

**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
THE OHIO CHAMBER OF COMMERCE**

I. INTRODUCTION

On June 16, 2022, the Ohio Power Siting Board (“Board”) issued an entry requesting comments on revisions to Ohio Adm.Code Chapters 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7 (“Proposed Rules”). Following a Motion for Extension of Initial and Reply Comment Due Dates, filed by the undersigned and an entry from the Administrative Law Judge’s (“ALJ’s”) agreeing to extend the timeframe, Initial Comments were due on August 5, 2022, and Reply Comments on September 2, 2022.

The Board received Initial Comments from approximately thirty organizations, coalitions, and individuals: American Petroleum Institute; American Transmission Systems, Inc.; National Audubon Society and Audubon Great Lakes; Buckeye Power, Inc.; Chain Link Fence Manufacturer Institute; Columbia Gas of Ohio, Inc.; Columbus Partnership; Darby Creek Association; Data Center Coalition ; Dayton Power and Light Company dba AES Ohio ; Duke Energy Ohio, Inc. ; Generation Pipeline, LLC; Ohio Power Company and AEP Ohio Transmission Company, Inc.; Industrial Energy Users- Ohio; International Brotherhood of

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Electrical Workers District 4 ; National Grid Renewables Development, LLC; National Resources Defense Council ; Ohio Farm Bureau Federation ; Ohio Chamber of Commerce ; Ohio Conservative Energy Forum ; the Ohio Consumers' Council ; Ohio Economic Development Association ; One Energy Enterprises, Inc.; the Ohio Energy Group; Ohio Manufacturers' Association; Ohio Oil and Gas Association ; Ohio Partners for Affordable Energy; Plus Power; Storage Coalition of American Clean Power, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio ; Representative Shane Wilkin; Ohio Southeast Economic Development ; and Union Neighbors United .

The Ohio Chamber submitted Initial Comments on August 5, 2022. In the Initial Comments, we discussed the impact several of the proposed rule changes would have on Ohio's energy industry. Likewise, the Ohio Chamber's Initial Comments highlighted how siting energy projects in Ohio spurs economic activity and development that benefits local communities, businesses, and Ohioans.

The Ohio Chamber's Reply Comments will focus on those same topics while underscoring how views expressed in the Initial Comments are shared by a broad and diverse array of organizations. Moreover, the Reply Comments will discuss the importance of the Board's consideration of economic factors when it is determining if a project is in the public interest.

II. DISCUSSION

A. OAC 4906-01-01(F)(2)(b)

By expanding the definition of what substations are considered associated facilities to include substations that change line voltage between transmission and distribution voltage, the

Proposed Rules attempt to regulate facilities that do not currently need to obtain certificates from the Board. This change in the law and increase in regulatory jurisdiction can hamstring Ohio businesses by making it harder for large users of energy who take transmission level service from utilities to operate free from burdensome regulation and permitting.

The Ohio Chamber was not the only organization who sought to revise the Proposed Rules and return the definition of associated facilities to the current definition under OAC 4906-01-01(F)(2)(b). Companies and other organizations who shared the Ohio Chamber's position on the definition of associated facilities include labor unions, publicly owned utilities, large energy users, and companies who own and operate high voltage electric transmission systems. These organizations and companies with diverse interests in the Proposed Rules agree the Board should refrain from expanding its regulatory authority to include substations that change transmission voltage into distribution voltage.

B. OAC 4906-3-03(B)

Informational meetings open to the public or Public Information Meetings ("PIM") play an important role in energy development projects. These meetings give local community members the opportunity to share their views on proposed developments while giving project owners an opportunity to build goodwill and consensus within a community by addressing concerns voiced at an informational meeting. However, the Proposed Rules which require two PIMs within 90 days do not provide a sufficient amount of time between informational meetings for project owners to adequately address concerns raised by community members. To finalize a project's plan in a manner consistent with the application following receipt of the public's input on the scope of a project – as dictated by the Proposed Rules – is a time intensive process. That

is why the Ohio Chamber recommends extending the timeframe to hold two separate informational meetings to 180 days prior to filing a project with the Board. Providing more time to complete informational meetings will benefit community members and project owners alike. Under the Ohio Chamber's proposed timeframe, project owners will have more time to analyze the community's input on the scope of the project before presenting their finalized plan to the community. For community members, they will benefit from that additional time since project owners will have greater opportunity to consider their feedback and determine if their project can be accomplished in a manner that is consistent with the public's input.

Again, the Ohio Chamber was not the only organization to provide comments on the Proposed Rules changes to 4906-3-03(B). While various solutions and recommendations were made to address concerns similar to those raised above, companies and organizations that share the Ohio Chamber's concern about the Proposed Rules include an environmental organization, companies investing in renewable energy generation, publicly owned utilities, and other large business trade associations.

C. OAC 4906-3-05

The Proposed Rules mandate that appears to require generation facilities to acquire landowner leases for preferred and alternate sites would increase development costs and harm economic development efforts in Ohio. Under the current rule, only standard certificate applications for electric power transmission facilities and gas pipelines are required to provide preferred and alternate sites or routes. Limiting this requirement to energy infrastructure projects prevents energy generation projects from finding themselves in a position where the project owner must negotiate and obtain landowner leases for an alternate site – without any eminent

domain authority – only to abandon those leases in favor of their preferred site. In that scenario, the Proposed Rules will have increased the cost of the development project and added to a project owner’s regulatory compliance burden without any significant benefit to affected parties. Moreover, the cost increases associated with negotiating and finalizing lease agreement for two separate site locations could have a chilling effect on energy developers selecting the Buckeye State for their energy generation project which will harm the state’s ability to diversify their portfolio of energy sources.

As with the Ohio Chamber’s comments on other provisions of the Proposed Rules, a diverse group of organizations and companies weighed in on the proposed changes to OAC 4906-3-05 including several publicly owned utilities, a renewable energy developer, and another statewide business trade organization.

D. OAC 4906-4-09(G)(4)

The Proposed Rules add additional requirements on solar projects that limits output capacity by applying setback distances of at least 150 feet. Under the Proposed Rules, solar facility designs must incorporate a minimum setback from solar modules of at least 150 feet from non-participating parcel boundaries and from the edge of pavement of any state, county, or township road within or adjacent to the project area. The setback expands to 300 feet from any non-participating residences that exist at the time of the applications filing date. These setbacks, which do not currently exist for solar projects, can diminish the viability of solar projects by limiting the number of modules a project can operate. Likewise, reducing the number of modules will shrink the output capacity of solar projects and could make it harder for Ohio employers who want to use renewable energy to power their businesses to meet that objective.

To ameliorate any negative economic impact of the Proposed Rules solar setbacks, the Ohio Chamber asks the Board to consider reducing the length of the proposed setbacks and allow project developers to deploy various options to mitigate visual impacts and landowner concerns.

A diverse group of organizations and businesses agreed with the Ohio Chamber's position on solar setbacks including an environmental organization, a trade association devoted to economic development, and a renewable energy generation company.

E. Application of the Final Proposed Rules Should Be Prospective Only

The Ohio Chamber urges the Board to only apply the finalized Proposed Rules prospectively. Applying the rule changes prospectively will assure predictability and stability for Ohio businesses who are impacted by changes to the Board's rules. That predictability and stability is crucial because businesses have made decisions and investments based upon the rules at the time a project started. Thus, changing the applicable rules after a project is underway may result in additional or wasted costs for companies in a variety of industries.

F. Public Interest Test Should Include Economic Factors

Ohio law requires the Board to consider the "public interest, convenience, and necessity" as one of the factors when determining whether to grant a certificate for construction, operation, and maintenance of a major utility facility (*See* R.C. 4906.10(A)). As Ohio's leading business advocate whose mission to aggressively champion free enterprise, economic development, and growth for the benefit of all Ohioans, we view the economic impact of energy generation projects as a key component of the public interest. The economic impact from these projects can be significant and should be measured in a myriad of ways. Most directly, all things being equal, increased energy supply reduces energy costs for business and residential consumers statewide.

Conversely, a siting regime that chokes off supply will raise prices, especially in an inflationary environment, so Ohio has a strong interest in increased in-state power generation to help employers control their costs.

In addition, from compensation paid to landowners for leases, tax benefits to local communities, payment in lieu of tax (“PILOT”) payments made by the project owner, job creation tied to project construction and upkeep, and availability of diverse energy sources, the economic impact derived from energy development projects siting in Ohio is significant and can benefit every Ohioan. That is why is it imperative the Board compiles all possible economic benefits when evaluating whether a project is in the public interest. Using a broad view of what is the economic benefit also aligns with the mission of the Board which is to support sound energy policies that promote the state’s economic interests (See <https://opsb.ohio.gov/about-us>).

While the Board’s use of economic factors when deciding whether to issue certificates is important to the Ohio Chamber, local input should still be considered by the Board. However, the Board should weigh the quality of evidence presented by both proponents and opponents when it is determining if a project is in the public interest. By weighing the quality of the evidence, the Ohio Chamber believes the Board can better evaluate the true impact of a particular energy generation facility.

The Ohio Chamber was not the only organization who shares the view that the Board’s public interest determination should take into account a broad array of factors. Organizations ranging from labor unions, environmental groups, consumer groups, and large energy users all voiced their belief that the Board ought to consider factors ranging from the benefits to Ohio’s

skilled workforce, customer access to power, and financial investments in local communities and the state.

III. CONCLUSION

The Ohio Chamber appreciates the opportunity to provide Reply Comments to the Board's Proposed Rules and looks forward to working with the Board to continue finding public policy solutions that support an "all-of-the-above" energy portfolio that does not impede Ohio's ability to develop its abundant and diverse energy resources.

Respectfully Submitted,

/s/ Kevin Shimp
Kevin Shimp (0097660)
(Counsel of Record)
Ohio Chamber of Commerce
34 S. Third St., Suite 100
Columbus OH, 43215
KShimp@ohiochamber.com

Attorney for Ohio Chamber of Commerce

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments were served by electronic mail upon the following on this 2nd day of September, 2022.

/s/ Kevin Shimp
Kevin Shimp (0097660)

Administrative Law Judge:

Michael.Williams@puco.ohio.gov

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Summary: Public Comment Response electronically filed by Mr. Kevin Shimp on
behalf of Ohio Chamber of Commerce