Comments of Julia F. Johnson
OHIO POWER SITING BOARD RULE WORKSHOP
In the Consideration of the Ohio Adm. Code Chapter 4906-4

Case No. 19-778-GE-BRO

August 14, 2020

My name is Julia Johnson and I reside in Champaign County. My mailing address is P.O. Box 230, Urbana, Ohio 43078.

I wish to express support for the Board's efforts to adopt a rule requiring industrial wind facility operators to file public reports of incidents. Given the history of incidents experienced in Ohio and the lack of transparency surrounding those events, the public has demanded more accountability and assurance that the safety of the community is given the highest priority in siting industrial wind turbines. Because Ohio has pre-empted local zoning and governance of these facilities, we must rely on effective state-level protocols. We believe rules must require timely reporting, meaningful staff investigations and authorized restarts of any turbines following a failure.

It is deeply concerning to the residents of NW Ohio that representatives of the wind industry have objected to reasonable safety requirements, which they call "costly, duplicative, and unnecessary." Moreover, industry claims that ambiguity in the proposed rules could have an adverse business impact on financing are specious. The proposed revisions remove any ambiguity.

MAREC's May 25, 2020 letter to the Joint Committee on Agency Rule Review tries to make an argument that "local communities that rely on associated tax revenue" from industrial wind facilities would be harmed by rules which require a period of investigation before a restart. (Attachment A) It is absurd to think communities prefer to put tax revenue above the safety of local residents. Three days for an initial site visit by staff is reasonable.

The OPSB's amended rule at 4906-4-10 (D) provides for a swift and reasonable process that will give the community some assurance that their wellbeing is protected going forward following a blade shear, ice throw, tower collapse or other failure such as experienced the Timber Road/Paulding Wind Farm where a technician in Portland, Oregon restarted a damaged turbine causing a blade to strike the tower and then throw debris across a field. The local community supports amended 4906-4-10 (D) (4) giving OPSB up to seven days following the docketing of the final written report and verification to authorize resumption of operation.

I believe the turbines in the 2018 Blue Creek incident in Van Wert were Gamesa. But the Timber Road wind facility's turbines are Vestas as are the Hog Creek turbines in Hardin County. It was disturbing to read on Tuesday of this very week, that Vestas reported a quarterly loss due to extraordinary warranty claims on a "considerable number of blades", causing the company to re-introduce a guidance for all 2020, expecting a lower profitability than seen earlier this year."[1]

---

[1] In the second quarter of 2020, Vestas generated revenue of EUR 3,541m – an increase of 67 percent compared to the year-earlier period. EBIT before special items decreased by EUR 94m to EUR 34m. This resulted in an EBIT margin before special items of 1.0 percent, compared to 6.0 percent in the second quarter of 2019. The decrease was primarily a result of extraordinary warranty provisions made in the quarter of EUR 175m, covering a specific repair and upgrade of a confined number of blades already installed; excluding these provisions, the underlying margin was 5.9 percent. Free cash flow* amounted to EUR (78)m compared to EUR (75)m in the second quarter of 2019." https://www.vestas.com/en/investor/company-announcements?n=3732093#!NewsView

The source of the warranty issues was reported to be a high incidence of lightning strike blade damage.[2] Vestas CEO Henrik Anderson reportedly refused to say how many blades were impacted or what the models were. (Attachment B) Wouldn't we all like to know if any of those models are operating in Ohio? Without incident reports that apply to existing and future utility wind facilities, we may never know.

Citizens of NW Ohio have long complained about the culture of secrecy in the wind industry. It starts with quiet visits to the community, signed lease agreements that are not timely recorded, gag clauses prohibiting leaseholders from speaking out about adverse impacts, unwillingness to disclose avian mortality rates, claims that safety manual information is confidential and so on. The OPSB proposed incident reporting rules are a first step in bringing about a cultural change in Ohio with respect to the culture of industrial wind secrecy.

The risk to the public from wind turbine incidents is documented. The people of Ohio have a right to expect their government to maintain protocols that provide for their awareness and safety. The proposed rules and timeframes associated with those rules are reasonable and should be adopted.

[2] https://www.rechargenews.com/wind/lightning-strike-blade-damages-push-vestas-into-fresh-quarterly-loss/2-1-855590

Attachment A

May 25, 2020

The Honorable Theresa Gavarone, Chair
Joint Committee on Agency Rule Review
77 South High Street
Columbus, Ohio 43215

Re: Ohio Power Siting Board Forthcoming Proposed New and Amended Administrative Rules Regarding Wind Farms / Request for Further Review or Invalidation

Dear Chair Gavarone,

On behalf of the **Mid-Atlantic Renewable Energy Coalition** ("**MAREC**"), we write to express opposition to new and amended administrative rules the Ohio Power Siting Board ("OPSB" or "Board") intends to file with the Joint Committee on Agency Rule Review ("JCARR" or "Committee"), which pertain to the construction and incident management of wind-powered electric generation facilities.[1]

MAREC is a coalition of renewable energy manufacturers and developers who build renewable energy throughout the Mid-Atlantic region. Several MAREC members own, operate, and are developing wind projects in Ohio that have and will continue to create hundreds of jobs and billions of dollars' worth of economic investment statewide. In short, we find the OPSB's proposed rules to be costly, duplicative, and unnecessary. Further, given their ambiguous nature and direct conflict with existing statute, we believe they will introduce undue regulatory uncertainty and reduce our member companies' ability to both operate existing projects cost-effectively and to obtain financing for new projects from lenders and investors. This jeopardizes the construction and operation of our projects and the associated economic development in Ohio. **We respectfully request the Committee invalidate the identified rules or send them back to OPSB for further review and revision**.

Background: On June 20, 2019, the Board formally requested stakeholders to file comments regarding the proposed rules at issue. In particular, amended OAC Rule 4906-4-09(A)(1) would require wind farm "structures not involved in generation or transmission of electricity" to comply with the state building code, and new OAC Rule 4906-4-10 ("Incident Reporting Rule") would create additional reporting obligations for wind farm operators (Collectively, "Proposed Rules"). Despite significant stakeholder opposition, on November 19, 2019, the Board recommended adoption of the Proposed Rules. The Board rejected all of MAREC's recommendations for improvement.

JCARR Jurisdiction: As you know, the Committee's primary function is to review proposed new, amended and rescinded rules from state agencies to ensure they do not exceed the rule making authority granted to them by the General Assembly. JCARR has the authority to recommend

[1] On November 21, 2019, the OPSB issued an Order recommending adoption of amendments to Ohio Administrative Code ("OAC") Rule 4906-4-09(A)(1) and new OAC Rule 4906-4-10. *See* In re OPSB's Consideration of OAC

Chapter 4906-4, Case No. 19-778-GE-BRO, Order (Nov. 21, 2019) (attached). Subsequently, the OPSB denied various applications for rehearing. *Id.*, Entry (Feb. 20, 2020) (attached). Although the Board has not yet filed the proposed rules with JCARR, we understand that the applicable submission could occur imminently. In light of the recent action filed with the Ohio Supreme Court regarding the same rules, we find it prudent to bring them to the Committee's attention immediately. *See* Notice of Appeal from OPSB Case No. 19- 778-GE-BRO (Filed with Ohio Supreme Court Apr. 20, 2020) (Case number not yet assigned).

invalidation of rules that exceed an agency's statutory authority, conflict with another rule or statute, or create an unjustified adverse impact on business.[2]

Adverse Business Impact: The Proposed Rules would create confusion and uncertainty across the industry, harming wind energy businesses and local communities that rely on the associated tax revenue. The lenders and equity investors upon whom developers rely for funding need some degree of long-term regulatory and operational predictability to justify the significant up-front capital investment associated with large scale wind projects. Proposing unnecessary and duplicative rules on top of the existing certificate approval process, and in addition to ongoing condition compliance obligations, would jeopardize the industry's ability to obtain such critical financing. Simply put, the Proposed Rules could torpedo the development of future job-producing and economy-stimulating energy projects. To illuminate these impacts, we specifically note just one section of the Incident Reporting Rule, which reads:

> *….a wind farm operator should not disturb any damaged property within the facility or the site of a reportable incident until after staff has made an initial site visit. A wind farm operator will not restart any damaged property within a facility involved in a reportable incident until such restart is approved by the board's executive director or the executive director's designee.* (New OAC Rule 4906-4-10(D)(1) - (2)).

Under this new rule, operators must wait an unspecified amount of time for OPSB staff to investigate any "reportable incident"—which broadly includes events resulting in any injury (however minor) or property damage of any kind. Not only must they pause operations during this potentially lengthy period, but they may not resume (even after repairs) until OPSB Executive Director approval.

This presents numerous logistical and financial challenges for wind projects as a shutdown of any part of the wind facility can have far-reaching detrimental effects on the operator, landowner(s), offtaker(s), and community at large. And under the rule's broad language, shutdowns could occur often for indeterminate periods "to be determined." The prospect of numerous shutdowns of undetermined, potentially very long duration make financing projects in the first place very challenging since lenders and investors will face the risk of long periods with no production. Developers would also face the prospect of damage claims from project-offtakers who are relying on the electricity produced.

In our initial comments, MAREC offered practical suggestions for improvement in an attempt to make this rule workable—including specifying a deadline by which OPSB staff must make their initial site visit. The Board rejected these recommendations.[3]

Exceeding Statutory Authority: The Proposed Rules grant the Board unprecedented authority to stall and even shutdown existing and future wind farm operations. Again, we emphasize

[2] *See* JCARR Procedure Manual (Aug. 19, 2019 Edition), available at http://www.jcarr.state.oh.us/assets/files/jcarr-procedure-manual-1-22-20-328.pdf. *See also* Ohio Revised Code ("RC") Section 101.35.

[3] In addition to an inspection deadline, MAREC advised the OPSB in its initial comments that, given the strict protocol in the emergency plans approved by the Board and enforced via certificate conditions, experts employed by the project operator and parts manufacturer are in the best position to evaluate and determine when the impacted facilities are safe to resume. Consequently, MAREC suggested the process provide for reasonable notice from the operator to the Board's Executive Director prior to any facility restart.

that as currently drafted, the rules grant the Board unfettered discretion to maintain a shutdown for an indeterminate amount of time. Not only do the rules lack a time period by which OPSB staff must investigate an incident, but moving forward, facility "restarts" would be left entirely to the discretion of the Board's Executive Director or unnamed appointee. The process represents a regulatory overreach of agency authority that does not exist in any other arm of state government and does not apply to any other industry. Just wind.

In addition, the Proposed Rules allow the Board to "circle-back" and re-litigate closed cases on which it has already issued a certificate of approval. Under the Proposed Rules, the Board could alter existing certificate conditions of operational projects, each of which the developer established after lengthy deliberations with the Board's staff, intervening stakeholders, and the public. But as the Committee knows, the Board may only exercise the authority granted to it by statute. And Ohio law does not authorize the Board to pass rules that retroactively impose conditions on an existing certificate; the law similarly does not provide the Board with authority to adopt a rule that imposes new conditions on existing certificates that are final and non-appealable.[4]

Conflict with Existing Statute: The Proposed Rules conflict with the state's decades-long statutory and regulatory framework governing the review and certification of electric generation facilities. Ohio law currently requires OPSB staff not only to conduct a robust investigation into any application to construct a commercial scale wind farm, but to subsequently produce a report, and hold public hearings where necessary.[5] This 1- to 2-year approval process represents a multi-million dollar investment for the project developer / owner, and allows members of the public to intervene and (more generally) submit comments. Once approved, the Board issues a certificate of approval along with conditions the applicant must continuously meet that ensure the proper construction and same ongoing operation / maintenance of the facility. The certificate conditions address a myriad of incident reporting obligations, as well as the regulation of non-generation / transmission structures. As such, the Proposed Rules are duplicative and unnecessary.

Based on the foregoing, we respectfully request the Committee invalidate the identified rules or send them back to OPSB for further review and revision. Attached are our initial July 11, 2019 comments to the OPSB, which contain additional context. Thank you for your consideration.

Sincerely,

Bruce Burcat, Executive

Director cc: JCARR Committee members
Larry Wolpert, Executive Director, JCARR

Bruce W. Burcat

---

[4] *See* RC Chapter 4906.

[5] RC Sections 4906.04, 4906.20, 4906.98.

Attachment B

https://www.rechargenews.com/wind/lightning-strike-blade-damages-push-vestas-into-fresh-quarterly-loss/2-1-855590

Lightning strike blade damages push Vestas into fresh quarterly loss

Revenues rise on US deliveries but extraordinary blade warranties impact earnings

11 August 2020 8:02 GMT *UPDATED 11 August 2020 13:29 GMT*

By **Bernd Radowitz**

Danish wind turbine manufacturer Vestas has posted another quarterly loss, due to extraordinary warranty on a “considerable number of blades”, and re-introduced a guidance for all of 2020, expecting a lower profitability than seen earlier this year.

Earnings before interest and taxes (Ebit) and special items plunged to €34m ($40m), from €128m in the second quarter of 2019.

The decrease was driven by increased cost levels derived from warranty provisions as well as logistical challenges and supply-chain bottlenecks, amplified by the Covid-19 situation. Costs related to warranty provisions amounted to €283m, including a €175m one-off provision.

The OEM in consequence posted a net loss of €5m, compared to a net profit of €90m in the second quarter of 2019. It was the second quarter in a row Vestas had suffered a loss.

Vestas stressed the extraordinary provisions in the second quarter of 2020 are not related to current or future production but cover a specific repair and upgrade of a confined, but considerable number of blades that are already installed.

"Current and future blades will not be affected by any of this," chief executive Henrik Andersen assured investors during an earnings call.

Andersen refused to tell which number of blades had been affected, or with which turbine model they are associated. But he did disclose that the damages are related to "high intensity lightning" and to a number of confined spaces.

Apart from the mysterious blade problem, results also suffered a €20m direct impact from the coronavirus pandemic, chief finance officer Marika Fredriksson said.

“The COVID-19 pandemic continued to impact the renewable energy industry and the global economy in the second quarter of 2020,” according to Andersen.

“In these challenging circumstances and without state aid, Vestas’ almost 26,000 employees have performed strongly, growing our revenue by 67% percent compared to the same quarter last year and achieving an order intake of 4.1GW as well as a record high total order backlog of more than €35bn.”

The company’s revenue actually rose during the second quarter to €3.54bn ($4.16bn), up 67% from the year-earlier period, primarily driven by a higher volume of wind turbine deliveries in the US, and despite a negative impact from foreign exchange effects of about €100m.

“The global pandemic and economic downturn will continue to create uncertainty in 2020, but we remain confident in our ability to ensure business continuity across our value chain and are therefore reintroducing guidance for 2020 with unchanged outlook for revenue of €14-15bn, while the EBIT margin is updated to range between 5 and 7%,” Andersen added.

In light of the difficult economic environment, but a simultaneous rising order intake both in wind turbines and services, Vestas re-introduced a guidance it had suspended in April due to disruptions in the wake of the coronavirus pandemic.

The company continues to expect revenues of €14-15bn, as in the previous guidance, but lowered the expectation for its earnings before interest and taxes margin (Ebit margin) to 5-7%, from the 7-9% still expected until April. The lower profitability forecast includes the €175m in warranty provisions.

The company now sees total investments of less than €700m this year, compared to about €700m seen earlier.

Vestas didn't disclose how much less than €700m it expects to spend this year, but Fredriksson said a normal investment level for the company would be €500-700m.

After having come up with a number of new products recently, Vestas will likely reduce its R&D spending somewhat in the foreseeable future, the CFO added.

The MHI Vestas offshore wind joint venture, in which Vestas and Japanese conglomerate Mitsubishi each own 50%, had a net loss of €12m during the second quarter of 2020, compared to a net profit of €20m a year earlier.