A. The Board's process should be fair and consistent across all forms of electric generating and transmission applications and consider public interest broadly, consistent with precedent, that includes impacts to Ohio's skilled workforce.

Electric generating projects have historically been, and should be, reviewed by this Board in a manner that ensures due process for stakeholders while considering public interest through a broad lens. This process must allow for fair and proper consideration of the impacts to the landowners who may lease parcels for proposed projects (many of whom are Ohio farming families), the impacts that proposed generating facilities are having on our air and water quality as well as other pressing environmental concerns and public health, the impacts to investment interests looking to do business in Ohio, and of course the ability for those projects to help create careers for the men and women in Ohio who construct and maintain our infrastructure.

Infrastructure development directly translates into skilled-labor construction jobs and thereby careers in the skilled trades. Skilled-labor construction jobs translate into middle-class wages for thousands of Ohioans. Middle-class wages drive broad-based economic growth and

generate tax revenues. These are all in the public interest and must be given fair consideration by this Board as it issues its decisions.

Conversely, an expensive, drawn-out, and unpredictable process such as the one reflected in multiple recent solar project proceedings¹, does not promote the maintenance, upgrade, and construction of critical infrastructure in this state. Indeed, this seeming departure from precedent creates uncertainty that will only negatively impact our state's ability to build and maintain electric generating facilities and consequently reduce the availability of jobs and future job growth. States with more efficient, predictable, and reasonable regulations and guidelines will take these important electric sector jobs from IBEW's Ohio workers without a fair and consistent process that the developers of these projects need.

More than simply creating construction jobs now and in the future, the timely construction of state-based energy generating infrastructure on a predictable timeline helps to mitigate Ohio's shortage of skilled craftsmen and women, a problem that continues to plague the Ohio economy. The availability of union construction jobs and their middle-class wages will draw more prospective workers into the skilled construction trades, thereby increasing the skilled workforce that Ohio needs, serving the public interest. With a fair and predictable process, IBEW's Ohio members can compete not only for new infrastructure construction jobs, but also

¹ Five of the last twelve Staff Reports regarding solar project applications have recommended denial for not meeting Staff's changing, and recently narrowed view of the public interest, convenience, and necessity requirement. IBEW disagrees with this Staff interpretation, and notes that these cases represent well over 2,000 Ohio jobs and more than \$1B of investment in this state.

the other new construction jobs that result from business location and expansion that demands such infrastructure.

This Board should be careful not to place Ohio at a competitive disadvantage to other states in attracting business, and thus a competitive disadvantage in growing new jobs, such as the skilled jobs that the workers of IBEW can perform. It is in the public interest for Ohio to actively develop its skilled workforce and create meaningful careers for Ohioans in the skilled trades.

B. All proposed rules must be subject to a thorough review of their impacts on business and economic development in the state. Proposed rules that create material adverse business impacts must be shown to provide benefits, to all Ohioans, that outweigh their material adverse impacts.

IBEW also has concerns with the rules review process as Staff has not appeared to make a substantive attempt at satisfying the business impact requirements of R.C. 106.03. The same canned response regarding the nature of the adverse impact is provided for many of the proposed rules. Staff states,

Costs of compliance vary greatly depending on the nature of the facility that is seeking or operating pursuant to a OPSB certificate. Costs include environmental studies, application preparation, service and distribution of the application, participation in the public review process, and the OPSB's cost of reviewing applications and ongoing operations to ensure that they align with certificate conditions.

The above statement does not provide a sufficient basis for a review of the negative business impacts. It is true that costs will vary from project to project as each developer will enter into different contracts with different vendors. However, at a minimum a range should be provided of the actual financial impact these changes will have on developers. Without an understanding of the amounts by which these rules will be raising the cost of development, no substantive analysis can be done as to the nature of the adverse impacts on business. The adverse

impacts to business analysis is not a pro-forma requirement that is just a box to be checked. It is designed to ensure regulations do not unnecessarily negatively impact businesses who have an expressed interest in the Ohio economy. The canned statement provided by Staff does not provide sufficient information to make that determination and therefore is inadequate.

C. The proposed rules do not include a discussion of R.C. 121.95 which requires the elimination of two or more existing regulatory restrictions for each new regulatory restriction adopted.

Revised Code 121.95(F) states:

Beginning on October 17, 2019, and ending on June 30, 2025, a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. The state agency may not satisfy this section by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.

“Regulatory restriction” is defined as “rules that include the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit” shall be considered to contain regulatory restrictions.

Revised Code 121.95(B).

The proposed rules contain numerous examples of these types of proposed regulatory restrictions. For a non-exhaustive sample see proposed Ohio Admin. Code 4906-4-08 (A)(1)(a); (A)(1)(g); (A)(3)(a); (A)(5)(c); (A)(5)(e); (A)(14); (B)(1)(a)(vi)-(viii); (B)(1)(b),(c), and (e); (B)(2)(a)(i)-(iv); (B)(4)&5); (D)(5); (D)(6)(b);(E)(2)(b)(i)-(vi); (E)(3); Ohio Admin. Code 4906-4-09(A)(3)(e)-(f); 4906-4-09(G). For each of these new regulatory restrictions Staff proposes, the Board is required to eliminate at least two existing regulatory restrictions. Yet, there is no discussion of this requirement and no proposed accounting of any additions and deletions. Given that many of the newly proposed rules or rule provisions implement new and additional burdens on applicants, Staff should identify which regulatory restrictions it proposes to eliminate if the Board accepts Staff’s newly proposed regulatory restrictions. This is required by Ohio law.

IBEW's comments are proffered with the goal of ensuring a fair, transparent, and evidence-based process that is not beholden to passionately held views that are not based in fact nor to speakers who are not willing to subject their positions to the scrutiny of the evidentiary process.

III. SPECIFIC COMMENTS

A. Ohio Adm. Code Chapter 4906-3 – Certificate Applications Generally

1. Rule 4906-3-13– Construction and operation (Amended)

The proposed rule contains new language in Provision (C) stating “[t]he certificate authority provided by the board does not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor can it be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.”

This propose revision makes no sense as it is entirely unnecessary. Administrative rules cannot supersede state or federal statutes. Further, this rule would conflict with Ohio statutory law thereby invalidating it. Revised Code 4906.13(B) states: “No public agency or political subdivision of this state may require an approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility...” Additionally, R.C. 519.211 exempts public utilities, a broader term in a zoning context than just those entities regulated by the Public Utilities Commission of Ohio, from local zoning requirements.

The law is clear, with the exception of the provisions of Senate Bill 52 which expressly allow a local government to prohibit certain types of development before it occurs, the Ohio Power Siting Board controls and has jurisdiction over major utility

facilities. It is unclear why Staff is proposing this revision at all. At best, its an unnecessary, though unenforceable attempt to abdicate the Board's authority. At worst, its contrary to established statutory law.

There is no apparent reason for this proposed revision which would only accomplish undermining the Board's authority and purpose. IBEW recommends proposed Ohio Admin. Code 4906-3-13(C) be stricken in its entirety.

B. Ohio Adm.Code Chapter 4906-4 – Certificate Applications for Electric Generation Facilities –and Electric Power Transmission Lines, and Gas Pipelines

1. Rule 4906-4-08– Health and safety, land use and ecological information (Amended)

Proposed changes to 4906-4-08 (A)(3)(a) would require applicants to describe construction noise levels at the nearest property line and would even require the identification of any “particularly annoying sounds.” Construction at its very core is annoying as it disrupts normal flows of traffic, changes viewsapes, and of course makes noise. Dozers, trucks, backhoes, cranes, jackhammers and skid steers cannot produce without the noise they make. Each piece of equipment will have a different noise based on its make, model, age, muffler or lack of and type of fuel, and the jobs that it is doing. To describe the noise of each of these types of equipment and the job they perform seems as overly burdensome as it is unnecessary and should be rejected by the Board. Further, what be annoying to one person may not be annoying to the next. It is unclear how a dispute could be settled over whether a particular construction sound is “annoying” and if there is an unsettled dispute, whether that would hinder an applicant's compliance with this provision.

Back-up horns on equipment may be “particularly annoying,” but that is precisely the intent. A loud annoying noise, heard over top of the normal construction noise is designed to put

a worker on alert that a piece of equipment is moving backward, perhaps with limited sight of the operator. This safety requirement is meant to prevent damage, injury or death, which protects the health and safety of the workers and keeps the project on schedule. The IBEW is working on thousands of construction jobs all across North America making noise on projects in the cities, suburbs and throughout the rural countryside, but only for the duration of the project they are working on. In the construction industry, it's common to hear the phrase: "we are working ourselves out of a job;" referring to the fact that all construction is temporary as projects are ultimately completed. More than that, construction noise is many times temporary in one area of a project before moving to another area and most noises won't persist throughout the entire construction process.

We support the ability of a developer to work with the project's neighbors to limit the hours which construction will take place, but it makes no sense to try to limit the noise of construction. This would only add time and expense to the project, lengthening the amount of time that IBEW's highly skilled workforce will be in the project area making noise.

C. Ohio Adm.Code Chapter 4906-7 – Procedure

1. Rule 4906-7-06– Self-Reporting of Incidents (Proposed)

Proposed Rule 4906-7-06 defines an "incident" as an event occurring at the site of a certified facility where there is either (1) injury to a person; (2) damage to property other than the facility operator's; or (3) damage to the facility operator's property that is estimated to exceed \$50,000 under certain parameters. The proposed rule requires in provision (D), that within 30 days of the discovery of an incident, the facility operator is required to submit a written report to the Board's executive director detailing the incident on a form provided by the Board. Provision (F) of the proposed rule then states that any facility involved in a reportable incident under

provision (B) cannot restart or resume construction until such action is approved by the Board's executive director or the executive director's designee.

This is an unnecessarily burdensome requirement that will have a materially adverse impact to business. First, halting construction until such time as the Board's executive director can evaluate a report will necessarily lead to delays which could cause missed deadlines and incur financial penalties. Shutting down construction for any substantial period also incurs the risk of losing the skilled labor to complete the project, who may have to move to other jobs to continue to earn a living. Finally, in the event of an outage event, having a project shut down will only serve to extend outages and delay the restoration of service.

IBEW considers safety paramount on all our jobs. We want our members to earn an appropriate wage and then return home to enjoy the fruits of their labor with their families. Halting construction on a project because of one of the reportable incidents described above is not the appropriate reaction to the incident and will materially impact a project's ability to maintain adequate staffing and meet construction deadlines. IBEW would propose that provision (F) be rewritten to allow the executive director, after analyzing the written report, to halt construction if and only if there is a significant unaddressed safety concern. This will ensure a safe work environment without the risk and costs associated with unnecessary delays or work stoppages.

IV. CONCLUSION

IBEW appreciates the ability to respond to the Board Staff's proposed rules and respectfully provides the foregoing comments for the Board's consideration.

/s/Robert Dove

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments was served electronically on all parties of record by the Power Siting Board's DIS system on this 5th day of August, 2022.

/s/ Robert Dove

Robert Dove (0092019)

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Summary: Text Initial Comments electronically filed by Mr. Robert Dove on behalf of
International Brotherhood of Electrical Workers, District 4