

**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.)	

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

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.

Initial supplemental comments were filed by American Transmission Systems, Inc.; Buckeye Power, Inc.; Columbia Gas of Ohio, Inc.; the Ohio Chamber of Commerce; Ohio Power Company and AEP Ohio Transmission Company, Inc.; the Ohio Environmental Council; Ohio

Manufacturers' Association Energy Group; National Resources Defense Council; and Union Neighbors United. The Clean Energy Industry submitted initial Supplemental Comments on January 30, 2023.

The Clean Energy Industry would like to emphasize that we are not aware of any state regulations where the PJM Interconnection, LLC ("PJM") operates that strictly imposes solar setbacks of the distance contained in the proposed rules. Nonetheless, 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.

The Clean Energy Industry is not aware of regulations having setbacks of this

distance in the broader PJM service territory.¹ We do not believe these setbacks are necessary to protect homeowners or consistent with prevailing permitting and zoning practices across the county.

For example, the Indiana legislature enacted a siting standard bill in 2021, with setbacks of 50 feet from non-participating property lines and 250 feet from nonparticipating residences.² Indiana's statutory scheme requires landscape buffers for projects within 250 feet.³ Illinois also recently passed a siting bill requiring that no county have setback more restrictive than 50 feet from nonparticipating property lines.⁴

Many jurisdictions within PJM Service territory establish setbacks through local permitting procedures. Even when local governments regulate siting, the setbacks are typically not as rigorous as those proposed here and account for the effects of screening. For example, Paradise and Huron townships in Michigan impose less onerous requirements than those currently contemplated here; those jurisdictions require projects to be 100 feet from public roads and between 200 and 250 feet from residences.⁵

Kentucky's state law includes an 1,000 foot setback from adjoining properties but allows for the Kentucky Siting Board authority to grant deviations from those requirements over setbacks and allows for county primacy over the setbacks.⁶ The Kentucky Siting Board has

¹ PJM's Service Territory includes Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

² See [IN ST 8-1-42-10](#).

³ *Id.*

⁴ Illinois HB 4412, Public Act 102-1123, accessible here: <https://www.ilga.gov/legislation/publicacts/102/PDF/102-1123.pdf>.

⁵ See e.g., Zoning Ordinance, Paradise Township, MI, accessible here: <https://randolphsolar.solunesco.com/wp-content/uploads/2021/08/VA-Counties-Ordinance-Setback-Language-V5.pdf>; See also: Zoning Ordinance, Huron Township, MI, accessible here: [Board of Trustees - 08 Feb 2023 - Agenda - Pdf \(civicweb.net\)](#)

⁶ KRS 278.704, accessible here: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=42953>

consistently granted deviations from state law for solar project setbacks in recognition of the unworkable distance established in statute. Even though there is a mechanism to provide deviations from setbacks, Kentucky's statutory posture has undeniably created uncertainty for solar development – Kentucky is currently ranked 50th in the nation for utility scale solar capacity.

As noted previously, the Ohio Department of Health— represented on the Board—concluded that existing sound and setback standards already ensure that these facilities do not negative health effect to people nearby.⁷ Applying rigorous setback requirements, furthermore, removes thousands of acres from potential solar production and farmed land. It would lead to poorly-designed projects with stranded strips of acreage off limits to solar but no longer practical to farm, while providing minimal or no corresponding benefit to project neighbors. Codifying this change would increase project costs due to increased acreage per project, as well as an increase in per-project solar acreage to make up for the reduced efficiency of large setbacks. The greater the setbacks, the more agricultural land is taken out of production.

III. CONCLUSION

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

⁷ Health Assessment Section, Ohio Department of Health. 2022. "Health Assessment Section, Ohio Department of Health. 2022. "Ohio Department of Health Solar Farm and Photovoltaics Summary and Assessments." <https://odh.ohio.gov/know-our-programs/health-assessment-section/media/summary-solarfarms>"

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments were served by electronic mail upon the following on this 6th day of February, 2023.

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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