

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting)
Board's Review of Chapters 4906-1,)
4906-5, 4906-7, 4906-9, 4906-11, 4906-13,) Case No. 12-1981-GE-BRO
4906-15, and 4906-17 of the Ohio)
Administrative Code.)

ENTRY ON REHEARING

The administrative law judge finds:

- (1) Pursuant to R.C. 106.03 and R.C. 111.15, all state agencies are required to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.
- (2) In summary, R.C. 106.03(A) requires that the Ohio Power Siting Board (Board) determine whether the rules: should be continued without amendment, be amended, or be rescinded; need amendment or rescission to give more flexibility at the local level or to eliminate unnecessary paperwork; incorporate a text or other material by reference; duplicate, overlap, or conflict with other rules; have an adverse impact on businesses; and contain words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive.
- (3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must: review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

- (4) On July 5, 2012, the Board initiated its five-year review of the rules contained in Ohio Adm.Code Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17 in this docket.
- (5) On February 18, 2014, the Board issued a Finding and Order (First Order) in which it adopted a number of revisions to the current administrative rules, including a reorganization of the rules in order to provide a better structure for the rules and to make it easier to follow the process and requirements for different types of cases. In the First Order, the Board concluded that Ohio Adm.Code Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17 should be rescinded and replaced by new Ohio Adm.Code Chapters 4906-1 through 4906-7, subject to the provisions of R.C. 111.15.
- (6) By Entry on Rehearing issued May 15, 2014, the Board granted, in part, and denied, in part, the applications for rehearing filed by two commenters.
- (7) On September 15, 2014, House Bill 483 (H.B. 483) became effective, thus, amending R.C. 4906.20 and 4906.201, regarding the setback requirements for applications to construct wind-powered electric generation facilities that come before the Board.
- (8) While the Board moved forward, in accordance with the provisions of R.C. 111.15, and filed the vast majority of the rules with the Joint Committee on Agency Rule Review (JCARR), in light of the new law contained in R.C. 4906.20 and 4906.201, the Board did not file new Ohio Adm.Code 4906-4-08, which contained a consolidation of the rules found in Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08. In addition, Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08 were not filed with JCARR. The rules not filed with JCARR address the health and safety, land use, and ecological information required in applications filed before the Board, including the provision regarding the statutory setback requirements for wind-powered electric generation facilities.

- (9) By Entry issued November 24, 2014, the Board requested comments on Staff's proposed revisions to Ohio Adm.Code 4906-4-08, which were intended to reflect the setback requirements for applications to construct wind-powered electric generation facilities in light of the amendments to R.C. 4906.20 and 4906.201. In the November 24, 2014 Entry, the Board noted that, until JCARR reviewed Ohio Adm.Code 4906-4-08 and it became effective, Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08 should remain in effect.
- (10) In response to the November 24, 2014 Entry, comments were filed by multiple parties including, in part, Union Neighbors United (UNU) joined by Robert and Diane McConnell and Julia Johnson in individual capacities (jointly referred to as UNU).
- (11) On November 12, 2015, the Board issued a Second Finding and Order (Second Order) in this proceeding. In the Second Order, the Board found that revisions to Ohio Adm.Code 4906-4-08(C)(2)(b) should be filed with JCARR, the Legislative Service Commission, and the Secretary of State, in order to ensure the most current statutory setback requirement is implemented as soon as possible. However, the Board found that further discussion was necessary on issues regarding Ohio Adm.Code 4906-4-08 as they relate to wind-powered electric generation facilities. Consequently, the Board directed that Staff commence discussions with all interested stakeholders in January 2016 in order to obtain more information on stakeholders' proposals and to develop potential solutions. The Board further found that, upon conclusion of the discussions, but no later than June 1, 2016, the Board should initiate a rulemaking docket in order to formally consider Staff's proposed revisions to Ohio Adm.Code 4906-4-08 resulting from the stakeholder deliberations.
- (12) Thereafter, on December 11, 2015, UNU filed an application for rehearing regarding the Second Order. In its application for rehearing, UNU asserts that the Second Order is unlawful and unreasonable because: it promulgates Ohio Adm.Code 4906-4-08 in its entirety despite the Board's acknowledgement that there is insufficient information in

the docket to support issuance of the rule; the Board erroneously concluded that comments concerning safety hazards associated with the potential for turbine blade throw or ice throw are beyond the scope of the Board's authority; and, neither Ohio Adm.Code 4906-4-08 nor the other rules promulgated in this proceeding set forth reasonable regulation of subjects mandated by R.C. 4906.20(B)(2), specifically reconstruction or enlargement of wind turbines, protection of recreational lands or wildlife, interconnection, decommissioning, cooperation for site visits and enforcement investigations, and enforceable standards for protection of the public from ice throw, wind turbine noise, blade shear, or shadow flicker.

- (13) Ohio Adm.Code 4906-2-32 provides that an administrative law judge may grant an application for rehearing for the limited purpose of affording the Board additional time to consider the issues raised in the application for rehearing.
- (14) Pursuant to Ohio Adm.Code 4906-2-32, the administrative law judge hereby grants UNU's application for rehearing for the purpose of affording the Board additional time to consider the issues raised therein.

It is, therefore,

ORDERED, That UNU's application for rehearing is granted for the purpose of affording the Board additional time to consider the issues raised therein. It is, further,

ORDERED, That notice of this Entry on Rehearing be sent to the electric-energy and gas-pipeline industry service lists. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all commenters and all interested persons of record.

THE OHIO POWER SITING BOARD

s/Mandy W. Chiles

By: Mandy Willey Chiles
Administrative Law Judge

JRJ/sc

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in

Case No(s). 12-1981-GE-BRO

Summary: Administrative Law Judge Entry granting UNU's application for rehearing for the limited purpose of affording the Board additional time to consider the issues raised therein. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio