

**BEFORE
THE OHIO POWER SITING BOARD**

**In the Matter of the Power Siting Board’s)
Review of Chapters 4906-1, 4906-5,)
4906-7, 4906-11, 4906-13, 4906-15, and) Case No. 12-1981-GE-ORD
4906-17 of the Ohio Administrative Code)**

**INITIAL COMMENTS OF UNION NEIGHBORS UNITED, ROBERT AND DIANE
McCONNELL, AND JULIA F. JOHNSON**

In an entry dated November 24, 2014, the Ohio Power Siting Board requested interested parties to submit comments on the Staff’s proposed changes to Ohio Adm. Code 4906-4-08. Union Neighbors United appreciates this opportunity to submit the following comments on the proposed rule.

I. ABOUT THE COMMENTERS

Union Neighbors United (“UNU”) is a nonprofit corporation formed for the purpose of promoting the safety and well-being of the Champaign County community by addressing issues relating to the siting of industrial wind turbines. UNU consists of ten trustees and officers, all of whom reside in the area that would be affected by the Buckeye Wind and Champaign Wind projects previously certificated by the Ohio Power Siting Board.

Robert and Diane McConnell reside at 4880 E. U.S. Route 36, Urbana, Ohio. Julia Johnson resides at 4891 E. U.S. Route 36, Urbana, Ohio. The McConnells and Ms. Johnson are trustees of UNU, but are also commenting in their individual capacities.

Since 2007, UNU, the McConnells, and Ms. Johnson have actively educated themselves and the community concerning the implications of wind development for Champaign County and the State of Ohio. For example, Ms. Johnson and Ms. McConnell served as members of the Champaign County Wind Turbine Study Group convened by former Champaign County Prosecutor Nick Selvaggio. *Id.* Ms. Johnson also served as a stakeholder in the Ohio Wind Working Group, representing consumer interests. *Id.* UNU submitted extensive written comments on the Power Siting Board's wind turbine siting rules, O.A.C. Chapter 4906-17. UNU, Ms. Johnson, and the McConnells also participated as intervenors in the Ohio Power Siting Board proceedings relating to the Buckeye Wind and Champaign Wind projects. *Application of Buckeye Wind, LLC for a Certificate to Construct a Wind Powered Electric Generating Facility in Champaign County, Ohio*, OPSB Nos. 08-666-EL-BGN, 13-360-EL-BGA; *Application of Champaign Wind, LLC for a Certificate to Construct a Wind Powered Electric Generating Facility in Champaign County, Ohio*, OPSB No. 12-160-EL-BGN.

Although the McConnells and Ms. Johnson join in these comments in their individual capacities, these comments will refer to them and to UNU collectively as "UNU" for simplicity.

II. COMMENTS ON PROPOSED RULE:

1. Manufacturer Safety Manuals and Recommended Setbacks (4906-4-08(A)(1)(c)):

UNU supports the requirement that applicants provide copies of all manufacturer safety manuals and recommended manufacturer setbacks. However, in addition to formal safety manuals and setback recommendations, turbine manufacturers have also developed written recommendations concerning siting and "micro-siting" of turbines to address safety hazards and other siting considerations. Therefore, UNU urges the Board to revise Ohio Adm. Code 4906-4-

08(A)(1)(c) to read as follows: “Provide the generation equipment manufacturer’s safety standards, a complete copy of the manufacturer’s safety manual or similar document, any manufacturer-recommended setbacks, and any other manufacturer recommendations relating to safety, health, or turbine siting.”

2. Noise, Health, and Safety Considerations (4906-4-08(A)):

Revised Code 4906.20(B)(2) requires the Board to prescribe reasonable regulations regarding wind turbines of economically significant wind farms that include, among other things, regulations for ice throw, sound and noise levels, blade shear, and shadow flicker. Neither the proposed rule nor the Board’s existing rules set forth enforceable standards to protect the public from wind turbine noise, blade shear, or other hazards such as ice throw.

For the reasons set forth fully in UNU’s Merits Brief in *Matter of Champaign Wind, LLC*, OPSB No. 12-160-EL-BGN,¹ UNU urges that the Board adopt the following requirements relating to noise, health, and safety.

(a) Noise:

(i) To prevent annoyance and sleep deprivation from inherently intrusive wind turbine noise, operational noise levels of wind energy facilities should not exceed five dBA above the background sound level at nonparticipating properties. UNU Brief at 22-25. Since this proposed standard applies to nonparticipating properties, the rule should require all background noise measurements to be taken on location at nonparticipating properties wherever possible.² For purposes of determining compliance with this standard, background noise assessments must be based on the L90 statistical standard, as universally acknowledged in the acoustical engineering

¹ Citations to “UNU Brief” below are to UNU’s Opening Merits Brief in *Champaign Wind*. UNU incorporates the cited pages in these comments by reference.

² Measurement of background noise from participating properties calls into question the objectivity of the measurements.

profession. *Id.* at 30. The L90, known as the residual sound level, is the sound level exceeded during 90% of the measurement period. The L90 measures the quietest 10% of a time interval in order to identify the amount of background sound that is normally available to mask turbine noise that otherwise would awaken a person. By measuring the quietest 10% interval, the L90 statistic filters out the sporadic noise from noise events of short duration, such as passing cars. By removing brief noise spikes, the L90 metric eliminates short-term noise spikes that serve no purpose for masking the sound of a new noise source. *Id.*

(ii) No nonparticipating resident or landowner should be exposed to noise levels greater than 35 dBA and 50 dBC at any time. UNU Brief at 35-40, 44.

(iii) The above standards should apply at the property lines of nonparticipating properties, not merely at neighboring residences. *Id.* at 44-45.

(iv) Proposed subsection 4906-4-08(C)(3)(B) requires that the application address “cumulative operational noise levels at the property boundary for each non-participating property adjacent to or within the project area, under both day and nighttime conditions.” As the Board is well aware, wind energy developers often plan their facilities in phases, while in other cases, one developer’s facility is proposed in or near the location of another developer’s facility. In order to assess the cumulative impact of multiple facilities, it is critical that such assessment take into account impacts from other existing, proposed, or planned wind power facilities in addition to impacts from the facility that is the subject of the application. This comment applies not only to assessment of cumulative noise impacts, but also to visual impacts, shadow flicker, and other cumulative facility impacts.

(b) Blade and ice throw:

In *Champaign Wind*, the Staff recommended a setback equivalent to 150 percent of the sum of turbine hub height and rotor diameter to safeguard individuals in occupied structures and on heavily traveled roads from ice and blade fragments thrown from a turbine. *Matter of Champaign Wind, LLC*, Staff Report at 31. The Board adopted the Staff's recommendation. *Id.*, Opinion, Entry and Certificate at 44-45 (4/29/2013). UNU urges the Board to adopt this standard as an enforceable setback from all roadways, since the risk of being struck by blade or ice fragments is present for all motorists, not merely those on heavily-traveled roadways. Furthermore, the term "heavily-traveled roadways" is ambiguous and therefore not conducive to an enforceable setback standard.

With regard to nonparticipating properties, the risk of being struck by ice or blade fragments is present throughout the setback area, not simply for those in structures. Indeed, individuals in structures or vehicles are less apt to be injured by smaller fragments than those who may be outdoors on a nonparticipating property. Therefore, since turbines can throw blade or ice fragments at least 1,640 feet, UNU urges the Board to adopt in its rule an enforceable setback of 1,640 feet from all nonparticipating property lines. UNU Brief at 54-59.

3. Wildlife Resources (4906-4-08(B)(1)(c)-(e)):

The proposed rule requires the applicant to provide the results of a "literature survey of the plant and animal life" within one-quarter mile of the project area. 4906-4-08(B)(1)(c). One-quarter mile is inadequate for mobile endangered species such as the Indiana bat, which may move freely in and out of the project area. UNU urges the Board to require a broader range for the initial literature survey.

Sections (B)(1)(d) and (e) of the proposed rule call for submission of certain field studies, but do not require them. At a minimum, the rule should require submission of actual field studies for all endangered species identified in the literature survey, or where the applicant has knowledge of the presence of an endangered species within a specified distance of the project area.

As the Board is aware, wind developers have been known to purchase lease rights from other developers who may have conducted ecological surveys of the subject area. UNU is aware of at least one situation where the acquiring developer did not include in its certificate application ecological studies conducted by its predecessor. Therefore, where the applicant is aware of and has access to studies (such as field studies) regarding the potential impact of the proposed facility, the Board's rule should require the applicant to submit copies of all such studies with the application, regardless of whether the studies were performed "by or for the applicant." 4906-4-08(B)(1)(e).

4. Mitigation of Construction and Operational Impacts on Wildlife (4906-4-08(B)(2)-(3)):

Subsection (B)(2)(b)(vii) of the proposed rule requires that the applicant specify measures for avoiding construction impacts to "major species and their habitat." The term "major species" appears to have carried over from the Board's existing rules, but has not been defined in the proposed rule. See Ohio Adm. Code 4906-17-08(B)(1)(e). That term should include, at a minimum, species of commercial or recreational value, or species listed or proposed for listing as endangered or threatened under federal or Ohio law. UNU further urges the Board to require applicants to specify measures for both mitigation and avoidance of construction impacts on such species.

Subsection (B)(3)(c) requires applicants to provide information on plans for post-construction monitoring of wildlife impacts caused by operational or maintenance activities. For major species (as described above), the rule should also require a plan for mitigation of such impacts. Post-construction monitoring and mitigation should be mandatory, not optional. In order to avoid conflicts of interest, the Board should require all monitoring to be conducted by State employees or third –party contractors working on behalf of the OPSB, with all associated costs to be paid by the certificate holder.

5. Land Use and Community Development (4906-4-08(C)):

Proposed subsection (C)(1)(a) requires submission of a map showing specified information, such as prevailing land use, within one mile of the proposed facility. The Board’s existing rule requires a map showing such information within five miles of the proposed facility. Ohio Adm. Code 4906-17-08(C)(1). A one-mile mapping area around the proposed facility may not pick up important land uses, such as airports, that would be affected by construction and operation of the facility. UNU urges the Board to retain the five-mile mapping distance set forth in its existing rule.

Subsection 4906-4-08(C)(1)(b) of the proposed rule calls for a table indicating, for each structure within 1,000 feet of a wind turbine, the distance between the structure and the turbine. Because all statutory setbacks are now to be measured from the nearest adjacent property, R.C. 4906.20(B)(2)(a), UNU submits that the distance to nearby structures is no longer of primary relevance. For purposes of the statutory setback requirements, the rule should require specification of distances from turbines and adjacent properties. In addition, for purposes of determining compliance with enforceable noise and safety standards, *see* pp. 3-5, above, the Board should similarly require a table showing distances to all properties within 1,640 feet of

each proposed turbine. For purposes of determining compliance with enforceable blade and ice throw standards, *id.*, the Board should also require the application to indicate the distance from each turbine to the nearest public road.

UNU strongly supports the Board's proposal to require applicants to map all parcels leased by the applicant for the proposed facility. 4906-4-08(C)(2). Because applicants may be developing projects in stages, however, the rule should require the applicant to indicate all parcels it has leased for wind development—not just parcels it has leased for the facility that is the subject of the application. Identification of all leased properties is important to the Board, the Staff, and the public for the sake of determining which parcels should be considered participating landowners. The information is also important for the purpose of assessing the potential for future wind energy development in the affected area.

6. Visual Impact Study (4906-4-08(D)): The proposed rule provides no guidance for the number or selection of vantage points for visual simulations. UNU urges the Board to require visual simulations with north/south/east/west views for at least one location per square mile within one mile of the proposed project area.

7. General Comments:

In UNU's experience, the format of past applications for wind farm certificates has sometimes made it difficult or impossible for members of the public to find key information that is important to their properties and their community. For example, modeling reports have sometimes referenced surrounding properties by unintelligible codes rather than by address, parcel number, or other means that can be readily interpreted by the public. In other cases, members of the public have not been able to decipher modeling conclusions without the purchase of expensive proprietary software. UNU urges the Board to require that applications express all

parcel-specific information, such as modeling inputs and results, in a manner that can be readily interpreted by members of the public.

Finally, as noted above, R.C. 4906.20(B)(2) requires the Board to enact reasonable rules as follows:

[T]he 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.

Neither proposed rule 4906-4-08 nor the Board's rule package recently filed with JCARR set forth regulations governing the reconstruction or enlargement of wind turbines, protection of recreational lands or wildlife, interconnection, decommissioning, or cooperation for site visits and enforcement investigations. Furthermore, the rules contain no enforceable standards for protection of the public from ice throw, wind turbine noise, blade shear, or shadow flicker. By requiring "reasonable regulation" of these topics, the General Assembly contemplated enforceable standards, not a toothless requirement that information on these subjects be included in an application for *ad hoc* adjudication by the Board.

II. CONCLUSION

For the foregoing reasons, Union Neighbors United recommends that the above comments and changes be considered and adopted by the Board as it finalizes proposed Ohio Adm. Code 4906-4-08. Thank you for your consideration and for the opportunity to comment on this rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments was served on each prior commenter in this matter by electronic mail through PUCO's Docket Information System this 16th day of January, 2015.

/s/ Christopher A. Walker
Christopher A. Walker

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Summary: Comments Regarding Proposed Rule 4906-4-08 electronically filed by Mr. Christopher A Walker on behalf of Union Neighbors United and McConnell, Robert Mr. and McConnell, Diane Mrs. and Johnson, Julia F. Ms.