

SUPREME COURT OF OHIO

In the Matter of the Application of )  
Firelands Wind LLC for a Certificate of ) Case No. 2022-0055  
Environmental Compatibility and )  
Public Need to Construct a Wind- ) Ohio Power Siting Board  
Powered Electric Generation Facility in ) Case No. 18-1607-EL-BGN  
Huron and Erie Counties, Ohio )

BRIEF OF AMICUS CURIAE OHIO CHAMBER OF COMMERCE  
IN SUPPORT OF APPELLEES

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## STATEMENT OF INTEREST

Since its founding in 1893, the Ohio Chamber of Commerce has been an advocate and resource for businesses throughout the Buckeye State. Its members range from individually owned and operated businesses serving rural communities to publicly traded companies doing business in countries across the globe. Commercial competition and economic growth benefit all Ohioans, but competition and growth demand a stable, predictable business climate and legal system. The Chamber works to those ends by regularly filing amicus briefs in cases, like this one, that are important to the interests of its members.

## BACKGROUND

Ohio invites those outside the state to “find it here.”<sup>1</sup> That invitation extends to businesses that Ohio hopes to attract to the state. One key consideration for businesses today is the availability of renewable energy. Ohio shares that desire for renewable energy, yet it risks falling behind other states in realizing its renewable energy capacity. Although Ohio possesses the geographic and economic potential to be a leader in renewable energy projects, delays in permitting such projects can thwart

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<sup>1</sup> *Ohio Hopes New Slogan Lures Tourists to ‘Find It Here,’* Columbus Dispatch (updated Nov. 18, 2015), <https://bit.ly/3KLyron>.

progress. This, in turn, could leave businesses to “find it” elsewhere. To empower the efficient administration of Ohio’s renewable energy project approval process and enable Ohio businesses to meet their energy needs, this Court should affirm the decisions of the Ohio Power Siting Board.

### **STATEMENT OF FACTS**

The Chamber defers to and incorporates that statement of facts included in the response brief of Appellee Firelands Wind LLC.

### **STANDARD OF REVIEW**

Section 4906.12 of the Ohio Revised Code provides for this Court to apply the same standard of review to power-siting determinations as to the Public Utilities Commission. *In re Application of Buckeye Wind LLC*, 2012-Ohio-878, ¶ 26. Under that standard, the Court will reverse, modify, or vacate an order only when its review of the record reveals that the order is unlawful or unreasonable. Ohio Rev. Code § 4903.13. *See also Constellation NewEnergy Inc. v. Pub. Util. Comm.*, 2004-Ohio-6767, ¶ 50.

In deference to the specialized expertise of the Ohio Power Siting Board, the Court will not reverse or modify its decision as to questions of fact when the record contains sufficient probative evidence to show that the Board’s decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension,



mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm.*, 2004-Ohio-6896, ¶ 29. Appellants bear the burden of demonstrating that the Board’s decision is against the manifest weight of the evidence or is clearly unsupported by the record. *In re Application of Champaign Wind LLC*, 2016-Ohio-1513, ¶ 7.

### DISCUSSION

Pursuant to section 4906.10(A) of the Ohio Revised Code, the Board may not grant a certificate for the construction, operation, and maintenance of a major utility facility—like the proposed Emerson Creek wind farm project—unless it makes certain findings and determinations. In particular, sections 4906.10(A)(3) and (6) require:

(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; [and]

....

(6) That the facility will serve the public interest, convenience, and necessity . . . .

The Chamber defers to the conclusion of Firelands and the Board that the Emerson Creek project represents the minimum adverse environmental impact. The Chamber writes separately regarding the second

requirement—that is, how the Emerson Creek project will serve the interest, convenience, and necessity of the people and businesses of Ohio.

### **1. Rising Business Demand for Renewable Energy**

Private businesses are increasingly demanding access to renewable energy across the United States. So much so that they now outpace even public utility companies as purchasers of renewable energy. James Kobus et al., *The Role of Corporate Renewable Power Purchase Agreements in Supporting U.S. Wind and Solar Deployment*, Columbia Ctr. on Glob. Energy Pol’y 10 (Mar. 2021), <https://bit.ly/3KMQ7Qw>. Rather than relying on utilities, more and more businesses are taking control of their own energy destiny and making private commercial arrangements to procure a steady supply of renewable energy and to achieve their sustainability goals. *Id.* 10–12.

Last year, corporate purchases of renewable energy soared to record numbers. On a global scale, corporations purchased a record 31.1 gigawatts of renewable energy in 2021, rising “nearly 24% from the previous year’s record” of 25.1 gigawatts. Veronika Henze, *Corporate Clean Energy Buying Tops 30GW Mark in Record Year*, Bloomberg New Energy Fin. (Jan. 31, 2022), <https://bit.ly/3MQI7Qe>. Two-thirds of that power capacity—totaling 17 gigawatts—is generated in the United States. *Id.* Similarly, on a national scale, companies purchased 20% more renewable energy in 2021 than in

2020. BloombergNEF, *Sustainable Energy in America 2022 Factbook* (2022), <https://bit.ly/3FjtUIQ>. Even that statistic pales in comparison to the 600% increase in corporate power purchases occurring in the United States since 2016. See *CEBA Deal Tracker*, Clean Energy Buyers Ass’n, <https://bit.ly/3KH82be> (last visited May 2, 2022).

This rising trend of corporate renewable energy purchases is only expected to increase in 2022 and beyond. See Henze, *supra* (“It is no longer a matter of whether corporate clean energy procurement will grow each year, it’s a matter of how much.”). See also Emma Penrod, *Microsoft, Google, Other Corporate Buyers Get Creative as Demand for Renewable Energy Spikes*, Utility Dive (Feb. 7, 2022), <https://bit.ly/3kK3sPa> (“Global corporate procurement set yet another record in 2021, and the pace isn’t expected to slow in 2022 in spite of a continued upward trend in PPA [power purchase agreement] prices.”).

The country’s largest employers—many of which have a presence in Ohio and are Chamber members—drive renewable energy purchases. See BloombergNEF, *supra*, at 37; *CEBA Deal Tracker*, *supra*. These businesses include tech companies Amazon, Meta, Google, and Microsoft. See *CEBA Deal Tracker*, *supra*. They also include manufacturers like General Motors and Proctor & Gamble and institutions like The Ohio State University. See Johnathan Lopez, *General Motors to Reach 100 Percent Renewable Energy in the*

*U.S. by 2025*, GM Authority (Sept. 30, 2021), <https://bit.ly/3Nn1zo1>; Press Release, Proctor & Gamble, *P&G Purchases 100% Renewable Electricity in U.S., Canada, and Western Europe* (Oct. 24, 2019), <https://bit.ly/3x9ju1a>; Press Release, The Ohio State University, *Ohio State to Power Campus with Wind Energy from Ohio Wind Farm* (Sept. 30, 2012), <https://bit.ly/3NVnrH3>. Other companies that drive purchases and have an Ohio presence include DuPont, Johnson & Johnson, and Target. *See CEBA Deal Tracker, supra*.

Not only does renewable energy meet companies' practical needs for a reliable supply of electricity to power their offices, factories, stores, and data centers, it also furthers their sustainability goals. *See BloombergNEF, supra*, at 10. Nearly 300 companies have committed to achieving "a 90% carbon-free U.S. electricity system by 2030." *Our Vision*, Clean Energy Buyers Ass'n, <https://bit.ly/3KTBifn> (last visited May 2, 2022). Some of those companies have taken a step further to commit to "sourcing 100 percent renewable electricity by no later than 2050." BloombergNEF, *supra*, at 10.<sup>2</sup>

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<sup>2</sup> States are following along with similar sustainability ambitions. Ohio's most populous cities have also committed to providing residents with 100% clean energy through renewable sources. *See, e.g., Green Cincinnati Plan*, City of Cincinnati, <https://bit.ly/3KBDCYf> (last visited May 2, 2022); Press Release, City of Cleveland, *Cleveland Releases Green & Equitable Energy Report* (Apr. 9, 2021), <https://bit.ly/3MExrns>; Press Release, City of Columbus, *Columbus Residents to Begin Receiving 100% Clean Energy in June* (Apr. 1, 2021), <https://bit.ly/3MHPJcj>. Clean energy "is a growing industry and economic driver of job creation in Ohio," and "Ohio's clean energy

To satisfy their long-term renewable energy goals, businesses most often turn to wind and solar energy sources to power their operations. See Justine Calma, *Big Tech Drove Record Clean Energy Purchases in 2021*, Verge (Feb. 1, 2022), <https://bit.ly/3LFdI79> (“Solar and wind are still the sources of clean electricity most sought after by corporations.” (cleaned up)). See also BloombergNEF, *supra*, at 22 (“Wind and solar have accounted for nearly all new additions, aided by policy support, rapidly falling equipment costs, and steadily increasing demand from the private sector.”) Wind power, in particular, “was the largest source of U.S. renewable power generation for the third year in a row” in 2021. *Id.*

The Buckeye State is no stranger to corporate demand for wind and solar power. For example, the largest online retailer in the world—Amazon—has opened more than thirty facilities throughout Ohio and plans to develop additional sites. See Kelly Byer, *What to Expect When Amazon Moves Into Town*, Canton Repository (Oct. 15, 2021), <https://bit.ly/3LUfFwo>. Amazon now ranks as Ohio’s fourth-largest employer. Ohio Dep’t of Dev., *Ohio Major Employers*, at tbl.1 (Dec. 2021), <https://bit.ly/3vF7CxS> (estimating that Amazon has hired around 41,000

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sources can assure low-cost, reliable energy.” See Proclamation, Gov. Mike DeWine, *National Clean Energy Week* (Sept. 20, 2021), <https://bit.ly/3vziNbt>.

Ohioans). To date, Amazon has announced deals with several solar farms in Ohio. See Byer, *supra*. See also *Moving In: How Amazon Is Helping Ohio, and Communities Across the Country, Make a Comeback*, Amazon (Feb. 28, 2019), <https://bit.ly/3KIPEnj>.

With Ohio's abundant land and access to the regional transmission grid, the state has a tremendous opportunity to successfully compete with other states when enticing expanding businesses.<sup>3</sup> The predictability of administrative approval of renewable energy projects in Ohio, such as the Emerson Creek project, directly affects the state's ability to do so.

## **2. Exponential Local Benefits to Ohio Citizens**

When Ohio attracts a business to the state that will purchase offtake from a renewable energy project, the benefits to Ohio citizens are plentiful. Those benefits start with the creation of new jobs. For example, estimates show that the Emerson Creek project will create 1,096 jobs during construction, resulting in \$62.9 million in wages paid and \$170.4 million in

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<sup>3</sup> For example, Ohio achieved an unprecedented \$20 billion deal this year with leading computer chip manufacturer Intel to locate two of its factories in New Albany. Alana Semuels, *Exclusive: Intel Reveals Plans for Massive New Ohio Factory, Fighting the Chip Shortage Stateside*, Time (Jan. 20, 2022), <https://bit.ly/3KD81oR>. Intel's decision to come to Ohio was driven, in part, by Ohio's potential to supply 100% renewable energy to Intel's cutting-edge factories by the time they become operational in 2025. *Id.*

economic output. *See, e.g., Soc. Rep. 23.*<sup>4</sup> After construction, and throughout its operation phase, the Emerson Creek project “is estimated to generate demand for 53 jobs with annual earnings of approximately \$3.1 million.” *Id.* That income is then “used to purchase local goods and services, creating a ripple effect throughout the state.” *Id.* at 19. Additionally, during the operation phase, the Emerson Creek project could also increase total economic output by \$10.6 million. *Id.* at 25.

As earnings and economic output increase, so do local tax revenues. The Emerson Creek project would contribute to local tax revenues through annual payments in lieu of taxes. *See Soc. Rep. 25.* Those annual payments would remain local and would generate over \$2.4 million every year, which would be divided among the county, nine townships, and seven school districts each year.<sup>5</sup> *Soc. Rep. 26.* During the public hearing regarding the

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<sup>4</sup> “Soc. Rep.” refers to the January 2019 Socioeconomic Report appended to the Emerson Creek Wind Farm Application to the Ohio Power Siting Board as Exhibit F. The report explains that economic output is “a measurement of the value of goods and services produced and sold by backward-linked industries” and “provides a general measurement of the amount of profit earned by manufacturers, retailers, and service providers connected to a given project.” *Soc. Rep. 24.* Backward-linked industries are “companies engaged in construction and operation.” *Id.* at 20.

<sup>5</sup> The townships are “Groton and Oxford Townships in Erie County” and “Lyme, Ridgefield, Sherman, Norwich, and Richmond Townships in Huron County.” *Soc. Rep. 26.* The school districts are “Bellevue City School District, Berlin-Milan Local School District, Margareta Local School

Emerson Creek project, several residents emphasized the need for and benefits of additional tax revenues. As Glen Eric Jennings, manager of a local family business, explained:

Huron County is in dire need of an improved tax base to support our schools and services. There simply aren't significant new taxpayers moving into the county or developing locally. I support this project because, from Day 1, Emerson Creek would be one of Huron County's largest taxpayers.

Tr. 103.<sup>6</sup> Other residents echoed Jennings's sentiments. *See, e.g., id.* at 111 (noting that the "economic benefits" of the project to "schools, libraries, and senior enrichment facilities will also provide for future advancement as well"); *id.* at 130 (explaining that the "project would generate funds that the county could not or would not otherwise receive"); *id.* at 132 (advising that the "project will not only provide clean energy but valuable tax money for our schools and townships"). And Jane Harf, executive director of Green Energy Ohio, added further details:

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District, Monroeville Local School District, Perkins Local School District, Seneca East Local School District, and Willard City School District." *Id.*

<sup>6</sup> "Tr." refers to the transcript of the August 20, 2020, proceedings before the Ohio Power Siting Board.



It has been shown that some of the lowest environmental impacts, combined with economic advantages, are what makes wind power so persuasive today. Wind facilities generate economic development as well as power. The resources that flow to landowners, local governments and school districts, medical facilities, first responders, and small businesses, significantly enhance the economies of the primarily rural communities in which they are located.

*Id.* at 164.

Landowners will also benefit from a new source of income—that is, annual lease payments to local farmers who have agreed to host turbines and other infrastructure on their land. *See* Soc. Rep. 27. One public witness—Dr. Randi Pokladnik—testified that the project “would provide \$51.3 million in landowner payments.” Tr. 135. These payments will benefit local farmers by providing “a way for the farm owner to diversity their risk so if there’s a bad year, they still have some money coming in,” as local, longtime farm owner Mary Musko explained. Tr. 95. *See also Renewable Energy Sources: Wind Power*, Office of Ohio Consumers’ Counsel, <https://bit.ly/3MM8giY> (last visited May 4, 2022) (“Wind turbines can also provide extra income for farmers. A farmer in Ohio could make \$11,000–\$14,000 per year for each utility-scale turbine leased on the land . . . . The land around the turbine can continue to be used for growing crops or

grazing livestock.”). See generally Kathiann M. Kowalski, *For Ohio Farmers, Wind Turbine Revenue Helps Take the Sting Out of a ‘Bad’ Year*, Energy News Network (Oct. 31, 2019), <https://bit.ly/3sb0CqG>.

All things considered, wind energy projects like the Emerson Creek project “provide new jobs, a new source of revenue for farmers and ranchers, and an increased local tax base for rural communities.” U.S. Dep’t of Energy, *Wind Energy for Rural Economic Development 3* (rev. 2004), <https://bit.ly/3DTUOq8>. Unduly delaying a project like this one does not just slow the production and availability of renewable energy—it also delays much-needed economic benefits to Ohio communities.

### 3. Growth Opportunity for Ohio Renewable Energy

Wind is the largest available source of renewable energy in Ohio. See *Ohio State Profile and Energy Estimates—Analysis*, U.S. Energy Information Admin., <https://bit.ly/3rY5oYs> (last visited May 2, 2022). But Ohio has not yet tapped into its full potential. Ohio has greater potential capacity than many of its neighbors, but most are outperforming the Buckeye State:

	<i>Installed</i>	<i>Potential</i>	<i>Realized</i>
<b>Ohio</b>	864	119K	0.72%
<b>Indiana</b>	2968	118K	2.51%
<b>Pennsylvania</b>	1459	109K	1.33%
<b>Michigan</b>	2681	81K	3.30%
<b>West Virginia</b>	742	69K	1.07%

See *U.S. Installed and Potential Wind Power Capacity and Generation*, WINDEXchange, <https://bit.ly/3s5vloG> (last visited May 2, 2022) (noting Ohio’s potential capacity of 119,000 megawatts).

Ohio still has a “strong foundation for a potentially booming wind energy industry.” *Wind Power in Ohio*, Ohio Citizen Action, <https://bit.ly/3LEd4XA> (last visited May 2, 2022). Projects like the Emerson Creek wind farm will help Ohio to realize that potential. But without a predictable siting process, Ohio will lack the regulatory certainty necessary to procure such projects from the renewable energy industry and will struggle in its ongoing competition with other states to attract both renewable project developers and those who wish to be their customers.

## CONCLUSION

Ohio is in a constant race against other states to attract business. Those businesses are increasingly demanding renewable energy—especially affordable wind energy—from the states in which they choose to locate. This gives Ohio an opportunity to capitalize on the wind power potential it has not yet realized and deliver economic benefits to local communities, such as those supporting Emerson Creek. That opportunity may be missed, however, if renewable energy projects are subject to an unpredictable administrative process and stymied by undue delay.

Accordingly, it is beyond dispute that the Emerson Creek wind farm project will serve the interest, convenience, and necessity of the people and businesses of Ohio as required by section 4906.10(A)(6). To empower an efficient and predictable process for siting renewable energy projects in Ohio, this Court should affirm the decision of the Ohio Power Siting Board and allow Firelands to move forward with the Emerson Creek project.

**AMICUS CURIAE OHIO CHAMBER  
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