

**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  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

---

**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”). The 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.

Ohio Partners for Affordable Energy (“OPAE”) is an Ohio non-profit corporation with a stated purpose of advocating for affordable energy policies for low-and moderate-income Ohioans. Further, OPAE advocates for energy policies that promote the health, safety, and opportunities for low- and moderate-income Ohioans and small commercial customers. OPAE includes, as members non-profit organizations known as Community Action Agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, Community Action Agencies are charged with advocating for low-income residents of their communities.

OPAE 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 should only accept those proposed revisions which support an all-of-the-above approach to energy development as championed by Governor DeWine.**

OPAE has concerns that some of the proposed revisions seem to penalize solar and wind facilities in a disproportionate manner than other traditional forms of generation. OPAE understands that to some extent certain regulatory restrictions for specific types of generation may be unavoidable given the different potential impacts and concerns specific to each unique type of generation. However, OPAE asks that the Board review the proposed revisions closely to ensure there is no undue burden placed on the development of renewable energy projects - which serve to bring jobs and money into the communities in which they are sited. As Governor DeWine noted in his first State of the State Address,

Mr. Speaker, I share your interest in making sure that the air we breathe is as clean as it can be. I look forward to working with you and all the members of the General Assembly **on an all-the-above energy strategy for our state** that not only will ensure that Ohio's economy remains competitive, but that also generates clean electricity that lights our homes and powers our businesses.<sup>1</sup>

OPAE encourages the Board to keep his approach in mind while reviewing these rules to ensure there are not unnecessary barriers to clean forms of generation that will serve to power our state, drive our economy, and avoid polluting the air we breathe.

---

<sup>1</sup> State of the State Address March 5, 2019. <https://www.ohiochannel.org/video/state-of-the-state-address-2019> (Last accessed August 3, 2022)

**B. The Board's process must maintain an evidence-based approach grounded in law and process.**

OPAE has been very active before the Public Utilities Commission of Ohio for over twenty years. OPAE has been a staunch and ardent advocate for low-income and moderate-income Ohioans, as well as small commercial customers. OPAE understands the value and the benefits that clean energy development has and can bring to Ohio as a whole, and particularly to the low-to-moderate income Ohioans living in and around the project areas. Recently, OPAE has seen it necessary to step outside its traditional Commission advocacy and get involved in cases before the Power Siting Board to ensure these benefits are not being lost.

Several recently decided cases have placed great emphasis on public opposition without due regard to the benefits provided by the proposed projects. There are currently pending cases where Board Staff has advocated for decisions based not on the facts of the case but instead on the number of negative public comments submitted to the Board.<sup>2</sup> This is not the manner in which an adjudicatory body should be making decisions. Public participation is important and must be considered. But public comment, no matter how ardent, cannot supersede law, evidence that is subject to cross examination, and due process.

A prior Chairman of the Board stated:

But passionately held views of one or more opponents of a project do not necessarily mean that the positions held by the developer are not reasonable, are without merit or incapable of being sustained by the Board. And, as importantly, passionately advanced opposition does not license the use of our evidentiary proceedings to fish for things that might appear to make the passion logical, rational or, when accompanied by credible evidence, compelling.

Concurring Opinion of Former Chairman of the Board Sam Randazzo, *Ohio State University*, Case No. 19-1641-EL-BGN, Opinion and Order, and Certificate (September 17, 2020).

---

<sup>2</sup> Case No. 20-1605-EL-BGN, Staff Initial Brief.

The Board's process is designed to encourage and consider public participation. Public participation in governance is worthwhile and should be considered. However, public participation, particularly public participation outside of the bounds of the legal process, cannot be allowed to supersede the evidence introduced in the legal process. Passionately advanced opposition, without supportive evidence presented as part of an adversarial evidentiary process, cannot be given greater weight than the actual evidence within the record of the proceedings before the Board. Nor can the Board base its decisions on public comments submitted in writing, not subject to cross-examination, and without any form of verification.

Revised Code 4903.09, applicable to the Board pursuant to R.C. 4906.12, requires that any decisions made by the Board be accompanied by findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon said findings of fact. Recent cases have included discussions of the number of public comments in opposition to the proposed project, including those filed as written comments<sup>3</sup>, not made at either the local public or evidentiary hearing subject to cross-examination, as well as public comments made after the close of the record.<sup>4</sup>

Decisions based on information outside of the record undermines parties' due process rights because parties do not have the opportunity to rebut or challenge statements made outside of the evidentiary process. Further, decisions based on these written public comments, which are the definition of "hearsay" for evidentiary purposes, complicate the appellate process because the

---

<sup>3</sup> In the Matter of the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio, Case No. 17-2295-EL-BGN, Opinion, Order and Certificate (June 24, 2021) ("Republic")

<sup>4</sup> In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Transmission Line in Mahoning County, Ohio, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) ("ATSI Case").

Ohio Supreme Court must review the decision based on the evidence in the record <sup>5</sup> and out of court statements, filed as written public comments are not part of the record.

OPAE respectfully requests that the Board use this rule review to ensure that the Board's rules are in line with the fact-based evidentiary process proscribed by statute which provides the information upon which the Board may base its decisions.

**C. "Public Interest" for purposes of R.C. 4906.10(A) must be considered broadly.**

The same cases discussed above, which focus on negative public comments, use those opposing comments as a basis for determining that the proposed project is not in the "public interest, necessity, and convenience" as required by R.C. 4906.10(A). However, the Board has previously determined that the "public interest" "should be examined through a broad lens."<sup>6</sup> The Board expressly stated that factor should consider the public's interest, as well as environmental and economic factors. OPAE agrees that public interest needs to be considered broadly. OPAE also agrees that the voices of the local community should be considered in weighing this criterion, provided those voices occur within the evidentiary process. But public participation, specifically opposition, must not be merely tallied to determine if a proposed project is in the public interest.

The Board must consider that opposition against the host of benefits provided by the proposed project. OPAE encourages the Board to take into account the wide-ranging benefits these projects are capable of providing. The Board has traditionally considered the economic benefits of projects through the jobs they create, the tax revenue they create through increased economic activity in the areas as well as the PILOT payments they provide the local community.

---

<sup>5</sup> R.C. 4903.13 applicable to Board proceedings pursuant to R.C. 4906.12.

<sup>6</sup> Republic ¶91.

Additionally, the Board has recognized clean energy projects provide environmental benefits through zero emissions generation.

However, OPAE urges the Board to think even broader when it considers these types of benefits. OPAE represents residential utility customers who live within 200% of the federal poverty line. A large percentage of these Ohioans are either families with small children or elderly individuals. These are very vulnerable Ohioans, and the Board should look for ways to ensure these projects provide support.

Currently, PILOT payments from these programs go to the local communities which can then be used to serve low-to-moderate income Ohioans in and around the project area. These funds can support local health agencies which provide free and reduced cost health care to income eligible patients. PILOT payments go to school districts which can use them to support children in low-income homes. Schools can use these funds to support children who face food insecurity, who may need additional instruction through after school programs, or to ensure the facilities in which all the children learn are safe and comfortable and provide the optimal learning environment.

From an environmental perspective, clean generation results in cleaner air and a cleaner environment. But the environmental benefits do not stop at cleaner air. Cleaner air means less air pollution. Low-income households are disproportionately exposed to air pollution.<sup>7</sup> Air pollution is a contributor to a host of breathing problems including asthma and chronic obstructive pulmonary disease (“COPD”). Long-term exposure to air pollution has consistently been found to be a cause of premature death. Reductions in air pollution have meaningful and direct impacts on the health of low-income Ohioans living in and around the project area including lowering the

---

<sup>7</sup> <https://kinder.rice.edu/urbanedge/2020/09/02/fine-particle-air-pollution-has-decreased-across-us-poor-andminority>. See also <https://www.annualreviews.org/doi/10.1146/annurev-environ-082508-094348>.

risk of asthma and COPD. OPAE has consistently noted both the health and healthcare costs benefits of weatherization which includes thousands of dollars in savings for the average family in fewer hospital visits, lost work days, and other avoided costs.<sup>8</sup> The United States Environmental Protection Agency has determined that reduced air pollution provides similar health related economic benefits because fewer air-pollution-related illnesses means less money spent on medical treatments and fewer missed days of work.<sup>9</sup>

Increased generation, particularly low- cost clean generation, such as wind and solar, can drive down the wholesale price of energy. Thereby reducing the price of energy in the state generally and providing benefits beyond those realized by the local community. Further, increased renewable energy can contribute to grid resiliency through increased distributed generation. As severe weather events, like the derecho Columbus residents recently experienced, increase so do the chances for failures within our grid. Distributed generation resources provide the opportunity to provide power to local areas in times of emergency and reduce down times for the surrounding communities. Which can be critical to health and safety of residents in times of severe heat or if an individual relies on power for medically necessary devices - which is not uncommon for the Ohioans we serve.

OPAE respectfully requests that the Board take as broad a consideration of public interest as possible moving forward to ensure these vital benefits are not lost merely because alleged opposition that operates outside the bounds of the evidentiary process. OPAE would cite back to a prior Chairman and agree that “passionately held views of one or more opponents of a project do not necessarily mean that the positions held by the developer are not reasonable, are without merit or incapable of being sustained by the Board.”

---

<sup>8</sup> See Testimony of Robert Williams in Pub. Util. Comm. Case No. 21-637-GA-AIR et al.

<sup>9</sup> <https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>

### **III. SPECIFIC COMMENTS**

#### **A. Ohio Admin. Code Chapter 4906-1 – General Provisions**

##### **1. Rule 4906-1-03 – Board Meetings (Amended)**

The passage of Senate Bill 52 creates two new voting ad hoc members of the Board for proposed projects that are not subject to the grandfathering provisions of the Bill. These members will be the chairperson of the township board of trustees and the president of the county board of commissioners, both based on where the project is proposed, or their designees. OPAE would encourage the Board to adopt rules in this section ensuring those new ad hoc members receive appropriate training on the standards by which projects must be judged as well as the policies and procedures governing members of the Board and their communications with parties and non-parties to a proceeding. The Board should ensure these new ad hoc members are fully aware of their obligations as decision makers to avoid ex parte communications as well as the statutory requirements on which they must base their decision. This recommendation is consistent with OPAE's general comments seeking to ensure a fair and impartial evidentiary process subject to the statutory scheme provided by the General Assembly in Chapters 4906 and 4903.

#### **C. Ohio Admin. Code Chapter 4906-3 – Certificate Applications Generally**

##### **1. Rule 4906-3-11– Amendments of accepted, complete applications and of certificates (Amended)**

OPAE respectfully requests that the Board reject Staff's proposed revisions to this rule that would require modifications to an application, introduced after acceptance of the application during the review process, be considered amendments to the application if, among other things, they "appear to create further additional adverse impacts".



“Appear to create” is a subjective analysis that has no place in an evidentiary process. Imposing such a subjective standard, especially one with such an onerous result as making the modification an amendment, is contrary to an objective fact-based evidentiary process. OPAE respectfully requests that the Board deny this revision consistent with OPAE’s general comments in support of ensuring an objective, fact-based evidentiary process as contemplated by Chapters 4903 and 4906 of the Revised Code.

**D. Ohio Admin. Code Chapter 4906-4 Certificate Application for Electric Generation Facilities**

**1. Rule 4906-4-06 Economic Impact and Public Interaction.**

OPAE would recommend an additional revision to this proposed rule. As discussed above, these projects can have tremendous positive impacts on the communities in which they are sited, including through environmental benefits, job creation, and PILOT program payments. OPAE would like, to the extent possible, the benefits maximized for low-to-moderate income residents in the area. Therefore, OPAE respectfully requests inserting a new provision (F) and making the currently proposed provision (F) provision (G). OPAE recommends a new provision (F) which would require the applicant to meet with the community action agencies in the county or counties in which the project will be sited to discuss the needs of the low-to-moderate income residents of the county or counties.

The purpose of this requirement would be so applicants can better understand the needs of low-to-moderate income residents in the county or counties in which the projects are located, with the goal of minimizing any potential negative impacts to those residents and maximizing the potential benefits. OPAE believes that additional communication, specifically with the local community action agencies, can help applicants better understand the communities in which they want to be a neighbor and the best way they can serve those communities as a good neighbor.

#### IV. **CONCLUSION**

OPAE appreciates the opportunity to respond to the Board staff's proposed rules and respectfully provides the foregoing comments for the Board's consideration.

*/s/Robert Dove*

---

Robert Dove (0092019)  
Kegler Brown Hill + Ritter Co., L.P.A.  
65 E State St., Ste. 1800  
Columbus, OH 43215-4295  
Office: (614) 462-5443  
Fax: (614) 464-2634  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)

(Willing to accept service by email)  
**Attorney for OPAE**

### **CERTIFICATE OF SERVICE**

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

/s/ Robert Dove  
Robert Dove (0092019)

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**8/5/2022 3:45:55 PM**

**in**

**Case No(s). 21-0902-GE-BRO**

Summary: Text Initial Comments electronically filed by Mr. Robert Dove on behalf of  
Ohio Partners for Affordable Energy