**BEFORE**
**THE OHIO POWER SITING BOARD**

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| 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. | ) ) ) ) ) | Case No. 21-902-GE-BRO |

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**SUPPLEMENTAL COMMENTS OF**
**THE AMERICAN CLEAN POWER ASSOCIATION, MAREC ACTION, AND THE UTILITY SCALE SOLAR ENERGY COALITION OF OHIO**

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## 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 through 4906-7 proposed by the Board's Staff ("Staff"). In accordance with the Board's entry issued July 14, 2022, Initial Comments were due August 5, 2022, and Reply Comments on September 2, 2022.

American Clean Power ("ACP"), "MAREC Action," and the Utility Scale Solar Energy Coalition of Ohio ("USSEC") (collectively "the Clean Energy Industry") submitted Initial Comments on August 5, 2022 and Reply Comments on September 2, 2022.

On January 19, 2023, the Board issued a subsequent entry recommending changes to (1) certain definitions in Ohio Adm.Code 4906-1-01, (2) the site/route information that is required of applicants, as described in Ohio Adm.Code 4906-3-05, and (3) the facility setback requirements, as required in Ohio Adm.Code 4906-4-09.

As described in our Initial Comments, the Clean Energy Industry supports reasonable administrative setbacks. While we recommend some important additional changes, we appreciate the Board's proposed revisions. The Clean Energy Industry reiterates its support for the

proposed setback from residential structures (in context of the greater package) and believes the changes regarding property line setbacks and a measure of flexibility regarding setbacks from roads strike a better balance than the prior proposal.

## II. DISCUSSION

### A. Setback Requirements - Ohio Adm.Code Section 4906-4-09 (G)(4)

As modified, Section (G)(4) requires a minimum setback from the solar modules of:

- At least 50 feet from non-participating parcel boundaries not containing a residence,
- At least 300 feet from non-participating residences existing as of the application filing date, and
- At least 150 feet from the edge of pavement of any state, county, or township road within or adjacent to the project area, unless otherwise agreed to by an authorized government representative with authority over a state, county, or township road or a waiver is granted.

As stated in our Initial Comments, the Clean Energy Industry recommends combining Sections (G)(4) and (5). Setbacks and landscaping are complementary tools used to mitigate visual impacts that can be used independently, or jointly, and in varying intensity, as needed by project-specific variables (e.g., topography, home density, existing vegetation, existing structures, facility design, etc.). Distance between the viewer and a solar panel mitigates visual effects. Visual screening between a viewer and a solar panel achieves the same purpose, likewise mitigating visual impacts. Requiring both can be economically wasteful if one or the

other can achieve the desired effect. That said, we offer the following with respect to the various setback provisions.

Property Lines: The prior proposal of a 150-foot setback from a non-participating parcel was very problematic for reasons outlined in our Initial Comments. The newly-proposed 50-foot setback from non-participating parcel boundaries that do not contain a residence is clearly an improvement. But it would still needlessly remove thousands of acres from potential energy production and farmed land without offering a corresponding benefit. It risks producing poorly-designed projects with stranded strips of acreage off limits to solar but also no longer practical to farm, while providing very limited benefit to project neighbors, if any. A more appropriate setback in this scenario is 25 feet.

In addition, we request that the phrase "not containing a residence" be removed as it would create a duplicative requirement as the rule already contemplates a setback of 300 feet from residences.

Residences: While prevailing responsible siting practices across the country indicate a 300-foot setback from homes is unnecessarily long, we do not object to this provision as part of a larger package of rules that generally provides for sound, albeit rigorous, regulation. We recommend the rule clarify that this setback be measured from the edge of the residence and that homeowners retain the ability to waive it.

Roads: The Clean Energy Industry appreciates the Board's modifications to this section, which incorporate additional flexibility when determining setbacks from roads. This proposed modification would provide an opportunity for projects to engage with local government officials and stakeholders that have familiarity and experience with these roads to achieve a mutually-

agreed solution or otherwise seek a waiver from the Board.

With respect to the waiver, we would propose that the rule specify criteria to be used when evaluating such a request, including of course the proposed visual screening plan (including vegetative screening).

As originally noted, we also suggest the rule delete reference to roads "within" a project area as there are no public roads inside the fenceline of a solar project, such that "adjacent to" is sufficient.

Waiver: Consistent with our Initial Comments, the Clean Energy Industry also believes the rules should explicitly state that setbacks in this rule shall be waived if the affected property owner(s) agree in writing.

Storage: The industry previously articulated concerns regarding potential ambiguity regarding the setback rules' applicability to technology such as energy storage facilities. As previously noted, applying this rigid regulatory scheme to predominantly urban energy storage systems would create unintended and negative results.

The absence of additional specification contained in these modified rules appears to confirm that the setbacks outlined in this rule apply to solar modules only and are inapplicable to storage. As such, any setbacks applicable to energy storage facilities would be applied through conditions adopted by the Board when approving projects. Any future conditions that apply to energy storage facilities should be consistent with the attributes of such technology. A more flexible regime of setbacks, through Board conditions, for energy storage systems would be appropriate so long as the Board recognizes the unique value that energy storage systems bring to the grid.

Consistent with what we submitted in Our Initial Comments, below is our proposed re-write of the rule.

**4906-4-09 Regulations associated with renewable energy generation facilities.**

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(G) The following are applicable to solar facility applications.

(4) Setbacks.

(a) The board recognizes that the visual impact of each project varies and depends on specific variables such as topography, home density, existing vegetation, existing structures, facility design, and other factors make each project's potential visual impact unique. In lieu of following the suggested visual mitigation methods described below, applicants can demonstrate they have designed a project that provides appropriate visual mitigation measures in an effort to properly reduce visual impact through combined setback and landscaping plans.

(b)The facility design is to incorporate a minimum setback from the project's solar modules of (i) at least ~~50~~ 25 feet from non-participating parcel boundaries unless the owner of the non-participating parcel agrees in writing to a shorter distance ~~not containing a residence~~, (ii) at least 300 feet from non-participating residences existing as of the application filing date unless the owner of the non-participating parcel agrees in writing to a shorter distance, and (iii) at least 150 feet from the edge of pavement of any state, county, or township road ~~within~~ ~~or~~ adjacent to the project area, unless otherwise agreed to by an authorized government representative with authority over the ~~a state, county, or township~~ road or a waiver is granted by the board. With respect to the setback from a road, the board may in its discretion reduce the setback to not less than 50 feet if, after consultation with the local ad hoc members of the board and a review of the proposed aesthetic and visual impact mitigation measures (including vegetative screening), it finds that the reduction is appropriate.

(c)~~(5) Landscape Plans.~~ The application is to include a landscape plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic impacts of

the facility on adjacent residential non-participating properties, ~~the traveling public~~, and nearby communities, ~~and recreationalists~~ through measures such as shrub plantings or enhanced pollinator plantings and be in harmony with the existing vegetation and viewshed in the area. Such vegetative screening is to be maintained for the life of the facility. The plan shall include robust landscaping for heavily travelled roads and lighter landscaping for lightly travelled roads. Screening is not required around the entire perimeter of a solar project and landscape plans are not expected to screen projects entirely from all public viewsheds. For energy storage facilities, landscape plans shall include appropriate screening measures for the environment in which the project is proposed. Architectural elements such as building facades, fences, and walls may be incorporated to address aesthetic impacts.

## B. Ohio Adm.Code Chapter 4906-1 – General Provisions

### 1. Rule 4906-1-01 – Definitions - Brownfields

The Clean Energy Industry appreciates the inclusion of the definition of "brownfield" in the revised rules. As noted in our Initial Comments, this update will encourage and streamline the location of new generation facilities on these sites to further the state's strong interest in brownfield redevelopment. We recommend the rules explicitly allow for waivers for facilities located on brownfields. As noted in our Initial Comments, the Clean Energy Industry also recommends that these applications be reviewed and approved on an expedited basis given the strong public interest in redevelopment. Absent some sort of indication of how the rules apply to brownfields, it is unclear why the rule would contain the definition.

We restate our position with regard to how this rule could be further modified below:

(H) "Brownfield" has the same meaning listed in division (D) of section 122.65 of the Revised Code.

For any application for a generation project proposed to be sited on a brownfield, the Board shall make reasonable efforts to expedite the application and give due consideration to any request to waive individual rules that may unduly hinder or delay brownfield development. Nothing in this rule shall be construed to waive any state or federal Environmental Protection Agency rule regarding brownfields.

## III. CONCLUSION

MAREC, ACP, and USSEC appreciate the opportunity to provide these Supplemental Comments and remain available to collaborate with all interested parties.

Respectfully Submitted,

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***Attorneys for the American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio***

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Comments were served by electronic mail upon the following on this 30th day of January, 2023.

/s/ Terrence O'Donnell
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Summary: Comments - Supplemental Comments of The American Clean Power Association, MAREC Action, and The Utility Scale Solar Energy Coalition of Ohio electronically filed by MR. TERRENCE O'DONNELL on behalf of American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio