

Before the Sunset Review Committee

Prepared Statement of Sam Randazzo

Ohio Power Siting Board

February 25, 2020



1 Chair Roegner, Vice-Chair Wiggam, and members of the Sunset Review
2 Committee, my name is Sam Randazzo. I am the chairman of the Ohio
3 Power Siting Board (OPSB) and the Public Utilities Commission of Ohio
4 (PUCO). I am here to testify on behalf of the OPSB.

5
6 The OPSB is a division of the Public Utilities Commission of Ohio (PUCO).
7 The General Assembly has charged the OPSB with reviewing applications
8 to construct and operate certain “major utility facilities” and determining
9 whether a certificate of public convenience and necessity should be
10 granted to applicants in accordance with the applicable statutory criteria.
11 No major utility facility can be constructed in Ohio unless the OPSB
12 authorizes a certificate of public convenience and necessity. In other
13 words, the OPSB is responsible for regulating the use of land in Ohio to
14 construct and operate such facilities which include electric generation
15 facilities, electric transmission lines and natural gas pipelines above
16 specified size thresholds.

17
18 Section 4906.02 of the Revised Code defines the OPSB’s voting members
19 as:

- 20 • The chairman of the public utilities commission;
- 21 • The directors of:
 - 22 ○ The Ohio Environmental Protection Agency,
 - 23 ○ The Department of Health,
 - 24 ○ The Department of Development,
 - 25 ○ The Ohio Department of Natural Resources,
 - 26 ○ The Department of Agriculture; and

- A representative of the public who shall be an engineer and shall be appointed by the governor

These voting members of the OPSB are joined by nonvoting members from each party representing both chambers of the General Assembly.

The PUCO staff supports the functions performed by the OPSB. There are usually 8 to 10 dedicated staff, however several other PUCO staff members provide services to the OPSB when the number of applications increase.

The workload of the OPSB is tied to the number and type of applications submitted to the OPSB. Over the last four years, application submission averaged 100 per year. Applicants are assessed fees based on the nature of the proposed project. These fees cover all of the expenses incurred by the OPSB to fulfill its statutory responsibilities. The OPSB is not funded from the general revenue fund. In the last two fiscal years, OPSB's annual operating costs have been \$1,095,185.

When reviewing applications for certificates to construct and operate these facilities, the staff of the PUCO engages technical staff from each of the member agencies to facilitate coordination of the technical resources and expertise resident within each agency.

The process associated with applications for a certificate of public convenience and necessity is mostly specified by rules adopted by the OPSB. In 2020, the OPSB will be reviewing these rules to determine how the rules might be eliminated, adjusted or revised to better serve the public interest. The statutory and rule requirements provide opportunities for

stakeholders to participate in the certificate application review process which typically includes a public information meeting, a local public hearing and an evidentiary hearing generally held in Columbus at the PUCO's offices. Once an application is submitted to the OPSB, the PUCO Staff and the Staff of the other member agencies begin their review of the application and this review typically is followed by a "staff report" that contains findings and recommendations for the OPSB's consideration.

Once the evidentiary phase of the process is complete, the record is reviewed by the OPSB voting and non-voting members who then determine whether to grant, grant with conditions or deny the application based on the following statutory criteria set forth in section 4906.10 of the Revised Code:

- (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 Ohio's water and air protection laws, as well as laws governing hazardous materials and rules that protect aircraft from obstructions near airports.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) The impact on the viability of agricultural land of any land in an existing agricultural district.
- (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.

88 Ohio has established a statewide approach to the authorization of land use
89 for the construction and operation of major utility facilities. As a result, local
90 control is preempted except with regard to things like tax abatement and
91 road use agreements. But for this statewide approach, the land use
92 regulation functions performed by the OPSB would be performed at the
93 local level, as is the case with much land use regulation, but without the
94 statewide perspective and coordination that is within the design objective
95 for the OPSB.

96
97 The OPSB performs important functions on behalf of the citizens of Ohio
98 and in accordance with its statutory directives. Therefore, I respectfully
99 recommend that you conclude that the sun should not set on the OPSB.

100 Thank you for your time. I am happy to answer any questions that you
101 might have.



Power Siting Board

Mike DeWine, Governor
Sam Randazzo, Chairman

Board Members

Director, Ohio Environmental Protection Agency
Director, Ohio Development Services Agency
Director, Ohio Department of Health
Director, Ohio Department of Natural Resources
Director, Ohio Department of Agriculture
Public Member
Ohio House of Representatives
Ohio Senate

About the Ohio Power Siting Board

The Ohio Power Siting Board (OPSB) supports sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of Ohio citizens, promoting the state's economic interests, and protecting the environment and land use. To accomplish this mission, the OPSB reviews applications for major utility facilities and economically significant wind farms. Ohio Revised Code [Chapter 4906](#) outlines the authority of the OPSB and the criteria it must consider when evaluating applications. Ohio Administrative Code [Chapter 4906](#) outlines supplement rules passed by the OPSB.

In 1972, as part of the legislation creating the Ohio Environmental Protection Agency (Ohio EPA), Senate Bill 397 created the Ohio Power Siting Commission. Member agencies of the Ohio Power Siting Commission included the Ohio Department of Development, the Ohio Department of Health, the Public Utilities Commission of Ohio (PUCO) and a public member, a professional engineer, appointed by the governor. The director of the EPA served as chair of the Ohio Power Siting Commission.

In 1974, state law established staffing, each member agency appointed agency coordinators, and funding for the Ohio Power Siting Commission from the general revenue fund and through fees charged to applicants.

In 1977, the Ohio Power Siting Commission membership expanded to include the Ohio Department of Energy, the Ohio Department of Natural Resources and four state legislators.

In 1979, the term of the public member increased from two years to four years and solid waste facilities were exempted from the Ohio Power Siting Commission's jurisdiction.

In 1981, House Bill 694 made several changes to the Ohio Power Siting Commission. The Ohio Power Siting Commission was renamed the Ohio Power Siting Board and moved to the PUCO. The chair of the PUCO was designated as chair of the OPSB. Finally, the funding structure was amended to include only fees charged to applicants.

In 1982, Ohio law added agricultural district criteria to the OPSB's responsibility. An agricultural district is a portion of land set aside specifically for agricultural purposes. Ohio law outlines specific criteria for its creation, use and dissolution. This addition required consideration of the disruption of an agricultural district when evaluating an application.

In 1983, the Ohio Department of Energy dissolved and was removed from the OPSB.

In 1985, the Ohio Department of Agriculture was added to the OPSB.

In 1986, special legislation regarding coal development projects was enacted. This legislation allowed the OPSB to adopt rules regarding the accelerated review of a major utility facility related to coal research and development.

In 1988, water conservation practices were added to the criteria the OPSB must consider when granting a certificate. This required applicants to consider and outline water conservation practices at the site.

In 1991, airport coordination rules were added to Ohio law, requiring the OPSB to consult with the aviation division in the Ohio Department of Transportation to ensure the project does not obstruct air navigation.

In 1999, Ohio law was amended to presume need for electric generation projects. Thereafter, only electric transmission line and gas pipeline projects required applicants to demonstrate the need for electric transmission or gas pipeline projects. Today, electric generation projects remain exempt from the need requirement.

In 2004, Ohio law was amended to include a formal complaint process and outlined penalties for applicants for apparent violations of the terms of their certificates.

In 2008, as part of House Bill 562, the OPSB's jurisdiction expanded to include economically significant wind farms.

In 2012, Senate Bill 315 clarified the OPSB's gas pipeline jurisdiction and expedited the review of generation retirement driven transmission projects.

Setback requirements for economically significant wind farms and electric generating plan consisting of wind turbines and associated facilities were modified in 2013 and 2014 as part of House Bill 59 and House Bill 483, respectively.

In 2015, the OPSB's rules in Ohio Administrative Code Chapter 4906 were reorganized and restructured to how it appears today.

In 2019, the OPSB adopted a new administrative rule requiring wind farm operators to report incidents affecting wind farm facilities to the OPSB.

Overview

Ohio's Statewide Scheme for Authorizing Land Use for "Major Utility Facilities" and Wind Turbine Electric Generation Projects Greater than 5 Megawatts*

<http://www.opsb.ohio.gov/>

*Note: For wind turbine electric generation projects primarily dedicated to providing electricity to a specific customer ("self-generator"), the OPSB's jurisdiction begins with facilities greater than 20 megawatts.

In the United States, land use regulation authority is most often vested in units of local government.

Ohio's statewide scheme for authorizing land use for "major utility facilities" and wind turbine electric generation projects is an exception to typical land use regulation architecture in most states.

4906.04 Certificate required for construction of major utility facility.

No person shall commence to construct a major utility facility in this state without first having obtained a certificate for the facility. ... Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein.

4906.20 Certificate required to construct certain wind farms.

(A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains.

4906.98 Prohibited acts.

(A) No person shall construct a major utility facility or economically significant wind farm without first obtaining a certificate.

(B) No person shall construct, operate, or maintain a major utility facility or economically significant wind farm other than in compliance with the certificate the person has obtained.

(C) No person or economically significant wind farm shall fail to comply with any order issued pursuant to this chapter or with a suspension otherwise required under division (B) of section 4906.97 of the Revised Code.

4906.13 No local jurisdiction.

(B) No public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code.

4906.01 Power siting definitions.

As used in Chapter 4906. of the Revised Code:

(B)

(1) "Major utility facility" means:

- (a) **Electric generating plant** and associated facilities **designed for, or capable of, operation at a capacity of fifty megawatts or more;**
- (b) An **electric transmission line and associated facilities of a design capacity of one hundred kilovolts or more;**
- (c) A **gas pipeline** that is **greater than five hundred feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch.**

4906.01 Power siting definitions.

(2) "Major utility facility" does **not** include any of the following:

- (a) Gas transmission lines over which an agency of the United States has exclusive jurisdiction;
- (b) Any solid waste facilities as defined in section 6123.01 of the Revised Code;
- (c) Electric distributing lines and associated facilities as defined by the power siting board;
- (d) Any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by the power siting board;
- (e) Gathering lines, gas gathering pipelines, and processing plant gas stub pipelines as those terms are defined in section 4905.90 of the Revised Code and associated facilities;
- (f) Any gas processing plant as defined in section 4905.90 of the Revised Code;
- (g) Natural gas liquids finished product pipelines;
- (h) Pipelines from a gas processing plant as defined in section 4905.90 of the Revised Code to a natural gas liquids fractionation plant, including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline;
- (i) Any natural gas liquids fractionation plant;
- (j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines;
- (k) Any compressor stations used by the following:
 - (i) A gathering line, a gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant as those terms are defined in section 4905.90 of the Revised Code;
 - (ii) A natural gas liquids finished product pipeline, a natural gas liquids fractionation plant, or any pipeline upstream of a natural gas liquids fractionation plant; or
 - (iii) A production operation as defined in section 1509.01 of the Revised Code.

4906.10 Basis for decision granting or denying certificate.

(A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the **construction, operation, or maintenance** of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under section 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application.

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;

4906.10 Basis for decision granting or denying certificate.

(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 section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 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.

4906.20 Certificate required to construct certain wind farms.

(A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certifying of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) The rules shall provide for an application process for certifying economically significant wind farms that is identical to the extent practicable to the process applicable to certifying major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

4906.20 Certificate required to construct certain wind farms.

(a) The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to property line of the nearest adjacent property at the time of the certification application.

(b)

(i) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet.

(ii) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

4906.02 Power siting board organization.

(A) There is hereby created within the public utilities commission the power siting board, composed of the **chairman of the public utilities commission**, the **director of environmental protection**, the **director of health**, the **director of development**, the **director of natural resources**, the **director of agriculture**, and a **representative of the public** who shall be an engineer and shall be appointed by the governor, from a list of three nominees submitted to the governor by the office of the consumers' counsel, with the advice and consent of the senate and shall serve for a term of four years. The chairman of the public utilities commission shall be chairman of the board and its chief executive officer. The chairman shall designate one of the voting members of the board to act as vice-chairman who shall possess during the absence or disability of the chairman all of the powers of the chairman. All hearings, studies, and consideration of applications for certificates shall be conducted by the board or representatives of its members. In addition, the board shall include **four legislative members** who may participate fully in all the board's deliberations and activities except that they shall serve as **nonvoting members**. The speaker of the house of representatives shall appoint one legislative member, and the president of the senate and minority leader of each house shall each appoint one legislative member. Each such legislative leader shall designate an alternate to attend meetings of the board when the regular legislative member he appointed is unable to attend. Each legislative member and alternate shall serve for the duration of the elected term that he is serving at the time of his appointment. A quorum of the board is a majority of its voting members. The representative of the public and, notwithstanding section 101.26 of the Revised Code, legislative members of the board or their designated alternates, when engaged in their duties as members of the board, shall be paid at the per diem rate of step 1, pay range 32, under schedule B of section 124.15 of the Revised Code and shall be reimbursed for the actual and necessary expenses they incur in the discharge of their official duties.

4906.02 Power siting board organization.

(B) The chairman shall keep a complete record of all proceedings of the board, issue all necessary process, writs, warrants, and notices, keep all books, maps, documents, and papers ordered filed by the board, conduct investigations pursuant to section 4906.07 of the Revised Code, and perform such other duties as the board may prescribe.

(C) The chairman of the public utilities commission may assign or transfer duties among the commission's staff. However, the board's authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board itself.

(D) The chairman may call to his assistance, temporarily, any employee of the environmental protection agency, the department of natural resources, the department of agriculture, the department of health, or the department of development, for the purpose of making studies, conducting hearings, investigating applications, or preparing any report required or authorized under this chapter. Such employees shall not receive any additional compensation over that which they receive from the agency by which they are employed, but they shall be reimbursed for their actual and necessary expenses incurred while working under the direction of the chairman. All contracts for special services are subject to the approval of the chairman.

(E) The board's offices shall be located in those of the public utilities commission.

Typical Process Map

