

Case No. 2024-1477

IN THE

Supreme Court of Ohio

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
GENERATING FACILITY IN MADISON
COUNTY, OHIO

On Direct Appeal from 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 TRANSMISSION LINE IN
MADISON COUNTY, OHIO

Ohio Power Siting Board
Case Nos. 22-549 and 22-550

BRIEF OF THE OHIO CHAMBER OF COMMERCE AND THE OHIO BUSINESS ROUNDTABLE AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE OHIO POWER SITING BOARD AND INTERVENOR OAK RUN SOLAR PROJECT, LLC

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Joint Economic Committee, <i>How Renewable Energy Can Make the Power Grid More Reliable and Address Risks to Electricity Infrastructure</i> (Jan. 19, 2024), https://www.jec.senate.gov/public/index.cfm/democrats/2024/1/how-renewable-energy-can-make-the-power-grid-more-reliable-and-address-risks-to-electricity-infrastructure	11

Mark Williams, <i>Facebook parent Meta to expand New Albany data center by 1 million square feet</i> , Columbus Dispatch (Apr. 21, 2022), https://www.dispatch.com/story/business/2022/04/21/facebook-expand-new-albany-campus/7394750001/	12
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North American Electric Reliability Corporation, <i>2023 State of Reliability Overview, Assessment Overview of 2022 Bulk Power System Performance</i> , (June 2023) at 7-8, https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2023_Overview.pdf	10
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Proctor & Gamble, <i>P&G Purchases 100% Renewable Electricity in U.S., Canada, and Western Europe</i> (Oct. 24, 2019), https://us.pg.com/blogs/pg-purchases-renewable-electricity/	12
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STATEMENT OF INTEREST

Founded in 1893, the Ohio Chamber of Commerce (“Ohio Chamber”) is one of Ohio’s leading business advocacy trade organizations, representing nearly 8,000 businesses and professional organizations located or operating in Ohio, ranging from sole proprietorships to some of the nation’s largest companies. The Ohio Chamber’s mission is to champion free enterprise, economic competitiveness, and growth on behalf of its members and all Ohioans. By promoting its pro-growth agenda with policymakers and courts around the country, the Ohio Chamber seeks a stable and predictable legal system which fosters a business climate in which enterprises and Ohioans prosper. The Ohio Chamber regularly files amicus briefs in state and federal courts in cases that, like this one, are important to its members’ interests and have the potential to impact Ohio businesses’ ability to compete effectively both nationally and in the global economy.

The Ohio Business Roundtable (the “OBRT”), established in 1992, was founded for one purpose: to improve Ohio’s business climate. Since its inception, the OBRT has worked with Ohio’s governors and legislative leaders to make Ohio more business-friendly and more competitive both nationally and internationally. OBRT members—the Chief Executive Officers of many of our state’s largest, most successful businesses—have helped bring about momentous change in Ohio’s economic landscape. OBRT’s executives identify vexing, intractable issues facing Ohio’s job creators, and through their expertise, experience and resources, pursue policies that make Ohio stronger.

This case is of great importance to the Ohio Chamber, the OBRT, and their members. The Ohio Power Siting Board (“OPSB”) thoroughly reviewed Intervenor Oak Run Solar Project, LLC’s (“Oak Run”) application and balanced the Appellants’ concerns with the public interest,

convenience, and necessity that the project serves for Ohio residents. If reversed, the decision would impose unlawful and unreasonably high standards on those seeking to participate in the already well-regulated energy industry, stifling both growth and innovation. Thus, the Ohio Chamber and the OBRT, together “the Business Amici,” as the premier business advocacy organizations in Ohio, write to emphasize the public benefit of the proposed solar project and the extent to which they outweigh the remote possibility of damages the Appellants claim the project will bring to the local community.

INTRODUCTION

Reliable electricity generation and supply is critical to Ohio's businesses and consumers. Due to increasingly unpredictable weather conditions and other factors, however, traditional means of electricity generation have struggled in recent years to meet that need in the way they once did. The solar project proposed by Oak Run and approved by the OPSB and other similar projects are critical to remedying that problem, providing access to power sources that can plug gaps in Ohio's electric grid as part of a larger regional program to boost grid resilience. Beyond that, the Oak Run project promises to bring jobs and other critical economic benefits to its community.

Yet the Appellants here seek to block this project and impose unreasonable burdens on future generation and transmission projects in service of primarily aesthetic concerns. Indeed, while they cite purported environmental and safety concerns, it is telling that their lead argument against the project is a complaint about "unsightly towering solar panels" and the risk they pose to a "scenic country landscape." (Appellant's Br. at ii, 6–9, 16–23). The OPSB correctly rejected these concerns in an exhaustive and detailed 131-page opinion approving the Oak Run project, which considered and rejected the concerns Appellants now raise. Because that decision is imminently reasonable and the Oak Run project is critical to the future reliability of power generation and transmission in Ohio, the Business Amici urge this Court to affirm the OPSB's decision.

STATEMENT OF THE CASE AND FACTS

As the OPSB's opinion and order provides a thorough account of the underlying facts of this case, the Business Amici pause here to highlight only a few especially salient facts. *See generally* the Opinion and Order dated March 21, 2024, filed in this matter on October 21, 2024, in connection with the Notice of Appeal ("Order").

In September 2022, Oak Run filed its application for the construction, operation, and maintenance of an 800-megawatt solar-powered electric generation facility, two 230-kilovolt transmission lines, and a 300-megawatt battery energy storage facility in Monroe, Somerford, and Deercreek Townships in Madison County, Ohio (the "Application"). (*See* Order, p. 1, ¶ 1). In support of that Application, it filed a joint stipulation and recommendation alongside, among others, the Ohio Farm Bureau Federation; Ohio Partners for Affordable Energy; the International Brotherhood of Electrical Workers, Local Union 683; and Ohio Environmental Council (the "Stipulation"). (*See* Order, pp. 4-5, ¶ 22). The OPSB adopted the stipulation in its Order, finding that the Stipulation was the product of serious bargaining among capable, knowledgeable parties, and it commended Oak Run's efforts to engage with the public and incorporate their suggestions in the final Application. (*See* Order, pp. 1, 109-110, ¶¶ 1, 218).

Specifically, as part of its Application, Oak Run went to great lengths to protect community safety and ensure the solar project had a positive impact on its community. Among other things, the Stipulation included multiple conditions that were not required, "such as providing fire and emergency responders with annual training to enable them to respond to emergency situations at the BESS and expanding the proposed agrivoltaics program." (Order, p. 124, ¶ 243) Further, Oak Run also included with its Application a memorandum of understanding ("MOU") it had presented the Madison County Board of County Commissioners. The MOU

contained several additional obligations, including an increase in annual tax payments from \$9,000/MW to \$10,300/MW; potentially converting a portion of annual payments to an upfront lump sum payment; working with OSU to expand the Molly Caren Agricultural Center located in Madison County, including an Agrivoltaics Center; increased job commitments; implementation of agrivoltaics at the Project, with specific commitments included; working with the Madison County Engineer prior to construction and provide for feedback; during operation, incorporation of design and construction lessons learned from the Madison Fields Solar Project; and continued collaboration with local stakeholders. (*See Order*, p. 104, ¶ 208). Though the Madison County Commissioners were unwilling to agree to the MOU, Oak Run nonetheless submitted the document alongside its Application to incorporate the additional obligations, and the OPSB expressly modified the Stipulation to add the terms of the MOU to the extent they were not already addressed, binding Oak Run to comply with its promises. (*See Order*, pp. 110-111, ¶ 219).

On this basis, the OPSB granted Oak Run's Application for the construction, operation, and maintenance of the solar-powered electric generation Facility and BESS facility subject to the conditions set forth in the Stipulation as amended. (*See Order*, pp. 129-130, ¶¶ 279-283). This appeal followed.

LAW AND ARGUMENT

The OPSB’s opinion and the Intervenors ably explain the authorities supporting, and reasons for affirming the OPSB’s decision in this case. For that reason, the Business Amici write separately only to emphasize two points. First, the Appellants in this case fail to give the appropriate deference to the OPSB, asking this Court to improperly second-guess the OPSB’s factual determinations. Second, the OPSB correctly found that the proposed project promises substantial public benefits at little cost, if any, cost to the public and blocking it would harm Ohio’s public and business interests.

I. The appeal requests this Court to disregard the discretion due to the OPSB’s factual determinations.

This Court may reverse, modify, or vacate an order of the OPSB only when, upon consideration of the records, the order is “unlawful or unreasonable.” R.C. 4903.13; 4906.12; *see also In re Letter of Notification Application of Columbia Gas of Ohio, Inc.*, 2024-Ohio-4747 ¶ 13. Appellants bear the burden of establishing that the Order is unlawful or unreasonable. *In re Application of Alamo Solar I, L.L.C.*, 2023-Ohio-3778, ¶ 16.

The “unlawful” part of this standard refers to the review of legal questions: questions like what the proper interpretation of a statutory term is, or whether the board followed the procedures prescribed by statute or its own regulations. *Id.* at ¶ 11-13. Whether a decision is unlawful is a question of law that the Court reviews *de novo*. *Id.* at ¶ 11. In making this determination, “the judicial branch is never required to defer to an agency’s interpretation of the law.” *Id.* at ¶ 12 (quoting *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, ¶ 3).

The “unreasonable” part of this standard refers to this Court’s examination of the board’s exercise of its implementation authority for whether the board’s act falls within the zone of permissible statutory construction. *Alamo Solar*, 2023-Ohio-3778, at ¶ 15-16. Thus, an agency like

the OPSB generally has wide discretion to make determinations under its implementation authority, and this Court will only find an action unreasonable if it is (1) manifestly contrary to the evidence in the record, (2) when the evidence is clearly not enough to support the decision, or (3) when the agency’s order is internally inconsistent. *See id.* at ¶ 16. This Court does not disturb such findings of fact by “reweigh[ing] the evidence or second-guess[ing]” the board on such questions of fact. *Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35.

Yet, that is exactly what the Appellants here ask this Court to do. For example, with characteristic hyperbole, they lament damage to “Madison County’s scenic beauty and rural setting,” worry that county residents “will have no means to escape” having to look at solar panels at times, and describe the Oak Run project as “monstrous.” (Appellant’s Br. at 16). But they then acknowledge in the same breath that the OPSB did in fact consider the visual impact of the project and that Oak Run submitted conceptual schematics of vegetative screening (even if they were not as detailed as Appellants would like and did not specify the exact location of the screens). (*Id.* at 17–18). In other words, Appellants take issue with how the OPSB weighed their concerns against the steps Oak Run had already taken to reduce visual impacts and its commitment to work with the community going forward—in addition to weighing any visual impact against the project’s benefits. But that is not the question here. The question is whether the Board’s approval of the project notwithstanding the Appellants concerns and without requiring the hyperdetailed vegetation screening plan they wanted was reasonable. It was.

What Appellants are really asking OPSB to do—and what they now ask this Court to do—is to use Ohio laws and regulations to enable local “NIMBY-ism” that allows a few powerful landowners or lobbies to impede the economic progress of entire communities and regions. Launching major infrastructure and construction projects has already become a herculean endeavor

in today’s regulatory environment.¹ Transforming the Revised Code’s flexible and thorough “reasonableness” review standard into an even more protracted paperwork accumulation project that requires detailed reports related to, among other things, the proper placement of shrubbery is neither wise nor required by law.

This Court should refuse to do so. The OPSB’s decision to grant Oak Run's Application is based on its implementation authority and should be reviewed under the reasonableness prong as articulated in the Court’s prior cases. *See Alamo Solar*, 2023-Ohio-3778 at ¶ 16. In its analysis of the “public interest, convenience, and necessity” factor under R.C. 4906.10(A)(6), the OPSB followed this Court’s guidance and the proper statutory procedures to examine the evidence presented in support of and against Oak Run’s Application “with a broad lens” to “balance[] projected benefits against the magnitude of potential impacts on the local community.” (Order, p. 106, ¶ 212). Because the record shows that it balanced them correctly and reasonably as required by statute, this Court should affirm the OPSB’s decision and reject Appellants’ attempt to relitigate the OPSB’s determination anew on appeal.

II. The Project serves the public interest, convenience, and necessity.

Before the OPSB may issue a certificate for the construction of a major utility facility, it must make eight substantive determinations. *See* R.C. 4906.10(A). The Appellants’ “primary concerns about the Project stem from its potential damage to drainage, roads, views, soil erosion, water quality, groundwater levels, fire protection, wildlife, land use, agricultural land, and the area’s businesses.” (Appellants’ Br. at 3). Four of the OPSB’s determinations are relevant to those concerns:

¹ Compare Robert Cruickshank, *Make It Legal to Build*, The American Prospect (Dec. 11, 2024), <https://prospect.org/infrastructure/housing/2024-12-11-make-it-legal-to-build/> (accessed Mar. 12, 2025).

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

R.C. 4906.10(A)(2)-(3), (5)-(6).

The Business Amici address only the last factor, leaving the remaining factors to the OPSB and Intervenors.

There is overwhelming evidence that the Oak Run Project promotes the public interest, convenience, and necessity because it provides economic benefits to Ohio residents both statewide and locally. As such, there is sufficient evidence in the record to support the decision, and it should therefore remain undisturbed.

The OPSB ultimately determined that the local community and surrounding businesses would, in fact, benefit from the increased employment opportunities in the construction and maintenance, and agrivoltaics portions of the project. (*See Order*, p. 113, ¶ 222). The Board additionally went on to address, in detail, how each of the Appellants' concerns presented in this appeal were remote or already properly addressed in the Application itself and/or in the binding Stipulation implemented through the Order. (*See Order*, pp. 107, ¶ 214, 113-117, ¶¶ 221-227). Therefore, Appellants' arguments presented both then and now are insufficient to overcome the overwhelming public benefits of the Project.

As a leading advocates of economic growth for all of Ohio, the Business Amici believe increased in-state electric generation will lower electric rates for all Ohioans. Lower electric rates will in turn add to Ohio’s economic growth and stability. Growing and diversifying our in-state generation places downward pressure on the commodity price of electricity—and this delivers real energy savings vital to keeping our state economically competitive.² The Order notes the public’s interest in new, renewable power generation, the benefits of increased supply. (*See* Order, pp. 123-124, ¶ 243).

Further, increased electric generation is necessary to combat the increasing risk of electric grid reliability issues.³ In June 2023, the North American Electric Reliability Corporation (“NERC”) found that “conventional generation [like coal and natural gas plants] is significantly challenged by more frequent extreme weather, high-demand conditions, and a change resource mix, resulting in higher overall outage rates and surpassing transmission in their contribution to major load loss events.”⁴ Indeed, in 2022, “conventional generation experienced its highest level of unavailability (8.5%) overall since NERC began gathering” the relevant data in 2013. *Id.* And PJM Interconnection LLC—the regional grid operator overseeing power transmission in Ohio, among other states—“found that 70 percent of its forced outages were caused by failing gas plants

² *See* Commission for Environmental Cooperation, *Renewable Energy as a Hedge Against Fuel Price Fluctuation: How to Capture the Benefits* (2008), at p. 4, <https://www.cec.org/files/documents/publications/2360-renewable-energy-hedge-against-fuel-price-fluctuation-en.pdf> (accessed Mar. 12, 2025).

³ *See* Sanzana Tabassum et al., *Solar Energy in the United States: Development, Challenges and Future Prospects* . (2021) at 7.6.4., <https://doi.org/10.3390/en14238142> (accessed Mar. 12, 2025) (“For utility-scale projects, storage can provide utility stabilization, avoid over-generation, act as a back-up during electrical disruption, reduce grid management concerns”).

⁴ North American Electric Reliability Corporation, *2023 State of Reliability Overview, Assessment Overview of 2022 Bulk Power System Performance*, (June 2023) at 7-8, https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2023_Overview.pdf (accessed Mar. 12, 2025).

and 16 percent were caused by coal . . . because gas plants face fuel supply and equipment failures from freezing temperatures”⁵

Renewable energy projects like the one proposed by Oak Run are critical to addressing this problem and are already making valuable contributions across the grid. “Around the country, wind turbines, solar energy, and batteries often buttress the grid when extreme heat or other weather events tax it the most.”⁶ For example, “[h]igh solar generation is often correlated with peak summer loads when air conditioning units are in heavy use,” *id.*, which helps to ensure that reliable energy is available precisely when customers need it and traditional production methods may fail. Thus, in May 2023, “solar and energy storage” facilities were able to fill the gap in Texas “while 10 gigawatts of power from coal and nuclear plants were offline” because of heat-related issues. *Id.* It is no surprise, then, that PJM has been working to address electric grid shortfalls in Ohio and other states within its jurisdiction by organizing power generation and transmission projects’ requests to connect to the power grid. Oak Run is part of that process: in its Application, Oak Run indicated that it has sought approval to connect to the local power grid through PJM, and OPSB mandated this approval as part of Oak Run’s certification. (Order, p. 44, ¶ 111).

It follows that, if Appellants succeed in imposing artificially high application standards on generation and transmission projects seeking certification, that heightened barrier to entry would exacerbate the already present danger of grid failure due to the slow construction of new baseload

⁵ Rachel Chang, *Renewable Energy is the Key to Building a More Resilient and Reliable Electricity Grid*, Center for American Progress (Nov. 7, 2023), <https://www.americanprogress.org/article/renewable-energy-is-the-key-to-building-a-more-resilient-and-reliable-electricity-grid/> (accessed Mar. 12, 2025).

⁶ Joint Economic Committee, *How Renewable Energy Can Make the Power Grid More Reliable and Address Risks to Electricity Infrastructure* (Jan. 19, 2024), <https://www.jec.senate.gov/public/index.cfm/democrats/2024/1/how-renewable-energy-can-make-the-power-grid-more-reliable-and-address-risks-to-electricity-infrastructure> (accessed Mar. 12, 2025).

generation projects.⁷ The approval of this project is therefore vital to the stability of our state's electric grid reliability, and it certainly serves the public interest, convenience, and necessity in this capacity.

Furthermore, the Project helps fulfill the increasingly robust corporate demand for renewable energy, which encourages significant industry growth in Ohio. Some of the country's largest employers with a renewable energy appetite are Business Amici members, including manufacturers like Proctor & Gamble and tech companies Amazon, Meta, Google, and Microsoft.⁸

Increasingly, businesses will only locate corporate infrastructure in Ohio if renewable energy is available. In 2017, Meta announced that it would build a \$750 million, 22-acre data center in New Albany, Ohio, citing the availability of renewable energy sources, including wind, solar, and hydro, as being critical to choosing the location.⁹ Meta has since announced plans to expand its data center operations in New Albany due to "the infrastructure available at the site, the community partnerships and access to renewable energy."¹⁰

⁷ See PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, (Feb. 24, 2023), at 1, <https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx> (accessed Mar. 12, 2025).

⁸ See Johnathan Lopez, *General Motors to Reach 100 Percent Renewable Energy in the U.S. by 2025*, GM Authority (Sept. 30, 2021), <https://gmauthority.com/blog/2021/09/general-motors-to-reach-100-percent-renewable-energy-in-the-u-s-by-2025/> (accessed Mar. 12, 2025); see also Press Release, Proctor & Gamble, *P&G Purchases 100% Renewable Electricity in U.S., Canada, and Western Europe* (Oct. 24, 2019), <https://us.pg.com/blogs/pg-purchases-renewable-electricity/> (accessed Mar. 12, 2025).

⁹ Emily Holbrook, *Facebook to Open Renewables-Powered Data Center in Ohio*, E+E Leader (Aug. 16, 2017), <https://www.environmentenergyleader.com/stories/facebook-to-open-renewables-powered-data-center-in-ohio,15569> (accessed Mar. 12, 2025).

¹⁰ Mark Williams, *Facebook parent Meta to expand New Albany data center by 1 million square feet*, Columbus Dispatch (Apr. 21, 2022), <https://www.dispatch.com/story/business/2022/04/21/facebook-expand-new-albany-campus/7394750001/> (accessed Mar. 12, 2025).

Meta is not the only company making substantial infrastructure decisions based on the availability of renewable energy resources. After breaking ground on an initial data center in New Albany, Ohio in 2019, citing New Albany as a fit for Google’s “quest to operate on 24/7 carbon-free energy, everywhere, by 2030,” Google has invested \$4.4 billion and pledged an additional \$2.3 billion investment into its three data center sites in Central Ohio.¹¹ Likewise, as it relates to perhaps Ohio’s most anticipated business partnership, Intel has committed to 100% renewable energy supply by 2030 to power its global manufacturing operations, including its new Licking County semiconductor manufacturing facility.¹² Thus, Ohio’s continued ability to attract large employers requires a consistent and fair decision-making process at the OPSB, which is endangered by the unreasonably heightened certification standards sought by the Appellants.

CONCLUSION

The OPSB’s Order granting the Application was supported by ample evidence that the Project would serve the public interest, convenience, and necessity. The Order was clearly within the zone of permissibly statutory construction, as the OPSB underwent an exhaustive investigation and analysis not once but twice in its consideration of Appellants application for rehearing. The evidence plainly shows that the Project will support local livelihoods, generate tax revenue, and facilitate greenhouse gas emission reductions, which will benefit the public both statewide and locally. Therefore, the Court should affirm the Order granting the Application and ensuring the

¹¹ Mark Williams, *Google to invest billions more in data center operations in central Ohio*, Columbus Dispatch (Jun. 18, 2024), <https://www.dispatch.com/story/business/2024/06/18/whats-next-for-google-in-central-ohio-tech-company-will-say-tuesday/74126956007/> (accessed Mar. 12, 2025).

¹² Business Wire, *Ohio Solar Industry Welcomes Intel*, (Jan. 21, 2022), <https://www.businesswire.com/news/home/20220121005479/en/Ohio-Solar-Industry-Welcomes-Intel> (accessed Mar. 12, 2025).

public interest, convenience, and necessity is best served through the additional sources of renewable energy created by the Project.

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