

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Oak Run)
Solar Project, LLC for a Certificate of)
Environmental Compatibility and Public Need)
to Construct a Solar-Powered Electric)
Generation Facility.)

Case No. 22-0549-EL-BGN

INITIAL POST-HEARING BRIEF OF THE OHIO ENVIRONMENTAL COUNCIL

Karin Nordstrom (0097613)
Chris Tavenor (0096642)
Ohio Environmental Council
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212
(614) 487-7506
knordstrom@theoec.org
ctavenor@theoec.org

*Counsel for the Ohio Environmental
Council*

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I. Introduction

Ohio has long been a hub for innovation, improving the lives of its citizens and others around the world. As Ohio faces the economic and environmental challenges posed by climate change, the Ohio Power Siting Board (hereinafter the “Board”) must continue to meet this legacy of innovation. Oak Run Solar LLC (hereinafter “Oak Run”) will fuel innovation in renewable energy production, battery storage, and agricultural production in Ohio.

Oak Run represents the potential for continued investment in renewable energy in Ohio, a necessary step given the threats posed by climate change. As a state that still generates nearly 60.5% of its electricity from coal-fired and natural gas power plants and only 5% of its electricity from renewable resources, Oak Run’s proposed 800 MWs will be the most significant contribution to-date against climate change in Ohio’s utility-scale energy sector.¹ Solar energy provides a zero emissions source of electricity; it also helps reduce the amount of water consumption attributable to the electric sector (i.e. water used in coal and nuclear resources) since no water is used to create electricity from solar panels.

In addition to bringing innovation to Ohio, Oak Run meets or exceeds all of the statutory siting requirements. Oak Run has provided the necessary information to satisfy Ohio’s legal requirements for the siting of renewable energy in Ohio. The new facility will provide roughly 800 MW of renewable energy, 300 MW of battery energy storage, and a planned agrivoltaic site, a significant step toward diversifying our electric portfolio and driving agricultural innovation. For the reasons outlined below, the Ohio Environmental Council (OEC) asks this Board to approve Oak Run’s proposed application for a certificate to build a solar farm in Central Ohio.

¹ See Public Utilities Commission of Ohio, *How does Ohio use electricity*, <https://puco.ohio.gov/utilities/electricity/resources/how-does-ohio-use-electricity> (last visited July 7, 2023).

Oak Run is an important step toward developing a new, safe method in which to increase clean energy in the Midwest. The Joint Stipulation's terms will ensure the project's development and operations will have the minimum adverse environmental impact possible. Thus, the OEC urges this Board to approve Oak Run's application.

II. Procedural History and Statement of Facts

Oak Run motioned this Board to file a joint generation and transmission application on May 26, 2022. Oak Run then filed a pre-application notification letter on June 7, 2022. The Board granted Oak Run's motion on June 24, 2022. Oak Run filed a second pre-application notification letter on July 18, 2022. Oak Run filed proof of publication for the second public information meeting on August 1, 2022. Oak Run filed an Application for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility with exhibits A-Z on September 2, 2022. *Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility & Public Need for the Republic Wind Farm, Ohio Power Siting Board, Case No. 22-0549-EL-BGN, (September 2, 2022)* (hereinafter the "Application"). On January 20, 2023, the Board set the procedural schedule for this case.

This Application proposes siting photovoltaic panels with the nameplate capacity of 800 MWs and 300 MWs of Battery Energy Storage Systems (BESS). *Id.* Oak Run consists of 6,050 acres in Madison County and plans to include an agrivoltaic project between the rows of photovoltaic panels on as much as 2,000 to 4,000 acres. *Id.*; *Supplemental Direct Testimony of Sarah Moser*, Supplement Attachment SM-1, 3 (May 11, 2023).

The Application provides numerous studies including the project's potential environmental, socioeconomic, cultural impacts. Throughout the application process, Oak Run provided supplemental materials including a Phase I Archaeology Survey and an addendum to

the Phase I Archaeology Survey and Phase II Archaeology Work Plan. Oak Run responded to eight data requests from the Ohio Power Siting Board Staff (hereinafter “Staff”). In addition to the Application, Oak Run and other intervening parties provided testimony of experts and witnesses discussing the components of the Application in detail.

On March 28, 2023, the Staff recommended the Board find Oak Run’s Application complies with all relevant conditions in R.C. 4906.10(A) and grant the Certificate. *See* Staff Exhibit 1, *Staff Report of Investigation*, Case No. 22-0549-EL-BGN; 22-0550-EL-BTX (March 28, 2023) (hereinafter “Staff Report”). The Staff compiles its Staff Report following an extensive review of the proposed application, ensuring compliance with statutory requirements. It also includes coordination with the state agencies that are members of the Board—as well as the U.S. Fish and Wildlife Service. *Id.* at 2-3.

Nine parties intervened in this case, including three townships, the Madison County Commissioners, conservation experts, a local resident, and a trade union. On July 7, 2022, the Madison County Commissioners filed a resolution with the Board appointing Commissioner Mark Forrest as an ad hoc Board member. The Commissioners later filed, on April 12, 2023, a resignation of County Commissioner Mark Forrest as an ad hoc board member and appointed Commissioner Chris Wallace instead. On September 29, 2022, the Board of Trustees of Monroe Township filed a resolution appointing Jim Moran as an ad hoc board member. On October 7, 2022, Deercreek Township filed a resolution also appointing Jim Moran as an ad hoc board member. Somerford Township, Deercreek Township, Madison County Commissioners, Madison County Soil and Water Conservation District, Ohio Farm Bureau Federation (OFBF), International Brotherhood of Electrical Workers Local Union 683 (IBEW), the Ohio Environmental Council (OEC), local resident Dr. Boeckl, and Ohio Partners for Affordable

Energy (OPAE) all filed motions to intervene in this case. The Board granted all of these motions to intervene on April 7, 2023.

Oak Run, the Board, and some intervening parties participated in a public hearing at Jonathan Alder High School, 9200 US Route 42, Plain City, Ohio on April 11, 2023. On May 11, 2023, Oak Run entered a Joint Stipulation and Recommendation with five parties: OFBF, IBEW, the OEC, local resident Dr. Boeckl, and OPAE. These parties agreed to 36 conditions to ensure best practices for environmental and economic stewardship of the project throughout the facility's useful life.

The Board held a public evidentiary hearing in this case from May 15, 2023 to May 17, 2023, with 30 witnesses. At the adjudicatory hearing, the administrative judges heard cross examination of witnesses from Oak Run, Staff, and intervening parties—a wide array of individuals and organizations from across Ohio that includes the OEC Council, local Townships, County Commissioners, and IBEW officials.

Following the close of the hearing, the Administrative Law Judges set dates for initial briefs arguing for and against the issuance of a Certificate based on all information included in the record. The Board ordered the parties to file initial briefs on July 10, 2023 and reply briefs on July 31, 2023.

III. Standard of Review

This Board must review each application for a certificate of environmental compatibility and public need under the eight criteria in R.C. 4906.10(A). R.C. 4906-2-24 authorizes parties to Board proceedings to enter into stipulation agreements regarding the terms of the certificate. Where the parties agree to a stipulation of terms, that agreement must meet three criteria to gain Board approval.

Statutory criteria: R.C. 4906.10(A)

Pursuant to R.C. 4906.10(A), “The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline; (2) The nature of the probable environmental impact; (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations; (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability; (5) That the facility will comply with Chapters 3704, 3734, and 6111 of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code; (6) That the facility will serve the public interest, convenience, and necessity; (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site; (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

Stipulation criteria: reasonableness test

The Board reviews stipulations under a reasonableness standard. See, e.g., *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). In considering the reasonableness of a stipulation, the Board uses the following criteria:

(1) whether the settlement is a product of serious bargaining among capable, knowledgeable parties; (2) whether the settlement, as a package, benefits ratepayers and the public interest; and (3) whether the settlement package violates any important regulatory principle or practice. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight.

IV. Argument

The OEC urges this Board to approve Oak Run because it meets the statutory criteria for a certificate and the three reasonableness factors for a stipulation. The Staff Report in this case found Oak Run's Application satisfied all statutory criteria. The stipulation meets the reasonableness test because it is the product of serious bargaining, is a benefit to ratepayers and the public interest, and does not violate any important regulatory practice or principle. Each of these criteria do not exist in a vacuum, and evidence may be relevant to multiple prongs. *Ohio Edison Co. v. Power Siting Com.*, 56 Ohio St. 2d 212, 216-217, 383 N.E.2d 588 (1978). This complex web of factors requires this Board to balance not just each individual criteria but look at the project as a whole. The risks of climate change and the opportunity to mitigate its impact in Ohio resonates throughout the statutory criteria, R.C. 4906.10(A), and the reasonableness test for stipulations.

Oak Run meets all 8 statutory criteria under R.C. 4906.10(A):

1. The basis of need for an electric transmission line or gas pipeline: **Satisfied.**

While this criteria is not applicable to Oak Run's request for solar and battery storage facilities, Oak Run will require a transmission line to connect into PJM Interconnection LLC (PJM). *Staff Report* at 11. Here, "the facility can be safely connected to the interconnection, without creating negative network impacts." *Id.*

2. The nature of the probable environmental impact: **Satisfied.** Oak Run provided OPSB Staff and this Board with 26 Exhibits, responses to 8 data request requests, and testimony from 14 witnesses. This information is sufficient to establish the nature of the probable environmental impact. *Staff*

Report at 34. In addition to Oak Run’s testimony and exhibits, the OEC provided testimony from Dr. Jeffrey Reutter on how the proposed project will mitigate climate change. OEC Exhibit 1, *Revised Testimony of Dr. Jeffrey Reutter*, 12-13 (May 11, 2023).

3. The minimum adverse environmental impact: **Satisfied**. Oak Run has taken steps to minimize all impacts to wildlife and wetlands, as well noise and visual impacts. *Staff Report* at 35-36. The project also represents the minimum adverse environmental impact because it will limit damage to nearby waterways by reducing agricultural runoff and will improve Ohio’s mix of renewable energy sources. OEC Exhibit 1 at 14.
4. Consistent with regional plans for expansion of the electric power grid and will serve the interests of the electric system: **Satisfied**. PJM performed a feasibility study for the project which analyzed the potential impacts on the network, deliverability, and existing hardware. *Staff Report* at 37-40. This study found “the facility is consistent with regional plans for expansion of the electrical power grid.” *Id.* at 40.
5. That the facility will comply with Chapters 3704, 3734, and 6111 of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code: **Satisfied**. Oak Run will not include any stationary sources of air emissions, will not include structures over height thresholds for the Federal Aviation Administration’s applicable rules, will obtain all relevant environmental

permits, and will follow solid waste disposal requirements under R.C. 3734. *Staff Report* at 41-43.

6. The public interest, convenience, and necessity: **Satisfied.** Oak Run fulfills common economic public interest needs by increasing consumer access to local energy; increasing Ohio's energy independence; and diversifying the energy marketplace with new renewable energy sources to Ohioans. *Staff Report* at 47. In addition, the project takes significant steps to mitigate climate change, improving safety and providing economic benefits to Ohio.
7. Impact to agricultural land: **Satisfied.** Oak Run has committed to robust soil testing to ensure it maintains viability of the agricultural land on the project site. Joint Exhibit 1, *Joint Stipulation and Recommendation* (May 11, 2023). Oak Run also plans to maintain some of the project site land for agriculture. *Staff Report* at 48-49. For more discussion of the public interest, see section A. Oak Run also helps support the agricultural industry statewide by mitigating a major factor affecting the volatility of growing seasons: climate change. OEC Exhibit 1 at 10-11.
8. Incorporates maximum feasible water conservation practices: **Satisfied.** Oak Run's operations will rely primarily on precipitation and plans to use only minimal water from existing on-site wells or an offsite source. *Staff Report* at 50.

Oak Run meets the three elements of the reasonableness test for stipulation agreements:

1. A product of serious bargaining among capable, knowledgeable parties:

Satisfied. Oak Run invited all parties to multiple stipulation discussions.

Supplemental Testimony of Sean Flannery 8 (May 11, 2023).

2. Benefits ratepayers and the public interest: **Satisfied.** For more discussion of the public interest, see section A.

3. Does not violate any important regulatory principle or practice: **Satisfied.** As discussed in the Staff Report, Oak Run has complied with all relevant statutory criteria.

Climate change considerations resonate throughout these statutory and reasonableness criteria. In particular, Oak Run's ability to mitigate climate change weighs heavily in the project's public interest calculation. Climate change's increase to severe weather and disruption to conventional weather patterns creates several intersections with the safety and economic considerations critical to any public interest analysis.

While the Staff Report and Application highlight Oak Run's economic benefits in the form of local jobs, job training in emerging industries of solar energy and agrivoltaics, and diversified local energy, it also provides significant economic and safety benefits by mitigating climate change. Oak Run's opportunity for innovation to meet the challenges Ohio faces from climate change satisfies the public interest and outweighs any potential risks or local opposition in this case.

A. Oak Run benefits the public interest by mitigating climate change.

Oak Run's ability to mitigate climate change delivers critical public interest benefits. The public interest prong requires a broad balancing of factors. *Republic Wind*, OPSB Case No. 17-

2295-EL-BGN (June 24, 2021). In reviewing this balancing test, the Ohio Supreme Court generally weighs the likelihood of potential risks, and opportunities to mitigate risk, against the potential benefits. *See e.g., Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 166 Ohio St. 3d 438, 187 N.E.3d 472 (2021). In Board cases that make it to the Ohio Supreme Court, this scale generally involves weighing safety factors against economic benefits. *See e.g., In re Champaign Wind, L.L.C.*, 146 Ohio St. 3d 489, 58 N.E.3d 1142 (2016). Here, Oak Run breaks with the conventional siting trade-offs of safety against economic benefits by bringing both economic and safety benefits through its ability to mitigate climate change.

The Ohio Supreme Court has generally approached the public interest by balancing the likelihood of risks against the potential benefits, with significant weight to maintaining energy access. *In re Champaign Wind, L.L.C.*, 146 Ohio St. 3d 489, 58 N.E.3d 1142 (2016); *Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 166 Ohio St. 3d 438, 187 N.E.3d 472 (2021). In *Champaign Wind*, this Board found the “environmental and consumer” benefits of a utility-scale wind power generation facility outweighed safety concerns of falling turbine blades (i.e. blade throw). *Champaign Wind* at 503. The Ohio Supreme Court agreed. *Id.* at 502. The court reasoned that while a blade had fallen from a wind turbine in Ohio before, the likelihood of this occurrence remained incredibly rare. *Id.* at 498. The court held that such a remote risk could not outweigh the significant “bulk power transmission system” benefits. *Id.* at 498

However, this balancing is not just counting the number of benefits against the risks; the Ohio Supreme Court heavily favors economic benefits and energy access, even in the face of significant local opposition. *Waltz v. Power Siting Bd. (In re Duke Energy Ohio, Inc.)*, 166 Ohio St. 3d 438, 187 N.E.3d 472 (2021). In *Waltz*, the local opposition demonstrated several examples of natural gas pipeline safety incidents in the applicant’s other projects, demonstrating a

significant health and safety risk. *Id.* at 453. However, the court upheld the natural gas pipeline's certificate in spite of the risks of fire, explosion, and methane leakage because the company had committed to stringent safety measures that could mitigate this risk. *Id.* at 453-454. As a result, the court upheld the Board's finding the project was in the public interest because the economic benefit of reliable natural gas access for 50,000 customers outweighed safety concerns, given the opportunity to mitigate risks. *Id.*

Economic impacts and energy access are a prominent factor throughout the court's discussion of public interest in other substantive areas. *See e.g., Ohio Consumers' Counsel v. PUC*, 117 Ohio St. 3d 289, 300, 883 N.E.2d 1025, 1035 (2008) (competitive pricing); *Akron v. Public Utilities Com.*, 149 Ohio St. 347, 78 N.E.2d 890 (1948) (ensuring energy access). In the 2008 OCC challenge to the PUCO's waiver of some telephone exchange regulations, the court emphasized the public benefit of allowing competition in the market to uphold the Commission's decision. *Id.*

Given Ohio Supreme Court precedent emphasizing the weight of economic impacts, any public interest discussion must consider the economic impacts of climate change. Like *Champaign Wind*, Oak Run delivers significant environmental and economic benefits. In addition to the environmental benefits of increasing the growth of native species and pollinator friendly habitats, Oak Run provides 800 MWs of renewable energy to the Ohio market. This renewable energy helps mitigate the impacts of climate change, while delivering a myriad of economic benefits through employment and tax revenues.

Climate change is a "a rising threat to the living creatures in Ohio and on this planet." OEC Exhibit 1 at 12. Climate change is caused by greenhouse gases in the atmosphere. *Id.* at 9-10 ("greenhouse gases warm up and hold heat in our atmosphere"). Conventional energy sources

require the burning of fossil fuels, like coal and natural gas, which releases greenhouse gases into the atmosphere and accelerates climate change. *Id.* at 9-12. Climate change is altering growing seasons, complicating pest management, and increasing precipitation. *Id.* Each of these factors can disrupt and even devastate agricultural yields. Climate change is also increasing the frequency of severe weather. *Id.* at 10-11. Severe storms damage infrastructure and displace workers. Thus, climate change has the ability to disrupt every sector of Ohio's economy.

This increase in precipitation and severe weather also exacerbates storm runoff, creating Harmful Algal Blooms, excessive growths of blue-green algae also known as cyanobacteria, in Ohio's freshwater. *Id.* at 11. This toxic bacteria affects Ohio's fishing and recreation economies as well as the safety of Ohio drinking water. *Id.* at 13-14. While burning fossil fuels releases greenhouse gases into the atmosphere, coal and nuclear energy also discharge warm water back into several of Ohio's water sources, killing fish and creating an ideal habitat for this cyanobacteria. *Id.*, Attachment B at 9.

With the consequences of climate change threatening Ohio's economy, including its critical agricultural and watershed resources, Oak Run satisfies the public interest by mitigating risks to climate change. Unlike coal or natural gas, the production of energy through solar panels does not require any burning of fossil fuels. Removing this process eliminates greenhouse gas emissions from energy production. Unlike nuclear and coal-fired energy, solar energy generation also does not require large amounts of cooling water, preventing disruptions to Ohio's freshwater resources. *Id.* at 12.

Unlike *Waltz*, where the court had to balance significant safety concerns of explosion and methane leakage against economic benefits, Oak Run provides both safety and economic benefits. Oak Run's contributions to mitigating climate change also come with several safety

benefits. Since Oak Run does not require any heat or thermal generation, through fossil fuels or other materials, it does not emit particulate matter into the atmosphere. This preserves air quality for local residents and the State of Ohio. The displacement of greenhouse gases that contribute to the increase of severe weather not only prevents disruptions to agriculture and industry but also preserves the homes and safety of Ohio residents. Where this Board has often felt torn between Ohioans' safety and economic development, solar energy lowers the stakes for the economic benefits by avoiding the typical safety concerns of conventional energy generation.

Like *Champaign Wind* and *Waltz*, the potential risks raised by the local opposition are rare or easily mitigated. Like *Waltz*, Oak Run has committed to follow industry standards on sourcing the photovoltaic panels. Joint Exhibit 1, Condition 5, 3 (May 11, 2023). Oak Run plans to maintain 2,000 to 4,000 acres in agricultural production. For those areas that do not remain in agricultural production, Oak Run has also committed to planting beneficial native plants and pollinator friendly species, as well as controlling noxious weeds. *Id.*, Condition 39 at 14. Finally, Oak Run has gone above and beyond standard industry practices and committed to robust soil testing to assure the project site soil remains just as agriculturally viable at decommissioning. *Id.*, Condition 23 at 8. These commitments further mitigate the persuasive value of the local opposition.

The 800 MWs proposed for Oak Run is Ohio's biggest opportunity to-date to displace major detriments to Ohio's economy. The Ohio Supreme Court has consistently balanced the public interest by comparing the likelihood of potential risks and opportunities for mitigation with the potential benefits. The court has not weighed all benefits equally. It has generally found economic benefits as more persuasive than others, like local opposition, especially when the developer commits to mitigating risks raised by local opposition. In this case, Oak Run's

contribution to mitigating climate change simultaneously provides economic benefits while also mitigating risks. Thus, Oak Run's public interest benefits outweigh the local opposition.

B. The various ecological impact studies included in the Application, and protections set forth in the Staff Report conditions satisfy R.C. 4906.10(A)(2)-(3).

Oak Run provided extensive ecological studies of the proposed project areas, and has committed to several conditions that will mitigate any potential environmental impacts. The studies demonstrate not only the nature of the environmental impact, but that the project represents the minimum adverse environmental impact when certain conditions are applied pursuant to the Staff Report (dated March 28, 2023). The Wetland and Waterbody Delineation Report carefully details the water resources in the Oak Run project area, and Oak Run has used this information to plan wildlife corridors to ensure all wildlife is able to access these resources.

The Application and testimony provided at the hearing, along with the Staff Report's ecological conditions, show that the requirements under R.C. 4906.10(A)(2)-(3) are satisfied, and the Environmental Advocates support those Conditions. Holistically, the ecological conditions in the joint stipulation (Conditions (5), (7), (22)-(23), (25), (27), (29)-(31), (36)-(39), (41), (44)) ensure the safety of Ohio's natural areas and wildlife and represent the minimum adverse environmental impact. Condition (23), detailing an agricultural protection plan, requires Oak Run to not only preserve nutrient levels in the soil but also density at decommissioning. This condition goes above and beyond to preserve the agricultural soil in the project area.

Stipulation Condition (30), specifically, will help protect and preserve Ohio's wetland areas impacted by Oak Run by requiring a Staff-approved environmental specialist "on site during construction activities." While Condition (24) will provide ongoing oversight of the project during construction activity to ensure that wildlife, plants and water quality protection issues are addressed if they arise. Similarly, Conditions (24), (40), and (34) ensure ongoing

monitoring of the project area and oversight for remedying complaints. Condition (29) will ensure important support and protections for avian and bat species, by committing to planting pollinator species and limitations on mowing activities.

As a whole, Oak Run's proposal, along with the Joint Stipulation Conditions and Recommendations, defines the nature of the probable environmental impacts and represents the minimum adverse environmental impact, meeting the requirements set forth in R.C.

4906.10(A)(2)-(3).

V. VI. Conclusion

The OEC urges this Board to grant Oak Run's Application because it provides significant economic and safety benefits for Ohio. Subject to conditions ensuring proper environmental protections and ecological safeguards, Oak Run satisfies the criteria for approval by the Board established in R.C. 4906.10(A). In particular, the project addresses ecological issues and also serves the public interest in a way conventional energy sources cannot: it reduces greenhouse gas emissions, mitigating the causes of climate change.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this
10th day of July 2023 via electronic mail upon the following parties of record.

/s/Karin Nordstrom
Karin Nordstrom

Service List:

Counsel:

cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mmcdonnell@dickinsonwright.com
jsecrest@dickinsonwright.com
dlockshaw@dickinsonwright.com
werner.margard@ohioAGO.gov
ambrosia.wilson@ohioAGO.gov
nick.adkins@madison.oh.gov
lcurtis@ofbf.org
cendsley@ofbf.org
lhetrick@ofbf.org
trent@hubaydougherty.com
danielloud@quinnemanuel.com
michael.gerrard@arnoldporter.com
matthew.eisenson@law.columbia.edu
rdove@keglerbrown.com
jvankley@vankley.law

Administrative Law Judges:

david.hicks@puco.ohio.gov
isabel.marcelletti@puco.ohio.gov

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