

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting)	
Board's Review of Rule 4906-4-08 of the)	Case No: 16-1109-GE-BRO
Ohio Administrative Code.)	

**INITIAL COMMENTS OF
ICEBREAKER WINDPOWER, INC.**

I. INTRODUCTION

On September 22, 2016, the Ohio Power Siting Board ("Board") issued an entry requesting comments from interested persons on staff's proposed changes to Ohio Administrative Code ("OAC") Rule 4906-4-08 and new OAC Rule 4906-4-09. The initial comments are due on October 24, 2016, and reply comments are due on November 8, 2016. In accordance with the Board's schedule, Icebreaker Windpower, Inc. (Icebreaker Windpower or the company) submits the following comments.

Icebreaker Windpower is pleased that the staff has presented proposed rules that address many important issues affecting the wind industry in Ohio. It is essential that the regulatory agencies and stakeholders partner with the wind industry to expand the use of clean renewable energy in this state for the benefit of the environment, the health of Ohio's residents, local jobs, and the economy. Icebreaker Windpower's proposed small 6-turbine demonstration wind-powered generation project in Lake Erie off the shore of Cleveland, Ohio will provide economic growth to this state in the form of manufacturing, construction, and operational jobs, as well as much needed tax support for schools and other public interests.

Icebreaker Windpower's comments today focus solely on one aspect of the staff's proposal; however, the company believes that all sections of the proposed rules should be reviewed and revised in an effort to ensure that the regulations are reasonable and will effectively advance Ohio's wind industry and do not include burdensome and unnecessary requirements that would prevent the expansion of wind energy projects in Ohio. Rather, as the first offshore wind project in the state and being new to Ohio's power siting regulatory landscape, Icebreaker Windpower is confident that our onshore colleagues that have been involved in the state's power siting process for many years will effectively present additional recommendations that should be considered and adopted by the Board.

II. OAC RULE 4906-4-09(A)(5)(c)¹ SHOULD NOT BE ADOPTED

Icebreaker Windpower strongly urges the Board to reject proposed new OAC Rule 4906-4-09(A)(5)(c), which establishes a brand new procedure for the review of certificate modifications by wind farm applicants. This new rule has no statutory basis, and it potentially creates a costly and unnecessary regulatory process for project modifications that are de minimis under section (A)(5)(b). Moreover, the new rule discriminates against wind generators and is contrary to the Governor's Common Sense Initiative.²

The process imposed by new proposed Rule 09(A)(5)(c) includes the potential for the filing of objections by intervenors and a staff recommendation, even when a proposed modification is truly de minimis under section (A)(5)(b). The requested modification could even be suspended. Icebreaker Windpower is extremely concerned about the additional burden, delay, and expense this new requirement could very well place on the development of wind facilities in Ohio.

¹ For ease of readability, the rule number will be referred to without reference to the chapter or division number.

² "Establishing the Common Sense Initiative," Executive Order 2011-01K (Jan. 10, 2011).

This new requirement is also not supported by the statute. Ohio Revised Code (“RC”) Chapter 4906 only requires and sets forth procedures for the filing of applications for certificates and amendments to such certificates. The statute does not contain a process for the filing of a modification to a certificate. Therefore, Icebreaker Windpower strongly recommends that the Board follow the statute and reject new Rule 09(A)(5)(c).

Icebreaker Windpower believes that the proposed rule creates a new obstacle that wind developers must overcome in order to move forward with projects that have already been fully vetted and approved by the Board. Requiring all nonsignificant changes and modifications to be filed with the Board will result in unnecessary expense and could disrupt construction and future development of wind-powered facilities in Ohio. Not only does this provision create a barrier to Ohio’s economic growth and development, but it discourages developers’ from integrating new updated technologies into their facilities. These new technologies could benefit all stakeholders and maximize the facilities’ production and reduce costs to electric ratepayers.

Moreover, new Rule 09(A)(5)(c) creates a new administrative process that is contrary to the Governor’s Common Sense Initiative. This rule disregards the requirement that the Board balance the critical objectives of the regulation and the cost of compliance, and eliminate rules that are needlessly burdensome or that unnecessarily impede business growth. Icebreaker Windpower believes that the proposed new procedure in Rule 09(A)(5)(c) could significantly impede business growth in the wind industry by potentially delaying projects and threatening to suspend projects for further review, even where proposed modifications are in fact de minimis. The potential cost consequences of new Rule 09(A)(5)(c) could be devastating for wind developers. In addition, the process would create uncertainty and potentially place the developers’ financial support at risk.

Icebreaker Windpower also disagrees with Item 14 in the business impact analysis (BIA)³ that was included as Attachment C to the Board's September 22, 2016 entry. Item 14 of the BIA asked for the estimated cost of compliance with the rules and the scope of the impacted business community. In response, Item 14(a) of the BIA states that the only entities impacted by the rules would be entities seeking to build "electric generation facilities and wind farms." However, with respect to Rule 09 this statement is false, because the only entities affected by this rule are "wind farms." Applicants for generation facilities that are not wind powered will not be burdened by this new rule. In fact, no other major utility facility (i.e., electric transmission, electric substation, or gas pipeline facilities) will be expected to file "modifications" with the Board and be subjected to possible suspension and delay of their projects, even where the proposed modification is in fact insubstantial. Due to the discriminatory nature of Rule 09(A)(5)(c), which is only directed at wind facilities, the proposed rule should be rejected.

Next, Item 14(b) in the BIA states that the costs of compliance with Rule 09(A)(5)(c) "are not expected to vary from the costs of complying with [the current rule]." This statement is incorrect. On the contrary, the cost of compliance with this rule could be significantly higher for wind developers. In fact, such costs would be detrimental to the wind developers, and could result in Ohio foregoing the opportunity to bring additional jobs to the state through the construction and operation of a new wind facility; not to mention the draw of new companies that are seeking to locate in Ohio to take advantage of access new wind facilities. If the requirement for modifications is not rejected, then Item 14 in the BIA should to be revised to

³ Under RC 121.82, the Board must conduct a BIA regarding the rules and provide the draft rules and the BIA to Ohio's Common Sense Initiative Office. Led by Lt. Governor Mary Taylor, this office was "established to create a regulatory framework that promotes economic development, is transparent and responsive to regulated businesses, makes compliance as easy as possible, and provides predictability for businesses." <http://governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx>

reflect that wind developers, as well as other businesses that support the wind industry in Ohio, will experience severe, negative impacts from this rule.

Icebreaker Windpower also notes that certificate conditions approved by the Board for years acknowledge that some insubstantial engineering modifications will be expected prior to construction (this includes wind farms, as well as other generation, substation, and transmission projects). The conditions in those certificates require that, prior to the preconstruction conference, the applicant submit to staff, for review and approval, detailed engineering drawings of the final facility design, so that staff can determine that the final design is in compliance with the certificate.⁴ These conditions recognize that reasonable, but minor adjustments may be necessary prior to submission of the final engineering drawings; hence the reference to a “final” design. Thus, the very language of certificate conditions approved by the Board permit these minor modifications in order to reflect engineering necessities.

The expectation that all modifications by wind developers, even insubstantial, nonmaterial modifications that do not equate to an amendment, must be formally filed creates unnecessary delay and expense. Moreover, this new provision, if adopted, would negatively impact the state of Ohio by discouraging economic growth and clean energy, in favor of a process that potentially gridlocks the wind industry in Ohio. Therefore, new Rule 09(A)(5)(c) should be rejected.

Even though Icebreaker Windpower strongly opposes Rule 09(A)(5)(c), we recognize the Board’s need to receive information concerning modifications and to be apprised of the progress

⁴ *Carroll County Energy, LLC*, Case No. 13-1752-EL-BGN, Order (Apr. 28, 2014) at 21; *NTE Ohio, LLC*, Case No. 14-534-EL-BGN, Order (Nov. 24, 2014) at 17; *Hog Creek Windfarm, LLC*, Case No. 10-654-EL-BGN, Order (Aug. 29, 2011) at 39; *Hardin Wind Energy, LLC*, Case No. 09-470-EL-BGN, Order (Mar. 22, 2010) at 34-35; *Paulding Wind Farm, LLC*, Case No. 09-980-EL-BGN, Order (Aug. 23, 2010) at 37; *Heartland Wind, LLC*, Case No. 09-1066-EL-BGN, Order (Aug. 23, 2010) at 37; *Champaign Wind, LLC*, Case No. 12-160-EL-BGN, Order (May 28, 2013) at 78; *Clean Energy Future-Lordstown, LLC*, Case No. 14-2322-EL-BGN, Order (Sept. 17, 2015) at 27.

of construction and installation of the projects on an ongoing basis. Therefore, Icebreaker Windpower would be willing to work with other wind developers and the Board staff to define what constitutes a modification so that there is no need for the creation of a formal filing and review process for these insubstantial and nonmaterial types of adjustments.

III. CONCLUSION

Icebreaker Windpower appreciates the opportunity to present comments to the Board regarding the proposed revisions and we respectfully request that our proposal to delete Rule 09(A)(5)(c) be adopted. Icebreaker Windpower looks forward to working with the Board to ensure reasonable regulations that support the state of Ohio's economic future and the public interest are advanced.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing comments were served by electronic mail upon the following on this 24th day of October, 2016.

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Summary: Comments filed on behalf of Icebreaker Windpower, Inc. electronically filed by Terrence O'Donnell on behalf of Icebreaker Windpower, Inc.