



Ohio Environmental Council

To: Ohio Power Siting Board
From: Miranda Leppla, Clean Energy Attorney, Ohio Environmental Council
Date: February 1, 2018
Subject: Ohio Environmental Council Comments on Proposed Language Revision in Paragraph 10 of the Entry Dated January 18, 2018, Review of Rule OAC 4906-4-08(C)(3), Case No. 16-1109-GE-BRO

The Ohio Environmental Council (“OEC”) submits the following comments on the Ohio Power Siting Board’s (“OPSB”) proposed language revision set forth in Paragraph 10 of the Entry dated January 18, 2018, reviewing Ohio Adm. Code 4906-4-08(C)(3).

The OEC believes the inclusion of the word “all” in the additional revision proposed in the OPSB’s January 18, 2018 Entry is unnecessary, and will only complicate interpretation of the rule implementing the statute--a statute that already is vigorously debated. Because adding the word “all” does nothing but add another layer of interpretation and possible confusion of the intention of the statute, it should not be included in the proposed Ohio Amd.Code 4906-4-08(C)(3).

The purpose of R.C. 4906.20(B)(2)(c) is to permit landowners to waive the minimum statutory setback distance from their property to a proposed turbine, permitting that turbine to be placed closer to their property than the minimum distance required under Ohio law. The OEC’s concern is that the addition of the word

“all” could be interpreted to put a requirement on developers to obtain waiver of the minimum setback distance from each and every owner of property adjacent to the property on which the turbine will be sited, even where those adjacent property lines meet and/or exceed the minimum setback distance. Including the word “all” could be interpreted to conflict with the statutory language, and such an interpretation both defies common sense and infringes upon the property rights of the individual who agrees to waive the minimum setback distance for their property. The inclusion of the word “all” could permit the interpretation that “all” adjacent property owners to the turbine property need to approve their neighbor’s decision to waive a setback distance. Why, if Neighbor A chooses to sign a waiver and permit a turbine to be placed closer than the statutory minimum setback distance to her property, should Neighbor B, whose property line meets or exceeds the minimum setback distance from the turbine, need to sign a waiver to permit Neighbor A’s choice?

The answer is, Neighbor B does not need to sign a waiver under Ohio law, and OPSB needs to ensure this rulemaking implements that reality. The OPSB has approved prior wind farm siting cases that agree that under Ohio law, waivers must only be obtained from property owners whose adjacent properties do not meet the minimum setback requirements--not that all adjacent property owners must waive the setback requirement if one property owner’s property line does not meet the minimum setback distance. *See e.g., In the Matter of the Application of Heartland Wind, LLC*, PUCO Case No. 09-1066-EL-BGN.

The OEC believes the rule should closely track the statute it is implementing, especially in a situation such as this where the statutory language has been debated. It is imperative to not further confuse the matter with additional language that could be interpreted in alternative ways. Language that diverges from the statute could add another layer of interpretation, giving parties opposed to wind projects on principle, rather than because of safety or environmental concerns, another avenue to stall projects.

The intent of the statute must be preserved, and the best way in which to ensure this is to revise Ohio Adm. Code 4906-4-08(C)(3) to more closely track the statute, as detailed in the comments made previously in this docket by Mid-Atlantic Renewable Energy Coalition (“MAREC”). *See MAREC Initial Comments* (Oct. 24, 2016), at 7. MAREC noted that the language should closely track the language of the statute, recommending that the rule read: “[t]he owner(s) of property adjacent to the wind farm property may waive the application of the setback to that property pursuant to the procedures set forth in this rule”.

Conclusion

While the OEC believes the best route is to implement the language suggested by MAREC in its Initial Comments, at minimum, the word “all” should not be included in Ohio Adm. Code 4906-4-08(C)(3), and the additional revision should be rejected.

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Summary: Comments Ohio Environmental Council Comments on Additional Revision
electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council