

**BEFORE
THE OHIO POWER SITING BOARD**

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

**REPLY COMMENTS OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, DISTRICT 4**

I. INTRODUCTION

On June 16, 2022, the Ohio Power Siting Board (“Board”) issued an entry requesting comments from interested persons on revisions to Ohio Adm.Code Chapters 4906-1 through 4906-7 proposed by the Board’s Staff (“Staff”). In accordance with the Administrative Law Judge’s (“ALJ’s”) entry issued July 14, 2022, initial comments were due by August 5, 2022, and reply comments are due by September 2, 2022. Initial comments were filed by: American Petroleum Institute (“API”); American Transmission Systems, Inc. (“ATSI”); National Audubon Society and Audubon Great Lakes (“Audubon”); Buckeye Power, Inc. (“Buckeye”); Chain Link Fence Manufacturer Institute (“CLFMI”); Columbia Gas of Ohio, Inc.(“Columbia Gas”); Columbus Partnership; Darby Creek Association ;(“Darby Creek”) Data Center Coalition (“DCC”); Dayton Power and Light Company dba AES Ohio (“AES Ohio”); Duke Energy Ohio, Inc. (“Duke”); Generation Pipeline, LLC (“Generation Pipeline”); Ohio Power Company and AEP Ohio Transmission Company, Inc. (“Ohio Power/AEP”); Industrial Energy Users- Ohio (“IEU-Ohio”); National Grid Renewables Development, LLC (“NG Renewables”); National Resources Defense Council (“NRDC”); Ohio Farm Bureau Federation (“OFBF”); Ohio Chamber

of Commerce; Ohio Conservative Energy Forum (“OHCEF”); the Ohio Consumers’ Council (“OCC”); Ohio Economic Development Association (“OEDA”); One Energy Enterprises, Inc. (“One Energy”); Ohio Manufacturers’ Association (“OMA”); Ohio Oil and Gas Association (“OOGA”); Ohio Partners for Affordable Energy (“OPAE”); Plus Power; Storage Coalition of American Clean Power, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio (“Storage Coalition”); Representative Shane Wilkins (“Rep. Wilkins”); Ohio Southeast Economic Development (“Ohio SE”); and Union Neighbors United (“UNU”).

International Brotherhood of Electrical Workers, District 4 (“IBEW”) submitted initial comments on August 5, 2022, and is now filing these reply comments in accordance with the July 14, 2022 entry.

II. GENERAL COMMENTS

A. The initial comments submitted demonstrate the proposed rules, as currently drafted, will negatively impact renewable generation development along with numerous other industries which support and benefit from that development.

Multiple parties commented about the undue burden the proposed rules place on the development of renewable generation in the state. Audubon notes that the proposed changes will likely slow down the permitting process and reduce the total benefits achieved by development. OEG notes that the rules could have the effect of discouraging development which would ultimately serve to undermine the attraction of new industry into Ohio. Especially, as OEG noted, when so many manufacturers have carbon reduction goals. IBEW agrees with both comments. New businesses, such as the Intel facilities and the possible Honda battery manufacturing facility, bring with them jobs. Jobs that employ IBEW’s electricians and other skilled laborers at a fair wage.

IBEW members spend their careers working themselves out of a job. It is the nature of our business that a job done well necessarily requires an IBEW member to move on to the next opportunity. Solar energy projects provide not only direct jobs for our members, but numerous opportunities for that next job resulting in dignified careers for our members. Solar energy projects that attract and support industrial development exponentially increase the opportunity to build, attract, and employ a skilled workforce within the state. The Board should consider the negative impacts these proposed rules will have, not only on project development, but also on the industries and workers who provide for their families through the jobs these projects provide and enable.

B. The Board must ensure the statutory rule review process is followed.

IBEW stated in its August 5th Comments that all proposed rules must be subject to a thorough review of their impacts on business and economic development in Ohio, as required by R.C. 106.03. Further, IBEW supports the comments made by NG Renewables regarding compliance with R.C. 121.95.

The large number of comments on the material adverse business impacts of the proposed rules filed on August 5th by others confirm how important it is that the Staff and the Board make a substantive attempt at satisfying the business impacts requirements of R.C. 106.03, instead of the canned response it provided. The review of these impacts should be specific and include a review of the effects of each rule on Ohio's ability to support and sustain its skilled labor force. For example, the Board must consider the work and the people who do the work when reviewing the effect of the proposed rule on noise reporting, or on halting construction until the Board's executive director evaluates a report on self-reported incidents. Without putting these things at

the forefront, the Board will push work out of state. IBEW's members may need to move to other jobs (like moving out of state or taking on a job in a different industry).

Ohio needs to develop and support its skilled workforce. Staff should eliminate the proposed changes to the rules that make it more difficult for projects to be completed in Ohio. They should instead focus on the real effects of these proposals on workers and project developers.

C. IBEW stands with the commenters urging that “public interest” for purposes of R.C. 4906.10(A) be interpreted as broadly as possible.

Numerous commenters, including NRDC, OEC, OHCEF, DCC, and OPAE encouraged the Board to adopt a broad definition or list of factors to be considered when determining if a project is in the public interest for purposes of R.C. 4906.10(A). IBEW members attend the local public hearings and the local information meetings. IBEW members witness firsthand the public participation both in support and in opposition. Public participation is important part of the process, but it cannot be allowed to become the most important part of the process. Especially, when some merely attempt to be the loudest voice in the room, without regard to the validity of what they are saying.

The Board must consider such participation along side the benefits a project can provide both to the local community and the state. This is the broad lens about which the Board has previously spoken. Only when all benefits are considered can a true balancing occur to determine if a project is in the public interest. IBEW urges the Board to consider public interest as broadly as possible moving forward and ensure any rules adopted related to public interest consider all benefits.

DCC commented on the broad nature of benefits that accrue to the public that should be considered with community concerns. IBEW agrees that local community considerations should be weighed with other matters of public interest which should include the construction jobs that provide a living for our skilled electrical workers. Our members make 40-year careers of working themselves out of the job they are on to move on to the next job. These jobs provide family-sustaining wages and benefits that allow us to support the local grocery store, barbershop, auto dealerships and others.

D. Public Participation must not be weighed greater than the evidence in the evidentiary case.

NRDC urged the Board to ensure its process remain objective and fact-based, rooted in evidentiary investigations and reviews. IBEW agrees with NRDC. IBEW has committed both financial and human resources to participating in the OPSB process exactly for this reason. IBEW members who attend the public hearings and public information sessions have concerns about the level of misinformation floating around the project communities. IBEW considered it important to engage in this reliable, fact-based process to support projects. IBEW has written to the Board and testified before the Ohio legislature on its concerns.

The process must be fact-based and reliable. Our members have attended nearly every Public Information Meeting to learn more about these projects. We have engaged at the local level and our members and their representatives have testified at nearly every public hearing. But ultimately, we must be able to rely on this evidentiary process to ensure good projects move forward and are not subjected to popularity contests. IBEW works on all sorts of generation, and there is always public concern raised when a major electric generating facility or transmission line is proposed. But this critical infrastructure is in the public interest, and this public process

should be used as intended, to identify mitigation measures to address reasonable local concerns, not to conclusively determine whether a project is in the public interest at all.

III. SPECIFIC COMMENTS

1. Ohio Admin. Code Chapter 4906-1 – General Provisions

Expanding regulatory oversight into areas that don't require it today is a step in the wrong direction for Ohio. Specifically, the proposed definition of Associated Facilities, which almost all commenters criticized. This proposed definition discourages businesses to bring their plants, data centers, and business facilities to Ohio. It also discourages existing business to expand the facilities they already have. Fewer businesses in Ohio means fewer jobs and less work for IBEW's members and other Ohioans. Remaining competitive with other states is key to Ohio's economic development. When the OPSB reviews this proposal, it should specifically include analysis of what this proposal does to the workers who are affected by making it more difficult to build facilities in Ohio.

2. Rule 4906-4-18– Construction and operation (Amended) and Rule 4906-7-06 – Self-Reporting of Incidents (Proposed).

Another area the proposed rules will make things more difficult is when they stop work for minor changes to projects in construction. IBEW agrees with the other comments that said that going back to the Board to amend projects even for minor changes in the project location or the equipment to be used is unnecessary. What is important is the economic impact of the requirement to stop work and go back to the Board for additional approval of minor changes. The review of this rule should focus on the problems that start-and stop work schedules cause to the construction crews (and consider impacts under R.C. 106.03). In our August 5th Comments, IBEW explained that work stoppages create risk of losing skilled workers who have to move on

to other jobs. This is over and above the fact that work stoppages drive project costs up, and that's bad for IBEW's Members and their families and customers.

Additionally, the proposed rules regarding safety are impractical and unnecessarily onerous. For example, when looking at the safety of construction workers, it does not make sense to make it more difficult for workers to be alerted when a truck is backing up (like the noise restriction rule proposed rule, for example) but then halt construction so that the Board's executive director can review a report on any incident (especially when other entities with expertise in this area already have oversight such as OSHA).

Anyone working on a construction job knows that the back-up horns on equipment are among the most important to keep everyone safe, and that start-and-stop construction schedules instead make safety more challenging, often involving changes in personnel, site conditions, and speed of construction. It makes no economic sense that the rules make it more likely that project construction will have to be halted on projects, but place restrictions on the safety features of the equipment used for the work or arbitrarily limit the use of the most cost and time-efficient tools to complete the job, simply because construction equipment temporarily makes noise that some might consider to be "particularly annoying."

Another area that is problematic is the proposed rules for site visits. Several commenters pointed out that advance notice for site visits is critical to safety. IBEW welcomes those comments and supports a requirement for advance notice before Staff conducts a site visit. It is not only for the safety of the Board's Staff, but also for the workers at the site who may need to take emergency actions or to implement important safety-related protocols to protect an unannounced visitor that put the workers and others at the site at greater risk of injury.

In summary, the failure of the rules to require advance notice has a negative impact of worker safety, and for purposes of the review under R.C. 106.03 it also has an adverse impact on businesses and Ohio's economic development.

3. **Rule 4906-4-09– Regulations associated with renewable energy generation facilities (Amended)**

Numerous commenters also highlight the need for flexibility in designing and planning these projects, specifically as it relates to setbacks. IBEW agrees with commenters such as the Ohio Chamber of Commerce, OHCEF, OEDA, NG Renewables, and NRDC that 150-foot setbacks are unnecessarily onerous and restrictive. Such expansive setbacks will drive up projects costs by requiring more land and ultimately hinder development. Developers should not have arbitrary setbacks imposed upon the project. Instead, developers should be enabled to adjust the setbacks to account for the needs of a specific project and the impacted landowners.

If participating or adjacent landowners do not require 150-foot setbacks because the developer has otherwise addressed their concerns, then the Board should not require them. IBEW supports other commenters who request the Board decline to adopt this proposed requirement because of the negative impact it can have on both project developers as well as participating or adjacent landowners and the ability for these interests to work together toward an agreeable outcome.

Similarly, IBEW agrees with CLFMI's comments regarding developer's use of chain link fencing. The proposed rules use the phrase "aesthetically fitting for a rural location" in an attempt to limit the type of barriers that can be used by developers, particularly solar developers. As other commenters have noted, this an arbitrary phrase with no objective meaning. CLFM noted that chain link fence systems are routinely used in solar projects and there are numerous

ways to make them fit aesthetically into their environment. IBEW agrees with CLFMI. Our partner contractors utilize chain link fences on all of our substation builds for security purposes. Chain link fence is on many construction projects during and after the project is finished. Not only do these fences serve a purpose, but they can be installed and used in an aesthetically pleasing manner.

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 2nd day of September, 2022.

/s/ Robert Dove
Robert Dove (0092019)

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