

**BEFORE
THE OHIO POWER SITING BOARD**

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

**ADDITIONAL JOINT REPLY COMMENTS OF
NATURAL RESOURCES DEFENSE COUNCIL, OHIO PARTNERS FOR
AFFORDABLE ENERGY, AND 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 Admin. Code Chapters 4906-1 through 4906-7 proposed by the Board’s Staff (“Staff”). Initial comments were originally due on July 22, 2022, and reply comments were originally due on August 12, 2022. On July 14, 2022, the Board extended the deadline for initial comments to August 5, 2022, and the deadline for reply comments to September 2, 2022. On January 19, 2023, the Board issued additional revisions and requested comments and reply comments by January 30, 2023, and February 6, 2023, respectively.

Natural Resources Defense Council (“NRDC”), Ohio Partners for Affordable Energy (“OPAE”), and the International Brotherhood of Electrical Workers, District 4 (“IBEW”) all submitted individual initial comments on August 5, 2022, and individual reply comments on September 2, 2022. NRDC filed additional comments on January 30, 2023. In the interest of administrative efficiency, NRDC, OPAE, and IBEW hereby submit additional joint reply

comments pursuant to the January 19, 2023 Entry, because of the shared subject matter of the joint reply Comments.

II. SPECIFIC COMMENTS

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

NRDC, OPAE, and IBEW support the comments of the American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio related to the need for flexibility in the proposed setback requirements. All of the above parties noted that the newly proposed revisions, particularly reducing the 150-foot setback from non-participating boundaries to 50 feet is a vast improvement. NRDC, OPAE, and IBEW appreciate the Board providing the opportunity for stakeholder comment and then adapting to those comments. The Board's reduction to 50 feet represents a fair compromise that will enable development to move forward without an unreasonable restriction.

NRDC, OPAE, and IBEW would also encourage the Board to provide further flexibility to effected landowners through a further revision, which would empower landowners to waive or agree to smaller setbacks if they choose. This is the same authority the proposed rule provides to local governments in relation to setbacks from roads under the local governments' purview. Such flexibility would be in line with many of the comments the Board has received.

OEC sought further reduction to 25 feet to conserve land for both energy and agricultural production. By authorizing landowners to agree to shorter setbacks, this goal could be achieved. Numerous public comments, both in support of and opposition to solar development, spoke to the necessity of protecting landowners' rights. By empowering landowners to determine what is right for them, subject to the Board's minimum standard if no agreement can be met, the Board

is simultaneously protecting landowners but also not substituting the Board's judgment for that of the landowner.

NRDC, OPAE, and IBEW note that such a revision would make the rule for non-participating landowners consistent with the authority offered to local governments to choose the right setback for them subject to a Board established minimum in case of disagreement. The Board has been focused on the needs and wants of the local citizenry in numerous recent Power Siting Board decisions over the last two years. The Board should provide similar deference within the setback rules to allow property owners to choose whether a 50-foot setback, or smaller, is right for them. The Board's Rules should encourage and empower effected landowners to craft a resolution right for them and their property and not unilaterally constrain them to a specific setback unless the landowner and developer cannot reach agreement.

III. CONCLUSION

NRDC, OPAE, and IBEW appreciate the opportunity to respond to the Board Staff's proposed rules and respectfully provides the foregoing additional joint reply comments for the Board's consideration.

/s/Robert Dove

Robert Dove (0092019)
Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215-4295
Office: (614) 462-5443
Fax: (614) 464-2634
rdove@keglerbrown.com

(Willing to accept service by email)
Attorney for NRDC, OPAE, and IBEW

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 6th day of February, 2023.

/s/ Robert Dove
Robert Dove (0092019)

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

2/6/2023 5:20:28 PM

in

Case No(s). 21-0902-GE-BRO

Summary: Text Additional Reply Comments electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council and Ohio Partners for Affordable Energy and International Brotherhood of Electrical Workers, District 4