MEMORANDUM

TO: Chris Pirik, Chief, Power Siting and Gas Section ï Public Utilities Commission of Ohio

FROM: Todd Colquitt, Business Advocate

DATE: March 19, 2014

RE: **CSI Review – Ohio Power Siting Board Five-Year Review (Case No. 12-1981-GE-BRO)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (ñCSIò) Office under Ohio Revised Code (ñO.R.Cò) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Officeôs comments to the Agency as provided for in ORC 107.54.

Analysis

Currently in Ohio Administrative Code chapter 4906, there are eighty-eight (88) rules spread across eight (8) sub-chapters governing the process by which the location of major utility facilities for energy generation and transmission are submitted by utilities for review and approval by the Ohio Power Siting Board (ñOPSBò or ñBoardò). The rule package originally proposed by the Board would re-organize the regulations into eighty-four (84) rules covering seven (7) sub-chapters. The statutory framework creating and empowering the Board to establish rules governing power siting is found in Ohio Revised Code chapter 4906. Senate Bill 315 ï which was signed into law on June 11, 2012 ï amended parts of O.R.C chapter 4906. As a result of that and the pending five-year review of its rules required under O.R.C 119.032, the Board initiated a rulemaking in Case No. 12-1981-GE-BRO on July 5, 2012.

As part of that rulemaking, the Board convened a workshop on August 13, 2012, inviting interested stakeholders to provide suggestions for Board Staff to consider as it began the process

of updating the chapter. The Board sought public comment on the rule package and Business Impact Analyses by issuing an Entry dated May 1, 2013 seeking comments to be filed by June 3, 2013 and reply comments to be filed by June 18, 2013. During the stakeholder comment and reply period, the Board received input from six (6) and four (4) parties, respectively, all but one party representing a directly impacted regulated company or interest. Having reviewed the information provided by stakeholders at the workshop and in the comments and replies, the Board issued an Order on Feb. 18, 2014 addressing the comments and Staffôs proposed rule changes.

Broadly speaking, the issues raised by the commenting parties can be divided into three categories: 1) paperwork requirements; 2) data and information required to be filed with applications; and 3) procedural matters. In response to the many suggestions from the commenting parties, the Board made numerous changes to the rules proposed by Staff. There were three changes proposed by Staff that drew the most consistent response from the affected businesses, regardless of the industry sector they occupy. The first involves the proposal to require an applicant to have a public information meeting no further out than sixty (60) days before the filing of the application. The second involves the proposal to allow accelerated applications subject to automatic approval to have conditions attached by Staff. The third issue surrounds the type and amount of data required to be filed for Accelerated Construction Notices and Accelerated Letters of Notification.

The directly impacted regulated companies assert that the Public Information Program as proposed by Staff in rule 4906-3-03 would negatively impact public stakeholder input by compressing that process into the sixty-day (60) period preceding the filing of an application, thereby limiting the ability of an applicant to make changes to the project based on local feedback. In its order, the Board rejects suggestions to allow the public information meeting to be held further out from the actual filing date. It states that holding the public information meeting too far out with the project in earlier planning stages and subject to a greater degree of change risks attendees of the meeting drawing conclusions about the projectôs relevance to and impact on them that later prove to be incorrect due to subsequent changes in the project. Held too far in advance, if a public informational meeting attendee were to decide that the project did not affect them, they might find out only later that the project had changed in such a way as to affect them, but that this awareness would arrive too late in the application process for the attendee to be meaningfully involved. The Board also noted that a goal of the informational meetings is to provide an opportunity for public comment on the project for which the applicant will be applying. As such, the project viewed by the public should more closely hew to the project for which the applicant will be applying, rather than something that may be significantly modified by the applicant prior to applying. The Board further notes in its Order that nothing precludes an applicant from gathering information from and meeting earlier with landowners and other members of the public as part of its internal process for developing its plans to identify siting options.

The second issue cited by the directly impacted regulated companies is that rule 4906-6-10 as proposed by Staff would allow the imposition of conditions on project approval by Staff without the opportunity for an applicant to address the reasonableness or necessity of conditions prior to the project being deemed approved under the auto-approval process. The Board states that the ability for a party to comment on and rebut the content of a Staff report on an accelerated application has not changed from the existing rules. Nonetheless, the Board goes on to state that the proposed rule should be revised to clarify the process for allowing the filing of objections to Staff reports on accelerated applications recommended for automatic approval. Accordingly, revised proposed rule 4906-6-10 contained in the Boardôs Feb. 18 Order is significantly amended from the originally proposed rule 4906-6-10 contained in the Boardôs May 1, 2013 Entry, and does indeed appear to provide a process for applicants to contest conditions proposed by Staff in a Staff report on an accelerated application and require them to be considered by the Board.

On the third issue, the directly impacted regulated companies assert proposed rule 4906-6-05 creates new or expanded informational filing requirements for projects that historically have fallen under the less burdensome Construction Notices category, specifically by requiring accelerated Construction Notices (ñCNò) certificate applications to provide the same type and amount of information required of accelerated Letter of Notification (ñLONò) certificate applications. In its Order, the Board rejects these comments. While it acknowledges that CN projects are typically smaller and less impactful than LON projects, the Board counters that such is not always the case, and has often had to require the submittal of the additional information now being delineated upfront. Throughout its Order, the Board notes that a goal of the proposed changes is to make the requirements more transparent to applicants by identifying beforehand information that may be needed for it to fulfill its statutory obligations in reviewing siting projects. The Board further states throughout its Order that to the extent a listed data requirement is irrelevant, the applicant need merely state as much and explain so in its application. Finally, the Board also repeatedly states that it does not anticipate reviewing CN projects any differently than it does now.

In addition to comments on the rules, two of the commenting parties also commented on the BIAs completed by Staff. In particular, both parties disputed the answer to Question 14 that the costs of compliance with the proposed rules will be lower than the costs of compliance under the current rules. Instead, the commenting parties state that the costs of the rules will increase, primarily as a result of the increased information and data requirements for accelerated CN and LON applications. However, as noted above, the Board asserts that the amended rules shift the submission of some information earlier in the process, but should not lead to the Board reviewing accelerated project applications differently than current practice. As such, the CSI Office has not requested the Board submit a revised BIA.

The purpose of a CSI Recommendation is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered; whether the appropriate balance has been struck; and, whether the agency has adequately articulated the necessity for the adverse business impact. After reviewing the various documents contained in the docket for Ohio Power Siting Board Case No. 12-1981-GE-BRO, including the transcript from the workshop, May 1, 2013 Entry and Staff proposal, the BIAs, comments, reply comments, and the Boardôs Feb. 18, 2014 Finding and Order, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIAs.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Chris Pirik, Chief, Power Siting and Gas Section
Mark Hamlin, Lt. Governorôs Office