

**BEFORE
THE OHIO POWER SITING BOARD**

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

Reply Comments of the Ohio Farm Bureau Federation

On May 18, 2016 the Ohio Power Siting Board ("OPSB") initiated Case Number 16-1109-GE-BRO as a new rule making docket to formally consider OPSB Staff's proposed revisions to Ohio Administrative Code ("OAC") Chapter 4906-4-08.

On June 9, 2016 a formal workshop was held on Case Number 16-1109-GE-BRO. At the workshop, eight stakeholders provided comments, including the Ohio Farm Bureau Federation ("OFBF" or "Farm Bureau").

On September 22, 2016 and after Staff had reviewed comments offered at the formal workshop, the OPSB issued an entry with detailed revisions to its rules in OAC 4906-4-08 and 4906-4-09, and requested initial and reply comments from interested parties.

On or before October 24, 2016 government leaders, organizations, community groups, energy developers and individuals provided initial comments on draft rules being considered in these proceedings, including OFBF.

The Ohio Farm Bureau Federation welcomes the opportunity to share and examine suggestions submitted by other stakeholders and provides the following reply comments:

Regulations on Health and Safety, Land Use and Ecological Information

- **4906-4-08 (C) (2) (b):** Since passage of House Bill ("H.B.") 562 in 2008, the Ohio General assembly has amended wind turbine setback requirements twice; most recently in H.B. 483

in 2014. OFBF understands and appreciates OPSB efforts to amend the current rules under review in these proceedings to reflect the current standard.

OFBF understands and appreciates suggestions brought forward in initial comments by all parties involved with this review process. Farm Bureau supports energy development efforts that involve the project developer, utilities, regulatory agencies, government at the local, state and federal levels, economic development authorities and community groups. These efforts should focus on creation of projects that address environmental concerns, consider aesthetic needs and provide economic benefits for landowners and the community.

Farm Bureau recognizes the rights of landowners to enter into effective partnerships and agreements with developers to responsibly use land and resources to develop energy transportation, generation and distribution projects.

OFBF supports OPSB rules, regulations, stipulations, orders and amendments that provide landowner friendly, reasonable and uniform statewide procedures for siting, placement, construction and operation of utility-scale wind farms. Farm Bureau strongly supports an application process that evaluates economic, environmental, and aesthetic impacts on the community as defined in the Ohio Revised Code (“ORC”) Chapter 4906 and OAC 4906. Moreover, Farm Bureau supports wind turbine setback requirements that ensure safety and are based on scientific research.

- **4906-4-08 (C) (2) (c):** OFBF questions revisions suggested by the Mid-Atlantic Renewable Energy Coalition (“MAREC”) concerning identification of *gas pipelines* on wind farm maps. There are ample resources, accessible public records and service organizations that help developers accurately locate interstate, intrastate, distribution and utility service pipelines, as well as associated wells, compression stations, metering locations, tank batteries and other

related infrastructure. Services are provided by the Ohio Utility Protection Service (“OUPS”), the Ohio Oil and Gas Association (“OOGA”) and the Ohio Department of Natural Resources (“ODNR”). Moreover, leases and easements identifying the presence and location of this infrastructure on parcels being incorporated into a wind farm can be found as a matter of public record at the County Recorder’s office.

All oil and gas infrastructure can be readily identified by the company as they conduct their preliminary environmental surveys. Moreover, federal and/or state regulations already establish mandatory procedures for identifying and marking all forms of pipeline infrastructure prior to construction by enlisting services provided by OUPS and OOGA.

- **4906-4-08 (C) (3):** OFBF understands the concerns raised by Union Neighbors United (“UNU”) and Greenwich Neighbors United (“GNU”) with regard to transparency and content of options, leases, easements and waivers establishing relationships between landowners and project developers. However, with the exception of proprietary information concerning legally recognized trade secrets, enforceable copies of these agreements are currently and should continue to be filed as a matter of public record at the County Recorder’s Office.

These types of legal documents have been used by energy and utility developers (oil and gas, electric transmission and distribution, pipeline and telecommunications) and landowners for over a century. Key agencies governing these projects (the Federal Energy Regulatory Commission, the Federal Communications Commission, the Public Utilities Commission of Ohio and the Ohio Attorney General) have established rule, regulation and policy explaining that the respective regulatory agency governs development of a project in

areas of public safety, convenience, need and necessity; they do not govern and/or dictate terms in legal agreements between developers and individual landowners.

OFBF recognizes the rights of landowners to enter into effective partnerships and agreements with developers to responsibly use land and resources to develop energy transportation, generation and distribution projects. Along with the government agencies listed above, we encourage all landowners considering these relationships and agreements seek competent legal counsel.

- **4906-4-08 (E) (2) (c) (ii):** OFBF questions revisions suggested by MAREC concerning repair/remediation of damaged subsurface drainage systems (drain tile or field tile). OFBF agrees that the rule should confirm the landowner's right to manage property. However, it must be taken into consideration that surface and subsurface drainage systems are interconnected across property lines. Damage to the system on one property could impact additional landowners located a considerable distance from the construction project. Timely repair for these adjoining landowners is vital.
- **4906-4-09 (A) (5) (b):** OFBF agrees in principle with concerns expressed from the Ohio Environmental Council, MAREC, Icebreaker Windpower, Inc. and Greenwich Windpark, LLC. The need to clarify which design changes in a wind energy development project should be considered a *modification* and which should be considered an *amendment* is vital. In describing the minimal nature of modifications, the rule states that modifications *would not create additional adverse impacts for any property owner*. This wording could be considered too broad and invites disputes.

OFBF understands that a change that warrants no major physical alteration to the plan layout (selecting a new or upgraded turbine model based on generation capacity, but

no changes to turbine size and/or reducing the number of turbine sites and related infrastructure within the plan) should be considered a *modification* and be subject to the approval process suggested in rule revisions. Moreover, changes expanding the physical size of the plan (selecting a new, physically larger turbine model warranting new environmental evaluations and/or relocating or expanding the number of turbine sites and related support infrastructure) should be subject to an *amendment*.

OFBF suggests additional work on the draft text, and/or providing a list of specific changes to a plan that would be considered a *modification*, and which changes would be considered an *amendment*.

- **4906-4-08 (E) (2) (b) (i):** OFBF agrees with Mr. Gary Biglin that aerial application of seeds, crop protectants, fertilizers (“aerial application” or “crop dusting”) should be considered a field operation eligible for impact evaluation. Moreover, utilization of drone technology for agricultural field monitoring and evaluations should be added.

Wind energy development companies could address this requirement by showing how the issue would be addressed in effective lease agreements and waivers with landowners, as well as developing turbine shutdown procedures during times when aerial applications are necessary on an emergency and/or scheduled basis.

General Comments

- **Definition of a Wind Energy Generation Facility:** OFBF understands and appreciates Ms. Katie Elasser’s general comments on terminology used to define these types of facilities. OFBF points to ORC 4906.13, which defines these facilities as *Economically Significant Wind Farms*. As consistency between the authorizing statutes and rules are important, terminology refers back to this legal definition.

Conclusion

For the foregoing reasons, the Ohio Farm Bureau Federation recommends that the above comments and changes be considered and adopted by the Ohio Power Siting Board as it finalizes rules in OAC 4906-4-08 and 4906-4-09.

Respectfully Submitted,

/s/ Chad A. Endsley

Chad A. Endsley (0080648)
Chief Legal Counsel
Leah F. Curtis (0086257)
Amy M. Milam (0082375)
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218-2383
Phone: 614.246.8258
Fax: 614.246.8658
E-Mail: cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

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Summary: Comments Reply Comments of the Ohio Farm Bureau Federation electronically filed by Amy M Milam on behalf of Ohio Farm Bureau Federation