BEFORE THE POWER SITING BOARD

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**

RELPY COMMENTS OF

UNION NEIGHBORS UNITED

Respectfully Submitted,

Julia F. Johnson
P. O. Box 230
Urbana, Ohio 43078
Telephone: (937) 653-8355
julie@ohiolandmatters.com

Reply Comments of Union Neighbors Untied
Case No: 21-902-GE-BRO
February 6, 2023

Introduction:

Union Neighbors United (UNU) appreciates the opportunity to provide Reply Comments in response to Supplemental Comments made by various industry representatives in connection with Administrative Rule 4906-4-09.

UNU has been an active participant in both the legislative and the administrative rulemaking process for utility-scale wind energy since the beginning. UNU was a stakeholder in the Ohio Department of Development's Ohio Wind Working Group (OWWG) established in 2007 to develop best practices for siting and managing utility scale wind. In this capacity, UNU represented the interests of the public throughout the state. Sixteen years later, UNU continues to study issues related to the siting and management of utility-scale wind and, more recently, utility-scale solar. We have developed a broad network of colleagues throughout Ohio and continue our efforts to speak on behalf of communities facing the imposition of industrial wind and solar in rural areas.

Discussion:

As originally proposed, 4906-4-09 (G) (4) would require a setback of 150 feet from the property line of a parcel that did not contain a residence and 300 feet from a home if the parcel contains a residence. A number of industry-based comments have requested the 150-foot setback be reduced to 25 feet. The Ohio Power Siting Board's most recent proposal reduces the setback to 50 feet. This OPSB proposal was rejected by UNU in its Comments filed January 30, 2023. Not surprisingly, the industry has redoubled its call for a reduction to 25 feet in their January 30th comments. Neither 25 nor 50 feet are acceptable.

The argument put forth by industry representatives is based almost entirely on its belief that the aesthetics and views of solar arrays are the principal concerns of the public and can be

mitigated by landscaping.[1] In fact, the "Clean Energy Industry" proposes to combine Section (G) (4) and (5) based on their position that mitigating visual impact through landscaping achieves the same objectives as longer setbacks.

UNU asserts that, while visual impacts are a concern, they are only one of many concerns and that landscaping has nothing to do with the public's main concern which is the imposition of an industrial facility into a rural community that fundamentally changes the character of that community. These changes include impacts to wildlife, noise and traffic on rural roads.

The notion that an incompatible land use could be placed next door to a rural property and that a homeowner's yard could be employed by a solar facility as its setback is known as "trespass zoning". Moreover, measuring a 300-foot setback from the side of a home enables a developer to place solar panels, invertors or batteries almost on the property line - or within 25 to 50 feet. Common sense would say that doing so would devalue the neighboring non-participating property.

The Clean Power Industry claims that the costs of development will be higher if setbacks are 150 feet. But what the industry is asking the OPSB to do is to make the neighboring landowner provide the subsidy through the devaluation of his property. This is wrong.

Wood MacKenzie solar analyst Matthew Sahd was quoted recently predicting that Ohio will be a region "that will see very explosive solar growth" due in part to "cheap land and land availability"[2] The adoption of inadequate and unreasonable setbacks advocated by the Clean Power Industry seem designed to accelerate this "explosive growth" at the expense of rural

[1] "First, 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 such as topography, home density, existing vegetation, existing structures, facility design, and other factors. Distance between the viewer and a solar panel mitigates visual effects. Likewise, visual screening between a viewer and a solar panel mitigates visual effects. Requiring both can be economically wasteful if one or the other can achieve the desired effect. To that end, rather than imposing blunt, "one-size-fits-none" fixed setbacks, the rule should incorporate discretion to reduce the setbacks based on specific site conditions and the efficacy of the landscape plan. Pages 52-53 Initial Comments Of The American Clean Power Association, Marec Action, And The Utility Scale Solar Energy Coalition Of Ohio

[2] https://www.wvxu.org/local-news/2023-01-26/ohio-counties-banning-solar-farms?utm

communities. Claims of economic hardship shouldered by the industry unless setbacks are reduced are not credible and they are not fair. As Wood MacKenzie notes, Ohio already has "cheap land" and "land availability."

UNU acknowledges that costs are increasing for solar development. In our January 30th comments we alluded to increases in insurance costs reported by kWh Analytics, which has a database of over 300,000 operational renewable energy assets and $4 billion in insured assets. The increases are attributed, in part, to underperformance that can jeopardize investor returns.

> "Last month, kWh Analytics shared findings from its operational asset database in a solar generation index report. The study found broad underperformance in the field when compared to forward-looking performance estimates.
>
> On average, projects constructed after 2015 have generated 7% to 13% less electricity than P50 production estimates. P50 means there is a 50% chance in any given year that production will be at least a specific amount. If an array has a P50 production level of 500 kWh, it means that on any given year there is a 50% chance that production will be at least 500 kWh.
>
> The report concluded that as the gap between actual and expected generation grows, underperformance risk jeopardizes investor returns and the industry's ability to achieve sustainable growth.
>
> The underperformance trend is a nationwide phenomenon, said kWh Analytics. Under 10 years of operational data, average lifetime performance ranged from 5% to 10% below initial P50 estimates across seven major US regions. The report also evaluated system performance based on project capacities and mount types and found no underperformance trends isolated to any specific group of projects."[3]

On a related note, last fall the Federal Emergency Management Administration (FEMA) proposed reclassifying solar arrays from a Class 1 risk to Class 4.

> "In its 2024 International Building Code, FEMA has proposed to raise the "structural risk" ranking of solar to the maximum level. This would place ground mounted solar arrays and energy storage on par with hospitals and fire stations in terms of structural building requirements for natural disaster resilience.
>
> While increased structural resilience requirements might seem like a positive, solar industry proponents say the proposal is an "overreach" that could slow solar deployment.
>
> "There is no extended record of irreparable damage to solar arrays from higher seismic, wind or snow loads, and there is no justification for these overly burdensome codes," said Abigail Ross Hopper, president of the Solar Energy Industries Association (SEIA)."[4]

[33] https://pv-magazine-usa.com/2023/01/24/solar-property-insurance-product-launched-by-kwh-analytics/?utm

[4] https://pv-magazine-usa.com/2022/10/07/proposed-fema-building-code-may-hamper-solar-deployment/

Intense pushback from the solar industry resulted in FEMA limiting its risk category increase from Class 1 to a Class 2 risk category rather than Class 4. The reclassification likely increases insurance costs and perhaps construction costs as well. These cost increases are on top of costs for unreliable production, grid congestion, supply chain disruption, and trade issues.

Last, a recent natural gas newsletter reported that new utility-scale solar installations fell about 40% in 2022 over 2021 despite the incentives provided in the Inflation Reduction Act.[5] UNU acknowledges the challenges which the industry is facing but does not believe trampling the safety and ability of rural communities to enjoy the amenities of rural life in the name of developer expense reduction is justified or fair.

Unreasonable setbacks of 25 or 50 feet make the neighboring property collateral damage in pursuit of developer profits.

Conclusion:

UNU requests that 4906-4-09 (G) (4) and (5) remain as first proposed by the OPSB. We believe setbacks and landscaping are and should be kept distinct. With respect to setbacks, we request that all setbacks be measured from property lines and never from the side of a home.

Property owners who wish to waive setbacks ought to have the power to negotiate a fair easement with the developer. Inadequate setbacks deny that opportunity to the neighboring landowner.

Setbacks from homes should be 300 feet as measured from the property line of a parcel containing a residence and 150 feet for parcels not containing a residence.

[5] https://naturalgasnow.org/wind-and-solar-projects-face-uphill-battles-despite-subsidy/

Summary: Comments Reply Comments of Union Neighbors United electronically filed by Julia Johnson on behalf of Union Neighbors United