



December 3, 2019

Chair Vitale, Vice Chair Kick, Ranking Member Denson, and Members of the House Energy and Natural Resources Committee:

Thank you for the opportunity to offer written testimony in opposition to H.B. 401. sPower, an AES and AIMCo company, is the largest private owner of operating solar assets in the United States. sPower owns and operates a portfolio of solar and wind assets greater than 1.4 GW and has a development pipeline of more than 10 GW.

sPower is the proud developer of the Seneca Wind Project, a 212 MW wind farm located across the townships of Scipio, Reed, Venice, Eden and Bloom in Seneca County, Ohio. The project represents an investment of approximately \$300 million, including \$56 million directly shared with local schools and townships through a payment in lieu of taxes, direct lease payments to landowners, and a significant economic stimulus to the area through jobs and local contracts for goods and services.

Creating a local referendum with the power to invalidate an Ohio Power Siting Board (“OPSB”) certificate for wind farms is problematic for multiple reasons. First, it will make Ohio one of the least business friendly states for energy development in the country as it removes all certainty for companies making large investments. Second, during the OPSB process local citizens potentially impacted by the proposed project and elected officials have multiple opportunities to participate in the review process and participate as an intervenor in the case. An intervenor receives the opportunity for discovery and is a formal participant. The OPSB process also includes a public hearing held in the community where the project is located.

#### Purpose of the Ohio Power Siting Board.

After reviewing the testimony and opposition to wind turbines raised during proponent testimony on H.B. 401, we noted that many witnesses made the case for why Ohio has a power siting board in the first place. The purpose of the OPSB is to apply uniform siting criteria to critical infrastructure throughout the state such as utility-scale power plants (nuclear, coal, natural gas), solar installations, transmission and distribution lines, and wind farms. The OPSB Staff is made of professional engineers, economists, environmental specialists, geologists, and other experts. The OPSB process is rigorous, but fair. OPSB certificates are not granted lightly and the OPSB takes great care to ensure that potential impacts caused by these projects are addressed, mitigated, or corrected before a certificate is issued.

Many of the objections and claims made about the impacts and negative attributes are demonstrably false or easily disproven. The OPSB staff reviews each application carefully to ensure that instances of flicker, noise, or impacts to wildlife are either eliminated or mitigated. If, for example, an application proposes siting a turbine in an area that would impact migratory

patterns of birds, the OPSB could require the turbine be sited elsewhere, eliminated from the project, or require, as part of the certificate, that the turbine not be operated during such times.

Proponents also argued that the OPSB does not consider cumulative impacts of multiple projects. This is untrue. For example, when considering noise levels, an applicant can only exceed the baseline ambient noise levels by +5dBA over ambient. While multiple projects increases the baseline ambient noise levels, the OPSB has the discretion to restrict future applicant's permitted noise levels.

The OPSB is equipped with the expertise to make these difficult and technical determinations and to filter through unfounded and unproven claims. In an electoral campaign setting, as proposed by H.B. 401, the general public could be subjected to misleading claims, which could easily skew a local election.

#### Notice Provisions.

Proponents insist that they are not given sufficient notice or opportunity to intervene in an OPSB case. However, the OPSB provides a thorough and clear process for the public to place input and provide comments on a proposed application.

Prior to filing the application, the developer of the project must hold an informational meeting. An informational meeting allows the public and interested stakeholders to learn the details and ask questions about the project. Company representatives attend the informational meeting to answer questions and provide materials on the project. The informational meeting is required to be held no more than 90 days prior to submitting the standard certificate of application. Notice of the informational meeting must be placed in newspapers of general circulation in the project area no more than 21 days or fewer than 7 days before the date of the meeting. Then, at least 21 days before the informational meeting, the developer must send a letter to each property owner and affected tenant. Those included in the required notice letter must be within the planned site, contiguous to the planned site, and who may be approached by the applicant for any additional easements for the construction, operation and maintenance of the facility.

If the project location changes after the informational hearing, then the applicant must send another letter to any property owner and affected tenant. Also, if substantial changes to the application occur after the informational meeting, the executive director of the OPSB can require another informational meeting on his or her own discretion.

After filing the application, the board must accept the application. Once the OPSB accepts the application as complete, the company must send its first public notice within 15 days of the application being accepted. The first public notice must go to each owner of a property cross and or is adjacent to the proposed project preferred and alternative routes. Paper copies of the project are also required to be sent to the public libraries. Then, the OPSB completes their application review and investigation of the project. A second notice is required to be sent between 7 and 21 days before the public hearing. The second notice must be sent to the same property owners as the first notice and be published in newspapers of general circulation.

A public hearing is held after the staff report of the board is published. Copies of the staff report are provided at the public hearing. The staff report provides all information analyzed and any recommendations the board finds necessary for the project to receive approval. A public hearing is held near the location of the proposed project. All members of the public are invited to come and listen to the hearing. In addition, the public may submit spoken testimony on the project. A court reporter transcribes all spoken testimony and the transcript is placed in the record of the project. In addition, company representatives attend the public hearing to answer any questions individuals may have on the project. Also, the administrative law judges allow each member of the public to provide spoken testimony for as long as the member would like to speak. Public hearings do not end until the last individual who would like to testify does so.

After the public hearing concludes, an adjudicatory hearing is held in Columbus at the OPSB offices. This meeting allows the developer to present evidence for the project and allows intervening parties to present a case against or in support of the project. Local governments, local businesses and organizations may intervene in the case and must have legal counsel. However, individuals may intervene before the deadline and are not required to have legal counsel.

Finally, public comments may be submitted any time to the OPSB in support or against the project. These comments are filed in the official record of the case under the public comments section. In addition, public comments are reviewed by OPSB staff. Voting members of the board have access to view the public comments on the public website of the case docket.

In total, the OPSB process provides numerous opportunities for the public to voice opposition or concern on an application. On average, the OPSB process takes at least one year from notification of application to approve certification of the project. After receiving certification, a project still must complete financing to begin construction of the certified project. Even after receiving certification, application for rehearing can be made within 30 days after the original decision. Certification can also be appealed to the Ohio Supreme Court after an application for rehearing is denied.

Due process is provided to the public through several avenues such as the informational meeting, informal comments, public hearing and the ability to intervene in the case.

As mentioned above, the Ohio Supreme Court has direct jurisdiction over all appeals from the OPSB, meaning an intervener can appeal directly to the state's highest court – demonstrating the gravity and importance placed on an OPSB certificate. In fact, the Ohio Supreme Court has reversed the OPSB where the Court determined not enough opportunity was provided for intervening parties to fully participate in the proceedings and fully challenge the proposed project. See, *In re Application of Middletown Coke Co.*, 2010-Ohio-5725, ¶ 2, 127 Ohio St. 3d 348, 348, 939 N.E.2d 1210, 1210–11 (holding that the OPSB unreasonably denied a local municipality an opportunity to test the company's assertion concerning the preferred location of the project).

We provided as a supplement to our testimony a graphical representation of the OPSB process for your convenience.

### Alternatives to H.B. 401.

While sPower believes the OPSB process works, any process can be improved and if this body wishes to address the concerns raised about notice and standing, we are happy to discuss possible reforms. We understand that pending legislation, H.B. 246, may contain possible reforms to the OPSB process. sPower would be more than happy to participate in discussions about reforming both the timing of notice and standing. Discussions could also address process improvements from the developer standpoint as well. However, subjecting a project to a local election after enduring the lengthy and arduous OPSB process is patently unfair and has a chilling effect on future development.

Additionally, many witnesses stated that they feel the OPSB is not equipped to handle the technical review required to adequately review applications for wind farms. While sPower has the utmost confidence in the independence and expertise of the OPSB staff, we would not oppose entering a discussion about providing the OPSB with additional resources. The caseload for the OPSB has steadily increased as the volume of applications for all generation types has increased. Providing the OPSB with additional resources to employ more technical experts may be warranted, and could help address concerns raised by proponents of H.B. 401.

Reasonable alternatives to H.B. 401 exist that addresses many of the concerns raised by proponents of the legislation without injecting uncertainty and risk into an already difficult development process.

### Conclusion.

H.B. 401 creates a dangerous precedent and renders the OPSB close to irrelevant. Will a similar local referendum be permitted on other power generators? Will Ohio now embrace local referendums on the siting of natural gas pipelines or fracking wells? Should local referendums be extended beyond the OPSB process for any type of development? Of course not. Doing so would make Ohio an untenable place to develop new business.

sPower invested in Ohio because of the state's skilled workforce, natural resources, and transparent regulatory process. The Ohio Power Siting Board process is not easy. It is a lengthy and intensive process, however, by providing clear regulatory guidance of what is expected, the OPSB is part of what makes Ohio appealing for conducting business. Developers know and understand the risks when developing a project through the OPSB. Enacting H.B. 401 invalidates that process.