



Ohio Environmental Council

The Ohio Environmental Council Reply Comments
IN THE MATTER OF THE OHIO POWER SITING BOARD'S REVIEW OF OHIO ADM.CODE
CHAPTERS 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, AND 4906-7

September 2, 2022

The Ohio Environmental Council submits its reply comments to the OPSB's proposed rule amendments. The number of comments and diversity of commenters to these proposed rules underscore the importance of a fair power siting process. Many commenters noted that the proposed rules contain unreasonable restrictions to Ohio businesses, particularly to renewable energy applications. The calls for a fair "all-of-the-above" approach to power siting spanned a wide variety of stakeholders, from the American Petroleum Institute, Ohio (API) to consumer advocates like the Ohio Partners for Affordable Energy (OPAE), to the International Brotherhood of Electrical Workers, District 4 (IBEW). The OEC joins the many commenters requesting a fair, clear, and evidence-based siting process.

The power siting process is critical to Ohio's economy, health, and safety. Given the importance of these rules in shaping Ohio's future, the OEC's reply comments below build on our initial comments regarding the OPSB's future public interest analysis. In our initial comments, we raised concerns about recent arbitrary applications of this element. Several other commenters raised similar concerns. So, the OEC provides some additional discussion of the public interest in Section I below. Section II highlights other suggestions on eliminating vague language and setting clear expectations for applicants and board members.

Ultimately, the power siting process must be fair to stakeholders, including the many commenters demanding the OPSB support an Ohio that provides clean air, water, and energy for its residents. A fair siting process must include clear expectations of applicants and staff. It must appropriately address climate change and the threat it represents to our state.

I. The OEC again urges this Board to provide clear guidance on the public interest, including the importance of climate change in any public interest calculation.

The public interest is central to any power generation project. All successful siting applications require a finding that the project serves the public interest. R.C. 4906.10(A)(6). The public interest prong requires a broad balancing of factors, beyond any individual stakeholder interest.

Republic Wind, OPSB No. 17-2295-EL-BGN (June 24, 2021). As discussed in the OEC's initial comments, this broad lens will continue to lead to arbitrary results unless this Board establishes some clear guidance through these proposed rules.

Further complicating this broad lens, the Ohio Supreme Court has found the variety of public interest prong factors may intersect with other elements of R.C. 4906.10(A). *Ohio Edison Co. v. Power Siting Com.*, 56 Ohio St. 2d 212, 383 N.E.2d 588, (1978). A growing intersection is the Supreme Court's well-established public interest factor of safety, with environmental impact. As climate change affects the safety and reliability of Ohio's access to power, it is critical for this Board to include climate change and greenhouse gas emissions in the public interest prong.

In the next five years, Ohio's energy industry will face many challenges and opportunities. It will see increased electricity demand, more options for federal funding, and increased climate-related disruptions. To mitigate challenges and seize opportunities, this Board must clearly articulate and evenly apply its definition of public interest. The first round of public comments demonstrates the public's hunger for this Board to include the impact of climate change and greenhouse gas emissions in the power siting process.

For Ohio businesses and workers to seize opportunities from increased electricity demand and historic federal investments in renewable energy, the OPSB cannot put undue or arbitrary burdens on renewable energy generation. We agree with other commenters that the public interest requires a broad, evidence-based, "all-of the above" analysis. See e.g., Robert Dove, *Initial Comments of the Ohio Partners for Affordable Energy* (Aug. 5, 2022) ("The Board should only accept those proposed revisions which support an all- of-the-above approach to energy development as championed by Governor DeWine."). This Board should weigh the substance, rather than the sheer volume, of evidence and comments. To ensure an effective public interest evaluation, this Board should provide guidance on the meaning of public interest in its rules.

The OEC urges this Board to implement both suggestions from commenters to provide clear guidance on the public interest. The OEC and Nation Resources Defense Council (NRDC) recommended including a definition of public interest with factors for the Board and staff to consider. The Clean Energy Industry suggested adding guidance on public interest to section 4906-3-06(C)(2), following the requirement that staff reports make a recommendation on public interest. These are both effective measures to provide guidance on public interest. They are even more effective together.

Regardless of where this Board provides clarity on the public interest, this calculation must include considerations of climate change and greenhouse gas emissions. Many individual commenters noted the most recent science signals a need to transition energy usage away from fossil fuel sources. The National Audubon Society noted the current climate change trajectory will devastate bird populations. The NRDC reports the United Nations has issued a "code red" on climate change. Finally, many of the commenters opposed to solar still voice concerns about the future of farmland in Ohio. Climate change mitigation will be a crucial aspect of preserving

Ohio's great agricultural history. Thus, any power development going forward should explicitly include climate change in the review process.

II. Other helpful suggestions to improve the ease and clarity of the siting process.

The OEC agrees with many of the suggestions from other commenters to provide additional clarity in the proposed rules. In particular, we would like to point to the following suggestions.

a. Vague language

The OEC supports comments on clarifying vague phrases. Vague language undermines the purpose of rulemaking. Vague rules create an additional burden on the public and applicants to understand the agency's purpose and expectations. Entities must expend unnecessary time and money trying to comply. Vague rules can also inhibit otherwise compliant action because entities fear getting too close to an unclear restriction. These effects unduly burden applicants and extend the regulatory process.

An example of unnecessary vague language is the term "appear to create" in 4906-3-11(A)(6). This section exempts certain route modifications from going through the amendment process. The NRDC and Clean Energy Industry suggested this language is too vague. The OEC agrees. The term "appear to create" swallows the intended exception because any route change can conceivably create a perceived or imagined damage. Thus, in practice, no modification is eligible for this exception.

The phrase "particularly annoying sounds" in 4906-4-08(A)(3)(a) is another example of vague language. This section requires applicants to estimate the noise impacts of a proposed project, including an estimate of any "particularly annoying sounds." The OEC agrees with the NRDC and IBEW that this term again swallows the rule. Everyone has varying hearing ranges and tolerance for sounds. Thus, without further clarification, this phrase could mean any sound audible to the human ear.

"Aesthetically fitting for a rural location" in 4906-4-09(G)(3) provides another example of vague language. The state of Ohio contains a vast number of rural communities with varied aesthetics and opinions on what constitutes a "rural aesthetic." This term has no universally accepted definition. To the extent that the rural aesthetic is associated with abundance of flora and fauna, this rule is redundant with the requirements for wildlife permeable fencing and vegetative screening.

b. Training for ad hoc board members

The OEC agrees with OPAC's suggestion to provide a comprehensive training to all ad hoc board members. The OPSB rules and governing statutes are voluminous. OPSB applications can contain thousands of pages of detailed reviews. The OPSB holds an imperative role to Ohio's economy and residents. Each serving board member must be adequately trained and prepared for this important role.

II. Conclusion

The power siting process must be fair, safe, and effective. To do this, the OPSB's rules must provide clear guidance on key terms such as the public interest. The OEC joins the many other commenters requesting additional clarity on the term "public interest" following arbitrary and disparate results in recent board decisions and staff recommendations. The OEC also urges this Board to explicitly include climate change and greenhouse gas emissions in its review of the public interest and probable environmental impact.

Respectfully submitted,
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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.

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